

Commission Meetings & Corresp.

May 1991

MSA 51032-82

AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

May 1, 1991

275 West Street, Suite 320
Annapolis, Maryland

1:00 - 1:05 Approval of the Minutes of March 6th Meeting John C. North, II
Chairman

PROJECTS

1:05 - 1:30 Reconsideration - Ferry Farms Subdivision Project (Residue) Dorchester County Tom Ventre, Planner/
Samuel Bowling, Ch./
Kathryn Langner, Ch.

1:30 - 1:50 Reconsideration - Tobin Ferry Project - Dorchester County Tom Ventre, Planner/
Samuel Bowling, Ch./
Kathryn Langner, Ch.
legal council
delayed for legal review

1:50 - 2:05 Vote on University of Maryland Wye Research & Education Center Pump House - Queen Anne's Co. Ren Serey, Planner/
Samuel Bowling, Ch./
Kathryn Langner, Ch.
passed

2:05 - 2:20 Vote on Maryland National Capital Park & Planning Commission - Balloon Park - Bladensburg, Prince George's Co. Ren Serey, Planner/
Samuel Bowling, Ch./
Kathryn Langner, Ch.
passed

2:20 - 2:35 Vote on Maryland National Capital Park & Planning Commission - Mini Park Basketball Court, Prince George's Co. Ren Serey, Planner/
Samuel Bowling, Ch./
Kathryn Langner, Ch.

2:35 - 2:45 Update - Stadium Project - Baltimore City Dawnn McCleary,
Planner

AMENDMENTS/REFINEMENTS/PROGRAMS

2:45 - 3:00 Vote on Cecil Co. Growth Allocation Policy - Needs to be Extended for One Year Anne Hairston,
Planner
passed

3:00 - 3:05 Refinement - HB 1060 Impervious Surfaces - Prince George's County Pat Pudelkewicz,
Planner
OK

3:05 - 3:10 Refinement - HB 1060 Impervious Surfaces - Town of Federalsburg Claudia Jones
Planner
OK

LEGAL MATTERS

3:10 - 3:30	Update - The Wharf at Handy's Point - Kent County	George Gay, Asst. Attorney General
3:30 - 3:45	Update - Bellanca Case - Kent County	George Gay, Asst. Attorney General
3:45 - 4:00	Burton Appeal - Dorchester Co. <i>*injunction</i>	George Gay, Asst. Attorney General/ Tom Ventre, Planner
4:00 - 4:15	Davis Appeal - Dorchester Co.	George Gay, Asst. Attorney General/ Tom Ventre, Planner
4:15 - 4:30	Old Business New Business	John C. North, II Chairman
	*June 5th Commission Meeting - St. Mary's City, Maryland	Hugh Smith

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
March 6th, 1991
Constellation Room
World Trade Center
Baltimore, Maryland

The Chesapeake Bay Critical Area Commission met in the Constellation Room of the World Trade Center, Baltimore, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

Ronald Adkins
Samuel Y. Bowling
James E. Gutman
Joseph J. Elbrich, Jr.
Kathryn D. Langner
Robert R. Price, Jr.
Albert W. Zahniser
Parris Glendening
James Peck
of the Department
of Natural Resources
Deputy Secretary Cade
DCHD

G. Steele Phillips
Victor K. Butanis
William H. Corkran, Jr.
Shepard Krech, Jr.
Roger W. Williams
Michael J. Whitson
Ronald Hickernell
Thomas Jarvis
Robert Schoeplein
of DEED
James L. Hearn of
Dept. of Environment

The Minutes of the Meeting of February 6, 1991 were approved as written. Chairman North announced the very tragic loss of Mrs. Susan Lawrence Barr, Chesapeake Bay Critical Area Commission Natural Resource Planner, who died on February 16th of natural causes. A motion was made and seconded that the Commission Secretary convey to Susan's family, parents and husband, the Commission's deepest condolences at their loss. The vote was unanimously in favor.

Chairman North mentioned that contributions in Mrs. Barr's memory might be made to the Mount Carmel United Methodist Church, 4760 Mountain Road, Pasadena, Maryland 21122. It was Susan's desire that any contributions be disbursed to the benefit of the Homeless.

Chairman North announced that on April 28th, 1991 there will be a dedication of a Park in Baltimore County in honor of the former Commission Chairman, Judge Solomon Liss. He said that all previous and former Commission Members would receive an invitation to attend and that the Chesapeake Bay Commission is funding a plaque to be mounted on a stone in honor of Judge Liss. Contributions to that cause should be sent to the Department of Natural Resources (checks made out to Tremendous Maryland). He said that it has been suggested to Dr. Torrey Brown that a tree be planted in that park in the honor of Mrs. Susan Barr.

Chairman North asked Ms. Pat Pudelkewicz to report on Program Refinements for Caroline County, Rock Hall, Snow Hill, Millington, Cecil County and Port Deposit.

Ms. Pudelkewicz stated that these jurisdictions named have incorporated into their local programs the requirements of House Bill #1060 for impervious surface legislation which the General Assembly passed last year.

A motion was made and seconded to support the refinements presented and the vote was unanimously in favor.

Chairman North asked Ms. Anne Hairston to report on the Leonardtown Program Amendment.

Ms. Hairston stated that the request was for an annexation to the Town and the delineation and designation of 12 acres in the Critical Area on this annexed property in Leonardtown. She stated that the issue was that Leonardtown annexed the parcel in question after the Critical Area Program had been adopted (11-14-88), but before St. Mary's County program had been completed (3-27-90). She said that during the annexation process, the Town did not delineate the Critical Area line or place a designation on it, so they have come in now to rectify the situation.

She demonstrated with a map that showed the proposed Critical Area line and designation (4 ac. LDA, 8 ac. IDA). She stated that the delineation of the line exceeds 1000 feet from the head of tide, but conforms to the delineation on the adjacent parcel, an area that had been extended at the time of original program approval. The area beyond the 1000-foot line has steep slopes, highly erodible soils, and forest-interior-dwelling-bird habitat, all adjacent to Town Run, the stream which runs through the parcel in question and into Breton Bay. Because of the sensitivity to the area beyond the 1000-foot line and the likelihood of degradation in the Critical Area if it were developed without strict environmental controls, the Town extended the Critical Area line, although not to the full extent of the area of forested, erodible, steep slopes.

Ms. Hairston stated that the current delineation does conform with the previous extension although it was not recognized as an extension at the Town level. She said that it only came out in a public hearing in Leonardtown the previous week and there had been no advertisement at that time that this constituted an extension of the Critical Area and was not the minimum 1000' line. However, she stated that the designation of part of the parcel as IDA does not seem supportable according to the Criteria. The entire area is served by sewer and water, and is adjacent to existing LDA and IDA, so it qualifies for LDA designation under the Town's mapping criteria. The existing development consists of a cemetery in the proposed LDA, and one structure previously used as a combination doctor's office and residence in the proposed IDA. Although the use as a doctor's office is commercial, it does not meet the condition that IDAs be predominantly commercial or industrial uses, because the site is predominantly wooded, and developed only with a single, residential-type structure. The area does not meet the residential density necessary for IDA designation.

Ms. Hairston said that the proposed IDA has been zoned for a Planned Unit Development (PUD) since 1982. None of the PUD has been developed, and the plans are still in conceptual stages. The Route 5 Bypass is being constructed north of the proposed Critical Area, and some delays in planning the PUD evidently occurred because of uncertainty over the final alignment of the Bypass. She said that the development company is planning garden apartments and condominiums in the proposed Critical Area. IDA designation would avoid the need to protect steep slopes, although the nontidal wetlands near Town Run would be protected from direct disturbance.

Ms. Hairston stated that the panel recommendation was for denial of the Amendment, based on the determination that the 8 acres does not qualify for IDA designation.

Mr. Joseph Elbrich asked if the part of the property that is in the Critical Area to be extended was part of a PUD approval that existed as of

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1985, and was there approval of a plan or a project proposed at that time.

Ms. Hairston said that it had PUD zoning as of 1982.

Mr. Bowling stated that not all of the site was owned by the same person and that there was no approval of a plan or a project proposed.

Ms. Hairston said that the larger parcel was given a PUD zoning and that the part where the Doctor's office is now was not a part of the original approval.

Mr. Glenn Gass, the development representative - an engineer for Norris, Gass and Ocker, said that they had been working with Interstate General, the current landowner, since 1989 on the specific concept plan. Mr. Gass said that in Leonardtown, the St. Mary's Academy property, Route 5 is the major roadway serving St. Mary's County, particularly coming in from the County line and going through St. Mary's City. He said that a line that has traditionally come into the center of Leonardtown and up to Riken High School, has for years been identified for a specific need by the town, county and State Highway to bypass the town of Leonardtown with an updated, upgraded Route 5 and that plan was in the process in the early 80's. The previous owner, Academy Development Corporation approached the County in late 1980 with a planned unit development which would have provided a corridor for a Route 5 bypass, but was not to anyone's desire. The State in the 1980's held a number of hearings and presented alternatives and the preferred one became the bypass that is now under construction - the Maryland Route 5 bypass. He said that in addition to that specific construction, the County in the development of their governmental center identified a need for a new jail and a new state office complex; therefore, there became a need to upgrade the sewer capacities. With the agreement of all property owners affected, a sewer corridor was secured and the construction was completed which would take the sewer to Route 5.

