

Committee Meetings & Correspondence January 1992

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TENTATIVE AGENDA

Chesapeake Bay Critical Area Commission
C - 1 Conference Room
Tawes State Office Building
Taylor Avenue
Department of Natural Resources
Annapolis, Maryland 21401

January 8th, 1992

1:00 - 1:05 p.m. Approval of Minutes of December 4, 1991 John C. North, II, Chairman

PROJECTS

1:05 - 1:30 p.m. Jefferson Patterson Park ~~Park~~ - MAC Facility Kay Langner, Chair
VOTE Sam Bowling, Co-Chair
Pat Pudelkewicz, Planner

AMENDMENTS

~~1:30 - 2:00 p.m. Bata Growth Allocation Anne Hairston, Planner~~
~~Harford County~~
~~TENTATIVE~~

POLICIES

2:00 - 3:00 p.m. Structures Over Tidal Waters and Wetlands Jim Gutman, Chair
UPDATE Liz Zucker
Nontidal Wetlands Policy *UPDATE* Jim Gutman, ^{Chair} Planner
Policy on Reconsideration Bob Price, Jr., Chair
Sarah Taylor

LEGAL

3:00 - 3:30 p.m. Betterton Bay Club - Appeal Pat Pudelkewicz, Planner
Black marsh decision appealed Anne or George

3:30 - 3:45 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
December 4, 1991

The Chesapeake Bay Critical Area Commission met in St. Michaels, Maryland at the Chesapeake Bay Maritime Museum Propulsion Building. The meeting was called to order by Chairman John C. North, II with the following members in attendance:

Philip Barker	Anthony Bruce, Esq.
William H. Corkran, Jr.	James E. Gutman
Russell Blake	Robert Price, Jr.
Ronald Hickernell	Kathryn Langner
Dr. Shepard Krech, Jr.	Thomas Jarvis
G. Steele Phillips	Bill Bostian
Michael J. Whitson	Natalie McPherson for
Joseph J. Elbrich, Jr.	Robert Schoeplein of DEED
Louise Lawrence	James L. Hearn, of Dept.
of Dept. of Agriculture	of the Environment
James Peck, of Dept. of	Roger Williams
Natural Resources	Larry Duket for Ronald Young
J. Rodney Little for	of Md. Office of Planning
Jacqueline Rogers, DHCD	

The Minutes of November 6th, 1991 were read and approved as written.

Chairman North announced that the Harford County Growth Allocation was withdrawn from consideration pursuant to the request of Mr. William G. Carroll, the Director of Planning for Harford County (letter of request attached to Minutes), and taken off the Agenda.

Chairman North asked Pat Pudelkewicz to report on a Zoning Ordinance Word Change Refinement request for Talbot County.

Ms. Pudelkewicz stated that as part of an ongoing review of the amendments to Talbot County's Zoning Ordinance, the request was for a minor change, two words, which were approved by the County in Bill #459. She said that these two word changes were reviewed by a panel when they reviewed other amendments contained in Bill 459; however, these two word changes were not officially submitted by Talbot County at that time. When Critical Area Commission Staff noted to the County the official change had to be made, the County this month submitted the two words as a refinement to their Program. The first word change occurred in the Zoning Ordinance land uses classification table under "Substations for Oil and Gas Lines," the word "Substation" was changed to "Pumpstation" in order to be more descriptive of the use; In the Zoning Ordinance non-conforming use section, the title of one of the categories was changed from "Enlargement or Expansion of Non-Conforming Situation" to "Enlargement or Expansion of Non-Conforming Use". The Chairman has determined the change to be a refinement.

The Commission supported the Chairman's determination.

Chairman North asked Ms. Theresa Corless to report on a request for Refinement to the Prince George's County Program.

Ms. Corless stated that the request was for a refinement to Prince George's County's Critical Area Program for impervious surface limitations as required by House Bill #323. This change would make their Program consistent with State law. She said that it was reviewed by George Gay, Commission Counsel and has been determined to be a refinement by the Commission Chairman.

The Commission supported the Chairman's determination.

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Chairman North asked Ms. Claudia Jones to report on the St. Mary's County Amendments.

Ms. Jones reminded the Commission members that they had been briefed at the November meeting on this request by St. Mary's County for an Administrative Buffer Variance. She updated the Commission members on the request in a Panel report which was disseminated to them and is as follows:

St. Mary's County has requested an Amendment to their Program for an Administrative Buffer Variance that would allow County Planning and 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 a principal structure, 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 project can be no larger than 500 square feet (cumulative);
- the construction does not require the removal of existing vegetation except for the proposed construction itself;
- a Critical Area Buffer Planting Plan is agreed to;
- the construction is located no closer than 50 feet from Mean High Water;
- the construction is not within a nontidal wetland buffer;
- all projects applying for approval within the 100-foot Buffer shall be reviewed by the Critical Area Commission consistent with COMAR 14.20, prior to any administrative act by the staff.
- In administering this policy the Planning Director shall apply the standards for variance contained in the St. Mary's County Critical Area Ordinance.
- Contiguous property owners shall be notified by staff prior to any action.

The panel recommends approval of the amendment with the following changes to the Resolution as conditions:

- #1 add: "tidal wetlands and tributary streams" in addition to Mean High Water.
- #2H. add: The Critical Area Commission shall be notified of any administrative action by the staff within 10 days.

Also add in
Section 4:

The Chairman of the Critical Area Commission may appeal an Administrative Variance granted by the Planning staff consistent with 66.01 of the St. Mary's County Ordinance. At this time the project will go before the Board of Appeals de novo.

Staff shall give notice of applicant's proposal no less than fifteen days prior to all administrative approvals authorized by this policy by publication of notice in an official paper of general circulation. By such publication staff will give notice to comment in writing on the applicant's proposal.

Under Sec-
tion 4a: Add to contiguous property owners - "any person, firm or corporation," if aggrieved by the staff approval may appeal...

Chairman North called to the attention of the Commission members copies of a letter from Mr. Jack F. Witten of Hollywood, Maryland dated December 1, 1991 recommending disapproval of the proposal.

Commissioner Price asked if this was a situation peculiar to St.

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Mary's County.

Mr. Scott Kudlas, St. Mary's County, responded that this is an initiative of a joint meeting which was held early last year with the St. Mary's County Commissioners, the Board of Appeals, and the Planning Commission requesting staff to investigate an alternative to Buffer exemption areas for dealing with grandfathered lots and this was the proposal that was decided upon.

