

Commission Meetings & Corresp.

July 1991

MSM-51832-84

AGENDA

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

July 10, 1991

1:00 - 1:05 p.m. Approval of the Minutes of John C. North, II  
June 5, 1991 Chairman

AMENDMENTS AND REFINEMENTS

1:05 - 1:10 p.m. Baltimore County - Anne Hairston, Planner  
Impervious Surface Refinement

1:10 - 1:15 p.m. Town of Church Hill - Anne Hairston, Planner  
Impervious Surface Refinement

1:15 - 1:25 p.m. Kent County - Subdivision Pat Pudelkewicz, Planner  
In the Resource Conservation  
Area - Refinement

1:25 - 1:40 p.m. Kent County - Zoning Text Pat Pudelkewicz, Planner  
Changes - Refinement

1:40 - 2:15 p.m. Talbot County - Changes to Pat Pudelkewicz, Planner  
the Zoning ordinance - Amendment

2:15 - 2:30 p.m. Somerset County - Growth Tom Ventre, Planner  
Allocation - Von Wagenberg  
Property - RCA to LDA

2:30 - 2:45 p.m. Towns of Crisfield, Cambridge Tom Ventre, Planner  
Impervious Surface Refinements

2:45 - 2:50 p.m. Town of Indian Head Ren Serey, Planner  
Impervious Surface Refinement

PRESENTATION

2:50 - 3:50 p.m. Development Trends Catherine Stevenson,  
"Waterward" in the Director, WRA  
Critical Area Bill Burgess, Director  
Enforcement Services  
Program, WRA

3:50 - 4:05 p.m. Old Business John C. North, II  
Chairman

New Business John C. North, II  
Chairman

Chesapeake Bay Critical Area Commission  
Minutes of Meeting Held  
June 5, 1991

The Chesapeake Bay Critical Area Commission met in St. Mary's City at St. Mary's College, in the Montgomery Fine Arts Center. The meeting was called to order by Chairman John C. North, II with the following members in attendance:

Ronald Adkins, former member	William J. Bostian
Victor K. Butanis, Esq.	Samuel Y. Bowling
William H. Corkran, Jr.	Joseph J. Elbrich, Jr.
Parris Glendening	James E. Gutman
Ronald Hickernell	Thomas Jarvis
Dr. Shepard Krech, Jr.	Kathryn Langner
G. Steele Phillips	Robert R. Price, Esq.
Michael J. Whitson	W. Roger Williams
Albert W. Zahniser	Robert Schoeplein, of DEED
Louise Lawrence, of Dept. of Agriculture	James L. Hearn, of Dept. of the Environment
James Peck, of Dept. of Natural Resources	Larry Duket for Ronald Kreitner of Md. Office of Planning
Anthony Bruce	

The Minutes of May 1, 1991 were read and approved as written.

Chairman North announced that Mr. Ron Adkins representing Somerset County would be retiring from the Critical Area Commission and that Mr. Tony Bruce would be replacing him. Mr. Bruce is a City Solicitor for the City of Crisfield, practices law in Princess Anne and is also a farmer in Somerset County. He also introduced Ron Young, the new Deputy Director of the Maryland Office of Planning, and former Mayor of the City of Frederick, who will be replacing Ron Kreitner, Director of the Maryland Office of Planning after he is sworn in.

Chairman North asked Mr. Thomas Ventre to report on the Tobin Ferry Project in Dorchester County.

Mr. Ventre reminded the Commissioners that at the May meeting at the request of Dorchester County, the Commission began reconsideration of a proposal to develop a landing on Taylor's Island for a trans-bay ferry service. Mr. Ventre briefed the Commission on the history of the project: in 1989 the Critical Area Commission considered a request for growth allocation from the Dorchester County Commissioners to reclassify land at the site in order to accommodate the facility. He said that at that time, the Commission did not approve the request because of inconsistencies with the proposal and the Dorchester ordinances as well as the stated reason in the Commission's letter that there had been no request for a buffer exemption area which was necessary to develop and accommodate the facility. In the intervening time, the case was reviewed by the applicant and the Dorchester County staff, who then determined that there was sufficient reason that the Critical Area Commission should reconsider the earlier decision. It was brought to the attention of the Critical Area Commission staff who reviewed several of the items and issues involved over a period of several months, culminating in a meeting between the Dorchester staff, the applicant and

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Commission staff in the early spring. He explained that part of the issue dealt with definitions of terms and whether they did appropriately apply in this case. He said that he believed that there was sufficient reason to believe that they were not appropriately applied, and that the proposal could have stood as it was submitted. He further stated that the request also raises the issue of procedure, and on both counts, the Commission at the May meeting directed Commission Counsel, Mr. George Gay, to investigate the matters.

Commission Counsel, Gay Gay, said that at the direction of the Chairman and the Commission he did consider the question of whether the facility proposed by Mr. Tobin constituted a "port" as opposed to a "marina" or other water-dependent related facility under the Criteria. He said that his conclusion is that the facility could be interpreted by the Commission as either; however, the most appropriate would be a marina or other water-dependent facility. He stated that he also considered whether or not it was appropriate for the Commission to reconsider a matter that it had ruled on a long period of time ago and on which there had been disapproval, and whether the Commission could reconsider the matter at its pleasure or if there was some limitation on what could be reconsidered by the Commission. He said that there is a limitation wherein an administrative body can reconsider or modify its determinations or correct errors that it believes were made on the ground of "fraud", "mistake" or "irregularity". Mr. Gay said that with the interpretations of the Court of Appeals in Maryland, essentially, a reconsideration of the determination can be made if good cause has been shown in the realm of mistake or irregularity in this instance. He stated that the Commission should make a determination on whether a mistake or irregularity had been made or exists before it could reconsider the Tobin Ferry matter. He said that in the event there is no mistake determined for a reconsideration, then additional information would not be needed from the applicant. He also advised that, if it is determined that it could reconsider, then the applicant could present his case on growth allocation.

Mr. Ventre stated that after review of the definitional matters just outlined by Mr. Gay, the facility could be accommodated with the present underlying zoning in Dorchester County, a residential zone. Mr. Ventre said that such uses were accommodated by special exception in residential zones, that he believed that, according to the general State criteria, references to boat docking facilities and to commercial maritime operations in the buffer in RCA's and LDA's, that the facility could be accommodated without the need for reclassification or growth allocation. All the activities such as comfort stations, ticket booths and parking facilities would be located outside the 100' buffer.

Mr. Steve Dodd, Director of Planning in Dorchester County, addressed the issue of "mistake". He said that he thinks that the mistake began with the misinterpretation of the Critical Area Criteria (as it applies to this proposal) made by Ms. Abigail Rome, the Critical Area Commission staff member in 1989 who corresponded with Karen Phillips in Dorchester County Planning and Zoning regarding Tobin's Ferry. Mr. Dodd read a portion of the letter from Abigail Rome: "In addition, the growth allocation applied for must be to zone the property as an Intensely Developed Area with a proper exemption.

