



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

March 14, 2003

Mr. Warren K. Rich
Rich and Henderson, P.C.
Attorneys at Law
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589

Dear Mr. Rich:

I am in receipt of your letter, dated March 11, 2003, in which you reference the Days Cove rubble landfill, owned by the State of Maryland and operated by contract with the State by Days Cove Reclamation Company.

In Case No. 96-132-SPH, it was determined that the property utilized by the landfill was exempt from the Baltimore County zoning regulations because it was owned by the State while operated by Days Cove Reclamation Company under contract with the State. You ask whether this exemption from local zoning will extend to adjoining property presently under contract to be purchased by the State.

The information you present is that the State and the present operator of the landfill, Days Cove, intend to expand the existing landfill to the area located adjacent to it. It is the intent of the State and Days Cove to file for an extension of the rubble fill permit under Subtitle 9 of the Maryland Environmental Article to operate the rubble fill on this adjoining property. You explain that Days Cove has entered into a contract to purchase the adjoining 12 acres from a private party. Days Cove has in turn provided a Gift of Assignment of the contract to the State, which has accepted it. At closing, the property will be transferred directly from the seller to the State. Subsequently, when the permit is approved, the rubble fill will be operating on State property only.

You ask whether the exemption from local zoning provided in the aforementioned case will extend to the adjoining property once transferred to the State for the express purpose of operating the rubble fill. Our answer is yes. We hereby confirm that the installation and operation of a rubble fill on such State property is not subject to the zoning regulations of Baltimore County.

Should you have any questions, please feel free to contact me.

Sincerely,


Arnold Jablon
Director

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March 11, 2003

VIA FACSIMILE & FIRST CLASS MAIL

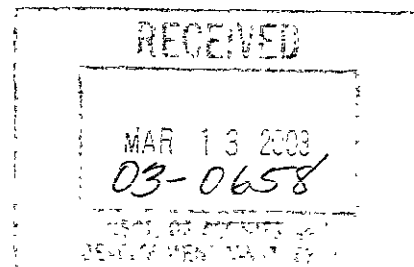
Arnold Jablon, Director
Department of Permits and Development
for Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

RE: Days Cove Reclamation Company

Dear Mr. Jablon:

This office represents Days Cove Reclamation Company ("Days Cove") which presently operates a rubble landfill in the State owned Gun Powder State Park. Both the State of Maryland and Days Cove intend to file for an extension of the rubble fill permit under Subtitle 9 of the Maryland Environment Article. Days Cove has entered into a contract to purchase the subject 12 acres from a private party and has provided a Gift of Assignment of the contract to the State. The State has accepted the Gift of Assignment and, at closing, the property will be transferred directly from the seller to the State of Maryland. As a consequence, the rubble fill will be operating on State property only.

In Zoning Case No. 96-132-SPH, Zoning Commissioner Lawrence Schmidt reviewed the same set of facts as it pertained to the initial expansion of the original rubble fill. After reviewing the relevant case law, he concluded that this privately operated rubble landfill, leased from the State and operated on State property, "is not subject to the zoning regulations of Baltimore County". We have shepardized the case law cited in that opinion issued on March 29, 1996 and determined that the case law cited therein remains the applicable law in the State of Maryland.



Arnold Jablon, Director
March 11, 2003
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We, therefore, ask if you would, by return letter, determine that the installation and operation of a rubble fill on State property is not subject to the zoning regulations of Baltimore County.

Yours very truly,

A handwritten signature in black ink, appearing to read "Warren K. Rich". The signature is fluid and cursive, with the first name "Warren" and last name "Rich" clearly distinguishable.

Warren K. Rich

WKR:rw

cc: Kenneth R. Binnix

IN THE MATTER OF
THE APPLICATION OF
WHITE MARSH CIVIC ASSN.,
ET AL -PETITIONERS
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE SOUTH
SIDE DAYS COVE ROAD, 5300'
EAST OF CENTERLINE OF PULASKI
HIGHWAY (6425 DAYS COVE ROAD)
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-132-SPH
*

* * * * *

ORDER OF DISMISSAL

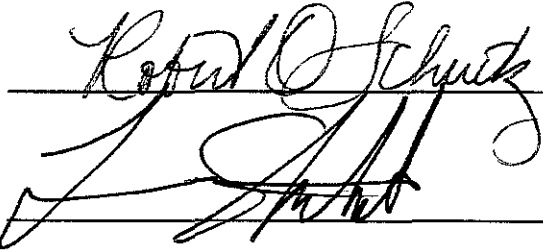
This matter comes to this Board on appeal from a decision of the Zoning Commissioner in Case No. 96-132-SPH in which Petitioner's request for special hearing relief was denied.

WHEREAS, the Board is in receipt of a dismissal of appeal dated September 11, 1996 and an amendment to dismissal to include all original Appellants, dated September 12, 1996, filed by J. Carroll Holzer, Esquire, on behalf of Petitioners White Marsh Civic Association, Harewood Park Community Association, and Nottingham Improvement Association, Inc., Appellants, (copies of which are attached hereto and made a part hereof); and

WHEREAS, said Counsel for Appellants requests that the appeal filed in this matter be dismissed as of September 10, 1996;

IT IS HEREBY ORDERED this 25th day of September, 1996 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY




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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 25, 1996

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 96-132-SPH
White Marsh Civic Assn., et al

Dear Mr. Holzer:

Enclosed please find a copy of the Order of Dismissal issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

Chabotte Radcliffe for
Kathleen C. Bianco
Legal Administrator

encl.

cc: White Marsh Civic Association
and Adam Paul
Harewood Park Community Association
and Joe McGraw
Nottingham Community Association
and Marie Simoes
John B. Gontrum, Esquire
Warren K. Rich, Esquire and
Jennifer L. Wurzbacher, Esquire
Days Cove Reclamation Company
Pamela D. Anderson
/Assistant Attorney General
John Griffin, Secretary /DNR
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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IN RE: PETITION FOR SPECIAL HEARING	* BEFORE THE
3/S Days Cove Road, 5300' E of	
the c/l of Pulaski Highway	* ZONING COMMISSIONER
(6425 Days Cove Road)	
11th Election District	* OF BALTIMORE COUNTY
5th Councilmanic District	
	* Case No. 96-132-SPH
White Marsh Civic Assoc., et al	
Petitioners	*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on a Petition for Special Hearing for that property known as 6425 Days Cove Road, located in the vicinity of Pulaski Highway and the Gunpowder Falls State Park in White Marsh. The property is owned by the State of Maryland to the use of the Department of Natural Resources (DNR). Unlike the vast majority of Petitions for zoning relief which come before this Zoning Commissioner, the subject Petition was not presented by the property owner. Rather, the Petitioners are identified as three community groups, and three individuals who reside in the vicinity. The civic associations identified as the Petitioners are the White Marsh Civic Association, through Adam Paul, its President; the Harewood Park Community Association, through Joe McGraw, its President; and, the Nottingham Community Association, through Marie Simoes, its President. In addition to identifying those respective officers as Presidents of the named community associations, those individuals are also identified within the Petition as individual Petitioners, as taxpayers of and residents in, eastern Baltimore County.

As to the Petition for Special Hearing, the Petitioners request a determination by this Zoning Commissioner as to "...whether a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources (DNR), in an R.C.2 zone, is subject to the zoning regula-

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tions of Baltimore County, and therefore, must have a special exception in conformance with Section 1A01.2C(18) of the Baltimore County Zoning Regulations (B.C.Z.R.)"

Following the filing of the Petition for Special Hearing, the matter was scheduled for a public hearing, as required by Baltimore County law. Furthermore, proper notice of the public hearing was advertised in The Jeffersonian and the property was posted to advise the public of the hearing.

Appearing at the public hearing were Adam Paul, Joe McGraw, and Marie Q. Simoes, individually and on behalf of their respective community associations. A number of other residents of the surrounding community and members of the Associations also appeared. Collectively, these associations and individuals were represented by J. Carroll Holzer, Esquire. Also appearing at the requisite public hearing were Wayne Knight and Charles Volpe on behalf of the Honeygo Reclamation Company. Those individuals and that company own property in the vicinity which is being developed as a landfill. Messrs. Knight and Volpe as well as their company requested permission to intervene and participate in the hearing. The intervenors were represented by John B. Gontrum, Esquire. Although reserving on the issue of standing as it relates to both the Petitioners and intervenors, I allowed Mr. Gontrum to participate in this case. Appearing on behalf of the Department of Natural Resources (DNR) was Pamela D. Anderson, Esquire, from the Office of the Attorney General. Warren Rich, Esquire, Private Counsel retained by the Days Cove Reclamation Company (DCRC), also appeared and participated at the hearing. Mr. Rich's client is the Operator/Lessor of the proposed landfill.

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BACKGROUND & FACTS

The Petition for Special Hearing has presented a series of complex legal issues to be considered by this Zoning Commissioner. These will be discussed hereinafter; however, the factual history and proposed use of the property is largely not in dispute. The record of this case will show that there was limited testimony and evidence offered at the public hearing. A summary of the history of the property was agreed to by the parties by stipulation. Moreover, recognizing the complexity of the legal analysis necessary, the parties requested an opportunity to submit written memoranda following the hearing. Lengthy memoranda were received from all parties in a sequence agreed to at the public hearing. These memoranda have been carefully read and considered by me in my evaluation of this case. A review of those memoranda as well as the stipulations entered at the hearing disclose the following relevant facts.

The property under consideration is a 27-acre parcel, zoned R.C.2, located in the Gunpowder State Park in Baltimore County. As noted above, the property is owned by the State of Maryland, to the use of the Department of Natural Resources (DNR). The State acquired the site as part of a larger tract of land that it purchased from the Smuck family in 1986. The deed evidencing that transfer and attachments thereto were appended to the memoranda submitted by the parties.

Prior to the sale of the property to the State from the Smuck family, certain areas of the overall tract had been mined for sand and gravel and other areas were utilized for sludge disposal and mixing. A portion of the tract was also operating as a landfill. The operator of that landfill is Mr. Rich's client, the Days Cove Reclamation Center

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(DCRC). Apparently, the principals of that company were members of the Smuck family and/or their assigns. Under the terms of the sale to the State, the operators retained the right to continue to operate the existing rubble landfill for a period not to exceed 6 and 1/2 years, or until proceeds of \$4,000,000 was earned, whichever occurred first. Moreover, a reservation of the mineral rights for a 12-acre parcel was also provided within the deed, as well as the grantor's right to utilize the sludge mixing area, as permitted by the State Department of Health and Mental Hygiene (DHMH), for a period not to exceed 4 and 1/2 years from the date of the closing of the sale.

From the memoranda and documents offered, two factual conclusions are reached which bear on the issue presented. First, the existing rubble landfill is not located within or on the 27-acre parcel which is the subject of the special hearing request. That is, the proposed landfill use will be on a different portion of the overall tract. Although labeled an expansion of the existing landfill, the new landfill proposes utilization of different lands, albeit within the same overall tract previously owned by the Smuck family. This fact eliminates a conclusion that the new landfill could be nonconforming or otherwise grandfathered. (See Section 104, B.C.Z.R.) Secondly, it is clear that a portion of the 27-acre parcel under consideration was utilized in the past for the sludge disposal and mixing operation. In this regard, it is averred by the State and proposed landfill operator that these disturbed areas need restoration and reclamation before the site can be utilized as active park land. The property owners therefore suggest that the proposed use of the 27 acres is not strictly a for profit landfill business, but a means to reclaim and restore park land, a State function.

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Although the right to continue to operate the landfill has expired under the deed of conveyance, the landfill continues in operation. Apparently, the State and the DCRC renegotiated this issue at the time the DCRC's right to continue operations on the site expired under the deed. Thus, the existing landfill operation is continued under a contract between the present owners (State of Maryland) and the DCRC.

In 1994, the DCRC approached the State about expanding the rubble landfill to the subject area. The operators and the State agreed that the proposed expansion would allow the State to reclaim the sludge site for park land, in addition to meeting the need for additional rubble fill capacity in Baltimore County.

On November 28, 1994 and January 30, 1995, DCRC submitted to the Maryland Department of the Environment (MDE) an application for a refuse disposal permit for this site. By July 1995, MDE's Waste Management Administration had completed its review of Phase 1 (Permit Application) and Phase 2 (Geologic and Hydrologic Report) for the refuse disposal permit and considered those submissions to be complete. The State had also begun its review of Phase 3 (engineering plans and specifications).

On July 12, 1995, the Director of MDE's Waste Management Administration, Richard Collins, wrote to Baltimore County Executive C. A. "Dutch" Ruppertsberger to advise him of the status of the permit application. This letter has been submitted as an exhibit, attached to the memorandum offered by DCRC. In that letter, Mr. Collins advised of the status of the application and stated that "...because this facility is situated on State-owned property, the prerequisite for a Statement of Conformity with the County's local zoning and land use requirements will

not be required." Needless to say, the Petitioners and the intervenors heartily disagree with this conclusion.

ISSUES:

1) Zoning Commissioner's Jurisdiction: A threshold issue raised by the DCRC, as well as the Attorney General's Office, relates to the jurisdiction of this Zoning Commissioner to entertain the Petition for Special Hearing. Simply stated, the DCRC and Attorney General's Office aver that the Zoning Commissioner lacks jurisdiction to consider the issue presented in the Petition for Special Hearing. The arguments offered in support of this position are contained within the respective memoranda. For reasons set forth below, I disagree with this assertion and conclude that jurisdiction is proper.

Baltimore County is a chartered County, subject to the general provisions of Article 25A of the Annotated Code of Maryland. Subsection 5 of Article 25A delineates the express powers granted to and conferred upon any chartered County under the provisions of Article XI(A) of the Maryland Constitution. Among the powers conferred to Baltimore County are powers relating to planning and zoning. {See Article 25A, Section 5(X)}.

This Section recognizes the policy of the State that orderly development and use of land requires comprehensive regulation through the implementation of planning and zoning controls. Moreover, it is indicated that these controls should be implemented by local government, i.e., the County. Thus, it is clear that the County, not the State, regulates the use of land within the borders of the subdivision. It is also of note that this grant of power does not permit the County to exercise other powers not specifically granted within Article 25A, Section 5(X), nor is the County or its officers to engage in an activity which is beyond their

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power under other public general law, public local law, or otherwise, nor can the County preempt or supersede the regulatory authority of any State department or agency under public general law.

In furtherance of the grant of powers pursuant to Article 25A, Section 5 of the Annotated Code of Maryland, the Baltimore County Charter was adopted. Therein, the Office of the Zoning Commissioner was established (Section 522 - Baltimore County Charter). The Baltimore County Code was enacted, in part, to regulate and define the powers and responsibilities conferred to Baltimore County. Title 26 of the Code regulates planning, zoning, and subdivision control, including a further defining of the Zoning Commissioner's responsibilities and conduct of office. Lastly, the Baltimore County Zoning Regulations (B.C.Z.R.) were enacted to provide specific regulations for the use of land in Baltimore County and to delineate and define the Zoning Commissioner's duties. In addition to the authority to consider Petitions for Variance and Special Exception, the B.C.Z.R., by Section 500.7 therein, permits the Zoning Commissioner "...to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Clearly, the language of this regulation is broad and the authority of the Zoning Commissioner in the land use realm is far-reaching. The meaning of the words is clear; the Zoning Commissioner may conduct such hearings and issue such Orders as, in his discretion, are necessary for the proper interpretation and implementation of the Baltimore County Zoning Regulations (B.C.Z.R.).

Section 102 of the B.C.Z.R. defines the scope of the regulations. Section 102.1 states that "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in

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conformity with these regulations, and this shall include any extension of a lawful nonconforming use." Moreover, Section 103.2 indicates that "When any public use ceases, or, when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these regulations." (emphasis added)

In my judgment, resolution of the jurisdictional issue is simple. In effect, the Petitioners and the Intervenor ask whether the subject land can be utilized, as proposed, and whether such utilization would be in conformity with the B.C.Z.R. It is the applicability of Section 102.1 of the B.C.Z.R. to this proposed use which is at issue. As a corollary, the question presented is whether the 27 acres at issue have ceased to be publicly used, and, under the proposal, will be utilized for private purposes. Thus, an interpretation of Section 103.2 of the B.C.Z.R. is necessary.

Clearly, it is these two Sections, considered in conjunction, which must be interpreted and applied to the facts presented. The Zoning Commissioner, pursuant to Section 500.7 of the B.C.Z.R., is clearly the proper person to interpret these Sections, as applied to the facts presented. The DCRC's position, as supported by the Attorney General's Office, begs the rhetorical question, "If the Zoning Commissioner is not the proper authority to interpret and apply the B.C.Z.R., who would be?"

Moreover, the mere fact that this statute (i.e., Sections 102.1 and 103.2 of the B.C.Z.R.) need be interpreted does not remove the issue from the Zoning Commissioner's jurisdiction. To the contrary, the general rule is that where the issue is one of statutory construction, an exhaustion of administrative remedies is required before Court intervention is

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permitted. See e.g., Arundel Corporation v. County Commissioners, 323 Md. 504 (1991). In Maryland Commission on Human Relations v. Mass Transit Administration, 294 Md. 225 (1982), the Court discussed the doctrine of exhaustion of administrative remedies. The Court noted "Although there may be cases in some other jurisdictions supporting the trial court's view that administrative remedies need not be exhausted if the question is one of statutory interpretation like that presented here, this view is contrary to the settled law of Maryland. This Court has consistently held that statutorily prescribed administrative and judicial review remedies must be exhausted in cases involving the interpretation of statutory language." Citations omitted, Pages 232-233. For these reasons, it is clear that the Zoning Commissioner has jurisdiction to consider this issue.

In further support of this conclusion, it is to be noted that all parties extensively briefed the issue of whether the operation of the proposed landfill was a public or private use. Among the cases cited by all parties were Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 683 (1989) and Youngstown Cartage Company v. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975). It is of note that both of these cases found their way to the Appellate Courts as appeals from the Circuit Court for Baltimore County. Moreover, a review of the opinions issued in those cases show that both started as proceedings before the Zoning Commissioner of Baltimore County. Subsequently, the cases were appealed to the County Board of Appeals, then on to the Circuit Court, and so on. Although those opinions do not directly address the jurisdictional issue, the genesis of both cases was the fundamental consideration of whether a proposed use was insulated from the B.C.Z.R. by the State's immunity from the zoning regulations.

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That is, the same fundamental issue was under consideration. In those cases, the Zoning Commissioner was the first level at which this question was addressed, and the matter proceeded thereafter, ultimately to the powers that be in Annapolis. I see no reason that this case should take a different jurisdictional/procedural route.

2) Standing: The second issue raised by DCRC and the Attorney General's Office relates to an alleged lack of standing of the Petitioners and intervenors to raise the issue presented. For reasons stated hereinafter, this argument also cannot be sustained.

In considering the standing issue, again a review of Section 500.7 of the B.C.Z.R. is necessary. In addition to establishing the Zoning Commissioner's jurisdiction, that Section provides that "The power given hereunder shall include the right of any interested person to Petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises, or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." (emphasis added) This language is broad and sweeping. It allows any "interested" person to Petition for an interpretation of the B.C.Z.R. as it may bear on any rights whatsoever of that person. This office has long held that Petitions may be filed, not just by property owners, but by any individual or entity which avers that it may be affected by a certain land use. Any reasonable nexus to the subject property will support standing.

It is undisputed that the operation of a landfill brings about an impact on the vicinity in which it is located. At the very least, a landfill use generates vehicular traffic, brought about by the transporta-

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tion of items to be disposed of within the fill by the operators' customers. Thus, the surrounding road system suffers an impact. Moreover, environmental considerations are primary, hence, the significant scope of review afforded to the Maryland Department of the Environment (MDE) in considering and approving all permits to operate and establish landfills. Whether these environmental impacts may affect surrounding properties is an issue.

Based on these factors, in my judgment the Petitioners and intervenors possess the requisite interest to bring the Petition. I do concur with DCRC that economic competition is not a factor which raises a legitimate "interest"; however, there is more at issue here than the economic impact of the proposed landfill on business at the Honeygo Reclamation Center. Rather, it is generally the criteria identified in the special exception review process (B.C.Z.R., Section 502.1) which support the Petitioners'/Intervenors' interest in this case. Within its memorandum, DCRC cites a line of cases in support of its claim that the Petitioners and intervenors lack standing. One case, Brynairski v. Montgomery County, 247 Md. 137 (1966), is recognized as a leading case in Maryland. Other cases cited include Richmark Realty v. Whittliff, 226 Md. 273 (1960), Zang and Sons Builders, Inc. v. Taylor, 203, Md. 628 (1993), and Crozier v. City Commissioner's of Prince George's County, 202 Md. 501 (1952). Although the principals espoused in these cases are self-evident, they are not applicable here. The cases cited discuss the standing of an "aggrieved party" which has instituted an appeal. Indeed, much of DCRC's memorandum discusses that concept. While it is true that appeals might, in some circumstances, be limited to "aggrieved persons", a showing of aggrieved party status is not required at the Zoning Commissioner's level.

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As noted above, only a claim that a party has a reasonable interest is required under Section 500.7 of the B.C.Z.R.

3) The Impact of Title IX, Environment Article, Annotated Code of Maryland: Having resolved the preliminary issues relating to jurisdiction and standing, attention is next directed towards the merits of this case. Specifically, inquiry need be made as to whether the B.C.Z.R. are applicable to the proposed use.

In addressing this issue, Counsel for the Intervenor first argues that the precise language contained within the Environment Article of the Annotated Code of Maryland requires application of the B.C.Z.R. to the proposed use.

The Environment Article codifies the vast array of State laws which regulate impacts to the natural environment of the State. Title 9 of the Article regulates Water, Ice and Sanitary Facilities. Title 9, Subtitle 2 specifically defines the required regulation by the State. As the Intervenor notes, Section 9-201 of the Article defines person as including "...the Federal government, a State, County, municipal corporation, or other political subdivision." Thus, for the purposes of the regulations contained within Title 9, the State of Maryland is a "person". Further on, Section 9-204 of the Article requires that a person shall have a permit issued by the Secretary of the Department of Natural Resources (DNR) before that person installs, alters or extends a landfill. {See Section 9-204,(d)} The Intervenor then goes on to note that Section 9-210 of the Article designates the prerequisites for the issuance of a permit. Among other requirements, that Section states that the Secretary may not issue a permit to install, alter or materially extend a landfill until the County in which the landfill is located has provided the Department a

written statement that the landfill, a) meets all applicable zoning and land use requirements; and, b) is in conformance with the County's solid waste plan. In the Intervenor's eyes, these Sections, read in conjunction, require the State (a designated person) to obtain a permit, and that such permit can be issued only after compliance with the County zoning and land use requirements.

Both the State and DCRC dispute such a reading of the law. They point to the use of the word "applicable" within Section 9-210(a)3.i as dispositive. They argue that the B.C.Z.R. are not applicable by virtue of the State's well-settled immunity from local zoning regulations.

Clearly, this issue hinges upon a interpretation of the statute. For their part, the Intervenor's have presented a lengthy statement of the legislative history of Section 9-210. It is claimed that this history supports a finding consistent with their reading of the statute.

It is well-settled that the cardinal rule of statutory construction is to ascertain and carry out the intent of the legislature. See Stapleford v. Hyatt, 330 Md. 388 (1933). In making such judgment, the language of the statute and the natural and ordinary meaning of same must be considered. See Harford v. University, 318 Md. 525 (1990). Most importantly, the Courts have held that if there is no ambiguity or obscurity of the language of a statute, there is no need to look elsewhere to ascertain the intent of the legislative body. See Montgomery County v. Buckman, 333 Md. 516 (1994). Thus, it is only when there is an ambiguity or obscurity in the language of the statute should an examination of the legislative history of the act be undertaken.

I find no ambiguity or obscurity here. It is clear that the legislature intended that permits be issued only upon certification that

applicable County zoning and land use requirements were met. The statute does not go beyond that plain direction, and cannot be construed to constitute a waiver of the State's well-settled immunity from zoning regulations. Quite simply, I do not read that section as broadly as the Intervenor. I do not perceive, based on the plain language presented, a legislative intent to waive the well-established rule of law that the State is immune from local zoning regulations. Such a waiver in my judgment would require a clear mandate within the statute. It is not present here. The use of the word "applicable" suggests that only those regulations which are legally binding on a person need be satisfied.

Moreover, even a reading of the legislative history of Section 9-210 is not supportive of the Intervenor's argument. To the contrary, it appears that earlier versions of the present law did not utilize the word "applicable" in describing the zoning regulations which must be applied before a permit is issued. That is, it is only in more recent versions of the statute has the term "applicable" been employed. In my judgment, this evolution does not evidence a waiver of the State's immunity, rather, a recognition of same. Thus, the plain language of Title 9, Environmental Article, Annotated Code of Maryland, does not, in and of itself, mandate a conclusion that the B.C.Z.R. are applicable in this instance.

4) Pre-emption: A brief comment is in order about the doctrine of pre-emption, which essentially provides that the State, by its regulation of a given activity, prohibits other regulation of that activity by a local jurisdiction. A review of the Environment Article discloses no language from which a conclusion may be drawn that the State has pre-empted the field of landfill regulation. In this field, there is no pre-emption, be it express or implied. The Court of Appeals holdings in Ad + Soil,

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Inc. v. County Commissioners, 307 Md. 307 (1986) and Harker, supra, are dispositive in reaching this conclusion. More importantly, both the State (DNR's Memorandum, Pg. 5) and DCRC (Memorandum, Pg. 20, Note 9) concede that pre-emption is not applicable in this case.

5) Applicability of the B.C.Z.R. (Public versus Private Use):

The final issue presented is the most difficult. Its resolution will determine the outcome and constitutes the hub of the case. Its resolution requires an inquiry into the nature of the proposed operation.

It is clear that the State, as sovereign, is exempt from the reach of the B.C.Z.R. It is well-settled that the State is not bound by an enactment of the General Assembly, unless the enactment specifically includes the State, or manifests a clear and undisputable intention that the State is to be bound. See City of Baltimore v. State, 281 Md. 217 (1977) and Harker, supra. Thus, in nearly all cases it must be concluded that an activity conducted on the sovereign's land is exempt from the reach of the B.C.Z.R.

Moreover, it is clear that the State has not affirmatively waived its immunity from the provisions of the B.C.Z.R. In my judgment, none of the provisions of the Environment Article constitute such a waiver. As stated in City of Baltimore and Harker, supra, such waiver must be specifically and clearly provided or manifested by a clear and unambiguous intention. There is no manifestation or waiver in this case.

Finding no waiver of its immunity, an examination of the case law is next necessary in order to determine whether there may be an exemption from the general rule of law. Chronologically, the first case which came about to discuss this issue arose before the Court of Special Appeals of Maryland in 1975. At that time, the Court considered Youngstown Cartage

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Company v. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975). In that case, the State Highway Administration (SHA) acquired a parcel of land adjacent to North Point Boulevard in eastern Baltimore County. The SHA acquired the property with the intent of utilizing same for road improvements and other clearly identifiable State purposes. For one reason or another, however, the land was not so immediately used. In order to generate income, and to put the property to some immediate use, the SHA then leased the land to the Youngstown Cartage Company for a monthly fee. It is clear from the Court's opinion that the utilization of the property by the Youngstown Cartage Company was for strictly private purposes. The Company operated a trucking terminal on the property. The SHA clearly had no involvement in the operation of the business, which was undoubtedly a private enterprise.

The case came before the Court to consider whether the B.C.Z.R. were applicable to the subject use. The Court concluded that it was. The Court discussed the concepts of public use versus private use and concluded that the property was not utilized for public purposes. The Court noted that "The public has no right to enter upon or make use of the subject property so long as Appellant remains a lawful tenant thereof. The State is but the landlord of the Appellant until such time as the State sees fit to terminate the lease agreement and rent to another, use the property for its own purpose, or divest itself of title." (Page 630). Thus, the B.C.Z.R. were held to apply. Upon the facts as found in Youngstown, an exemption was carved from the settled rule of law recognizing the State's immunity. This exemption allowed County regulations to apply when the State's role was limited to landlord status, and the property was utilized solely for private enterprise purposes.

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The next case relating to this subject arose from Baltimore City. That case, Mayor and City Council of Baltimore v. State of Maryland, 281 Md. 217 (1977), tested the applicability of the Baltimore City zoning regulations to a State-owned piece of property. In that matter, the State acquired a piece of property on which a jail was to be constructed. A dispute ensued as to whether the Baltimore City zoning regulations were applicable. In deciding the case, the Court restated the well-worn premise noted above, namely, that the State is not bound by an enactment of the General Assembly unless it clearly waived its immunity. Determining that there was no such waiver in this case, the Court concluded that Baltimore City had no authority to subject the State's use of the property to the zoning ordinance. The use identified in Mayor and City Council, infra, was clearly a public use, to be operated on State land by the sovereign.

A third case arose in 1978 before the Court of Special Appeals. That case also arose from Baltimore City, namely, Mayor and City Council, of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978). As in the case with Youngstown Cartage and Mayor and City of Baltimore, infra, the property at issue was owned by the State. In that case, the State Department of Juvenile Services purchased a property in Baltimore City and determined to rent same to a private, non-profit charitable organization (e.g. the Campfire Girls). The property was to be used as a home for teenage girls who had been committed by the Juvenile Court to the jurisdiction of the Department of Juvenile Services. The Court discussed the impact of Youngstown Cartage and Mayor of Baltimore City, infra. The Court's opinion studied the operation and proposed use of the property by the Campfire Girls organization. Moreover, the Court again discussed the definition of "public use".

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Apparently, the Court gave great weight to the fact that the Campfire Girls was a charitable corporation and that, although a private organization, the Campfire Girls was carrying out the will of the General Assembly by providing homes for teenage children. After full discussion, the Court concluded that the zoning regulations of Baltimore City were inapplicable.

The most recent case in this arena is Harker, supra. That case arose out of Baltimore County and this Zoning Commissioner participated in that matter while a member of the County Board of Appeals. In fact, I authored the opinion rendered by the Board in that case. Unlike the prior three cases, Harker involved privately owned property. The Methodist Board was under contract with a State agency to provide facilities for children in need. Again, the question was presented as to whether the local zoning regulations were applicable. After full discussion, the Court of Appeals concluded that the Methodist Board was not entitled to invoke the State's immunity from the Baltimore County Zoning Regulations (B.C.Z.R.)

Within its memorandum, DCRC cites the Harker opinion as dispositive on the issue presented. DCRC extracts from the Court's opinion a single statement, namely, that the State's sovereign immunity "...does not turn on the use being made of the property by the party claiming the exemption, but upon its ownership by the State." Id. at 695. Thus, DCRC claims that since the land under question is State-owned, immunity from the B.C.Z.R. must attach. I disagree.

Although indeed the Harker Court penned such a statement, DCRC has misconstrued the context in which that statement was made. Unlike Youngstown Cartage, City of Baltimore v. State, and City of Baltimore v. State Department of Health and Mental Hygiene, the issue presented in

Harker did not involve State land. As noted above, the property under consideration in Harker was owned by a private entity. The opinion in Harker emphasizes the fact of that ownership and notes that the Methodist Board attempted to utilize the State's immunity for its own protection and insulation from the B.C.Z.R. It was in this context that the Harker Court observed that the immunity arises from the ownership of land, and not the activity which occurs thereon. If DCRC's argument was adopted and the Harker language strictly followed, the holding in the Youngstown Cartage decision would be overturned and the analysis undertaken by the Court in City of Baltimore v. State and City of Baltimore v. State Department of Health and Mental Hygiene unnecessary. I do not believe that the Court of Appeals intended such a result in Harker. In my judgment, the mere proof of ownership by the State in this case is not the sole factor to be considered. An analysis of the potential activity on the site need be undertaken, as was done by the Court in the three cases which have considered public/private use on State-owned land.

In this respect, the positions of the parties are crystallized. For their part, the Petitioners and Intervenor aver that the landfill operation is strictly a private enterprise. They note that DCRC is a for-profit corporation, unlike the Campfire Girls. Like the Youngstown Cartage operation, DCRC pays rent to the State. The Petitioners and Intervenor allege that the State is not a partner in the use of the facility, the State does not control the use of the facility, and that the facility operates as a private entity. Moreover, although the Petitioners and Intervenor acknowledge that DCRC's operation results in some public benefit, they claim that the benefit is no different from other benefits resultant from other private enterprises. For example, a privately operat-

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ed golf course, while providing some public use and benefit, is nonetheless considered a private enterprise and subject to the B.C.Z.R. Although a golf course increases the tax base in Baltimore County, provides recreational and social activities to the citizens of the County, and confers similar benefits, it is, nonetheless, a private enterprise and subject to the B.C.Z.R. In a similar vein, the Petitioners and Intervenor argue that the proposed use is likewise subject to the regulations.

Obviously the State and DCRC disagree. It is their position that utilization of the site as a landfill will facilitate the reclamation of the property previously disturbed by the sludge disposal operation. Thus, they believe that the landfill's operation is intertwined with the use of the property as parkland. Moreover, DCRC notes that the proposed use fills a significant public need by providing landfill space otherwise unavailable in Baltimore County. Moreover, it raises revenue for DNR, to be utilized for improving the State park system and other public purposes.

Some of these arguments are compelling and others are not. I take particular issue with the State and DCRC's position that utilization of this landfill furthers a park purpose. The land previously used for sludge disposal could be reclaimed by means other than operating a landfill. Removal of the sludge and regrading of the property would reclaim the site to useable park area. As the Petitioners and Intervenor correctly note, digging a large fill area, filling same with concrete, debris and other items, is not necessary to reclaim the land for useable parkland.

In the final analysis, however, it must be noted that Youngstown Cartage, infra, is the sole authority in Maryland from which an exemption has been carved from the State's immunity. It is the only case involving State-owned land where it was determined that local zoning regulations do

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not attach. Although the Court's opinion is not as detailed about the features of the Youngstown Cartage operation as would be preferable, it is abundantly clear that it was strictly a private enterprise, utilizing the State Highway Administration property. There was no regulation by the State of the business activity and the use by Youngstown Cartage did not further an ultimate public purpose, e.g., the reclamation of land for future public park-type uses. The Youngstown Cartage operation was a 100 percent private enterprise and the State's sole gain was the receipt of rental income. To the contrary, the use at issue can best be labeled a public/private hybrid. There is no doubt that DCRC is a private enterprise and that its desire to rent this land stems from its desire to turn a profit. Nonetheless, the public use and ultimate benefit here is far more significant than in Youngstown Cartage. It is recognized that the land will be returned in better condition for utilization as public parkland. Moreover, the business of DCRC in operating this facility is significantly more regulated and of a public nature than the Youngstown Cartage operation of a truck terminal.

The State's sovereign immunity is a precept which is well-settled and from which an exemption should be carved only in limited circumstances. The Court's exemption based upon the facts presented in Youngstown Cartage is appropriate. The facts presented here are not as compelling. I do not believe that they are sufficient to allow me to expand the exemption from the State's immunity developed in Youngstown Cartage. Thus, the Petition for Special Hearing must be denied. I must conclude that the B.C.Z.R. cannot be applied to this use.

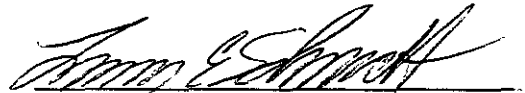
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Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested in the Special Hearing must be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of March, 1996 that a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources (DNR), in an R.C.2 zone, is not subject to the zoning regulations of Baltimore County, and thus, the Petition for Special Hearing be and is hereby DENIED.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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Date 3/21/96
By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

March 21, 1996

(410) 887-4386

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
S/S Days Cove Road, 5300' E of the c/l of Pulaski Highway
(Department of Natural Resources' property at 6425 Days Cove Road)
11th Election District - 5th Councilmanic District
White Marsh Civic Association, et al, Petitioners
Case No. 96-132-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: White Marsh Civic Assoc., Harewood Park Community Assoc., Nottingham Community Assoc., through Mr. Adam Paul, Mr. Joe McGraw, and Ms. Marie Q. Simoes, respectively.

Mr. John Griffin, Secretary, Department of Natural Resources
Tawes State Office Building, 580 Taylor Ave., Annapolis, Md. 21401;
Mr. J. Joseph Curran, Jr., Attorney General, and
Ms. Pamela D. Anderson, Assistant Attorney General, State of Maryland
200 St. Paul Place, Baltimore, Md. 21202

John B. Gontrum, Esquire, Romadka, Gontrum & McLaughlin
814 Eastern Boulevard, Baltimore, Md. 21221

DEPRM; People's Counsel: File

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IN THE MATTER OF:

* BEFORE THE

DAY'S COVE RUBBLE LANDFILL
EXPANSION

* ZONING COMMISSIONER

* OF

GUNPOWDER FALLS STATE PARK

* BALTIMORE COUNTY

* Case No.: 96-132-SPH

* * * * *

REPLY OF MEMORANDUM OF PETITIONER

The Petitioners, having received the Memorandum of Law in response to their petition from Counsel for Days Cove Reclamation Company late, hereby submits a brief reply.

The Memorandum from Day's Cove Reclamation Company appears to concede that the determination of this case rests upon what constitutes a "public use" and, therefore, that the public use question is the issue before the Zoning Commissioner. Petitioners do not accept nor concede the fact that every landfill is per se a public use and that simply because the applicant in this Case, Day's Cove Reclamation Company, desires to place a landfill on public property, that that, in and of itself, satisfies the case law requirement for the determination of a public use. Clearly every landfill does not qualify as a public use, particularly under the proffered factual situation in this case in which the State is operating a State park in which the landfill will be located.

Clearly what is needed in this case in addition to the hearing already held on November 7 is the State and the Day's Cove Reclamation Company be required to come forward and disclose the factual basis for the operation and the need of this proposed landfill. Many questions still exist on this record as to the factual basis of how the site is to be used, leased, and to what extent state oversight is or is not involved in this case.

LAW OFFICE

HOLZER AND LEE

305 WASHINGTON AVENUE

SUITE 502

TOWSON, MARYLAND

21204

(410) 825-6961

FAX (410) 825-4923

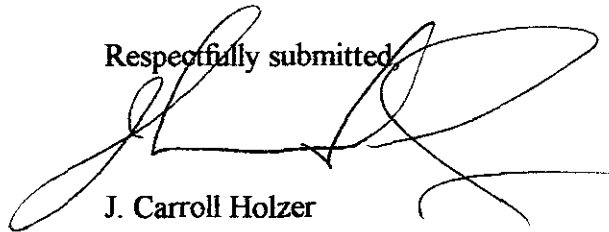
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In a review of the Youngstown Cartage Company v. North Point case, it is clear that the determination of the issue of public use rests upon a factual foundation.

WHEREFORE, Petitioners respectfully submit that the Zoning Commissioner should convene an additional hearing for the purpose of obtaining whatever factual information all sides desire to present to further create a record for purpose of a determination of the core issue of "public use."

For an explanation as to why this brief reply memorandum is late in accordance with the Zoning Commissioner's previous ruling, please see the letter of December 4, 1995, from Jennifer L. Wurzbacher Representing Days Cove Reclamation Company.

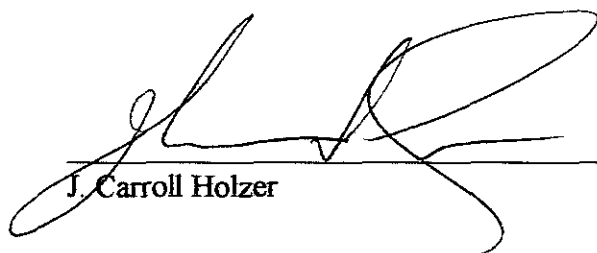
Respectfully submitted,



J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 8th Day of December, 1995, a copy of the foregoing Reply of Memorandum of Petitioner was mailed, postage pre-paid, to: Warren Rich, Esquire, P.O. Box 819, Stevensville, Maryland 21666, and to Pamela Anderson, Esquire, Assistant Attorney General, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 and John Gontrum, Esquire, Romadka, Gontrum & McLaughlin, 814 Eastern Blvd., Baltimore, Maryland 21221.



J. Carroll Holzer

IN THE MATTER OF:

DAYS COVE RUBBLE LANDFILL
EXPANSION

GUNPOWDER FALLS STATE PARK

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No.: 96-132-SPH

* * * * *

RESPONSE MEMORANDUM OF WAYNE KNIGHT AND HONEYGO RECLAMATION CENTER

The Memoranda filed by the State of Maryland, Department of Natural Resources (hereinafter referred to as the "State") and by Days Cove Reclamation Center (hereinafter referred to as "DCRC") both concede a fundamental point of Petitioners,' which is that mere State ownership of the property does not constitute immunity from local zoning oversight. Because there is a fundamental disagreement over whether the facility will operate as a "public" or a "private" use, a factual hearing is necessary to determine the means of operation of the facility.

The Memorandum of the State

The State's Memorandum opens with a statement as to how environmentally valuable and sensitive the area surrounding the subject site is. It is important to realize that the parcel of property on which the proposed landfill is to be located was never approved previously for a landfill use. Another tract had been used, and the deed conveying that parcel allowed that use on that tract to continue. The deed did not give permission for other such activities, but rather provided for their termination.

No one contests that the State gets revenue from the site or

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that the revenue is not put to "good" use. Presumably, the State does not lease land to private interests for nothing unless the interest is a state public use. Rent would be appropriate if the use is a private use. The fact that no lease has been drawn as yet for this site is irrelevant, however, because the applicant (DCRC) in its application for use is using the previous lease as a model, and that lease clearly sets the use up as one privately operated and maintained. It is clear even from the State's memorandum that the role of the State is very passive, that of the landlord.

The State's Memorandum, however, is very incorrect in its characterization that the applicant is running the existing landfill. It is not. The current landfill is permitted to a separate corporate entity, JWP Enterprises, Inc., and no corporate identity or relationship has been alleged. Consequently, the State is letting a new entity come in to operate a new landfill. Whatever non-conforming use status the old landfill may have enjoyed can not be transferred to a new operator/lessee on a new site. The documentation offered including the application filed by DCRC supports this fact.

