

Judge John C. North, II
Chairman



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Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

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Document ID Number: 2091
AR: Chalk Point Oil Spill
Title: Restoration Plan letter from Chesapeake Bay
Critical Area Commission [CBCAC]

July 11, 2002

Mr. Jim Hoff
NOAA Damage Assessment Center
1305 East-West Highway, Bldg. 4
Silver Spring, Maryland 20910

Re: Restoration Plan and Environmental Assessment for the April 7, 2000 Oil Spill at
Chalk Point on the Patuxent River, Maryland

Dear Mr. Hoff:

I received the above-referenced document last week for review and comment. Therefore, at this time I can provide you with abbreviated comments regarding the proposed preferred restoration alternatives identified in the document.

Our office is aware of several of the alternatives and our staff has visited certain sites. Although we have no objection to the proposed restoration projects, certain projects that are considered development activities will require formal approval by the Critical Area Commission. The best way to ensure consistency of the proposals with the Critical Area law and regulations is to provide notice to the Commission of all selected alternatives.

It appears that the Commission could approve the preferred alternatives that involve development activities provided impacts are minimized to Habitat Protection Areas (HPAs) identified by the Code of Maryland Regulations (COMR) at 27.01.09. Those HPAs include the following areas: the 100-foot Buffer measured from the edge of tidal waters, tributary streams and tidal wetlands; threatened and endangered species and species in need of conservation; plant and wildlife habitats (colonial waterbird nesting sites, historic waterfowl staging and concentration areas, riparian forests, Forest Interior Dwelling Bird habitats); and anadromous fish propagation waters.

The following comments should be taken into consideration when planning the individual projects.

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Creating Tidal Marsh and Enhancing Shoreline Beach

This office has some experience working with the State Highway Administration on creating tidal marsh from uplands. Please be aware that when new tidal marsh is created, the 100-foot Critical Area Buffer is adjusted accordingly. In these situations, the Buffer is measured from the landward edge of the new tidal marsh, and thus extends farther than it did before the marsh was created. Note also that the Commission generally does not support excavation of a fully forested Buffer for marsh creation. Figure 2 on page 41, however, appears to indicate that the wetland project would require excavation of an area that is primarily agricultural, and likely does not have a fully forested Buffer.

The shoreline beach enhancement proposed as part of the tidal restoration project appears to meet the spirit and intent of the Critical Area program in Maryland.

Acquiring and Restoring Ruddy Duck Nesting Habitat

We have no comment on this alternative because the restoration activity would not result in physical disturbance to the Critical Area.

Creating Oyster Reef Sanctuary

This project meets the spirit and intent of the Critical Area program in Maryland.

Improving Recreation Opportunities

The Critical Area regulations allow public access to the Chesapeake Bay and its tidal tributaries. Therefore, all of the preferred alternatives are generally permitted; however, HPAs need to be considered when planning these projects. The primary concern in most of these projects is the disturbance to the 100-foot Buffer. Certain types of water-dependent activities are permitted in the Buffer, including boat ramps and perpendicular pedestrian access. Activities that are not water-dependent should be located outside the Buffer, including structures, roads that do not provide access to the water, impervious surfaces, sanitary facilities, etc. We may need to review other activities in more detail in order to determine their best location and appropriateness in the Buffer.

Thank you for the opportunity to comment. Again, the comments above are general; we will review the individual projects for compliance with Maryland's Critical Area program

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when the appropriate agencies submit them to the Commission. If you have any questions, or if I can provide you with additional assistance, please do not hesitate to telephone me at (410) 260-3478.

Sincerely,



Lisa A. Hoerger
Natural Resources Planner

cc: Ms. Carolyn V. Watson, Assistant Secretary, DNR, Trustee
Mr. Samuel Wynkoop, Prince George's County, DER
Ms. Sherry Conway-Appel, Prince George's County, DER
Mr. Robert Summers, MDE, Trustee
Ms. Beth McGee, USFWS, Trustee