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This is to comply with sections D5 & J5 and 6 of the Dorchester County Code". Mr. Dodd said that prior to receiving the letter, his office had informed Mr. Tobin that he would be required to apply for an LDA because it was believed that an LDA would have accommodated the ferry project. Based on this information, Mr. Tobin amended his request for growth allocation to be consistent with what Dorchester County believed was a mandate from the Critical Area Commission staff. Mr. Dodd said that it had been only eight months since the issue was raised last October, 1990. He stated that according to the interpretation of the staff of the Critical Area Commission, Commission Counsel, Mr. Gay, and the staff of Dorchester County Planning and Zoning, that the general consensus is that it is not a port, nor is it a port-related industry. He stated that with a proper interpretation from the outset, the Commission would have no reason to deny the request. He said that on the basis of the decision of the Commission in September, 1989, the project did not have a buffer exemption granted to it by Dorchester County and when the growth allocation request was received at the local level the IDA was approved and forwarded to the Critical Area Commission, but there was no buffer exemption requested. That request was denied and returned to the County on the basis that there was no buffer exemption requested. He stated that this project does not require a buffer exemption, so there is no basis in the law for denying it and therefore it is a "mistake" and enough reason to reconsider the request.

Upon direct inquiry by Commissioner James Gutman, Commission Counsel stated that it was his belief that there was an erroneous interpretation of the Dorchester County Program.

Commissioner Robert Price stated that he was on the Panel at the hearing and that the issue before the Panel was the request from the County Commissioners to go from RCA to IDA. He stated that the LDA and Abby Rome were never an issue before the Panel or public at the hearing. He stated that he remembered that the problem with the Program in Dorchester County was that a reclassification could not be made from RCA to IDA.

Mr. Dodd stated that he did not believe it fair to ask Mr. Tobin to start all over again, that the mistake should be corrected and allow him to proceed with his request in a proper fashion because all of the controversy has been because of conflicts between the County and State.

Mr. Price asked if the Critical Area Commission were to reconsider the request, would there be a public hearing.

Mr. Dodd said that the County had approved an IDA.

Mr. Price said perhaps there should be a new Panel hearing.

Mr. Dodd stated that they were not amending the request at the local level, and the local hearing has already been held, so there would be no requirement to hold another one.

Mr. Price asked if the Commission could go from RCA to IDA and not be in violation of the Dorchester County code.

Mr. Dodd stated that was not a reason given for denial but if that was a problem, then the County would submit that the Commission condition their approval upon the local text amendment to allow this.

Mr. Paul Tobin reiterated the sequence of events in his request, citing Abby Rome's recommendation in her letter and the "mistakes" made which he

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believes should lead the Commission to reconsider his request.

Commissioner Samuel Bowling stated that if the Commission revisited the issue without a new public hearing, he believed it would be unfair treatment to the opponents that were at the first hearing. He made a motion to start all over again at the beginning with a new Panel hearing.

Mr. Gutman seconded the motion.

Commissioner Ronald Hickernell said that based on his understanding of the events, he was not in agreement with the motion and believed that the Commission should deal with the issue of reconsideration, because there has already been action by the Commission with a vote, and they could not revisit the issue and come to two conclusions on the record, which may differ.

Mr. Bowling amended his motion for the Commission to reconsider the request with the idea that the Commission will re-hear the issue from the Panel's point of view. He stated that as a member of that Panel he did not remember the buffer exemption as the reason for denial and he said that the issue should be revisited to be fair to the opponents who were at the first hearing.

Commissioner Parris Glendening suggested that a very simple motion to reconsider on advice of Counsel that a "mistake" had been made in the original deliberations be made and once that is adopted, the other issues could be considered.

Mr. Gutman suggested that there be two distinct motions. He seconded Mr. Bowling's first motion. The vote was carried unanimously.

Mr. Bowling made a second motion that the Commission renew the Panel from before. The motion was seconded.

Mr. Glendening asked for clarification whether under the existing County plan they are not able to move into the RCA.

Mr. Price answered that that was his understanding.

Mr. Glendening asked if they could go into LDA, under the reconsideration, would the request be for LDA approval or if the intention was to come back and say it was a mistake and to get LDA classification or did Mr. Tobin want and IDA approval.

Mr. Tobin stated that he would ultimately prefer the LDA.

Mr. Glendening recommended that they go back to the County under a mistake rule and get them to make an amendment.

Mr. Hickernell recommended remanding it to the County for a decision because there are other options open.

Commissioner Jarvis said that he does not remember that it was denied because of buffer exemption.

Mr. Ventre stated that the Minutes would show a reference to the "leap-frogging" language in the Dorchester Zoning Ordinance and also refer in the same context to the need for buffer exemption and to the nature of a port. However, Mr. Ventre stated that the letter that went back to the County stated the need for buffer exemption as the basis for denial.

Commissioner Steele Phillips asked what would happen to the buffer exemption if it goes IDA.

Mr. Todd answered that as a buffer exemption relates to a ferry, the section of the law that requires a buffer exemption does not apply except for a port and it seems to be a dead issue.

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Mr. Bowling said that he would like to get clearly stated facts based on the appropriate request and that it was not only the mistake of the Critical Area Commission but several mistakes which have been made. He withdrew his second motion and made a third motion to deny Mr. Tobin's request based on the fact that the Commission could not go from RCA to IDA according to the Dorchester County ordinance. The motion was seconded by Commissioner Zahniser.

Commissioner Ronald Adkins stated that he believed that a conditional approval was more appropriate and he opposed the motion.

The vote was 4 in favor; 16 opposed; Mr. Elbrich abstaining. The motion failed. (Mr. Schoeplein was late and not part of the vote).

Mr. Glendening made a motion to send the letter to the County Commissioners indicating that the Critical Area Commission has reconsidered this matter, that the issue of the "leap-frogging" is of great concern; that the understanding is that Dorchester County is considering legislation to permit moving from RCA to IDA and, if they are going to adopt that, would they prefer the Commission to consider this action under their amended plan, assuming the amendment is approved by the Critical Area Commission, and if they are not, would they like it considered under the existing plan which would mean an automatic denial. He said at that time, the applicant would have the right to withdraw and resubmit as an LDA if they wished to do so. The motion was seconded.

Mr. Price was in favor of the motion, but subject to a Public Hearing. Mr. Glendening accepted the amendment to his motion. The vote was unanimously in favor. (Mr. Glendening left meeting.)

Mr. Bostian asked what the Panel that was just voted on was going to review - the Dorchester County text amendment, or the Critical Area amendment, or the actual issue of the ferry boat landing.

Mr. Price explained that it was his understanding that there would be a hearing on whether growth allocation or reclassification would come back to the Commission after having received the letter.

