

Chesapeake Bay Critical Area Commission
 Quiet Waters Park
 Hillsmere, Maryland
 January 5, 2000

Y2K
 Ask P. Barker,
 about "his" display
 in H. de G.

Itapes

AGENDA

1:00 p.m. - 1:05 p.m. Approval of Minutes John C. North, II, Chair
 Of December 1, 1999

SPECIAL PRESENTATION

1:05 p.m. - 1:25 p.m. New Stormwater Management Dawnn McCleary, Planner
 Approaches to Urban Runoff Ken Pencyl, MDE

PROGRAM AMENDMENTS and REFINEMENTS

1:25 p.m. - 1:35 p.m. Refinement/Talbot County Lisa Hoerger, Planner
 Bill No. 741 - Reasonable
 Accommodation for Disabled
 Citizens

1:35 p.m. - 1:40 p.m. VOTE Town of Church Creek, Meredith Lathbury, Planner
 Dorchester County,
 Modification of Exclusion

PROJECT EVALUATION

1:40 p.m. - 1:45 p.m. VOTE SHA Revetment Tracy Batchelder, Planner
 St. Georges Island
 St. Mary's County

1:45 p.m. - 1:55 p.m. VOTE Easton Boulevard Meredith Lathbury, Planner
 Enhancement Project
 Baltimore County

1:55p.m. - 2:10 p.m. Old Business John C. North, II, Chairman
 Changing the Critical
 Area Line Based on
 Tidal Wetlands Reevaluation
 Ren Serey, Executive Dir.

New Business

SUBCOMMITTEES

9:30a.m. - 11:30 a.m. Project Evaluation

Members: Bourdon, Cain, Witten, Giese, Goodman, Corkran, Cooksey, Hearn, Graves, Wilde, Olszewski, Jackson, McLean, VanLuven

**Four Seasons at Kent Island,
Queen Anne's Co.
Concept Plan**

Susan Zankel, Planner

**SHA Revetment at St. George's Island,
St. Mary's County**

Tracy Batchelder, Planner

**SHA Eastern Boulevard Enhancement Project,
Baltimore County**

Meredith Lathbury, Planner

**SHA Woodrow Wilson Bridge,
Prince George's County
Briefing**

Lisa Hoerger, Planner

10:30 a.m. - 12:00 p.m. Program Implementation

Members: Foor, Myers, Barker, Williams, Wynkoop, Johnson, Lawrence, Duket, Samorajczyk, Bradley

Somerset County/Noble Farms Growth Allocation

Meredith Lathbury, Planner

**Talbot County Refinement - Bill No. 741
Reasonable Accommodation for
Disabled Citizens**

Lisa Hoerger, Planner

**Town of Church Creek, Dorchester Co., Modification
Of Exclusion**

Meredith Lathbury, Planner

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

**Chesapeake Bay Critical Area Commission
Officer's Club
United States Naval Academy
Annapolis, Maryland 21401
December 1, 1999**

The Chesapeake Bay Critical Area Commission met at the Officer's Club, United States Naval Academy, Annapolis, Maryland. The meeting was called to order by John C. North, II, Chairman, with the following Members in attendance:

Bourdon, Dave, Calvert County	Samorajczyk, Barbara, A.A. Co.
Barker, Philip J., Harford County	Van Luven, Heidi, Md. Dept. Transportation
Corkran, Bill, Talbot County	Johnson, Samuel Q., Wicomico County
Cain, Deborah Boyd, Cecil Co.	Witten, Jack, St. Mary's County
Graves, Charles, Baltimore City	Williams, Roger, Kent County
Wynkoop, Sam, Prince George's Co.	Olszewski, John Anthony, Baltimore County
Wilde, Jinhee, Western Shore MAL	Foor, Dr. James, Queen Anne's Co.
Wenzel, Lauren, DNR	Hearn, J. L. Dept. Environ.
Giese, William, Jr., Dorchester Co.	McLean, James H., DBED
Duket, Larry, Md. Office Planning	Myers, Andrew, Caroline County
Jackson, Joseph, III, Worcester Co.	Goodman, Bob, DHCD
Lawrence, Louise, Md. Dept. Ag.	

The Minutes of November 3, 1999 were approved as read.

Lisa Hoerger, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement a growth allocation request for two parcels which are a part of the National Harbor development project (formerly known as Port America) in Prince George's County on the east shore of the Potomac River. This project is consistent with the County's Critical Area Program and the Critical Area Act and criteria. The growth allocation is being requested to provide continuity with the overall design of this project. Ms. Hoerger described the technical details of the project and the process for deducting growth allocation. There will be no impacts to Habitat Protection Areas. Ms. Hoerger gave the history of the project explaining that the proposal in 1988 was for a mixed use project and that the variances were approved for structures for this project by the County 10 years ago but that it was never constructed due to the economic slowdown in the early 1990's. The project was considered "grandfathered" with respect to the activities in the Buffer because the project was underway when the Critical Area Program was adopted. The Commission approved a growth allocation for this project which changed the designation of 98 acres from LDA to IDA. The project site is now 533.9 acres. This has generated a lot of public comment. Bonnie Bick of Oxon Hill, Maryland and Karen Egloff, Huntingtown, Maryland spoke at the meeting in opposition to this project. The Commission supported the Chairman's determination of Refinement.

