

Committee Meetings & Correspondence September 1992

USA\_5\_1832-48

## PRELIMINARY AGENDA

Chesapeake Bay Critical Area Commission  
Department of Housing and Community Development  
100 Community Place, Conference Room 1100 A  
Crownsville, Maryland

### SUBCOMMITTEES

MOU-MDOT	9:30 a.m. - 10:15 a.m.	Conference Room C
Special Issues	10:15 a.m. - 11:00 a.m.	Conference Room C
Anne Arundel Panel	12:00 p.m. - 12:30 p.m.	Conference Room D
Queen Anne's Co. Panel Mtg.	12:00 p.m. - 12:30 p.m.	Conference Room C
Project Evaluation	11:00 a.m. - 12:00 p.m.	Conference Room C
Program Amendment	10:30 a.m. - 12:00 p.m.	Conference Room D

LUNCH 12:30 p.m. - 1:00 p.m.

### PLENARY MEETING

1:00 p.m. - 1:10 p.m.	Approval of Minutes August 5th, 1992	John C. North, II, Chairman
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### PROJECTS

1:10 p.m. - 1:30 p.m.	Broad Creek Waste Water Pump Station - WSSC	Theresa Corless, Planner
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### INFORMATION

1:30 p.m. - 1:55 p.m.	Solomons Fishing Pier Additional Parking Maryland Office of Planning	Dawnn McCleary, Planner Vivian Marsh, MD. Office of Planning
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### VOTE

### PROGRAM AMENDMENTS & REFINEMENTS

1:55 p.m. - 2:25 p.m.	Prince George's County Growth Allocation VOTE	Theresa Corless, Planner Ron Hickernell, Chair
2:25 p.m. - 2:45 p.m.	City of Cambridge REFINEMENT	Tom Ventre, Planner
2:45 p.m. - 3:05 p.m.	Queen Annes County Amendments VOTE	Claudia Jones, Planner Judge John C. North, II, Chair

**MOU'S AND GENERAL APPROVALS**

3:05 p.m. - 3:25 p.m. Mosquito Control Elizabeth Zucker,  
Gen. Approval Science Advisor  
VOTE Cy Lesser, MDA

3:25 p.m. - 3:50 p.m. Legal Updates George Gay, AAG  
Burris Status  
Betterton Status  
Short Appeal  
Back Bay Beach Status

**OLD BUSINESS**

3:50 p.m. - 4:30 p.m. Clarification of Elkton George Gay, AAG  
Mapping Mistake

WSSC - Hyattsville Theresa Corless  
Phase D Planting  
Plan Update

**NEW BUSINESS**

John C. North, II,  
Chairman

October Retreat and Meeting Hugh Smith, PAO

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
MINUTES

*approved*  
*20-0*

The regular monthly meeting of the Chesapeake Bay Critical Area Commission was held on **August 5, 1992** at 1:00 p.m. at the Commission offices, 45 Calvert Street, Annapolis, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in attendance:

Barker, Phillip	Bostian, William
Bowling, Samuel	Corkran, William
Gutman, James	Hickernell, Ron
Jarvis, Thomas	Langner, Kathryn
Lawrence, Louise, DOA	Phillips, Steele
Price, Robert, Jr.	Schoepflein, Robert, DEED
Whitson, Michael	Carolyn Watson for Parris Glendening
Williams, Roger	Larry Duket for Ronald Young, MOOP

The Minutes of July 1st, 1992 were amended to reflect the attendance of Carolyn Watson for Parris Glendening and Larry Duket for Ronald Young and approved as corrected.

Mr. Vivian Marsh, Maryland Office of Planning, gave a presentation on the Randall Cliffs Bay Access Project stating that final concept plan approval was being sought from the Commission. After much discussion regarding the placement of the parking area site, Southern site vs. Northern site, questions were raised as to Natural Heritage's recommendation of the Southern site. Natural Heritage was not represented at the meeting as this issue was on the agenda for information only. Therefore, a presumptive explanation was offered by Mr. Larry Duket that it was preferred because "Natural Heritage viewed the site as disturbed already because of past human habitat of it, not having original species structure and composition." At a panel discussion of the issue before the Commission meeting it was concluded that the Northern site was still the better site as far as overall impacts to the property. The panel recommended approval of the project.

Commissioner Samuel Bowling moved to approve the final concept plan of the **Randall Cliffs Bay Access in Calvert County** based on the northern most parking lot which was the original panel recommendation. He said that the State Highway Administration concurred. The motion was seconded and carried unanimously.

Ms. Claudia Jones, CBCAC Planner, gave an informational report to the Commission on the **Queen Anne's County Program** request for amendments which will be on the agenda in September.

Ms. Jones commented to the Commission on Colburn's Cove in Somerset County. The County Commissioners voted to deduct the entire 57 acres that the Commission had authorized.

Ms. Theresa Corless, CBCAC Planner, explained the **Hyattsville Gravity Sewer, Phase D, WSSC** project to the Commission. She said the impacts produced by this project were being dealt with by WSSC. She described the problems with sediment and de-watering effects to the non-tidal wetlands and solutions for dealing with those impacts. She stated that WSSC has been very cooperative with the County as well as with the Critical Area Commission.

Mr. Bowling moved to approve the **Hyattsville Gravity Sewer, Phase D, WSSC** with conditions: A planting plan for the entire site will be prepared by the staff of the Washington Suburban Sanitary Commission, Prince George's County, Maryland National Capital Park and Planning Commission, Critical Area Commission and the Bay Watershed Forester based on actual area disturbed and will include:

1. 3:1 areal replacement of all trees disturbed by unapproved activity. This includes wetlands, buffer and upland areas.
2. Restoration of the non-tidal wetland area.

3. 1:1 replacement of trees in approved upland areas. These are areas mainly located behind Allison St. and along the levee and have yet to be disturbed.

4. An 85% survival rate of acceptable native species after 3 years. Replanting may be required to attain this rate. Monitoring responsibilities will be specified in the approved planting plan. The motion was seconded and carried unanimously.

Ms. Dawnn McCleary, CBCAC Planner, briefed the Commission on a request from Maryland Office of Planning for the **Solomons Island Boat Ramp Expansion**. She said that if all the required information is submitted this request will be on the September agenda for a vote.

Ms. Corless briefed the Commission on the project for **Growth Allocation in Prince George's County** which will be on the agenda for a vote in September.

Ms. Anne Hairston, CBCAC Planner, updated the Commission on the **Timber Harvesting Plans** and stated that the Approval as it stands is functional.

#### OLD BUSINESS

Chairman North appointed a panel to review a growth allocation request from Prince George's County: Ron Hickernell, Chair; Joe Elbrich, Parris Glendening, Samuel Bowling and Bob Schoepflein.

Mr. Thomas Ventre, CBCAC Planner, briefed the Commission on the matter of the Ronald and Patricia Short variance (shed in the Buffer) in Dorchester County which was noted for appeal by the Commission. Mr. Ventre stated that his comments to the Board of Appeals was to deny the variance because there were no circumstances to condone the action.

Ms. Hairston responded to an inquiry from Mr. Bowling as to the possibility of examining wetlands lines to incorporate into the comprehensive four year review of programs. Ms. Hairston said that based on advice from previous and current Commission Counsel, tidal wetlands "head of tide" lines must be based on the State wetland maps. These maps identify the head of tide line and the Critical Area line, and the Tidal wetlands division has an ongoing process of remapping, and generally comments regarding known inaccuracies of the tidal wetlands maps should be submitted to the Tidal Wetlands Division so that they can be corrected when the remapping occurs for the particular county.

#### NEW BUSINESS

Mr. Duket informed the Commission members of a situation in Charles County involving the Planning Commission in undertaking some of its responsibilities that have Critical Area Commission implications. The proposal is to extend sewer and water to approximately a mile of shoreline, 280-300 acres in the Critical Area which would be impacted. He said that the Maryland's Office Of Planning recommendation was for denial and that a menu of solutions was offered to the County.

Chairman North announced that the October meeting of the Critical Area Commission will be held at the J. Millard Tawes Museum in Crisfield, Maryland on October 14th followed by a workshop for the Commission members on October 15th. This will be discussed at the regular September Commission meeting.

Chairman North informed the Commission that Phillip Gerald, President of the Somerset County Commissioners, has written to the Governor recommending Mr. Robert Fitzgerald for appointment to the Critical Area Commission.

There being no further business, the meeting adjourned at 3:00 p.m.

**STAFF REPORT**  
September 2, 1992

ITEM: Amendments to Queen Annes County's Critical Area Program

COMMISSION ACTION: **Vote**

**SUMMARY**

The County Commissioners of Queen Annes County have submitted amendments to their Critical Area Program following a hearing of the Planning Commission on July 9, 1992. A Critical Area Commission hearing was held in Centreville on August 11, 1992. The complete amendments as submitted by the County were distributed to the full Commission at the monthly meeting in August. I have some extra copies if anyone needs one.

In general, the amendments are as follows:

- 1 - corrects language in the grandfathering section dealing with Habitat Protection Areas and Water Dependent Facilities;
- 2 - creates three new sections of the Critical Area Ordinance establishing performance standards for the approval of building permits in the IDA, LDA, and RCA;
- 3 - deletes the buffer exemption section which allowed ongoing designation of buffer exempt areas;
- 4 - updates the impervious surface language to incorporate the new standards
- 5 - inclusion of the word "redevelopment" within the definition of "Project Approval."

Staff recommendations are as follows:

- page 3. Section 6006D.8. RCA needs to be changed to LDA. (The way it was submitted, there are two RCA sections). The County says that this was a mistake.
- page 4. Section 6006E. There needs to be a #6 stating "A minimum 25-foot buffer shall be maintained around nontidal wetlands". This was included in the other sections. The County says that it was inadvertently left out.
- The County needs to address the 10% reduction in pollutant runoff for development in an IDA. The Metropolitan Washington Council of Governments is currently working on an update of

- The County needs to address the 10% reduction in pollutant runoff for development in an IDA. The Metropolitan Washington Council of Governments is currently working on an update of "A Framework for Evaluating Compliance with the 10% Rule in the Critical Area" for the Commission. This update will include ways to address the 10% Rule on single lots in the IDA. Staff recommendation is to incorporate this document into the IDA building permit review section when it is complete.