Chairman North asked Ms. Dawnn McCleary to report on the Wastewater Treatment Facilities at Point Lookout State Park in St. Mary's County.

Ms. McCleary stated that the treatment plant is in need of upgrading because of the aging of the plant. She said that the plant is located in the Critical Area, but she said that the new construction will be located outside the Buffer.

Ms. McCleary introduced Ms. Kinard who described the construction and upgrades of construction, the existing wastewater treatment plant, and the wastewater collection system which would be outside the 100 foot Buffer.

Mr. Zahniser asked if the capacity of the plant was decreasing, to which Ms. Kinard replied, yes.

Mr. Bowling read the motion which was that the project review committee recommended approval of the proposed construction at Point Lookout State Park Wastewater Treatment Plant with the condition that the Critical Area Commission staff be allowed to monitor the work.

The motion was seconded and the vote was unanimously in favor.

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Chairman North asked Mr. Thomas Ventre to report on DNR/Capital Programs Deal Island Shop Facility.

Mr. Ventre stated that the proposal was for the construction of an industrial building for storage and maintenance purposes on DNR property on Deal Island in Somerset County. He said that it is on the site of DNR's oyster hatcheries and that presently there are two buildings on the site which is enclosed by a chain link fence. One of the buildings has been condemned and is no longer good for use and has been vacated and the intention that this proposed pre-fabricated industrialized buffer type building will be erected. The dimensions are 40'x 60' to replace the lost capacity of the condemned building. The issue is that it is situated in the Buffer. Mr. Ventre stated that he believed there were other locations available on the site. Capital Programs insists that the site proposed was chosen in order to accommodate drainage into the site's septic system. Mr. Ventre stated that the site is flat but Capital Programs cite engineering reasons for their selection of that site in the Buffer. Mr. Ventre said that the project evaluation subcommittee reviewed the request and recommended denial.

Mr. Samuel Bowling made a motion that because the building is not water dependent and does not need a location near the water, it should be located outside the Buffer and therefore a denial was recommended.

The motion was seconded and the vote was carried with 19 in favor of the motion, Mr. Peck and Mr. Bostian abstaining.

Chairman North asked Ms. Anne Hairston to report on North Point State Park/Black Marsh Wildlands.

Ms. Hairston said that there would be a presentation of the master plan for the North Point State Park/Black Marsh Wildlands. Ms. Hairston introduced

Mr. John Wilson, from the Greenways and Resources Planning Program, presented a slide show to the Commission and to the audience to introduce the North Point State Park area and draft master Plan. He said that what is proposed is recreational use concentrated in a 20 acre area on a site that consists of a total of 1,310 acres.

Chairman North said that there had been a great many letters and communications from private citizens received at the Commission offices who have demonstrated an interest in this proposal. He recognized many of those people at the meeting, some represented by Counsel. Counsel was permitted to comment.

Mr. David Plott, an attorney for the law firm of Linowes and Blocher, and with the Coalition to Preserve Black Marsh, spoke. He said that the coalition consists of about 39 different civic and environmental organizations and has over 600 individual members. He said that the main concern the coalition has with the proposal submitted is the location of the development as proposed by DNR, and the intensity of some of the development. He said that they believed that some of the uses proposed are not consistent with the Critical Area Criteria. He stated that their request is that the Commission would extend the period of review of the proposal as provided for in the criteria for a full 60 days, in addition to the normal 30 day review

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period for such a proposal, and in addition that the time period to not begin at the June 5th meeting because many of the components and information have not been submitted to the Commission. He stated that they wanted the Critical Area Commission staff to determine when all information has been received to start the review period; also, that the Chairman appoint a panel to have testimony, public hearings on the record and at least one of the hearings be held in Baltimore County.

Mr. Plott stated that DNR has requested a general approval and they believe that is totally inappropriate in this case according to the criteria. He stated that they believe that the specific critical area issues should be examined for consistency. He said there appear to be deficiencies in the proposal regarding water-dependent facilities, shore erosion control, non-tidal wetlands, threatened and endangered species and wildlife and fish habitats and buffer issues.

Mr. James Gutman asked how much impervious surface would be added.

Mr. Bostian asked if there was a formal application from Black Marsh yet.

Chairman North said that there was no formal application and although an extended debate is not desirable at this time, a summation is needed for consideration.

Mr. Wilson stated that he thought that the total square footage of impervious surface is approximately 5,879 square feet from what was originally a vegetated surface, but would have to check to be sure.

Chairman North said that he would appoint a panel to review the matter and will hold at least one public hearing and he announced that the time period for review has not begun yet. He stated that he would announce the composition of the panel within the next five days.

Chairman North asked Ms. Claudia Jones to report on Point Lookout State Park/Elevated Walkway.

Ms. Jones stated the project was proposed by DNR and that Mr. Donnie Hammett would be commenting on it.

Mr. Hammett stated that at the visitor's center off the corner of the building was a deck. In order to gain access to the edge of the water a trail was made which has done considerable damage to the wetlands. What they are proposing to do is to build a 64-foot elevated walkway, to accommodate visitors and would also serve as an educational tool because it also serves as a nature center for school groups who come to visit.

Dr. Shepard Krech stated that it would be very similar to the one done at the Merkle Wildlife Refuge three years ago which the Critical Area Commission approved unanimously.

Mr. Samuel Bowling said that the project review subcommittee recommended approval as submitted. The motion was seconded and the vote was unanimously in favor.

(Verbatim transcript Pier One)

CHAIRMAN NORTH: The next item is the Pier One mapping mistake, Queen Anne's County. Ren would you care to address that issue.

REN SEREY: Queen Anne's County has applied to the Critical Area

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Commission to amend the program to change the mapping designation on the Pier One property that is located on the eastern side of the Chesapeake Bay bridge. The County has presented the argument to the Commission that the entire property should have been designated IDA for program approval. The Commission approved an IDA/LDA split, which I have shown to you in spring colors. IDA is in pink and LDA, which the Commission approved, is in green. The County is insisting that the entire property be designated as IDA. The basis of the County's argument, as presented to the Commission, was that there were sufficient commercial uses and I guess they decided a lack of natural habitat on the property at the time, December 1, 1985, warrant the entire property being designated IDA. The Commission panel, chaired by Shep Krech, held a hearing, heard from County and from property owners. Heard from several witnesses presented by the property owners. The panel heard that commercial uses existed at the time, December 1, '85, in the LDA, that there was, for instance, a windsurfing operation in use here at the bay shoreline, that boat storage took place in other areas in the LDA, that there was some roads and trails through the property at the time and that generally, commercial use of the Pier One Marina, at the time, extended out into the entire property. The Panel's report was sent to you last week and I am going to turn it over to Shep Krech now, the Chairman of the Panel, who will provide you with some other information and a recommendation of the Panel.