Mr. Gass said that the habitat in the cemetery area would remain stable. He said that when the town came forward with a proposal for annexation in 1989, Interstate General, the landowner then, said there would be no conflicts with the annexation of the property into the town and that annexation gave the town control of that interceptor and the only condition was that the overall densities of their development be maintained in the annexation process. He said that when the town was approached with plans, they agreed to what the densities were for the overall development. However, the Town made one request at that time concerning one 24-acre piece. That request was for a single family area - to decrease the density so that it would be consistent with the existing adjacent single family dwellings. Interstate General directed that to occur, and where the density could have been picked up significantly, the area was left in larger sized single family lots to be compatible with the town's directives and the existing pattern of development. The trade off in design, being aware of the steep slopes and wooded conditions, was to pick up the type of density and the types of units and construction for mixes and matches of single family and multi-family to increase the densities. In trying to design a plan a much smaller development envelope emerged. He stated that they were aware of the differences in the mapping between the town and county. They had worked with the county mapping and what areas were identified as wetlands or open space. However, when the town was approached, they wanted to use their mapping which takes a substantial portion of the property. The town suggested that if the area could be IDA, which would be consistent with their prior mapping for the

comprehensive plan, that it would work for the development company. Mr. Gass stated that with the IDA designation suggested by the town or with the County's mapping of the Critical Area the problems could be worked out, but with the combination of LDA and the town mapping, it would be almost impossible to work with.

Mr. Bowling asked when Interstate General acquired the tract of property known as the Barbich portion.

Mr. Gass replied in 1989 the town annexed it all as PUD. He said that Leonardtown has a two stage approval. The first is an exploratory plan, and then there is a development plan. The exploratory plan is, in essence, a concept plan approval which shows the general layout and allocation of units and their proposed densities. A copy of the actual exploratory plan application is in the Commission records. The mapping is part of the exploratory plan and the narrative which goes into the history and allocation of units and various densities is included which corresponds to the requirements of the ordinances of Leonardtown.

Ms. Langner asked what was the proposed density of the portion in the Critical Area.

Mr. Gass stated that the concept plan provides area for mixed garden apartments - the average density 10-12 units per acre, condominium or garden apartments, stacked, flat units. He said that they have access provided for by State Highway construction and designated by them.

Ms. Hairston said that Habitat Protection Areas would have to be identified and appropriate protection measures applied for whatever area will be in the Critical Area as a program requirement.

Mr. Price asked if the extension of the Critical Area would have been part of the St. Mary's County Critical Area.

Ms. Hairston stated, not as originally mapped.

Mr. Bowling said that it was interesting that the Town extended the Critical Area and the adjacent County did not extend it.

Mr. Price stated that his understanding is that when the Town annexed the property they didn't extend the Critical Area on the parcel.

Mr. Bowling stated that they did not go through a request of an extension of it but did map an extension of it when they annexed it.

Mr. Gass said that the Town's Critical Area line is overlaid in one area and the County's Critical Area Mapping line is a projection of what they would have put into the same area. He said that from an overview most of the area is in open space.

Mr. George Gay asked if the County had been consulted in conjunction with the annexation, to see how they feel about the zoning request.

Mr. Bowling stated that the County was not present at the hearing.

Mr. Gass said that Leonardtown was one of the first jurisdictions to comply with the Critical Area Program and to become a fully implemented program. At the time of the annexation, the County was approaching the moment when they would have adopted their mapping and they had no Town designation.

Ms. Hairston stated that the annexation had been completed for over a year and they had neglected to designate the Critical Area line.

Mr. Price said that they actually didn't have Critical Area designation before the annexation was completed.

Ms. Hairston stated that the extension was not represented as an extension to the Commission and they were not aware that it was an extension.

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The portion within the Town limits was mapped like this, and it was a continuation of and conforms with the mapping on the adjacent parcel.

Mr. Gay stated that the County, during a five year window after annexation, has a limited amount of control over change in zoning designation on properties that were within its jurisdiction.

Ms. Hairston said that zoning designation was PUD in the County and Town and so the zoning designation is consistent.

Mr. Bowling said the Barbich tract was not included in the PUD at that time.

Ms. Hairston said that it was in the zoning, but not within the development plan.

Mr. Gass said that the County adopted a comprehensive plan in 1988 and that this area is in the center of one of the two development districts in the County. He said that there are only two major development districts. He said that the county's underlying zoning is compatible.

Mr. Bowling stated that it appeared to the panel that it had to be mapped as it appeared in December 1985. He said that any higher use would require growth allocation or something along those lines.

Mr. Gay said that if the Commission has a problem with either the IDA or the LDA, that it cannot approve the other part.

Mr. Bowling stated that it was not made clear to the public that this was an extension of the Critical Area, (which came out in the hearing rather than being part of the hearing) and that there was inappropriate advertising. He made a motion, based on the panel recommendation, that the 12 acres be denied, because 8 acres of it do not meet the IDA criteria, and the extension of the Critical Area was not mentioned in the advertisement.

The motion was seconded by Mr. Zahniser.

Mr. Ronald Hickernell said that the decision of the panel and subcommittee is the only option available, but the consequence that is obvious, considering the history of the tract of land, and the convoluted nature of the questions coming to the Commission, and the logical expectation would appear to be that the Town will react by removing the Critical Area designation beyond a 1000' and honor the prior agreements. He said that means that the Commission, in the interests of the well-being of the Critical Areas and the Chesapeake Bay, would lose ground. He stated that while he did not believe that the Commission had the ability to place within the Commission's actions another course of action beyond that which has been recommended, it would be very useful if the Commission staff were helpful to both the town and the developer to suggest other courses of action by which the Town's objectives can incorporate those environmental concerns that the Commission has for the Habitat Protection Area and particularly for the contour of the land, so as this project proceeds one doesn't end up with the position that the only thing to do is to discontinue any consideration of Critical Area Criteria in the area beyond the 1000'.

Chairman North asked if the motion should be tabled.

Mr. Hickernell stated, no, his remarks were comments to state his position to the staff.

Mr. Bowling commented that to withdraw the extension would require the use of two different sets of mapping rules within the same town and that would be rather unlikely; therefore, the approach to use would be to apply for growth allocation for this parcel.

Mr. Hickernell said that the County has a lot of growth allocation.

Ms. Cade stated that the motion did not seem to be the subject of the hearing and that the Commission may not have the right or jurisdiction to be voting on its recommendation.

Mr. Bowling commented that the motion proposes that the eight acres does not qualify for IDA and also that it is an extension of a Critical Area that should have been available to the public for comment.

Mr. Zahniser asked if they need to justify the extension.

Mr. Bowling stated, yes.

Ms. Hairston said that it was heard at the local level and with a Commission hearing but there was no advertisement with the awareness that this represented an extension of the Critical Area. It was not submitted as an extension of the Critical Area but the fact came out at the local public hearing the previous week.

Mr. Gay stated that perhaps it would be appropriate to break the motion into two motions: 1) with respect to the amendment request and 2) with respect to the Commission's position on the notice problem. He said that if it was in one motion, the Commission members may not have a problem with one aspect of it and may have a problem with the other and a vote on both points would be confusing.

Chairman North asked if the suggestion was acceptable by the "motioner" and "seconder".

The motion was restated by Mr. Bowling: 1) the proposed amendment of 12 acres be denied on the basis that the proposed acres of IDA do not qualify for IDA designation for the following reasons: a) the site is not primarily in commercial or industrial use; b) the site is predominantly wooded; c) there is only one structure on the site and it is in residential use; and d) the site does not meet the residential density necessary for IDA designation. The motion was seconded by Mr. Zahniser. The vote was carried 19 in favor with one abstention, Ms. Cade.

Mr. Bowling asked if the lack of advertising for a public hearing that would represent a Critical Area extension would require a motion or just a stated fact.

Mr. Gay said that a motion would not be inappropriate but it may not require one.

Mr. Bowling stated that this extension was not part of a program approval.

Mr. Gay asked if the amendment now requests an extension.

Mr. Bowling stated that there was not a request for an extension but an extension was submitted. He asked if it should just be noted, or requested.

Mr. Gay said that a notation would take care of it.

Mr. Elbrich asked if the amendment would have to be denied on the basis that it was not properly advertised as an extension of the Critical Area Boundary line.

Ms. Hairston stated that it was already denied on another basis.

Mr. Elbrich asked if a denial was being split into two separate motions sufficient to cover both aspects.

Mr. Gay said that it would be sufficient to make the Town bring the request back and that when they did, have the proper form on the extension also.

Chairman North asked if Counsel's opinion was that a second motion was not required.

Mr. Gay confirmed such.