Commissioner Elbrich asked if the County agreed to the conditions imposed. Ms. Jones replied, yes.

Mr. Elbrich summarized by saying that it takes Buffer decisions out of the variance process and makes it an administrative decision.

Mr. Kudlas commented that it delegates authority for certain minor encroachments.

Mr. Larry Duket said that at the last Critical Area Commission meeting when this was given as an informational item, he went back to the Office of Planning and asked their Assistant Attorney General's informal opinion on whether or not Article 66B enabled County Commissioners to pass local legislation to delegate authority of the Board of Appeals to the Planning Director and she agreed that it does not enable a Non-Chartered County to delegate authority of the Board of Appeals to an Administrative staff.

Commission Counsel, George Gay stated that St. Mary's has submitted this request as an Amendment to its Program and by Critical Area Law, §8-1809, the Commission is compelled to approve amendments that meet the definition "The Commission shall approve Programs and Amendments that meet 1) the standards set forth in §8-1808 B1-3 of the Critical Area Law"; the goals of the Critical Area Law to protect water quality, plant, wildlife habitat and the very general goals in the Law; and, 2) the Criteria adopted by the Commission. Mr. Gay said that he believes that the amendment meets those two factors, but that it is not to say that it is lawful in every other regard. However, for purposes of Commission review it meets the two factors set forth in the Law. He stated that he did not agree with the opinion issued by the Assistant Attorney General of the Office of Planning.

Commissioner Bob Price asked if it equated to some counties just reducing their Buffer from 100' to 50'.

Commission Counsel said that a reduction of the Buffer would not be consistent with the Criteria.

Mr. Price said that in the Resolution an addition is located no further than 50 feet from Mean High Water. Would it also apply to new construction?

Mr. Kudlas stated that the inconsistencies in the prior staff report were discussed at a panel meeting and have been clarified in a staff report disseminated to the Commission at this meeting.

Ms. Jones stated that it does cover principal structures but the belief of the Staff is that there is only 500 sq. ft. allowed, so it is unlikely that a new principal structure and septic system would fit in 500 sq. ft.

Mr. Kudlas stated that the intent was to establish a situation where lots that were 150 or 200 feet in depth would be allowed to construct a portion of the septic system or the dwelling in the Buffer. He stated that rather than request an exemption through the Buffer exemption process, the County preferred this method.

Mr. Price asked that if he were to construct a 500 sq. ft. stand alone building, could he move up to within 50 feet.

Mr. Kudlas said, yes, provided he met the standard and complied with all the other conditions.

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Commission Counsel asked if the Proposal required the Zoning Administrator, who will be making this decision, to render his/her opinion in a written form with Findings of Fact and Conclusions of Law.

Ms. Jones said, no.

Commission Counsel asked if an applicant for a variance under the existing system has to show to the Board of Appeals the same things that under the new system would have to be shown to a Zoning Administrator. He asked if it is simply shifting the first level to the Zoning Administrator and are the standards of review the same. And if there are any aggrieved parties, if the appeal would go back to the Board of Appeals where the standards now in St. Mary's County would be applied on appeal.

Mr. Kudlas stated, yes.

Ms. Watson stated that the Criteria required that if the regulations cannot be literally enforced, then certain findings have to be made. She said that Mr. Kudlas has indicated that those findings do not have to be made with this proposal and if this request is approved, then at a minimum the Commission should require the findings dictated by the Criteria if these regulations cannot be literally enforced. She asked if this applied to all existing lots in the Buffer.

Mr. Kudlas stated that it applied to grandfathered lots.

Ms. Watson asked if this applied to new subdivisions.

Mr. Kudlas said that the Staff is on record with the Board of Appeals stating that there will be no support for new subdivisions that require variances.

Ms. Watson asked if what is currently written is allowing administrative appeals with no findings for accessory structures by definition (not knowing what the definition is), decks, sheds to be constructed up to within 50 feet of the water. She said that she believed that it should be open to public input if findings are exempt.

Ms. Watson said that her concern is that, because St. Mary's County has so many existing lots in the Buffer regardless of whether there are new subdivisions or not, is that this proposal will grandfather all those existing lots.

Ms. Jones said that if there is room to get behind the 100 ft. Buffer they will have to get behind it, because they have to go through a regular variance procedure.

Mr. Kudlas said that to meet the regular variance procedure a finding of hardship will still have to be shown to the Planning Director.

Commissioner Bostian made a motion to accept the panel recommendation, and it was seconded by Commissioner Louise Lawrence.

Commission Counsel, George Gay asked whether the notice described in the panel report, Section 4 provision was the only notice that would be provided to the Commission and asked if the Commission will receive notice directly from the County.

Ms. Jones stated that it comes under the section in the Resolution used to notify the Commission consistent with COMAR 14.20.

Commission Counsel pointed out that under Section 4A it is not intended to limit any appellant rights of concerned citizens, aggrieved parties, taxpayers, etc., but is something in addition to already existing appellant rights.

Mr. Price stated that it looks like the County really wants an exemption for all preexisting lots of record.

Dr. Sarah Taylor, Executive Director of the Critical Area Commission, asked Mr. Kudlas if the existing lots of record were equated to grandfathered lots in the Resolution and grandfathered as of what date.

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Mr. Kudlas replied, yes, as was testified to before the panel, of December 1, 1985.

Chairman North called the question.

The vote was 11 in favor and 6 opposed; the motion carried.

Chairman North asked Ms. Anne Hairston to report on the Anne Arundel County Amendments.

Ms. Hairston briefed the Commission on the Amendment requests in a staff report disseminated to them as follows:

Panel: Shep Krech (ch.), James E. Gutman, Parris Glendening (Carolyn Watson), J. L. Hearn, and Joe Elbrich.

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, siting, 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 RCA to LDA, and 102 acres to change LDA to IDA. The bill is silent regarding the submittal and approval process for the Critical Area Commission. Although clarification of the process would be desirable, the requirements of the Critical Area Law (NRA §8-1809) will be applicable, so no conflict with the Critical Area Criteria is apparent. The bill is also silent regarding the method of deducting acreage for growth allocation.

The panel hearing was held on November 25, 1991, 7PM, in the Department of Agriculture Conference Room, with full panel attendance.

Panel Recommendation: To approve Bill 66-91.

Commissioner Shep Krech stated that at the panel hearing there were no comments oral or written opposing Bill #66-91 and he made a motion to approve County Council Bill 66-91, amending the Anne Arundel County Critical Area Program to include a process for awarding growth allocation and reclassification on the basis of mistake. Commissioner Jim Gutman seconded the motion.

