

Committee Meetings & Correspondence April 1992

MSA S.1832-93



State of Maryland

DEPARTMENT OF AGRICULTURE

Office of Resource Conservation

F. Fred Samadani, P.E.

Nutrient Management Program

410/841-5865
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50 Harry S Truman Parkway
Annapolis, Maryland 21401

AGENDA
APRIL 1, 1992
 Chesapeake Bay Critical Area Commission
 45 Calvert Street
 Annapolis, Maryland 21401

SUBCOMMITTEES

9:30 - 12:00 pm	Program Amendment and Implementation Briefing Room	Philip Barker
11:30 - 12:00 pm	Project Evaluation	Kay Langner, Chair
11:00 - 12:00 pm	Basement Conference Room	
	Special Issues - Structures On Piers	Jim Gutman, Chair
	Library	

LUNCH

1:00 - 1:10 pm	Approval of Minutes of 2/5/92	VOTE	John C. North, II, Chairman
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PROGRAM AMENDMENTS & REFINEMENTS

1:10 - 1:50 pm	Calvert County Program Amendments & VOTE Refinements	Sam Bowling, Panel Chair Dawnn McCleary, Planner
1:50 - 2:20 pm	Somerset County Growth Allocation, Colburne's Cove VOTE	Bob Price, Panel Chair Claudia Jones, Planner
2:20 - 2:45 pm	Dorchester County Ferry Landing Growth Allocation Request VOTE	Tom Ventre, Planner
2:45 - 3:00 pm	Queen Anne's County UPDATE	John C. North, II, Chairman

RECONSIDERATION

3:00 - 3:30 pm	Talbot County Batchelor's Point	Pat Pudelkewicz, Planner
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PROJECTS

3:30 - 4:00 pm	Maryland Environmental Service - Point Lookout State Park - Water Treatment Plant	Jessica Kinard, MES Duane Wilding
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LEGAL & LEGISLATIVE UPDATES & POLICIES

4:00 - 4:05 pm	Legislative Update	Sarah Taylor, Ph.D., Executive Director
4:05 - 4:30 pm	Legal Updates	George Gay, Assist. Atty. Gen.
4:30 - 4:45 pm	Old Business New Business	John C. North, II, Chairman

Decision Pending. Our process should be accelerated. We are on a tight schedule. Crit Area Act. Unpredictable. Personal.

Raw One - We may have to amend the law to get around this (Virginia of decision).

*Roger
Mr. Smith, attorney for the applicant.*

*441 HB
633 HB*

*Grand matter - Betterton - mtg. next Thurs. iron out wrinkles
St. Mary's variance - garybo - Enoch Burris file an Ex Parte communication*

*- Ple. mail your disclosure statement directly - Apr 30th
- DHCD Crownsville - conference room May 6th
Wharf argued - wait for decision.
Black Marsh - DNR attyp Motion to Dismiss Reply from Coalition - not to Issue - whether we are making contested case decisions*

under APA

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1:50 - 2:20 pm	Somerset County Growth Allocation Colburne's Cove VOTE	Bob Price, Panel Chair Claudia Jones, Planner
2:20 - 2:45 pm	Dorchester County Ferry Landing Growth Allocation Request VOTE	Tom Ventre, Planner
2:45 - 3:00 pm	Queen Anne's County UPDATE	John C. North, II, Chairman

13:16 approved w/caveat
19:10 approved
8-pg letter pretty much addressing 2 of 4 issues

RECONSIDERATION

3:00 - 3:30 pm	Talbot County Batchelor's Point	Pat Pudalkewicz, Planner	<i>2554 acres Growth Allocation</i>
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17:1 denied (debit G.A. by mistake)

PROJECTS

3:30 - 4:00 pm	Maryland Environmental Service - Point Lookout State Park - Water Treatment Plant	Dwayne Wilding Jessica Kinard, MES
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approved

LEGAL & LEGISLATIVE UPDATES & POLICIES

4:00 - 4:05 pm	Legislative Update 2 bills - imp surf. variance - Add DOT sec to CBCAC	Sarah Taylor, Ph.D. Executive Director
4:05 - 4:30 pm	Legal Updates	George Gay, Assist. Atty. Gen.
4:30 - 4:45 pm	Old Business New Business	John C. North, II, Chairman

*maybe mtg
DHCD mtg
Crownsville*

Wharf at Handy Pt argued 3-31-92
Black Marsh - motion to dismiss filed
(whether CAC making "contested case" decisions)
Betherton (Triad)
St. Mary's Variance Appeals - - Gazebos
- Pool in buffer

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10:00 - 11:00 am	MOU - MDOT	Jim Gutman, Chair
11:00 - 12:00 pm	Basement Conference Room Special Issues - Structures On Piers	Jim Gutman, Chair
	Basement Conf. Room LUNCH	
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PROJECTS

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LEGAL & LEGISLATIVE UPDATES & POLICIES

4:00 - 4:05 pm	Legislative Update	Sarah Taylor, Ph.D. Executive Director
4:05 - 4:15 pm	Policy on Reconsideration <i>George has not had time to review yet.</i>	Robert Price, Panel Chair Sarah Taylor, Ex. Director
4:15 - 4:30 pm	Legal Updates	George Gay, Assist. Atty. Gen.
4:30 - 4:45 pm	Old Business New Business	John C. North, II, Chairman

CHESAPEAKE BAY CRITICAL AREA COMMISSION
Decoy Museum
Havre de Grace, Maryland
Minutes of Meeting Held
March 4, 1992

*approved
as written*

The Chesapeake Bay Critical Area Commission met at the Decoy Museum in Havre de Grace, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

Barker, Philip	Bostian, William J.
Bowling, Samuel Y.	Corkran, William H., Jr.
Elbrich, Joseph J., Jr.	Gutman, James E.
Hickernell, Ronald	Jarvis, Thomas L.
Krech, Dr. Shepard	Langner, Kathryn D.
Phillips, G. Steele	Price, Robert R.
Whitson, Michael J.	Williams, W. Roger
Hearn, J. L., Md. Dept. of Environment	Lawrence, Louise, Md. Dept. Agriculture
Peck, Jim, Md. Dept. of Natural Resources	Schoeplein, Robert, DEED
Carolyn Watson for Parris Glendening	Larry Duket for Ronald Young of MOP

The minutes of February 5th, 1992 were read and approved as written.

Chairman North asked Mr. Ren Serey to report on the **Choptank River Fishing Piers State Park, Shoreline Stabilization.**

Mr. Serey gave the Commission members a brief description of the proposal in a staff report and map that he distributed to them and is as follows:

The Department of Natural Resources proposes to construct offshore stone breakwaters and a stone revetment for erosion control on the Talbot County side of the Choptank River Fishing Piers State Park. At its meeting in November, 1991, the Commission approved a revetment for shore erosion control on the Dorchester County side of the park. The Commission approved the park Master Plan at the September, 1991 meeting. Under terms of the Master Plan approval, the Commission must review specific development projects.

Three stone breakwaters will be constructed approximately 140 feet offshore from the existing revetment north of the Frederick Malkus (Route 50) Bridge. Approximately 500 feet of stone revetment will be placed along the shoreline of the Choptank River, extending north from the existing revetment. The Department will upgrade and replant the slope along this section. The Department's Natural Heritage Division has reviewed the project for the presence of threatened and endangered species. Four trees in the Buffer will be removed. Replacement of these trees and other mitigation for Buffer disturbance will be handled through afforestation approved in the park Master Plan.

Commissioner Kay Langner made a motion that the Choptank River Fishing Piers State Park Shoreline Stabilization plan be approved as presented. Commissioner Tom Jarvis seconded the motion. The motion carried unanimously.

Chairman North asked Mr. Serey to report on **Point Lookout State Park - Shoreline Stabilization project in St. Mary's County.**

Mr. Serey briefed the Commission members on the proposal in a staff report and map distributed to them and is as follows:

The Department of Natural Resources proposes to construct approximately 380 feet of stone revetment, for shore erosion control, along the Potomac River at Point Lookout State Park in St. Mary's County.

The site borders a narrow strip of land, 40-100 feet wide, between the river and Point Lookout Road. The site has eroded significantly over the last several years. The construction will disturb an area of marsh grass. This disturbance will be mitigated by planting a marsh area behind the revetment.

Mr. Serey said that under the St. Mary's County's program a disturbance of this nature in the Buffer even shore erosion protection measures would require a 2:1 mitigation planting. In order to be consistent with the County Program on the project, the Commission staff has recommended that the County program be followed using a 2:1 mitigation for Buffer disturbance, and be monitored by staff. He said that this area has also been reviewed for threatened and endangered species.

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Ms. Langner made a motion for the approval of the Point Lookout State Park Shoreline Stabilization Project with the following conditions: 2:1 mitigation for Buffer disturbance and that the project would be monitored by staff. The motion was seconded by Commissioner Bill Corkran and carried unanimously.

Chairman North asked Ms. Rena Jennings to report on the Queenstown Amendment.

Ms. Jennings briefed the Commission on the request by Queenstown in a staff report disseminated to them and is as follows:

The Town Commissioners of Queenstown are proposing an amendment to the Critical Area jurisdictional boundaries. The Town originally requested and received the approval of the Commission to include all the area in the Town within the Critical Area jurisdiction. Because the Town has determined that certain regulations regarding impervious surface requirements can not be imposed on commercial development along the Route 301 corridor, the Town Planning Commission has recommended reduction of the definition of the Critical Area to only include land within the required 1000 foot boundary.

Commissioner Shep Krech made a motion to approve the proposed amendment to the Town of Queenstown's Program, to change the boundary of the Critical Area to be consistent with the minimum requirements of the Critical Area Law of §8-1807. The motion was seconded by Commissioner Joe Elbrich.

Commissioner Samuel Bowling asked what the impact would be to their growth allocation.

Mr. Elbrich replied that there should be none because it is all LDA.

Chairman North called the question. The motion carried unanimously.

Chairman North asked Ms. Claudia Jones to update the Commission on Coulbourne's Cove in Somerset County.

Ms. Jones distributed a staff report to the Commission members which is as follows:

The Somerset County Commissioners 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 majority of the site has been farmed. A sizable portion of this farmed area is mapped as hydric soils and has since been designated by the Soil Conservation Service as being Prior Converted. There is a forested area that covers portions of lots 9, 10 and 11. Sections of the forested area are also mapped as having hydric soils. There are at present two drainage ditches that go from the road to the southwest portion of the property (toward Coulbourn's Cove). The property owner is proposing to fill these ditches and create new ditches that run along the property lines between the lots. Creation of a new drainage system on the property is being required by the Somerset County Health Department before it will approve on-site septic systems.

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 Program also requires that the portion of the lot outside of the development pad be restricted from further development and maintained in natural vegetation.

ISSUES

1. The development pad is not shown on the site plan. There is no indication on the site plan that there are any restrictive covenants on the portion of the lots outside of the development pad. The Somerset County Commissioners' Findings of Fact require that the development for the parcels in the Critical Area be limited to 20,000 square feet. However, the County's Finding on this point is incomplete. The County's requirement will only preclude the placement of structures, but would allow lawns and gardens, etc. This is not consistent with the County's definition of development pad as follows:

Development Pad--The area of a lot, within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed the remaining area of the lot must be maintained in natural vegetation. (Emphasis added)

2. The road and the pond will be a disturbed area (approximately 8.5 acres), that is not represented in the deduction for the single lots.

3. 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.

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

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be determined if the forested portion of the site is a nontidal wetland. If this area is a nontidal wetland, then the required 25-foot buffer would have to be maintained as shown on the site plan. If this area is a wetland, any drainage systems need to be designed so they will not impact this area.

Staff Recommendation: Approval with the following conditions:

1. That the County be required to deduct the 8.5 acres that will be disturbed for the road and pond area.
2. That two acres be deducted for the two lots that are partially in and partially out of the Critical Area or that restrictions be placed on these lots limiting development to the portion of the lot outside of the Critical Area.
3. That the County Commissioners amend their Findings of Fact to require that property owners maintain the portion of their property outside of the development pad in natural vegetation.
4. That any nontidal wetlands be designated on the site plan and a 25-foot buffer be placed around them.

She said that the panel had a hearing on this on Monday, February 24, 1992 in Princess Anne. The panel decided they needed extra time to come in with a recommendation for a vote at the April meeting.

Chairman North asked Ms. Jones to report on the request in Caroline County for Brick Mill Landing.

Ms. Jones briefed the Commission on the request in a staff report distributed to them and is as follows:

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.

Commissioner Shep Krech made the motion to approve the request upon meeting one or two of the conditions: 1) to include the 5 acres to the restricted area under easement to growth allocation as required by the County's ordinance or, 2) deduct this 5 acre residual parcel from the growth allocation.

Mr. Elbrich seconded the motion which carried unanimously.

Chairman North asked Ms. Theresa Corless to report on the Londonderry Subdivision Refinement in Easton.

Ms. Corless said that this would be done in two parts. She said that this is just a refinement, but since she had subdivision and site plan information, after the refinement she would present that information to the Commission. The Town of Easton proposes to grant 21.722 acres of Growth Allocation which is the entirety of the lot, to change the designation from

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RCA to IDA. She said that Easton has a map on which they designate where all their growth allocation is going to go. This site has been designated on their growth areas map. The Chairman has deemed this to be a refinement. This method of growth allocation by refinement is consistent with Easton's Critical Area Program. The Commission's procedure is to consider that once all of these standards have been met it qualifies as a refinement.

The Commission supported the Chairman's determination of refinement.

She said that the subdivision is going to be divided into three lots. Two lots will consist of a little over two acres each and one lot of 16.7 acres. This is a preliminary site plan for the large 16.7 acre lot for the Londonderry Retirement Community. It will be a phased development and eventually, the plan is to have 101 units with 166 bedrooms. A health care center is planned at some point in the future. The Critical Area Commission has received a letter from the DNR on HPA's and the only concern is the Tred Avon River. In the past it has been a nesting area for Colonial Waterbirds, but there are no plans for piers or anything on the water. As it is a preliminary site plan, all the kinks have not been worked out. One thing being done which is commendable is that although a 10% reduction in stormwater runoff is required, a 15% reduction is planned. One concern is that a recalculation of the 100' Buffer and non-tidal wetland Buffers be done. Ms. Corless said that by a rough check by staff, it appears that a 100' Buffer runs through some of the housing units, so a recalculation is needed. Another concern is that wetlands have been left off the latest version of the site plan. There is a non-tidal wetland buffer indicated on the current site plan. However, on previous site plans they have indicated the presence of both tidal and significant non-tidal wetlands which have been left off this version of the site plan. This apparent omission must be addressed. For some reason, they also neglected to put the Critical Area Line on this version. They have also indicated some trails in the Buffer which were not on previous site plans and appear to run through areas that were indicated as non-tidal wetlands on previous site plans. Also, one of their stormwater management ponds either backs up on to a non-tidal wetland or totally overlaps it, which is not very clear on their site plan. She said that she had been in contact with the Assistant Town Planner for Easton who is handling this and with the developer and is sure that these things can be worked out.

