

Committee Meetings & Correspondence July 1992

MS A-S-1832-96

AGENDA  
Chesapeake Bay Critical Area Commission  
100 Community Place Conf. Room 1100 A  
Department of Housing and Community Development  
Crownsville, Maryland  
July 1, 1992

SUBCOMMITTEES

9:30 a.m. - 10:00 a.m. Elkton Mapping Mistake Panel Mtg. Conf. Room 1100 A  
(R. Hickernell, J. Gutman, B. Schoeplein, P. Barker)

10:00 a.m. - 12:00 p.m. Program Amendment & Implementation Conf. Room C

11:00 a.m. - 12:00 p.m. Project Evaluation Conference Room D

12:00 p.m. - 12:15 p.m. Anne Arundel Co. Comprehensive Review Panel (UPDATE) Conference Room A

MEETING AGENDA

1:00 p.m. - 1:05 p.m. Approval of Minutes of June 3, 1992 John C. North, II, Chairman

1:05 p.m. - 1:20 p.m. Introduction of the Department of Transportation as a Commission member The Honorable James Lighthizer

AMENDMENTS AND REFINEMENTS

1:20 p.m. - 1:30 p.m. Town of Vienna Refinement to the Zoning Ordinance Tom Ventre, Planner

1:30 p.m. - 2:00 p.m. Town of Elkton - VOTE Mapping Mistake Ron Hickernell, Panel Chair  
Anne Hairston, Planner

PROJECTS

2:00 p.m. - 2:40 p.m. St. Mary's City Master Plan - VOTE Ren Serey, Planner

2:40 p.m. - 3:00 p.m. University of Maryland Center/Enviro. & Estuarine Studies/Horn Point, Dorchester Co. VOTE Ren Serey, Planner

MOU'S

3:00 p.m. - 3:30 p.m. General Approval Mosquito Control Liz Zucker, Science Advisor  
Dr. Cy Lesser, Dept. of Agriculture

OVER

*\* Please note: Sec. Lighthizer + Hal Kassoff (Div of State Hwy Admin) will be present. Please sign MOU w/ Sec. Lighthizer - both men will have to leave shortly thereafter.*

LEGAL UPDATES

3:30 p.m. - 3:45 p.m.

Burriss  
Lucas Decision

George Gay, AAG

3:45 p.m. - 4:00 p.m.

Old Business  
New Business  
WSSC, Hyattsville  
Gravity Feed, Plan D

John C. North, II, Chairman

Theresa Corless, Planner

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\*\* Please acknowledge John Hippman - our Summer intern - who is tackling + developing a policy for Uses in the RCA for Commission approval at some future date. He is doing this gratis.

\*\*\* You may also want to introduce Pat Pudelkewicz who can talk about our 4 workshops that were held last week.

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
NAVORDSTA  
Indian Head, Maryland  
June 3, 1992

The Chesapeake Bay Critical Area Commission met at the The Mix House, Naval Surface Warfare Center, Indian Head, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

Ambridge, Anthony	Bostian, William J.
Bowling, Samuel Y.	Glendening, Parris
Elbrich, Joseph J., Jr.	Gutman, James E.
Hickernell, Ronald	Jarvis, Thomas L.
Krech, Dr. Shepard	Langner, Kathryn D.
Price, Robert R.	Young, Ronald, Maryland
Whitson, Michael J.	Office of Planning
Lawrence, Louise, Md. Dept.	Schoeplein, Robert, DEED
Agriculture	Whitson, Michael J.
Peck, Jim, Md. Dept. of	
Natural Resources	

The Minutes of May 6th, 1992 were read and approved as written.

Chairman North asked Ms. Anne Hairston to report on Cecil County's Special Growth Allocation - small lots request.

Ms. Hairston briefed the Commission on the request in a staff report disseminated to them which is as follows:

COMMISSION ACTION: Vote to approve or deny at this meeting or the July 1st meeting

DISCUSSION: This issue was presented to the Critical Area Commission at the May 6th meeting. An advertised public hearing was scheduled for May 27th and continued on June 1st in Elkton. No opposing testimony was received.

To summarize the amendment, Cecil County has submitted a map amendment granting 1.15 acres of growth allocation on a 16.95-acre parcel (15.15 in the Critical Area), changing the designation from Resource Conservation Area (RCA) to Limited Development Area (LDA). The site is owned by the Earl White Estate, and located near Chesapeake City, on Knight's Corner Road by Long Branch Creek.

The amendment results from the recorded will of Earl N. White, which created five lots for grandchildren. Three lots were subdivided under the intrafamily transfer provisions, which is applicable to this situation, but no more than three lots are permitted through this mechanism. Growth allocation is the only other option to allow the remaining two lots created by the will.

The Special Growth Allocation category is available in Cecil County for small residential subdivisions. Additional lots through the Special Growth Allocation category are limited by a schedule in the County Program; for this parcel, only 2 additional lots are permitted. The maximum lot size cannot exceed the minimum lot size required by the County Health Department. All other Critical Area, subdivision, and zoning requirements must be met. If agricultural use is retained on a portion of the parcel, a cooperator's agreement for a Soil Conservation and Water Quality Plan must be signed. A Forest Management Plan is required for forested portions of the property. The wildlife habitat on the entire site must be protected and improved. The growth allocation segment of the County Program has been given conditional approval by the Commission. The intent of the conditional approval was to grant growth allocation based on the proposed approach, then evaluate its appropriateness in implementing the Critical Area Law and Criteria. This is the first growth allocation submitted by the County. The growth allocation deduction may not conform entirely to the Commission policy,

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but the deduction methodology and Special Growth Allocation category were part of the approach given conditional approval for later evaluation. The Comprehensive Review for Cecil County is due by September 1992, and may be an appropriate mechanism for review of the approach.

The growth allocation submitted deducts the two individual lots, and has required the project to conform to all the requirements for the Special Growth Allocation category. Four of the lots are the minimum lot size required by the County Health Department and are clustered adjacent to the road, away from the stream and nontidal wetlands. The fifth lot consists of the remainder of the parcel, 13.8 acres. No further subdivision is permitted, a Forest Management Plan is required for disturbance of forested areas, and Habitat Protection Areas (buffer and nontidal wetlands) have been identified and protected.

The Commission policy for deducting growth allocation does not have an avenue to count less than the full parcel (i.e., the development envelope) for parcels less than 20 acres, unless there is an adjacent area protected from development which would combine with the excluded area to meet the 20-acre minimum. There is no adjacent parcel known to have a conservation easement or similar protective instruments. However, because of the parcel's location adjacent to Long Branch Creek, the buffer and nontidal wetland area on the property are contiguous to the 110-foot buffer surrounding the creek, which is required by County law both inside and outside of the Critical Area. Consequently, there are contiguous habitat areas characteristic of the RCA remaining, due to the combination of the remaining parcel and the County-wide stream buffer requirements, but these are not protected by any other means.

**PANEL RECOMMENDATION:** The panel recommends approval of 1.15 acres of growth allocation for the Earl White Estate, based on the application meeting the requirements of the Cecil County Program for Special Growth Allocation, as conditionally approved.

**Commissioner Ron Hickernell** made a motion to approve the request of 1.15 acres of growth allocation of the Earl White estate based on the application meeting the requirements of Cecil County's program for special growth allocation as conditionally approved. The motion was seconded and carried unanimously.

Chairman North asked Ms. Theresa Corless to report on the 9 Talbot County Growth Allocation requests.

Ms. Corless stated that there had been a panel hearing on May 21st; she presented the requests individually for a vote to the Commission and disseminated to them a staff report outlining that presentation which is as follows:

**COMMISSION ACTION:** Vote

**DISCUSSION:** Talbot County has submitted nine requests for Growth Allocation. A brief outline of each proposed amendment follows.

1. J. McKinney Willis - North Bend II. Map 33, parcel 43. The County requests 37 acres of Growth Allocation for the development of a seven lot subdivision. The entire parcel is 79.38 acres. Phase I is not in the Critical Area. Phase II is the entirety of the parcel in the Critical Area. The current designation is RCA. The request is to change the designation to LDA.

Panel Recommendation: Approval.

**Commissioner Joe Elbrich** made a motion to approve the request for McKinney Willis for 37 acres of growth allocation in Talbot County. The motion was seconded and carried unanimously.

2. Claiborne Gooch Map 51, parcel 77. The County requests 16 acres of Growth Allocation for an eight lot subdivision. The rest of the lot has been developed since December 1, 1985, without the use of Growth Allocation at a proper density for RCA. The entire parcel is 106.48 acres. The current designation is RCA. The request is to change it to LDA.