Finally, there is no showing that the current rubble landfill was in fact in compliance with the local regulations when taken over by the state. In point of fact such landfill could only have been in compliance if it had been adjudicated as non-conforming because it was located then in R.C. 2 and R.C. 50 zones, neither of which permitted the operation of that landfill as proposed.

The State's memorandum also fails to adequately distinguish

Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975), based on the facts presented. In both cases the situation involved state-owned property on which public use was deferred. In Youngstown, the State deferred the public use for highways, and instead leased the property to a private entity that put the property to productive, revenue-generating use. In this case the State also is deferring the public, park use until the landfill is capped and completed. To say that the property is being "reclaimed" is ridiculous. Assuming that the site has been used in the past for sludge storage and mixing with soil, if it truly was the goal of this project to reclaim or restore the site, the legitimate restoration or reclamation could not possibly involve the further removal of almost one million (1,000,000) cubic yards of soil, down to a depth of seventy feet below existing grades. How can this be justified as "reclamation"? This is not one of the quarries that the State claims is on the properties they purchased.

We agree obviously with the State in its statement as to the purpose of parks and its responsibilities. The statements made on the second page of the State's Argument, however, should be matched with the statements made on the first page of the memorandum. The proposal is to put in an unlined rubble landfill without County review to ensure that there are no environmental hazards from the previous use of the property. The cure is worse than the existing problem. If the purity and pristine nature of the park, its serenity, its ecological importance are truly important to the

State, how can the State justify putting in an unlined, privately operated landfill and state that this serves the purpose of the park? The mere allegation does not make it so. The revenues of leasing the site may serve a the State's purpose but not this precise use.

Nowhere in the authority of the Department of Natural Resources, Park Administration is there authority to run landfills in the parks. As the State concedes, this is the only landfill proposed in the State on park property. There are currently fifteen (15) rubble landfills operated in the State, and not one is owned and run by the State. In reality, this is not part of a statutory program, nor part of a state solid waste disposal authority, nor part of a state program. The proposed landfill will serve as a revenue producer only and should be viewed on the merits in that light alone.

The proposed lease and use in this case is much more akin to the facts of Youngstown than to the facts contained in Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978). This use is very similar to the examples of disruption cited in footnote number 1 at 381 A.2d 1190 in that case if state-owned property is put to private purposes without local zoning supervision. Presumably, the examples cited in that footnote also serve needed, economic development purposes and would, if the situation arose and were economically valuable, be similarly justified by the State as public uses.

Finally, it is clear that if the State reasoning applies, then the mere statement by a state official that the local jurisdiction should remove itself should cause the County to neglect its own charter and mandate. The State law does indeed say that the County must determine if the use conforms to applicable zoning requirements. The property is zoned on the zoning maps.

The purpose of this hearing is to determine if the local zoning requirements do in fact apply. That determination should be made if the facts indicate that the use is not a public use serving purposes of legislation mandating state action. The legislation's own wording could not be clearer, and an interpretation is justified only if there is ambiguity. This is the rare case where the State is explicitly defined as a "person" subject to the application process. If the State is subject to the process, then for the words to have any meaning, it too must be subjected in this matter to local zoning regulations.

The Memorandum of Days Cove Reclamation Center

The Memorandum filed by DCRC follows the State Memorandum on the substantive argument, and the previous discussion is equally applicable. The statements of the Department of the Environment are not binding upon local zoning officials as to the law, and especially not when local zoning officials have been charged with the responsibility of zoning overview.

There are factual statements in the Memorandum, however, which again are simply not supported. The site is not "open to the public" in the same way that a restaurant or convenience store is

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open. Presumably loads may be rejected in the complete discretion of the operator. Interestingly, the DCRC memorandum, while stating that this matter is a new matter, continues to refer to the conditions at the existing landfill operated by a separate company. While it rejects comparisons, its rationale for being is based on the existing landfill and its contracts and agreements. There is no statement, however, that the operations will be identical.

The bulk of DCRC's memorandum is devoted to jurisdictional and standing issues. The Baltimore County Zoning Regulations are very broad in the scope given the Zoning Commissioner. Clearly, under B.C.Z.R. Section 500.7, jurisdictional issues are issues for consideration by the Commissioner in special hearings. The Zoning Commissioner has complete discretion to hold hearings on his own motion or on the Petition of others on matters that effect the enforcement of the regulations. When the State code says that the rubble landfill proposed must meet applicable zoning regulations, and those regulations permit the use only by special exception, it is a matter for the Zoning Commissioner. It otherwise might be argued by DCRC that a suit for injunction and mandamus is inappropriate due to failure to exhaust administrative remedies.

The standing issue equally is a non-issue. Baltimore County by statute has a very broad standing provision in zoning and development matters. That standing is not contained in other County regulations nor in many State regulations. Nevertheless this is a County zoning case, and in this County an "interested person" includes community groups and taxpaying residents of the

County. This Petition was brought by taxpayers and community groups, which included this area as part of their territory. Just because the property is surrounded by State-owned land DCRC can not claim immunity from concerned citizens. Finally, because a special hearing may be raised even by the Zoning Commissioner on his own, any person should be allowed to assist in the presentation of the matter for the consideration of the Commissioner.

It is our position that the state legislation on its face delegates the responsibility for zoning decisions on landfills to local jurisdiction, even those landfills on state property. Even if express delegation, however, is not found, the determination of whether the proposed use at this location is a public use serving a public purpose, is a matter to be determined after a factual review of the conduct of the use.

In conclusion, Intervenors do not argue that there is not a monetary benefit to the state due to this use. We concede that the money that will be generated by this project will probably be used for worthwhile causes and that some will be returned to the County. We even concede that a rubble landfill in and of itself does serve a valuable purpose. Until technology and recycling develop, there is a need for these facilities. Need alone, however, does not determine a public purpose. There is a need for trucking facilities, a need for rendering facilities, for steel manufacturers and many other types of economic development. This use, however, has been singled out in both State law and in local law as having particular, potential adverse impacts on the

community, and for that reason, unlike so many other uses, the statutes and regulations have singled this use out for close scrutiny and review. To deny this statutorily-mandated review to the local jurisdiction on a matter so particularly defined defies logic and is contrary to the responsibilities of the local jurisdiction and its statutory duty. All that is being sought is that this use at this location be the subject of the review that the law mandates as necessary to protect the welfare of the people of the County and of the State.

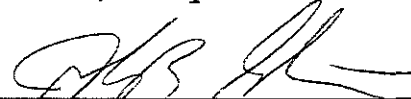
Respectfully submitted,



John B. Gontrum
Attorney for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 1995, a copy of the foregoing Memorandum was mailed by first class mail, postage prepaid to Warren Rich, Esq., attorney for Days Cove Reclamation, P.O. Box 819, Stevensville, Maryland 21666, and to Pamela D. Andersen, Esq. Assistant Attorney General, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 and to J. Carroll Holzer, Esq., attorney for Petitioners, Suite 502, 305 Washington Avenue, Towson, Maryland 21204-4740.



John B. Gontrum

IN THE MATTER OF:

DAY'S COVE AREA OF GUNPOWDER
FALLS STATE PARK
6425 DAY'S COVE ROAD
FIFTH COUNCILMANIC DIST.

* BEFORE THE ZONING
* COMMISSIONER OF
* BALTIMORE COUNTY
* CASE NO. 96-132-SPH

* * * * *

RESPONSE MEMORANDUM OF THE STATE OF MARYLAND,
DEPARTMENT OF NATURAL RESOURCES

Comes now, the State of Maryland, Department of Natural Resources, by its attorneys, J. Joseph Curran, Jr., Attorney General and Pamela D. Andersen, Assistant Attorney General, and responds to the memoranda submitted by the petitioners and intervenors in the above captioned matter.

Facts

On December 29, 1986, the State of Maryland purchased approximately 737 acres of land from Joseph and Stanley Smuck and the ROC Corporation, a Smuck family corporation. The land purchased from the Smucks borders on the confluence of the Big and Little Gunpowder Falls, one of only a few true river deltas in the State. The area, known as the Days Cove Area of Gunpowder Falls State Park, is significant for the diversity of habitats it contains. These include extensive marshes, both tidal and nontidal, a floodplain, wooded areas, a lake and open fields. Many consider this natural setting unsurpassed on the western shore of the Chesapeake Bay so it is being developed as an environmental study area.

At the time the State purchased the property, the Smucks had an active sludge mixing operation, a sand and gravel mining operation and a rubble landfill on the property. The Smucks retained the mineral rights (except for a 12 acre site containing critical habitat) with the right to

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mine for sand and gravel for the next ten years. The deed also specified that the Smucks were allowed to continue operating the rubble landfill until they had made \$4,000,000 or 6 ½ years had passed whichever came first. The \$4,000,000 mark was reached in 1993 and at that time the State entered into a lease with the company which had operated the landfill for the Smucks for the continued operation of the landfill. As the lessor, the State gets a percentage of the tipping fee. The County gets 10% of the State's revenue pursuant to Natural Resources Article, Section 5-212.

After many months of operating the landfill for the State, the tenant, Days Cove Reclamation Company, came to the Department with a proposal that the landfill be expanded in size onto the area which had been used for sewage sludge mixing and is now used as a site for storing the mixed sludge. The Department of Natural Resources agreed to allow the tenant to pursue getting a permit from the Maryland Department of the Environment for an expansion but has not yet taken a new lease or lease amendment to the Board of Public Works for its approval. No lease document has even been drafted yet.

Before the Department of the Environment issued the permit for the expansion of the rubble landfill, several individuals and civic associations petitioned for a special public hearing on whether or not the site proposed for expansion of the rubble landfill should be subject to the Baltimore County zoning regulations and this proceeding ensued. The current rubble landfill was in compliance with the zoning regulations at the time of its acquisition by the State. Following the acquisition, Baltimore County discontinued regulating the rubble landfill's operation.

The landfill is open to the public for use but there are operating rules which customers must comply with just as there are rules at all State parks which must be followed. The State's tenant works with the State Park Service on coordinating operation of the rubble landfill with the

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management of the State Park. The Maryland Environmental Service provides daily technical inspection services for the Department of Natural Resources pursuant to a contract for services.

Argument

At the hearing on December 7, the Zoning Commissioner reviewed the case law governing the application of local zoning regulations to State property. He determined that the Baltimore County zoning enabling legislation did not grant the County express authority to regulate State property, therefore, the County zoning regulations could only apply if the State could be shown to have waived its sovereign immunity from local regulation by not allowing the property proposed for the expanded landfill to be put to a public use.

The only case in which such a waiver has been found by a Maryland appeals court is Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975). In Youngstown, unlike the property at issue here, a State agency was not using the property in any manner. The entire tract was leased out and the privately operated facility was not open to the public. The State Highway Administration had leased all of the property to a trucking company to use for its own business because the Administration was not yet ready to build a road on the property. The property in this case is a public park and the facility at issue is a rubble landfill which is open to the public for use.

The facts in this case are much closer to those in Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978) in which the Court of Special Appeals held that a State owned house leased to a private entity to operate a home for girls adjudicated to be "children in need of supervision" was exempt from local zoning because the use made of the property was public and it served a public purpose. In Mayor, the Department of Health and Mental Hygiene was statutorily responsible for the care of

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the children staying in the home. In this case, the Department of Natural Resources is statutorily responsible for the promotion, administration and management of State-owned or leased parks. Natural Resources Article, Section 5-201. The Department is required to use and develop parks in a manner which protects and promotes the health, safety, economy and general welfare of the people of the State. Natural Resources Article, Section 5-102. The Department is fulfilling these responsibilities by including the rubble landfill in the Days Cove Area of Gunpowder Falls State Park.

The operation of the landfill is compatible with the existing uses of the Park. It does not interfere with the present recreational and educational activities in the Days Cove Area. The income it generates has allowed the Department to develop an Environmental Education Center and use the delta created by the confluence of the Big and Little Gunpowder Falls to be an educational tool. Just as the original landfill caused the reclamation of an area which had been mined for sand and gravel, the expansion of the landfill will allow the State to reclaim a disturbed area of the Park used as a sludge mixing site prior to the State's purchase of the property. The reclamation will ensure that there are no unknown pending environmental hazards and cause the area to be landscaped to conform to the Park plan.

It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of the local economy, preservation of the natural beauty, and promotion of the recreational and leisure interest throughout the State. Natural Resources Article, Section 5-102. The State complied with that policy when it allowed the rubble landfill to continue operating within the confines of a State park. Currently there are no other rubble landfills within the County and 75% of the waste deposited in the rubblefill originated in Baltimore County. Use of this rubble landfill saves capacity at the nearby County-owned Eastern

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Landfill. Convenient and economical rubble landfills keep down construction costs and promote the local economy. The landfill is a part of the State's Solid Waste Management Plan and fulfills an identified waste management need.

Other State owned facilities used for business-like activities have been determined to be exempt from local zoning regulations by the Maryland Attorney General. In 62 Op.A.G. 45 (1977) the Attorney General opined that a liquor dispensary owned and operated by the Wicomico County Liquor Control Board, which was a State entity, was not subject to local zoning regulation even though it was a business enterprise. Similarly, in 78 Op.A.G. (1993) [Opinion No. 93-017, May 25, 1993] the Attorney General found that a fraternity house purchased by the University of Maryland and leased to a private entity for student housing was not subject to local zoning because it fulfilled a public purpose. Opinions of the Maryland Attorney General are not binding on the courts or in this local zoning proceeding but the Maryland Court of Appeals has held that they are entitled to careful consideration. Dodds v. Shamer, 339 Md. 540, 663 A.2d 1318 (1995).

The petitioners also argue that Environment Article, Section 9-210(a) requires all refuse disposal systems to comply with county zoning and land use requirements regardless of who owns and operates the system and for what purpose. The statute requires the Department of the Environment to get a written statement from a county that a proposed refuse disposal system "meets all applicable county zoning and land use requirements" before the Department can issue a permit for the system. Environment Article, Section 9-210(a)(3)(I) (emphasis added). The petitioners have failed to acknowledge that the statute says all 'applicable' zoning requirements. In this situation, there are no applicable zoning requirements.

The Department of the Environment does not agree with the petitioners' interpretation of

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Section 9-210(a). Furthermore, it does not consider Baltimore County zoning regulations to be applicable in the permit pending for the rubble landfill expansion. See the attached letter of Richard W. Collins, Director of the Waste Management Administration, Maryland Department of the Environment. The statutory interpretation of the administrative agency administering the statute is entitled to great deference. B & O Railroad v. Bowen, 60 Md. App. 299, 482 A.2d 921 (1984).

A second argument made by the petitioners is that because the Maryland Environmental Service has a contract with the Department of Natural Resources to inspect the rubble landfill, Natural Resources Article, Section 3-104(v) requires the Department to comply with local zoning requirements. Section 3-104(v) prohibits the Service from constructing, establishing or operating any new solid waste disposal project within the boundaries of any county or municipal corporation without the express consent of the governing body of the county or municipal corporation. It does not apply in this situation because the Service did not construct or establish the rubble landfill nor does it operate the landfill. The Service merely provides technical inspection services to the Department of Natural Resources just as it does for many private businesses and local governments in addition to owning and operating its own projects.

The petitioners have also cited numerous cases on preemption for authority that the County can regulate the location of landfills. The Department has not addressed the preemption issue in this memorandum because no one is arguing that the State has preempted the field of local zoning of solid waste disposal facilities. The argument is that local zoning is not applicable to a State owned rubble landfill in a State park that is open to the public and is used for public purposes.

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For these reasons, the State of Maryland Department of Natural Resources respectfully requests the Zoning Commissioner to hold that the Baltimore County zoning regulations do not apply to the rubble landfill within Gunpowder Falls State Park.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 1995 a copy of the foregoing Response of the State of Maryland, Department of Natural Resources was mailed first class, postage pre-paid to J. Carroll Holzer, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for the Petitioners, to ~~John B. Gontrum, Romadka, Gontrum & McLaughlin~~, 814 Eastern Blvd., Baltimore, Maryland 21221, Attorney for Wayne Knight and Honeygo Reclamation Company, to Peter Max Zimmerman, Room 47, Courthouse, 400 Washington Avenue, Towson, Maryland 21204, People's Counsel, and to Warren K. Rich, Rich and Henderson, 844 West Street, P.O. Box 589, Annapolis, Maryland 21404-0589, Attorney for Days Cove Reclamation Company.



Pamela D. Andersen
Assistant Attorney General

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BEFORE THE ZONING COMMISSIONER OF
BALTIMORE COUNTY

IN THE MATTER OF	)	
DAYS COVE RUBBLE LANDFILL	)	
Gunpowder Falls State Park	)	Case No. 96-132-SPH
Days Cove Road	)	
11th Election District	)	

MEMORANDUM OF LAW IN RESPONSE
TO PETITIONERS' AND INTERVENORS' MEMORANDA

Days Cove Reclamation Company ("DCRC") hereby submits this Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda.

At the November 7 hearing and in their respective legal memoranda, Petitioners and Intervenor's have argued that Baltimore County's Zoning Ordinance applies to the Days Cove Rubble Landfill. Because Petitioners and Intervenor's cannot escape the sizeable body of case law holding that State-owned property put to a "public use" is immune from local zoning laws, they have focused on two arguments: (1) that the State has somehow waived its sovereign immunity with respect to rubble landfills; and (2) that the installation of this rubble fill on State park lands does not constitute a "public use."

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BACKGROUND

The proposed expansion of the Days Cove Rubble Landfill is the latest step in an effort to reclaim for park land property that previously was used for mining and sludge mixing, while at the same time operating a rubble fill. Rubble placed at Days Cove is largely inert construction and demolition debris. This material is placed in areas that were previously disturbed, which is brought up to a specified grade, capped and revegetated for park purposes.

The site of the proposed expansion (the "Site") is a 27 acre parcel located in Gunpowder State Park in Baltimore County. The Maryland Department of Natural Resources ("DNR") acquired the Site as part of a larger tract of land that it purchased from the Smuck family in 1986. Prior to their sale to the State and for a short period thereafter, certain areas of the property were mined for sand and gravel and other areas were utilized for sludge mixing. See Sludge Site Lease (Exhibit "A") and Mining Permit (Exhibit "B"). These activities resulted in the removal of top soils, sand, and gravel from the subject property, and lowered the grade of the affected areas. Disturbed areas needed restoration and reclamation before use as active parkland.

To aid in the reclamation of a portion of the former mining area, DNR leased that portion of the property to Enviro-Gro Technologies Company, a predecessor of DCRC, for the purpose of operating the Days Cove Rubble Landfill. Operation of the rubble landfill, which began in 1992, has restored that area to its natural grade.

The Days Cove Rubble Landfill is open to the public. In addition to accepting rubble transported by individuals and commercial haulers, Days Cove accepts brush and wood waste from neighboring Eastern Sanitary Landfill, which is owned and operated by the County. See Operating Agreement Between Baltimore County and DCRC (Mar. 8, 1995) (Exhibit "C").

In 1994, DCRC approached DNR about expanding the rubble landfill to the area encompassing the former sludge-mixing site. DCRC and DNR agreed that the proposed expansion would allow the State to reclaim the sludge site for park land, in addition to meeting the need for additional rubble fill capacity in Baltimore County and its environs.

On November 28, 1994 and January 30, 1995, DCRC submitted to the Maryland Department of the Environment ("MDE") applications for a Refuse Disposal Permit for the Site. By July 1995, MDE's Waste Management Administration ("WAS") had completed its review

of Phase I (permit application) and Phase II (geologic and hydrologic report) for the Refuse Disposal Permit and considered those submissions to be complete. WAS had also begun its review of Phase III (engineering plans and specifications) for the permit. At that time, Richard Collins, Director of WAS, wrote to Baltimore County Executive Dutch Ruppertsberger to advise him of the status of the permit application. See Letter from R. Collins to C.A. Ruppertsberger (Jul. 12, 1995) (Exhibit "D"). In that letter, Collins explained that:

Section 9-210(a), as amended, of the Environment Article, Annotated Code of Maryland requires that the Department report the findings of its preliminary technical review in writing to the County and that the County must provide a written statement to the Department affirming that the proposed facility is in conformance with approved County solid waste management plan. On April 14, 1995 WAS received a written statement from the County to this effect. Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

Id. at 1-2. The State requested no further input from the County with respect to the Refuse Disposal Permit.

Contrary to Petitioners' and Intervenors' assertions, no "proposed lease" has been negotiated or drafted. It is

anticipated that, like the current lease for the existing rubble fill, the lease for Site will set a level of rent based on the fees generated by the rubble fill. It is also likely that the Maryland Environmental Service will continue to play a role in monitoring disposal and placement of waste. Finally, the expansion, like the existing rubble fill, will be open to the general public and ultimately used for active park purposes.

The primary opposition to the rubble fill expansion have been Petitioners and Intervenors. Petitioners are three neighborhood associations and their respective leaders. Two out the three association leaders named in the Petition live two or more miles from the Landfill. The third lives more than three quarters of a mile from the Landfill. None of the neighborhood associations named in the Petition has identified any interest independent of those of its members that is affected by the issue presented. Intervenors are a reclamation company and its operator. Intervenors plan to construct a competing rubble landfill three miles from the Days Cove Rubble Landfill. These remote and purely competitive interests have driven the process that has resulted in the instant proceedings and do not provide a basis for standing.

ARGUMENT

I. THE ZONING ADMINISTRATION LACKS JURISDICTION TO CONSIDER THE ISSUE RAISED BY PETITIONERS AND INTERVENORS.

The subject matter jurisdiction of the Baltimore County Zoning Commission is established by the State Enabling Act and by the Baltimore County Charter, Baltimore County Code, and Baltimore County Zoning Regulations ("BCZR"). None of these authorities confers upon the Zoning Commission the power to consider the issue presented in this case.

Article 25A of the Maryland Code (the State Enabling Act) confers upon chartered counties, including Baltimore County, the power to enact and provide for enforcement of local laws. Md. Code Ann., Art. 25A § 5(A). Section 5(X) of the statute confers the specific power to enact local laws relating to zoning and planning. This section of the statute clarifies, however, that it does not "authorize the county or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise" or "to preempt or supersede the regulatory authority of any State department or agency under any public general law." Id. § 5(X)(v)3 & 4.

Neither the Charter, Code, or Zoning Regulations of Baltimore County grant the Zoning Commissioner the power to entertain a petition or issue an order in the absence of an adjudicatory "case or controversy." See Balto. Cty. Charter § 26-121; Balto. Cty. Code § 26-121; BCZR Part 500. Rather, as set forth in the BCZRs, the Zoning Commissioner has the specific authority to consider applications for building permits (§ 500.1), petitions for zone and district classification and reclassification of property, and special exceptions (§ 500.2), applications for use permits (§ 500.4). In addition to these powers, the Zoning Commissioner is granted the authority to conduct hearings and issue orders in matters "involving any violation or alleged violation or non-compliance with any zoning regulations, or on the proper interpretation thereof" (§ 500.6) and in situations where, "in his discretion, [it is] necessary for the proper enforcement of all zoning regulations" (§ 500.7). An order issued pursuant to these authorities is subject to the right of appeal to the County Board of Appeals. §§ 500.6 & .7.

The issue raised in the pending Petition is whether the BCZRs apply to a parcel of State-owned property that is leased to a private entity for the purpose of operating a rubble landfill. The only substantive question to be resolved is the scope of the

State's immunity from the application of local zoning regulations.

Most importantly, neither Petitioners nor Intervenors have presented a case or controversy, only a pure question of law. This issue, furthermore, does not require the interpretation of the local regulations. Nor does it concern the alleged violation of or non-compliance with those regulations. The County has already confirmed that the existing landfill does not require local approvals and the proposed expansion has not yet taken place. It is not a question of proper exercise of enforcement authorities. Rather, stripped of Petitioners' spin, the issue presented is purely one of State law.

Moreover, Petitioners claim that provisions of Maryland's Environment Article have effected a waiver of its sovereign immunity where rubble landfills are concerned. Implementation and interpretation of these provisions has been committed to the regulatory authority of the Maryland Department of Environment ("MDE"). Consequently, in light of the explicit language of the Enabling Act, this issue is clearly beyond the County's power to consider. See Art § 5(X)(v)4.¹

¹ Through this proceeding, Petitioners and Intervenors are
(continued...)

II. PETITIONERS AND INTERVENORS LACK STANDING TO RAISE THE ISSUE PRESENTED.

Under the general rules of standing applied by the Maryland courts, a party that would rest its right to sue on its status as a "resident," "park user," or "citizen" must establish through evidence in the record that the alleged public wrong sought to be addressed created special damages to the plaintiff different from that suffered by the public at large. Rogers v. Maryland-National Capital Park & Planning Comm'n, 253 Md. 687, 691

(1968).² The applicable statutory provisions supplement these standing limitations in the present case.³

(...continued)

really challenging the State's conclusion in the context of the Refuse Disposal Permit application that the subject property is immune from local zoning. Their attempted "end run" around the appropriate appeal process and final decision requirements should not be countenanced by this tribunal.

² In order to establish standing based on a party's status as a taxpayer, it is necessary to show that the statute or action challenged results in an increase in the party's taxes. Kerpelman v. Bd. Of Public Works, 261 Md. 436, 442-43 (1971). No one has suggested in this case, nor could they establish, that the exemption of Days Cove from zoning regulations would increase Petitioners' or Intervenors' taxes.

³ The BCZR's limit standing to petition the Zoning Commissioner to an "interested person" who seeks to determine his or her rights in property in Baltimore County "insofar as they are affected by these regulations." BCZR § 500.7. Further, only a person "aggrieved" by a decision of the Zoning Commissioner has
(continued...)

The Court of Appeals has applied a two-pronged test that a plaintiff must meet to establish standing to challenge a zoning action. Brynairski v. Montgomery Cty, 247 Md. 137, 144-145 (1966). First, he must show that he has a personal or property interest that will be adversely affected by the zoning action. Id. Second, he must demonstrate that his personal or property interest will be harmed by the zoning act in a way that is distinct from the harm that the general public will suffer. Id.

Under this test, standing generally has been limited to the owners of property located adjacent to or in close proximity to the subject activity, who can establish that the activity will cause them special damage--i.e., devaluation of their property.⁴ By contrast, courts have held that complainants lacked standing

(...continued)

the right to appeal that decision to the County Board of Appeals. BCZR § 500.10. The State Enabling Act limits standing to challenge decisions of the County Board of Appeals to persons "aggrieved by" a decision of the Board. Md. Code Ann., Art 25A § 5(U); Shore Acres Imp. Ass'n v. Anne Arundel Cty Bd. Of Appeals, 251 Md. 310 (1971).

⁴ 318 Md. at 92; see also Richmark Realty v. Whittliff, 226 Md. 273, 278 (1960) (complainants owned lot 200 feet from the subject property); Zang & Sons, Builders, Inc. v. Taylor, 203 Md. 628, 633 (1953) (complainants owned property directly across the road from subject property); Crozier v. Cty Comm'r of Prince George's Cty, 202 Md. 501, 509 (1952) (complainants owned property adjacent to or in close proximity to subject property).

where their property is so distant from the activity that any claim of decreased property value would be conjectural.⁵

None of the individual Petitioners or Intervenors in this case would be able to establish a personal or property interest that would be adversely affected by a determination that the Days Cove Rubble Landfill is not subject to local zoning regulations. Two out of three of the individual petitioners live more than two miles from the landfill. The other lives almost a mile away. Each of their residences is separated from the landfill by the Bird River, intervening park land, and other residential property. Intervenors intend to open a competing rubble landfill on property that is approximately three miles from the subject property. To the extent that Intervenors have any affected interest, it is purely competitive and, therefore, not cognizable under the zoning regulations. In addition, Intervenors' facility remains in the planning stages; rendering their interest entirely prospective and speculative.

⁵ 318 Md. At 92; see also Pressman v. Baltimore, 222 Md. 330, 332-37 (1959) (evidence of standing "scant" where some complainants lived 1-4 blocks from highway across from subject property and others lived more than a mile away); Loughborough Dev. Corp. V. Rivermass Corp., 213 Md. 239, 241-43 (1956) (complainants lived approximately ½ mile from and out of sight of subject property and residential zone and public park and stream lay between subject property and complainant's property).

Nor can the individual Petitioners or Intervenors establish that they will be affected by the decision in a way that is distinct from the rest of the public. Petitioners' rights to use and enjoy Gunpowder State Park are no different than other residents of the County or State. Their rights to use the rubble landfill are no different than those of any other County residents. Finally, because their properties are located at a considerable distance from the landfill, Petitioners cannot begin to show that the value of their properties would be diminished by a determination that the landfill is exempt from zoning requirements.

In Maryland, moreover, an organization cannot acquire standing to appeal simply because one or more of its members has standing. Clyburn Arboretum Ass'n v. Mayor & City Council of Balto., 106 Md. App. 183, 188 (1995) (citing Citizens Planning & Housing Ass'n v. County Exec., 273 Md. 333, 345 (1974)). Rather, an organizational plaintiff must establish standing based on its own personal or property interests. Id. In the instant case, none of the petitioning neighborhood associations have alleged a personal or property interest separate from those of the individual Petitioners.

In short, neither Petitioners nor Intervenors have established that they are "interested persons" or that they would be "aggrieved" by an adverse decision in this case. Accordingly, they have failed to establish the requisite standing to advance the Petition.

III. DAYS COVE RUBBLE LANDFILL IS EXEMPT FROM BALTIMORE COUNTY ZONING REGULATIONS.

A. The State is Immune From the Application of Local Zoning Laws.

It is a fundamental principle of statutory construction that the State is not bound by an act of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intent that the State is to be bound. See, e.g., Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 683 (1989). In Lomax v. Comptroller of the Treasury, 323 Md. 419 (1991), the question was raised as to whether State government was bound by a State provision which exempted certain pension funds from the act of garnishment. In concluding that the State was not subject to these general statutory provisions, the Court quoted with approval the words of Justice Story in State v. Milburn, 9 Gill 105 (1850):

General Acts of the Legislature are meant to regulate and direct the acts and rights of citizens, and in most cases, the reasoning applicable to them applies with very different, and often contrary force, to the government itself. It appears to me, therefore, to be a safe rule, founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the Act."

Id. at 118.

The Maryland Court of Appeals has applied this rule a number of times in the context of zoning matters. In Harker, the Court of Appeals concluded that Article 25A of the Maryland Code, which grants Baltimore County its zoning authority, neither specifically provides nor implies that the State is intended to be subject to its provisions. 316 Md. at 691. In fact, the Court noted, Section 5(X)(2)(v)(4) of the statute provides that the County's zoning powers shall not "preempt or supersede the regulatory authority of any State department or agency under any public general law." Id. In Glascock v. Baltimore County, 321 Md. 118 (1990), the Court of Appeals, applying this reasoning, held that the Legislature did not intend the County to be bound by its own zoning regulations for the construction of a communications tower. In short, the State of Maryland has not

waived its sovereign immunity from Baltimore County's zoning regulations through its enabling legislation.

B. The State Has Not Waived Its Sovereign Immunity Through
 Any Provisions of the Environment Article.

Petitioners and Intervenors appear to contend that certain provisions of the Environment Article subject the State to Baltimore County zoning regulations when a rubble landfill or other refuse disposal system is concerned. But the language and the purpose of the provisions to which these parties refer defy their argument.

Section 9-210(a) states that:

The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under Sec. 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

.

(3) The county has completed its review of the proposed refuse system, and has provided to the Department a written statement that the refuse disposal system :

(I) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan.

Md. Env't Code Ann. § 9-210(a) (emphasis added).

Nowhere does the statute specifically name the State or manifest a clear and indisputable intent to bind the State.

Accordingly, under the general principle announced in Harker and Lomax, only one conclusion can be reached: Section 9-210(a) does not waive the State's sovereign immunity from the application of local zoning laws.

The Legislature's use of the word "applicable" in Section 9-210(a) confirms that the statute does not seek to affect the scope of applicability of a county zoning ordinance. In short, this provision confers no additional zoning authority upon the County. It merely obligates the County to certify that a planned refuse disposal system is in compliance with those zoning requirements, if any, that apply.⁶

Consistent with this reasoning, the Maryland Department of the Environment ("MDE") MDE interprets Section 9-210(a) as providing no requirement that the County certify compliance with zoning regulations where a refuse disposal facility is located on State-owned property. In fact, MDE expressed this view in the

⁶ Intervenors provide a lengthy discussion of the legislative history of section 9-210(a) that attempts to emphasize the importance of the local jurisdiction's role in the State permitting process. Nothing in their analysis or the legislative history to which they cite even remotely suggests that this statute was intended to expand the scope of the County's zoning authority.

context of this very case in a July 12, 1995 letter to Baltimore County Executive Ruppertsberger, stating:

Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

Letter from Richard W. Collins, Dir., MDE Waste Management Administration, to Hon. C.A. Dutch Ruppertsberger, Balto. Cty Exec. at 2 (Jul. 21, 1995). As the administrative agency charged with implementing the statute, MDE is entitled to considerable deference in its interpretation of Section 9-210. B & O R.R. v. Bowen, 60 Md. App. 299 (1984).

Thus, in the instant case, no action on behalf of the County was required, or authorized, under the statute.⁷

⁷ Intervenor's seem to suggest that the County may have effected a waiver of the State's sovereign immunity through their drafting of the zoning ordinance or through their 1991 application for an injunction in a case involving sludge application in Gunpowder Falls State Park. It is important to note, however, that the County cannot waive the State's sovereign immunity. Moreover, in 1993, the County re-evaluated its position and concluded that local zoning regulations do not apply to State-owned land. See Letter from Eugene G. Siewierski, Supervisor, Waste Management Section, Balto. Cty Dept. Env'tal Pro. and Resource Mgt. to Margaret L. Demczak, Mgr., JWP Environmental Services Co. (Dec. 7, 1993) (Exhibit "E").

C. The State's Immunity from Local Zoning Laws Extends to State-Owned Land Leased to a Private Entity to Operate a Rubble Fill.

The case law in Maryland makes clear that, first and foremost, the right to exemption based on the State's sovereign immunity "does not turn on the use being made of the property by the party claiming the exemption, but upon its ownership by the State." Board v. Harker, 316 Md. at 695. In this case, State-ownership of Gunpowder Falls State Park, on which Days Cove is situated, is undisputed.

As Petitioners and Intervenors appear to acknowledge, moreover, the State's immunity from local zoning laws extends to any State-owned property that is put to a "public use," even if the use is undertaken by a private entity. See City of Baltimore v. State Board of Health and Mental Hygiene, 38 Md. App. 570 (1978). The primary test employed by the courts to determine whether an undertaking constitutes a "public use" is, quite basically, whether it constitutes a "use by the public." Id. at 576.⁸ "Use by the public," the courts have held, is "not susceptible to any one single, all-inclusive definition." Id.

⁸ Another test for determining "public use," the "public benefit" test, has been limited to Land Development and Redevelopment projects such as slum clearance. Id.

The applicable case law makes it clear, however, that the focus of the public use analysis is the benefits that could accrue to the general public as a result of the use. See, e.g. Williams v. Anne Arundel County, 334 Md. 109 (1994) (applying "public use" test in the context of a special community benefit tax).

There is no question that the development and preservation of state park lands is a valid public purpose. See Md. Nat. Resources Code Ann. § 5-102. It is also beyond dispute that the encouragement of economic development and use of the State's natural resources for the improvement of the local economy are valid public purposes. See Id. Finally, it is clear that the condemnation of land for use as a landfill is a public use. See County Commissioners of Frederick Cty v. Schrodell, 320 Md. 202

(1990).⁹ The proposed expansion of the Days Cove Rubble Landfill falls within each of these categories of public use.

First, the Site is located in Gunpowder Falls State Park. The landfill expansion will advance the State's interest in facilitating park uses by allowing the State to reclaim an area of the Park that was used as a sludge mixing site prior to the State's acquisition of the property. DNR, which is charged with the proper use, development, and preservation of parks and other natural resources, concurs that the expansion of the landfill will advance these interests. See Letter from Pamela D. Anderson, Esq., Assistant Attorney General, to Arnold Jablon, Dir. Balto. Cty Dept. Of Permits and Dev. Mgt. at 1 (Oct. 27, 1995) (hereinafter "Anderson Letter") (Exhibit "F").

⁹ Petitioners and Intervenorers confuse the concepts of preemption and public use. Citing Ad+Soil, Inc. v. County Commissioners, 307 Md. 307 (1986), they seem to argue that the State has not preempted local regulation of solid waste; therefore, landfills are not always public uses.

DCRC does not contend in this proceeding that the State has preempted all local regulation of solid waste disposal. DCRC's argument is that the State has never conferred upon the County zoning authority over rubble landfills on State-owned property. It need not be established that the State took back from the County through preemption something that was never given in the first place.

Second, the State and County will derive considerable economic benefit from the operation of the expanded Days Cove Rubble Landfill. First, the lease for the Site will require DCRC to pay the State a percentage of its revenues. Those monies will be placed in the Department of Natural Resources' general fund and, thus, inure to the benefit of all residents of the State. The income generated from the existing operation already has allowed DNR to develop an Environmental Education Center at Gunpowder State Park. Second, by DNR's analysis, there currently are no other rubble landfills in Baltimore County and 75% of the waste deposited in the rubble fill originates in the County. As DNR has pointed out, convenient and economical rubble landfills hold down construction costs and promote the local economy. See Anderson Letter.

Fourth, the State and County will derive a substantial benefit from the increased disposal capacity provided by the expansion. The landfill is part of the State's Solid Waste Management Plan and fulfills an identified waste management need. In its Operating Agreement with DCRC, the County has acknowledged a desire "to reduce, and preferably eliminate, brush and wood waste from entering [Eastern Sanitary Landfill] and consuming landfill capacity." The agreement seeks to advance the County's

goal by requiring DCRC to accept brush and wood waste for recycling or disposal in the rubble landfill.

Petitioners and Intervenor argue, however, that the Days Cove Rubble Landfill is not a public use because, they allege, it is open only to haulers approved by the landfill and DCRC retains control over the entities from whom it accepts contracts.

Petitioners' Memorandum at 6; Intervenor's Memorandum at 16.

Petitioners and Intervenor misstate the facts. Days Cove Rubble Landfill is, and will continue upon expansion to be, open to the general public. Importantly, DCRC is bound by contract with the County:

to accept brush and wood waste delivered to the [rubble landfill] by the County and which has been generated by County residents or municipal agencies, or generated on-site at the [adjacent Eastern Sanitary Landfill] from clearing activities and to chip, grind, reuse, recycle, or market the chips as a commodity. Alternatively, DCRC must dispose of at the [rubble landfill] whatever quantity of chipped or ground material is not otherwise utilized.

Operating Agreement Between Baltimore County and Days Cove Reclamation Company (Mar. 8, 1995). The only limitations on access that DCRC has ever imposed have been for the purpose of ensuring public safety, non-exceedance of disposal capacity, and compliance with State-imposed regulatory obligations.

Petitioners and Intervenors also misinterpret the term "public use." The courts have noted that "'public use' is not synonymous with the physical use or access by the public." Id. at 575. In fact, the courts have noted that "[t]here are many State-owned facilities where the public, in the sense of the average citizen, has 'no right to enter' absent a special permission received from competent authority." Id. Limitations on access that promote safe and effective operation do not defeat the public character of a given use. See Id. (noting acceptable limitations on access to penal institutions, courthouses, Comptrollers' offices, police station investigation rooms, and the records rooms of the Department of Motor Vehicles).¹⁰ The restrictions placed on the general public's access to the Days Cove Rubble Landfill are clearly not of a nature that would undermine the public nature of the use.

Petitioners further contend that the proposed rubble fill expansion is not a public use because "the private entity operating the fill is a for-profit corporation" that has the

¹⁰ These reasonable restrictions on public access stand in stark contrast to the purely private uses identified by the courts in case like Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624 (1975) (use of State-owned property as a commercial trucking terminal).

right to set its prices and operating hours and "is not dependent on any state agency for referrals, nor is there any guarantee of business." Petitioners' Memorandum at 8.

Importantly, the courts have held that "[t]he fact that some private enterprise or person will also benefit from an acquisition via condemnation will not convert the public character to private." City v. Board of Mental Hygiene, 38 Md. App. at 575. Accordingly, the Court of Appeals upheld under a public use analysis:

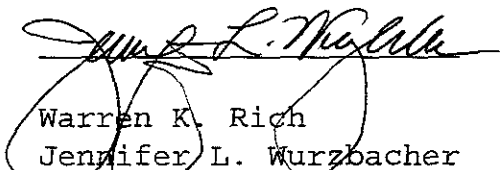
- the condemnation of 323 acres of private land for use as an industrial park; Prince Georges Cty v. Collington Crossroads, Inc., 275 Md. 171 (1975);
- the condemnation of land for a privately owned railroad spur or line; Riden v. Phila., B & W.R.R., 182 Md. 336 (1943); New Central Coal Co. v. George's Creek Coal & Iron Co., 37 Md. 537 (1873); and
- the condemnation of land situated on the shore of the Patapsco River for the construction of wharves, piers, docks, warehouses and buildings to be rented to private users; Marchant v. Baltimore, 146 Md. 513 (1924).

In light of this precedent, any private benefit that DCRC realizes from operation of the Landfill does not convert this overwhelmingly public use into a private one.

CONCLUSION

For the foregoing reasons, the Zoning Commissioner for Baltimore County should dismiss the pending Petition or, alternatively, hold that the Baltimore County Zoning Regulations do not apply to the Days Cove Rubble Landfill.

Respectfully Submitted,



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PETITION FOR SPECIAL HEARING	*	BEFORE THE
IN THE MATTER OF :	*	ZONING COMMISSIONER
DAYS COVE RUBBLE LANDFILL	*	OF BALTIMORE COUNTY
GUNPOWDER FALLS STATE PARK	*	CASE NO. 96-132-SPH
DAYS COVE ROAD		
11TH ELECTION DISTRICT		

- - - - -

MEMORANDUM OF LAW

STATEMENT OF CASE

This case arose out of a Petition for Special Hearing filed by the Nottingham Improvement Association, the White Marsh Civic Association, the Harewood Park Improvement Association and various individuals asking the Zoning Commissioner for Baltimore County to take jurisdiction over a proposed rubble landfill in an R.C. 2 zone. At the hearing held on November 7, 1995, appearances were entered by counsel for the Petitioners, by the State Attorney General representing the Department of Natural Resources, and by counsel for the lessee and operator of the proposed facility. In addition, intervention was granted to Wayne Knight and Honeygo Reclamation Company, on whose behalf this memorandum is filed.