- House Bill 323 (Natural Resources Article, Section 8-1808.3) allows 25% impervious surface on a lot that is less than one-half acre in size and is in residential use or zoned for residential purposes. The recent County amendments do not include lots that are zoned for residential purposes. The County has been notified that this language is available for their use if they so choose.

Staff Contact: Claudia Jones

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
STAFF REPORT

DATE: September 1, 1992

JURISDICTION: Prince George's County

PROJECT: WSSC Broad Creek Pumping Station Upgrade

COMMISSION ACTION: Information

The Broad Creek Pumping Station in Prince George's County was built in 1964-65 and is in need of upgrading to bring it to current WSSC standards. The property which is owned by WSSC is 3.21 acres. The pump station site is approximately 1 acre in area, and all construction will be limited to this site. The entire site is within the Critical Area and the 100 year floodplain. There are tidal and non-tidal wetlands near the property, but they will not be impacted. There are no HPAs on the site.

The site is not in an area of Intense Development. Impervious surfaces have been minimized to 15.6%.

*F.Y.I. The panel Commission members associated with project review will hold a hearing on the project and it will be ready for a vote at the next mtg.*

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

DATE: August 31, 1992  
JURISDICTION: Prince George's County  
PROJECT: Growth Allocation

COMMISSION

ACTION: Prince George's County has requested 15.4 acres of growth allocation to change the zoning on the Tepaske property from RCO (Resource Conservation Area) to LDO (Limited Development Area). The entire property is 15.4 acres. The applicant requested only 9.8 acres which would have left 5.6 acres as RCO. The County will debit the entire 15.4 acres; however, only 9.8 acres will be remapped as LDO.

The County has addressed Habitat Protection Areas. The applicant is planning a 300-foot buffer which will be protected through a conservation easement.

PANEL

RECOMMENDATION: Approval

*approved  
unanimously  
20 - 0*

September 2, 1992

*Info Omeig*

STAFF REPORT  
INFORMATION ONLY

JURISDICTION: Chestertown

ISSUES: Two (2) mapping issues

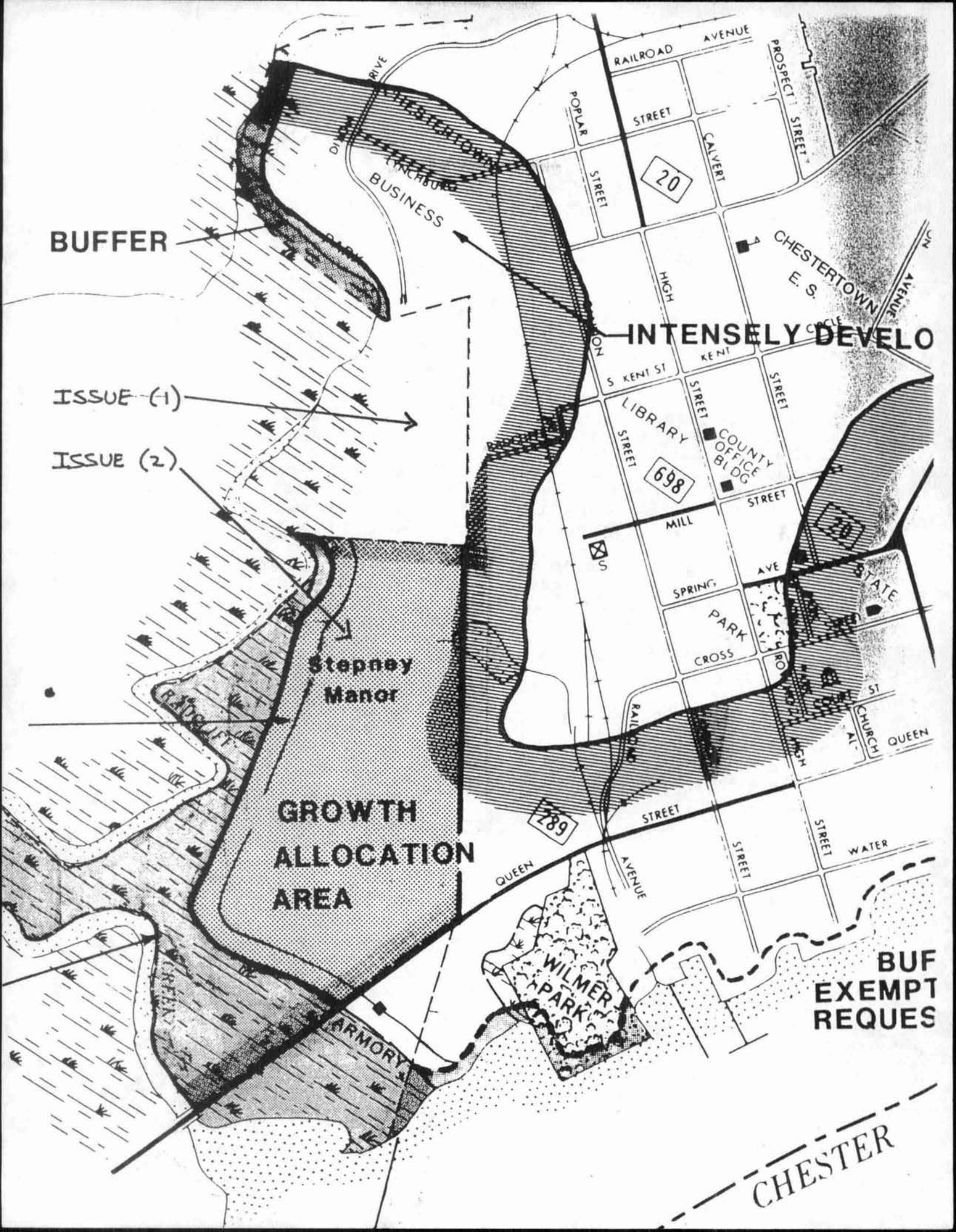
DISCUSSION:

(1) A 15-acre parcel of land within the Town boundary was inadvertently left out of the Critical Area Program in 1989 when the local Program was adopted. The Town now wishes to incorporate this area into its Critical Area Program and map the area as a Limited Development Area. This parcel meets the mapping criteria for LDA in that sewer lines and public water were in existence on the site prior to December 1, 1985; the site is less than 20 acres in size; and, it is adjacent to an existing IDA within the Town.

(2) The Town has also requested 43 acres of growth allocation for a property known as Stepney Manor. The property is currently designated Resource Conservation Area, and is indicated as a Growth Allocation Area on the adopted Critical Area Map. The Town wishes to designate this area as IDA. Public water and sewer was in existence on this site prior to December 1, 1985. Chestertown has requested that this request be reviewed as a refinement.

STAFF: Pat Pudelukewicz

PP/lh



**BUFFER**

**ISSUE (1)**

**ISSUE (2)**

**Stepney Manor**

**GROWTH ALLOCATION AREA**

**WILMER PARK**

**BUF EXEMPT REQUES**

**CHESTER**

**INTENSELY DEVELOPED**

**BUSINESS**

**RAILROAD AVENUE**

**STREET**

**20**

**PROSPECT STREET**

**CHESTERTOWN E. S.**

**HIGH**

**S KENT ST**

**LIBRARY STREET**

**698**

**STREET**

**STREET**

**MILL**

**SPRING**

**PARK**

**CROSS**

**STATE**

**CHURCH**

**QUEEN**

**789**

**STREET**

**QUEEN**

**AVENUE**

**STREET**

**STREET**

**WATER**

**ARMORY**

**RAILROAD**

**STREET**

**STREET**

**STREET**

**BUF EXEMPT REQUES**

**CHESTER**

**INTENSELY DEVELOPED**

**BUSINESS**

**STREET**

**HIGH**

**S KENT ST**

**LIBRARY STREET**

**698**

**STREET**

**STREET**

**MILL**

**SPRING**

**PARK**

**CROSS**

**STATE**

**CHURCH**

**QUEEN**

**789**

**STREET**

**QUEEN**

**AVENUE**

**STREET**

**STREET**

**WATER**

**ARMORY**

**RAILROAD**

**STREET**

**STREET**

**STREET**

**BUF EXEMPT REQUES**

**CHESTER**

9/2/72

FOR INFORMATION ONLY

PROPOSED CHANGE TO LOCAL PROGRAM

JURISDICTION: Dorchester County

REQUEST: Program Refinement

DESCRIPTION: The County requests permission to change the Critical Area classification on a parcel of land approximately seven acres in size, citing error in the original mapping. The parcel lies on the east shore of Slaughter Creek, between the creek and Maryland Route 16 (Taylors Island Road). The parcel in question is part of a larger 65-acre parcel that was classified originally as "Resource Conservation Area (RCA)" in its entirety, although the portion in this instance is the site of a marina that has been in continuous operation for thirty years. The site is zoned "B-3: General Business." In this regard, it must be noted that Dorchester County, during the original mapping in its local program development, classified operating marinas as "Limited Development Area (LDA)." There is no explanation how or why this particular marina was overlooked in the mapping/classification process.

An application for a commercial use brought this situation to the County's attention. The County does not allow new or expanded commercial uses on Critical Area lands classified "RCA" even though the underlying local zoning is commercial and would allow the proposed use (an inn/restaurant) in this instance.

In light of these facts, the County believes the original mapping is erroneous; and wishes to change it.

