

Committee Meetings & Correspondence February 1992

USA-5-1832-91

** need info on past decisions*

AGENDA
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
February 5, 1992

1:00 - 1:05 p.m. ✓ Approval of January 8th Minutes VOTE ✓ *approved* John C. North, II, Chairman

1:05 - 1:20 p.m. ✓ Recognition of Commission Member and Staff ✓ John C. North, II, Chairman

AMENDMENTS/REFINEMENTS

1:20 - 1:50 p.m. ✓ Growth Allocation Bata - Harford Co. VOTE ✓ Robert Price, Jr., Chair
23 acres approved Anne Hairston, Planner
unanimously

1:50 - 2:10 p.m. ✓ Growth Allocation Brittingham (RCA to LDA) Worcester Co. - VOTE ✓ Bill Bostian, Chair
Theresa Corless, Planner

2:10 - 2:25 p.m. ✓ Calvert Co. - Refinements ✓ Pat Pudelkewicz, Planner

2:25 - 2:40 p.m. ✓ Crisfield - Refinement ✓ Claudia Jones, Planner

PROJECTS

2:40 - 3:00 p.m. ✓ Mosquito Control Project Department of Agriculture (Somerset Co.) - VOTE ✓ Sam Bowling, Chair
Kay Langner, Co-Chair
Liz Zucker, Science Advisor

3:00 - 3:35 p.m. ✓ University of Maryland
A) Fleet Operations ✓ Sam Bowling, Chair
Fuel Tank, Solomons ✓ Kay Langner, Co-Chair
B) Geochemistry Building ✓ Liz Zucker, Science Advisor
Solomons ✓
C) Chemical Storage Building ✓
Horn Point VOTES ✓

3:35 - 4:00 p.m. ✓ Somerset County - VOTE ✓ Claudia Jones
Coulbourn's Cove ✓

✓ Caroline County VOTE ✓ Claudia Jones
Brick Mill Landing ✓

RECONSIDERATIONS

4:00 - 4:15 p.m. ✓ Bachelor Point Marina Joseph Elbrich, Chair
Mapping Mistake - Talbot County VOTE ✓ Pat Pudelkewicz, Planner

POLICIES

4:15 - 4:20 p.m. ✓ Policy for Reconsideration UPDATE VOTE ✓ Robert Price, Jr.
Tony Bruce
Parris Glendening
Sarah Taylor

4:20 - 4:40 p.m. ✓ Structures Over Wetlands UPDATE ✓ Liz Zucker, Science Advisor

4:40 - 4:50 p.m. ✓ Non-tidal Wetlands ✓ Liz Zucker, Science Advisor

LEGAL UPDATES

4:50 - 4:55 p.m. ✓ Black Marsh - Appeal George Gay, Assist. Atty. Gen.
✓ Wharf at Handy Point
✓ Betterton Bay Club

4:55 - 5:00 p.m. ✓ Old Business John C. North, II, Chairman
✓ New Business

** write a job Tony Bruce received the w/ regret*

she supported approved

write a letter to Somerset Co. on problem w/ growth allocation

** will mail out response for members seek George's comments*

Vote support for the bill Parris & Joe abstain

legislation

Growth Allocation

MOU-MDOT

9:00 - 10:00 a.m. Library, 2nd floor, Commission offices

Claudia Jones, CAC Staff

James E. Gutman, Chair
Sam Bowling
Shep Krech
Bill Corkran
J.L. Hearn
Carolyn Watson

Special Issues

Structures over Tidal Waters

10:30 - 11:00 a.m. Basement Conference Room

Liz Zucker, CBCAC Science Advisor

James E. Gutman, Chair
Bill Bostian
Parris Glendening/Carolyn Watson
J. L. Hearn
Robert Price
Jim Peck
Louise Lawrence
Ron Young/Larry Duket

Nontidal Wetlands

11:00 - 11:30 a.m. follow Structures over Tidal Waters, same location

Liz Zucker, CBCAC Science Advisor

James E. Gutman, Chair
Bill Bostian
Parris Glendening/Carolyn Watson
J. L. Hearn
Robert Price
Jim Peck
Louise Lawrence
Ron Young/Larry Duket
Joe Elbrich
Shep Krech
Tony Bruce

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
January 8th, 1992

The Chesapeake Bay Critical Area Commission met at the Department of Natural Resources, Tawes State Office Building, C-1 Conference Room, Annapolis, Maryland. The meeting was called to order by Chairman John C. North, II with the following members in attendance:

William J. Bostian	Philip Barker
Samuel Y. Bowling	Anthony Bruce
William H. Corkran, Jr.	Parris Glendening
Joseph J. Elbrich, Jr.	Ronald Hickernell
James E. Gutman	J. L. Hearn of Md. Dept. of Environ.
Shepard Krech, Jr.	Thomas L. Jarvis
Kathryn D. Langner	G. Steele Phillips
Robert R. Price, Jr.	Michael J. Whitson
Roger W. Williams	Louise Lawrence
J. Rodney Little	of Dept. of Agriculture
of DHCD	Larry Duket for
Robert Schoeplein of DEED	Ronald Young of Maryland Office of
Jim Peck of DNR	Planning

The Minutes of the meeting of December 4th, 1991 were approved as written.

Chairman North introduced Mr. Rodney Little who was just appointed to a position on the Commission from the Department of Housing and Community Development. Ms. Renee Jennings interning with the Critical Area Commission was also introduced .

Chairman North asked Ms. Patricia Pudelkewicz to report on the Jefferson Patterson Park MAC Facility.

Ms. Pudelkewicz stated that a staff report was mailed to the Commission and is as follows:

The Maryland Archaeological Conservation (MAC) Facility and Museum Service Center Project for Jefferson Patterson Park and Museum (JPPM), Calvert County
MD Department of Housing and Community Development.

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.

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.

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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.

Ms. Pudelkewicz said that the Commission approved in September of 1989 the master plan for the Jefferson Patterson Park and as part of the approval, the Commission stated that individual development projects that occurred at the Park should come back before the Commission for individual project approval. She said that the Maryland Archaeological Conservation Facility and Museum Service Center Project is nearing completion of the design stage and is now before the Commission. She said that the Subcommittee had reviewed the proposal and it is up for a vote as a State project.

Ms. Pudelkewicz introduced Mr. Mike Smolick of the Jefferson Patterson Park who described the project, illustrating with maps. He said that the building itself is a storage facility for 4 1/2 million State artifacts; that research and analyses would be done on the artifacts and allow scholars to come and utilize them; and that the building would be climate controlled with special systems, specifically geared for preserving and conserving the artifacts.

Commissioner Samuel Bowling made a motion to approve as presented the Maryland Archaeological Conservation (MAC) Facility and Museum Service Center Project. The motion was seconded and carried unanimously.

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Chairman North called for Executive Session to discuss the Betterton Bay Club Appeal.

Ms. Patricia Pudelkewicz and Ms. Elizabeth Zucker remained in Session due to their involvement in the matter. Ms. Pudelkewicz presented a summary of the project. Commission Counsel, George Gay, brought the members up-to-date concerning the appeal process. Judge North described the negotiation process. Questions were then asked and addressed.

Chairman North called to order the regular session and introduced Mr. Earl Savino, the applicant; Mr. Paul Bowman, his attorney; and, Mr. Peter Johnston, of Redman and Johnston, to make a presentation to the Commission on the Betterton Bay Project.

Mr. Savino gave a history of the project and described how substantial problems had been resolved, in his opinion, with the proposed development. He then referred to a letter from the Critical Area Commission, dated December 20th under Chairman North's signature (attached to Minutes) to his attorney, Mr. Paul Bowman, stating that there were only two difficulties which remained unresolved: 1) approval of the wildlife corridor; and, 2) location of a portion of the golf course on steep slopes or highly erodible soils. He said that there have been discussions with the Park and Wildlife Services of the Department of Natural Resources, and that Triad Partners are in the process of augmenting the benefits associated with the portion of the corridor in question. He said that the eighteenth hole was the other difficulty and as of the end of the year they had contacted their architect, Ron Pritchard, (letter to Mr. Earl Savino, dated December 30, 1991 and attached to Minutes) in Houston, Texas and he redesigned the eighteenth hole so that the only encroachment on any sensitive area and that only disturbance allowed would be the cutting of trees to allow a golf ball to pass over that area and that there would be dense mitigation for the cutting of any trees. He further stated that there remains 1.37 acres of encroachment of the structures but, he said no development with respect to buildings that encroach on highly erodible soils will take place unless they can demonstrate that such development will have a zero impact on water quality. Therefore, he asked the Commission for the consideration of acceptance of the compromise position, to withdraw the Appeal, with respect to the Zoning Hearing Board's decision, and to acquiesce to the Town of Betterton's wish to give growth allocation to allow this particular development at the compromise position to take place.

Chairman North noted that there have been problems with respect to defining with precision the areas in which highly erodible soils exist and only as recently as December 23rd, 1991, the Commission cartographer came up with the most refined version of the areas which had the effect of putting a greater percentage of the Club House in a highly erodible soil area than was realized before. He said that was not foreseen when his letter of December 20th was authored. Chairman North also stated that there is no letter from Mr. Glenn Therres, Supervisor, Nongame and Urban Wildlife Program, stating that the second problem with the wildlife corridor had been resolved.

Commissioner Samuel Bowling made a motion that Chairman North, Dr. Sarah J. Taylor, Executive Director for the Commission, and Commission Counsel, George Gay be allowed to continue to negotiate with Triad Partners and its attorney to develop a consent, a compromise position.

Commissioner Roger Williams proposed an amendment to Mr. Bowling's motion to include the listing out of any problems and come back to the Commission to resolve them.

Mr. Bowling rejected the amendment so as not to tie the negotiator's

hands. Commissioner Corkran seconded Mr. Bowling's motion.

Commissioner Bostian proposed an amendment to authorize Chairman North, Dr. Taylor, and Counsel Gay to pursue negotiations and to enter a consent decree with any changes *along the lines as outlined by the Commission in front of the Commission*.

Mr. Bowling accepted the amendment to his motion: to give Chairman North, Dr. Taylor, Counsel Gay authority to negotiate for the Commission and that as part of the negotiation the aspects of the project as shown to the Commission in Exhibit #1 be included as part of the negotiation as well as the minor points needing to be resolved in the Consent Decree. *That day*

Mr. Corkran seconded the amendment.

Counsel Gay stated that the original Consent Decree that was drafted for the Commission's review was drafted by the Attorneys for the applicant. It was 4 - 5 pages and the Commission responded with a Consent Decree of its authoring which included some provisions that were believed important and which were left out of the original document and was 7 - 8 pages. Included were a number of issues such as Enforcement of an Agreement, and how growth allocation application would be approached in the future. He stated that he believed that the negotiators should be empowered to negotiate any minor details as well as the major points.

Commissioner Glendening asked for clarification of whether this motion for Consent Decree would be the tool for resolution so that it would not come before the Commission again.

Chairman North responded, that was his understanding, and asked the Commission members if his understanding that it is the sense of this meeting that the overall conceptual proposal, as presented by Mr. Savino and others, is generally considered appropriate. The Commission members supported that understanding.

Chairman North called the question. The motion carried with one abstention.

Chairman North asked Ms. Elizabeth Zucker to update the Commission on Structures Over Tidal Waters and Wetlands.

Ms. Zucker said that there is a draft letter (attached to Minutes) on a proposed Commission policy to address the problem of structures that are not water dependent being constructed over tidal wetlands and tidal waters. She said that subsequent to a presentation of Mr. Bob Miller, Water Resources Administration in Department of Natural Resources to the Commission on "Structures on Piers", the Critical Area Commission Staff decided to work with Water Resources Administration to develop a policy paper that the Commission could provide to local jurisdictions to assist them in implementing some of the criteria regarding structures that are not water dependent being placed over tidal waters and wetlands (areas waterward of the Buffer). The letter was disseminated to the Commission members and Ms. Zucker informed them that at the next Commission meeting the Water Resources Administration would be discussing a Bill that the Department of Natural Resources will be presenting to the General Assembly this session. She said that the DNR Bill would clarify a 1989 law that was passed regarding "housing on piers".

Ms. Zucker updated the Commission on the Nontidal Wetlands Policy issue. She said that it was discussed at the Commission meeting in December. She said that as a result of the discussions, Commission members requested that the Special Issues Subcommittee take another look at a draft letter (attached to Minutes) to be provided to the local jurisdictions with some guidance as to how wetlands should be delineated within the Critical Area. She said that the Critical Area Law, Criteria and various local jurisdictions all have a definition of nontidal wetlands that apply to the Critical Area and that the

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definition must be met when identifying wetlands in the field. Three methodologies for wetland delineation were proposed in the draft letter. Ms. Zucker stated that that the issue was discussed in Subcommittee and the committee members requested an opinion from George Gay as to what the legal issues are. The committee will try to come up with some alternatives of how to proceed with regard to recommending methodology to local jurisdictions on how to identify wetlands in the Critical Area. She said at the next Commission meeting a very narrow issue would be framed for George Gay to consider from a legal aspect for an answer.

Mr. Bostian asked if the Oversight Committee would be consulted as an option about possible legislation.

Chairman North stated that the Chairs of the Committee may be approached to persuade them to do that which they have been reluctant to do in the past and to give some legislative direction and he and Dr. Taylor would be doing that soon.

Commissioner Price stated that the Subcommittee met as to the development of a Policy of Reconsideration and they are still reconsidering it.

