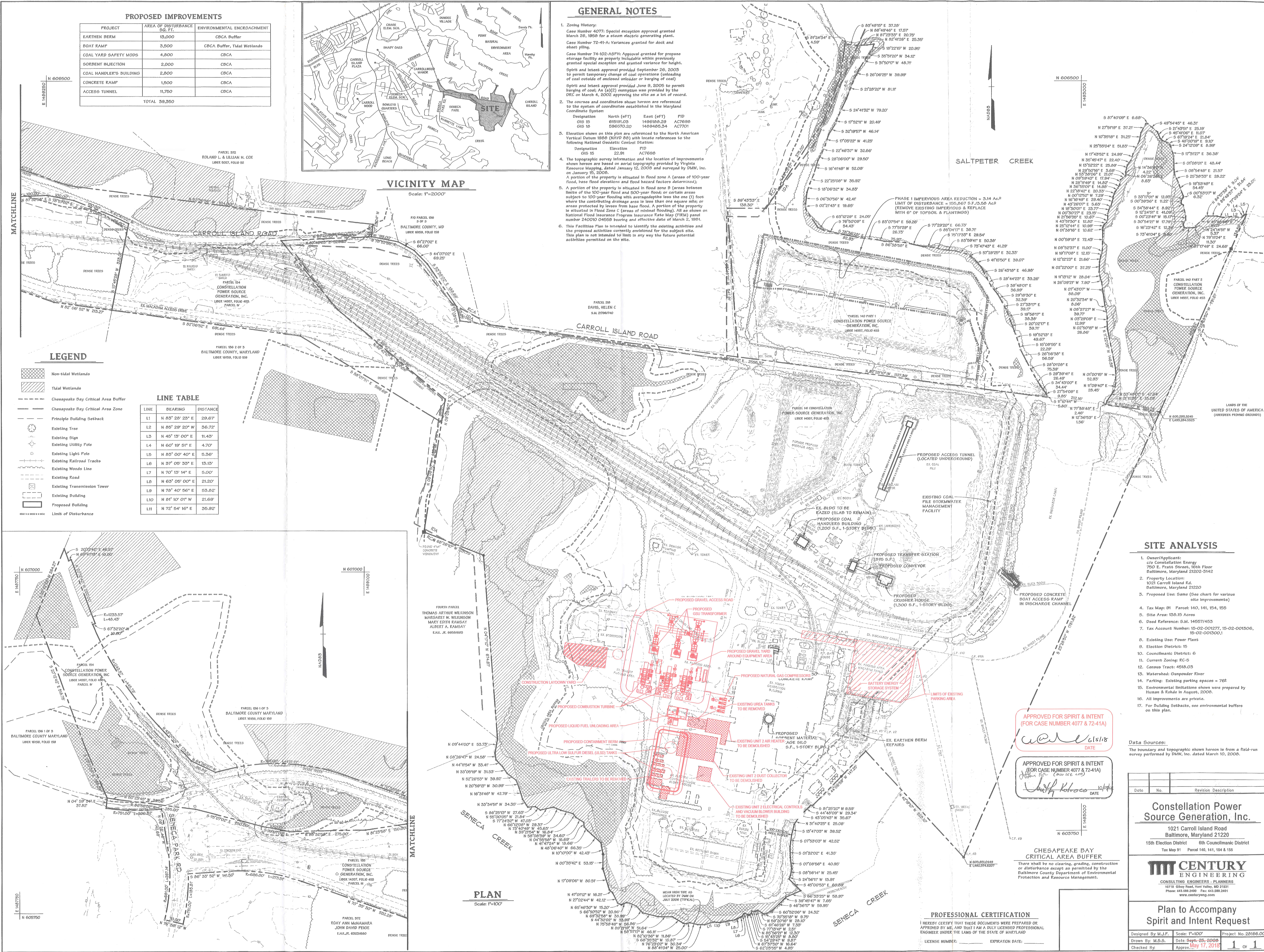




PROPOSED IMPROVEMENTS		
PROJECT	AREA OF DISTURBANCE SQ. FT.	ENVIRONMENTAL ENCROACHMENT
EARTHEN BERM	13,000	CBCA Buffer
BOAT KAMP	2,500	CBCA Buffer, Tidal Wetlands
COAL YARD SAFETY MODS	4,800	CBCA
SORBENT INJECTION	2,000	CBCA
COAL HANDLER'S BUILDING	2,800	CBCA
CONCRETE KAMP	1,500	CBCA
ACCESS TUNNEL	11,750	CBCA
TOTAL 59,350		

GENERAL NOTES

- Zoning History:**
Case Number 4077: Special exception approval granted March 26, 1955 for a steam electric generating plant.
Case Number 72-41-A: Variances granted for dock and sheet piling.
Case Number 74-102-ASP: Approval granted for propane storage facility as property includable within previously granted special exception and granted variance for height.
Spirit and Intent approval provided September 26, 2005 to permit temporary change of coal operations (unloading of coal outside of enclosed unloader or barging of coal).
Spirit and Intent approval provided June 9, 2005 to permit barging of coal. An (A)(2) exemption was provided by the DEC on March 4, 2002 approving the site as a lot of record.
- The courses and coordinates shown hereon are referenced to the system of coordinates established in the Maryland Coordinate System.
Designation North (NPT) East (EPT) PID
G15 15 61501.00 1486165.29 AC7698
G15 15 596570.20 1489465.34 AC7701
- Elevation shown on this plan are referenced to the North American Vertical Datum 1985 (NAVD 85) with locate references to the following National Geodetic Control Station:
Designation Elevation PID
G15 15 22.91 AC7698
- The topographic survey information and the location of improvements shown hereon are based on aerial topography provided by Virginia Resource Mapping, dated January 12, 2009 and surveyed by DMW, Inc. on January 15, 2009.
A portion of the property is situated in flood zone A (areas of 100-year flood, base flood elevations and flood hazard factors determined).
A portion of the property is situated in flood zone B (areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than the one (1) foot where the contributing drainage area is less than one square mile, or areas protected by levees from base flood. A portion of the property is situated in Flood Zone C (areas of minimal flood). All as shown on National Flood Insurance Program Insurance Rate Map (IRM) panel number 240010 0455B bearing and effective date of March 2, 1991.
- This Facility Plan is intended to identify the existing activities and the proposed activities currently envisioned for the subject site. This plan is not intended to limit in any way the future potential activities permitted on the site.