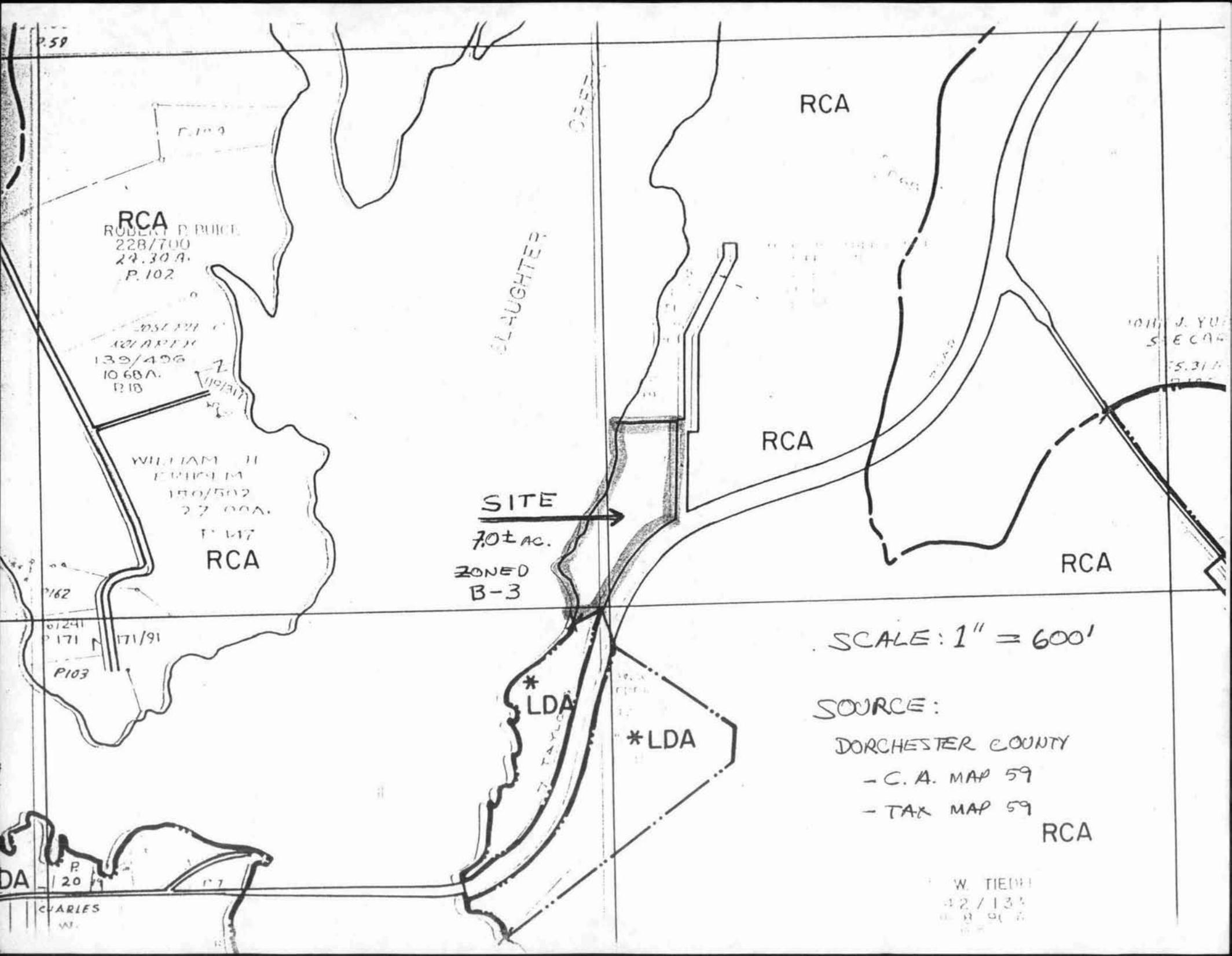
CHAIRMAN'S  
DETERMINATION: Pending

TODAY'S  
ACTION: None

STAFF: Tom Ventre

TV/lh

See map on reverse side



P. 58

P. 109

**RCA**  
ROBERT P. BUICE  
228/700  
24.30 A.  
P. 102

139/496  
10.68 A.  
P. 10

WILLIAM H. EUBANK  
180/502  
27.00 A.  
P. 117  
**RCA**

SLAUGHTER

**SITE**  
70± AC.  
ZONED  
B-3

RCA

RCA

RCA

J. YU  
S. E. CAR  
P. 5.31

SCALE: 1" = 600'

SOURCE:

- DORCHESTER COUNTY
- C. A. MAP 59
- TAX MAP 59

RCA

DA

P. 20

CHARLES  
W.

W. TIEHL  
42/133  
P. 8.91

*approved  
concurrent  
with by  
the  
Commission*

STAFF REPORT

CHANGE TO LOCAL PROGRAM

JURISDICTION: City of Cambridge

REQUEST: Program Refinement

DESCRIPTION: The City of Cambridge recently annexed lands contiguous to it in Dorchester County. The annexed area contains 18.125 acres, more or less. The annexed land was originally classified by the County for Critical Area Program requirements as Limited Development Area (LDA). The acreage is undeveloped. The adjacent areas inside the City limits were originally classified by the City as LDA by its Critical Area Program and shown thus on its Program maps. These areas are developed at low residential densities. The entire area---county and city---is served by public water and sewerage systems.

The original Critical Area classification remains unchanged, as does the current (and probable future) land-use pattern. The character of the land use is consistent with the adopted City and County Programs. It meets the statutory standard for "Program refinement". Please see map on reverse side for location.

CHAIRMAN'S  
DETERMINATION: Program Refinement

TODAY'S  
ACTION: Commission vote on the Chairman's determination.  
concurrence requested.

DATE: September 2, 1992



*approved  
2/1-0*

**STAFF REPORT**  
September 2, 1992

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COMMISSION ACTION: Vote

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In general, the amendments are as follows:

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Staff Contact: Claudia Jones

20-0  
approved  
unanimously  
**DRAFT**

CHESAPEAKE BAY CRITICAL AREA COMMISSION (CBCAC)  
DRAFT STAFF REPORT

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 General Approval document has been developed by CBCAC and MDA staff. Notable elements of the document include:

- Processes for CBCAC staff review of OMWM projects on State-owned, local and private 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.
- The local jurisdictions, the Assistant Attorney General and several Department of Natural Resources agencies have provided comments on the draft document
- Minor revisions have been made to the draft document to address the comments

STAFF RECOMMENDATION: Approval of the The General Approval

**DRAFT**

## PROJECT PROCEDURES

In the following section, procedures are described to insure that the activities for which this general approval is sought will conform with COMAR 14.15 or COMAR 14.19.05.03-.14, as applicable. 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 resulting in development of local significance 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 under COMAR 14.19.05 or 14.19.03 as applicable.

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 shall 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 ~~mitigate~~ minimize potential impacts;
- d. ~~copies of written~~ communication with DNR regarding the identification and protection of HPAs;  
*(including copies of written correspondence)*
- e. status of permits or approvals required from local, State and federal agencies.

- Step #2 When determined necessary by either CAC staff or MCS, 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 compliance with the general approval. To gain a determination of compliance, 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 criteria in COMAR 14.19.05.03-.14 as applicable and will not adversely affect any HPAs as defined in COMAR 14.19.05.09-.13;

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

- Step #4 Within 30 days following the CAC staff's determination that the information package from MCS is complete, CAC staff shall send MCS a written determination of whether or not the project proposal complies with the terms and conditions of the general approval.
- Step #5 If CAC staff find that unresolved issues remain with respect to the project's compliance with the terms and conditions of the general approval, MCS will be informed (within the time frame set forth in Step #4 above) that it may submit the project individually for full CAC vote at the next scheduled CAC meeting under procedures outlined in COMAR 14.19.06 or 14.19.07 as applicable.
- Step #6 If the project is denied by the full CAC, MCS may appeal the denial to the CAC according to procedures outlined in COMAR 14.19.08.02.

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 Section A., Step #1 through Step #6, above except that under Step #3, d., CAC staff will review proposals for consistency with Critical Area criteria in COMAR 14.15, and in particular COMAR 14.15.09.

. . . . .

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 complies with the general approval. To gain a determination of compliance, 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. is consistent with applicable criteria in COMAR 14.19 or COMAR 14.15, and will not adversely affect any HPAs as defined in COMAR 14.19.05.09-.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 Within 30 days following the CAC staff's determination that the permit application is complete, CAC will send MCS a written determination of whether or not the proposed spray program complies with the terms and conditions of the general approval.

- Step #4 If CAC staff find that the proposed spray program does not comply with the terms and conditions of the general approval, MCS will be informed (within the time frame specified in Step #3) 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 applicable.
- 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.

### Public Health Emergency Conditions

A determination of compliance may be made to allow insecticide application to control mosquito-borne disease outbreak for a public health emergency in any area not approved for spray under the MDE Toxics Permit. The procedure for obtaining a determination of compliance during a public health emergency will consist of:

- a. A statement from MCS to CAC which includes: notification that a threat to public health and safety exists due to an outbreak of mosquito-borne disease based on clinical observation or laboratory isolation of etiologic agents; the vector species and areas involved; the reasons that a permit to allow treatment of the area was not originally approved; the pesticide(s) MCS will apply; the rate and manner of applications;
- b. CAC staff will review the statement to determine if the proposed insecticide application is consistent with COMAR 14.19 or COMAR 14.15 as applicable and respond to the request within 24 hours from the date and time that the MCS statement is received by CAC staff;
- c. If the request is not approved, an explanation for the denial will be made, along with CAC recommendations for alternative action. Approval of a request will state the specific period of time for which it is valid;
- d. MCS will implement the approved activity, collect data to document their results and submit a report to CAC within 90 days after completion of the control efforts.

STAFF REPORT

September 2, 1992

(Md.T.A.)  
21-0  
unanimous  
approval.

ITEM: Memorandum of Understanding between MD Department of Transportation and the Critical Area Commission

Commission Action: VOTE

SUMMARY

The Deputy Council to the Department of Transportation has requested some minor housekeeping changes to the MOU-MDOT. These are as follows:

- "Maryland Transportation Authority" (MTA) is to be deleted as a separate modal administration. The MTA exists as a separate agency not directly under the Department of Transportation.
- "State Rail Administration" is to be deleted throughout the document since it no longer exists as a separate modal administration, but is now included in with the Mass Transit Association.

STAFF RECOMMENDATION: Approval

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



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING  
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August 3, 1992

*Vote to execute*  
*21-0 approved*

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Via Facsimile

F. Michael Harris, Esq.  
Route 5, Ragan Building  
P.O. Box 437  
Leonardtwn, Maryland 20650

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

Dear Mr. Harris:

Thank you for your letter of July 29, 1992. I will present the enclosed draft Settlement and Pool Maintenance Agreement to the Critical Area Commission for its review at its 8/5/92 meeting. You will note that it differs somewhat from the version I sent you July 22, 1992. The changes resulted, in part, from Commission staff comments. Deleted language has a line through it. Added language is underlined.

I do not know whether the services your client has seemingly procured from Anthony Pools, in and of themselves, will enable him to satisfy the terms and conditions of the Agreement. Please do not infer from this correspondence that I either accept or reject them on behalf of the Critical Area Commission.