Meredith Lathbury, Planner, CBCAC presented for VOTE, the Maryland Department of Natural Resources placement of mini-cabins on sites throughout Gunpowder Falls State Park on Intensely Developed Areas. She described the cabins and locations and said that there were no trees removed or vegetation disturbed and that impervious surface for both cabins totals 300 square feet. Jim McLean moved to approve the mini-cabins project at the Hammerman Area of Gunpowder Falls State Park. The motion was seconded by Mr. Corkran and carried unanimously.

Lisa Hoerger presented for VOTE the proposal by the Department of Transportation, State Highway

Administration to widen MD Route 2 from Virginia Avenue to South Pike Ridge Road in Anne Arundel County. She described the work involved as grading, draining and paving. There will be similar improvements along Mayo Road and Maryland Avenue, Southdown Road, Pike Ridge Road and a service road connecting MD 2 and Maryland Avenue. She said that two storm water management facilities will be constructed and one existing storm water facility will be retrofitted. New water lines and sanitary lines will be installed. Approximately 6.57 acres are in the Critical Area of Intense Development. Best Management Practices will be used. She described the pollution reduction methods. SHA has agreed to mitigate all clearing associated with this project. Bob Goodman moved to approve the widening of MD 2 with four conditions: 1) Recommend approval as the applicant is providing quality measures for the first inch of runoff for the impervious areas based on the site plan submitted; 2) If the applicant fails to receive permits from the Maryland Department of the Environment and/or the Army Corps of Engineers, or if as a result of obtaining those permits, the design changes, the applicant shall resubmit the revised plan to the Commission for approval; 3) The applicant will work with Commission staff regarding mitigation for all clearing and/or impacts that will result both inside and outside the Buffer, and will coordinate follow-up site visits to monitor the survivability of the planting areas; and, 4) SHA will bank 1.32 acres of forest mitigation and identify another site within the Critical Area for planting within one year. The site will be planted once funding has been allocated. A status report on where the mitigation will occur and on funding availability will be given to the Commission in one year. There will be no in stream work. The motion was seconded by Jim McLean and carried unanimously.

Commission Counsel Marianne Mason, Esquire, presented information on a merger issue (wherein a structure crosses lot lines) decision on old- grandfathered non-conforming lots. She referred to a recently decided case in the Maryland Court of Appeals, Friends of the Ridge vs. Baltimore Gas and Electric unrelated to the Critical Area. The case involved a local zoning case regarding two adjoining lots contiguous to a substation wherein BGE wanted to expand and sought a variance. This was opposed by a citizens group but BGE received the variance from the County Board of Appeals. An environmental group appealed and BGE won at the Board of Appeals, Circuit Court and Court of Special Appeals. When it came to Court of Appeals, the Court declared that BGE did not need a variance at all because a setback variance to a lot line is not required as these parcels have been merged by "*Operation of Law*" into a single parcel because BGE owns the parcels and desires to use them in service of one facility. The *Doctrine of Merger* had not been expressly adopted in this state and Marylanders did not know about it. However, the Court of Appeals has said that we hold that the *Doctrine of Merger* exists in the State of Maryland. The *Doctrine of Merger* prohibits the use of individual substandard lots if contiguous parcels have been at any time combined in the service of one structure or one building. The Court also says that the platted lot remains for title purposes, but by *Operation of Law*, a single lot emerges for zoning purposes. The outside boundary lines are not affected and there is no need for official subdivision or conveyancing. The owner needs to express an intent to merge the lots, such as building across lot lines, and that is all that is needed for the lots to merge. However, an owner cannot at any later time reestablish a non-conforming lot.

Lisa Hoerger presented for Concurrence with the Chairman's determination of Refinement, the Town of St. Michaels annexation of 1.715 acres of land which lie in the Critical Area. The portion of the properties inside the Town have a Critical Area designation of IDA and the portions of the properties in the County had a Critical Area designation of LDA. The Critical Area designation was not reconciled on the properties at the time of annexation and the Town will be pursuing a change to the Critical Area designation of those portions of the properties that are LDA to IDA. The Commission supported the Chairman's determination.

Ren Serey, Executive Director, CBCAC presented for Concurrence with the Chairman's determination of Refinement the amended process for consideration of requests for growth allocation for the Town of St. Michaels. The process originally provided that the Critical Area Commission would receive growth allocation requests after a decision by the Town Planning Commission before a decision by the Town Commissioners and

the change provides that the Commission must receive program amendments and refinements only from the local body authorized to make such changes. That local legislative body for St. Michaels is the Town Commissioners. The Commission supported the Chairman's determination of Refinement.