VICINITY MAP

Scale: 1"=2000'

LEGEND

- Non-tidal Wetlands
- Tidal Wetlands
- Chesapeake Bay Critical Area Buffer
- Chesapeake Bay Critical Area Zone
- Principle Building Setback
- Existing Tree
- Existing Sign
- Existing Utility Pole
- Existing Light Pole
- Existing Railroad Tracks
- Existing Woods Line
- Existing Road
- Existing Transmission Tower
- Existing Building
- Proposed Building
- Limit of Disturbance

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 85° 25' 23" E	29.67'
L2	N 65° 29' 20" W	56.72'
L3	N 45° 13' 00" E	11.43'
L4	N 60° 19' 51" E	4.70'
L5	N 85° 00' 40" E	5.36'
L6	N 57° 05' 33" E	15.15'
L7	N 70° 13' 14" E	5.00'
L8	N 63° 05' 00" E	21.20'
L9	N 78° 40' 56" E	53.82'
L10	N 81° 10' 01" W	21.68'
L11	N 72° 54' 16" E	35.82'

SITE ANALYSIS

- Owner/Applicants:**
c/o Constellation Energy
750 E. Pratt Street, 16th Floor
Baltimore, Maryland 21202-2142
- Property Location:**
1021 Carroll Island Rd.
Baltimore, Maryland 21202
- Proposed Use:** Same (See chart for various site improvements)
- Tax Map:** 91 Parcel: 140, 141, 154, 155
- Site Area:** 138.15 Acres
- Dead Reference:** S.M. 14557/453
- Tax Account Numbers:** 15-02-001277, 15-02-001206, 15-02-001500, 15-02-001500, 15-02-001500, 15-02-001500
- Existing Use:** Power Plant
- Election Districts:** 15
- Councilmanic Districts:** 6
- Current Zoning:** EC-5
- Conservation Tracts:** 4518.03
- Waterbody:** Gunpowder River
- Parking:** Existing parking spaces = 785
- Environmental limitations shown were prepared by:** Human & Kohle in August, 2008.
- All improvements are private.**
- For Building Setbacks, see environmental buffers on this plan.**

Data Sources:

The boundary and topographic shown hereon is from a field-run survey performed by DMW, Inc. dated March 10, 2008.

Date	No.	Revision	Description
------	-----	----------	-------------

Constellation Power Source Generation, Inc.

1021 Carroll Island Road
Baltimore, Maryland 21220

15th Election District 6th Councilmanic District
Tax Map 91 Parcel 140, 141, 154 & 155

CENTURY ENGINEERING
CONSULTING ENGINEERS - PLANNERS
10710 Glen Road, Hunt Valley, MD 21031
Phone: 443.588.2300 Fax: 443.588.2401
www.centuryeng.com

Plan to Accompany Spirit and Intent Request

Designed By: M.J.P.	Scale: 1"=100'	Project No: 20166.00
Drawn By: M.S.S.	Date: Sept. 25, 2008	
Checked By:	Approved: May 17, 2018	1 of 1

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.

LICENSE NUMBER: EXPIRATION DATE:

APPROVED FOR SPIRIT & INTENT
(FOR CASE NUMBER 4077 & 72-41A)
DATE: 6/15/18

APPROVED FOR SPIRIT & INTENT
(FOR CASE NUMBER 4077 & 72-41A)
DATE: 10/18/18

JENNIFER R. BUSSE
DIRECT LINE (410) 832-2077
DIRECT FAX (410) 339-4027
jbusse@wtplaw.com

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000

BALTIMORE, MD
COLUMBIA, MD
FALLS CHURCH, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE

WWW.WTPLAW.COM
(800) 987-8705

July 12, 2011

Via Hand Delivery

W. Carl Richards, Jr., Chief
Baltimore County Zoning Review Office
Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

**Re: Constellation Power Source Generation, Inc.
C.P. Crane Power Plant - 1001 Carroll Island Road
Spirit & Intent Request for Equipment Installation**

Dear Mr. Richards:

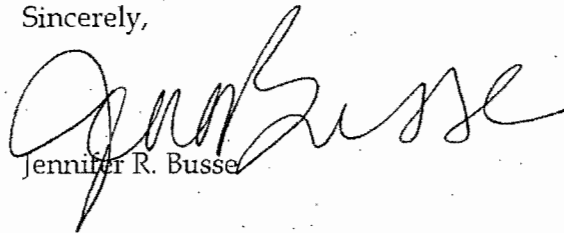
Please accept this letter as our request for Spirit & Intent relief for the above referenced property. In order to reduce emissions at the C.P. Crane Power Plant, Constellation Power Source Generation, Inc. ("Constellation") desires to install improvements to facilitate the addition of additives to the coal which will improve boiler operations and reduce air emissions.

Preliminarily, with regard to the site's zoning and development history, there are three previous zoning cases applicable to the Crane plant. Specifically, Case No. 4077 granted the site Special Exception approval, Case No. 72-41-A granted variances for the dock and sheet piling, and Case No. 74-102-ASPH granted a Special Hearing and Variance for a propane storage facility (interpreting it as properly includable within the Special Exception, and granting a variance for its height). The site has also been granted a variety of administrative approvals.

We are now seeking your office's administrative Spirit & Intent approval to permit upgrades which will improve the existing operation. The use of the site is not changing. Specifically, Constellation is seeking to add enclosures for additive storage and equipment, associated conveyors to facilitate the placement of the additives onto the coal, and leveling supports to stabilize the placement of the above listed new equipment. The area in which these improvements will be located within the existing coal pile area is shown on the attached plan.

If your office is in agreement with the contents of this letter and deems this Spirit & Intent relief request appropriate, please indicate your approval by executing below. Attached is our firm's check in the amount of \$50.00 representing payment for this request.

Sincerely,



Jennifer R. Busse

APPROVED FOR SPIRIT & INTENT RELIEF:



W. Carl Richards, Jr.
Chief, Zoning Review Office

7/13/11
Date

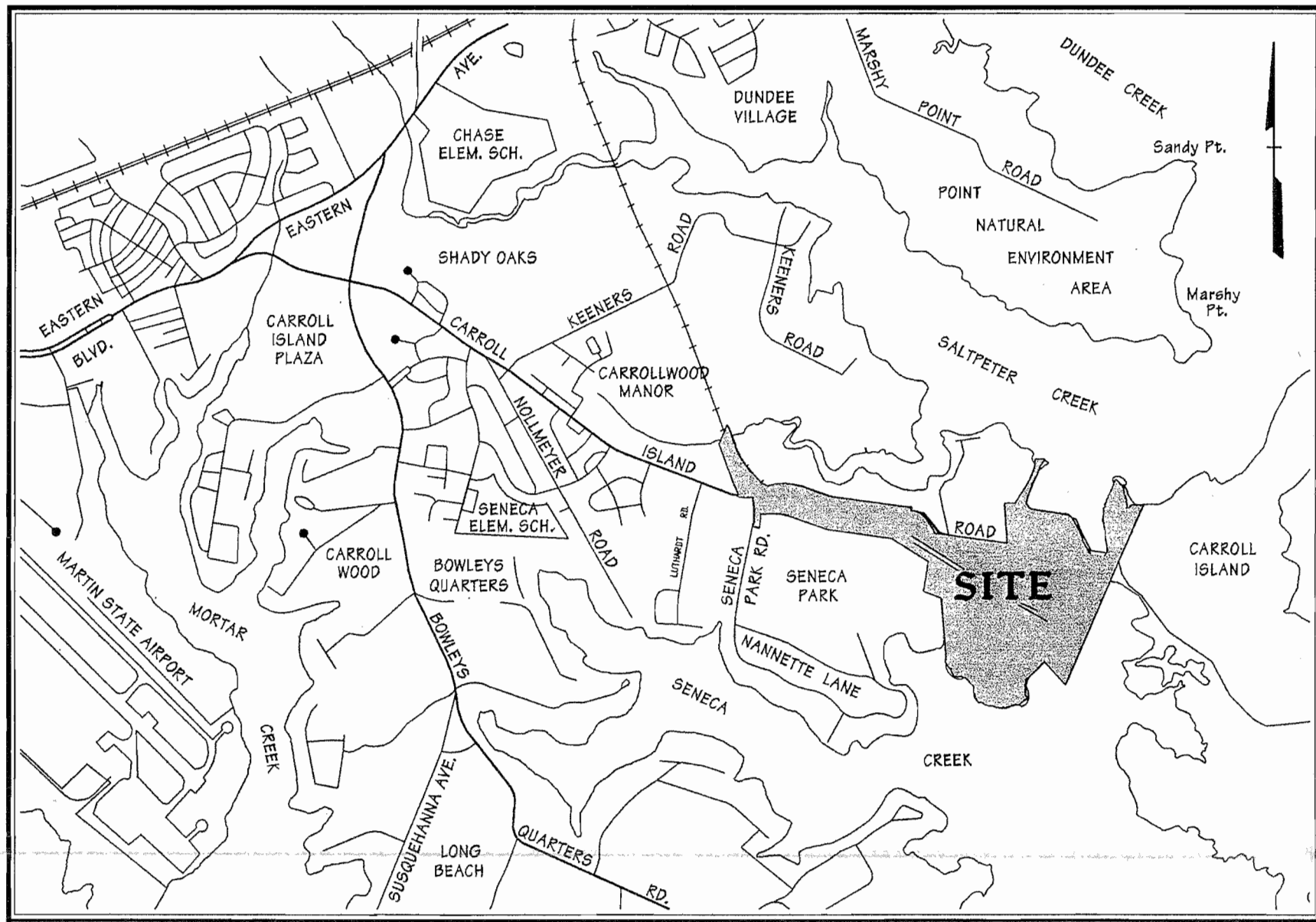
cc: Barbara Kernan
Richard A. Ransom, Esq.
James F. Burkman
Thomas Weissinger