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Mr. Glendening asked that if a jurisdiction extends a line beyond the 1000' and then subsequently that jurisdiction wants to do something and the Critical Area Commission denies it, can the jurisdiction then unilaterally and voluntarily, without Commission approval, remove that restriction and revert to the original designation. He said that if that is the case, then when a jurisdiction does not agree with the Commission, would it require Commission approval to rescind a voluntary extension beyond a 1000'.

Mr. Bowling stated that the original Leonardtown plan included an extension of the Critical Area which was approved by the Critical Area Commission. He said that this portion of land was annexed without any designation in between the time the Leonardtown Plan had already been approved and before the St. Mary's County Plan had ever been approved. He said that it had never been classified. It had been mapped an extension but they had never requested an extension.

Mr. Glendening acknowledged the clarification by Mr. Bowling but explained that he was asking a hypothetical question on an issue that should be resolved in a formal way before such an issue came before the Commission.

Mr. Elbrich said that that had been done in some instances in Anne Arundel County. It had been done as a part of the approved plan and is of record in the approved plan. The only reason that the County did not go back in and amend or change that expanded boundary line was that they must bring it as an amendment before the Commission to change it. He said that there is also a procedure that can extend the Critical Area Boundary line by "amendment after the fact". Once that extension has been approved by the Commission, it becomes a part of the approved program and the approved plan and would also have to come back before the Commission in order to be approved in order to move that boundary line back to the original Critical Area.

Mr. Glendening stated that although that would be a very logical interpretation, he believed that if Commission Counsel could take a look at the issue and perhaps adopt some formal position so that no one could come in subsequently and unilaterally claim that they have the power to withdraw it.

Chairman North asked Commission Counsel to examine that issue.

Chairman North asked Ms. Claudia Jones to update the Commission on the Memorandum of Understanding with the Maryland Department of Transportation.

Ms. Jones clarified that it is only an update and not up for approval. She said that Mr. Gay, Commission Counsel, reviewed the MOU and found it acceptable with only a few legal word changes. She discussed the term "sensitive areas" and how they were to be targets for additional controls. She told the Commission that section of the MOU had basically the same language but the term sensitive areas has been taken out. Ms. Jones stated that there has been no final communication from the MDOT on the MOU, but in conversation they indicated there were some problems with the MOU, but they are minor. She said that optimistically, it would be voted on at the next meeting.

Chairman North asked Ms. Dawnn McCleary to report on the Maryland Stadium Authority.

Ms. McCleary announced that Mr. David Chapin and Mr. John d'Epagnier would outline the concerns of the Maryland Stadium Authority and the Stadium Project.

Mr. Chapin stated that the Stadium Authority site is approximately 100 acres in size and a relatively small portion of it falls within the 1000' Critical Area zone, approximately 12 acres. There is no portion of the site that falls within the 100' Buffer. He said that within the 1000' zone a reduction in impervious acreage will be about 26%, up from 21% reported at a Commission meeting in December. Also, proposed was an extended stormwater retention pond that would treat a substantial portion of the 1000' zone. Since that meeting, further discussions with the Department of Environment in relation to the stormwater management practices for the entire site and further revisions to the plans and the current status is that within 1000' zone a reduction of impervious acreage by 26%; an extended stormwater retention pond is proposed which will treat almost 11 acres of land equivalent to 95% of the area within the 1000' zone. The area that will be treated is four times the amount of impervious acreage increase throughout the whole site although impervious acreage is being decreased within the 1000' zone. He said that a draft Memorandum of Understanding has been reached with the Department of Environment that would probably be signed within a week or two and that Memorandum discusses the measures taken to reduce impervious acreage and refers to stormwater retention pond and also to do regular vacuum sweeping of the parking lots.

Ms. McCleary stated that the subcommittee reviewed the information submitted by Mr. Chapin and Mr. d'Epagnier and was prepared to make a recommendation.

Mr. Bowling made a motion to grant approval of the Maryland Stadium Authority for development with conditions: 1) compliance with the plans review on March 6, 1991 with the Project Evaluation Subcommittee and 2) Critical Area Commission staff and subcommittee review of the final plans before advertising approval.

Mr. Price said that there were two abstentions on the recommendation of the subcommittee to approve the MOU. Ms. McCleary acknowledged same.

The motion was seconded. The vote was carried with 18 in favor with two abstentions - Mr. Gutman and Mr. Jarvis.

OLD BUSINESS

Chairman North gave a Legislative update on House Bill #315. He said that he, as well as the Executive Director for the Chesapeake Bay Critical Area Commission, Dr. Sarah Taylor, made a concerted effort to lobby HB #315 by making appointments to see many legislators who are directly concerned with the matter and the Environmental Subcommittee in particular. He said that although they were courteously received with a number of questions, the bill provided in essence that the Critical Area Commission was to be vested with the authority to modify and change its criteria and regulations by proceeding with eight regional hearings on any proposed changes in conjunction with the AELR process rather than going through the full legislative route which is the only way now to affect any changes whatever. He stated that there were several people who voiced concern about the 1/20 rule - some believed that there was a danger that 1/20 might be reduced to 1/5 or increased from 1/20 to 1/40 but a number of people who felt that that particularly significant provision in the Critical Area law should not be in any wise affected or tampered with. He said that both he and Dr. Taylor agreed with that proposition and suggested that provision of the law be

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exempted from the proposed regulatory authority. He said that word reached him that there was some reservation with respect to the scope of the Bill whether it was too broad and all inclusive in other areas as well. He said that he and Dr. Taylor conferred with Commission Counsel and it was suggested that the amended Bill include some further specificity as to what the anticipated changes were to be. He said that one of the more innocuous elements which was suggested as a possible area of modification was "definitions". Chairman North said that this somehow raised a red flag to certain legislators who felt that by referring to definitions, the legislation contemplated changing the very basis upon which the Critical Area law was predicated. He said that because of the substantial amount of concern generated by the 2020 legislation, that land regulation is uppermost in the minds of many people, particularly legislators and because of that and their concern that they would be surrendering some of their control and prerogative with respect to land use in the Critical Area law, the Bill was defeated in Committee. He said that Chairman Ronald Guns who introduced the Bill at the Commission's request was very helpful and very sympathetic but said that the votes were against him and nothing further could be done this year.

Commission Counsel, Mr. George Gay gave legal updates to the Commission. He said that the Bellanca case, the case that involved the Commission at the Court of Special Appeals level, has been decided and the decision of the Circuit Court was affirmed. He said that this case will carry precedent throughout the State of Maryland, not just in Kent County. Mr. Gay reported that the Bellanca's now have the opportunity to ask the Court of Appeals to hear a further appeal of the Court of Special Appeals decision. Mr. Gay stated that there have been no other changes in the other matters that are in litigation since the last Commission meeting.

New Business

Chairman North called upon Mr. Hugh Smith, the voluntary Public Affairs Officer for the Chesapeake Bay Critical Area Commission, to direct the Commission members on the remainder of the Agenda for the afternoon.

Mr. Smith reported that the successes of the Commission really have not gotten the public notice that they deserve nor need to achieve in order to maintain political support for the continuing existence of the Program. He said that the interim successes need to be made subject to public awareness and therefore broken down into two groups, tangible evidence which would include development sites which would have been developed since the inception and implementation of the Critical Area law and criteria; and, intangible successes which are the fact that all programs are now implemented as well as the great educational groundswell that is now occurring about the Environment of the Bay and the Critical Area Law. He announced that 11 Governor's citations would be awarded for both tangible and intangible successes at the day's luncheon, held at the National Aquarium; that Mr. Tom Horton, a noted environmental writer, Author of Bay County Reflections, also a former Baltimore Sun Reporter, would deliver the post-luncheon address; that there would be a visit to the Habitat Theater at the Aquarium and attendance of the Marine Mammal Pavillion performance.

Chairman North appointed a panel for Queen Anne's County for a mistake in mapping amendment relating to Pier One. He appointed Vic Butanis, Bob Price, Sam Bowling, Jim Gutman, Bob Schoeplein, and Shep Krech to serve as Chairman.

Chairman North announced that Mr. Skip Zahniser and Mr. Victor Butanis would be leaving the Commission as Mr. Zahniser's term expires and that Mr. Butanis' has had a change in jobs which disqualifies him to sit as a Commission member. He said that both had worked long, hard and effectively and that they would be missed and had the thanks of everyone for a job exceedingly well-done.

There being no further business, the meeting was adjourned.

DORCHESTER COUNTY PLANNING & ZONING OFFICE

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

Item 1

100 & 700 V.

DIRECTOR
STEVE DODD, AICP



ZONING ADMINISTRATOR
JAMES H. MICHAEL

ASSISTANT PLANNER
KAREN HALES

CHIEF ZONING INSPECTOR
ALLEN TOLLEY

PLANNING SECRETARY
JULIA T. HENRY

ZONING SECRETARY
MARNE COPPINGER

April 2, 1991

Judge John C. North, II, Chairman
Critical Area Commission
Eastern Shore Office
31 Creamery Lane
Easton, MD 21601

Dear Judge North:

The Chesapeake Bay Critical Area Commission, at its meeting on January 9, 1991, voted on two motions to approve two growth allocation requests for subdivisions in Dorchester County. One of these, "Ferry Farms", was requesting 59.8 acres to be reclassified from Resource Conservation Area (RCA) to Limited Development Area (LDA). During their review, the Commission noted that 16.45 acres on the plat were shown as "residue". Since the "residue" areas displayed the characteristics of building lots, a motion was made to add the 16.45 acres of 'residue' to the request. Thus, the Commission awarded 76.25 acres growth allocation to the Ferry Farms Subdivision.