If you have any questions or comments regarding this matter, let me know. By copy of this letter, I am asking Commission staff to place this matter on the Commission's August 5, 1992 agenda.

Very truly yours,

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

GEHG:cjw

Enclosure (as stated)

FAX (301) 974-5206

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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

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IN THE  
CIRCUIT COURT  
FOR  
ST. MARY'S COUNTY

Case No.: CA 91-1196

\* \* \* \* \*

SETTLEMENT AND POOL MAINTENANCE AGREEMENT

This Settlement and Pool Maintenance Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 1992, by and between DANIEL W. BURRIS, hereinafter referred to as "Mr. Burris" and the CHESAPEAKE BAY CRITICAL AREA COMMISSION, hereinafter referred to as "Commission".

WHEREAS, Mr. Burris is the owner of 4.19 acres of improved real property in the third election district of St. Mary's County ("Property");

WHEREAS, the Property is located south of Maryland Route 244, approximately one mile east of Whirlwind Road;

WHEREAS, the Property is adjacent to an unnamed tidal inlet of Poplar Hill Creek;

WHEREAS, a portion of the Property is within St. Mary's County's Critical Area and St. Mary's County's Critical Area Buffer. A copy of a plat of the Property is attached hereto and incorporated herein as Exhibit #1;

WHEREAS, on or about July 1, 1992, Mr. Burris submitted to the St. Mary's County Board of Appeals ("Board") a written application for a variance from the provisions of Section 38 of the St. Mary's County Zoning Ordinance ("Ordinance") as they apply to the Property so that he could construct 700 square feet of impervious surface for an inground swimming pool in the Buffer just 71 feet from the

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mean high tide line of Poplar Hill Creek ("Pool");

WHEREAS, the Board granted the Application on September 26, 1991 ("Decision");

WHEREAS, in accordance with the Decision, Mr. Burris built the Pool on the Property;

WHEREAS, Pursuant to Natural Resources Article, §8-1812, Annotated Code of Maryland, Judge John C. North, II, Chairman, Chesapeake Bay Critical Area Commission, has the standing, right and authority to note this appeal because the Commission has previously approved St. Mary's County's local critical area program;

WHEREAS, Chairman North timely filed an appeal from the Decision after Mr. Burris had built the Pool;

WHEREAS, at its July, 1992 meeting, the Commission, without conceding that the variance was lawful, voted to withdraw the appeal in the above-captioned case if Mr. Burris paid \$2,500.00 to the St. Mary's County Office of Planning and Zoning to pay for the publication of a brochure and entered into a pool maintenance agreement outlining the parties' respective powers and obligations concerning ~~Mr. Burris' pool~~ the Pool;

WHEREAS, Mr. Burris has accepted the Commission's offer; and

WHEREAS, it is the desire of the parties hereto to resolve the issues raised in this matter.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Commission, by its Chairman, Judge John C. North, II, and Mr. Burris do hereby agree to the following

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terms and conditions:

1. Mr. Burris, for himself, his heirs and assigns, shall employ a recycling filter system or similar device in order to maintain the swimming pool in a manner so as not to discharge Pool without discharging, directly or indirectly, chlorinated water into Poplar Hill Creek or any of its tributaries or unnamed tidal inlets or onto the Property.

2. The terms of this Agreement shall be binding upon the parties, their successors and assigns.

3. Mr. Burris and his successors and assigns shall require each and every one of their agents, contractors, and subcontractors to carry out any development, construction and maintenance activities associated with the pool in accordance with the terms of this Agreement.

4. Mr. Burris shall be responsible for any breach of the terms and conditions of this Agreement by his agents, contractors, and subcontractors.

5. The parties hereby acknowledge that they have been afforded the opportunity to obtain the advice of independent counsel.

6. Their decision to execute this Agreement is made freely, knowingly, and voluntarily.

7. This Agreement, executed in the State of Maryland, shall be subject to and construed in accordance with the laws of the State of Maryland.

8. ~~This Agreement may be modified by mutual written consent~~

~~of both parties.~~ shall be recorded by Mr. Burris at his sole expense among the Land Records of St. Mary's County.

9. Mr. Burris agrees that the Commission's representatives may inspect the Property at reasonable times to determine compliance with this Agreement.

10. Upon a finding by any Court of competent jurisdiction, or any other reviewing entity mutually agreed upon by the parties, of a breach of this Agreement by Mr. Burris or his successors, assigns, agents, contractors or subcontractors, Mr. Burris shall be responsible for the reasonable cost of enforcement including, but not limited to, court costs and expenses incurred by the Commission.

11. The promises and covenants contained in this Agreement shall remain in full force and effect in perpetuity unless extinguished by mutual agreement of the parties.

\_\_\_\_\_  
Witness

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

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\_\_\_\_\_  
Witness

\_\_\_\_\_  
Daniel W. Burris

\_\_\_\_\_  
*Ronna J. Burris*

## A Comparison of Critical Area and DNR Nontidal Wetland Programs

Recently there has been discussion between Critical Area Commission and Department of Natural Resources (DNR) staff on various alternatives for making the DNR and the Critical Area (CA) nontidal wetlands programs more consistent with each other. As a result of the discussions, the following comparison has been made to highlight the notable differences found between the Critical Area (CA) criteria versus the Department of Natural Resources (DNR) regulations for protecting nontidal wetlands. These differences should be taken into consideration as legislative alternatives for implementation are discussed.

### .01.B Definitions

The DNR regulations use the federal methodology to identify nontidal wetlands. The CA criteria use the US Fish and Wildlife Service (USFWS) definition. The federal identification methodologies have been politically manipulated in the past and could be manipulated again in the future. Currently the DNR interpretation of the federal method seems to be fairly compatible with the intent of the CA criteria. There may be some notable exceptions:

- a. DNR may not regulate unvegetated bottoms of streams and ponds (CA criteria would)
- b. DNR may not regulate some of the "drier" coastal plain wetlands such as white oak/beech complexes that have hydric soils. These areas are important wildlife habitat that may otherwise not be protected under the CA criteria (if not considered a nontidal wetland). The CA definition would protect these areas.

The DNR regulations have a category of wetlands termed farmed which includes areas that are currently farmed that have lain fallow for less than 5 years. The DNR regulations make "exceptions" for certain activities in farmed wetlands (see below for details). The CA criteria do not have a farmed wetland category. In the CA, an area is either a wetland or not, and is regulated as such.

### 05.A(1) Criteria for review of permits

The DNR regulations allows for disturbances to wetlands that are water-dependent. So do the CA criteria. The DNR regulations allow for disturbances for public need. So do the CA criteria. The DNR regulations allows for disturbances that are not water-dependent but for which no "practicable alternative" exists. The CA criteria are more protective in intent. In the CA, a disturbance to a nontidal wetland would not be permitted unless the criteria for a

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variance is met. The variance criteria include "unwarranted hardship" and no "adverse impact" to water quality and fish, plant and wildlife habitat. For example, in the CA a new subdivision must be planned around a nontidal wetland, while the DNR regulations would allow a subdivision where no practicable alternative exists.

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#### Exemptions from permitting activities and mitigation

1. Forestry activities are given an exemption from DNR permits and mitigation. Responsibility for implementation is given to the Soil Conservation District (SCD) through Sediment and Erosion Control Plans. The DNR regulations give guidance to the SCD for Best Management Practices (BMP) and approving Sediment and Erosion Control Plans that are required for forestry activities in nontidal wetlands.

The CA criteria require a "formal" timber harvesting plan prepared by a registered forester that should protect any nontidal wetlands from disturbance from forestry activities. There is also a provision in the CA criteria that requires a mitigation plan reviewed by DNR, USFWS, MD Department of the Environment (MDE) and USFWS. While the CA criteria seem more protective of nontidal wetlands than the DNR regulations, the wording of the criteria is general and subject to differences in interpretation (e.g. What is mitigation? Does it include avoidance and minimization?).

The DNR regulations describe specific BMP's that must be used in harvesting nontidal wetlands, however implementation seems to be a SCD responsibility. The CA General Approval for forestry activities is more specific than the criteria with regard to implementation. However, it is not clear how the General Approval would apply if the CA nontidal wetlands are absorbed by the DNR program.

2. There are exemptions for agriculture (See below)
3. The DNR regulations allow certain disturbance to the 25 foot buffer. Manipulation of buffer vegetation (e.g. 30 % of trees and understory) don't require a DNR permit or mitigation. This is in contrast to the CA criteria where disturbance to the 25 buffer is not permitted. The CA buffer is an area to be maintained in natural vegetation in order to insure the effective functioning of the wetland it protects. A variance would be required to disturb the CA buffer.

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### Activities Requiring a Letter of Exemption

The DNR regulation do not require a permit or applicant mitigation for projects that are less than 2 acres and which convert farmed wetlands to a nonagricultural activity. The CA criteria have no such exception. Wetlands, farmed or not farmed in the CA must remain undisturbed when converted from agricultural use. However, it should be noted that even though the applicant does not have to mitigate, DNR will mitigate for these activities under the programmatic mitigation plan.

Under the DNR regulations, impacts of less than 5000 sq. feet are permitted in any wetland type (which has no significant plant and wildlife habitat). The applicant is not required to mitigate for this type of impact, however DNR is mitigating for the cumulative impacts through a programmatic plan. The CA criteria would not permit this type of disturbance (except when a variance is warranted).

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### Agricultural activities

Certain agricultural activities are exempted from both permit review and mitigation under the DNR regulations. Activities of note that are exempted from both include:

- a. Agricultural activities on wetlands that are currently farmed or that have lain fallow for less than 5 years
- b. Structures (e.g. barns, aquaculture structures, etc) that are necessary to farming activities established on wetlands that are currently farmed or have lain fallow for less than 5 years
- c. Agricultural activities impacting less than 5000 sq. feet (in areas with no significant habitat) in any type of wetland

The DNR regulations exempt all other agricultural activities from permit review but not mitigation.

Under the CA criteria, seasonally wet or wetter nontidal wetlands may not be disturbed for agriculture uses except under a mitigation plan to be reviewed by the SCD and DNR.