STATEMENT OF FACTS

Intervenors Wayne Knight and Honeygo Reclamation Company hereby expressly adopt the Statement of Facts contained in the Memorandum submitted by counsel for Petitioners. At the hearing it was not contested that the proposed rubble fill, which also

ENCLOSURE

will contain wood chipping, will be located on a 27 acre parcel of state owned land for the benefit of the Department of Natural Resources. The property was part of a larger tract conveyed for consideration to the Department of Natural Resources for the Gunpowder State Park.

An application was filed by Days Cove Reclamation Company, a private corporation unaffiliated with the State of Maryland, to lease and operate a waste disposal facility on the state property. The facility would be operated as a private facility under lease with the State of Maryland, subject to approval by the Board of Public Works, and subject to State Regulation as set forth in the Environment Article of the Annotated Code of Maryland.

The application submitted by Days Cove Reclamation referred to existing lease arrangements between the State and JWP Environmental Services Co., a subsidiary of JWP, Inc., a Delaware Corporation, for the existing facility, and claimed that the proposed facility, although separated from the state facility by a privately owned parcel of 12 acres, would be an "expansion". The proposed site was not part of the original application site permitted by Baltimore County in the 1960's. Exhibits introduced indicated that Maryland Environmental Services (MES) would be retained by the private operator to monitor the facility for the benefit of the Department of Natural Resources.

It also was undisputed that the operation of the facility is "for profit" with the State receiving a percentage of the fees

charged customers as "rent". No other connection to the State except for required permitting is alleged.

The subject property was subjected to a sludge handling permit issued to Enviro-Gro Technologies, Inc., and some of the topsoil was mixed with sludge and removed. The site plans filed with the application indicate the elevations existing and proposed in the excavation of the site and the refilling of the pit. According to the application a hole seventy (70) feet deep will be excavated involving the removal from the site of 700,000 cubic yards of excess material not needed as cover. In all, over 1.6 million cubic yards of space will be filled.

The application of the private company restricts the kinds of materials it will accept and notes that they are restricting the customers it accepts to prolong the life of the fill. Haulers bringing material to the fill must be approved by the operator, and there are no conditions in the leases or applications restricting material to that generated by the State or by any governmental entity.

DISCUSSION

I. THE ANNOTATED CODE OF MARYLAND SPECIFICALLY SUBJECTS STATE OWNED PROPERTIES TO LOCAL ZONING REVIEW WHEN USE OF THE PROPERTY INVOLVES LANDFILLS.

Landfill Regulation is contained in Title 9 of the Environment Article of the Annotated Code of Maryland. Section 9-201(d) of the title defines "Person" as follows: "'Person'

includes the federal government, a state, county, municipal corporation, or other political subdivision." A "Refuse Disposal System" is defined by Section 9-201(e) to include a landfill. Section 9-204(d) requires that a "person" must have a permit issued by the Secretary of the Environment before commencing construction of a refuse disposal system. Section 9-210(a) states in pertinent part as follows:

The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under Sec. 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

....

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:

(i) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan.

The legislative history of these sections and of Title 9 clearly indicate a two-fold intention on the part of the legislature. First, the legislators were clearly concerned with the environmental impact of landfill systems and wanted it to be closely regulated by the State, particularly for water and air contamination. Second, the legislators were very concerned over the community impact of landfills. Consequently, the statutes require extensive notification provisions and public hearings. Just as important, however, was the requirement that local zoning regulations be brought to bear on the proposed land use.

Landfill regulations initially required zoning compliance in Chapter 661 of the Laws of Maryland, 1970 (App. 1-2). Section

394A of the Article 43 of the Annotated Code of Maryland was amended to provide as follows:

The Department of Health shall not issue a permit for a land fill unless it has complied with all county zoning and land use requirements of the county in which the proposed landfill is to be located and has an affirmative statement that the board of county commissioners or the county council does not oppose the permit.

The section remained the same throughout the 1970's and was amended only with respect to sludge facilities. The problem with it was that it did not articulate who was supposed to represent non-opposition and what happened after a permit was issued. Chapter 412 of the 1988 Laws of Maryland substantially rewrote the section to close to its current wording. Section 9-210 a(2) was amended to require a written statement from the applicant that the refuse disposal system conforms to the solid waste master plan and meets all applicable zoning and land use requirements (App. 3-5). That requirement from the applicant, however, was soon amended by Chapter 358 of the 1989 Laws of Maryland (App.6-8). That amendment changed the requirement from an applicant's representation that all was well with local zoning and permitting to a requirement that the county certify that all local zoning and land use regulations had been met as well as conformance with a solid waste master plan. It was not clear, however, whether the Secretary had to notify the County of the progress of the permit or had to wait for a local jurisdiction's response.

In the early 1990's an application was filed to permit a

rubble landfill in Harford County. The fill was permitted under local zoning and originally was part of the county's solid waste master plan. After review by the State, it was decided to release the permit, and the county rescinded its previous inclusion of the project in the solid waste master plan. These facts were at the heart of Holmes v. Maryland Reclamation Associates, Inc., 90 Md. App. 120, 600 A.2d 864 (1992). The decision came down from the Court of Special Appeals in January, 1992, and two pieces of legislation were introduced to offset its determination that local government had no say after an initial review. Chapter 516 of the 1992 Laws of Maryland was enacted to require the Department to comply with notice and hearing provisions to and within the local jurisdiction (App. 9-11). It also required the State to hold its permit review in abeyance until the County had completed its review of the project and had certified that all requirements had been met. Very clearly, the Department was not to issue a permit until the local jurisdiction had its review of the permit. No longer could the Department issue a permit because the county was unresponsive.

Chapter 636 of the 1992 Laws of Maryland was a Senate Bill that also rewrote Section 9-210 (App. 12-15). Initially, it seems that there was an intent to eliminate Section 9-204, but it ultimately was left unamended. Consequently, the local jurisdiction now has a definitive role to play in the process of permitting landfills and must take action in order for permits to be released.

The Annotated Code is explicit in requiring all persons to have permits to operate a landfill. All persons must apply to the Secretary of Environment. Before the Secretary can issue a permit, it must be shown that all local zoning and land use requirements have been met and that local jurisdictions have been informed of the inquiry. The State is explicitly included as a person who must file for a permit, and consequently, even if the state were operating this particular landfill instead of a private operator it would be required to go through the public process and to obtain a permit.

Landfills clearly have an impact on local communities. In some zones in Baltimore County they are not permitted except as accessory uses, and in no zone are landfills permitted except by special exception. The problems caused by the lack of ability of Harford County to control a landfill in its jurisdiction lead the General Assembly in response to its constituents to give land use control over landfills to local jurisdictions and to give a threshold determination in the state permit process.

The application of the permitting process to private operators is not disputed. Section 9-211 makes a distinction between private operators of landfills and public operators in the bonding requirements. Only private operators may be required to post bonds. In this case there is a private operator subject to state permitting requirements going through the process. Just because the applicant is on public land, there is no exemption from the permit. In fact whether the land is public or private

is not a meaningful distinction on the permitting process as local zoning requirements must be met. The state has subjected itself to the permitting process, and accordingly the use of its land is subject to local review for this purpose.

II. EVEN IF THE STATE LAND WOULD BE EXEMPT FOR A STATE PURPOSE, IT IS NOT EXEMPT FROM LOCAL ZONING WHEN USED FOR A PRIVATE PURPOSE, AND THE OPERATION OF A LANDFILL BY PRIVATE OPERATORS IS A PRIVATE PURPOSE.

There are three (3) types of land use cases that may arise when government property is involved. There is government property used for governmental purposes. There is government property leased to a private entity to conduct governmental operations. There is government property leased to private individuals for private purposes. This case falls within the last category.

This is not a case of pre-emption. Just because the use is heavily regulated, the regulations in and of themselves do not preclude local scrutiny. Even if the statutes were not as explicit as they are with respect to local jurisdiction involvement, the regulation by the State of landfills is intended to protect the populace of the state from the use and not the use from the people. The case of Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 513 A.2d 893 (1986), is controlling precedent to this case. In Ad + Soil the operator of a sewage sludge storage facility was held subject to

local zoning in spite of a pre-emption argument. The company had contracted with a public agency for the exclusive dumping of its waste material. A permit had been obtained under the old wording of Section 9-210(b) to operate a sludge facility despite local zoning. No one paid attention to the local zoning ordinances except the local authorities. After attempts were made to resolve the issue in federal courts, it was decided to go through the administrative process. The company acknowledged that there was no explicit statement in the state legislation denying local jurisdictions authority over the subject matter, but it maintained that such pervasive state regulation was present to preclude local zoning overview. The Court in finding for the local jurisdiction quoted Section 9-502(c) of the Environment Article, which section is equally applicable to this case, 307 Md. 327 (1986). That section states:

Any rule or regulation adopted under this subtitle does not limit or supersede any other county, municipal, or State law, rule, or regulation that provides greater protection to the public health, safety or welfare.

The Court also recognized that as the law then existed the Department was required to consider local zoning laws. 307 Md. 327 (1986).

The Ad + Soil case determination was followed and expanded upon in Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 683, 561 A.2d 219 (1989). In Harker the applicant for a child care facility tried to bring itself under the pre-emption doctrine because the applicant was a

non-profit organization providing services regulated by the State. Unlike Ad + Soil the applicant was a not for profit organization, and the proposed use of the property was promoted by state law and regulation. The applicant claimed its proposed use served a governmental purpose, and, therefore, should not be regulated. The Court of Appeals by upholding the Board of Appeals and the Circuit Court disagreed. The Court found that there was no pre-emption despite the intervention of the State in the proceedings on behalf of the applicant. There was no express pre-emption in the statutes and no implied pre-emption. The Court also did not find that the local zoning laws in and of themselves conflicted with state regulation. As the Court noted:

This is not a case of a political subdivision prohibiting by local law what a State by public general law has permitted. The BCZR does not prohibit the operation of child care facilities; rather, it expressly allows such facilities to operate subject to compliance with zoning regulations. Board of Child Care v. Harker, 316 Md. 683, 699, 561 A.2d 219 (1988).

Government property used by the government for its purposes also is not at issue here. In Mayor and City Council of Baltimore v. State of Maryland, 281 Md. 217, 378 A.2d 1326 (1977), the Court of Appeals determined that the regulations of Baltimore City did not apply to the State's use of its land for a correctional facility. This case reiterated long-standing authority to the effect that the zoning authority of local jurisdictions comes from the State, and that provision of the enabling legislation does not expressly or implicitly indicate

that the State as sovereign is to be bound by it. The Court stated; "In this regard, it is a basic and long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound. 281 Md. 217,223 (1977).

In this case in addition to an express inclusion of the State as an entity required to go through the permitting process, it must be recognized that it is not the State that is the applicant. A private corporation, operating for profit and not in partnership with the State is the entity seeking permit approval.

This case, therefore, resolves itself into whether the operation of the site by a private entity is a public governmental function or a private function. If it is the former then it is not regulated; if it is the latter, it is regulated.

Baltimore County Zoning Regulations (BCZR) clearly contemplate the use of public property for private purposes subject to local zoning. First, the comprehensive zoning maps include all lands whether privately or publicly held. Although some of the sites are not regulated, others are. Zoning even extends over public waterways as an extension of local zoning on the land. Harbor Island Marina v. Calvert County, 286 Md. 303, 319, 407 A.2d 738 (1979). Section 103.2 of the BCZR states:

When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings

shall not be used for private purposes until they shall have been zoned in conformance with these regulations.

In Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624 (1975), the Court of Special Appeals held that the State's immunity from local zoning was forfeited when it leased its property to a private entity for private purposes. In that case the State Highway Administration leased property for which it had no current use to the Youngstown Cartage Company for a trucking terminal. SHA received rent for the use of the site. Just as in this case and in Harker, supra the State appeared to tell the County that it lacked jurisdiction. Judge McDaniel, then on the Circuit Court, quoted Section 103.2 of the BCZR as cited above, and affirmed the Deputy Zoning Commissioner and the Board on the fact that the facility was subject to local jurisdiction. The Court of Special Appeals in affirming the Circuit Court stated that the issue as later presented in Mayor and City Council of Baltimore had not yet been decided in the State and was not before the Court, for the land was being used for private purposes by a private entity. The Court indicated that the public has no right to use the facility or to go on the land as long as the tenant remains in possession. The Court concluded:

The State Highway Administration is but the landlord of the appellant until such time as the State sees fit to terminate the lease agreement, terminate the lease agreement and lease to another, use the property for its own purposes, or divest itself of title.

...

We conclude that when the State acquires land and then leases or rents that land to a private person or concern for

a private use, the land is subject to local zoning ordinances or regulations so long as it is so leased or rented.
Youngstown Cartage co. v. North Point Peninsula, etc., 24 Md. App. 624, 332 A. 2d 718, 721 (1975).

A few years later in City of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978), the Court of Special Appeals revisited the issue of State owned property leased to a private entity and the application of local zoning. In this case the Department of Juvenile Services (DJS) purchased property in Baltimore City as part of its state-mandated program to care for the predelinquent child. DJS then rented the property to the Campfire Girls Council, a non-profit organization, to operate the facility for girls in need of assistance.

In City of Baltimore the Court distinguished Youngstown and found that a public purpose did exist for the use of the property. The Court recognized the need for a Youngstown determination to protect the community from "deplorable" situations of private uses conflicting with local community uses. City of Baltimore v State Department of Health, 38 Md. App. 570, 381 A.2d 1188 at 1190 (1978). In that case, however, the Court of Special Appeals found that DJS had a mandate, which it intended to fulfill by having the non-profit organization run the facility. The Circuit Court's findings of fact that the facility served a public purpose were affirmed.

The Court of Special Appeals recognized that the term "public use" did not pertain to public accessibility to the site.

ENCLOSURE

Obviously, the public could not access the home for girls any more than it could the trucking facility. The question, therefore, was whether the use of the site was in furtherance of public benefit. Even this concept, however, was narrowly construed. It could, for instance, be argued that trucking facilities have a public benefit in easing transportation or that slaughter houses (also referred to by the Court) have a public purpose. The issue of public benefit, however, is one of connecting the use of the site by the private operator with the furthering legislation of the state in owning the site. It was the decision of the court that DJS by acquiring the site and then renting it was "carrying out the will of the General Assembly". 381 A.2d 1188 at 1192 (1978). It contrasted this situation from Youngstown, supra, where avoidance of local ordinances "...would be to permit the sovereign to trample willy-nilly over the zoning ordinances of the municipalities to the possible detriment of the public health, safety and general welfare." 381 A.2d 1188 at 1190 (1978).

The principles of these cases were later applied by Baltimore County in applying to the Circuit Court for an Injunction in a case against Enviro-Gro Technologies and the Department of Natural Resources, for the spreading of sludge on another part of the Gunpowder Falls State Park. That case also involved a lease of State-owned property, where a for-profit operator would use the site for a heavily regulated operation. Court records indicate that the injunction was granted based on

the County's jurisdiction under R.C. zoning. Baltimore County Circuit Court Case No. 91 CSP 1375. A copy of the Motion and Memorandum filed by Baltimore County is attached (App. 16-31).

These cases directly relate to the subject site and case. The State of Maryland, Department of Natural Resources, acquired the property for a park, not a landfill. The deed explicitly stated that the existing commercial uses on the site would cease after a defined period. Possibly because the State desired the revenue from the site, at some point it permitted continued commercial operations, but the proposed facility has nothing to do with completing the existing facility, which originally had been permitted by the county as a private facility.

The proposed facility has nothing to do with the reclamation of land for use as a park. Digging a hole seventy (70) feet deep, digging out over a million and a half cubic yards of material, and replacing it with rubble and cover is not reclamation, nor does it fulfill any of the functions of a state park. It might be a different situation, for example, if this case involved the marina at the Hammerman portion of the State Park. That facility arguably provides recreation in furtherance of a state park purpose. This landfill furthers no park purpose.

The State also can not argue that because landfills are heavily regulated that they serve in and of themselves a state purpose. Landfills are subject to regulation not because they are so necessary but because they can have such deleterious effects on a community and its environment. The State itself

runs no landfills in the metropolitan area. Through MES, a quasi-public corporation, it assists in the operation of some landfills, but the law forming MES makes its operation of landfills specifically subject to local government approval. Annotated Code of Maryland, Natural Resources Article, Sec. 3-104(v).

This case does not present any analogous facts to those before the Court of Special Appeals in City of Baltimore v. State Department of Health, 38 Md. App. 570, 381 A.2d 1188 (1978). The Department of Natural Resources under its open space program and Park program is not charged with locating and providing for landfills. Days Cove Reclamation Company is not the Campfire Girls Council. The private entity proposes to provide a service to business for a profit. The landfill will not have business referred to it by state agencies or courts; moreover, the private operator will get to pick and choose its source of material and contractors. The private operator gets to pick and choose its means of operation. Days Cove Reclamation Company is not operating under a direct state mandate to provide this service at this location. DJS was providing a mandated service at the site it acquired. It could not have put the site to some other unrelated purpose, such as a landfill, and escape local scrutiny.

There are creatures of the state such as solid waste authorities, where public entities including counties and municipalities acquire or operate waste disposal facilities. The state may further such entities, but it does so only with local

approval. Consequently, the legislature intended that landfills in and of themselves did not need protection of legislation from public outcry, but that the public needed protection from landfills and necessary input. Far from ascribing a "public purpose" to landfills because they are so heavily regulated, it is the public that is sought to be protected and to have local zoning input.

In all important respects Days Cove Reclamation Company is operating a private operation for private gain. It had to apply to Baltimore County for inclusion on the solid waste master plan. It had to apply to the State for a permit to operate a waste disposal facility. It is privately liable and must provide liability insurance in the event of injury. It must provide security and has control over the operating hours of the facility per the application. It only provides the State with rental and provides for return of the property in a usable condition. The State does not set the tipping fees; the State does not control the users of the facility; the State is not a partner in the use of the facility; there is no requirement that the facility accept or reject refuse from any particular user or group of users. The facility operates as a private entity and is not distinguishable from any other private entity operating on state property. If this use were located on State property in the center of Timonium or Towson or Pikesville, would it not be subject to local regulation? Wouldn't the result be "deplorable" if the use as proposed and operated were located on State property in those

areas? The state reviews the site not for compatibility with local zoning or with local land use regulations or with respect to compatibility to neighbors. It only regards the environmental aspects of the facility, and the county has a responsibility under the code to review the site. Maybe the use as located will have little impact, but that decision in itself is being denied the County if the argument of the operator and of the Department of Natural Resources is accepted.

It also can not be denied that the Department of Natural Resources is interested in the outcome of the case. As the landlord the rent generated over the life of the proposed fill will run into millions of dollars. Its opinion that there is no local jurisdiction is hardly disinterested. Anything that jeopardizes that economic interest is subject to attack.

Economic benefits, however, do not amount to public purpose any more than serving a public need serves a public purpose or a public use. Youngstown Cartage Company also provided rent to the State Highway Administration, which presumably was used in furtherance of its programs. That indirect benefit is not the "public use" or "public benefit" required for immunity. If so, Youngstown would have been decided differently. So too the fact that there was a public need or a public demand for the use is not the same as "public purpose". There is a need for transportation facilities and for most private enterprises; otherwise, these facilities would not exist. That "need" is not equivalent to public benefit or purpose.

The County does permit landfills and has approved them. The County does not prohibit them from occurring. The question is whether some sites should be exempt from scrutiny and other sites should not. There clearly was no intent in the Environment Article to exempt certain sites or certain users from scrutiny either on a state or on a local level. The legislative intent to subject a landfill operation to strong public scrutiny is clear. To relieve it of scrutiny on such essentials as local land use control is in complete opposition to that intent.

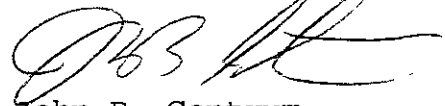
Even the operators of the existing landfill through their counsel recognized that local review would and should attach if there was an expansion of the facility. It also was recognized that local soil conservation services should review the site for its impact on sediment control and run-off. Should not the county development regulations pertaining to afforestation or reforestation also apply? Should not the setback criteria called for in the zoning regulations apply? As long as these regulations are not unreasonable or not unreasonably applied, it would seem that the legislative intent is to have them apply for the protection of the community.

CONCLUSION

In conclusion, the Zoning Commissioner for Baltimore County should exercise the duties and responsibilities conferred upon the office by the Zoning Regulations and take jurisdiction of the

subject proposed use as a proposed private use of state-owned property and as required by state law.

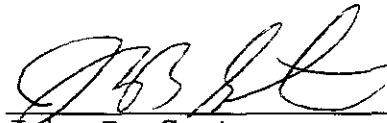
Respectfully submitted,



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Phone: 410-686-8274

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 1995, a copy of the foregoing Memorandum was mailed by first class mail, postage prepaid to Warren Rich, Esq., attorney for Days Cove Reclamation, P.O. Box 819, Stevensville, Maryland 21666, and to Pamela D. Andersen, Esq. Assistant Attorney General, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 and to J. Carroll Holzer, Esq., attorney for Petitioners, Suite 502, 305 Washington Avenue, Towson, Maryland 21204-4740.



John B. Gontrum

IN THE MATTER OF:

DAYS COVE RUBBLE LANDFILL
EXPANSION

GUNPOWDER FALLS STATE PARK

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No.: 96-132-SPH

* * * * *

PETITIONERS' MEMORANDUM

STATEMENT OF FACTS

On November 28, 1994, Days Cove Reclamation Company filed a Refuse Disposal Permit Application with the Maryland Department of the Environment. With the application, a Phase I Preliminary Report also was filed with the Maryland Department of the Environment. The application and report pertained to a 27 acre parcel zoned R.C.2 on which a 17 acre or 20 acre¹ landfill was proposed. The property is currently owned by the State of Maryland to the use of the Department of Natural Resources, for the use of the Gunpowder State Park and is proposed to be leased to Days Cove Reclamation Company. Under the terms of the proposed lease agreement, the project would be operated solely by Days Cove Reclamation Company. The Company would determine the tipping fees, hire the personnel, determine the appropriate customer base, and accept or reject fill material in its sole discretion. Also under the proposed lease, The Maryland Environmental Service would be

1

The application called for a 17 acre rubble land fill but the materials filed with the application called for a 20 acre landfill.

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paid to have an on-site monitor review the material accepted and its placement, and the Department of Natural Resources would receive a percentage of the fees generated as its rent.

In 1986, the parcel on which the 27 acre site is contained was purchased along with other parcels by the State of Maryland to the use of the Department of Natural Resources. The parcel at that time was part of a larger 138 acre tract owned by Stanley Holding Company. The property was then zoned R.C. 2. As a condition of the transfer, which cost the state Three Million Five Hundred Thousand Dollars (\$3,500,000.00), the Grantors were allowed to continue mining a nearby 12 acre site also conveyed for a period of ten years, the right to the sludge area, part of which was on the subject site, for a period of four and a half years, and the right to continue to operate a rubble landfill for a period of no longer than six and a half years. The rubble landfill was on an adjacent parcel separated from the subject site by a twelve (12) acre privately owned tract (Deed is attached hereto as Exhibit A).

The original landfill is still operating and has never been the subject of County review, possibly because of a non-conforming use. Despite being characterized in the application materials as "Expansion of Days Cove Landfill," the subject site has never been part of the existing landfill parcel or considered in the operating landfill's permits. In addition, the existing landfill is operated by a separate corporate entity. The sludge permits for the existing site were originally issued to a third entity and not renewed.

The 1992 Baltimore County Solid Waste Master Plan does contain approval of the subject site for a rubble landfill in addition to a review of other proposed and existing landfills. The Department of Public Works has indicated acceptance of the site by letter indicating that it was part of the plan. The proposal has been through three (3) phases of the state application process, and has had a public hearing on the proposed issuance of a permit. The County has indicated heretofore on the existing landfill that it has no jurisdiction, and has not taken jurisdiction of the proposed landfill to this point nor has it formally commented on the plan presented.

ISSUES PRESENTED

- I. IS THE OPERATION OF A RUBBLE LANDFILL ON STATE-OWNED PROPERTY, BY A PRIVATELY OWNED AND OPERATED ENTITY, A "PRIVATE USE" OF STATE-OWNED PROPERTY AND SUBJECT TO LOCAL ZONING LAWS?
- II. IF IT IS DETERMINED THAT THE PROPOSED RUBBLE LANDFILL WILL BE PUT TO PUBLIC USE, DO BALTIMORE COUNTY ZONING REGULATIONS NEVERTHELESS APPLY?

LEGAL ARGUMENT

I.

IS THE OPERATION OF A RUBBLE LANDFILL ON STATE-OWNED PROPERTY, BY A PRIVATELY OWNED AND OPERATED ENTITY, A "PRIVATE USE" OF STATE-OWNED PROPERTY AND SUBJECT TO LOCAL ZONING LAWS?

YES. WHEN THE STATE OF MARYLAND LEASES ITS PROPERTY TO A PRIVATE ENTERPRISE FOR THE OPERATION OF A RUBBLE LANDFILL, THE IMMUNITY OF THE SOVEREIGN FROM LOCAL ZONING LAWS CEASES TO EXIST, AND THE USE BECOMES SUBJECT TO THE LOCAL ZONING AUTHORITY.

The case law is very clear that publicly owned land used by the State or by its agencies for public purposes is not subject to local zoning authority absent a specific grant of power from the State. Mayor of Baltimore v. State, 281 Md. 217, 378 A.2d 1326 (1977). The County derives its local zoning authority from Article 25A, Section 5(X). That section also states, however, that the authority granted shall not be construed "To preempt or supersede the regulatory authority of any State department or agency under any public law." Annotated Code of Maryland, Article 25A, Section 5(X)(2)(v)4. Cf. Board of Child Care v. Harker, 316 Md. 683, 561 A.2d 219 (1989).

The Court of Appeals has never precisely addressed the issue of public land leased privately, but this subject has been addressed by the Court of Special Appeals. In City of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978), the Court of Special Appeals found that property owned by the State, to the use of the Department of Juvenile

Services, and leased to a non-profit organization pursuant to an agreement to provide care for juvenile girls in need of supervision, was exempt from local zoning. The Court indicated in its opinion that the purpose of the Department of Juvenile Services was furthered by the lease arrangement by taking care of the children in need of assistance. The Court of Special Appeals indicated that the use to which the property was put was a "public use". The public use occurs because the State is providing, through the lease of the property, the benefits required of it under State law for children in need of assistance. The Court also pointed out that the tenant was a charitable, non-profit corporation, not operating for private gain.

The Court of Special Appeals in City of Baltimore took great pains to distinguish the case from an earlier decision made in Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975). Youngstown Cartage arose in Baltimore County when a private trucking firm leased property from the State. The Court in Youngstown held that when the State acts in a **proprietary** capacity, or creates a landlord-tenant relationship with a private person or entity, the sovereign immunity usually accorded to the State is lost and the land must be used in accordance with local zoning and land use regulations. Youngstown Cartage Co. v. North Pt. Pen. Comm. Co. Council, 24 Md. App. 624, 332 A.2d 718 (1975). The Court of Special Appeals in Youngstown stated: " We conclude that when the State acquires land and then leases or rents that land to a

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private person or concern for a private use, the land is subject to local zoning ordinances or regulations so long as it is so leased or rented. 24 Md. App. 624, 631 (1975).

Baltimore County's Zoning Regulations echo this theme in Section 103.2. That section states:

When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these regulations.

The operation by Days Cove Reclamation Company is not a public use. It is not a facility open to the public but rather it is open only to haulers approved by the landfill, and Days Cove Reclamation Company retains control over the entities from whom it accepts contracts. The existing rubble fill at Days Cove, operated by JWP Environmental Services Company, has haulers from whom it accepts materials and haulers from whom it does not accept materials. Not just anyone can use the facilities, and the subject site is so limited. A public use must extend to more than a legal use or a needed use. To be public, it must be a use with which the State is charged and which it entrusts to private entities.

City of Baltimore, supra, made it very clear that extremely obnoxious results could occur if all State-owned land ceased to be regulated by local authorities. The Court deemed such sovereign immunity extension "deplorable". It went on to pose this question: "Imagine the hypothetical situation wherein the State acquires a tract of land in a highly desirable residential area of the city and then leases it to a tannery or a slaughter house. The effect

on the surrounding area would be devastating." 381 A.2d 1188 at 1190 (1978). In Youngstown, the Court pointed out that the use inured to the private benefit of the tenant, not like a public utility such as a rail line, which is open to the public for public use.

The question presented by this case is whether the particular capacity in which the State-owned property is proposed to be used is "public" or "private" in nature. Landfills and the like are **not** considered public by their very nature. In Ad+Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 513 A.2d 893 (1986), the Court of Appeals was reviewing a claim by the operator of a sewage storage and distribution facility that it was immune from local zoning because the state had pre-empted the field. Despite the voluminous regulations regarding such storage in the state regulations, the local zoning authority was held to have a say in the regulation of such facilities. Similarly, the Jett farm in Baltimore County was not held to be exempt from regulation by virtue of the public use of its facility and the regulation by the State. Cf. Jett v. State of Maryland, 77 Md. App. 503, 551 A.2d 139 (1988). Consequently, despite being operated subject to state regulation, and despite having a legitimate purpose, privately owned waste disposal systems are not in and of themselves exempt from regulation, particularly land use regulation, merely because they are "public facilities". This should be contrasted with uses such as alternative living units or even the housing for the children in need of assistance, where

there is state legislation promoting these land uses.

The State of Maryland, Department of Natural Resources, clearly purchased the subject site as part of its strategy to acquire land for the Gunpowder Falls State Park, not to run a landfill. There is a waste authority under which the State could have purchased the site had it decided to do so. The State did not do so, however; and, the deed conveyance specifically terminates landfill rights in the private entity.

The private entity operating the fill is a for-profit corporation. The corporation has the right to select its customers and may reject loads brought to the site. The corporation has the right to set its operating hours and its prices. It may make as much money or as little as its prices and good management dictate. It is not dependent upon any state agency for referrals, nor is there any guarantee of business. How is this operation different from Jett's operation or from the rendering plant cited in City of Baltimore, supra? The R.C.2 zoning on the property was placed there presumably to prevent the very activity that is proposed under this permit application.

If the County now determines that it lacks jurisdiction in this case, then there will be no regulation over the land use and no review under Baltimore County's environmental regulations. If this is allowed to occur, then all landfills could be offered to the State, and none of the protection afforded by local government review would be applicable. How is this site different in concept from the Honeygo site recently litigated before the Zoning

Commissioner? That site has better access, public services of water and sewer, and is to be turned over to the County for a park. In addition, the Honeygo site also has the zoning permitting the land use.

For the County and the State to extend public benefit analysis to every disposer or even recycler of waste is absurd. Truckers presumably serve the public also, and for enough money, truckers will haul any legal item. Truckers, however, are not granted sovereign immunity, and neither should landfills which by their very nature may have a severe impact on the community. The public use findings of City of Baltimore cannot be made in this case.

II.

IF IT IS DETERMINED THAT THE PROPOSED RUBBLE LANDFILL WILL BE PUT TO PUBLIC USE, DO BALTIMORE COUNTY ZONING REGULATIONS NEVERTHELESS APPLY?

YES. BECAUSE THE GENERAL ASSEMBLY INTENDED THE ISSUANCE OF PERMITS FOR RUBBLE LANDFILLS TO BE CONDITIONED ON THE SATISFACTION OF COUNTY ZONING AND LAND USE REQUIREMENTS, BALTIMORE COUNTY ZONING REGULATIONS MUST BE MET.

Because landfills have such a pernicious effect on the surrounding area, they are one of the very few entities where the local jurisdictions have been given zoning authority over and beyond that contained in Article 25A. In fact, the conferral of review to local zoning on landfills makes no distinction between

public and private landfills. Even the state agency Maryland Environmental Service is legislatively made subject to local zoning and approval in obtaining its permits to operate. Annotated Code of Maryland, Natural Resources Article, Sec. 3-104(v). That section states:

Except as provided in Secs. 3-109 and 3-110 of this subtitle, the Service does not have any power to construct, establish, or operate any new solid waste disposal project within the boundaries of any county or municipal corporation without the express consent of the governing body of the county or municipal corporation.

Unlike other sections of the Code there is no specific preemption of local zoning regulations for rubble landfills.² In fact, Section 9-210 of the Environment Article of the Annotated Code of Maryland, which is the statute governing the issuance of permits for Refuse Disposal Systems, specifically requires that local zoning requirements be satisfied and states:

Section 9-210. Landfill Systems - Prerequisites for issuance of permit.

(a) The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under Sec. 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase 1 technical review of the proposed refuse disposal system;

2

This is opposed to other environmental concerns in which the General Assembly has specifically preempted local zoning regulations. See Annotated Code of Maryland (Nat. Res.) § 3-705(d) (1990 Repl. Vol.).

(2) The Department has reported the findings of its preliminary phase 1 technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse system:

(I) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan.

This language was adopted in 1992 with the purpose of the section being stated as follows:

FOR the purpose of prohibiting the Secretary of the Environment from issuing a permit to install, materially alter, or materially extend a refuse disposal system until the Department and the County each comply with certain requirements; and generally relating to the regulation of refuse disposal systems.
Chapter 516, 636 Public Laws of the State of Maryland 1992

Interestingly, the COMAR regulations were adopted prior to the enactment of the language, and limit the participation of local government to a statement of general compliance and to inclusion in the local jurisdiction's solid waste master plan. They do not call for local comment on whether a proposed facility will meet all applicable county zoning and land use requirements as was intended by Sec. 9-210 (a)(3)(I) of the Environment Article. The article is very clear that these issues must be dealt with regardless of the origin of the facility.

The most recent Court of Special Appeals decision in the field, Holmes v. Maryland Reclamation Associates, Inc., 90 Md. App. 120, 600 A.2d 864 (1992), is in agreement with the proposition that

the local government does have zoning review of landfills despite government pre-emption over other areas. In that case the Court of Special Appeals found that the county could not come back in after the State had agreed to issue the permits and amend its solid waste master plan to delete a proposed landfill facility. The Court indicated that in that case that local zoning specifically permitted the proposed use. The Court expressly found it significant that the local zoning issues had been resolved prior to issuance of the state permit.

Consequently, despite the fact that rubble landfills are used by members of the public, are regulated by the State and serve a needed purpose, the State law specifically finds that their location within a community must meet local zoning regulations. There is nothing specifically exempting such facilities from local review, and indeed, the contrary is the case.

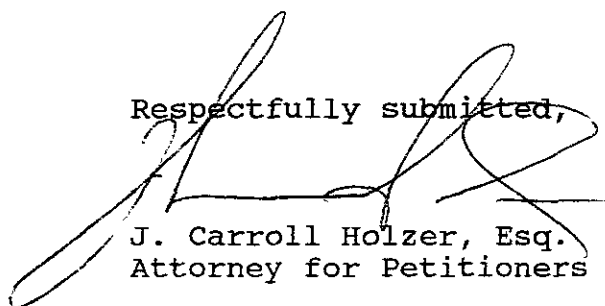
This particular facility could severely impact local resources and private property. The site was found sensitive enough by the County over a decade ago to limit additional rubble fills by placing R.C. 2 zoning upon it. The subsequent purchase by the State for a park certainly confirms its value as a public resource, and surely no one can construe that part of the purpose of the park system is to promote landfills. If Maryland Environmental Service, the Department of Natural Resources Agency, is specifically subjected to local government approval, then the operation of a landfill by a private entity under a lease whereby the state receives rent based on usage, is not intended to be exempt from

local government regulation or review.

CONCLUSION

In conclusion, the County has a definite interest in reviewing the zoning of the Days Cove parcel and the proposed use. The interest is one protected by the legislature and approved by the Courts and should be exercised in this case.

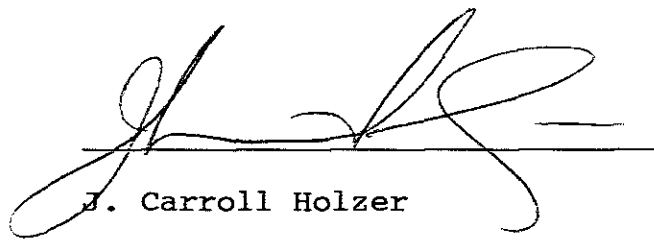
Respectfully submitted,



J. Carroll Holzer, Esq.
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petitioners' Memorandum was submitted to all parties of record on the 7th Day of November, 1995.



J. Carroll Holzer

JCH:clg

IN THE MATTER OF

*

BEFORE THE ZONING

Day's Cove

*

COMMISSIONER OF

6425 Day's Cove Road

*

BALTIMORE COUNTY

5th Councilmanic District

*

CASE NO. 96-132-SPH

* * * * *

MOTION TO QUASH SUBPOENA

The Maryland Department of the Environment (MDE) moves to quash the subpoena directed to Jane T. Nishida, Secretary of MDE in this matter for the following reasons:

1. Ms. Nishida is not willing to testify in this matter and therefore will not appear, pursuant to Zoning Commission Rule IIIC.3.

2. Ms. Nishida was not properly served with the subpoena because it was served by certified mail because the return receipt was signed by an employee not authorized to accept service of process upon Ms. Nishida, and therefore she has not been summoned at least five days before the scheduled hearing on November 7, 1995, pursuant to Zoning Commission Rule IIIC.3.

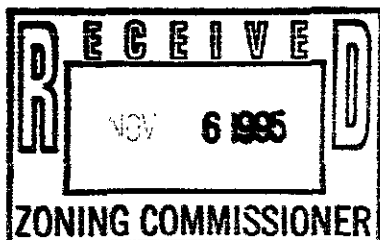
3. Ms. Nishida's testimony is not relevant because she has no personal knowledge of any facts relating or pertaining to Day's Cove. Non-relevance of expected testimony is grounds for denial of a request for a subpoena. Whittlesey v. U.S., 221 A.2d 86 (D.C. App. 1966).

4. Ms. Nishida is not the custodian of the records requested in the supplemental sheet attached to the subpoena.

For these reasons the subpoena should be quashed.

Norma Jean Kraus Belt

NORMA JEAN KRAUS BELT
Assistant Attorney General
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224
(410) 631-3048



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of November, 1995, a copy of the foregoing Motion to Quash Subpoena was mailed, postage prepaid, to J. Carroll Holzer, Esquire, 305 Washington Avenue, #502, Towson, Maryland 21204.



NORMA JEAN KRAUS BELT
Assistant Attorney General

MICROFILMED

IN THE MATTER OF

*

BEFORE THE ZONING

Day's Cove

*

COMMISSIONER OF

6425 Day's Cove Road

*

BALTIMORE COUNTY

5th Councilmanic District

*

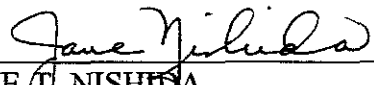
CASE NO. 96-132-SPH

* * * * *

AFFIDAVIT

I, JANE T. NISHIDA, this 3 day of November, 1995, affirm under the penalties of perjury that:

1. I am over 18 years of age and competent to be a witness in this case.
2. I am not willing to testify in the hearing scheduled in this matter.
3. The person who signed the mail return receipt has never been authorized by me to accept service of process upon me.
4. I have no personal knowledge of any facts relating or pertaining to Day's Cove.
5. I am not the custodian of the records requested in the supplemental sheet attached to the subpoena.



JANE T. NISHIDA
Secretary
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

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Baltimore County Government
Office of Zoning Administration
and Development Management



RECEIVED
NOV 19 1993
SOLID WASTE DIVISION

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

November 23, 1993

Mr. Roger S. Copp, P.E.
Dames & Moore
7101 Wisconsin Avenue, Suite 700
Bethesda, MD 20814-4870

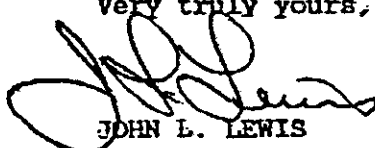
RE: Addendum to November 1, 1993
Correspondence
Proposed vertical extension
of an existing Rubble Landfill
6425 Days Cove Road
Zoning File Reference - Days
Cove Road Land Reclamation
Project
11th Election District

Dear Mr. Copp:

This letter refers telephone conversations on November 23, 1993 with Mr. Michael Kendall of your company and Mr. Hussien Alhiza of the Maryland Department of the Environment. Both these gentlemen have requested an addendum to my letter of November 1, 1993 concerning the proposed vertical expansion at the above referenced site in order to further clarify the decision of this office. To be brief:

The 14 foot vertical expansion of the rubblefill as previously referenced in my letter of November 1, 1993 is consistent with the land use and zoning regulations as specified in the Baltimore County Zoning Regulations subject to the restrictions defined in the above referenced letter.

Very truly yours,


JOHN L. LEWIS
Planner II

JLL/jaw

c: Mr. Hussien Alhiza

Post-It® brand fax transmittal memo 7571 # of pages = 1	
To: MIKE KENDALL	From: JLEWIS
Co:	Co: ZADM
Dept:	Phone #
Fax # 301-656-8059	Fax # 887-5708

Baltimore County Government
Engineering Administration
Waste Management



(410) 887-3353

November 1, 1993

Mr. Roger E. Copp, P.E.
Dames & Moore
7101 Wisconsin Avenue, Suite 700
Bethesda, MD 20814-4870

RE: Proposed vertical extension of an
existing Rubble Landfill
5425 Days Cove Road
Zoning File Reference - Days
Cove Road Land Reclamation Project
11th Election District

Dear Mr. Copp:

This letter references several prior contacts with Mr. Michael Kendall of your company, as well as correspondence and plans, dated 10/27/93, and from Ms. Gina Zawitoski of Piper and Marbury, dated October 20, 1993. Each of these contacts concern a requested zoning approval for the above referenced use and location as required by the Maryland Department of the Environment.