The award of the 76.25 acres creates many problems for the applicant and the County. First of all, the Commission awarded 76.25 acres while the County Commissioners approved only 59.8 acres. Therefore, the County can not adopt an ordinance by the April 9th, 1991 deadline specified in Mr. Ventre's letter on February 28, 1991. Secondly, the "residue" designation represents an area which is characteristically like open space. The owner may put an "ag" building on the property, but if he wishes to develop the land he must apply for growth allocation. Until that time the property will be designated as a Resource Conservation Area on our maps. The owner, in this instance, can not develop the "residue" because the Health Department will not approve the "residue" for lots. Therefore, unless sewer and water is expanded to this area the residue will not be developed in the future. Thirdly, the applicant no longer wishes to use the complete 59.8 acres originally requested, since he only needs 58.0 acres of growth allocation.

RECEIVED

APR 3 1991

OVER

FAX 1-301-228-1563

1991
CRITICAL AREA COMMISSION

Steve Dodd and I met with Tom Ventre, Pat Pudelkewicz, Ren Serey, and Liz Zucker on March 28th, 1991, to discuss these problems. Problems which conceivably could have been avoided if the local hearing on January 7th had not been cancelled due to snow. Since the Critical Area Commission did not say "no" to the project, I would like to request that they revisit the request and award only the acreage requested by the applicant. Hence, saving the County's growth allocation and the applicants necessity to reapply in July.

In conclusion, I am asking the Commission to revisit the "Ferry Farm" request and provide Dorchester County with an extension for recordation of the ordinance. We request the Commission approve only 58.0 acres of growth allocation as requested by applicant and remove condition of granting 16.45 acres of growth allocation to the residue. Please send a reply as soon as possible, our deadline is rapidly approaching.

Thank you for your cooperation in this matter.

Sincerely,

Karen Hales

Karen Hales
Assistant Planner

KH/mc

RECORDED

APR 5 1991

COMMUNITY DEVELOPMENT



CONSULTING ENGINEERS AND SURVEYORS

Andrews, Miller & Assoc., Inc.

AGENDA ITEM 1

DONALD E.
HAROLD M.

EXHIBIT B

April 9, 1991

Mr. Tom Ventre
Critical Area Commission
Dept. of Natural Resources D4
580 Taylor Avenue
Annapolis, Maryland 21401

RECEIVED

APR 16 1991

RE: Ferry Farm Estates
Dorchester County, Maryland
AMA 85244.40

DNR
CRITICAL AREA COMMISSION

Dear Mr. Ventre:

On January 9, 1991, the Critical Area Commission awarded 76.25 acres growth allocation to the above referenced project. This exceeded the requested 59.8 acres that was approved by the Dorchester County Commissioners for reclassification from Resource Conservation Area (RCA) to Limited Development Area (LDA).

As you may recall, the Commission added 16.45 acres of "residue" to the requested 59.8 acres approved by the County. The Commission decided that the residue is essentially a buildable lot and should therefore be granted growth allocation to avoid nonconformance with the 20 acre RCA requirement. However, the residue on this property is not in any manner similar to the characteristics of a buildable lot and is actually open space that is retained by the original owner. If a subdivision or development were proposed for the residue, the owner is required to receive approvals from the Dorchester County Planning Commission and Health Department. Further, a formal request for growth allocation would have to be made at that time. In the case of Ferry Farm Estates, the Health Department will not approve the residue for development, even for a single residential unit, at this point unless public sewer and water are provided to the subdivision.

Since our original request for growth allocation, we have revised the subdivision plans which have been approved by the Dorchester County Planning Commission. We are now requesting growth allocation for 58.0 acres to be reclassified as Limited Development Area (LDA). This does not include acreage for residue which has been reconfigured. Again, the residue portion of this subdivision is not buildable without entering into the agency review process.

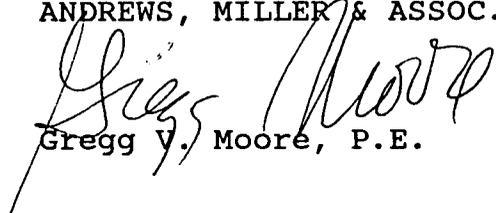
OVER

Mr. Tom Ventre
Page 2
April 9, 1991

Please schedule the review before the Commission for the next meeting to resolve this issue. If you have any questions, feel free to contact me.

Very truly yours,

ANDREWS, MILLER & ASSOC., INC.



Gregg V. Moore, P.E.

GVM/skr
Enclosure

cc: Mr. Steve Dodd
Mr. Henry Thomas
Mr. Mace Thomas

(W320L1GVM)

BRIEFING

May 1, 1991

SUBJECT: Request for Reconsideration of 1989 Commission Action,
Dorchester County

BACKGROUND:

In June, 19189, this Commission received a formal request to review and approve a local growth allocation/land reclassification amendment affecting a six-acre (more or less) parcel on Taylors Island in western Dorchester County. The amendment was necessary in order to accommodate a landing facility for a proposed trans-bay ferry service. After due process and consideration, this Commission voted (on September 6, 1990) to return this request for program amendment to the Dorchester Commissioners without approval. The reason cited by the Commission was the violation of the County's Zoning Ordinance at 155-47.1.J(G) concerning the placement of water-dependent facilities only in IDA areas with buffer exemption. As no exemption had been requested, no new IDA could be created. (North-to-Dodd letter of October 17, 1989, attached).

Since that decision, the applicant has researched the issue, with particular attention to this Commission's interpretation of certain definitions and regulations pertinent to the matter. The applicant reviewed his case with Dorchester County Planning and Zoning staff. In turn, the County staff made a written request to the Commission Chairman for reconsideration of its earlier decision, in light of new information. (Dodd-to-North letter, March 7, 1991, attached).

The principal points of the County's and applicant's position are these:

- that an IDA classification is not necessary to accommodate the proposed activity
- that a Buffer exemption was not necessary, and lack thereof as cited by this Commission was not a valid factor
- that this Commission's assumption that the proposed activity was an industrial or port-related water-dependent facility was incorrect
- that the proposed activity should be judged as a marina and/or as a boat docking structure, which activities can be accommodated in the County on LDA lands.

STAFF RECOMMENDATIONS:

Staff believes that the research and information presented by the applicant and the County warrant review and consideration by this Commission. Initially, this review could be made using the Commission's panel procedure.

STAFF CONTACT:

Tom Ventre

Attachment

Attachment 1



JOHN C. NORTH, II
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MARYLAND 21401
974-2418 or 974-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

COMMISSIONERS

October 17, 1989

Thomas Osborne
Anne Arundel Co.

James E. Gutman
Anne Arundel Co.

Ronald Karasic
Baltimore City

Ronald Hickernell
Baltimore Co.

Albert W. Zahniser
Calvert Co.

Thomas Jarvis
Caroline Co.

Kathryn D. Langner
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G. Steele Phillips
Dorchester Co.

Victor K. Butanis
Harford Co.

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Shepard Krech, Jr.
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William Corkran, Jr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

Mr. Steve Dodd
County Planner
Dorchester County
P.O. Box 307
Cambridge, MD 21613

Re: Paul A. Tobin, Tax Map 67,
Block 6, Parcel 1, Trans-Bay
Ferry, 6.23 acres from RCA
to LDA: Growth Allocation

Dear Mr. Dodd:

This is to inform you that at the September 6, 1989 meeting of the Chesapeake Bay Critical Area Commission, the members voted unanimously to return the proposed growth allocation request for the above-mentioned project:

"A motion was made and seconded that the Commission return the amendment to the County with the clear explanation that disapproval was not because of the Commission's judgement of whether or not growth allocation should be used in this instance, but because it was in violation of the County's own Program ordinances. The Commission would inform the County of its willingness to work with them toward a mutually agreeable conclusion."

The Ordinance referred to in the Motion is Ordinance No.144, Section 155-47.A.J.(6):

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 Kreitner
Planning

"New, expanded, or redeveloped industrial or port-related water-dependent facilities, and the replacement

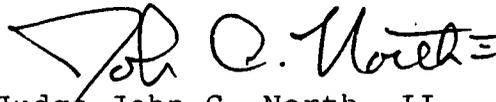
Mr. Steven Dodd
October 17, 1989
Page Two

of these facilities, are permitted only in those portions of Intensely Developed Areas that are exempt from tidewater buffer designation. Ports and industries which use water for transportation and derive economic benefits from shore access shall be located near existing port facilities."

For the creation of this new Intense Development Use, a buffer exemption was not requested as required by the County Ordinance or by Section 14.15.03.05 of the Critical Area Criteria - Water Dependent Facilities.