Chairman North asked Ms. Corless to report on the Snow Hill's request for refinement to incorporate the impervious surface limitation language of HB 323.

Ms. Corless said that the Chairman has determined the request to be a refinement and the language has been dealt with as a refinement in the past for other jurisdictions.

The Commission supported the Chairman's determination of a refinement.

Chairman North asked Ms. Claudia Jones to report on Queen Anne County's Program for proposed changes.

Ms. Jones told the Commission that lengthy information had been mailed to them regarding the issues and problems with Queen Anne's County and she proceeded to give a history of those problems. Her brief staff report disseminated to the Commission highlighting the issues was as follows:

Over the past three years the Critical Area Commission has notified Queen Anne's County of several omissions and deficiencies in their Critical Area Program. The issues include:

1) The County does not review building permits for Critical Area purposes. This means that the County does not review development activities which require only a building permit to lawfully proceed for Habitat Protection Areas, impervious surfaces and other requirements. 2) The County designates Buffer-exemption areas on a case-by-case basis without specific approval by

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the Critical Area Commission. 3) The grandfathering language of the County's Program requires that Habitat Protection Areas and development of water-dependent facilities meet the Criteria standards only insofar as possible. This is inconsistent with the Criteria. Attached you will find correspondence between the Commission and the County regarding these issues. Under Natural Resources §8-1809 (L), the Commission is authorized to require changes to a local program when the Commission determines that a program contains deficiencies or has omitted certain provisions of the Criteria. You are asked to read this material. At the Commission meeting on March 4, the Commission will discuss the issues raised in the correspondence and will consider appropriate action as authorized under Natural Resources §8-1809(L).

Commissioner Bob Price stated that the County's position in regards to a building permit is that conformance standards are not required either in the RCA or the LDA; but, if you need approval of the Board of Appeals for project approval for site plans, subdivisions, variance or conditional use, all the conformance standards kick in.

Ms. Jones read over the correspondence contained in Commission files generated in an attempt to resolve the problems with Queen Anne's County from 1989 - to the present.

Counsel Gay summarized that the County's Program requires a Planning Commission hearing but not that necessarily the local legislative body to review the amendment or proposal before it come to the CAC.

Commissioner Jim Gutman suggested another meeting with all parties involved for a possible resolution.

Ms. Jones stated that that was essentially what had already taken place.

Commissioner Bostian asked how many other Counties have a situation that is similar with respect to the three same issues which were raised for this County.

Ms. Anne Hairston added that there are some programs where these things are at issue, but no other program that she knows of does not review building permits at all.

Mr. Duket asked if any other jurisdiction had been so remiss in responding to correction of their deficiencies.

Ms. Jones replied, no.

Counsel Gay stated that the Critical Area Act does provide the Commission with the authority to send a notice to the County Officials indicating that the Commission believes that the Program contains a clear mistake, omission or conflict with the Criteria and that the County needs to address these deficiencies and that the County is required to adopt corrections to the deficiencies as suggested in the Chairman's notice letter.

Mr. Gutman asked about a time frame for these corrections.

Counsel Gay said he believed that it is 90 days; that when this notice is received by the County it precludes the County from issuing any approval, permit, etc., under the provisions of the local program which the Commission deems to be either in conflict with the Criteria or to contain an omission or clear mistake.

Commissioner Elbrich asked Commission Counsel if the nullification is retroactive to the beginning to the Program or as of the notification date.

Counsel Gay said that the Statute is unclear but perhaps the wiser course would be to apply it in a prospective manner.

Mr. Bostian asked whether the County had given any reason for their reluctance to pursue either the grandfathering or the Buffer motion.

Ms. Jones said that they were stating initially that they believed that the Law did not require them to do it, but they have now submitted amendments to address review of building permits.

Commissioner Williams asked whether the Planner could be at the next Commission meeting to explain to the Commission members instead of to the staff and to be asked why this has happened.

Mr. Elbrich said that perhaps a panel should be set up in the interim to discuss the issues directly with the Planner before having him come before the Commission.

Mr. Bowling asked for Commission Counsel's recommendations.

Counsel Gay said that this is something that has not been done before by

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the Commission and something that the Commission became empowered to do July 1, 1990 and is a remedy enacted by the General Assembly after recognition by that body that there was in the field a certain degree of non-compliance with the Criteria. Counsel Gay said that this is certainly a situation wherein all other approaches have been exhausted to no avail.

Mr. Bostian stated that he believes that the panel assembly for investigation should be the approach.

Commissioner Jarvis made a motion to instruct Counsel Gay to take the procedures as Counsel has described. Mr. Gutman seconded the motion.

Counsel Gay commented that all of the Commission's efforts have been directed at Mr. Stevens and the Planning Commission and Planning Office. It is the local legislative body that would have to live with or without the imposed amendments and a distinct effort should be made to focus attention on the Board of County Commissioners. And, perhaps the motion to put the County on notice should be directed to the County Commissioners.

Chairman North clarified that there had been a motion, a second and asked Counsel Gay if his suggestion was to amend the motion. He therefore asked the movant and the seconder if they were amenable to accepting the suggestion.

Mr. Jarvis accepted the amendment. Mr. Gutman accepted the amendment and commented that no explanation was required as to why they have not acted yet but to convince them that they must comply.

Mr. Elbrich asked for a clarification of the motion of whether it was to send a letter to notify the County that they were in violation and that they must change or was it to inform the County that they must enter into another level of negotiation.

Mr. Bostian asked if it would be a formal notice.

Mr. Jarvis reiterated that his motion was to follow Counsel Gay's procedures as outlined by Counsel to put the County on notice that they have a limited time to comply with the Law.

Counsel Gay said that a formal notice under §1809 of the Natural Resource Article advising the local jurisdiction of specific deficiencies in their local program is the procedure for guidance under the motion.

Ms. Carolyn Watson, Prince George's County, asked whether Queen Anne's County would be able to issue any building permits in the Critical Area once the notice had been delivered.

Counsel Gay stated that Natural Resources Article §8-1809(L)(3) provides that "local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency."

Ms. Watson said that her concern is whether it would be wise given the depressed economy to stop development in the Critical Area, and because a legislative process could take a long time to amend the program, it would be a risky decision.

Ms. Langner said that if the motion stated 30 days then they could speed things up.

Ms. Watson stated that is not the way the motion stands and would be a different approach.

Ms. Langner stated that if 30 days were given in the notice to meet compliance it might prevent a lot of hardship on the people in the County, and be more expedient than the 90 days on notice.

Mr. Bowling asked if the motion could make the notice effective 30 days from the day they receive it so that the Commission would have that amount of time to do something before the motion took effect. He said that that way they are really given 120 days, 30 days to effectuate some action and if they don't then the 90 days kicks in.

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Counsel Gay said that the law would not preclude it from being done.

Mr. Jarvis said that the only problem that he has with that is that if he were in that position and would be dragging this thing on forever, he would try to get all the approvals that he could.

Commissioner Philip Barker said that the 30 days seems reasonable to him.

Chairman North said that the 30 days limitation suggests a necessity for a further amendment to the motion.

The movant, Tom Jarvis, clarified the amendment that within 30 days something has to happen to come into compliance with the Criteria, however if nothing happens within 30 days then the legal remedies begin.

The seconder, Jim Gutman accepted the amendment as reasonable.

Counsel Gay further clarified the amendment of Tom Jarvis' interpretation as "something has to happen", something being amendment of the program to resolve or to correct the deficiencies.

Ms. Jones said that they would not have time to go through the whole process.

Counsel Gay said that it would then read "submittal to the Commission of an amendment that would correct the deficiency in the opinion of the Commission".

Ms. Watson added "with a timeline for implementation".

Mr. Schoeplein asked for a restatement of the motion.

Counsel Gay restated Mr. Jarvis's motion at his request: "The Commission determines that the Queen Anne's County Program contains certain clear mistakes, omissions, or conflicts and that the Commission shall send a notification to the Board of Commissioners of Queen Anne's County notifying the specific deficiencies as described in the presentation of Ms. Jones today and that the notice will take effect 30 days from the date of the correspondence unless the Board of County Commissioners submits a proposed amendment correcting to the satisfaction of Commission staff the deficiencies found by the Commission.

Jim Peck asked if at the meeting on April 1, 1992 the Commission could evaluate their degree of compliance and either ratify or rescind the order at that time.

Ms. Jones asked if it should not be to the satisfaction of the Chairman.

Mr. Jarvis said that he believed it would be better to satisfy the Chairman. Chairman North called the question, the motion carried with two nays (Commissioners Bostian, Elbrich).

Chairman North asked Ms. Anne Hairston to report on the proposed changes to Anne Arundel County's program.

Ms. Hairston said that the Anne Arundel County issues are similar to Queen Anne's but a different situation. Ms. Hairston briefed the Commission on the proposed changes of the Anne Arundel County Program in a staff report disseminated to them and is as follows:

The Critical Area Commission approved the Anne Arundel County program in May, 1988 as complete and sufficient. However, experience with implementation of the regulations has revealed some problems, deficiencies, or interpretations that do not appear to meet the intended goals of the Critical Area Law and regulations. Discussions and correspondence between staffs have been occurring since late spring of 1989 with Anne Arundel County with regards to certain changes in the County's program. The presentation today is not meant to present the culmination of those discussions, but rather to inform the Commission of existing situations and to provide an opportunity to give guidance to Commission staff as to the most appropriate approach to take in continuing discussions and taking actions. There are some far-reaching policies involved in these issues, and it was felt that the Commission should be given an opportunity to discuss and guide staff efforts. It should also give the Commission a solid background in the problems and issues when action on proposed changes occurs in the future.

In May, 1989, Mr. Tom Osborne, then the director of the Anne Arundel County Office of Planning and Zoning, wrote a letter to Judge North indicating that the County intended to make some program changes, particularly in reference to variance

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provisions, language commonly misread or misinterpreted, and procedures for awarding growth allocation and map changes on the basis of mistake, in response to requests to address these issues. In July, 1989, Ren Serey, Chief of the Commission's Project Evaluation Division, requested Mr. Osborne to address discrepancies in the language or interpretation of grandfathering provisions. The procedures for growth allocation and mapping mistakes were developed by the County, submitted as a program amendment, and approved by the Commission. Other changes such as the variance language and grandfathering language which have been discussed as problems have not been presented as amendments.

The County's 4-year review of their Critical Area Program is due on October 22, 1992. Commission staff has completed a review of the County Program, and identified a comprehensive list of issues which are expected to be addressed at the time of Comprehensive Review. Preliminary discussions on those suggested changes started with a meeting last September with County staff. Since then, the County has sent a letter identifying where they consider that changes are needed and where the existing language is thought sufficient. There are several issues which Commission staff considers to be of particular importance to address, whether through the 4-year review or otherwise: (1) Critical Area review for all permits in the Critical Area, (2) exemption of subdivisions placed on the wastewater treatment allocation waiting list, (3) grandfathering, and (4) environmental factors information for water-dependent facilities. Explanation of these issues follows.

(1) Currently, Critical Area review for building permits is required only on riparian property (County Council Bill 49-88, Section 2). Critical Area review is required for all subdivisions, variances, and special exceptions within the Critical Area, but for building permits, only riparian properties are specified. The lack of application of Critical Area regulations to building permits for all but waterfront lots means that a substantial portion of the Critical Area is omitted from program requirements. The distinction between waterfront and waterview (non-riparian) lots has proved particularly troublesome because of the close proximity of some "waterview" lots to tidal waters. The presence of a strip of community property only a few feet wide on the tax maps, which may in actuality be long eroded, has exempted certain landowners from Critical Area requirements, and resulted in inequitable application of Buffer regulations.

(2) Section 3 of County Council Bill 49-88, the County's Critical Area Bill, exempts certain subdivisions from the requirements of the bill based on their presence on the wastewater treatment allocation waiting list. Such exemption was clearly not provided for within the Critical Area Law or Criteria. Developments under common ownership should be reconfigured to comply with the Critical Area Criteria, per COMAR 14.15.02.07. The approval of the Woods Landing Subdivision, Section II, has illustrated the potential impact of this provision. While the County has worked to have the subdivision comply with the Critical Area criteria insofar as possible, and has required fees-in-lieu for forest clearing and avoidance of wetlands, the 100-foot buffer has not been required, and only a 50-foot buffer is being provided. Both lots and townhouse units are proposed within the 100-foot buffer. Woods Landing is mapped LDA, and consequently has substantial development potential; however, this development potential is lower than that proposed by the preliminary plat approved by the County prior to the adoption of the Critical Area Program. There are 12 other subdivisions on the wastewater treatment allocation waiting list on the Broadneck Peninsula alone; Critical Area designations are mostly LDA or IDA.

(3) The Anne Arundel County ordinances do not contain language to implement the intended scope of grandfathering in COMAR 14.15.02.07. Of particular importance is the omission of the last paragraph of the section, which states that nothing in the grandfathering section may be interpreted as altering any requirements for development activities set out in COMAR 14.15.03, and 14.15.09, i.e., the Water-dependent Facilities requirements and the Habitat Protection Area requirements, which include the 100-foot Buffer. On lots existing as of December 1, 1985, Anne Arundel County ordinances require compliance with Critical Area regulations insofar as possible. Implementation of this clause allows structures in the buffer, nontidal wetlands, or other Habitat Protection Areas without a variance on waterfront lots less than 200 feet deep.

Inclusion of the intended scope of grandfathering is crucial to the appropriate functioning of the program. The Criteria provide flexibility for development on legal lots existing as of December 1, 1985, with the exception of Water-dependent Facilities and Habitat Protection Areas. For areas where the buffer is already predominantly developed, and cannot feasibly fulfill the specified functions of the Buffer, Buffer Exemption Areas and an associated mitigation policy/regulations may be established. Other deviations from these sections must be provided for by the other avenue for site-specific considerations, the variance procedure, which includes specific standards for allowing an exception. Currently, this is not occurring in Anne Arundel County. Administrative variances could be considered, but all of the variance standards from COMAR 14.15.11 must be applied and the Critical Area Commission staff should have an opportunity to review projects which propose development in the buffer, as is required by COMAR 14.20, the regulations on notification of project applications.

