

Committee Meetings & Correspondence December 1991

MSA-S-1832-89

ABH 12-4-91

AGENDA

Chesapeake Bay Critical Area Commission  
Chesapeake Bay Maritime Museum  
St. Michael's, Talbot County, Maryland  
December 4, 1991

2:00 - 2:05 Approval of Minutes VOTE John C. North, Chairman  
November 6, 1991

PROGRAM AMENDMENTS & REFINEMENTS

2:05 - 2:35 Harford County - Growth VOTE Robert Price, Jr., Chair  
Allocation Amendment, Bata Anne Hairston, Planner  
*Withdrawn*

2:35 - 2:40 Talbot County - Refinement Pat Pudelkewicz, Planner  
Zoning Ordinance Word Change  
*OK*

2:40 - 2:45 Prince George's County - Refinement Theresa Corless, Planner  
Impervious Surface Limitation  
*OK*

2:45 - 3:00 St. Mary's County Amendments VOTE Louise Lawrence, Chair  
*passed 11-6* Claudia Jones, Planner

3:00 - 3:30 Anne Arundel County VOTE Shep Krech, Chair  
*(1 abst) passed* 3) Reforestation Fee-In-Lieu *denied 12-4* Anne Hairston, Planner  
*(1 abst) passed* 1) 2) Growth Allocation Procedure *1 abst.*  
2) 3) Reserve Growth Allocation for the City of Annapolis

PROJECTS

3:30 - 4:00 Department of Natural Resources John C. North, II Chair  
North Point State Park (Balt. Co.) Anne Hairston, Planner  
VOTE John Wilson, DNR

4:00 - 4:20 Maryland Office of Planning Kay Langner, Chair  
Concept Approval for Randle Sam Bowling, Co-Chair  
Cliffs (Chesapeake Beach) Claudia Jones, Planner  
VOTE *approved*

POLICY

4:20 - 4:30 Nontidal Wetlands Liz Zucker, Science Advisor  
VOTE

4:30 - 5:00 Old Business John C. North, II, Chairman  
New Business John C. North, II, Chairman

Chesapeake Bay Critical Area Commission  
Minutes of Meeting Held  
November 6, 1991

The Chesapeake Bay Critical Area Commission met in the Commission Office, 275 West Street, Annapolis, Maryland 21401. The meeting was called to order by Chairman John C. North, II with the following members in attendance:

Judge John C. North, II, Ch.	Parris Glendening
Philip Barker	Samuel Y. Bowling
William H. Corkran, Jr.	Joseph J. Elbrich, Jr.
Russell Blake	James E. Gutman
Ronald Hickernell	Robert Price, Jr.
Dr. Shepard Krech, Jr.	Kathryn Langner
G. Steele Phillips	Thomas Jarvis
Michael J. Whitson	Bill Bostian
Robert Schoeplein, of DEED	Anthony Bruce
Louise Lawrence	James L. Hearn, of Dept.
of Dept. of Agriculture	of the Environment
James Peck, of Dept. of	Larry Duket for Ronald Young
Natural Resources	of Md. Office of Planning
J. Rodney Little for	
Jacqueline Rogers, DHCD	

The Minutes of October 2nd were corrected on page number 17, second paragraph from the top, reference made to approval expected at the December meeting of the North Point State Park Draft Master Plan - read "6" days extension have been requested, a typographical error which should be corrected to "60" days. Mr. Gutman made a motion to approve the minutes as circulated, the motion was seconded and the vote was unanimously in favor.

Chairman North asked Ms. Patricia Pudelkewicz to report on Talbot County's request for Amendments to their Zoning Ordinance.

Ms. Pudelkewicz said that the amendments being heard today are part of an ongoing process to get the Critical Area Amendments to the new Talbot County Zoning Ordinance approved. She gave a brief history of the process to-date, as documented in the July, September and October, 1991 Minutes.

She said that the amendments before the Commission now are resubmittals of the amendments on which comments were made at the July meeting. Changes have been made as requested by the Commission. These changes were approved by the Talbot County Council in the form of Bill 459. She said that there are originally 21 amendments. She read over the 21 amendments outlined in a staff report and disseminated to the Commission members (and attached to these minutes) which included the actual language of the submittals by Talbot County, with staff comments and Panel recommendations.

Commissioner Joseph Elbrich made a motion that the Commission approve all of the Critical Area Amendments to the Talbot County Zoning Ordinance as submitted by section and only those sections of Bill 459 that were submitted as Critical Area amendments are the ones that are intended to be approved by this Commission subject to the comments and recommendations contained in the panel report of November 6th, 1991. The motion was

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seconded.

The vote was unanimously in favor.

Chairman North asked Ms. Patricia Pudelkewicz to report on a request for a refinement by Talbot County.

Ms. Pudelkewicz stated that she had notified the County that their revised process for reviewing Text Amendments and Growth Allocations had not been officially approved by the Commission. She said that Mr. Cowee submitted a letter recently asking the Commission to review and approve the amendment process in Section 19.14(c) of the Zoning Ordinance, as approved in Talbot County Bill 450.

The Chairman determined the request to be a refinement and the Commission supported the Chairman's decision.

Chairman North asked Mr. Serey to report on the Amendment request from Charles County.