SHEP KRECH: Thank you, Ren. The Panel consisted of Judge North, Sam Bowling, Bob Price and Bob Schoeplein and myself. Bob Price knows more about this Pier One Marina problem than anyone else in this room, and if Bob would start, I think, Bob, that you're in the best position to wrestle the mystery of this problem, because it is a problem and I'll come up with our recommendations after Bob has a few words.

REN SEREY: Bob, may I say one thing, when I, I neglected to mention for the acreages, there is approximately 29 acres in IDA now, and the request is for approximately 22 acres.

SHEP KRECH: I just wanted to add that we, part of the panel visited the property. We did have our hearing, ah, the Panel met on several occasions after the meeting and at Judge North's office in the Annapolis Commission office.

CHAIRMAN NORTH: Bob, you seem to be particularly pleased with this assignment.

BOB PRICE: Yeah. (Crosstalk)

CHAIRMAN NORTH: We are looking forward to every word, Bob.

BOB PRICE: I really wasn't sure that, sure in a sense to monitor the facts that were set forth in a Panel report. I think they are very clear. I think essentially, ah, what comes through to the findings of fact is that the property was in transition from December 1, 1985 until sometime in 1989 and the family, the County considered it, ah, its classification at that time. Essentially, alot of the commercial activity that took place was after December 1, 1985. The first success that we had was the use of the areas as of December 1, 1985 and ah, (unintelligible) everybody has a recommendation of the panel (unintelligible) an existing marina and has been for a period of 20 years (unintelligible) December 1,

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1985.

SHEP KRECH: With that, we thank you, Bob, the Panel that handles this believes that the application should be disapproved, and I'd like to make that into a formal motion before I make any further comment.

CHAIRMAN NORTH: Alright, is there a second to that motion?

DOUG BROSSMAN: Counsel for Pier One

requests.....

CHAIRMAN NORTH: Yes, just, just, just yes, indeed, just a moment, is there a second to the motion?

SAM BOWLING: I second.

CHAIRMAN NORTH: Very well, thank you. Now, Counsel is present representing the owner and he would like an opportunity to address the Commission and we'll be glad to hear you.

DOUG BROSSMAN: My name is Doug Brossman. I'm Counsel for Pier One Marina. I represented Pier One Marina through most of the development phases and transitional phases which Mr. Price is talking about and I am fairly familiar with this site and I also represented Pier One through the County hearings matter and the Panel hearings matter. Ah, I brought with me today, Casey Bading, who is a, the office mana - marina manager who has been involved in the property since 1979 and I also brought with me Mr. John Manganello, who is a professional engineer and land planner who can testify as to the appropriateness of the LDA/IDA designations on the property. Ah, these gentlemen offered testimony as well as hearings below and I feel their testimony is necessary here, to clarify certain issues which were not brought out in the staff report. Essentially, also available today, the affidavit from Mr. Milt McCarthy providing technological testimony at the hearing and at the Panel hearing. Mr. McCarthy disputed some of the findings of fact which were in the panel's report and then Mr. McCarthy also provided a plan which marked off certain areas which were improperly represented as to being natural habitat or breeding habitat for various types of ducks.

Ah, first I'd like to summarize some of the problems we had with the Panel report. The first question is: Do you feel that the panel report required the wrong standard as to the review of the County's action. There was no mention in the panel report as to the County's presumption of correctness to the County's designation of the State. There was no mention of any part of the record of the County's prior (unintelligible)

Also, the panel's report relies heavily on correctness, presumed correctness of this, correctness of a prior designation. Th (unintelligible) and I agree with that. There is a small presumption of correctness, ah, with a prior zoning designation. However, that case has expanded in a subsequent case and (unintelligible) case to find that presumption can be overcome, where that earlier designation can be placed in a position I am fairly debating. Further, that presumption may be overcome whereas a staff report for the body which enacts the legislation, which recommends a change. In this case, we get testimony from Mr. Joe Stevens, the Planning Commissioner for Queen Anne's County that designated it was his position and the County's position rather than (unintelligible) State (unintelligible) and this property met the criteria the entire property met the criteria for intensely developed area as of December 1, 1985.

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Another point which was omitted from the staff report, was in the initial plan adopted by Queen Anne's County and was approved by this Commission, this property was designated a buffer exemption. In order to designate a buffer exemption area requires a finding that a buffer development on the property is such that it significantly impairs runoff on that property. How can you have a finding on this area in the staff report that bears no evidence that there is an alteration or an impairment of runoff, when the official program writes its own statute by its own terms and the buffer exemption area has already made that finding. Another point which isn't brought out on the staff report is the review of how this line was established. As you can see on this plan, this line clearly follows the tight turns of the marina basin. Unfortunately, your law requires an outline established based on use of December 1, '85. This basin did not exist December 1, '85. There is testimony in the record that this line bears no relationship to any manmade or physical feature of that property as it existed in December 1, '85. It is a clear mistake, it was drawn after the fact, drawn to follow a line which was created after the operative date of the Statute.

Also, um, the notes from the Critical Area Commission files indicated that they were looking at aerial photographs, looking at County maps that improperly located some buildings up here which were not, they located them inside the Critical Area when they actually were located further back, further away from the Critical Area line. Once again, that shows that they are basing mistake in their original designation.

Finally, as indicated earlier, the panel report indicates that there is testimony that the property was dominated by herbaceous and shrubby vegetation. First of all, it also was a green habitat with black ducks, mallards and Canadian geese. The testimony here indicated that while the species may appear offshore in waters there was no testimony those species are using the property as habitat to breed on that property at all. Further, the testimony was clear that these areas were being impacted by the marine activities although they were not paved, they were clearly impacted, the vegetation was impacted as a result the property was impacted.

As my first witness, I'd like to call Mr. Casey Bading.

CHAIRMAN NORTH: We are not going to entertain witnesses.

DOUGLAS BROSSMAN: Excuse me.

CHAIRMAN NORTH: We are not going to entertain

witnesses.

SHEP KRECH: Mr. Chairman, can I make a comment.

CHAIRMAN NORTH: Yes.

SHEP KRECH: The photograph that is being passed around the table now is not a 1985 photograph. This is 1990.

CHAIRMAN NORTH: Alright, thank you.

DOUGLAS BROSSMAN: I agree with that, that photograph is .....

SHEP KRECH: Not from '85.

DOUGLAS BROSSMAN: I agree with you, no dispute there.

CHAIRMAN NORTH: Counselor, we wish to afford you, out of courtesy, if nothing more, an opportunity to, to address the Commission, but in point of fact, our procedure, as you know, is to have this matter examined closely and evaluated by a panel and for the Commission to receive the panel

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recommendation. The panel has met and there has been a motion made by Dr. Krech in accordance with the panel's findings. We wish to give you an opportunity to speak with respect to your client's position which we have done, but we did not wish to revisit the matter in detail, nor did we contemplate giving you an opportunity to call witnesses and reopen the entire hearing which the panel has already done. If there is anything further that you'd like to say in summation, we'll be glad to hear you, but we don't wish to entertain witnesses.