Panel Recommendation: Approval.

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Mr. Elbrich made a motion to approve the Claiborne Gooch 16 acre growth allocation request for Talbot County. The motion was seconded and carried unanimously.

3. Robert Pascal - Bar Neck Farm Phase II. Map 51, parcel 97. The County requests 19.38 acres of Growth Allocation for a ten lot subdivision. Phase I was approved prior to December 1, 1985. The requested acreage is the remainder of the parcel. The current designation is RCA. The request is to change it to LDA.

Panel Recommendation: Approval. The panel also recommends that non-structural, vegetative shore erosion control methods be used.

Commissioner Jim Gutman asked why this was only a suggestion and not a condition to the stabilization.

Ms. Corless said that it may not be an appropriate method. She said that she had tried to contact DNR to speak with them and that the panel did request that a letter be sent to Mr. Pascal suggesting that this would be a very good method.

Mr. Elbrich stated that the panel discussed the issue in detail and decided that it would be best to handle it at the approval process rather than as a condition of the growth allocation.

Ms. Corless said that the shore erosion method would be reviewed by the County and Critical Area Commission staff.

Mr. Elbrich made a motion that the Robert Pascal - Bar Neck Farm Phase II be approved for 19.38 acres of growth allocation at the request of Talbot County. The motion was seconded and carried unanimously.

4. Fred McEnany Map 31, parcel 18 lot 4. The County requests 2.12 acres of Growth Allocation for a 2 lot subdivision. The current designation is RCA. The request is to change it to LDA.

Panel Recommendation: Approval.

Mr. Elbrich made a motion to approve the Fred McEnany request for a 2 lot subdivision for growth allocation for 2.12 acres in Talbot County. The motion was seconded and carried unanimously.

5. Lyles Carr et al - Winterbottom Acres. Map 31, parcel 93. The County requests 14.72 acres of Growth Allocation for a 9 lot subdivision of 2 lots. (The subdivision is to occur on parcels 325 and 93. Parcel 325 already has an LDA designation. Parcel 93 is made up of two lots, a large one and a much smaller one. The entirety of parcel 93 is being deducted. Parcel 325 and the large lot of parcel 93, with one existing house, are being subdivided into eight lots. The smaller lot of parcel 93, also with one existing house, is being left as is.)

Panel Recommendation: Approval.

Mr. Elbrich made a motion to approve Talbot County's request for 14.72 acres with Lyles Carr et al. The motion was seconded and carried unanimously.

6. John Sullivan Map 46, parcel 146. The county originally requested 5 acres of Growth Allocation for a two lot subdivision. The entire parcel has 23 acres in the Critical Area. The current designation is RCA. This would have changed 5 acres to LDA, and would have left the remainder of the parcel, 18 acres, as RCA. Granting of Growth Allocation would have been inconsistent with recent Commission decisions, such as those in St. Mary's County and Caroline County, in which at least a 20 acre RCA residue must remain. The County has revised their growth allocation request. They are now requesting only 2 acres of growth allocation. This leaves 21 acres as RCA, and is consistent with previous Commission actions.

Panel Recommendation: Approval.

Mr. Elbrich made a motion to approve the John Sullivan site 2

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acre request for growth allocation in Talbot County with the remainder of the 5 acres to be restricted through the County's mechanisms so that it will be precluded for development. The motion was seconded and carried unanimously.

7. William Hunter - Springfield. Map 42, parcel 56. The County requests 31.5 acres of Growth Allocation. The entire parcel in the Critical Area is 131.5 acres. The applicant is in the process of subdividing the remaining 100 acres into 5 lots without the use of Growth Allocation. The 5 lots will be clustered and the remaining land put into a conservation easement. The current designation is RCA. The request would change 31.5 acres to LDA.

Panel Recommendation: Approval.

Mr. Elbrich made a motion to approve the 131.5 acre growth allocation requested by Talbot County. The motion was seconded and approved unanimously.

8. William Hunter - Peachblossom. Map 42, parcel 7. The County requests 38.78 acres of Growth Allocation. This is part of a much larger parcel, of which approximately 89 acres are in the Critical Area. The developer plans to put the remaining 50 acres of Critical Area land into a conservation easement and plans to do habitat enhancement.

Panel Recommendation: Approval.

Mr. Elbrich made a motion to approve the William Hunter - Peachblossom, 38.78 acre growth allocation requested by Talbot County. The motion was seconded and carried unanimously.

9. FUS Inc., James & Beatrice Harrison, Robert T. Fuller, and William & Christine Hunter. Map 42, parcels 58, 65, 274, 173 and a portion of 56 (located along Rt. 50). The County requests 14.43 acres of Growth Allocation. These parcels were submitted last summer to the Commission as a mapping mistake. The Commission denied the mapping mistake. The current designation is RCA. The request would change the designation to LDA. No project at this time.

Panel Recommendation: Approval.

Mr. Elbrich made a motion to approve the FUS Inc., Harrison, Fuller, Hunter 14.3 acre property for growth allocation in Talbot County. The motion was seconded and carried unanimously.

Chairman North asked Ms. Anne Hairston to update the Commission on the Elkton Mapping mistake.

Ms. Hairston stated that the Elkton Mapping Mistake was presented to the Commission at the May meeting. She said that a hearing was held on June 1st and the record was still open and therefore a vote would not be taken at this meeting but that the request is on the agenda for July 1st for a vote. She said that the panel is still divided on its recommendation but will have a recommendation for the next meeting.

Chairman North asked Commissioner Michael Whitson, in Ms. Pudelkewicz' absence, to report on the Growth Allocation Policy DRAFT proposal.

Mr. Whitson said that a narrative of the DRAFT proposal on the Growth Allocation Policy was mailed to the Commission members which is as follows:

The Program Amendment Subcommittee has been at work for several months in an attempt to formulate

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regulations for the use of growth allocation. We have examined this issue as a result of problems associated with applying the 1988 Commission policy statement as it relates to various growth allocation projects, in particular, from Harford, St. Mary's, and Somerset Counties. We understand that this proposal by no means answers all possible questions.

We have identified a number of issues (see attachment) that we hope will be the foundation of the regulations. As proposed regulations move through the approval process, we anticipate the Commission using the principles of the draft regulations as the basis for interim growth allocation decisions.

Our goal is to provide a fair and consistent application of the criteria and program goals. Our first concern is the question of the area to be deducted. We believe the Commission should insist on the full deduction of the parcel proposed for growth allocation with the sole exception of the development envelope concept. We also believe that a 300' Buffer is mandatory for parcels in the RCA receiving growth allocation. It should be noted that the Buffer is also to be deducted with the exception of a proposal where the Buffer is a part of a contiguous conservation easement. Any proposal using the development envelope concept which yields less than a 20-acre residue in the RCA, cannot meet the test in the retention of RCA characteristics which must be adhered to; therefore, the residue must also be deducted. This is necessary to meet both the goals of the program, and the demands of the criteria. We also wish to stress that the strict adherence to this method of deduction should be observed in order to assure that growth allocation is, in fact, a 5% utilization of the available RCA land. Deviations which allow for a mathematically greater creation of LDA and IDA lands are not consistent with the law.

The final major principal which we have attempted to adhere to is the use of the date of December 1, 1985 as a basis for determining the underlying parcel size. We understand that it will be difficult at times to track the subdivision process subsequent to that date; however, in order to be faithful to the spirit of the law and support the principles upon which the designation of RCA, LDA, and IDA were based, this date should be used. It is also consistent with its use as a basis for allowing certain grandfather densities.

We invite your comments and suggestions.

GROWTH ALLOCATION ISSUES

ISSUE: Parcel less than 20 acres

If original parcel is less than 20 acres in the RCA, then the acreage of the entire parcel must be deducted. This requirement is based on the principle that at least 20 acres are needed to maintain the RCA character.

ISSUE: Development Envelopes and Residue

If a development envelope is proposed in the RCA and less than 20 acres remain outside of the envelope, then the entire parcel must be deducted.

If there is a protected resource conservation area (ex. protected by easement) adjacent and contiguous to the less-than-20-acre residue, resulting in a minimum 20-acre residue, then the entire parcel does not have to be deducted.

The remaining 20-acre residue may be developed at an RCA density.

ISSUE: Parcel as of December 1, 1985

The date of December 1, 1985 was the original mapping date for the Critical Area, and should be used for growth allocation as a beginning point of analysis.

Subdivision of a parcel after December 1, 1985 will affect the amount of growth allocation deducted whenever the RCA density is exceeded.

example: undeveloped parcel as of December 1, 1985: 25 acres

Growth allocation proposed for 5 acres; remaining 20 acres may be developed with one dwelling.