The motion was unanimously carried with one abstention, Commissioner Joseph Elbrich.

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. This reservation of growth allocation is consistent with COMAR 14.15.02.06.A.(2), which directs counties to accommodate the growth needs of municipalities, and with the approval of the growth allocation deduction by the Critical Area Commission on October 5, 1988, which identifies 11 acres of growth allocation to be available for the City of Annapolis.

The panel hearing was held on November 25, 1991, 7PM, in the Department of Agriculture Conference Room, with full panel attendance.

Panel Recommendation: To approve Bill 67-91.

Commissioner Joseph Elbrich stated that the City would be subject to adopting procedures that the County's procedures for allowing distribution of growth allocation for the City do not apply.

Dr. Shep Krech stated that there was no opposition to the Bill either written or oral and made the motion to approve County Council Bill 67-91, amending the Anne Arundel County Critical Area Program to officially reserve 11 acres of growth allocation to be available for the City of Annapolis by request of the Mayor and City Council. Mr. Gutman seconded the motion.

Commissioner Philip Barker asked if these 11 acres could be reclaimed by the County at some later date and if there is a time limit for the use of those acres.

Ms. Hairston stated that there was no specific provision for that and suggested that it would require another action by the County Council for a Program Amendment.

Mr. Elbrich stated that in the County's regulations for growth allocation there is a "use it or lose it" provision; and to reclaim it would require another amendment request to the Critical Area Commission.

Chairman North called the question. The motion carried with one abstention, Mr. Joseph Elbrich.

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 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 County has been collecting fees-in-lieu since 1988, but did not start any reforestation until this fall, because it has been in the process of identifying sites.

The criteria in COMAR 14.15.02.04.C.(3) are relevant to Bill 63-91. In the Limited Development Area (LDA) and the Resource Conservation Area (RCA), the forested acreage within the Critical Area of the county is required to be maintained or increased [C.(3)(a)]. Forests cleared or allowed to be developed in the LDA and RCA are required to be replaced on not less than an equal area basis [C.(3)(b)]. The County bill does not require any commitment to reforest the acreage cleared to create the reforestation fund, and could make it difficult or impossible for the County to accomplish the requirements of the Criteria.

The panel hearing was held on November 25, 1991, 7PM, in the Department of Agriculture Conference Room, with full panel attendance. Panel Recommendation: The panel recognizes the laudable goals of Bill 63-91, and supports the protection of mature forested land and shore grass planting efforts as furthering the goals of the Critical Area Law, but recommends denial of Bill 63-91, because the use of the fund for additional purposes would undercut the County's ability to meet the reforestation requirements of the Critical Area Criteria, specifically COMAR 14.15.02.04.C.(3).

Dr. Shep Krech stated that at the hearing 4 individuals came forth

speaking against the Bill and only one spoke in favor of it; written comments have been received all opposing the Bill. He made a motion to deny County Council Bill 63-91, because, although the goals of the bill are commendable and protection of mature forestland and planting of shore grasses support the goals of the Critical Area Law, the use of the reforestation fees-in-lieu fund for purposes other than those directly related to the implementation of an afforestation or reforestation program is not appropriate and is contrary to COMAR 14.15.02.04.C.(3). Mr. Gutman seconded the motion. The motion was carried with 4 opposed and one abstention (Joseph Elbrich).

Chairman North asked Ms. Claudia Jones to report on the Proposed Park at Randle Cliffs.

Ms. Jones briefed the Commission members on the proposal in a staff report disseminated to them and as follows:

The Maryland Office of Planning has developed a preliminary plan for a park for the Randle Cliffs Beach Natural Heritage Area. The property is in private ownership at this time. The Office of Planning would like to receive concept approval from this Commission for the park plan prior to any attempt to purchase the property.

The site in question is approximately 70 acres in size and is part of a designated Natural Heritage Area. Its Critical Area designation is Resource Conservation Area. The cliffs along the site support the Puritan Tiger-beetle (*Cicindela puritana*), an endangered species in Maryland. Other threatened species exist on the property across Rt. 261. No development is to occur across Rt. 261 in conjunction with the park. The site is primarily forested and 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.

The State Office of Planning has proposed the following components:

1. A parking lot for no more than 50 cars in the northeast corner of the site. The parking lot to be constructed of pervious material on slopes of less than 15%.
2. A pedestrian walkway and access to the beach for park ranger vehicles utilizing the existing dirt road to the beach.
3. A comfort station to be constructed in the old borrow pit and an outside foot shower. No clearing of trees is proposed.
4. A picnic site in the area of the old borrow pit. No clearing of trees is proposed.
5. A Bay overlook pavilion on an unvegetated cliff within the 100-foot Buffer. The pavilion is proposed as a way to control access and to block off the area.
6. A series of nature trails utilizing existing trails.

Comments have been received by the Natural Heritage program within the Department of Natural Resources and the Wildlife Division.

Comments from Heritage include:

- Concern over cutting and clearing in a Natural Heritage Area.
- Location of septic field for the restroom facility.
- Observation platform located on an eroding cliff.

Comments from the Wildlife Division include:

- Proposed parking lot should minimize tree removal.
- Parking lot should be located as close to Rt. 261 as possible and should utilize existing disturbed areas as much as possible.
- Utilize existing trails and dirt roads.
- Disturbed sites should be reforested.

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- Recommend purchase of portion of property across Rt. 261 for conservation of forest interior-dwelling birds.

The subcommittee recommends approval of a concept plan for a Bay access park with the following components.

1. A parking lot for a maximum of 50 cars to be located on the site.
2. A comfort station to be located in the area of the old borrow pit. It should not be necessary to cut any trees for this.
3. A pedestrian walkway and access for park rangers to the beach utilizing the existing dirt road to the beach.
4. A picnic area in the old borrow pit. No clearing should be necessary.
5. A nature trail system utilizing existing trails and dirt roads. No cutting of trees should be necessary.

In addition, the subcommittee recommends that access to the top of the cliff be restricted. The Commission must approve each component of plan prior to any construction.

Mr. Vivian Marsh, Southern Maryland Regional Office of Planning, said that Calvert County was going through its master planning process and developed a plan for North Beach and Chesapeake Beach in the Northeast area of Calvert County and one of the developments was to have more Chesapeake Bay access, and to develop a master plan and a method for acquiring property. Before actually acquiring property, concept approval must be given.