Chairman North asked Counsel George Gay to update the Commission on an Appeal in the Black Marsh matter.

Counsel Gay stated that at the Commission meeting in St. Michaels the Commission voted by a majority to approve the administration's proposal for concept plan development of Black Marsh North Point State Park. He said that on January 3rd, an Appeal from that decision was noted in the Circuit Court for Baltimore County. The appellants have 10 days from the date on which they note the Appeal to file Petition on Appeal which explains why they are appealing. He said that it seems that the Commission is the disinterested party in this case but its role would be to assemble the record and to file it with the Circuit Court for Baltimore County. The parties to the matter may be the Department of Natural Resources and some other interested parties or persons that have standing to become involved in the action.

Counsel Gay updated the Commission on the Appeal taken for a Pool in the Buffer. Mr. Gay stated that in Talbot County, a property owner sought a variance from the Talbot County Buffer restrictions in order to put a pool in the Buffer. The local Board granted the variance and the Commission staff felt that the applicant had not met the variance factors in the local program and the Chairman directed that an Appeal be noted from that Board's decision. The memorandum outlining the Commission position is due this month.

Old Business

The Commission members were advised of convenient and expedient parking facilities at the Navy Stadium in conjunction with the Downtown Shuttle. They were informed that the March meeting of the Commission would be held in Harford County at the Havre de Grace Decoy Museum.

Commissioner Tony Bruce asked what the status of the General permit of the Department of Agriculture for Mosquito Control.

Ms. Zucker said that the Mosquito Control division has a draft of a proposed general approval and they are assessing it.

New Business

Chairman North said that Mr. Tom Ventre presented a Dorchester County Refinement determination. Local enactment of necessary program language changes to satisfy this Commission's conditional approval of local ordinance amendments in October, 1991. Acceptance of the Program language changes as a Program refinement as recommended by the Dorchester panel as an element of the October condition. The staff has concluded that this is a refinement and Chairman North concurs. There being no dissention, the determination was approved.

There being no further business the meeting was adjourned at 3:40 p.m.

JUDGE JOHN C. NORTH, II
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STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

PRESS RELEASE

For Release: March 3, 1992

For Further Information Contact : Hugh M. Smith (410) 974-2426

The Chesapeake Bay Critical Area Commission (CBCAC), an independent Maryland State Regulatory Agency charged with implementing and enforcing the 1984 Critical Area Law will conduct its regular monthly meeting at the Havre De Grace Decoy Museum in Harford County on Wednesday, March 4, 1992. The Commission's visit to Havre De Grace was made possible through the good offices of County Councilman (District F) and Commissioner Philip J. Barker

The Environmental Protection Agency's 1983 study titled Chesapeake Bay: A Framework For Action directly linked the precipitous decline in the Chesapeake Bay's once bountiful populations of anadromous fish, crustaceans, wildlife, and waterfowl to a parallel decline in the quality of its water and the destruction of natural habitat; a consequence of man's ever increasing activity within its vast watershed.

Following publication of that study, in 1984, the State of Maryland resolved to reverse the deterioration of the Bay's environment by enacting a law creating the Critical Area Commission, a twenty-five member panel, charged with creating a land and resource management program designed to mitigate the damaging impact of non-point source pollution (NPS) and loss of natural habitat, while accommodating Maryland's anticipated future growth. The Law recognized that the land immediately surrounding the Bay and its tributaries has the greatest potential to affect its water quality and wildlife habitat and thus designated all lands within 1000 feet of the tidal waters edge or from the landward edge of adjacent tidal wetlands, tidal waters, and the lands under them as the "Critical Area".

Preceding the meeting, the Commission will host a Noon lunch, in the Museum, for the Commission, its guests, and several local residents who will receive Governor's Citations for their outstanding contributions to the preservation of the Chesapeake.

To be honored are:

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. 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. 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.

According to Commission Chairman John C. North II, " The mission of the Havre De Grace Decoy Museum is a vitally important one. Our younger generations must not be allowed to forget the former abundance of this great estuary. They must come to understand the value of this precious resource and that its possible loss is a consequence of man's ever increasing activity within its vast watershed. With that understanding, it will be possible to reverse this decline and restore the Chesapeake to its natural abundance. Our current and future generations must become educated stewards of the Bay; willing to support sensible and sensitive land and resource management programs. The alternative is acceptance of the status quo; the willingness to accept the Chesapeake as nothing more than a beautiful view. Many of us are not willing to accept that status quo. The Chesapeake Bay Critical Area Commission applauds the work of the Havre De Grace Decoy Museum in this regard."

The media is cordially invited to attend this event. The Commission meeting, beginning at 1:00 PM is open to the public.

CRITICAL AREA COMMISSION STAFF REPORT

February 5, 1992

ISSUE: Harford County Growth Allocation for Bata Land Co.
Riverside South 40 Residential property

COMMISSION ACTION NEEDED: Vote for approval or denial by April
24, 1992 or before

DISCUSSION: Harford County has granted 23 acres of growth allocation for the Riverside South 40 residential development, owned by Bata Land Co., Inc., and is requesting Commission approval of this action. This parcel is the third and last portion in the Critical Area of Bata Land Co.'s planned unit development which was approved in the mid-70's. The Harford County Critical Area Program requires that a project have the infrastructure available and be able to develop within 2 years before they will grant growth allocation to the project. Because of this requirement, this portion of Bata Land Co.'s growth allocation has not been approved by the County until now.

The growth allocation request is for 23 acres to go from Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The proposal is to develop the property with 265 to 270 townhouse and condominium units within the Critical Area. Most of the area proposed for development is currently agricultural. One acre of forest will be cleared for road access from Rt. 40, and it will be replaced on-site. One crossing of nontidal wetlands, adjacent to Rt. 40, is proposed. Any applicable mitigation will be required by the County's Program. The parcel is 121 acres, 111 acres of which are in the Critical Area. Of the 111 acres, 82 acres are uplands, with the remainder being tidal wetlands. There are no mapped Habitat Protection Areas, other than the buffer and nontidal wetlands, on the property.

Development is proposed on 23 acres of the uplands. The growth allocation is adjacent to existing IDA, the old Bata Shoe Factory, and provides a minimum 300-foot buffer to tidal waters, as specified in the Critical Area Criteria (COMAR 14.15.02.06.B). The area excluded from the growth allocation is 88 acres, which exceeds the 20-acre minimum required by the Commission's policy on deducting growth allocation. The 88 acres will have conservation easements placed to restrict any future development, and will be managed by the community association or will be deeded to a conservation organization (or similar entity) to ensure permanent protection. The set-aside includes the 300-foot buffer to tidal waters, and extends beyond the buffer areas for nontidal wetlands and tributary streams adjacent to the 300-foot buffer. The 23 acres proposed for growth allocation include the lot areas, storm-water management facilities, and areas

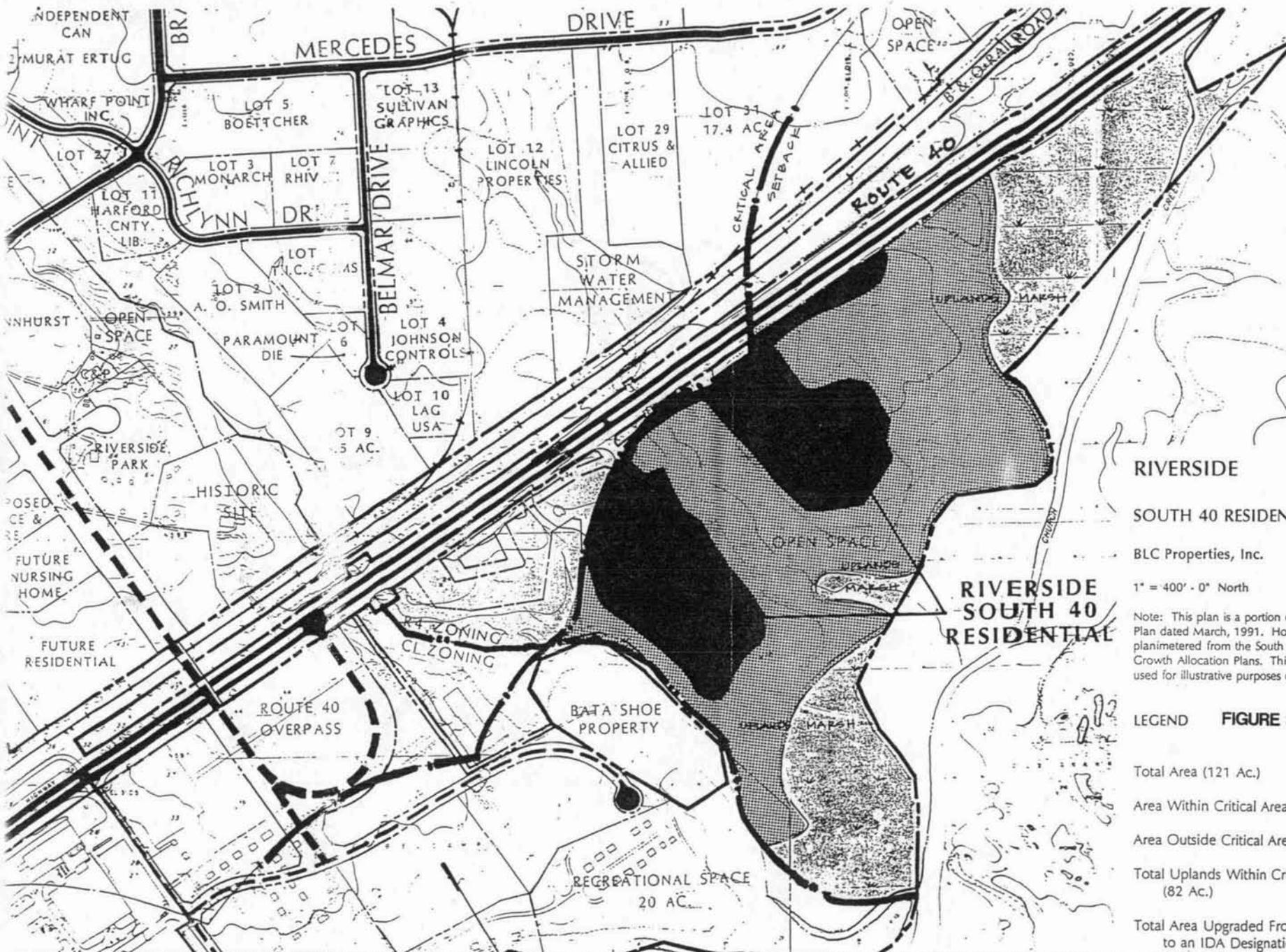
disturbed for roads and utilities, and to the limits of disturbance. Required buffers to streams and nontidal wetlands are not included in the growth allocation request, but are encompassed within the 88-acre contiguous undisturbed set-aside.

A local public hearing was held November 5, 1991. The panel did not reach a conclusive recommendation before the December meeting, because they were divided on whether to accept the growth allocation deduction as proposed or to require a greater acreage deducted (e.g., including all buffers). The panel was concerned that the growth allocation deduction be consistent with the past actions of the Commissions on previous growth allocations, and with the Commission's policy on deducting growth allocation. Harford County withdrew the application and resubmitted it on January 24, 1992 without changes. Since the application had not changed, a second public hearing was not required or held. At a subsequent panel meeting, information on deductions for previous growth allocations throughout the Critical Area was presented. The panel developed a recommendation for this application, with caveats that the decision is dependent on particular site characteristics such as adjacency to an expanse of tidal wetlands and not a precedent for not including buffers in growth allocation deductions. Additionally, the panel requested clarification of the methodology for deducting growth allocation, so that it can be consistently applied.

Harford County has 42.6 acres of growth allocation available to convert private development projects from RCA to LDA or IDA. An additional 20 acres are reserved for the City of Havre de Grace and 15 acres are reserved for County public park projects. There are 79 acres available for converting LDA to IDA (with 15 acres reserved for County park projects).

PANEL RECOMMENDATION: The panel recommends approval of the amendment, debiting growth allocation as proposed.

STAFF REPRESENTATIVES: Anne Hairston and Dawnn McCleary



RIVERSIDE
SOUTH 40 RESIDENTIAL
 BLC Properties, Inc.

1" = 400' - 0" North
 Note: This plan is a portion of the Riverside Concept Plan dated March, 1991. However, all acreages have been planimetered from the South 40 Residential Critical Area Growth Allocation Plans. This Plan should therefore be used for illustrative purposes only.

RIVERSIDE SOUTH 40 RESIDENTIAL

- LEGEND** **FIGURE 3**
- Total Area (121 Ac.)
 - Area Within Critical Area (111 Ac.)
 - Area Outside Critical Area (10 Ac.)
 - Total Uplands Within Critical Area (82 Ac.)
 - Total Area Upgraded From an RCA to an IDA Designation (23 Ac.)



POLICY OF THE CRITICAL AREA COMMISSION FOR
DEDUCTING GROWTH ALLOCATION

1. Deduct acreage of entire parcel (not in tidal wetlands)
or
2. Development envelope acreage deducted
Development envelope includes:
 - individually owned lots
 - any required Buffers
 - impervious surfaces
 - utilities
 - stormwater management
 - on-site sewage disposal
 - any area subject to human use (ex: active recreation area)
 - any additional acreage needed to meet the development requirements of the criteria

Remainder of parcel must be:

1. at least 20 acres in size and contiguous;
2. retain its natural features or use by resource utilization activities;
3. restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by CAC.

