Land use + Enrut Officer P&L I+P Mil + PW Dr. Foor - Progr. Amend. + Implementation Bob DeVoe Planning Office

AGENDA

Chesapeake Bay Critical Area Commission Meeting
February 3, 1993
Department of Housing and Community Development
Crownsville, MD

PLENARY MEETING

Conference Room 1100 A

10:00 a.m. - 12:00 p.m.	Growth Allocation Policy **VOTE**	M. J. Whitson, Committee Chair Pat Pudelkewicz Ren Serey
12:00 p.m. - 1:00 p.m.	**WORKING LUNCH** Project Evaluation Program Amendment Special Issues	 Conference Room C Conference Room D Conference Room A

PLENARY MEETING CONTINUES

1:00 p.m. - 1:05 p.m.	Approval of Minutes of January 6, 1993	John C. North, II, Chairman approved
1:05 p.m. - 1:25 p.m.	Anne Arundel County Program - by the end of the month.	Jim Gutman Update Tom Andrews, AA. Co. Sarah J. Taylor, Ex. Dir.

PROJECT EVALUATION

1:25 p.m.- 1:45 p.m.	WSSC - Piscataway **VOTE**	Theresa Corless, Planner. approved unanimously
1:45 p.m. - 2:00 p.m.	**Swan Point Sewage Treatment Plant** **INFORMATION**	**Ren Serey, Chief, PE**
2:00 p.m. - 2:15 p.m.	WSSC - Rhode Island Ave - **INFORMATION**	Theresa Corless, Planner
2:15 p.m. - 2:30 p.m.	WSSC - Swan Creek - Tantallon - P.G. County **VOTE**	Theresa Corless, Planner approved unanimously
2:30 p.m. - 2:40 p.m.	Maryland Aviation Administration - Martin State Airport/Shore Erosion Project **VOTE**	Regina Esslinger, Planner Brad Collins, Consultant approved unanimously

Motion for Growth Allocation Policy - reconsidered + amended + same vote. See notes.

OVER

2:40 p.m. - 2:50 p.m.	MNCPPC - Western Branch Bridge - P.G. County **VOTE**	Theresa Corless, Planner Steve Lotspeich approved unan.
2:50 p.m. - 3:00 p.m.	MNCPPC - Anacostia River Park Trail System - P.G. County - **VOTE**	Theresa Corless, Planner Steve Lotspeich approved unan w/ conditions
3:00 p.m. - 3:15 p.m.	North Point State Park Pole Barn, DNR **INFORMATION**	Ren Serey, Chief, Project Evaluation
3:15 p.m. - 3:25 p.m.	Miller's Island Park Site, Baltimore County lease land, DNR Applicant **INFORMATION**	Regina Esslinger, Planner

PROGRAM AMENDMENTS

3:25 p.m. - 3:45 p.m.	St. Mary's County Critical Area Ordinance Revisions **INFORMATION**	Ren Serey, Chief, PE

POLICIES AND PROCEDURES will mail out some-thing

3:45 p.m. - 3:55 p.m.	Buffer Development on Grandfathered Lots	Claudia Jones, Planner
3:55 p.m. - 4:15 p.m.	Public Hearing Procedures **VOTE**	George E. H. Gay, AAG
4:15 p.m. - 4:25 p.m.	Reconsideration Policy **VOTE** — change the format to flavor what we are really trying to do.	George E. H. Gay, AAG
4:25 p.m. - 4:35 p.m.	Legal Updates a) Leas Family Trust - b) Black Marsh - filed a motion to intervene c) Anne Arundel Co. - Back Bay opposition mem of law;	George E. H. Gay, AAG
4:35 p.m. - 4:40 p.m.	Legislative Updates a) Hearing with Environmental Matters Committee	John C. North, II, Chairman

OLD BUSINESS

4:40 p.m. - 4:50 p.m.	1994 Budget [5 whs - Bill Corkran]	Sarah J. Taylor, Ex. Dir.

NEW BUSINESS

4:50 p.m. - 5:00 p.m.

* Appointment of Prince George's Co. Panel
Councilwoman Diane Evans Parris Glendening
Chair - Hal Kassoff
~~Dave Bowdoin~~ Dr. James Foor
Dr. Rodney Little

* Update on Bill Corkran

Chesapeake Bay Critical Area Commission
Minutes
January 6, 1993

The Chesapeake Bay Critical Area Commission met at the Eugene B. Casey Academic Center, Washington College, Chestertown, MD. The meeting was called to order by Chairman John C. North, II with the following Members in attendance:

Philip Barker	William Bostian	David Bourdon
Samuel Bowling	Joseph Elbrich	Robert Fitzgerald
Parris Glendening	James E. Gutman	J. L. Hearn
Ronald Hickernell	Thomas Jarvis	Dr. Shep Krech
G. Steele Phillips	Dr. James C. Foor	Kathryn Langner
Michael Whitson	Roger Williams	

Robert Schoeplein, Maryland Department of Economic & Employment Dev.
Hal Kassoff, Maryland Department of Transportation
J. Rodney Little, Department of Housing and Community Development
Larry Duket for Ronald Young, Maryland Office of Planning
Fred Samadani for Louise Lawrence, Maryland Department of Agriculture
Paul Massicot for Jim Peck, Maryland Department of Natural Resources

The Minutes of December 2, 1992 were read and amended to reflect the corrected date of December 2nd on pages 2 - 5.

Thomas Ventre, Planner, CBCAC, reported on the **City of Salisbury's and Wicomico County's requests for approval of changes to the local program maps to reflect recent Annexation** of County Lands into City jurisdiction. On August 28, 1992, the Salisbury City Council formally annexed twenty acres of land in Wicomico County. 3.5 acres of that land lie within the Critical Area which the County classified as LDA at the time of the local program's original Critical Area mapping. The City will keep the same classification and adjacent Critical Area lands already in the City's jurisdiction are classified as IDA.

Mr. Ventre stated that a hearing was held on January 4, 1993 and there are no technical or substantive issues raised by this procedural matter.

Commissioner Bill Bostian moved to approve the request for annexation of the County lands into the City jurisdiction. The motion was seconded and carried unanimously.

Mr. Ventre presented **Dorchester County's request for growth allocation and land reclassification.** He said that the request is for a one-lot subdivision of a 56-acre parcel in the Critical Area on land classified as RCA. Three dwelling units are already on the parcel. The new lot is desired for a fourth dwelling. As the parcel is already at its dwelling-density limit for its land classification, a growth allocation is necessary. Mr. Ventre said that the proposal complies with all applicable regulations, and conforms with the guidelines and standards of the Chesapeake Bay Critical Area Commission's 1988 policy, except for restrictions on future development activity on the remaining undisturbed portions of the original parcel; that issue is outstanding.

Commissioner Shep Krech moved to approve the request of the Dorchester County Commissioners to allocate 2 acres from the county's critical area growth reserve and the remaining 54 acres to be placed in a protective conservation easement. The motion was seconded by Commissioner Hickernell.

Dr. Krech clarified that the applicants, the Sipler's, have not had an opportunity to consider establishing an easement, as recommeded in the motion for approval.

Commissioner Bowling asked Dr. Krech to amend his motion to allow the separation of the two existing lots. Commissioner Elbrich asked if this easement would preclude the applicants from coming back in and asking for another growth allocation on the remaining parcel. Counsel Gay stated that it would depend upon the terms of the easement and that it may be appropriate for the Commission to go with the motion as amended to provide the Commission an opportunity to review the terms and conditions found in the easement.

Mr. Bostian then proposed amending the motion in a fashion to ensure that the applicants would not be precluded by the easement from subdividing the existing 54-acre lot into two separate parcels. Dr. Krech accepted the amendment.

After much discussion, Mr. Elbrich reiterated that the Commission does not know that the applicants would want an easement on their property.

Chairman North posed the possibility of deferring the matter until the property owners were consulted.

Dr. Krech restated his original motion. Mr. Bowling restated his original amendment to allow subdivision of 54 acres between the two existing dwelling units. Mr. Phillips commented that a conservation easement is not desirable on this property because of its close proximity to Cambridge and the fact that it is good land for development, that perhaps the growth should be kept in Cambridge. Mr. Bostian said that it would be best to not have a conservation easement and to leave the balance in RCA which make it available for growth allocation in the future.

Dr. Krech withdrew his original motion. He moved that the Commission approve the request of the Dorchester County Commissioners to allocate two acres from the County's critical area growth reserve and to reclassify the remaining 54 acres from resource conservation area to limited developed area on the Sipler property. There was no second to the motion and the motion failed.

Counsel Gay informed the Commission that his concern with the original motion by Dr. Krech was that it is in effect an approval of a proposed amendment that was never put on the floor. He suggested that perhaps the proposed amendment as suggested should be considered and in the event that it is insufficient, to deny it. If the amendment does not meet the standards set forth in the Law for program amendment, then the County can come back with an altered program amendment that may include some conservation easement provisions for consideration by the Commission. The applicant and the County have no clue at this time that the applicant may be asked to impose a conservation easement on the property and no one at the public hearings have had an opportunity to address that particular concern. Counsel Gay asked the Commission to consider the amendment as proposed and rule on it and if the County objects to it give them the opportunity to appeal the decision or to submit a new program amendment.

Dr. Krech resubmitted his original motion as amended; Ron Hickernell seconded the motion. Chairman North called the question. The motion failed with 10 in favor - 11 opposed.

Mr. Bostian moved to approve the request without a conservation easement so that the balance of the property will remain in RCA, subject to growth allocation. Mr. Gutman seconded and the motion carried unanimously.

Mr. Ventre presented the Kent County request for refinement to its local Program map, to correct a minor mapping/drafting error. He said that a surveyor's error discovered subsequent to the mapping necessitated an amendment to the maps, which will redraw certain segments of property lines and reclassify 0.113 acres (4,922 square feet) from RCA to LDA. Mr. Ventre said that hearings have been held, that the mapping changes are consistent with the applicable terms of the Critical Area law, and with the development area designation of the Kent County Critical Area Program. The Chairman determined this to be a program refinement. The Commission supported the Chairman's determination.

Ms. Patricia Pudelkewicz, Chief of Program Amendments, CBCAC, presented a request for an amendment to the Chesapeake City Critical Area Program to include 7.16 acres of Critical Area land out of a total area of 16.9 acres which were annexed into the Town. She said that Chesapeake City has requested that this be a refinement to their Critical Area Program; however, Chairman North has determined, based on advice of Commission Counsel, that annexations be viewed as amendments unless an annexation area is specifically designated in a local Critical Area Program.