(4) Another omission is the lack of ordinance language requiring the environmental factors listed in COMAR 14.15.03.04 for certain water-dependent facilities (i.e., adequate flushing, minimizing impacts on submerged aquatic vegetation, shellfish beds, etc.). These environmental factors are contained in the W-2 zone language, but are not specified in the language for the maritime zones or any other zone that could support a community marina or other regulated water-dependent facility. Some information is required for special exceptions [Zoning 12-1-3(d)], and marine service facilities have a general requirement for appraisal of environmental impact [Zoning 12-230(b)(3)], but the environmental factors required by COMAR 14.15 are not specified. Requirements for information on the eight environmental factors should be placed so that they are applicable to every water-

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dependent facility, including expansions, other than individual private piers. These environmental factors are listed in the Critical Area Program document, which is incorporated in its entirety by reference in Bill 49-88. However, the ordinance language asks for the specific factors in some situations, and only for general "environmental impact" in others, which results in the required Critical Area information being submitted only where specifically listed (or requested by the Commission). A landowner searching for submittal requirements is not clearly presented with the requirement for information, and this has been reflected in the lack of this information in some water-dependent facilities project expansions accepted by the County and sent to the Commission for review. The omission of the particular requirements results in implementation of COMAR 14.15.03 in conflict with the intent of the Criteria.

The Anne Arundel County Critical Area Program was approved by the Critical Area Commission May 18, 1988 and it became effective in August 22, 1988. Since then, various situations have arisen which appear contrary to the State Critical Area Criteria, but these situations have not been pursued through the legal avenues open to the Commission because of certain deficiencies or omissions in the County Ordinances, on which legal action would be based.

The Commission does have the authority to request changes in a local jurisdiction's program, and to have those changes presented as program amendments within 90 days. This authority is granted by Natural Resources Article §8-1809(L), as it was amended by HB1062, in circumstances where the Commission discovers a clear mistake, omission, or conflict with the Critical Area Law or Criteria. This clause grants considerable authority to the Commission, which makes it all the more important to use it wisely and with carefully considered deliberation.

Ms. Hairston said that she would like to focus on four issues (described above) that the Commission staff believe are of particular importance. She said that based on the Comprehensive Review, discussions have been initiated with County staff and they have responded saying that they believe that some changes are needed and in some situations they believe that regulations are effective as written.

Mr. Bostian asked if there is a panel to take up this issue.

Ms. Hairston said that there has been a panel established for amendments but there are no amendments proposed at this time.

Mr. Bostian stated that it seems to him that all the jurisdictions during the Comprehensive Review will have some things that are not in compliance with the Criteria and that the Commission should decide whether it will deal with all the issues rather than to take one County at a time.

Ms. Hairston said that she is trying to bring all the issues up as larger issues, but in particular, grandfathering.

Ms. Betsy Kulle, representing Woods Landing Community Association, spoke to the Commission regarding wastewater treatment waiting list exemptions affecting Woods Landing in a negative way. She said that the first phase of the Community was developed in a very environmentally sensitive way.

Commissioner Elbrich stated that the County was under an Appeal on Woods Landing.

Counsel Gay at the request of Mr. Elbrich, clarified for Ms. Kulle and the Commission the fairness guidelines for Ms. Kulle to speak to the Commission on this issue under the circumstances and Mr. Elbrich decided to remain.

Commissioner Barker asked whether Anne Arundel County has a reforestation ordinance.

Ms. Kulle said that she was not too familiar with it but to her understanding it does apply within the Critical Area.

Ms. Hairston said that fees in lieu would be required for Woods Landing at a 1:1 ratio (not a 3:1). The plans are for clearing 50%, which exceeds the 30% maximum clearing.

Ms. Kulle said 65% tree removal is the plan, and 85% of the 65% would be impervious surfaces and the banks are highly erodible.

Ms. Hairston called for direction or recommendations from the Commission as to what the staff should do regarding addressing the types of issues presented, in particular where it is discovered through working with the program that there are problems with existing parts of the Critical Area Program.

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Mr. Gutman said that the staff should continue to do what they have done in the past to bring into compliance any problem that arises.

Mr. Bostian said he believed that there is going to be a real problem when the Commission tries to tell a jurisdiction that something which was approved originally and which they have been applying is suddenly now not correct and must be changed.

Counsel Gay asked when Anne Arundel County's Program was up for review.

Ms. Hairston replied, the anniversary date is in August, and the review is due in October.

Mr. Jarvis said that according to Natural Resources Article §8-1809 passed in 1990, it clearly states that the Commission is authorized to require changes to a local program when the Commission determines that a program contains deficiencies or has omitted certain provisions of the Criteria. Mr. Jarvis emphasized that he interprets that to mean even if there were deficiencies then this is the tool to fix it and that the Commission is not stuck with a deficiency if it was overlooked.

Commissioner Bill Corkran stated that originally there were panels for the Counties to review their program and he believes that should be the procedure now.

Mr. Corkran made a motion to establish an overall review panel, and the motion was seconded by Mr. Bostian.

Mr. Bowling asked that the motion be amended to obtain the desired results of Natural Resources Article §1809.

Mr. Corkran said that had no objection of that being in the motion because that is the goal of his motion.

Chairman North called the question.

Counsel Gay asked for a clarification of the motion.

Mr. Corkran restated his motion: originally there were panels set up to review each of the jurisdictions programs and he suggests that be done now.

Mr. Bostian asked if that would be when the Programs come up for review or as problems are being discovered.

Mr. Corkran stated as reviews come up.

Mr. Bostian asked when a review panel would be appointed for Anne Arundel County.

Chairman North replied that he could appoint a panel at an appropriate time prior to action being required by the county.

Mr. Gutman asked if the panels originally appointed could stand.

Chairman North stated that Dr. Sarah Taylor, Executive Director for the Commission, suggested that would be a good approach. Chairman North called the question.

The motion carried unanimously.

Chairman North asked Ms. Liz Zucker to report on the Structures Over Wetlands Policy Paper.

Ms. Zucker said that a guidance paper on Structures Over Tidal Wetlands and Tidal Waters was developed by the Special Issues Subcommittee and had been mailed to the Commission members.

Ms. Zucker stated that the Commission staff has been working with the Department of Natural Resources, Water Resources Administration (WRA) which is developing its own set of regulations on this issue. She said that the CBCAC will be working with them to present a united front. Ms. Zucker stated as Boathouses are a controversial issue, the CBCAC will work with DNR through their regulation process and public hearing process to get feedback and to try to solidify policy in this area. She asked for a vote from the Commission and she stated that this will have to be a conditional approval because Commission Counsel has not been able to complete his legal review of

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the paper. She said the condition should be that Commission Counsel complete his review and if his comments are not substantial that the letter can be sent out, but if there are substantial comments the policy would be brought back to the Commission for discussion and another vote.

Mr. Frank Dawson, WRA, commented that DNR supports what the Commission is attempting to do. He stated that although he is new to the Tidal Wetlands Division of DNR, it is his understanding that structures are in violation when they are moved from the Buffer and are built over tidal waters. DNR will be addressing those problems through regulations.

Mr. Peck stated that the policy paper is consistent with the proposals of Water Resources Administration and would go a long way in helping to answer some questions being asked by the local jurisdictions.

Mr. Gutman made a motion to approve the guidance paper to the local jurisdictions regarding structures over tidal wetlands and tidal waters with the condition that legal review by the Assistant Attorney General be completed without significant alteration. Mr. Peck seconded the motion and it carried unanimously.

Chairman North asked Ms. Patricia Pudelkewicz to report on Bachelor Point Marina Mapping Mistake Reconsideration.

Ms. Pudelkewicz briefed the Commission on the history and the request for reconsideration of Bachelor Point Marina Mapping Mistake in a staff report disseminated to them and is as follows:

JURISDICTION: Talbot County ISSUE: Bachelor Point Marina Mapping Mistake - Reconsideration

SUMMARY: Talbot County has requested a portion (13.6 acres) of the Bachelor Point Marina parcel (Tax Map 53, Parcel 86, approximately 27 acres) be remapped from RCA to LDA by virtue of mistake.

- The standards for approval for amendments are set forth in State Law (§ 8-1809) and State criteria.
- Critical Area mapping designations shall be based on land uses and development in existence on December 1, 1985 (COMAR 14.15.02.07C).
- Land use of parcel in question on December 1, 1985:
- John Todd Boatworks - marina basin/slips, 2 buildings
- land use predominantly barren land and wetlands; extensive wetlands
- no sewer or water
- Talbot County based mapping mistake on events which occurred after December 1, 1985 (adjoining subdivision approved in 1986/87, water and sewer agreement with Oxford in 1987, Planning Commission designation in 1986).
- Based on Critical Area Law and criteria, parcel correctly mapped as Resource Conservation, and did not meet LDA criteria on December 1, 1985.

HISTORY: County originally proposed mapping mistake to the Critical Area Commission in April 1991. CAC denied mapping mistake in July 1991 stating that parcel met RCA criteria. County submitted additional information in August 1991. CAC voted to reconsider this issue at its November 1991 meeting. A public hearing was held on January 16, 1992.

DISCUSSION: The Critical Area Law and criteria set forth the standards by which the Critical Area was mapped, and state that these maps may only be changed by proof of mistake (or growth allocation). The Law and criteria pertinent to mapping and zoning map amendments are on the attached sheet.

The Law (§ 8-1809j) directs that amendments must meet the goals of the Program as set forth in § 8-1808(b) and meet the Critical Area criteria. Designation of this parcel as LDA did not meet the goals of the Critical Area Program in that an LDA classification results in increased development activity and increased numbers, movement and activities of people in the area which would create an adverse environmental impact on a parcel of land dominated by wetlands and open/barren land.

The criteria set forth the mapping rules for RCAs, LDAs, and IDAs, and state that Critical Area mapping designations shall be based on land uses and development in existence on December 1, 1985. The parcel in question did not meet any of the LDA criteria as set forth in COMAR 14.15.02.04 (attached) on December 1, 1985.

Per COMAR 14.15.02.04A, LDAs shall have at least one of the following features:

1. Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre.

Housing density in this area did not meet this criterion as of December 1, 1985. The County contends the land use density for this area met a density of 1 dwelling unit per 5 acres; however, this density was derived using

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- a proposed subdivision and undeveloped grandfathered lots. It was not based solely on existing dwelling units as required by COMAR 14.15.02.07. (Exhibit 5 of Public Hearing Record; p. 44 of Public Hearing Transcript.)
2. Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space.
On December 1, 1985, the area was dominated by barren land and extensive wetlands. (Aerial photo, 1985; letter from Gina Zawitoski to Chairman North dated January 30, 1992.)
 3. Areas meeting the standards for IDAs, but less than 20 acres.
Area did not have IDA characteristics.
 4. Areas having public sewer or public water, or both.
This parcel was not served by public water or sewer on December 1, 1985. (Exhibit 2 and 5 of Public Hearing Record; p. 44 of Public Hearing Transcript.)

The parcel in question met the RCA criteria as set forth in COMAR 14.15.02.05 (attached). The density in the area as of December 1, 1985 was less than one dwelling unit per 5 acres, and the dominant land use was wetlands and barren land.

The County's declaration of a mapping mistake was based on approvals and determinations made in 1986 and 1987, subsequent to the December 1, 1985 date set forth in the Critical Area criteria. The Talbot County policies which guided the classification of lands within the Critical Area and the mapping criteria for LDAs as set forth in its Critical Area Program (attached) are consistent with the Critical Area Law and criteria. The only criterion unique to Talbot County's Program is LDA criterion #3 which states "Areas were designated as LDA by Planning Commission". This criterion was preceded by the following two criteria:

- 1) the areas were not dominated by agriculture, wetlands, forest, barren land, surface water or open space; and
- 2) that the areas had public water or sewer or both.

All three criteria are inclusive, joined by the conjunction "and" rather than "or". The County demonstrated that the Planning Commission looked upon this area as being LDA in 1986; however, this was only one of three criteria which had to be met. Therefore, even under the Talbot County Critical Area Program, this property did not meet the standards for LDA designation.

PANEL RECOMMENDATION: The Panel recommends denial of the requested Program amendment for the following reasons:

- 1) Sufficient evidence was not produced to show that the land use of the parcel in question on December 1, 1985, was other than RCA; and
- 2) Based on the evidence presented, the requested Program amendment is not consistent with Critical Area Law and criteria.

The Panel also recommends that Talbot County and Tred Avon River Limited Partnership consider growth allocation for any intensification of use on the parcel.

Ms. Pudelkewicz stated that in November 1991, the Commission heard a request for reconsideration wherein Dan Cowee presented new evidence to the Commission. The Commission voted to look at the additional information and to reconsider the mapping mistake issue. On November 6th, 1991 the 90 day review process kicked in and it was looked upon as a new amendment request. A Panel was appointed and in January, 1992 and held a public hearing to entertain the new data presented by the County. In February, 1992, because there was not a Panel quorum to make a recommendation, the County decided to withdraw the amendment request and to bring it before the Commission in March in order to give the panel a chance to review all the information and to make a recommendation. That panel meeting was held, all members of the panel were present, and an indepth discussion of all the issues was held and the Panel report was mailed to the Commission members.

Ms. Pudelkewicz said that the new evidence presented by the County is that in 1986 the Talbot County Planning Commission had looked upon this site as LDA. One of the criteria in Talbot County's program for the designation of an area as LDA is that it be looked upon by the Planning Commission as being LDA; his evidence had never been submitted to the whole Commission.

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Based upon the County's recognizing this as LDA since 1986, certain project approvals were granted on this site in 1987 which supported the County's intention that they were recognizing the area as LDA. These projects in the Buffer would not have been approved if the County had recognized the area as RCA. She said that when the site was rezoned the County had intended it to receive a limited commercial zone, which was granted to LDA sites previously zoned commercial. This site was previously zoned commercial prior to the Critical Area Program, and according to the County, this site was intended to be LDA which is further substantiation. These were the 3 main pieces of evidence submitted by the County.

She said that when the panel deliberated on all the evidence, they looked at the Law and the Criteria to determine the basis for designating areas for IDA, LDA and RCA. She reviewed the pertinent Law and criteria which were handed out as part of the Panel report.

Ms. Pudelkewicz, with the use of a map, answered questions from the Commission on various land designations, subdivisions and lot approvals.

Ms. Langner asked if the parcel was a commercial enterprise at that time.

Ms. Pudelkewicz said that part of parcel 86, (between 13 - 14 acres) was zoned commercial; the part where the marina was located. The entire parcel was about 27 acres. Zoning was not a basis for designating IDA, LDA or RCA, the basis was existing land use.

Ms. Langner asked if the 14 acres was existing commercial at the time it was zoned.

Ms. Pudelkewicz said that there was a marina located on that site as well as two structures.

Mr. Hickernell asked about the present condition of the land.