Forest Management Plan - required for any forested areas in the undeveloped portion of the parcel.

Qualifying parcels for the "development envelope" deduction:

1. New IDA's which are located adjacent to an existing IDA or within an LDA, and the development envelope has a 300-foot Buffer to tidal waters, tidal wetlands or tributary streams.
2. New LDAs which are located adjacent to existing LDAs or IDAs, and the development envelope has a 300-foot Buffer to tidal waters, tidal wetlands or tributary streams.
3. In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico and Worcester Counties, the adjacency requirements of #1 and #2 above for Qualifying Parcels may be waived by the CAC provided the jurisdiction can demonstrate that it would be practical to locate the growth allocation area adjacent to existing LDAs and IDAs.

STAFF REPORT

*oh
Chairman's
determination
supported*

JURISDICTION: Calvert County

ISSUE: Proposed Refinements

DISCUSSION: The Chairman of the Commission has determined that the following Calvert County amendment requests may be viewed as refinements.

1. Calvert County proposes to add the following definition for "clearing": The removal or cutting of trees from any forest area or the removal or cutting of any vegetation from the Critical Area buffer.
2. The County proposes to add the impervious surface language of HB 1060 and HB 323 to allow increases in impervious surfaces up to 25 percent in certain instances.
3. The County is clarifying language in its IDA criteria to indicate that the 10% criterion applies to new development. The revised language will read:

In case of new development, IF THESE TECHNOLOGIES DO NOT REDUCE POLLUTANT LOADINGS BY AT LEAST 10 PERCENT BELOW THE LEVEL OF POLLUTION ON THE SITE PRIOR TO REDEVELOPMENT, THEN, offsets as determined...

The current regulations do not appear to allow the 10% reduction in pollutants to be met if new development is proposed.

4. Administrative and editorial changes are proposed by the County. Administrative changes address the following issues:
 - a. If a project occurs in the Critical Area, a Critical Area form needs to be completed and the project reviewed for Critical Area consistency.
 - b. Building and grading permits requiring reforestation and afforestation do not require interagency review.
 - c. Reference to Division of Inspections and Permits is changed to Department of Planning and Zoning.

COMMISSION ACTION: Concur with Chairman's determination or vote to overturn Chairman's determination that these change are refinements.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
JUDSON P. GARRETT, JR.
RALPH S. TYLER, III
DEPUTY ATTORNEYS GENERAL



THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
M. BRENT HARE
JUDITH F. PLYMYER
PAMELA D. ANDERSEN
MAUREN O'F. GARDNER
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
ASSISTANT
ATTORNEYS GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(301) 974- 2501

February 3, 1992

MEMORANDUM

Via Facsimile Transfer
Hard Copy to Follow

TO: Elizabeth Zucker
Science Advisor,
Chesapeake Bay Critical Area Commission

FROM: George E. H. Gay *[Signature]*
Assistant Attorney General

RE: Non-Tidal Wetlands in the Critical Area

Due to the current confusion surrounding non-tidal wetland delineation methodology, the Commission would like to provide local jurisdictions with guidance on how non-tidal wetlands should be determined within the Critical Area. In your capacity as staff advisor on this matter, you have asked me to provide you with legal advice concerning which of the various delineation methodologies should be used to determine non-tidal wetlands in the Critical Area. Although this question does touch upon some legal issues, its ultimate resolution must be based upon scientific expertise. Consequently, I will refer it back to you. Let me explain.

At the outset, it is important to note that the Commission should not be controlled by the non-tidal wetland delineation methodologies used by federal/State/local agencies which are not implementing the State's Critical Area Criteria or which do not have jurisdiction over land in the Critical Area. The Commission's sphere of concern is quite limited. It is defined in Natural Resources Article, §8-1807, Annotated Code of Maryland, of the Critical Area Law as:

- (1) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands designated under Title 9 of this article; and
- (2) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of this Article.

The Commission has no jurisdiction outside of the Critical Area. Therefore, it is problematic for it to be guided by what is occurring there.

Within the Critical Area, the Commission is concerned with a number of habitat protection areas, one of which is non-tidal wetlands. COMAR 14.15.09.02. Non-tidal wetlands are defined in COMAR 14.15.09.02(a) as:

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, and which 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.

(2) Excluded from these regulations are existing farm ponds and other existing man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat purposes.

This definition is based upon a classification system developed by the U.S. Fish and Wildlife Service, as published in Classification of Wetlands and Deep Water Habitats of the United States, Cowardin, et al. (1979). (See Guidelines for Protecting Non-Tidal Wetlands in the Critical Area, CBCAC guidance paper No. 3). In the Critical

Elizabeth Zucker
February 3, 1992
Page 3

Area a non-tidal wetland is any area which meets this definition. Thus, in the Critical Area, a lawfully sufficient non-tidal wetland delineation methodology is one which identifies all land areas to which it is applied that meet this definition. If a certain delineation methodology does not identify as non-tidal wetland all land areas to which it is applied that meet this definition, it may not be used. It is insufficient. It is not inclusive enough. This is true even if it is a methodology which has been adopted by a federal agency or another state agency. The delineation methodologies that should be approved/suggested by the Commission are those which identify all lands evaluated which meet the definition found in the Criteria.

It seems to me that as Science Advisor you are well suited for compiling and evaluating the best available information concerning which delineation methodologies will result in the identification of all land areas to which they are applied which meet the Criteria's definition of non-tidal wetlands.

Thank you very much for the opportunity to look at this matter. If you have any other questions with respect to it, please do not hesitate to contact me.

GEHG:cjw

DRAFT

Dear (Name of local jurisdiction representative),

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.

DRAFT

OVER

DRAFT

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.

If you have any comments or questions regarding this issue, please feel free to contact me or Dr. Sarah Taylor at (410) 974-2426.

Sincerely,

John C. North, II
Chairman

DRAFT

DRAFT

CRITICAL AREA COMMISSION
STAFF REPORT (Preliminary)
JANUARY 22, 1992

Project: Maryland Department of Agriculture (MDA), Mosquito Control Projects, Somerset County

Discussion: The Mosquito Control Section (MCS) of MDA, proposes to maintain 19,700 feet of existing ditches to control mosquitoes in nontidal wetlands in four locations within the Critical Area of Somerset County. All ditching will outlet to tidal sources as originally constructed. Material excavated from the ditches will be graded to a depth not exceeding 12 inches above ground level. Ditches will be approximately 30 inches wide and 24 to 30 inches deep.

Notable aspects of the project include:

- The Somerset Soil Conservation District has reviewed the project and required that excavated material be seeded with annual rye grass to stabilize soil and provide colonization of native plants.
- The Resource Conservation Division of the Department of Natural Resources is reviewing the project for possible impacts on Habitat Protection Areas (HPAs)s.
- The US Army Corps of Engineers and Maryland Department of the Environment are reviewing the proposal for a Section 404 and 401 permit, respectively.
- The State Nontidal Wetlands Division assisted CAC staff in reviewing the project.
- Because water management for mosquito control in nontidal wetlands is a new type of activity in HPAs, the MCS will provide the CAC with information on mosquito control efficacy, effects of ditching on surface water hydrology and changes in vegetation in adjacent wetlands, and information on effects of the project on nontarget organisms.

DRAFT

*approved
unanimous*

CRITICAL AREA COMMISSION
STAFF REPORT
February 3, 1992

PROJECT: Maryland Department of Agriculture (MDA), Mosquito Control Projects, Somerset County

DISCUSSION: The Mosquito Control Section (MCS) of MDA, proposes to maintain 19,700 feet of existing ditches to control mosquitoes in nontidal wetlands in four locations within the Critical Area of Somerset County. All ditching will outlet to tidal sources as originally constructed. Material excavated from the ditches will be graded to a depth not exceeding 12 inches above ground level. Ditches will be approximately 30 inches wide and 24 to 30 inches deep.

Notable aspects of the project include:

- The Somerset Soil Conservation District has reviewed the project and required that excavated material be seeded with annual rye grass to stabilize soil and provide colonization of native plants.
- The Resource Conservation Division of the Department of Natural Resources has reviewed the project and found that the project will not affect Habitat Protection Areas (HPAs).
- The US Army Corps of Engineers and Maryland Department of the Environment are reviewing the proposal for a Section 404 and 401 permit, respectively.
- The State Nontidal Wetlands Division assisted CAC staff in reviewing the project.
- Because water management for mosquito control in nontidal wetlands is a new type of activity in an HPA, the MCS will provide the CAC with information on mosquito control efficacy, effects of ditching on surface water hydrology and changes in vegetation in adjacent wetlands, and possibly information on effects of the project on nontarget organisms.

STAFF CONTACT: Liz Zucker

STAFF RECOMMENDATIONS: Approval with conditions that copies of all State and federal permits are sent to the CAC, and all monitoring studies are completed.

CRITICAL AREA COMMISSION
STAFF REPORT
February 3, 1992

*approved
unanimously
Parris H.
abstained*

PROJECT: University of Maryland, Chesapeake Biological Laboratory, Fuel Storage Tank for Research Fleet Operations Building.

DISCUSSION: The University of Maryland (UM) has a research fleet operations building located at the tip of Solomon's Island, in Calvert County. The building is used for the staging and repair of scientific equipment, maintenance and minor repair of vessels, administration of fleet operations, and the collection and storage of research samples. At its meeting in October, the CAC approved renovations of the building. However, the plans also included an above-ground 4,000 gallon petroleum storage tank to provide fuel to the research vessels. The CAC requested that the UM provide more information on the location and need for the fuel tank before CAC approval for the tank could be granted.

Notable aspects of the project include:

The site is within an Intensely Developed Area (IDA) that is Buffer-exempt. It is completely impervious (i.e., covered by the existing building, paved parking and roads).

There are no Habitat Protection Areas that will be affected by the project as documented by the Maryland Forest, Park and Wildlife Service.

At the request of CAC staff, the fuel storage system project is currently under review by the Maryland Department of the Environment (MDE) Industrial Discharge Program. MDE has made preliminary comments on the storage tank and piping specifications.

Fuel for vessels is currently transported by underground pipe from an adjacent marina to the docking area. The new storage tank will be equipped with a secondary steel containment providing 110% volume capacity to prevent spillage.

Despite concerns expressed by CAC staff for the tank's proposed location adjacent to the shoreline, UM feels that there is no other acceptable location for the tank.

STAFF CONTACT: Liz Zucker

STAFF RECOMMENDATIONS: If the CAC approves the tank, the approval should be with the conditions that all MDE permit comments (including location) be met and that copies of correspondence and permits are sent to the CAC.

PATUXENT RIVER

FUEL DISPENSER

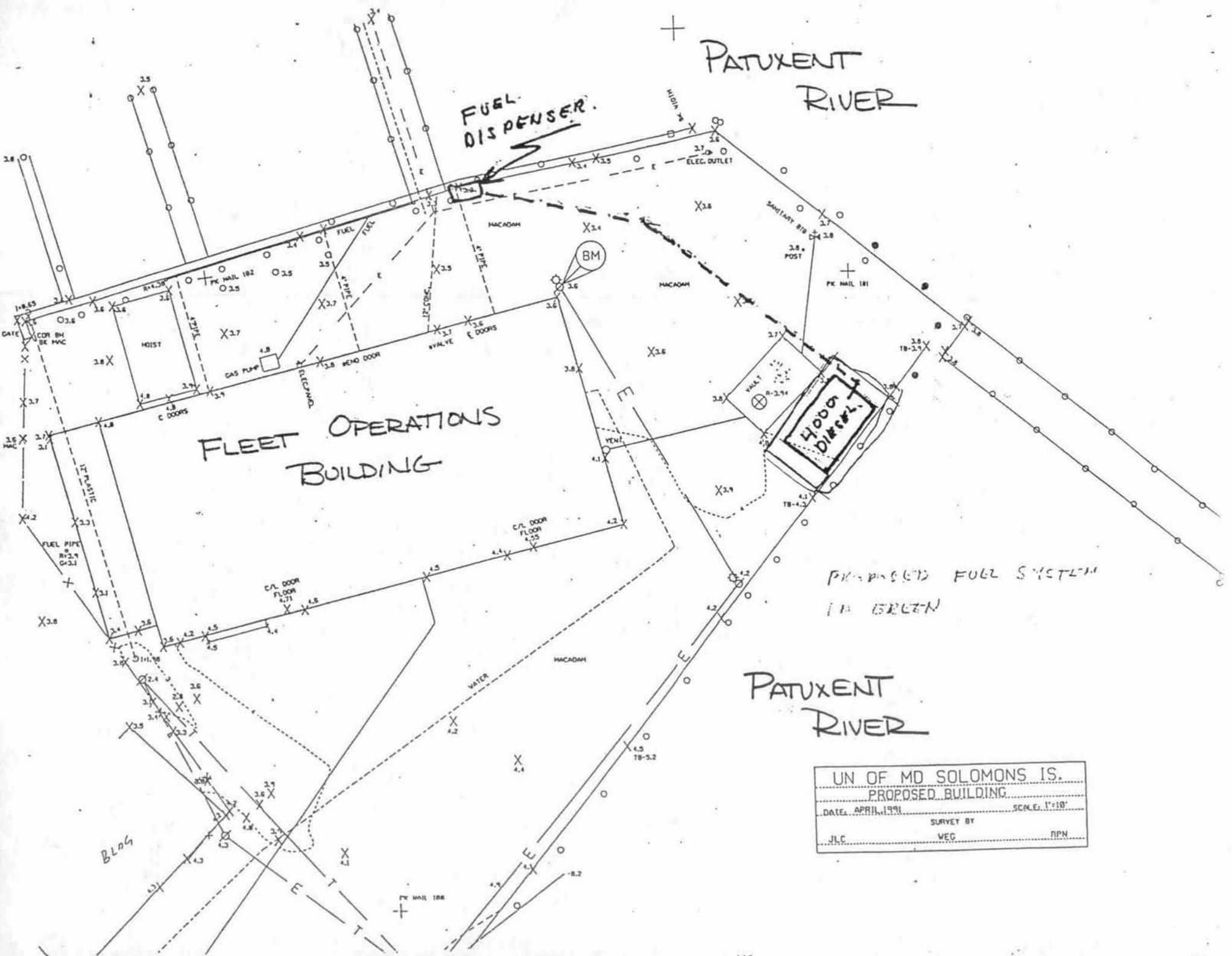
FLEET OPERATIONS BUILDING

4000 Diesel

PROPOSED FULL SYSTEM
IN GREEN

PATUXENT RIVER

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PROPOSED BUILDING		
DATE: APRIL 1991	SCALE: 1"=10'	
SURVEY BY		
JLC	VEG	RPN



CRITICAL AREA COMMISSION
STAFF REPORT
February 3, 1992

*approved
w/ 1
abstention.*

PROJECT: University of Maryland, Chesapeake Biological Laboratory, Coastal Research and Environmental Geochemistry Center

DISCUSSION: The University of Maryland is proposing to construct a new environmental research building at its Chesapeake Biological Laboratory (CBL) complex on Solomon's Island in Calvert County. The 19,000 square foot building will be located in an open area. The plans also include an underground tank for storage of heating fuel.