Commissioner Roger Williams moved to approve Chesapeake City's annexation of the 7.16 acres in the Critical Area. The motion was seconded and carried unanimously.

Ms. Theresa Corless, Planner, CBCAC, briefed the Commission on the Washington Suburban Sanitary Commission's (WSSC) request for the Hyattsville Gravity Sewer Phase E project in Prince George's County. She gave a detailed informational report on this request at the December meeting. The project is located along the Anacostia River and involved the installation of approximately 2, 675 feet of sewer line along and across the river. She reiterated that the only HPAs affected by the project are a narrow fringe of tidal wetlands along the river and the 100' buffer which is unavoidable as the line must cross the river. There will be a time-of-year restriction on the project because the Anacostia is an anadromous fish spawning area.

Mr. Bowling moved to approve the request as presented. The motion was seconded and carried unanimously.

Ms. Corless gave an informational report to the Commission on the WSSC Swan Creek Road Water and Sewer Relocation project in Prince George's County. She said that WSSC proposes to relocate 233 feet of ten inch

management system which provides a greater pollutant reduction than required. He said that all activities undertaken by this project satisfy all requirements of COMAR 14.19. **Mr. Bowling moved to approve the project as presented. The motion was seconded and approved unanimously.**

Ms. Pudelkewicz reviewed the draft of the **Growth Allocation Policy.** She stated that the main purpose of the discussions on the growth allocation policy have been to determine what deduction takes place for growth allocation.

She said that historically, the criteria set out a process for growth allocation at 5% of RCA land, minus tidal wetlands and Federal property. The amount of growth allocation varies for each jurisdiction. The programs differ in method for deducting growth allocation and some do not address it at all. The 1988 policy stated that an entire parcel should be deducted, although in certain instances part of a parcel could be deducted by using the development envelope concept. The development envelope concept could be applied if the parcel met certain criteria, and was designed to be the exception rather than the rule. However, over the last several years the "envelope" has become the rule rather than the exception. The programs that were adopted subsequent to the 1988 policy did not all have the policy of growth allocation incorporated but were approved by the Commission. Over the years, the '88 policy was not uniformly applied and not uniformly adopted in all programs. Because of the inconsistencies in applying growth allocation, the evolution of the development envelope as the rule rather than the exception. The Program Subcommittee was appointed to look into the growth allocation policy for revision, due to the need for a consistent deduction methodology for all programs.

The purpose of the policy is to deal with the amount of deductions. The Criteria address three goals: 1) the minimization of the adverse impact on water quality; 2) the conservation of fish, wildlife and plant habitat, and 3), the accommodation of development while avoiding the adverse environmental effects associated with that development. The criteria address these goals by limiting the density and uses in the RCA as a means of protecting resources that exist in the RCA. The criteria give locational guidelines for growth allocation which are not mandatory.

Ms. Pudelkewicz stated that under the 1988 policy, the acreage of an entire parcel would be deducted unless the development envelope concept is used. In the draft policy, **the definition of development envelope** would include individually owned lots, required Buffers, defined as the minimum 100' Buffer and a 25' nontidal wetlands Buffer, all impervious surfaces, roads, utilities, stormwater management measures, any areas subject to human use such as active recreation areas, and any additional acres needed to meet the development requirements of the criteria.

There was more discussion and then Mr. Kassoff asked whether the "additional acres needed to meet the development requirement of the criteria" would include areas required for mitigation.

Mr. Elbrich stated that the acreage of mitigation must be deducted if

it is part of a development plan that is approved with required mitigation.

Ms. Pudelkewicz stated that if open space is a local matter and not a requirement of the critical area, then it should not be deducted.

Mr. Bostian said that he did not believe that mitigation should be counted in growth allocation.

Ms. Pudelkewicz stated that on-site mitigation is encouraged rather that off-site mitigation.

Mr. Kassoff stated that he believes that any acreage of mitigation that adds to the environmental quality of habitat should not be included in growth allocation.

Mr. Jarvis stated that if a property owner has uncontrolled access to property, then growth allocation should be charged, and when the property owner does not have uncontrolled access to property, growth allocation should not be charged.

Mr. Bostian moved to wait 1 - 2 months to continue with further discussion of the growth allocation issue and to allow more time for the discussion.

Mr. Gutman asked that the Commission staff list some of the issues and some of the pros and cons on some of the fundamental elements of the issue.

Mr. Williams objected to delaying the discussion and voting on the issue.

Mr. Gutman seconded the motion.

Mr. Hickernell stated that if growth allocation is cleverly used, the Critical Areas Program could be literally wiped out. He suggested that some reasonable basic standards for growth allocation be tailored to each individual jurisdiction and that the Critical Area Commission enforce the standards of each program. Mr. Hickernell was opposed to waiting 2 months but not opposed to further discussion and a postponement of 1 month only.

Chairman North stated that Counsel suggests that the next meeting of the Commission be an all day meeting and to dedicate the morning session to the growth allocation issue so that the issue can be dealt with in 30 days vs 60 days.

Mr. Bostian agreed to this suggestion as long as a list of pros and cons on the issues were provided to the members and agreed to amend his motion to 1 month.

Mr. Gutman as the seconder to the motion agreed to the amendment.

Subsequent to the suggestion to hear the remainder of Ms. Pudelkewicz's presentation before deciding whether to take the issue of growth allocation up in another meeting, Mr. Bostian withdrew his motion.

Ms. Pudelkewicz pointed out that if the development envelope is proposed in the RCA and less than 20 acres remain outside the envelope, then the entire parcel would be deducted. She said that further, if the original parcel is less than 20 acres, then the full parcel would be deducted. If there is a permanently protected resource conservation area that is next to the residue, which, if combined, total more than 20 acres,

then that residue will not have to be deducted. Ms. Pudelkewicz said that if there is greater than a 20 acre residue, such as where 10 acres are deducted from a 56 acre parcel, the remaining 46 could be developed at RCA density.

Mr. Bostian stated that a potential issue might be the relation of the 20 acre residue issue to the Critical Area law amendment dealing with growth allocation. He said this requirement may be inconsistent with the amendment which permits certain counties to designate where certain growth allocation can be located when adjacenty is not possible.

Ms. Pudelkewicz stated that all growth allocation decisions must be based on the acreage of a parcel as of December 1, 1985. She said the Commission needs to look at subdivision history of a parcel to make sure that development in the RCA does not exceed the RCA density.

Ms. Pudelkewicz stated that a proposed project should determine the new Critical Area designation; projects of an LDA nature should receive LDA designation and IDA designation should be given only to projects which require IDA. The use should be the prime factor in the determination of the request. The Commission may deny growth allocation where the use does not meet the definition of Critical Area designation. As an example, an IDA designation should not be approved by the Commission simply to allow a developer to avoid LDA protections, if LDA would be the more appropriate designation.

Parris Glendening stated that in specific development proposals he believes that this is a back door opening for opponents to argue the merits of specific projects to the Commission. Those who may be in opposition will try to make the Commission a super zoning board and the Commission must be very careful. It should be left up to the jurisiction whether the zoning is appropriate for growth allocation.

Ms. Pudelkewicz stated that the map should reflect the area deducted.

Ms. Carolyn Watson stated that it makes sense for the most part to have the mapping match the area deducted, but the locational criteria in COMAR specified that new LDAs and IDAs in the RCA should be located 300 feet back from tidal waters. The Criteria do not state that development within new IDA or LDA should be located 300 feet back, but only that new LDAs and IDAs should be 300 feet back. Prince George's County's program made that mandatory. She said that there will be situations whenever waterfront RCA property is converted for growth allocation where a 300 foot portion of that will remain RCA, by law in the County program. She said that Prince George's County does not have a problem deducting the RCA acreage but the mapping will not match what has been deducted in these instances.

Ms. Pudelkewicz stated that certain jurisdictions have specific time frames within which their growth allocation must be used. The jurisdictions must state what happens to the growth allocation if the time frame is exceeded. She said that identification of site features should be done in order to alert the Commission and the local governments that HPA issues could restrain future development. All sensitive areas must be

protected according to the criteria.

Parris Glendening restated as clarification that growth allocation is almost exclusively a local decision provided the criteria requirements are met.

Ms. Pudelkewicz stated that for growth allocation areas proposed in the RCA, a 300 foot naturally vegetated Buffer is strongly encouraged and for waterfront projects a minimum 100 foot naturally vegetated Buffer must be established and be included in any acreage deduction. Jurisdictions must address the adjacency guidelines contained in COMAR and, if the guidelines are not met, the amendment package must contain an explanation.

Mr. Bostian moved to postpone for 30 days the issue of Growth Allocation to be discussed in a dedicated portion of the February meeting of the Commission and provided that a list of issues identified by the counties and the pros and cons of the issues discussed at this meeting are disseminated at least one week in advance of the Commission meeting to its members. Mr. Gutman seconded the motion which carried unanimously.

Because of the lengthy discussion of the Growth Allocation Policy, the issues of **Public Hearing Procedures and the Reconsideration Policy** were postponed until the February Commission meeting.

Commission Counsel George E. H. Gay updated the Commission on the **Enoch property in St. Mary's County**, which is pending a decision from the Circuit Court regarding three growth allocation challenges in St. Mary's county to denial rendered by the Critical Area Commission. He said that when the County files its brief the Commission will then have 30 days within which to file a response. A hearing is anticipated sometime in May.

Counsel Gay said that **Pier One in Queen Anne's County** is still awaiting a decision from the Circuit Court.

Counsel Gay said that there are four challenges raised by the Commission to **variances issued by the Board of Appeals in Dorchester County**. In those cases, the Commission filed pleadings explaining to the Court why the variances were improperly issued. The applicants for the variances failed to respond although they were voluntarily given extensions of time within which to do so. Notices of default, issued by the Circuit Court, need to be acted upon by the Court within 30 days.