This criterion will need to be complied with in order for the Commission to reconsider the growth allocation request.

Very truly yours,



Judge John C. North, II
Chairman

JCN:msl

cc: Lee Epstein, Esquire
Ms. Pat Pudelkewicz
Mr. Ren Serey
Mr. Tom Ventre

DORCHESTER COUNTY PLANNING & ZONING OFFICE

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

DIRECTOR
STEVE DODD, AICP

ASSISTANT PLANNER
KAREN HALES

PLANNING SECRETARY
JULIA T. HENRY



ZONING ADMINISTRATOR
JAMES H. MICHAEL

CHIEF ZONING INSPECTOR
ALLEN TOLLEY

ZONING SECRETARY
MARNE COPPINGER

March 7, 1991

RECEIVED

MAR 8 1991

**DNR
CRITICAL AREA COMMISSION**

John C. North II, Chairman
Chesapeake Bay Critical Areas Commission
West Garrett Place, Suite 320
275 West Street
Annapolis, Maryland 21401

RE: Paul A. Tobin
Tax Map 67, Block 6, Parcel 1
Trans-Bay Ferry
6.23 acres from RCA
to IDA: Growth Allocation

Dear Chairman North:

This letter requests that the Critical Areas Commission reconsider its decision on the above-referenced growth allocation request (see Attachment #1). We submit to you that the Commission, in making its findings, incorrectly applied State and Local Critical Area Law which was not relevant to the particular request before them. Furthermore, we request that the Commission correct its error and approve growth allocation for Mr. Tobin's project, or indicate to the County the reasons for its denial.

Allow me to provide you with some background information:

1. On January 19, 1989, the Dorchester County Board of Zoning Appeals granted Mr. Tobin a special exception to operate a ferry service on the above-referenced parcel. The Board found that the proposed ferry service was a use similar to a public or private marina, which is a permitted special exception in the R-2, residential zone. No change in the zoning designation was required. (see Attachment #2 for the minutes from that meeting).

2. Prior to the Appeals Board hearing, the Commission staff reviewed the proposal and submitted written comments in a letter dated January 12, 1989 (see Attachment #3). In that letter, Abigail Rome correctly cited Section 155-47.1 (H) (3) of the Dorchester County Code, which conditioned any special exception granted by the Board with the requirement for an award of growth allocation (either IDA or LDA). The letter goes on to

reference Section 155-47.1 (D) (5) and (J) (5 and 6) as evidence that (a) the growth allocation designation must be IDA (and not LDA) and (b) a buffer designation exemption must be granted. We would challenge this, as this appears to be the basis for the Commissions decision to return the growth allocation request to the County.

3. Mr. Tobin, in relying upon Ms. Rome's interpretation of the Critical Area Law, submitted a growth allocation request to Dorchester County for an IDA designation with a buffer exemption. This request was reviewed and approved by both the Dorchester County Planning Commission (April 5, 1989) and Dorchester County Commissioners (June 6, 1989). (see Attachment #4 for the minutes from that meeting). The growth allocation request was formally submitted to the Commission on June 21, 1989 (see Attachment #5). The issue of the buffer exemption was never formally discussed by either the Planning Commission or County Commissioners, and therefore, never approved. We would submit to you, however, that the Critical Area Laws when properly interpreted do not require a buffer exemption for Mr. Tobin's project. Therefore, the lack of a buffer exemption is not a valid reason to return the growth allocation request. Please allow me to elaborate.

In Ms. Rome's January 12th letter and subsequently in the Commissions September 6th decision, it is assumed that Mr. Tobin's proposal is classified as an "industrial or port-related water dependent facilities" and regulated as such under Section 155-47.1 (J) (6) of the County Code. Mr. Tobin contends, and I agree, that his ferry should be judged as a "marina and related water-dependent facility" as regulated under 155-47.1 (J) (5) and (7). I would note that neither of these terms are defined in either the Criteria or the local program. In such cases, it is my understanding that the Commission will defer to the County's underlying zoning regulations. In Dorchester County, Mr. Tobin's Ferry proposal can and has been accommodated under the current zoning classification of R-2 residential. In fact, the types of uses regulated under Section 155-47.1 (J) (6) would not be permitted in the County's R-2 zone but would require heavy industrial zoning (I-2).

Under Section 5 and 7 (of 155-47.1 J) Mr. Tobin's proposal could be permitted in either an LDA or IDA. In addition, it appears that no tidewater buffer exemption is required for "marinas and related water-dependent facilities." It appears that the criteria for approval of these activities is that a) the project must meet a recognized public need or private right and b) adverse effects to water quality and to plant, fish or wildlife habitat must be minimized. Therefore, if Mr. Tobin could meet these tests to the satisfaction of the Commission, approval could be granted.

In light of the above, I believe that the Commission should revisit this issue under the correct sections of the County's laws; those being 155-47.1 (J) (5) and (7).

Sincerely,

A handwritten signature in cursive script that reads "Steve Dodd".

Steve M. Dodd
Director

Enclosures: Paul Tobin
Tom Ventre

Attachments

STAFF REPORT
May 1, 1991

ISSUE: Cecil County Growth Allocation Point System

COMMISSION ACTION NEEDED: Renewed approval to use the proposed growth allocation method for one cycle (a maximum of 57 acres). Cecil County has requested approval for two years.

DESCRIPTION: Cecil County's growth allocation point system was given conditional approval at the time of original program approval. The County was to use the proposed point system and deduction methodology for one year, then the Commission was to reevaluate the proposal to see if it met the intent of the Commission's policy on deducting growth allocation (which, at the time of the County's program approval, had not been distributed). Cecil County has previously requested and twice received extension of the conditional approval to use the growth allocation system proposed. Because one cycle of growth allocation has still not been completed, the County is requesting a further extension for two years.

The growth allocation point system awards points for design elements in a development which go above and beyond the required Criteria. A minimum number of points is needed for a proposal to be considered in the design competition. The greatest numbers of points are awarded for additional open space (clustering) and expanded buffers. Other categories for which points are awarded are the location, forest and woodland protection, protection of Habitat Protection Areas, minimizing impervious surfaces, continued resource utilization activities (forestry, farming), shore erosion control, and shared water-dependent facilities. Bonus points are awarded when the proposals include correcting areas of failing septic systems with sewer extensions, public access to waterfront, establishment of a natural park, or agricultural land preservation.

The conditional approval of the growth allocation system was due to concern over the deduction methodology, which was based on a development envelope, rather than a complete parcel. The development envelope was expanded from the draft program and currently is defined in the approved County program as:

"Individually owned lots and required Buffers, any part of which is not subject to a restrictive conservation easement running to the County or community association, impervious surfaces, utilities, stormwater management measures, onsite sewage disposal measures; any areas subject to regular human use such as active recreation areas; and any additional acreage needed to meet the development requirements of the Critical Area criteria".

RECOMMENDATION: Approval for 1 cycle (57 acres) or 2 years, whichever comes first.

STAFF REPORT

April 26, 1990

Subject: University of Maryland, Wye Research and
Education Center, Pump House

Discussion:

The University of Maryland proposes to add a pump house and pipelines to provide water for aquatic toxicology research at the Wye Research Center in Queen Anne's County. Water will be pumped from DeCoursey Cove through underground pipelines to an existing research building located in the northern portion of the project area. Approximately 380 feet of a new pipeline system will be laid to connect with an existing pipeline. A 15' x 15' pump house will be established 30 feet from Mean High Water (MHW). Notable elements of the project include:

- The project is not in an Intensely Developed Area (IDA). The total impervious surface of the Research Center is about 12%. The net increase of impervious surface due to the pump house will be negligible.
- The pump house and pipelines will be located in grassed areas. Trees will not be removed to establish the structures.
- The pump house is considered to be "water-dependent." It will be necessary to locate it in the 100-foot Buffer.
- All permits have been obtained including a U.S. Army Corps of Engineers permit for work in DeCoursey Creek, a State Water Appropriation permit, and a State NPDES permit for discharge of wastewater.
- The Maryland Forest, Park and Wildlife Service (MFPWS) has been contacted concerning potential Habitat Protection Areas (HPAs) in the area. Response from the MFPWS is pending.

Staff Recommendation:

Approval with conditions that comments from the MFPWS be obtained. If HPA impacts are identified, the plan must be coordinated through Critical Area Commission staff.

Staff Contact: Liz Zucker and Ren Serey

STAFF REPORT

April 30, 1991

Agency: Maryland-National Capital Park
and Planning Commission

Project: Bladensburg Gardens Balloon Park

Recommendation: APPROVAL, with conditions

Discussion:

The Maryland-National Capital Park and Planning Commission (MNCPPC) proposes to design a passive recreation garden area on U.S. Route 1 in Bladensburg, in Prince George's County. The 1.1 acre park will commemorate the first hot-air balloon launch in the United States.

The site is located in a wide, grassy median strip between the north- and south-bound lanes of Route 1. Prince George's County has designated most of the Bladensburg area as Intensely Developed Area. Development will consist of walkways, a sitting area, planting beds and other landscaping. The site is not within the 100-year floodplain; there are not tidal or nontidal wetlands present. Stormwater will be managed by grass swales and check dams. Planting consists of 44 trees and 545 shrubs.

