

Committee Meetings & Correspondence October 1992

USA_S_1832-99

PRELIMINARY AGENDA
 Chesapeake Bay Critical Area Commission
 J. Millard Tawes Museum
 Crisfield, Maryland
 October 14, 1992

Subcommittees

- 10:00 a.m. - 11:00 a.m. Special Issues: Legislative Forestry, Non-tidal Wetlands
- 11:00 p.m. - 12:00 p.m. Project Evaluation
- 11:00 a.m. - 12:00 p.m. Program Amendments
- 12:00 p.m. - 1:00 p.m. LUNCH and AWARDS

PLENARY MEETING

- 1:00 p.m. - 1:10 p.m. Approval of Minutes September 2, 1992 John C. North, II, Chairman

PROJECTS

- 1:10 p.m. - 1:25 p.m. Broad Creek Treatment Plant Upgrade - WSSC ~~VOTE~~ Kay Langner, Chair
Theresa Corless, Planner
mailed out previously
- 1:25 p.m. - 1:40 p.m. State Highway Admin. Bridge Replacement MD 150 over Middle River VOTE Kay Langner, Chair
Sam Bowling, Co-Chair
Claudia Jones, Planner
- 1:40 p.m. - 2:00 p.m. ~~Solomon's Island Project - VOTE~~ Dawn McCleary, Planner
Vivian Marsh, MOP

AMENDMENTS & REFINEMENTS

- 2:00 p.m. - 2:10 p.m. Talbot County - Refinement Theresa Corless, Planner
- 2:10 p.m. - 2:20 p.m. Dorchester County - & City of Cambridge Map Change(Annexation/Refinement) Tom Ventre, Planner
- 2:20 p.m. - 2:30 p.m. ~~Dorchester County - Mapping Mistake Reclassification of RCA to LDA - Pending~~ Tom Ventre, Planner
Amendment
- 2:30 p.m. - 2:45 p.m. ~~Balt Co. - Mapping Mistake Info~~ Pat Pudelkewicz, Planner
mailed previously
Chestertown - Amendment
& Refinement
1) Map Amendment VOTE
2) Refinement
mailed previously
- 2:45 p.m. - 3:00 p.m. St. Mary's County Growth Allocation Ren Serey, Planner

INFORMATION

PROPOSED LEGISLATION

3:00 p.m. - 3:20 p.m.

Non-Tidal Wetlands
Amendments

~~mail previously~~
Liz Zucker, Science
Advisor

3:20 p.m. - 3:30 p.m.

Forest Criteria
Amendments

Sarah Taylor, Exec. Dir.

POLICIES

3:30 p.m. - 4:15 p.m.

Uses In the RCA
Presentation & Discussion

John Lippman, Intern

LEGAL UPDATES

4:15 p.m. - 4:30 p.m.

Status of Legal Actions

George Gay, AAG

OLD BUSINESS

4:30 p.m. - 4:45 p.m.

John C. North, II,
Chairman

NEW BUSINESS

4:45 p.m. - 5:00 p.m.

The Retreat - Game Plan

Hugh Smith, PAO
Sarah Taylor, Exec. Dir.

CHESAPEAKE BAY CRITICAL AREA COMMISSION
MINUTES

September 2, 1992

approved
17-0

The regular monthly meeting of the Chesapeake Bay Critical Area Commission was held on September 2, 1992 at 1:00 p.m. at the Department of Housing and Community Development, Conference Room 1100 A, Crownsville, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in attendance:

Peck, Jim, DNR	Hearn, J. L., Dept. of Env.
Hickernell, Ron	Lawrence, Louise, Dept. of Ag.
Elbrich, Joseph,	Whitson, Michael
Krech, Shep	Little, Rodney, DHCD
Gutman, Jim	Williams, Roger
Blake, Russell	Corkran, William
Langner, Kathryn	Schoepflein, Bob, DEED
Bowling, Samuel	Jarvis, Thomas
Bostian, William	Phillips, Steele
Kassoff, Hal, MdTA	Glendening, Parris (arrived 1:30)
Young, Ron, Md. Office of Planning (arrived 2:30)	
Watson, Carolyn for Parris Glendening	

Chairman North presented a Certificate of Appreciation to Anne Hairston, CBCAC Planner, who will be leaving for Oregon later in September to begin studies for a doctorate at the Oregon State University. Anne has been with the Commission since October 1988 and will be missed very much.

The Minutes of August 5th were read and amended to reflect the attendance of Hal Kassoff. Commissioner James Gutman moved to approve the Minutes as amended. The motion was seconded and carried unanimously.

Ms. Theresa Corless, CBCAC Planner, gave an informational report to the Commission on Broad Creek Waste Water Pump Station in Prince George's County - WSSC. She said that a hearing will be scheduled. Joe Mantua of WSSC described the project to the Commission. He said that the pump station will be expanded and that a section will be added to the electrical substation to eliminate power outages that create an overflow. Chairman North stated that the panel members will be studying the issue and it will be brought to the Commission for a vote next month.

Ms. Corless addressed the Commission on the Prince George's County Growth Allocation. She reminded the Commission that this request was presented last month as information and there has since been a public hearing. Ms. Corless said that the County has requested 15.4 acres of growth allocation to change the zoning from RCO to LDO. She said that only 9.8 acres will be remapped as LDO which was what the applicant requested and is consistent with the Prince George's Critical Area Program. Commissioner Ron Hickernell stated that the panel had a public hearing and the recommendation was to approve the application. Mr. Hickernell moved to approve the request as presented. The motion was seconded and carried unanimously.

Ms. Corless updated the Commission on the Hyattsville Gravity Sewer Project which was approved in August. She stated that there is now a planting plan and the wetlands will be restored.

Ms. Elizabeth Zucker, CBCAC Science Advisor, informed the Commission that a General Approval for mosquito control had been drafted. She said that there was a compilation of comments on the General Approval from the 60 local

Chesapeake Bay Critical Area Commission
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jurisdictions as well as the Assistant Attorney General, George Gay. Ms. Zucker said that the comments from the AAG were incorporated into the Draft before it was sent to the local jurisdictions. She said that the comments received from the local jurisdictions did not substantially affect the Draft of July and that the current Draft was reflective of the changes needed. Ms. Zucker explained that if the document is approved, it will contain the signatures of Chairman North and the Secretary of Agriculture acknowledging that it is a General Approval between the two agencies and valid for three years at which time it could be reviewed and updated if necessary. Commissioner Sam Bowling moved to approve the Mosquito Control General Approval. The motion was seconded and carried unanimously.

Ms. Patricia Pudelkewicz, CBCAC Planner, gave the Commission an informational report on the Chestertown Mapping Issues. She explained that a 15-acre parcel of land was inadvertently left out of the Critical Area Program in 1989 and the Town now wishes to incorporate and to map the area as LDA. The Town has also requested 43 acres of growth allocation for property known as Stepney Manor. She stated that this property is already mapped as a Growth Allocation Area in the Chestertown Critical Area Program. These mapping amendments will be on the agenda for a vote in October.

Mr. Thomas Ventre, CBCAC Planner, gave an informational report to the Commission on a pending Dorchester County Map Amendment. Mr. Ventre said that the County has requested a Program Refinement to accommodate an error in the original mapping of a 7 acre portion of a parcel of land near Slaughter Creek. He stated that new information on the request for Map Amendment Mistake was only forthcoming that morning and that there was no recommendation to the Chairman at that time; however, this would be on the agenda in October.

Mr. Ventre told the Commission that the City of Cambridge has requested that the Chairman make a determination of Program Refinement to its local program and maps to accommodate a recent annexation of land from Dorchester County. He stated that he had reviewed the request and his recommendation to the Chairman was for a program refinement. The Chairman concurred. The Commission supported the Chairman's decision.

Ms. Claudia Jones, CBCAC Planner, briefed the Commission on the Queen Anne's County's request for Amendments to their Critical Area Program reiterating information presented to them at the August Commission meeting. Ms. Jones reviewed the general changes: language corrections to the grandfathering section dealing with Habitat Protection Areas and Water Dependent Facilities; creation of three new sections of the Critical Area Ordinance establishing performance standards for the approval of building permits in the IDA, LDA, and RCA; deletion of the buffer exemption section which allowed ongoing designation of buffer exempt areas; updating of the impervious surface language to incorporate the new standards; and, the inclusion of the word "redevelopment" within the definition of "Project Approval." She said that a hearing was held in Centreville on August 11, 1992 and she outlined Staff recommendations to the request.

Commissioner Thomas Jarvis moved to approve the proposed amendments subject to the following conditions, that: Section 6006D.8 be changed from RCA to LDA; Section 6006E, #6 stating "A minimum 25-foot buffer shall be maintained around nontidal wetlands"; the 10% reduction in pollutant runoff for development in an IDA must be addressed within the next six months; the

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County has the option of incorporating the language of House Bill 323 allowing lots 1/2 acre or less in size that are not only in residential use but also those that are zoned residential to go up to 25% impervious surface. The motion was seconded by Commissioner Bill Corkran and carried unanimously.

Ms. Claudia Jones updated the Commission on the changes in the Memorandum of Understanding between the Maryland Department of Transportation and the Chesapeake Bay Critical Area Commission. She said that the Deputy Counsel of the Department of Transportation has requested some minor changes to the Memorandum of Understanding as follows: 1) "Maryland Department of 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. 2) "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. Commissioner Hal Kassoff added that if the abbreviation for the Maryland Transportation Authority facility is to be used it should be MdTA because MTA is the "Mass Transit Association". Commissioner Jim Gutman moved to accept the changes and forwarded for signature. The motion was seconded and carried unanimously.

Commission Counsel George Gay updated the Commission on the status of the Burris matter which involved a pool constructed in the Buffer in St. Mary's County. Mr. Gay said he was directed by the Commission to negotiate a settlement offer to Mr. Burris of \$2,500 as well as a pool agreement, which has been reviewed by CBCAC staff. He said that the \$2,500 would be made payable to the County authorities for their use in the publication of a brochure that would be made available at the Planning and Zoning Office and distributed by officials to people who wanted to conduct development activities in the Critical Area. He said that he had contacted Mr. Harris, Mr. Burris' attorney, and the terms have been negotiated. Mr. Gay stated that Mr. Burris and his attorney are willing to enter into the agreement and hoped that the Commission will authorize Chairman North to enter into the agreement on behalf of the Commission and asked that a vote be taken. Mr. Gutman moved to authorize the Chairman to enter into the agreement on behalf of the Commission. The motion was seconded and carried unanimously.

Counsel Gay told the Commission that the Triad Consent Decree has been signed by Judge Raisin in the Kent County Circuit Court and introduced into court records. He said that a Stipulation of Dismissal to formally dismiss the case has been signed by Commission Counsel and must be signed by Paul Bowman who represents Mr. Savino, and will be filed in Court which will conclude the matter.

Counsel Gay said that Chairman North had instructed him to note an Appeal in a matter involving the issuance of a variance for a storage shed constructed in the Buffer. He stated that A Petition on Appeal was filed and that Commission members had been notified in writing that the Appeal was noted.

Counsel Gay told the Commission that Chairman North and Dr. Torrey Brown have been named as defendants along with Department of Transportation and State Highway Administration officials in a lawsuit which Declaratory Judgement and a Permanent Injunction enjoining further construction on the Severn River Bridge. He informed the Commission that

his advice to the Commission Staff was that because the Bridge project had proceeded so far in the process prior to the adoption of the Green Regs it was in effect grandfathered from review by this particular Commission and based upon that advice, he believes, is the reason it has not been raised from Staff level to Commission level.

Counsel Gay said that the Defendants Motions for Summary Judgement in the ongoing litigation in Talbot County involving Boone Creek Bridge have all been granted. The Court ruled in favor of the defendants as a matter of law. This final judgement may be appealed.

OLD BUSINESS

Clarification of Elkton Mapping Mistake: Counsel Gay reminded the Commission that in July it addressed a proposed program amendment involving a mapping mistake in Elkton. Through a motion by Ron Hickernell a recommendation was made for denial of the request. Counsel Gay wanted to further explain the advice he rendered on this matter.

He explained the role the Commission has during the course of reviewing proposed amendments based upon "mistake". He said that the Law, §1809, provides that the Commission shall approve programs and program amendments that meet the standards set forth in §8-1808 (b)(1-3) of the Critical Area Law and Criteria.

If a program amendment such as a mistake meets the goals of the program and is consistent with the Criteria - in the Commission's collective opinion - then the Law says that the proposed amendment must be approved. Counsel Gay said that the Law also states that changes to zoning map designations can only be granted based upon "mistake".

Counsel Gay will prepare a letter of advice to the Chairman to be distributed to each Commission member on the procedure of reviewing program amendments based upon allegations of mistake.

Counsel Gay said that there has been no word of whether or not Commission's Appeal in the Enoch variance in St. Mary's County will be granted or denied. He said that the Black Marsh matter is ongoing and the administrative record of the CBCAC will be filed.

Ms. Elizabeth Zucker stated that the Commission recognized in a policy paper that there were a lot of regulatory inconsistencies in identifying wetlands within the Critical Area vs wetlands outside the Critical Area. She said that those differences are being reconciled between the two programs and there are three legislative alternatives to accomplish that: 1) let DNR non-tidal wetlands programs encompass the Critical Area; 2) give DNR jurisdiction over non-tidal wetlands in the CA but to modify the DNR regulations with a section on Critical Area wetlands; 3) modify the Critical Area criteria to make them more consistent with the non-tidal wetlands program. Ms. Zucker stated that the Special Issues Subcommittee panel believes that alternative number 2 is the best.

Mr. Gutman informed the members that there is now a Forest Conservation Act that deals with some of the provisions of the Critical Area Law. Ms. Hairston said that the subcommittee is trying to coordinate the Forest Conservation Act and the Critical Area forest regulations. One approach is to make some changes to the Criteria and the other is to use a Policy approach to accept the Forest Conservation Act as an amendment within the existing Critical Area Criteria.

NEW BUSINESS

Dr. Shep Krech asked for clarification of how the conservation easements would work in Growth Allocation.

Counsel Gay stated that a uniform set of documents that affect these restrictions should be used throughout the Critical Area. Chairman North asked Mr. Gay to look into the matter for the next meeting.

Commissioner Elbrich said that in Anne Arundel County there are 7 - 8 local trusts and the County has sponsored the establishment of two, the Severn River Trust and the Anne Arundel Conservation Trust. He stated that it is recommended that the land be held by the trust holder in perpetuity so that they are the enforcer rather than the County. He said that some have joint sponsorship with MET.

Commissioner Glendening stated that this is also an issue in Prince Georges County and the problem is that of responsibility of maintenance. He said that it is very clear that Public agencies are reluctant to accept that responsibility because of the expense and, moreover, some of the parcels are small and isolated from other county land and any type of maintenance responsibility would be cost prohibitive. He emphasized that any policy should recognize that if a public or private trust wants to assume responsibility that it be through a covenant that runs with the land, and enforcement can come through the County if necessary.

Mr. Gutman said that easements may be granted by a developer who could, subsequent to development, abandon the responsibility of maintenance. Other Commission members suggested that easements should be recorded on a plat with the Homeowners' Association as a condition of sale.

Mr. Hugh Smith, Public Affairs Officer, CBCAC, informed the Commission that the next meeting will take place October 14th at the Millard Tawes Museum in Crisfield, Maryland. Following that meeting, on October 15th a workshop will be held. Mr. Smith explained that the goal of the workshop is to exchange accumulated knowledge between long-serving Commissioners and new-serving Commissioners, Staff and Commissioners, etc. He asked for input from the Commission members to be included in the curriculum.

Dr. Sarah Taylor, Executive Director, CBCAC, announced that an Economic Incentives Handbook has been written primarily for the layman who does not want to get into all the depth and detail. She said that workshops are planned, one on the Eastern Shore and one on the Western Shore, with the private sector and local governments utilizing this handbook. She said that the same workshop will be using another handbook which has been developed for 10% stormwater management criterion. She said that this handbook would probably be available in print in October.

Dr. Taylor told the Commission that the Advisory Committee has one more required review of the Reconsideration Policy before it comes before the Commission which could be in October.

Dr. Taylor said that there are three sets of regulations at this time (Blue Regs 14.15, Green Regs 14.19 and the project submittal Regs) however, these three sets will be recodified to a Title 27 and available in print in another six weeks.

There being no further business, the meeting adjourned.

1. Judge John C. North III
2. Anthony Ambudge
3. Ron Young
4. Phil Barker
5. Ron Hichernell
6. Joe Elbuck
7. Carolyn Watson for Paris Slendering
8. Louise Lawrence
9. Shep Kuch
10. Charlie Wheeler for Jim Peck
11. Russell Blake
12. Bill Bastian
13. Tom Jarvis
14. G. Steele Phyllis
15. Bill Corkran
16. Bob Schoeplein
17. Jim Gittman
18. J. J. Hearn
19. Williams Rags
20. Robert Fitzgerald.