Commission Counsel said that **Black Marsh** is in Circuit Court in Baltimore County. In this matter, the Commission granted conditional approval to the Department of Natural Resources to go ahead with its Concept Development Plan of a park on that property which is owned by the State. Neighboring property owners and the Coalition to Preserve Black Marsh appealed the Commission's decision to grant conditional approval. Counsel Gay stated that this appeared to be the classic challenge to a Commission decision based upon whether it was arbitrary, capricious, and upon facts in the record, etc. He stated that at that time, the decision was made to not intervene in the case and to simply allow the Department of Natural Resources to defend its position and allow the Coalition to

challenge the Commission's decision. In late November, the Commission received briefs from the Coalition and one of their major points is that the Green Regulations are in and of themselves invalid because they allow the Commission to treat public projects on public property differently than projects proposed by private entities on private land. As it seemed a point blank challenge to a big part of our regulatory scheme, it seemed appropriate to Chairman North that the Commission intervene and play an active role in rebutting the accusations of the Coalition. A Motion to Intervene was filed which is pending in the Circuit Court in Baltimore County. In the event the Court allows the Commission to intervene, a Brief explaining why the distinction in the Green-Regs, Blue Regs scheme is appropriate as a matter of Law will be filed. Also challenged was the Commission's ability to grant "Concept Approval". The Coalition contends there is no such provision in the Green Regulations that the Commission has to say yeah, or nay on an actual "proposal".

Chairman North asked for a consensus of appropriateness or inappropriateness of the actions taken by Commission Counsel in this matter at his direction. The Commission supported the Chairman's decision.

An **Appeal was filed in St. Mary's County** from a decision of the Board of Appeals to grant a variance. That matter was scheduled for a hearing some months ago and prior to the hearing, the applicant, Mr. Dorsey, agreed to scale down the proposed development activity on his lot and not construct a pool on the property and associated guest house facilities, pool shed, or pool house and agreed to simply construct a single family dwelling. As a result, the Chairman instructed Counsel to withdraw the variance appeal and, in conjunction with that, the applicant agreed to file documents in the local land records office setting forth his permanent restrictive development potential on the property.

The **Severn River Bridge in Anne Arundel County** is coming up for a hearing in April and the litigation is being handled by the Assistant Attorney General in the State Highway's Administration Offices. Preliminary motions to dismiss the case will be filed before it comes for a full hearing in April.

Counsel Gay said there are 10 cases pending in which the Commission is involved in litigating.

OLD BUSINESS

Chairman North informed the Commission that a meeting had been held with the **Legislative Oversight Committee** about 2 weeks ago. Delegate Thornton from Caroline County is not a member of the Committee but appeared before the Committee to voice concern that recommendations coming from the staff of the Critical Area Commission are received with such awe and distinction by local planning and zoning agencies that any attorney attempting to contravene the suggestions and recommendations of the Commission staff is defeated before the case out of the starting blocks. He said this is because everyone else accepts as gospel recommendations emanating from Annapolis. Chairman North told Delegate Thornton that in

point of fact not everyone quite sees it this way and as a result the Commission is embroiled in a substantial number of cases in litigation.

Chairman North stated that with respect to the **1994 Budget**, while there have been some budget constraints, the situation is essentially a sound one, as good as it can be, given the problems the State has experienced.

Mr. Gutman inquired as to **Anne Arundel County's comprehensive review** and asked that it be discussed at the February meeting.

NEW BUSINESS

There was no new business.

There being no further business, the meeting adjourned at 4:48 p.m.

Submitted by:
Peggy Mickler, Commission Secretary

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Revised Commission Policy (Draft)
1992

GUIDELINES FOR THE COUNTING OF GROWTH ALLOCATION

CRITICAL AREA COMMISSION

INTRODUCTION

The Critical Area criteria require that lands are to be classified into one of three management categories based on certain characteristics of land use that existed as of December 1, 1985. For each of those categories, [Intensely Developed (IDA), Limited Development (LDA) and Resource Conservation (RCA) Areas], policies and criteria are specified to guide the nature and location of future development. Under the conditions of COMAR 14.15.02.06, some subsequent expansion and intensification of new development beyond that provided in the original land management classification is allowed, but subject to overall acreage limitation for each jurisdiction and to guidelines for the location of such development. The area of expansion permitted is called Growth Allocation and is defined as an area equal to 5% of a county's Resource Conservation lands that are not tidal wetlands or federally owned. The question has arisen as to what portion of a given development site should be considered development in this context and, therefore, subtracted from a jurisdiction's Growth Allocation. The purpose of this paper is to explain the Commission's position on this issue.

CRITERIA REQUIREMENTS

As provided for in the criteria, the potential grandfathering of land uses is based on legal parcels of land that were recorded as of December 1, 1985. In determining whether development on such lands counts against a jurisdiction's Growth Allocation during the interim period (that is, between December 1, 1985 and the date of local Program approval), the criteria refer to the "land that was subdivided" and state that the "area of land" (e.g., the parcel that existed as of December

1, 1985) is to be charged against the Growth Allocation [see COMAR 14.15.02.07B(2), (3) and (4)]. Similarly, for any parcel of land described above which is to be subdivided after December 1, 1985, and, after local Program approval, designated for new IDAs or LDAs, the total acreage of the parcel should logically be counted against the Allocation, even though the entire parcel may not actually be developed or fully designated as a new IDA or LDA. This would treat the counting of growth allocation uniformly both before and after local Program approval.

DISCUSSION

The land classification system required by the criteria was adopted by the Commission to address the goals of the Critical Area law: the minimization of adverse impacts on water quality; the conservation of fish, wildlife, and plant habitat; and the accommodation of development while avoiding the adverse environmental effects associated with that development. Conservation of the protective land uses of agriculture and forests was also an objective of the Commission, as well as the concentration of new development in or near areas of existing development. Thus, the density criterion for the Resource Conservation Area and the development standards for the Limited Development Area were based on water quality considerations, the protection of extensive habitat areas of regional significance and the retention of farm and forest land. The subdivision and development of RCA lands beyond the density permitted by the criteria, and the intensification of development on lightly or moderately occupied LDA lands, was considered by the Commission to result in a significant reduction in these values. Thus, the Commission provided that the total acreage of land so developed should be counted against the Growth Allocation.

In order to "mitigate" the significant reduction in these values, criteria were developed to guide the location and extent of future growth allocation areas. These criteria are found in COMAR 14.15.02.06. These guidelines indicate that new

IDAs should be located in LDAs or adjacent to existing IDAs, and that new LDAs should be located adjacent to existing LDAs or IDAs. The guidelines provide that no more than half of the allocated expansion may be located in RCAs; however, rural jurisdictions in Southern Maryland and the Eastern Shore may be able to utilize a greater percentage of their growth allocation in RCA areas if they can demonstrate that they are unable to locate growth allocation adjacent to LDAs and IDAs. In addition, new IDAs and LDAs should be located in order to minimize impacts to Habitat Protection Areas, and for use of growth allocation in RCAs, new IDAs and LDAs should be located at least 300 feet beyond the landward edge of tidal wetlands and tidal waters. The 300-foot Buffer is proposed in order to "mitigate" the significant reduction in the value of RCA lands resulting from the use of growth allocation, and serves to preserve some of the wildlife habitat benefits of the RCA. Though these guidelines are not mandated, they are required to at least be considered and addressed by local jurisdictions in all growth allocation decisions.

It has been suggested that only the development "pad" or area of direct disturbance in a new development or subdivision should be counted against Growth Allocation. For example, if a 100-acre parcel in an RCA was to be subdivided into 20 two-acre parcels, and 60 acres were to remain in open space, it is argued that only a 20,000 square foot development pad associated with each two-acre lot should be counted and therefore, only 10 acres of Growth Allocation would be used. There are several objections to this approach. First, it runs counter to the third goal of the Critical Area Law which recognizes that the number, movement, and activities of persons can cause adverse environmental impacts even if direct pollution from development is controlled. This

goal suggests that the area of disturbance from new development clearly extends well beyond the immediate development pad. Second, the Commission sought to address the habitat protection goal of the Law, and the conservation of forest and farm land, by establishing the '1 unit per 20 acres density' criterion for RCA lands. When this density is exceeded by conversion to IDA or LDA development, then a parcel no longer exhibits RCA characteristics and the total acreage should be counted against Growth Allocation. Finally, the approach given in the example above would permit nearly a ten-fold increase in development in RCA lands over that originally contemplated by the Commission when it proposed Growth Allocation as a means to provide some flexibility in accommodating new development in the Critical Area. Thus, a jurisdiction with 5,000 acres of Growth Allocation could, in theory, convert nearly 50,000 acres of RCA lands to LDA uses, a situation clearly not intended in the original formulation of Growth Allocation.

The Commission recognizes, however, that there may be circumstances where the overall goals of the Critical Area Program would be enhanced if an area less than the full parcel being developed was to be deducted from a jurisdiction's Growth Allocation. For example, clustering of development, while encouraged by the criteria, may be limited by the full application of this rule. In order to provide for these special cases, the Commission will consider less than full parcel deduction only in the case of the use of the development envelope

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concept, explained more fully on the following pages.

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- Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the local jurisdiction as a Growth Allocation area, shall result in the acreage of the entire parcel not in tidal wetlands, counting against the jurisdiction's Allocation, unless the development envelope concept is used.

Development Envelopes

- The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The "required buffers", in this instance, refers to the minimum 100' Buffer and the 25' nontidal wetlands buffer.

- If a development envelope is proposed in the RCA and less than 20 acres remain outside of the envelope, then the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the entire parcel must be deducted. This requirement is based on the principle that at least 20 acres are needed to maintain the RCA character.

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- If there is a permanently protected Resource Conservation Area (for example, protected by easement) adjacent and contiguous to the less-than-20-acre residue, resulting in a minimum 20-acre residue, then the entire parcel does not have to be deducted.

- The remaining minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless permanent protection is in place.

Parcel History

- The date of December 1, 1985 was the original mapping date for the Critical Area, and should be used for growth allocation as a beginning point of analysis; therefore, the subdivision history of a parcel in the RCA must be provided as part of a growth allocation application.

- For all growth allocations involving a parcel of land in the RCA which was subdivided subsequent to December 1, 1985, the acreage of the parcel as it existed on 12/1/85 will affect the amount of growth allocation deducted. The Critical Area Commission will ensure that the area of the original parcel (as of 12/1/85) not proposed for growth allocation meets the one dwelling unit/20 acre RCA criterion.

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

New IDAs

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

Specific Development Proposals

. Growth allocation is not required to be tied to a specific development proposal if the following conditions are met;
  - the total parcel acreage is deducted
  - HPA issues are identified
  - local jurisdiction certifies that the Critical Area criteria must be met for project development.

New Critical Area Designation

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

DRAFT

Acreage Deducted vs. Area Mapped

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

Site Features

- Identification of site features should be done in order to alert the CAC and local government that HPA issues could restrain future development.
- All Critical Area criteria must be met at the time of project development. The approval of growth allocation by the CAC for a parcel with sensitive site features in no way indicates the Commission's concurrence that this site is suitable for maximum development. All sensitive areas must be protected.