Conditions of approval:

1. Submit letter of Critical Area consistency from Prince George's County Department of Environmental Resources. Plans must be adjusted as recommended by Prince George's County.
2. Obtain County sediment and erosion control, stormwater management and grading permits.
3. Submit review letter from Maryland Forest, Park and Wildlife Service. Plans must be adjusted as needed.

Contact person: Ren Serey

**OFFICE OF
PLANNING &
ZONING**



March 21, 1991

**CECIL
COUNTY,
MARYLAND**

Room 300,
County
Office
Building
Elkton,
Maryland
21921
(301) 398-0200
FAX:
(301) 392-9226

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

ATTN: Anne Hairston

Dear Anne:

On Tuesday, March 19, 1991, the Cecil County Commissioners gave their preliminary approval to the Growth Allocation System which the County has used in previous years. The procedure and point system are the same as those the Critical Area Commission approved for the County last year.

Enclosed, for the Commission's review and approval, is an application form and a copy of the Point System for Growth Allocation within the Chesapeake Bay Critical Area. This Office feels our procedure for Growth Allocation is a positive approach in addressing growth pressures and assuring only quality development along the Bay shoreline. This year, however, we would request that the Commission grant approval of the procedure for a two year period, as opposed to the current annual approval period. We ask you to consider biennial review because the point system is workable and we wish to reduce the review time spent by both Cecil County and the Chesapeake Bay Critical Area Commission.

Please inform our office of the hearing date for this review, as we would be glad to discuss this in further detail as you deem necessary.

Very truly yours,

Donald A. Halligan
Principal Planner

DAHpn

RECEIVED

MAR 22 1991

DNR
CRITICAL AREA COMMISSION



CECIL COUNTY GROWTH ALLOCATION POINT SYSTEM

Establishing the Annual Point Schedule

The Planning Commission shall annually publish a notice of the opening of the annual Growth Allocation point competition and the proposed point system. The public shall have thirty (30) days in which to comment in writing on the proposed point awards after which a final point system shall be adopted by resolution of the County Commissioners. Points will be assigned by the County in, but not limited to, the following categories:

1. Development type
2. Buffer enhancement
3. Location
4. Forest and Woodland protection
5. Habitat protection
6. Water Quality protection
7. Resource utilization
8. Water Dependent Facilities
9. Erosion control

Applications for Growth Allocation must be consistent with the current zoning of the property. No project for Growth Allocation will be accepted which is not consistent with the density permitted in the current base zoning classification. Scoring of each proposed development project by the Planning staff and Planning Commission will be based on the point award system set forth below.

Proposed First Annual Cycle Scoring Schedule

Scoring Thresholds

A two tiered scoring threshold will be established to screen projects. Only those projects scoring a total score at or above the first tier (56 points) threshold shall be considered for Growth Allocation. At a minimum, all projects scoring at or above the second tier (94 points) threshold will be awarded Growth Allocation and granted the Growth Allocation floating zone. Bonus points shall not qualify for inclusion in the first tier threshold.

General Provisions

The following general provisions shall apply in the award of Growth Allocation:

1. For residential subdivisions, the maximum lot size permitted in a RCA conversion is the minimum lot size permitted on the site by Health Department Regulations.

2. In a RCA to LDA conversion, higher points will be awarded for having a 60 percent open space ratio. This will allow the majority of the site to continue to provide the benefits of RCA, since it will be dominated by agriculture, wetlands, forest, barren land, surface water, or open space and protective land uses. The impact of the Growth Allocation conversion will be less than if a smaller open space ratio is achieved. Tidal wetlands, reforested areas, and Buffer extensions may be counted in the 60 percent open space ratio provided that at least three-quarters of the open space is upland.
3. In a LDA or RCA to IDA conversion, higher points will be awarded for providing a 30 percent open space ratio if evidence is included that the site continues to exhibit the characteristics of a LDA, i.e., containing areas of natural plant and animal habitats, and that the quality of runoff is not substantially altered or impaired. If these conditions can be demonstrated, it is assumed that the impact of the Growth Allocation conversion is less than if a smaller open space ratio is achieved. Tidal wetlands, reforested areas, and Buffer extensions may be counted in the 30 percent open space ratio, provided that at least three-quarters of the open space is upland areas.
4. All proposed projects located adjacent to a municipality will be scored in the same manner as all other projects, except that such projects may be designed to the development codes of the adjacent municipality (including the municipality's Critical Area Program) if it is to be annexed. In addition, projects endorsed by a municipality will be awarded special bonus points, provided the entire proposed development site is to be annexed into the municipality. Such projects shall be incorporated into the municipality within one (1) year of approval.
5. In an RCA to LDA conversion, which involves land only in the Critical Area, calculation of the maximum permitted density will be based on Critical Area acreage. The maximum permitted density within the Critical Area portion of the site may not exceed the base zone density for the Critical Area portion of the site or 3.99 units per acre, whichever is less.
6. In an RCA to LDA conversion, where non-Critical Area portions of a site are included in the development, the maximum permitted density may not exceed the base zoning density calculated for the entire site, or 3.99 units per acre as calculated based on the size of the Critical Area portion of the site, whichever is less.
7. In a RCA or LDA conversion to IDA the permitted maximum density or intensity shall not exceed that permitted by the base zoning.
8. Large Lot Residential is defined as lot size in excess of the minimum required by the Health Department.
9. A development pad (permitted area of disturbance) is defined as the area of a lot devoted to structures, drives and parking areas.

10. In projects that include water-dependent facilities, locating such facilities in the Buffer will not be reason for denying Buffer points, if a Buffer is provided on portions of the site that are not required for locating such facilities. In such cases Buffer points for water-dependent facilities will be awarded as set forth below, provided non-water dependent facilities are not located in the Buffer.
11. These criteria shall apply to lots of record as of July 5, 1988.
12. Parcels having already utilized the Special Growth Allocation are not eligible for this contest.

Point Criteria and Values

1. Development Type (maximum possible points = 25)

Clustering

- Where dwelling units are concentrated in a selected area of the development tract so as to provide natural habitat or other open space uses on the remainder. Points = 3

Conversion of RCA to LDA

- Where a 60 percent open space ratio is maintained throughout the entire Critical Area portion of the site only. Points = 12

OR

- Where a 60 percent open space ratio is maintained throughout the entire site, and where open space outside the Critical Area portion of the site is a minimum of 20 acres. Points = 22

Conversion of LDA and RCA to IDA

Community sewer facilities are an *a priori* requirement for conversion to IDA. If a community sewer facility is not present or not proposed as part of the development, conversion to IDA will not be permitted.

- Where a 30 percent open space ratio is maintained throughout the entire Critical Area portion of the site only. Points = 12

OR

- Where a 30 percent open space ratio is maintained throughout the entire site, and where open space outside the Critical Area portion of the site is a minimum of 20 acres. Points = 22

2. Buffer Enhancement (maximum possible points = 20)

<u>Minimum Depth of Buffer</u>	<u>Points</u>
Required	0
Required plus 50 feet	4
Required plus 100 feet	6
Required plus 150 feet	7
Required plus 200 feet	9

Required = 110 feet plus any expansion required by location of the Buffer adjacent to sensitive areas.

	<u>Portion of Buffer afforested by Applicant</u>				<u>Depth of Buffer</u>
	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>	
Points	1	2	3	4	Required (as above)
Points	1	2	3	4	Required + 50'
Points	1	2	3	4	Required + 100'
Points	2	3	4	5	Required + 150'
Points	2	3	4	5	Required + 200'

Drainageways are: Minor watercourses which are defined either by soil type or by the presence of intermittent or perennial streams or topography which indicates a swale where surface sheet flows join, including the land, except where areas are designated as floodplain, on either side of and within fifty (50) feet of the centerline of any intermittent or perennial stream shown on the U. S. Geological Service's 7 1/2 minute Quadrangle sheets covering Cecil County.