Mr. Serey briefed the Commission on the request outlined in a staff report disseminated to the Commission members (and attached to the minutes.) The report was as follows: A Commission panel conducted a public hearing October 28, 1991 on the proposed Charles County Program amendments outlined below. Staff briefed the Commission on the amendments at the Commission meeting of October 2, 1991.

1) Bald Eagle protection plan - The County will add ten Bald Eagle sites to its 1989 inventory. These sites contain over 30 nests. The Department of Natural Resources (DNR) identified the sites and has reviewed the County maps. The County Office of Planning and Growth Management has prepared a generic habitat protection plan for Bald Eagles. The plan is based on guidelines prepared by the National Wildlife Federation and incorporates DNR recommendations. The plan applies a quarter-mile protection radius with three concentric regulatory zones. The County's intent, based on a DNR recommendation, is to leave the generic plan in place until development is proposed that may effect one or more of the sites. Under the plan, existing development activities may continue, but new activities at a Bald Eagle site will be regulated. When a specific plan is needed, the County, the landowner and DNR will negotiate a protection agreement. A public hearing is required.

2) Impervious surface provisions - The County currently limits the increase in impervious surfaces to 25% above the existing level a) in Buffer Exempt areas and b) on lots that are less than 200 feet deep, measured from tidal waters, tidal wetlands and tributary streams. The County does not use the date of program adoption as the basis for measuring existing coverage. Therefore, increasingly larger incremental increases are allowed. The ultimate impervious surface limit is set by the State in amendments to the Critical Area Law. The County proposes to eliminate the need for successive increases and allow the site maximum to be reached in one application. The impervious surface changes required by HB 1060 and HB 323 also are included in this amendment package. The County has met all requirements of these bills.

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A motion was made and seconded to approve the Charles County amendments as presented. The vote was unanimously in favor.

Chairman North asked Ms. Anne Hairston to inform the Commission regarding the Anne Arundel County requests for amendments and refinements.

Ms. Hairston briefed the Commission members on the request to be voted on at the December meeting in a staff report disseminated to them which follows:

Anne Arundel County has submitted three bills as amendments to their Critical Area Program. County Council Bill 63-91 expands the uses of the reforestation fees-in-lieu fund to include planting of shore grasses and purchase of developable forested land. The planting of shore grasses is limited to 5% of the money collected for the fund in the previous fiscal year, and must be adjacent to buffers, Resource Conservation Area, or tidal wetlands. The purchase of developable forested land does not have a cap, but must be approved by the County Executive and the Office of Planning and Zoning. Advice on the purchase is to be sought from the Executive Director of the Critical Area Commission, the Natural Heritage Program, and a designee of the Anne Arundel County Forest Conservation Board. The intent of the bill is to allow an avenue for protection of existing mature forested land, not just reforestation with small trees which need time to mature. Funding the planting of shore grasses is expected to augment the functions of the buffer. The bill was apparently motivated by the fact that the County had collected a substantial amount in the fee-in-lieu fund, and had not yet started spending the money on replanting, because it was still in the process of identifying sites. Some plantings are being carried out this fall, and will be the first expenditures of the fund.

Bill 66-91 establishes a process for the County to award growth allocation and to reclassify on the basis of mistake in mapping. Applications for growth allocation are accepted twice a year and application for reclassification by mistake are accepted four times a year. The bill identifies information required in the submittal. The information required for evaluating the proposals includes: 1) public need; 2) maximization of environmental benefits; 3) minimization of negative environmental impacts; 4) compliance with all requirements of development for the proposed project without offsets or mitigation; 5) reforestation, mitigation, and the provision of easements that exceed the requirements of development for the proposed project; 6) energy-efficient use of design, citing, and development methods; 7) preservation of archeological sites and historic structures; and 8) affordable housing, where applicable. Anne Arundel County has 58 acres to change from RCA to LDA, and 102 acres to change from LDA to IDA.

Bill 67-91 reserves 11 acres of growth allocation for the City of Annapolis. The Mayor and City Council must still request the growth allocation from the County Council in order to award it. However, the 11 acres is officially segregated from the growth allocation acreage available for the County. The 11 acres represents 5% of the RCA within the City of Annapolis.

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A panel hearing is scheduled for November 25, 1991, 7PM, in the Department of Agriculture Conference Room (50 Harry S. Truman Parkway, Annapolis).

Chairman North asked Ms. Claudia Jones to report on St. Mary's County's request for Amendment Buffer Waiver.

Ms. Jones briefed the Commission on the request to be voted on at the December meeting outlined in a staff report disseminated to the Commission members (and attached to the minutes.) The report was as follows: St. Mary's County has requested an Amendment - Administrative Buffer Variance. The proposed amendment to their Critical Area Program would allow County Planning & Zoning staff to approve certain variance requests within the 100-foot Buffer without the applicant having to go before the Board of Appeals. The process would apply to construction of an accessory structure, an addition to an existing residential structure or repair to an existing failing septic system on existing lots of record. The following requirements would apply:

- the footprint of the addition can be no longer than 500 square feet (cumulative);
- the construction of the addition cannot require the removal of any vegetation except for where the construction itself is located;
- a Critical Area Buffer Planting Plan is agreed to;
- the addition is located no closer than 50 feet from Mean High Water;
- the addition is not within a nontidal wetland buffer;
- all projects requiring a variance for work within the 100-foot Buffer would be reviewed by the Critical Area Commission staff prior to any administrative action by the County staff.