Ms. Pudelkewicz said that there has been development based on approvals given during the interim period because they were thinking that the site was LDA.

Mr. Hickernell said that it becomes a procedural question, that the map shows RCA, the County is saying that despite that, the intent was LDA, and so their actions were determined by their intent and not by the map. When that proposal came forth, it was never submitted to the Commission, and the staff never looked at the development process as these structures were being approved and built.

Mr. Duket said that his recollection at the time he reviewed it under the interim process is that it was to be annexed by the Town of Oxford, and there was going to be over 60 acres or lots.

Mr. Hickernell asked if the Circuit Court has acted in any way upon the Commission's prior position at this point.

Counsel Gay replied, no. The status of litigation is that the Order for Appeal was filed in order for the applicant to preserve its rights to have the matter go forward in the Circuit Court. Prior to the filing of a Petition on Appeal, Counsel for the Applicant and Counsel agreed to put the Circuit Court case on hold (done with the agreement of Judge Horn in Talbot County) until the Commission has resolved 1) the reconsideration request, and 2) if reconsideration was granted, the reapplication.

Mr. Roger Truitt of Piper, Marbury Limited on behalf of Tred Avon Limited Partnership asked for time (10 Minutes) to ask questions of the staff.

Chairman North granted him 10 minutes.

Mr. Truitt asked when the panel recommendation was made based on the dominance of certain land forms under the criteria, what were the quantitative determinations made. He asked how much of the area was wetlands and what the basis was used for that.

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Ms. Pudelkewicz replied that Gina Zawadowski, the attorney who represents Tred Avon, had submitted to the Commission a site plan of the area which shows the extent of the wetlands on the property.

Mr. Truitt asked when the panel was looking at the LDA criteria in the Commission's regulations, and the four categories for LDA consideration were looked at, whether the panel determined that if one of the criteria was satisfied whether the parcel in question would be considered LDA.

Ms. Pudelkewicz said that the Criteria states "at least one" of the following. She said that in the Talbot County Program the word "and" is used instead of "or".

Mr. Truitt asked what the panel did to investigate what the proximity of public water or sewer to this parcel based on the data of December 1, 1985.

Ms. Pudelkewicz said that the Panel knew that through the evidence presented, an agreement that was signed in 1987, but there was no investigation of where the line ended for the Town of Oxford. The panel went by the evidence presented at the public hearing stating that a water and sewer agreement was signed in 1987; therefore, the Panel knew that there was no water and sewer in 1985.

Mr. Elbrich stated that there was no testimony that there was in fact water and sewer or that there was a discrepancy in the acreage or predominance in land use by acreages so that that material was not something that could be taken into consideration other than photographic evidence and site plans which were submitted.

Mr. Bostian asked if the County has determined that this is LDA, and we are looking at that decision and saying that that decision must be wrong according to the Criteria.

Mr. Duket stated that he believes that it is wrong based on the clear language of the Criteria and not the way in which the Commission looks at it in a program.

Mr. Bob Price said that the County made a determination, based on events which occurred in 1986 and 1987 and not in 1985.

Dr. Krech suggested that the Commission cannot ignore the December 1, 1985 date, and that the County try to submit it as a total growth allocation.

Mr. Barry Griffith, the Assistant Planning Director for Talbot County, speaking in Dan Cowee's absence, tried to reemphasize the County's position.

He stated that the County looks at Bachelor's Point as two separate entities, a residential component, and a commercial component. He said that of the 13 acres zoned prior to Critical Area Law, 7 acres are upland. In 1986, when they were trying to designate LDA and IDA's, the County had a very specific procedure that it used to look at residential areas and calculate whether the density was there for an LDA or not. That was all done in accordance with approved and adopted Critical Area Plan at that time. The subdivision was designated as an LDA and mapped rural residential. At the same time, the County took the position that all existing commercial properties within the Critical Area were going to be ultimately mapped either IDA or LDA depending upon their size. That is the determination that was made for the Bachelor Point Marina. There was an existing commercial marina there in 1985. In '86 and '87 permits were issued to expand the operation with the knowledge it would be mapped limited commercial when the mapping was done. In 89 when the mapping was submitted, this property along with several others, were omitted commercial property. [The County intended to map this LDA; it was an existing commercial use in 1985]. He said that it is being looked at separate from the subdivision.

Mr. Bowling said that he heard one consistent statement - that the County meant to make it LDA - not that it deserved LDA or met the criteria for LDA. He said that the Commission is bound by what was there and not what

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the County wanted it to be.

Mr. Griffith responded that the County believed that the 7 acres met the criteria of an LDA.

Mr. Jarvis asked why they were not pursuing growth allocation instead of a mapping mistake.

Mr. Griffith replied that they preferred not to lose their growth allocation; however, growth allocation has not been ruled out.

Ms. Carolyn Watson asked how much growth allocation remains in Talbot County.

Mr. Griffith stated that less than 50 acres has been approved, but pending applications are coming for another 130.

Chairman North asked for the remaining balance.

Mr. Griffith replied, over 1000 acres.

Counsel Gay asked why he believes that the property which is the subject of the application met the LDA criteria but not the RCA criteria as of December 1st, 1985.

Mr. Griffith stated that he was not there in 1985 and perhaps the developers could answer that better. However, his understanding was that there was a commercial marina pier, parking lot and two structures that were used as part of the commercial marina. He said that he is looking at it as actually meeting IDA requirements but being less than 20 acres in size.

Mr. Truitt passed out additional new exhibits. He stated there were 3 key factors to keep in mind: 1) property was in active commercial use in December, 1985; 2) the County has consistently said a mistake was made with regard to mapping; and, 3) the County acted on project approvals as if this was LDA. He stated that this parcel met LDA criteria in December 1, 1985. The Talbot County Program, which was approved in 1989 by the Commission, had a listing of characteristics that were used for mapping LDA areas. The Program does not state that you had to meet each one of those characteristics to find LDA. If you had to meet each one, then that would be much more stringent than the State regulations. Pat Pudelkewicz has acknowledged it only requires one of the State criteria to be met in order to qualify for LDA status. He stated that Talbot County worked with the interim criteria and made judgements about LDA, including this property, and then when they made the maps and went back and tried to capture all the LDA determinations, it captured virtually all except for one or two and this one is clearly a mistake. He said that the qualifying criteria that is met to make it LDA is that land is not dominated by wetlands and barren land. Wetlands are well under 50% of acreage of parcel. It is not clear from '85 aerial photos that land is barren. Finally, he said that proximity to sewer and water is another criteria. He stated that there was an Attorney General's Opinion of 1988 on what "having water & sewer" meant. He interpreted this opinion as meaning that sewer lines did not actually have to be on the property, but it had to be in reasonable proximity, there had to be available capacity, and there had to be a plan to serve an area. He believed all things met in this case. Public water and sewer were 70 feet from the site. Capacity was available at Oxford, and this area was designated in the County Water and Sewer Plan as part of the service area for Oxford.

Mr. Duket asked what was the time frame designation of the property in the County Water and Sewer Plan at the time.

Mr. Truitt said that he did not have that. He referred to Exhibit E, and Figure 22.

Mr. Jarvis asked if in 1985 there was any guarantee that there would be sewer and water.

Mr. Truitt said that he did not know of a guarantee. Mr. Henry Neff stated that in 1984 there was a referendum in Oxford that requested an

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annexation of Bachelor Point to Oxford, and the annexation was based on water and sewer being provided and the voters turned it down, but the discussion was ongoing.

Mr. Sam Bowling said action taken by public in Oxford in 1984 indicated there would be no agreement.

Mr. Bob Price asked why the water and sewer evidence was not presented at either the first or the second hearing, by the County or anyone else.

Mr. Truitt responded that the Panel recommendation caught the developer

and his attorney by surprise in focusing on December 1, 1985 date.

Chairman North asked why the date was a surprise.

Mr. Truitt said that in looking at Talbot County's Plan, the principle criterion of an LDA was that it be designated by the Planning Commission.

Ms. Pudelkewicz stated that the findings of facts from the original Panel recommendation last July referred to the December 1, 1985 date.

Mr. Larry Duket stated for the record that this is an excerpt of a draft plan from 1983 of the discussion on the Oxford area and the tax supply does not mention sewer being extended to Bachelor Point; the map does not show anything but a general geographic area with no patterns as to what area should be served and under what time frame.

Ms. Deborah Renshaw, Talbot County Planning Director in 1985, said that this was one of the first projects that was reviewed by the County under the interim findings program and they were hoping to protect the growth allocation. She said this was everyone's big concern.

She stated that she reviewed existing commercial uses on the site, and said that the County first looked at this as IDA. She said that Oxford confirmed ongoing negotiations to extend water and sewer. The site was not dominated by agriculture or wetlands.

Counsel Gay asked at the time it was reviewed, on December 1, 1985, how much of the site was in open space or undeveloped area although not agriculture use or wetlands. How much was undeveloped?

Ms. Renshaw said it was hard to say because there was grading going on at the site. This is disturbed area.

Mr. Henry Neff replied, fastland was 10 acres, under 10 acres.

Counsel Gay asked how much of the fastland had structures or development activity on it, percentage-wise, as of December 1, 1985.

Mr. Neff replied approximately 4 acres as a spoil site, 2 acres were roadway, dock access and buildings, and 1 acre hard surface road.

Chairman North stated that there have been two separate hearings on this matter and out of courtesy he afforded the attorney, Mr. Roger Truitt, the opportunity to speak, all testimony had been submitted and all evidence accepted; now, he said, this appears to be a third hearing and procedurally they were out of order.

Mr. Neff summed up that of the LDA criteria, residential density did not apply. Of the 15.7 acres, 5.8 is wetlands, less than 50%, and property not dominated by barren land, wetland, or open space.

Counsel Gay asked to be included into the record the submittal of Mr. Neff, submittal of Mr. Truitt, the photograph of the site as it existed December 1, 1985, the color photograph and any displays.

Mr. Hickernell asked if there is no action to reconsider the entire act at this meeting, is it appropriate for reconsideration to be initiated at the next meeting? Is there any time limit for reconsideration to occur.

Counsel Gay stated that it has been treated as a new submittal.

Ms. Pudelkewicz said that as of February the 90 day limit had been

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reached and a recommendation had to be made for a vote. Because there was no panel recommendation in February, Dan Cowee agreed to withdraw the project and resubmit it with the understanding that it would be on the Agenda in March. It has been resubmitted.

Mr. Hickernell said that the resubmission doesn't force necessarily the issue of reconsideration of a prior action of the Commission. Resubmission may, in fact, just go through a procedure which requires growth allocation. The Commission by majority may want to reconsider a prior action on a map designation and, although he is not prepared to make a judgement on the appropriateness of a reconsideration, but after reading all the information at the next meeting, he may be convinced that it is a reasonable consideration.

Counsel Gay asked that before considering what we need to do under the Law, does Counsel for the Applicant have any feeling with respect to the Commissions' authority to delay decision on this application.

Mr. Truitt said that he has discussed with his client the possibility of extending this one more month, and his understanding unless he is told differently now, is that they would in fact urge the Commission to delay the ruling for one month and to digest the material that has been submitted. And, that they would stipulate that they would not raise that extension as somehow resulting in automatic approval.

Mr. Bostian added "with the understanding that there is not going to be another presentation".

Mr. Barker stated that if this was put off for 30 days, regarding the question that was asked earlier about where exactly do you fit into Talbot County's master water and sewerage plan without response, he believes this parcel of land would be categorized in the immediate to five, or six to 10 or whatever or however you all define your master sewerage plan, I would think that would be essential information. Mr. Truitt said they would make every attempt to find that document.

Chairman North queried the Commission as to some sense of the body as to whether they would proceed to take action or if it would be deferred to the next meeting.

Mr. Gutman made a motion to defer the issue with the understanding that discussion resumes and concludes at the next meeting.

Counsel Gay told Mr. Truitt with the stipulation that would be consistent with and incorporate the comments of Mr. Bostian with respect to the limitation of additional evidence and presentation, all of that would be precluded at the next meeting barring a response to the comments of the Commission member that spoke that goes back to water and sewer.

Mr. Truitt stated that was acceptable with one small caveat and that is of course that the staff or someone else will present information that is new and needs to be addressed, but providing no one else submits information they don't have any more except for the one request.

Counsel Gay asked if the County, as the applicant, agreed to defer to the next meeting.

Mr. Griffith concurred.

Mr. Barker seconded the motion.

Mr. Elbrich asked if the panel would make its recommendation on the basis of this information or would it be without panel recommendation. Chairman North stated that the panel is now privy to all the additional information that has been produced today, the Chairman of the panel thinks it appropriate to meet again to reconsider that might be accomplished if the Chairman feels it is not appropriate, then there is no need for it.

Mr. Gutman stated that the recommendation of the staff however, remains valid and appropriate for consideration for the next meeting.

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Chairman North said yes, unless the staff wishes to change by the next meeting.

Chairman North called the question.

The motion carried unanimously.

Mr. Bowling asked if it would be appropriate that the Commission review their program and we also review their LDA mapping if we consider it to be based on whim or wishes rather than on fact.

Chairman North stated he was not sure how pertinent it would be.

Chairman North asked Ms. Dawnn McCleary to report on Calvert County's proposed amendments.

Ms. McCleary disseminated a staff report to the Commission which is as follows:

AMENDMENT: Package of 24 propose amendments to Calvert County's Critical Area Program

DISCUSSION: There are several issues within Calvert County's Critical Area Program Amendment. The proposed amendments involve changes to Calvert County's Zoning Ordinances that includes: a Buffer Management Program, a Forest Management Program with revisions to Critical Area Criteria regarding Habitat Protection Areas (HPA's), Buffer Exemption Areas, Growth Allocation, and others. Map amendments include a revision of the Critical Area Boundary Line, designation of HPA's, a growth allocation, with a mapping mistake.

CATA 91-8 Eagle Nesting Site Protection Measures:

County proposes:

Text and zoning ordinance changes throughout section with minor word changes in the threatened ad endangered species section. Example of changes are: limits of the Protection Zone, allowance of selective cutting, no timber cutting, land clearing or building, road and trail construction, etc.

Note: Making minor word changes to text and zoning ordinance.

CATA 91-9 & 91-10 - State Listed Species and Locally Significant Habitat:

County proposes:

-Text additions which includes State Listed Species sites and locally significant habitats.

Note: County never adopted the State Listed Species sites and Locally significant habitats with its Critical Area Program.

CATA 91-12 Anadromous Fish Propagation Areas:

Issue: Adding "Fresh Creek" to Calvert County's list of Anadromous Fish Propagation Areas. The sources used to designate "Fresh Creek" were through a survey and inventory of anadromous fish spawning areas Completion Report for the Chester River drainage, West Chesapeake Bay drainage, DNR. etc.