Buffer

- For growth allocation areas proposed in the RCA, a 300' naturally vegetated Buffer is strongly encouraged.
- For waterfront projects, a minimum 100' naturally vegetated Buffer must be established and be included in any acreage deduction.

Adjacency

- Jurisdictions must address the adjacency guidelines contained in COMAR 14.15.02.06:

  New IDAs should be located in LDAs or adjacent to existing IDAs.

  New LDAs should be located adjacent to existing LDAs or IDAs.

- As part of a growth allocation amendment request to the CAC, local jurisdictions shall be required to provide a written assessment as to how the adjacency guidelines in COMAR 14.15.02.06 were considered.

GROWTH ALLOCATION ISSUES

ISSUE	PROS	CONS
1. Deduct the full parcel. Counting the full parcel was intended to be the rule rather than the exception in the 1988 Commission Growth Allocation Policy; however, this has become the exception rather than the rule through the extensive use of the development envelope concept.	1. Basis of 1988 Commission Policy. 2. Interim period method: During the period between 12/1/85 and local Program adoption, any land in an RCA whose development did not conform with the criteria was counted against the Growth Allocation. The acreage of the entire parcel was counted. 3. Simple, easy to understand method of deduction. 4. Lessens likelihood of RCA being dotted with small Growth Allocation areas, thereby protecting the resources and character of the RCA.	1. Opposed by locals as using too much growth allocation. For example, when a large parcel is involved, only 20 acres out of a 100-acre parcel may be proposed for development, yet the entire parcel would be counted. 2. Does not promote clustering.
2. Development Envelope Concept - Less than full parcel deduction is allowed when the development is clustered within a development envelope.	1. Promotes cluster 2. Allows more flexible use of growth allocation for local jurisdictions 3. Protects RCA character, on the residue of a parcel if at least 20 acres remains. 4. Promotes the identification and better protection of Habitat Protection Areas.	1. Contrary to the methodology of deducting the full parcel used during the interim period. 2. Allows a more scattered use of the growth allocation acreage, thereby resulting in a greater fragmentation of the RCA.

ISSUES	PROS	CONS
3. Definition of Development Envelope - ..."and any additional acreage needed to meet the development requirements of the criteria." This element of the definition was a subject of discussion at the January CAC meeting.	1. This element of the definition was included in order to incorporate any disturbance/development resulting from the growth allocation. 2. It incorporates any remaining development acreage which may not have been covered in the "development envelope" definition: individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal, any areas subject to human use such as active recreation areas.	1. Newly-created mitigation areas (i.e., wetlands, forests) would now be required to be deducted and designated either LDA or IDA.
4. If less than 20 acres remain outside of a development envelope, then the entire parcel must be deducted. If a parcel is less than 20 acres to begin with, then the entire parcel must be deducted.	1. Upholds 20-acre concept to maintain RCA character. 2. Prevents small pieces of parcels left as RCA with no development potential. 3. Eliminates need to track or put deed restrictions on non-developable residue.	1. Uses more growth allocation than that which is actually developed

ISSUES	PROS	CONS
5. Remaining minimum 20-acre residue outside of the development envelope may be developed at RCA density unless permanent protection is in place.	1. It is RCA land; therefore, criteria permit density of 1 du/20 acres. 2. RCA character is maintained on the minimum 20-acre residue. 3. Allows future development adjacent to growth allocation area instead of placing it in a permanent easement.	1. Different approach than 1988 Growth Allocation Policy, where permanent easement is required on land outside of the development envelope.
6. Acreage of parcel as it existed on 12/1/85 will affect the amount of growth allocation deduction	1. COMAR 14.15.02.07 uses December 1, 1985 as grandfather date, and states that any development subsequent to 12/1/85 must conform to criteria or count against growth allocation 2. December 1, 1985 is the original mapping date for the Critical Area and development density beyond that allowed by the criteria, as of this date, should have growth allocation deducted	1. Subdivision history may be difficult to compile by local jurisdictions. 2. Deduction methodology may be cumbersome if subdivision of land has occurred after 12/1/85.

ISSUES	PROS	CONS
7. New IDAs located in the RCA must be at least 20 acres in size unless contiguous to an existing IDA or LDA.	1. The Subcommittee was originally considering some type of adjacency requirement for IDAs and double counting when going from RCA to IDA. However, the Subcommittee settled on a 20-acre minimum IDA in the RCA, basing its decision on the original mapping criteria. This raised questions about using mapping criteria; however, the Subcommittee finally agreed that this requirement was important in light of the potential signficant impact to the RCA from IDA-type development. This only applies to IDAs being located in the RCA where they are not adjacent to existing LDAs or IDAs; it only applies to "stand alone" IDAs in the RCA.	1. Local jurisdictions believe this takes away their flexibility in locating new IDAs.
8. Growth Allocation is not required to be tied to a specific development proposal.	1. Allows local jurisdictions to plan in a comprehensive fashion for future development in the Critical Area instead of reacting to individual development requests	1. Prevents CAC from analyzing potential impacts on a site; however, this will occur at the time of project review by CAC staff.

ISSUES	PROS	CONS
9. The particular project should determine the new Critical Area designation; projects of an LDA nature should receive an LDA designation, and IDA designation should only be given to projects requiring IDA.	1. Try to prevent growth allocation going from RCA to IDA just to avoid the environemtnal restrictions of LDA.	1. Perspective that local government should make the determination; CAC should not play a role. 2. If we state the previous issue, that growth allocation does not have to be tied to a specific development proposal, then it cannot be determined if a site should be LDA or IDA.
10. Acreage deducted must equal area mapped.	1. Simplifies the tracking of use of growth allocation 2. Keeps the mapping and the deduction coordinated.	1. Prince George's County is concerned because its Program currently mandates a 300' Buffer in the RCA, and deduction of the acreage; however, the 300' Buffer remains as RCA. The County's approach would be a more strict interpretation of the proposed Policy.
11. Site features should be identified prior to approval of growth allocation in order to alert the CAC and local government if HPA issues are present.	1. Although this will not be used to deny a growth allocation, everyone will at least be aware that site constraints exist. If a local jurisdiction chooses to give growth allocation to a site with sensitive features, it will do so with full knowledge that these features must be protected at the time of project development and will limit full utilization of the parcel.	

The following issues did not lend themselves to the "pro" and "con" format; therefore, they will be listed here with a brief description of the Subcommittee's deliberations. The two issues which follow are part of COMAR 14.15.02.06, which are guidelines for the location and extent of future Intensely Developed and Limited Development Areas. These guidelines are not mandated by the criteria, but are required to be considered.

(1) 300' Buffer
COMAR 14.15.02.06(B)(6) states, "New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters". The Subcommittee originally contemplated making this mandatory in order to mitigate the negative impact on water quality and habitat of new growth allocation areas locating in the RCA. The response by the local jurisdictions was overwhelming opposition to this issue. The Subcommittee compromised on its original approach and has revised the draft policy to state, "For growth allocation areas proposed in the RCA, a 300' naturally vegetated Buffer is strongly encouraged." This is now consistent with the non-mandatory approach of the guidelines.

(2) Adjacency
The draft policy reiterates the growth allocation guidelines in COMAR 14.15.02.06B, that "New Intensely Developed Areas should be located in Limited Development Areas or adjacent to existing Intensely Developed Areas" and "New Limited Development Areas should be located adjacent to existing Limited Development Areas or Intensely Developed Areas". The criteria require that these guidelines be used; therefore, the draft policy requires that a local jurisdiction provide a written assessment as to how these adjacency guidelines were considered.

plus copy for staff + Commission

HOUSE BILL 225

M1 3lr0757

By: **Chairman, Environmental Matters Committee (Departmental – Natural Resources)**
Introduced and read first time: January 15, 1993
Assigned to: Environmental Matters

A BILL ENTITLED

AN ACT concerning

Nontidal Wetlands – Critical Area Exemption

FOR the purpose of repealing an exemption from the provisions of the Nontidal Wetlands Protection Act for certain activities within the Chesapeake Bay critical area.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 8–1203(a)
Annotated Code of Maryland
(1990 Replacement Volume and 1992 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

8–1203.

(a) [(1)]There is a statewide program within the Department for the conservation, regulation, enhancement, creation, monitoring, and wise use of nontidal wetlands.

[(2) This subtitle does not apply to agricultural, forestry, or regulated activities located within the Chesapeake Bay critical area.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1993.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

approved w/ conditions

STAFF REPORT

February 3, 1992

AGENCY: Washington Suburban Sanitary Commission (WSSC)

PROJECT: Piscataway Relief Sewer, Prince George's County

COMMISSION ACTION: Vote

RECOMMENDATION: Approval with conditions.

DISCUSSION: WSSC proposes to construct a relief sewer in the vicinity of Piscataway Creek to provide peak flow relief and to increase the capacity of the local sewer system. The proposed line will be approximately 2,204 feet in length and will connect an existing manhole structure near the Indian Head Highway bridge over Piscataway Creek to the Piscataway Wastewater Treatment Plant.

The proposed route will use the right-of-way of two existing WSSC sewer lines. This right-of-way requires the crossing of three tidally-influenced creeks. The right-of-way also crosses tidal and nontidal wetlands, steep slopes, forested areas and anadromous fish spawning waters. A time-of-year restriction will be imposed on construction in anadromous fish spawning areas.

The proposed sewer line is to be gravity fed. WSSC has examined possible alternate routes and has determined that the proposed alternate routes are not feasible due to engineering constraints. All impacts have been minimized and are unavoidable. Mitigation for impact to forested nontidal wetlands will be at 3:1.

All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19., Regulations for Development in the Critical Area Resulting from State and Local Agency Programs. Following are relevant provisions from Chapter 5.

This project satisfies all requirements. All citations are COMAR 14.19.05.

Utilities .03(B)(3)(a)(ii);
Forest and Woodland Protection .06(B)(3);
Buffer .09(B)(2), .09(B)(3);
Nontidal Wetlands .10(B)(2)(c), .10(B)(2)(d).

CONDITIONS: A planting plan must be developed in conjunction with the Bay Watershed Forester, Commission and Prince George's County's staff.