Based on the information provided, the use in question is currently operating under an active permit as a rubble landfill which has been approved by Baltimore County and has been in existence since 1986. The use became nonconforming due to Section 105 of the Baltimore County Zoning Regulations (BCZR, copy attached), which was adopted in 1988, and as a result of the properties zoning reclassification from R.C.-2 to R.C.-50 and the new critical areas designations (as stated in your letter).

A review of the current Baltimore County Zoning Regulations indicate that legislation passed in 1987 also requires a zoning special exception public hearing for a rubble landfill in an R.C.-2 zone. Therefore, the R.C.-2 zoned site area is also nonconforming with respect to the current BCZR requirements. See Section 1A01.2.C.18, BCZR (copy attached).

The zoning approval you are requesting is "to extend vertically the operation" to "96 feet above mean sea level" (msl) "to 110 feet above mean sea level, an increase of 14 feet". Calculation based on your figures indicate that this will be a vertical extension increase of 20% above the currently existing level.

Mr. Roger S. Copp, P.E.
6525 Days Cove Road
November 1, 1993
Page 2

Information supplied in the previously referenced correspondence includes a copy of a letter from Regina Esslinger of the State of Maryland Critical Areas Commission, dated March 26, 1993, detailing the fact that this is considered "a minor redevelopment of an existing facility and does not need formal C.B.C.A. Commission approval". Also, included is a letter from Bruce Holmgran of the Maryland Department of Natural Resources, dated March 29, 1993, which states in part: "The vertical rubble fill expansion will be entirely within the permit boundaries, no additional areas will be impacted by this action."

I have recently contacted Mr. Michael Imbierowicz of the Waste Management Office of the Department of Environmental Protection and Resource Management who confirmed that this site is a "Rubblefill" which may be subject to the approval of his agency but is also controlled by state regulations which must be met. State approval is required prior to any county approval. Mr. Eugene Siewierski of Waste Management indicated that, on an informal basis, he saw no difficulties for his agency's approval subject to prior state approval.

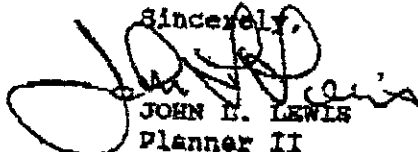
Staff has reviewed all of the above issues and information in detail and (based on the statements of the prior referenced reviewing agencies) has determined that Section 104, BCZR concerning nonconforming use expansions does not limit this sites' vertical expansion. Additionally, due to the C.B.C.A. Commissions comments that "no additional critical area will be impacted by this minor redevelopment", staff will state that Section 104.5 as it references Section 105, BCZR is also not a limiting factor in this particular case.

Therefore, this 14 foot vertical expansion of this existing rubble fill is approved for zoning subject to all limitations and restriction as they originally applied to this site. See copies of the letter from Mr. Jerry Siewierski of the Waste management Section of D.E.P.R.M., dated December 29, 1987, and the copy of the approved permit of the Solid Waste Disposal Site (Permit Conditions), both enclosed with this letter.

Please be aware that this approval is for zoning only and is not to be considered an approval for any other agency.

Should you have any questions, please do not hesitate to contact me at 887-3391.

Sincerely,


JOHN E. LEWIS
Planner II

JLL/jaw
Enclosures

land use

zoning



Petition for Special Hearing

96-132-SPH

to the Zoning Commissioner of Baltimore County

for the property located at 6425 Days Cove Road

which is presently zoned R.C.2.

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve / determine whether a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources, in an R.C.2. zone is subject to the zoning regulations of Baltimore County and must have a Special Exception in conformance with Section 1A01.2C18 of the Baltimore County Zoning Regulations.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:

Days Cove Reclamation Company

(Type or Print Name)

Signature

6425 Days Cove Road

Address

White Marsh, MD 21162

City

State

Zipcode

Petitioner:

White Marsh Civic Assoc, et al (attached)

Attorney for Petitioner:

J. Carroll Holzer, Esquire

(Type or Print Name)

Signature

305 Washington Ave., Suite 502

Address

Towson, MD 21204

Phone No.

(410) 825-6926

City

State

Zipcode

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition

Legal Owner(s):

Department of Natural Resources

(Type or Print Name)

John Griffin, Secretary

Signature

Tawes State Office Building

580 Taylor Ave., Annapolis, MD 21401

(Type or Print Name)

(with copy to:) State of Maryland

J. Joseph Curran, Jr.,

Signature Attorney General

200 St. Paul Place

Baltimore, MD 21202

Address

Phone No.

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Name

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

ORDER RECEIVED FOR FILING

Date

By

DROP-OFF
NO REVIEW

9/21/95

WCR



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PETITION FOR SPECIAL HEARING CONTINUED

96-132-SPH

This petition for Special Hearing is filed on behalf of the following community groups, all of whom currently are doing business in eastern Baltimore County and whose members are affected by the subject matter of this hearing.:

White Marsh Civic Association
c/o Adam Paul, President
10404 Vincent Farm Lane
White Marsh, Maryland 21162

Harewood Park Community Association
c/o Joe McGraw, President
6912 North River Drive
Baltimore, Maryland 21220

Nottingham Community Association.
c/o Marie Simoes, President
1314 Spotswood Road
White Marsh, Maryland 21162

It also is filed on behalf of the following individuals all of whom are residents and taxpayers in Eastern Baltimore County:

Adam Paul
10404 Vincent Farm Lane
White Marsh, Maryland 21162
Phone: 335-1404

Marie Simoes
1314 Spotswood Road
White Marsh, Maryland 21162

Joe McGraw
6912 North River Drive
Baltimore, Maryland 21220
Phone: 335-3352

The petitioners aver that the use of state-owned property is for private purposes and as such is controlled by the zoning on the property, R.C. 2. The petitioners further agree that the state receives rent for the use of the property making the property usable by the state in a proprietary, not governmental manner. That under the R.C. 2 zone the proposed uses of the property for a 20 acre rubble fill on a 27 acre site with a fill that is over 70 feet deep requiring the excavation of over 900,000 cubic yards of fill is not permissible. The further use of the site for individuals to bring wood waste onto the property for chipping and storage also is not a permitted use, and the Office of Planning and Zoning should exercise its jurisdiction to review the proposal.

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ZONING DESCRIPTION

96-132-SPH

Per the property owners the subject site consists of a 27 acre parcel on the south side of Days Cove Road bordering the eastern side of property owned by Baltimore County , known as the Eastern Sanitary Landfill, being parcel 416 on Tax Map 73 and bordered on the west by property owned by Barry L. Byrum, et al., being parcel 106 on Tax Map 73, the subject property being part of Tax Parcel 17 containing 126.93 acres and all of parcel 105 consisting of 2.2 acres of land, both contained on Tax map 73.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

96-137-SPH

District 10th Date of Posting 4/28/96
Posted for: Appeal
Petitioner: White Marsh Civic Association, et al
Location of property: 6475 Day's Cove Rd
Location of Signs: Facing roadway on property being appealed
Remarks: _____
Posted by M. J. Haly Date of return: 5/5/96
Signature
Number of Signs: 1

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NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #96-132-SPH
(Item 130)
6425 Days Cove Road
S/S Days Cove Road, 5300' E
of c/I Pulaski Highway
11th Election District
5th Councilmanic
Legal Owner(s):

Department of Natural Resources

Contract Purchaser:
Days Cove Reclamation Company

Petitioners:
White Marsh Civic Association, et al
Hearing: Tuesday, November 7, 1995 at 2:00 p.m. in Rm. 118, Old Courthouse.

Special Hearing: to determine whether a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources, in a R.C.-2 zone is subject to the zoning regulations of Baltimore County and must have a special exception in conformance with Section 1A01.2C18 of the Baltimore County Zoning Regulations.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) or information concerning the File and/or Hearing, Please Call 887-3391.

10/23/95 Oct. 19.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 10/23, 1995

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/19, 1995.

THE JEFFERSONIAN,

A. Henrichs

LEGAL AD. - TOWSON

BALTIMORE COUNTY, MARYLAND
OFFICE OF TANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No 007050

DATE 4/16/96 ACCOUNT R001-6150

AMOUNT \$ 175.00

RECEIVED FROM: J. Carroll Holzer

FOR: Appeal 96-132-SPH

MICROFILMED ST 96163-089MICRO \$175.00
SA 001-57PM04-16-96

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND
OFFICE OF TANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No 007050

DATE 4/16/96 ACCOUNT R001-6150

AMOUNT \$ 35.00

RECEIVED FROM: J. Carroll Holzer

FOR: Sign for Appeal 96-132-SPH

MICROFILMED ST 96163-089MICRO \$35.00
SA 001-57PM04-16-96

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND
OFFICE OF . . . CE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 154318

DATE 9/21/95 ACCOUNT 96-132 001-6150
NO REVIEW ITEM #130

AMOUNT \$ 285.00

RECEIVED FROM: Henley & Henley

#040 - SPECIAL HEARING
#080 - SIGN POSTING
TOTAL \$285.00

FOR: 6425 Days Cove Road

01A01#0050#12-50

\$285.00

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 25047

DATE 3/14/03 ACCOUNT 001-006-6170

AMOUNT \$ 50.00

RECEIVED FROM: Richard Henderson, P.C.

FOR: Days Cove Rubble Landfill

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

DATE RECEIVED
TIME RECEIVED
BUSINESS ACTUAL TIME
3/17/2003 3/14/2003 14:53:74
REQ 4506 WALDEN KACH KAP
RECEIPT 4 1-1041 3/17/2003
DEPT 5 500 ZONING VERIFICATION
CR NO. 123047
Receipt Tot 50.00
50.00 OK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 12, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-132-SPH (Item 130)
6425 Days Cove Road
S/S Days Cove Road, 5300' E of c/l Pulaski Highway
11th Election District - 5th Councilmanic
11th Election District - 5th Councilmanic
Legal Owner: Department of Natural Resources
Contract Purchaser: Days Cove Reclamation Company
Petitioners: White Marsh Civic Association, et al

Special Hearing to determine wheter a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources, in a R.C.-2 zone is subject to the zoning regulations of Baltimore County and must have a special exception in conformance with Section 1A01.2C18 of the Baltimore County Zoning Regulations.

HEARING: TUESDAY, NOVEMBER 7, 1995 at 2:00 p.m. in Room 118, Old Courthouse.

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

Arnold Jablon
Director

cc: J. Carroll Holzer, Esq.
Days Cove Reclamation Company
Department of Natural Resources/John Griffin
J. Joseph Curran, Jr., Esq.
Jennifer Wurzbacher, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 31, 1995

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 502
Towson, Maryland 21204

RE: Item No.: 130
Case No.: 96-132-SPH
Petitioner: White Marsh
Civic Assoc., et all

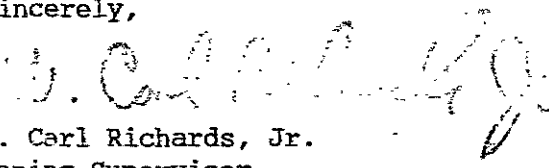
Dear Mr. Holzer:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on September 21, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,


W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

MICROFILMED



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
October 10, 1995

FROM: J. Lawrence Pilson 
Development Coordinator, DEPRM

SUBJECT: Zoning Item #130 - Days Cove Reclamation Company
6425 Days Cove Road
Zoning Advisory Committee Meeting of October 2, 1995

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Air Quality and Waste Management

The Days Cove Rubble Landfill, located at 6425 Days Cove Road, is operated by a private company on land leased from the State of Maryland, Department of Natural Resources. The existing landfill has not been subject to local environmental requirements since the land was purchased by the State. The County Office of Law is currently conducting research to determine whether or not this private landfill, located on State owned property, is subject to local permitting and regulatory requirements. If it is determined that local requirements do apply, the rubble landfill operation would be subject to the following:

1. Solid Waste Processing Facility permit for the wood waste processing portion of the landfill operation
2. Solid Waste Land Disposal Permit
3. Sediment Control Plans approved by the Soil Conservation District
4. Grading Permit
5. Storm Water Management Plans
6. Storm Water Management Permit
7. Security in accordance with the nature and extent of grading and storm water management

JLP:DF:sp
DAYSCOVE/DEPRM/TXTSBP

MICROFILMED

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Oct. 13, 1995
Zoning Administration and Development Management

FROM: *RWB* Robert W. Bowling, P.E., Chief
Development Plans Review

RE: Zoning Advisory Committee Meeting
for October 10, 1995
Items 123, 125, 126, 129, 130 and 131

The Development Plans Review Division has reviewed
the subject zoning items and we have no comments.

RWB:sw

RECEIVED



**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Hal Kassoff
Administrator

10-2-95

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 130 (WCR)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for *Bob Small*

Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

MICROFILMED

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 10/03/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: DEPARTMENT OF NATURAL RESOURCES

LOCATION: S/S DAYSCOVE RD., 5300' E OF CENTERLINE PULASKI HWY.
(6425 DAYS COVE RD.)

Item No. : 130

Zoning Agenda: SPECIAL HEARING

Gentlemen:

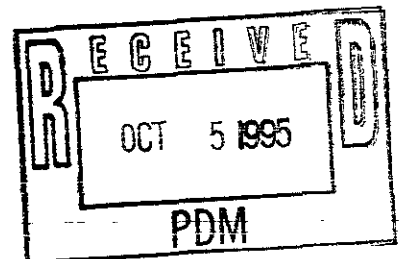
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office. PHONE 887-4881, MS-1102F

cc: File

MICROFILMED





Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 3, 1995

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 502
Towson, MD 21204

96-132-S PH

RE: Preliminary Petition Review (Item #130)
6425 Days Cove Road
Legal Owner: Dept. of Natural Resources
Contract Purchaser: Days Cove
Reclamation Company
Petitioner: White Marsh Civic Assoc., et al.

Dear Mr. Holzer:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

1. A detailed sealed site plan (with checklist informational requirements) to a reasonable (engineers scale) dimension and a sealed zoning description, as required by the petition checklist, was not filed with this item.
2. Worthwhile comments cannot be made with insufficient information for zoning review.

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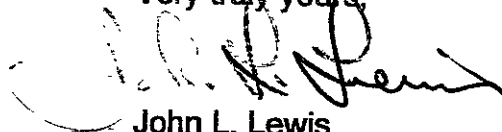


J. Carroll Holzer, Esquire
October 3, 1995
Page 2

3. Be aware of all possible special exception requirements, inclusive of maximum permitted rubble landfill areas as limited by the Baltimore County Zoning Regulations.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,



John L. Lewis
Planner II
Zoning Review

JLL:scj

Enclosure (receipt)

c: Zoning Commissioner

RECEIVED



Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

April 22, 1996

Mr. John Griffin, Secretary
Department of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

J. Joseph Curran, Jr., Esquire
Attorney General
Pamela D. Anderson, Esquire
Assistant Attorney General
State of Maryland
200 St. Paul Place
Baltimore, MD 21202

John B. Gontrum, Esquire
Romadka, Gontrum and McLaughlin
814 Eastern Boulevard
Baltimore, MD 21221

RE: Petition for Special Hearing
S/S Days Cove Road,
5300' E of the c/l of Pulaski Highway
6425 Days Cove Road
11th Election District
5th Councilmanic District
White Marsh Civic Association, et al,
Petitioners
Case No. 96-132-SPH

Dear Mr. Griffin, Mr. Curran, Ms. Anderson, and Mr. Gontrum:

Please be advised that an appeal of the above-referenced case was filed in this office on April 16, 1996 by J. Carroll Holzer, Esquire on behalf of the White Marsh Civic Association, Nottingham Improvement Association, and Barewood Park Community Association. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

If you have any questions concerning this matter, please do not hesitate to contact the Board at 887-3180.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon", is written over a horizontal line.

ARNOLD JABLON
Director
Department of Permits and
Development Management

AJ:nmn

c: George Perdikakis, DEPRM
People's Counsel

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APPEAL

Petition for Special Hearing
S/S Days Cove Road,
5300' E of the c/l of Pulaski Highway
6425 Days Cove Road
11th Election District - 5th Councilmanic District
White Marsh Civic Association, et al - Petitioners
Case No. 96-132-SPH

Petition for Special Hearing

Description of Property

Zoning Plans Advisory Committee Comments

Petitioner(s) Sign-In Sheet

Petitioner's Exhibits: 1 - Baltimore County v. Enviro-Technologies, et al/Circuit Court #91 CSP 1375
2 - Kahn, et al v. Perciasepe, et al/Circuit Court No. 75/337/91 CSP 1374
3 - Petitioner's Memorandum/Statement of Facts
4 - Zoning Map (N.E. 9-L) to Accompany Petition for Special Hearing
5 - For Identification Only - Marked on Orange Cover of ZAC Comments

Petitioner's Proffer's: 1 - Nottingham Improvement Association, Inc. Correspondence dated November 7, 1995
2 - White Marsh Civic Association Correspondence dated January 25, 1995
3 - White Marsh Civic Association Correspondence dated September 19, 1995

Correspondence to A. Hussain Alhija from Bruce Holmgren dated April 9, 1996

Memorandum to Ed Dexter from Molly Cannon dated April 1, 1994

Memorandum to Chichang Chen from Warren K. Rich dated October 8, 1985

Phase III Permit Application Information and Reports Pertaining to Case including Sections 1.0 through 11.0, Appendix A through F with 12 construction drawings (Not Marked as Exhibits)

Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda

Baltimore County Board of Appeals Opinion, Case No. 5166-X

Lease Agreement for Mixed Sludge Storage Site not dated

Lease Agreement for Rubble Landfill Site dated February 19, 1992

Days Cove Rubble Landfill Interagency Agreement dated June 30, 1993

Amendment to Lease Agreement dated September 27, 1993

Amendment to Lease Agreement dated March 18, 1994

Motion to Quash Subpoena dated November 6, 1995

Memorandum of Law for Hearing held on November 7, 1995

Correspondence to Zoning Commissioner from Pamela D. Anderson, Esq. dated November 29, 1995

Response Memorandum of Wayne Knight and Honeygo Reclamation Center for Baltimore County Case No. 96-132-SPH dated December 6, 1995

Reply of Memorandum of Petitioner for Case No. 96-132-SPH dated December 8, 1995

13 Miscellaneous Correspondence (Not Marked as Exhibits)

Zoning Map to be submitted with Petition for Special Hearing (Not Marked as Exhibit)

Zoning Commissioner's Order dated March 21, 1996 (Denied)

Notice of Appeal received on April 16, 1996 by J. Carroll Holzer, Esquire on behalf of White Marsh Civic Association, Nottingham Improvement Association, and Barewood Park Community Association

c: J. Carroll Holzer, Towson Office, 305 Washington Avenue, Suite 502, Towson, MD 21204
White Marsh Civic Association, c/o Adam Paul, President, 10404 Vincent Farm Lane, White Marsh, MD 21162
Barewood Park Community Association, c/o Joe McGraw, President, 6912 North River Drive, Baltimore, MD 21220
Nottingham Community Association, c/o Marie Simoes, President, 1314 Spotswood Road, White Marsh, MD 21162
Mr. John Griffin, Secretary, Department of Natural Resources, Tawes State Office Building, 580 Taylor Avenue, Annapolis, MD 21401
J. Joseph Curran, Jr., Esquire, Attorney General, and Pamela D. Anderson, Esquire, Assistant Attorney General, State of Maryland, 200 St. Paul Place, Baltimore, MD 21202
John B. Gontrum, Esquire, Romadka, Gontrum and McLaughlin, 814 Eastern Boulevard, Baltimore, MD 21221
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM
George Perdikakis, Director of DEPRM

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OCT - 2 1985



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

September 26, 1985

Warren K. Rich, Esquire
93 Main Street
P.O. Box 589
Annapolis, Maryland 21404

RE: Allender Road Sand and
Gravel Operation
11th Election District

Dear Mr. Rich:

With reference to your letter of September 24, 1985, please be advised that your conclusion is correct and no zoning hearing will be required.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. Jablon", is written over a circular stamp.

ARNOLD JABLON
Zoning Commissioner

AJ/srl

✓

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Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

11/7/95

October 31, 1995

The Honorable Lawrence Schmidt
Zoning Commissioner's Office
Old Court House
Towson, Maryland 21204

RE: Case No. 96-132-SPH
Days Cove

Dear Mr. Schmidt:

I am in receipt of the attached letter from the Office of the Attorney General. The conclusion of that office is that the use and utilization of the above-referenced property as a landfill is exempt from local zoning regulations.

I have reviewed the letter and the case law, and it is the position of this department that, pursuant to the position taken by the Office of the Attorney General, we cannot impose Baltimore County's zoning regulations in the instant matter. If there is disagreement with the Office of the Attorney General, the appropriate forum to determine the application of local zoning to state-owned property is the courts.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Director

AJ:ljb

Attachment

c: Pamela D. Anderson, Esquire
Warren K. Rich, Esquire
J. Carroll Holzer, Esquire
John Gontrum, Esquire
Virginia Barnhart, Esquire
George Perdikakis

11/3/95



6/10/96 -Notice of Assignment for hearing scheduled for Tuesday,
September 17, 1996 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire
White Marsh Civic Association
and Adam Paul
Harewood Park Community Association
and Joe McGraw
Nottingham Community Association
and Marie Simoes
John B. Gontrum, Esquire
Warren K. Rich, Esquire and
Jennifer L. Wurzbacher, Esquire
Days Cove Reclamation Company
Pamela D. Anderson
/Assistant Attorney General
John Griffin, Secretary /DNR
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

9/11/96 -Letter of Dismissal of appeal filed by J. Carroll Holzer on
behalf of White Marsh Civic Association and Harewood Park Community
Association, Appellants.

- T/C to S. Leese -- original appeal indicated three community
groups as Appellants /Petitioners (also included Nottingham Imp.
Assn.); S. Leese will verify and get back to us.

9/12/96 -Amendment to letter of dismissal from J. Carroll Holzer;
amending original letter to include Nottingham Imp. Association.

- Order of Dismissal to be issued by CBA.

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RIGHT HAND SIDE
Pleadings

12/08/95

Reply of Memorandum of Petitioner

J. Carroll Holzer

(Response to Days Cove's Memorandum of Law in response to the petition.)

12/06/95

Response Memorandum of Wayne Knight and Honeygo Reclamation Center
John Gontrum, Esq.

(Response to the State of Maryland, Department of Natural Resources and
Days Cove Reclamation Center Memoranda)

11/29/95

Response Memorandum of the State of Maryland, Department of Natural
Resources

Joseph Curran, Jr., Attorney General and Pamela D. Andersen, Assistant
Attorney General.

(Response to Petitioners' and Intervenors' Memoranda)

11/29/95

Memorandum of Law in Response to Petitioners' and Intervenors'
Memoranda (with exhibits A thru F)

Jennifer L. Wurzbacher, Esq. on behalf of Days Cove Reclamation Company.

11/15/95

Memorandum of Law/Statement of Case

John Gontrum, Esq. on behalf of Wayne Knight and Honeygo Reclamation
Company.

11/07/95

Motion to Quash Subpoena

Norma Jean Kraus Belt, Esq. on behalf of the Maryland Department of the
Environment.

11/07/95 Pet No. 3

Petitioners' Memorandum/Statement of Facts

J. Carroll Holzer, Esq.

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LEFT HAND SIDE
Exhibits and/or Proffers

03/18/94 Amendment to Agreement of Lease
between the State of Maryland to the use of the Department of Natural
Resources and JWP Enviromental Services Company, fka Enviro-Gro
Technologies Company.

09/27/93 Amendment to Agreement of Lease
between the State of Maryland to the use of the Department of Natural
Resources and JWP Enviromental Services Company, fka Enviro-Gro
Technologies Company.

06/30/93 Days Cove Rubble Landfill Interagency Agreement
between the Maryland Enviromental Service of the Maryland Departmenbt
of Natural Resources and the Public Lands Administration of the
Maryland Department of Natural Resources.

02/19/92 Agreement of Lease for Rubble Land Fill
between Department of Natural Resources and Enviro-Gro Technologies

Pet. No. 1
Baltimore County v. Enviro-Technologies, et al
Circuit Court #91 CSP 1375

Pet. No. 2
Kahn, et al v. Perciasepe, et al/Circuit Court #75/337/91 CSP 1374

Pet. Proffer #3
Copies of various letters written from 1993 to 1995.

UNRECORDED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: April 9, 1997
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed File: Case No. 96-132-SPH
White Marsh Civic Assn., et al - Petitioners

As no further appeal has been taken regarding the subject case, which was dismissed by Order dated September 25, 1996, we are hereby closing the file and returning same to you herewith.

Attachment (Case File No. 96-132-SPH and brown wallet containing exhibits and misc. correspondence)

APR 10 1997

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



10/1/95

5307-9541
THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-

2501

October 27, 1995

Arnold Jablon, Director
Baltimore County Department of Permits
And Development Management
Development Processing County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Zoning of Gunpowder Falls State Park
Case Number: 96-132-SPH (Item 130)

Dear Mr. Jablon:

The Department of Natural Resources has been notified by your office that you have scheduled a public hearing on the issue of whether or not County zoning regulations apply to the rubble landfill the State maintains within Gunpowder Falls State Park. I am representing the Department of Natural Resources in this matter and must inform you that it is the opinion of this office that local zoning regulations do not apply to the rubble landfill.

The State of Maryland to the Use of the Department of Natural Resources owns the rubble landfill. Currently it is operated by a private company pursuant to a lease with the Department of Natural Resources which was approved by the Maryland Board of Public Works. The landfill is open to the public and, in addition to regulatory inspections by the Maryland Department of the Environment, its operation is monitored by the Maryland Environmental Service at the request of the Department of Natural Resources.

The Department of Natural Resources is responsible for, among other things, the proper use, development, and preservation of the forests, streams, valleys, wetlands, parks, scenic, historic and recreation areas of the State. These are basic assets of the State and their proper use, development, and preservation are necessary to protect and promote the health, safety, economy, and general welfare of the people of the State. It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of local economy,

FAX (410) 974-5206

MICROFILMED

2

preservation of the natural beauty, and promotion of the recreational and leisure interest throughout the State. Natural Resources Article, Section 5-102, Annotated Code of Maryland. The rubble landfill meets this policy and fulfills a public need. Currently there are no other rubble landfills within the County and 75% of the waste deposited in the rubblefill originated in Baltimore County. Convenient and economical rubble landfills keep down construction costs and promote the local economy. Furthermore, the landfill is a part of the State's Solid Waste Management Plan and fulfills an identified waste management need.

The operation of the landfill is compatible with the existing uses of the Park. It does not interfere with the present recreational and educational uses of the Days Cove Area. The income it generates has allowed the Department to develop an Environmental Education Center and use the nearby confluence of the Big and Little Gunpowder Falls rivers, one of only a few river deltas in Maryland, as an educational tool. This area has been designated as a State Critical Area by the State Office of Planning and its wise use and preservation are of great concern to the Department.

Just as the original landfill caused the reclamation of an area which had been mined for sand and gravel, the expansion of the landfill will allow the State to reclaim an area of the Park used as a sludge mixing site prior to the State's purchase of the property. The reclamation will ensure that there are no unknown pending environmental hazards and cause the area to be landscaped to conform to the Park plan.

The Department acquired the property in the Days Cove Area of Gunpowder Falls State Park with a number of existing private enterprise activities occurring on the properties, including a sand and gravel mining operation and the continued use of the sludge mixing site as well as the rubble landfill. As a condition of the sale and in order to protect the extensive wetland and upland habitats, it was agreed to allow these uses to continue. They support the local economy and allow wise use of the State's natural resources and public lands. They serve a valid public purpose of the State and are not subject to local zoning.

The law in Maryland is that State property used for public purposes is not subject to the controls and restrictions of local planning and zoning regulations, absent a specific grant of authority from the General Assembly. City of Baltimore v. State Dept. Of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978); City of Baltimore v. State, 281 Md. 217, 378 A.2d 1396 (1977); Youngstown Cartage Co. v. North Point Peninsula Community Coordinating Council, 24 Md.App. 624, 332 A.2d 296 (1975). In Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 683, 691, 561 A.2d 219 (1989), the Court of Appeals found that Baltimore County's zoning enabling statute neither specifically provided nor clearly implied that the State was intended to be subject to its provisions.

In City v. Dept. Health and Mental Hygiene, *supra*, the property at issue was also owned by the State and leased to a private entity. It was a home for six teenagers who had been adjudicated "children in need of supervision" and the Court held that local zoning did not apply. Similarly, 62 Op.A.G. 45 (1977) (a liquor dispensary operated by the Wicomico County Liquor Control Board) and 78 Op.A.G. (1993) [Opinion No. 93-017, May 25, 1993] (a fraternity house owned by the University of Maryland) opine that State owned property which is leased to a

MICROFILMED

private entity can be considered to be used for public purposes in appropriate circumstances. The rubble landfill is owned by the State and the public has a right to use it. Its existence plays an integral role in the Department's comprehensive plan for and use of the Days Cove Area of Gunpowder Falls State Park. It fulfills the State's need to provide facilities for the responsible disposal of solid waste and the Department of Natural Resources' duty to "... unify, coordinate, and promulgate policies, plans, programs, and practices which insure the development, wise use and enjoyment of all the natural resources for greatest benefits to the State and its citizens." Natural Resources Article, Section 1-101(b)(4), Annotated Code of Maryland.

For the reasons given we conclude that the Baltimore County zoning regulations do not apply to the rubble landfill in Gunpowder Falls State Park and the Department respectfully requests your office to cancel the public hearing scheduled on this matter. We are, of course, happy to meet with you to discuss any concerns your office may have regarding the operation of the landfill or its proposed expansion. This is not an Opinion of the Attorney General but I have conferred with Jack Schwartz, Chief Counsel for Opinions, Advice and Legislation about the matter and he is in agreement. Thank you for your consideration.

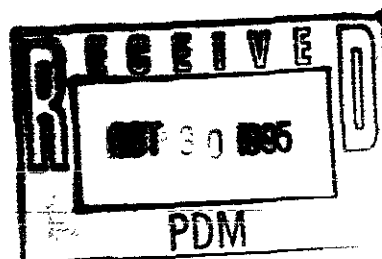
Very truly yours,



Pamela D. Andersen
Assistant Attorney General

cc: John R. Griffin
C.A. "Dutch" Ruppertsberger
Michael J. Nelson
George Perdikakas

MICROFILMED



J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-

2501

November 1, 1995

Larry Schmidt
Zoning Commissioner
Baltimore County
Department of Permits and Development Management
Development Processing County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Public hearing on Case No.: 96-132-SPH (Item 130)
Days Cove Area of Gunpowder Falls State Park

Dear Mr. Schmidt:

This letter is to inform you that the State of Maryland, Department of Natural Resources will not be attending the above referenced public hearing on November 7, 1995. The property is a State park in public use and is not subject to local zoning regulations. The attached letter explaining the Department's position was sent earlier to Arnold Jablon. Please be advised that neither John Griffin nor Steve Cassard who have received subpoenas from your office will be attending either.

Very truly yours,

Pamela D. Andersen
Assistant Attorney General

Enclosure

cc: John R. Griffin	J. Carroll Holzer, Esq.	George Perdikakas
Steve Cassard	305 Washington Ave.	Arnold Jablon
Michael J. Nelson	Towson, MD 21204	Warren K. Rich

J. JOSEPH CURRAN, JR.
Attorney General



11/3/95
JO BS
JLA

NORMAN E. PARKER, JR.
RALPH S. TYLER
Deputy Attorneys General

(410) 576-7003

TELECOPIER No

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

(410) 576-6327

WRITER'S DIRECT DIAL No

November 1, 1995

Mr. Arnold Jablon
Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

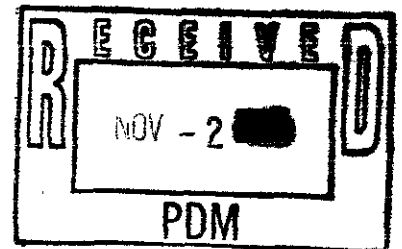
Re: *Zoning of Gun Powder Falls State Park*
Case No. 96-132-SPH (Item 130)

Dear Mr. Jablon:

I am writing to confirm that I have reviewed the letter dated October 27, 1995, concerning the above-captioned matter, sent to you by Assistant Attorney General Pamela D. Andersen. I concur with Ms. Anderson's analysis and conclusion.

Very truly yours,

Jack Schwartz
Chief Counsel
Opinions & Advice



J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



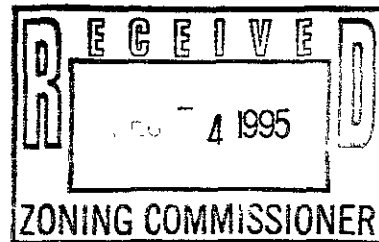
STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-

2501

November 29, 1995

Clerk of the Office of the Zoning
Commissioner of Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204



THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
JUDITH F. PLYMYER
PAMELA D. ANDERSEN
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MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUFFERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

Re: Days Cove Rubble Landfill/Gunpowder Falls State Park
Case No. 96-132-SPH

Dear Madame:

Please file the enclosed Memorandum of the State of Maryland, Department of Natural Resources in the above referenced proceeding. Thank you.

Very truly yours,

Pamela D. Andersen
Assistant Attorney General

Enclosure

cc: Michael J. Nelson
John Wilson

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL

NORMAN E. PARKER, JR.
DEPUTY ATTORNEY GENERAL



JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
COUNSEL TO THE SECRETARY

MARIANNE D. MASON
SHARON B. BENZIL
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STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
580 TAYLOR AVENUE, C-4
ANNAPOLIS, MARYLAND 21401
(410) 9742503

May 7, 1996

Baltimore County
Board of Appeals
Room 49
400 Washington Ave.
Towson, Maryland 21204
Attn: Ms. Kathleen Bianco

6425 Days Cove Road
Towson, MD 21204
6425 Days Cove Road
Towson, MD 21204

Re: Case No. 6425 Days Cove Road

Dear Ms Bianco:

Please enter the appearance of Pamela D. Andersen, Assistant Attorney General on behalf of the State of Maryland, Department of Natural Resources in the above-reference matter.

Very truly yours,

A handwritten signature in cursive script that reads "Pamela D. Andersen".

Pamela D. Andersen
Assistant Attorney General

cc: Warren K. Rich
Jennifer L. Wurzbacher
J. Carroll Holzer
Arnold Jablon
John Gontrum
Peter Max Zimmerman
Michael J. Nelson
Michael Browning
John Wilson

6425 Days Cove Road
Towson, MD 21204
6425 Days Cove Road
Towson, MD 21204

BPW 12/15/93

DEPARTMENT OF GENERAL SERVICES
ACTION AGENDA

LEASE

ITEM 6-L

DEPARTMENT OF NATURAL RESOURCES

Baltimore County

Reference is made to Item 15-L of the Board of Public Works agenda dated February 19, 1992 wherein the Board approved the Department of Natural Resources leasing 24 acres of land to the Enviro-Gro Technologies Company, in Gunpowder Falls State Park (Days Cove Area), for the use of the site as a rubble landfill. Board of Public Works approval is requested to amend this lease as follows:

- #1 {
1. ^{1.1 att.} Acknowledge the change in the corporate name of the tenant from Enviro-Gro Technologies Company to JWP Environmental Services Company.
 2. ^{1.9} Acknowledge the management of the premises on the tenant's behalf by the Days Cove Reclamation Company.
 3. ^{1.4} Incorporate a Maryland Environmental Service Contract into the lease for the purpose of evaluating and monitoring the operation of the landfill.
 4. ^{1.3} Increase the acreage of the premises from 24 acres to 54.55 acres.
 5. ^{#2} Acknowledge the Declaration of Deed Convenants to be recorded as required by the Department of the Environment. The Deed Convenants restrict the future use of the site of the rubblefill by requiring written MDE authorization for any construction or excavation. The Deed Convenants were required when the rubblefill was originally established, prior to the State acquisition, but MDE and JWP Environmental Services have no record of the Deed Convenants being recorded in the land records of Baltimore County.
 6. The area leased to Enviro-Gro Technologies Company on February 19, 1992, as Board of Public Works Item 15-L, was only the area to be filled with rubble and did not include the overburden stockpile areas, stormwater management and sediment control structures, haul roads, equipment storage and repair facilities and offices; therefore, the lease must be amended to increase the leased area to 54.55+ acres, the area of the Surface Mining Permit for this site, to include the portions of the Tenant's operation other than the actual fill. The area used by the Tenant is not changed, the acreage leased is corrected by this amendment. The acreage increase provides indemnification of the State by the Tenant on areas which are necessary for the operation of the Rubblefill.

All other terms and conditions of the lease agreement shall remain the same.

Board of Public Works Action - The above referenced Item was:

Approved

Disapproved

Deferred

Withdrawn

With Discussion

Without Discussion

SM602A.LS

1/10/94

statutory administrative remedies may be exhausted. In our case law, in various enactments. For example, the Administrative Procedure Act authorizes a party to seek judicial review of an agency decision. Art. 41, § 255(a), Declaratory Judgment, 1980 Repl. Vol.), and Judicial Procedure. If a statute provides a specific remedy, that remedy shall be exhausted under this

the strong public policy requirement that administrative remedies be exhausted. In this particular case, an administrative remedy was sought spontaneously. The failure of the Commission to issue a decision, *Joseph H. v. MTA*, 449 A.2d 409, 410.

limited exception to the exhaustion requirement. The Commission's decision on the challenge to its decision in *Prince Geo's Co.*, 449 A.2d 1114 (1981); *Shipp v. Calvert*, 449 A.2d 738 (1981). However, the Commission's decision falls within the exception provided by this

certain circumstances. *Prince Geo's Co.*, 449 A.2d 1114 (1981); *Shipp v. Calvert*, 449 A.2d 738 (1981). In addition, the Commission's decision might be considered an administrative remedy. *Shipp v. Calvert*, 449 A.2d 738 (1981).

[2] Although there may be cases in some other jurisdictions supporting the trial court's view that administrative remedies need not be exhausted if the question is one of statutory interpretation like that presented here,⁵ this view is contrary to the settled law of Maryland. This Court has consistently held that statutorily prescribed administrative and judicial review remedies must be exhausted in cases involving the interpretation of statutory language. See, e.g., *Prince George's Co. v. Blumberg*, supra, 288 Md. at 287-290, 418 A.2d 1155 (interpretation of county building code); *Sec. Dep't Of Human Res. v. Wilson*, supra, 286 Md. at 642, 647, 409 A.2d 713 (interpretation of statutory provision increasing the amount of unemployment benefits); *Soley v. St. Comm'n On Human Rel.*, supra, 277 Md. at 523-524, 527-528, 356 A.2d 254 (interpretation of provision in Art. 49B setting forth requirements for complaints issued by Human Relations Commission). Moreover, to hold that the existence of a statutory interpretation issue furnishes an excuse to abort the administrative proceedings before a final agency decision, would also be inconsistent with the principle that the agency's construction of a statute which it administers is entitled to weight. See *National Asphalt v. Prince Geo's Co.*, supra, 292 Md. at 80, 437 A.2d 651; *Balto. Bldg. & Constr. Trades v. Barnes*, 290 Md. 9, 14-15, 427 A.2d 979 (1981); *Comptroller v. John C. Louis Co.*, 285 Md. 527, 543, 404 A.2d 1045 (1979); *Holy Cross Hosp. v. Health Services*, 283 Md. 677, 685, 393 A.2d 181 (1978); *Demory Brothers v. Bd. of Pub. Works*, 273 Md. 320, 327, 329 A.2d 674 (1974); *Department v. Greyhound*, 247 Md. 662, 669, 234 A.2d 255 (1967).

[3] The MTA in the present case has couched the statutory interpretation issue in terms of the Commission's "authority" or "power" or "jurisdiction," and has charged that the Commission is attempting to "expand" its jurisdiction and proceed in an unauthorized manner. Nevertheless, many,

5. See some of the cases reviewed in Davis, *Administrative Law Treatise* (1958, 1982

if not most, statutory interpretation issues arising in administrative proceedings could be phrased in terms of the agency's "authority," "power" or "jurisdiction" to take a certain type of action in a specific case. A party's argument that an agency will be exceeding its authority if it ultimately interprets the statute and decides the case contrary to that party's position, does not excuse the failure to await a final agency decision. Thus in *Soley v. St. Comm'n On Human Rel.*, supra, 277 Md. at 523-524, 527-528, 356 A.2d 254, it was argued by the appellant that, because the initial complaints failed to conform to statutory requirements as interpreted by the appellant, the Commission would be exceeding its authority to process the complaints and that, therefore, the appellant need not exhaust the statutorily prescribed administrative remedies. In rejecting this argument, Judge Levine stated for the Court (*id.* at 527-528, 356 A.2d 254):

"The remaining ground on which appellants rely for their contention that the general rule should not be applied here is that there need be no exhaustion of administrative remedies where the act of the administrative agency is alleged to be ultra vires or illegal. They rest this contention on two cases, *Shpak v. Mytych*, 231 Md. 414, 418, 190 A.2d 777 (1963), and *Stark v. Board of Registration*, 179 Md. 276, 284, 19 A.2d 716 (1941). This reliance is misplaced. In neither *Shpak* nor *Pressman v. Barnes*, 209 Md. 544, 549-50, 121 A.2d 816 (1956), the principal authority which it cites, did this Court hold that declaratory relief may be granted where a law is alleged to be ultra vires or illegal, despite the existence of a statutory remedy.

* * * * *

"We find no authority, therefore, for the proposition that there need be no exhaustion of a statutory or administrative remedy where the act of an administrative agency is alleged to be ultra vires

Supp.), Ch. 20.

MICROFILMED

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-

2501

November 29, 1995

Clerk of the Office of the Zoning
Commissioner of Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Days Cove Rubble Landfill/Gunpowder Falls State Park
Case No. 96-132-SPH

Dear Madame:

Please file the enclosed Memorandum of the State of Maryland, Department of Natural Resources in the above referenced proceeding. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Pamela D. Andersen".