CATA 91-13 Use of LDA Criteria for Residential IDA Lots:

County proposes:

-To add to the Zoning Ordinances, new subsection stating the use of LDA criteria for residential IDA lots.

Issue: The County's proposal for single family residential development on residential lots located in IDA may be allowed to apply either to IDA or LDA criteria though not a mixed of the two. LDA has more restrictions according to the County, and more appropriately addresses single family residential development. State criteria do not provide for an option of which development criteria to apply.

CATA 91-4 Clustering within LDA and LDA-3 Areas:

County proposes:

-To add in Zoning Ordinance, a new paragraph to the last sentence of the second paragraph. The County proposed that when LDA and LDA-3 areas are adjacent, LDA clustering may be clustered into the LDA-3 if certain conditions are met.

Issue: The County is adding a new paragraph that will deal with clustering within LDA and LDA-3 Areas. Present regulations don't allow clustering in LDA-3 or LDA. This proposal will allow clustering.

CATA 91-11 - Growth Allocation:

County proposes:

-To add (in text), 5% growth allocation (GA) date chart. The GA date chart to be added, will give the distribution and balance of Growth Allocation in the critical area and ,

-Delete a section in Zoning Ordinance and replacing with new growth allocation language. Growth Allocation shall only be used for commercial or industrial projects except where a mistake in the original designation of residential land can be demonstrated.

Issue: The County is using their own interpretation on how to use growth allocation. Staff will further investigate the County's interpretation.

Critical Area Commission
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CATA 91-2 LDA and RCA Forest Clearing Regulation:

Issue: County discovered that 5,000 square feet of forest cover is not enough. County proposes 6,000 square feet of forest cover to be removed. Also, the County is replacing new section call "Forest Management Program" in the text section of the program.

Also, County has proposed to replace in the text, their County's Forest Maintenance Program which includes regulations concerning: afforestation, reforestation, and fees-in-lieu and fines relating to clearing areas outside of the buffer. The elements of the Forest Maintenance Program include: Application and permit process, planting bond, planting criteria, fees-in-lieu, fines, etc.

CATA 91-15 - Replanting Program:

County proposes:

-To add in text a "Replanting Program" which will use fees-in-lieu funds. This section will add to the Forest Maintenance Program.

Issue: The County's "Replanting Program" will use fees-in-lieu funds.

CATA 91-7 - Critical Area Buffer (Extending Buffer):

County proposes:

-To add in Zoning Ordinance, how Extended Buffer is to be measured and sets an upper limit of 300 feet.

Issue: The County feels that adding the Extended New Buffer language helps to clarify how the extended buffer is to be measured and sets an upper limit of 300 feet. The County will measure the percentage of slope by starting at a point beyond 100 feet from mean high tide, perpendicular to slope and for 30 feet along the slope, etc. Staff will further investigate this proposal and its implication.

CATA 91-1 - Buffer Management Program

County proposes:

-To add in text, new paragraph on Structural Shore Erosion Control Devices as well as revise section for "Buffer Management Program" which established guidelines and procedures for alterations and cutting in the buffer. The above Buffer Management Program proposed is in forestry, residential, commercial, and industrial (e.g. as permit cutting, planting bond, fees-in-lieu, and fines) areas.

Issue: The Shore Erosion Control Division within DNR, has requested that the areas immediately behind structural shore erosion control devices not be planted to avoid structural damage to the device from the growth of root systems.

CATA 91-16 - Buffer Exemption Areas:

County proposes:

-To add a new section in Zoning Ordinance under "Buffer Exemption Areas." It proposes that all lots and parcels zoned R-1 as of 12\13\88 and in an LDA are buffer exempt provided they meet the following requirements which will be stated in the panel recommendations.

Issue: The purpose of this new section, is to reduce the number of variances brought before the Board of Appeals. The County wants to use similar language of what is being used in St. Mary's County Buffer Exemption Areas. Staff will further investigate St. Mary's proposal and its implication.

Ms. McCleary stated that a panel recommendation would be forthcoming after the panel hearing next week.

Chairman North asked Mr. Bob Price to update the Commission on the Policy for Reconsideration.

Mr. Price stated that when the panel meeting was held, Parris Glendening suggested that because Charles Bruce and he were lawyers, Sarah could write something that a layman could understand and she did that; however, before the meeting, it was given to George Gay and he doesn't understand it, therefore, because Counsel Gay has recommendations it was requested that action be postponed until next month.

Chairman North asked Commission Counsel to give updates to the Commission on Legal issues.

Counsel Gay said that the Pier One Appeal was argued before Judge Zouse in Queen Anne's County and the decision is pending. The Judge was particularly concerned with the process which was afforded applicants during the course of redesignation requests.

He said that The Wharf at Handy's Point was argued in the Court of

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Special Appeals one month ago and the Commission was awaiting the Court's decision; however, a Court Order came a week or so ago asking for a rebriefing and re-argument which is due March 10th; the argument is set for March 31st. The Court was particularly concerned whether the Commission can note its Appeal directly to the Circuit Court or whether it first has to go to the Board of Appeals.

Counsel Gay said that the DNR application in Baltimore County for Black Marsh, a Motion to Dismiss that Appeal has been filed by DNR, and the Motion has not been answered by the Coalition which is in opposition to DNR's Plan. The Coalition is now represented by a firm in Baltimore.

Regarding Betterton, Counsel Gay said that there have been ongoing negotiations with Mr. Savino, Mr. Bowman and Mr. Johnson who made a presentation in January in an effort to reach and sign a Consent Decree to enable that development to go forward in a manner consistent with the Criteria. He stated that the Commission staff and Chairman believed that the parties were close to having an agreement, but at a recent meeting the developers

submitted a new proposed Consent Decree which is quite a bit different than the document that had been used as a baseline. Now, there is the need to reconsider this new document and decide where to go.

Commissioner Roger Williams asked how long will this go on.

Counsel Gay stated that the charge of Chairman North, Dr. Taylor and himself was to attempt to negotiate a Consent Decree consistent with the Commission's position at the January meeting, without a deadline from the Commission and that is the "modus operandi". He stated that the Commission could give a deadline if they believe it was necessary.

Chairman North stated that it was the Commission's impression from what Mr. Savino and his Counsel had previously indicated that they were under substantial time constraints and anxious to get the matter rapidly resolved. He said that as negotiations continue they seem to have lost site of that and rather than getting closer they insist on rehashing seemingly resolved points at each subsequent meeting.

NEW BUSINESS

Dr. Sarah Taylor briefed the Commission on five Bills in the Legislature. Bill #1 addressed adding the Secretary of the Department of Transportation as a member to the Commission. She said that the staff position as well as the Special Issues Subcommittee is to support this Bill. It has not been voted out of the House Environmental Matters Committee.

She said that there were two Bills dealing with impervious surface: 1) A Bill in which Delegate Weir provides variance language into the impervious surface limitation to allow flexibility at the local government level according to COMAR 14.15.11 which is the variance section of the Criteria, and 14.20 which are the Regulations where copies of all variance decisions are provided to the Critical Area before they are made at the local level. 2) A similar bill from Prince George's County, where Delegate Alexander wants to increase the residential acreage to 3/4 acre for a constituent. She said that it appears that Alexander's Bill is dying and that Weir's Bill will make it through Environmental Matters Committee. The Commission staff's position, which is not refuted by Special Issues, is to support the Weir Bill.

The third Bill allows for cutting of 50% of the vegetation by property owners on 10 acres or less by performing indestructible maintenance on renewable vegetation provided the substrate is not disturbed. This is a special client bill on the part of one of the delegates in P.G. County. It basically allows the Buffer to be cut, habitat protection areas to be cut,

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and 50% of forested tracks to be cut. The 10 acres or less affects over 1/3 of the entire Critical Area. Staff position is opposed. Nothing has been heard from the Special Issues Committee and it is hoped that the Bill will die in the Environmental Matters Committee, as it has not been reported out yet.

The last bill which will require testimony on March 11th, is a Bill dealing with shore erosion that basically does several things: it allows private property owners to build whatever they want for shore erosion control whenever they want to do it on their property and it eliminates the use of the erosion rate maps used to determine what is highly erodible. It literally undermines the habitat protection areas and the buffer and those aspects of the Criteria for community marinas to be clustered in spots where best suitable along the shoreline. The Bill also seeks to reverse the locational criteria and environmental criteria for water dependnet uses. The staff's recommendation is to oppose the Bill and it has not been submitted to Special Issues since it has just been received. Dr. Taylor asked for Commission support with respect to this legislation which Chairman North and she must testify on next Wednesday.

Mr. Gutman made a motion to provide the support requested on the Bill by Dr. Taylor; it was seconded by Jim Peck and carried with one abstention, Bill Bostian.

OLD BUSINESS

Mr. Elbrich asked that panel members for Bachelor's Point meet to arrange a date for discussing the new information received at the meeting today.

Mr. Bostian asked if the Commission staff could prepare an assessment of the funding cuts on a jurisdictional/jurisdiction basis.

Dr. Taylor said the assessment would be based on receiving federal money and we should be hearing about that soon. Right now the budget is at zero in the General Fund and there is no budget in existence now for local technical assistance. She said that it is hoped that assistance from the Coastal Zone Program will be forthcoming.

Mr. Peck said the monies should be forthcoming soon.

There being no further business, the meeting adjourned at 5:27 p.m.

**STAFF SUMMARY
INFORMATION REPORT
MARCH 4, 1992**

JURISDICTION: Calvert County

AMENDMENT: Package of 24 propose amendments to Calvert County's Critical Area Program

DISCUSSION: There are several issues within Calvert County's Critical Area Program Amendment. The proposed amendments involve changes to Calvert County's Zoning Ordinances that includes: a Buffer Management Program, a Forest Management Program with revisions to Critical Area Criteria regarding Habitat Protection Areas (HPA's), Buffer Exemption Areas, Growth Allocation, and others. Map amendments include a revision of the Critical Area Boundary Line, designation of HPA's, a growth allocation, with a mapping mistake.

CATA 91-8 Eagle Nesting Site Protection Measures:

County proposes:

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Note: Making minor word changes to text and zoning ordinance.

CATA 91-9 & 91-10 - State Listed Species and Locally Significant Habitat:

County proposes:

-Text additions which includes State Listed Species sites and locally significant habitats.

Note: County never adopted the State Listed Species sites and Locally significant habitats with its Critical Area Program.

Continue, Page Two
Calvert County
Date March 4, 1992

✓ **CATA 91-12 Anadromous Fish Propagation Areas:**

Issue: Adding "Fresh Creek" to Calvert County's list of Anadromous Fish Propagation Areas. The sources used to designate "Fresh Creek" were through a survey and inventory of anadromous fish spawning areas Completion Report for the Chester River drainage, West Chesapeake Bay drainage, DNR. ect.

✓ **CATA 91-13 Use of LDA Criteria for Residential IDA Lots:**

County proposes:

-To add to the Zoning Ordinances, new subsection stating the use of LDA criteria for residential IDA lots.

Issue: The County's proposal for single family residential development on residential lots located in IDA may be allowed to apply either to IDA or LDA criteria though not a mixed of the two. LDA has more restrictions according to the County, and more appropriately addresses single family residential development. State criteria do not provide for an option of which development criteria to apply.

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County proposes:

-To add in Zoning Ordinance, a new paragraph to the last sentence of the second paragraph. The County proposed that when LDA and LDA-3 areas are adjacent, LDA clustering may be clustered into the LDA-3 if certain conditions are met.

Issue: The County is adding a new paragraph that will deal with clustering within LDA and LDA-3 Areas. Present regulations don't allow clustering in LDA-3 or LDA. This proposal will allow clustering.

Continue, Page Three
Calvert County
Date: March 4, 1992

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Issue: The County is using their own interpretation on how to use growth allocation. Staff will further investigate the County's interpretation.

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-To add in text a "Replanting Program" which will use fees-in-lieu funds. This section will add to the Forest Maintenance Program.

Issue: The County's "Replanting Program" will use fees-in-lieu funds.

Continue, Page Four
Calvert County
Date: March 4, 1992

✓ **CATA 91-7 - Critical Area Buffer (Extending Buffer):**

County proposes:

-To add in Zoning Ordinance, how ~~to~~ Extended Buffer is to be measured and sets an upper limit of 300 feet.

Issue: The County feels that adding the Extended New Buffer language helps to clarify how the extended buffer is to be measured and sets an upper limit of 300 feet. The County will measure the percentage of slope by starting at a point beyond 100 feet from mean high tide, perpendicular to slope and for 30 feet along the slope, etc. Staff will further investigate this proposal and its implication.

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County proposes:

-To add in text, new paragraph on Structural Shore Erosion Control Devices as well as revise section for "Buffer Management Program" which established guidelines and procedures for alterations and cutting in the buffer. The above Buffer Management Program proposed is ~~in~~ ⁱⁿ areas of forestry, residential, commercial, and industrial (e.g. as permit cutting, planting bond, fees-in-lieu, and fines) *areas*

Issue: The Shore Erosion Control Division within DNR, has requested that the areas immediately behind structural shore erosion control devices not be planted to avoid structural damage to the device from the growth of root systems.

✓ **CATA 91-16 - Buffer Exemption Areas:**

County proposes:

-To add a new section in Zoning Ordinance under "Buffer Exemption Areas." It proposes that all lots and parcels zoned R-1 as of 12\13\88 and in an LDA are buffer exempt provided they meet the following requirements which will be stated in the panel recommendations.

Issue: The purpose of this new section, is to reduce the number of variances brought before the Board of Appeals. The County wants to use similar language of what is being used in St. Mary's County Buffer Exemption Areas. Staff will further investigate St. Mary's proposal and its implication.

PANEL REPORT

April 1, 1992

Overall note - approved w/ conditions caveat as to the local program of H.A. process.

JURISDICTION: Somerset County
PROJECT: Growth Allocation - Coulbourn's Cove
COMMISSION ACTION: Vote
PANEL RECOMMENDATION: APPROVAL with conditions

DESCRIPTION

The Somerset County Commissioners 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 with a small portion of the property being forested nontidal 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 majority of the site has been farmed. A sizable portion of this farmed area is mapped as hydric soils and has been designated by the Soil Conservation Service as being Prior Converted. The farmed portion of the property currently has several ditches crossing it for drainage. It is very wet, but would not meet the definition of wetlands in the Somerset County Program due to the presence of the drainage ditches.

There is a forested area that covers portions of lots 9, 10 and 11. Sections of the forested area are also mapped as having hydric soils. Field visits have confirmed that the majority of this forested area is a wetland. The property owner has agreed to put a conservation easement on the entire forested area as well as on the adjacent 25-foot buffer.