Growth allocation proposed for 10 acres; remainder must be deducted because less than 20 acres remain

The CAC can deny a growth allocation if it looks at the subdivision history since December 1, 1985, and determines that the subdivision circumvented the growth allocation process. All parcels may not be



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appropriate for growth allocation.

The primary reason to go back to December 1, 1985 is to protect the existing RCA features as of the date that the Critical Area designations were made.

ISSUE: 300-foot Buffer

All growth allocation projects in the RCA must be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

The 300-foot Buffer is part of the acreage deduction unless it is contiguous to a minimum 20-acre area that will be conserved in the long term through some legally effective instrument (such as a conservation easement or deed restriction), and maintains its RCA characteristics.

ISSUE: Specific development projects

Growth allocation does not have to be tied to a specific development proposal if the total parcel acreage is deducted (or at least 20-acres remain), HPA issues are identified, and the local government certifies that the Critical Area criteria must be met for project development.

ISSUE: Size of new IDAs

New IDAs must be at least 20-acres in size unless they are contiguous to an existing IDA.

ISSUE: New Critical Area designation

The particular project should determine the Critical Area designation; projects of an LDA nature should receive LDA designation and IDA designation should be given only to projects requiring IDA. The use should be the prime factor in the determination of the request. The Commission may deny a growth allocation request where the use does not meet the definition for which the Critical Area designation was applied.

ISSUE: Acreage deducted vs. area mapped

The amount of growth allocation deducted must equal the area mapped.

If a jurisdiction has a clause in its Program which sets a time limit within which the growth allocation must be used, then it must be specified what is to happen should this time lapse. If the jurisdiction "decertifies" this area with the Commission, then the acreage goes back into the growth allocation reserve for the jurisdiction, and this may be handled as a Program refinement.

ISSUE: Site features

Site features should not be used by the CAC as a means to deny a growth allocation; however, identification of site features should be done in order to alert the CAC and local government that HPA issues could restrain future development.

ISSUE: Adjacency

Jurisdictions are encouraged to meet the adjacency guidelines in COMAR 14.15.02.06.

Any additional growth allocation granted to a parcel of land which has already partially received growth allocation must be located adjacent to the first growth allocation.

ISSUE: Intra-family transfer

Growth allocation may be granted to parcels subdivided by Intrafamily Transfer.

The Intra-family transfer provision of the Law at E(1) states,

"A local jurisdiction may approve the subdivision of a parcel of land into the number of lots indicated in this subsection by means of a bona fide intrafamily transfer, and may not approve any greater subdivision of the parcel of land or any portion of it."

Since the Law allows no further subdivision, the language may need to be changed in order to allow growth allocation.

Mr. Whitson told the Commission that Mr. Ren Serey, Critical Area Commission Planner, would outline the issues and take any questions they may have. Mr. Whitson stated that although an approval was not sought at this meeting, a general consensus of opinion was requested in order to proceed and to refine the issues and that the DRAFT proposal with comments would be dispensed to the

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local jurisdictions for their input before being voted on.

Mr. Serey stated that the subcommittee on Growth Allocation had met that morning and discussed all the issues and that the issue of a 300' Buffer is the one issue that is different than proposed in the policy discussion outlined in the report distributed to the Commission members. He said that alternatives were proposed:

Because a 300' foot Buffer is presumed to be necessary whenever growth allocation is used, the Commission will expect a local jurisdiction to show why a 300' Buffer could not be used on a certain property and that the burden would be on the local government to show why a 300' Buffer is not appropriate or cannot be used. In an instance where a county wishes to propose as many lots as possible for growth allocation there would be a significant burden because that alone would not be sufficient reason. A person cannot get as many houses as he may want and have a 300' Buffer. There would have to be another reason such as a configuration of the parcel. The minimum 100' Buffer would, as now, have to be deducted. The other 200' of the 300' Buffer would not be required to be deducted. There is still a possibility, as the concept is shown in the draft, of even the 100' Buffer not to be deducted; that would be if it were adjacent to, or if the parcel were 20 acres adjacent to a minimum 20 acre permanently set-aside area or would constitute a part of that. Then, it is possible that the Commission would not require a deduction even of the 100' Buffer.

Commissioner Bostian asked if "should" rather than "must" needed further clarification in the language and if the burden or proof is now being transferred to the applicant.

Mr. Serey said that the subcommittee believed that it should retain the language, but it is being given more emphasis because it now states that the local jurisdiction has to show why the 300' can't be used, as opposed to the currently accepted - only a mentioning of it by the jurisdictions acknowledging that it has been addressed. Mr. Serey stated that the subcommittee is recognizing that even though the language is clear it is not always addressed. He said that now is the time for comments on the issues.

Commissioner Joe Elbrich agreed that input from the local jurisdictions would be beneficial to developing an overall growth allocation policy.

Chairman North called for a concensus of opinion on the DRAFT proposal from the Commission members.

There was no dissention on the DRAFT proposal.

Chairman asked Ms. Theresa Corless to report on the Hyattsville WSSC Sewer Project.

Ms. Corless briefed the Commission on the Prince George's County request in a staff report dessiminated to them which is as

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follows:

PROJECT: Hyattsville Gravity Sewer

APPLICANT: Washington Suburban Sanitary Commission (WSSC)

JURISDICTION: Prince George's County

STAFF: Theresa Corless

STAFF RECOMMENDATION: Approval, with conditions.

This project is a phase in a much larger project to replace a number of aging pumping stations and sewer lines. Eventually, seven pumping stations will be taken off-line and replaced with the new Hyattsville Pumping Station which the Commission approved in 1990. In addition, many old and leaking sewer lines will be replaced with new lines.

This phase of the project proposes to install approximately 4,320 feet of sewer line to connect the existing Bladensburg and Baltimore Avenue Pumping Stations with the new Hyattsville Pumping Station. Eventually, the sewage that went through the two existing pumping stations will be pumped through the new station.

The proposed right-of-way for the new sewer lines will vary from 30 feet to 100 feet in width and will cross land currently in use as a utility right-of-way, public space, and Maryland National Capital Park and Planning Commission (MNCPPC) park land. The total Critical Area land involved is 17.25 acres, of which 5.25 acres are IDA and 12 acres are RCA. The project is out of the 100 foot Buffer with the exception of the crossing of the Northeast Branch, a tributary of the Anacostia River.

This project has been found to be consistent with Prince George's County's Critical Area program. The site was reviewed by the Maryland Natural Heritage Program and no threatened or endangered species were found. All areas of disturbance are to be revegetated where possible. Some areas of disturbance along the water will have to have rip-rap installed to prevent further erosion. MNCPPC has required a planting plan to be developed for areas of their land that are disturbed.

Conditions: Appropriate reforestation for right-of-way areas to be permanently cleared.

Ms. Corless added that when the subcommittee met that morning a question of property ownership where the sewer line crosses the Northeast Branch was raised and she stated that it is owned by MNCPPC with a 100 year flood plain which has to be mowed and maintained in vegetation.

Commission Counsel George Gay asked if the project was reviewed pursuant to the Green Regulations or if it was considered one of local significance or a project of major development activity.

Mr. Serey told Counsel Gay that it was a State project owned which does not come under that requirement.

Counsel Gay asked if the project crossed into any private property zoning.

Mr. Bill Kennedy, WSSC, replied that it is all public property.

Counsel Gay asked who owned the property right-of-way.

Ms. Corless said that it is owned by one state agency or another and lets WSSC have a right-of-way.

Commissioner Bowling made a motion to approve the request subject to staff review and approval of vegetation and maintenance plans. The motion was seconded and carried unanimously.

Ms. Carolyn Watson informed the Commission that there are some areas that have been flagged off of Rhode Island Avenue and that WSSC has said that those areas are part of the WSSC Hyattsville

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Sewer Project. Ms. Watson said that it should be clarified that those areas are not part of this presentation and if in fact the areas are in the Critical Area it must be brought back to the Commission for approval.

Mr. Kennedy stated that that area is another project on its way in for approval.

Ms. Corless interjected that the area had been mentioned to her as the next phase that would be coming in shortly to the Commission.

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

Chairman North stated that at the commencement of the meeting he was asked by representatives of the Coalition to Preserve Black Marsh for the right to distribute a Memorandum which they had prepared. The Memo was distributed to the Commission members (and attached to the minutes). The Coalition representative declined to speak at the meeting, because their comments were contained in the handout.