LeeAnne Chandler, Planner, presented for Concurrence with the Chairman's determination of Refinement, Wicomico County's request for growth allocation for 24.59 acres with approximately 25 lots in the proposed residential subdivision, Cooper Landing, in the Critical Area portion of the site. The use of this growth allocation will change the Critical Area designation of Tax Map 46, parcel 21 from RCA to LDA. Ms. Chandler explained the technical aspects of the request and said that the project will not be forwarded to the Commission for subdivision review after the growth allocation is approved as the County's Planning Commission has already reviewed and approved this project. With the exception of mitigation, staff comments and questions on this subdivision have already been addressed by the County. The staff recommendation is for approval of the Growth Allocation with the condition that the Critical Area Certificate of Compliance will not be issued to the developer until a copy of the final plat for the subdivision and a copy of the mitigation plan is provided to the Commission. The plat must include notes clearly stating that forest mitigation is required at three times the area cleared. The Commission supported the Chairman's determination of Refinement with the understanding that this is a site-specific reference.

Roby Hurley, Circuit Rider, CBCAC presented for Concurrence with the Chairman's determination of Refinement the restoration of growth allocation resulting from a mapping change in the City of Cambridge, Dorchester County. He explained that the request results from an approved amendment that changed the Critical Area line on property previously in the Critical Area, making that property now outside the Critical Area. Growth allocation had been awarded for development of a Wal-Mart for 21.15 acres. Due to the approved change to the Critical Area line, the actual amount of growth allocation needed can be reduced to 1.37 acres. The Mayor and Commissioners of the City of Cambridge voted to restore this growth allocation previously to the City's growth allocation reserve. The Commission supported the Chairman's determination of Refinement.

Tracy Batchelder, Planner, CBCAC provided a draft copy of the Forest Mitigation Guidance Paper to the Commission which she has worked on for several months. She said that this paper came about for several reasons. Some local jurisdictions find that the written requirements are unclear and consequently are being applied and interpreted inconsistently; actual mitigation is inadequate, unenforced or not maintained; and difficulty in carrying out the mitigation on small sites. She said that this paper is meant to provide guidance to the local jurisdictions on the forest mitigation requirements in the Critical Area regulations and to discuss some of the challenges they are facing in implementing the requirements.

New Business

Lauren Wenzel told the Commission that the Chesapeake Executive Council, the governing body of the regional Chesapeake Bay Program, will be meeting on December 7th and 8th and will review policy and set the agenda for the program for the year. This year the program has been developing a renewed Chesapeake Bay Agreement. The first Agreement, a very brief, one statement document, was written in 1983. In 1987 it became somewhat more detailed and outlined goals and a commitment to nutrient reduction. This Agreement is considered a national model on how to restore an estuary. The renewed one will contain very specific goals and objectives and will set the tone over the coming several decades for the restoration of watersheds throughout the entire Chesapeake Bay watershed. She said that there is a lot of public involvement in developing it and the public is invited to attend this meeting. It is hoped that a Draft Agreement will be released after this meeting.

Old Business

Dr. Foor asked about the consequences of the Commission's requiring a change to the Wicomico County program concerning the Site-specific Buffer Variance provision. Marianne Mason stated that because of the language in the Circuit Court's order, the best course of action for the Commission was to dismiss the appeal. Ren Serey said that because the County had removed the Site-specific language as the Commission directed, dismissing the appeal had no adverse consequence to the Commission. Ms. Mason agreed.

Chairman North told the Commission that the Annapolis Commission offices will be relocated to the old Pepsi Cola Bottling Plant on West Street which is being renovated.

There being no further business, the meeting was adjourned.

Minutes submitted by: Peggy Mickler
Commission Coordinator

Friday Dec 10, 1999

Chopped Tree May Have Held An Eagle's Nest

*U.S. Officials Investigating;
Resort Developer Apologizes*

By JACKIE SPINNER
Washington Post Staff Writer

An employee of the company developing the National Harbor resort in Prince George's County is under investigation for cutting down a tree on the property that may have held a bald eagle's nest.

The U.S. Fish and Wildlife Service is conducting the investigation and has referred the case to the U.S. attorney's office in Baltimore, federal authorities said.

It is a federal crime under the Bald and Golden Eagle Protection Act to disturb the habitat of a bald eagle. Bald eagles also are protected under the Endangered Species Act. Violators can be fined \$5,000 or sentenced to one year in prison.

No criminal charges have been filed against the employee of the Northern Virginia-based Peterson Cos. The employee's name is being withheld by investigators.

Developer Milton V. Peterson, the company owner, expressed regret over the incident yesterday in a sometimes tearful interview and said he would take full responsibility for the actions of his employee.

"I sincerely apologize to the community at large and to the thousands of people who have supported us to

See EAGLE, B5, Col. 1

M A R Y L A N D

Tree May Have Been Bald Eagle's Home

EAGLE, From B1

bring our vision of National Harbor to Prince George's County," he said. "It is a very unfortunate mistake and error in construction."

No birds appeared to inhabit the nest at the time the tree was cut down.

The fallen nest was one of at least two located in the National Harbor project area in Oxon Hill along the Potomac River. A much larger nest that biologists have confirmed belongs to a pair of bald eagles is visible to motorists from the Capital Beltway near the Woodrow Wilson Bridge.

Chris Wagnon, natural resources chief for the county, said it is common for bald eagles to build several nests in an area as a way to trick predators with a "dummy nest."