1959618v3

1 COPY TO LTR FILE

1 COPY TO REPRG (WITH PLAN)

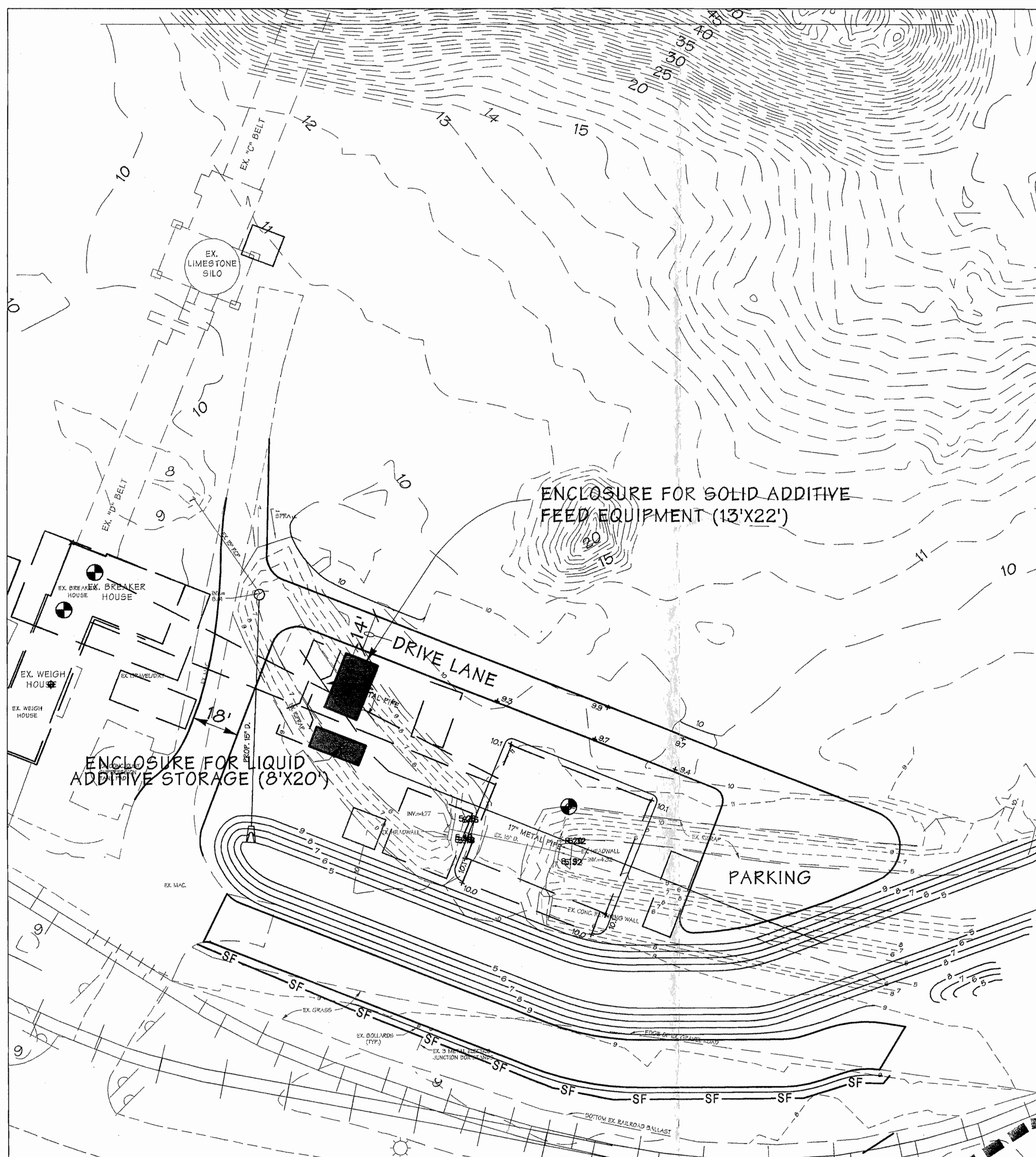
1 COPY TO ARCHIVE 7A-102-ASPH (WITH PLAN)



VICINITY MAP

Scale: 1"=2000'

Scale: 1"=2000'



LEGEND

- Existing Minor Contour
- Existing Major Contour
- Existing Edge of Road
- Existing Storm Drain and Inlet
- Existing Water and Fire Hydrant
- Existing Sewer
- Existing Tree Line
- Existing Drive
- Tract Boundary
- Utility Easement Line
- Existing Building
- Critical Area Buffer
- Critical Area Zone
- Principal Building Setback Line
- Proposed Improvements

PLAN

SCALE: 1"=50'