Ms. Hairston stated that a vote was sought on this project and she introduced Mr. Bob Dannecker, DNR, to speak to the issue.

Mr. Dannecker described the project in a letter addressed to the Chairman and disseminated to the Commission members (attached to the minutes).

Counsel Gay asked if the project was part of the Department's overall Master Plan for activity at Black Marsh.

Mr. Dannecker stated that it is mentioned in the Master Plan, but that this project is just to restore an historic structure before it falls in, regardless of the Master Plan submitted.

Ms. Hairston responded to Counsel Gay's question of review by the subcommittee of whether this project had been reviewed as part of the overall plan by saying that it was being considered part of the Master Plan. The panel looked at the relevant criteria in the review, which included the buffer and stormwater management.

Counsel Gay asked if the subcommittee looked at the conditions that were put on the original approval of the Concept Master Plan.

Ms. Hairston stated that they were aware of them.

Mr. Dannecker said that there was a 45 day comment period on this project.

Counsel Gay asked what the standards of review for approval, denial or approval with conditions were applicable to each project and if the subcommittee reviewed the project with that standard.

Ms. Hairston replied COMAR 14.19, Chapter 5 and that the standards for all State projects were applied.

Mr. Bowling said that when the panel looked at the project, it was as an individual action, not as part of Black Marsh even though it was known to be a part of it. He said that after looking at the building it was found to be no more harmful to be restored, perhaps more desirable, than to leave it in its present state. Mr. Bowling

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made a motion to approve the restoration subject to the following conditions: That the existing vegetation in the 100' Buffer not be disturbed and that DNR prepare for staff review and approval a plan for stormwater management. The motion was seconded and carried unanimously.

Chairman North asked Ms. Claudia Jones to report on the MDOT-MOU.

Ms. Jones said that a brief summary of the MOU was mailed to the Commission members, which is as follows:

ITEM: Memorandum of Understanding between the Maryland Department of Transportation and the Critical Area Commission(MOU-MDOT)

COMMISSION ACTION REQUIRED: VOTE

SUMMARY

After considerable deliberation the MOU-MDOT Subcommittee has developed a memorandum of understanding with the Maryland Department of Transportation. This includes:

State Highway Administration  
Maryland Transportation Authority  
Maryland Aviation Administration  
Mass Transit Administration  
Maryland Port Administration  
Motor Vehicle Administration  
State Rail Administration

The document outlines the process for handling of DOT projects beyond that provided for in the "Green Regs" as well as provides for a general approval for projects meeting specific conditions.

The main points of the document include:

- A process for determining which projects the Commission would like to see;
- Provisions for a general approval for projects that fall within certain classes and meet certain conditions;
- an agreement by the Department of Transportation to treat the Critical Area as a sensitive area to be automatically targeted for additional erosion and sediment controls;
- Limitations on the use of herbicides. Only those herbicides found acceptable to the Commission will be allowed.
- A provision for a quarterly meeting with the Department of Transportation, the MD Department of the Environment, the Governor's Office and the Commission on the effectiveness of MOU itself, the general approval process, and specific projects.

Ms. Jones outlined the MOU (attached to the Minutes and provided to the Commission members) and responded to questions from the Commissioners.

Commissioner Ambridge asked what sanctions were placed on a state agency if they violate the agreement.

Ms. Jones said that there is an item in the MOU to address that and that the interagency meeting is designed to deal with any problems that surface.

Mr. Ambridge asked if there was any reason to have any of the other agencies co-sign the agreement.

Mr. Hilliard replied that the Secretary of Transportation is accountable.

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Mr. Ambridge asked to make a motion that there be an addendum to the MOU for the administrators of the agencies to sign.

Counsel Gay stated that when there is a document that will bind more than one unit within a Department, the Department head is the only person to execute the document.

Chairman North advised Mr. Ambridge that his concern would be best addressed by a letter to each of the Department heads rather than having them be a signatory to the MOU.

Mr. Ambridge inquired if there was a renewal of the MOU agreement binding each successive Secretary to the Department.

Ms. Jones read the provision for that in the MOU.

Commissioner Jim Gutman made a motion that the Commission authorize the CBCAC Chairman to sign the proposed MOU-MDOT agreement at this time. The motion was seconded and carried unanimously.

Mr. Gutman added that the clock will start to tick with the signature of Mr. Lighthizer as to when the quarterly meetings will begin, within 90 days of the signing of the document. He assured the Commission members that the suggestion of the 5,000 square feet mentioned regarding the 10% of an area interpretation would be given further discussion for clarification.

Chairman North asked Mr. Hillard, MDOT, to convey to the Secretary of the Department of Transportation the concern of Mr. Ambridge with respect to having in hand a communication of some nature from the several sub-administrations and authorities so that there is no potential for misunderstanding.

Chairman North asked Ms. Elizabeth Zucker to report on the General Approval for Mosquito Control, Maryland Department of Agriculture.

Ms. Zucker stated that a DRAFT (attached to minutes) of the General Approval had been mailed to the Commission members for their review as well as an overview of that DRAFT proposal which is as follows:

- PROJECT: General Approval of Maryland Department of Agriculture's (MDA) mosquito control activities
- DISCUSSION: The CBCAC and MDA have a Memorandum of Understanding (MOU) for control of mosquitoes in the Critical Area through use of Open Marsh Water Management (OMWM) and insecticide application. The MOU calls for a General Approval of mosquito control activities. A draft General Approval has been developed by CBCAC and MDA staff. Notable elements of the document include:
- A process for CBCAC staff review of OMWM projects on State-owned lands is described.
  - CBCAC staff determines if OMWM projects are consistent with water quality and natural habitat goals of the Critical Area criteria.
  - Only if CBCAC staff find that certain issues can not be resolved for a particular OMWM project, will the project be brought to the CBCAC for discussion and a vote.
  - CBCAC staff will review MDA's proposed insecticide applications for consistency with the Critical Area criteria through the Department of the Environment's Toxics Permit annual approval process. Only if certain issues cannot be resolved at the staff level, will the spray projects be brought to the CBCAC for discussion and a vote.
  - The General Approval for the spray program contains an emergency public health exemption for spraying areas where there is a disease outbreak.

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STAFF RECOMMENDATION: Approval of the General Approval with the condition that legal review by the Assistant Attorney General is completed.

Ms. Zucker outlined the DRAFT proposal (provided to the Commission members and attached to the minutes). She said that the Procedures For General Approval, page nine through Page 13 of the draft proposal, outlines how projects will be reviewed under the Approval for State projects. She said that a similar process will be worked out for projects on private or local lands. Ms. Zucker asked the Commission for a consensus of opinion on the document so that it could be sent to the local jurisdictions for their 30 day review and comment period. She said the document then would be reformulated if necessary and then brought before the Commission for a vote.

It was suggested by some of the Commission members that the process for administration of the General Approval, for insecticide application projects, is too cumbersome. It was suggested that one agency co-ordinate the applications instead of the several mentioned - Critical Area Commission, Department of Natural Resources, Maryland Department of Health and Mental Hygiene, Maryland Department of the Environment, and Maryland Department of Agriculture, etc.

Ms. Zucker said that the process would be a concurrent process and not involve more time than the current agency review.

Commissioner Louise Lawrence stated that this document has been worked on for four years. She said that MDA is a State agency accountable to the citizens of Maryland and receiving comments to make the process less cumbersome would be appreciated, but it would not be practical to spend another year in reviewing the General Approval because of the lack of staff and the lack of budget. She asked that it be approved and then perhaps amended.

Cy Lesser, Department of Agriculture, answered technical questions from the Commission members and stated that it would be beneficial to develop a document of mutual understanding. The General Approval accomplished that and hopefully there will be no further delay.

Dr. Taylor said that the intention in the General Approval was to give a sense as to what exists procedurally and how the Commission fits in with that process. She said that the document will be reviewed to see if it can be simplified.

Mr. Bostian asked what part the Critical Area plays in reviewing the projects.

Ms. Zucker stated that as a result of a Memorandum of Understanding between the Department of Agriculture and the Commission a General Approval was to be developed for these two types of activities (OMWM and spraying). This implies that OMWM and spraying are development activities which are to be regulated as required by Law. She said that it would make the process easier by linking the Commission into the ongoing review processes being

Chesapeake Bay Critical Area Commission  
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done by the Department of the Environment. The General Approval document does that.

Counsel Gay said that MDE may not be reviewing the projects for consistency with the Critical Area criteria. MDE may only be reviewing them for MDE requirements. State agency actions on local or private or State property must be undertaken in a manner consistent with the Green or Blue Regs.

Chairman North asked Commission Counsel Gay to update the Commission on legal issues.