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### Expanded buffer

The DNR regulations require the buffer to be expanded from 25 feet to 100 feet around nontidal wetlands of special State concern and around wetlands with contiguous steep slopes and highly erodible soils. The 100 feet may not be sufficient for wetlands with very wide areas of adjacent slopes (the buffer should be expanded beyond the sloped area to compensate for increased runoff volume and

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velocity).

It should be noted that the CA criteria do not specifically require expansion of the 25 foot buffer for nontidal wetlands (Expansion is outlined only for the 100 foot tidal wetland Buffer).

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#### Nontidal wetlands of Special State Concern

The DNR regulations specifically designate certain wetlands as unique and requiring strong protection. Because the CA was excluded from the DNR regulations, no CA wetlands are designated as being of special State concern. Special CA wetlands would have to be identified.

#### Mapping Issues

Because the DNR regulations excluded the CA, the DNR maps do not show nontidal wetlands in the CA. The maps would have to be amended if the CA was brought under DNR purview.

#### General Issues

The following are some general "benefits" provided by the DNR regulations which are not found in the CA criteria:

Specific permit application requirements including written alternative analysis are outlined

Mitigation specifications including monitoring and bonding requirements are outlined

Mitigation ratios are provided and are generally greater than 1 to 1 for more "valuable" wetlands

BMPs for agricultural and forestry activities are described

Enforcement authority is clarified

Will provide for County delegation where demonstrated that local implementation will be effective

#### Possible implementation alternatives:

Alternative I. Incorporate the CA directly into the DNR program with no changes (except those associated with maps and wetlands of Special State Concern)

Alternative II. Incorporate the CA into the DNR program with a section of regulations that are specific to the CA in order to address any notable differences (e.g. a regulation that states that mitigation for CA nontidal wetlands must take place in the CA)

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Alternative III. Modify the CA criteria to make them compatible with the DNR regulations

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CHESAPEAKE BAY CRITICAL AREA COMMISSION  
Attman Glazer Building  
45 Calvert Street, 2nd Floor  
Annapolis, Maryland 21401

August 24, 1992

MEMORANDUM

TO: Critical Area Commission  
FROM: Pat Pudelkewicz  
SUBJ: Uses in the Resource Conservation Area

Attached, for your review, is a paper concerning uses in the RCA which was prepared by John Lipman, a student intern working for the Critical Area Commission (CAC) this Summer.

Over the last several years the Commission has dealt with the issue of uses in the RCA in a number of local Program amendments, such as the Kent County Zoning Ordinance and the Talbot County Zoning Ordinance. The CAC will be dealing with this issue even more in the coming year, with many of the Comprehensive Reviews currently underway and local Zoning Ordinances being revised.

John has prepared an analysis of the issues, and based on this analysis and the previous actions of the Commission with regard to uses in the RCA, has written the attached discussion paper. It is the intent that after this paper is read and discussed by the full Commission, the CAC will refine its position on uses in the RCA and adopt a policy that may be distributed to local jurisdictions.

This paper will be a topic for discussion at our October 1992 Commission meeting. It has already been presented to the Program Amendment Subcommittee, which recommended that it be sent to the full Commission and be placed on an upcoming Commission agenda.

/jjd

Attachment

AN ANALYSIS OF PERMITTED LAND USES IN THE RESOURCE CONSERVATION  
AREA AND PROPOSED GUIDELINES FOR JURISDICTIONAL DECISION MAKING

Submitted By:

John Lipman  
September 1992

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## INTRODUCTION

The purpose of this paper is to clarify the policy for local jurisdictions as to which proposed uses, particularly the construction of new industrial, commercial, and institutional facilities, are consistent with the criteria of the Critical Area's Resource Conservation Area (RCA). There are many uses for which no specific criteria or guidelines exist. For example, are farm stands that sell produce permitted? What about nursing homes? Or guest houses? This paper will address some of these questions by examining both the general framework of the Critical Area law as well as the acceptability of specific instances of land use that jurisdictions themselves have proposed.

The goals of Commission staff in writing this paper will be to seek out sources of confusion about or misinterpretation of the details of the law; to establish and substantiate what the Commission regards as appropriate policy for land uses in the Resource Conservation Area; and, to communicate this policy, in writing, to local jurisdictions so that they will be better able to make land-use decisions consistent with the expectations of the Commission. It is the long-range intent of the Commission staff to propose language that can be used to formulate a legislative amendment to the law in order to strengthen the Commission's position in promulgating clear and concise land use policies.

A common criticism of current policies in the Resource Conservation Area is that they are too restrictive. At first glance, land use policies in the RCA may appear inflexible; on closer inspection, however, it becomes evident that these policies, vital to the achievement of the Critical Area goals, still provide local jurisdictions ample flexibility. First of all, most counties have adequate room for development in Intensely Developed Areas (IDAs) and Limited Development Areas (LDAs). Second, counties can develop in RCAs by using their growth allocations. Lastly, Critical Area regulations restrict land use only within 1,000 feet of Chesapeake Bay waters and tidal wetlands. Although this can be a significant percentage of the land base in some counties, there is, for the most part, adequate room for development in interior regions, which are restricted only by state law and jurisdictional zoning. Thus, even strict implementation of the Critical Area law allows jurisdictions great latitude in overall land use and development decisions while protecting the precious natural resources that all Maryland residents share.

## THE ISSUES: PROBLEMS IN INTERPRETATION

Where legislation appears clear and succinct to those who promulgate regulations, it is often confusing to local decision makers who must interpret and apply it on a day-to-day basis. Here, an attempt will be made to demonstrate the intent of the Commission, to substantiate the logic and spirit of the law, and

to suggest more explicit interpretations of RCA criteria that may clarify the decision process for local jurisdictions. Much of the controversy over uses in the RCA concerns the following aspects of the Critical Area law.

**Rezoning:** Regulation 14.15.02.05 states that "... [e]xisting industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding [one dwelling unit per 20 acres] shall be allowed in Resource Conservation Areas. **Additional land may not be zoned for industrial or commercial development, except as provided in Regulation .06, below**" (emphasis added). (Regulation .06 specifies that any additional lands zoned for such development must be debited from a jurisdiction's growth allocation.) At issue is whether the "zones" being addressed are Critical Area zones (IDA, LDA, and RCA) or the pre-existing underlying zones created by jurisdictional zoning ordinances. The Commission, in recommending criteria, anticipated that jurisdictions would eliminate the old zoning system and rezone all Critical Area lands as IDA, LDA, or RCA when submitting their programs for Commission approval. The Commission's intent was to permit the continuation of existing industrial and commercial structures, facilities, and uses; any additional such structures, facilities, and uses that were inconsistent with RCA criteria would require a rezoning of RCA land to either LDA or IDA. Thus, the term "additional (industrial or commercial) zone" was perceived as being synonymous with and prerequisite to an "additional structure or facility."

Most jurisdictions, however, simply used overlay zones to designate Critical Areas, leaving underlying zones intact. Many of these underlying zones are undeveloped industrial and commercial zones. Thus, some jurisdictions interpret zoning of "additional land ... for industrial and commercial development" to mean that any additions of industrial and commercial underlying zones must be debited from the growth allocation; conversely, they reason that existing underlying zones of this nature may be developed as such without any growth allocation debit, because no "rezoning" is occurring. In other words, there is confusion among jurisdictions as to whether the term "rezoning" applies to underlying zones or Critical Area (overlay) zones.

However, by examining the language and basic design of the law, it becomes clear that the "rezoning" in question was intended to apply to Critical Area zones, not underlying zones, and that any expansion of incompatible uses in the RCA requires a rezoning of RCA land to IDA or LDA, commensurate with growth allocation debits. The designation of Critical Area zones with carefully specified uses would be meaningless if the underlying zones had primacy. The intent of the Critical Area law would be undermined if, for example, a jurisdiction maintained the right to develop large tracts of RCA land for industrial or commercial purposes (or for that matter, high-density residential housing)

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simply because the underlying zones were designated as such. It is clear that allowing the expansion of industrial and commercial uses in the RCA was never intended by the Commission in approving local programs. Although most jurisdictions have used overlay zones for designating Critical Areas instead of rezoning as the Commission had originally anticipated, failing to give primacy to Critical Area zones deprives the legislation of its efficacy. Underlying uses are permitted only to the extent that they are consistent with restrictions in the overlay zone.

Also, the concept of growth allocations, as envisioned in the Critical Area law, is unrelated to changes in underlying zones. The law states that in Resource Conservation Areas "... [a]dditional land may not be zoned for commercial or industrial development **except as provided in Regulation .06, below**" (emphasis added). Yet Regulation .06 discusses only the reclassification of RCA land to IDA/LDA or LDA to IDA. Thus it is clear that the zoning of "additional land" to which the law refers concerns only the Critical Area zones, which most jurisdictions have applied as overlay zones; permitted uses in underlying zones are irrelevant to this discussion. By virtue of this reference, any additional industrial or commercial facilities proposed in the RCA may be approved only as an expansion of IDA/LDA consistent with the growth allocation provisions of Regulation .06.

**Institutional Uses:** Although institutional uses (schools, police stations, hospitals) were addressed as part of what was to be permitted in IDAs and LDAs, the word "institutional" does not appear anywhere in Regulation 14.15.02.05 (Resource Conservation Areas) as either prohibited or permitted. By virtue of this omission, counties have interpreted the law as providing them latitude in permitting certain institutional uses in the RCA. Yet many institutional uses have the same or even greater impacts, in the form of water pollution, impervious surfaces, traffic, and habitat disruption, than industrial or commercial uses. From an environmental perspective, there is no reason to exclude institutions from the list of incompatible uses in the RCA. Also, uses in the IDA generally stand in contrast to uses in the RCA; what is permitted and encouraged in the former is generally prohibited in the latter. Because industrial, commercial, and institutional are listed together in Regulation .02 as uses which "predominate" in the IDA, it is logical to conclude that such uses are together proscribed in the RCA, as specified in Regulation .05.

There may be exceptions to the above rationale, for example, when an institutional use cannot be located outside the RCA because of its special nature (e.g., an estuarine research facility) or when that institutional use has a negligible impact on and perhaps a long-term benefit to the environment. Jurisdictions, in determining whether a particular institutional use is permissible in the RCA, must consider two factors: The extent to which that type of use is dependent upon the utilization of land or resources found exclusively within the RCA

(referred to hereafter as "locational requirements") and whether the proposed use can be implemented in a manner consistent with development criteria for the RCA. If the use can be implemented outside the RCA or if implementation would be inconsistent with development criteria, then growth allocation must be used.