18 voting members.

* make copies of the SHA project
* call MDOT & find out where the MOW is.

-
1. ~~Consensus~~ Minutes approved 17-0
 2. PEPCO MOW approved unanimously 17-0
 3. * SHA Project for information only - Vote next mtg
 4. * Tabled until we get the necessary information.
 4. Uses on the RCA. - Jim Gittman presented the philosophy & approach.
 5. * Balt Co. Mapping mistake - vote next mtg panel appt'd. Phil Barker, Ron Hichernell, Bob Schoeplein, Anthony Ambudge, J. J. Hearn.
 6. Talbot Co. Refinement - approved.
 7. Chestertown - Map Amendment - Mapping Issue approved. 17-0
 8. Chestertown Refinement - S.A. Endorsed.
 9. * St. Mary's Co. Growth allocation - Information - Vote next mtg.
 10. * N.-T. Wetland Legislation - discussion - possible recommendation & vote next mtg.
 11. * Forest Conservation Act. - get the Statute, copies of FC Manual & the appropriate sections to the Commissioner.

STAFF REPORT
Information Only

JURISDICTION: Baltimore County

ISSUE: Mapping Mistake

DISCUSSION: Baltimore County has submitted a mapping mistake for the property of the First National Bank of Maryland at 809 Eastern Avenue in Essex, Baltimore County (Tax Map 97, Parcel 321). The bank itself is designated IDA; however, the parking area behind the bank is mapped LDA. The County is proposing to change only that area of the parcel being used as the parking area from LDA to IDA by reason of mistake in mapping. The area is completely paved and is served by water and sewer. The remainder of the parcel will continue to be designated LDA.

A public hearing is scheduled for October 27, 1992. A vote is anticipated at the November Commission meeting. Please note that a map is printed on the reverse side of this staff report.

STAFF: Pat Pudelkewicz



Parcel 321



Portion of parcel to be changed from L.D.A. to I.D.A.

OFFICIAL CRITICAL AREA MAP

Chesapeake Bay Critical Area

Development Relations in the Chesapeake Bay Critical Area

Bill # 35-88 Effective June 13, 1988

John T. Volz
John T. Volz, Chairman

4/13/89
Date

Sheet 10 of 20

CHESAPEAKE BAY CRITICAL AREA
LAND USE AREAS

Legend:

Intensely Developed Area



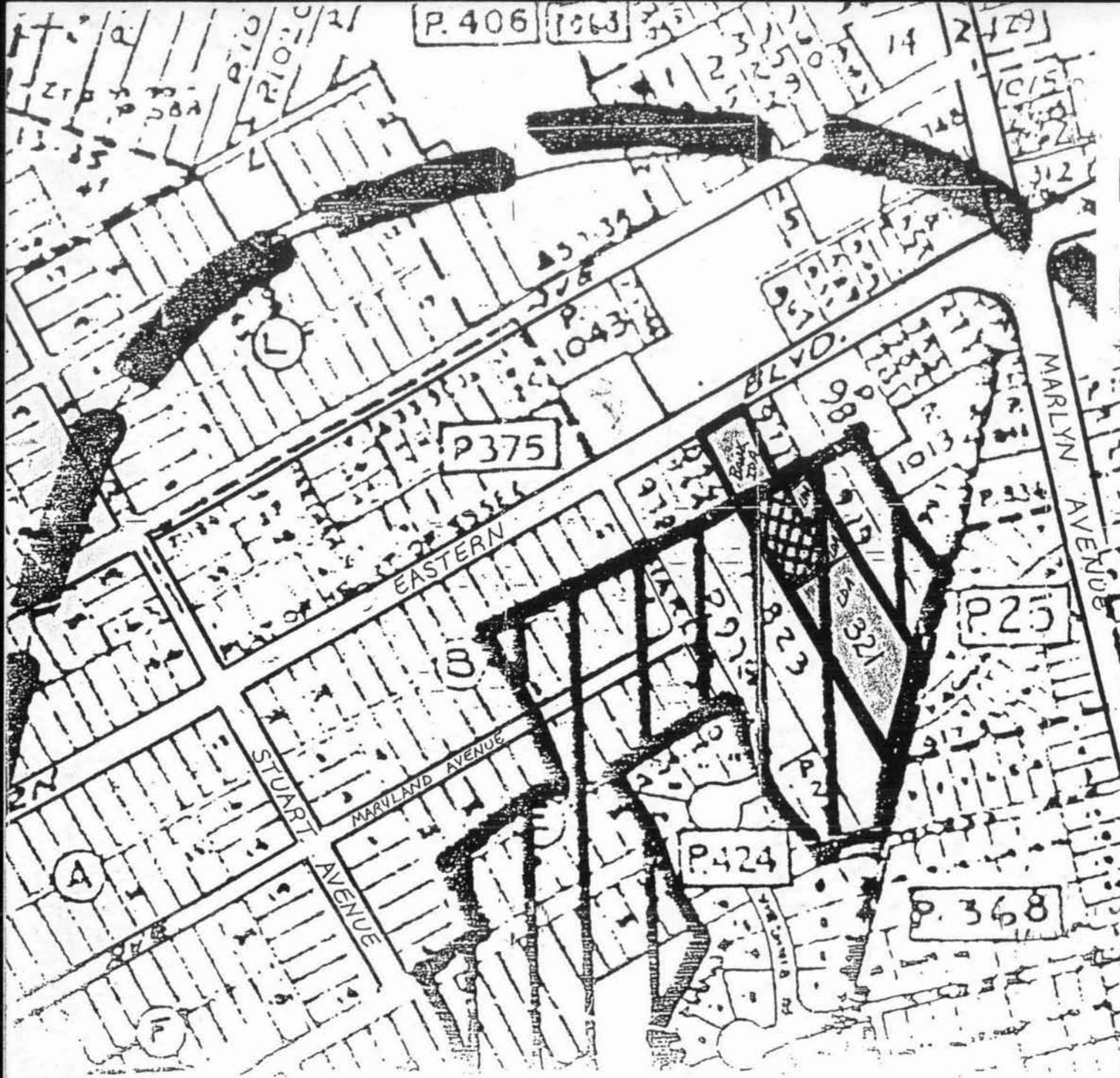
Limited Development Area



Resource Conservation Area



Critical Area Boundary



SOME SUGGESTED CHANGES IN REGULATIONS TO IMPROVE
COORDINATION BETWEEN THE CRITICAL AREA CRITERIA AND THE
FOREST CONSERVATION ACT (FCA)

ABH 9-1-92

- 1.) MAKE FOREST + REFORESTATION DEFINITIONS CONSISTENT, PERHAPS BY
ADOPTING FCA DEFINITIONS IN CA CRITERIA. (AFFORESTATION DEFINITIONS
ARE THE SAME.)

CA DEFINITIONS:

(26) "Forest" means a biological community dominated by trees and other woody plants covering a land area of 1 acre or more. This also includes forests that have been cut, but not cleared.

(58) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.

FCA DEFINITIONS:

Forest. NRA 5-1601 (K)

A. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.

B. "Forest" includes:

(1) Areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2-inch or greater diameter at 4.5 feet above the ground and larger; and

(2) Areas that have been cut but not cleared.

C. "Forest" does not include orchards.

NRA 5-1601 (dd)

(dd) Reforestation or reforested.

(1) "Reforestation" or "reforested" means the creation of a biological community dominated by trees and other woody plants containing at least 100 trees per acre with at least 50% of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground, within 7 years.

(2) "Reforestation" includes landscaping of areas under an approved landscaping plan that establishes a forest that is at least 35 feet wide and covering 2,500 square feet of area.

- 2) EXPLICITLY ALLOW LOCAL JURISDICTIONS TO INCORPORATE THE IMPLEMENTATION TECHNIQUES CONTAINED IN THE FOREST CONSERVATION ACT, EXCLUDING THE DIFFERENT REPLACEMENT RATIOS, i.e., CONSERVATION THRESHOLDS.

A SUGGESTION OR EXAMPLE:

IN COMAR 14.15.02-04.C.

(2) For the cutting or clearing of trees in forests and developed woodland areas which are associated with current or planned development activities in the Limited Development Area, all jurisdictions shall:

(a) Require that the developer consider the recommendations of the Maryland Forest, Park and Wildlife Service when planning development on forested lands;

(b) Provide regulations that development activities be designed and implemented to minimize destruction of woodland vegetation; and

The local jurisdiction may adopt the Forest Stand Delineation and the Forest Conservation Plan requirements contained in NRA § 5-1604 and 5-1605, respectively, and the techniques contained in the Forest Conservation Technical Manual; and

(c) Provide protection for forests and developed woodlands identified as Habitat Protection Areas in COMAR 14.15.09.

(3) For the alteration of forest and developed woodland in the Limited Development Area, the jurisdiction shall apply all of the following criteria:

(a) The total acreage in forest coverage within a jurisdiction in the Critical Area shall be maintained or, preferably, increased.

(b) All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis.

The local jurisdiction may adopt the priority for reforestation and afforestation areas contained in NRA § 5-1607 (d).

(c) That no more than 20 percent of any forest or developed woodland may be removed from forest use, except as provided in §C(4), below. The remaining 80 percent shall be maintained through recorded, restrictive covenants or similar instruments.

The local jurisdiction may adopt the priorities for retention and protection of forested areas contained in NRA § 5-1607 (c).

2) CONT.

(d) Developed woodland vegetation shall be conserved to the greatest extent practicable.

(4) For replacement of forest and developed woodland, if more than 20 percent is removed from forest use, the following formula shall apply: a developer may clear or develop more forest than otherwise permitted to be disturbed, if the total forest area removed from forest use is not increased by more than 50 percent of the area permitted to be disturbed in §C(3)(c) above, provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both.

(5) In addition, local jurisdictions shall adhere to the following criteria for forest and woodland development:

(a) Local programs shall make provision for surety to be provided by owners or developers in an amount acceptable to the local jurisdiction and suitable to assure satisfactory replacement as required by §C(4), above;

(b) Grading permits shall be required before forest or developed woodland is cleared;

(c) Forests which have been cleared before obtaining a grading permit, or that exceed the maximum area allowed in §C(4) shall be replanted at three times the areal extent of the cleared forest;

(d) If the areal extent of the site limits the application of §C(3), C(4), and C(5)(c), above, alternative provisions or reforestation guidelines may be developed by the local jurisdiction, if they are consistent with the intent of COMAR 14.15.05, to conserve the forest and developed woodland resources of the Critical Area. Alternative provisions may include fees-in-lieu provisions if the fee is adequate to ensure the restoration or establishment of an equivalent forest area;

The local jurisdiction may adopt the strategy outlined in NRA § 5-1610 g, h, i, and j.

(e) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent;

(f) All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants, or other protective instruments;

(g) The developer shall designate, subject to the approval of the local jurisdiction, a new forest area on a part of the site not forested; and

(h) The afforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments.

State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

MEMORANDUM

TO: St. Mary's County Growth Allocation Panel

FROM: Ren Serey

SUBJECT: Panel hearing: October 1, 1992
Carter State Office Building
2nd Floor
7:00 p.m.

DATE: September 25, 1992

The St. Mary's County Commissioners have submitted three growth allocation amendments to the Critical Area Commission. The County conducted local public hearings on these amendments in March of this year.

Scott Kudlas, the County's Environmental Planner, will attend the panel's hearing and will present the amendments. I will brief the full Commission at its meeting on October 14th. A Commission vote, following a panel recommendation, is expected at the November 4th meeting. I have outlined the three amendments below.

St. Winifred's Estates

- 16 lots proposed in Critical Area; one lot outside
- 60.4 acres in Critical Area
- 15.2 acres, in a development envelope, proposed for deduction; Critical Area designation is Resource Conservation Area, proposed designation is Limited Development Area; at least 20 acres will be restricted from future development; preliminary staff review indicates the deduction is consistent with Commission policies
- all but one of the proposed dwelling sites are at least 300 feet from tidal waters and tidal wetlands
- a 100 foot buffer from nontidal wetlands is proposed
- impervious surfaces will cover approximately 5% of the site
- forest areas will be increased to 15% of the site

Windward Cove

- four lots proposed
- 31.3 acre parcel in Critical Area
- 6 acres proposed for deduction; Critical Area designation- Resource Conservation Area, proposed change to Limited Development Area; preliminary staff review indicates deduction is consistent with commission policies
- at least 20 acres, with an existing dwelling, will be restricted from further development
- forest areas will be increased to at least 15% of the site

Christmas Hill

- five lots
- 66.4 acres in Critical Area
- 6.3 acres proposed for deduction; Critical Area designation is Resource Conservation Area, proposed change to Limited Development Area; preliminary staff review indicates deduction is consistent with Commission policies
- approximately 60 acres will be restricted from development, with possible reservation of one development right
- forest interior dwelling bird habitat impacts must be reviewed
- Bald Eagle nest impacts must be reviewed
- areas proposed for reforestation must be reviewed

RS/lh

October 14, 1992

*already
voted on
+ approved
at
10/14/92
MFG
unanimous*

STAFF REPORT

JURISDICTION: Chestertown

ISSUES: Two (2) mapping issues

PROGRAM AMENDMENT:

ISSUE (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.

PANEL HEARING: October 1, 1992; no public comment

PANEL
RECOMMENDATION: Approval

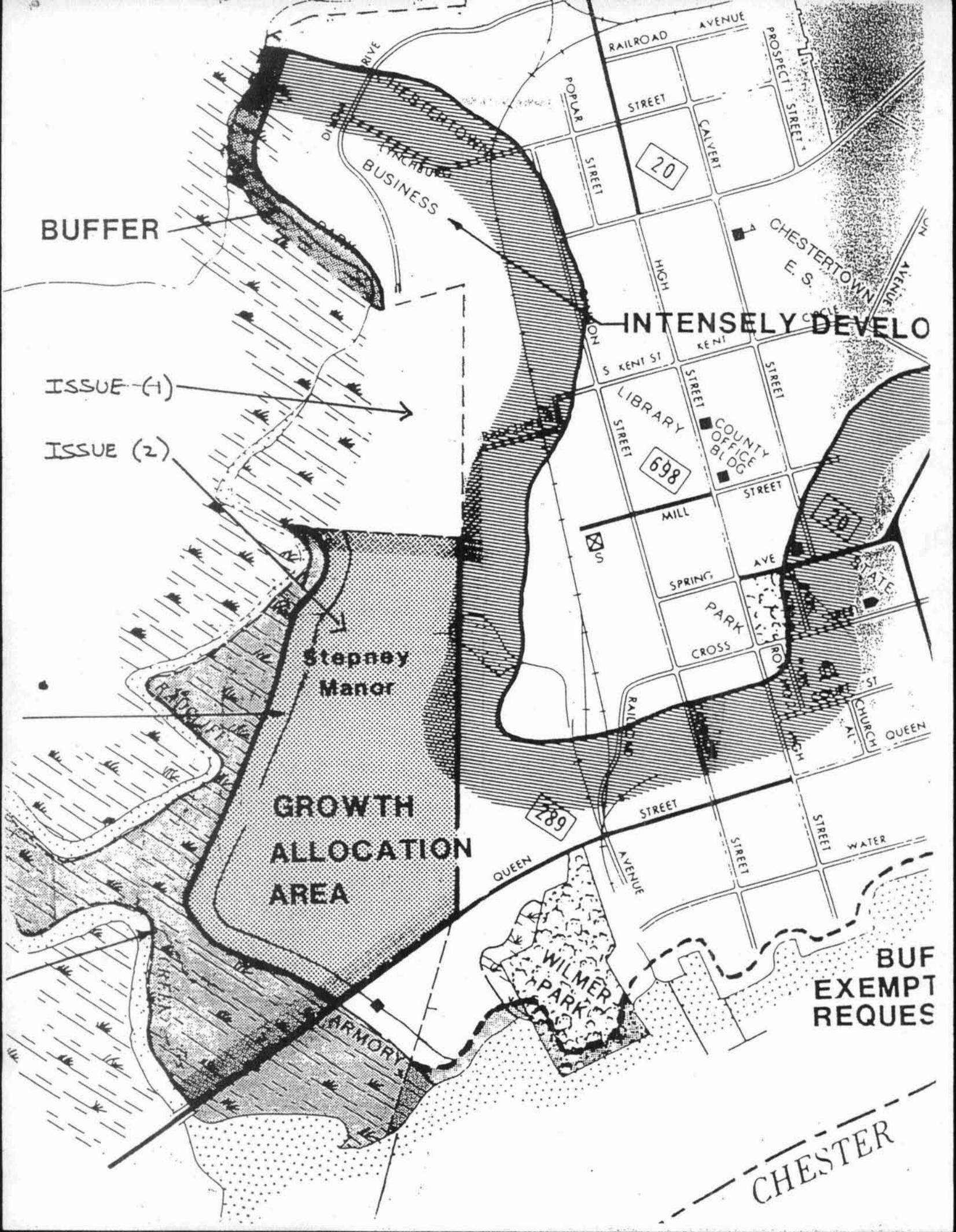
COMMISSION
ACTION: Vote

PROGRAM REFINEMENT:

ISSUE (2): Chestertown 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 Town's adopted Critical Area Map. The Town wishes to designate this area as IDA. Public water and sewer were in existence on this site prior to December 1, 1985. Chestertown has requested that this proposal be reviewed as a refinement. This proposal meets the definition of refinement in NRA §8-1802, as amended, in that Program Refinement includes "The use of the growth allocation in accordance with an adopted Program."