There are also requirements that the County notify contiguous property owners prior to administrative approval. These property owners may appeal the administrative approval to the Board of Appeals within 30 days. All applicant appeals from an administrative denial may be appealed to the Board of Appeals within 30 days.

Issues to consider:

- . Tidal wetlands or tributary streams are not included in the description of the 100-foot Buffer, only Mean High Water.
- . There is a discrepancy in the County's language between the section entitled "Requirements for Staff Review" which refers to the proposed construction being an accessory structure, an addition to an existing residential structure or repair to an existing failing septic system, and the section entitled "Decision", which refers to approval of proposed construction of principal or accessory structures. Principal structures are not in the first section.
- . The determination of what constitutes an existing lot of record is not defined. It is not clear whether the policy applies just to grandfathered lots or also to lots created since the Program

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went into effect.

- There is no reference to Habitat Protection Areas.
- Would the Critical Area Commission be able to appeal variance approvals made administratively as it is able to do of those made by the Board of Appeals?
- There is no stated mitigation requirement.

Mr. Larry Duket commented that another point to consider would be whether or not under Article 66 B if the Board of Appeals could grant variances under State law, and whether that authority could be delegated to Administrative bodies.

Chairman North asked Ms. Elizabeth Zucker to report on the Dorchester County Mosquito Control Project.

Ms. Zucker stated that a preliminary staff report was mailed to the Commission members (attached to minutes) about Open Marsh Water Management in Dorchester County for mosquito control. She said that essentially any action on the project has been postponed while habitat protection issues are being resolved for clarification that involve the Heritage Program and the Black Rail.

Commissioner Anthony Bruce asked what the status was of a general approval request before the Commission by the Department of Agriculture.

Ms. Zucker stated that there is a draft General Approval which has been reviewed for internal comment by Commission staff and the Executive Director. The staff is awaiting comments of the Assistant Attorney General, George Gay so that the draft can be presented to the Department of Agriculture.

Chairman North asked Ms. Claudia Jones to report on the Choptank River State Park Fishing Pier in Dorchester County.

Ms. Jones briefed the Commission on a request by the Maryland Department of Natural Resources, Shore Erosion Control Division's proposal to construct a stone revetment on the Dorchester County side of the Choptank River Fishing Piers State Park, disseminated to the Commission members in a staff report which follows:

The Master Plan for the Choptank River Fishing Piers State Park was approved by the Commission at the September 1991 meeting. The project is located adjacent to Rt. 50 on the property with the "goose monument." There is also an eight-foot gravel path proposed behind the revetment. The length of the revetment is 256 feet. The maximum encroachment into the water is ten feet. The area is considered to be an Area of Intense Development based on the existing use (parking), and that the City of Cambridge has designated the surrounding area as IDA.

The following sections of the "green regs" are particularly relevant.

- Areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, should be maintained and, if possible, encouraged to be established. COMAR 14.19.05.03(B)(2)(d). Development in Areas of Intense Development.

- If shore erosion protection is planned on State-owned lands, the agency

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proposing the protection should determine which of the ...characteristics describes the shoreline area and provide that structural control measures only be used where nonstructural control measures would be impractical or ineffective. COMAR 14.19.05.05(B). Shore Erosion Protection Areas.

- The agency shall establish a minimum 100-foot Buffer landward from mean high water. COMAR 14.19.05.09(B)(1).
- New development activities ...and other impervious surfaces are not permitted in the Buffer except for those necessarily associated with water-dependent facilities. COMAR 14.19.05.09(B)(2).
- The Buffer shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the shoreline. COMAR 14.19.05.09(B)(3).

The staff believes that the Criteria have been satisfied. The site is undergoing severe erosion. Nonstructural erosion control would not be practical. The walkway behind the revetment is in the Buffer; however, the site is in an Area of Intense Development and public access to the shoreline is encouraged. There is not enough room on the site to mitigate for the encroachment into the Buffer; however, DNR is afforesting 48% of the site on the Talbot County side (15% required) and staff believes that this balances it out.

Commissioner Steele Phillips asked about purchasing the adjacent property.

Ms. Jones stated that the property owners do not want to sell the property.

Commissioner Sam Bowling made a motion to approve the request based on the panel recommendation. The motion was seconded and the vote was unanimously in favor.

Chairman North asked Ms. Anne Hairston to update the Commission on North Point State Park Draft Master Plan.

Ms. Hairston said that the Commission is accepting written comments until November 4th, 1991. The panel had a follow-up site visit on November 1st to inspect certain areas. Information is still being gathered and comments are being evaluated. She said that there was no panel recommendation at this time but it is anticipated at the December meeting. She said there would be a panel meeting in the interim to develop a recommendation.

Chairman North asked Ms. Claudia Jones to report on a proposed park at Randle Cliffs in Calvert County.