DOUGLAS BROSSMAN: Well, in summation, I'd like to expand on Dr. Krech's and Ren's statements that our (un- intelligible) commercial activities occurring in the LDA portion. I've also declared that this property is surrounded by commercial activity in a commercial IDA airport to the south in a commercial marina that has been in a commercial marina for many years located in the north. The County plan specifically finds that this is high intensity commercial area in the County and in fact, 80% of its intensely developed area is along the Route 30, ah, Route 50, 301, corridor. I think that dictates that the finding that this area, this area is clearly dominated by commercial uses as intended by the Critical Area Acts and therefore, it was improper to carve out an LDA portion. I would also like to proffer for the record, Mr. Chairman, that we feel it is improper to prevent us from putting on additional testimony at this level since this is the decision making board go...administrative rules and law and to give us the opportunity to provide additional testimony and we would like the record to be clear that you have not allowed this opportunity to allow this additional testimony.

CHAIRMAN NORTH: Alright, sir, thank you. Is there further discussion on the motion, any comments or questions?

SHEP KRECH: If I may make it clear on my one comment.

CHAIRMAN NORTH: Yes, indeed.

SHEP KRECH: That is our panel, in the course of its deliberations, suggested that the County Commissioners consider growth of allocation for the property, pursuant to their Section 70001 of the local program, after the plan of Pier One submits its appropriate application.

CHAIRMAN NORTH: Thank you.

DOUGLAS BROSSMAN: Mr. Chairman, may I clarify one point.

CHAIRMAN NORTH: Yes, indeed.

DOUGLAS BROSSMAN: We did make application for that growth allocation and were advised by the County that because they have not, we have not been advised in writing by the County, because they have no policy for the use of their growth allocation they will not entertain an application for growth allocation at this time.

CHAIRMAN NORTH: Further comments or discussions on the motion. If not... yes?

BILL BOSTIAN: Is it clear that this is one property and not two properties or anything like that?

CHAIRMAN NORTH: I think that is entirely clear. Very well, those in favor of the motion will please indicate by saying aye.

MEMBERS: AYE.

CHAIRMAN NORTH: Those opposed?

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MEMBERS: (No response.)

CHAIRMAN NORTH: The motion is carried unanimously. Thank you very much.

Chairman North asked Mr. George Gay to update the Commission members on the Davis appeal in Dorchester County.

Mr. Gay stated that at the last Commission meeting, the Commission asked him to contact Mr. Davis to determine if Mr. Davis felt that an alternative resolution to the situation in Dorchester County was available and if so, what that alternative solution would be. He said that the Commission had indicated a willingness to dismiss its Appeal of the Dorchester County Board of Appeals decision to allow variance for the installation of a pool if Mr. Davis would take certain adequate actions in mitigation and those actions were specifically a payment of two thousand five hundred dollars to the Dorchester County authority. Mr. Davis' response was that he felt that the only appropriate alternative would be for him to agree with the Commission to locate plantings in the Buffer along his property. He said that he asked Mr. Davis if he would allow the Commission to choose the species and the location and he indicated that he was not agreeable to that. He indicated that he was also prepared to work with the Commission and with the local authorities to draft a form letter to be submitted to citizens who made application for development in the Critical Area in Dorchester County. The letter would be designed to red-flag for those citizens the interests and involvement of the Critical Area Commission and what steps a citizen should take to further inform him or herself of the Commission's role. He said that he would not agree to a specific number of hours to that effort but that he would sometime in the future agree to a schedule that would enable him to do that. That was his alternative proposal.

Mr. Gay asked the Commission if it would like to maintain its posture with respect to the litigation.

Chairman North stated that there was no indication to the contrary and Mr. Bostian said that he believed that the Commission should stand procedurally.

Mr. Gay said that Mr. Davis had to respond within a certain time as he was notified by a letter from the Commission outlining what the rules were assuming that he did not obtain Counsel. Mr. Gay stated that Mr. Davis, informed him that he had submitted appropriate motions and answers pro se.

OLD BUSINESS

There being no old business, the meeting proceeded.

NEW BUSINESS

As the next regularly scheduled meeting of the Critical Area Commission falls on the 3rd of July a motion was made to reschedule the meeting for the following Wednesday in July the 10th. The motion was seconded and the vote was unanimously in favor.

Chairman North designated a Panel for a new amendment for Talbot County.

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Designated members were Shep Krech, Bill Corkran, Tom Jarvis, Steele Phillips and Roger Williams.

There being no further business, the meeting adjourned.

STAFF REPORT

JURISDICTION: Talbot County

AMENDMENT: Revisions to Talbot County Zoning Ordinance, including five mapping mistakes

DISCUSSION: Talbot County has submitted a list of Critical Area changes to the new Talbot County Zoning Ordinance, including five mapping mistakes. This new Zoning Ordinance combines the County's 1974 Zoning Ordinance and the 1989 Critical Area Ordinance.

Changes submitted to the Critical Area Commission were in six categories: 1) definitions; 2) land use regulations by zoning districts; 3) development design standards; 4) nonconforming uses; 5) administration; and 6) mapping mistakes.

Section 19.2 Definitions: Changes made to definitions of berm, jetty, marina (divided into commercial, community, yacht club), and nontidal wetlands.

X2 - PANEL RECOMMENDATION: Changes consistent with Critical Area Law and criteria, with exception of nontidal wetlands. Panel recommends adding language to ensure that the Critical Area definition of nontidal wetlands shall apply where there are conflicts with the Federal Manual.

Section 19.4 Land Use Regulations  
New Uses Proposed in RCA: (See attached chart)

Section 19.10 Development Design Standards: A density table was omitted under Rural Conservation District Density Transfer. Two other minor changes were not specifically Critical-Area related.

PANEL RECOMMENDATION: Changes consistent with Critical Area Law and criteria.

Section 19.13 Non-Conforming Uses:

1. An amendment was enacted to the zoning ordinance (Bill 452) to grandfather certain structures erected prior to April 11, 1991, as accessory structures, though they may not have been the subject of specific building permits. These structures include

driveways, culverts, private bridges, light standards or poles, mailboxes, ornamental entrance gates, and any similar accessory structures customarily associated with the principal use of the property.

2. Section 19.13(d)(2) - expansion of non-conforming structures in the buffer should be landward only, not shoreward.

PANEL

RECOMMENDATION: As proposed, Bill 452 must work in conjunction with the Critical Area grandfathering criteria under COMAR 14.15.02.07. However, these criteria have not been incorporated into the County's zoning ordinance. It was stated in the Talbot County Critical Area Program that grandfathering language would be included in the County Zoning Ordinance after Program adoption.