COMMISSION
ACTION: Affirm the Chairman's determination of refinement

STAFF: Pat Pudelkewicz



BUFFER

ISSUE (1)

ISSUE (2)

INTENSELY DEVELOPED

Stepney Manor

GROWTH ALLOCATION AREA

WILMER PARK

BUF EXEMPT REQUES

CHESTER

20

698

289

20

RIVE

RAILROAD AVENUE

STREET

PROSPECT STREET

POPULAR STREET

CALVERT STREET

HIGH STREET

CHESTERTOWN E. S.

S KENT ST

LIBRARY STREET

COUNTY OFFICE BLDG

MILL STREET

SPRING PARK

CROSS

CHURCH STREET

QUEEN

QUEEN STREET

RAILROAD AVENUE

STREET

STREET

WATER

ARMORY

STAFF REPORT

PROJECT: MD 150 over Middle River
Bridge Replacement-Baltimore County

COMMISSION: Vote

Description

The State Highway Administration proposes to replace an existing four span concrete bridge. The existing bridge consists of two 38' wide roadways consisting of two lanes with shoulders in each direction separated by an open median. To meet current safety standards, SHA proposes to close and pave the median and to replace the existing bridge with a two span bridge which will carry two 56' 5" wide roadways, each consisting of two lanes, and an acceleration and deceleration lane in each direction. The construction will increase impervious surface by 2,000 square feet. The stream will be diverted during a portion of the construction to allow for removal of the replacement of existing bridge abutments and piles.

The project area is designated as LDA (approximately 75%) and IDA (approximately 25%) on the county maps. However, since the project is on state land, I would recommend that the project area be classified as Intensely Developed (state land is to be classified as either Intensely Developed or not Intensely Developed). On either side of the river are mixed residential/commercial areas. Currently there is no treatment of stormwater as it comes off of the bridge and roadway. It is obvious where the stormwater leaves the road and flows down an unvegetated embankment. No specific stormwater management has been proposed at this time.

There are nontidal wetlands adjacent to the project, but they are not to be impacted. Middle Branch is an anadromous fish spawning stream for yellow and white perch. No in-stream work will be allowed from March 1 through June 15.

The staff recommends approval of the project with the following conditions:

- that the project area is classified as an area of Intense Development.
- that a 10% reduction in existing pollution be achieved.
- that SHA submit a stormwater management plan to Commission staff for review and approval prior to construction.

Staff contact: Claudia Jones

EX OF SHEETS
1. TITLE SHEET

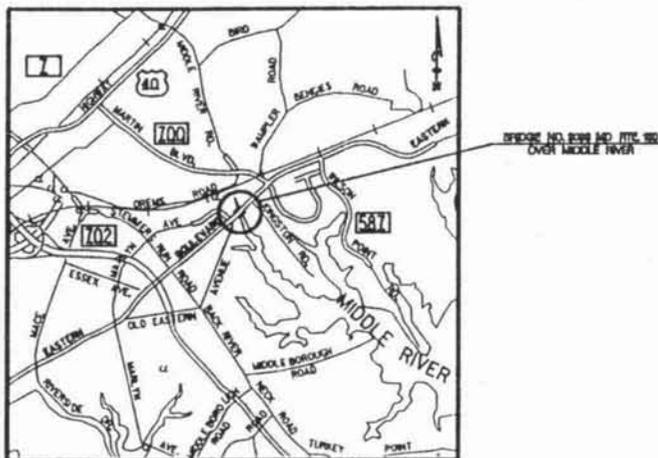


Maryland Department of Transportation

STATE HIGHWAY ADMINISTRATION

WIDENING AND REPLACEMENT OF BRIDGE NO. 3096 ON MD RTE. 150 (EASTERN BLVD.) OVER MIDDLE RIVER

CONTRACT NO. B 929-501-480



LOCATION MAP
SCALE: NONE

COMMENCE AND TERMINATION OF RECORDS PRINTS OF PLANS OF BRIDGES
IF ENCLOSURES ARE INCLUDED WITH THIS CONTRACT, NO RESPONSIBILITY
IS ASSUMED FOR COMPLETION IS ASSUMED BY THE STATE HIGHWAY
ADMINISTRATION, DESIGN, ETC., AS SHOWN THEREON MAY NOT BE

THE LOCATION OF UTILITIES SHOWN ON THE PLANS ARE
INFORMATION AND GUARANTEE ONLY. NO GUARANTEE IS
AS TO THE ACCURACY OF SAID LOCATIONS.

DESIGN AND BRIDGE CONTROL REGULATIONS WILL BE
STRICTLY ENFORCED DURING CONSTRUCTION.

OWNER / DEVELOPER CERTIFICATION:
I, THE UNDERSIGNED, CERTIFY THAT ANY CLEARING, GRADING,
CONSTRUCTION AND/OR DEVELOPMENT WILL BE DONE
Pursuant to this plan, and that any responsible
PERSONNEL INCHARGED IN THE CONSTRUCTION PROJECT
WILL HAVE A CERTIFICATE OF ATTENDANCE AT A
DEPARTMENT OF NATURAL RESOURCES APPROVED
TRAINING PROGRAM FOR THE CONTROL OF SEDIMENT
AND EROSION BEFORE BEGINNING THE PROJECT.
I HEREBY AUTHORIZE THE RIGHT OF ENTRY FOR
PERIODIC ON-SITE INSPECTION BY STAFF OF
MARYLAND DEPARTMENT OF THE ENVIRONMENT,
COMPLIANCE INSPECTORS.

DATE: _____ OWNER / DEVELOPER SIGNATURE: _____
CARD NO.: _____ PRINTED NAME AND TITLE: _____

ALL NEIGHBORHOOD IMPROVEMENT FACILITIES CONSTRUCTED
FOR THIS CONTRACT SHALL BE INSPECTED SEPARATELY
WITH INSURANCE PROVIDED WHEN REQUIRED.

THE SPACING LINES SHOWN ON THE PLANS ARE LEGS
TO BE SHOWN. ANY CHANGES IN THE SPACING,
SIZES AND BEARING CAPACITY, PLAN,
STORAGE AND REMOVAL FACILITY OR OTHER
ASPECTS OF THE WORK SHALL BE PERMITTED AND
APPROVED BY THE OFFICE OF ENGINEERING,
DESIGN AND/OR THE OFFICE OF THE CHIEF ENGINEER.

THE STATE HIGHWAY ADMINISTRATION SHALL ONLY BE
RESPONSIBLE FOR THE COMPLETION OF DOCUMENTS
OBTAINED DIRECTLY FROM THE STATE HIGHWAY
ADMINISTRATION CHIEF'S OFFICE. FAILURE TO ATTACH
ACCURATE MAP COPIES TO BE SUBMITTED.

RIGHT OF WAY AND EMBANKMENT LINES SHOWN ON THESE
PLANS ARE FOR INFORMATION IN INTERPRETING THE PLANS.
THESE LINES DO NOT REPRESENT THE OFFICIAL PROPERTY
ACQUISITION LINES FOR OFFICIAL USE RIGHT OF WAY
AND EMBANKMENT INFORMATION, SEE APPROPRIATE RIGHT OF
WAY PLAN.

OPTIONAL SIGNS	
LANE OR CITY LIMIT	TEMPORARY SIGN
TRAFFIC SIGN	TEMPORARY SLOPE DRAIN
TRAVEL SIGN	CHAINS, SLOPE FENCE
NO	SLOPE SLOPE FENCE
NOV LINE	ROAD SLOPE STRUCTURE
NOVORY	
SLABBY LINE	PLACES NEWP DITCH
NOV	TEMPORARY STONE OUTLET STRUCTURE
NO SLOPE	BRIDGE
CLUBBY	TEMPORARY BEARING SIGN WITH SLOPE FENCE
NOV INLET	TEMPORARY BEARING SIGN WITH BRIDGE SLOPE
NO	TEMPORARY BEARING SIGN WITH STONE OUTLET STRUCTURE
NOV SIGN	TEMPORARY BEARING SIGN WITH NEWP OUTLET STRUCTURE
NOV SIGN	
NOV SIGN	
NOV SIGN	

DESIGN TRAFFIC DATA

A.D.T.	5000	5000 (EXT)
D.V.V.	8%	8%
DIRECTIONAL DISTRIBUTION	50%	50%
PERCENT TRUCKS-A.D.T.	8%	8%
PERCENT TRUCKS-D.V.V.	8%	8%
DESIGN SPEED	40 M.P.H.	

REVIEWED AND APPROVAL, RECOMMENDED

DATE: _____

APPROVAL, RECOMMENDED

DATE: _____

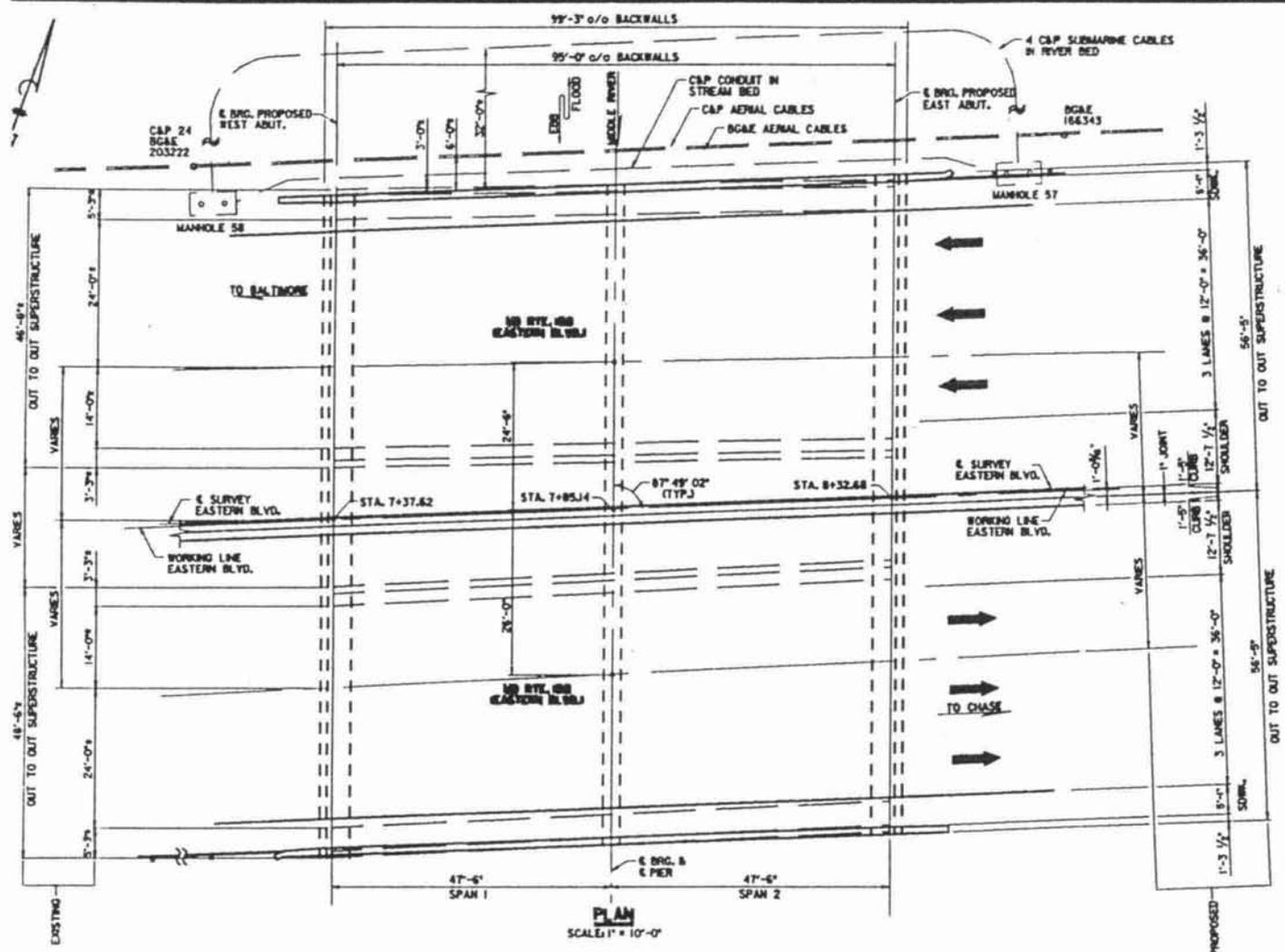
APPROVED

DATE: _____

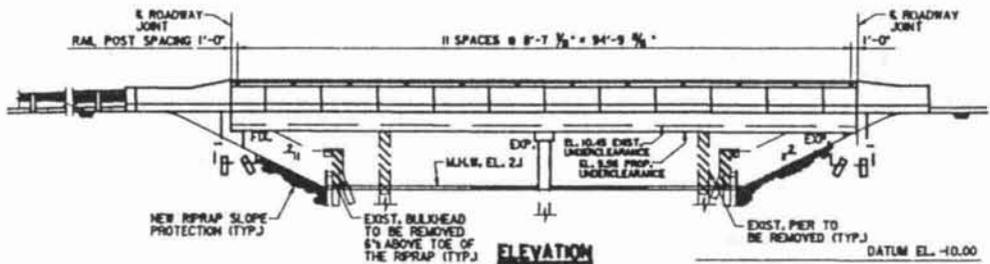
DATE	BY	PROJECT
8	MCL	SEE TITLE SHEET

GENERAL NOTES

- SPECIFICATIONS:** SHA SPECIFICATIONS DATED JANUARY, 1982, SUPPLEMENT TO SPECIFICATIONS DATED JANUARY, 1988, SUPPLEMENT TO THE JANUARY, 1990 SUPPLEMENT TO SPECIFICATIONS DATED FEBRUARY, 1990, REVISIONS THEREOF AND ADDITIONS THERETO AND SPECIAL PROVISIONS FOR MATERIALS AND CONSTRUCTION.
- AASHTO STANDARD SPECIFICATIONS FOR HIGHWAY BRIDGES DATED 1989 FOR DESIGN INCLUDING ALL INTERIM SPECIFICATIONS THROUGH 1991.
- CONCRETE DESIGN SERVICE LOAD DESIGN METHOD $f_c = 1200$ PSI EXCEPT THAT IN BRIDGE DECK SLABS SUPPORTED BY STRINGERS IT SHALL BE 1350 PSI.
- REINFORCING STEEL DESIGN $f_s = 24,000$ PSI.
- STRUCTURAL STEEL DESIGN ELASTIC DESIGN METHOD.
- LOADING:** HS 20 WITH PROVISIONS FOR FUTURE 3" WEARING SURFACE AND 15 LB/FT² FOR USE OF BRIDGE DECK FORMS.
- CONCRETE:** ALL CONCRETE FOR ABUTMENT BACKWALLS AND PARAPETS AT ABUTMENTS AND ENTIRE SUPERSTRUCTURE SHALL BE MIX NO. 8 (4500 PSI). ALL OTHER STRUCTURE CONCRETE SHALL BE MIX NO. 3 (3500 PSI).
- REINFORCING STEEL:** REINFORCING STEEL SHALL CONFORM TO ASTM A 615, GRADE 60. ALL SPLICES, NOT SHOWN, SHALL BE LAPPED AS PER BAR LAP CHARTS. MINIMUM COVER FOR ANY BAR SHALL BE 2" UNLESS OTHERWISE NOTED. WITH THE EXCEPTION OF BARS AT THE TOP OF PIERS AND AT THE BOTTOM AND SIDES OF ALL FOOTINGS WHICH SHALL HAVE 3" MINIMUM COVER.
- FOR TIES AND STIRRUPS STANDARD 90 DEGREE BENDING TOLERANCES ARE MODIFIED TO PLUS (+) ZERO INCHES, MINUS (-) NORMAL 90 DEGREE TOLERANCES.
- ONLY GRADE 60 CAN BE USED ON THIS PROJECT.
- REINFORCING STEEL IN THE FOLLOWING AREAS SHALL BE EPOXY COATED:
- ENTIRE SUPERSTRUCTURE INCLUDING PARAPETS
 - ABUTMENT BACKWALLS
 - ALL BEARING SEAT PADS
 - ABUTMENT BRIDGE SEAT AREAS
 - PARAPET PORTION OF WING WALLS
- KEYS:** ALL KEYS ARE NOMINAL SIZE.
- STRUCTURAL STEEL:** STRUCTURAL STEEL SHALL MEET ASTM A 709 GRADE 50, INCLUDING THE ADDITIONAL REQUIREMENTS FOR CHIPPY V-NOTCH TESTING OF AASHTO M 270 FOR PRIMARY LOAD CARRYING MEMBERS.
- EXISTING STRUCTURES:** ALL DIMENSIONS AFFECTED BY THE GEOMETRICS, AND/OR LOCATION OF THE EXISTING STRUCTURES SHALL BE CHECKED IN THE FIELD BY THE CONTRACTOR, BEFORE ANY CONSTRUCTION IS DONE, AND BEFORE ANY REINFORCING STEEL, ETC., IS ORDERED OR FABRICATED. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO SUPPLY THE ENGINEER WITH ALL FIELD DIMENSIONS REQUIRED TO CHECK DETAIL DRAWINGS. THE (+) MARKS SHOWN WITH DIMENSIONS AND STATIONS DO NOT INDICATE ANY DEGREE OF PRECISION. THESE (+) MARKS INDICATE EXISTING DIMENSIONS AND STATIONS THAT MAY VARY AND DO REQUIRE FIELD VERIFICATION BY THE CONTRACTOR.
- EXISTING STRUCTURE SHOWN IN LONG DASHED LINES. PORTIONS OF EXISTING STRUCTURES SHOWN HATCHED, TO BE REMOVED.
- HYDROLOGICAL & HYDRAULIC DATA:** FOR HYDROLOGICAL AND HYDRAULIC DATA, SEE SHEET TITLED "100".