There is also a small section of scrub/shrub wetland along Coulbourn's Cove that will be protected from development.

The property owner is proposing to fill the existing drainage ditches that go from the road to the southwest portion of the property (toward Coulbourn's Cove) and create new ditches that run along the property lines between the lots. Creation of a new drainage system on the property is being required by the Somerset County Health Department before it will approve on-site septic systems.

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 Program also requires that the portion of the lot outside of the development pad be restricted from further development and maintained in natural vegetation.

ISSUES

1. The development pad is not shown on the site plan. There is no indication on the site plan that there are any restrictive covenants on the portion of the lots outside of the development pad. The Somerset County Commissioners' Findings of Fact require that the development for the parcels in the Critical Area be limited to 20,000 square feet. However, the County's Finding on this point is incomplete. The County's requirement will only preclude the placement of structures, but would allow lawns and gardens, etc. This is not consistent with the County's definition of development pad as follows:

Development Pad--The area of a lot, within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed the remaining area of the lot must be maintained in natural vegetation. (Emphasis added)

2. The road and the pond will be a disturbed area (approximately 8.5 acres), that is not represented in the deduction for the single lots.

3. 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.

PANEL RECOMMENDATION: Approval with the following conditions:

1. That the County be required to deduct the 8.5 acres that will be disturbed for the road and pond area.

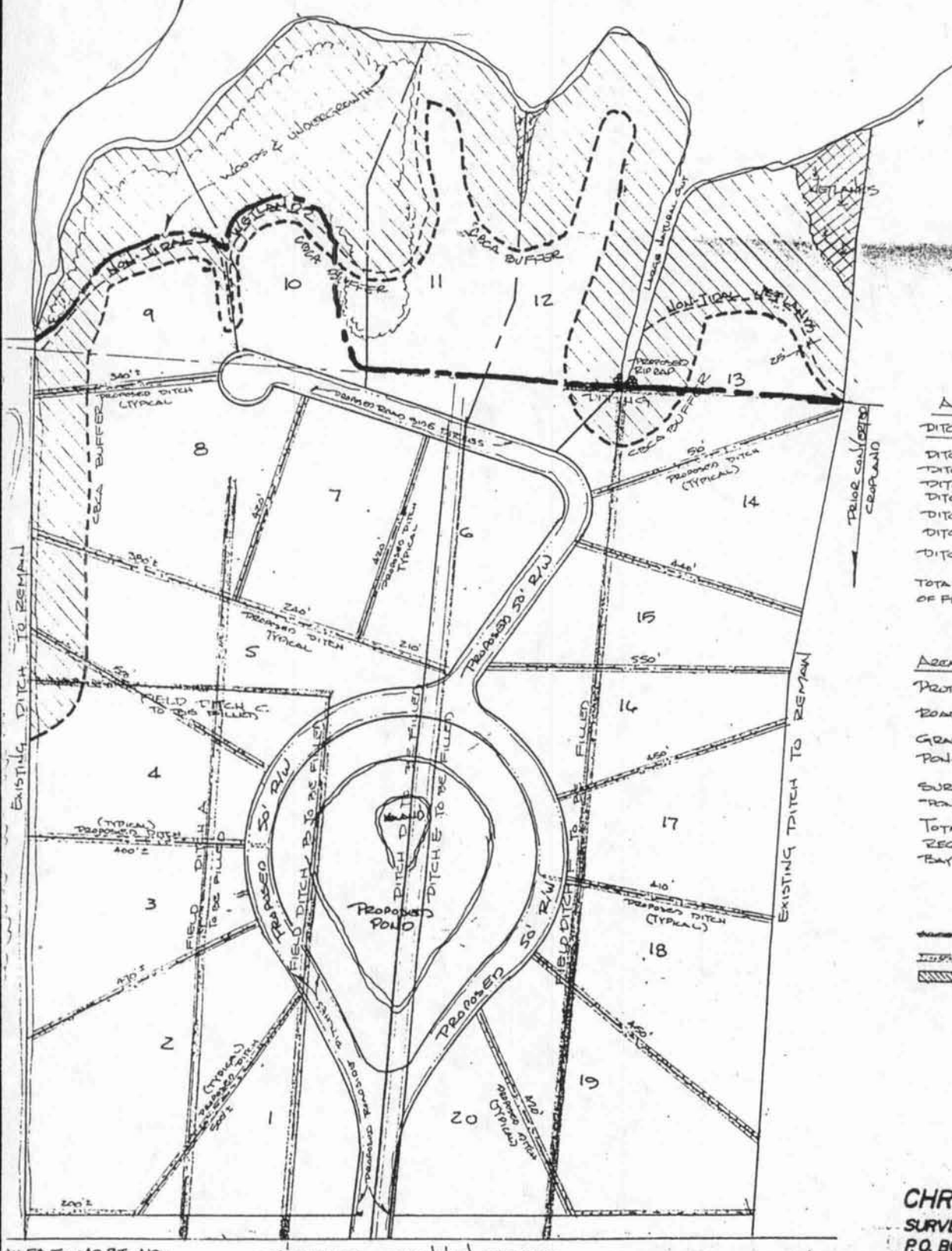
2. That an additional two acres of growth allocation be deducted for the two lots that are partially in and partially out of the Critical Area or restrictions be placed on these lots that will limit development impacts to that portion of the lot outside of the Critical Area.

3. That the County require that property owners maintain the portion of their property outside of the development pad in natural vegetation.

4. *Drainage system be approved and installed.*

STAFF CONTACT: Claudia Jones

COULBOURN'S CREEK



AREAS TO BE FILLED

DITCH	AMOUNT OF FILL
DITCH A	933 CU YDS
DITCH B	220 CU YDS
DITCH C	400 CU YDS
DITCH D	170 CU YDS
DITCH E	170 CU YDS
DITCH F	1813 CU YDS
DITCH G	280 CU YDS
TOTAL AREA OF FILL	39560 CU YDS

AREAS TO REVERT TO NODICIAL VEGETATION

PROPOSED TRENCHES	4740 CU YDS
ROADSIDE DITCHES	1092 CU YDS
GRASS AREA GRAVITY POND & ISLAND	120,000 SQ. FT.
SURFACE AREA OF TRENCH	78,750 SQ. FT.
TOTAL PLANTING AREA REQUIRED BY CHEWLAKE	370,260 SQ. FT.
BY CRITICAL AREAS	

- EXISTING DITCHES
- PROPOSED DITCHES/LOT LINES
- AREA TO REMAIN UNOCCUPIED

CHRIS D. CUSTIS
 SURVEYING & LAND PLANNING
 P.O. BOX 786, PRINCESS ANNE, MD
 21853

1 MILES TO MD RT. 413

CHARLES CANTON ROAD

4

***CRITICAL AREA 1991 MAP AMENDMENTS

CAMA 91-1 Plum Point, Neeld Property:

- Mapping Mistake- 7.15 acres in Critical Area, has R-1 zoning existing critical area designation LDA-3 to proposed critical area designation LDA (See map).

Note: A LDA-3 means zoned rural with minimum lot size 3 acres. LDA means housing density from 1 unit per 5 acres up to 4 units per acre.

CAMA 91-3 Olivert Road and Joy Road:

- Out of the 9.65 acres, 8.50 acres are in the critical area, R-1 zoning with existing critical area designation of LDA to a proposed RCA.

CAMA 91-4 Grascock Property, Solomons:

- Out of 14.2 acres, all 14.2 acres are in the critical area where Growth Allocation is being required. Existing critical area designation of LDA to IDA is being proposed. Will be deducting the entire parcel.

CAMA 91-5 Eagle Nesting Site Revision:

- See CAMA 91-5 under proposed mapping changes to Habitat Protection Areas.

CAMA 91-8 Waterfowl Staging and Concentration Areas:

- Same as CAMA 91-8 under proposed mapping changes to Habitat Protection Areas.

CAMA 91-9 New Residential Buffer Exemption Areas

-The County wants to add new residential buffer exemption areas for all lots and parcels.

Continue, Page 7
Date: March 4, 1992

CAMA 91-10 Natural Heritage Area Revisions:

- See CAMA 91-10 under proposed mapping changes to Habitat Protection Areas.

*** Note: Analysis of the propose map amendments will be further evaluated in the panel recommendations.

Prepared By: Dawnn McCleary

****MAP AMENDMENTS CONCERNING HABITAT PROTECTION
AREAS**

CATA 91-5 Eagle Nesting Sites

- Eagle Nesting Site revisions are being propose by deleting: inactive areas, areas out of Critical Area and adding new nesting sites in some areas (See maps).

CATA 91-8 Waterfowl Staging and Concentration Areas:

- Addition of Waterfowl Staging and Concentration Areas as new Habitat Protection Areas is being proposed. (See map)

CATA 91-10 Natural Heritage Area Revision:

- Adjusting Critical Area line to the North of the Southern Boundary of Camp Roosevelt Cliffs Natural Heritage Area base on DNA recommendation. (See map)

** Note: All done in conjunction with DNA's approval.

Calvert County's Proposed
Critical Area Amendments
(Date: April 1, 1992)

*approved
unanimously
20 in favor*

Calvert County's Habitat Protection Areas

1. CATA 91-8 - Eagle Nesting Site Protection Measures:

The County has proposed to change various sections within the text and zoning ordinances under the County's Habitat Protection Program such as the Eagle Nesting Site Protection measures. Examples of proposed changes are: changes of a distance of 1200 feet to 1\4 mile, 600 to 660, the deletion of harvesting and the addition of selective cutting, etc.

2. CATA 91-9 & 91-10 - State Listed Species Sites & Locally Significant Habitat:

The County adopted eight (8) State Listed Species Sites and one Locally Significant Habitat Area. All approved by the Maryland Department of Natural Resources' Natural Heritage Program under Calvert County's Critical Area Habitat Protection Areas for threatened and Endangered Species, and species in need of conservation.

3. CATA 91-¹² Anadromous Fish Propagation Areas:

An additional Anadromous Fish Propagation Stream called "Fresh Creek" is to be added to the County's already list of Anadromous Fish Propagation Areas. Department of Natural Resources Fisheries Division, Mr. Harely Speir confirmed that the areas have not changed.

Panel Recommendation on these three (3) amendments: Approval

Continue, Page Two
Calvert County Amendments
Recommendation
Date: April 1, 1992

Habitat Protection Areas Map Amendment

1. CAMA 91-5 - Eagle Nesting Sites:

In accordance with Department of Natural Resource's, Natural Heritage Program, the County will delete the following sites:

- a. Ferry Landing Woods Site;
- b. Howes Road Site (found outside of Critical Area);
- c. Two sites at mouth of Halls Creek (inactive);
- d. Two sites at Cocktown Creek (one inactive the other outside of Critical Area)

2. CAMA 91-8 - Waterfowl Staging and Concentration Areas:

In accordance to the Department of Natural Resources Natural Heritage Area, the County will add the following sites:

- a. Hunting Creek;
- b. Hall Creek;
- c. Jack Bay mouth of Battle Creek; and ,
- d. Area from 231 Bridge to God's Grace Point including Buena Vista.
- e. Broomes Island and Mouth of Island Creek: Only include Broomes Island and the Mouth of the Island Creek, but exclude the Marine Commercial Area. Department of Natural Resources has not confirmed that the Marine Commercial Area is a Waterfowl Staging and Concentration Area.

3. CAMA 91-10 - Natural Heritage Area Revision:

Adjust to the North, the South boundary of the Camp Roosevelt Cliffs Natural Heritage Area based on DNR recommendation and map provided by DNR (see letter and map attached).

Continue, Page Three
Calvert County Amendment
Recommendation
Date: April 1, 1992

Justification for Proposed Amendment: A mapping error resulted in an excessive southern boundary for Camp Roosevelt Cliffs Natural Heritage Area. Note that a letter from Janet Mckegg Director of Maryland's Natural Heritage Program has confirmed that boundary illustrated on the 1987 map was mistakenly drawn well to the south of the Tiger-beetle population. The mistake was discovered while reviewing in-house data on the Tiger beetle population for assessing potential impacts of the proposed shoreline stabilization project by the property owner Mr. and Mrs. Woo.

Panel Recommendation on these Three (3) amendments: Approval

Limited Development (LDA) and Resource Conservation Areas (RCA)

1. CATA 91-4 - Clustering within LDA and LDA-3 areas

LDA-3 is zoned rural with minimum lot size of three (3) acres where as LDA means housing density from one (1) unit per five (5) acres up to 4 units. The County proposes to add a new paragraph stating that LDA clustering may be clustered into LDA -3 if certain conditions are met. Presently, the County's regulations don't allow clustering in LDA or LDA-3. This proposal will allow clustering.

2. CATA 91-11 - Growth Allocation:

The County proposes the following: 1) Add 5% Growth Allocation data chart outlining the distribution and balance of Growth Allocation, and 2) adding the language that Growth Allocation shall only be used for commercial and industrial projects except where a mistake in the original designation of residential land, can be demonstrated.

Panel Recommendation on these Two (2) amendments: Approval

Continue, Page Four
Calvert County Amendments
Recommendation
Date: April 1, 1992

Forest Conservation Section of the County's Text

1. CATA 91-2 - LDA and RCA Forest Clearing Regulations:

The County proposed to amend their County's Conservation Manual in the Critical Area Program and add: 1) a Forest Maintenance Program that addresses: forest replacement and afforestation, establishment of fees-in-lieu, bonding of plantings and planting criteria.

Panel Recommendation of this One (1) amendment: Approval

Proposed Map Amendments for Calvert County

1. CAMA 91-1 - Plum Point, Needle property Tax Map 19, parcel 106, 7.15 acres, 7.15 in Critical Area (CA), R1 Zoning, existing CA designation LDA-3, proposed CA designation LDA.

Justification for Map Amendment: The property was rezoned from RUR (rural) to R1 (single Family Residential) based on a mistake on original zoning based existing housing density (26 cottage). See map attached

2. CAMA 91-3 - Olivet Road and Joy Road, Buehler, Owings, Bowler Property, Tax Map 44, parcel 440, 9.65 acres, ca. 8.5 acres in the Critical Area, R-1 zoning, existing Critical Area designation LDA; proposed designation RCA

Justification for Map Amendment: The applicant stated that a mistake that was made in the Critical Area designation of the above property meets the criteria of a RCA district but not the criteria of a LDA. The applicant requested the change and the County approved it. The density of RCA is less than one dwelling unit per 5 acres where as LDA, the housing density ranges from one dwelling unit per 5 acres up to four dwelling unit per acre.