"There may be a second nest, one that we're not aware of," he

said.

Environmentalists and opponents of the resort used the presence of the eagles last year to rally against the development, which has since been approved. They nicknamed the man-made inlet at the site "Eagle Cove" as a way to mobilize resistance.

"They couldn't care less about the environment as a whole, and the eagles are a perfect symbol why the area should be cared for as the natural habitat that it is," said Helen O'Leary, president of the Indian Head Highway Area Action Council, an opposition group.

The developer has permission to grade the land in preparation for construction of the giant entertainment complex. Peterson said his employee was clearing underbrush two weeks ago and accidentally cut down two trees, one containing a nest.

A WTTG-Channel 5 news heli-

copter crew videotaped the fallen nest after previously videotaping it in the tree.

Peterson defended his company's environmental record and said he is "optimistic that this unfortunate incident shall be resolved so we may proceed with our plans."

Last spring, when the other nest was spotted, Peterson's company agreed to move a construction access road so the eagles would not be disturbed.

Nathaniel K. Tutt Jr., president of the South County Economic Development Association, said he will continue to support Peterson because he believes the development is good for the county.

"The environmentalists will look for anything they can find as a way to derail the project," he said. "If Peterson accidentally cut a tree down, I know everyone, including Peterson, would be very sorry this happened."



THE MARYLAND STORMWATER PROGRAM



Maryland's Current Stormwater Management Program:

- Was implemented in 1984
- Prevailing attitude was that if the flooding from new development was controlled, quality of receiving streams could be sustained
- New development required to reduce post construction flows to pre construction for the two and ten year design events (flood control)
- Although water quality management was required, specific criteria and guidance were absent
- ½ inch over impervious area "first flush" rule generally applied across Maryland
- BMP preference list

Maryland's Proposed Stormwater Management Program:

- 1993 Goals:
 - Specific guidance for water quality management
 - Manage more frequent storm events for channel erosion control
 - Limit number of stormwater management waivers
 - Provide incentives for more environmentally friendly design
- General agreement that program needed revision, but
- General disagreement on direction and specific changes
- Need to separate policy from technical design requirements – COMAR vs. Design Manual

Stormwater Design Manual

- Developed w/three distinct goals:
 - Protect waters of the State from adverse impacts of urban stormwater runoff,
 - Provide design guidance on the most effective structural and non structural best management practices (BMPs) for development sites, and
 - Improve the quality of BMPs constructed in the State, specifically w/respect to performance, longevity, safety, maintenance, community acceptance, and environmental benefit.
- Divided into two volumes:
 - Volume I contains basic technical information for stormwater design in Maryland.
 - Volume II contains appendices with supporting information such as landscaping, construction specifications, design examples and miscellaneous tools for BMP design.
- Unified Sizing Criteria (Chapter 2): Five criteria that are designed to meet specific pollutant removal goals, maintain groundwater recharge, reduce channel erosion, prevent overbank flooding, and pass extreme flood events.
- Design Criteria for BMP's (Chapter 3): Performance criteria for five groups of structural BMPs addressing general feasibility, conveyance, pretreatment needs, geometry, environmental and landscaping requirements, and maintenance concerns.
- BMP Selection and Location (Chapter 4): Guidance for selecting BMPs based on watershed, terrain, physical feasibility, community, environmental, location, and permitting factors as well as stormwater treatment suitability.
- Innovative Site Planning (Chapter 5): A series of non structural site design techniques that reduce the generation of runoff from a site thereby reducing the size and cost of structural BMPs.

Unified Sizing Criteria

- **Water Quality Volume (WQ_v)**
 - Storage needed to capture and treat 90% of the average annual stormwater runoff.
 - Equivalent to 1" (0.9" Frederick County and west) of rainfall multiplied by a volumetric runoff coefficient and site area.
 - A minimum of 0.2 inches per acre shall be used for sites with imperviousness of 15% or less.
 - 1" is derived from point of inflection on the rainfall frequency curve.
 - WQ_v is directly related to site imperviousness.
 - WQ_v is treated using BMPs capable of meeting a pollutant removal rate of 80% for total suspended solids (TSS) and 40% for total phosphorus (TP).
 - WQ_v may be reduced using environmentally sensitive site design techniques (Chapter 5).

- **Groundwater Recharge Volume (Re_v)**
 - Goal is to mimic existing groundwater recharge rates thereby maintaining hydrology of streams and wetlands during dry weather.
 - Based on the average annual recharge rates for USDA hydrologic soils groups (HSGs) present on sites.
 - Re_v is directly related to site imperviousness.
 - Re_v is inclusive with the water quality volume, WQ_v .
 - Local review authority may alter Re_v requirements for unsuitable soils (e.g., marine clays), karst topography, or urban redevelopment areas.

- **Channel Protection Volume (Cp_v)**
 - Goal is to protect channels from excessive erosion caused by increased flow at or near the bankfull level.
 - Provided by 24 (12 in Use III/IV) hour extended detention of the post developed one year design storm (MDE, 1987).
 - Providing Cp_v does not meet WQ_v requirements.