PLAN
SCALE: 1" = 10'-0"

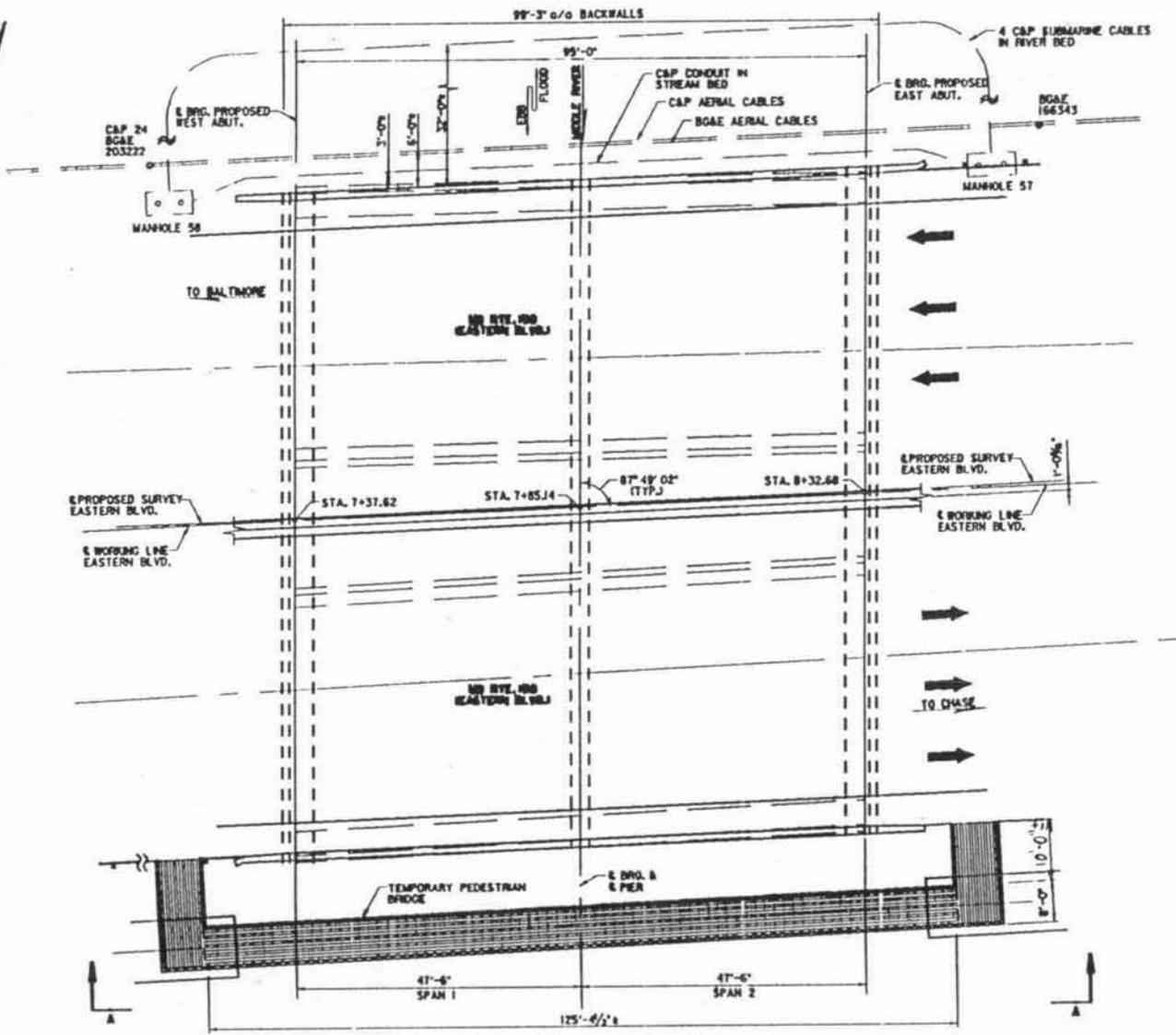


ELEVATION
SCALE: 1" = 10'-0"

- NOTES:**
1. EXIST. ABUTMENTS AND SUPERSTRUCTURE NOT SHOWN.
 2. PROPOSED TIE BEAM ATTACHMENT ON APPROACH ENDS ONLY.

REVISIONS	STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION OFFICE OF BRIDGE DEVELOPMENT	
	WIDENING AND REPLACEMENT OF BRID NO. 3008 ON MD RTE. 150 (EASTERN BLV OVER MIDDLE RIVER	
	GENERAL PLAN AND ELEVATION	
	SCALE AS SHOWN ON SHEET	CONTRACT B 888-004-4
	DESIGNED BY A.C., F.R.	
	DRAWN BY G.F.H.	
	CHECKED BY	
		SHEET NO.

NO.	DATE	BY	REVISION
3	MD.		TITLE SHEET

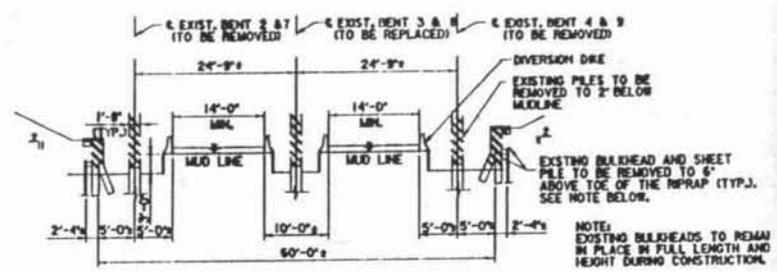
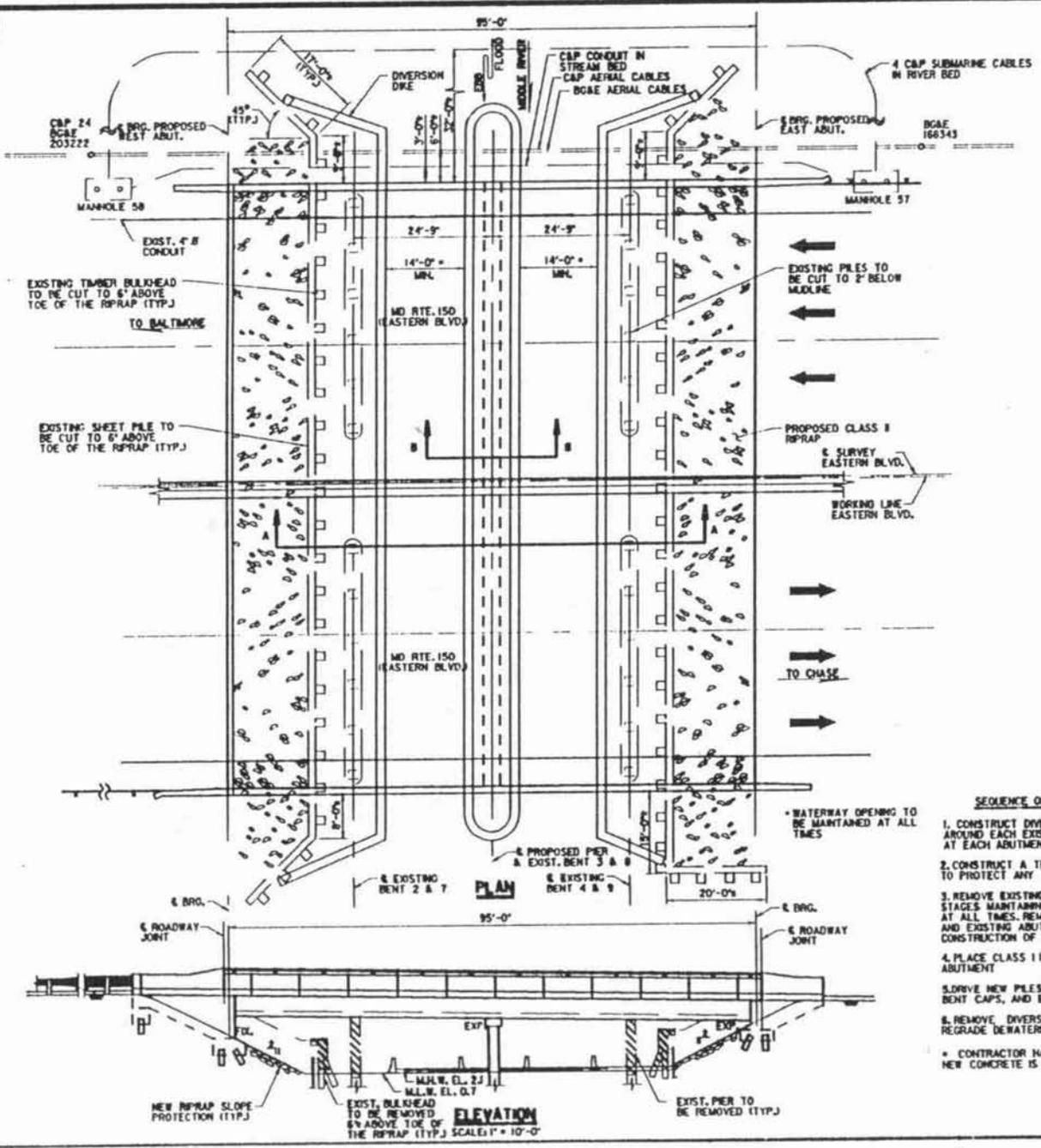


PLAN
SCALE 1" = 10'-0"

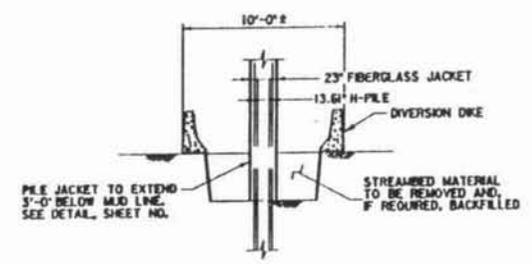
- NOTES:
 1. FOR SECTION A-A, SEE SHEET NO.
 2. TEMPORARY PEDESTRIAN BRIDGE TO BE INSTALLED FOR STAGE 1 OF CONSTRUCTION ONLY.

	STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION OFFICE OF BRIDGE ENGINEERING		
	WIDENING AND REPLACEMENT OF BRIDGE NO. 3006 ON MD RTE 150 EASTERN BLVD OVER MIDDLE RIVER		
	PLAN - TEMPORARY PEDESTRIAN BRIDGE		
	SCALE AS SHOWN	DATE	CONTRACT NO. 803-803
	DESIGNED BY: A.C.F.R.		
	DRAWN BY: G.F.J.		
	CHECKED BY:		
			SHEET NO.

NO.	DATE	REVISION
3	M.L.	SEE TITLE SHEET



SECTION A-A
SCALE: NONE



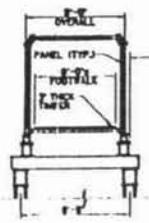
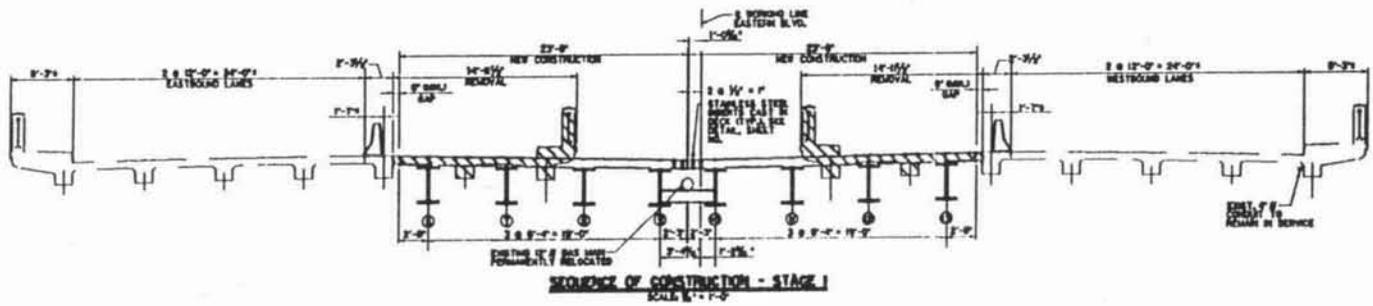
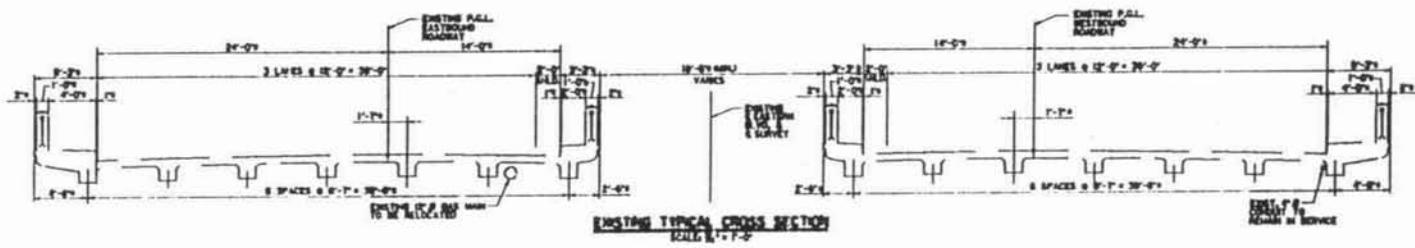
SECTION B-B
SCALE: NONE

SEQUENCE OF CONSTRUCTION / STREAM DIVERSION

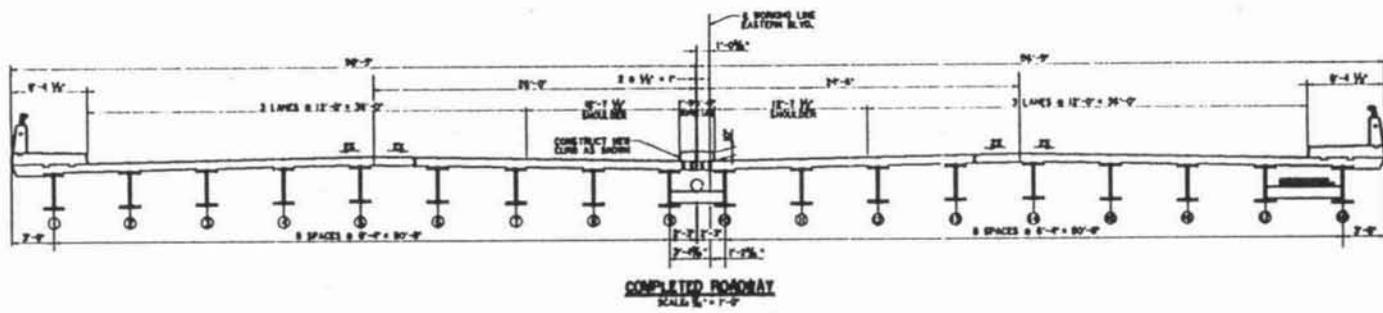
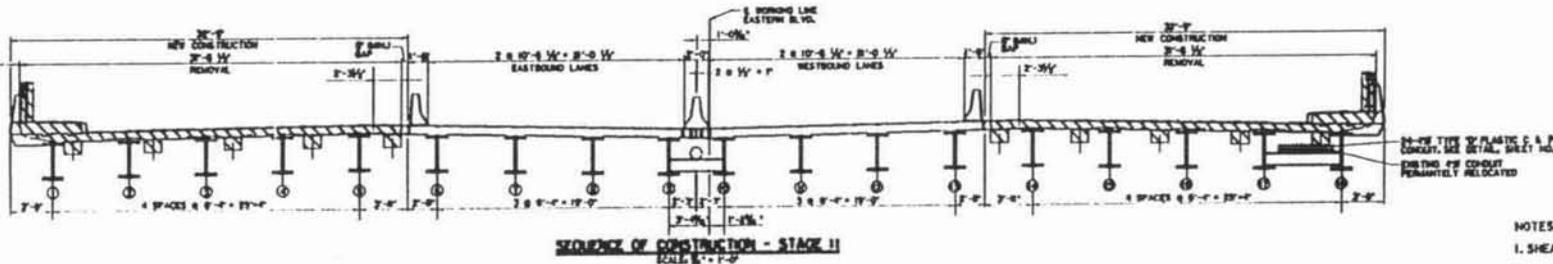
1. CONSTRUCT DIVERSION DIKE FROM UPSTREAM TO DOWNSTREAM AROUND EACH EXISTING BENT, AND CONSTRUCT DERATERING BASINS AT EACH ABUTMENT.
 2. CONSTRUCT A TEMPORARY PROTECTIVE SHIELD UNDER THE BRIDGE TO PROTECT ANY MATERIALS FROM ENTERING MIDDLE RIVER.
 3. REMOVE EXISTING BRIDGE DECK AND CONCRETE BEAMS IN 2 STAGES MAINTAINING 2 LANES OF TRAFFIC IN EACH DIRECTION AT ALL TIMES. REMOVE EXISTING PILE BENTS 2' BELOW MUDLINE AND EXISTING ABUTMENTS UNDER EACH STAGE TO ALLOW CONSTRUCTION OF NEW BRIDGE.
 4. PLACE CLASS II RIPRAP FOR ABUTMENT PROTECTION AROUND EACH ABUTMENT.
 5. DRIVE NEW PILES, PLACE NEW CONCRETE AT ABUTMENTS AND BENT CAPS, AND ERECT NEW STEEL STRINGERS AND BRIDGE DECK.
 6. REMOVE DIVERSION DIKES FROM DOWNSTREAM TO UPSTREAM AND REGRADE DERATERING BASINS BACK TO ORIGINAL GROUND.
- * CONTRACTOR HAS OPTION OF PLACING RIPRAP BEFORE OR AFTER NEW CONCRETE IS PLACED AND NEW STRINGERS ERECTED.