Counsel Gay stated that the Wharf at Handy Point case argued before the Court of Special Appeals and which was waiting for a decision has been decided. He said that the Court decided in favor of the Critical Area Commission's position affirming Judge Wise's decision not to allow the proposed project in Kent County in a 20-page opinion.

Counsel Gay said that the Critical Area Commission prevailed in the Graham Case in Talbot County. The CBCAC argued that the Board of Appeals Opinion was insufficient for the Court to really determine whether or not the applicant met the hardship necessary for a variance and the Circuit Court agreed and remanded the matter to the Board of Appeals for explanation of why it had granted the variance.

Counsel Gay said that the Betterton Bay Club matter is still in negotiation. A meeting was held between the Queen Anne's County Commissioners, officials of the Critical Area Commission, Judge North, Dr. Taylor, Ms. Claudia Jones, and several issues were worked out to the satisfaction of both parties however, a few points that remained unresolved were scheduled to be dealt with at a meeting scheduled for June 4th.

Chairman North asked that the Commission go into Closed Session to discuss the Burris matter.

After discussion of the matter, Chairman North stated that a consensus had been reached. Mr. Gutman made a motion that the Critical Area Commission has considered a proposal made on behalf of Mr. Burris that is hereby rejected and advise that the matter will be taken to further litigation concerning a pool already built on his property. Mr. Bowling suggested an amendment to authorize the Commission Counsel, George Gay, to further litigate the matter. Mr. Gutman acquiesced to the amendment and Mr. Bowling seconded the motion and it was carried unanimously.



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OLD BUSINESS

There was no old business.

NEW BUSINESS

Dr. Taylor informed the Commission members that each and every Commission member had a tree planted in their honor by the Back River Neck Peninsula Community Association, Inc. at the Governor Harry Hughes Grove dedication on May 20th, 1992.

Mr. Glendening announced that the Prince George's County Kids were highlighted for their Environmental Education Program in the film that opened the National Conference on the Environment.

There being no more business, the meeting adjourned.

CRITICAL AREA COMMISSION  
STAFF REPORT

July 1, 1992

ISSUE: Map amendment by reason of mistake, Town of Elkton

COUNTY: Cecil, Town of Elkton

COMMISSION ACTION: Vote to approve or disapprove by July 20, 1992

DISCUSSION: This map amendment was introduced at the May 6th meeting. The Town of Elkton has submitted a map amendment changing 35.4 acres of the property of Chesapeake Haven Land Corp./ Remle Inc. from Resource Conservation Area (RCA) to Limited Development Area (LDA) by reason of mistake in mapping. The site is within the municipal boundaries of Elkton, near the intersection of Rt. 213 and Whitehall Road. As of 1985, the property was 86.6 acres, 45.9 acres of which are in the Critical Area. A portion of the property, 35.4 acres, is proposed to change to LDA, while 10.5 acres dominated by nontidal wetlands remains RCA.

Several different developments had been proposed for the property through the years, none of which were recorded or carried out. There is an existing adjacent subdivision (Elkwood Estates) predating 1985, although it is in the County, not in the Town. The property was mined for sand and gravel to some extent in the 1950's and 60's, and the vegetation has naturally regenerated since then. The property had received final approval for a residential subdivision in the 1970's, but the plats were never recorded. Sewer lines were on the property prior to 1985, and the Town of Elkton had previously operated a sewage treatment plant on adjacent property. The Town determined that a mistake in mapping had occurred, and that the property should have been mapped LDA because it had sewer and development had been planned for the property.

At the time of program approval, the Critical Area Commission panel evaluated the mapping submitted by Elkton, and requested corrected designations on four parcels. The parcel currently being considered for a mapping mistake had been submitted as LDA by the Town, and the Commission panel requested that it be RCA because there were no structures serviced by water and sewer on the 46 acres within the Critical Area (even though there was sewer on the property). Also, land use was dominated by forest and wetlands, which was considered more consistent with the RCA definition. Two other parcels submitted as LDA were requested to be mapped as RCA for the same reasons. A subdivision was approved on one of these parcels through interim findings (before program approval), a situation which requires the use of growth allocation where the approved development is inconsistent with RCA criteria. Consequently, the panel agreed at the time to apply all of the Town's available growth allocation (70 acres) to the approved development, although this did not equal the area to be developed.

Review of the LDA and RCA definitions is helpful in considering the appropriateness of a mapping mistake. The Critical Area mapping was based on land use as of December 1, 1985. The Critical Area Criteria state that Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and wildlife habitat and the quality of runoff from these areas has not been substantially altered or impaired. These areas should have at least one of the following features:

- housing density between one unit per five acres up to four units per acre;
- areas not dominated by agriculture, wetland, forest, barren land, surface water or open space;
- areas having the characteristics of the Intensely Developed Area, but less than 20 acres; or
- areas having public sewer or public water, or both.

Resource Conservation Areas are those areas characterized by nature-dominated environments (i.e., wetlands, forest, abandoned fields) and resource-utilization activities (i.e., agriculture, forestry, fisheries activities, or aquaculture). These areas should have at least one of the following features:

- density is less than one dwelling unit per 5 acres; or
- dominant land use is in agriculture, wetland, barren land, surface water, or open space.

Jurisdictions could create additional mapping rules to specify how these definitions would be carried out. The Town of Elkton did not have specific additional mapping rules in its Critical Area Program. The mapping in the towns was sometimes markedly different than those of counties, because of the disparity in situations. For example, the City of Annapolis created some very small areas of RCA in order to grant greater protection for existing forested areas, rather than treating these areas as infill, which was usually done with such areas in counties. Because the availability of sewer and water was generally more prevalent within towns, the presence of this infrastructure on undeveloped land may not have been given the same weight as in counties during mapping.

The mapping of the parcel in question as RCA appears to have been consistent with other mapping in Elkton, where parcels were evaluated based on whether there were structures serviced by sewer and water, rather than whether there were sewer and water lines on the property. The parcel did have sewer lines available to service the property as of 1985.

PANEL RECOMMENDATION: to be developed at the panel meeting

STAFF: Anne Hairston

## Status of Growth Allocation Chesapeake Bay Critical Area (As of June 1, 1992)

PROGRAM	ORIGINAL AMOUNT (ACRES)	AMOUNT USED AS OF 6/92 (ACRES)	AMOUNT REMAINING (ACRES)	PERCENT OF TOTAL REMAINING
AnneArundel	918	758	160	17%
Baltimore City	022	- 0 -	022	100%
Baltimore	462	098	364	79%
Calvert	684	299	385	56%
Caroline	434	012	422	97%
Cecil	960	70***	890	93 %
Charles	1130	- 0 -	1130	100%
Dorchester	2900	875	2025	70%
Harford	278	141	137	49%
Kent	1399	002*	1397	100%
Prince George's	328	134	194	59%
Queen Anne's	1528	153	1375	90%
St. Mary's	1686	016	1670	99%
Somerset	1506	063 +	1443	96%
Talbot	2554	67**	2487	97%
Wicomico	894	- 0 -	894	100%
Worcester	474	074	400	84%
Totals	18157	2692	15465	85%

\* Betterton - 2 Acres

\*\* Easton - 28 Acres

+ Does Not Include Colbourne Cove Allocation

\*\*\* Town Of Elkton - 70 acres

PROJECT PROCEDURES

In the following section, procedures are described to insure that mosquito control projects will be in compliance with the Critical Area criteria under the general approval. A procedure is described for the review of OMWM activities in tidal marsh on State lands under COMAR 14.19.05, and for OMWM activities proposed in tidal marsh on private or local lands under COMAR 14.19.02. Also included is an outline of CAC review procedures for MCS spray program activities on State, private and local lands.

A. Tidal Marsh OMWM Projects - State Agency Actions on State-owned Lands (COMAR 14.19.05)

Step #1 MCS sends information on the proposed project to the CAC staff before the commencement of construction or the issuance of requests for proposals for site development, whichever is the earliest. At a minimum, the information package shall include maps (of State lands) showing:

- a. the Critical Area Boundary (as determined from the State Wetlands Boundaries Map);
- b. all Habitat Protection Areas (HPAs) as described in COMAR 14.19.05.09 through .13 and as identified with assistance from the Department of Natural Resources (DNR);
- c. areas of proposed disturbance (temporary and permanent).

The information package should also include a written discussion of:

- a. type of activities proposed (e.g. number and size of ponds, ditches, sill systems) and approximate timing;
- b. potential environmental impacts from the project;
- c. mitigation measures to be taken to avoid or minimize potential impacts;
- d. copies of written communication with DNR regarding the identification and protection of HPAs;
- e. status of permits or approvals required from local, State and federal agencies.