BENCHMARK

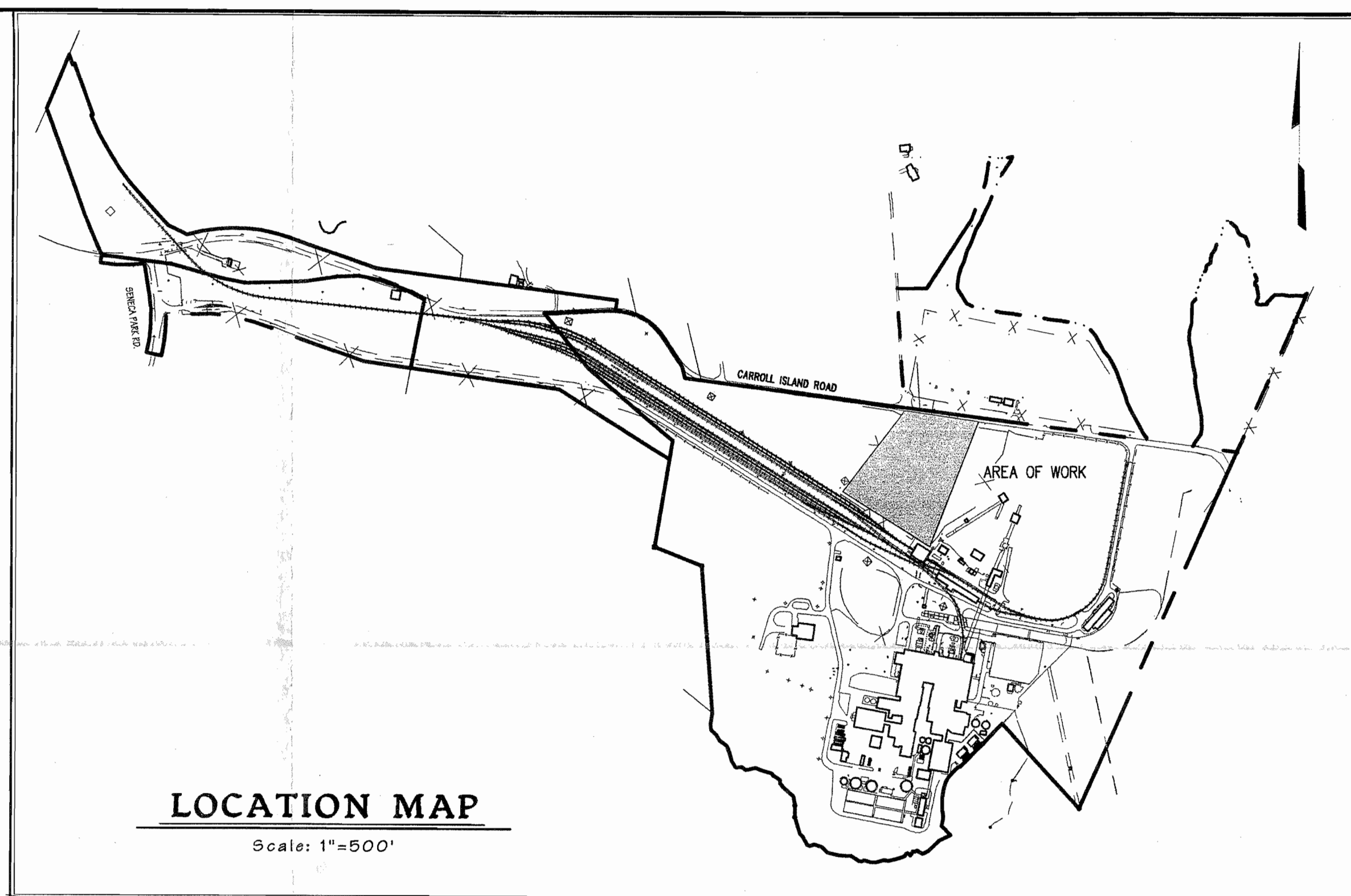
The courses and coordinates shown hereon are referenced to the system of coordinates established in the Maryland Coordinate System

Designation	North (NAD 83)	East (NAD 83)	Height (NAVD 88)
GIS 15	615191.03	1496108.29	AC7698
GIS 16	596570.20	1494495.34	AC7701

Elevation shown on this plan are referenced to the North American Vertical Datum 1988 (NAVD 88) with local references to the following National Geodetic Control Station:

Designation	Elevation	Height
GIS 15	22.91	AC7698

Concrete monument with brass disk.



LOCATION MAP

Scale: 1"=500'



PLAN

SCALE: 1"=50'

DATA SOURCES:

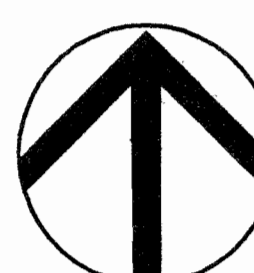
- Topographic information shown hereon is from aerial topography provided by Virginia Resource Mapping, dated July 23, 2006.
- Existing Breaker and Weigh Houses located by a field survey by Century Engineering, Inc. dated June 10, 2009.
- Architecture based on S. & L. plans dated August, 2009.

DATE	#	REVISIONS
7/5/11	2	Added 2 Enclosure Buildings
9/9/09	1	Revised plan per 8/24/09 S&L memo

CENTURY
ENGINEERING
CONSULTING ENGINEERS - PLANNERS
10710 Gilroy Road, Hunt Valley, MD 21031
Phone: 443.589.2400 Fax: 443.589.2401
www.centuryeng.com

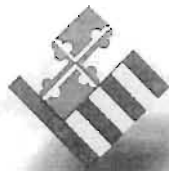
Site Plan
CP Crane
Constellation Power
Source Generation, Inc.

1021 Carroll Island Road
Baltimore, Maryland 21220
15th Election District 6th Councilmanic District



OK Per WLR LTR
Signed 7/13/11

ISSUE DATES		BASE:	
REVIEW:		DRAWN:	M.S.S.
BID:		DESIGNED:	M.S.S.
PERMIT:		CHECKED BY:	M.J.P.
CONSTRUCTION:		DATE CHECKED:	
SCALE:	1"=50'	DRAWING:	
PROJECT NO:	28166.01		



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

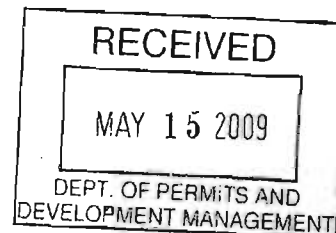
May 15, 2009

Richard A. Ransom, Esq.
Constellation Power Source Generation, Inc.
750th East Pratt Street, 17th Floor
Baltimore, MD 21202

EDF Development, Inc.
20, Place de la Defense
92050 Paris
France
Attention: Marianne Laigneau

EDFD C.P. Crane, LLC
C/o EDF Development, Inc.
20, Place de la Defense
92050 Paris
France
Attention: Marianne Laigneau

RE: Zoning Verification Letter
Crane Power Plant
1021 Carroll Island Road
Baltimore County, Maryland



09-124

Dear Gentlemen:

Per §1A04.2.B.12 of the Baltimore County Zoning Regulations, which permits by special exception public utility uses not permitted by right, the Crane Power Plant is permitted via special exception as a public utility at the above referenced property (the property is zoned R.C.5). The property was initially granted special exception approved in 1958 via Case No. 4077. A variance was then granted via Case No. 72-41-A to permit dock and sheet piling extensions. Relief was then obtained via Case No. 74-102-ASPH, approving an amendment to the special exception to permit the construction of a propane storage facility at the property. Copies of each of these zoning cases are attached hereto.

Spirit & Intent approvals have also been approved for the property. On 9/26/03, this office approved a temporary change of coal operations (unloading of coal outside of enclosed unloader or alternatively the barging of coal), and on 6/9/05 this office provided approval to permit the barging of coal. A zoning verification letter was executed by the undersigned on 7/29/05, in which the undersigned confirmed that no zoning relief was required for then proposed equipment, which was approximately 110' tall.

Page Two
Crane Power Plant
May 14, 2009

Most recently, on 10/7/08, this office provided Spirit & Intent approval permitting a variety of minor repairs and improvement at the property, including: coal yard safety modifications, the installation of additional air quality emissions control equipment, earthen berm repairs, the installation of a boat access ramp, the installation of plantings as part of a stormwater mitigation plan, and associated grading activities. Copies of each of these approvals are also attached hereto.

With regard to the development history of the property, an (a)(2) exemption was provided by the Development Review Committee (DRC) on 3/4/02 approving the site as a lot of record. A copy of this approval is also attached hereto.

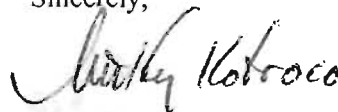
All above referenced zoning and development approvals run with the land and are not personal to the current owner of the property.