- **Overbank Flood Protection Volume (Qp_x)**
 - Goal is to protect infrastructure from flooding caused by increases in peak discharges due to development.
 - MDE may allow ten year peak management (Q_{p10}) to be waived by local jurisdictions if development in the floodplain is restricted and infrastructure design is based on Ultimate Conditions.
 - Two year peak management (Q_{p2}) is required on the Eastern Shore.

- **Extreme Flood Protection (Q_f)**
 - Goal is to protect infrastructure from extreme flood events caused by increases in peak discharges due to development.
 - Flood plains provide natural flood storage and attenuation of flows.
 - All new development in the State is highly restricted in flood plains
 - Past development has occurred in flood plains and may warrant protection.

- **Environmental Incentives and Credits**

To promote greater use, a series of credits and incentives are provided for use of the following non-structural practices:

- *Natural Area Conservation*
- *Disconnection of Rooftop Runoff*
- *Disconnection of Non-Rooftop Runoff*
- *Sheet Flow Discharge to Stream Buffers*
- *Environmentally Sensitive Development*
- *Open Section Roads*
- *Impervious Cover Reduction*

- **Proposed Regulation Changes**

- *Incorporating Design Manual by Reference*
- *Addressing Re-development*
 - ◆ Reduce existing site impervious area by at least 20%, or
 - ◆ Manage the water quality volume for the 20%, or
 - ◆ Select a practical alternative where conditions on site prevent stormwater management:
 - *Fees Paid*
 - *Off Site BMP Implementation*
 - *Watershed or Stream Restoration*
 - *Retrofitting and existing stormwater BMP*
 - ◆ **Watershed Management Plans Implementation**

- **Proposed Schedule:**

- Summer 2000 – Complete Formal Adoption Process for Regulations and Request Revised Ordinances from Local Jurisdictions. Implementation of new urban runoff management approach by end of year 2000.

**The latest version of Maryland's Stormwater Design Manual and Proposed Regulation Changes is available on MDE's WEB Page.
(<http://www.mde.state.md.us>)**

Dr. Fon: much better - clearer

Chesapeake Bay Critical Area Commission

Concurrence

**STAFF REPORT
January 5, 2000**

APPLICANT: Talbot County

PROPOSAL: Refinement - Talbot County Council Bill # 741, Provide for Reasonable Accommodation for Disabled Citizens

COMMISSION ACTION: Concurrence

STAFF: Lisa Hoerger

**APPLICABLE LAW/
REGULATIONS:** COMAR §8-1809 (p)

DISCUSSION:

The Talbot County Council recently passed Bill # 741 (attached) amending section 19.14(b)(7) of the Talbot County Zoning Ordinance. Bill #741 allows the Board of Appeals to make reasonable accommodation for disabled citizens, to establish criteria for doing so, and for limiting the environmental impact of any such accommodation in the Critical Area. Last March, Bill # 701 was proposed to the Commission as an amendment to the Talbot County Critical Area Program. However, the Commission did not approve the Bill since it appeared to require Talbot County to issue approvals that were not consistent with the Critical Area Criteria. Concerns with Bill # 701 included lack of definitions, general clarity, and compliance with the Criteria.

Bill #741 replaces Bill # 701. Bill #741 requires the applicant to meet the definition of a disability as defined in the American with Disabilities Act (ADA). It also provides standards that an applicant must meet in order to obtain reasonable accommodation. The Board of Appeals must take into consideration the purpose of the request and the size, location and nature of the accommodation proposed. Also, the Board must ensure that the accommodation is environmentally neutral and that only the minimum environmental change to address the needs of the disability may be permitted. The Board may condition its approval requiring the accommodation be removed when it is no longer needed.

Since this text change will have no effect on the use of land or water in the Critical Area, and it otherwise consistent with the Talbot County Critical Area Program, Chairman North has determined this to be a refinement and seeks your concurrence.

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

1999 Legislative Session, Legislative Day No. November 9, 1999

Bill No. 741

Introduced by: County Council

A BILL TO REPEAL AND RE-ENACT SECTION 19.14(b)(7), TITLE 19. ZONING, OF THE TALBOT COUNTY CODE, WITH AMENDMENTS TO ALLOW THE BOARD OF APPEALS TO MAKE REASONABLE ACCOMMODATION FOR DISABLED CITIZENS, TO ESTABLISH CRITERIA FOR DOING SO, AND FOR LIMITING THE ENVIRONMENTAL IMPACT OF ANY SUCH ACCOMMODATION IN THE CRITICAL AREA.

By the Council November 9, 1999

Introduced, read first time, ordered posted and public hearing scheduled on Tuesday, November 23, 1999, at 2:15 p.m. in the Council Hearing Room, Courthouse, Easton, Maryland.

By Order Jessica Mom3
Secretary

A BILL TO REPEAL AND RE-ENACT SECTION 19.14(b)(7), TITLE 19. ZONING, OF THE TALBOT COUNTY CODE, WITH AMENDMENTS TO ALLOW THE BOARD OF APPEALS TO MAKE REASONABLE ACCOMMODATION FOR DISABLED CITIZENS, TO ESTABLISH CRITERIA FOR DOING SO, AND FOR LIMITING THE ENVIRONMENTAL IMPACT OF ANY SUCH ACCOMMODATION IN THE CRITICAL AREA.