Ms. Jones briefed the Commission members on the proposal for a park and stated that a vote on the Concept Plan is anticipated at the December meeting. The staff report was disseminated to the Commission members and is as follows:

The Maryland Office of Planning is working on a preliminary development plan for Randle Cliff Beach Natural Heritage Area. The property is at present privately owned and is a designated Natural Heritage Area. The Office of Planning would like to receive concept approval from this

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Commission for the park plan that they have developed prior to trying to purchase the property. The cliffs along the site support the Puritan Tiger-beetle (Cicindela puritana), an endangered species in Maryland. The wetlands and ravines on the property also support two threatened species, Red Turtlehead (Chelone obliqua) and Glade Fern (Athyrium pycnocarpon), and an uncommon plant, Whorled Water-pennywort (Hydrocotyle verticillata). These species are not known to be present on the portion of the property where the park development is to take place, but across Route 261 within the Natural Heritage Area. The site is approximately 70 acres in size and is primarily forested. The site is potential forest interior-dwelling bird habitat (FIDS). A dirt road through the site is presently used as access to the beach and the water. There are existing trails on the property that are currently used for dirt bikes to some degree.

The State has proposed the following:

- A parking lot in the northwest corner of the property. A portion of this area is disturbed. This would require some clearing and grading. Stormwater management would have to be provided. This may be within the 100-foot Buffer of tidal wetlands.
- Comfort station and picnic tables in an old borrow pit area. This would not require the removal of trees.
- Utilization and stabilization (wood chips) of existing trails and dirt roads. No tree removal would be necessary for this.
- Gazebo/observation platform on the Bay cliff. This would be within the Buffer.

MD Forest, Park and Wildlife Service has indicated that the concept plan as proposed to them will conserve FIDS habitat provided that the parking lot is located in existing disturbed areas and it is located as close to Route 261 as possible, that no trees are removed for the placement of the comfort station and picnic tables, and that no trees are removed for the hiking trails.

Heritage is concerned about the proposed parking lot, the clearing and grading that would be necessary for its construction, and any precedent that would be set for development in a Natural Heritage Area. They are also concerned about the proposed observation deck/gazebo in the Buffer. Forest, Park & Wildlife Service has also recommended that the parcel of land west of Route 261 owned by the same landowner should be included in any purchase and managed in its natural state to help conserve the FIDS habitat in the area.

Issues to be addressed include impacts to the protected species within the Natural Heritage Area and proposed structures in the Buffer.

Ms. Carolyn Watson stated that about 5 years ago, a developer came in with this piece of property to have the designation changed and to get a growth allocation, ostensibly for residential and commercial and at that time, Forest Park and Wildlife Service played a key role in preventing the development and whatever they are proposing is probably very sensitive.

Ms. Jones introduced Mr. Vivian Marsh, from the Office of Planning who stated that this is the only piece of property within the Town of Chesapeake Beach or in Northern Calvert County that is available for

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purchase to set aside as a park. It is also within a growth zone. It is a natural heritage area, and this plan entails preservation of the entire site. The Tiger Beetle is in the cliffs and the plan meets all the criteria for a Natural Heritage Area; Also, it can provide Bay access site for people.

Commissioner Gutman asked who the ultimate owner of the property would be. Ms. Jones replied that the County or State. Mr. Marsh stated that there is a proposal by the Mayor that he wants the County and the State to purchase the property. The Mayor has offered to make all the improvements and to staff the property.

Mr. Gutman asked if the Gazebo could be moved out of the Buffer.

Mr. Marsh explained that the Gazebo would be situated on a cliff where children always play and the proposal is to block it off with a structure without cutting trees to stabilize the eroding property. He said that it is a great observation area. The parking lot is outside of the buffer and totals less than 1/2% of the entire site.

Ms. Jones stated that there would be a site visit on the 2nd of December.

Chairman North announced that Dr. O'luwole Alade and his staff, Mr. Ken Feldman, Mr. Min Pyo and Larry Newman from Comptron, would be giving a demonstration on how the Geographic Information System works.

Dr. Alade stated that the demonstration has three major modules which would show what has been accomplished over the years regarding the automation of the Commission's Geographic Information System and automating the entire process that the Commission staff is involved with regarding project evaluation, program review, and the assessment of the cumulative effect of the overall Critical Area Program.

Dr. Alade demonstrated how the application software can be used to do program review. The process involves the cross referencing of the C.A. Criteria elements with the corresponding elements in the local program. Key elements in the Criteria, such as the Buffer, can be searched for inclusion or omission, consistency and content.

The second module of the application software involves an automated checklist for evaluating projects. The checklist is in the form of a matrix, whereby project evaluation requirements of the Criteria are segregated or clustered according to the development types, e.g. marinas, residential, industrial, commercial, etc., and project site location, e.g. IDA, LDA or RCA.

The third module is the spatial assessment component which involves the Geographic Information System. Spatial assessments were demonstrated by Mr. Ken Feldman and Mr. Pyo. The demonstration highlighted how the projects can be evaluated with a series of map overlays such as agricultural, forest, habitat protection etc., to show what possible effects the projects could have on the adjoining resources. In view of the various data entered and stored into the computer, as projects are being evaluated, the accumulation of information can readily provide the Commission with the sum of resources that have been disturbed or created,

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such as impervious surface, in any of the jurisdictions over a specific period.

The application software is a valuable tool for making the Commission staff's work more efficient given the volume of projects that need to be evaluated annually and the 60 local programs which need to be comprehensively reviewed against the 580 elements identified in the Criteria.

Dr. Alade was able to demonstrate the powerful and valuable capabilities of the application software he calls the "Integrated Program and Project Evaluation System" by using the Cecil County Program as the prototype. He further stated that, given the fiscal crunch, the need to find funds to encode the remainder of the local programs becomes a crucial task, otherwise, Dr. Alade said, the full potential of the system will not be realized and the implementation of the Critical Area Program will not be effectively monitored.