- Step #2 When necessary, MCS holds a site visit and/or meeting with CAC staff (and any other appropriate regulatory officials) to discuss the project proposal.
- Step #3 CAC staff determines whether the information package is complete. Once a determination of completeness is made, CAC staff reviews the proposal for consistency with the general approval. To gain a determination of consistency, it must be established that the project:
- a. implements current standards of OMWM;
  - b. includes measures to insure no significant change in wetland vegetation communities;
  - c. includes measures to insure the activities will not result in significant adverse effects to water quality as well as non-target organisms and their habitat; and
  - d. is consistent with applicable criteria in COMAR 14.19.05, and in particular will not adversely affect any HPAs as defined in COMAR 14.19.05.09 through .13; and

The CAC staff will consult with MCS, DNR and other appropriate agencies and organizations in making a determination of consistency.

- Step #4 If a determination of consistency is made for the project, CAC will send MCS a final letter of consistency within 30 days following the staff's determination that the information package from MCS is complete.
- Step #5 If, however, Commission staff find that unresolved issues remain with respect to the project's consistency with the water quality and habitat protection goals of the Critical area criteria, MCS will be informed that it may be submit the project individually for full CAC vote at the next scheduled CAC meeting under procedures outlined in COMAR 14.19.05. through 14.19.08.
- Step #6 If the project is denied, MCS may appeal the denial to the CAC according to procedures outlined in COMAR 14.19.08.

. . . . .

7/1

B. Tidal Marsh OMWM Projects - State Agency Actions on Private or Local Lands Resulting in Development of Local Significance (COMAR 14.19.02)

Step #1 through Step #6

MCS and CAC staff will follow the procedures outlined for OMWM projects in A., Step #1 through Step #6, above (the procedure section for development on State lands) except that CAC staff will review proposals for consistency with Critical Area criteria in COMAR 14.15.

. . . . .

C. Insecticide Application Projects---State-Agency Actions on State-Owned Lands and/or Private or Local Lands (COMAR 14.19.05 and 14.19.02)

Step #1 MCS will submit a copy of the application for a Maryland Department of the Environment Toxics Permit to CAC staff for review and comment.

Step #2 CAC staff will review the permit application to determine if the proposal is consistent with the general approval. To gain a determination of consistency, it must be demonstrated that the insecticide application program:

- a. implements current methods, rates and standards of pesticide application;
- b. includes measures to insure that spraying will not result in adverse effects to water quality or populations of nontarget organisms and their habitat; and
- c. complies with applicable criteria in COMAR 14.19 or COMAR 14.15 and in particular will not adversely affect any HPAs as defined in COMAR 14.19.05.09 through .13 or COMAR 14.15.09 (whichever is applicable);

The CAC staff will consult with MCS, DNR and other appropriate agencies and organizations in making a determination of consistency.

Step #3 If a determination of consistency is made for the proposed spray program, CAC will send MCS a final letter of consistency within 30 days following receipt of the complete permit application.

- Step #4 If, however, CAC staff find that unresolved issues remain with respect to the spray program's consistency with the water quality and habitat protection goals of the Critical area criteria, MCS will be informed that it may submit the unresolved element(s) of the spray program for a full CAC vote at the next scheduled CAC meeting under procedures outlined under COMAR 14.19.06 and COMAR 14.19.07 as determined by CAC staff.
- Step #5 If the spray program element(s) is denied, MCS may appeal the denial to the CAC according to COMAR 14.19.08.02.
- Step #6 A public health exception will be issued to allow necessary insecticide application for mosquito-borne disease outbreak in any area not approved for spray under the MDE Toxics Permit. The procedure for obtaining a public health exception will consist of:
- a. A statement from MCS to CAC which includes the following information: notification that a threat to public health and safety exists due to an outbreak of mosquito-borne disease based on clinical observation of laboratory isolation of etiologic agents; the vector species involved; the areas involved; the reasons that a permit to allow treatment of the area was not originally approved; the pesticide(s) MCS proposes to apply; the rate and manner of applications;
  - b. CAC staff will review the statement and respond to the request for a public health exception within 24 hours;
  - c. If the exception is not approved, an explanation for the denial will be made, along with CAC recommendations for alternative action; and if the exception is approved it will state the specific period of time for which the exception is valid;
  - d. MCS will implement necessary control, collect data as necessary to document the results of the control program and submit a report to CAC within 90 days after completion of the control efforts.



## PROPOSED LOCAL PROGRAM REFINEMENT

**JURISDICTION:** Town of Vienna (Dorchester County)

**PROPOSAL:** A renumbered and reindexed Zoning Ordinance for the Town, integrating and incorporating Critical Area requirements here and there throughout the Ordinance according to the subject matter of the various sections. (From the time of local Program adoption until now, the Town's Critical Area regulations have been a separate section of the Zoning Ordinance.) This will simplify day-to-day interpretation.

**ANALYSIS:** Technical staff made 33 recommendations to the draft revised Ordinance. The recommendations clarified language and brought it into conformance and compliance with the requirements of the Code of Maryland Regulations (COMAR) at 14.15.

All but 6 have been incorporated here. The 6 which have not been incorporated deal with language which the Town feels may be redundant or superfluous, and therefore, not necessary to include. Be that as it may, the language is mandatory in nature, either by regulation or by statute. Other language issues stem from the continued inclusion of terms that were used erroneously at the time of original Program development in 1988.

These 6 items are important, but not so significant that the Town's implementation of its Ordinance is jeopardized. The required quadrennial review of the Town's entire Program will be undertaken later this calendar year. That is an opportunity to resolve these matters.

**RECOMMENDATION:** On the advise of the technical staff, the Chairman has determined the proposed revised Ordinance to be a Program refinement. We request the Commission's concurrence with this determination.

**STAFF:** Tom Ventre  
Roby Hurley

July 1, 1992 (Happy New Fiscal Year!)

PRELIMINARY STAFF REPORT

APPLICANT: Historic St. Mary's City Commission

PROJECT: Master Plan Update

RECOMMENDATION:

Discussion:

The Historic St. Mary's City Commission (HSMC) proposes to undertake several development projects in conjunction with the updating of its Master Plan. The Master Plan also covers research and education programs over five years. A summary of activities, prepared by HSMC, is attached.

The Master Plan proposes:

- development of a Visitors Center and Museum,
- reconstruction of the Great Brick Chapel;
- construction of partial, frame buildings, or ghost structures, in locations of original buildings; and
- relocation of structures not associated with the historic layout.

At the upcoming July 1st meeting, representatives of Historic St. Mary's City will brief the Project Subcommittee and discuss the relation of the Master Plan to Critical Area regulations. The full Commission will review the Master Plan at the afternoon meeting.

STAFF CONTACT: Ren Serey

## HISTORIC ST. MARY'S CITY MASTER PLAN UPDATE SUMMARY

### Overview

A Master Plan Update was completed in late 1991 to build upon the successes of the past 25 years at Maryland's premier open-air living history park and museum. Its goal was the development of a 5 year vision to transform Historic St. Mary's City (HSMC) into a nationally-recognized museum with a significantly larger number of visitors.

As HSMC continues to discover, conserve and interpret the unique historical significance of the St. Mary's City National Historic Landmark, it will concentrate its museum and public education efforts to highlight:

St. Mary's City as the first capital of Maryland

St. Mary's City as one of the first English settlements in North America, best presented through the period 1634-1695.

St. Mary's City as the site of many firsts in American history, and the source of legacies fundamental to American society, the most important of which is separation of church and state.

St. Mary's City as a traditional rural Southern Maryland landscape.

These areas of significance will be employed within an exhibit plan entitled St. Mary's City - Maryland Birthplace, American Legacy. This plan will address the religious, social and cultural experiment set in motion by Maryland's founders 300 years ago, which continues to challenge all succeeding generations. In exploring the actual site of where Maryland began, visitors will look back to the past and see themselves.

### Recommendations

The major recommendations of the Master plan Update cluster around three major goals:

1. Improve visitor interest in and understanding of HSMC.

Give the site of the historic City a three-dimensional reality.

## HSMC Plan Update Summary

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Reconstruct the Great Brick Chapel at the opposite end of the City from the 1676 Statehouse, recreating historic bookends that symbolize the separation of church and state.

Link original archaeological sites throughout the City with a major exhibition corridor.

Recreate in a variety of ways the forms of all known 17th century buildings, using ghost structures and other partial and complete reconstructions.