Continue, Page Five
Calvert County Amendments
Recommendation
Date: April 1, 1992

3. CAMA 91-4 - Glascock Property, Solomons, Tax Map 44, parcel 91, 14.2 acres in the CA, TC zoning, existing CA designation LDA, proposed CA designation IDA. This change requires Growth Allocation.

Justification for Map Amendment: This site is currently an open field covered with grass. The County is requesting to change LDA designation to a IDA which will require Growth Allocation. The site meets all the existing and proposed requirements for Growth Allocation. The total parcel is being deducted. The Solomons area is a designated priority area to receive growth allocation. See map attached.

4. CAMA 91-6 - Changes Critical Area line and location of Tidal Wetlands to conform to State Tidal Wetland Maps for the entire County.

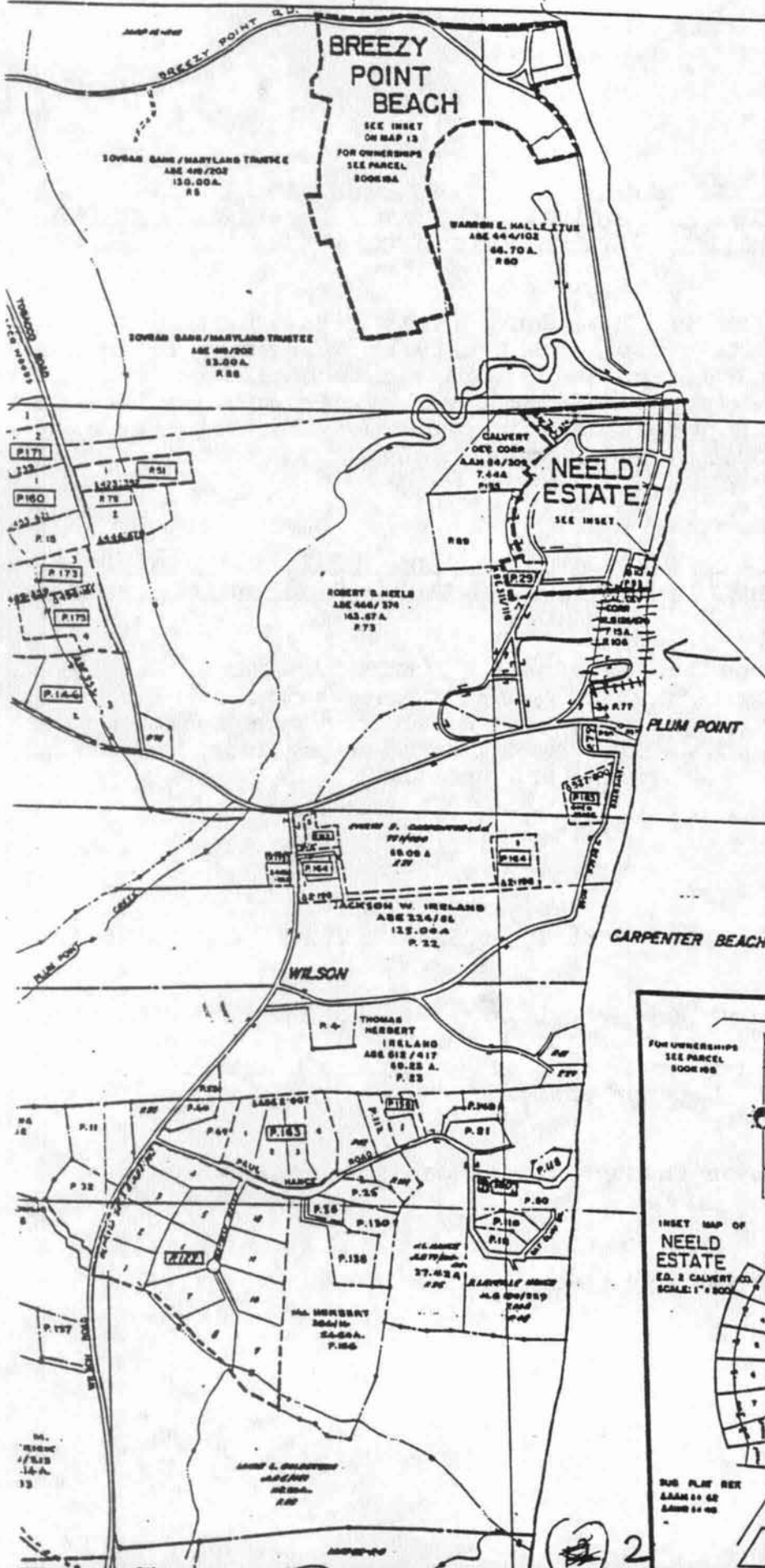
Justification for Map Amendment: After the March 11, 1992 public hearing in Calvert County, the County wrote a letter to Judge North acknowledging that based on a letter from Doldon Moore of the Tidal Wetlands Division, the County will now adopt the State Wetland maps for Calvert County and use their own County maps as guidance.

5. CAMA 91-7 - Add "Fresh Creek" as an Anadromous Fish Propagation Water.

Justification for Map Amendment: Spoke to the Fisheries Division of the Department of Natural Resources. Mr. Harely Speir confirmed that the above creek is still viable as a Anadromous Fish Propagation Water and has not changed.

Panel Recommendation on these Five (5) map amendments: Approval.

Prepared by: Dawnn McCleary



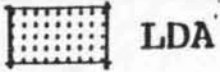
C H E S A P E A K E
B A Y
CAMA 91-1



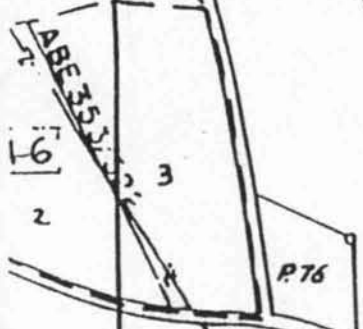
83.00A.
P. 88

EXHIBIT "AA"

SUBJECT PROPERTY



LDA



VIVA J. NEED
ANR 4/217, AAN 36/521
163.75A
P. 78

CALVERT
DEV. CORP.
A.AH 24/309
744A
P135

**NEELD
ESTATE**

SEE INSET

P 89

P. 29

0.10 A
P 83

CAL. DEV.
CORP.
A.B136/670
7.15A
P. 106

P. 77

P. 87

P. 79

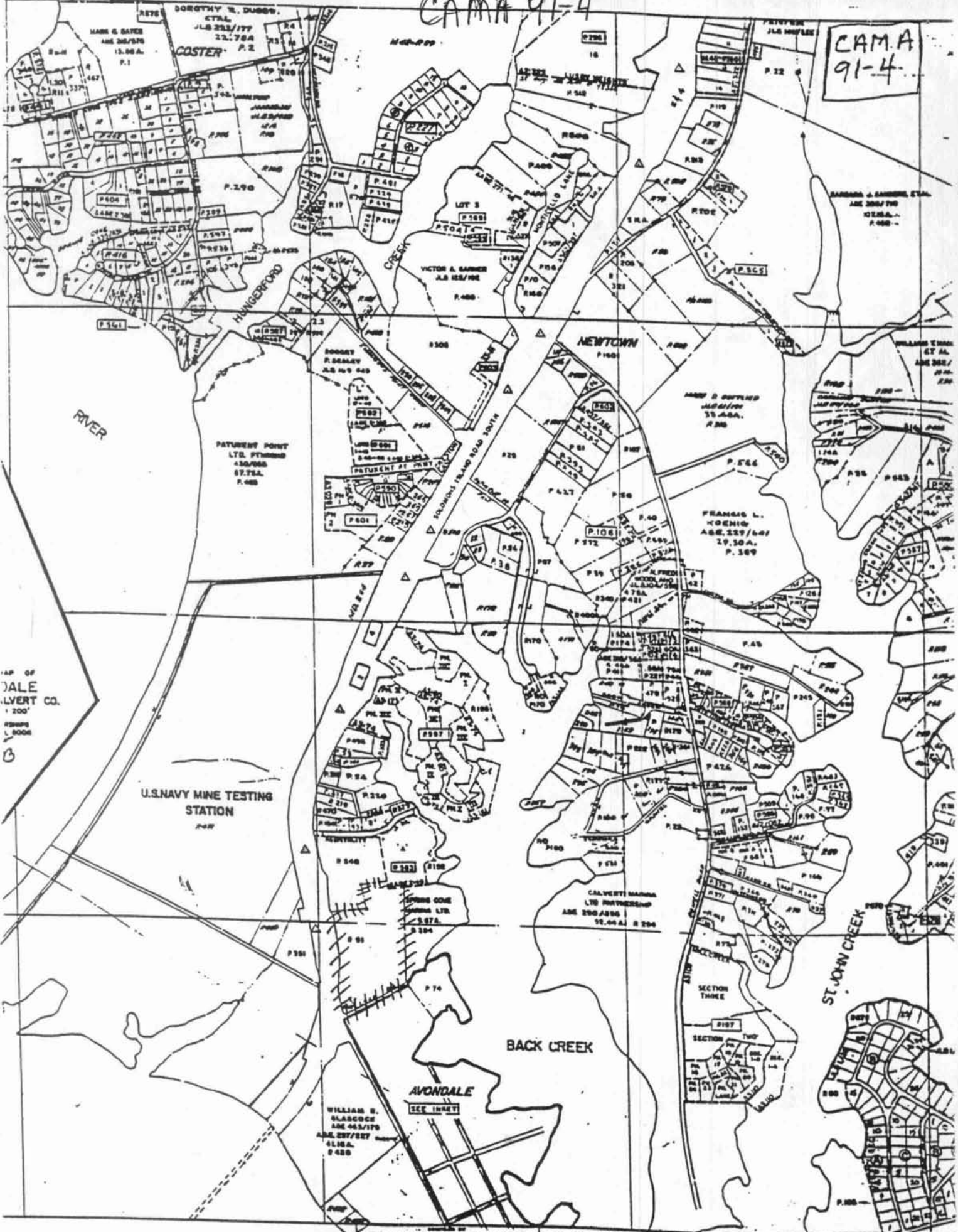
02 198

CAMA 01-1

PLUM POI.

CAMA 91-4

CAMA 91-4



MAP OF
DALE
LIVERT CO.
1" = 200'
RANGE
L. 8000

U.S. NAVY MINE TESTING
STATION

BACK CREEK

AVONDALE
SEE INSET

WILLIAM B. GLASCOE
AGE 46 1/2 / 179
AGE 287 / 227
41 LG. A.
P. 420

CALVERT MARINA
LTD PARTNERSHIP
AGE 290 / 290
55.00 A. R. 290

FRANCIS L. KOENIG
AGE 227 / 601
29.50 A.
P. 369

VICTOR & GARRER
J.B. 122 / 102
P. 400

PATURMENT POINT
LTD PARTNERSHIP
AGE 290 / 290
87.75 A.
P. 400

BOBBY P. BRADY
J.B. 149 / 440
P. 400

NEWTOWN
P. 100

DOROTHY W. DUBB.
CTAL
J.B. 222 / 177
22.78 A.
P. 2

MARK & GAYE
AGE 288 / 170
13.00 A.
P. 1

BARBARA J. GARRER, ETAL.
AGE 288 / 170
10.10 A.
P. 100

FRANCIS L. KOENIG
AGE 227 / 601
29.50 A.
P. 369

DEPT. OF ASSESSMENTS & TAXATION
MAP DIVISION

PROPERTY LINE
SUB-DIVISION BOUNDARY
CONTIGUOUS OWNERSHIP - Z L.E.

PARCEL NUMBER - P. 340

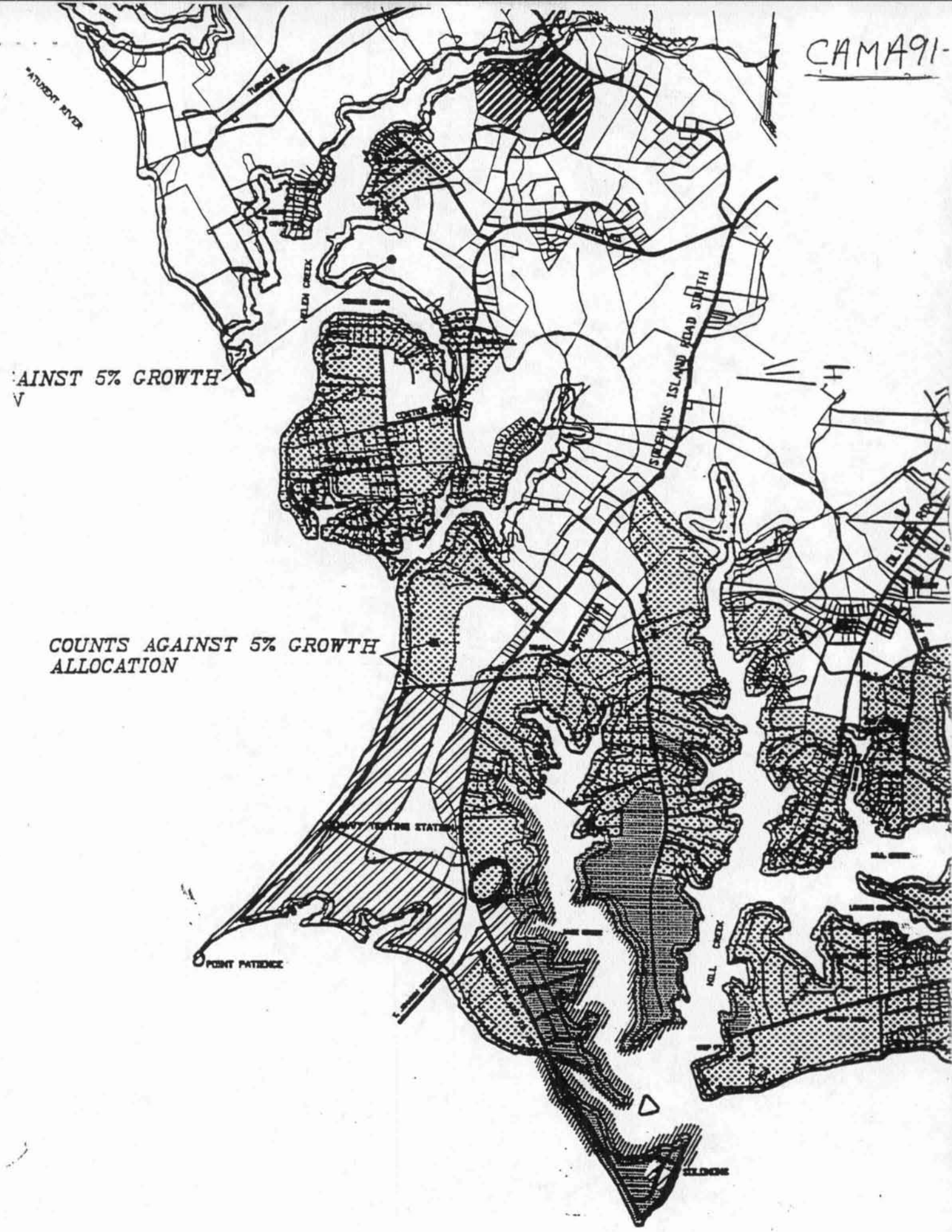
SCALE: 1" = 600'