NUMBER	STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION OFFICE OF BRIDGE ENGINEERING
	WIDENING AND REPLACEMENT OF E NO. 3008 ON MD RTE. 150 (EASTERN OVER MIDDLE RIVER STREAM DIVERSION PLAN
	SCALE: AS SHOWN DRAWN BY: A.C.F.R. CHECKED BY: G.F.J.L.
	CONTRACT: B-100

SHEET	DATE	PROJECT
5	REV.	TITLE B



ELEVATION PORTABLE PANEL



- NOTES
1. SHEAR DEVELOPERS NOT SHOWN
 2. EXISTING UTILITY PIPES SHALL BE MAINTAINED DURING CONSTRUCTION AND PERMANENTLY RELOCATED, AS SHOWN ON THE PLAN.
 3. THESE DIMENSIONS HOLD TRUE ONLY AT THE CENTER LINE OF THE PIER AND VARY ALONG THE BRIDGE LENGTH.

REVISION	STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION OFFICE OF SPECIAL DEVELOPMENT
	WIDENING AND REPLACEMENT C NO. 3086 ON MD RTE. 150 (EAST OVER MIDDLE RIVER)
	SEQUENCE OF CONSTRUCTION
SCALE AS SHOWN DRAW	CONTRACT B
DESIGNED BY A.C. P.A.	
DRAWN BY G.F.J.	
CHECKED BY	

*approved.
Supported.*

CHESAPEAKE BAY CRITICAL AREA COMMISSION
STAFF REPORT

DATE: October 8, 1992

JURISDICTION: Talbot County

SUBJECT: Refinement

Talbot County implements its critical area program through an overlay zoning system. There are three underlying zones within the Limited Development Area (LDA). Talbot County proposes to change its zoning ordinance to allow changes within those underlying zones without bringing them before the Commission. In these cases, there is no change in the critical area designation, just in the underlying zones. Any proposed zoning change which would change a parcel's critical area designation would still come before the Commission. See attached.

Chairman North has deemed this to be a refinement to Talbot County's Critical Area Program.

A BILL TO AMEND SECTIONS 19.14(c)(1) AND 19.14(c)(1)(ii) OF TITLE 19 OF THE TALBOT COUNTY CODE.

SECTION ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1) be amended to read as follows:

- (1) The provisions of the Talbot County Zoning Ordinance or the boundaries of any zoning district may be amended by the County Council in accordance with the procedures set forth in this section. For the purposes of this section, amendments are separated into four (4) categories: (i) amendments to the Zoning Ordinance text, (ii) amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation acreage is requested, (iii) amendments to the Critical Area provisions of the Zoning Ordinance, and (iv) growth allocation district boundary amendments in the Critical Area.

SECTION TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(ii) be amended to read as follows:

- (ii) Amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area, where growth allocation acreage is requested.

SECTION THREE: BE IT FURTHER ENACTED that this Bill shall take effect sixty (60) days from the date of its passage.

SECTION FOUR: BE IT FURTHER ENACTED that each individual section of this Bill may be reviewed as a separate amendment or refinement by the Chesapeake Bay Critical Area Commission.

A DISCUSSION OF LEGISLATIVE ALTERNATIVES
Nontidal Wetlands in the Critical Area

ISSUE: Bridging inconsistencies between the Critical Area criteria and the Department of Natural Resources' (DNR) regulations for protecting nontidal wetlands

Because the Nontidal Wetlands Protection Law of 1989 (as implemented by DNR) does not include the Critical Area within its purview, nontidal wetlands within the Critical Area are regulated under criteria that are separate and different from the DNR nontidal regulations. Regulatory inconsistency and confusion has resulted from the implementation of two different sets of standards, particularly where wetlands encompass both sides of the Critical Area boundary. To eliminate or minimize inconsistencies between the two programs, the Critical Area Commission, in conjunction with DNR is reviewing three legislative alternatives.

Alternative I. Amend the 1989 Nontidal Wetlands Protection Law to include the Critical Area (with no additional text changes). The Critical Area criteria for nontidal wetlands would be repealed.

Advantages:

- a. Existing discrepancies in the definition and identification of nontidal wetlands would be eliminated.
- b. Regulatory activities including permitting, mitigation, and enforcement would be implemented uniformly throughout the State, including the Critical Area.
- c. The number and type of government agencies involved in the nontidal wetland regulatory process would be uniform and consistent.
- d. Local jurisdictions that are currently understaffed would be alleviated of regulatory responsibility for nontidal wetlands.

Disadvantages:

- a. In some situations, the Critical Area criteria are more protective of nontidal wetlands than the DNR regulations. Because of their position in the landscape, nontidal wetlands in the Critical Area must be protected as an integral part of the Chesapeake Bay cleanup efforts. Some differences in protection between the DNR and Critical Area programs would not be rectified under Alternative I.
- b. Local jurisdictions capable of effectively administering a program would lose jurisdiction over Critical Area wetlands.

Alternative II. Incorporate the Critical Area into the DNR Nontidal Wetland Protection Law with a provision that regulations specific to the Critical Area be established by DNR to address the most important differences between the two programs. The Critical Area criteria for nontidal wetlands would be repealed.

Advantages:

- a. through d. same as Alternative I. above
- e. A section of regulations specific to the Critical Area, could rectify notable differences in the two programs.
- f. Language can be added to allow DNR delegation of regulatory responsibility to Counties that can effectively administer a wetland protection program. Counties could be given the option to have a program that is stricter than the existing DNR regulations. (Note: Towns would not be able to regain jurisdiction.)

Disadvantages:

- a. The criteria used by DNR to review Critical Area wetlands would be slightly different than for other wetlands.
- b. Local jurisdictions would lose regulatory responsibility for strict protection of Critical Area nontidal wetlands unless the Law is specifically amended to allow DNR delegation of a more strict program.

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

Advantages:

- a. Depending on the amount and type of changes to the criteria, major discrepancies between the two programs could be resolved (e.g. by referencing the Federal method for wetland identification in the Critical Area criteria, a source of major confusion could be eliminated).
- b. Responsibility for protection of Critical Area nontidal wetlands would remain at the local level subject to Commission oversight.

Disadvantages:

- a. A major rewrite of the Critical Area criteria would be needed to bring them into close conformance with the DNR regulations. The local jurisdictions would be required to incorporate numerous revisions into their ordinances.
- b. The DNR and Critical Area programs would still be separate with two sets of regulations implemented by different agencies on either side of the Critical Area boundary. Understaffed jurisdictions would not be able to implement an effective program.

PROPOSED ACTIONS UNDER ALTERNATIVE II.

The Special Issues Subcommittee of the Critical Area Commission has discussed the three legislative alternatives described above. The alternatives have also been reviewed with representatives from the Department of Natural Resources (DNR) Water Resources Administration. There will be a general discussion of the legislative alternatives at the October 1992 Critical Area Commission meeting, however the following are proposed actions under Alternative II., which is the alternative currently receiving the strongest consideration of the Special Issues Subcommittee.

Step I. An amendment to the Department of Natural Resources (DNR) Nontidal Wetlands Protection Law would be made to:

- a. include the Critical Area
- b. provide for regulations for protecting Critical Area wetlands to be established by a specific deadline (e.g. July 1993)
- c. provide for DNR to delegate all or part of its authority to those Counties demonstrating that they will implement a program that is as strict or stricter than the DNR program.

Step II. An amendment to the Chesapeake Bay Critical Area Law would be made to have all criteria for nontidal wetlands in the Critical Area repealed at the State and local level by a deadline concurrent with adoption of the DNR Law and regulations.

Step III. Regulations would be developed to address protection of Critical Area nontidal wetlands and delegation of regulatory responsibilities to Counties. The regulations would address the following issues:

- a. The DNR regulations require that an applicant demonstrate "no practicable alternative" before a regulated activity is permitted. To adequately protect nontidal wetlands in the Critical Area, an additional requirement for demonstrating "unwarranted hardship" would be placed on an applicant requesting a permit for a regulated activity in wetlands in the Critical Area.
- b. Generally, the DNR regulations allow a 30% disturbance to trees in the 25 foot nontidal wetland buffer before DNR review is required. The regulations for the Critical Area would be written

to allow 10% disturbance for personal use (e.g. firewood and horticultural activities to maintain the health of an individual tree). All other activities in the buffer would require a permit. The applicant would have to demonstrate "unwarranted hardship" and would provide mitigation for disturbed wetlands.

- c. Under the DNR regulations, regulated activities which impact 2 acres or less of farmed wetlands do not require a permit or mitigation by an applicant (DNR mitigates for these activities under a programmatic mitigation plan). Regulations would be written to require a permit and applicant mitigation for regulated activities in farmed wetlands in the Critical Area.
- d. Regulations would be established to ensure that a County could be delegated authority for nontidal wetland protection in the Critical Area and that a delegated program could be more strict than the DNR program.
- e. Regulations would be drafted to require that mitigation for permitted disturbance to wetlands in the Critical Area be located in the Critical Area, to the extent possible. However if mitigation must take place outside of the Critical Area, it must be located in an area that is immediately adjacent to and hydrologically connected to the Critical Area and located in the same watershed of the wetland to be disturbed.

supported.

STAFF REPORT

CHANGE TO LOCAL PROGRAM

JURISDICTION: Dorchester County

REQUEST: Program Refinement

DESCRIPTION: The County has requested Commission approval of changes to its local-Program maps and to total-acreage estimates in its Limited Development Area (LDA) classification. These changes are made necessary by the recent annexation by the City of Cambridge of 18.125 acres of County land. This County request for Program refinement is the complement to the City's Program refinement, approved last month by the Chairman with the Commission's concurrence. (See September, 1992 meeting minutes, page 2, paragraph 4.) There is a locator map on the reverse of this sheet.

CHAIRMAN'S
DETERMINATION: Program refinement

TODAY'S
ACTION: Commission vote on the Chairman's determination, pursuant to NRA 8-1809(p) (3) (i), ACM. Concurrence requested.

DATE: October 14, 1992

approved
17-0.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CHESAPEAKE BAY CRITICAL AREA COMMISSION,
PRINCE GEORGE'S COUNTY, MARYLAND AND
THE POTOMAC ELECTRIC POWER COMPANY

AUTHORITY: Natural Resources Article, Sections 3-305(a)(1) and (5), 3-306.1 and 8-1801 et seq., Annotated Code of Maryland and COMAR 14.19.01 et seq.

THIS AGREEMENT, dated _____, 1992, memorializes the understanding reached by the Chesapeake Bay Critical Area Commission (CBCAC), Prince George's County, Maryland, a body corporate and politic, (County) and the Potomac Electric Power Company (PEPCO).

WHEREAS, the CBCAC is authorized to implement the State's Chesapeake Bay Critical Area Protection Program, Natural Resources Article (NR), §8-1801 et seq., Annotated Code of Maryland; and

WHEREAS, the CBCAC has established regulations, COMAR 14.19.01 et seq., permitting certain development actions in the Critical Area even though the development has not been approved by a local jurisdiction with an approved Critical Area program; and

WHEREAS, the CBCAC is vested with the authority to approve, deny, or request modifications to development actions on private lands occurring as a result of State or local agency programs based on assessment of the extent to which the development action conforms with COMAR 14.19.01 et seq.; and

WHEREAS, the County has an approved Chesapeake Bay Critical Area Protection Program (County Program) pursuant to NR §8-1809; and

WHEREAS, NR §3-306.1 provides that "any sites acquired and placed in inventory . . . shall be used and operated for electric generating and associated on-site transmission purposes without regard to any local zoning rule, regulation, law, or ordinance, and this use is not required to be submitted to or approved by any county or municipal zoning board, authority or unit"; and

WHEREAS, NR §3-305(a)(1) provides that "any site either already owned or purchased in the future by electric companies shall be included in the inventory"; and

WHEREAS, NR §3-305(a)(5) provides that the term "site" "includes land necessary for such ancillary purposes as . . . transportation access"; and

WHEREAS, PEPCO was permitted to build and operate two coal-fired units which included railroad access facilities on a site in the County known as the Chalk Point Generating Station (Chalk Point) and commenced operations on October 7, 1964; and

WHEREAS, the Public Service Commission has granted PEPCO Certificates of Public Convenience and Necessity for the construction of a third and fourth generating unit at Chalk Point per Order No. 59297 in Case No. 6409 dated April 21, 1971 and Order No. 59888 in Case No. 6526 dated August 9, 1972; and

WHEREAS, PEPCO asserts that the existing railroad access facilities originally constructed at Chalk Point are in need of restoration to allow safe operation of railroad equipment servicing the Chalk Point facility; and

WHEREAS, the County asserted to PEPCO by letter dated April 30, 1991 that it "has no authority to require PEPCO to comply with County ordinances pertaining to the Critical Area Program", and

WHEREAS, the CBCAC maintains that the County Program is not a "local zoning rule, regulation, law, or ordinance" and that the County, not the CBCAC, has authority to require PEPCO to comply with the County Program; and

WHEREAS, PEPCO requested CBCAC review and approval of its proposed Chalk Point Generation Station Railroad Restoration/Upgrade project (Project) by letter dated June 10, 1991; and

WHEREAS, the CBCAC asserted that PEPCO should resubmit the Project to the County for review and approval; and

WHEREAS, PEPCO subsequently requested the County's approval of the Project by letter dated August 30, 1991; and

WHEREAS, the County by letter dated January 23, 1992 asserted to PEPCO that "variances must be obtained from the Board of Zoning Appeals for disturbances within the primary and secondary buffer, nontidal wetlands, nontidal wetland buffers and steep slopes," associated with the Project; and

WHEREAS, PEPCO maintains that the County's requirement that a zoning variance is required for certain aspects of the Project is in conflict with NR §3-306.1; and

WHEREAS, PEPCO has not applied to the County for a variance from the terms and conditions of the County Program as they relate to the Project; and

WHEREAS, PEPCO continues to maintain that the CBCAC rather than the County has review and approval authority over the Project;

WHEREAS, the County by entering into this MOU does not waive its position that a variance is required; and

WHEREAS, both County and CBCAC staff have reviewed the Project.

NOW, THEREFORE, be it resolved that the parties named above hereby agree to the following:

1. PEPCO shall submit the Project to the CBCAC in a manner consistent with COMAR 14.19.01 et seq. for CBCAC review and determination pursuant to COMAR 14.19.01 et seq.

2. The County shall have an opportunity to comment to the CBCAC on the Project during the CBCAC review.

3. This Memorandum of Understanding (MOU) shall not be applicable to and shall have no effect on any other projects at power plant sites.