Recreate the Baroque Plan street pattern and further enhance the historical landscape with new plantings (orchards, gardens, and crops) and fencing.

Further develop the historical farm exhibits to interpret how early Marylanders lived and worked on their tobacco plantation.

Develop and build new Visitor Center/Museum to improve visitor arrival, orientation, and understanding. A concentration on high-tech exhibits and videos in the Visitor Center will contrast with the low-tech live interpretation and static exhibits throughout the site, creating a sense of then and now.

Achieve active visitor participation in the rediscovery of St. Mary's City with exhibits of new finds and regular archaeological digs that are interpreted, and, in some cases, include, the public.

### 2. Reach out to as many audiences as possible.

Revise the public interpretation and education program to highlight the American Legacies (liberty of conscience, resource stewardship, cultural diversity, pursuit of happiness, and citizen government) that provide diverse modern audiences reasons to care about HSMC.

Continue to use costumed interpreters to bring the City and farms to life for visitors.

Expand HSMC's public outreach program to include schools throughout Maryland, special interest groups, and formal academic programs at the college level, making every Maryland student aware of HSMC.

## HSMC Plan Update Summary

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3. Better protect the HSMC site and setting to enrich the visitor experience.

Modify current Maryland Route 5 to decrease the disruption of a major highway through the historic site. Reinforce the historic rural landscape at the entrances to HSMC, and use clear and coherent signage to direct visitors to their destinations within the historic area.

Immediately implement a thoughtful and consistent program of landscape management to rediscover, enhance and maintain the extraordinary historic rural landscape that survives at HSMC. Remove as many modern structures from the site as possible and accelerate efforts to protect key views on the edges of HSMC.

Complete a comprehensive archaeological survey by the year 2000 to identify all significant historic sites on land administered by HSMC and St. Mary's College.

*Ren*

PRELIMINARY STAFF REPORT

APPLICANT: University of Maryland Center for Environmental and Estuarine Studies, Horn Point, Dorchester County

PROJECT: Repair and expansion of boat basin.

RECOMMENDATION:

Discussion:

The Center for Environmental and Estuarine Studies at Horn Point proposes to widen its existing boat basin and undertake general repairs at the facility. The Center also has applied for State and federal permits to dredge the basin, the existing channel and a portion of the Choptank River. The Critical Area Commission does not have approval authority for dredging, and those activities are not a subject of this review.

The Center's proposed widening of the boat basin involves excavation of approximately 1800 square feet of Buffer area. Mr. John Coffee, Senior Engineer with the University's Department of Engineering, has stated that the basin requires widening to accommodate the Center's research vessels in a safer manner. A representative of the Center will brief the Project subcommittee on the issue of Buffer excavation. The Center has been notified that any Buffer excavation must be specifically justified.

The project will be presented to the full Commission at the afternoon meeting on July 1, 1992.

STAFF CONTACT: Ren Serey

EDGE OF EXISTING CROWN

SECTION 2

HYDRAULICALLY DESIGNED B.O.C.

EXISTING TIMBER PIER

SECTION 1

BEACH SLOPE UP TO PIER

STONE SCOUR



### DREDGING PLAN

SCALE 1" = 40'

SEE NOTES 1, 2, 3 & 4 ON DWG. A.2

EXISTING BOATHOUSE

EXISTING SHIP TO BE DEMOLISHED

NEW BULKHEAD

EXISTING RIPRAP

EXISTING TIMBER BULKHEAD

EXCAVATED 6.0'

SPILLWAY

EXISTING CONCRETE RAIL

EXISTING TIMBER BULKHEAD

EXCAVATED 6.0'

EXISTING DECAYED TIMBER BULKHEAD

NEW BULKHEAD

15

Ken

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STAFF CONTACT: Ren Serey

*But numerous*



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## HSMC Plan Update Summary

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Complete a comprehensive archaeological survey by the year 2000 to identify all significant historic sites on land administered by HSMC and St. Mary's College.

COMMISSION MEMBERS

2/2/16

North, II, John C., Chairman

Ambridge, Anthony. Baltimore City

~~yes~~

Barker, Philip, Harford County

~~no~~

Blake, Russell W., Worcester County

H. Kasson  
J. G. [unclear]

Bostian, William J., Talbot County

Bowling, Samuel Y., Charles County

~~Bruce, Anthony (Tony), Somerset County~~

Corkran, William H. Jr., Talbot County

Elbrich, Joseph J. Jr., Anne Arundel County

~~Glendening, Parris, Prince George's County~~

~~not~~

Gutman, James E., Anne Arundel County

yes

~~Hearn, J. L., MD Dept. of Environment~~

~~not (no ML)~~

Hickernell, Ronald, Baltimore County

Jarvis, Thomas L., Caroline County

~~Krech, Dr. Shepard Jr., Talbot County~~

~~Dr. Krech - no~~

Langner, Kathryn D., Cecil County

Lawrence, Louise, Department of Agriculture

yes

Little, J. Rodney, DHCD

Peck, Jim, Department of Natural Resources

yes

Phillips, G. Steele, Dorchester County

N/A

Price, Robert R. Esquire, Queen Annes County

Schoeplein, Robert, DEED

~~Whitson, Michael J., St. Mary's County~~

~~not~~

Williams, W. Roger, Kent County

~~Young, Ronald, Maryland Office of Planning~~

(no Larry Duket X)  
MML

~~VACANT, Calvert County~~

Tremman

Tremman ltr

Di.  
C. B. Com. Jri  
S H,

**HARRIS & CAPRISTO**

ATTORNEYS AT LAW  
ROUTE 5, RAGAN BUILDING  
SUITE 1E  
POST OFFICE BOX 437  
LEONARDTOWN, MARYLAND 20650

F. MICHAEL HARRIS  
JOSEPH C. CAPRISTO

TELEPHONE: 301-475-5581  
FACSIMILE NUMBER: 301-475-5490

June 29, 1992

Office of the Attorney General  
Department of Natural Resources  
Tawes State Office Building  
Annapolis, MD 21401

Attention: George E.H. Gay  
Assistant Attorney General

Re: Daniel W. Burris, Variance in Appeal  
Case No. VAAP #91-0932, St. Mary's  
County, Maryland, Case No. CA 91-1196

Dear Mr. Gay:

Upon my client's instructions, my client has authorized me to offer as a compromise of the above-captioned matter, the sum of \$2,500.00. This sum will be paid to a fund dedicated to educating St. Mary's County property owners as to the meaning and purpose of the CRITICAL AREA LAW. If the above is acceptable, payment can be made as soon as the fund is set up.

Very truly yours,

  
F. Michael Harris

/db

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



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

July 1, 1992

Via Facsimile

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

FROM: George E. H. Gay *George E. H. Gay*  
Assistant Attorney General

RE: In the Matter of the Application of Daniel W. Burris for  
a Variance in Appeal Case VAAP #91-0932 Before the St.  
Mary's County Board of Appeals, Case No. CA 91-1196

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I suggest that we discuss this matter with the full Commission today. You will note that Mr. Harris, in response to a direct request from me, has indicated that he was not involved with Mr. Burris' application on or before the day that it was considered by the St. Mary's County Board of Appeals. This is contrary to what I advised the Commission. This new information will undoubtedly be of interest to the Commissioners.

GEHG:cjw

cc: Sarah J. Taylor, Ph.D.

CAC-44-91  
NORTH.BUR

**HARRIS & CAPRISTO**

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JOSEPH C. CAPRISTO

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Upon my client's instructions, my client has authorized me to offer as a compromise of the above-captioned matter, the sum of \$2,500.00. This sum will be paid to a fund dedicated to educating St. Mary's County property owners as to the meaning and purpose of the CRITICAL AREA LAW. If the above is acceptable, payment can be made as soon as the fund is set up.

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Via Facsimile

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Chesapeake Bay Critical Area Commission

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GEHG:cjw

cc: Sarah J. Taylor, Ph.D.

CAC-44-91  
NORTH.BUR

JUDGE JOHN C. NORTH, II  
CHAIRMAN  
410-822-9047 OR 410-974-2418  
410-820-5093 FAX

SARAH J. TAYLOR, PH.D.  
EXECUTIVE DIRECTOR  
410-974-2418/26  
410-974-5338 FAX



WESTERN SHORE OFFICE  
45 CALVERT ST., 2ND FLOOR  
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE  
31 CREAMERY LANE  
EASTON, MARYLAND 21601

STATE OF MARYLAND  
CHESAPEAKE BAY CRITICAL AREA COMMISSION  
May 20, 1992

Mr. Walter B. Harris  
Blooming Neck Farm  
Still Pond Neck Road  
Worton, Maryland,

Dear Walter:

I did not want your letter of May 5, 1992 to go unanswered pertaining to the meeting at your home on May 15th concerning the disposal of mustard gas by incineration at Aberdeen. Unfortunately, I was unable to attend the meeting because of a need to be in court.