Notable aspects of the project include:

The site is within an Intensely Developed Area. It is located over 300 feet from the Patuxent River.

Pollutant loadings will be reduced by 10% using several infiltration trenches to manage rooftop runoff from adjacent existing buildings. Stormwater plans will be reviewed by the Maryland Department of the Environment (MDE) for stormwater requirements.

There are no Habitat Protection Areas that will be affected by the project as documented by the Maryland Forest, Park and Wildlife Service.

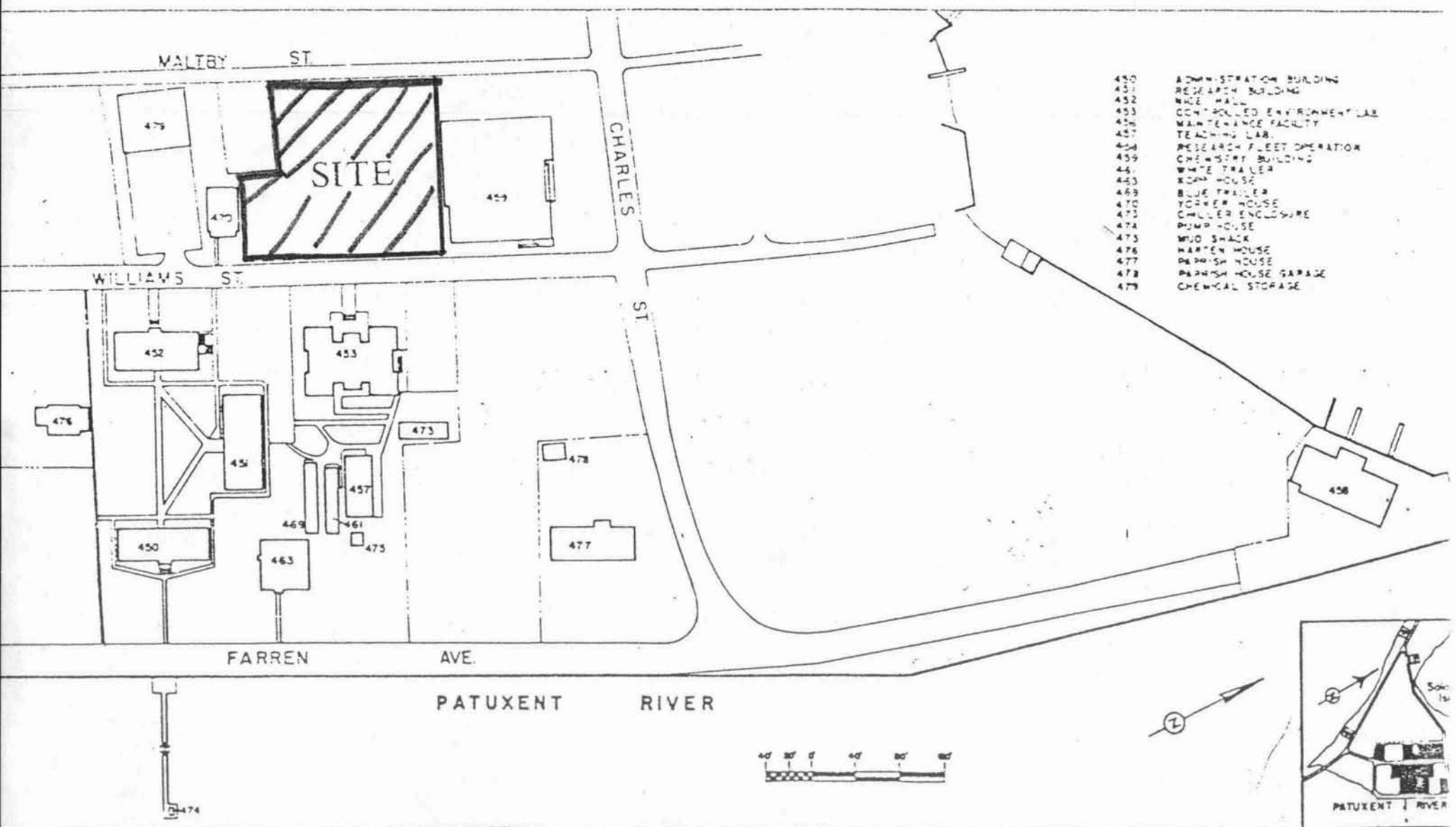
The Underground Storage Tank Division of MDE is reviewing the plans for the proposed storage tanks.

Several trees may have to be removed during construction of the building.

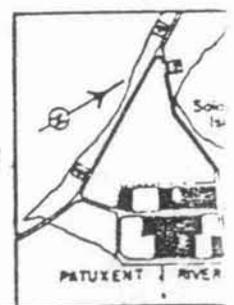
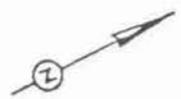
STAFF RECOMMENDATION: Approval with the following conditions:

- a) Stormwater plans are reviewed and approved by MDE and CAC staff;
- b) Storage tanks are established according to MDE's specifications and a copy of all correspondence with MDE is provided to the CAC;
- c) All trees that are removed must be replaced within the Critical Area of the CBL complex.

STAFF CONTACT: Liz Zucker



- 450 ADMINISTRATION BUILDING
- 451 RESEARCH BUILDING
- 452 NICE HALL
- 453 CONTROLLED ENVIRONMENTAL LAB
- 454 MAINTENANCE FACILITY
- 455 TEACHING LAB.
- 456 RESEARCH FLEET OPERATION
- 459 CHEMISTRY BUILDING
- 460 WHITE TRAILER
- 462 X-CAMP HOUSE
- 463 BLUE TRAILER
- 464 YORKER HOUSE
- 465 CALLER ENCLOSURE
- 466 PUMP HOUSE
- 467 MUD SHACK
- 468 MARTIN HOUSE
- 469 PARRISH HOUSE
- 472 PARRISH HOUSE GARAGE
- 473 CHEMICAL STORAGE



CRITICAL AREA COMMISSION
STAFF REPORT
February 3, 1992

*Hammer
w/
calabrese*

PROJECT: University of Maryland, Horn Point Laboratory,
Chemical Storage Building

DISCUSSION: The University of Maryland (UM) is proposing to construct a new chemical storage building at the Horn Point Laboratory research complex in Dorchester County. The building will be 60 by 50 feet (3000 square feet) in area. Crushed stone paving and a concrete pad (3200 sq. ft.) will be used to provide vehicular access to the building. The facility will provide centralized storage of chemicals which are currently kept in various locations throughout the laboratory research complex.

Notable aspects of the project include:

The site is within a Limited Development Area (LDA). It is located more than 100 feet from a ditch that leads to Lakes Cove.

The building will be located in an open field. No trees will be removed to construct the project.

There are no Habitat Protection Areas that will be affected by the project as documented by the Maryland Forest, Park and Wildlife Service.

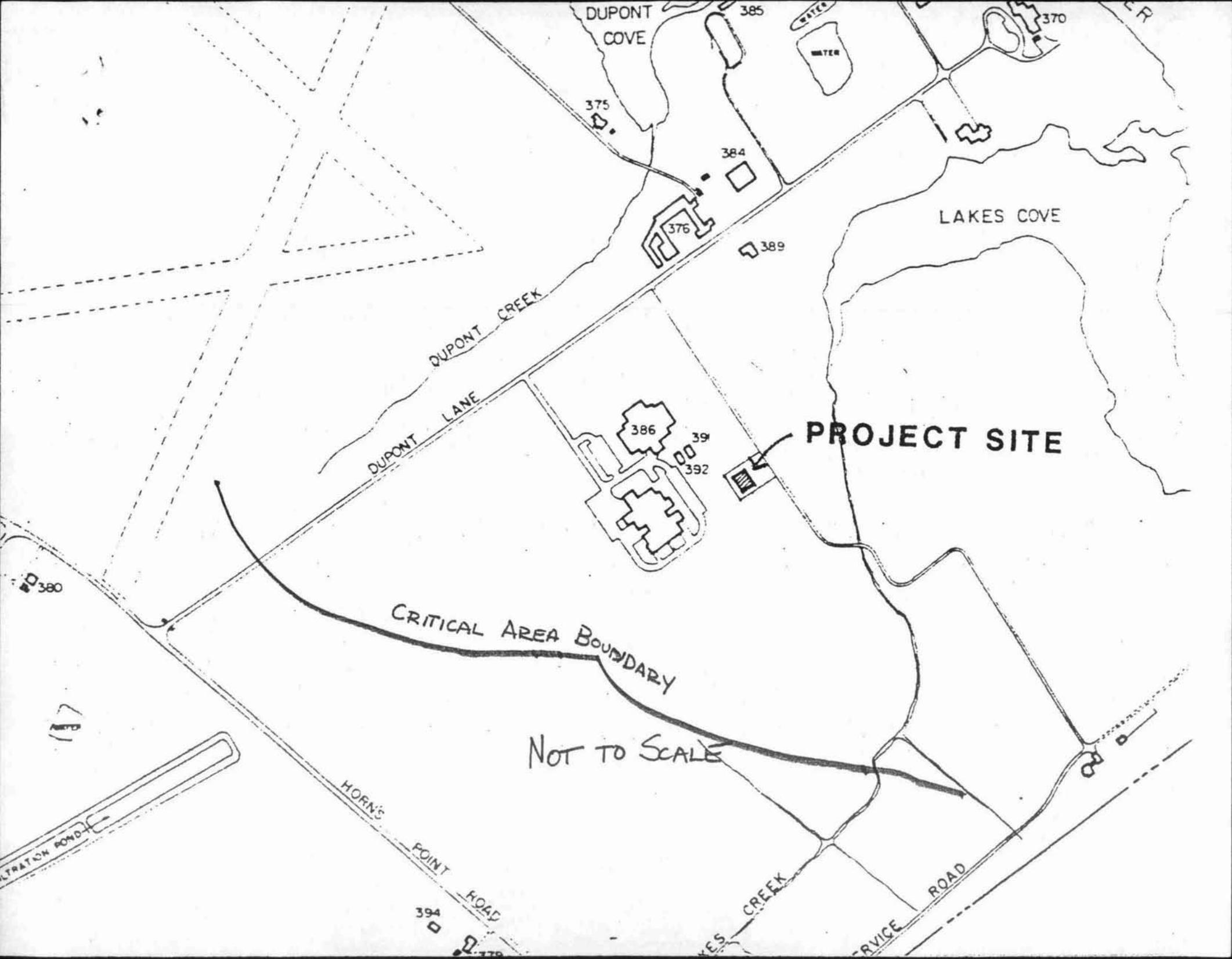
The total area of impervious surface on the site after development of the project will not exceed 15% of Horn Point's Critical Area.

The storage building will have an internal spill recovery system. It will have improved ventilation and greater security as compared to existing laboratory conditions.

Stormwater management requirements are under review by the Maryland Department of the Environment (MDE).

STAFF CONTACT: Liz Zucker

STAFF RECOMMENDATION: Approval with the conditions that the stormwater plan is reviewed and approved by MDE.



STAFF REPORT

February 5, 1992

JURISDICTION: **Somerset County**

PROJECT: **Growth Allocation - Coulbourn's Cove**

COMMISSION ACTION: For information only
Commission vote at March meeting

DESCRIPTION

The Somerset County Commissioner's have requested 16 acres of growth allocation for the project known as Coulbourn's Cove. The site is currently RCA. The majority of the site is farm field/prior converted wetlands.

The total acreage of the parcel is 68 acres, with 57 acres in the Critical Area. The applicant is proposing the creation of 20 lots ranging in size from 2 acres to 4.6 acres; 16 lots are entirely in the Critical Area, 2 lots are partially in and partially out.