4. The County expressly adopts the CBCAC review and determination of the Project under COMAR 14.19.01 et seq. as the County's review and determination under the County Program in the event that the County Program is found applicable in the future to the Project.

5. PEPCO expressly acknowledges that it is proceeding in accordance with the terms and conditions of this MOU at its own risk.

6. This MOU may be amended at any time. Modifications must be made in writing and must be agreed upon by all of the parties hereto.

7. This MOU embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations, referring to the subject matter other than those contained herein.

IN WITNESS WHEREOF, the parties have executed this MOU by causing the same to be signed on the day and year first above written.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Chairman

PRINCE GEORGE'S COUNTY, MARYLAND

County Executive

THE POTOMAC ELECTRIC POWER COMPANY

(Title)

Approved as to form and legal sufficiency
this ____ day of _____, 19__.

Assistant Attorney General, CBCAC

Approved as to form and legal sufficiency
this ____ day of _____, 19__.

County Attorney, Prince George's County

Approved as to form and legal sufficiency
this ____ day of _____, 19__.

Counsel, PEPCO

DRAFT POLICY FOR RECONSIDERATION
(Revised August 28, 1992)

I. BACKGROUND

On several occasions, a local government or State agency has asked the Chesapeake Bay Critical Area Commission to reconsider a decision it made on a project, a program amendment or program submittal ("Original Decision"). Traditionally, an administrative agency like the Commission has discretionary power to reconsider its decisions.

However, the Critical Area Law and Criteria do not address reconsideration, and Robert's Rules of Order, current edition, ("Roberts") which the Commission's By-laws direct it to follow, does not do so comprehensively. Consequently, the Commission has adopted the following policy and amended its By-laws accordingly.

II. CIRCUMSTANCES FOR REQUEST

A. The Commission will exercise its power to reconsider an Original Decision only in accordance with Robert's.

B. However, contrary to Robert's, in certain instances when fraud, mistake, irregularity, or newly discovered evidence is alleged, a request may be entertained. The definitions for such circumstances are:

(1) Fraud - an act of deliberate deception that was designed to secure something by taking unfair advantage. Example: The Commission's review of an application that included intentional misrepresentation by the applicant.

(2) Mistake - a jurisdictional error on the part of the Commission. Example: A Commission decision concerning property located outside the Critical Area.

(3) Irregularity - an administrative process or procedure which does not conform to established rules or usual procedure. Example: Failure of the Commission to hold a panel hearing in the jurisdiction impacted by a proposed amendment.

(4) Newly Discovered Evidence - evidence that could not have been discovered in a timely fashion even if due diligence was used.

III. TIME FRAME OF REQUEST

A. Requests not based on fraud, mistake, irregularity and/or newly discovered evidence shall be made in writing at the same meeting that the Commission rendered the Original Decision at issue.

B. Requests based on fraud, mistake, irregularity and/or newly discovered evidence shall be made in writing within 30 days of the Original Decision at issue.

IV. PROCESS TO BE USED BY THE COMMISSION FOR RESOLVING THE REQUEST

A. Requests not based on fraud, mistake, irregularity, or newly discovered evidence shall be resolved in accordance with Robert's.

B. Requests based on fraud, mistake, irregularity, or newly discovered evidence shall be resolved as follows:

1. Requests that are not timely made in writing to the Chairman are denied.

2. Within ten (10) days of receipt of a written, timely Request, the Chairman shall review it; determine whether it includes clear and convincing evidence that the Original Decision at issue was based upon fraud, mistake, irregularity, or newly discovered evidence ("Initial Determination"); acknowledge receipt of the Request to the Requestor; and notify each Commission member in writing that the Request has been received; what the Initial Determination is, and the date on which the Commission will consider the Request. Copies of the Request will be distributed to the Commission members at or before the specified meeting.

3. At the specified meeting, the Chairman shall present the Initial Determination. The local jurisdiction may present argument concerning the Request at the specified meeting.

a. If the Initial Determination is that the Request does not include clear and convincing evidence that the Original Decision at issue was based upon fraud, mistake, irregularity, or newly discovered evidence, and 2/3rds of the Commission members present at the specified meeting concur, the Request shall be denied. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

b. If the Initial Determination is that the Request does include clear and convincing evidence of fraud, mistake, irregularity, or newly discovered evidence, and a majority of the Commission members present at the specified meeting concur, the Request shall be approved. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

c. If 2/3rds of the Commission members present at the specified meeting do not concur with an Initial Determination that the Request does not include evidence that the Original Decision at issue was based upon fraud, mistake, irregularity or newly discovered evidence, or if a majority of the Commission members present at the specified meeting do not concur with an Initial Determination that the Request does include evidence that the Original Decision was based upon fraud, mistake, irregularity, or newly discovered evidence, the following process applies:

(1) If a majority of Commission members present at the specified meeting agree that the Original Decision resulted primarily from a panel recommendation, the Request will be referred to the panel. Within 30 days of the specified meeting, the panel shall hold a public information meeting which is not a contested case hearing in the affected jurisdiction, and a panel recommendation will be prepared to be presented. At the next Commission meeting, the panel shall recommend to the Commission whether or not the Original Decision at issue was based upon fraud, mistake, irregularity, or newly discovered evidence and the Commission members shall vote whether or not to approve the Request. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

(2) If a majority of Commission members present at the specified meeting agree that the Original Decision did not result primarily from a panel recommendation, the Commission members shall vote whether or not to approve the Request. The Chairman shall notify the Requestor in writing within ten (10) days of the decision.

(3) There shall be no right of appeal from a resolution of a Request by the Commission.

page 4 reconsideration policy

V. APPROVED REQUESTS

A. The Commission shall treat an approved Request as a proposed program amendment under Natural Resources Section 8-1809(o); Annotated Code of Maryland, as amended from time to time.

B. An approved Request shall be accepted for processing on the date the Chairman notifies the Requestor that the Request was approved.

DRAFT

PROPOSED SUGGESTIONS FOR COMMISSION MEETING PROCEDURES

A. Addressing Projects, Program Amendments, Policies, Four Year Reviews and Other Matters

1. A two phase process will be used by staff in presenting projects, amendments, policies and four-year reviews as well as other matters to the Commission whenever possible.

2. When it is time for an item (e.g., project, amendment, four year review, policy etc.) to be heard by the Full Commission, it will be introduced for information purposes only whenever possible. Handouts describing the item (if applicable) will be distributed and the item will be discussed in as thorough a manner as possible.

3. A vote by the Full Commission on the item will occur at the next scheduled Commission meeting, or within the time frames required by the Critical Area Law or regulations.

B. Adding Local Government Input to the Commission Meeting Process

1. A local government, representing itself or an applicant, will be given the opportunity to address the Full Commission at the "informational purposes only" meeting and at the voting meeting of the Commission when a project, amendment, four year review, policy or other item which affects its jurisdiction is being heard. The Commission planner responsible for working with that local government will notify the local government planner by phone ahead of these meetings to see if the planner wishes to attend the meeting and address the Full Commission.

2. The local government presentation will occur after the Commission planner presents or introduces the project, amendment etc..

3. The presentation by the local government will be limited to 10 minutes with questions, unless the Chairman agrees to a longer time because of the nature of the item being considered. The objective to be met through this presentation is not to reiterate what the Commission planner has stated, but rather to present facts that may have been missed by the Commission Planner or to present a perspective that the local government believes is important for the Full Commission to hear. However, if new information arises between the panel hearing and the Commission

meeting where a vote is to be taken, the local government should notify the Commission planner of the situation, and ask for a meeting of the panel to discuss this information prior to full Commission vote.

C. Adding Public Input to the Commission Meeting Process

1. The Commission's Panel Hearing as well as the various local government hearings should be the main arenas for the public to comment and where public comment should be addressed. However, on very specific occasions (i.e. very controversial projects that are not in litigation) the nature of the project, amendment or four year review may be such that public comment will need to be heard during a Commission meeting.

2. Prior to the Commission meeting, where the item is to be scheduled for a vote, the Commission planner will notify the Chairman that the "public" desires to attend and speak. The Chairman, Executive Director, Assistant Attorney General and the Commission planner will decide who will speak and for how long. The Commission planner will notify the individuals informing them of the conditions under which a presentation can be made.* The local jurisdiction will also be notified by the Commission planner and provided the opportunity to attend and to speak as well.

3. At the Commission meeting, the Chairman will inform the Commission members about the decision to permit public input and will announce the "ground rules" under which public as well as local government comment will be received. The tape from the meeting will be kept as a record of the presentation and discussion about the project, amendment, four year review etc..

* Cross Examination of Commission staff will not be encouraged but this is pending legal determination by the Courts.

Process for Comprehensive Reviews

1. Chairman of CAC notifies a jurisdiction 5 months prior to the anniversary date that a Comprehensive Review of its Critical Area Program is due 60 days after the anniversary date.
2. CAC staff reviews local Program and provides comments to the local government approximately 5 months prior to the anniversary date.
3. Local governments review their Programs. Some set up advisory committees; others use the Planning Commission to review the Program and identify issues.
4. Circuit riders ask the Towns with approaching Comprehensive Reviews to set up review committees. The circuit riders work with these committees, and consult with the Department of Natural Resources to update the resource inventories.
5. Once draft CAC staff comments are prepared, the staff and circuit rider meet to review the comments. Then the comments are sent to the local jurisdiction in draft form.
6. CAC staff and circuit rider meet with the local jurisdiction to review comments. Comments are subsequently finalized and sent to the local jurisdiction. CAC staff and circuit rider work with local jurisdiction throughout the process to answer any questions or discuss any issues.
7. A Panel of CAC members will be appointed by the Chairman just prior to the local jurisdiction's submission deadline. A Panel may be appointed earlier at the Chairman's discretion or through a local jurisdiction's request.

The purpose of the Panel is to review a local jurisdiction's submittal, conduct a public hearing if one is required, and make a recommendation to the full Commission of either acceptance or denial of the various amendments and the Comprehensive Review.

If a Panel is appointed earlier in the process, the Panel may be involved in meeting with the local jurisdiction to discuss issues. The Panel is not a decision-making body, but may make recommendations to the full Commission concerning the resolution of difficult issues.

8. Once the local jurisdiction completes the Comprehensive Review, it will be submitted to the CAC, including any requested Program amendments.
9. The CAC will either approve, conditionally approve, or deny the submittal. Individual action will be taken on each Program amendment submittal.

10. The Chairman will notify a local jurisdiction in writing, within 30 days of the CAC's action, the result of the vote. If the CAC votes to conditionally approve or deny the submittal, the reason for the vote will be explained, as well as what needs to be done to obtain approval of the Comprehensive Review.

CHESAPEAKE BAY
CRITICAL AREA COMMISSION
45 CALVERT STREET, 2nd FLOOR
ANNAPOLIS, MARYLAND 21401

September 23, 1992

MEMORANDUM

TO: Critical Area Commission Members

FROM: Liz Zucker
Science Advisor

SUBJ: Proposed Legislation on Nontidal Wetlands

Attached please find a document discussing legislative alternatives for bridging inconsistencies between the Critical Area criteria and the Department of Natural Resources' program for protecting nontidal wetlands. We will be reviewing this issue at the October Commission meeting. Your comments and suggestions for legislative action are welcome. If you have any questions before the meeting please contact me or Sarah at (410) 974-2426.

/jjd
Attachment

A DISCUSSION OF LEGISLATIVE ALTERNATIVES
Nontidal Wetlands in the Critical Area

ISSUE: Bridging inconsistencies between the Critical Area criteria and the Department of Natural Resources' (DNR) regulations for protecting nontidal wetlands

Because the Nontidal Wetlands Protection Law of 1989 (as implemented by DNR) does not include the Critical Area within its purview, nontidal wetlands within the Critical Area are regulated under criteria that are separate and different from the DNR nontidal regulations. Regulatory inconsistency and confusion has resulted from the implementation of two different sets of standards, particularly where wetlands encompass both sides of the Critical Area boundary. To eliminate or minimize inconsistencies between the two programs, the Critical Area Commission, in conjunction with DNR is reviewing three legislative alternatives.

Alternative I. Amend the 1989 Nontidal Wetlands Protection Law to include the Critical Area (with no additional text changes). The Critical Area criteria for nontidal wetlands would be repealed.

Advantages:

- a. Existing discrepancies in the definition and identification of nontidal wetlands would be eliminated.
- b. Regulatory activities including permitting, mitigation, and enforcement would be implemented uniformly throughout the State, including the Critical Area.
- c. The number and type of government agencies involved in the nontidal wetland regulatory process would be uniform and consistent.
- d. Local jurisdictions that are currently understaffed would be alleviated of regulatory responsibility for nontidal wetlands.

Disadvantages:

- a. In some situations, the Critical Area criteria are more protective of nontidal wetlands than the DNR regulations. Because of their position in the landscape, nontidal wetlands in the Critical Area must be protected as an integral part of the Chesapeake Bay cleanup efforts. Some differences in protection between the DNR and Critical Area programs would not be rectified under Alternative I.
- b. Local jurisdictions capable of effectively administering a program would lose jurisdiction over Critical Area wetlands.

Alternative II. Incorporate the Critical Area into the DNR Nontidal Wetland Protection Law with a provision that regulations specific to the Critical Area be established by DNR to address the most important differences between the two programs. The Critical Area criteria for nontidal wetlands would be repealed.

Advantages:

- a. through d. same as Alternative I. above
- e. A section of regulations specific to the Critical Area, could rectify notable differences in the two programs.
- f. Language can be added to allow DNR delegation of regulatory responsibility to Counties that can effectively administer a wetland protection program. Counties could be given the option to have a program that is stricter than the existing DNR regulations. (Note: Towns would not be able to regain jurisdiction.)

Disadvantages:

- a. The criteria used by DNR to review Critical Area wetlands would be slightly different than for other wetlands.
- b. Local jurisdictions would lose regulatory responsibility for strict protection of Critical Area nontidal wetlands unless the Law is specifically amended to allow DNR delegation of a more strict program.

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

Advantages:

- a. Depending on the amount and type of changes to the criteria, major discrepancies between the two programs could be resolved (e.g. by referencing the Federal method for wetland identification in the Critical Area criteria, a source of major confusion could be eliminated).
- b. Responsibility for protection of Critical Area nontidal wetlands would remain at the local level subject to Commission oversight.

Disadvantages:

- a. A major rewrite of the Critical Area criteria would be needed to bring them into close conformance with the DNR regulations. The local jurisdictions would be required to incorporate numerous revisions into their ordinances.
- b. The DNR and Critical Area programs would still be separate with two sets of regulations implemented by different agencies on either side of the Critical Area boundary. Understaffed jurisdictions would not be able to implement an effective program.

STAFF REPORT

CHANGE TO LOCAL PROGRAM

JURISDICTION: Dorchester County

REQUEST: Program Refinement

DESCRIPTION: The County has requested Commission approval of changes to its local-Program maps and to total-acreage estimates in its Limited Development Area (LDA) classification. These changes are made necessary by the recent annexation by the City of Cambridge of 18.125 acres of County land. This County request for Program refinement is the complement to the City's Program refinement, approved last month by the Chairman with the Commission's concurrence. (See September, 1992 meeting minutes, page 2, paragraph 4.) There is a locator map on the reverse of this sheet.

CHAIRMAN'S
DETERMINATION: Program refinement

TODAY'S
ACTION: Commission vote on the Chairman's determination, pursuant to NRA 8-1809(p) (3) (i), ACM. Concurrence requested.

DATE: October 14, 1992

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



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

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

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

October 13, 1992

Dear Commission Member:

Welcome to the Commission Retreat! As promised, the Briefing Packet consists of those items that comprise the basis for the Critical Area Program. On the left side are:

- 1) An updated copy of the Critical Area Law passed in 1984;
- 2) A copy of the amended Critical Area Law reflective of changes made in the 1992 Session;
- 3) A copy of the "Blue" Regulations (unfortunately in Black & White), also called the Criteria, which local governments apply to projects in the Critical Area, and which form the underpinning for the local Critical Area Programs;
- 4) A copy of the "Green" Regulations (also in Black & White) which apply to State and Local Projects and which the Commission applies when approving projects of this nature in the Critical Area; and,
- 5) A copy of the By-Laws for the Commission.

On the right side of the packet are:

- 1) Three policies approved by the Commission over the years:
 - a) Mapping,
 - b) Extension of the Resource Conservation Area, and
 - c) Shared Facilities.
- 2) A guidance letter sent to local governments (Harford County being the addressee) explaining the standard of "unwarranted hardship" as opposed to other standards for the granting of a variance.
- 3) An update for Calendar year 1992 reflective of the work of the Commission and its staff; and
- 4) A recently published article as to the effect of the Critical Area Program on the reduction of nutrients into the Bay. The agricultural components of the criteria are stressed.