Chairman North asked Commission Counsel, George Gay to give the Commission a synopsis of his research on policy for reconsideration requests procedures.

Mr. George Gay summarized his research and gave his recommendations. He said that there are two requests for reconsideration before the Commission today. One, a request by Talbot County to reconsider a decision the Commission rendered some time ago concerning a property called Bachelor's Point Marina. The other has been made by St. Mary's County, a request that the Commission grant reconsideration for several growth allocation matters voted on in October. He said that both requests are in proper form, in writing, submitted to the Chairman in a timely manner, and appropriate for review by the Commission. In looking at what procedures apply to requests for reconsideration, however, the Bylaws that govern Commission activities provide that Commission meetings are to be conducted in accordance with Robert's Rule of Procedure (RROP). According to RROP with respect to requests for reconsideration, requests for reconsideration can only be made and considered at the very meeting at which the original vote was taken, and that the motion can only be offered by somebody who originally voted for the decision that is the subject of the request for reconsideration. He said that over the years, the Commission has moved away from that approach and allowed reconsideration to occur in other instances, ones which are in accordance with typical administrative law that applies to agencies such as the Commission; and in accordance with Maryland Rules of Civil Procedure that apply to reconsideration requests that come before the Courts. He said that the factors in granting reconsideration are fairly limited. There is a strong encouragement in the law to agency "finality".

The factors determining reconsideration are if the deciding agency is convinced that the decision was based upon a 1) mistake, 2) irregularity, 3) fraud or, 4) that newly discovered evidence has been provided which is substantial in nature and which through the exercise of due diligence of

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the applicant could not be found. He explained case law regarding the meaning of the factors. First, mistake means a jurisdictional mistake (e.g. a property outside the Critical Area); Second, irregularity means an irregularity in the administrative process or procedure (e.g. addressing an item belonging to one county and holding a hearing in another county); Third, fraud means a deliberate misrepresentation of facts (e.g. lies in testimony); Fourth, newly discovered evidence means evidence presented at the request for the reconsideration hearing which could not have previously been discovered by due diligence by the applicant and which is substantial.

Commissioner Parris Glendenning suggested amending the By Laws to make explicit reference that the Commission is using these additional and somewhat standard zoning practice exceptions to Robert's Rules for reconsideration. He asked what time limitation would be imposed.

Mr. Gay stated that it would be appropriate to adopt some reasonable time limit as the Maryland Rules don't provide any time limit in those instances of fraud, mistake, irregularity; however, they do provide for those of newly discovered evidence.

Mr. Gutman suggested a time frame that is not prolonged.

Chairman North appointed a committee to consider the matter focusing on drafting a policy statement for reconsideration by the Commission.

Mr. Gay said that there is a general policy that has been used in the past and he believes that it should be reviewed for any modifications or additions.

Chairman North asked Mr. Bob Price to Chair the Committee comprised of Mr. Tony Bruce, Mr. Parris Glendenning and to consult with Commission Counsel George Gay and to render a recommendation at the December meeting. It was recommended that 60 days be the time frame for a reconsideration.

Rather than to go into Executive Session at this time, Chairman North requested that those present remain in the room to hear the facts about the reconsideration proposal.

Chairman North asked Ms. Pudelkewicz to report on the reconsideration request for Bachelor's Point in Talbot County.

Ms. Pudelkewicz briefed the Commission on the procedural history of Bachelor's Point as follows:

- The mapping mistake was submitted by Talbot County to the Critical Area Commission on April 30, 1991, together with a package of other amendment requests. The mapping mistake read: "Tax Map 53, Parcel 86 - 30 acres: Existing marina originally zoned commercial, but mistakenly rezoned as an RCA classification when the Critical Area Program was adopted in 1989. The mapping error is being corrected".
- A legal notice was placed in the Star Democrat on June 9, 1991, and a public hearing was held by a panel of Critical Area Commission members on June 24, 1991.
- At the Critical Area Commission meeting on July 10, 1991, the Panel recommendation was made to the Critical Area Commission that no mistake was made based on the mapping criteria and land use in 1985.

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The Findings of Fact cited by the Panel were:

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.
- The Critical Area Commission voted to deny the mapping mistake on July 10, 1991.
  - In a letter to Clinton Bradley, III, President of Talbot County Council, from Pat Pudelkewicz dated July 25, 1991, the County was informed that the Critical Area Commission had denied the rezoning request for the Bachelor Point Marina site.
  - In a letter dated August 16, 1991 (copy attached), from Dan Cowee, Talbot County Planning Director, to Pat Pudelkewicz, the County requested a reconsideration of the Bachelor Point mapping mistake based on additional evidence the County wanted to present.

Mr. Dan Cowee stated that Talbot County had a moratorium on all residential development from December 1, 1985 through August, 1989 when their final Program was adopted. During that period there were a number of LDA requests that were submitted to the Planning Commission and were reviewed, approved and/or denied based on interim rules. Bachelor's Point was one that was reviewed and approved in 1986; however, Mr. Cowee did not come on board in Talbot County until 1987 and was not aware of some of the LDA requests. He stated that he had to put together some of the requests that were approved and put them into mapping but this particular one was not reflected in the original mapping. Hence, the letter to the Commission after it became known, and therefore he contends that it constitutes new evidence because he did not know it was not presented at the July meeting for a well-informed decision by the Commission.