Commissioner Jim Peck, DNR, commented that all the Divisions of DNR support the concept of the park but the main area of concern has been voiced by Heritage with the location of the parking lot, which is in an undisturbed forest in the Natural Heritage Area. They would like to see if there are any alternatives to the placement of the parking lot.

Mr. Marsh stated that Heritage has offered an alternative to the original site which is being considered.

Commissioner Hickernell said that he was not sure whether or not this Commission ought to be the deciding factor in making the decision on the placement of the parking lot, especially if there is no great disruption to the Critical Area plan.

Commissioner Kay Langner made a motion to approve the concept plan for Randle Cliffs with the following components:

1. A parking lot for a maximum of 50 cars to be located on the site.
2. A comfort station to be located in the area of the old borrow pit. It should not be necessary to cut any trees for this.
3. A pedestrian walkway and access for park rangers to the beach utilizing the existing dirt road to the beach.
4. A picnic area in the old borrow pit. No clearing should be necessary.
5. A nature trail system utilizing existing trails and dirt roads. No cutting of trees should be necessary.

In addition, the subcommittee recommends that access to the top of the cliff be restricted. The Commission must approve each component of plan prior to any construction. Commissioner William Corkran seconded the motion.

Mr. Hickernell made a motion to amend Ms. Langner's motion to strike the last sentence of Ms. Langner's motion. Ms. Langner denied the amendment to her motion. Mr. Hickernell's suggested amendment was declined. Chairman North called the question. The motion was carried unanimously.

Chairman North asked Ms. Liz Zucker to report on the Draft Interim Nontidal Wetlands Draft Letter to the Local Jurisdictions.

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Ms. Zucker stated that a draft of a letter to be sent to local jurisdictions regarding the nontidal wetlands delineation in the Critical Area was mailed to the Commission members. She said that in January of 1989 the four Federal agencies that regulate wetlands, U.S. Environmental Protection Agency, the Soil Conservation Service, the Army Corps of Engineers and the U.S. Fish and Wildlife Service produced a document that outlined a unified method for delineating wetlands in the field. She said that recently there has been some proposed changes to the Unified Federal Methodology and as a result of those proposed changes many questions have been asked by local planners, attorneys, developers, and property owners as to how the proposed changes will affect nontidal wetland delineation in the Critical Area. Therefore, it was decided that the Chesapeake Bay Critical Area Commission should meet with the wetland experts and decide what to do to respond to these inquiries. She said that as a result of a meeting with a representative of the U.S. Army Corps of Engineers and the State Nontidal Wetlands Division, a draft letter to be sent to the local jurisdictions was prepared and which is as follows:

As a result of recently proposed changes to the federal wetland delineation methodology, the Critical Area Commission (CAC) has received a number of inquiries from local planners and developers regarding nontidal wetland determinations in the Chesapeake Bay Critical Area. To address this issue, CAC staff met with legal counsel from the Office of the Attorney General as well as with representatives of the U.S. Army Corps of Engineers, and the Department of Natural Resources (DNR) Nontidal Wetlands Division. In light of these discussions, and recognizing that the CAC and the local jurisdictions are required to protect nontidal wetlands as they are defined by the Critical Area regulations, we are providing you with the following guidance and policy position of the CAC on the delineation of nontidal wetlands within the Critical Area.

---Nontidal wetlands in the Critical Area must be identified in the field according to the definition of nontidal wetlands found in the local jurisdiction's Critical Area ordinances and programs. The local jurisdiction's definitions should be the same or similar to the definition found in the State Critical Area criteria [COMAR 14.15.01.01.B.(46)] which reads:

"Nontidal wetlands means those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. These regulations apply to the Palustrine class of nontidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979) and as identified on the National Wetlands Inventory maps, or which may be identified by site survey at the time of application for a development activity. These lands are usually characterized by one or both of the following:

- a) At least periodically, the lands support predominantly hydrophytic vegetation;
- b) The substrate is predominantly undrained hydric soils."

---The methodologies outlined in the following references most clearly meet the Critical Area criteria definition (and thus the local jurisdictions' definition) of nontidal wetlands. These methodologies should be used to field delineate nontidal wetlands in the Critical Area.

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Federal Interagency Committee for Wetland Delineation. 1989.
"Federal Manual for Identifying and Delineating Jurisdictional Wetlands." US Army Corps of Engineers, US Environmental Protection Agency, US Fish and Wildlife Service, and USDA Soil Conservation Service, Washington, DC. Cooperative technical publication.
Sipple, W. S. 1987. "Wetlands Identification and Delineation Manual." Volumes I & II. US Environmental Protection Agency, Office of Wetlands Protection, Washington DC.
Tiner, R. W., Jr. 1988. "Field Guide to Nontidal Wetland Identification." Maryland Department of Natural Resources, Annapolis, MD and US Fish and Wildlife Service, Newton Corner, MA. Cooperative publication.

---It must be emphasized that whenever nontidal wetlands are delineated on a site in the Critical Area, the wetlands must be identified to meet the definition found in the Critical Area criteria and the local jurisdiction's ordinances, notwithstanding the technique or methodology used to make the determination.

---Once federal methodologies for delineating wetlands are finalized through the federal legislative process, the CAC will reevaluate all available wetland delineation techniques as to their appropriateness for delineating nontidal wetlands in the Critical Area according to the definition in the criteria. At that time, the CAC will provide the local jurisdictions with the results of its review. In the interim, the CAC will continue to work with the U.S. Army Corps of Engineers and DNR in developing an acceptable approach to wetland delineation and protection for projects located in the Critical Area.

Mr. Elbrich asked how prior converted farm fields would be addressed, will they be considered excluded or included because they are generally hydric soils and need a definition.

Ms. Zucker stated that it was her understanding that if they are prior converted that means that the hydrology has been significantly changed and should no longer be considered a wetland.

Mr. Elbrich asked how one distinguishes a drained from an undrained farmland.

Ms. Zucker stated that in the '89 Federal Manual there is guidance for assessing hydrological parameters for determining whether or not a wetland has been drained.

Dr. Krech asked if the 1989 Classification Manual is being used until the whole thing is ironed out.

Ms. Zucker stated, yes.

Commissioner Steele Phillips asked if both the Manuals, the '89 vs the '91 lean too far in opposing views. He stated that he believed that the Corps of Engineers is using the '87 Corps Manual and the Soil Conservation Service is using the '85 Manual and that all the manuals are in a state of flux.

Dr. Krech asked which manual was used when the criteria were developed.

Ms. Zucker said that it was the U.S. Fish and Wildlife publication which is really not a wetland delineation manual but a way of classifying wetlands as to type.