October 13, 1992
Page Two

The policies that are being discussed by all of us during the Retreat have not been included in this Packet because they have not been finalized. Once they have been adopted by the Commission, a final approved version will be distributed to the members, the staff, and to the local governments.

The staff and I appreciate your dedication, your creativity and your help in making this Retreat an effective one and we thank you for the help you have always given to us as we seek to strengthen the Program.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah".

Sarah J. Taylor, Ph.D.
Executive Director

SJT/pm

CHESAPEAKE BAY CRITICAL AREA COMMISSION
AGENDA
COMMISSION RETREAT
THURSDAY, OCTOBER 15, 1992
J. MILLARD TAWES MUSEUM
CRISFIELD, MARYLAND

MORNING SESSION

09:00 - 10:00 HISTORY AND PHILOSOPHY OF CRITICAL AREA PROGRAM

Panel:

Former Governor Harry Hughes ; John Griffin; Tom Osborne;
James Gutman; Shepard Krech; Statement by Bob Price

Panel to present prepared remarks to plenary session on antecedents, history, goals, philosophy, and policies of Critical Area Program, identify one issue each panel member identifies as important to carry forward to the future, and one issue that ought to be addressed by the Commission in the future followed by 15 minute Q&A/Discussion.

10:00 AM BREAK

10:15 - 10:30 INTRODUCTION OF CRITICAL ISSUES

Chairman John C. North II presents overview of two important policy issues facing commission to plenary session and frames the issues of Growth Allocation and Buffer Area Exemption.

10:30 - 11:15 GROWTH ALLOCATION POLICY

Two break-out groups of staff and commission members meet to identify:

- a) areas of consensus on Growth Allocation issue;
- b) and, areas requiring further investigation and analysis.

Discussion leaders will prepare a summary for presentation at the November meeting on those areas identified.

Discussion leaders: Pat Pudelkewicz and Ren Serey, staff; Commissioners Ron Hickernell and Roger Williams.

(OVER)

11:15 - 12:15 BUFFER AREA EXEMPTIONS

Plenary Session reconvenes to discuss Buffer Area Issues

Discussion leader: Claudia Jones.

12:15 LUNCH

AFTERNOON SESSION

1:00-1:45 CRITICAL AREA CONSISTENCY

A report from Mr. David Carroll of the Governor's Office, on the status of the Maryland Economic Growth, Resource Protection, and Planning Act of 1992, Critical Area consistency with this legislation, and the status of the Chesapeake Bay Agreement, and Critical Area Consistency with this protocol.

1:45-2:00 BREAK

2:00-3:30 CRITICAL PROCEDURES

Plenary session to discuss Comprehensive Reviews, Commission meeting procedures, and panel hearing, then break-out into three discussion groups to brainstorm streamlining Commission procedures and processes:

A. Comprehensive Reviews	Pat Pudelkewicz
B. Commission Meeting Procedures	Sarah Taylor
C. Panels and public hearings	George Gay

Discussion leaders will prepare summary of discussion and recommendations for presentation at November Commission Meeting.

3:00 Streamlining

Discussion leaders will prepare summary of brainstorming for presentation at November Commission Meeting.

3:30 ADJOURNMENT

cc: Commissioners
Judge North
Dr. Taylor
Ren Serey
Pat Pudelkewicz
Liz Zucker
Claudia Jones

CHESAPEAKE BAY CRITICAL AREA COMMISSION
GENERAL AGENDA, VENUES, AND DIRECTIONS
COMMISSION MEETING AND RETREAT
WEDNESDAY, OCTOBER 14, 1992
THURSDAY, OCTOBER 15, 1992
CRISFIELD, MARYLAND

WEDNESDAY, OCTOBER 14th

10:00 AM COMMISSION MEETINGS : J. MILLARD TAWES MUSEUM, 3 Ninth Street, Crisfield, Maryland

(410) 968-2501

Directions from points north and west: Follow Maryland Route 50/301 East from Chesapeake Bay Bridge through Easton, Cambridge, and Salisbury to exit on Maryland Route 13 South. Follow Rt. 13 south through Princess Anne to exit right on Maryland Route 413 South. Follow Rt. 413 to Crisfield. Take a left turn on Ninth Street. Museum is straight ahead at end of street. (Drive time; approximately 2 hours 20 minutes from Annapolis) See Map on reverse.

10:00 AM Special Issues Subcommittee
11:00 AM Project Evaluation Subcommittee
11:00 AM Program Amendment Subcommittee

12 Noon -1:00 PM LUNCH AND AWARDS PRESENTATION

1:00 PM COMMISSION PLENARY MEETING

FOLLOWING THE COMMISSION MEETING COMMISSIONERS AND STAFF SHOULD CHECK INTO THEIR OVERNIGHT ACCOMMODATIONS

SOMERS COVE MOTEL, R. R. Norris Drive, Crisfield, Maryland

(410) 968-1900

Directions From Millard Tawes Museum: Take Ninth Street to Right turn on Main Street (Rt. 413) East. Follow two (2) blocks to right turn on 7th Street. Follow 7th St. to right turn on Norris Drive. Follow around harbor to right turn on Norris Harbor Drive. Bear right on R.R. Norris Drive. Follow to right turn at entrance to Somers Cove Motel. (drive time: approximately 8-10 minutes from museum) See mapp on reverse of next page

COMMISSIONERS STAYING AT SOMERS COVE (16) :

North	Langer		
Ambridge	Gutman	Kassoff	Young
Barker	Hearn	Phillips	
Corkran	Hickernell	Schoeplein	
Elbrich	Jarvis	Williams	
	Krech		

STAFF STAYING AT SOMERS COVE (6):

Gay	Delve
Hurley	Mickler
Zucker	Smith

JANES ISLAND STATE PARK , 26280 Alfred Lawson Drive
(410) 968-1565

Directions From J. Millard Tawes Museum: Take Ninth Street to right turn on Main Street (Rt. 413) East. Follow to left turn on Jacksonville Rd. (Rt. 358). Follow to left on Park Road. Check in at Ranger station on right. See map on reverse
LINENS AND BLANKETS ARE PROVIDED. PLEASE BRING TOWELS AND TOILETRIES.

Cabin #1

Sarah J. Taylor
Pat Pudelkewicz
Dawn McCleary

Cabin #3

Tom Ventre
Yong Min Pyo
Ren Serey

Cabin #2

Carolyn Watson
Veronica Nicholls
Bonnie Bjornstad

Cabin #4

Theresa Corless
Claudia Jones

6:00 PM CRAB FEAST AND COMPANY SOCK WASH (Dress: Crisfield Chic)

THE SIDE STREET SALOON, 10th and Main Street, Crisfield, Maryland
(410) 968-2442

Directions from Somers Cove : Left at Motel entrance to left on Norris Harbor Drive. Left on Norris Drive. Follow to left on Cove Street. Follow to left on Main Street. Follow to left on 10th Street. Restaurant is on left, second floor. Wear warm clothes. See map on reverse.

Directions from Janes Island: Right at Park entrance. Follow to right on Maryland Avenue (Rt. 413). Follow to left on 10th Street. Restaurant is on left, second floor. Bring warm clothes. See map on reverse.

THURSDAY OCTOBER 15th

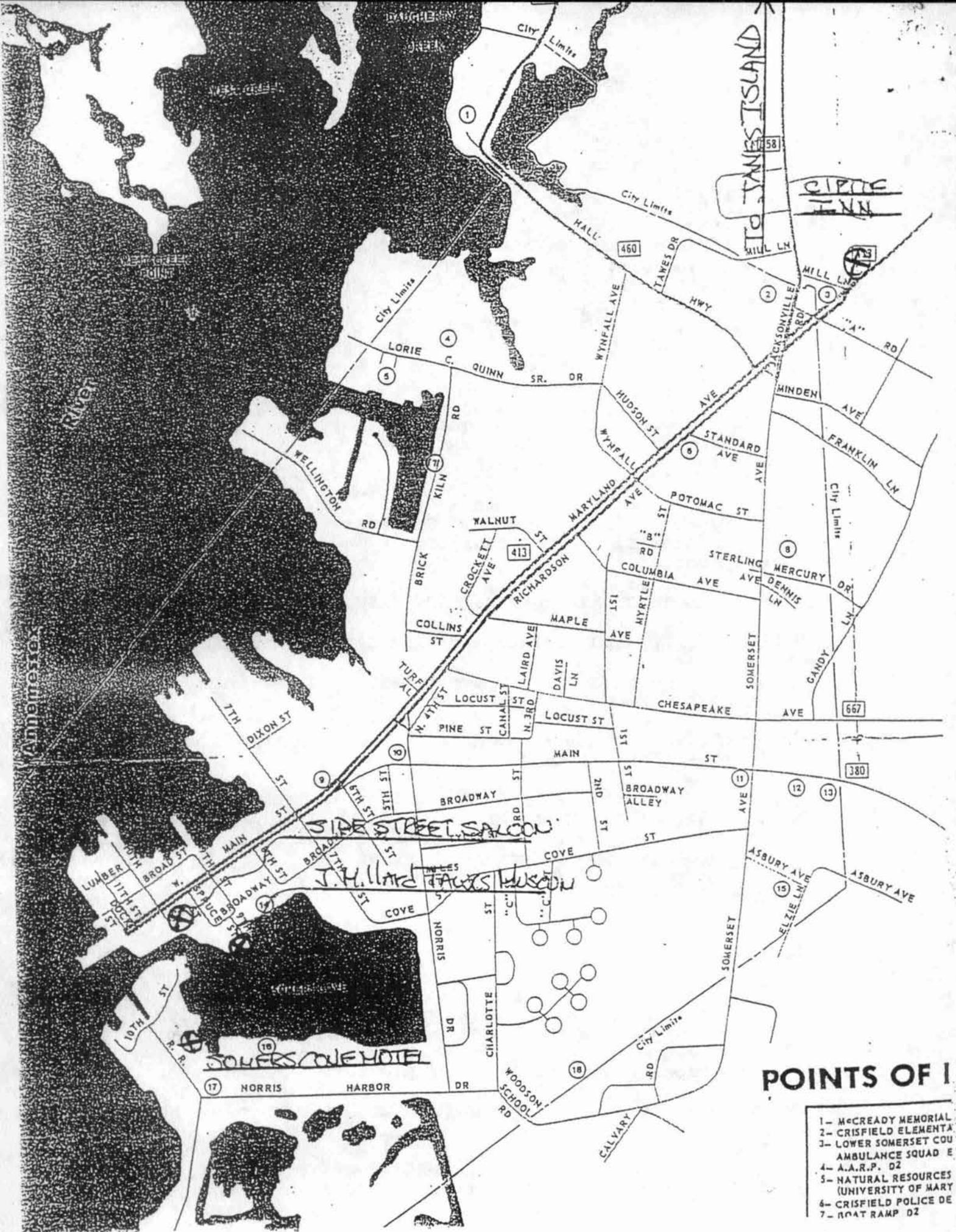
7:00 AM - 8:00 AM BUFFET BREAKFAST AT CIRCLE INN, Rt 413, Crisfield, Maryland (410) 968-1969

Directions from Somers Cove : Left at Motel entrance to left on Norris Harbor Drive. Follow to right on Main Street. Follow to merge of divided highway. Restaurant is on left immediately after merge. No New York Times Available. See map on reverse.

Directions from Janes Island: Right at Park entrance. Follow to left on Maryland Avenue (Rt. 413). Restaurant is almost immediately on left where divided street merges. See map on reverse.

9:00 AM COMMISSION RETREAT AT J. MILLARD TAWES MUSEUM

Directions: You've been here long enough to know where your going.



POINTS OF I

- 1- MCCREADY MEMORIAL
- 2- CRISFIELD ELEMENTA
- 3- LOWER SOMERSET COU
- 4- A.A.R.P. D2
- 5- NATURAL RESOURCES (UNIVERSITY OF MARY)
- 6- CRISFIELD POLICE DE
- 7- BOAT RAMP D2

Panels and Public Hearings
CBCAC 10/15/92 Retreat
Discussion Overview

- I. Panel types - HO/1
- II. Panel purpose - HO/1,2,3
- III. Panel review standards - HO/1
- IV. Existing Panel procedures - HO/4
- V. Panel/Full Commission interaction - HO/1,2,3
- VI. Perceived issues
 - A. Green regulation Panels
 - B. Panel recommendations
 - C. Panel inquiry
 - D. Prehearing Panel preparation
 - E. NR 8-1809(m) regulations
 - F. Formal "Board of Appeals" process
 - G. Posthearing Panel actions

NR 8-1809 (d) (1) provides:

Within 30 days after a program is submitted, the Commission shall appoint a panel of 5 of its members to conduct, in the affected jurisdiction, a public hearing on the proposed program.

NR 8-1809 (o) provides:

For proposed program amendments, a Commission panel shall hold a public hearing in the local jurisdiction, and the Commission shall act on the proposed program amendment within 90 days of the Commission's acceptance of the proposal. If action by the Commission is not taken within 90 days, the proposed program amendment is deemed approved.

NR 8-1804 (e) provides:

(e) *Quorum*. — (1) A quorum of the Commission consists of 1 member more than a majority of the full authorized membership of the Commission.

(2) A quorum of a panel of the Commission consists of 3 members.

(3) The Commission or a panel of the Commission may not hold a public hearing unless a quorum is present.

(4) The Commission or a panel of the Commission may not take any official action unless:

(i) A quorum is present; and

(ii) A majority of the members who are present and eligible to vote concur in or vote for the action.

NR 8-1809 (j) provides:

— The Commission shall approve programs and program amendments that meet:

(1) The standards set forth in § 8-1808 (b) (1) through (3) of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle.

NR 8-1808 (b) (1) - (3) provide:

(1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

(2) To conserve fish, wildlife, and plant habitat; and

(3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

NR 8-1809 (m) provides:

(1) The Commission may adopt regulations that prescribe the procedures and information requirements for program amendments and program refinements.

H0/1

COMAR 14 .19 .07 .01 and .02 provide:

.01 Types of Development.

The Commission shall receive and review proposals for development by local and State agencies, including consistency certifications as described in COMAR 14.19.02.02B, requests for general approval as described in COMAR 14.19.03.01B, proposals for major development as described

in COMAR 14.19.04.02C, proposals for development on State-owned lands as described in COMAR 14.19.05, and requests for conditional approval as described in COMAR 14.19.06.

.02 Review Procedures.

A. For the purpose of reviewing the development proposals listed in Regulation .01, above, the Commission may establish panels, pursuant to Regulation .03, below, or it may undertake these reviews by the full

Commission.

COMAR 14 .19 .08 provides:

A. Pursuant to COMAR 14.19.02, for State development proposals which are of local significance only, and which occur on private lands or lands owned by local jurisdictions, the sponsoring agency, shall provide to the Commission the local jurisdiction's certification of consistency with the local Critical Area Program. Local denial of the certification may be appealed to the Commission by the sponsoring State agency under the following provisions:

(1) The State agency sponsor whose certification has been denied by the local jurisdiction may file an appeal of the denial with the Commission within 30 days of the receipt by that State agency of official notice of denial.

(2) The Chairman shall, within

15 days of receipt of a notice of State agency appeal, appoint a panel of five Commissioners to hear and make recommendations to the full Commission concerning the appeal.

(3) The panel shall meet within 30 days of its appointment, shall hear a presentation by the State agency which has been denied certification, and shall, within 30 days of its meeting or at the next scheduled Commission meeting, whichever is later, make its recommendations known to the full Commission.

(4) In considering the matter of local certification, the panel and the Commission shall utilize as criteria the relevant portions of the approved local Critical Area Program, and may not substitute their judgment for that of the local certifying authority. If, on the other hand, it appears that the local certifying authority has failed to apply its own program criteria in a rational and reasonable manner, or has been ar-

bitrary and capricious in the application of those criteria to the proposed development, the panel may recommend, and the Commission by majority vote may act, to certify the proposed development. The Commission's final decision shall be in writing.

(5) A State agency which is aggrieved by the final decision of the Commission is entitled to bring whatever appeal or civil action may be appropriate before the courts of this State.

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June 16, 1986

M E M O R A N D U M

TO: Solomon Liss, Chairman
Chesapeake Bay Critical Areas Commission

FROM: Lee R. Epstein, Assistant Attorney General

SUBJECT: The Role of the Panels and of Individual
Commission Members in Program Review and Approval

Commissioners Eichbaum, Glendenning, Walkup, and Price raised several questions concerning the proper role of the Commission's local program review panels, during a staff discussion of this matter at the Commission meeting of June 4, 1986, and at a previous meeting. Commissioners Glendenning and Walkup offered the view that the panels should become intimately familiar with the development of the local programs in the jurisdictions in which they are charged with conducting the Commission's public hearings. They view the panels' role as that of a sounding-board for the local policy-making activities of program development. Commissioner Eichbaum expressed some concern over a possible conflict between a panel member's reviewing and making interim recommendations to local officials on their nascent programs, and then sitting in judgement on those programs with the full Commission. Commissioner Price asked about the seeking out of a Commissioner's personal opinions during program development. This memorandum is an attempt at sorting out what I believe the panels' proper role is, based upon the statute and whatever legislative history I have been able to discern. I would suggest that the full Commission discuss these recommendations and, upon reaching some kind of accord, seek the advice of the Attorney General on this matter.