At this time, (i) the current use of the property is in compliance with all applicable regulations and zoning laws and (ii) this office has not issued any notification of any outstanding or pending zoning violations, and to the best of the undersigned's knowledge, no such violation exists, with respect to the property.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

The foregoing is merely an informal opinion. It is not an expert or legal opinion. It is not intended to be relied on as expert or legal advice, and is not legally or factually binding on Baltimore County or any of its officials, agents, or employees. Baltimore County expressly disclaims any and all liability arising out of, or in any way connected with the information provided in this document, or any interpretation thereof.

Sincerely,



Timothy M. Kotroco
Director, Permits & Development Management

Cc: G. Scott Barheight, Esq.
Whiteford, Taylor & Preston LLP
One West Pennsylvania Avenue
Suite 300
Towson, Maryland 21204

TMK/klm

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 547-8700
FAX 410 752-7092

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

COPY WITH
PLAN

October 6, 2008

Via Hand Delivery

Timothy M. Kotroco, Director
Office of Permits & Development Management
Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: **Constellation Energy - Crane Power Plant
Spirit & Intent Request for Site Modifications**

Dear Mr. Kotroco:

Please accept this letter as our request for Spirit & Intent relief for the above referenced property. In response to federal and state environmental compliance requirements related to power plant operations, Constellation desires to perform a variety of minor repairs and install a variety of improvements at the Crane Power Plant site. Constellation has been working closely with DEPRM to address all of their concerns with regard to all of the now proposed repairs and improvements.

There are three previous zoning cases applicable to the Crane plant, specifically Case Nos. 4077 (granting the site's Special Exception), 72-41-A (granting variances for the dock and sheet piling), and 74-102-ASPH (granting a Special Hearing and Variance for a propane storage facility - interpreting it as properly includable within the Special Exception, and granting a variance for its height). Previously, you provided Spirit & Intent relief on 9/26/03 to permit a temporary change of coal operations (unloading of coal outside of enclosed unloader or alternatively the barging of coal) and again on 6/9/05 to permit the barging of coal. In addition, via a zoning verification letter you executed on 7/29/05, you confirmed that no zoning relief was required for proposed equipment which was approximately 110' tall. Finally, an (a)(2) exemption was provided by the Development Review Committee (DRC) on 3/4/02 approving the site as a lot of record. Copies of each of these prior approvals is attached hereto.

We are now seeking your office's administrative Spirit & Intent approval to permit a variety of minor repairs and improvements at the site, including: coal yard safety modifications (the replacement of existing coal crusher and transfer facilities as well as conveyor

Timothy M. Kotroco, Director

October 6, 2008

Page 2

belts/facilities, the installation of an underground access tunnel, as well as the replacement of coal handler equipment); the installation of additional air quality emissions control equipment (a new sorbent material storage silo); earthen berm repairs surrounding the existing oil dikes; and the installation of a boat access ramp in order to permit an improved method of response to any potential oil related spill. Constellation is also installing planting in an area on the north side of the site as part of a stormwater mitigation plan. All of these repairs and improvements are documented on the attached plan. Grading is required to accommodate these improvements and this letter is providing you with notification of this activity.

The original Special Exception approval provided via Case No. 4077 placed eight (8) restrictions on the approval. The proposed repairs and improvements are consistent with each of these restrictions. Constellation will obtain any and all necessary permits for the newly proposed equipment foundations and structures.

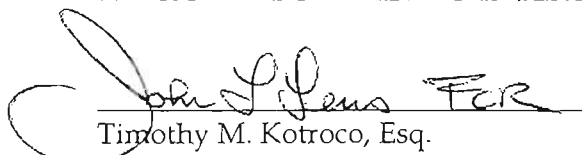
If your office is in agreement with the contents of this letter and deems this Spirit & Intent relief request appropriate, please indicate your approval by executing below. Attached is our firm's check in the amount of \$250.00 representing payment for this expedited request.

Sincerely,


Jennifer R. Busse

cc: Constellation Energy Group
Century Engineering

APPROVED FOR SPIRIT & INTENT RELIEF: (SUBJECT TO THE FOLLOWING *)


Timothy M. Kotroco, Esq.
Director, Permits & Development Management

10/07/08
Date

Constellation Energy- Crane Power Plant
Spirit & Intent Request 10/07/08
15th ED

*

404881

The foregoing is merely an informal opinion. It is not an expert or legal opinion. It is not intended to be relied on as expert or legal advice, and is not legally or factually binding on Baltimore County or any of its officials, agents, or employees. Baltimore County expressly disclaims any and all liability arising out of, or in any way connected with the information provided in this document, or any interpretation thereof.

Zoning Review Letter # 08-454
Approved quick response/JLL for TK

01.600.13400

RECEIVED
JUL 18 1957
CONTROLLER'S OFFICE

The Baltimore Gas and Electric Company, owners of the property, have petitioned for authorizing Navy money in order to install the State's new floating tank mentioned above. Assuming that it is necessary to locate such a generating plant in the Baltimore area there does not appear to be a more suitable location for such a use than that proposed. The proposed use of the property would be to utilize the area for cooling purposes. The property is at the end of Carroll Island Road, abutting the United States Government Military Reservation to the east (a part of the Aberdeen proving grounds). The property is bounded by the Chesapeake Bay to the west, the property is Baltimore Creek and to the north, Seneca Creek. The general area in the vicinity of the property is sparsely developed, and considering that the prevailing wind is from south-southwest, the proposed use would have no adverse effect on the area. The proposed use would have the minimum effect on the properties in the vicinity. It does not appear that the proposed use would create any traffic problems on local roads since the initial number of employees is estimated at 50 and the probable eventual

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air.

William N. Coleman
Zoning Commissioner
of Baltimore County

(a) The Commissioner was without jurisdiction or authority to affect or bind the rights of the herein Petitioners and particularly

WHEREFORE your Petitioners pray that the Zoning Commissioner will

TAKE NOTICE: That a copy of the within Petition for Special Hearing was this 25th day of October, 1957, delivered at the office of Wilsie H. Adams, Zoning Commissioner for Baltimore County.

J. ELMER WEISHEIT, J.
ATTORNEY-AT-LAW

4077
✓
MAP
15-D
PETITION FOR RECLASSIFICATION
FROM an R-6 Zone to an M-H
Zone - Carroll Island Rd.
between Seneca Creek and Salt
Peter Creek - 15th Dist.,
Baltimore Gas & Electric Co.,
Petitioner.

RECEIVED
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
4077

OPINION

The Petitioner herein seeks to have reclassified from an R-6 Zone to a M-H Zone, a 98 acre tract of land abutting on the westernmost portion of the U.S. Government property at the end of Carroll Island Road, and lying roughly between Seneca Creek and Salt Peter Creek, both being estuaries of Middle River. The original request covered 138 acres, but was amended with the consent of the Board to conform with the description and map which comprise Petitioner's Exhibit #20, offered and received without objection during the course of the hearing. The purpose of the Petition is to allow the erection of a Steam Electric Generating Station and related facilities.

Several legal points were raised by the Protestants immediately prior to the hearing on the merits and, after argument upon same by counsel, the Board made rulings for the record, which rulings, because of the present and future importance of certain of the questions, should be restated and augmented in this Opinion.

On October 25, 1957, after the time for appeal from the Zoning Commissioner's decision had expired, the Protestants filed with him a Petition for Special Hearing, which alleged in substance that the Commissioner's Order of July 9, 1957, which denied the reclassification sought but granted in lieu thereof a Special Exception for a Steam Electric Generating Station and related facilities, was illegal. This Special Hearing Petition sought to have the Commissioner reopen the proceeding and declare his Order of July 9, 1957 null, void, and of no further legal force and effect. After consideration

of the Petition and consultation with the Solicitor's Office, the Zoning Commissioner passed an Order denying the relief sought, and the Protestants entered an appeal therefrom. We shall first consider the appeal from the Commissioner's denial of the Petition for Special Hearing.