Pamela D. Andersen
Assistant Attorney General

Enclosure

cc: Michael J. Nelson
John Wilson

MICROFILMED

FAX (410) 974-5206

IN THE MATTER OF:

DAY'S COVE AREA OF GUNPOWDER
FALLS STATE PARK
6425 DAY'S COVE ROAD
FIFTH COUNCILMANIC DIST.

* BEFORE THE ZONING
* COMMISSIONER OF
* BALTIMORE COUNTY
* CASE NO. 96-132-SPH

* * * * *

RESPONSE MEMORANDUM OF THE STATE OF MARYLAND,
DEPARTMENT OF NATURAL RESOURCES

Comes now, the State of Maryland, Department of Natural Resources, by its attorneys, J. Joseph Curran, Jr., Attorney General and Pamela D. Andersen, Assistant Attorney General, and responds to the memoranda submitted by the petitioners and intervenors in the above captioned matter.

Facts

On December 29, 1986, the State of Maryland purchased approximately 737 acres of land from Joseph and Stanley Smuck and the ROC Corporation, a Smuck family corporation. The land purchased from the Smucks borders on the confluence of the Big and Little Gunpowder Falls, one of only a few true river deltas in the State. The area, known as the Days Cove Area of Gunpowder Falls State Park, is significant for the diversity of habitats it contains. These include extensive marshes, both tidal and nontidal, a floodplain, wooded areas, a lake and open fields. Many consider this natural setting unsurpassed on the western shore of the Chesapeake Bay so it is being developed as an environmental study area.

At the time the State purchased the property, the Smucks had an active sludge mixing operation, a sand and gravel mining operation and a rubble landfill on the property. The Smucks retained the mineral rights (except for a 12 acre site containing critical habitat) with the right to

mine for sand and gravel for the next ten years. The deed also specified that the Smucks were allowed to continue operating the rubble landfill until they had made \$4,000,000 or 6 ½ years had passed whichever came first. The \$4,000,000 mark was reached in 1993 and at that time the State entered into a lease with the company which had operated the landfill for the Smucks for the continued operation of the landfill. As the lessor, the State gets a percentage of the tipping fee. The County gets 10% of the State's revenue pursuant to Natural Resources Article, Section 5-212.

After many months of operating the landfill for the State, the tenant, Days Cove Reclamation Company, came to the Department with a proposal that the landfill be expanded in size onto the area which had been used for sewage sludge mixing and is now used as a site for storing the mixed sludge. The Department of Natural Resources agreed to allow the tenant to pursue getting a permit from the Maryland Department of the Environment for an expansion but has not yet taken a new lease or lease amendment to the Board of Public Works for its approval. No lease document has even been drafted yet.

Before the Department of the Environment issued the permit for the expansion of the rubble landfill, several individuals and civic associations petitioned for a special public hearing on whether or not the site proposed for expansion of the rubble landfill should be subject to the Baltimore County zoning regulations and this proceeding ensued. The current rubble landfill was in compliance with the zoning regulations at the time of its acquisition by the State. Following the acquisition, Baltimore County discontinued regulating the rubble landfill's operation.

The landfill is open to the public for use but there are operating rules which customers must comply with just as there are rules at all State parks which must be followed. The State's tenant works with the State Park Service on coordinating operation of the rubble landfill with the

management of the State Park. The Maryland Environmental Service provides daily technical inspection services for the Department of Natural Resources pursuant to a contract for services.

Argument

At the hearing on December 7, the Zoning Commissioner reviewed the case law governing the application of local zoning regulations to State property. He determined that the Baltimore County zoning enabling legislation did not grant the County express authority to regulate State property, therefore, the County zoning regulations could only apply if the State could be shown to have waived its sovereign immunity from local regulation by not allowing the property proposed for the expanded landfill to be put to a public use.

The only case in which such a waiver has been found by a Maryland appeals court is Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975). In Youngstown, unlike the property at issue here, a State agency was not using the property in any manner. The entire tract was leased out and the privately operated facility was not open to the public. The State Highway Administration had leased all of the property to a trucking company to use for its own business because the Administration was not yet ready to build a road on the property. The property in this case is a public park and the facility at issue is a rubble landfill which is open to the public for use.

The facts in this case are much closer to those in Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978) in which the Court of Special Appeals held that a State owned house leased to a private entity to operate a home for girls adjudicated to be "children in need of supervision" was exempt from local zoning because the use made of the property was public and it served a public purpose. In Mayor, the Department of Health and Mental Hygiene was statutorily responsible for the care of

the children staying in the home. In this case, the Department of Natural Resources is statutorily responsible for the promotion, administration and management of State-owned or leased parks. Natural Resources Article, Section 5-201. The Department is required to use and develop parks in a manner which protects and promotes the health, safety, economy and general welfare of the people of the State. Natural Resources Article, Section 5-102. The Department is fulfilling these responsibilities by including the rubble landfill in the Days Cove Area of Gunpowder Falls State Park.

The operation of the landfill is compatible with the existing uses of the Park. It does not interfere with the present recreational and educational activities in the Days Cove Area. The income it generates has allowed the Department to develop an Environmental Education Center and use the delta created by the confluence of the Big and Little Gunpowder Falls to be an educational tool. Just as the original landfill caused the reclamation of an area which had been mined for sand and gravel, the expansion of the landfill will allow the State to reclaim a disturbed area of the Park used as a sludge mixing site prior to the State's purchase of the property. The reclamation will ensure that there are no unknown pending environmental hazards and cause the area to be landscaped to conform to the Park plan.

It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of the local economy, preservation of the natural beauty, and promotion of the recreational and leisure interest throughout the State. Natural Resources Article, Section 5-102. The State complied with that policy when it allowed the rubble landfill to continue operating within the confines of a State park. Currently there are no other rubble landfills within the County and 75% of the waste deposited in the rubblefill originated in Baltimore County. Use of this rubble landfill saves capacity at the nearby County owned Eastern

Landfill. Convenient and economical rubble landfills keep down construction costs and promote the local economy. The landfill is a part of the State's Solid Waste Management Plan and fulfills an identified waste management need.

Other State owned facilities used for business-like activities have been determined to be exempt from local zoning regulations by the Maryland Attorney General. In 62 Op.A.G. 45 (1977) the Attorney General opined that a liquor dispensary owned and operated by the Wicomico County Liquor Control Board, which was a State entity, was not subject to local zoning regulation even though it was a business enterprise. Similarly, in 78 Op.A.G. (1993) [Opinion No. 93-017, May 25, 1993] the Attorney General found that a fraternity house purchased by the University of Maryland and leased to a private entity for student housing was not subject to local zoning because it fulfilled a public purpose. Opinions of the Maryland Attorney General are not binding on the courts or in this local zoning proceeding but the Maryland Court of Appeals has held that they are entitled to careful consideration. Dodds v. Shamer, 339 Md. 540, 663 A.2d 1318 (1995).

The petitioners also argue that Environment Article, Section 9-210(a) requires all refuse disposal systems to comply with county zoning and land use requirements regardless of who owns and operates the system and for what purpose. The statute requires the Department of the Environment to get a written statement from a county that a proposed refuse disposal system "meets all applicable county zoning and land use requirements" before the Department can issue a permit for the system. Environment Article, Section 9-210(a)(3)(I) (emphasis added). The petitioners have failed to acknowledge that the statute says all 'applicable' zoning requirements. In this situation, there are no applicable zoning requirements.

The Department of the Environment does not agree with the petitioners' interpretation of

Section 9-210(a). Furthermore, it does not consider Baltimore County zoning regulations to be applicable in the permit pending for the rubble landfill expansion. See the attached letter of Richard W. Collins, Director of the Waste Management Administration, Maryland Department of the Environment. The statutory interpretation of the administrative agency administering the statute is entitled to great deference B & O Railroad v. Bowen, 60 Md. App. 299, 482 A.2d 921 (1984).

A second argument made by the petitioners is that because the Maryland Environmental Service has a contract with the Department of Natural Resources to inspect the rubble landfill, Natural Resources Article, Section 3-104(v) requires the Department to comply with local zoning requirements. Section 3-104(v) prohibits the Service from constructing, establishing or operating any new solid waste disposal project within the boundaries of any county or municipal corporation without the express consent of the governing body of the county or municipal corporation. It does not apply in this situation because the Service did not construct or establish the rubble landfill nor does it operate the landfill. The Service merely provides technical inspection services to the Department of Natural Resources just as it does for many private businesses and local governments in addition to owning and operating its own projects.

The petitioners have also cited numerous cases on preemption for authority that the County can regulate the location of landfills. The Department has not addressed the preemption issue in this memorandum because no one is arguing that the State has preempted the field of local zoning of solid waste disposal facilities. The argument is that local zoning is not applicable to a State owned rubble landfill in a State park that is open to the public and is used for public purposes.

For these reasons, the State of Maryland Department of Natural Resources respectfully requests the Zoning Commissioner to hold that the Baltimore County zoning regulations do not apply to the rubble landfill within Gunpowder Falls State Park.

Respectfully submitted,

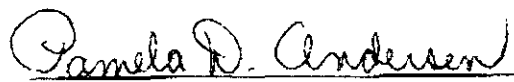
J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



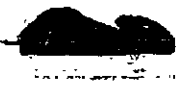
Pamela D. Andersen
Assistant Attorney General
Dept. Of Natural Resources
580 Taylor Avenue
Annapolis, Maryland 21401

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 1995 a copy of the foregoing Response of the State of Maryland, Department of Natural Resources was mailed first class, postage pre-paid to J. Carroll Holzer, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for the Petitioners, to John B. Gontrum, Romadka, Gontrum & McLaughlin, 814 Eastern Blvd., Baltimore, Maryland 21221, Attorney for Wayne Knight and Honeygo Reclamation Company, to Peter Max Zimmerman, Room 47, Courthouse, 400 Washington Avenue, Towson, Maryland 21204, People's Counsel, and to Warren K. Rich, Rich and Henderson, 844 West Street, P.O. Box 589, Annapolis, Maryland 21404-0589, Attorney for Days Cove Reclamation Company.



Pamela D. Andersen
Assistant Attorney General


MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore, Maryland 21224
(410) 631-3000

Husson

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

July 12, 1995

The Honorable C.A. Dutch Ruppersberger
Baltimore County Executive
Court House
Towson MD 21204

Dear County Executive Ruppersberger:

This letter is to advise you of the current status of the permit application for the proposed horizontal expansion of the Days Cove Rubble Landfill located at 6425 Days Cove Road, White Marsh, Maryland.

The Maryland Department of the Environment (MDE), Waste Management Administration (WAS), is presently reviewing permit applications for a State Refuse Disposal Permit and a State Discharge Permit for the proposed expansion. These applications were submitted by Dames and Moore on behalf of the applicant, Days Cove Reclamation Company, to WAS on November 28, 1994 and January 30, 1995, respectively.

WAS has completed review of the Phase I (permit application) and Phase II (Geologic and Hydrogeologic Report) for the Refuse Disposal Permit and considers these reports to be complete. WAS is currently reviewing the Phase III (Engineering Plans and Specifications) that we received on May 24, 1995. Please note that a Phase III joint plan review meeting for this phase of the permit application was held on June 15, 1995.

An Informational Meeting was held by WAS regarding this permit application on Tuesday, March 14, 1995. The purpose of the Informational Meeting was to provide an opportunity to the public to obtain information about the permit applications and MDE's permit review process.

Section 9-210(a), as amended, of the Environment Article, Annotated Code of Maryland requires that the Department report the finding of its preliminary technical review in writing to the County and that the County must provide a written statement to the Department affirming that the proposed facility is in conformance with approved County solid waste management plan. On April 14, 1995 WAS received a written statement from the County

The Honorable C.A. Dutch Ruppertsberger
Page 2

to this effect. Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

If you have any questions, please call Dr. Hedy V. Alavi, Ph.D., Acting Chief, Design and Certification Division, at (410) 631-3364.

Sincerely,



Richard W. Collins, Director
Waste Management Administration

RWC:APA:nh

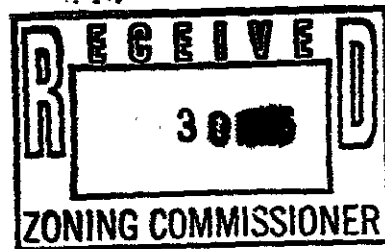
cc: Mr. Arnold Jablon
Ms. Margaret L. Demczak
Mr. Steve Gebhardt

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666

November 29, 1995

The Honorable Lawrence Schmidt
Zoning Commissioner's Office
Old Court House
Towson, Maryland 21204

**Re: Case No. 96-132-SPH
Days Cove**



Dear Mr. Schmidt:

We enclose for filing original and one copy of Memorandum of Law in Response to Petitioners' and Intervenors' Memoranda in the above-referenced matter. Please call me at (410) 267-5900 if you have any questions concerning this filing. Thank you for your assistance.

Sincerely,


Jennifer L. Wurzbacher

JLW:jll

Enclosures

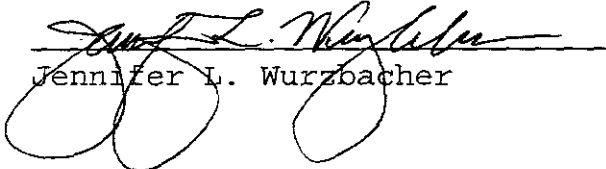
cc: J. Carroll Holzer, Esquire
John B. Gontrum, Esquire
Pamela D. Andersen, Esquire

dayscove\schmidt.ltr

57-1-1-1-1-1

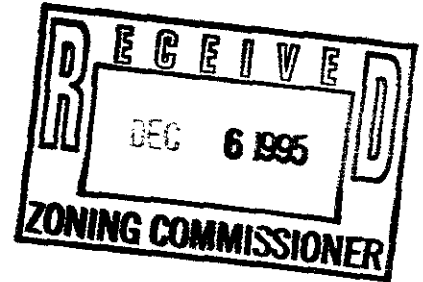
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 1995, a copy of the foregoing was mailed, postage pre-paid, to J. Carroll Holzer, Esquire, Holzer and Lee, 5 Washington Avenue, Suite 502, Towson, Maryland 21204; John B. Gontrum, Esquire, 814 Eastern Boulevard, Baltimore, Maryland 21221; and Pamela D. Andersen, Esquire, Assistant Attorney General, Department of Natural Resources, 580 Taylor Avenue, Annapolis, Maryland 21401.


Jennifer L. Wurzbacher

MAILED

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666
December 4, 1995



Clerk of the Office of Zoning
Commissioner of Baltimore County
Old Court House
400 Washington Avenue
Towson, MD 21204

RE: Days Cove Rubble Landfill/Gunpowder Falls State Park
Case No. 96-132-SPH

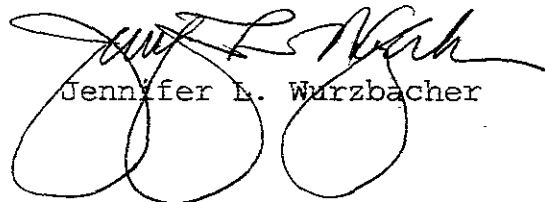
Dear Sir or Madame:

It has come to my attention that when our Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda was filed with your office on or about November 29, 1995, Counsel for the People, Peter Max Zimmerman, was inadvertently left off of the Certificate of Service and therefore was not served with a copy of the Memorandum.

I enclose for the record a Certificate of Service reflecting that Mr. Zimmerman has this date been forwarded a copy of the Memorandum.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Jennifer L. Wurzbacher

JLW:piy
enclosure

MICROFILMED

cc: J. Carroll Holzer, Esquire
John B. Gontrum, Esquire
Pamela D. Andersen, Esquire
Peter Max Zimmerman, Esquire

dayscove.cof

MICROFILMED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 1995 a copy of the Memorandum of Law in Response to the Petitioners' and Intervenor's Memoranda was mailed, postage prepaid, to Peter Max Simmerman, People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204.


Jennifer L. Wurzbacher

MICROFILMED

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666
December 4, 1995

VIA FEDERAL EXPRESS

J. Carroll Holzer, Esquire
Holzer and Lee
305 Washington Avenue, Ste. 502
Towson, MD 21204

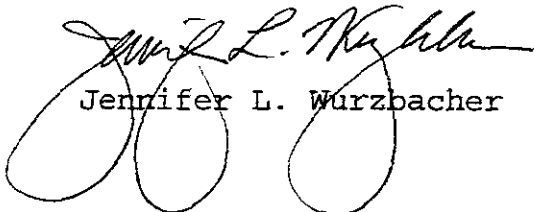
RE: Days Cove Rubble Landfill/Gunpowder Falls State Park
Case No. 96-132-SPH

Dear Mr. Holzer:

We enclose a copy of our Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda, originally mailed on November 29, 1995. Due to a typographical error on the mailing label, the post office has returned the document to us. (See enclosure). We received the returned package today.

I apologize for the delay in your receiving this and hope that this has not caused you any inconvenience.

Very truly yours,

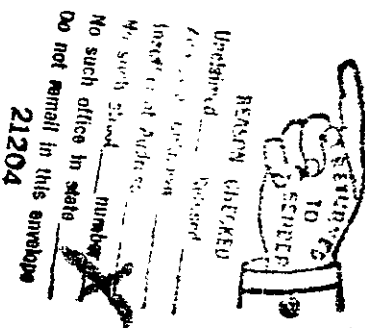

Jennifer L. Wurzbacher

JLW:piy

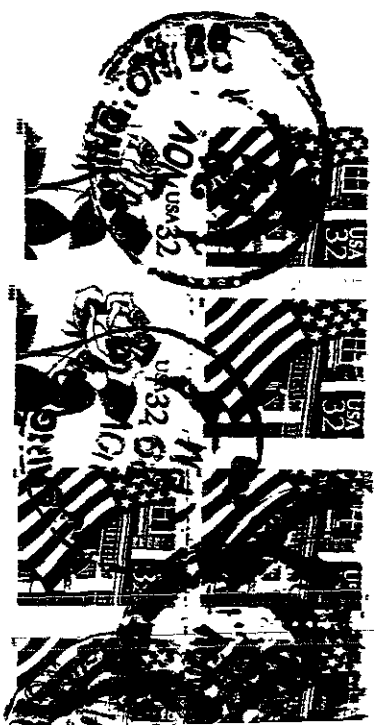
Enclosures

cc: Clerk, Zoning Commissioner's Office

RECEIVED
DEC 11 1995



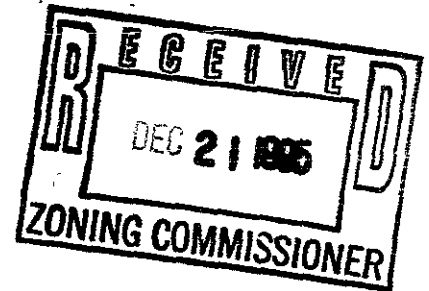
J. Carroll Holzer, Esquire
Holzer and Lee
5 Washington Avenue, Suite 502
Towson, Maryland 21204



MICROFILMED

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666

December 20, 1995



VIA FACSIMILE & FIRST CLASS MAIL

The Honorable Lawrence Schmidt
Zoning Commissioner's Office
Old Court House
400 Washington Avenue, Rm. 112
Towson, Maryland 21204

Re: Days Cove Rubble Landfill--Case No. 96-132-SPH

Dear Mr. Schmidt:

We write on behalf of Days Cove Reclamation Company ("DCRC") to correct a misrepresentation of fact in the Response Memorandum of Wayne Knight and Honeygo Reclamation Center ("Intervenors Response Memorandum").

Intervenors contend in their Response Memorandum that:

The State's Memorandum, however, is very incorrect in its characterization that the applicant [DCRC] is running the existing landfill. The current landfill is permitted to a separate corporate entity, JWP Enterprises, Inc., and no corporate identity or relationship has been alleged. Consequently, the State is letting a new entity come in to operate a new landfill.

Intervenor' Response Memorandum at 2. See also Id. at 5-6 (responding to DCRC's Memorandum).

Intervenors' assertion is false. The current refuse disposal and groundwater discharge permits for the Days Cove Rubble Landfill were issued in October 1994 to JWP Environmental Services Company ("JWP-ES"). In December 1994, JWP-ES was acquired by DCRC and Weston Investments. Through this

MICROFILMED

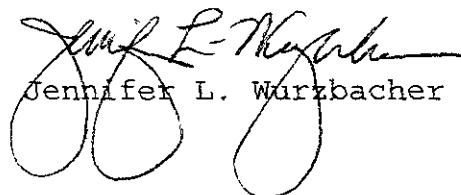
The Honorable Lawrence Schmidt
December 20, 1995
p. 2

acquisition, DCRC and Weston Investments succeeded to JWP-ES's interests, including the permits for the Days Cove Rubble Landfill.

Importantly, Alfred Tyler, III owns 100 percent of both DCRC and Weston Investments. Prior to acquiring JWP-ES and beginning in 1992, DCRC operated the Days Cove Rubble Landfill pursuant to an operating agreement with JWP-ES. Entities owned and controlled by Mr. Tyler have operated the Days Cove Rubble Landfill, both as permit holders and through operating agreements, since the inception of the rubble fill in 1986. Consequently, to characterize the applicant a "new entity" seeking to operate a "new landfill" is absurd.

We hope this letter clears up any confusion created by the factual misstatements set forth in Intervenor's Response Memorandum. We believe that the other issues raised by the Intervenor have been sufficiently addressed in the legal memoranda filed previously by DCRC and the State.

Sincerely,



Jennifer L. Wurzbacher

cc: J. Carroll Holzer, Esquire
John B. Gontrum, Esquire
Pamela D. Andersen, Esquire

dayscove\schmidt.d19

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666

Jennifer L. Wurzbacher

April 30, 1996

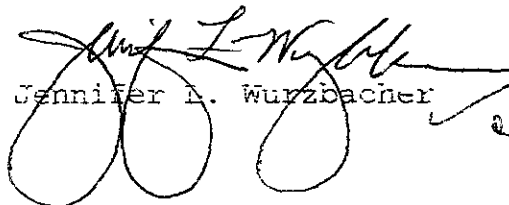
Baltimore County
Board of Appeals
Room 49
400 Washington Ave.
Towson, Maryland 21204
Attn: Ms. Kathleen Bianco

RE: Case No. 6425 Days Cove Rd.

Dear Ms. Bianco:

Please enter the appearance of Warren K. Rich & Jennifer L. Wurzbacher, and the law firm of Rich & Henderson, P.C. on behalf of Days Cove Reclamation Company in the above-referenced matter.

Very truly yours,


Jennifer L. Wurzbacher

5/3/96

cc: Pamela D. Anderson, Esq.
J. Carroll Holzer, Esq.
Mr. Arnold Jablon

RECEIVED

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666

FACSIMILE TRANSMITTAL

TO: THE HONORABLE LAWRENCE SCHMIDT FAX: (410) 887-3468

FROM: JENNIFER L. WURZBACHER FAX: (410) 267-5901

DATE: December 20, 1995 3 pages (including this cover sheet)

Aug

CONFIDENTIALITY NOTE: This facsimile is intended only for the person or entity to whom it is addressed. Dissemination, distribution, or copying of this facsimile or the information herein by anyone other than the intended recipient is prohibited.

If there are any problems regarding this transmission, please call (410) 267-5900 immediately.

MICROFILMED

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 269-6666

December 20, 1995

VIA FACSIMILE & FIRST CLASS MAIL

The Honorable Lawrence Schmidt
Zoning Commissioner's Office
Old Court House
400 Washington Avenue, Rm. 112
Towson, Maryland 21204

Re: Days Cove Rubble Landfill--Case No. 96-132-SPH

Dear Mr. Schmidt:

We write on behalf of Days Cove Reclamation Company ("DCRC") to correct a misrepresentation of fact in the Response Memorandum of Wayne Knight and Honeygo Reclamation Center ("Intervenors Response Memorandum").

Intervenors contend in their Response Memorandum that:

The State's Memorandum, however, is very incorrect in its characterization that the applicant [DCRC] is running the existing landfill. The current landfill is permitted to a separate corporate entity, JWP Enterprises, Inc., and no corporate identity or relationship has been alleged. Consequently, the State is letting a new entity come in to operate a new landfill.

Intervenor's Response Memorandum at 2. See also Id. at 5-6 (responding to DCRC's Memorandum).

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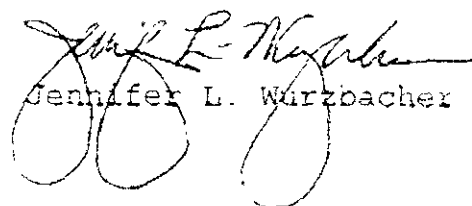
The Honorable Lawrence Schmidt
December 20, 1995
p. 2

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We hope this letter clears up any confusion created by the factual misstatements set forth in Intervenor's Response Memorandum. We believe that the other issues raised by the Intervenor have been sufficiently addressed in the legal memoranda filed previously by DCRC and the State.

Sincerely,


Jennifer L. Wurzbacher

cc. J. Carroll Holzer, Esquire
Jonr E. Gontrum, Esquire
Pamela D. Andersen, Esquire

dayscove schmidt.019



LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE
J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

96-1850
4/16/96
f
TO JWC
CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

April 16, 1996
#6910

Arnold Jablon, Director
Department of Permits and
Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petition for Special Hearing, Day's Cove
Case No. 96-132-SPH

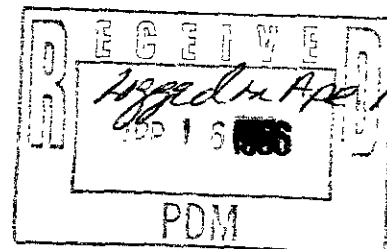
Dear Mr. Jablon:

On behalf of my clients, White Marsh Civic Association, Nottingham Improvement Association and Harewood Park Community Association, I herewith file an appeal to the County Board of Appeals from the decision of the Zoning Commissioner in the above matter rendered on March 21, 1996. I am also enclosing a check in the amount of \$210 made payable to Baltimore County for the costs of the appeal. If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clg
cc: White Marsh Civil Assn.
Nottingham Improvement Assn.
Harewood Park Community Assn.



Post-It® Fax Note	7671	Date	4/1	# of pages	1
To	ROSEANN	From	C. RADCLIFFE		
Co./Dept.	HENDERSON	Co.	BD OF APPEALS		
Phone #		Phone #	887-3180		
Fax #	410-867-5901	Fax #	887-3182		

MICROFILMED



LAW OFFICE
J. CARROLL HOLZER, PA
THOMAS J. LEE
J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

September 10, 1996
#6910

Kathleen C. Bianco
Administrative Assistant
County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland, 21204

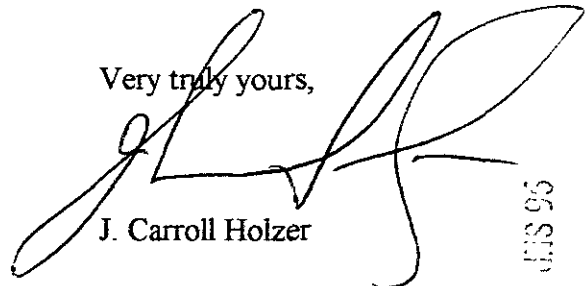
Re: Case No. 96-132-SPH, White Marsh Civic Assn., et al.
6425 Days Cove Road

Dear Ms. Bianco:

My clients in the above captioned matter, Petitioners White Marsh Civic Association and Harewood Park Community Association, hereby withdraw their appeal to the Board of Appeals for Baltimore County in case No. 96-132-SPH scheduled for Tuesday, September 17, 1996 at 10:00 a.m.

If you should have any questions, please call me at 825-6961.

Very truly yours,



J. Carroll Holzer

JCH:clg
cc: Warren Rich, Esq.
Adam Paul
Joe McGraw
Pamela Anderson, Esq.
People's Counsel for Baltimore County

MICROFILMED



LAW OFFICES

J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

September 12, 1996
#6910

Kathleen C. Bianco
Administrative Assistant
County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland, 21204

Re: Case No. 96-132-SPH, White Marsh Civic Assn., et al.
6425 Days Cove Road

Dear Ms. Bianco:

By way of this letter, I would like to amend my letter of dismissal of the above appeal filed with the Board of Appeals yesterday, September 11, 1996 to also include the dismissal of the Nottingham Improvement Association, Inc. Thus, for the record, all of the Appellants have dismissed their appeal, and it will not be necessary for the Board to conduct a hearing on Tuesday, September 17 at 10:00 a.m. I appreciate your assistance in this matter.

Very truly yours,

J. Carroll Holzer

JCH:clg

cc: Warren Rich, Esq.

Adam Paul

Joe McGraw

Pamela Anderson, Esq.

People's Counsel for Baltimore County

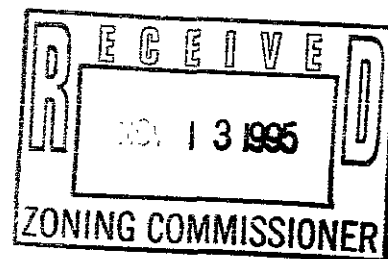
06 SEP 14 1996

MICROFILMED



The Greater Kingsville Civic Association, Inc.

P.O. BOX 221 KINGSVILLE, MARYLAND 21087



November 9, 1995

Mr. Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
400 Washington Avenue
Towson, Maryland 21204

Ref: Days Cove Rubble Landfill
Case #96-132-SPH

Dear Mr. Schmidt:

On September 20, 1995 the board of the Greater Kingsville Civic Association unanimously voted to oppose the granting of a permit to expand the rubble landfill at Days Cove.

We support the concerns raised by the White Marsh and Nottingham Associations and want our position recorded before you in the matter of Days Cove.

Thank you for your consideration.

Very truly yours,

Nancy Hastings

Nancy Hastings
President

ENCLOSURE

NILES, BARTON & WILMER

ATTORNEYS AT LAW

93 MAIN STREET - P. O. BOX 589

ANNAPOLIS, MARYLAND 21404

301-268-3090

(PRINCIPAL OFFICE)

929 N. HOWARD STREET
BALTIMORE, MD 21201
FROM BALTIMORE 269-1610

1616 H STREET, N. W.
WASHINGTON, D. C. 20006
FROM WASHINGTON 261-1136

September 24, 1985

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
Office of Planning & Zoning
Towson, MD. 21204

Dear Mr. Jablon:

This is a follow up of our conversation this morning. Sometime ago I was party to a three-way conversation between you and the People's Counsel of Baltimore County. In that conversation Ms. Freedman indicated that there was no need for a public hearing requiring a change in the site plan for the Allender Road sand and gravel operation and it is my understanding that you agreed with her position. Your agreement was premised upon the fact that the project would require approval by the State and local health department representatives.

I have subsequently had conversations with Mr. Forrest, who indicated that this matter would be the subject of further proceedings before the local and State health offices. Under the circumstances further zoning actions are not required. I would appreciate your confirming these facts by return letter.

Yours very truly,

Warren K. Rich

WKR/cac

MICROFILMED

Dexter
C

Niles, Barton & Wilmer

TO: Edward Dexter
Chichang Chen
A. Cremonni
Joseph Smuck
Stanley Smuck

FROM: Warren K. Rich

DATE: October 8, 1985

RE: Allender Road Sand and Gravel
Operation

100-11100
OCT 9 1985
MINISTERIAL WASTE
DIVISION

Enclosed for each of you is a copy of my letter of September 24, 1985 addressed to Mr. Jablon, and also a copy of Mr. Jablon's response dated September 26, 1985 in reference to the above-captioned matter.

Warren K. Rich

MICROFILMED

MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore, Maryland 21224
(410) 631-3000

Hussain

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

July 12, 1995

The Honorable C.A. Dutch Ruppertsberger
Baltimore County Executive
Court House
Towson MD 21204

Dear County Executive Ruppertsberger:

This letter is to advise you of the current status of the permit application for the proposed horizontal expansion of the Days Cove Rubble Landfill located at 6425 Days Cove Road, White Marsh, Maryland.

The Maryland Department of the Environment (MDE), Waste Management Administration (WAS), is presently reviewing permit applications for a State Refuse Disposal Permit and a State Discharge Permit for the proposed expansion. These applications were submitted by Dames and Moore on behalf of the applicant, Days Cove Reclamation Company, to WAS on November 28, 1994 and January 30, 1995, respectively.

WAS has completed review of the Phase I (permit application) and Phase II (Geologic and Hydrogeologic Report) for the Refuse Disposal Permit and considers these reports to be complete. WAS is currently reviewing the Phase III (Engineering Plans and Specifications) that we received on May 24, 1995. Please note that a Phase III joint plan review meeting for this phase of the permit application was held on June 15, 1995.

An Informational Meeting was held by WAS regarding this permit application on Tuesday, March 14, 1995. The purpose of the Informational Meeting was to provide an opportunity to the public to obtain information about the permit applications and MDE's permit review process.

Section 9-210(a), as amended, of the Environment Article, Annotated Code of Maryland requires that the Department report the finding of its preliminary technical review in writing to the County and that the County must provide a written statement to the Department affirming that the proposed facility is in conformance with approved County solid waste management plan. On April 14, 1995 WAS received a written statement from the County

The Honorable C.A. Dutch Ruppertsberger
Page 2

to this effect. Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

If you have any questions, please call Dr. Hedy V. Alavi, Ph.D., Acting Chief, Design and Certification Division, at (410) 631-3364.

Sincerely,



Richard W. Collins, Director
Waste Management Administration

RWC:AHA:nh

cc: Mr. Arnold Jablon
Ms. Margaret L. Demczak
Mr. Steve Gebhardt

RECEIVED



Keep this for
Hearings file
I made copy
for permit file
ah.

ADD
Dis public copy
for Larry File
Dead
NRE compares
involved!
Squaring per

William Donald Schaefer
Governor

Maryland Department of Natural Resources

Tawes State Office Building
Annapolis, Maryland 21401

Torrey C. Brown, M.D.
Secretary

John R. Griffin
Deputy Secretary

April 4, 1994

RECEIVED

APR 6 1994

SOLID WASTE DIVISION

A. Hussain Alhija
Public Health Engineer
Solid Waste Compliance Division
Waste Management Administration
Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

Re: Days Cove Rubble Landfill

Dear Hussain:

Enclosed are one copy each of Days Cove Declaration of Covenants and Restrictions and Amendment to Agreement of Lease for the Days Cove Rubble Landfill of Gunpowder Falls State Park.

The deed covenants are required by COMAR 26.04.07.17B as a requirement for rubble landfills. These covenants were approved by an Assistant Attorney General representing the Department of the Environment before they were submitted to the Board of Public Works for approval.

The Lease Amendment is submitted per your request.

Both of these documents were approved by the Board as Item 6-L at the December 15, 1993 Board meeting.

If you have any questions regarding these matters, please contact me.

Sincerely,

Bruce Holmgren
Program Open Space

C:\DOCS\DAYSA\ALHJA

cc: Margaret Demczak
Larry Lee

MICROFILMED



MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore, Maryland 21224
(410) 631-3000

✓
✓
NAJ AHA file

William Donald Schaefer
Governor

David A.C. Carroll
Secretary

MEMORANDUM

RECEIVED

APR 5 1994

SOLID WASTE DIVISION

TO: Ed Dexter
FROM: Molly Cannon *Molly*
SUBJECT: Days Cove Rubble Landfill
DATE: April 1, 1994

Recently, it came to my attention that my original advice regarding the status of the rubble landfill project at Days Cove was never documented in the project file. This memo should serve that purpose.

As we discussed earlier today, the landfill is located on State property, but will be operated by a private company. In light of the fact that a private entity will have control over the grading and other daily operations on the landfill, it is appropriate that the Baltimore County Soil Conservation District review and approve the erosion and sediment control plan.

If you need any further information on this subject, please feel welcome to contact me at 631-3543.

MICROFILMED

BPW 12/15/93

DEPARTMENT OF GENERAL SERVICES
ACTION AGENDA

LEASE

ITEM 6-L

DEPARTMENT OF NATURAL RESOURCES

Baltimore County

Reference is made to Item 15-L of the Board of Public Works agenda dated February 19, 1992 wherein the Board approved the Department of Natural Resources leasing 24 acres of land to the Enviro-Gro Technologies Company, in Gunpowder Falls State Park (Days Cove Area), for the use of the site as a rubble landfill. Board of Public Works approval is requested to amend this lease as follows:

- #1 {
1. ^{1.1 att.} Acknowledge the change in the corporate name of the tenant from Enviro-Gro Technologies Company to JWP Environmental Services Company.
 2. ^{1.9} Acknowledge the management of the premises on the tenant's behalf by the Days Cove Reclamation Company.
 3. ^{1.4} Incorporate a Maryland Environmental Service Contract into the lease for the purpose of evaluating and monitoring the operation of the landfill.
 4. ^{1.3} Increase the acreage of the premises from 24 acres to 54.55 acres.
 5. ^{#2} Acknowledge the Declaration of Deed Convenants to be recorded as required by the Department of the Environment. The Deed Convenants restrict the future use of the site of the rubblefill by requiring written MDE authorization for any construction or excavation. The Deed Convenants were required when the rubblefill was originally established, prior to the State acquisition, but MDE and JWP Environmental Services have no record of the Deed Convenants being recorded in the land records of Baltimore County.
 6. The area leased to Enviro-Gro Technologies Company on February 19, 1992, as Board of Public Works Item 15-L, was only the area to be filled with rubble and did not include the overburden stockpile areas, stormwater management and sediment control structures, haul roads, equipment storage and repair facilities and offices; therefore, the lease must be amended to increase the leased area to 54.55+ acres, the area of the Surface Mining Permit for this site, to include the portions of the Tenant's operation other than the actual fill. The area used by the Tenant is not changed, the acreage leased is corrected by this amendment. The acreage increase provides indemnification of the State by the Tenant on areas which are necessary for the operation of the Rubblefill.

All other terms and conditions of the lease agreement shall remain the same.

Board of Public Works Action - The above referenced Item was:

Approved

Disapproved

Deferred

Withdrawn

With Discussion

Without Discussion

SM602A.LS

MICROFILMED

CHAPTER 659
(House Bill 459)

AN ACT to authorize and direct the Board of County Commissioners of Prince George's County to pay the sum of Eighteen Thousand, Eight Hundred and Eighty Four Dollars and Ninety Two Cents (\$18,884.92) to Sgt. Ralph Bond, Sgt. Frank Bishop, Sgt. Everett Husk and Detective Thomas Blount as reimbursement for legal fees and other costs incurred in their legal defense as to bribery charges. This sum of Eighteen Thousand, Eight Hundred and Eighty Four Dollars and Ninety Two Cents (\$18,884.92) is to be paid as follows: Detective Thomas Blount is to be paid \$3,750. for legal fees and \$81.68 for defense costs. Sgt. Ralph Bond is to be paid \$5,000. for legal fees and \$647.13 for defense costs. Sgt. Everett Husk is to be paid \$3,750. for legal fees and \$92.78 for defense costs. Sgt. Frank Bishop is to be paid \$5,000. for legal fees and \$63.38 for defense costs.

WHEREAS, In December 1968 Sgt. Ralph Bond, Sgt. Frank Bishop, Sgt. Everett G. Husk and Detective Thomas Blount were advised officially that they were under investigation for alleged bribery charges; and

WHEREAS, On April 2, 1969 they were indicted on charges of bribery; and

WHEREAS, The bribery allegations arose entirely within the scope of their employment as police officers of Prince George's County; and

WHEREAS, Sgt. Everett Husk, Sgt. Frank Bishop and Detective Thomas Blount stood trial individually and were acquitted and the charges against Sgt. Ralph Bond were nolle prossed by the State following the three acquittals.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the Board of County Commissioners of Prince George's County is authorized and directed to include in the next county budget the sum of Eighteen Thousand, Eight Hundred and Eighty Four Dollars and Ninety Two Cents (\$18,884.92) as full reimbursement for the legal fees and defense costs these three (3) policemen and one (1) detective incurred in defense of bribery charges placed against them and of which charges they were fully and honorably acquitted. This sum of Eighteen Thousand, Eight Hundred and Eighty Four Dollars and Ninety Two Cents (\$18,884.92) is to be paid as follows: Detective Thomas Blount is to be paid \$3,750. for legal fees and \$81.68 for defense costs. Sgt. Ralph Bond is to be paid \$5,000. for legal fees and \$647.13 for defense costs. Sgt. Everett Husk is to be paid \$3,750. for legal fees and \$92.78 for defense costs. Sgt. Frank Bishop is to be paid \$5,000. for legal fees and \$63.38 for defense costs.

Sec. 2. *And be it further enacted,* That this Act shall take effect July 1, 1970.

Approved May 5, 1970

CHAPTER 660
(House Bill 762)

AN ACT to repeal and re-enact, with amendments, Section 402(a) of Article 23 of the Annotated Code of Maryland (1966 Replacement Volume), title "Corporations," subtitle "Cooperative Associations," subheading "Electric Cooperatives," concerning electric cooperatives obtaining certain loans without requiring approval by a majority of their membership and exempting loans made to electric cooperatives as regards the requirement of Art. 21, Sec. 30(b) concerning the oath and affirmation of the party secured.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 402(a) of Article 23 of the Annotated Code of Maryland (1966 Replacement Volume), title "Corporations," subtitle "Cooperative Associations," subheading "Electric Cooperatives," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

402(a).

The board of directors of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors shall determine, to secure any indebtedness of the cooperative to the United States of America or any agency or instrumentality thereof, or to a national financing institution, organized on a cooperative plan for the purpose of financing its members' programs, projects and undertakings, in which the cooperative holds membership, and provided further that such loans shall not be subject to the provisions of Art. 21, Sec. 30(b).

Sec. 2. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a yeas and nays supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved May 13, 1970.

CHAPTER 661
(House Bill 606)

AN ACT to repeal and re-enact, with amendments, Section 394A of Article 43 of the Annotated Code of Maryland (1969 Supplement), title "Health," subtitle "Water, Ice and Sewerage," amending the laws concerning hearings for permits for a landfill refuse dis-

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posal system in order to require that the Department of Health shall not issue such a permit unless it has complied with all county zoning and land use requirements in the particular county and it has an affirmative statement that the board of county commissioners or county council does not oppose the issue of the permit.