SECTION ONE: BE IT ENACTED by the County Council of Talbot County that Section 19.14(b)(7), Title 19. Zoning, of the Talbot County Code entitled "Reasonable Accommodation" shall be and is hereby repealed in its entirety and re-enacted as set forth herein.

(7) Reasonable Accommodation for the Needs of Disabled Citizens

(i) Purpose. Notwithstanding any other provision of this Ordinance, the Board of Appeals may make reasonable accommodations for the benefit of disabled citizens in the consideration of any final order or decision of the Planning Officer or any administrative appeal, special exception or variance. Reasonable accommodation for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in paragraph (ii) of this Section. Reasonable accommodations may only be approved following a review and recommendation by the Planning Commission, and final approval and authorization after a public hearing before the Board of Appeals.

(ii) An applicant/appellant shall have the burden of demonstrating by a preponderance of the evidence that:

[a] The existence of a disability within the meaning of the Americans with Disabilities Act;

[b] Literal enforcement of the statute, ordinance, regulation, or other requirement would (1) result in discrimination by virtue of such disability or (2) deprive the applicant/appellant of the reasonable use and enjoyment of the property;

[c] A reasonable accommodation would reduce or eliminate the discriminatory effect of the statute, ordinance, regulation, or other requirement or restore the applicant/appellant's reasonable use or enjoyment of the property;

[d] The accommodation requested will not substantially impair the purpose, intent, or effect of the statute, ordinance, regulation or other requirement as applied to the property;

If the property is located in the critical area, the accommodation would:

[e] Be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or

- [f] Allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.
- (iii) The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to:
- [a] The purpose, intent, or effect of any applicable statute, regulation, or ordinance;
 - [b] The size, location, nature, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
- (iv) Upon termination of the need for any accommodation, the Board of Appeals may require, as a condition of approval, that the property be restored to comply with all applicable statutes, ordinances, regulations, or other requirements.
- (v) Hearing Notice. Public notice of all applications and hearings shall be given in accordance with Section 19.14(h).
- (vi) Site Visit. A majority of the members of the Board of Appeals shall be required to visit the site before conducting the public hearing. However, the decision shall be based upon the evidence of record.
- (vii) Recommendation of the Planning Commission. Before making a decision on any application or appeal, the Board of Appeals shall obtain the recommendation of the Planning Commission. The Planning Commission's recommendation shall address the criteria in paragraph (ii) in this Section. The recommendation shall be considered by the Board of Appeals, shall become part of the record, but shall not be binding on the Board of Appeals. The Board may request from the Planning Commission such technical service, data, or factual information as may further assist the Board of Appeals in reaching a decision.
- (viii) New application after denial. Following the denial of a request for a reasonable accommodation, no application for the same use on the same premises shall be filed within one (1) year from the date of denial, except on grounds of newly discovered evidence.

SECTION TWO: BE IT FURTHER ENACTED by the County Council of Talbot County that Section 19.14(b) Power of Board of Appeals, Title 19. Zoning, of the Talbot County Code, is amended by changing subsection (6) to subsection (7) and subsection (7) to subsection (6).

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

Mr. For - new A + B - motion
McLean - sec
C/N

Chesapeake Bay Critical Area Commission

STAFF REPORT

January 5, 1999

APPLICANT: Town of Church Creek
PROPOSAL: Modification of Exclusion Resolution
JURISDICTION: Dorchester County
COMMISSION ACTION: VOTE
STAFF RECOMMENDATION: Approval
STAFF: Meredith Lathbury
**APPLICABLE LAW/
REGULATIONS:** *Natural Resources Article §8-1807*

DISCUSSION:

The Town of Church Creek is one of four small towns in Dorchester County that sought exclusion from the Critical Area. Church Creek passed a resolution on August 1, 1988 that was accepted by the Commission on August 17, 1988 (see attached Resolution 1). This resolution says that the Town would comply with Dorchester County's Critical Area Program insofar as possible. The Commission agreed that Church Creek along with three other towns in Dorchester County should be allowed to pass this resolution. Each of these towns has a population of around 100 and only five developable lots exist between the four towns.

It has come to the attention of the Town of Church Creek and Dorchester County that it is unclear how the Town can comply with Dorchester County's Critical Area Program under the current resolution. The resolution says that the Town should comply with Dorchester County's program "insofar as possible" with no further guidance about Critical Area designations or project review. The County's maps show the parcels in the Town designated as Resource Conservation Area (RCA), even though there never was a formal determination of the Critical Area designation.

On December 13, 1999, the Town of Church Creek passed a resolution that provides clarification on several issues (see attached Resolution 2). The resolution designates all parcels in the town and all parcels to be annexed in the future as a Limited Development Area (LDA). The Maryland Office of Planning Circuit Rider will review development and redevelopment plans.

Forest clearing must comply with Dorchester County's forest replacement requirements. Parcels along the shoreline are designated Buffer Exemption Areas. Impervious surfaces are limited to 15% except as provided in Natural Resources Article §8-1808.3. Mitigation must comply with the chart provided (see attached Resolution 2).