Commissioner Louise Lawrence stated that by referring to all the methodologies for reference would confuse local jurisdictions as they do not all function for the purpose of delineating wetlands. She said that hydrology is the term to be defined to delineate wetlands.

limit impact on aquatic resources:

- (a) The boat slips may not occupy more than one half the length of the existing pier the furthest from the shoreline, and may not exceed 25 slips for recreational boats and 2 slips for educational/patrol boats;
- (b) The slips must be constructed to provide protection to moored boats and minimize the effect of prop wash on bottom sediments;
- (c) Dredging may not exceed a depth of 5 feet; and
- (d) Dredge spoil should be used for beach replenishment in the park, if the material is determined to be clean sand. If the material is other than clean sand, location of the spoil in the park must be approved by the Commission.

(4) that the stage and seating area adhere to the following restrictions to limit the number of anticipated visitors and their impact on park resources:

- (a) The seating or assembly area must be designed and constructed to accommodate a maximum of 350 persons; and
- (b) Design and construction must minimize disturbance to existing topography.

(5) that the 150-car parking lot be moved to a location that avoids impact to nontidal wetlands identified according to the Critical Area definition and to a 25-foot buffer surrounding them;

(6) that clearing in the Buffer be limited to a corridor for access to water-dependent facilities, and that the Buffer be maintained in natural vegetation or established with native species;

(7) that picnic areas avoid intrusion into the Buffer;

(8) that only areas essential for the use and construction of proposed facilities should be cleared, in order to minimize forest clearing; and

(9) that at the project planning stage, suitable restrictions and methods to control the total number of visitors in the park at one time be developed, in order to limit use to the capacity of the natural terrain to tolerate human disturbance.

The Critical Area Commission is favorably impressed by the DNR's commitment to remove the existing maintenance and office buildings from the Buffer and to rehabilitate it with natural vegetation.

Mr. Bill Bostian asked Mr. Wilson if there were any points of erosion on the shoreline.

Mr. Wilson stated that there was currently some shoreline erosion identified by DNR and that methods to control the erosion have been suggested. One method is the existing pier that did have a concrete bulkhead which has deteriorated but would be one of the first things to be addressed with timber bulkheading.

Mr. Philips asked the depth of the surrounding water around the pier.

Mr. Wilson stated that the depth varies, but is identified as being from about 2 - 4 feet.

Mr. Phillips asked how much water is there at mean low tide.

Mr. Wilson said that dredging is proposed to a depth of -5.

Dr. Krech asked if DNR has made an Environmental Impact Study on the project and is it required.

Mr. Wilson said that DNR has not done a formal Federal impact study nor is one required; however, he said that all departments of DNR have submitted environmental comments on the project.

Mr. Whitson asked if this was all RCA classification.

Ms. Hairston stated that it is State land and County mapping divides it into RCA. In the State regulations there are two categories, in terms of

developed area and non-intensely developed areas and it is the consensus of the Commission Staff that this area is non-intensely developed as it exists.

Chairman North invited limited commentary from the audience to speak on the issue.

Members of the Black Marsh Coalition spoke in opposition to the Draft Master Plan; members of the Advisory Committee and Community spoke in support of the Draft Master Plan. Other individuals representing various organizations spoke both in opposition and in support of the Plan, limited to two minutes.

Mr. Gutman asked Mr. Wilson to elaborate on the anticipated need of dredging.

Mr. Wilson stated that one of the submittals provided was a map of the proposed area of dredging; to dredge a 50 foot wide channel into the area and to have the basin dredged out, 14,000 cubic yards of dredged material.

Mr. Jarvis asked what the priorities were regarding the financing of each phase, if monies get short, what would be left out of the Plan.

Mr. Wilson said that the phasing schedule would be submitted to capital budget in phases and financing would be dependent on legislative approval.

Mr. Gutman made a motion, based on the November 26, 1991 panel recommendation and the panel assessment, that the Chesapeake Bay Critical Area Commission conditionally approve the Draft Master Plan in concept, the Northpoint State Park - Black Marsh Wildlands with the following conditions: (1) that all individual projects or phases be submitted to the Commission for separate approval at the design/engineering stage, before the commencement of construction, so that full compliance with the Critical Area Criteria may be determined;

(2) that Non-Intensely Developed Area regulations be applied park-wide;

(3) that the proposed boat tie-ups adhere to the following restrictions to limit impact on aquatic resources:

(a) The boat slips may not occupy more than one half the length of the existing pier the furthest from the shoreline, and may not exceed 25 slips for recreational boats and 2 slips for educational/patrol boats;

(b) The slips must be constructed to provide protection to moored boats and minimize the effect of prop wash on bottom sediments;

(c) Dredging may not exceed a depth of 5 feet, and

(d) Dredge spoil should be used for beach replenishment in the park, if the material is determined to be clean sand. If the material is other than clean sand, location of the spoil in the park must be approved by the Commission.

(4) that the stage and seating area adhere to the following restrictions to limit the number of anticipated visitors and their impact on park resources:

(a) The seating or assembly area must be designed and constructed to accommodate a maximum of 350 persons; and

(b) Design and construction must minimize disturbance to existing topography.

(5) that the 150-car parking lot be moved to a location that avoids impact to nontidal wetlands identified according to the Critical Area definition and to a 25-foot buffer surrounding them;

(6) that clearing in the Buffer be limited to a corridor for access to water-dependent facilities, and that the Buffer be maintained in natural vegetation or established with native species;

(7) that picnic areas avoid intrusion into the Buffer;

(8) that only areas essential for the use and construction of proposed facilities should be cleared, in order to minimize forest clearing; and (9) that at the project planning stage, suitable restrictions and methods to control the total number of visitors in the park at one time be developed, in order to limit use to the capacity of the natural terrain to tolerate human disturbance. The Critical Area Commission is favorably impressed by the DNR's commitment to remove the existing maintenance and office buildings from the Buffer and to rehabilitate it with natural vegetation.

Chairman North pointed out a minor modification suggested to Mr. Gutman's motion with respect to a slight rephrasing, under Draft Panel Recommendations, reads "all individual project or phases be submitted...", modified to read "that all individual projects within each phase be submitted...".

Mr. Gutman accept the modification to his motion.

Mr. Steele Phillips suggested adding under item 3C, dredging to say "Mean Low Water". Mr. Gutman accepted the modification and Kay Langner seconded the motion. The motion was carried with Dr. Krech in opposition. (17 voting in attendance at this time, one by proxy).