STAFF CONTACT: Theresa Corless

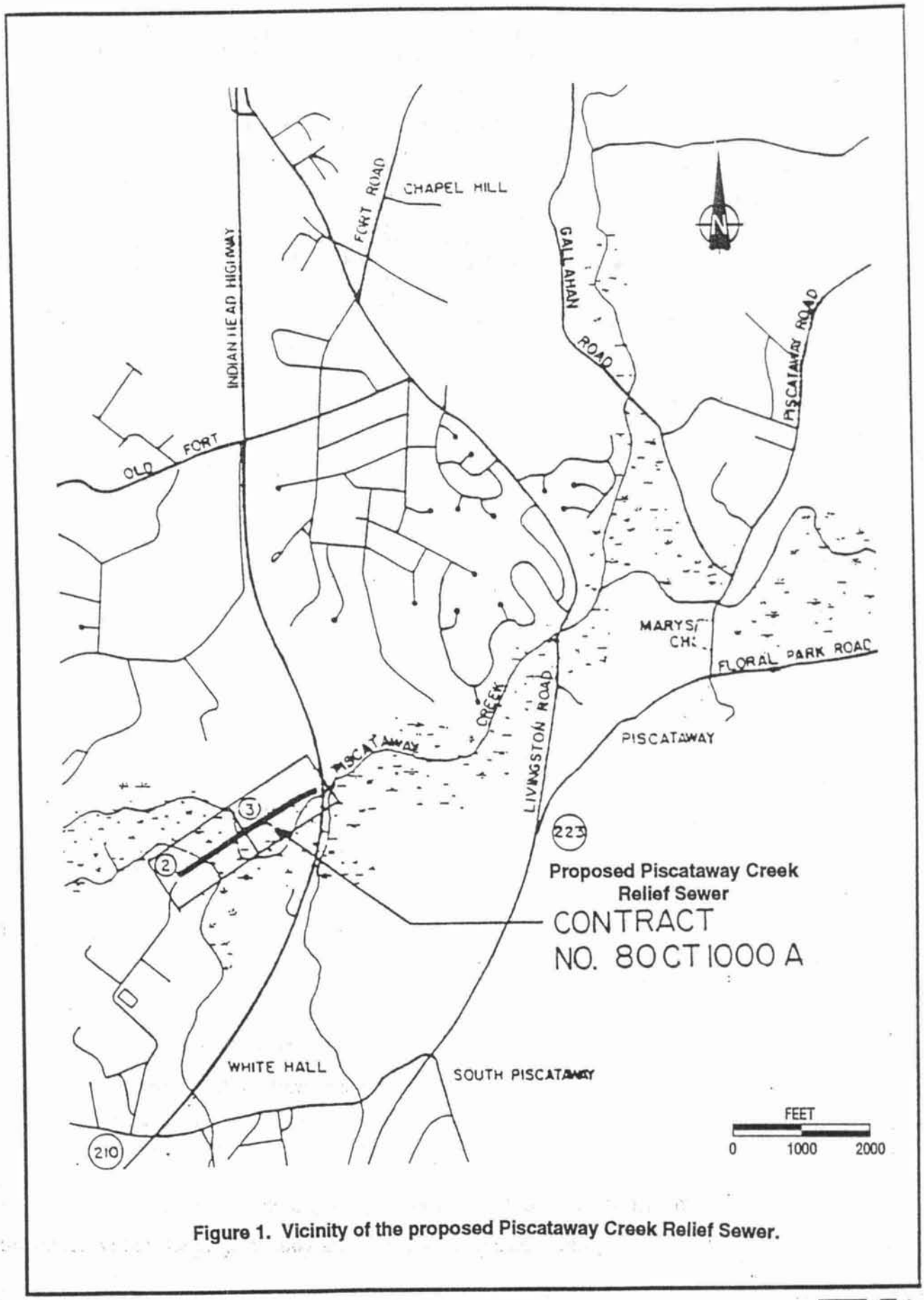


Figure 1. Vicinity of the proposed Piscataway Creek Relief Sewer.

Vote in March

STAFF REPORT

February 3, 1993

PROJECT: Swan Point Sewage Treatment Facility-Charles County

AGENCY: Charles County Commissioners

ACTION: Information briefing

Discussion:

The Charles County Commissioners propóse to expand the Cobb Island Wastewater Treatment Facility in order to accommodate the approved waterfront planned community of Swan Point. The existing plant at Swan Point was constructed in 1982. It is located approximately 1.5 miles from the Cobb Island facility. Both the existing Cobb Island facility and the proposed expansion are located entirely within the Critical Area.

The project is being reviewed under Chapter 4 of the regulations for State and local government projects, COMAR 14.19. It is a major project, which requires Commission approval. Chapter 4 requires the County to submit findings regarding the consistency of the project with the Charles County Critical Area Program. The Commission is required to make its decision based on consistency with its Criteria, COMAR 14.15. The project will include the following:

Phase I

-replacement of wastewater pumps at the vacuum sewer pump station;

-installation of 9300 feet of 12 inch force main, to connect the existing vacuum pump station to the new wastewater treatment plant;

-development of a 300,000 gpd treatment process and aerobic sludge digestion process area;

-construction of a new facilities building;

-installation of 1200 feet of 16 inch outfall sewer;

-construction of a shellfish protection pond for emergency overflows.

Phase II

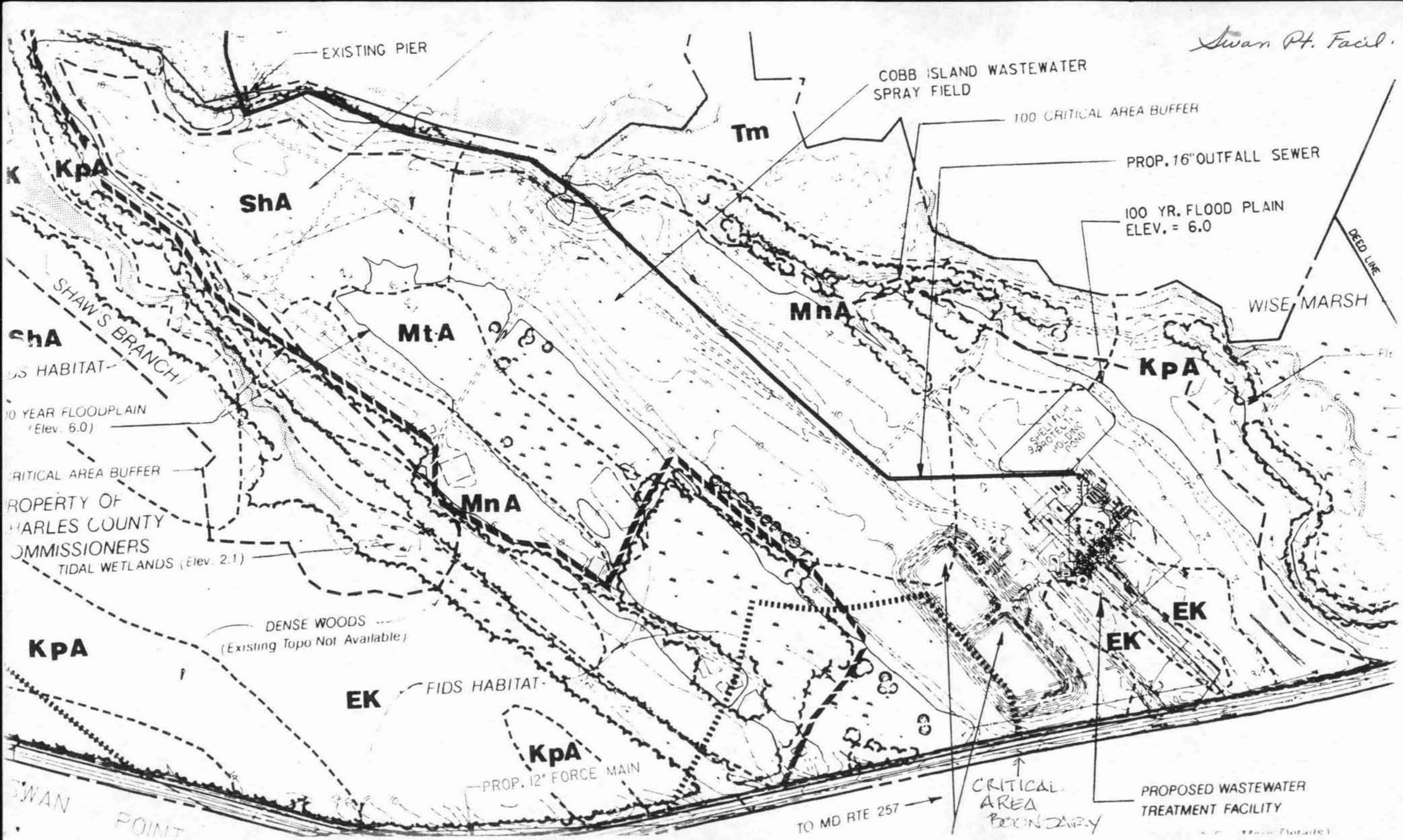
-development of a 300,000 gpd treatment process addition and a sludge dewatering building.

The preliminary project report, prepared for Charles County by the Swan Point developer, identifies two endangered plant species on the 220 acre site. The report states that neither species will be affected by the project. Staff will consult with the Department of Natural Resources.

The report also discusses submerged aquatic vegetation near the sewer outfall area.

Nontidal wetlands have been identified using the 1987 US Army Corps of Engineers manual. The County has been notified that use of the 1987 manual is not consistent with requirements of the Criteria.

Staff: Ren Serey


Swan Pt. Facil.
EXISTING PIER
COBB ISLAND WASTEWATER SPRAY FIELD
100 CRITICAL AREA BUFFER
PROP. 16" OUTFALL SEWER
100 YR. FLOOD PLAIN ELEV. = 6.0
DEED LINE
WISE MARSH
Tm
KpA
ShA
MnA
MtA
EK
SHAW'S BRANCH
10 YEAR FLOODPLAIN (Elev. 6.0)
CRITICAL AREA BUFFER
PROPERTY OF CHARLES COUNTY COMMISSIONERS
TIDAL WETLANDS (Elev. 2.1)
DENSE WOODS (Existing Topo Not Available)
FIDS HABITAT
PROP. 12" FORCE MAIN
SWAN POINT
TO MD RTE 257
CRITICAL AREA BOUNDARY
PROPOSED WASTEWATER TREATMENT FACILITY

Vote in March

STAFF REPORT

February 3, 1993

AGENCY: Washington Suburban Sanitary Commission (WSSC)

PROJECT: Rhode Island Avenue Water Extension, Prince George's County

COMMISSION ACTION: Information Only

DISCUSSION: WSSC proposes to install a new water main along Rhode Island Avenue in the College Park - Hyattsville area. This is necessitated by an existing pipe which is old and leaking and of inadequate size to meet local demand.