The only mention of the panel concept appears in the Critical Area law at Natural Resources Article, §8-1809(d), Annotated Code of Maryland:

(d)Public hearing; approval by Commission
- (1) Within 30 days after a program is
submitted, the Commission shall appoint a

H0/2

panel of 5 of its members to conduct in the affected jurisdiction a public hearing on the proposed program.

As set out therein, the panel's role is limited: "to conduct ... a public hearing...". When developing this section of the law, the legislators were attempting to set out a mechanism which would ease the extraordinary burden that would otherwise fall upon the full Commission, to conduct hearings in all Critical Area jurisdictions submitting local programs. These panels of five Commissioners are meant to serve the function of impartially receiving and passing on to the full Commission the local programs, along with any recommendations they may have concerning those programs. It is especially important that the impartiality of these special "hearing examiners" be guaranteed. The panel should listen to both pros and cons presented at the hearing; it may put questions to advocates or opponents; it may then deliberate on what it has heard and, if it deems it appropriate, formulate and deliver recommendations on the program to the full Commission. These recommendations may be presented in the form of an overall panel vote, or in merely a polling of its members, but certainly no dissenting member should be constrained from presenting his or her opposing views to the full Commission. Finally, the panel should, in any case, faithfully and accurately report the content of the hearing to the full Commission, and perhaps highlight what it feels are the most salient issues for further discussion.

The special function of the panels, as set out here, is potentially jeopardized in the event that the panel, or individual panel members, actually participate in the development of the local program. Thus I do not believe that on-going participation or exchanges of views would be beneficial to fulfilling the special role set out for the panel in the statute.

Can or should a panel be kept advised of the development of the local programs in that panel's jurisdictions? Of course. Several or regular briefings can be devised that would inform panel members of the content and reasoning behind the locality's developing program. That way, the panel is not coming to the hearing, or to any later deliberation, totally "cold" with regard to the nature of the local program. On the other hand, these briefings should not be two-way discussions. As stated above, I believe that any such on-going input by panel members would be inappropriate to the role set out for them in the statute.

Can an individual panel member respond to a request for feedback from a local official? Yes, as long as the Commissioner makes very clear that any opinions he is passing on are wholly personal, that they must not be construed as an official sanction or Commission direction of any kind, and that such an opinion could well change as a consequence of his/her discussions with other Commissioners in the future. (In other words, the local official would not be getting anything he could "count on" down

the line.) At the point of local program development, as reflected in the mapping policies recently resolved by the Commission, feedback and assistance should really be staff to staff, and should not -- on the whole or as a regular practice -- involve Commissioners.

In conclusion, I believe the panel's role is generally circumscribed by the statute to that of a hearing body; the panels hear the presentation of a local program and any contrary views, pass that information on to the Commission, and may, in their discretion, decide to make collective or individual recommendations on the program to the full Commission. Advisory opinions or "give-and-take" during program development are inappropriate. On the other hand, I think it is both prudent and efficient for the panels to become informed of the nature and scope of the local programs as these are being developed. Finally, while personal contact with panel members by local officials is not totally out of the question, those Commissioners must make clear that any views expressed are personal, unofficial and subject to change. Only in this way can the integrity of the panel system, and of the final Commission vote, be maintained.

Please note that this memorandum constitutes advice of counsel and is not an Opinion of the Attorney General.

LRE/jtd

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July 7, 1989

MEMORANDUM

Half +
10 members

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JUL 10 1989

DNR
CRITICAL AREA COMMISSION

TO: John C. North, II, Chairman
Chesapeake Bay Critical Areas Commission
Sarah Taylor, Executive Director ✓
Chesapeake Bay Critical Areas Commission

FROM: Lee R. Epstein
Assistant Attorney General

SUBJECT: Panel reviews and reporting on local programs and
program amendments

On several recent occasions, I have observed Commission panel action that may not be completely in accord with the limited role that panels have been given under the Critical Area law (see my memorandum of advice of June 16, 1986). The central tenet of my earlier advice was that the panels' role is quite limited, to that of a hearing body which passes on to the full Commission information received at the hearing on the local program or program amendment. The panels may also make recommendations to the full Commission concerning a program or amendment, but only the Commission as a whole is empowered to approve or disapprove and send back with changes the local submissions.

What has been observed over the past year is a willingness on the Commission's part to "leave to the panels" all the details, discussions, negotiations, and even compromises over a particular matter, such that what comes before the Commission is a "fait accompli", with the panel chair and staff announcing that "all outstanding issues have been resolved" and seeking Commission approval of the program or amendment as a whole. I believe such a process is flawed.

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John C. North, Chairman
July 7, 1989
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If the Commission must, by virtue of work load, economy and efficiency, and administrative reality, rely on a small number of its members to concentrate on a particular jurisdiction's proposals and make recommendations thereon, such a process must also recognize its own limitations. Too often, I believe, many of the contentious and difficult issues that surround a particular local proposal are compromised and bargained solely by the panel toward the admittedly wished-for goal of accomodating all interests equitably and putting the local proposal in place. The Commission, in voting the proposal, may have little or no idea of the actual extent of these controversies, or the impact of the compromises. Instead, the briefest of outlines of the "remaining issues" is often discussed, assurances by the panel that these have been suitably "worked out" is received, and the Commission votes with the panel's recommendation for approval. Quite simply, I believe more full-Commission attention is required.

I recommend that both staff and panel brief the full commission in (perhaps more agonizing, but necessary) detail on program proposals, issues raised therein, and panel and staff recommendations. If a panel is split, for example, or if "negotiations" have occurred over a long period of time, I do not believe that a panel should necessarily continue to "negotiate" for the full Commission; rather, the issues and positions should be made known to the full Commission, which should then render a decision or itself continue negotiations. This is not to say that local jurisdictions and the Commission should cease negotiating or, if settlement on an item appears close, should cut off discussion. Rather, I believe that since panels cannot represent full Commission views, their negotiations should be limited and tightly constrained, and full Commission discussion and decision on various issues should be more regular.

The consequences of almost total reliance on panels (and even on panels with staff) can be significant. Issues of broad import Bay Critical Area-wide could be essentially decided by a panel for one jurisdiction without wider exposure; or, programs, parts of programs, or amendments to programs could be approved on panel recommendation without their broader implications ever being voiced or discussed among the full Commission -- as has indeed happened on more than one occasion.

I believe the remedy is to provide stronger and renewed guidance to the Commission on the proper role of panels, and to insist on full staff briefings to the Commission on all matters either under discussion at particular points along the way, or certainly prior to Commission vote on a local proposal. This would necessarily imply more than a report that "the issues have been narrowed to one or two, and here is what they are", and rather should be constructed as "the issues under discussion for the past two months were A (with some detail), B (the same), C (etc.), D, E, and F, and we propose to have the Commission resolve them thusly (with some detail), leaving only G and H for

John C. North, Chairman
July 7, 1989
Page 3

resolution. . . .". In this way, the Commission's decision-making role is adequately protected, a record of decision is created, and issues of (perhaps) wide implication are broadly aired and reviewed.

Please note that this memorandum constitutes advice of counsel and is not an Opinion of the Attorney General.

LRF/cjw

HEARING PROCESS

1. The panel Chairperson should call the hearing to order, welcome everyone, and introduce the panel member, as well as any other members of the Commission present.
2. The purpose of the hearing should be stated by the Chairperson as follows: "to hear public comment on such and such local jurisdiction's program amendment as required under Section 8-1809 of the Critical Area Law."
3. The Chairperson should also inform the public that the Commission must make a decision on that local program within 90 days after the amendment is submitted to the Critical Area Commission.
4. The Chairperson should recognize the court reporter or that the meeting is being taped and that a record is being kept, which will be used to help the Commission render a decision. The record will only be kept open under extenuating circumstances and by special request.
5. The Chairperson should then recognize if there are any local officials (executives, mayors, council, commissioners, or State officials--General Assembly, Comptroller, etc.) present, and have them stand. (These names can be obtained from the attendance sheets which the staff will provide to the Chairperson prior to the meeting, with the officials so noted.) IF any of these officials have indicated a desire to testify, they should be recognized first.
6. Finally, ground rules will need to be announced:
 - (a) a time limitation for speakers (usually 3-5 minutes per person). If there are many people from the same group present, a request should be made by the Chairperson that a spokesperson should be chosen from the group.
 - (b) Once again, to reiterate, public comment is to focus on the local program amendment. No answers to individual problems should be offered by the panel members. Under no circumstances should the panel get into an argument with any person who testifies. It may be necessary to bite your tongue, but do it and we will furnish repairs to your tongue.
7. The local government should then be allowed approximately 20-25 minutes to present the program amendment. Questions should be discouraged and wherever possible should be referred to the local zoning and planning officers after the hearing.
8. Testimony can then begin, usually taking the first name signed up to testify from the sign-up sheets at the door. The staff will make certain that the sheets are available to the Chairperson before the hearing begins, so that the names can be called. People who want to testify should proceed to the microphone and identify themselves before beginning with the content of their presentations.
9. When the list has been completed, the Chairperson should check with the audience to see if all have been given the opportunity to be heard. If there are no additional people to present, the hearing can be concluded.

STAFF REPORT

CHANGE TO LOCAL PROGRAM

JURISDICTION: Dorchester County

REQUEST: Program Refinement

DESCRIPTION: The County has requested Commission approval of changes to its local-Program maps and to total-acreage estimates in its Limited Development Area (LDA) classification. These changes are made necessary by the recent annexation by the City of Cambridge of 18.125 acres of County land. This County request for Program refinement is the complement to the City's Program refinement, approved last month by the Chairman with the Commission's concurrence. (See September, 1992 meeting minutes, page 2, paragraph 4.) There is a locator map on the reverse of this sheet.

CHAIRMAN'S
DETERMINATION: Program refinement

TODAY'S
ACTION: Commission vote on the Chairman's determination, pursuant to NRA 8-1809(p) (3) (i), ACM. Concurrence requested.

DATE: October 14, 1992

CHESAPEAKE BAY CRITICAL AREA COMMISSION
STAFF REPORT

DATE: October 8, 1992

JURISDICTION: Talbot County

SUBJECT: Refinement

Talbot County implements its critical area program through an overlay zoning system. There are three underlying zones within the Limited Development Area (LDA). Talbot County proposes to change its zoning ordinance to allow changes within those underlying zones without bringing them before the Commission. In these cases, there is no change in the critical area designation, just in the underlying zones. Any proposed zoning change which would change a parcel's critical area designation would still come before the Commission. See attached.

Chairman North has deemed this to be a refinement to Talbot County's Critical Area Program.

A BILL TO AMEND SECTIONS 19.14(c)(1) AND 19.14(c)(1)(ii) OF TITLE 19 OF THE TALBOT COUNTY CODE.

SECTION ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1) be amended to read as follows:

- (1) The provisions of the Talbot County Zoning Ordinance or the boundaries of any zoning district may be amended by the County Council in accordance with the procedures set forth in this section. For the purposes of this section, amendments are separated into four (4) categories: (i) amendments to the Zoning Ordinance text, (ii) amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation acreage is requested, (iii) amendments to the Critical Area provisions of the Zoning Ordinance, and (iv) growth allocation district boundary amendments in the Critical Area.

SECTION TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(ii) be amended to read as follows:

- (ii) Amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area, where growth allocation acreage is requested.

SECTION THREE: BE IT FURTHER ENACTED that this Bill shall take effect sixty (60) days from the date of its passage.

SECTION FOUR: BE IT FURTHER ENACTED that each individual section of this Bill may be reviewed as a separate amendment or refinement by the Chesapeake Bay Critical Area Commission.

file

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October 5, 1992

Sarah J. Taylor, Ph.D.
Executive Director
Critical Area Commission
275 West Street, Suite 320
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Dear Sarah,

I am sorry I cannot be with the Commission and staff at the Crisfield meeting.

Enclosed are some remarks I hope will be appropriate as to History and Philosophy of the Program, as well as, my concern over a future issue. Sorry if it's a little "preachy."

Have a good meeting.

Sincerely yours,

Bob Price

Robert R. Price, Jr.

RRPJr/mbb

Enclosure

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OCT 9 1992

DNR
CRITICAL AREA COMMISSION

It was almost exactly eight years ago, on October 22, 1984, that the Critical Area Commission held its first meeting at the Calvert Room, State House, Annapolis, Maryland.

With a few exceptions, the Commission members at that time were well aware of and supportive of the Declaration of public policy (Sec. 8-1801) and the Goals of the program (Sec. 8-1808 (b), (2) set forth in the enabling legislation.

The Declaration of public policy adopted by the General Assembly was and is to me one of the clearest statements of reason and purpose found in legislation and it reflected the overwhelming position of the Maryland citizens.

The Declaration not only made findings as to the declining quality and productivity of the Bay but also made findings that this decline was due:

"to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region."

The Declaration further found that restoration of the Bay was dependent on minimizing further adverse impacts to the water quality and natural habitat of the shoreline and adjacent lands, and that the current development (under existing land use regulations) was prejudicial and adverse to these purposes.

The Declaration concluded that it was critical to the State, and to future generations, that there be more sensitive development in a consistent and uniform manner so as to minimize damage to water quality and natural habitat.

The Goals of the program were to "minimize adverse impacts on water quality", "conserve fish, wildlife and plant habitat" and to "accommodate growth and to address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impact."

To me the findings and the purposes of the legislation set a clear direction and philosophy. I personally endorsed that philosophy and its goals, and I do so today.

While arguments and differing proposals such as less pollution from homesites than agriculture use may have merit, I consider them as matters already decided by the legislation and not subjects for the Commission to re-hash. In short, I do not believe the Commission's function was to define the state of the Bay, or what caused the decline, or what the broad solutions were. The enabling legislation did this, and the Commission drafted the criteria to carry out the plan.

RECEIVED

OCT 9 1992

DNR
CRITICAL AREA COMMISSION

I believe the criteria adopted addressed all the primary goals as well as the specifics of program requirements. In the seven years since its adoption the criteria has had no amendment of substance nor have any such amendments been seriously proposed.

The LDA and IDA accommodate growth while the RCA conserves and preserves the forestland, agriculture lands, habitat, and minimizes the impact of people.

While the future implementation of the local programs will bring issues as to buffer exemptions, impervious surface, water quality discharge and other matters, the sole major issue before the Commission is how to protect, conserve and preserve the RCA lands.

The access to these lands are a developer's dream and also represent to some counties their only source of new revenues. When the Commission protects these lands in the future, it will be from the developer and the county acting in concert and this makes for a formidable challenge both from the finances, expertise and experience of developers to the politics, home rule claims, etc. of the counties.

The probing for access to the RCA will be by either introducing new uses in the local program or by awarding growth allocation under a procedure where it is not deducted fully from the county allotment.

Changing zoning classifications or uses has been a development tool for years and with a cooperative county government can survive most of the legal challenges.

The use of growth allocation is a new game but it won't take long to re-write the rules. The first ventures will be to convince the county governments the award will cost them a minimum deduction of growth allocation if they can structure a deduction procedure in their program and have the program approved. We have this now in Wicomico, Dorchester, Somerset and probably other programs I am not familiar with. Having been in the "land use" business for over thirty years, I can think of endless scenarios to get your developer to the promised land and hopefully keep the other developers out.

This is the major issue we have to prepare for and I suggest the following:

We should first adopt a firm policy that protects, preserves and conserves the RCA, not a policy that gives developers and counties a choice of various cluster options or envelopes that are based on encouraging "good development" in the RCA at less allocation cost.

The policy then should be placed with uniformity and consistency in every county program as it comes up for its four

year review, if not sooner.

There is no requirements in the criteria that a county in its program set forth a method of deducting for its growth allocation. All deduction methods should be stricken out unless, the Commission wants to keep the Cecil County experiment. These deduction methods are nothing but self-serving provisions claimed to supersede the criteria because they are in an approved local program.

The public overwhelmingly supported the Critical Area Program when it was adopted and supports it now in its implementation. The only reason some counties have not moved more aggressively against this political intrusion on their land use policies is this political concern about the public sentiment.

If this Commission becomes a party to making the use of growth allocation easier, or enlarging its use, then the public support is going to erode as soon as the bulldozers start in the RCA lands. The public is not going to understand how the 1 in 20 development right now supports condominiums and townhouses. Without public support the entire program will begin to unravel.

I have no problem supporting the above proposals as they conform with the philosophy of the enabling legislation, the criteria as adopted, and the understanding of the general public. I see no reason, whatsoever, to consider conforming growth allocation policies to a few non-conforming local programs.