The County's program requires that 1 acre of growth allocation be deducted for each detached single family site provided that the development pad is limited to no more than 20,000 square feet. The County is also to subtract all disturbed areas and areas not restricted from further development through restrictive covenants and not maintained in natural vegetation.

ISSUES

The development pad is not shown on the site plan. There is no indication that there are any restrictive covenants on the portion of the lots outside of the development pad. If there are not restrictions on the lots, then the entire lot needs to be counted against the County's growth allocation allotment.

The road and the pond area will be disturbed, however, they are not included in the amount of growth allocation to be deducted.

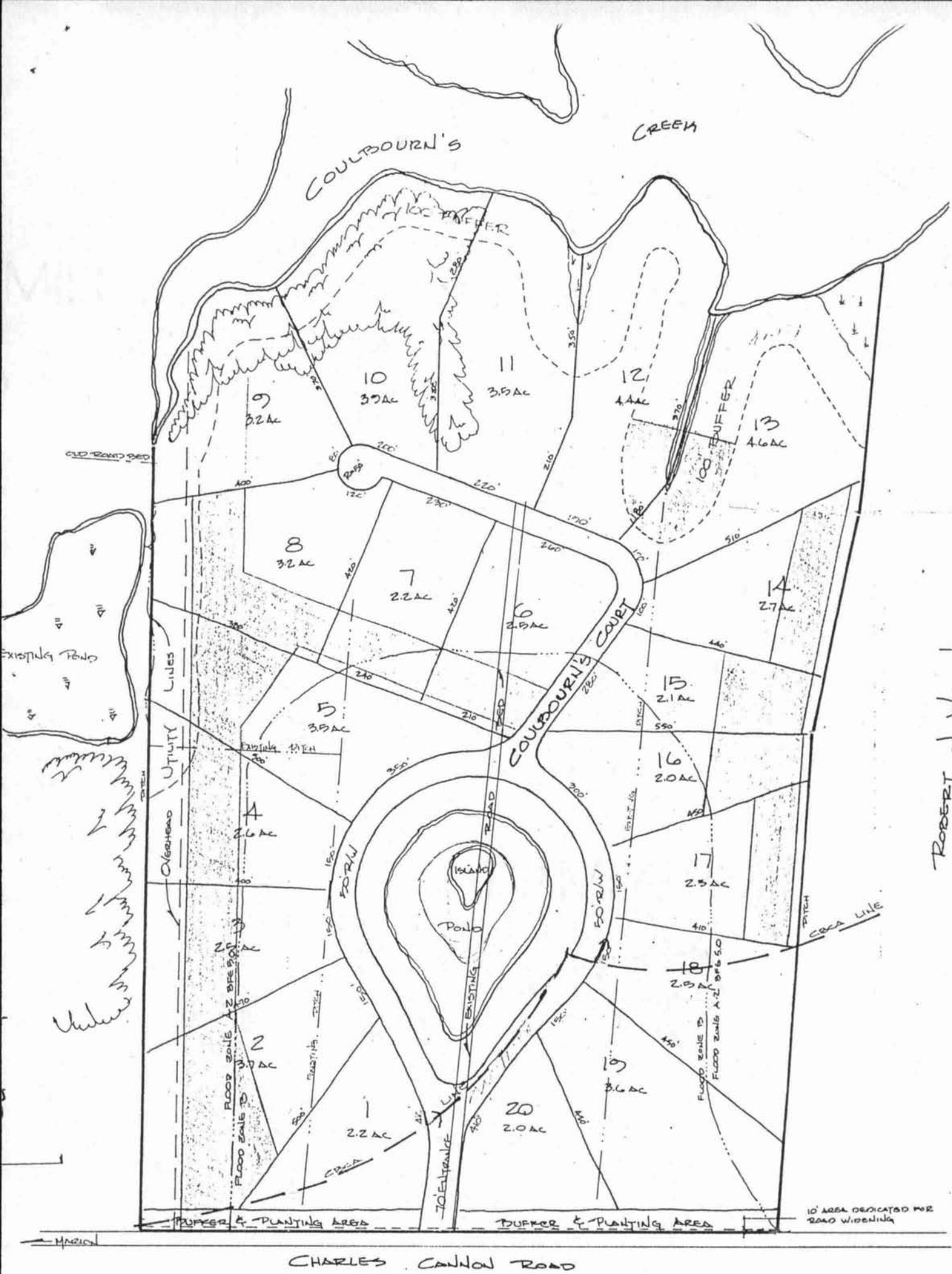
The lots that are partially in and partially out of the Critical Area need to have the dwelling and disturbance restricted to the portion of the lot outside of the Critical Area since they are not being counted against growth allocation at all. This may not be possible for lot number one.

The Somerset County Health Department is requiring a drainage system be developed before septic systems are approved. It needs to be

determined if the forested portion of the site is a nontidal wetland. If this area is a wetland any drainage systems need to be designed so they will not impact this area.

A hearing has been scheduled for Monday, February 24, 1992 in Princess Anne.

STAFF CONTACT: Claudia Jones



CHARLES CANNON ROAD

ROBERT J. WILSON

10' AREA DEDICATED FOR ROAD WIDENING

MARION

Handwritten notes:
 Utility Lines
 Clearhead
 Existing Pond
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STAFF REPORT

February 5, 1992

JURISDICTION: **Caroline County**

PROJECT: **Growth Allocation - Brick Mill Landing**

COMMISSION ACTION: For information only
Commission vote at March meeting

DESCRIPTION

The Commissioners of Caroline County have requested 7 acres of growth allocation for the project known as Brick Mill Landing. The parcel is 74.19 acres; 31 acres are in the Critical Area. The applicant is proposing to create four lots totalling seven acres. The applicant will place a conservation easement on 20 acres. This leaves a five acre residual parcel which is neither protected by easement nor counted against growth allocation.

The property is across the street from the Choptank River, so the 100-foot buffer is not an issue in this situation. There is a small creek and associated nontidal wetlands on the property; however, these will be protected by the required buffers. Although, there are some endangered species in the vicinity, none have been found on the site.

ISSUES

The Caroline County Program specifies that the entire acreage of a parcel not in tidal wetlands shall be counted against growth allocation unless the following conditions are met:

1. A development envelope should be specified which includes individually owned lots, any required buffers, impervious surfaces, utilities, stormwater management measures, on-site sewage disposal measures, and any additional acreage needed to meet the development requirements of the criteria.

2. The remainder of the parcel, including any tidal wetlands, would not count against the County's growth allocation if it is contiguous, at least 20 acres in size, retains its natural features or resource utilization activities (agricultural, forestry, fisheries activities, or aquaculture), and is restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the County and the Critical Area Commission.

-The five acre residual parcel is not being deducted from growth allocation.

-There are no restrictions proposed on the five acre residual parcel.

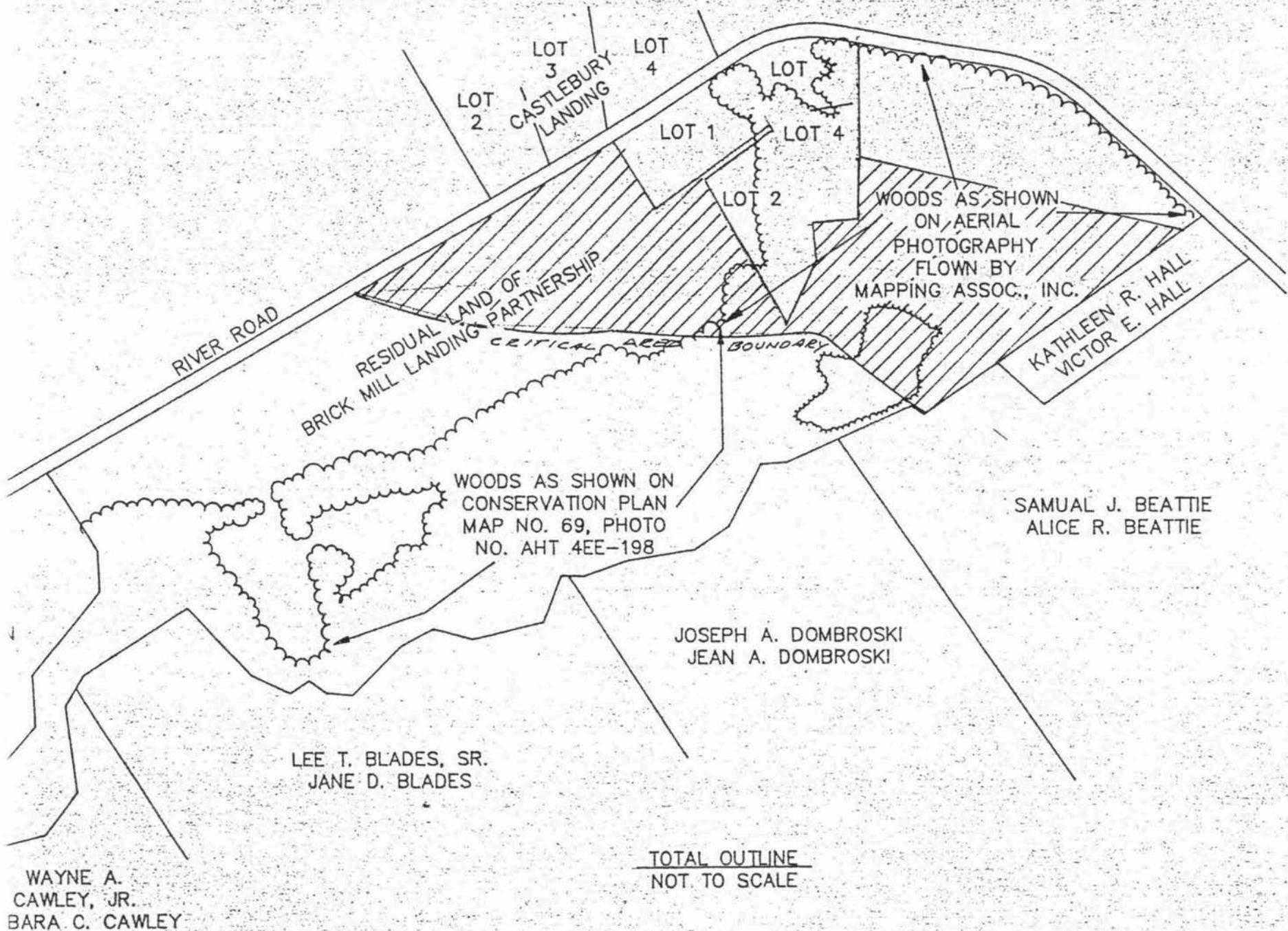
-The five acre residual parcel is not being proposed for any development at this time.

Preliminary staff recommendation is approval upon meeting one of the following conditions:

- 1 - Add the five acre residual parcel to the restricted area under easement, as required by the County's ordinance; or
- 2 - Deduct this five acre residual parcel from growth allocation.

A public hearing is scheduled for March 10, 1992 at 7pm in the Court House in Denton.

Staff Contact: Claudia Jones



WAYNE A.
CAWLEY, JR.
BARA C. CAWLEY

LEE T. BLADES, SR.
JANE D. BLADES

TOTAL OUTLINE
NOT TO SCALE

SAMUAL J. BEATTIE
ALICE R. BEATTIE

JOSEPH A. DOMBROSKI
JEAN A. DOMBROSKI

KATHLEEN R. HALL
VICTOR E. HALL

PLAT SHOWING
"BRICK MILL LANDING FARM"

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

TO: Judge North

FROM: CLAUDIA JONES

SUBJECT: Panel meeting for growth allocation
hearing in Somerset County

DATE: 2-5-92

I need a panel for a hearing in
Somerset County on a growth allocation.

I recommend the following:

Russell Blake
Bill Bostian
Shep Krech
Bob Price - alternative chairman
Tom Jarvis - Chairman
and
Sam Bowling

and
Bob Schoepflin

A hearing has been scheduled for February 24
in Princess Anne.

- #1 The project itself
- #2 Straightening out
the Somerset
Co. C.A. differences
w/ Commission
Policy

STAFF REPORT

JURISDICTION: Worcester County

PROJECT: Edward & Carol A. Brittingham

STAFF CONTACT: Theresa Corless

January 21, 1992

The Brittings own a 7 acre parcel in the RCA. There currently exists on the property a concrete building with two commercial uses in it, and a two story frame house. The Brittings wish to renovate the interior of the concrete building to accomodate three commercial uses and add gas pumps and additional parking. They intend to remove the frame house to a portion of the property which is out of the Critical Area. The county has asked for 6 acres of Growth Allocation to change the Critical Area designation to LDA (the entirety of the parcel within the Critical Area). The parcel is adjacent to an IDA area that is on the other side of Parnell Creek. The Worcester County Soil Conservation District has approved a stormwater management plan for the site.

*move it to
6 acres.
subject to
letter from
Res. Conserv.
Program.*

STAFF REPORT

JURISDICTION: Talbot County

SUBJECT: Reconsideration - Bachelor Point Marina -
Mapping Mistake

DISCUSSION: On April 30, 1991, Talbot County submitted the Bachelor Point Marina mapping mistake to the Critical Area Commission as an amendment to its Critical Area Program. On July 10, 1991, the Commission denied the mapping mistake. The staff report with the Panel recommendation presented to the Commission in July 1991 is printed on the reverse of this sheet.

In August 1991, the Talbot County Planning Director presented additional new evidence that a mapping mistake had occurred and requested that the issue be reconsidered. The Commission voted to reconsider this issue in November, 1991.

The Panel held a public hearing on January 16, 1992. The record has been left open until January 30, 1992. A Panel recommendation will be made after the record closes.