The case of Board of Zoning Appeals vs McKimney, 17th Md. 564 and Maryland Clothing Manufacturing Company vs Baltimore, 207 Md. 165, limit the power of a Zoning Board to reopen terminated proceedings to instances involving fraud, surprise, mistake, or inadvertence. The sound reasoning behind these rulings, relating to the evils of lack of finality, can be logically extended to apply to decisions by a Zoning Commissioner as well as by a Zoning Board. Therefore, fraud and the other factors specifically excepted in the appellate decisions being admittedly absent, we find that the Petition for Special Hearing was properly denied.

The Protestants then verbally raised, and counsel argued, the following two questions as part of this appeal:

1. In acting upon a Petition for a Reclassification only, does the Zoning Commissioner have the power and authority to deny the reclassification but grant a Special Exception in lieu thereof?
2. Is a Steam Electric Generating Station and its related facilities a public utility use within the meaning and scope of Baltimore County Zoning Regulations 209.3 and 206.2, which, when read together, appear to allow public utility uses by Special Exception in an R-6 Zone.

As to the first point, the Protestants strongly argue that a reclassification is separate and distinct from a Special Exception, and that in this case, the Commissioner has no power to do other than grant or deny the reclassification requested. They further argue that different standards of proof apply, and contend that notice of a hearing on a reclassification is not necessarily notice of a hearing on a Special Exception.

- 2 -

We indicated orally our feeling that Section 501.7 of the Regulations, allowing the Board the power to modify, infers the right to upgrade, and we further indicated that we felt that the right to upgrade, or grant more restrictive zoning than is sought, by implication and past administrative interpretation, also applied to the Zoning Commissioner. We believe the power to grant more restrictive zoning applies not only within the various categories of reclassification, but also extends to Special Exceptions, Use Permits, or any lesser relief than that requested.

The case of Tyrie vs Baltimore County, 137 A 2nd 155, which dealt with the statutory minimum time limit between filings, would seem to indirectly support our thinking in that, where a reclassification is petitioned for, it makes the eighteen month waiting period applicable to a Special Exception as well as a new attempt at reclassification, and vice versa. Under this reasoning, the instant Petitioner, and in fact any Petitioner applying for zoning which can be granted either by Special Exception or Reclassification, would have to file for both concurrently to protect himself from the bar of the eighteen month waiting period in the event he guessed wrong in evaluating how much the Commissioner or Board would grant him. The net effect of this would be to stimulate a fear of requesting the less restrictive zoning unless the more restrictive were also and at the same time applied for as a "hedge". We do not believe such needless duplication of costs and administrative effort was ever intended by the adopters of the Regulations.

Answering the Protestant's argument that different standards of proof apply to reclassifications than do to Special Exceptions, and that the constitutional requirement of notice has not, therefore, been met by advertising and posting for a reclassification, we maintain that all matters of proof which must appear to support a Special Exception case, plus either a showing of error in original zoning or a substantial change in neighborhood conditions, must be proved in a reclassification case. (Price vs Cohen, 213 Md. 457), where a reclassification was denied because a situation detrimental

- 3 -

to the public safety and welfare existed). Therefore, notice of the attempt to reclassify was, in our opinion, sufficient to meet the constitutional need of notice for granting the Special Exception. We would not, however, similarly find if the reverse situation applied, to wit: that the notice had been for a Special Exception and a Reclassification were granted.

But regardless of the propriety or impropriety of the Commissioner's Order, a general appeal was taken therefrom, by which the Protestants voluntarily submitted to the jurisdiction of this Board to entertain the matter "de novo". Had such Order denied the Petitioner any relief whatever, as the Protestants contend it should have done, the Petitioner would have appealed and the case would have still come before this Board without delay. To deny a public utility the right to be heard expeditiously on the merits in a matter vital to the welfare of a sizeable portion of the County, would be a mockery of justice for the sake of questionable technicality.

As to the second question, verbally raised by the Protestants, we find that under Section 209.3 and 206.2 of the Regulations, all public utility uses, except those covered by Section 209.1 and 200.11, are permitted by Special Exception in an R-6 Zone. The uses covered by Sections 209.1 and 200.11 are permitted without a Special Exception in an R-6 Zone. The Protestants contend that we should read into the Regulations the word "peculiar", so that if a use is not unique to utilities, it does not fall within those permitted. We do not agree, and we see no reason to exclude Steam Electric Generating Stations, which are certainly common public utility uses in this age of electricity, even if not completely peculiar to public utilities. Had the intention been to except them, they would have been specifically excepted. We believe the intention was to include such public utility uses to allow us the necessary latitude to serve the public welfare without the obligation to grant similar uses to private interests similarly situated.

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Having unanimously disposed of the legal questions, we move now to a determination on the merits by the majority members.

A tremendous amount of technical and other expert testimony has been produced by the Petitioner, which has used its considerable resources to prove with great precision that the use is needed for the proper rendition of its services.

Mr. Penman, its Vice President in charge of Electric Power, testified with great clarity and at great length as to this present need for expansion, based on scientifically computed projections of future need. He stated that the estimated 1961 load will be over 1,250,000 kilowatts and that present peak capacity is now 1,108,000 kilowatts. He further explained that maintenance and overhaul make it impossible to operate at the theoretical capacity.

The Protestants, understandably, were unable to produce any evidence to contravert the general question of need, so we must find that the requested use is, in fact, needed within the meaning of the first part of Section 111.1 of the Regulations.

While the Protestants implicitly admit the need, they strenuously maintain, and attempt to show both by cross examination and direct testimony, that the need can be adequately met in a more appropriate location; further, that the last part of Section 111.1, which provides that the location of the public utility use shall not seriously impair the use of neighboring property, prohibits the installation at this location.

The Petitioner's testimony, mostly by Mr. Penman and Dr. Christie, indicates that nearly four years were spent searching for the best site to meet its purposes. Several locations, including Bush River, Back River, and Garrett Island in the Susquehanna River, were studied and compared with the Carroll Island site. The choice narrowed to Garrett Island vs Carroll Island, Bush River having been eliminated because of inadequate water

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circulation and Back River because the effect of pollution on the condensing equipment would cause tubes to blow and make operations prohibitively expensive.

Much testimony follows on the comparison of costs between Carroll Island and Garrett Island. It appeared from the testimony that due to the increased distribution distance, (9.8 miles for Carroll against 25.8 miles for Garrett), topography variation on Garrett, trackage difficulties, bridge construction, and the lack of rail facilities; four units at Garrett Island would cost \$140,958,000 more than four units at Carroll Island. Further, that Garrett Island operating expense for four units would be about \$210,000 more annually than Carroll Island operating costs.

However, regardless of the unavailability of other locations, the second part of Section 111.1 must still apply, and the Petitioner must show that the use requested will not seriously impair the use of neighboring property. This proof we think has been adequately met. The preponderance of testimony shows that, through modern scientific control, gases, fly ash, and coal dust will not adversely affect the neighborhood. That noise will not be a factor is admitted by Protestant's own witnesses.