Section 19.14 Administration

1. Changes were made to the "Amendments to the Critical Area provisions of the Zoning Ordinance".

PANEL

RECOMMENDATION: Changes consistent with Critical Area Law and criteria.

2. Changes were made to the "Growth Allocation District Boundary Amendments in the Critical Area"

PANEL

- RECOMMENDATIONS:
- a) Design standards in Section 19.12 should also be met for growth allocation submittals (19.14.C(1)(iv)(b)).
  - b) Add "or improvement on quality and quantity of stormwater" to the growth allocation requirement that an application should "Have minimal effect on stormwater, floodplain and stream character." [19.14C(1)(iv)(b)(6)].
  - c) Clearly state that the Critical Area Commission only receives those growth allocations which have been approved by the County Council [(19.14.C(1)(iv)(g)].
  - d) If an applicant is going from LDA to another LDA, or IDA to another IDA, then growth allocation is not needed. [(19.14.C(1)(iv)(m)].

Additional Comments

1. The Zoning ordinance does not clearly indicate how the County zones and the Critical Area designations (RCA, LDA and IDA) are related, especially with regard to IDA designations. This should be clearly spelled out.

2. HB 323 on impervious surfaces should be incorporated into the zoning ordinance.

3. The section dealing with Special Exceptions should indicate that the Critical Area Commission must be sent all Special Exceptions within the Critical Area for review and comment.

NEW USES PROPOSED IN TALBOT COUNTY'S RCA

<u>USE</u>	<u>TYPE</u>	<u>PANEL RECOMMENDATION</u>
1. Agriculture Research Facilities (commercial)	S	Approve
2. Aquaculture (retail)	S	Approve
3. Aquaculture (wholesale)	P	Approve
4. Greenhouse & Plant Nursery (retail commercial) (old zoning ordinance allows wholesale commercial as a permitted use in RCA)	S	Approve
5. Single family residence (duplex)	P	Approve
6. Kennel (commercial)	S	Deny
7. Bed & Breakfast (operated as a home occupation)	A	Approve *
8. Group Day Care Center	S	Approve, if in dwelling existing as of December 1, 1989
9. Cottage Industry (existing dwelling)	S	Approve
10. Shared Facilities for Sewage Collection, Treatment, Disposal	S	Approve
11. Septage Land Application	P	Approve
12. Recycling Collection Center	P	Deny, based on COMAR 14.15.02Q
13. Solid Waste Transfer Station	S	Deny, based on COMAR 14.15.02Q
14. Substations for Gas/Oil Pipeline	S	Approve (utility)
15. Nursing Home (existing structure)	S	Approve, if located in dwelling existing as of December 1, 1985.
16. Private Bridge Which Crosses Tidal Waters Useable by Marine Craft	S	Approve
17. Private Bridges	A	Approve
18. Antenna Tower	S	Approve

\*1) in dwelling existing as of August 1989; 2) minimum lot size for any parcel providing such facility in the RC is five acres; 5) extension or enlargement of the principle and accessory structures may not exceed 50 percent of the gross floor area of each individual building above that which existed at the time of the adoption of these regulations.

- S = Special Exception
- P = Permitted Use
- A = Accessory Use

*supported*

STAFF REPORT

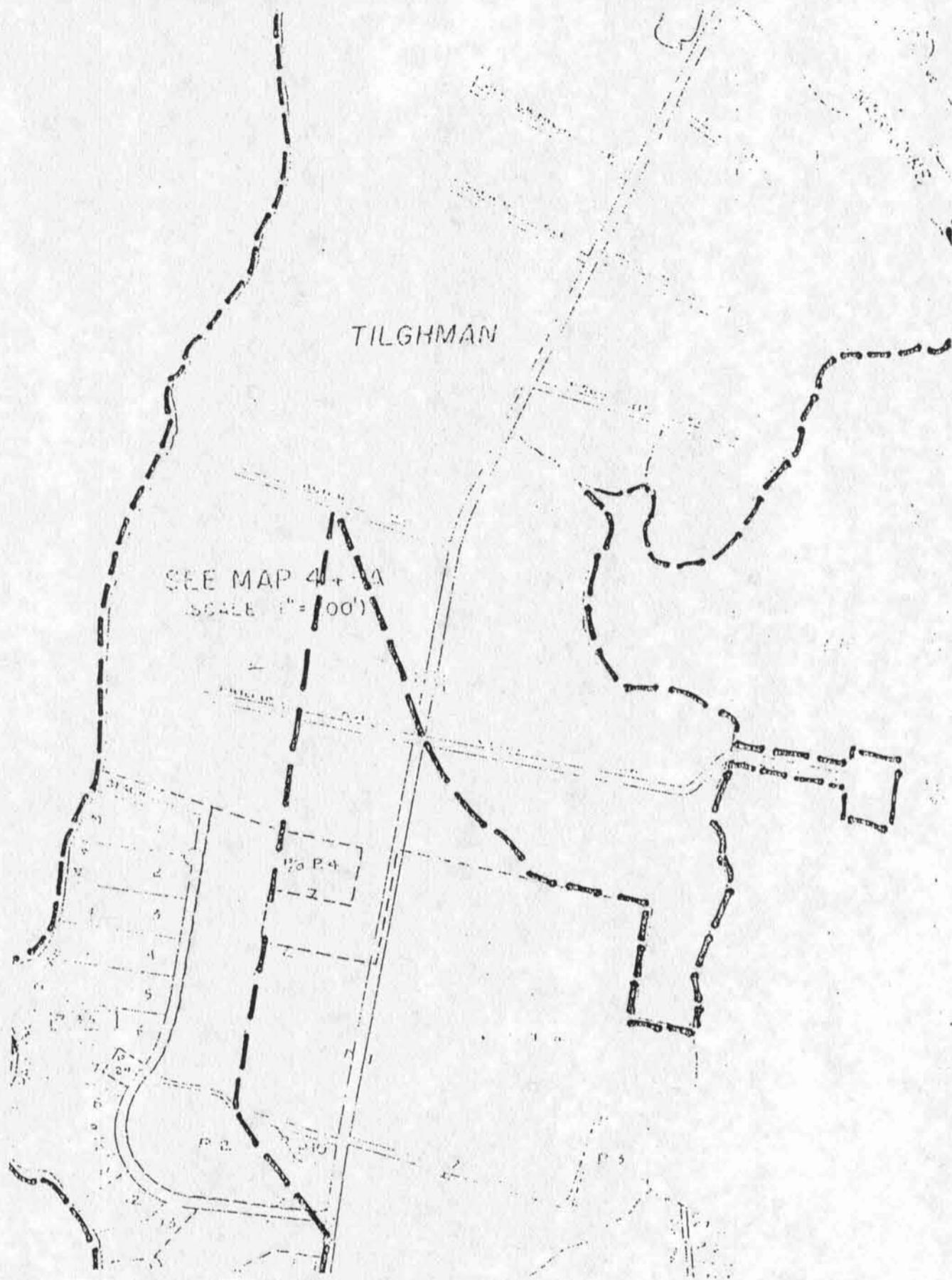
JURISDICTION: Kent County

REFINEMENT: Subdivision in the Resource Conservation Area

DISCUSSION: Kent County proposes to add the following language to the zoning ordinance for the Resource Conservation District

Parcels of more than one acre improved by more than one dwelling unit, existing as of December 1, 1985, may be subdivided into parcels of land of not less than one-half (1/2) acre each for each dwelling unit situated on the one-half (1/2) acre, or more, being subdivided.