Regulations are more explicit regarding institutional uses in the Critical Area that result from State or local agency actions. Subtitle 19, Chapter 4 states that major developments may be submitted for Commission review if siting of the development in the Critical Area is "unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area." It is up to the Commission to approve such developments after reviewing the proposal. Whether or not a proposed development is the result of State or local agency action, jurisdictions should be vigilant in ensuring that an institutional use is one which cannot, because of locational requirements, be sited outside the Critical Area.

**Low-Impact Commercial Uses:** Although the expansion of existing commercial uses are strictly regulated by the law, some uses may have negligible impacts on the environment and may benefit the overall stability and maintenance of a resource-based economy in the long run. A good example is a farmer who uses several square yards of his or her property to set up a roadside produce stand. Another is a craftsperson or artisan who does business out of his or her home. Clearly, there needs to be some flexibility in the law. As with institutional uses, jurisdictions must evaluate the extent to which the type of use is dependent upon locational requirements found exclusively within the RCA and whether the proposed use can be implemented in a manner consistent with development criteria for the RCA.

**Expansion of Existing Non-Residential Uses:** The intensification or expansion of existing facilities, or any other use in the RCA, must be consistent with the approved local program or with the variance procedures outlined in COMAR 14.15.11. Regulation .07 states that "... [a]fter program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval ... [i]f any existing use does not conform with the provisions of the local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11." What level or type of "intensification" warrants a variance? When is an expansion really an "additional" industrial or commercial use requiring a growth allocation debit? Local programs may omit such specificity or may be inconsistent with criteria for uses of the RCA. Also, some local programs only require a building permit, rather than an approved site plan, for the expansion of an existing use in the RCA. Because site plans, but not building permits, are required to be submitted to the Commission for comment, many expansions may go unacknowledged by the Commission. If the Commission is not aware of a proposed expansion, it will not have the opportunity to comment on or appeal the project.

A general rule of thumb is that any expansion of an existing commercial, industrial, or institutional use that involves the physical disturbance of any land currently in habitat, agriculture, abandoned fields, woodlands, natural vegetation, or vegetative ground cover requires a variance and subsequent notification of the Commission for review and comment, regardless of whether that jurisdiction currently requires a site plan for such expansion. Thus, an addition to an existing building that is constructed on the unused portion of a parking area probably would not require a variance; an addition that required the cutting of trees or clearing and leveling of unpaved or previously undeveloped land would.

The issue of how to differentiate between an expansion and an addition to commercial, industrial, or institutional uses (the latter requiring a growth allocation debit under Regulation .05) is more complicated. It is best to consider two factors when deciding whether a growth allocation is required: Whether the facility in question constitutes a "new" use in terms of its relation to the existing use in function, location, and legal incorporation, and the extent to which the use impacts undisturbed land. For example, a restaurant that adds an attached ice cream bar on existing pavement would probably be considered an expansion of the current facility with minimal impact. A new detached structure unrelated to the existing facility (i.e., a new business) might be permitted if it were constructed on a currently impervious surface and had a minor impact on traffic and noise (for example, if the restaurant opened a small gift shop on the same parking lot). However, if the restaurant owners proposed constructing another restaurant in another RCA location, or were to build an unrelated business on undisturbed land, a variance should not be granted, as this would most likely be appealed by the Commission as a use inconsistent with RCA criteria. In this instance, growth allocation should be used.

The idea behind this regulation is to allow existing businesses to expand where a restriction against doing so would have no clear environmental benefit. In the case of a restaurant that wants to add an additional dining room, it might be unreasonable, depending on the particular circumstances, to request the construction of a new restaurant outside the RCA simply to accommodate a few extra tables. However, an entirely new business venture requiring additional land and new construction must be located in an appropriate commercial zone outside the RCA, as it prevents significant environmental degradation. Deciding whether a proposed use is an expansion of an existing use or an additional (new) use is often a matter of degree. Jurisdictions are required to consider the environmental impact of additional structures and apply for a variance in any case where the decision is less than clear.

**Grandfathering of Residential and Industrial/Commercial Uses:**  
There has been some confusion among counties as to which land

uses can be grandfathered under the law. The grandfather provisions of Regulation 14.15.07.B. permits subdivisions recorded as of December 1, 1985 to be developed in accordance with the density requirements in effect prior to the adoption of the jurisdiction's local Critical Area Program. This has been interpreted by some jurisdictions to mean that industrial and commercial zoning in effect prior to adoption of the local program is also grandfathered. However, grandfathering of industrial and commercial uses, according to Regulation 14.15.07.A, permits only the "continuation, but not necessarily the intensification or expansion of any use (emphasis added) in existence on the date of program approval." As discussed earlier, this has no bearing on industrially- or commercially-zoned lots. Regulation 14.15.07.B. applies only to residential uses. The term "density requirements" in planning nomenclature is used nearly exclusively to describe residential development; industrial or commercial development is normally regulated by floor-area-ratios or some surrogate standard. Also, Regulation .07.B. clearly prefaces all of the ensuing subsections with a reference to "dwellings." Thus, the word "subdivision" should not be confused with undeveloped industrially- or commercially-zoned lands, which are not in any way grandfathered.

#### WHAT SHOULD THE POLICY BE?: MAKING DECISIONS ABOUT RCA USES

In general, the most basic policy of the Resource Conservation Area is to conserve as much of the natural resource base as possible. This includes preserving overall ecological values, biological productivity and diversity, wildlife habitats, woodlands and forests, agricultural land, and open space. The policy is not to allow as much residential, commercial, industrial, and institutional development as possible without interfering with overall environmental values, but rather to allow as little development as possible without denying property owners the reasonable use of their land. The most relevant consideration for local jurisdictions in deciding what uses are permitted in the RCA is not whether a particular type of development can possibly be located in the RCA, but whether it can possibly be located outside the RCA. This single idea, more than any other, best captures the spirit and intent of allowable land uses in the RCA.

Regulation .05 is quite clear about the kinds of land uses permitted in the Resource Conservation Area: residential (one dwelling unit per 20 acres), resource-utilization activities, such as agriculture, forestry, fisheries activities, or aquaculture, and water-dependent uses consistent with COMAR 14.15.03. The analysis of permitted uses becomes more difficult when deciding on land uses related to resource utilization activities, such as grain-storage facilities, slaughterhouses, or roadside farm stands.

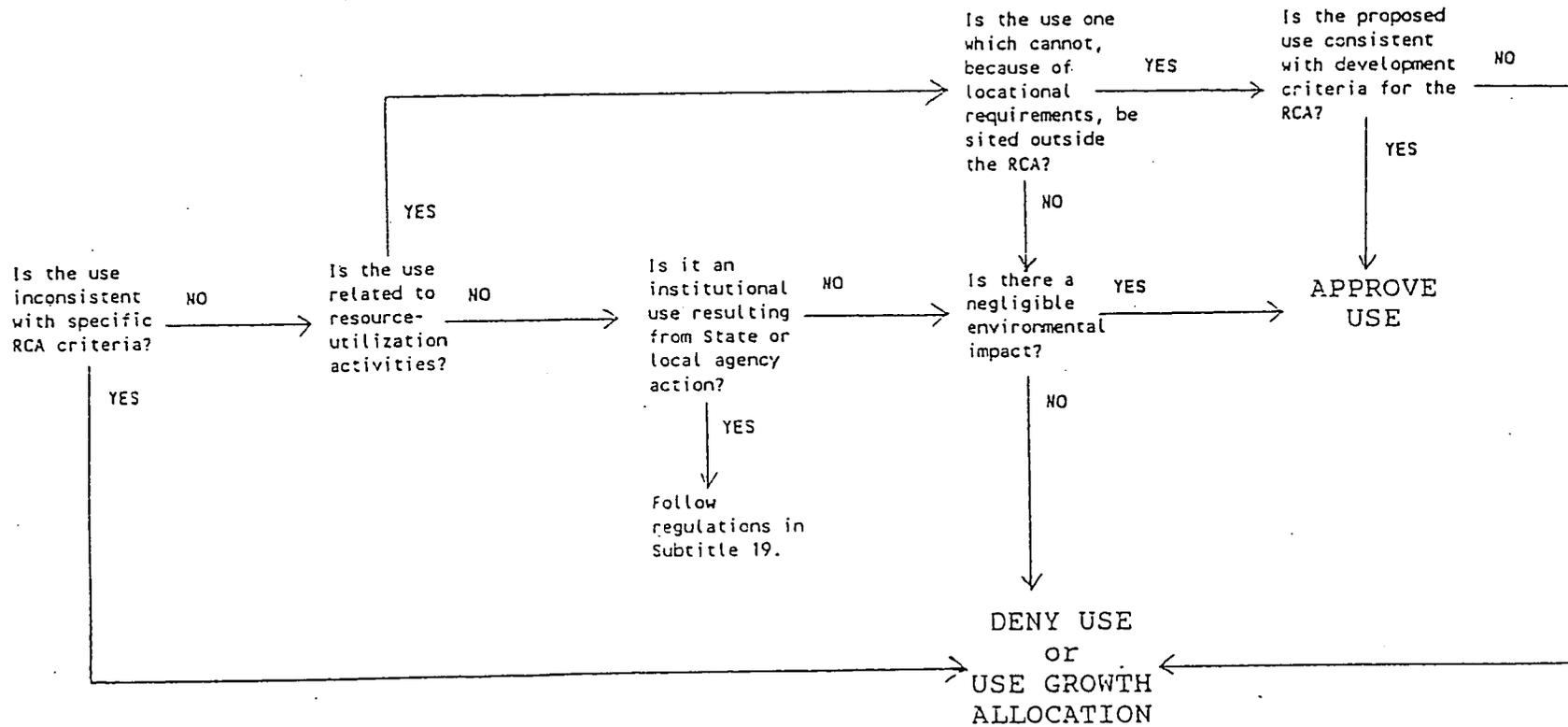
Decision makers should consider the following questions when an applicant seeks approval for a new industrial, commercial, or institutional use in the RCA:

- Is the use related to resource-utilization activities?
- Is the use inconsistent with any specific RCA criteria?
- Is the type of use (not the usefulness to particular property owner) one which cannot be located outside the RCA?
- What is the extent of the environmental impact of the use and is it consistent with development criteria for the RCA?