Approximately 860 feet of 30-inch pipe is to be placed in the Critical Area. All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19, Regulations for Development in the Critical Area Resulting from State and Local Agency Programs.

This project satisfies all requirements of Chapter 5. citations are COMAR 14.19.05.

STAFF CONTACT: Theresa Corless

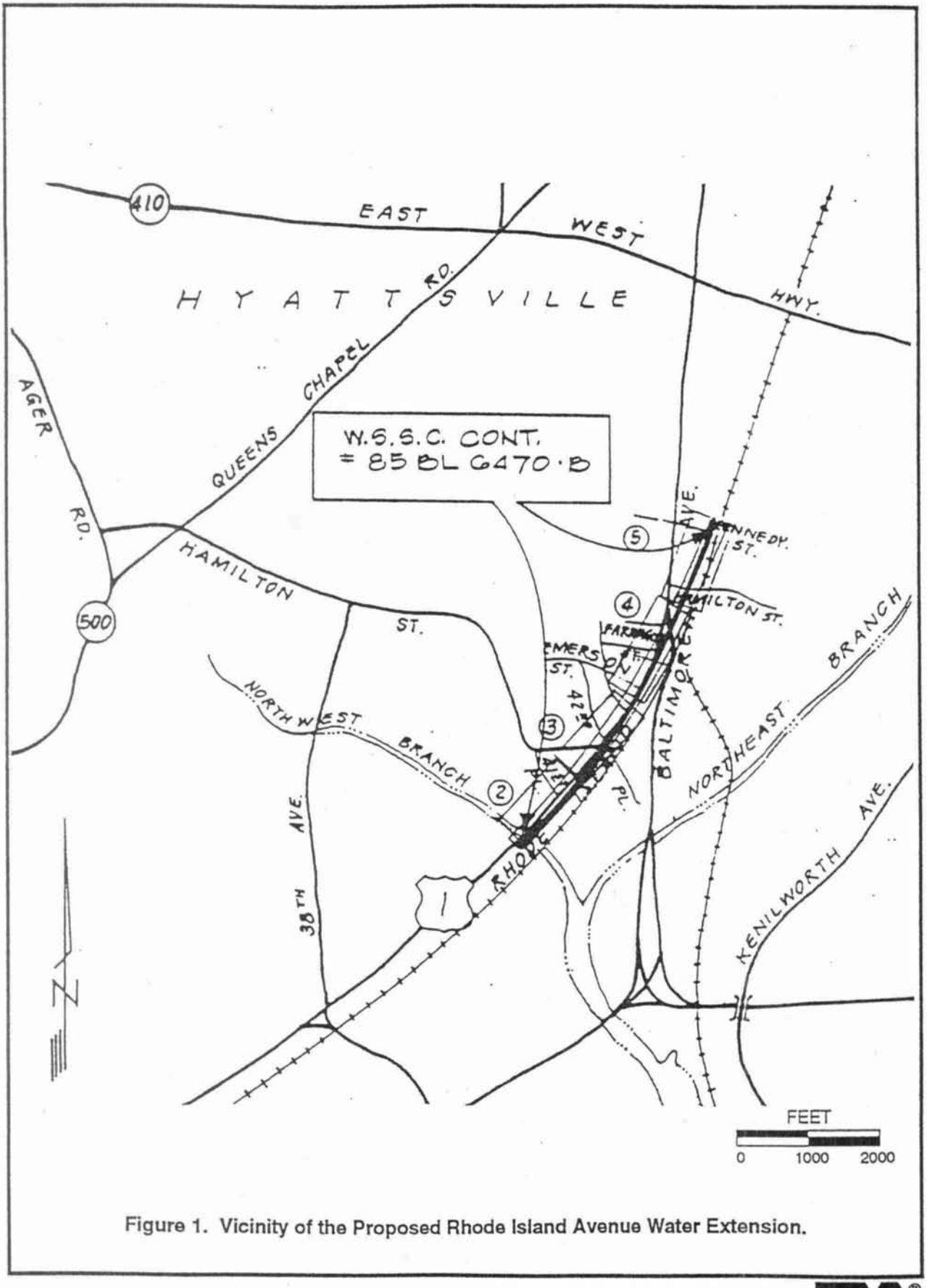


Figure 1. Vicinity of the Proposed Rhode Island Avenue Water Extension.

K. Langa - motion
second
Vote C.U.

STAFF REPORT

February 3, 1993

AGENCY: Washington Suburban Sanitary Commission (WSSC)

PROJECT: Swan Creek Road Water and Sewer Relocation, Prince George's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions.

DISCUSSION: WSSC proposes to relocate 233 feet of ten-inch water main and 566 feet of 18-inch sewer line on Swan Creek Road and Tantallon Marina. This project is necessary due to the recent road work on Swan Creek Road.

The impact to the 100-foot Buffer is unavoidable due to site constraints and engineering requirements.

The project will impact 10,675 sq. ft. of Buffer. An equal area will be reforested elsewhere as mitigation. No other Habitat Protection Areas are impacted.

All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19., Regulations for Development in the Critical Area Resulting from State and Local Agency Programs. The project is being reviewed under Chapter 2 and Chapter 5 of Subtitle 19. Prince George's County has certified that this project is consistent with its Program.

This project satisfies all requirements of Chapter 5 including the Buffer provision (.09).

CONDITION: A planting plan will be developed in conjunction with the Bay Watershed Forester, Commission and County staff.

STAFF CONTACT: Theresa Corless

approved w/conditions

STAFF REPORT
February 3, 1993

AGENCY: Maryland Aviation Administration

PROJECT: Martin State Airport shoreline erosion control

COMMISSION ACTION: Vote

RECOMMENDATION: Approval, with conditions

DISCUSSION: For this project, the Maryland Aviation Administration proposes to stabilize thirteen shoreline areas and two channels of the Martin State Airport property which are moderately to severely eroded. Nine of the shoreline sites and both of the channels will have structural stabilization (primarily riprap and slope excavation); all of the sites will have vegetative stabilization. This project was presented for information at the January meeting.

ANALYSIS: Baltimore County Department of Environmental Protection and Resource Management and Department of Natural Resources Shore Erosion Control and Tidal Wetlands divisions have reviewed this project. There are areas of protected designated forest along the shoreline of areas 3-5, 7-9, and channel 2 where no clearing is allowed. There are no threatened or endangered species plant or wildlife species on site.

APPLICABLE LAW/ REGULATION: All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19, Regulations for Development in the Critical Area Resulting from State and Local Agency Programs. Following are the relevant provisions from 14.19.05.

Habitat Protection Areas	.03B(2)(a)
Shore Erosion Protection Works	.05B(2)

CONDITIONS: Approval is contingent upon the following conditions:

1. Access to areas 3-5, 7-9, and channel 2 will be by existing dirt roads or by water.
2. Staging areas will be outside the 100 foot Buffer.

STAFF: Regina Esslinger

approved unanimously

STAFF REPORT

February 3, 1993

AGENCY: Maryland National Capital Park and Planning Commission (MNCPPC)

PROJECT: Western Branch Bridge, Prince George's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions.

DISCUSSION: The State owns property administered by MNCPPC adjacent to Patuxent River Park to which it currently has no legal access. Washington Suburban Sanitary Commission (WSSC) owns property across the Western Branch of the Patuxent River and has agreed to allow access to the MNCPPC property through its property. This would require a bridge to be built across the Western Branch. This bridge will be constructed in June by the Maryland National Guard.

The proposed alignment for the access road and bridge (Option A) involves no impact to a nearby nontidal wetland or its buffer. The proposed route will involve the removal of trees in the 100-foot Buffer, which will be replaced onsite at 2:1. Trees removed elsewhere in the Critical Area will be replaced on an equal basis. These impacts have been minimized and are unavoidable. The construction of the bridge will not involve in-stream work and will not impact anadromous fish propagation waters.

Response has been received. NHA will not be impacted

MNCPPC has requested an environmental review through DNR. No response has been received.

All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19., Regulations for Development in the Critical Area Resulting from State and Local Agency Programs. Following are relevant provisions from Chapter 5.

Jim Hutman expressed concern about grading so near the slope & the water. Believes that the bridge should be lengthened instead.

This project satisfies all requirements. All citations are COMAR 14.19.05.

Dave Bourdon believes effort to date is fine.

Forest cutting and Replacement Requirements .03(B)(3)(d)(ii);
Buffer .09(B)(2), .09(B)(3), .09(B)(5)(c);
Anadromous Fish Propagation Waters .13;
Public Access .03(B)(2)(d).