Mr. Cowee stated that as a result of that LDA designation, by the Planning Commission, construction permits were issued for this project and that a new marina was completed in the 100' Buffer.

Ms. Deborah Renshaw, Planning Director for Talbot County in 1986, stated that when the application was submitted to the Planning Commission, a written request was sought from the applicant who was asked to make his arguments based on the interim criteria that were in the proposed legislation at that point in time. The site was adjacent to the Town of Oxford, it was already classified as commercial as well as A-1 classification which was an area for higher density development. The Town of Oxford said that they had talked with the developer and there was a water and sewer project, and that it was adjacent to a town where there was an already existing Marina. Based on that criterion, the Planning Commission reviewed it and looked on it as an LDA designation, which was already planned into the project. The developer got his permits, made an application to the Board of Appeals for extension of the marina and the

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Appeals Board found that it met the LDA classification and granted a Special Exception based on their review of the interim findings.

Mr. Glendening commented that in about 1/3 of the Minutes no votes are shown on the presentations.

Ms. Renshaw stated that sketch plan approval also constituted approval of the LDA. Oftentimes, a project would come in not accompanied by a subdivision plan but just an individual request of the land owner. This particular one was accompanied by a sketch plan for a subdivision as well as a marina layout.

Mr. Glendening reiterated that all that was reflected in the Minutes was that the proposal was considered.

Ms. Renshaw stated that sketch approval does not formally appear in the Minutes which came up a few months later when there was public disappointment with the subdivision. The partnership resubmitted for sketch plan approval on August 19th and the Minutes of that meeting do formally show an unanimous vote for sketch plan approval as well as the LDA designation.

Chairman North asked Mr. Cowee when the minutes were first available to him.

Mr. Cowee stated that they were available ever since he took his job with Talbot County.

Ms. Pudelkewicz added that there was a subdivision located next to the property which did receive LDA designation. The parcel in question is adjacent to this subdivision and is where the marina is located. In the 1985 photos, the land was barren except for a marina and two structures. She said that she wanted to clarify for the Commission that there was a difference in the subdivision which did get LDA designation and the parcel in question.

Mr. Cowee stated that after careful review of all the past history, permits, minutes and records he determined that there was evidence that had not been presented.

**Chairman North called for Executive Session.**

After Executive Session Commissioner Samuel Bowling asked Mr. Cowee how the files were kept in his office, whether they were computerized.

He stated that the records are not computerized, but are kept in a proper fashion since he has been in his position. The records in question had not been kept in an organized style.

Commissioner Glendening made a motion that based on new evidence, which after with due diligence the evidence was not reasonably expected to be discovered by Mr. Cowee, that the presentation was made in good faith, and that the case should be reconsidered and go through the normal procedure with referral to a panel and hearings and then brought back to the full Commission. The motion was seconded and the motion was carried with two votes in opposition (Commissioners Gutman and Bruce).

Chairman North asked Mr. Ren Serey to report on St. Mary's County's

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growth allocation reconsideration requests.

Mr. Serey briefed the Commission on the requests and on the history of the requests in a staff report disseminated to them and which is as follows:

- 1) St. Mary's County proposed six growth allocation amendments to the Commission.
- 2) Staff briefed the Commission on the amendments at the September 4, 1991 meeting in Prince George's County.
- 3) A Commission panel conducted a public hearing on the amendments in St. Mary's County on September 5, 1991. The panel members were: Robert Schoepflein, Chair, Michael Whitson, Louise Lawrence, James E. Gutman, Samuel Bowling.
- 4) The Commission and panel received a staff report prior to the Commission's meeting on October 2, 1991. The panel met to discuss the amendments and made the following recommendations to the Commission.
  - a) Avenmar Community Center and residential area: approval
  - b) Calvert Industrial Park and Chesapeake Estates: Denial
  - c) Eppard property: Denial
  - d) Lore's Landing: Denial
  - e) Bashford Creek Estates: Denial
  - f) Maydel Manor: Denial
- 5) St. Mary's County has requested Commission reconsideration of the following amendments for minor subdivisions: c) Eppard property; d) Lore's Landing; f) Maydel Manor
- 6) The Panel recommended denial of growth allocation for these minor subdivisions for the following reasons:

Eppard property - The original Resource Conservation Area (RCA) parcel is 14 acres. The County proposed a four-lot subdivision for growth allocation, with a proposed deduction of 6 acres. The panel determined that the nondeducted eight acres, although remaining RCA, would be too small to continue functioning as RCA and should be deducted also.

Lore's Landing - The original RCA parcel within the Critical Area is 11.9 acres. The County proposed six acres of growth allocation for a four-lot subdivision. The panel determined that the remaining RCA acreage, split by the new subdivision, would not continue to function as RCA and should be deducted also.

Maydel Manor - The original parcel within the Critical Area is 50 acres. The County proposed a four-lot subdivision on 24.5 acres. Growth allocation was requested for 6 acres. Each lot is divided into parcels A and B. The B parcels were proposed for growth allocation. The panel determined that the entirety of the proposed lots should be deducted.
- 7) Jon Grimm, County Planning Director, formally requested reconsideration in a letter to Chairman North on October 29, 1991. The request is based on two arguments: a) the Commission staff did not fully and adequately explain the County's interpretation of growth allocation deduction for minor subdivisions, and b) although Mr. Grimm was in attendance at the Commission meeting, he did not understand that he could have requested to be heard.