NEW BUSINESS

Mr. Gutman stated that over the past few months the Special Issues Subcommittee has been discussing a policy dealing with regulations for structures over tidal waters and wetlands. He said that a draft of a policy will be in the mail for the next meeting in January. He asked that the Draft be reviewed for a vote at that meeting.

OLD BUSINESS

Mr. Thomas Ventre told the Commission members that at the Commission meeting in October they conditionally approved a development proposal submitted by the Channel Marker Foundation, Inc. in Easton regarding the development of a day activities center for its clients in Cambridge on the grounds of the Eastern Shore Hospital Center. The condition was that the proposed plan be modified in order to meet the impervious surface requirements which the original submittal did not meet. They have revised the plan and resubmitted it and it has been reviewed and the condition has been satisfied. The recommendation is that it be unconditionally approved.

Mr. Gutman made a motion to approve the request, it was seconded by Dr. Shep Krech and the motion carried unanimously.

Commission Counsel, George Gay updated the Commission on the Davis matter in Dorchester County. Mr. Davis had applied for a variance to locate a pool in the Buffer which was installed before the Appeal was noted by the Commission. He said that settlement negotiations have occurred with Mr. Davis and the Commission members; and the vote taken at Newton-White Mansion that the position would be that Mr. Davis pay the Dorchester County authorities \$2,500 and the Commission would withdraw its Appeal has been accepted. Mr. Davis agreed to the Commission's condition, submitted a check for \$2,500 to the Dorchester County authorities and the Commission has withdrawn its Appeal. The \$2,500 is now going to be used to put together a pamphlet, Dorchester County specific describing the Dorchester County Program and its impact upon the citizens of Dorchester County who are applying for permits to develop within the Critical Area.

There being no further business, the meeting was adjourned.

STAFF REPORT

STATE PROJECT: Maryland Archaeological Conservation (MAC)
Facility and Museum Service Center Project

LOCATION: Jefferson Patterson Park and Museum (JPPM),
Calvert County

AGENCY: MD Department of Housing and Community
Development

BACKGROUND: In September 1989, the Critical Area Commission (CAC) granted approval to the Master Plan for JPPM, which is the conceptual development plan for the park. Though the Master Plan is approved, individual development projects must still be approved by the CAC. The MAC Facility is one such project which was included in the Master Plan, but must now come before the CAC for approval. This facility will be engaged in the conservation, research and storage of the State's archaeological artifacts.

DESCRIPTION: The project area is approximately 7 acres out of a total of 512 acres at JPPM. The location is shown on the attached map. The MAC facility is planned to be about 38,000 sq. ft. of new construction adjacent to about 16,000 sq. ft. of existing farm buildings slated for renovation and adaptive reuse as the Museum Service Center.

The total new impervious surface will be approximately 96,000 sq. ft. (2.21 acres) and the existing impermeable surface is approximately 17,500 sq. ft. (.40 acres). This is less than 1% of the total JPPM area within the Critical Area.

There are no known Federal or State threatened or endangered plant or wildlife species on this site. Nontidal wetlands have been delineated; however, at the nearest point to construction, they are about 250 feet away. No slopes greater than 15% are impacted.

Stormwater management will be provided and will comply with MD Department of Environment guidelines. An infiltration basin will be constructed at the head of a wooded ravine leading to St. Leonard Creek, east of the project area. It will allow the first inch of runoff from the 4.71 acres draining to the basin to be infiltrated. An overflow spillway will be installed.

The construction site is approximately 97% agricultural field and grass land. About 36,650 sq. ft. (.84 acres) of secondary growth forest

will be removed. This is less than 1% of the forestland within the Critical Area at JPPM. It will be replaced on at least a 1:1 basis.

The facilities will produce a certain amount of chemical wastes largely as a by-product of conservation processes. These wastes will be handled according to all applicable regulations. Hazardous waste concerns are being coordinated with the MD Department of the Environment and the State Health Department. The largest volume of chemicals used will be polyethylene glycol (PEG) and sodium hydroxide. PEG is not a hazardous substance. An underground storage tank will be installed to hold and reuse the PEG whenever possible. The sodium hydroxide is a caustic that will be neutralized in an underground tank. Hazardous wastes will be hauled off-site through certified and approved handlers for which the State (DGS) has a statewide contract.

A septic drain field is planned to be located at the north end of the property outside of the Critical Area. There will be a small force main and one underground lift station to move the sewage to the field.

In order to minimize the water being used and discharged, plans call for a specifically designed water recycling system for certain water artifacts and it is planned that this water will be recycled through a reverse osmosis process.

The septic system and stormwater management structure is planned to be the recipient of process water from the reverse osmosis water purification system. The process water will be clean water which will have slightly elevated dissolved solids. The worst case scenario indicates that dissolved solids will range up to 440 ppm. The allowable dissolved solid level in drinking water is 600 ppm. The release of the water to the stormwater management structure will be on a controlled basis by means of a 6,000 gallon in-line tank. Any residual suspended solids will settle out in this tank for later removal. Testing would occur before the release. Despite the clean nature of the water, an industrial discharge permit may be required by the EPA.

STAFF: Pat Pudelkewicz

Asbury House

Barns

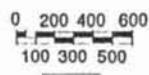
King's Reach House

Patuxent River

Jefferson Patterson Park & Museum St. Leonard, Maryland

Acres: 512 Total

- Legend
- Property Boundary 
 - Stand Number 
 - Paved Road 
 - Gravel Road 
 - Woods Road 
 - Existing Trails 
 - Proposed Trails 
 - Footbridge 
 - Hardwood 
 - Pine 
 - Marsh 
 - Stream 
 - Fence 
 - Pond 



Maryland Archaeological Conservation Facility (MAC) (proposed)