- Where a 50-foot forested buffer, which remains in open space, is established along all drainageways on the site. Points = 4

OR

- Where a 50-foot forested buffer, which remains in open space, is established along all drainageways on the site, including those portions of the site located outside the Critical Area. Points = 6

3. Location of Development (maximum possible points = 15)

- Conversion of LDA or RCA to new IDA which is located in existing LDA or adjacent to existing IDA. Points = 10

OR

- Conversion of RCA to new LDA which is located adjacent to existing LDA or IDA. Points = 10

AND, all proposed projects that are located adjacent to a municipality will be evaluated and scored in the same manner as all other projects, except that such projects may be designed based on development codes of the adjacent municipality, including that municipality's Critical Area Program, if intended to be annexed. In addition, if the projects are endorsed by the municipality, said endorsement consisting of a letter from the municipal officials, they will be awarded points provided that the entire proposed development site is to be annexed into the adjacent municipality. A condition of approval for such projects will be that the site must be incorporated into the adjacent municipality within one year of approval. Points = 5

4. Forest and Woodland Protection (maximum possible points = 10)

- If 40 percent or more of the Critical Area portion of the site is wooded, and less than 15 percent of the existing forest and woodlands are cleared. Points = 1
- If 40 percent or more of the Critical Area portion of the site is wooded, and less than 10 percent of the existing forest and woodlands are cleared. Points = 4.
- Where forest cover exclusive of Buffer Area and existing forest is increased as follows:

<u>Afforestation</u>	<u>Area of Forest Cover increased by:</u>		
	<u>30%</u>	<u>50%</u>	<u>70%</u>
Critical Area portion of site	3	4	5
Entire site where non-Critical Area portion is 5 acres or more.	4	5	6

5. Habitat Protection (maximum possible points = 10)

- Where a disturbance, of palustrine, non-tidal wetlands or hydrologic regime of non-tidal wetland, mitigation notwithstanding, is avoided. Points = 1
- Where permanent environmental easements on existing plant, wildlife and related habitat enhancement areas are donated. Points = 4
- Where the following existing Habitat Protection Areas are not present on, or adjacent to, the site: rare, threatened and endangered species, Natural Heritage Areas, and colonial waterbird nesting areas. Points = 4

- If the developed portion of the site is located the maximum distance possible from a habitat protection area minimum setback. Points = 2
- If measures are implemented which enhance the Habitat Protection Areas in the area of the site as recommended by the Cecil County Planning Commission and the Maryland Forest, Park and Wildlife Service. Points = 2
- If there is implementation of a forest management program which is designed to protect the habitat values of existing and newly created riparian forests and large forested areas (if the site includes 5 acres or more outside of the Critical Area), and this program is prepared in conjunction with the Cecil County Planning Department and the Maryland Forest, Park and Wildlife Service. Points = 1

6. Water Quality (maximum possible points = 8)

RCA to LDA conversion

For impervious surfaces less than 15 percent, points assigned as follows:

<u>Impervious surface</u>	<u>Points</u>
15% or less	0
14% or less	1
12% or less	2
10% or less	5
8% or less	8

LDA and RCA conversion to IDA

For impervious surfaces less than 70 percent, points assigned as follows:

<u>Impervious surface</u>	<u>Points</u>
70% or less	0
60% or less	1
50% or less	2
40% or less	5
30% or less	8

7. Resource Utilization (maximum possible points = 6)

- Where agriculture or silviculture is continued on the open space portions of the site in the Critical Area. Points = 3

OR

- Where agriculture or silviculture is continued on the open space portions of the entire site, where the site includes at least 20 acres in agriculture outside the Critical Area. Points = 6

8. Erosion Control (maximum possible points = 3)

- Where shore erosion protection measures are installed on 50 percent of the remaining shoreline where needed, and use of non-structural shore erosion controls where feasible. Points = 2
- Where shore erosion protection measures are installed on 100 percent of the remaining shoreline, and use of non-structural shore erosion controls where feasible. Points = 3

9. Water-Dependent Facilities (maximum possible points = 3)

- Where community piers are provided. Points = 3
- Where shared piers by less than 3 property owners are provided. Points = 1.

10. Bonus Points

These points shall not be used for the first tier scoring threshold of 56 points, but may be accumulated for the second tier threshold.

- Where a proposed development includes community sewer facilities and the developer is able to expand the system to serve existing developed areas of failing septic systems, thereby correcting a documented existing water quality problem. The award of these points will be based on the feasibility of servicing adjacent areas as determined in consultation with the Health Department and the Department of Public Works. Actual points awarded will vary depending on the number of units served, the severity of the problem and other factors relating to feasibility. A general guideline will be that the correction of all failing septic systems in adjacent areas will earn maximum points. Maximum Bonus Point Value = 25
- Where a proposed development project provides free public access to the shoreline. Bonus Points = 25
- Where a natural park is designated and approved by the Cecil County Planning Commission, and, provisions are made to permit limited access to the natural park for educational purposes (e.g., periodically permitting the local school system to conduct field trips to the park), points will be credited. To receive these points a natural park management plan and program must be developed and include the recommendations of the Maryland Forest, Park and Wildlife Service. Bonus Points = 10

- Placing all remaining viable agricultural lands in the open space portion of the site in a Maryland Agricultural Preservation Program District. Minimum acreage applicable is 100 acres, or if farm is exceptionally productive, a waiver will be granted on this size minimum. Bonus Points = 5.

Authorization: Addresses, signatures.

Names of all owners of property described in application, addresses, and signatures:

Name and address:

Signature(s)

CERTIFICATION: I hereby certify that the information and exhibits herewith submitted are true and correct to the best of my knowledge and that I am to file this application and act on behalf of the owners of this property:

_____	_____
Name	Date
_____	_____
Name	Owner(s)
_____	_____
Name	applicant(s)
	or agent(s)

STAFF USE ONLY

Date application received

Date of public hearing

Final Action

Estimated time for hearing

Remarks:

Advertisement for local newspaper:

Additional information from applicant (if space needed):

**OFFICE OF
PLANNING &
ZONING**



March 21, 1991

**CECIL
COUNTY,
MARYLAND**

Room 300,
County
Office
Building
Elkton,
Maryland
21921
(301) 398-0200
FAX:
(301) 392-9226

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

ATTN: Anne Hairston

RECEIVED

MAR 22 1991

DNR
CRITICAL AREA COMMISSION

Dear Anne:

On Tuesday, March 19, 1991, the Cecil County Commissioners gave their preliminary approval to the Growth Allocation System which the County has used in previous years. The procedure and point system are the same as those the Critical Area Commission approved for the County last year.

Enclosed, for the Commission's review and approval, is an application form and a copy of the Point System for Growth Allocation within the Chesapeake Bay Critical Area. This Office feels our procedure for Growth Allocation is a positive approach in addressing growth pressures and assuring only quality development along the Bay shoreline. This year, however, we would request that the Commission grant approval of the procedure for a two year period, as opposed to the current annual approval period. We ask you to consider biennial review because the point system is workable and we wish to reduce the review time spent by both Cecil County and the Chesapeake Bay Critical Area Commission.

Please inform our office of the hearing date for this review, as we would be glad to discuss this in further detail as you deem necessary.

Very truly yours,

Donald A. Halligan
Principal Planner

DAHpn



CECIL COUNTY GROWTH ALLOCATION POINT SYSTEM

Establishing the Annual Point Schedule

The Planning Commission shall annually publish a notice of the opening of the annual Growth Allocation point competition and the proposed point system. The public shall have thirty (30) days in which to comment in writing on the proposed point awards after which a final point system shall be adopted by resolution of the County Commissioners. Points will be assigned by the County in, but not limited to, the following categories:

1. Development type
2. Buffer enhancement
3. Location
4. Forest and Woodland protection
5. Habitat protection
6. Water Quality protection
7. Resource utilization
8. Water Dependent Facilities
9. Erosion control

Applications for Growth Allocation must be consistent with the current zoning of the property. No project for Growth Allocation will be accepted which is not consistent with the density permitted in the current base zoning classification. Scoring of each proposed development project by the Planning staff and Planning Commission will be based on the point award system set forth below.

Proposed First Annual Cycle Scoring Schedule

Scoring Thresholds

A two tiered scoring threshold will be established to screen projects. Only those projects scoring a total score at or above the first tier (56 points) threshold shall be considered for Growth Allocation. At a minimum, all projects scoring at or above the second tier (94 points) threshold will be awarded Growth Allocation and granted the Growth Allocation floating zone. Bonus points shall not qualify for inclusion in the first tier threshold.

General Provisions

The following general provisions shall apply in the award of Growth Allocation:

1. For residential subdivisions, the maximum lot size permitted in a RCA conversion is the minimum lot size permitted on the site by Health Department Regulations.

2. In a RCA to LDA conversion, higher points will be awarded for having a 60 percent open space ratio. This will allow the majority of the site to continue to provide the benefits of RCA, since it will be dominated by agriculture, wetlands, forest, barren land, surface water, or open space and protective land uses. The impact of the Growth Allocation conversion will be less than if a smaller open space ratio is achieved. Tidal wetlands, reforested areas, and Buffer extensions may be counted in the 60 percent open space ratio provided that at least three-quarters of the open space is upland.
3. In a LDA or RCA to IDA conversion, higher points will be awarded for providing a 30 percent open space ratio if evidence is included that the site continues to exhibit the characteristics of a LDA, i.e., containing areas of natural plant and animal habitats, and that the quality of runoff is not substantially altered or impaired. If these conditions can be demonstrated, it is assumed that the impact of the Growth Allocation conversion is less than if a smaller open space ratio is achieved. Tidal wetlands, reforested areas, and Buffer extensions may be counted in the 30 percent open space ratio, provided that at least three-quarters of the open space is upland areas.
4. All proposed projects located adjacent to a municipality will be scored in the same manner as all other projects, except that such projects may be designed to the development codes of the adjacent municipality (including the municipality's Critical Area Program) if it is to be annexed. In addition, projects endorsed by a municipality will be awarded special bonus points, provided the entire proposed development site is to be annexed into the municipality. Such projects shall be incorporated into the municipality within one (1) year of approval.
5. In an RCA to LDA conversion, which involves land only in the Critical Area, calculation of the maximum permitted density will be based on Critical Area acreage. The maximum permitted density within the Critical Area portion of the site may not exceed the base zone density for the Critical Area portion of the site or 3.99 units per acre, whichever is less.
6. In an RCA to LDA conversion, where non-Critical Area portions of a site are included in the development, the maximum permitted density may not exceed the base zoning density calculated for the entire site, or 3.99 units per acre as calculated based on the size of the Critical Area portion of the site, whichever is less.
7. In a RCA or LDA conversion to IDA the permitted maximum density or intensity shall not exceed that permitted by the base zoning.
8. Large Lot Residential is defined as lot size in excess of the minimum required by the Health Department.
9. A development pad (permitted area of disturbance) is defined as the area of a lot devoted to structures, drives and parking areas.