A decision-tree analysis may be helpful in conveying the intent of the Commission in regulating uses in the RCA (see Exhibit 1). The first two steps in the decision tree clearly reflect the fact that any use which is not related to resource-utilization activities (excluding uses with negligible environmental impacts, such as home businesses) or is inconsistent with specific RCA criteria should be denied. Beyond that, the decision tree engages in the "two-factor" analysis previously mentioned, namely, an examination of the extent to which a type of use is dependent upon locational requirements found exclusively within the RCA and whether the proposed use can be implemented in a manner consistent with development criteria for the RCA. Jurisdictions should consider the environmental impacts (such as impervious surfaces, traffic, habitat disruption, pollutant loading from septic systems, etc.) of proposed uses. Specifically, decision makers should examine whether a use is one which can or normally does take place outside the RCA. If so, it should take place outside the RCA, or be permitted using growth allocation. If, however, there are negligible environmental impacts of a particular use, it is reasonable to allow jurisdictions some flexibility in permitting that use in the RCA. Conversely, if the use is one which would be difficult or impossible to locate outside of the RCA because of its special nature, then the use should be permitted so long as its environmental impacts conform with RCA development criteria. For example, a roadside farm stand (i.e., the sale of produce) is a resource-related use that can and normally is located outside the RCA; however, because it provides a benefit to the farmer with virtually no environmental impact, it may be permitted inside the RCA. A grain mill, on the other hand, represents a use with substantial environmental impacts. Because the viability of this type of use (grain milling) is not dependent upon being located exclusively within the RCA, it should be located elsewhere. A small estuarine research facility, though perhaps equal in impact to that of the grain mill, may be difficult or impossible to locate outside of the RCA because of its special nature, and may be of substantial long-term benefit to our understanding of the Chesapeake Bay. Thus, there should be greater flexibility in approving its use, contingent upon adequate mitigation measures specified by the development criteria.

EXHIBIT 1

DECISION TREE: NEW INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL USES IN RCA.



\* Agriculture, forestry, fisheries, aquaculture, etc., are excluded from this analysis as they are specifically mandated to be acceptable commercial uses in the RCA.

This two-factor methodology is not intended to provide clear answers; it is merely an exercise for helping decision makers evaluate industrial, commercial, and institutional uses in the RCA. Nor should the exercise be interpreted as a substitute for Commission notification on any proposed use of substantial impact in the RCA. The overriding objective of this exercise is to provide to jurisdictions some flexibility in land-use criteria while ensuring that uses in the RCA are consistent with the overall goals of the Critical Area Act.

There are inevitably complaints by counties that certain industrial, commercial, and institutional uses pose no greater pollution hazard and perhaps less of one than agriculture or other resource-utilization activities. It is important to address this complaint. First of all, the law clearly establishes in Section 8-1808 (Program Development) that the goals of local programs are to "... minimize adverse impacts on water quality ... [c]onserve fish, wildlife, and plant habitat ..." and "[e]stablish land use policies for development in the Chesapeake Bay Critical Area which ... address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts." Secondly, even if adequate environmental performance zoning standards could be established by science so as to permit many types of new industrial, commercial, and institutional uses in the RCA, such a system would be overwhelmingly difficult and expensive to administer, monitor, and enforce by local jurisdictions and the Commission alike. Although a law based upon land-use criteria may appear less flexible than one based on performance criteria, it establishes an adequate, enforceable, and manageable system for decision makers while maintaining and enhancing Maryland's precious natural resources. Lastly, it is the Commission's foremost duty to carry out the intent and spirit of the law. It is likely that legislators approved the Critical Area law in general, and the land-use criteria of the Resource Conservation Area in particular, with issues of manageability in mind. Although the Commission does permit some flexibility based on environmental impacts, the promulgation of stringent land-use criteria was designed to achieve environmental performance; it should not be administered the other way around. In approving the Commission's recommended criteria on May 13, 1986, the General Assembly gave its legislative approval to allowable land uses in the Critical Area. Despite occasional problems in wording or discrepancies in interpretation, the bulk of the criteria and the intent behind them are clear and unequivocal. It is the Commission's charge to enforce the law, not a scientific proxy.

#### POLICY GUIDELINES: A SUMMARY

The following is a summary of guidelines for uses in the Resource Conservation Area, based upon the preceding discussion.

1. Land use and development in the Critical Area are subject to the regulations and policies of the Critical Area zones. Where conflicts exist between Critical Area overlay zones and pre-existing underlying zones, the Critical Area zones have primacy. Uses in the underlying zones are permitted only if consistent with uses in the Critical Area zone.
2. Institutional uses should be regarded as identical to industrial and commercial uses in terms of environmental performance and consistency with permitted uses in the RCA.
3. Expansion of existing industrial, commercial, and institutional facilities and uses may, but not necessarily shall, be permitted in the RCA. A variance, in accordance with COMAR 14.15.11, is required if such an expansion involves the physical disturbance of any land currently in habitat, agriculture, abandoned fields, woodlands, natural vegetation, or vegetative ground cover. Such disturbance includes, but is not limited to, the cutting of trees, the clearing of vegetation, or the grading of unpaved or ungraded land.
4. Any additional facility, structure, or use not directly related to and a part of an existing industrial, commercial, or institutional use in location, nature, and legal incorporation shall be considered a new use.
5. New industrial, commercial, and institutional types of uses may, but not necessarily shall, be permitted in the RCA, so long as they are related to resource utilization in general, are dependent upon locational requirements found exclusively within the RCA, and conform with RCA development criteria.
6. Any additional structures, facilities, and uses that are found to be unacceptable uses of the RCA, according to the guidelines listed above, must be located outside of the RCA or approved as an expansion of IDA/LDA consistent with the growth allocation provisions of Regulation .06.
7. If a use can be located outside the RCA, it should be located outside the RCA.
8. Grandfathering of undeveloped land pertains only to residential subdivisions, as specified in Regulation .07. Undeveloped industrially- and commercially-zoned land is not grandfathered.

## APPENDIX: TABLE OF USES

In all of the following examples, it is assumed that any public use proposed by a State or local agency may be allowed, pending a review by the Commission in accordance with the provisions of Subtitle 19. In the case of an identical private use, such a proposal must meet the specific criteria of the Resource Conservation Area. This implies greater flexibility for public uses based upon community need. Thus, a jurisdiction may choose to submit to the Commission for review a proposal for a public facility, such as a hospital, if no suitable land is available outside the RCA. An identical proposal for a private hospital, however, should be rejected outright, as it fails to conform to development criteria for the RCA and is not entitled to a review under Subtitle 19.

<u>USE</u>	<u>PERMITTED?</u>	<u>RATIONALE</u>
<b>Agriculture, Forestry, and Fisheries:</b>		
Farming	Yes	Resource-utilization activity.
Livestock	Yes	Resource-utilization activity.
Manure Storage	Yes	Resource-utilization activity.
Barn	Yes	Resource-utilization activity.
Roadside Stand	Yes	Related to resource-utilization activity; negligible environmental impact.
Farm Labor Camp	Yes	Related to resource-utilization activity; must be dependent upon locational requirements found exclusively within the RCA; must be used for farm labor only; seasonal use only.
Fish/Game Hatchery	Yes	Resource-utilization activity.
Aquaculture	Yes	Resource-utilization activity.

<u>USE</u>	<u>PERMITTED?</u>	<u>RATIONALE</u>
Timbering	Yes	Resource-utilization activity.
Nursery	Yes	Resource-utilization activity; must conform with development criteria for RCA.
Greenhouse	Yes	Resource-utilization activity; must conform with development criteria for RCA.
Slaughterhouse	No	Related to resource-utilization activity but not dependent upon locational requirements found exclusively within the RCA; significant environmental impact (traffic, animal waste).
Grain Mill	No	Related to resource-utilization activity but not dependent upon locational requirements found exclusively within the RCA; not dependent upon locational requirements found exclusively within the RCA; significant environmental impact (traffic).
<b>Recreation:</b>		
Wildlife Preserve	Yes	Resource-utilization activity.
Hunting Blind	Yes	Related to resource-utilization activity; negligible environmental impact; temporary.
Park/Playground	Yes	Related to resource-utilization activity; must conform with development criteria for RCA.
Shooting Range	No	Not related to resource-utilization activity; not dependent upon locational requirements found exclusively within the RCA; significant environmental impact (noise, traffic).

<u>USE</u>	<u>PERMITTED?</u>	<u>RATIONALE</u>
Stables	Yes	Related to resource-utilization activity; must conform with development criteria for RCA.
Golf Course	Yes	Preserves open space; may be permitted if wildlife and forest enhanced, non-point pollution reduced below levels of current land use, buildings located outside RCA; must conform with development criteria for RCA; resort not permitted without growth allocation.
Camp	Yes	Related to resource-utilization activity; must conform with development criteria for RCA; predominant use must be consistent with RCA.
Carnival	Yes	If temporary; no buildings.
Country Club	Yes	Buildings must be outside RCA; golf course permitted as per conditions listed above; no recreational courts (e.g., tennis) permitted in RCA.
Public Swimming Pool	No	Not related to resource-utilization activity; not dependent upon locational requirements found exclusively within the RCA.
RV Camp	Yes	Must conform with density requirements and development criteria of RCA.
Commercial Race Track	No	Not related to resource-utilization activity; not dependent upon locational requirements found exclusively within the RCA.
Comm. Outdoor Theater	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.

USEPERMITTED?RATIONALE**Residential:**

Single Family	Yes	Must conform with density limit of RCA.
Multi-Family	Yes	Must conform with density limit of RCA.
Mobile Home	Yes	Must conform with density limit of RCA.
Guest House	Yes	Must conform with density limit of RCA.
Garage/Shed	Yes	Must conform with development criteria for RCA.
Swimming Pool	Yes	Must conform with development criteria for RCA.
Tennis Court	Yes	Must conform with development criteria for RCA.
Apartment	Yes	Must conform with density requirements of RCA.