SECTION 1. *Be it enacted by the General Assembly of Maryland, That Section 394A of Article 43 of the Annotated Code of Maryland, (1969 Supplement), title "Health," subtitle "Water, Ice and Sewerage," be and it is hereby repealed and re-enacted, with amendments, to read as follows:*

394A.

Before issuing a permit for a landfill refuse disposal system under Section 394, Article 43 of the Annotated Code of Maryland, the State Department of Health shall set a day for a public hearing on the request. The applicant shall give notice to the public of his application and of the hearing, by publication once in each week for two successive weeks prior to the hearing, in a regularly published newspaper of general circulation in any city or county which the Department of Health determines may be directly affected by the request. The board of county commissioners or the county council of the county, the mayor or other chief executive official of each such municipal corporation, the Maryland Geological Survey, and the Department of Water Resources shall be notified by the applicant by registered or certified mail. The local officials shall notify all interested agencies of their political subdivisions. In the public notice of the application, the date, place and time fixed by the Department of Health for the public hearing on the application shall be stated. At the public hearing the applicant and any other interested person shall be given an opportunity to present facts, evidence, and arguments for or against the granting of the application. *The Department of Health shall not issue a permit for a land fill unless it has complied with all county zoning and land use requirements of the county in which the proposed landfill is to be located and has an affirmative statement that the board of county commissioners or the county council does not oppose the issue of the permit.*

SEC. 2. *And be it further enacted, That this Act shall take effect July 1, 1970.*

Approved May 21, 1970.

CHAPTER 662

(Senate Bill 15)

AN ACT to repeal and re-enact, with amendments, Section 34 of Article 1A of the Annotated Code of Maryland (1968 Replacement Volume), title "Aeronautics," subtitle "General Provisions"; to repeal and re-enact, with amendments, Section 3(d) of Article 10 of said Code (1968 Replacement Volume), title "Attorneys at Law and Attorneys in Fact," subtitle "Admission to the Bar"; to repeal and re-enact, with amendments, Section 9 of Article 32 of

said Code (1969 Supplement), title "Dentistry," subtitle "In General"; to repeal and re-enact, with amendments, Sections 121, 155, 259, 294(b), 314, 316(a), 360, 371, 472, 493, 509, 518(f), 545(c), 606, and 638 of Article 43 of said Code (1966 Replacement Volume and 1969 Supplement), title "Health," subtitle "Practitioners of Medicine," "State Board of Veterinary Examiners," "Commissioners of Pharmacy," "Registered Nurses and Practical Nurses," "Embalmers," "Podiatry," "Optometry," "Funeral Directors and Embalmers," "Podiatry," "Optometry," "Cosmetologists," "Physical Therapy," and "Psychologists Certification Act," respectively; to repeal and re-enact, with amendments, Sections 68 and 114 of Article 56 of said Code (1968 Replacement Volume), title "Licensure," subtitle "Trades," and "Boating, Sailing and Yachting," respectively; to repeal and re-enact, with amendments, SECTION 114 OF ARTICLE 66 OF THE SAID CODE (1968 REPLACEMENT VOLUME) TITLE "LICENSES," SUBTITLE "BOXING, SPARRING AND WRESTLING,"; to repeal and re-enact, with amendments, Section 9 of Article 75 of said Code (1965 Replacement Volume and 1968 Supplement), (1969 REPLACEMENT VOLUME), title "Professional Engineers and Land Surveyors"; to repeal and re-enact, with amendments, Section 1(f) of Article 75A of said Code (1965 Replacement Volume) title "Public Accountancy"; and to repeal Section 35 of Article 1A of said Code (1968 Replacement Volume), title "Aeronautics," subtitle "General Provisions"; to repeal Sections 321, 361, 480(e), and 545(d) of Article 43 of said Code (1965 Replacement Volume and 1969 Supplement), title "Health," subtitle "State Board of Barber Examiners," "Cosmetologists," "Funeral Directors and Embalmers," and "Osteopathy," AND "COSMETOLOGISTS," respectively; to remove the authorization of certain Articles of the Code to provide Special Funds for certain State agencies; to provide that monies collected by certain State agencies be paid into the State Treasury, and to provide that certain State agencies shall be operated only pursuant to appropriations made in accordance with Sections 32 and 52 of Article 3 of the Constitution or pursuant to the provisions of Sections 1 through 15, inclusive, of Article 15A of this Code, title "Budget and Procurement," as amended from time to time AND TO PROVIDE FOR THE DISPOSITION OF THE BALANCES AS OF JUNE 30, 1970, IN THE SPECIAL FUNDS.

SECTION 1. *Be it enacted by the General Assembly of Maryland, That Section 34 of Article 1A of the Annotated Code of Maryland, (1968 Replacement Volume), title "Aeronautics," subtitle "General Provisions," be and it is hereby repealed and re-enacted, with amendments; that Section 3(d) of Article 10 of said Code (1969 Replacement Volume), title "Attorneys at Law and Attorneys in Fact," subtitle "Admission to the Bar," be and it is hereby repealed, and re-enacted, with amendments; that Section 9 of Article 32 of said Code (1969 Supplement), title "Dentistry," subtitle "In General," be and it is hereby repealed and re-enacted, with amendments; that Sections 121, 155, 259, 294(b), 314, 316(a), 360, 371, 472, 493, 509, 518(h), 545(c), 606, and 638 of Article 43 of said Code (1965 Replacement Volume and 1969 Supplement), title "Health," subtitle "Practitioners of Medicine," "State Board of Veterinary Examiners," "Commissioners of Pharmacy," "Registered Nurses and Practical*

- (1) (3) Assign a mortgage for value;
 (2) (4) Release a mortgage when paid; or
 (3) (5) Foreclose a mortgage.

13-315.

(b) (1) Subject to paragraph (2) of this subsection, as long as it complies with any applicable federal treasury regulations governing the borrowing of moneys by the State, a loan to AN OWNER-OCCUPANT BORROWER OR A LOAN TO A GROUP HOME SPONSOR (shall) MAY permit:

- (1) The interest rate to be increased:
 1. Variably; or
 2. To a stated rate; or
 (1) Acceleration of maturity.

(2) Except as provided in paragraph (3) of this subsection, the interest rate of a loan may not be increased and the maturity may not be accelerated unless:

- (1) 5 years have passed from the date of the loan;
 (1) The financial circumstances of the owner-occupant borrower have changed and the borrower no longer would qualify as an original borrower under the Program; or
 (1) The group home sponsor no longer provides a group home.

(3) If a borrower violates § 13-317 of this subtitle or the loan is in default, the Department immediately may accelerate the maturity.

§ 13-317. DEPARTMENT--SHALL--ADOPT--REGULATIONS--WHICH PROVIDE--THAT--THE--TERMS--OF--A--LOAN--TO--AN--OWNER--OCCUPANT--BORROWER--OR--A--LOAN--TO--A--GROUP--HOME--SPONSOR--(SHALL)--MAY--PERMIT--:

§ 13-317. DEPARTMENT--SHALL--ADOPT--REGULATIONS--WHICH PROVIDE--THAT--THE--TERMS--OF--A--LOAN--TO--AN--OWNER--OCCUPANT--BORROWER--OR--A--LOAN--TO--A--GROUP--HOME--SPONSOR--(SHALL)--MAY--PERMIT--:

§ 13-317. DEPARTMENT--SHALL--ADOPT--REGULATIONS--WHICH PROVIDE--THAT--THE--TERMS--OF--A--LOAN--TO--AN--OWNER--OCCUPANT--BORROWER--OR--A--LOAN--TO--A--GROUP--HOME--SPONSOR--(SHALL)--MAY--PERMIT--:

§ 13-317. DEPARTMENT--SHALL--ADOPT--REGULATIONS--WHICH PROVIDE--THAT--THE--TERMS--OF--A--LOAN--TO--AN--OWNER--OCCUPANT--BORROWER--OR--A--LOAN--TO--A--GROUP--HOME--SPONSOR--(SHALL)--MAY--PERMIT--:

(e) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS WHICH PROVIDE THAT THE TERMS OF A LOAN TO AN OWNER-OCCUPANT BORROWER SHALL INCLUDE, AT THE OPTION OF THE BORROWER, EITHER:

(1) INCREASES TO INTEREST RATES AS PERMITTED IN SUBSECTION (B) (2) (II) OF THIS SECTION; OR

(II) LIMITS ON THE RETURN ON EQUITY ALLOWED TO THE BORROWER THROUGH AN EQUITY PARTICIPATION AGREEMENT.

(2) The Department shall adopt regulations that place limits on the return on equity allowed to a group home sponsor and that provide procedures for the Department to enter into an equity participation agreement with a group home sponsor.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 13-301(i) through (k), respectively, of Article - Financial Institutions of the Annotated Code of Maryland be renumbered to be Section(s) 13-301(h) through (j), respectively.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1988.

Approved May 17, 1988.

CHAPTER 412

(House Bill 448)

AN ACT concerning

Refuse Disposal - Regulation

FOR the purpose of authorizing the Secretary of the Environment to regulate certain refuse-disposal systems solid waste acceptance facilities for private use; requiring that certain refuse disposal systems installed, altered, or extended after a certain date obtain a permit from the Department of the Environment; regulating certain written information before a certain permit is issued; requiring an operator of a refuse disposal system that is ordered by the Department to install or alter its method of waste disposal to obtain a certain permit; altering the authority of the Secretary to order the alteration, extension, or utilization of certain facilities; requiring a person who receives a certain order from the Secretary to obtain a certain permit before the waste disposal methods are changed; repealing certain provisions regarding the issuance of certain orders

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and appeals; repealing certain penalty provisions; providing certain enforcement powers in accordance with the certain provisions of the Water Pollution Control Act; and generally relating to the regulation of solid waste and refuse disposal.

By repealing and reenacting, with amendments,

Article - Environment
Section 9-204(a), 9-210, 9-222(a) and (b)(1), 9-224(c),
9-252(a)(2), (b)(3) and (4), and 9-268
Annotated Code of Maryland
(1987 Replacement Volume)

BY repealing

Article - Environment
Section 9-224(d), (e), and (f)
Annotated Code of Maryland
(1987 Replacement Volume)

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

Article - Environment

9-204.

(a) This section applies [only] to any water supply system, sewerage system, or refuse disposal system that is for public use OR ANY REPAIRS TO OR ALTERATIONS TO THE SYSTEM, AS DEFINED BY APPENDICES B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AND AA, OR ANY REFUSE DISPOSAL SYSTEM THAT IS A SOLID WASTE ACCEPTANCE FACILITY AS DEFINED IN § 9-501(N) OF THIS TITLE IF THE SOLID WASTE ACCEPTANCE FACILITY IS INSTALLED, ALTERED, OR EXTENDED AFTER JULY 1, 1988.

9-210.

The Secretary may not issue a permit to install, materially alter, or materially extend a (landfill) REUSE DISPOSAL SYSTEM REGULATED UNDER § 9-204(A) OF THIS SUBTITLE until:

(1) The landfill meets all zoning and land use requirements of the county where the landfill is or is to be located; and

(2) The Department has a written statement from THE APPLICANT that the board of county commissioners or the county council of the county where the landfill is to be located does not oppose the issuance of the permit THAT THE REFUSE

DISPOSAL SYSTEM CONFORMS TO THE COUNTY SOLID WASTE MANAGEMENT PLAN AND MEETS ALL APPLICABLE ZONING AND LAND USE REQUIREMENTS.

9-222.

(a) The Secretary may issue an order under subsection (b) of this section, if, after investigation, the Secretary determines that the absence or incompleteness of a public waterworks, refuse disposal system, public sewerage system, or [public] refuse disposal system in a county, municipal corporation, sanitary district, subdivision, or locality:

(1) Is sufficiently prejudicial to the health or comfort of that or any other county, municipal corporation, sanitary district, subdivision, or locality; or

(2) Causes a condition by which any of the waters of this State are being polluted or could become polluted in a way that is dangerous to health or is a nuisance.

(b) An order under this section may require:

(1) The installation, ALTERATION, or EXTENSION, UTILIZATION (land), operation, or the completion of a public water, supply system, public sewerage system, or (public) refuse disposal system in a county, municipal corporation, sanitary district, subdivision, or locality within a time that the secretary sets; or

(2) The installation of any device, the establishment of any method, or the enforcement of any measure or regulation that the Secretary considers proper under the circumstances.

9-224.

(c) A person who is subject to an order issued under this section shall have a permit issued by the Secretary under (this section) § 9-204 OF THIS SUBTITLE before the person may change the waste disposal methods used by an industrial establishment.

(d) A person who is subject to an order issued under this section shall submit to the Secretary for approval any plans to change the waste disposal methods used by the industrial establishment.]

(e) If the Secretary approves plans under subsection (d)(1) of this section, the Secretary shall issue a permit to the owner or operator.]

(f) A person who is subject to an order issued under this section:

(1) Shall carry out any construction in accordance with the approved plans; and

(2) May not change the methods of disposing of waste at an industrial establishment except in accordance with a permit issued by the Secretary under this section.]

9-252.

(a) (2) The Secretary may:

(1) Require any public water supply system, public sewerage system, or [public] refuse disposal system to be operated in a manner that will protect public health and comfort and

(11) Order the alteration, extension, or replacement of any public water supply system, public sewerage system, or [public] refuse disposal system.

(b) The Secretary:

(3) Shall examine all -f-public-f- water supply systems-f-, -f- AND PUBLIC sewerage systems FOR--PUBHie--GBB, and refuse disposal systems; and

(4) Shall approve or disapprove the design and construction of any -f-public-f- water supply system-f-, -f- OR PUBLIC sewerage system FOR--PUBHie--GBB, or refuse disposal system that is to be built in this State.

9-268.

(a) In this section, "person" includes a water, sewerage, or sanitary district.

(b) A person is liable to the State for civil penalties if the person:

(1) Fails to comply with a final order of the Secretary within the time set for compliance with the order; or

(2) After an appeal has been filed, fails to obey or in good faith begin to obey a final order of the Secretary within 10 days after the court enters a final judgment affirming the order.]

(c) These civil penalties are:

(1) A basic penalty not less than \$500 nor more than \$10,000; and

(2) An additional penalty not less than \$500 nor more than \$10,000 a day for each day of noncompliance after the time for compliance with the order, up to a maximum of \$50,000.]

(d) The State shall recover the civil penalties under this section in a civil action.]

(B) EXCEPT FOR VIOLATIONS OF PART III OF THIS SUBTITLE AND VIOLATIONS ENFORCED UNDER SECTION 9-267 OF THIS SUBTITLE, THE PROVISIONS OF SECTIONS 9-334 THROUGH 9-342 OF SUBTITLE 3 OF THIS TITLE SHALL BE USED AND SHALL APPLY TO ENFORCE VIOLATIONS OF:

(1) THIS SUBTITLE;

(2) ANY REGULATION ADOPTED UNDER THIS SUBTITLE; OR

(3) ANY PERMIT ISSUED UNDER THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1988.

Approved May 17, 1988.

CHAPTER 413

(House Bill 460)

AN ACT concerning

Somerset County - Alcoholic Beverages Dispensaries

FOR the purpose of increasing the maximum total amount of the reserve fund that is maintained by the Somerset County Liquor Control Board for certain uses in connection with the operation of the County dispensaries; specifying the amount of the total reserve fund to be distributed to each of the County dispensaries; requiring the Hi-Way Dispensary to remit a certain percentage of its net proceeds to the Somerset County Commissioners by a certain date each year; and generally relating to profits and reserves of the alcoholic beverages dispensaries in Somerset County.

By repealing and reenacting, without amendments,

Article 2B - Alcoholic Beverages

Section 165(a)

Annotated Code of Maryland

(1987 Replacement Volume and 1987 Supplement)

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Ward 7, precincts 8 and 9; and

Ward 26, precincts 1 through 33 and 47 through 51.

(5) The following areas of Baltimore City: the 5th precincts of the 13th ward; the 10th, and 17th through the 24th, the 26th and 27th, the 31st through the 42nd, and the 44th and 45th precincts of the 15th ward; the 6th and 7th precincts of the 16th ward; and the 92nd through the 99th precincts of the 27th ward.

(b) Licenses for the sale of alcoholic beverages of any class may not be transferred into the areas of Baltimore City covered by this section.

(c) The prohibitions in this section do not apply to special 1-day licenses or to Class B beer, wine and liquor restaurant licenses to bona fide restaurants having:

(1) A minimum capital investment of \$150,000 for restaurant facilities or \$250,000 for restaurant facilities in the 47th legislative district of Baltimore City, not including the cost of land and building; and

(2) A minimum seating capacity of 75 persons.

(d) (1) Notwithstanding any other provision of this section or any regulation of the board of license commissioners of Baltimore City, a Class B beer and wine license may be issued in or transferred into the 43rd legislative district OR THE 39TH LEGISLATIVE DISTRICT for use in conjunction with a retail seafood facility that is a permanent bona fide raw bar.

(2) If a license issued under this subsection is issued in or transferred into the 43rd legislative district OR 39TH LEGISLATIVE DISTRICT, the license may not be transferred to any other location.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

Approved May 19, 1989.

WILLIAM DONALD SCHAEFER, Governor

Ch. 358

CHAPTER 358

(Senate Bill 808)

AN ACT concerning

Rubble Fill Landfills - Restrictions

FOR the purpose of prohibiting the Secretary of the Environment from issuing a permit to certain rubble fill landfills to accept certain materials or goods unless the county where the rubble landfill is located includes certain information in a certain county solid waste management plan; specifying certain materials that may be included in the plan; requiring applicants for permits for rubble fill landfills to give certain additional notice to certain persons; defining a term; and generally relating to rubble fill landfills.

BY-renumbering

Article---Environment
Section-9-201(e)-through-(f)-respectively
to-be-Section-9-201(f)-through-(m)-respectively
Annotated-Code-of-Maryland
+1987-Replacement-Volume-and-1988-Supplement+
+1987-Replacement-Volume-and-1988-Supplement+

BY-adding-to

Article---Environment
Section-9-201(e)-and-9-204+2
Annotated-Code-of-Maryland
+1987-Replacement-Volume-and-1988-Supplement+
+1987-Replacement-Volume-and-1988-Supplement+

BY repealing and reenacting, with amendments,

Article - Environment
Section 9-209 and 9-210
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 9-201(e) through (f) respectively of Article---Environment---of---the---Annotated---Code---of---Maryland---be renumbered-to-be-Section(s)-9-201(f)-through-(m)-respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Environment

9-201-

(B) -- RUBBLE-FILL-BANDFILL-MEANS-A-BANDFILL-THAT-AGEEPP-

(1) -- BAND-CHANGING-DEBRIS-

(2) -- DEMONSTRATION-DEBRIS-

(3) -- NONHABITABLES-CONSTRUCTION-DEBRIS-OR

BY-THAT-RUBBLE-FILL-BANDFILL-10-PERCENT-OF-WASTE-AGEEPP-

9-204-2-

THE-SECRETARY-MAY-NO--ISSUE-A-PERMIT-FOR-A-RUBBLE-FILL-BANDFILL-TO-AGEEPP-MATERIALS-CONTAINING-

(1) -- ASBESTOS-OR

ARFEE- (2) -- WHEN-60005-AS--DEFINED-IN--5-9-1701-OF-THIS

9-209.

(a) Before the Secretary issues a permit to an applicant under § 9-204 of this subtitle to install, materially alter, or materially extend a landfill system, or an incinerator for public use to burn solid waste, the Department shall hold a public hearing on the application.

(b) The applicant shall give notice of the application and the hearing:

(1) To the public, by publication once a week for 2 consecutive weeks before the hearing in a regularly published newspaper of general circulation in any county or municipal corporation that the Department determines may be affected directly by the application;

(2) To the board of county commissioners or county council of any county and the chief executive of any municipal corporation that the Department determines may be affected by the incinerator for public use or landfill system, by certified mail; and

(3) To the Department of Natural Resources, by certified mail.

(C) IN ADDITION TO THE NOTICE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, AN APPLICANT FOR A PERMIT FOR A RUBBLE FILL LANDFILL SHALL GIVE NOTICE OF THE APPLICATION AND HEARING:

(1) BY CERTIFIED MAIL TO THE MEMBERS OF THE SENATE OF MARYLAND AND HOUSE OF DELEGATES WHO REPRESENT THE LEGISLATIVE DISTRICT IN WHICH THE RUBBLE FILL LANDFILL IS TO BE LOCATED;

(2) BY CERTIFIED MAIL TO THE OWNERS OF REAL PROPERTY THAT ADJOINS THE PROPOSED SITE OF THE RUBBLE FILL LANDFILL; AND

(3) BY POSTING A NOTICE OF THE APPLICATION AND HEARING IN A CONSPICUOUS PLACE ON THE PROPOSED SITE OF THE RUBBLE FILL LANDFILL.

(c) (D) The local officials notified under subsection (b) (2) of this section shall give notice of the application and the hearing to all interested agencies of their respective jurisdictions.

(d) (E) The public notice shall:

(1) State that there is an application for a landfill system or incinerator for public use to burn solid waste pending before the Department; and

(2) Give the date, time, and place that the Department sets for the hearing.

(e) (F) At the hearing, the applicant and any other interested person may offer evidence and present arguments for or against the application.

(f) (G) To the extent practicable, the Department and other units of the State government shall consolidate hearings concerning permits for the same landfill system or incinerator for public use.

9-210.

(A) The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under § 9-204(a) of this subtitle until the Department has a written statement from the applicant that the refuse disposal system conforms to the county solid waste management plan and meets all applicable zoning and land use requirements.

(B) (1) THE SECRETARY MAY NOT ISSUE A PERMIT FOR A RUBBLE LANDFILL UNDER § 9-204(A) OF THIS SUBTITLE UNLESS THE COUNTY IN WHICH THE RUBBLE LANDFILL IS LOCATED HAS SPECIFIED THE TYPES OF WASTE THAT MAY BE DISPOSED OF IN THAT RUBBLE LANDFILL IN ITS COUNTY SOLID WASTE MANAGEMENT PLAN UNDER SUBTITLE 5 OF THIS TITLE.

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(2) THE TYPES OF WASTE THAT A COUNTY MAY ALLOW TO BE DISPOSED OF IN A RUBBLE LANDFILL UNDER THIS SECTION INCLUDE:

(I) TREES;

(II) LAND CLEARING DEBRIS THAT IS NOT A CONTROLLED HAZARDOUS SUBSTANCE AS DEFINED IN TITLE 7, SUBTITLE 2 OF THIS ARTICLE;

(III) DEMOLITION DEBRIS THAT IS NOT A CONTROLLED HAZARDOUS SUBSTANCE AS DEFINED IN TITLE 7, SUBTITLE 2 OF THIS ARTICLE; AND

(IV) CONSTRUCTION DEBRIS THAT IS NOT A CONTROLLED HAZARDOUS SUBSTANCE AS DEFINED IN TITLE 7, SUBTITLE 2 OF THIS ARTICLE.

(3) THE FOLLOWING TYPES OF WASTE MAY BE DISPOSED OF IN A RUBBLE LANDFILL SUBJECT TO THE REGULATIONS ADOPTED UNDER THIS SUBTITLE IF THE DISPOSAL OF THESE WASTES IS EXPRESSLY APPROVED BY THE COUNTY IN ITS COUNTY SOLID WASTE MANAGEMENT PLAN:

(I) ASBESTOS;

(II) WHITE GOODS; AND

(III) USED TIRES.

SECTION 3-2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

Approved May 19, 1989.

CHAPTER 359

(Senate Bill 822)

AN ACT concerning

Prince George's County - Property Tax Credit -
American Association Institute
of Physics Teachers
PG 409-89

FOR the purpose of requiring authorizing the governing body of Prince George's County to grant a credit against the county property tax imposed on real property owned by the American Association Institute of Physics Teachers and read by the

WILLIAM DONALD SCHAEFER, Governor

Ch. 359

American Association of Physics Teachers to affiliated societies for a certain purpose.

By repealing and reenacting, with amendments,

Article - Tax - Property
Section 9-318(a) 9-318(b)(1)
Annotated Code of Maryland
(1986 Volume and 1988 Supplement)

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

Article - Tax - Property

9-318.

(a) The governing body of Prince George's County shall grant a property tax credit under this section against the county property tax imposed on:

(i) real property;

(ii) owned by the Maryland State Employees Incorporated; and

(iii) used in the operation of a charitable nonprofit educational or rehabilitation institution of the kind that is exempted under 9-7-202 of this article; and

(iv) real property owned by the Prince George's County Chamber of Commerce Foundation; and

(v) is acquired on or after November 24, 1973; and

(vi) is not used for a commercial purpose; AND

(3) REAB-PROPERTY-OWNED-BY-SHE-AMERICAN-ASSOCIATION-OF-PHYSICS-TEACHERS-

(b) (1) The governing body of Prince George's County may grant, by law, a property tax credit under this section against county property tax imposed on:

(i) real property that is:

1. owned by a nonprofit community civic association or corporation;

Approved May 26, 1992.

CHAPTER 515
(House Bill 102)

AN ACT concerning**Howard County - Alcoholic Beverages - Unlicensed Places of Public Entertainment**

FOR the purpose of including Howard County among those counties that prohibit the bringing and consumption or transfer of alcoholic beverages on the premises of certain places of public entertainment; and making a certain technical change,

BY repealing and reenacting, with amendments,

Article 2B - Alcoholic Beverages

Section 86(m)

Annotated Code of Maryland

(1990 Replacement Volume and 1991 Supplement)

BY repealing

Article 2B - Alcoholic Beverages

Section 86(n)

Annotated Code of Maryland

(1990 Replacement Volume and 1991 Supplement)

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

Article 2B - Alcoholic Beverages

86.

(m) (1) In Baltimore [County], CHARLES AND HOWARD COUNTIES, alcoholic beverages may not be brought [on to] ONTO any premises and consumed or transferred if the premises constitute a place of public entertainment and the entertainment is of the type listed under § 71A(a)(1) through (4) of this article.

(2) Any person operating a place of public entertainment who knowingly permits any violation of this subsection on the premises is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 for each violation.

(3) Each day of operation in violation of this subsection is a separate violation.

WILLIAM DONALD SCHAEFER, Governor

Ch. 516

[(n) (1) In Charles County, alcoholic beverages may not be brought onto any premises and consumed or transferred if the premises constitutes a place of public entertainment and the entertainment is of the type listed under § 71A(a)(1) through (4) of this article.

(2) Any person operating a place of public entertainment who knowingly permits any violation of this subsection on the premises is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 for each violation.

(3) Each day of operation in violation of this subsection is a separate violation.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1992.

Approved May 26, 1992.

CHAPTER 516

(House Bill 192)

AN ACT concerning**Landfill Refuse Disposal Systems - Permits - County Plans**

FOR the purpose of prohibiting the Secretary of the Environment from issuing a permit to install, materially alter, or materially extend a refuse disposal system until the Department and the county where the refuse disposal system is to be located supplies the Department with a written statement that the proposed refuse disposal system meets certain requirements; requiring a county plan to identify locations for refuse disposal systems that satisfy each comply with certain requirements; and generally relating to the regulation of refuse disposal systems.

BY repealing and reenacting, with amendments,

Article - Environment

Section 9-210 and 9-505(a)(18) and (19)

Annotated Code of Maryland

(1987 Replacement Volume and 1991 Supplement)

~~By adding to~~

Article - Environment

Section 9-505(e)(20)

Annotated Code of Maryland

(1987 Replacement Volume and 1991 Supplement)

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

Article - Environment

9-210.

(a) The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under § 9-204(a) of this subtitle until the Department has a written statement from the applicant that the refuse disposal system conforms to the county solid waste management plan and meets all applicable zoning and land use requirements of the county where the refuse disposal system is to be located stating that:

- (+) THE SYSTEM;
- (+) MEETS ALL ZONING AND LAND USE REQUIREMENTS OF THE COUNTY; AND
- (+) IS IN CONFORMANCE WITH AN APPROVED COUNTY PLAN UNDER SUBTITLE 5 OF THIS TITLE OR

(+) A FINAL DECLARATORY JUDGMENT DECLARING THAT THE PROPOSED SYSTEM MEETS THE REQUIREMENTS OF PARAGRAPH (4) OF THIS SUBSECTION HAS BEEN ISSUED BY THE CIRCUIT COURT FOR THE CIRCUIT WHERE THE FACILITY IS TO BE LOCATED THE REQUIREMENTS SET FORTH IN THIS SUBSECTION ARE MET IN THE FOLLOWING SEQUENCE:

(1) EXCEPT FOR THE OPPORTUNITY FOR A PUBLIC INFORMATIONAL MEETING, THE DEPARTMENT HAS COMPLETED ITS PRELIMINARY PHASE 1 TECHNICAL REVIEW OF THE PROPOSED REFUSE DISPOSAL SYSTEM;

(2) THE DEPARTMENT HAS REPORTED THE FINDINGS OF ITS PRELIMINARY PHASE 1 TECHNICAL REVIEW, IN WRITING, TO THE COUNTY'S CHIEF ELECTED OFFICIAL AND PLANNING COMMISSION OF THE COUNTY WHERE THE PROPOSED REFUSE DISPOSAL SYSTEM IS TO BE LOCATED; AND

(3) THE COUNTY HAS COMPLETED ITS REVIEW OF THE PROPOSED REFUSE DISPOSAL SYSTEM, AND HAS PROVIDED TO THE DEPARTMENT A WRITTEN STATEMENT THAT THE REFUSE DISPOSAL SYSTEM:

- (I) MEETS ALL APPLICABLE COUNTY ZONING AND LAND USE REQUIREMENTS; AND
- (II) IS IN CONFORMITY WITH THE COUNTY SOLID WASTE PLAN.

(b) (1) The Secretary may not issue a permit for a rubble landfill under § 9-204(a) of this subtitle unless the county in which the rubble landfill is located has specified the types of waste that may be disposed of in that rubble landfill in its county solid waste management plan under Subtitle 5 of this title.

(2) The types of waste that a county may allow to be disposed of in a rubble landfill under this section include:

- (i) Trees;
 - (ii) Land clearing debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article;
 - (iii) Demolition debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article; and
 - (iv) Construction debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article.
- (3) The following types of waste may be disposed of in a rubble landfill subject to the regulations adopted under this subtitle if the disposal of these wastes is expressly approved by the county in its county solid waste management plan:

- (i) Asbestos;
- (ii) White goods; and
- (iii) Used tires.

9-505.

(+) In addition to the other requirements of this subtitle, each county plan shall

(48) For a county with a population greater than 150,000, according to the latest Office of Planning projections, include a recycling plan by July 1, 1990 that:

- (i) Provides for a reduction through recycling of at least 20 percent of the county's solid waste stream by weight or submits adequate justification, including economic and other specific factors, as to why the 20 percent reduction cannot be met;
- (ii) Provides for recycling of the solid waste stream to the extent practical and economically feasible, but in no event may less than a 10 percent reduction be submitted; and
- (iii) Requires full implementation of the recycling plan by January 1, 1994, and;

and, fund;

(49) For a county with a population less than 150,000, according to the latest Office of Planning projections, include a recycling plan by July 1, 1990 that:

- (i) Provides for a reduction through recycling of at least 15 percent of the county's solid waste stream or submits adequate justification, including economic and other specific factors, as to why the 15 percent reduction cannot be met;
- (ii) Provides for recycling of the solid waste stream to the extent practical and economically feasible, but in no event may less than a 5 percent reduction be submitted; and

1994 AND

(iii) ~~Require full implementation of the recycling plan by January 1,~~(20) ~~IDENTIFY AVAILABLE LOCATIONS FOR REUSE DISPOSAL SYSTEMS THAT~~(4) ~~ARE SUFFICIENT TO MEET THE PROJECTED NEEDS OF THE COUNTY FOR THE NEXT 10 YEARS;~~(4H) ~~ARE SUITABLE FOR THE PROJECTED USE AND~~(4H) ~~DO NOT HAVE ZONING OR LAND-USE RESTRICTIONS THAT WOULD PREVENT OR INHIBIT THE CONSTRUCTION OF THE PROPOSED SYSTEM.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1992.

Approved May 26, 1992.

CHAPTER 517

(House Bill 203)

AN ACT concerning

Maryland Human Relations Commission - Hearings - Subpoenas

FOR the purpose of authorizing subpoenas issued by the Commission to be served by certified mail, by an employee of the Human Relations Commission, or by any person who is not a party and is not less than a certain age; requiring a certain sheriff to serve certain orders; and generally relating to the serving of subpoenas by the Human Relations Commission.

BY repealing and reenacting, with amendments,

Article 49B - Human Relations Commission

Section 11(d)

Annotated Code of Maryland

(1991 Replacement Volume and 1991 Supplement)

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

Article 49B - Human Relations Commission

11.

(d) (1) In the administration and enforcement of the provisions of these several subtitles, the Commission has power to:

and

(II) COMPEL the production of books, papers, records and documents relevant or necessary for proceedings under the particular subtitle.

(2) Any [such] subpoena shall be served by:

(1) CERTIFIED MAIL, ~~TO RETURN RECEIPT REQUESTED REQUESTING RESTRICTED DELIVERY - SHOW TO WHOM, DATE, ADDRESS OF DELIVERY, OR~~

(II) PERSONAL SERVICE OF PROCESS BY:

1. AN EMPLOYEE OF THE COMMISSION;

(4H) 2. ANY PERSON WHO IS NOT A PARTY AND IS NOT LESS THAN 18 YEARS OF AGE; OR

(4H) 3. [the] THE sheriff or deputy sheriff of the political subdivision in which is located the residence of the person or the main office of the firm, association, partnership or corporation against whom or which the subpoena is issued.

(3) (1) In case of disobedience to a subpoena, the Commission may apply to a circuit court in any county for an order requiring the attendance and testimony of witnesses and the production of books, papers, records, and documents.

(11) In case of contumacy or refusal to obey a subpoena for the attendance of a witness or the production of books, papers, records, and documents, after notice to the person subpoenaed as a witness or directed to produce books, papers, records and documents, and upon a finding that the attendance and testimony of the witness or the production of the books, papers, records and documents is relevant or necessary for the proceedings of the Commission, the court may issue an order requiring the attendance and testimony of the witness and the production of the books, papers, records and documents.

(11) Any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(IV) AN ORDER ISSUED BY THE COURT UNDER THIS SUBSECTION SHALL BE SERVED ON THE PERSON TO WHOM IT IS DIRECTED BY THE SHERIFF OR DEPUTY SHERIFF OF THE POLITICAL SUBDIVISION WHERE THE RESIDENCE OR MAIN OFFICE OF THE PERSON IS LOCATED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1992.

Approved May 26, 1992.

SUBTITLE:

(1) BEARS A NOTATION UNDER § 13-506(C)(2)(II)2 OF THIS

(II) IS ISSUED BEFORE OCTOBER 1, 1992 AND THE APPLICATION IS ACCOMPANIED BY A ~~CERTIFICATION STATEMENT~~ IN WRITING FROM AN INSURANCE COMPANY THAT THE COST TO REPAIR THE VEHICLE WAS EQUAL TO OR LESS THAN THE FAIR MARKET VALUE OF THE VEHICLE PRIOR TO THE VEHICLE SUSTAINING DAMAGE; OR

(III) IS ISSUED FOR A VEHICLE THAT IS MORE THAN 7 MODEL YEARS OLD.

(C) (1) WHEN AN INSURANCE COMPANY MAKES A CLAIM SETTLEMENT ON A VEHICLE THAT HAS BEEN STOLEN, THE COMPANY SHALL APPLY FOR A SALVAGE CERTIFICATE AS PROVIDED IN § 13-506(C) OF THIS SUBTITLE.

(2) ON RECEIPT OF AN APPLICATION UNDER THIS SUBSECTION, THE ADMINISTRATION.

(1) SHALL MAKE THE APPROPRIATE NOTATION IN ITS RECORDS; AND

(II) MAY NOT ISSUE THE SALVAGE CERTIFICATE UNTIL THE VEHICLE IS RECOVERED.

(3) WHEN A VEHICLE THAT HAS BEEN STOLEN IS RECOVERED, THE ADMINISTRATION SHALL:

(1) ISSUE A SALVAGE CERTIFICATE FOR THE VEHICLE ~~UPON RECEIPT FROM THE INSURANCE COMPANY OF SUBMITS A CERTIFICATION UNDER § 13-506(C)(2)(II)1, 2, OR 3 OF THIS SUBTITLE; OR~~

(II) ISSUE A CERTIFICATE OF TITLE IN LIEU OF A SALVAGE CERTIFICATE IF THE INSURANCE COMPANY ~~CERTIFIES~~ STATES THAT THE VEHICLE HAS NOT SUSTAINED DAMAGE OR HAS SUSTAINED ONLY MINOR DAMAGE

(4) THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION APPLY TO A CERTIFICATE OF TITLE ISSUED UNDER THIS SUBSECTION.

(5) A VEHICLE FOR WHICH A CERTIFICATE OF TITLE WAS ISSUED UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION IS EXEMPT FROM THE VEHICLE EXCISE TAX AS PROVIDED IN § 13-810(A)(9) OF THIS ARTICLE.

(D) IF THE ADMINISTRATION RECEIVES AN APPLICATION FOR A CERTIFICATE OF TITLE FOR A VEHICLE ACCOMPANIED BY AN OWNERSHIP DOCUMENT ISSUED BY ANOTHER STATE CONTAINING A NOTATION UNDER THE LAWS OF THE ISSUING STATE THAT THE VEHICLE

IS IN A CONDITION THAT IS SUBSTANTIALLY SIMILAR TO A VEHICLE THAT IS REBUILT SALVAGE UNDER MARYLAND LAW, THE CERTIFICATE OF TITLE ISSUED BY THE ADMINISTRATION SHALL CONTAIN A SIMILAR NOTATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1992

Approved May 26, 1992.

CHAPTER 636

(Senate Bill 224)

AN ACT concerning

Refuse Disposal Systems - Permits - ~~Consideration by Local Government~~ County Plans

FOR the purpose of establishing a procedure in charter counties for certain local government consideration of certain applications to install materially alter or materially extend certain refuse disposal systems before the application is submitted to and considered by the Department of the Environment requiring a certain executive to make a certain analysis and recommendation to the legislative body of the local government requiring the local government to decide whether to pass a resolution approving a certain application and to make certain findings in writing requiring the executive or a designee of the executive to submit a certain application and permit to the Department under certain circumstances prohibiting the Secretary from issuing a certain permit under certain circumstances defining a certain term and generally relating to applications for permits to install materially alter or materially extend certain refuse disposal systems in charter counties prohibiting the Secretary of the Environment from issuing a permit to install materially alter, or materially extend a refuse disposal system until the Department and the County each comply with certain requirements; and generally relating to the regulation of refuse disposal systems.

By repealing and reenacting, with amendments,

Article - Environment

Section 9-204 9-210

Annotated Code of Maryland

(1987 Replacement Volume and 1991 Supplement)

By adding to

Article - Environment

Section 9-204.3

Annotated Code of Maryland

(1987 Replacement Volume and 1991 Supplement)

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

Article - Environment

§ 204.

(a) This section applies to any water supply system, sewerage system, refuse disposal system that is for public use or any refuse disposal system that is a solid waste receptance facility as defined in § 2-501(f) of this title if the solid waste receptance facility is installed, altered or extended after July 1, 1988.

(b) (1) The Secretary may adopt reasonable and proper regulations for submission of plans. These regulations may include the collection of a fee at the time of application for

(1) A permit issued under this section for a privately owned water supply or sewerage system or

(ii) A permit applied for by a local unit of government for a privately financed water supply or sewerage system.

(2) The Secretary shall provide the regulated community an opportunity to participate in the rate setting and regulatory process.

(c) (1) Before a person draws plans or submits an application under this section for a proposed water supply system, sewerage system or refuse disposal system, the person may submit to the Secretary a preliminary statement on the proposed system.

(2) At the request of the person, the Secretary shall outline the general requirements that must be met before the Secretary would approve the proposed system.

(d) A person shall have a permit issued by the Secretary under this section before the person installs, materially alters or materially extends a water supply system, sewerage system or refuse disposal system.

(e) ~~F.A.N. EXCEPT AS PROVIDED IN § 2-204.3 OF THIS SUBTITLE, AN~~ applicant for a permit shall

(1) Submit to the Secretary an application that contains:

(i) The complete plans and specifications for the installation, alteration or extension of the water supply system, sewerage system or refuse disposal system;

(ii) For any application related to any solid waste receptance facility in the areas of Baltimore City designated by the United States Post Office as zip code numbers 21225, 21226 and 21201, a groundwater and surface water impact analysis prepared at the expense of the applicant regarding the proposed installation, alteration or extension; and

(iii) Any other information that the Secretary requires;

(2) Submit to the Secretary any material change in the plans and specifications, with the reason for the change; and

(3) Pay the permit fee set by the Department;

(4) Results of any groundwater and surface water impact analysis required under subsection (e)(1)(ii) of this section may be a basis for the Secretary's denial of a permit.

(f) ~~F.A.N. EXCEPT AS PROVIDED IN § 2-204.3 OF THIS SUBTITLE,~~ WHEN a person applies for a permit and pays the fee under this section, the Secretary shall

(1) Examine the application without delay and

(ii) 1. Approve the application and issue the permit

2. Disapprove the application or

3. State the conditions under which the Secretary would approve the application.

(2) The Secretary shall act within 30 working days after receiving an application and payment of fee for a permit under this section for a water distribution line or a sewage collection line.

(3) If the Secretary does not act within the time set by paragraph (2) of this subsection:

(i) The application is approved automatically and

(ii) The Secretary shall issue a permit for the work.

(4) A person may not:

(1) Install, materially alter or materially extend a water supply system, sewerage system or refuse disposal system in this State except in accordance with a permit issued to the person by the Secretary under this section or

(2) Embody any material change in construction until the Secretary has issued a revised permit based on the submission to the Secretary under subsection (e)(2) of this section.

(4) After a person completes work under a permit, the person shall submit to the Secretary for permanent record a certified copy of the plans that show the work as built.