The following issues were presented by the County as new evidence that a mapping mistake was made:

- 1) The mapping rules in the Talbot County Critical Area Program include a LDA mapping criterion stating "Areas were designated as LDA by Planning Commission hearing". The Planning Commission minutes of April 1986 indicate that the County considered this area to be LDA.
- 2) The Planning Commission granted certain development approvals (expansion of marina basin and construction of 2 marina buildings in the Buffer) to the marina which would not have been granted if this site had not been considered LDA.
- 3) Former commercially zoned (C-1) properties of less than 20 acres in an LDA were zoned Limited Commercial (LC) for the Critical Area Program. This property is now zoned LC.

STAFF: Pat Pudelkewicz

STAFF REPORT

JURISDICTION: Worcester County

PROJECT: Edward & Carol A. Brittingham

STAFF CONTACT: Theresa Corless

January 21, 1992

The Brittinghams own a 7 acre parcel in the RCA. There currently exists on the property a concrete building with two commercial uses in it, and a two story frame house. The Brittinghams wish to renovate the interior of the concrete building to accomodate three commercial uses and add gas pumps and additional parking. They intend to remove the frame house to a portion of the property which is out of the Critical Area. The county has asked for 6 acres of Growth Allocation to change the Critical Area designation to LDA (the entirety of the parcel within the Critical Area). The parcel is adjacent to an IDA area that is on the other side of Parnell Creek. The Worcester County Soil Conservation District has approved a stormwater management plan for the site.

Please note that our Assistant Attorney General is currently reviewing this for legal implications and we will discuss ~~the~~ any issues at the meeting.

DRAFT

January 6, 1992

Re: A Draft Letter to the Local Jurisdictions on the Critical Area Commission's Policy on Structures Over Tidal Waters and Tidal Wetlands

Dear Local Jurisdiction:

Recently, there has been a significant increase in the number of structures that are not water-dependent being constructed over and in tidal waters and tidal wetlands of the Chesapeake Bay Critical Area. Particularly in the rapidly developing jurisdictions, a proliferation of structures such as storage buildings, gazebos, and dwellings has been established on piers or pilings in tidal waters and wetlands, waterward of the Critical Area Buffer. Because these structures are not water-dependent and may have direct as well as cumulative adverse impacts on the water quality and aquatic habitat of the Chesapeake Bay system, the appended document has been developed to clarify the Critical Area Commission's regulatory background and policies needed to address this issue.

We hope that this information will assist you in the implementation of your local Critical Area Program. Please contact me or Dr. Taylor if you have any comments or questions regarding this matter.

Very truly yours,

John C. North, II
Chairman

JCN/jjd

Enclosure

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CHESAPEAKE BAY CRITICAL AREA COMMISSION (CAC) POLICY PAPER ON STRUCTURES OVER TIDAL WETLANDS AND TIDAL WATERS

I. Background

Under the Critical Area criteria, water-dependent facilities are defined as:

"Those structures or works associated with industrial, maritime, recreational, educational or fisheries activities that require location at or near the shoreline within the Buffer...

An activity is water-dependent if it cannot exist outside of the Buffer and is dependent on the water by reason of the intrinsic nature of its operation." (COMAR 14.15.03.01).

The definition clearly characterizes water-dependent facilities in terms of the minimum 100-foot shoreline Buffer of the Critical Area. The definition does not as clearly define water-dependent facilities in terms of their location in tidal waters and tidal wetlands. Furthermore, the criteria specifically prohibit disturbance to the Buffer from structures that are not water-dependent, yet a parallel restriction for tidal waters and wetlands waterward of the Buffer is not clearly outlined by the regulations.

The Critical Area legislation regulates land use, thus the CAC focussed their regulatory efforts on land-based activities (i.e., activities landward of tidal waters and tidal wetlands). However, the CAC does have the authority to protect tidal wetlands and tidal waters under the Critical Area Law. The Law defines the Critical Area to include all the tidal waters, wetlands and submerged lands of the Chesapeake Bay as well as the area 1,000 feet landward. The CAC was empowered to protect the water quality and natural habitats of the tidally influenced water and wetland systems of the Bay in addition to 1,000 feet contiguous with the shoreline. Therefore, the CAC does have the ability to prohibit the establishment of structures that are not water-dependent in tidal waters and wetlands of the Chesapeake Bay, if such activities will adversely affect water quality and plant, fish and wildlife habitat.

II. Impacts From Structures That Are Not Water-Dependent

A number of direct as well as cumulative environmental impacts can occur from the establishment of structures over wetlands and open water. Initially, construction activities (e.g., pile driving, use of heavy equipment) can destroy or disturb wetland and benthic (bottom) plant and animal

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communities. Once structures are erected, shading will eliminate certain wetland and submerged communities or will result in a change in species composition.

When structures are impervious, the volume and velocity of stormwater runoff will increase, creating greater potential for erosion of wetlands and shallow water habitat. Also, pollutants such as nutrients and hydrocarbons collect and concentrate on structures as a result of human activities or from atmospheric deposition. These pollutants will be flushed into the water or wetlands without the filtering benefits of "buffer" vegetation and soils.

While the environmental impacts of a single structure may be minimal, the cumulative effects from a number of structures placed along a reach of shoreline can be significant. Pollutant loadings can increase to a point where water quality is severely degraded. A number of structures located in a confined waterbody can reduce flushing and circulation, also resulting in a decline in water quality. As a result of cumulative impacts, entire communities of wetland and benthic organisms may be adversely affected or even eliminated from an area.

III. Policies

The CAC policies regarding the construction of structures over tidal wetlands and waters and their Buffers are outlined below:

- A. The construction of water-dependent structures is permitted in tidal waters, tidal wetlands, tributary streams and their Buffers.

Certain types of structures are obviously water-dependent. They are necessary to provide access to the water and their intrinsic nature requires their location in, on, over or under the Buffer, tidal wetlands and tidal waters. Examples of water-dependent structures include piers, docks, moorings and swimming platforms (not associated with pools). Because they are water-dependent, the Critical Area criteria permit the construction of these types of structures in the Buffer as well as within wetlands and open water. The CAC in conjunction with the local jurisdictions will continue to implement the criteria and ensure that impacts to water quality and habitat from water-dependent structures are minimized.

- B. Structures that are not water-dependent may not be constructed within tidal waters, tidal wetlands and tributary streams and their Buffers.

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A number of structures clearly are not water-dependent as they do not provide access to the water and do not require location along the shoreline or within tidal wetlands and waters. Examples of structures that are not water-dependent include but are not limited to:

1. Dwellings
2. Restaurants, shops and other types of commercial buildings
3. Gazebos, decks, recreational areas
4. Sheds or storage buildings
5. Parking
6. Sanitary facilities

NOTE: Dwellings and other structures that are not water-dependent may be permitted on existing piers in private wetlands within Intensely Developed Areas (IDA) as outlined under Natural Resources Article §9-104 (i.e. "Housing on Piers Act" passed by the General Assembly in 1989). Under this legislation, a pier had to be in existence as of December 1, 1985 and must appear on a Department of Natural Resources (DNR) aerial photograph dated 1985. Pier expansion is limited to criteria outlined under the DNR legislation.

Because of impacts on water quality and natural habitat, the Critical Area criteria specify that the construction of structures that are not water-dependent is not permitted in the Buffer. The CAC has the responsibility of protecting the tidally influenced systems of the Chesapeake Bay as well as the 1000 foot area landward and will implement the intent of the Critical Area statute to prohibit structures that are not water-dependent in, on, over or under tidal waters, tidal wetlands, tributary streams and their Buffers.

- C. Certain structures and activities may be evaluated on a case-by case basis to determine if their location in tidal waters, wetlands and tributary streams and Buffers will be permitted.

Some structures are not obviously water-dependent and may have to be evaluated on a case-by-case basis as to whether they should be permitted in the Buffer or in tidal waters and wetlands. Certain structures and activities associated with aquaculture facilities are examples of "questionable" structures and will be examined individually with regard to proposed use and potential impacts on water quality and natural habitat.

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CRITICAL AREA COMMISSION
STAFF REPORT (Preliminary)
JANUARY 22, 1992

Project: Maryland Department of Agriculture (MDA), Mosquito Control Projects, Somerset County

Discussion: The Mosquito Control Section (MCS) of MDA, proposes to maintain 19,700 feet of existing ditches to control mosquitoes in nontidal wetlands in four locations within the Critical Area of Somerset County. All ditching will outlet to tidal sources as originally constructed. Material excavated from the ditches will be graded to a depth not exceeding 12 inches above ground level. Ditches will be approximately 30 inches wide and 24 to 30 inches deep.

Notable aspects of the project include:

- The Somerset Soil Conservation District has reviewed the project and required that excavated material be seeded with annual rye grass to stabilize soil and provide colonization of native plants.
- The Resource Conservation Division of the Department of Natural Resources is reviewing the project for possible impacts on Habitat Protection Areas (HPAs)s.
- The US Army Corps of Engineers and Maryland Department of the Environment are reviewing the proposal for a Section 404 and 401 permit, respectively.
- The State Nontidal Wetlands Division assisted CAC staff in reviewing the project.
- Because water management for mosquito control in nontidal wetlands is a new type of activity in HPAs, the MCS will provide the CAC with information on mosquito control efficacy, effects of ditching on surface water hydrology and changes in vegetation in adjacent wetlands, and information on effects of the project on nontarget organisms.

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POLICY FOR RECONSIDERATION

I. BACKGROUND

On several occasions, the Chesapeake Bay Critical Area Commission has been requested by local governments and State agencies to reconsider a decision made by the Commission on a project, a program amendment, or on a program submittal. As the powers granted to the Commission under Roberts Rules of Order do not comprehensively address all cases presented to the Commission, the following policy shall apply:

II. CIRCUMSTANCES FOR APPLICATION

- A. The Commission will exercise its power to reconsider only when there is justification and good cause.
- B. The Commission will exercise its power to reconsider only under these circumstances:
- 1) Under those circumstances to which Roberts Rules of Order, current edition, applies: Example - To those issues not based upon fraud, mistake, irregularity, and/or newly discovered evidence and which must be addressed on the same day that the issue was decided upon by the Commission.
 2. Under those specific circumstances in which Roberts does not apply:
 - (a) Fraud - An act of deliberate deception that was designed to secure something by taking unfair advantage of someone. Example - The Commission's review of a proposed amendment that was based upon intentional misrepresentation by the applicant.
 - (b) Mistake - A jurisdictional error on the part of the Commission itself in which the Commission did not have the authority to review the issue in the first place. Example - A decision made by the Commission concerning property located outside the Critical Area.
 - (c) Irregularity - An administrative process or procedure which does not conform to established rules or usual procedure. Example - Failure of the Commission to hold a panel hearing in the jurisdiction impacted by a proposed amendment. or
 - (d) Newly Discovered Evidence - Evidence that could not have been discovered in a timely fashion even if due diligence was used.

- C. The Commission will exercise its power to reconsider only when specific facts are presented and these facts have been set forth in a record which is able to be reviewed on appeal.

III. TIME FRAME OF REQUEST FOR RECONSIDERATION

- A. For allegations not based on one or more of the reasons including fraud, mistake, irregularity and/or newly discovered evidence - a request for reconsideration must be made and ruled upon at the same meeting that the Commission ruled on the underlying issue. The motion for reconsideration must be made by a member who voted with the prevailing side. Any voting member of the Commission may second the motion.
- B. For allegations based on one or more of the reasons - fraud, mistake, irregularity and/or newly discovered evidence - A request for reconsideration shall be made in writing by the local jurisdiction or State agency within 30 days of the Commission decision to the Chairman of the Commission.
 - 1. If the request is made within the 30 day consideration time frame it can only be granted by the Commission if clear and convincing proof is provided in writing at the time the written request is made that demonstrates that the Commission's prior decision was based substantially upon fraud, mistake, irregularity or if substantial new evidence was discovered after a Commission decision was made.
 - 2. If such a request is made in writing after the 30 day time frame or if the request is made verbally, neither situation will be accepted by the Chairman.

IV. PROCESS TO BE USED BY THE COMMISSION FOR RECONSIDERATION

- A. For reconsideration requests that are not based on fraud, mistake, irregularity or newly discovered evidence, Roberts Rules of Order, current edition shall be used and the decision will become final on that same day of the Commission meeting.
- B. For reconsideration requests that are based on fraud, mistake, irregularity or newly discovered evidence the following applies:
 - 1. If the request is made within the 30 day time frame, within ten (10) days of receipt of the information, the Chairman and the Assistant Attorney General, shall review the material and make an initial determination as to whether clear

and convincing proof exists for the request.

2. Within the same ten (10) days as noted above, the Chairman shall notify the requesting entity as well as the full Commission in writing that the material has been received, that an initial determination has been made, and that the request will be discussed at the Commission meeting to be held on _____ date. Copies of the submitted material will be made and distributed in advance of the Commission meeting to the voting members.
3. At the Commission meeting specified, the Chairman shall review the material with the members and present the initial determination. The local jurisdiction will be permitted to present its position at the meeting in which the discussion takes place.
 - (a) If the initial determination has been made by the Chairman that clear and convincing proof has not been provided and the members of the Commission support the decision of the Chairman by a 2/3rd vote of its voting members present, the request for reconsideration shall be denied and the entity making the request will be notified in writing by the Chairman within ten (10) days of the decision.
 - (b) If the initial determination made by the Chairman and supported by a majority vote reflects that clear and convincing proof has been provided, or if the Chairman's determination in (a) above is not supported by a 2/3rds vote of the voting members present, the following process will apply:
 - (1) The issue will be referred by the Commission to the original panel addressing the request if the majority of the voting members present agree that the original action resulted because of a panel decision. Within 30 days of the meeting, a panel hearing will be held and a panel recommendation will be prepared to be presented at the next scheduled monthly Commission meeting whereupon a final decision will be reached and the local jurisdiction shall be notified. In no instance shall the time frame for this process exceed a total of 75 days to

reach a decision by the full Commission on the matter.