Museum Service Center

Barn

Shed

Breckinridge Center

Visitor Center

Pavilion

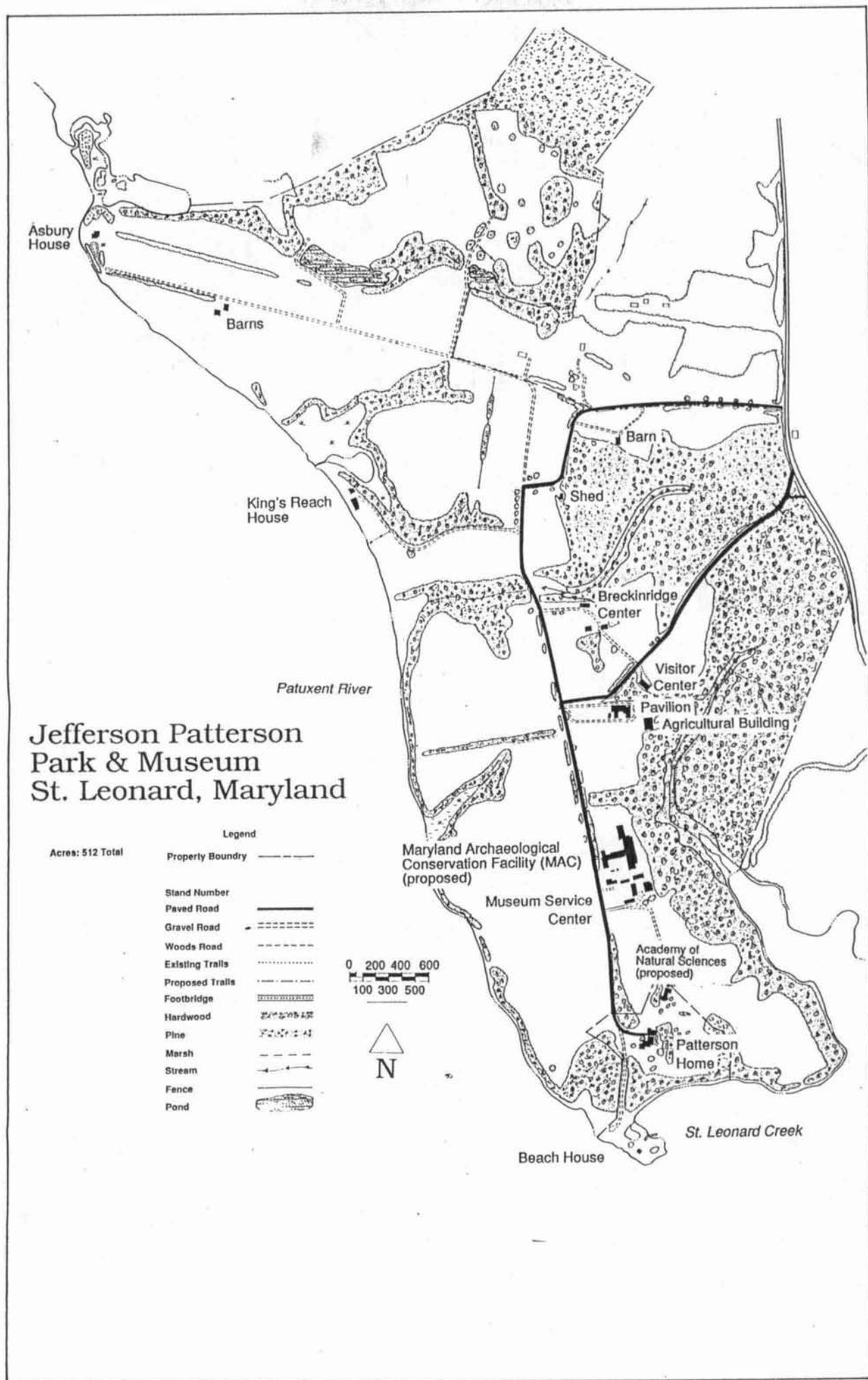
Agricultural Building

Academy of Natural Sciences (proposed)

Patterson Home

Beach House

St. Leonard Creek





Maryland Department of Natural Resources

Forest, Park and Wildlife Service

Tawes State Office Building
Annapolis, Maryland 21401

William Donald Schaefer
Governor

Torrey C. Brown, M.D.
Secretary

Donald B. MacLaughlin
Assistant Secretary

December 23, 1991

Dr. Sarah J. Taylor
Critical Area Commission
275 West Street, Suite 320
Annapolis, MD 21401

RE: Betterton Bay Club

Dear Dr. Taylor:

Liz Zucker of your staff and I met on December 18, 1991 to review the proposed changes to the Betterton Bay Club plan relative to forest interior dwelling birds (FIDB) and wildlife corridors.

The site as redesigned is better for FIDB than the original submission since additional contiguous forest acreage will remain intact. Moving the club house and the buildings on the west side of the property to a more central location is appropriate for FIDB habitat conservation.

The wildlife corridor needs to be modified as it is presently proposed. The encroachment of the golf course fairway into the corridor and the road to buildings #4,5,6 reduce the value of the corridor. I recommend the road be redesigned to border the wooded edge nearest the club house. The fairway should be redesigned to minimize vegetation removal in the corridor.

Peter Johnston has contacted my office and is trying to set up a meeting with your staff and myself over this issue. I am available the first of the year to meet.

RECEIVED

DEC 24 1991

DNR
CRITICAL AREA COMMISSION

Sincerely,

Glenn D. Therres

Glenn D. Therres
Supervisor, Nongame & Urban
Wildlife Program

CACBETT.LTR

Telephone: _____
DNR TTY for Deaf: 301-974-3683

JUDGE JOHN C. NORTH, II
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WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

December 20, 1991

Paul M. Bowman, Esquire
117 Court Street
P.O. Box 717
Chestertown, Maryland 21620

Re: Triad Partners
Betterton, Maryland

Dear Mr. Bowman:

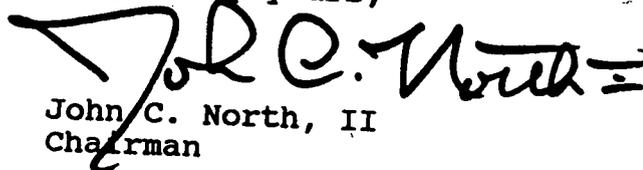
I am pleased to advise you that as a result of our several recent conferences with you and your client, Mr. Earl Savino, there now appears to be no substantial problem, as far as the Critical Area laws are concerned, as to the proposed development at Betterton.

There are still two difficulties which remain unresolved: approval of the wildlife corridor and location of a portion of the golf course on steep slopes or highly erodible soils. I am optimistic that these issues can ultimately be settled.

I invite you and your client to attend the next meeting of the Critical Area Commission, which will be held on Wednesday, January 8, 1992 at Annapolis. The meeting will take place in the C-1 Conference room on the ground floor of the Tawes State Office Building, on Taylor Avenue opposite the Navy Stadium parking lot. You or Mr. Savino should be prepared to explain the proposed project in some detail and to answer whatever questions the Commission members may have.

With best wishes of the Season.