(A) IN THIS SECTION "EXECUTIVE" MEANS:

(1) THE COUNTY EXECUTIVE IN A COUNTY THAT HAS A COUNCIL AND ELECTED EXECUTIVE FORM OF GOVERNMENT;

(2) THE COUNTY COUNCIL IN A COUNTY THAT HAS THE COUNCIL AND MANAGER FORM OF GOVERNMENT; OR

(4) ~~THE ELECTED EXECUTIVE OF ANY MUNICIPAL CORPORATION.~~

(5) ~~THIS SECTION APPLIES ONLY TO A COUNTY THAT HAS A CHARTER FORM OF GOVERNMENT UNDER ARTICLE XI-A OF THE CONSTITUTION.~~

(6) ~~BEFORE AN APPLICANT FOR A PERMIT TO INSTALL MATERIALLY ALTER OR MATERIALLY EXTEND A REFUSE DISPOSAL SYSTEM REGULATED UNDER § 9-204(A) OF THIS SUBTITLE MAY SUBMIT AN APPLICATION TO THE DEPARTMENT, THE APPLICANT SHALL SUBMIT THE APPLICATION TO THE EXECUTIVE IN THE COUNTY OR MUNICIPAL CORPORATION IN WHICH THE REFUSE DISPOSAL SYSTEM IS LOCATED.~~

(7) ~~THE EXECUTIVE SHALL:~~

(1) ~~ANALYZE THE PERMIT APPLICATION TO DETERMINE IF THE PROPOSED REFUSE DISPOSAL SYSTEM MEETS THE ENVIRONMENTAL REQUIREMENTS OF THE COUNTY OR MUNICIPAL CORPORATION FOR THE ESTABLISHMENT OF THE FACILITY IN THAT JURISDICTION; AND~~

(2) ~~SUBMIT TO THE LEGISLATIVE BODY OF THE COUNTY OR MUNICIPAL CORPORATION A WRITTEN ANALYSIS OF THE APPLICATION AND A RECOMMENDATION ON WHETHER THE LEGISLATIVE BODY SHOULD PASS A RESOLUTION IN SUPPORT OF THE APPLICATION FOR THE PERMIT FOR CONSIDERATION BY THE DEPARTMENT OF THE ENVIRONMENT.~~

(3) ~~AFTER RECEIPT OF THE ANALYSIS AND RECOMMENDATION OF THE EXECUTIVE, THE LEGISLATIVE BODY OF THE COUNTY OR MUNICIPAL CORPORATION SHALL DECIDE WHETHER TO PASS A RESOLUTION THAT APPROVES THE APPLICATION FOR THE PERMIT.~~

(4) ~~IF THE LEGISLATIVE BODY REFUSES TO PASS A RESOLUTION, THE LEGISLATIVE BODY SHALL STATE ITS REASON IN WRITING.~~

(5) ~~IF THE LEGISLATIVE BODY OF THE COUNTY OR MUNICIPAL CORPORATION DECIDES TO APPROVE THE APPLICATION FOR THE PERMIT, THE LEGISLATIVE BODY, IN ITS RESOLUTION, SHALL CERTIFY THAT THE PROPOSED REFUSE DISPOSAL SYSTEM MEETS THE FOLLOWING REQUIREMENTS:~~

(1) ~~THE SITE MEETS LOCAL ZONING REQUIREMENTS AND IS CONSISTENT WITH THE AREA MASTER PLAN;~~

(2) ~~THE PROPOSED REFUSE DISPOSAL SYSTEM IS INCLUDED IN THE JURISDICTIONS 10-YEAR SOLID WASTE MANAGEMENT PLAN;~~

(3) ~~A PUBLIC HEARING WAS HELD ON THE PROPOSED APPLICATION AND 60-DAYS NOTICE WAS GIVEN FOR THE HEARING; AND~~

(4) ~~THE SITE MEETS THE ENVIRONMENTAL REQUIREMENTS OF THE COUNTY OR MUNICIPAL CORPORATION.~~

(5) ~~IF THE LEGISLATIVE BODY OF THE COUNTY OR MUNICIPAL CORPORATION PASSES A RESOLUTION THAT APPROVES THE APPLICATION FOR A PERMIT, THE EXECUTIVE OR A DESIGNEE OF THE EXECUTIVE SHALL SUBMIT THE APPLICATION AND THE RESOLUTION TO THE DEPARTMENT OF THE ENVIRONMENT IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN § 9-204 OF THIS SUBTITLE.~~

(6) ~~THE SECRETARY MAY NOT ISSUE ANY PERMIT THAT IS SUBJECT TO THE PROVISIONS OF THIS SECTION UNLESS THE LEGISLATIVE BODY OF THE COUNTY OR MUNICIPAL CORPORATION HAS APPROVED THE PERMIT AND CERTIFIED BY RESOLUTION THAT THE PROPOSED REFUSE DISPOSAL SYSTEM MEETS THE REQUIREMENTS SET FORTH IN SECTION (7) OF THIS SECTION.~~

(7) ~~The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under § 9-204(a) of this subtitle until (the Department has a written statement from the applicant that the refuse disposal system conforms to the county solid waste management plan and meets all applicable zoning and use requirements) THE REQUIREMENTS SET FORTH IN THIS SUBSECTION ARE MET IN THE FOLLOWING SEQUENCE:~~

(1) ~~EXCEPT FOR THE OPPORTUNITY FOR A PUBLIC INFORMATIONAL MEETING, THE DEPARTMENT HAS COMPLETED ITS PRELIMINARY PHASE 1 TECHNICAL REVIEW OF THE PROPOSED REFUSE DISPOSAL SYSTEM;~~

(2) ~~THE DEPARTMENT HAS REPORTED THE FINDINGS OF ITS PRELIMINARY PHASE 1 TECHNICAL REVIEW, IN WRITING, TO THE COUNTY'S CHIEF ELECTED OFFICIAL AND PLANNING COMMISSION OF THE COUNTY WHERE THE PROPOSED REFUSE DISPOSAL SYSTEM IS TO BE LOCATED; AND~~

(3) ~~THE COUNTY HAS COMPLETED ITS REVIEW OF THE PROPOSED REFUSE DISPOSAL SYSTEM, AND HAS PROVIDED TO THE DEPARTMENT A WRITTEN STATEMENT THAT THE REFUSE DISPOSAL SYSTEM:~~

(1) ~~MEETS ALL APPLICABLE COUNTY ZONING AND LAND USE REQUIREMENTS; AND~~

(2) ~~IS IN CONFORMITY WITH THE COUNTY SOLID WASTE PLAN.~~

(b) (1) The Secretary may not issue a permit for a rubble landfill under § 9-204(a) of this subtitle unless the county in which the rubble landfill is located has specified the types of waste that may be disposed of in that rubble landfill in its county solid waste management plan under Subtitle 5 of this title.

(2) The types of waste that a county may allow to be disposed of in a rubble landfill under this section include:

- (i) Trees;
- (ii) Land clearing debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article;
- (iii) Demolition debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article; and
- (iv) Construction debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article.

(3) The following types of waste may be disposed of in a rubble landfill subject to the regulations adopted under this subtitle if the disposal of these wastes is expressly approved by the county in its county solid waste management plan:

- (i) Asbestos;
- (ii) White goods; and
- (iii) Used tires.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1992.

Approved May 26, 1992.

CHAPTER 637

(Senate Bill 298)

AN ACT concerning

Tax Increment Financing Act - Distribution of Tax Revenue

FOR the purpose of altering provisions of the Tax Increment Financing Act to change the distribution of property tax revenue between a county or municipal corporation's general fund and a special fund created for a development district when land within a development district no longer qualifies for farm or agricultural use assessment requiring that an adjusted assessable base, if applicable, be obtained from the Supervisor of Assessments before the issuance of certain bonds; defining a certain term; and generally relating to development districts under the Tax Increment Financing Act.

WILLIAM DONALD SCHAEFER, Governor

Ch. 637

By repealing and reenacting, with amendments,

Article 41 - Governor - Executive and Administrative Departments

Section 14-202 and 14-206

Annotated Code of Maryland

(1990 Replacement Volume and 1991 Supplement)

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

Article 41 - Governor - Executive and Administrative Departments

14-202.

(a) In this subtitle the following words have the meanings indicated, unless the context clearly indicates another or different meaning or intent.

(b) "Act" means the Tax Increment Financing Act.

(c) "ADJUSTED ASSESSABLE BASE" MEANS THE ASSESSABLE BASE AS OF THE DATE THAT ANY REAL PROPERTY WITHIN A DEVELOPMENT DISTRICT NO LONGER QUALIFIES FOR A FARM OR AGRICULTURAL USE ASSESSMENT UNDER § 8-209 OF THE TAX - PROPERTY ARTICLES, FOR REAL PROPERTY THAT QUALIFIES FOR A FARM OR AGRICULTURAL USE UNDER § 8-209 OF THE TAX - PROPERTY ARTICLE, THE FAIR MARKET VALUE OF THE PROPERTY WITHOUT REGARD TO ITS AGRICULTURAL USE ASSESSMENT AS OF JANUARY 1 OF THAT YEAR PRECEDING THE EFFECTIVE DATE OF THE RESOLUTION CREATING THE DEVELOPMENT DISTRICT UNDER § 14-206 OF THIS SUBTITLE.

(d) "Assessable base" means the total assessable base of all real property in a development district subject to taxation as determined by the Supervisor of Assessments.

(e) "Assessment ratio" means any real property tax assessment ratio, however designated or calculated, which is used or applied under applicable general law in determining the assessable base.

(2) "Assessment ratio" includes the assessment percentage as provided under § 8-103(c) of the Tax - Property Article.

(f) "Bonds" or "bond" means any revenue bonds or bond, notes or note, or other similar instruments or instrument issued by any municipality or county pursuant to and in accordance with this subtitle.

(g) "Chief executive officer" means the president, chairman, mayor, or other chief executive officer of a municipality or county.

(h) "County" means one of the 23 counties of Maryland.

(i) "Development" includes new development, redevelopment, revitalization, and renovation.

AMIR KAHN :
CATHERINE A. KAHN
HOWARD GOLDSTEIN
and
SAMUEL GOLDSTEIN

Plaintiffs

v.

ROBERT PERCIASEPE
RICHARD W. COLLINS
ENVIRO-GRO TECHNOLOGIES
and
SKIP PIEPER

Defendants

and

DEPARTMENT OF NATURAL RESOURCES

Inteviewer Defendant

IN THE

App. 16

CIRCUIT COURT FOR
BALTIMORE COUNTY

Case No.: 75/337/91 CSP 1374

BALTIMORE COUNTY, MARYLAND

Plaintiff

v.

ENVIRO-GRO TECHNOLOGIES
CHARLES L. PIEPER
and
STEVE PIEPER

Defendants

and

DEPARTMENT OF NATURAL RESOURCES

Inteviewer Defendant

IN THE

CIRCUIT COURT FOR
BALTIMORE COUNTY

CASE NO.: 91 CSP 1374

CONSOLIDATED

MOTION FOR INTERLOCUTORY AND PERMANENT INJUNCTION

Baltimore County, Maryland, (County) Plaintiff, by its undersigned
attorneys, hereby moves this Honorable Court, pursuant to Rules BB70

MICROFILMED

through BB77, of the Maryland Rules of Civil Procedure, to restrain and enjoin the Defendants, Enviro-Gro Technologies (EGT) from land applying, and Charles L. Pieper and Steve Pieper (Pieper) and the Department of Natural Resources (DNR) from accepting sewage sludge to and on the "Springdale Property" pursuant to MDE Permit S-91-03-2064-ABE issued on April 3, 1991, by the Maryland Department of the Environment.

Unless Defendants are so required, restrained and enjoined by Order of this Court, the County and the citizens surrounding the "Springdale" Property will suffer immediate, substantial and irreparable harm, loss and damage, which cannot be adequately remedied by an action in law.

The County requests that it not be required to file a bond in these proceedings.

WHEREFORE, the Plaintiff prays this Honorable Court to:

a: Restrain the Defendant's EGT from land applying sewage sludge to the "Springdale Property".

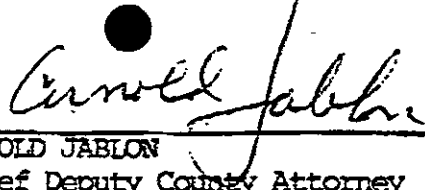
b: Restrain DNR and Pieper, t/a Pieper Brothers Farm, from accepting said sewage sludge on the "Springdale Property".

c. Require Enviro-Gro Technologies to apply for a special hearing before the Zoning Commissioner of Baltimore County for an interpretation of the applicability of any regulation impacting the utilization of sludge on the "Springdale Property".

d. And for such other and further relief as the Plaintiff's cause may require.



H. Emslie Parks
County Attorney


ARNOLD JABLON
Chief Deputy County Attorney


WILLIAM O. JENSEN, JR.
Assistant County Attorney
Courthouse, Room 202
Towson, Maryland 21204 887-4420

POINTS OF AUTHORITY

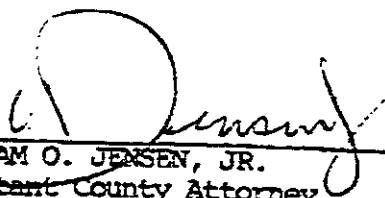
Maryland Rules of Procedure BB 70 - BB 72.

In support of the County's position, the County files the attached Memorandum of Law.

CERTIFICATION OF MAILING

I hereby certify that on this 2 day of May, 1991, a copy of the Motion for Interlocutory and Permanent Injunction and the Memorandum of Law in Support of Interlocutory and Permanent Injunction was mailed, postage prepaid, to Joseph S. Kaufman, Esq. and Lawrence M. Garten, Esq., Pedder & Garten Professional Association, 2300 Charles Center South, 36 S. Charles Street, Baltimore, MD 21201, Attorneys for Amir Kahn, et al. Plaintiffs; Robert Carson, Esq. and Randall M. Lutz, Esq., Smith, Somerville & Case, 100 Light Street, Baltimore, MD 21202-1084, Attorneys for Enviro-Gro Technologies, Defendant; Charles L. Pieper and Steve Pieper, individually and trading as Pieper Brothers Farm, 3159 Troyer Road, White Hall, Harford County, MD 21161, Defendants; Sean Coleman, Esq., Assistant Attorney General, 2020 Industrial Drive, Annapolis, MD 21401, Attorney for Maryland Department of Natural Resources, Intervenor Defendant; and Paul O'Connell, Esq., Assistant Attorney General, 2500 Broening Highway, Room

2219, Second Floor, Baltimore, MD 21224, Attorney for Maryland Department
of the Environment.


WILLIAM O. JENSEN, JR.
Assistant County Attorney
Courthouse, Room 202
Towson, Maryland 21204 887-4420

AMIRKAHN :
 CATHERINE A. KAHN
 HOWARD GOLDSTEIN
 and
 SAMUEL GOLDSTEIN

Plaintiffs

v.

ROBERT PERCIASEPE
 RICHARD W. COLLINS
 ENVIRO-GRO TECHNOLOGIES
 and
 SKIP PIEPER

Defendants

and

DEPARTMENT OF NATURAL RESOURCES

Intervenor Defendant

IN THE
 :
 : CIRCUIT COURT FOR
 :
 : BALTIMORE COUNTY
 :
 :
 : Case No.: 75/337/91 CSP 1374

.....

BALTIMORE COUNTY, MARYLAND

Plaintiff

v.

ENVIRO-GRO TECHNOLOGIES

CHARLES L. PIEPER
 and
 STEVE PIEPER

Defendants

and

DEPARTMENT OF NATURAL RESOURCES

Intervenor Defendant

IN THE
 :
 : CIRCUIT COURT FOR
 :
 : BALTIMORE COUNTY
 :
 :
 : CASE NO.: 91 CSP 1375
 :
 :
 : CONSOLIDATED

.....

MEMORANDUM OF LAW IN SUPPORT OF INTERLOCUTORY AND PERMANENT INJUNCTION

Baltimore County, Maryland, Plaintiff, files this Memorandum of Law in support of its Motion for Interlocutory and Permanent Injunction.

~~CONFIDENTIAL~~

FACTS

1. Baltimore County, Maryland (County) is a Charter County organized pursuant to Article XI-A of the Maryland Constitution and has certain powers and duties, including the right to bring this action.

2. Enviro-Gro Technologies, Inc. (EGT) is a Maryland Corporation, doing business in Maryland, and has been issued a Sewage Sludge Utilization Permit No. S-91-03-2064-ABE (Permit) from the Maryland Department of the Environment (MDE) to collect, transport and handle lime stabilized sewage sludge from the Back River Wastewater Treatment Plant (BRWTP) to the Springdale property, Gunpowder State Park, Jarrettsville Pike and Blenheim Road, Baltimore County, Maryland (Property). EGT has a contract with BRWTP for which they are paid money to remove and haul sewage sludge from its facility to anyone who can utilize same.

3. Charles L. Pieper and Steve Pieper, t/a Pieper Brothers Farm (Pieper), are the persons who farm the Property under a Lease Agreement with the Department of Natural Resources (DNR), wherein Pieper pays DNR a yearly rent to farm the Property. The free application of the sewage sludge will reduce Piepers' operating costs in fertilizer and cultivating.

4. On December 19, 1989, EGT requested permission and information from the Zoning Commissioner of Baltimore County (Commissioner) regarding the land application of sewage sludge (Land Application) on the Property.

5. On December 28, 1989, the Office of the Zoning Commissioner notified EGT that State or County property leased to private enterprise must comply with Baltimore County Zoning Regulations (BCZR). NOTE: The Property is zoned RC4; therefore, the utilization of sludge would not be a permitted use, either by right or by Special Exception. See BCZR Sec. 1A03.3A and B.1 and 412A-E.

6. That on or about March 14, 1990, the County Department of Environmental Protection and Resource Management (DEPRM) replied to the MDE's request for comment on the application for permit, which is the subject matter of this Complaint.

7. That on or about April 3, 1991, the MDE notified EGT that the Permit requested had been granted.

8. The issuance of said Permit did not include any of the conditions precedent requested by DEPRM, all of which were requested in order to protect the health, safety and public welfare of the citizens of Baltimore County who live in the community.

9. The property on which the sludge is to be utilized is adjacent to a watershed area and there is concern that there will be contamination caused by such utilization.

10. There is concern that there will be contamination of well and septic systems as a result of said utilization.

11. Environmental Art. 9-233 requires compliance with County requirements before a permit is to be issued.

12. The property at issue is a sewage sludge composting facility, and the Permit issued is not sufficient to satisfy the conditions established by Section 9-233, supra.

13. EGT, in addition to the instant permit, is required to receive a permit to install a sewage sludge composting facility on the Property.

14. The County was advised that EGT intended to begin spreading lime stabilized sewage sludge from the BRWTP to the 137 acre area of the Property, Gunpowder State Park, consisting of fields 1, 1E, 1H, 1G and 2; Jarrettsville Pike; and, Blenheim Road in Baltimore County, Maryland on TUESDAY, APRIL 16, 1991, and continue said spreading for the next seven (7)

days until the application of 890.5 dry-tons (6.5 dry-tons per acre x 137 acres per permit) was completed.

15. On April 15, 1991, the County filed a Petition to Suspend, Revoke or Modify the Permit with MDE, and have asked for an immediate stay of the Permit. No action on the Petition has been taken by MDE.

16. The County's allegations concerning the Defendant's failure to request a special hearing to determine if the use is exempt from the Baltimore County Zoning Regulations (BCZR) is contained in the Affidavit of James E. Dyer, Zoning Supervisor, attached to the County's Complaint as Plaintiff's Exhibit No. 2.

ARGUMENT

I.

BALTIMORE COUNTY ZONING REGULATIONS APPLY TO LAND OWNED BY THE STATE, BUT USED FOR PRIVATE ENTERPRISE.

Property owned by the State and operated for a public use is exempt from local zoning regulations. City of Baltimore v. State 281 Md 217, 223, 378 A.2d 1326, 1329 (1977). In City of Baltimore, the Court of Appeals determined that State owned property used by the State as a correctional institution is not subject to local regulations absent an intent by the General Assembly to subject the State to such regulations.

The issue presented in the case at bar, however, is not only whether local zoning regulations apply to State owned property leased to a private entity, but whether the particular use to which the property is subjected is a public use.

The first case to reach the appellate courts in Maryland to address this latter issue was Youngstown Cart. Co. v. North Point Peninsula, etc., 24 Md.App. 624, 332 A2d 718 (1975). In Youngstown, the State had acquired

property for tunnel project, but had no immediate use for the land. The land was then leased to a trucking company which operated a terminal on the site. In analyzing whether the BCZR, which prohibit such use, applied to this land, the Court of Special Appeals considered whether the land was put to "public use" and determined that it does not. The use was proprietary, not governmental in nature. The zoning regulations applied.

Likewise, in City of Baltimore v. State Dept. of Health, 38 Md. App. 570, 381 A2d 1188 (1978), the Court of Special Appeals considered whether state owned property leased to a private, non-profit organization for the purpose of providing a home for teenage girls committed to the Department of Juvenile Services was exempt from local zoning regulations. In its analysis, the Court again looked to whether the use to which the land was being put was a "public use". Here, the Court ruled that it was and thereby exempt from local zoning regulations.

There appears to be at least two distinct tests in Maryland for determining "public use". The first test was enunciated in Arnsperger v. Crawford, 101 Md. 247, 61 A. 413 (1905). In Arnsperger, the Court of Appeals determined that "public use" means use or enjoyment by the public, and does not mean with public benefit, public utility, or public advantage. This definition was reaffirmed in Riden v. Phila. B&W RR Co., 182 Md. 336, 35 A2d 99 (1944). The second test for determining "public use" appears in Herzinger v. City of Baltimore, 203 Md. 49, 98 A.2d 87 (1953). Herzinger concerned a constitutional attack on a Baltimore City ordinance empowering the city to "take" property for public redevelopment purposes. The Court held that a taking may be for a "public benefit". In Youngstown, however, the Court distinguished Herzinger, stating that the "public benefit test seems to be limited to land development and redevelopment

projects, such as slum clearance, and it is not applicable to the instant case."¹

The issue here not only revolves around the use of the particular agricultural property owned by the State, and by whom, but whether the utilization of an alternative means of fertilizing such property becomes clothed with the sovereignty of the State.

In the context of eminent domain, the Court of Appeals has strayed from the definition of "public use" as used in Youngstown. In Prince George's County v. Collington Crossroads, Inc., 275 Md. 171, 339 A.2d 278, Judge Eldridge, writing for the Court, held that the taking of land to create an industrial development was for a "public use" rather than a private use. Although such a development was for private industry, the general economic benefit to the County was of a public nature. Collington and other cases like it, however, are defining "public use" in a different context. The present case concerns whether a use is "public", such that local zoning regulations would not apply to state owned property leased to a private entity. Clearly, the Youngstown case is most applicable here. In both Youngstown and the present case, land was acquired by the state for a legitimate purpose-in Youngstown, for a highway, here, for a state park.

¹At first blush, it may appear that City of Baltimore v. State Department of Health, supra, creates an anomaly in the law concerning "public use". After recognizing that the "public benefit test" is limited to Land Development and Redevelopment projects, the Court stated, "we eliminate the public benefit test from our consideration", at 1192. To determine, however, that the use being made of the property was a "public use", the Court stated that "it is being used by the State for the benefit of the general public...." at 1192. What the Court was determining, however, was that the property was actually being "used" by the State. The fact that the entity leasing the land was a "charitable organization" weighed heavily in the determination that the land was used by the State. See, however, Harker v. Board of Child Care. 561 A.2d 219 (Md. 1989) infra.

In both cases, the land was leased to private entities until the property was to be put to its ultimate use. The fact that the land in Youngstown was eventually going to be put to a "public use" did not prevent the Court from applying the strict "public use" test while the property was being leased to a trucking company. In Collington, the Court of Appeals held that "where the predominant purpose or effect of a particular condemnation action has been to benefit private interests, this Court has held that the taking is not for "public use". 339 A.2d at 287. In the case at bar, the property is being leased to farmers for their livelihoods. No doubt, this private interest far outweighs any interest the State may have in keeping the land clear for uncertain future development. Thus, even within the context of eminent domain, the use of the property fails to meet the definition of "public use". Clearly, the application of the Arnsperger "public use" test results in a private use. The public has no right to use or enjoy the land.

The Intervenor Defendant, Maryland Department of Natural Resources, gives much weight to the legislation that gives power to the Department. The General Assembly stated its policy concerning State-owned natural resources: "Forests, streams, valleys, wetlands, parks, scenic, historic and recreation areas of the State are basic assets. Their proper use, development and preservation are necessary to protect and promote the health, safety, economy and general welfare of the people of the State. It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of local economy, preservation of the natural beauty and promotion of the recreational and leisure interest throughout the State." Md. Natural Resource Code Ann. 5-102 (1090 Repl. Vol.). Further, the General Assembly intends that the Department shall

"unify, coordinate and promulgate policies, plans, programs and practices which insure the preservation, development, wise use and enjoyment of all the natural resources for greatest benefits to the State and its citizens." Md. Natural Resource Code Ann. 1-101(b) (1989 Repl.Vol.). The Department "may purchase and manage lands in the name of the State, suitable for forest culture, reserves, watershed protection, state parks, scenic preserves, historic monuments, parkways, and state recreational reserves....." Md. Natural Resource Code Ann. 5-207(a) (1) (1989 Repl. Vol.).

The Intervenor Defendant argues that the agricultural use is for a public purpose because the legislature has authorized such use as part of its management program, i.e., it is a transitional use between acquisition and ultimate development. However, all of the legislation cited by the Intervenor Defendant encourages maintaining land in its natural state. In any case, a potential or speculative use cannot now be considered, only the benefit that immediately inures to the private farmers, which is the sole effect of the use of the property. Therefore, even applying the more liberal "public use" test cited in Collington, the use must be deemed private.

Intervenor Defendant also maintains that the land application of sewage sludge is a public use in and of itself. In support thereof, it cites Section 5-217 of the Natural Resources Article, which states, "A person may not dispose of raw sludge sewage on State park land or State forest land, unless the disposal is part of a program designed and operated by the Department of Natural Resources, or the Department of the Environment." The disposal of sewage sludge in the present case is derived from a private contract between Defendants Enviro-Gro and the Piepers. Neither the Department of Natural Resources nor the Department of the Environment

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(emphasis added). Clearly, the intent of the legislature was to prohibit disposal of sludge, except in certain specific, controlled circumstances, and to argue that the Secretary's policy is a "program", as used in the statute, is disregarding the true intent of the General Assembly. The Intervenor Defendant apparently argues that the Secretary may simply make a sweeping policy statement to completely divest the statute of any force. This cannot be what the legislature intended when it enacted Section 5-217.

In Harker, a nonprofit corporation appealed decision of County zoning board that held that the Baltimore County zoning ordinances were applicable to child care facilities. The Methodist Board argued that the State's exemption from BCZRs extends to property owned by nonprofit charitable corporation, which that corporation uses pursuant to a contract with the State to provide governmental services mandated by State law. Chief Judge Murphy, speaking for the Court, said, "That the exemption from county zoning regulations accorded in City of Baltimore v. State, supra, extends to the State agencies and instrumentalities is entirely manifest. Plainly, the Methodist Board is not a unit of State government." at p. 224. Continuing, the Court stated, after citing several authorities, "These authorities make it clear that the rights to exemption does to turn on the use being made of the property by the party claiming the exemption, but upon its ownership by the State or its instrumentalities."

On the subject of preemption in the field of licensing and regulation of child care facilities, the court referred back to Ad + Soil, supra, wherein, "we found no implied preemption of local zoning ordinances governing the location of sewage sludge facilities, despite the existence of pervasive statewide legislation requiring permits for sewage sludge

facilities and extensively governing the storage and distribution of sewage sludge."

EGT and Pieper will argue that if they are restrained from applying the sewage sludge to the Property, Pieper will lose a growing season and EGT will have to haul the sludge farther away. This then evolves into an economic issue; certainly, it is not a public use.

In summary, the land application of sewage sludge is not exempt from local zoning regulations where two private parties contract to have the sludge applied to the land.

II.

THE DETERMINATION OF WHETHER PROPERTY IS BEING USED AS A PUBLIC USE OR AS A PRIVATE USE IS TOTALLY WITHIN THE PURVIEW OF THE ZONING COMMISSIONER.

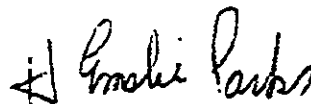
Section 500.7 of the Baltimore County Zoning Regulations states, "The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals, as hereinafter provided." The proper procedure requires the Defendants to petition the Zoning Commissioner for the determination of whether the use of the property is exempt from the regulations. An administrative process has been devised especially for this purpose, which the Defendants have failed to exhaust, Quesenberry v. Washington Sub. San Comm. 311 Md. 417, 535 A2 1079.

All the cases discussed have originated with the local zoning authority: City of Baltimore v. State Dept. of Health, an appeal by the City from an order reversing revocation of a zoning permit by the Board of Municipal and Zoning Appeals; Ad & Soil v. County Commissioner, zoning violation and stop work order and an appeal to the County Board of Appeals;

Youngstown v. North Point, etc., hearing before the Zoning Commissioner concerning operation truck facility. Board v. Harker, Special Hearing under 500.7 of BCZR to determine whether the proposed facility was entitled to an exemption not to allow the Zoning Commissioner to rule on whether the proposed use is exempt would evade the County's administrative process.

Therefore, the administrative process established pursuant to Art. 25A, Section 5, et seq, of the Annotated Code, Sections 500.7, and 502.1, of BCZR, must be satisfied prior to the issuance of the instant permit.

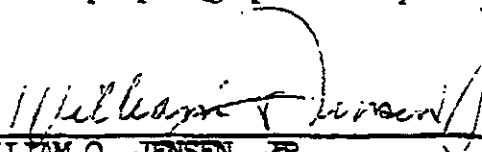
Respectfully submitted,



H. EMSLIE PARKS
County Attorney



ARNOLD JABLON
Chief Deputy County Attorney



WILLIAM O. JENSEN, JR.
Assistant County Attorney
Courthouse, Room 202
Towson, Maryland 21204 887-4420

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DRAFT

Richard W. Collins, Director
Waste Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

RE: Days Cove Reclamation Company

Dear Mr. Collins:

This office is familiar with the Days Cove rubble fill presently located in Gun Powder State Park and owned by the State of Maryland. In the past, because the property and rubble fill is owned by the State, ^{71C IN CASE NO 96-12 SP4} ~~the County~~ determined that it is not subject to the zoning regulations of Baltimore County. It is our understanding that the State and the present operator, Days Cove Reclamation Company, intend to expand the existing rubble fill to an area located within the silhouette of the existing rubble fill. The State has accepted a gift of assignment of the property and said property will be titled in the State of Maryland Department of Natural Resources immediately after the acquisition of such property. Accordingly, because a rubble fill will not operate or be constructed on such property unless it is within State ownership, we hereby confirm that the installation and operation of a rubble fill on such State property is not subject to the zoning regulations of Baltimore County.

Yours very truly,

Arnold Jablon

cc: Edward Dexter, Maryland Department of the Environment

PETITIONER(S) SIGN-IN SHEET

ADDRESS

10404 VINCENT FARM LANE WHITE MARSH 21162

10304 VINCENT FARM LA 21162

14 22 17 19

10314 Vincent Farm La 21162

16 17 18 19 20

1314 Spotswood Rd. 21237

10506 Vincent Farm Ln. White Marsh 21162

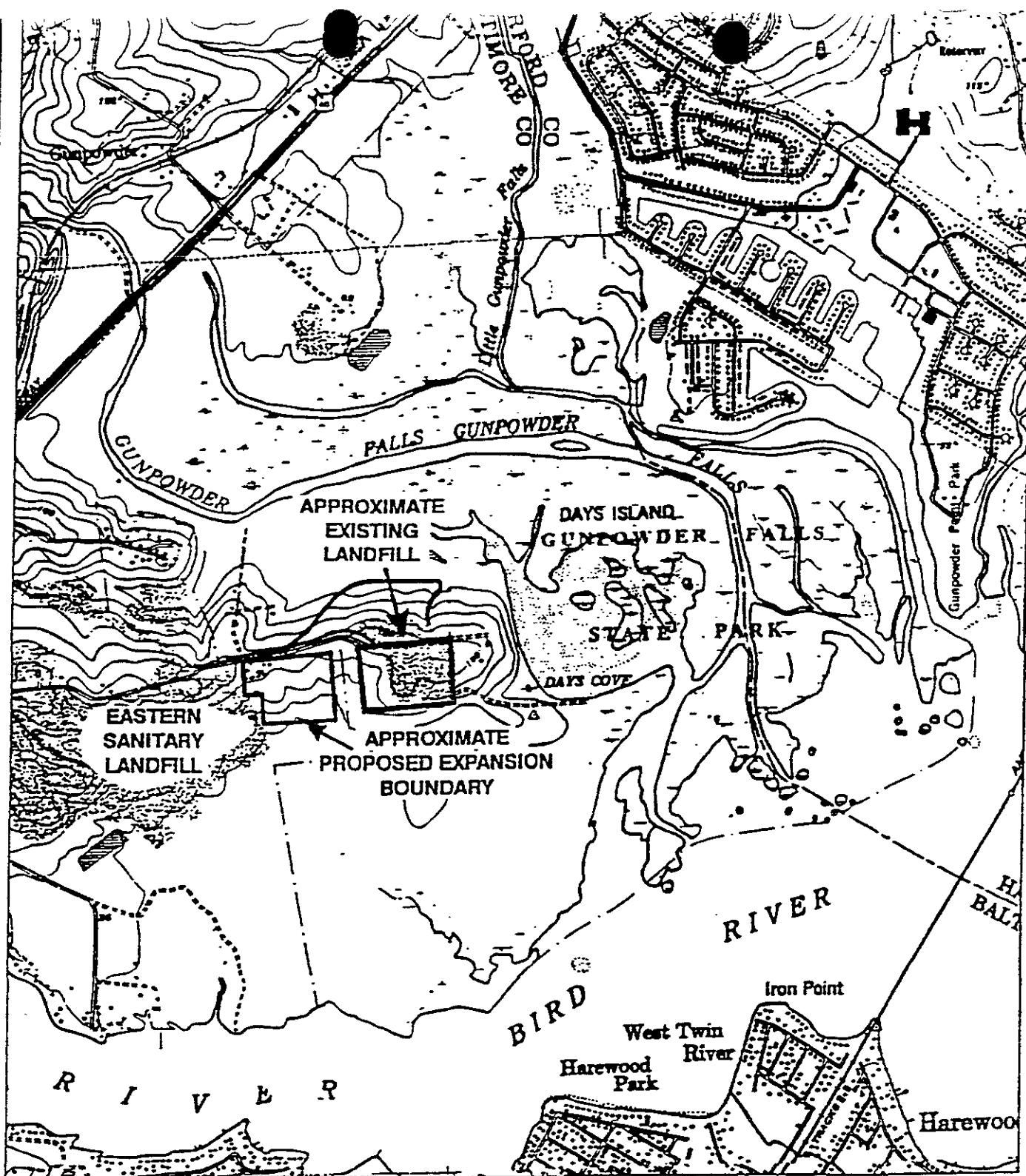
8814 COURTNEY AVE #1128

8814 Cowerton Ave 21/28

6912 N. River Dr. 21220

ACROLINE





SOURCE: U.S.G.S. 7 1/2 Topographic Series

**SITE VICINITY MAP
DAYS COVE RUBBLE LANDFILL EXPANSION**

DAMES & MOORE

UNCLASSIFIED

96-132-5 PH

130

R.C. 50

GUNPOWDER FALLS STATE PARK

DAYS COVE

APPROX.
PROPOSED
NEW
RUBBLE
LANDFILL

EASTERN
SANITARY
LANDFILL

R.C. 50

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R.C.
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R.C. 50

GUNPOWDER RIVER

R.C. 50



130

96-132-SPH

APPROVED
10/1/80

CASE NO. 96-132-SPH

White Marsh Civic Association, et al - Petitioner

S/s Days Cove Road, 5300' E. of the c/l
of Pulaski Highway (6425 Days Cove Road)

11th Election District

Appealed: 4/16/96

Pet No 1

AMIR KAHN :
CATHERINE A. KAHN
HOWARD GOLDSTEIN
and
SAMUEL GOLDSTEIN

Plaintiffs

v.

ROBERT PERCIASEPE
RICHARD W. COLLINS
ENVIRO-GRO TECHNOLOGIES
and
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Defendants

and

DEPARTMENT OF NATURAL RESOURCES

Inteviewer Defendant

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

Case No.: 75/337/91 CSP 1374

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BALTIMORE COUNTY, MARYLAND

Plaintiff

v.

ENVIRO-GRO TECHNOLOGIES

CHARLES L. PIEPER
and
STEVE PIEPER

Defendants

and

DEPARTMENT OF NATURAL RESOURCES

Inteviewer Defendant

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

CASE NO.: 91 CSP 1374

CONSOLIDATED

.....

MOTION FOR INTERLOCUTORY AND PERMANENT INJUNCTION

Baltimore County, Maryland, (County) Plaintiff, by its undersigned attorneys, hereby moves this Honorable Court, pursuant to Rules BB70

RECEIVED

1991

through BB77, of the Maryland Rules of Civil Procedure, to restrain and enjoin the Defendants, Enviro-Gro Technologies (EGT) from land applying, and Charles L. Pieper and Steve Pieper (Pieper) and the Department of Natural Resources (DNR) from accepting sewage sludge to and on the "Springdale Property" pursuant to MDE Permit S-91-03-2064-ABE issued on April 3, 1991, by the Maryland Department of the Environment.

Unless Defendants are so required, restrained and enjoined by Order of this Court, the County and the citizens surrounding the "Springdale" Property will suffer immediate, substantial and irreparable harm, loss and damage, which cannot be adequately remedied by an action in law.

The County requests that it not be required to file a bond in these proceedings.

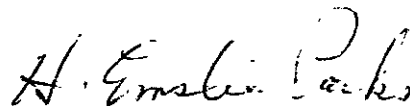
WHEREFORE, the Plaintiff prays this Honorable Court to:

a: Restrain the Defendant's EGT from land applying sewage sludge to the "Springdale Property".

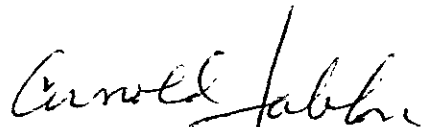
b: Restrain DNR and Pieper, t/a Pieper Brothers Farm, from accepting said sewage sludge on the "Springdale Property".

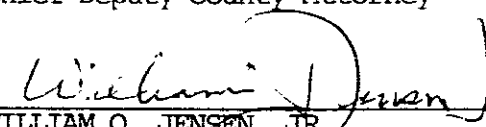
c. Require Enviro-Gro Technologies to apply for a special hearing before the Zoning Commissioner of Baltimore County for an interpretation of the applicability of any regulation impacting the utilization of sludge on the "Springdale Property".

d. And for such other and further relief as the Plaintiff's cause may require.



H. EMSLIE PARKS
County Attorney


ARNOLD JABLON
Chief Deputy County Attorney


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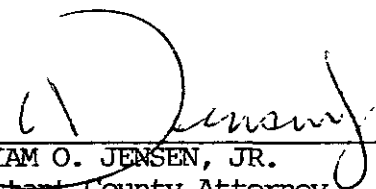
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2219, Second Floor, Baltimore, MD 21224, Attorney for Maryland Department
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CIRCUIT COURT FOR

BALTIMORE COUNTY

Case No.: 75/337/91 CSP 1374

V.

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Intervenor Defendant

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7. That on or about April 3, 1991, the MDE notified EGT that the Permit requested had been granted.

8. The issuance of said Permit did not include any of the conditions precedent requested by DEPRM, all of which were requested in order to protect the health, safety and public welfare of the citizens of Baltimore County who live in the community.

9. The property on which the sludge is to be utilized is adjacent to a watershed area and there is concern that there will be contamination caused by such utilization.

10. There is concern that there will be contamination of well and septic systems as a result of said utilization.

11. Environmental Art. 9-233 requires compliance with County requirements before a permit is to be issued.

12. The property at issue is a sewage sludge composting facility, and the Permit issued is not sufficient to satisfy the conditions established by Section 9-233, supra.

13. EGT, in addition to the instant permit, is required to receive a permit to install a sewage sludge composting facility on the Property.

14. The County was advised that EGT intended to begin spreading lime stabilized sewage sludge from the BRWTP to the 137 acre area of the Property, Gunpowder State Park, consisting of fields 1, 1E, 1H, 1G and 2; Jarrettsville Pike; and, Blenheim Road in Baltimore County, Maryland on TUESDAY, APRIL 16, 1991, and continue said spreading for the next seven (7)

days until the application of 890.5 dry-tons (6.5 dry-tons per acre x 137 acres per permit) was completed.

15. On April 15, 1991, the County filed a Petition to Suspend, Revoke or Modify the Permit with MDE, and have asked for an immediate stay of the Permit. No action on the Petition has been taken by MDE.

16. The County's allegations concerning the Defendant's failure to request a special hearing to determine if the use is exempt from the Baltimore County Zoning Regulations (BCZR) is contained in the Affidavit of James E. Dyer, Zoning Supervisor, attached to the County's Complaint as Plaintiff's Exhibit No. 2.

ARGUMENT

I.

BALTIMORE COUNTY ZONING REGULATIONS APPLY TO LAND OWNED BY THE STATE, BUT USED FOR PRIVATE ENTERPRISE.

Property owned by the State and operated for a public use is exempt from local zoning regulations. City of Baltimore v. State 281 Md 217, 223, 378 A.2d 1326, 1329 (1977). In City of Baltimore, the Court of Appeals determined that State owned property used by the State as a correctional institution is not subject to local regulations absent an intent by the General Assembly to subject the State to such regulations.

The issue presented in the case at bar, however, is not only whether local zoning regulations apply to State owned property leased to a private entity, but whether the particular use to which the property is subjected is a public use.