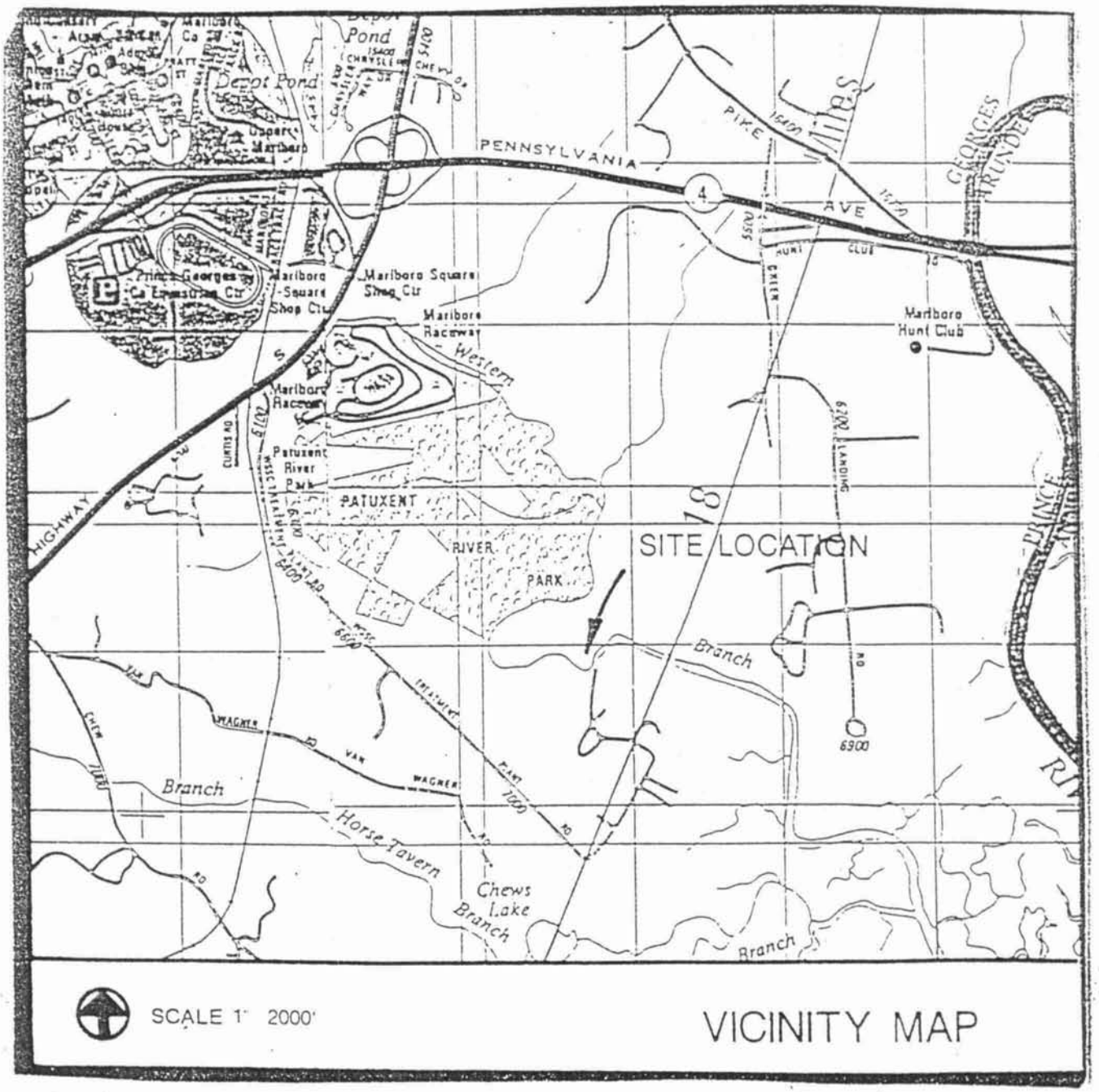
CONDITIONS:

1. Requirements resulting from DNR environmental review must be satisfied.

2. Planting Plan reviewed by Commission and Prince George's County staff.

3. Sediment and erosion control plans for bridges/river crossings will be reviewed by Commission and Prince George's County's staff.

STAFF CONTACT: Theresa Corless


Depot Pond
PENNSYLVANIA
PIKE
AVE
Marlboro Square Shop Ctr
Marlboro Raceway
Western
Marlboro Hunt Club
Patuxent River Park
PATUXENT
RIVER
PARK
SITE LOCATION
Branch
Horse Tavern
Chews Lake
Branch
SCALE 1" 2000'
VICINITY MAP

approved Turan.

STAFF REPORT

February 3, 1993

AGENCY: Maryland National Capital Park and Planning Commission (MNCPPC)

PROJECT: Anacostia Tributaries Trail, Prince George's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval with conditions.

DISCUSSION: MNCPPC proposes to construct a hiker/biker trail along the Northeast and Northwest Branches of the Anacostia River to connect existing trails in the area. This federally-funded project will include the construction of approximately 2.4 miles of 8-foot wide asphalt trail and two bridges, one spanning a drainage ditch and the other the Northwest Branch. It will also include the construction of an emergent nontidal wetland and a shallow marsh pond as mitigation for Habitat Protection Area (HPA) impacts. Interpretive signs addressing such topics as history of the area, wetland creation and reforestation will be installed. The trail is largely in the 100-year floodplain and a section is in the 100-foot Buffer. These impacts have been minimized and are unavoidable due to site constraints. The completed trail system will provide access to the River and its shoreline for residents of adjacent urban neighborhoods.

There are several impacts to HPAs. One section of the trail will cross a low quality emergent nontidal wetland. MNCPPC will address this impact by creating at 2:1 an emergent nontidal wetland on the site to be planted with appropriate species from their nursery. Another section of the trail will cross an area near Melrose Crossing which was reforested several years ago. MNCPPC will replant with appropriate native species. To mitigate the impact of the trail on the 100-foot Buffer, MNCPPC proposes to construct a shallow marsh pond to treat runoff from Melrose Crossing which is currently not being treated. A small number of trees along the bank of the Northwest Branch will have to be

removed due to the construction of the bridge. They will be replaced with appropriate native species at 2:1. As the bridge construction will not involve in-stream work, there is no impact to anadromous fish propagation waters.

The project area has a diversity of wildlife. No threatened or endangered species are known to inhabit the project area.

An environmental review through DNR has been requested. No response has been received.

All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19., Regulations for Development in the Critical Area Resulting from State and Local Agency Programs. Following are relevant provisions from Chapter 5.

The project satisfies all requirements. All citations are COMAR 14.19.05.

Forest cutting and Replacement Requirements .03(B)
(3)(d)(ii);
Buffer .09(B)(2), .09(B)(3), .09(B)(5)(c);
Anadromous Fish Propagation Waters .13;
Public Access .03(B)(2)(d);
Nontidal Wetlands .10(B)(2)(c).

CONDITIONS:

1. Requirements resulting from DNR environmental review must be satisfied.

2. Planting and mitigation plans reviewed by Commission and Prince George's County staff.

3. If bridge and embankment work is to be done during restricted period for anadromous fish, sediment and erosion control plans for bridges/river crossings will be reviewed by Commission and Prince George's County's staff.

STAFF CONTACT: Theresa Corless

For Vote In March

STAFF REPORT
February 3, 1993

AGENCY:	Department of Natural Resources, Greenways
PROJECT:	Miller's Island Park
COMMISSION ACTION:	Information
DISCUSSION:	This project is for a neighborhood park at North Point State Park; Baltimore County Department of Recreation and Parks is leasing the 3 acre site from the State. This park was a part of the concept plan approval for North Point State Park. The proposal is to create a community park with a mulched tot lot, a mulched picnic area, an open play area and a small parking lot (approximately six spaces) with Program Open Space funds. Some existing impervious surface will be removed and revegetated to create the open play area. The site is primarily LDA, with the remainder RCA. This project must first be approved by DNR before we can make a decision; however, we anticipate their approval shortly.
APPLICABLE LAW/ REGULATION:	All development activities undertaken in the Critical Area by State agencies on State land must satisfy the requirements of COMAR 14.19, Regulations for Development in the Critical Area Resulting from State and Local Agency Programs.
STAFF:	Regina Esslinger

VOTE IN MARCH.

STAFF REPORT
February 3, 1993

JURISDICTION: St. Mary's County

ITEM: Program amendments

COMMISSION ACTION: Informational briefing
Panel hearing: February 18, 1993
Commission vote: March 3, 1993

Discussion:

St. Mary's County has proposed a Critical Area Program amendment package which:

1) merges the Critical Area ordinance into the County Zoning ordinance;

2) reorganizes the various sections and provisions within the ordinance, including the addition of new section numbers and headings; and

3) proposes new provisions, deleting others.

St. Mary's County has implemented its Critical Area Program through a separate ordinance. The County proposes to incorporate the ordinance into the County Zoning ordinance as Section 38.2. No mapping changes are proposed.

Organizational changes - The existing ordinance addresses the major Program elements in two sections, one which lists goals and policies and one which includes the specific regulations. The proposed ordinance includes all relevant provisions for each element (i.e., Agriculture, Water-dependent facilities, Development, etc.) in separate sections. This reorganization necessarily requires the deletion of many section titles and cross-references.

Administrative changes and substantive changes - St. Mary's County has proposed several new provisions. The changes represent administrative procedures which the County has implemented through policy; Criteria requirements expanded for guidance and clarity; and new provisions which the County believes will strengthen overall implementation of the Program. Significant provisions are outlined below.

1. Reconfiguration or consolidation of grandfathered lots - The Criteria require jurisdictions to develop procedures to bring

certain grandfathered lots into compliance insofar as possible, and that the Commission approve these procedures. The County has proposed the following language in regard to this requirement:

> "Applicants shall show that reconfiguration or consolidation of lots is impractical when impacts to steep slopes or Habitat Protection Areas result from the development proposal."

2. Relation of Critical Area ordinance to other County regulations New language states that when a conflict arises between the Critical Area regulations and other County plans or regulations, the more restrictive provision applies.

3. Conditions on variances - New language sets out the following standards for the Board of Appeals when "reasonable or necessary" in granting a variance:

> "-new or expanded structures or other impervious surfaces shall be located the greatest possible distance from mean high water, tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.
>
> steps to mitigate adverse impacts resulting from the granting of a variance, including:
>
> planted mitigation on the site per square foot of the variance granted at no less than a three to one basis or as recommended by the Department of Planning and Zoning;
>
> reforestation on the site to offset proposed disturbance of forest or developed woodland as needed;
>
> afforestation on the site as needed to assure that 15% of the gross site area is forested;
>
> implementation of mitigation measures for Habitat Protection Areas that are recommended by the Department of Planning and Zoning or any interested member agencies of the Environmental Review Team."

4. Violations of Critical Area regulations - The County proposes fines up to $500 per day for violations of Critical Area regulations. Additional fines possible within the Buffer include: 1) $1.20 per square foot of the area disturbed, to be assessed at three times that area; and 2) $180 per tree for unauthorized cutting of individual trees in the Buffer.

5. IDA development - The following provision is proposed for residential development in the IDA: "Single family residential lots located in the IDA may be allowed to apply either IDA or LDA site development standards but not a mix of the two."

6. Forest mitigation and fees-in-lieu - New language includes provisions for mitigation of forests or developed woodlands, appropriate types of trees, spacing requirements for planting, bonding, inspections and planting of alternate sites when mitigation is not practical on a development site.

7. Water-dependent facilities - The County will require developers of water-dependent facilities to provide information on existing site conditions and potential impacts to aquatic and terrestrial habitats, as required in the Criteria.

8. Growth Allocation - The County lists minimum requirements for submittal of growth allocation proposals. The most significant requirement is a detailed environmental report.

9. RCA uses - The proposed Table of Uses lists uses permitted by right and by conditional use permit within the various underlying zones in the Critical Area. The County Critical Area Program has been in effect since March, 1990. In that period, only one non-farm project has been proposed in the RCA inconsistent with the Criteria. That proposal was for a community recreation center associated with the Avenmar subdivision. The Commission notified the County that the community center would require growth allocation, due to the intensity of use proposed, and the commercial nature of the center, i.e., community functions, parties, weddings, etc. St. Mary's County submitted a growth allocation amendment for the community center, which the Commission approved.