REVISED TO: OCT. 1, 1990

DATE: 11/19/90

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953

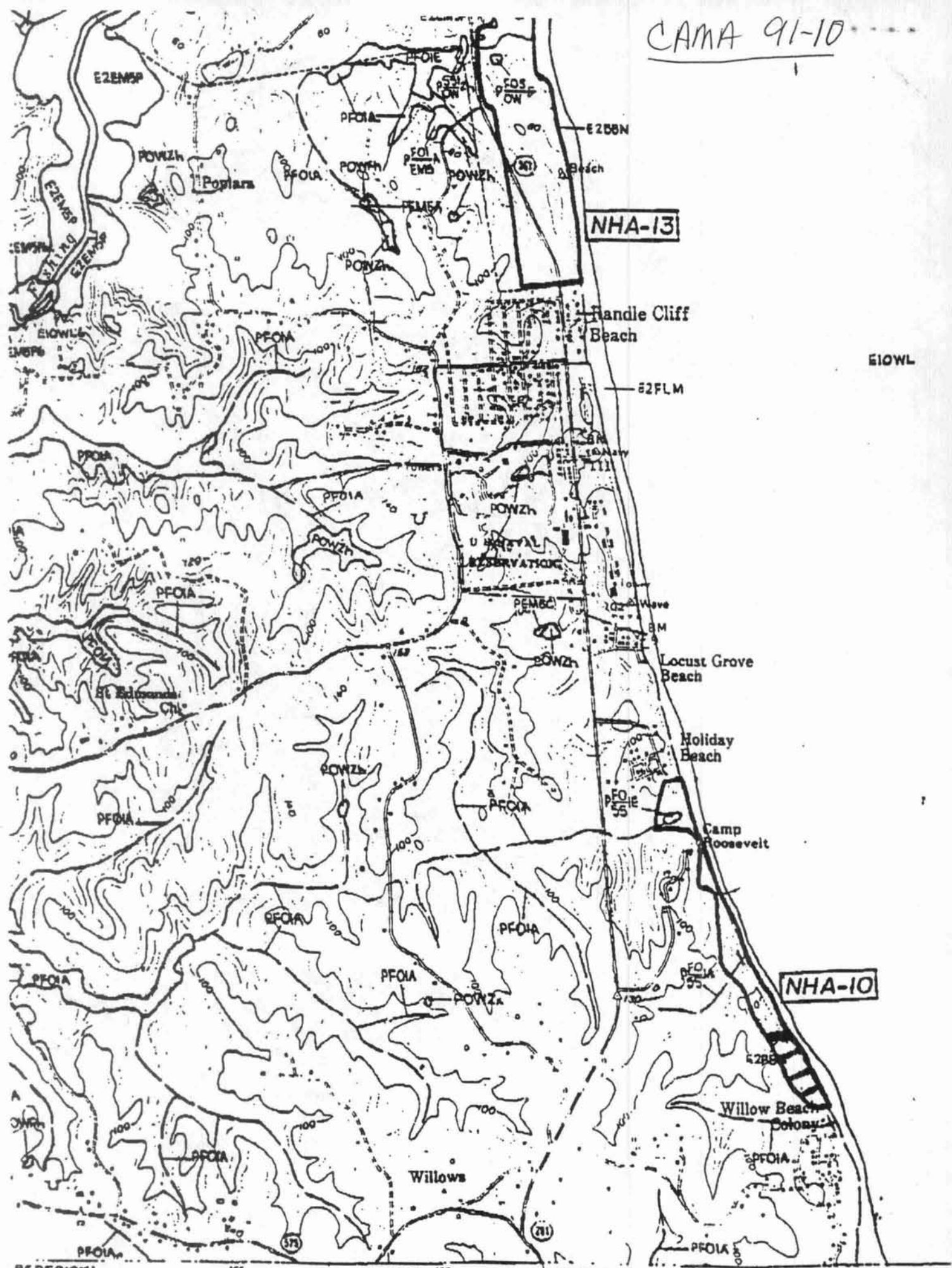




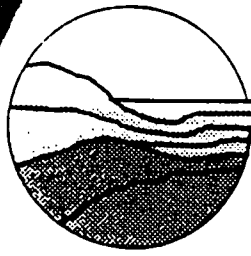
AGAINST 5% GROWTH
V

COUNTS AGAINST 5% GROWTH
ALLOCATION

CAMA 91-10



REDERICK 11 SE. 32°30' 115° PLUM POINT 2 41 © INDIAN GEOLOGICAL SURVEY



Maryland Department of Natural Resources

Forest, Park and Wildlife Service

Tawes State Office Building
Annapolis, Maryland 21401

William Donald Schaefer
Governor

Forrey C. Brown, M.D.
Secretary

Donald E. MacLaughlin
Assistant Secretary

23 August 1991

Mr. Jim Kehoe, Chairman
The Willows Citizens Association, Inc.
The Willows
Chesapeake Beach, MD 20732

Dear Mr. Kehoe:

Thank you for your letter of 19 August concerning proposed amendment CAMA 91-10. As expressed to the County in conversations preceding the 7 August 1991 letter to Dr. Brownlee, the southern boundary of Camp Roosevelt Cliffs Natural Heritage Area (NHA 10) coincides with the southern boundary of the Federally Threatened Puritan Tiger-beetle population plus a buffer of 100 feet. The 1987 mapped boundary occurs well to the south of the Tiger-beetle population as illustrated on the map accompanying the 7 August letter. The latter correspondence corrects this mistake.

I hope this clarifies our letter of 7 August to the County. Should you have additional questions, feel free to contact Wayne Tyndall of my staff. He has spoken in some detail with Ms. Mary Lou Lane concerning this proposal.

Respectfully,

Janet McKegg ^{DAB}
Janet McKegg, Director
Maryland Natural Heritage Program

cc: R. W. Tyndall

CAMA-91-10



Maryland Department of Natural Resources

Forest, Park and Wildlife Service
Tawes State Office Building
Annapolis, Maryland 21401

William Donald Schaefer
Governor

19 September 1991

Torrey C. Brown, M.
Secretary

Donald E. MacLauchl.
Assistant Secretary

Board of County Commissioners
Courthouse
175 Main Street
Prince Frederick, MD 20678

SUBJECT: Proposed Calvert County Critical Area Amendment CAMA
91-10

The purpose of this letter is to reiterate our support of Amendment 91-10. As stated in previous correspondence with the County, the southern boundary of Camp Roosevelt Cliffs Natural Heritage Area (NHA-10) coincides with the southern limit of the Federally Threatened Puritan Tiger-beetle population plus a buffer of 100 feet along the shoreline. Unfortunately, the boundary illustrated on the 1987 map was mistakenly drawn well to the south of the Tiger-beetle population. This mistake was discovered while reviewing in-house data on the Tiger-beetle population for assessing potential impacts of the proposed shoreline stabilization project of Woo et al.

The entire cliff system was resurveyed in June of this year as part of an ongoing effort to resurvey all Tiger-beetle sites. No adult beetles were found within 400 m of the southern end of the cliff, and the poor quality of the southern 300-m section indicated unlikely breeding habitat for this species. Therefore, we continue to support the proposed amendment and hope this information is helpful to its passage.

Respectfully,

Janet McKeeg
Janet McKeeg, Director
Maryland Natural Heritage Program

cc: R. W. Tyndall

Rec. 9-20-91 *RCB*

✓ Each item voted on separately

**PANEL ISSUES FOR
CRITICAL AREA COMMISSION VOTE
ON PROPOSED AMENDMENT
(Date: April 1, 1992)**

1. Intense Development Area Text\Zoning Ordinance Amendment

a. CATA 91-13 - Use of LDA Criteria for Residential IDA Lots

Panel Recommendation: Panel recommends approval of the above text amendment. Panel verified the approval of the above amendment by determining that it is consistent with the criteria (14.15.02.03D(3a-b)) during Critical Area staff panel meeting on March 24, 1992.

Note: Staff recommends the denial of this amendment because, Critical Area staff reevaluated and determined that the above proposed amendment is not consistent with the Intensely and Limited Development Sections of the Criteria.

*Amendment denied - unanimous
20 in favor*

2. Forest Conservation Text\Zoning Ordinance Amendment

a. CATA 91-15 - Replanting Program

Panel Recommendation: Panel recommends approval of this proposed amendment with conditions that the following language on Page 21 of the County's proposed amendments be considered. The language is as follows:

In addition, if reforestation exceeds or equals ^{100%}~~110%~~ of the areal extent of the forest lost in the Critical Area, then the remaining funds may be used for the following activities in priority order within the Critical Area:

Continue, Page Two
Calvert County Amendments
Date: April 1, 1992

1. Project that Improve Water Quality
2. Enforcement
3. Public Education
4. Purchase of Open Space for Preservation
5. Research On Program Effectiveness
6. Water Quality Monitoring
7. Tracking Cumulative Impacts
8. Program Development

Note: George Gay, Assistant Attorney General has provide the staff with his legal opinion about the above proposed amendment. He believes that CATA 91-15 and CATA 91-2 seem inconsistent with the Criteria based on what was outlined in a letter provided to staff.

*Approve w/ condition that all forests ...
20 in favor*

b. CATA 91-2 - LDA and RCA Forest Clearing Regulations

Panel Recommendation: The panel recommends approval of the above proposed amendment once Critical Area staff has received approval from the Calvert County's Bay Forester that the above proposed Forest Maintenance Program Amendment is an appropriate program for what Calvert County is doing.

Note: Ken Jolly, Calvert County Bay Forester, has written a letter (dated: March 31, 1992) stating that he has no comments to add to Calvert County's Critical Area Program.

*That all forest deny on deed plans shall
be maintained as far as practicable through
20 in favor*

3. **Critical Area Buffer**

a. CATA 91-7 - Extended Buffer

Panel Recommendation: Panel recommends deletion of the last line in the Calvert County's proposed amendment. According to the panel "The maximum extended 300 foot buffer" is not consistent with the criteria. With the above deletion, the panel will consider whether approval of the rest of the language in the above proposed amendment is appropriate.

Continue, Page Three
Calvert County Amendments
Date: April 1, 1992

Note: George Gay, Assistant Attorney General, provided during the panel, his legal opinion on the above proposed amendment. He has noted (to staff in a letter) that CATA 91-7 is inconsistent with the Criteria. COMAR 14.15.09C(7) does not permit a "Buffer Cap".

20 in favor Panel recommended approval of the language w.o. the 300' cap.
20 in favor ~~by~~ - language on the slope approved.

b. CATA 91-1 - Buffer Management Program

Panel Recommendation: After staff and Department of Natural Resources review of the above amendment, the following recommendations have been provided. They are:

Delete: [To avoid root damage to structural shore erosion control devices, deep rooted vegetation will not be required in any area within 30 feet of the device.]

Add: The Buffer shall be replanted with woody vegetation with the assistance of the Bay Forester, who will ~~assist in the~~ selection of species in order to avoid root damage to structural Shore erosion control devices. *provide as*

20 in favor extent of the Buffer shall remain the same as a pre-development Buffer.

c. CATA 91-16 - Buffer Exemption Areas

Panel Recommendation: The panel recommends withdrawal or denial of the above amendment if the County can not come up with proof that the development in the Critical Area prevents the buffer from fulfilling the function stated in COMAR 14.15.09.01 C(8).

Motion to ~~be denied~~ deny the amendment.
20 in favor

4. Critical Area Map Amendment

- a. CAMA 91-9 - Addition of new Residential buffer exemption Areas for all lots and parcels

Panel Recommendation: Same recommendation as
CATA 91-16.

Note: This is a map amendment associated with the text amendment on Buffer Exemption Areas.

*amendment
motion denied - 20 in favor*

Prepared by: Dawnn McCleary

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
MAUREEN 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

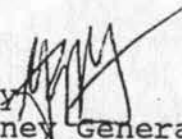
March 24, 1992

MEMORANDUM

RECEIVED

MAR 30 1992

TO: Dawnn McCleary
Planner

FROM: George E. H. Gay 
Assistant Attorney General

RE: Calvert County Proposed Amendments

DNR
CRITICAL AREA COMMISSION

In a March 19, 1992 memorandum you asked me to consider and comment on two legal issues which have been identified during review of the many proposed amendments to the Calvert County Critical Area Program ("County Program"). First, you asked me to "look at" proposed CATA 91-15 Replanting Program on pages 18-21 of the County's submittal. Based upon my evaluation of these additions, I believe that you should note the following:

- (1) Page 20 implies that reforestation sites may occur outside of the Critical Area. This appears inconsistent with COMAR 14.15.04C(3)-(5).
- (2) There is no distinction in the way in which reforestation applications are treated based upon the critical area designation of either the deforested or reforested site.
- (3) Page 20 provides that the applicant promises to maintain all trees received and planted for 10 years. This is short term protection. Instead, long term protections should be sought through recorded, restrictive covenants or similar instruments. See COMAR 14.15.04C(3)(c). Furthermore, there are no long term protection measures for those portions of the forest and developed woodland which are uncut. See Id.

- (4) Page 21 suggests that reforestation sites may occur outside of the Critical Area. See my comments in paragraph (1) above.
- (5) The fees assessed in the fees-in-lieu provisions do not seem adequate to restore or establish an equivalent forest area. See COMAR 14.15.04C(5)(d).
- (6) Generally, many aspects of both CATA 91-2 (B) and CATA 91-15 seem inconsistent with the Criteria. Consequently, I suggest that they both be denied by the Commission. As an alternative, perhaps the County should withdraw and revise them to correct the perceived problems.

Second, you asked me whether proposed CATA 91-16 Buffer Exemption Areas on page 29 of the County's submittal is consistent with the Criteria. It is not. It does not incorporate a showing that the pattern of existing development has compromised the subject Buffer areas as required in COMAR 14.15.09C(8).

Third, during my consideration of the legal issues you brought to my attention, I noted that CATA 91-7 is inconsistent with the Criteria. COMAR 14.15.09C(7) does not permit a "Buffer Cap".

I hope you find these comments useful.

GEHG:cjw

cc: Ms. Patricia J. Pudelkewicz
Ms. Sarah J. Taylor, Ph.D.
Ms. Elizabeth Zucker
Mr. Ren Serey