**Institutional:**

Agricultural Research	Yes	Related to resource-utilization activity; must conform with development criteria for RCA.
Airport	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Private Airstrip	Yes	Must conform with development criteria for RCA.
Cemetery	Yes	Preserves open space; may be permitted if wildlife and forest enhanced, non-point pollution reduced below levels of current land use, buildings located outside RCA; must conform with development criteria for RCA.

<u>USE</u>	<u>PERMITTED?</u>	<u>RATIONALE</u>
Church	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.
Nursing Home	---	If public use, must be approved by Commission in accordance with Subtitle 19; private use denied.
Hospital	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Medical/Dental Clinic	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Library/Museum	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Research/Public Edu.	---	Must be consistent with provisions of Subtitle 19; private use denied.
School	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Community Center	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Fire House	---	Must be consistent with provisions of Subtitle 19.
Police Station	---	Must be consistent with provisions of Subtitle 19.
Emergency Services	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Post Office	---	Must be consistent with provisions of Subtitle 19.

<u>USE</u>	<u>PERMITTED?</u>	<u>RATIONALE</u>
Group Home	Yes	If public use, must be consistent with provisions of Subtitle 19; private use acceptable if in residential unit consistent with density requirements of RCA.
Prison	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Sewage Treatment Plant	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Substation	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Water Treatment Plant	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
Other Public Utility	---	If public use, must be consistent with provisions of Subtitle 19; private use denied.
<b>Commercial:</b>		
Day Care Center	Yes	If public use, must be consistent with provisions of Subtitle 19; private use acceptable if it is a home business in residential unit consistent with density requirements of RCA.
Veterinary Hospital	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.
Kennel	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.

<u>USE</u>	<u>PERMITTED?</u>	<u>RATIONALE</u>
Office/Prof. Building	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.
Restaurant	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.
Rooming House	Yes	Acceptable if it is a home business in single-family residential unit existing as of December 1, 1985; expansion of structure may not exceed 50% of the gross floor area of each individual building above that which existed at that time.
Bed and Breakfast	Yes	Acceptable if it is a home business in single-family residential unit existing as of December 1, 1985; expansion may not exceed 50% of the gross floor area of each individual building above that which existed at that time.
Funeral Home	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.
Construction Services	No	Not related to resource-utilization activities; not dependent upon locational requirements found exclusively within the RCA.
Home Occupation	Yes	If in residential unit consistent with density limits of RCA.
<b>Industrial:</b>		
Asphalt Mixing	No	Not related to resource-utilization activities; not dependent upon locational requirements found

USEPERMITTED?RATIONALE

exclusively within the RCA; significant environmental impact (traffic, air pollutants).

Explosives Storage	No	Not related to resource utilization; not dependent upon locational requirements found exclusively within the RCA; significant environmental impact (traffic, hazardous materials).
Salvage Yards	No	Not related to resource utilization; not dependent upon locational requirements found exclusively within the RCA; significant environmental impact (traffic, hazardous materials).
Sawmill	No	Related to resource use but not dependent upon locational requirements found exclusively within the RCA; significant environmental impact (impervious surfaces, traffic); can/should be located outside RCA.
Mining	Yes	If area is reclaimed and kept as permanent open space.
<b>Other:</b>		
Community Piers	Yes	If for public use; must conform with development criteria for RCA.
Marinas	Yes	Must conform with development criteria for RCA.
Public Beach/Facilities	---	Must be consistent with provisions of Subtitle 19; private commercial use denied.
Commercial Recreation	No	Related to resource use but not dependent upon locational requirements found exclusively within

USEPERMITTED?RATIONALE

		the RCA; significant environmental impact (traffic, noise, habitat disruption)
Private Pier/Boathouse	Yes	Must conform with development criteria for RCA.
Parking	No	Only in conjunction with other acceptable developments; must conform with development criteria for RCA.
Communications Tower	Yes	Must conform with development criteria for RCA.

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

August 24, 1992

Dear Commission Member :

Thanks to the overwhelming, favorable response to our request for interest in a two-day Chesapeake Bay Critical Area Commission October meeting and retreat in Crisfield, this event has been definitely scheduled for Wednesday, October 14 and Thursday, October 15, 1992. Details of specific times and locations follow.

The Critical Area staff is interested in specific items ( i.e. Growth Allocation policy and precedent, " hardships", mapping mistakes, etc.) that would be of interest to you for inclusion on the agenda of the retreat. Please use the space where provided, on the attached form, to note these agenda items and return to Peg Mickler.

For budgeting and logistical purposes, Peg needs to know, at your earliest convenience, if you definitely plan to attend this event and whether, or not, you require single accommodations. Because of State regulations, regreftfully, we can not invite spouses to this event. In the interest of economy, we ask that as many of you as possible volunteer to "double-up".

Please complete the information requested on the enclosed form and return it to Peg at your earliest convenience.

I look forward to seeing you in Crisfield.

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh M. Smith".

Hugh M. Smith  
Communications Officer

enc.

YOUR NAME: \_\_\_\_\_

Ms. Peg Mickler  
Chesapeake Bay Critical Area Commission  
Second Floor  
45 Calvert Street  
Annapolis, Maryland 21401

Dear Peg:

Yes ! I plan to attend the October Meeting and Commission Retreat in Crisfield on October 14 and 15.

Yes, but I can only attend  Wednesday  Thursday

I require overnight accommodations.

I prefer single accommodations.

Sorry ! Because of previous commitments I cannot attend this meeting.

I am specifically interested in the following aspects of the Critical Area Law, the Criteria, History, policies, or procedures that I would like to see placed on the retreat agenda :

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Sincerely,

Critical Area Commissioner

MESSAGE CONFIRMATION  
TRANSMISSION

OCT-01-'92 THU 16:09

TERM ID: CBCAC  
TEL NO. : 301-974-5338

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NO.	DATE	ST. TIME	TOTAL TIME	ABBR/SBD	ID	DEPT CODE	#FGS
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FACSIMILE TRANSMITTAL SHEET  
CHESAPEAKE BAY  
CRITICAL AREA COMMISSION  
45 Calvert Street, 2nd Floor  
Annapolis, Maryland 21301  
(410) 974-2426 Office  
(410) 974-5338 FAX

DATE: 10/1/92

PLEASE DELIVER THE FOLLOWING TO:

NAME: Gerry Gay  
PHONE: \_\_\_\_\_

UNIT: \_\_\_\_\_  
FAX #: 5206

THIS FACSIMILE MESSAGE IS BEING SENT BY:

NAME: Peggy PHONE: \_\_\_\_\_

NUMBER OF PAGES INCLUDING COVER SHEET: \_\_\_\_\_

COMMENTS: Please deliver

ASAP

Thanks

New Business:

Dr. Shep Krech:

Judge

Chairman North:

Yes, Dr.

Dr. Shep Krech:

I need some clarification. We are getting more and more requests on these growth allocation requests that come in to the Commission with the appendage saying that ah, X number of acres are going to be put in a conservation easement, ah, who, these conservation easements gonna be in perpetuum, who is going to hold the easements. It sounds awfully good to hear of these conservation easements but I don't know how...MET is not going to accept these easements. How's it gonna work? The counties don't want em.

Chairman North:

George, do you have any insight into that?

Counsel Gay:

I think it's a great question, I think its something that we ought to look into, I think that we ought to encourage the uniform, a uniform set of documents that effect these restrictions and that they are used throughout the Critical Area. I'll be happy ....

Chairman North:

Well...

Counsel Gay:

....to look into it.

Chairman North:

I was going to say, perhaps you'd be kind enough to examine that matter and give us the benefit of your thoughts in writing, ah, hopefully by the next Commission meeting so that we will all have a better grasp of where we are headed in this way. Yes, Joe.

Joe Elbrich:

Ah, in Anne Arundel County there are about 7 - 8 local trusts and the County has sponsored the establishment of two, one being the Severn River Trust and the other one the Anne Arundel Conservation Trust. A lot of ours is recommending that that land be held by them as a trust holder in perpetuity as an easement to the property so that they are the enforcer rather than the county being involved in stuff like that. It appears to be working rather satisfactorily. Some of them have joint sponsorship with MET depending on who is involved and characteristics of the particular site.

Chairman North:

Thank you.

Parris Glendening:

Can I make one real quick observation.

Chairman North:

Yes, indeed.

Parris Glendening:

This is an issue we've ah, grappled with ourselves on.....land trusts and so on but, but the real part of the question becomes and I think one very difficult who has the real responsibility for maintaining this in a sense of clearing and whatever other problems may occur there and one of the things that is very clear is that public agencies looking at the extraordinary expense that can be associated with and are very reluctant to start picking up a lot of parcels like this...

Chairman North:

I am sure they are.

Parris Glendening:

...but, more importantly, many of the parcels are in fact spread around, they are isolated, relatively small parcels, I mean the one that, and I apologize that I was not here when you considered this, but they wanted to

talk about was an easement in Prince George's County was 300' deep and I forget how many feet in the other direction, isolated from other immediate County land and for us to go into any type of maintenance responsibility would be cost prohibitive and so it seems to me that while any policy would, can ....out of this clearly should recognize if a public agency wanted to assume it or a private trust wanted to assume it, that the real key, I think, is to say that it almost a covenant that runs with the land and is the responsibility fo the property owner that can be enforced by some agency if necessary and they, in their mind, if someone starts accumulating junk or other problems develop with the land, then it is the right of the County to go back in and require that property owner to maintain their own property upon which they may not build and must do other things to protect the easement because I think you will start to get a very chaotic situation if you pass it out of the homeowners or property owners hands and try to make it go into government hands or something like that so I would think the dominant question of what we are doing is just a matter of protecting that in all.

Chairman North:  
Jim Gutman:

Thank you, thank you for those comments. Yes, Jim.  
A problem that I have become aware of of these easements is that they may be granted by a developer and then the entire parcel is developed in units that are sold off and the developer is long gone by the time there is the problem of maintenance or whatever.

Parris Glendening:

It should be recorded with the landowner and this would be a condition of the sale recorded on a plat in the Court.

Kay Langner:  
Jim Gutman:

With the Homeowners Association.  
In some cases, they do not have a Homeowners Association at least not one that is active, or responsible or financially able to do very much, so I think the key word here is also maintenance as well as the nature of the title.

Chairman North:

Alright, thank you.