- (2) The issue will remain with the full Commission if the majority of the voting members present agree that the original action was made by the full membership. If a decision as to the disposition of the issue is not made at that meeting, the next scheduled regular monthly meeting may be used for that purpose. In no instance shall the time frame for this process exceed a total of 75 days to reach a decision on the matter.

JONES & BRUCE, P.A.

ATTORNEYS AT LAW

P.O. BOX 567

PRINCESS ANNE, MD. 21853-0567

EDGAR A. JONES (1892-1972)
ALEXANDER G. JONES (RETIRED 1986)
CHARLES A. BRUCE, JR.

AREA CODE 301
TELEPHONE 651-2747

February 5, 1992

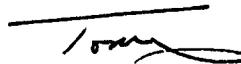
The Honorable John C. North, Chairman
Chesapeake Bay Critical Areas Commission
45 Calvert Street
Annapolis, MD 21401

Dear Judge North:

As you know I have served as a local government representative on the Commission as a result of being the City Solicitor for Crisfield. Effective Tuesday evening, February 4, 1992 I submitted my resignation as City Solicitor and it was accepted. As a consequence I acknowledge with regret that I am no longer eligible to be a member of the Commission.

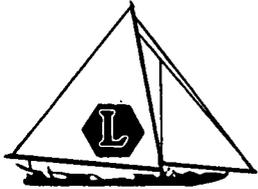
It has been a pleasure to know my fellow Commissioners and the staff and I wish all of you every continued success.

Sincerely,



Tony Bruce

TB:pea



LANGNER REALTY

File
LICENSED REAL ESTATE BROKER



FAX #410-885-5484

P.O. BOX 79
CHESAPEAKE CITY, MD. 21915
PHONE: (301) 885-2400

*Growth Allocation
HARFORD CO. JBATA*

January 15, 1992

Chesapeake Bay Critical Area Commission
Harford County Panel

I am sending this letter to represent my proxy vote of approval as to Growth Allocations & Design of B. L. C. Properties for the Riverside South 40 Project.

Since two other growth allocations were previously approved in Harford County where the buffers were not counted, I feel this approval would be consistent with our policy in previous actions.

Sincerely,

Kathryn D. Langner

Kathryn D. Langner

RECEIVED
JAN 22 1992
DNR
CRITICAL AREA COMMISSION

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
301/974-2501

GEORGE E.H. GAY
Assistant Attorney General

2-5-92

Judge, Sarah, Pat: Liz —

I spoke w/ Bowman:
Johnston yesterday. They
agreed to use our version
as the base document.

I have noted their
desired changes on the
attached. They ~~have~~ ^{are} not ~~been~~
overreading. Where these
desired changes are not
self-explanatory, I added
some comment.

Please review the attached
in anticipation of our
1pm gathering on 2-6. Thanks.

IN THE MATTER OF THE
APPLICATION OF TRIAD
PARTNERS BEFORE THE
BETTERTON BOARD OF APPEALS

*
*
*
*
*

IN THE CIRCUIT COURT
FOR KENT COUNTY

CASE NO.: CV-1875-L

* * * * *

CONSENT DECREE

WHEREAS, Triad Partners ("Triad") is the contract purchaser of approximately 310 acres of real property on Howell Point Road in the western part of the Town of Betterton ("Property"); and

WHEREAS, the Property consists of two parcels. The larger parcel, locally known as Hastings Farm, contains approximately 189 acres and is located on the north side of Howell Point Road. It is owned by Chesapeake Properties, Trustee, of Wilmington, Delaware. The smaller parcel contains approximately 121 acres on the south side of Howell Point Road. It is owned by David C. Bond of Ringoes, New Jersey; and

WHEREAS, the Property is adjacent to the Sassafras River, and as a consequence, approximately 70 acres of it are in the Town of Betterton's Critical Area ("Critical Area") and a part of it is in the Town of Betterton's Critical Area Buffer ("Buffer"). That portion of the Property which is located within the Critical Area ("Site") is depicted on the attached plat which is incorporated herein as Exhibit #1; and

WHEREAS, the Town of Betterton ("Betterton") adopted, with prior approval of the Chesapeake Bay Critical Area Commission ("Commission"), Ordinance 88-3 on the 26th day of May, 1988 which amended the Betterton Zoning Ordinance to include provisions to implement Natural Resources Article, Section 8-1809, Annotated Code of Maryland and thereby established Betterton as the approving

O.K. disagree
Note: I did not agree, on your behalf or otherwise, to any of the desired changes.

authority for all development and development activities in the Critical Area subject to the oversight and intervention authority of the Commission; and

WHEREAS, Betterton Ordinance 88-3 includes provisions that regulate development in the Critical Area, the Critical Area Buffer, and provisions for Betterton to grant variances and Growth Allocation; and

WHEREAS, sometime in early 1991, Triad submitted to Betterton's Board of Appeals ("Board") an application to locate a Planned Unit Development on the Property ("Application"). The contemplated Planned Unit Development includes several residential complexes, a restaurant/clubhouse facility, a marina, and an 18 hole golf course ("Project"); and

WHEREAS, in an opinion dated June 19, 1991, the Board conditionally granted Triad certain Planned Unit Development and related authorizations including certain variances ("Decision"); and

WHEREAS, on or about July 16, 1991, the Commission initiated this appeal from the Decision ("Appeal"); and

WHEREAS, the Appeal asserts that the Decision was erroneous, illegal, arbitrary and capricious for the many reasons set forth in the Commission's Petition on Appeal which was filed in the Appeal on or about July 29, 1991; and

WHEREAS, Triad vigorously denies that the Decision is in any way illegal, arbitrary and capricious; and

WHEREAS, for purposes of the entry of this Decree and its

o.k

subsequent enforcement, the parties agree and this Court determines that it has subject matter jurisdiction over the Appeal; and

WHEREAS, the Commission and Triad entered into negotiations for the purpose of modifying the Project so as to resolve their conflicts and thus avoid further litigation concerning the Decision; and

WHEREAS, said negotiations have resulted in an agreement as to the maximum extent of disturbance, i.e., limited development encroachment onto highly erodible soils, which may be conducted by Triad on the Site; and

WHEREAS, the parties wish to resolve all of the matters asserted by them in the Appeal, and for that purpose alone, consent to the entry of this Decree.

NOW THEREFORE IT IS HEREBY AGREED TO BY THE PARTIES AND ORDERED AND DECREED by the Circuit Court for Kent County, this _____ day of _____, 1992, as follows:

1. The terms used in this Decree shall be defined as set forth in the Betterton Zoning Ordinance except for the terms "Development and Development Activities" and "Water-dependent Facilities", which shall have the following meaning:

Development or Development Activities - Any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; cutting, clearing or other disturbance of vegetation or any combination thereof, including the subdivision of land.

Water-Dependent Facilities - Structures or works associated with industrial, maritime, recreational, educational, or fisheries activities which, due to their intrinsic nature, require location at or near the shoreline within the Buffer. This shall not include any type of parking facility.

2. Triad shall limit development or development activities in the following areas to that which is provided in this Paragraph:

a) On that portion of the Site located channelward of Line #2 on Exhibit #1, Triad may construct ~~only six~~ multi-family residential ~~dwelling~~^{structures} and one restaurant/clubhouse facility. The development pad of no more than four of the residential structures and the restaurant/clubhouse facility may each slightly intrude onto highly erodible soils with a cumulative intrusion onto highly erodible soils not to exceed ~~(.4)~~^{*} acres. Associated roads, cart paths, and the access road to the water-dependent facility shall not have a cumulative intrusion onto highly erodible soils in excess of ~~(.35)~~^{*} acres. Other development or development activities may not occur in this portion of the Site unless specified in this Decree. **

b) On that portion of the Site landward of Line #2 on Exhibit #1, Triad shall limit intrusion of any impervious surfaces onto highly erodible soils to 1.5 acres and cutting or clearing of vegetation ^{on areas of steep slopes and highly erodible soils} associated with the development of golf course holes numbers 1, 15 and 18 shall not exceed (to be completed upon review of architect's revision) acres.

*
*
*
c) Within the wildlife corridor as depicted on Exhibit #1, any development or development activity conducted by Triad shall be in accordance with this Decree and ~~with a detailed site plan that~~ ^{reviewed the written recommendations of} is expressly approved in writing by the Wildlife Service, Resource Conservation Division, Maryland Department of Natural Resources, to the extent practicable.

* Johnston wants opp. to review #ers.

** They would like to delete this. I suggested that deletion unnecessary if * changes are made.
*** This land was suggested by me. It does not,

d) In the Critical Area Buffer, cutting or removal of vegetation shall be limited to the minimum extent required to develop the Site as shown on Exhibit #1 and to the minimum extent required to provide access to private piers, or to install, construct and/or maintain a shore erosion protection device or measure, or water-dependent facility approved through applicable local, state and/or federal permits. Cutting or clearing of vegetation shall be in accordance with a Forest Management Plan prepared by a licensed forester[^] or landscape architect and approved by the Resource Conservation Division, Maryland Department of Natural Resources.

In accordance with the Forest Management Plan, Triad may:

- cut or remove vegetation in the Expanded Buffer to the minimum extent necessary to conduct the development or development activities as shown on Exhibit #1, to provide access to private pier(s), to install, construct or maintain a shore erosion protection device or devices, or water dependent facility as approved by the appropriate local, state and federal authorities holding jurisdiction over such matters;
- remove individual trees on the Property which are in danger of falling and causing damage to the dwellings or other structures or which are in danger of falling and causing blockage of streams or creating accelerated erosion on the property;
- use approved horticultural practices to maintain individual trees on the property; and ^{* the health of}
- utilize other cutting techniques within the Expanded Buffer and under the advice and guidance of the Department of Agriculture and Natural Resources if necessary to preserve the forest from extensive pest or disease infestation or threat of fire.

3. No development or development activity shall occur in the following areas:

- a) On steep slopes on the Site which are contiguous to the

* we would like to add this 5 although I neglected to mention it in my conversation

100-foot Buffer and thus are part of the Expanded Buffer as determined in accordance with Betterton's Critical Area Program ("Betterton Program"), with the exception of providing access to water-dependent facilities, and providing an airway at the 18th hole of the golf course with that disturbance for the airway not exceeding (to be completed upon review of architect's revision) acres on steep slopes.

b) Within 225 feet of mean high water, with the exception of shore erosion control measures, water-dependent facilities and access to water-dependent facilities. Cutting or clearing of vegetation within 225 feet of mean high water for these purposes must be done in accordance with the Forest Management Plan described in paragraph 2(e) of this Decree.

Access for purposes of paragraph 3 of this Decree shall mean one roadway ~~built solely~~ ^{designed} for the purpose of providing emergency vehicles a suitable surface upon which to drive to water-dependent facilities located on the Site.

4. Triad and the Commission agree to the conceptual location for the multifamily residential structures, the restaurant/clubhouse, the storm sewer systems and sanitary systems, water lines and mains, golf course cart paths, pedestrian ways, access ways and sidewalks as shown on Exhibit #1, but recognize that this does not alter the Commission's authorities concerning site plans for the project when they are finalized.

5. Triad may conduct development or development activities on areas of highly erodible soils as shown on Exhibit #1 only after

demonstrating to Betterton¹ ~~which shall be assisted in its~~
~~technical review, by~~ the Kent Soil Conservation Service, ~~and~~
~~obtaining a written statement~~ ^{oversight} from the Commission staff that there ^{with}
will be no impact on water quality as a result of the development
or development activity. The demonstration of no impact on water
quality will be based on the application of a combination of
pollutant loading and management effectiveness ratings, including
those contained in:

- a) Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMP's, July 1987;
- b) the SCS Universal Soil Loss Equation; and
- c) any other method that may be agreed upon by the Commission staff and Triad Partners.

6. Triad may, upon obtaining all appropriate and necessary local, state and federal permits, locate a water-dependent facility, e.g., Marina, within the Critical Area Buffer, provided such facility complies with the requirements of the Betterton Program and the Decision. Nothing in this Decree shall be construed to restrict or prohibit development or development activities which Triad would otherwise be entitled to pursue on the Property provided that the appropriate and necessary local, State and federal permits are obtained.

7. Triad ~~shall conduct~~ ^{may construct} shore erosion protection measures on that portion of the Site adjacent to the SassafRAS River in accordance with the Betterton Program and ~~after written approval of such measures is issued by Commission staff~~ and the Shore Erosion Control, Boating Administration, Maryland Department of Natural

Resources. If so directed by Shore Erosion Control, this shall include placement of heavy stone at the toe of the bank along its entire length and the planting of vegetation on the slope of the bank for its entire length. ~~It is understood that these erosion control measures will cost in excess of two million dollars.~~ *

8. Commission staff and/or its representatives may inspect the Property at reasonable times with proper and reasonable notice, to determine compliance with this Decree.