The County, it its current amendment package, is requesting the Commission to determine specifically which uses in the RCA would require growth allocation. The County prefers such a determination instead of continuing to operate on a case-by-case basis regarding appropriate RCA uses.

The Commission's Program subcommittee will be examining the issue of RCA uses when it concludes its work on growth allocation. During February, Commission staff will meet with several county planners on this issue as part of our ongoing discussions through the Maryland Association of Counties. We will use as the basis for both discussions, the paper prepared by our intern, John Lipman.

In the interim, staff proposes the following, in order to provide St. Mary's County the specific guidance it requests on as many items as possible:

1) notice of acceptance to the County regarding certain proposed RCA uses which the Commission traditionally has permitted. These include, among others, roadside produce stands, home occupations and bed-and-breakfast inns;

2) notice that the Criteria do not permit certain uses to be located in the Critical Area except under extraordinary circumstances. These uses include a) solid or hazardous waste collection or disposal facilities and b) sanitary landfills.

3) notice to the County that: a) the remaining proposed RCA uses are under review by the Commission, b) the Commission will attempt to reach a determination on the items in an expeditious manner, and c) the County should continue to request growth allocation determinations on the remaining items from the Commission on a case-by-case basis.

The County has provided the Commission the authority to consider all provisions of the amendment package as individual amendments.

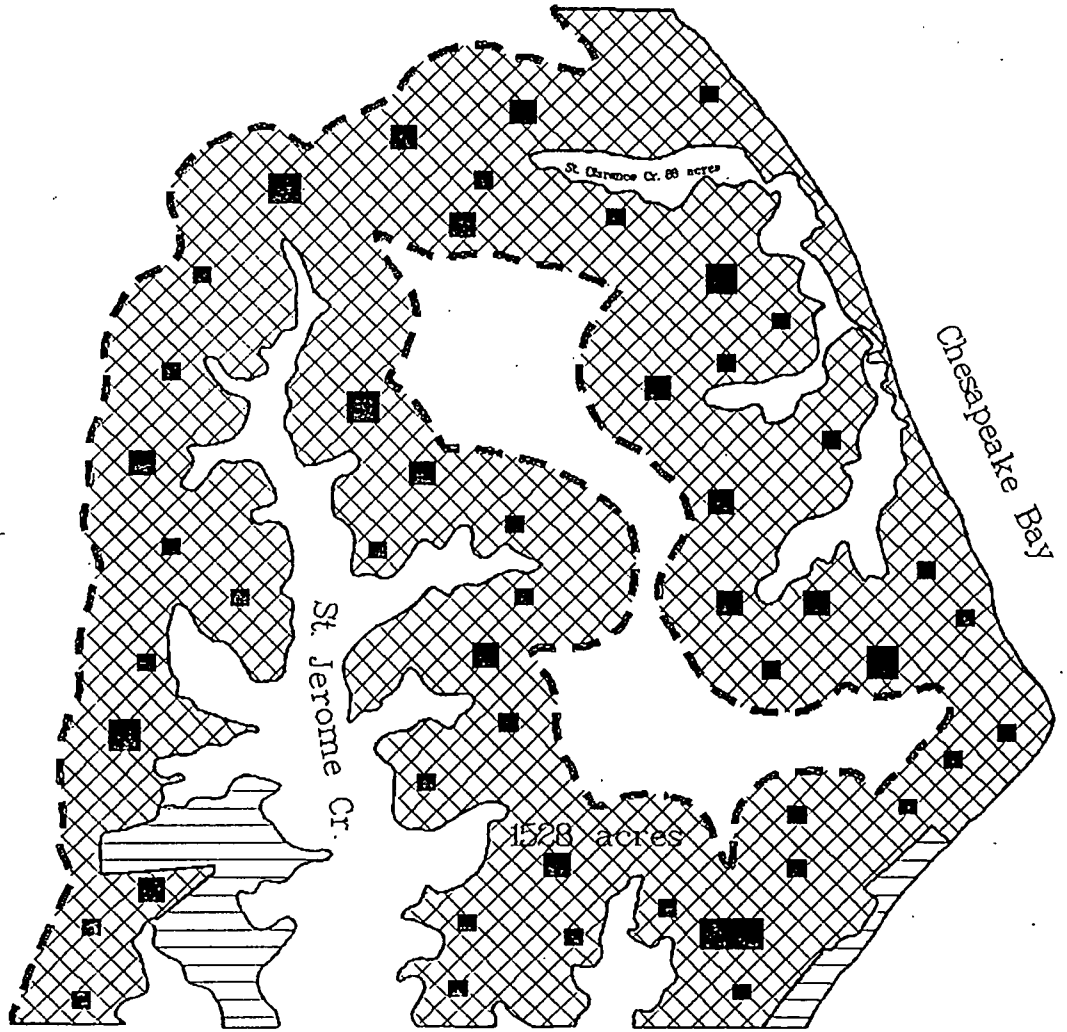
Staff: Ren Serey

Status of Growth Allocation Reserves
Chesapeake Bay Critical Area
(As of January 31, 1993)

PROGRAM	ORIGINAL AMOUNT (ACRES)	AMOUNT USED AS OF 1/93 (ACRES)	AMOUNT REMAINING (ACRES)	PERCENT OF TOTAL REMAINING
Anne Arundel	918	758	160	17%
Baltimore City	22	0	22	100%
Baltimore	462	98	364	79%
Calvert	684	299	385	56%
Caroline	434	12	422	97%
Cecil	958	71	387	93%
Charles	1130	0	1130	100%
Dorchester	2900	1151	1749	60%
Harford	278	141	137	49%
Kent	1399	120	1279	91%
Prince George's	328	150	178	54%
Queen Anne's	1528	153	1375	90%
St. Mary's	1686	44	1642	97%
Somerset	1506	120	1386	92%
Talbot	2554	243	2311	90%
Wicomico	894	0	894	100%
Worcester	474	74	400	84%
Total :	18155	3434	14721	81%

POTENTIAL IMPACTS OF GROWTH ALLOCATION TO THE RCA

St. Mary's County Map 68



LEGEND

- Critical Area line
- RCA
- LDA

- 3 acre sites
- 2 acre sites
- 1 acre sites

SCALE 1in.= 2000ft.

0 1000 2000 3000 4000

1528 acres of RCA land are shown on this map. Growth allocation derived from this acreage is 76.4 acres. 75 acres of growth allocation are shown , illustrating the potential negative impact of scattered growth.

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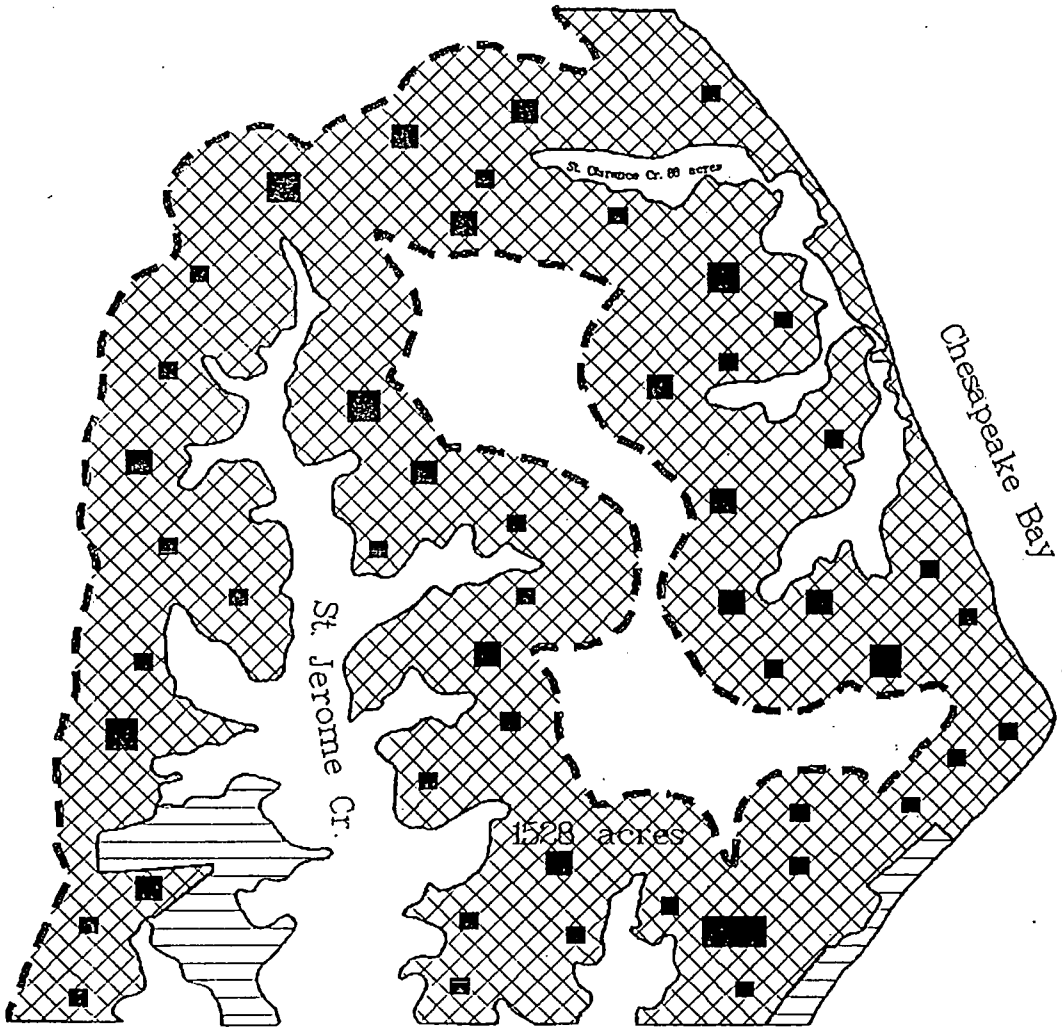

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Peggy

Maryland
Department of Economic & Employment Development

MEMORANDUM

RECEIVED
JAN 18 1993
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

TO: Deputy Secretary Joel G. Lee
Office of the Secretary, DEED

FROM: Robert N. Schoeplein
Office of Research, DEED Bob/ca

DATE: January 12, 1993

SUBJECT: Critical Areas Commission Meeting

Chaos is the order of the day during the first two months of each General Assembly session.

I must protect Wednesday, February 3, for a very important Critical Areas Commission meeting. The Commission wants a commitment at this time for that date, and I have assured them that I will attend.

RNS:ca

cc: Dr. Sarah J. Taylor, Critical Areas Commission