The Protestants claim that wild fowl and fish will be harmed by the proposed installation, but present no expert testimony to refute Petitioner's testimony that the requirements of the Water Pollution Law have been met and that the slight temperature increases are more attractive than repulsive to wild fowl and fish.

A careful inspection of voluminous notes taken during the extended hearings plus verifications and augmentation by spot inspections of the record, indicates to us that the proposed use will not seriously impair the use of neighboring property, nor will it be detrimental to the health, safety, or general welfare of the locality involved, nor will it tend to create congestion in roads, streets or alleys therein, nor will it cause any other conditions which the application of Section 502.1 of the Regulations would prohibit.

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It is contended by the Petitioner that substantial changes have occurred in the neighborhood since the adoption of the present map in 1945, and also contended that the original zoning of R-6 was residual and is erroneous. In support of these contentions, it produces evidence that the elevation of the property makes its use for residences prohibitive in cost, about \$8,000 to \$8,500 per acre being required to fill. A witness of the Protestants disagrees; he says it will cost only \$25.00 to fill 30 acres.

In any event, we do not reach the questions going to justification of a reclassification. In our opinion, a reclassification to M-H would open up the entire area to private commercialization, and such is not to the welfare of the locality. We reiterate our contention that relief by Special Exception is afforded to public utilities to allow us the latitude to afford them the facilities needed to serve the public need without encroaching upon the neighborhood and inviting the creeping paralysis of misplaced industrialization.

As the minority members of the Court of Appeals said in the case of Park vs Gas and Electric Company 60 A 2nd 751, ".....there is a vast difference between restrictions upon private undertakings and those clothed with public interest which must have access to the centers of population if they are to perform their public function. In weighing the reasonableness.... the harm to property owners in the immediate vicinity must be balanced against the benefit to all the users of electrical power in the whole urban area".

We, therefore, grant the Special Exception and exercise the rights given us by Section 503.2 by placing the following restrictions upon the use of the subject property.

1. This Special Exception shall apply only to the property petitioned for as amended by Petitioner's Exhibit #20.
2. No more than four power producing units shall be constructed on the subject property.

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3. The temperature of the water at the point of expulsion in Salt Peter Creek shall at no time exceed 80° Fahrenheit.
4. The requirements of the Maryland Water Pollution Control Law will at all times be met.
5. An adequate sewage disposal plant shall be constructed and maintained.
6. Bulkheading will be done where necessary to prevent erosion of neighboring property.
7. Coal will be dumped within buildings only, and coal piles will be cilled when necessary to prevent leaching of sulphur, so as not to create acidity in the surrounding water.
8. No more than one shipment of coal per day per unit shall be received.

ORDER

For the reasons set forth in the foregoing Opinion, a Special Exception for a Steam Electric Generating Station is granted; subject, however, to the conditions and restrictions set forth in the Opinion. The said Special Exception is granted only on the 98 acre property particularly described in Petitioner's Exhibit #20, said description being attached hereto and made a part of this Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Spec. 7 Agreed
Matthew M. G. Jones

DATE 3/26/57

The undersigned member of the Board dissents from the conclusion of the majority despite the very persuasive arguments in favor of the special treatment of the public utility involved. The length of the hearing and the various legal questions involved have made the majority report lengthy and this dissenting report must of necessity cover some of the same ground even though there is general agreement on many points.

It is agreed that there was competent testimony that the construction of a steam generating plant of an eventual 800,000 K.W. capacity was immediately necessary to meet the demands of the year 1960 and beyond, that this particular site was economically advantageous and in the public interest because of its location on the perimeter of the transmission feeder lines of the entire system and because of its location on a peninsula which would allow cooling water to be taken from the Seneca Creek and discharged in the Salt Peter Creek.

Because of the technical nature of the project neither the Board nor the Protestants could question the authority of the experts of the utility who clearly and painstakingly presented their case by the use of photographs, maps, samples and personal testimony of experts and laymen. All members of this Board are convinced that a generating plant of this capacity must be built in the near future and be ready for the projected increase in demand for electrical energy that is sure to come with the continued growth of Baltimore and its suburbs.

This very agreement presents the Board with the dilemma of public need of the larger area and the very real encroachment on the general welfare of the smaller but immediately affected area. Although not at issue in this action, the Board must also face up to the fact that a Steam Generating Plant using an average of 4000 tons of coal per day must be serviced by railroad lines with storage sidings as well as high voltage transmission lines which will have damaging effect on a much wider area than that owned and used by the petitioner.

In the original case appealed to this Board the Zoning Commissioner denied the application for reclassification from "B-5" to Manufacturing Heavy but granted a Special Exception to build and operate a Steam Generating Plant as well as other facilities connected therewith. All members of this Board agree that they could, under regulations as interpreted to date uphold the Zoning Commissioner in his decision under authority of Sec. 501.7 which states that "the decision and order of the Board of Appeals may affirm or reverse in whole, or in part, any decision of the Zoning Commissioner or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to coming regulations and restrictions.

At this point, however, agreement ends and while we examined the same grounds we arrived at different conclusions. This member examined Sec. 411 of the Regulations for guidance in judging the relationship of need in this particular case of a public utility and found in Sec. 411.1 a double-barreled admission that "the use must be needed for the proper rendition of the public utility service

and the location thereof shall not seriously impair the use of the neighboring property." Sec. 411.2 requires all public utility buildings and structures to have an exterior appearance harmonious with the general character of the neighborhood, including architectural treatment. Testimony and exhibits show rather startling discrepancies in this regard. Sec. 411.3 (6) directs both the commissioner and the Board to consider costs but specifically exhorts them not to allow extra cost to direct their decision. While this section of the Regulations deals with underground vs overhead power transmission, it can reasonably be argued that costs of construction and use of the power generating plant should likewise be weighed in arriving at a decision such as this. The obvious intent of Sec. 411 in its entirety is to grant to Public Utilities special privileges over other commercial uses but does not allow them unlimited latitude to exercise their judgment nor does it in any way indicate that it would be proper under the Regulations to build a public utility Steam Generating Plant in a residential zone under a Special Exception while such inherently objectionable use is relegated to the manufacturing heavy classification only.

Mr. Pennington of the Gas Company and Dr. Alexander Graham Christie, emeritus professor of Johns Hopkins and consultant engineer for many utilities, testified of their search for suitable locations in which proximity to use, rail transportation facilities, and sufficient coolant water are the prerequisites. An alternate site on Garrett Island in the Susquehanna River was examined carefully and estimates of the additional costs, both of construction and

continuing use, were explained to the Board at their request. Were this the only site available there would be no dissent and the Board would have written a unanimous decision in favor of the greatest good to the greatest number at the expense of the few, allowing a review by the Courts to approve or disapprove the stretching of the Special Exception Regulations to cover a Steam Generating Plant in a residential neighborhood. However, other sites that the Garrett Island were dismissed too lightly with little or no argument of their insufficiency. As a case in point, the use of the Back River industrial area, where rail facilities are already available, transmission lines already a deterrent to certain types of residential property and as such if not more water available for the cooling coils of the Generator Plant, was waived aside because the water was "contaminated". Testimony in the case clearly showed that water was used only for the lowering of the temperature, that nothing was added or taken away in its travel through the system and that it must be treated chemically to control algae. Both the Seneca Creek and Back River are tributaries of the Chesapeake Bay and both contain about the same amount of "contamination" since the Back River has been relieved of the effluent of the City Disposal Plant which is now piped directly to the northern Plant at Sparrows Point.