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Mr. Densford on behalf of St. Mary's County, stated that his arguments are centered around mistake and irregularity. He said that the Commission erred because it was unaware, based on the presentation of the staff following the panel's recommendation, that the Commission's actions denying the minor subdivision projects would basically take away one of the cornerstones of the growth allocation policy of the County's Program. He stated that the local program intentionally, specifically and clearly set forth a policy of promoting and permitting some growth allocation to be utilized on small parcels of land, less than 20 acres in size. He stated that the County did not want to grant to large property owners or developers all of the growth allocation. Therefore, the County deliberately set up a minor subdivision process for growth allocation by which 1.5 acre lots would be attributed toward growth allocation and the remainder of the parcel would not be deducted.

Mr. Gutman stated that he was on that panel and that issue was considered.

Mr. Ren Serey stated that the County's position was represented at the public hearing.

Mr. Jim Gutman made a motion to deny the request for reconsideration. The motion was seconded by Dr. Shep Krech.

Commissioner Bostian questioned whether the Commission had denied something that was consistent with the local Program.

Commissioner Elbrich asked if the Critical Area Commission approved the local program's growth allocation criteria.

Mr. Serey replied that the County's Program does not specify a maximum amount of growth allocation to be deducted for minor subdivisions. He said the panel did not believe that the County Program limited the acreage of growth allocation deducted for these types of projects. Therefore, he said, the Commission's action was not inconsistent with the local Program.

Commissioner Glendening asked what the specific language in the County Program was and Ms. Jones read from the County Program:

"Minor Subdivision and Single Lot Provisions

"Growth allocation awarded to minor and single-lot divisions will be subtracted from the County's growth allocation. The amount of land subtracted from the growth allocation shall be the area mapped LDA or IDA. The maximum size of a single lot created hereunder shall not exceed 1.5 acres."

Mr. Serey said the panel determined that insufficient acreage was deducted for these growth allocations.

Mr. Glendening said it would be important to know whether the panel knew of the County's position regarding deduction.

Commissioner Schoeplein, panel Chair, said that the panel understood the County's position and specifically discussed it. He said the panel's interpretation of the correct acreage to deduct was the central issue during its deliberations.

The Chairman called the question and the motion was carried with Mr. Bostian and Mr. Whitson in opposition.

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OLD BUSINESS

Mr. Gutman asked for a report from Ms. Zucker on the Oil and Gas Regulations.

Ms. Zucker stated that Commission staff met with representatives of DNR to discuss Critical Area Commission concerns with the draft DNR regulation for permitting oil and gas drilling. Critical Area Commission staff had concerns about the CAC's authority for approving permit conditions as well as the time period allotted for CAC review of a permit application. Ms. Zucker said that DNR assured CAC staff that the new language would be drafted into the DNR regulations to address CAC concerns.

NEW BUSINESS

Mr. Hugh Smith, Commission Public Affairs Officer, announced that the December 4th Commission meeting would be held at the Chesapeake Bay Maritime Museum Propulsion Room in St. Michael's, Maryland.

There being no further business the meeting adjourned at 5:26 p.m.

#2

## ZONING DECISION 91-CA

### BOARD OF APPEALS POLICY

**PURPOSE:** To Delegate Approval Authority to Staff to apply the standards for variance for certain expansions or additions to existing noncomplying structures or other proposed construction covered by this policy which does not result in the construction of more than 500 square feet and no closer than 50 feet from MHW within the Critical Area 100 foot Buffer under Zoning Ordinance 90-11 (amended) and the St. Mary's County Ordinance for the Critical Area Program 90-02.

### BACKGROUND JUSTIFICATION:

The Board wishes to expedite the approval process for minor additions or expansions of existing noncomplying structures and ~~accessory structures/uses~~ within the 100 foot Buffer on existing lots of record. This policy applies only to the administration of Critical Area Buffer variances which conform to the requirements herein. The following policy is proposed for the purpose of requiring only those projects which may have an impact on the Buffer or water quality to apply to the Board of Appeals

### REQUIREMENTS FOR STAFF REVIEW:

Proposed construction is not required to receive Board of Appeals approval if it can meet the following guidelines:

1. The proposed construction is an accessory structure, an addition to an existing residential structure, or a repair to an existing failing septic system approved by the Health Department;
2. The footprint of the addition(s) is no larger than 500 square feet;
3. The construction of the addition does not require the removal of existing vegetation except for the proposed construction itself;
4. A Critical Area Buffer Planting Agreement is agreed upon by the applicant and staff and executed by the applicant;
5. The addition is located no closer than 50 feet from Mean High Water (MHW) and/or;
6. The addition is located no closer than 25 feet from any nontidal wetland; *or edge of wetlands or trib. streams*
7. The cumulative impervious surfaces of the existing and proposed structures on the site do not exceed 15% (or 25%), as permitted by the St. Mary's County Ordinance for the Critical Area;
8. All projects applying for approval within the 100 foot Buffer shall be reviewed by the Maryland Critical Area Commission consistent with COMAR 14.20, prior to any administrative action by staff.