STAFF  
RECOMMENDATION: Accept as refinement



**Mapping Mistakes**

- I. Tax Map 44, Parcel 4: 10.5 acres. Request zoning change from RC to VC (Village Center), an LDA designation.

**Finding of Fact:**

1. This parcel is located within the limits of the Tilghman Island Sewer Service Boundary area. Land use was agricultural field in 1985.
2. Land within this sewer service boundary area was mapped LDA.
3. At the time the Critical Area map was drawn, the sewer boundary line was drawn incorrectly and should have encompassed this parcel.

**Panel Recommendation:** Approve mapping mistake from RCD to VC zone.

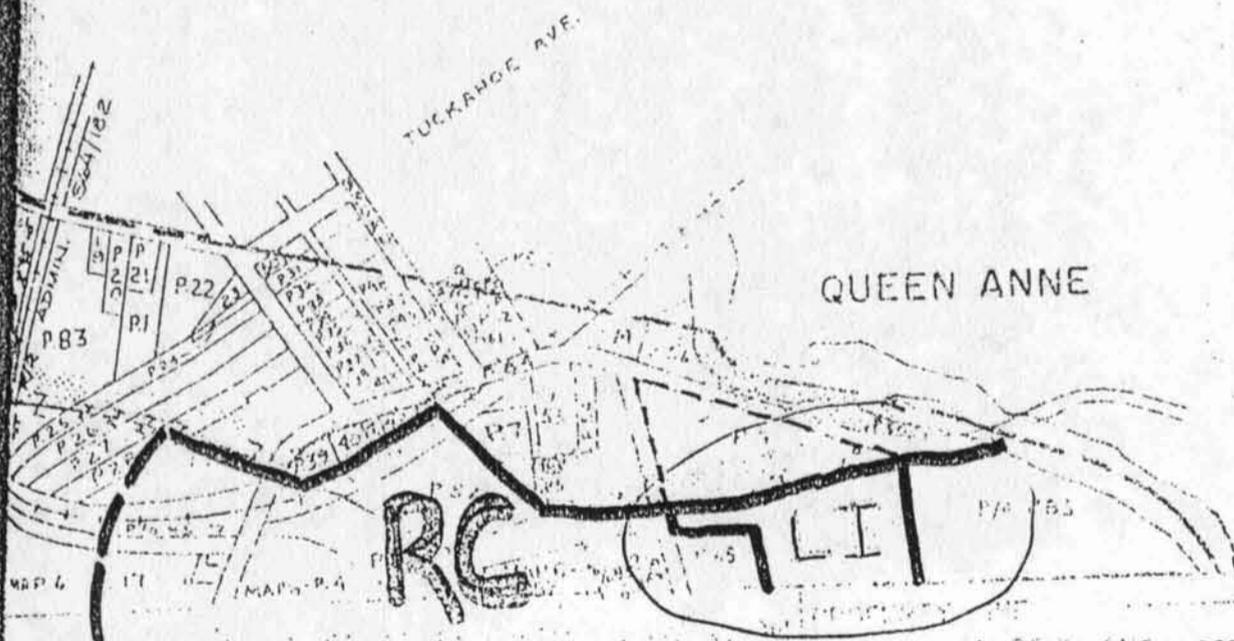
Map 3

II. Tax Map 3, Parcel 4: Request change from RC to LI (Limited Industrial), an IDA designation, for 5.52 acres.

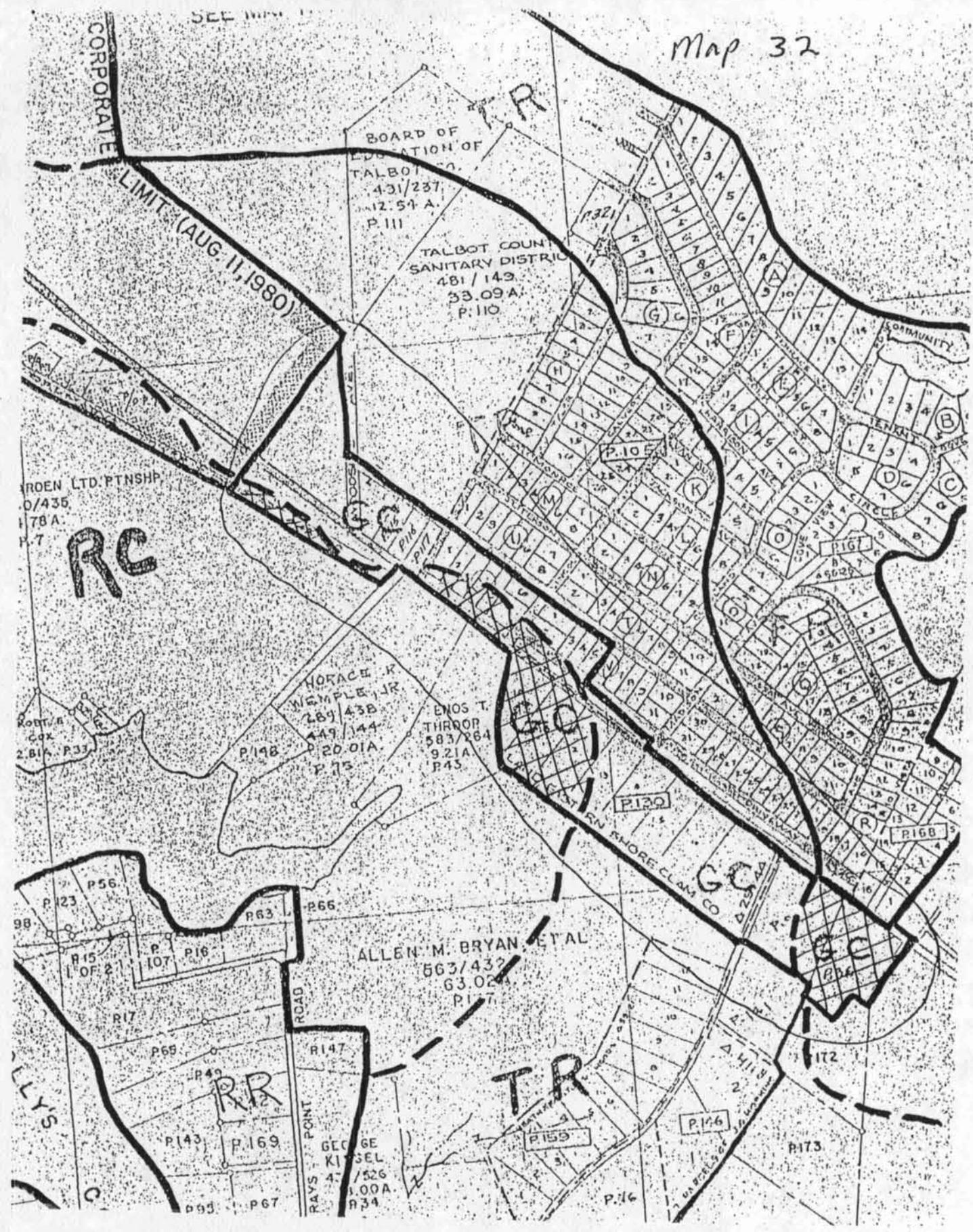
Finding of Fact:

1. A cannery operation existed on this site in 1985.
2. The property is a total of 10.69 acres, with 5.52 acres in Talbot County and the remainder in the Town of Queen Anne.
3. The Town/County boundary line bisects this property, with industrial uses occurring on both portions.
4. The portion within the Town of Queen Anne is zoned IDA.
5. IDA mapping criteria require 20 contiguous acres. The County Critical Area Program does not specifically state that areas outside of the County can count toward meeting that criteria.

Panel Recommendation: Deny mapping mistake. This parcel met the RCA mapping criteria to include the balance of the Critical Area not previously designated as an IDA or LDA.







IV. Tax Map 32: Strip of commercial property outside St. Michaels along Route 33: Request zoning change from RC to IDA for 11.5 acres in the Critical Area.

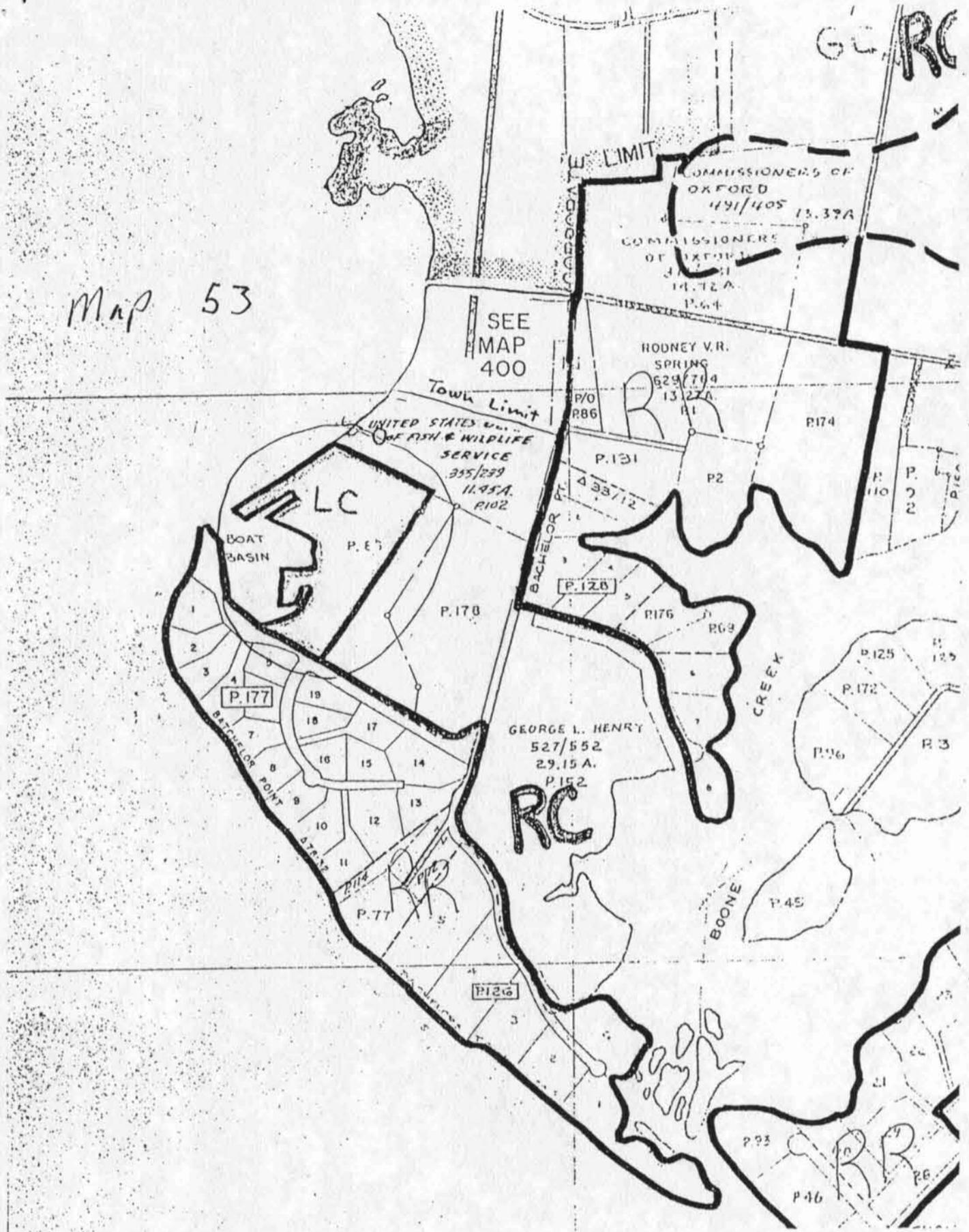
Finding of Fact:

1. The area is on County sewer.
2. Commercial uses existed on a majority of these properties in 1985.
3. The County mapping rule for IDAs requires that "IDAs included any area of 20 or more contiguous acres where residential, commercial, institutional and/or industrial development predominated and relatively little natural habitat was present..."
4. This area proposed for IDA was on the fringe of a large expanse of RCA and was less than 20 acres within the Critical Area of IDA characteristics.
5. Parcel 86 was already designated LDA, and is proposed to be designated IDA.

Panel Recommendation: Parcel 86 was correctly mapped at time of Program adoption and met LDA criteria. The remainder of the request met the RCA mapping criteria in that it included the balance of the Critical Area not previously designated as IDA or LDA.

GC RC

Map 53



V. Tax Map 53, Parcel 86, Existing marina, Bachelor's Point Marina: County requests mapping mistake from RC to LC, an LDA designation, for 13.9 acres.

**Finding of Fact:**

1. This site had an existing marina in 1985 (slips and limited development - two structures).
2. The majority of the site was barren land.
3. The parcel did not have public water or sewer.
4. Area met RC mapping criteria where dominant land use was barren land.
5. This parcel is contiguous to both RC land and LDA land.

**Panel Recommendation:** No mistake was made based on mapping criteria and land use in 1985.