Resolution #2

TOWN OF CHURCH CREEK

Include in minutes

RESOLUTION

WHEREAS, the Chesapeake Bay Critical Area Commission ("Commission") approved the exclusion of the Town of Church Creek in August of 1988, this Resolution refines the previous Resolution passed on August 1, 1988 in which the Town requested to be excluded from the Critical Area and agreed to comply with Dorchester County's Critical Area Program insofar as possible.

WHEREAS, the Town now wishes to adopt the following Critical Area requirements for any proposal for development or redevelopment in the Town, and any parcels annexed to the Town in the future that are within the Critical Area in order to satisfy the requirement that the Town comply with Dorchester County's Critical Area Program insofar as possible.

THEREFORE BE IT RESOLVED, THAT THE TOWN OF CHURCH CREEK does hereby adopt the following requirements which shall apply to all development or redevelopment within the Chesapeake Bay Critical Area.

CRITICAL AREA REQUIREMENTS FOR THE TOWN OF CHURCH CREEK

As per
Change
to A +
"Road"
classified

- A. The portion of the Town within the Critical Area, and any parcels in the Critical Area that are annexed to the Town in the future, shall be designated Limited Development Area (LDA).
- B. The Maryland Office of Planning Circuit Rider or other designee will review development and redevelopment proposals in the Critical Area.
- C. Forest clearing must comply with Dorchester County's requirement that forest and woodlands be replaced on an equal basis for clearing up to twenty percent (20%) of the parcel, and at a 1:1.5 ratio for clearing between twenty percent (20%) and thirty percent (30%); for forest clearing in excess of thirty percent (30%) on grandfathered parcels, clearing must comply with 155-47 (G)(3) of the Dorchester County Zoning Ordinance; applicants will be advised to contact the US Fish and Wildlife Service and MD Department of Natural Resources to see whether federal or state permits are required with respect to rare, threatened, or endangered species.
- D. Parcels along the shoreline within 100 feet of tidal waters, tidal wetlands and tributary streams are hereby designated Buffer Exemption Areas and new development activities, including streams, roads, septic systems, etc., shall minimize the shoreward extent of intrusion into the Buffer where possible. Mitigation shall be provided at twice the area of the impervious surface in the Buffer. (see table under F below).
- E. Man-made impervious surfaces are limited to 15 percent of a parcel or lot, except as provided below for grandfathered parcels:

LOT/PARCEL SIZE in square feet	IMPERVIOUS SURFACE LIMIT
0 - 8,000	25% of Parcel + 500 s.f.
8,001 - 21,780	31.25% of Parcel with mitigation as described in "F" below
21,781 - 36,300	5,445 s.f.
36,301 - 43,560	15% of Parcel

- F. Mitigation requirements are set forth below:
 *All trees must be at least three (3) feet in height

<u>Impervious Disturbance</u>		<u>Planting Requirement</u>
0 - 300 sq. ft.	=	1 tree
301 - 600 sq. ft.	=	2 trees
601 - 900 sq. ft.	=	3 trees
901 - 1200 sq. ft.	=	4 trees
1201 - 1500 sq. ft.	=	5 trees
over 1500		1 tree per 300 sq. ft.

- G. Clearing or grading activities disturbing over 5,000 sq. ft. of land area or disturbance or more than 100 cubic yards of earth requires a Grading Permit from the Dorchester County Highway Department.

Approved this 13th day of December, 1999

Attest:

June McWelleans Clerk

Town of Chatham

Robert L. Herbert
 Mayor

Mark McWelleans - Commissioner

Sharon Pfeffer - Commissioner

Karl Kelly - Commissioner

COMMISSIONERS OF CHURCH CREEK

OFFICE OF CLERK AND TREASURER

CHURCH CREEK, MD.

RESOLUTION

WHEREAS, the Town of Church Creek has a total population of 124, has no planning and zoning functions, has no central water or sewer systems, and has faced little or no growth or development for many years; and

WHEREAS, the Town of Church Creek does apply to the Chesapeake Bay Critical Area Commission for the exclusion of the Town from Critical Area coverage; and

WHEREAS, the Town currently has no planning or zoning of its own, or other local laws and restrictions which might serve to protect water quality or conserve fish, wildlife or plant habitats from adverse impacts or development in the excluded area:

THEREFORE, BE IT RESOLVED, that the Town of Church Creek, upon any proposal for development, will seek to make such development comply insofar as possible with the objectives, policies, and requirements of the Dorchester County Critical Area Program as approved or promulgated by the Chesapeake Bay Critical Area Commission and if any such annexation occurs such property shall conform to the Dorchester County Critical Area Program.