9. All parties agree that Exhibit #1 has been thoroughly reviewed by the Commission staff in the course of the appeal process and subsequent negotiations for compliance with the Betterton Program. The Commission agrees to expedite the Growth Allocation process by promptly scheduling its required panel hearing on Growth Allocation after Betterton has approved the Growth Allocation and by rendering its decision on Growth Allocation at the next Commission meeting following the panel's public hearing held to consider the Growth Allocation aspects of the Project.

10. On the Commission Chairman's referral of an alleged violation of this Decree to the Attorney General, the Attorney General may bring an action seeking remedies in accordance with this Decree.

11. Upon a finding by any Court of competent jurisdiction, or any other reviewing entity mutually agreed upon by the parties, of a violation of this Decree by Triad, Triad shall restrain from further violation, ~~pay to the Commission damages equal to the~~

* I made no comment on these changes at all.

~~estimated cost, as determined by Commission staff,~~ to restore the area to its condition prior to the occurrence of the violation as well as any waters and/or plant and wildlife habitat impacted. ~~as determined by Commission staff, by the violation.~~

12. Upon a finding by any Court of competent jurisdiction, or any other reviewing entity mutually agreed upon by the parties, of a violation of this Decree by Triad, Triad ^{may} ~~shall~~ be responsible for the reasonable costs of enforcement ~~including, but not limited to, reasonable attorneys fees, court costs and expenses incurred by the Commission.~~

13. In addition to any other remedy of a violation provided herein, upon a finding by any Court of competent jurisdiction, or any other reviewing entity mutually agreed upon by the parties, or a violation of this Decree by Triad, the Attorney General may invoke any of the remedies available to Betterton's authorities under the Betterton Program and/or Betterton's Zoning Ordinance.

* 14. Nothing in this Decree shall be construed to restrict or prohibit the Commission from taking any action in any other proceeding or with respect to any other application relating to Triad, the Project or the Application. This shall include, but shall not be limited to, application for Growth Allocation, shore erosion control measures, Planned Unit Development approval and/or Site Plan approval.

15. The Commission shall immediately dismiss the Appeal with prejudice.

* Both Bowman & Johnston are troubled by this. I explained its importance, from our perspective, and the "sun the light." Particularly Johnston. I suspect that if we contend that they just have to rely on our good faith, that they'll

Judge

Approved and consented to
as to form and substance

George E. H. Gay
Assistant Attorney General
Dept. of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 974-2501
Attorney for Appellee

John C. North, II
Chairman, Chesapeake Bay Critical
Area Commission

Paul M. Bowman, Esquire
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Chestertown, Maryland 21620
(410) 778-5171
Attorney for Appellant

Earl C. Savino
General Partner, Triad Partners
P.O. Box 356
Chadds Ford, Pennsylvania 19317



LANGNER REALTY

Feb - Hall
LICENSED REAL ESTATE BROKER



FAX #410-885-5484

P.O. BOX 79
CHESAPEAKE CITY, MD. 21915
PHONE: (301) 885-2400

January 15, 1992

Chesapeake Bay Critical Area Commission
Harford County Panel

I am sending this letter to represent my proxy vote of approval as to Growth Allocations & Design of B. L. C. Properties for the Riverside South 40 Project.

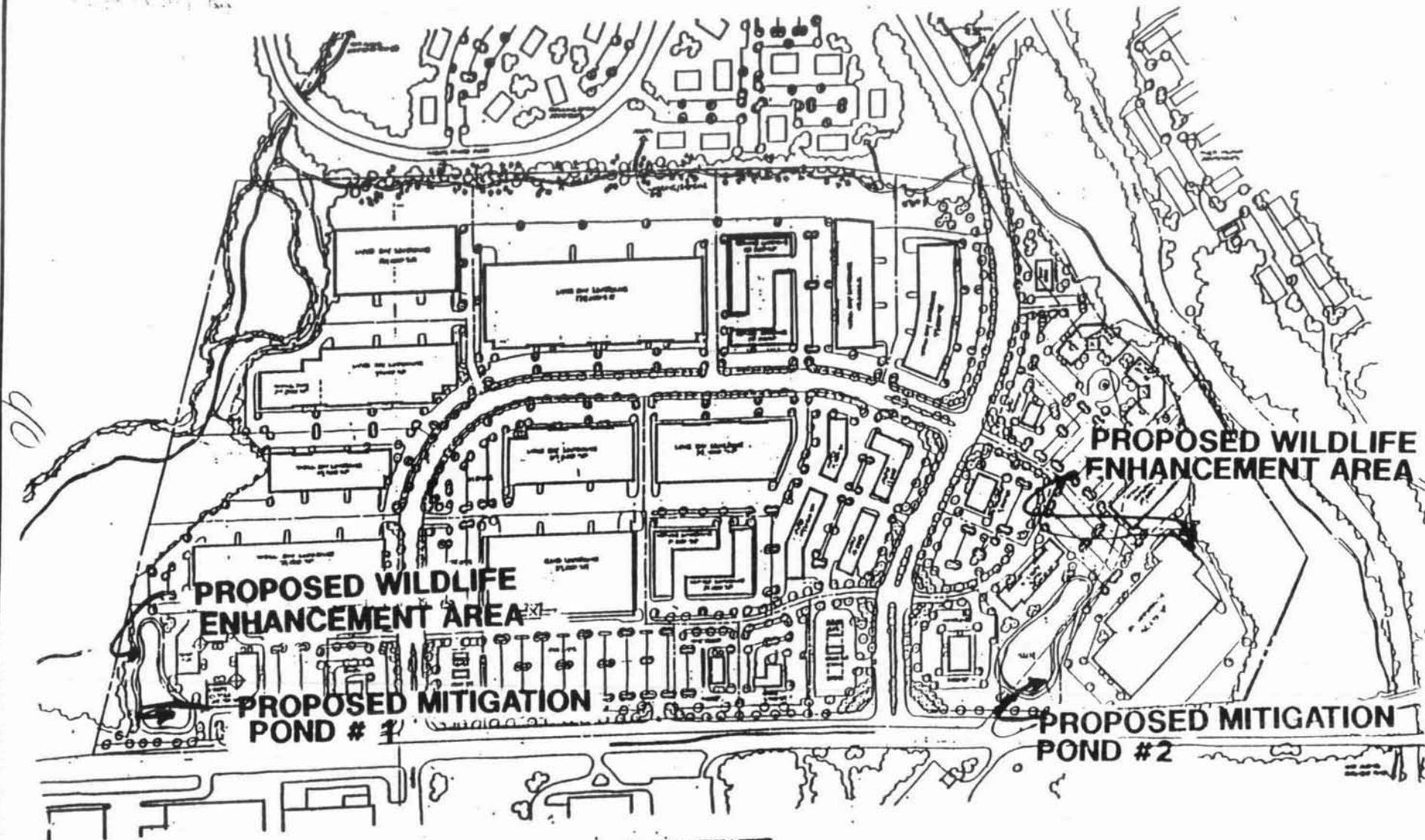
Since two other growth allocations were previously approved in Harford County where the buffers were not counted, I feel this approval would be consistent with our policy in previous actions.

Sincerely,

Kathryn D. Langner

Kathryn D. Langner

RECEIVED
JAN 22 1992
DNR
CRITICAL AREA COMMISSION



FREESTATE
 BOWIE COUNTY, MARYLAND

PROPOSED MITIGATION LOCATION PLAN

NOT TO SCALE

EXPLORATION RESEARCH, INC.
 8318 FORREST AVENUE, SUITE 101
 HISTORIC ELLICOTT CITY, MD. 21043
 (301) 750-1150
 DATE: 8/3/80

90-0692

PANEL REPORT

March 4, 1992

JURISDICTION: **Caroline County**
PROJECT: **Growth Allocation - Brick Mill Landing**
COMMISSION ACTION: **VOTE**
RECOMMENDATION: **APPROVAL with condition**

DESCRIPTION

The Commissioners of Caroline County have requested 7 acres of growth allocation for the project known as Brick Mill Landing. The parcel is 74.19 acres; 31 acres are in the Critical Area. The applicant is proposing to create four lots totalling seven acres. The applicant will place a conservation easement on 20 acres. This leaves a five acre residual parcel which is neither protected by easement nor counted against growth allocation.

The property is across the street from the Choptank River, so the 100-foot buffer is not an issue in this situation. There is a small creek and associated nontidal wetlands on the property; however, these will be protected by the required buffers. Although, there are some endangered species in the vicinity, none have been found on the site.

ISSUES

The Caroline County Program specifies that the entire acreage of a parcel not in tidal wetlands shall be counted against growth allocation unless the following conditions are met:

1. A development envelope should be specified which includes individually owned lots, any required buffers, impervious surfaces, utilities, stormwater management measures, on-site sewage disposal measures, and any additional acreage needed to meet the development requirements of the criteria.
2. The remainder of the parcel, including any tidal wetlands, would not count against the County's growth allocation if it is contiguous, at least 20 acres in size, retains its natural features or resource utilization activities (agricultural, forestry, fisheries activities, or aquaculture), and is restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the County and the Critical Area Commission.

-The five acre residual parcel is not being deducted from growth allocation.

-There are no restrictions proposed on the five acre residual parcel.

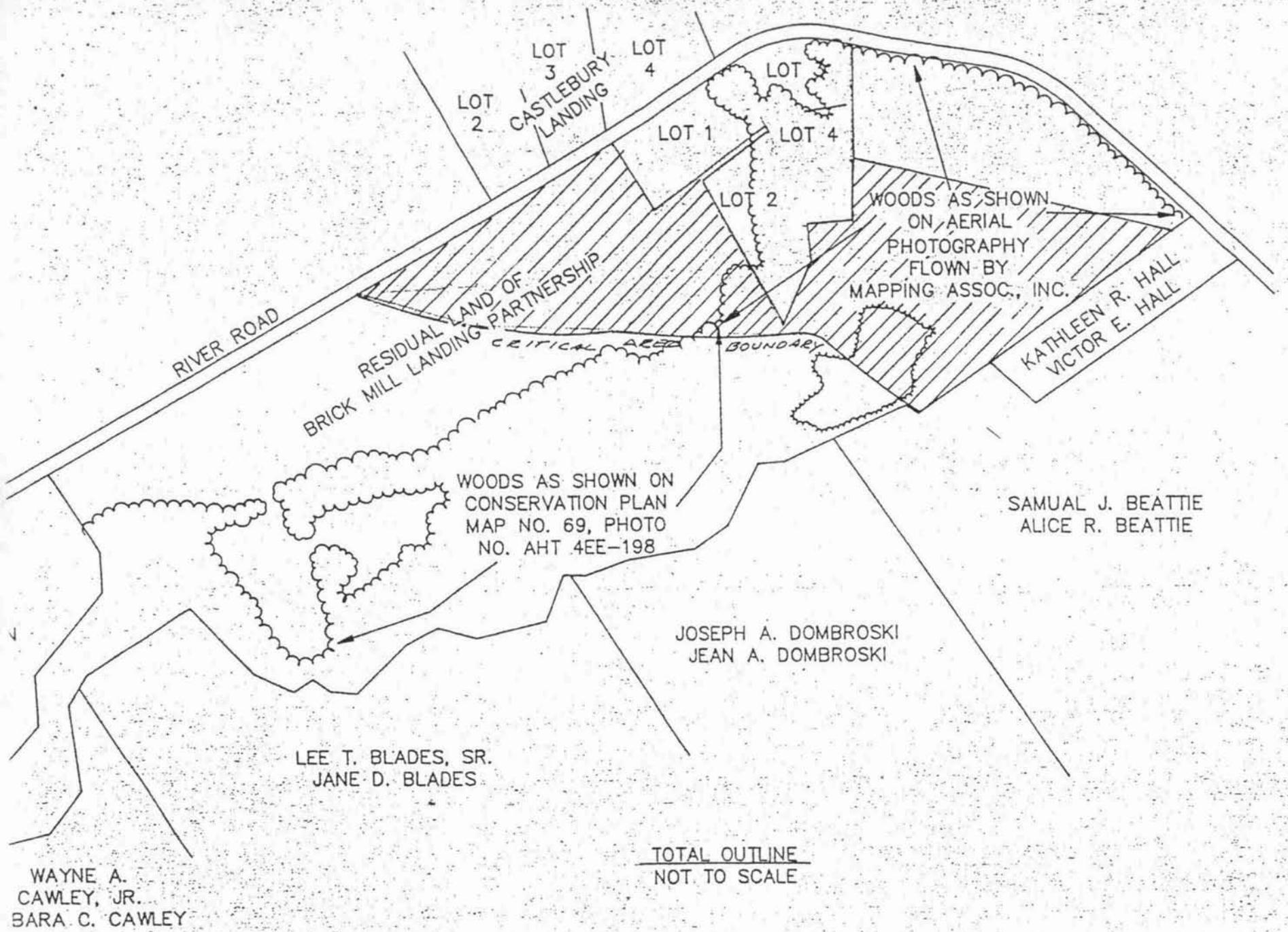
-The five acre residual parcel is not being proposed for any development at this time.

Panel recommendation is approval upon meeting one of the following conditions:

- 1 - Add the five acre residual parcel to the restricted area under easement, as required by the County's ordinance; or
- 2 - Deduct this five acre residual parcel from growth allocation.

A public hearing was held on February 10, 1992 in Denton.

Staff Contact: Claudia Jones



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TOTAL OUTLINE
NOT TO SCALE

PLAT SHOWING
"BRICK MILL LANDING FARM"