As you know, new hazardous waste disposal facilities are prohibited in the Critical Area unless there is no environmentally acceptable alternative outside the Critical Area. While that sentence may sound good, nevertheless, all that would need to take place would be for the Army to move the incineration facility out of the 1000 foot area and that would remove it from the prohibition, as well as remove any type of review on it from the Commission. Thus, I am afraid that we will not be able to be of much help.

I was pleased to see that the good Senator Mikulski introduced a bill that would delay construction of an incinerator until more studies are done and alternative technologies are considered. The article is enclosed for your information.

Please keep the Commission informed about this matter as other aspects about the project may have an effect in the Critical Area over which we could have jurisdiction.

Thank you again for your invitation. I am sure that the time was well spent.

Sincerely,

Sarah J. Taylor, Ph.D.  
Executive Director

Enclosure  
cc: Pat Pudelkewicz



# Maryland Department of Transportation

The Secretary's Office

**William Donald Schaefer**

Governor

**O. James Lighthizer**

Secretary

**Stephen G. Zentz**

Deputy Secretary

June 12, 1992

**RECEIVED**

JUN 19 1992

The Honorable John C. North, II  
Chairman  
Chesapeake Bay Critical Areas Commission  
West Garrett Place, Suite 320  
275 West Street  
Annapolis MD 21401

**DNR  
CRITICAL AREA COMMISSION**

Dear Chairman North:

I am sorry I could not be present for the last Critical Areas Commission meeting when the Commission approved the Memorandum of Understanding (MOU) between the Maryland Department of Transportation and the Commission. I was with the Governor making calls on Port customers.

Dale Hilliard attended for the Department to respond to concerns or questions regarding the MOU. I understand that a member questioned the commitment of all of the Department of Transportation administrations to carry out the requirements of this agreement and asked for each administrator to adopt the principles of this document.

Unequivocally, each and every one of the heads of the agencies responsible to me have adopted the language, spirit and intent of this MOU. The State Highway Administration, Mass Transit Administration, Maryland Aviation Administration, Maryland Port Administration and Maryland Transportation Authority have all participated in the development of the document and the review and approval of same. I cannot state their support strongly enough.

When I sign this agreement, I commit every element of the Department to abide by its language. Again, you will have the full cooperation and support of this Department and each of its administrations. And, if there are any issues which arise concerning the agreement, at any time, the Department will meet to discuss the issue immediately rather than wait for the scheduled quarterly meetings as specified in the document.

This is a good agreement. It is incumbent on all of us to do whatever we can to protect the critical areas of the State and this document sets forth a good framework for cooperation and understanding.

My telephone number is (410)- 859-7600

TTY For the Deaf: (410) 684-6919

Post Office Box 8755, Baltimore/Washington International Airport, Maryland 21240-0755

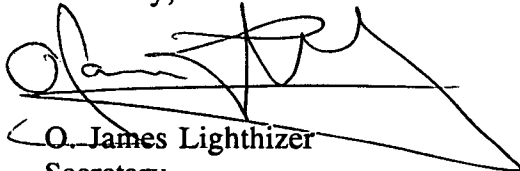


The Honorable John C. North, II  
June 12, 1992  
Page Two

I look forward to the implementation of the Memorandum of Understanding and complement the diligence of your subcommittee's work on this agreement. Even more, the Department is anxious to participate as a member of the Critical Areas Commission.

The Governor has signed H.B. 441; however, it does not become effective until October 1, 1992. Nevertheless, I request your permission to begin attending the meeting as a participant in the Critical Areas process. I will designate Hal Kassoff as my representative on the Commission, when I am unable to attend.

Sincerely,



O. James Lighthizer  
Secretary

cc: Mr. John Agro  
Mr. Ronald Hartman  
Mr. Dale Hilliard  
Mr. Hal Kassoff  
Mr. Theodore Mathison  
Mr. W. Marshall Rickert  
Mr. Adrian Teel  
Mr. Stephen G. Zentz

# News

For Immediate Release  
For More Information: David Slade  
(202) 508-3860

## South Carolina Reversed in *Lucas* Decision

from the Coastal States Organization

In a 6 - 3 Decision authored by Justice Scalia, the U.S. Supreme Court today reversed the South Carolina Supreme Court in the case *Lucas v. South Carolina Coastal Council*. The case will be remanded to the South Carolina Supreme Court for a determination of whether compensation is due to Lucas due to the two-year (1988 - 1990) "temporary taking" of his property. The decision is in three parts.

1. **Lucas's takings claim is not "unripe."** Citing *First Evangelical Lutheran Church*, wherein the Court found compensation owing for a "temporary taking," the court held that although Lucas can still apply for a "special permit" that would allow him to build seaward of the setback line, this does not rule out "any takings claim with respect to Lucas's *past* deprivation, *i.e.* for his having been denied construction rights during the period before the 1990 amendments."

2. **The South Carolina Supreme Court erred in applying the "harmful or noxious uses" principal to decide this case.** Although the Court, for over 70 years since holding that a takings occurs when regulations go "too far" in the *Pennsylvania Coal v. Mahon* case, has "eschewed any 'set formula' for determining how far is "too far", the Court has established "at least two discrete categories of regulatory action as compensable without case specific inquiry ... The first encompasses regulations that compel the property owner to suffer a physical 'invasion' of his property. (*Loretto*) ... The second .. is where regulation denies all economically beneficial or productive use of land." (*Nollan, Keystone, others*). In these two cases, it is incorrect to apply the "harmful or noxious use" exception to the "takings" arguments. Thus, where a land owner is deprived of all economic viability or use, the "noxious-use logic cannot serve as a touchstone to distinguish regulatory 'takings' -- which require compensation -- from regulatory deprivations that do not require compensation." Having held that Lucas was deprived of all economic use of his property from 1988 - 1990, the South Carolina Supreme Court's application of the "harmful or noxious use" exception was incorrect.

3. **Compensation may still not be owed to Lucas.** The Court noted that their "takings" jurisprudence ... has traditionally been guided by the understandings of our citizens regarding the content of, and the State's power over, the 'bundle of rights' that they acquire when they obtain title to property. Thus, Lucas is not due any compensation if it can be shown that the title to Lucas's property was already restricted by "the State's law of property and nuisance" such that the South Carolina could have prevented construction on the parcel under its common law, then there was no "taking." In other words, if the South Carolina Beach Front Management Act "did no more than duplicate the result that could have been achieved in the courts" no compensation is due. The Court went on, however, to state that it "seems unlikely that common-law principles would have prevented the erection of any habitable or productive improvements" on Lucas's land. Nonetheless, in an important point, the Court stated that "The question, however, is one of State law to be dealt with on remand." Upon remand, South Carolina need not compensate Lucas for the "temporary taking" only if it can "identify background principles of nuisance and property law that prohibit the uses [Lucas] now intends in the circumstances in which the property is presently found. Only on this showing can the State fairly claim that, in proscribing all such beneficial uses, the Beachfront Management Act is taking nothing."

Scalia, joined by Rehnquist, White, O'Connor and Thomas, wrote the majority opinion. Kennedy filed a concurring opinion. Blackmun and Stevens filed separate dissents. Souter filed a separate statement questioning the Court's acceptance of the case.

**CONCLUSION:** As Justice Blackmun states in his vociferous dissent, "From now on, there is a categorical rule finding these regulations [that eliminate all economic value] to be a taking unless the use they prohibit is a background common-law nuisance or property principle." Blackmun describes the majority opinion as a "missile" launched "to kill a mouse."

Another interesting twist to this decision is the effect it may have on federal legislation pertaining to wetlands. As noted, the Supreme Court remanded the case to the South Carolina Supreme Court because the questions presented were ones of "State law to be dealt with" by the State court. Congress, in its attempts to legislatively determine what would constitute a "taking" under wetlands legislation would be preempting State property and nuisance common law. It is constitutionally questionable whether Congress has this power. In other words, following the *Lucas* decision's reasoning, the Court may have thrown out federal attempts to legislatively prescribe and define a "taking." Legislation going this far could only be done at the State level.

- Copies of the decision available by mail. -

HALL OF STATES • 444 North Capitol Street, N.W. • Suite <sup>711</sup>~~811~~ • Washington, D.C. 20001 • (202) <sup>508-3860</sup>~~508-3860~~