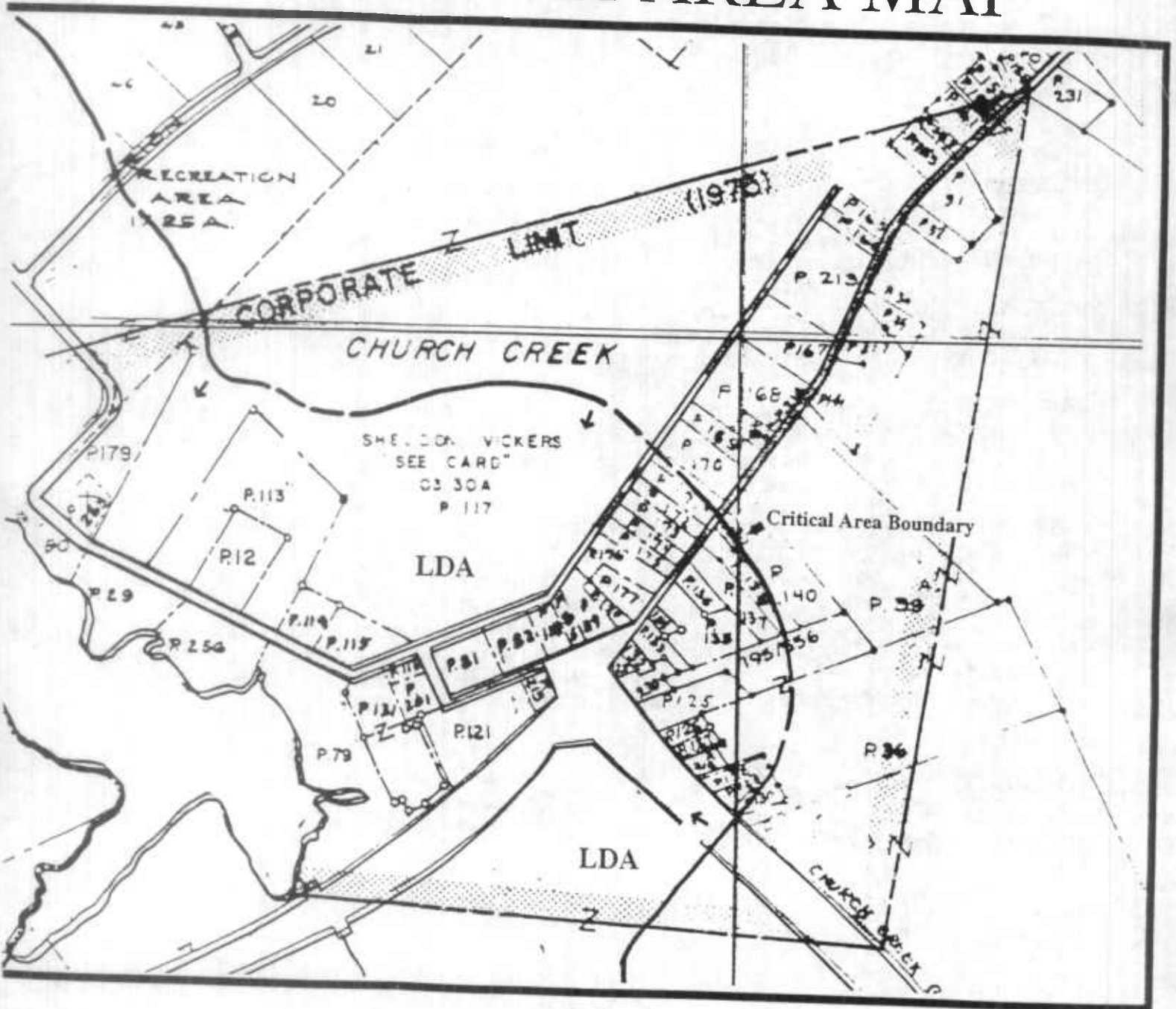
WITNESS:

Ronnie Reynolds
Ronnie Reynolds, Secretary
Town of Church Creek

Gerald J. Grindle
Gerald J. Grindle, Mayor
Town of Church Creek

1st August 1988

CHURCH CREEK CRITICAL AREA MAP



Attest : Mayor Robert Herbert

Date

Scale 1" = 600 feet

Robert L Herbert 12/13/99

Adopted this 13 day of December, 1999.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT

January 5, 2000

APPLICANT: Maryland Department of Transportation
State Highway Administration

PROPOSAL: Shore Erosion Control at St. George Island

JURISDICTION: St. Mary's County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Tracy Batchelder

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.05 State Agency Actions Resulting in
Development on State-Owned Lands

DISCUSSION:

The State Highway Administration (SHA) is proposing to construct at St. George Island approximately 120 linear feet of stone revetment within a dredged area and within a maximum of 42 feet channelward of the mean high water line. The project is needed to stop the severe erosion of the shoreline which is threatening the integrity of the MD 249 roadway. There is extensive revetment both to the north and south of the project site.

The site will be accessed from the southern end of the project area off of MD 249. Excavation, grading and fill will be required to complete the proposed project. SHA will dig a trench and put down filter cloth before placing the stone along the shoreline. The estimated volume of dredge material is 190 cubic yards. The area within the limits of disturbance is sparsely covered with grass and a pine tree. Removal of the tree will be mitigated for on-site and in the Buffer.

There are no tidal wetland impacts associated with the project. In addition, there are no anadromous fish spawning areas, federal or state rare, threatened or endangered plant or animal species in the vicinity of the site. A tentative construction date has been set for October of 2000.