10. In projects that include water-dependent facilities, locating such facilities in the Buffer will not be reason for denying Buffer points, if a Buffer is provided on portions of the site that are not required for locating such facilities. In such cases Buffer points for water-dependent facilities will be awarded as set forth below, provided non-water dependent facilities are not located in the Buffer.
11. These criteria shall apply to lots of record as of July 5, 1988.
12. Parcels having already utilized the Special Growth Allocation are not eligible for this contest.

Point Criteria and Values

1. Development Type (maximum possible points = 25)

Clustering

- Where dwelling units are concentrated in a selected area of the development tract so as to provide natural habitat or other open space uses on the remainder. Points = 3

Conversion of RCA to LDA

- Where a 60 percent open space ratio is maintained throughout the entire Critical Area portion of the site only. Points = 12

OR

- Where a 60 percent open space ratio is maintained throughout the entire site, and where open space outside the Critical Area portion of the site is a minimum of 20 acres. Points = 22

Conversion of LDA and RCA to IDA

Community sewer facilities are an *a priori* requirement for conversion to IDA. If a community sewer facility is not present or not proposed as part of the development, conversion to IDA will not be permitted.

- Where a 30 percent open space ratio is maintained throughout the entire Critical Area portion of the site only. Points = 12

OR

- Where a 30 percent open space ratio is maintained throughout the entire site, and where open space outside the Critical Area portion of the site is a minimum of 20 acres. Points = 22

2. Buffer Enhancement (maximum possible points = 20)

<u>Minimum Depth of Buffer</u>	<u>Points</u>
Required	0
Required plus 50 feet	4
Required plus 100 feet	6
Required plus 150 feet	7
Required plus 200 feet	9

Required = 110 feet plus any expansion required by location of the Buffer adjacent to sensitive areas.

	<u>Portion of Buffer afforested by Applicant</u>				<u>Depth of Buffer</u>
	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>	
Points	1	2	3	4	Required (as above)
Points	1	2	3	4	Required + 50'
Points	1	2	3	4	Required + 100'
Points	2	3	4	5	Required + 150'
Points	2	3	4	5	Required + 200'

Drainageways are: Minor watercourses which are defined either by soil type or by the presence of intermittent or perennial streams or topography which indicates a swale where surface sheet flows join, including the land, except where areas are designated as floodplain, on either side of and within fifty (50) feet of the centerline of any intermittent or perennial stream shown on the U. S. Geological Service's 7 1/2 minute Quadrangle sheets covering Cecil County.

- Where a 50-foot forested buffer, which remains in open space, is established along all drainageways on the site. Points = 4

OR

- Where a 50-foot forested buffer, which remains in open space, is established along all drainageways on the site, including those portions of the site located outside the Critical Area. Points = 6

3. Location of Development (maximum possible points = 15)

- Conversion of LDA or RCA to new IDA which is located in existing LDA or adjacent to existing IDA. Points = 10

OR

- Conversion of RCA to new LDA which is located adjacent to existing LDA or IDA. Points = 10

AND, all proposed projects that are located adjacent to a municipality will be evaluated and scored in the same manner as all other projects, except that such projects may be designed based on development codes of the adjacent municipality, including that municipality's Critical Area Program, if intended to be annexed. In addition, if the projects are endorsed by the municipality, said endorsement consisting of a letter from the municipal officials, they will be awarded points provided that the entire proposed development site is to be annexed into the adjacent municipality. A condition of approval for such projects will be that the site must be incorporated into the adjacent municipality within one year of approval. Points = 5

4. Forest and Woodland Protection (maximum possible points = 10)

- If 40 percent or more of the Critical Area portion of the site is wooded, and less than 15 percent of the existing forest and woodlands are cleared. Points = 1
- If 40 percent or more of the Critical Area portion of the site is wooded, and less than 10 percent of the existing forest and woodlands are cleared. Points = 4.
- Where forest cover exclusive of Buffer Area and existing forest is increased as follows:

<u>Afforestation</u>	<u>Area of Forest Cover increased by:</u>		
	<u>30%</u>	<u>50%</u>	<u>70%</u>
Critical Area portion of site	3	4	5
Entire site where non-Critical Area portion is 5 acres or more.	4	5	6

5. Habitat Protection (maximum possible points = 10)

- Where a disturbance, of palustrine, non-tidal wetlands or hydrologic regime of non-tidal wetland, mitigation notwithstanding, is avoided. Points = 1
- Where permanent environmental easements on existing plant, wildlife and related habitat enhancement areas are donated. Points = 4
- Where the following existing Habitat Protection Areas are not present on, or adjacent to, the site: rare, threatened and endangered species, Natural Heritage Areas, and colonial waterbird nesting areas. Points = 4

- If the developed portion of the site is located the maximum distance possible from a habitat protection area minimum setback. Points = 2
- If measures are implemented which enhance the Habitat Protection Areas in the area of the site as recommended by the Cecil County Planning Commission and the Maryland Forest, Park and Wildlife Service. Points = 2
- If there is implementation of a forest management program which is designed to protect the habitat values of existing and newly created riparian forests and large forested areas (if the site includes 5 acres or more outside of the Critical Area), and this program is prepared in conjunction with the Cecil County Planning Department and the Maryland Forest, Park and Wildlife Service. Points = 1

6. Water Quality (maximum possible points = 8)

RCA to LDA conversion

For impervious surfaces less than 15 percent, points assigned as follows:

<u>Impervious surface</u>	<u>Points</u>
15% or less	0
14% or less	1
12% or less	2
10% or less	5
8% or less	8

LDA and RCA conversion to IDA

For impervious surfaces less than 70 percent, points assigned as follows:

<u>Impervious surface</u>	<u>Points</u>
70% or less	0
60% or less	1
50% or less	2
40% or less	5
30% or less	8

7. Resource Utilization (maximum possible points = 6)

- Where agriculture or silviculture is continued on the open space portions of the site in the Critical Area. Points = 3

OR

- Where agriculture or silviculture is continued on the open space portions of the entire site, where the site includes at least 20 acres in agriculture outside the Critical Area. Points = 6

8. Erosion Control (maximum possible points = 3)

- Where shore erosion protection measures are installed on 50 percent of the remaining shoreline where needed, and use of non-structural shore erosion controls where feasible. Points = 2
- Where shore erosion protection measures are installed on 100 percent of the remaining shoreline, and use of non-structural shore erosion controls where feasible. Points = 3

9. Water-Dependent Facilities (maximum possible points = 3)

- Where community piers are provided. Points = 3
- Where shared piers by less than 3 property owners are provided. Points = 1.

10. Bonus Points

These points shall not be used for the first tier scoring threshold of 56 points, but may be accumulated for the second tier threshold.

- Where a proposed development includes community sewer facilities and the developer is able to expand the system to serve existing developed areas of failing septic systems, thereby correcting a documented existing water quality problem. The award of these points will be based on the feasibility of servicing adjacent areas as determined in consultation with the Health Department and the Department of Public Works. Actual points awarded will vary depending on the number of units served, the severity of the problem and other factors relating to feasibility. A general guideline will be that the correction of all failing septic systems in adjacent areas will earn maximum points. Maximum Bonus Point Value = 25
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Names of all owners of property described in application, addresses, and signatures:

Name and address: _____ Signature(s) _____

CERTIFICATION: I hereby certify that the information and exhibits herewith submitted are true and correct to the best of my knowledge and that I am to file this application and act on behalf of the owners of this property:

_____	_____
Name	Date
_____	_____
Name	Owner(s)
_____	_____
	applicant(s)
	or agent(s)

STAFF USE ONLY

Date application received _____ Date of public hearing _____

Final Action _____ Estimated time for hearing _____

Remarks: _____

Advertisement for local newspaper: _____

Additional information from applicant (if space needed):

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

TO: Judge North

FROM: Pat Pudelkewicz

SUBJECT: Designation of Panel for
Talbot County Amendment

DATE: 5-29-91

At the June 5th Commission meeting, will you please designate a panel of Commission members for a Talbot County ~~amendment~~ amendment?

Suggested panel members are:

Shep Krech

Bill Corkran

Tom Jarvis

Steele Phillips

Roger Williams

Thank you.