While the minority report agrees with the conclusion of the majority on the reclassification, it differs on the granting of the Special Exception which would, to all practical purposes, accomplish the same result as reclassification and in itself make such a change in the character of the neighborhood that the extension of commercial use on adjoining land would be inevitable. The end result would be to impair, if not actually destroy, a large area of fine, and potentially

fine, waterfront residential property in a region that contains the last uncontaminated waterfront in the vicinity of Baltimore. Besides the impact on the properties already in existence this Heavy Manufacturing would condemn the whole surrounding area of Carroll Island Neck, Bowleys Quarters, Seneca Park and other adjacent properties of this waterfront to commercialization of a character which it could not overcome, nor from which it could ever be reclaimed.

Charles O. Tishin
Chairman

DATE: March 26, 1958

PETITION FOR RECLASSIFICATION OF ZONE

IN THE MATTER OF : HONORABLE THE
BALTIMORE GAS AND ELECTRIC COMPANY : ZONING COMMISSIONER
OF BALTIMORE COUNTY

For a Reclassification of Zone

To the Zoning Commissioner of Baltimore County:

Baltimore Gas and Electric Company hereby petitions for a reclassification of zone under the Zoning Regulations and Restrictions passed by the Zoning Commissioners of Baltimore County agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1943 and Amendments thereto, for the reclassification of zone of a certain tract of land as provided under the said Regulations as follows:

1. For a reclassification of zone of a tract of land containing 138 acres, more or less, of which 6.8 acres is submerged land, situate on both sides of Carroll Island Road between Seneca Creek and Salt Peter Creek abutting on the east property of the United States Government and approximately 8300 feet east of the intersection of Carroll Island Road with Bowleys Quarter Road, all of which land is located in the Fifteenth Election District of Baltimore County and all of which is zoned Residential, (R-6) as will more particularly appear from Petitioner's Exhibit A attached hereto and made a part hereof. Said tract of land is described as follows:

BEGINNING at a concrete monument now planted at the beginning of a parcel of land described in a deed dated November 26, 1956 from Guarantees Title Holding Corporation et al. to Baltimore Gas and Electric Company, recorded among the Land Records of Baltimore County in Liber G.L.R. No. 3061 folio 307 etc., thence South 82 degrees 16 minutes East 100.00 feet to the beginning of a parcel of land described in a deed dated November 26, 1956 from Guarantees Title Holding Corporation et al. to Baltimore Gas and Electric Company recorded in the aforesaid Land Records in Liber G.L.R. No. 3061, folio 308 etc., thence binding on the land last above referred to and on the center of a road leading to the dwelling house now belonging to Francis W. Ayler North 3 degrees 13 minutes West 58.57 feet South 88 degrees 26 minutes East 139.80 feet North 31 degrees 21 minutes East 375.00

feet to the land of a marsh, thence through said marsh the two following courses and distances, viz., North 22 degrees 17 minutes East 100.00 feet and North 6 degrees 10 minutes East 100.00 feet to the waters of Salt Peter Creek, thence bounding on the waters of said creek the thirteen following courses and distances, viz., North 64 degrees 28 minutes East 68 feet, North 81 degrees 10 minutes East 111 feet, North 72 degrees 27 minutes East 204.00 feet, South 83 degrees 59 minutes East 163.70 feet, North 59 degrees 13 minutes East 335 feet, South 22 degrees 20 minutes East 21 feet, South 13 degrees 52 minutes East 161 feet, South 17 degrees 22 minutes East 100 feet, South 17 degrees 22 minutes East 130 feet, South 39 degrees 31 minutes East 100 feet, South 12 degrees 19 minutes East 220 feet, South 17 degrees 19 minutes East 100 feet, and South 16 degrees 21 minutes East 166.90 feet to intersect the division line between the land now being described and the land now owned by the United States of America, thence South 23 degrees 10 minutes East bounding on the 1st or North 31 degrees 18 minutes East 143.10 feet line of the land described in the deed first above referred to, thence North 12 degrees 08 minutes East bounding on said line 143.10 feet to the shore of Seneca Creek, thence binding on the waters of Seneca Creek the 17 following courses and distances, viz., South 75 degrees 27 minutes East 79 feet, South 18 degrees 23 minutes East 300 feet, South 6 degrees 32 minutes East 150 feet, South 13 degrees 26 minutes East 151 feet, South 39 degrees 31 minutes East 63 feet, South 61 degrees 10 minutes East 30 feet, North 71 degrees 16 minutes East 135 feet, North 22 degrees 19 minutes East 75 feet, North 1 degree 19 minutes East 135 feet, North 21 degrees 19 minutes East 60 feet, North 52 degrees 01 minutes East 10 feet, North 61 degrees 19 minutes East 95 feet, North 23 degrees 31 minutes East 110 feet, North 14 degrees 13 minutes East 61 feet, North 19 degrees 19 minutes East 123 feet, North 31 degrees 13 minutes East 60 feet, and North 31 degrees 55 minutes East 56.00 feet to the beginning of the North 3 degrees 02 minutes East 671.67 feet line in the deed first above referred to, thence still binding on said land North 1 degrees 17 minutes East 671.67 feet, North 61 degrees 26 minutes East 231.83 feet to a stone, North 9 degrees 21 minutes East 105.00 feet to a stone, North 29 degrees 01 minutes East 508.56 feet to the center of Carroll Island Road, thence binding on the center of Carroll Island Road the five following courses and distances, viz., North 60 degrees 07 minutes East 353.30 feet, South 77 degrees 19 minutes East 99 feet, South 23 degrees 12 minutes East 66 feet, South 43 degrees 52 minutes East 62.25 feet, and South 31 degrees 26 minutes East 166.30 feet, and thence South 12 degrees 53 minutes East 53.75 feet to the place of beginning.

Containing 138 acres of land, more or less, of which 6.8 acres is submerged land.

The Petitioner requests that all of said land above described (R-6) be reclassified and zoned from Residential to Heavy Manufacturing.

BALTIMORE GAS AND ELECTRIC COMPANY

By *William R. Porter*
Vice-President

1701 Lexington Building
Baltimore - 1, Maryland

Address

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John Mason Marshall
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Baltimore - 1, Maryland
Attorneys for Petitioner

3/15/58
10 A M

5-51613

SALTPETER

CREEK

WOOD PILE FENCE
582°16'E 1668.79'
STEEL SHEET PILING
WOOD PILE FENCE

N11200

FUTURE SUBSTATION

FINED

1/2" x 7/8" x 24' COT
DRAINAGE PILE

Clear Forest
15000 Tons

70' x 100' x 10' PAVING

FINED

COAL STORAGE
25,000 TONS

FENCE
 300'
 S 75° 23' W
 300'
 S 75° 27' W
 79'
 TOWNSHIP ROAD
 S 75° 23' W

823-4014
Residence of the United States of America

CREEK

SENECA

98 ACRES DEFINED BY PRINT ENTERED INTO
EVIDENCE IN ZONING HEARING ON NOV. 26, 1957.

#4077
MAP
15-D

SCHEME F-3
9-6-57 SCALE: 1"=100 FT.
REVISED AREA SHOWN - NOV 25, 1957



SALTPETER

MUDDY GUT

N 11 200
4 2000

N 58° 16' E 1668.75'
STEEL SHUT BARRAGE
N 11 200
4 2000

FUTURE SUBSTATION

AREA DEFINED
98 ACRES

N 58° 16' E
500.00

Coal Storage
25,000 Tons

674
2000
N 11 200
4 2000
1-23-59

2365.70'
To Street at Highway