Very truly yours,


John C. North, II
Chairman



DEC-31-1991 01:19PM

December 30, 1991

Mr. Earl Savino
Triad Partners
Route 1 & Fairville Road
Chadds Ford, Pennsylvania 19317

Dear Earl:

We've thoroughly reevaluated your concerns regarding the positioning of the eighteenth hole for the golf course in Betterton, Maryland.

Our posture is that we can redevelop the character of this hole as a "lay-up" par five rather than the current 444 yard par four. This redesign will not compromise the quality of the golf course, and should further reduce any disturbance of the natural vegetation bordering the golf course in the swales and gullies which drain into the Chesapeake Bay system.

Some players, however, may still attempt a shot over these trees which fill the gully between the landing area and the green; that is an exciting and enticing option.

We do not recommend any relocation of the teeing areas due to the existing site conditions, as that will shift the landing area too close to the entrance road, and will diminish the safety of our design.

I hope this meets with your approval.

All the best,


Ron Prichard
Golf Architect

RP:js

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EASTERN SHORE OFFICE
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EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

January 30, 1992

Mr. Thomas W. Burke
Director
Chesapeake Bay Communications Office
Executive Department
State House
Annapolis, Maryland 21401

Dear Mr. Burke:

The Chesapeake Bay Critical Area Commission (CBCAC) plans to hold its March 4, 1992 meeting at the Havre De Grace Decoy Museum. This is part of our continuing strategy to enhance public awareness and support of the Critical Area Law and Criteria by making our meetings accessible to local jurisdiction planners, real estate professionals and the public on a regular and regional basis.

Madison Mitchell has agreed to give a talk at lunch that day on waterfowl and estuarine resources, their importance to the regional economy, and lament their former abundance. We hope Mr. Mitchell will then endorse our watershed-based approaches to restoring that abundance.

In conjunction with this event, CBCAC Commissioner and Harford County Councilman, Philip Barker, our host and the Commission would like to nominate the following individuals and organizations for recognition by the Governor:

Mr. Jerry Smithson, Volunteer Zoning Administrator of Rock Hall Maryland:

Mr. Smithson serves as Zoning Administrator for the town of Rock Hall, Maryland. In that purely voluntary capacity Mr. Smithson has consistently demonstrated outstanding support for, and cooperation with, the Chesapeake Bay Critical Area Commission and its staff. Mr. Smithson's concern and dedicated efforts to accommodate the growth of Rock Hall in full compliance with the spirit and letter of the Critical Area Criteria ultimately benefits the Chesapeake Bay and thus all the citizens of Maryland.

Mr. Thomas W. Burke
January 30, 1992
Page Two...

Mr. Donald Halligan, Principal Planner for Cecil County Office of Planning and Zoning:

Mr. Halligan is Principal Planner and Critical Area Coordinator for Cecil County. In addition to the burdens of his everyday duties and responsibilities in this capacity, Mr. Halligan has selflessly given of his time and expertise to the Chesapeake Bay Critical Area Commission Geographic Information System Division for the development of the Integrated Program and Project Evaluation System (IPPES), an automated program review and project evaluation package. Cecil County was the pilot jurisdiction for developing the prototype. The data, expertise and cooperation furnished by Mr. Halligan was fundamental to the successful development and implementation of the software. The Chesapeake Bay and all sixty local jurisdictions effected by Critical Area regulations will ultimately benefit from Mr. Halligan's outstanding contributions.

Mr. Tom Trafton and the Havre De Grace High School Ecology Club:

Faculty Adviser Tom Trafton and the Havre De Grace High School Ecology Club are to be highly commended for enhancing public awareness of the importance of wildlife habitat and the effects of non-point source pollution through their frequent, continual, and voluntary, tree planting, stream and shoreline clean-ups, habitat creation, recycling activities, and stenciling of over 100 storm drains with the message "Don't dump, Chesapeake Bay drainage" in Harford County. Their concern for the Chesapeake Bay should serve as a model for all environmentally concerned secondary school students in Maryland.

Dr. James Bailey, Aberdeen Proving Ground (APG):

Dr. Bailey is to be commended for developing, and managing over the past three years, the wetlands program at the Aberdeen Proving Ground. His efforts and innovative solutions to unique challenges have allowed the development of projects essential to the APG mission (s) without compromising the 10,000 + acres of the facility's mapped wetlands to the ultimate benefit of Maryland's most precious natural resource - the Chesapeake Bay.

Mr. Thomas W. Burke
January 30, 1992
Page Three...

Mr. James Joseph Pottie, Aberdeen Proving Ground (APG):

Mr. Pottie serves as the Aberdeen Proving Ground's Fish and Wildlife Biologist. He is to be highly commended for successfully coordinating the management of Aberdeen's wildlife species and the Proving Ground's mission. In particular, his 1987 Bald Eagle Management Plan, a Chesapeake Bay Agreement Targeted Species, has resulted in a continual expansion of the Eagle population forming a viable core for the entire Upper Bay region. Mr. Pottie has also given selflessly of his time making presentations on Aberdeen's wildlife resources to school groups.

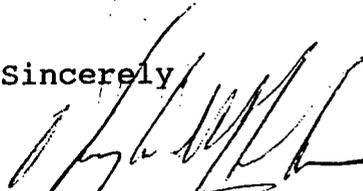
Mr. Steve Wampler, Aberdeen Proving Ground (APG):

Mr. Wampler is Aberdeen Proving Ground's Program Manager for the Chesapeake Bay Initiatives (CBAI). He is to be highly commended for outstanding success in two major areas. First, Mr Wampler recognized an anadromous fish passage blockage at the Van Bibber Dam on Winter's Run at the Edgewood Water Treatment Plant. In eighteen months he initiated and directed the construction of the first fish ladder in the Northern Chesapeake Bay thus correcting the problem. Secondly, Mr. Wampler, through regulation, monitoring, and education throughout the APG, has implement high standards of sediment and erosion control thus minimizing APG's possibly damaging silt loading of the waters of the Upper Chesapeake to the ultimate benefit of all the citizen's of Maryland.

If the Governor accepts these nominations, the CBCAC would like to cordially invite him to join us for lunch on March 4th to make the presentations. Understanding the Governor's busy schedule, Chairman North has, if necessary volunteered to do the honors in his stead.

I thank you in advance for your consideration of this matter and look forward to your favorable reply.

Sincerely


Hugh M. Smith
Communications Officer

cc: Dr. Sarah Taylor
Ms. Pat Pudelkewicz
Ms. Anne Hairston
Ms. Dawnn McCleary