Staff approval delegated by this policy is strictly limited to 500 square feet and this policy shall be cumulative; that is, this is a total of 500 square feet per parcel only. Any proposed construction in excess of 500 square feet, including phased or subsequent construction, must be submitted to the Board. Additions shall be limited to attached decks (open or covered), porches, sheds, garages (detached or attached), patios, breezeways, and other structures for residential use and incidental storage use. In administrating this policy, staff shall apply

**ANNE ARUNDEL**

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**David G. Boschert**, Vice Chairman (District 4) 1225 Bacon Ridge Road,  
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**Diane R. Evans**, (District 5) 506 Andrew Hill Road, Arnold, MD 21012  
*Phone: 757-4635*

**Maureen Lamb**, (District 6) 3 Goodrich Road, Annapolis, MD 21401  
*Phone: 269-1605*

**Virginia P. Clagett**, Chairperson (District 7) Ivy Neck Farms, West  
River, MD 20778  
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**Administration**—Adrian G. Teel, Chief Administrative Officer  
Post Office Box 2700, Room 405, Annapolis, Maryland 21404  
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**Assistant Chief Administrative Officer**—Louis L. Rochez  
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**Attorney (County)**—Stephen R. Beard  
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**Auditor (County)**—Joseph H. Novotny  
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**Budget Officer**—Dennis Parkinson  
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**Central Services Officer**—Richard H. Rogers  
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**Controller**—Joseph N. Burrows  
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*Phone: 222-1166* *Fax: 222-1799*

**Information Services Officer**—Dan Roper  
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**Personnel Board**—Emily Green, Acting  
Post Office Box 2700, Annapolis, MD  
*Phone: 222-1722*

**Personnel Officer**—Richard F. Mayer  
Post Office Box 2700, Annapolis, MD  
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**Purchasing Agent**—James F. Ryan  
Post Office Box 2700, Annapolis, MD  
*Phone: 222-1372*

**Recreation and Parks**—Joseph J. McCa  
Post Office Box 2700, Annapolis, MD  
*Phone: 222-3600*

**EDUCATION**

**Anne Arundel Community College**—Dr.  
President; College Parkway, Arnold,  
*Phone: 541-2223*

**Community College (Board of Trustees)**  
3135 Anchorage Drive, Annapolis,  
*Phone: 263-8436*

**Education (Board of)**—Nancy Gist  
2644 Riva Road, Annapolis, Maryland  
*Phone: 224-5299*

**Library Administrator**—Edward B. Hal  
5 Harry S. Truman Parkway, Annapo  
*Phone: 222-7234*

**Library Trustees (Board of)**—Admiral M  
President; 381 Grinstead Road, Sever  
*Phone: 260-5414*

**Superintendent of Schools**—Dr. Larry L  
2644 Riva Road, Annapolis, Maryland  
*Phone: 224-5304*

**HEALTH**

**Environmental Health**—Spencer Frankl  
3 Harry S. Truman Parkway, Annapo  
*Phone: 222-7050*

the standards for variance contained in the St. Mary's County Critical Area Ordinance, p. 31, Part 8. Environmental permits, consistent with all Critical Area requirements, are required in all cases and building permits when provisions of the Zoning Ordinance or BOCA/CABO are applicable.

**DECISION:**

- A) Approval of proposed construction of principal or accessory structures within the 100 foot Critical Area Buffer which meets the aforementioned policy requirements are hereby delegated to administrative staff.
1. Staff is to notify all contiguous property owners in writing no less than ten (10) calendar days of an applicant's proposal prior to all administrative approvals authorized by this policy. The contiguous property owners, if aggrieved, may appeal these administrative approvals to the Board of Appeals within thirty (30) calendar days.
  2. All applicant appeals resulting from an administrative denial may be appealed to the Board of Appeals within thirty (30) calendar days.
  3. Staff is to report all such administrative approvals to the Board of Appeals within thirty (30) days of the approval or at the second Board of Appeals meeting each month.
- B) **Expansion or Addition to A STRUCTURE WHICH RECEIVED PRIOR BOARD OF APPEALS APPROVAL FOR A BUFFER VARIANCE:**
- 1) For Board of Appeals approvals prior to the adoption of this policy, staff may approve future expansions or additions consistent with this policy, UP TO A TOTAL OF 500 SQUARE FEET, provided that future Board review was not a condition of approval.
  - 2) For Board of Appeals approvals after the adoption of this policy, staff may approve future expansions or additions consistent with this policy, UP TO A TOTAL OF 500 SQUARE FEET.

Approved this date: \_\_\_\_\_

Thomas A. Bowles  
Chairman

INSERT BEHIND PAGE 31, SMCCAO



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

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May 16, 1991

Al Donahew  
Crown Parking  
275 West St.  
Annapolis, MD 21401

Dear Mr. Donahew:

Thank you for bringing to my attention the incident which occurred on the morning of May 14th between one of your staff and a Commission staff member. It is unfortunate that these things happen, but rather than dwell on who was right and who was wrong, I feel we should seek preventative measures to ensure this from occurring again in the future.

The problem areas as described to me are as follows:

1. Rudeness of staff people;
2. Crown's outdated computer records; and
3. Non-compliance with garage rules and guidelines by Commission staff members.

CABINET MEMBERS

Wayne A. Cawley, Jr.  
Agriculture

Robert Schoeplein  
Employment and Economic Development

Robert Perciasepe  
Environment

Ardath Cade  
Housing and Community Development

Torrey C. Brown, M.D.  
Natural Resources

Ronald Kreitner  
Planning