The first case to reach the appellate courts in Maryland to address this latter issue was Youngstown Cart. Co. v. North Point Peninsula, etc., 24 Md.App. 624, 332 A2d 718 (1975). In Youngstown, the State had acquired

property for a tunnel project, but had no immediate use for the land. The land was then leased to a trucking company which operated a terminal on the site. In analyzing whether the ECZR, which prohibit such use, applied to this land, the Court of Special Appeals considered whether the land was put to "public use" and determined that it does not. The use was proprietary, not governmental in nature. The zoning regulations applied.

Likewise, in City of Baltimore v. State Dept. of Health, 38 Md. App. 570, 381 A2d 1188 (1978), the Court of Special Appeals considered whether state owned property leased to a private, non-profit organization for the purpose of providing a home for teenage girls committed to the Department of Juvenile Services was exempt from local zoning regulations. In its analysis, the Court again looked to whether the use to which the land was being put was a "public use". Here, the Court ruled that it was and thereby exempt from local zoning regulations.

There appears to be at least two distinct tests in Maryland for determining "public use". The first test was enunciated in Arnsperger v. Crawford, 101 Md. 247, 61 A. 413 (1905). In Arnsperger, the Court of Appeals determined that "public use" means use or enjoyment by the public, and does not mean with public benefit, public utility, or public advantage. This definition was reaffirmed in Riden v. Phila. B&W RR Co., 182 Md. 336, 35 A2d 99 (1944). The second test for determining "public use" appears in Herzinger v. City of Baltimore, 203 Md. 49, 98 A.2d 87 (1953). Herzinger concerned a constitutional attack on a Baltimore City ordinance empowering the city to "take" property for public redevelopment purposes. The Court held that a taking may be for a "public benefit". In Youngstown, however, the Court distinguished Herzinger, stating that the "public benefit test seems to be limited to land development and redevelopment

projects, such as slum clearance, and it is not applicable to the instant case."¹

The issue here not only revolves around the use of the particular agricultural property owned by the State, and by whom, but whether the utilization of an alternative means of fertilizing such property becomes clothed with the sovereignty of the State.

In the context of eminent domain, the Court of Appeals has strayed from the definition of "public use" as used in Youngstown. In Prince George's County v. Collington Crossroads, Inc., 275 Md. 171, 339 A.2d 278, Judge Eldridge, writing for the Court, held that the taking of land to create an industrial development was for a "public use" rather than a private use. Although such a development was for private industry, the general economic benefit to the County was of a public nature. Collington and other cases like it, however, are defining "public use" in a different context. The present case concerns whether a use is "public", such that local zoning regulations would not apply to state owned property leased to a private entity. Clearly, the Youngstown case is most applicable here. In both Youngstown and the present case, land was acquired by the state for a legitimate purpose-in Youngstown, for a highway, here, for a state park.

¹At first blush, it may appear that City of Baltimore v. State Department of Health, supra, creates an anomaly in the law concerning "public use". After recognizing that the "public benefit test" is limited to Land Development and Redevelopment projects, the Court stated, "we eliminate the public benefit test from our consideration", at 1192. To determine, however, that the use being made of the property was a "public use", the Court stated that "it is being used by the State for the benefit of the general public...." at 1192. What the Court was determining, however, was that the property was actually being "used" by the State. The fact that the entity leasing the land was a "charitable organization" weighed heavily in the determination that the land was used by the State. See, however, Harker v. Board of Child Care. 561 A.2d 219 (Md. 1989) infra.

In both cases, the land was leased to private entities until the property was to be put to its ultimate use. The fact that the land in Youngstown was eventually going to be put to a "public use" did not prevent the Court from applying the strict "public use" test while the property was being leased to a trucking company. In Collington, the Court of Appeals held that "where the predominant purpose or effect of a particular condemnation action has been to benefit private interests, this Court has held that the taking is not for "public use". 339 A.2d at 287. In the case at bar, the property is being leased to farmers for their livelihoods. No doubt, this private interest far outweighs any interest the State may have in keeping the land clear for uncertain future development. Thus, even within the context of eminent domain, the use of the property fails to meet the definition of "public use". Clearly, the application of the Arnsperger "public use" test results in a private use. The public has no right to use or enjoy the land.

The Intervenor Defendant, Maryland Department of Natural Resources, gives much weight to the legislation that gives power to the Department. The General Assembly stated its policy concerning State-owned natural resources: "Forests, streams, valleys, wetlands, parks, scenic, historic and recreation areas of the State are basic assets. Their proper use, development and preservation are necessary to protect and promote the health, safety, economy and general welfare of the people of the State. It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of local economy, preservation of the natural beauty and promotion of the recreational and leisure interest throughout the State." Md. Natural Resource Code Ann. 5-102 (1090 Repl. Vol.). Further, the General Assembly intends that the Department shall

"unify, coordinate and promulgate policies, plans, programs and practices which insure the preservation, development, wise use and enjoyment of all the natural resources for greatest benefits to the State and its citizens." Md. Natural Resource Code Ann. 1-101(b) (1989 Repl.Vol.). The Department "may purchase and manage lands in the name of the State, suitable for forest culture, reserves, watershed protection, state parks, scenic preserves, historic monuments, parkways, and state recreational reserves....." Md. Natural Resource Code Ann. 5-207(a)(1) (1989 Repl. Vol.).

The Intervenor Defendant argues that the agricultural use is for a public purpose because the legislature has authorized such use as part of its management program, i.e., it is a transitional use between acquisition and ultimate development. However, all of the legislation cited by the Intervenor Defendant encourages maintaining land in its natural state. In any case, a potential or speculative use cannot now be considered, only the benefit that immediately inures to the private farmers, which is the sole effect of the use of the property. Therefore, even applying the more liberal "public use" test cited in Collington, the use must be deemed private.

Intervenor Defendant also maintains that the land application of sewage sludge is a public use in and of itself. In support thereof, it cites Section 5-217 of the Natural Resources Article, which states, "A person may not dispose of raw sludge sewage on State park land or State forest land, unless the disposal is part of a program designed and operated by the Department of Natural Resources, or the Department of the Environment." The disposal of sewage sludge in the present case is derived from a private contract between Defendants Enviro-Gro and the Piepers. Neither the Department of Natural Resources nor the Department of the Environment

had any involvement in the disposal of the sludge, aside from the granting of the permit by Department of the Environment and the relationship as "landlord" of Department of Natural Resources to the Piepers. The disposal of the sludge in no way is part of a program designed and operated by the Departments.

Intervenor Defendant argues that the policy instituted by the Secretary for Natural Resources making State lands available for sewage sludge disposal constitutes a program, thus making such disposal a public use. The logic of this argument fails for two reasons. First, the language of Section 5-217 is merely permissive language. Although the activity is authorized by the General Assembly if the disposal is part of a "program", the General Assembly gives no indication that it intends to preempt the field of sewage sludge disposal on State land. Indeed, in Ad + Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A.2d 893, 903 (1986), the Court of Appeals noted, "Although the General Assembly has enacted extensive statewide legislation in the field of sewage management, the legislation manifests a general policy of fostering local control under state supervision, rather than to totally prohibit the enactment of laws on the subject at the local level." In Ad + Soil, the State was prohibited from issuing a permit for a sewage sludge composting facility unless the facility complied with local zoning requirements. The General Assembly, he therefore, intended state sludge legislation to apply concurrently with local zoning laws.

The second reason the Intervenor Defendant's logic fails is that the General Assembly could not have intended "program" to have such a broad meaning. Once again, Section 5-217 states, "A person may not dispose of raw sludge sewage unless the disposal is part of a program...."

(emphasis added). Clearly, the intent of the legislature was to prohibit disposal of sludge, except in certain specific, controlled circumstances, and to argue that the Secretary's policy is a "program", as used in the statute, is disregarding the true intent of the General Assembly. The Intervenor Defendant apparently argues that the Secretary may simply make a sweeping policy statement to completely divest the statute of any force. This cannot be what the legislature intended when it enacted Section 5-217.

In Harker, a nonprofit corporation appealed decision of County zoning board that held that the Baltimore County zoning ordinances were applicable to child care facilities. The Methodist Board argued that the State's exemption from BCZRs extends to property owned by nonprofit charitable corporation, which that corporation uses pursuant to a contract with the State to provide governmental services mandated by State law. Chief Judge Murphy, speaking for the Court, said, "That the exemption from county zoning regulations accorded in City of Baltimore v. State, supra, extends to the State agencies and instrumentalities is entirely manifest. Plainly, the Methodist Board is not a unit of State government." at p. 224. Continuing, the Court stated, after citing several authorities, "These authorities make it clear that the rights to exemption does to turn on the use being made of the property by the party claiming the exemption, but upon its ownership by the State or its instrumentalities."

On the subject of preemption in the field of licensing and regulation of child care facilities, the court referred back to Ad + Soil, supra, wherein, "we found no implied preemption of local zoning ordinances governing the location of sewage sludge facilities, despite the existence of pervasive statewide legislation requiring permits for sewage sludge

facilities and extensively governing the storage and distribution of sewage sludge."

EGT and Pieper will argue that if they are restrained from applying the sewage sludge to the Property, Pieper will lose a growing season and EGT will have to haul the sludge farther away. This then evolves into an economic issue; certainly, it is not a public use.

In summary, the land application of sewage sludge is not exempt from local zoning regulations where two private parties contract to have the sludge applied to the land.

II.

THE DETERMINATION OF WHETHER PROPERTY IS BEING USED AS A PUBLIC USE OR AS A PRIVATE USE IS TOTALLY WITHIN THE PURVIEW OF THE ZONING COMMISSIONER.

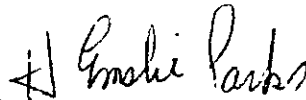
Section 500.7 of the Baltimore County Zoning Regulations states, "The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals, as hereinafter provided." The proper procedure requires the Defendants to petition the Zoning Commissioner for the determination of whether the use of the property is exempt from the regulations. An administrative process has been devised especially for this purpose, which the Defendants have failed to exhaust, Quesenberry v. Washington Sub. San Comm. 311 Md. 417, 535 A2 1079.

All the cases discussed have originated with the local zoning authority: City of Baltimore v. State Dept. of Health, an appeal by the City from an order reversing revocation of a zoning permit by the Board of Municipal and Zoning Appeals; Ad & Soil v. County Commissioner, zoning violation and stop work order and an appeal to the County Board of Appeals;

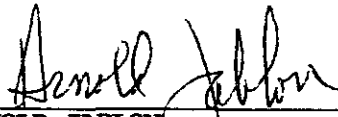
Youngstown v. North Point, etc., hearing before the Zoning Commissioner concerning operation truck facility. Board v. Harker, Special Hearing under 500.7 of BCZR to determine whether the proposed facility was entitled to an exemption not to allow the Zoning Commissioner to rule on whether the proposed use is exempt would evade the County's administrative process.

Therefore, the administrative process established pursuant to Art. 25A, Section 5, et seq, of the Annotated Code, Sections 500.7, and 502.1, of BCZR, must be satisfied prior to the issuance of the instant permit.

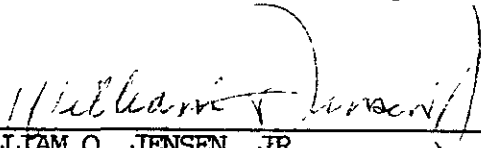
Respectfully submitted,



H. EMSLIE PARKS
County Attorney



ARNOLD JABLON
Chief Deputy County Attorney



WILLIAM O. JENSEN, JR.
Assistant County Attorney
Courthouse, Room 202
Towson, Maryland 21204 887-4420

CERTIFICATION OF MAILING

I hereby certify that on this 2 day of May, 1991, a copy of Memorandum of Law in Support of Interlocutory and Permanent Injunction was mailed, postage prepaid, to Joseph S. Kaufman, Esq. and Lawrence M. Garten, Esq., Fedder & Garten Professional Association, 2300 Charles Center South, 36 S. Charles Street, Baltimore, MD 21201, Attorneys

AMIR KAHN
CATHERINE A. KAHN
3939 Falls Road
Baltimore, Maryland 21211
HOWARD GOLDSTEIN
12015 Ridge Valley Drive
Owings Mills, Maryland 21117
and
SAMUEL GOLDSTEIN
12015 Ridge Valley Drive
Owings Mills, Maryland 21117
Plaintiffs

v.

ROBERT PERCIASEPE, Secretary
RICHARD W. COLLINS, Acting Director
Department of Environment
Hazardous and Solid Waste
Management Administration
2500 Broening Highway
Baltimore, Maryland 21224
ENVIROGRO TECHNOLOGIES
Post Office Box 24145
Baltimore, Maryland 21227
and
SKIP PIEPER
3159 Troyer Road
White Hall, Harford County,
Maryland 21161
Defendants

.....

BALTIMORE COUNTY, MARYLAND
a body corporate and politic
400 Washington Avenue
Towson, Maryland 21204

Plaintiff

v.

ENVIRO GRO TECHNOLOGIES
1540 Caton Center Drive
Baltimore, Maryland 21227

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

Case No.: 75/337/91 CSP 1374

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

Ref No 2

(10) gwl

FILED APR 23 1991

MICROFILMED

Serve On:	:	CASE NO.: 75/337/91 CSP 1375
James E. Baker, Jr.	:	
100 Light Street	:	
6th Floor	:	
Baltimore, Maryland 21202	:	
Resident Agent	:	
	:	
and	:	
	:	
CHARLES L. PIEPER	:	
and	:	
STEVE PIEPER, individually	:	CONSOLIDATED
and trading as Pieper Brothers Farm	:	
3159 Troyer Road	:	
White Hall, Harford County	:	
Maryland 21161	:	
	:	
Defendants	:	

.

COMPLAINT FOR INTERLOCUTORY AND PERMANENT INJUNCTION, SHOW
CAUSE ORDER AND MOTION TO EXTEND EX PARTE INJUNCTION

Baltimore County, Maryland, a body corporate and politic (County), Plaintiff by its undersigned attorneys, pursuant to the BB Rules of the Maryland Rules of Procedures, sues Enviro Gro Technologies, Inc. (EGT), a Maryland corporation, and Charles L. Pieper and Steve Pieper, individually and trading as Pieper Brothers Farm (Pieper), Defendants, and in support thereof states as follows:

1. The above cases have been consolidated for all purposes, by ORDER of this Court dated April 17, 1991.
2. The County hereby incorporates and adopts into this Complaint paragraphs 1-9 and Exhibits 1 and 2 of its Petition for Ex Parte Injunction previously filed, as if same were more particularly set forth herein.
3. The Defendant's have not filed a Motion for Relief against the Ex Parte Injunction signed on April 15, 1991, or requested a Hearing pursuant to Rule BB72.

4. The Maryland Department of the Environment (MDE) has not responded to the County's Petition to Suspend, Revoke or Modify Sewage Sludge Permit No. S-91-03-2064-ABE (Permit), nor have they stayed the operation of said permit nor set the matter in for a Hearing.

5. The Defendants have not requested a Special Hearing (Hearing) before the Baltimore County Zoning Office (BCZO), in accordance with Baltimore County Zoning Regulations (BCZR) 500.7, to determine if the use is exempt from the BCZR.

6. The Defendants, Pieper, have heretofore used other means of fertilization on the Property for the growing of agricultural crops and would be obtaining free fertilizer from EGT.

7. The Defendant, EGT, has disregarded its responsibility to obtain zoning approval as required by the BCZR. EGT was advised by MDE that the issuance of the Permit did not excuse the Permittee's compliance with local zoning and land use requirements. See letter dated April 15, 1991 from MDE to EGT, Exhibit 3.

8. The County seeks to maintain the status quo between the parties until such time as this Honorable Court has addressed and resolved the merits of this matter, or otherwise has determined that the County has no legal right to proceed and until:

(A) MDE acts on the County's Petition; and

(B) the Defendants request a Special Hearing before the BCZO, in accordance with BCZR 500.7, and a determination is made on the merits.

9. The losses that will be sustained by the County and residents of the area if the Injunctive Relief is denied will far outweigh any private gain or potential harm which any of the Defendants would incur as a result of the Court's action.

10. If the Defendants are not restrained from utilizing the Property as a sewage/sludge disposal site, immediate, substantial and irreparable harm will be suffered by the County, as well as all residents in the area, which cannot be remedied adequately by an action at law for damages.

WHEREFORE, the County respectfully prays:

1. That this Honorable Court issue an Order granting the Plaintiff an extension of the Ex Parte Order signed April 15, 1991.

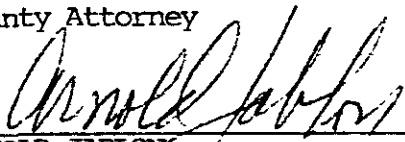
2. That after an adversary hearing, this Honorable Court issue an Order granting Plaintiff an Interlocutory Injunction restraining and enjoining Defendants from land applying sewage sludge to the "Springdale Property" pursuant to the MDE Permit S-91-03-2064-ABE issued on April 3, 1991.

3. That after a determination of the merits in this action, this Honorable Court issue an Order granting Plaintiff a Final Injunction restraining and enjoining the Defendants from land applying sewage sludge to the "Springdale Property" pursuant to the MDE Permit S-91-03-2064-ABE issued on April 3, 1991.

4. That the Plaintiff be relieved of the requirement from posting bond.

5. That Plaintiff be granted such other and further relief as this Court may deem just and proper.


H. EMSLIE PARKS
County Attorney


ARNOLD JABLON
Chief Deputy County Attorney

FILED APR 23 1991

the "Springdale Property" (Property). The Injunction is set to expire by its terms on April 25, 1991.

3. The Defendants have not requested a hearing for relief against the Ex Parte Injunction nor have they requested a Special Hearing pursuant to BCZR 500.7 in the Baltimore County Zoning Office.

4. Should the Injunction be allowed to expire without a resolution of the issues and the Defendants are allowed to land apply sewage sludge to the Property pursuant to MDE Permit No. S-91-03-2064-ABE (Permit), immediate, substantial and irreparable harm will result to the County and the citizens surrounding the Property, which cannot be remedied adequately by an action in law for damages.

I hereby declare and affirm under penalties of perjury that the above recited is true and correct to the best of my knowledge, information and belief.

4/22/91
DATE

William O. Jensen, Jr.
WILLIAM O. JENSEN, JR.
Assistant County Attorney

WHEREFORE, the County prays this Honorable Court:

(A) Extend the Injunction for an additional ten (10) days, beginning April 26, 1991.

(B) Relieve the County from the requirement of posting bond.

(c) And for such other and further relief as the County's cause may require.

H. Emslie Parks
H. EMSLIE PARKS
County Attorney

BALTIMORE COUNTY, MARYLAND

Plaintiff

vs.

ENVIRO-GRO TECHNOLOGIES, INC.,

CHARLES L. PIEPER and STEVE PIEPER

t/a Pieper Brothers Farm

Defendants

* * * * *

AMIR KAHN, et al.

Plaintiffs

vs.

ROBERT PERCIASEPE, Secretary,

et al.

Defendants

* * * * *

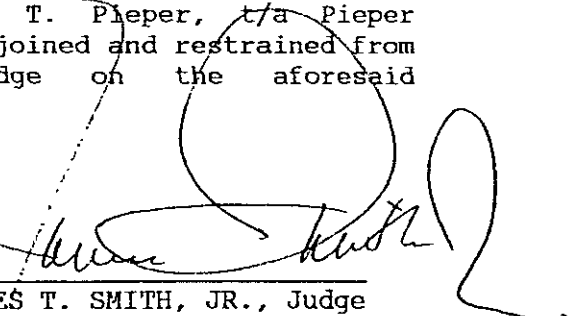
INTERLOCUTORY ORDER

Upon consideration of Plaintiffs' Motion for an Interlocutory Injunction and hearing having been held and testimony taken and argument of counsel for all parties having been heard on May 3, 1991,

FILED MAY 6 1991
14 EJA
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and without the necessity of posting bond by Baltimore County, Maryland, it is this 3rd day of May, 1991, by the Circuit Court for Baltimore County, ORDERED:

1) That, unless and until a final administrative determination by the zoning authorities for Baltimore County of their right to do so, the Defendant, Enviro-Gro Technologies, Inc. be and it is hereby enjoined and restrained from applying land sewage sludge to the "Springdale Property" leased by the Department of Natural Resources to Steven T. Pieper under lease dated August 30, 1990, and the Defendants, Charles L. Pieper and Steven T. Pieper, t/a Pieper Brothers Farm, are hereby enjoined and restrained from accepting said sewage sludge on the aforesaid "Springdale Property".



JAMES T. SMITH, JR., Judge

JTS/ss

Copy: H. Emslie Parks, Esq.
Arnold Jablon, Esq.
Joseph S. Kaufman, Esq.
Lawrence M. Garten, Esq.
Thomas A. Deming, Esq.
Marianne D. Mason, Esq.
Sean L. Coleman, Esq.
J. Joseph Curran, Jr., Esq.
Robert J. Carson, Esq.
Randall M. Lutz, Esq.
William O. Jensen, Jr., Esq.
Eileen E. Powers, Esq.
Rosemary Sweeney, Esq.
Paul O'Connell, Esq.

IN THE MATTER OF:

DAYS COVE RUBBLE LANDFILL
EXPANSION

GUNPOWDER FALLS STATE PARK

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No.: 96-132-SPH

* * * * *

PETITIONERS' MEMORANDUM

led No 3

STATEMENT OF FACTS

On November 28, 1994, Days Cove Reclamation Company filed a Refuse Disposal Permit Application with the Maryland Department of the Environment. With the application, a Phase I Preliminary Report also was filed with the Maryland Department of the Environment. The application and report pertained to a 27 acre parcel zoned R.C.2 on which a 17 acre or 20 acre¹ landfill was proposed. The property is currently owned by the State of Maryland to the use of the Department of Natural Resources, for the use of the Gunpowder State Park and is proposed to be leased to Days Cove Reclamation Company. Under the terms of the proposed lease agreement, the project would be operated solely by Days Cove Reclamation Company. The Company would determine the tipping fees, hire the personnel, determine the appropriate customer base, and accept or reject fill material in its sole discretion. Also under the proposed lease, The Maryland Environmental Service would be

1

The application called for a 17 acre rubble land fill but the materials filed with the application called for a 20 acre landfill.

LAW OFFICE

HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX: (410) 825-4923

MICROFILMED

THIS DEED, made this 29th day of December, 1986 by and between STANLEY J. SMUCK, JOSEPH I. SMUCK, and ROC CORPORATION, a body corporate of the State of Maryland, parties of the first part, "GRANTORS"; and the STATE OF MARYLAND, to the use of the Department of Natural Resources, party of the second part, "GRANTEE".

WITNESSETH: that in consideration of the sum of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000.00), the receipt of which is hereby acknowledged, the said Grantors do hereby grant, convey and assign unto the said Grantee, its successors and assigns, in fee simple, all those lots of ground situate in the Eleventh (11th) Election District of Baltimore County, in the State of Maryland, and described in the attached "Exhibit A".

TOGETHER WITH the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining, and; all mineral rights to twelve (12) acres currently permitted to the Genstar Stone Products Company by the Water Resources Administration in permit number 77-S-RO-133. 28.00

In addition the Grantor agrees:

- (1) to relocate all tenants currently occupying property by January 1, 1988;
- (2) to cause the razing, as a contribution in kind, and grading and landscaping the grounds surrounding the manor house (Environmental Education Center and adjacent outdoor classroom) by January 1, 1988. Landscaping will be accomplished in accordance with agreed to specifications, including, but not limited to a gravel entrance road to the Environmental Education Center from the lake area;
- (3) to cause to be constructed, as a voluntary contribution in kind, a 50-space parking lot for the environmental education center by July 1, 1987;
- (4) to cause the landscaping for the berms adjacent to the rubble fill area and fill eroded bank adjacent to lake as specified by the Department of Natural Resources; as well as place electric underground adjacent to berm and road, and;
- (5) to execute a confirmatory deed citing legal description of the property within 30 days after receipt of survey.

In exchange for which Grantee agrees to name the environmental education center The Harry A. Smuck Sr., Environmental Education Center,

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE

DATE 1-7-87-1-

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY MARYLAND
Per Joseph I. Smuck
Authorized Signature
Date 1/7/87 Sec. 11-35

EXH. A

STATE DEPARTMENT OF
ASSESSMENTS & TAXATION

1-7-87

CLERK DATE

TO HAVE AND TO HOLD the said described lots of ground and premises, unto and to the use of the said Grantee, its successors and assigns, in fee simple, but reserving unto the Grantor the following:

- (1) the mineral rights to the permitted area saving and excepting the above-mentioned twelve (12) acres and said Grantor is authorized to continue mining on said permitted area for a period of 10 years;
- (2) the right to the sludge area as permitted by State Department of Health and Mental Hygiene for a period not to exceed four and one-half (4 1/2) years from closing, and;
- (3) the right to operate rubble land fill as permitted by the State Department of Health and Mental Hygiene in permit number 86-03-00-09A and derive income not to exceed \$4,000,000 or not to exceed a maximum period of 6 1/2 years, whichever shall first occur.

AND the said Grantors covenant that they will warrant specially the property hereby granted and execute such further assurance of the same as may be requisite.

WITNESS the hands and seals of the said Grantors as of the date first above written.

WITNESS:

Stanley J. Smuck

Stanley J. Smuck (SEAL)
STANLEY J. SMUCK, Grantor

Joseph I. Smuck

Joseph I. Smuck (SEAL)
JOSEPH I. SMUCK, Grantor

ROC CORPORATION

Joseph I. Smuck

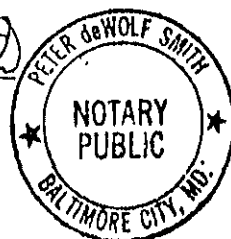
BY: *Joseph I. Smuck* (SEAL)
JOSEPH I. SMUCK
11/11/86

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 29TH day of DECEMBER, 1986, before me the subscriber, a Notary Public of the State and County aforesaid, personally appeared STANLEY J. SMUCK, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within deed, who signed the same in my presence, and acknowledged that he executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal the date above written.

Peter deWolf Smith
NOTARY PUBLIC



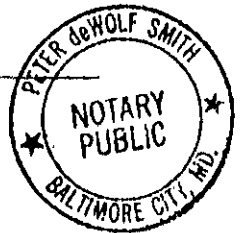
My Commission Expires: July 1, 1990.

STATE OF MARYLAND, COUNTY OF BALTIMORE , TO WIT:

I HEREBY CERTIFY, that on this 29TH day of DECEMBER, 1986, before me the subscriber, a Notary Public of the State and County aforesaid, personally appeared JOSEPH I. SMUCK, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within deed, who signed the same in my presence, and acknowledged that he executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal the date above written.

Peter deWolf Smith
NOTARY PUBLIC



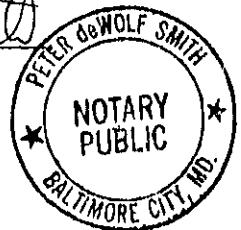
My Commission Expires: July 1, 1990.

STATE OF MARYLAND, COUNTY OF BALTIMORE , TO WIT:

I HEREBY CERTIFY that on DECEMBER 29, 19 86, before me, a Notary Public of the State of Maryland, personally appeared JOSEPH I. SMUCK, who acknowledged himself to be the PRESIDENT of the Grantor Corporation, and that he, as such PRESIDENT, being authorized so to do, executed the foregoing Deed for the purposes therein contained by signing, in my presence, the name of the Corporation by himself as PRESIDENT, and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the Grantor Corporation.

WITNESS my hand and Notarial Seal.

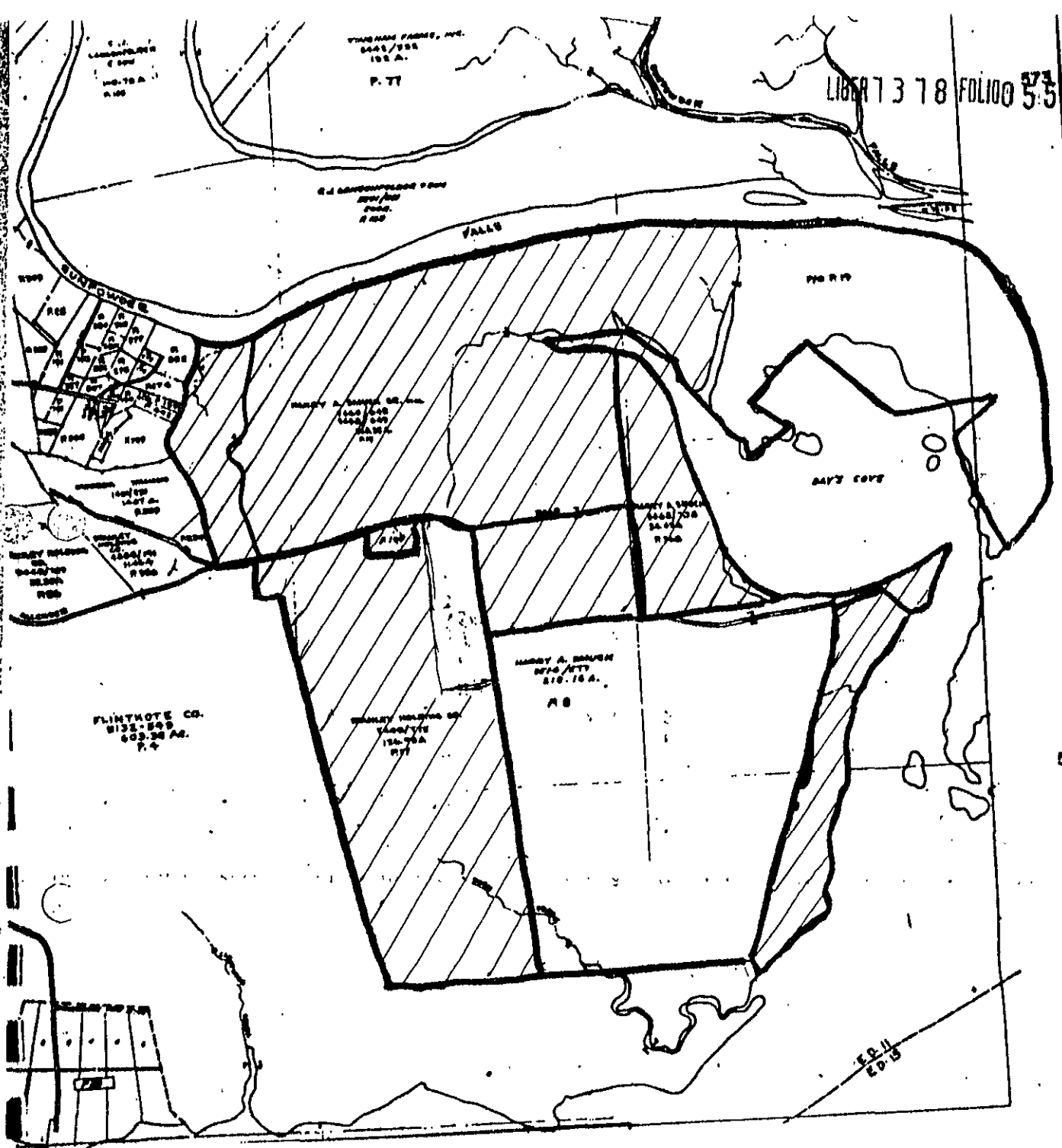
Peter deWolf Smith
NOTARY PUBLIC



My Commission Expires: July 1, 1990.

Return To:

MONUMENTAL TITLE CORPORATION
MONUMENTAL TITLE BUILDING
SEVERNA PARK, MARYLAND 21146



Properties of Joseph & Stanley Smuck

 : Land to be acquired

Exhibit 'A'
Page 1

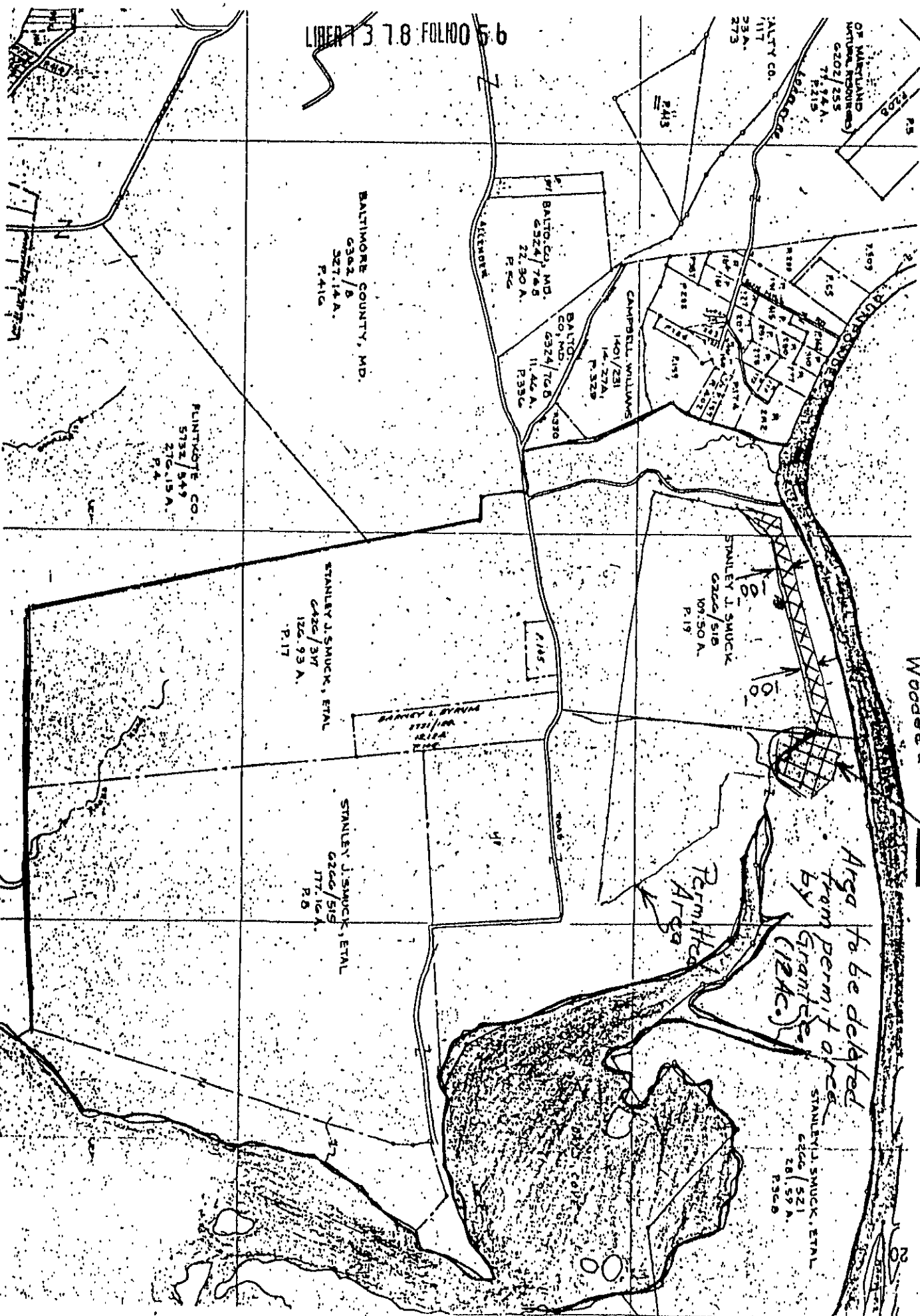
12 AC to be released by permit.
or from existing permit.

Wooded area

Area to be deleted
from permit area
by Granting
(124C)

Permitted
Area

LIBERTY 3 7.8 FOLIO 56



Being all those parcels of ground comprised of the following:

Tax Parcel 17 containing 126.93 acres as recorded among the Land Records of Baltimore County in Liber 6426, folio 317;

Tax Parcel 19 containing 109.50 acres as recorded among the Land Records of Baltimore County in Liber 6266, folio 518;

Tax Parcel 105 containing 2.2 acres as recorded among the Land Records of Baltimore County in Liber 6624, folio 542;

Part of Tax Parcel 368 containing 144 acres, which is the most westerly section of said parcel which is recorded among the Land Records of Baltimore County in Liber 6266, folio 521;

The second Tax Parcel 368 containing 33.434 acres recorded among the Land Records of Baltimore County in Liber 6266, folio 521;

Part of Tax Parcel 8 containing 40 acres which is the most northerly section of Parcel 8 as recorded among the Land Records of Baltimore County in Liber 6266, folio 515.

Containing 456 acres shown as cross hatched in Exhibit 'A' Page - 1 - which is attached and part of this Deed.

BALTIMORE COUNTY
ZONING PLANS
ADVISORY COMMITTEE



*Ref
for ID only*

PETITION AND SITE PLAN

EVALUATION COMMENTS

MICROFILMED

MICROFILMED

Nottingham Improvement Association, Inc.

(NOTTINGHAM)

Baltimore, Maryland 21237

November 7, 1995

My name is Marie Simoes, and I live at 1314 Spotswood Road in Nottingham, Maryland. That community is part of the White Marsh area. I am president of the Nottingham Improvement Association, on the Board of Directors of the White Marsh Civic Association, and an officer of the Eastern Baltimore County Community Council comprised of numerous community groups in Eastern Baltimore County.

I have been concerned for years over the proliferation of landfills and waste disposal facilities in Eastern Baltimore County. Over a dozen and a half such facilities exist contaminating in varying degrees our air and water for the greater good of the area. The time has come to say enough, especially when we are talking of using our parkland as a refuse site.

For years the Department of Natural Resources coveted the Days Cove property as a resource for the Gunpowder State Park. It was such a jewel that they gave up their Master Plan adopted in 1983 for the sake of acquiring Days Cove. Now, they want to dig it up and put in a landfill. This is not the filling of an old quarry, of which we have many. This is not the reclamation of land. This is the using of land so that private entities can profit heavily. I have seen the trucks with out-of-state tags lined up waiting to get into the nearby rubble fill, so I do not know how you can say this is for our benefit. I know you can not regulate to keep them out.

I believed it when I was told by the Department that all

Pat. Proff #1

MICROFILMED

rubble fills would be lined in the future. I do not think that liners will solve all the problems or that they are guarantees against bad practices or accidents. A liner, however, is absolutely essential for this landfill, situated as close as it is to the water. It simply is not right for the state to have two standards, one for landfills where citizens are concerned and one for landfills on state property, where there are few immediate neighbors and only our public trust to be injured.

I also am concerned over the lack of local oversight. The county is requiring public water for a wood chipping operation and limits the height of stockpiles. Where are the restrictions on this operation? There was a real mess when a fire occurred at the Eastern landfill because of the lack of public water. A mere water truck won't be of help. The county should have jurisdiction over a private landfill even if it is on state property, and these permits should be withheld until that determination is made.

Attention Carroll Holzer

W
C A
M

WHITE MARSH CIVIC ASSOCIATION

P.O. Box 314

White Marsh, Maryland 21162

January 25, 1994

Maryland Department of the Environment
Waste Management Administration

The White Marsh Civic Association, wishes to go on record as supporting the Bowerman-Loreley Beach Community in their opposition to the renewal of the State Refuse Disposal and State Discharge permits to JWP Environmental Services Company. JWP operates Days Cove Rubble Landfill located at 6425 Days Cove Road.

Opposition is based on several facts concerning the operation of a rubble landfill at that location.

1. The fact that the rubble landfill did not have a liner when originally constructed.

2. The landfill was developed in an area that had once been a sand and gravel mining operation. Because of this, there is a possibility of leachate from the rubblefill getting into the ground water.

3. The fact that the landfill is close to the Bird River, the possibility of leachate from the landfill further polluting the river is a concern.

4. The fact that people living across the Bird River in Bird River Beach, have had problems with their drinking water from wells being fouled by ground water seepage is a concern.

5. The fact that fish caught in the Bird River were tested and found to be unfit for human consumption, is a concern. The fish had lacerated livers.

6. The fact that leachate forms when the materials placed in a landfill become wet from rain or snow. It is our belief that it is physically impossible to keep all water from draining into the materials in a rubble landfill.

7. The fact that the four or five other landfills had the water tested in their test wells and it was found that they all contained the same 22 substances in varying quantities that are typical to rubble landfills, is a concern.

8. The fact that the area being used is parkland owned by the State of Maryland, we feel that it should not be leased for other purposes.

MICROFILMED

Ref Ref # 2

The only solution that we can see to correct any possible future damage to the environment is to discontinue using it as a rubblefill, cap it off with an impervious surface, and return it to park use.

It can be noted that Baltimore County has granted a special exception to the Honeygo Reclamation Corporation to develop a rubble landfill at Route 7 and Silver Spring Road. The Zoning Hearing Officer required the installation of a liner as one of the restrictions imposed in order for the rubblefill to become operational. Requiring a liner will make the rubblefill a little safer for the environment.

It can also be noted that the Federal Government is involved in a cleanup at Aberdeen Proving Grounds for the Carroll Island and Graces Quarters areas. Both areas are near the Bird River and Gunpowder River. The government dug holes and dumped materials into unlined pits and covered them with dirt. The cleanup in this area will cost in the neighborhood of one billion dollars through the "Superfund."

We realize that the laws or the technology were not in place when the Days Cove Landfill was developed, therefore, that which has already been done cannot be undone. However, we can prevent the situation from getting worse by discontinuing the rubble fill operation. If we are to clean up the Chesapeake Bay, we must start by cleaning up the streams and rivers that feed it. By capping off and sealing an unlined rubblefill, we feel would be a step in the right direction.

Adam E. Paul, Sr.
Adam E. Paul, Sr.
President

Attention Carole Holzer

W
C A
M

WHITE MARSH CIVIC ASSOCIATION

P.O. Box 314

White Marsh, Maryland 21162

September 19, 1995

Maryland Dept. of the Environment
Waste Mangement Administration

My name is Adam Paul, and my address is 10404 Vincent Farm Lane in White Marsh. I am the President of the White Marsh Civic Association in the area this landfill is being placed. Several years ago our organization first became aware of the existing rubble full and opposed the vertical addition to it at the request of the Lorely Beach Community Association (See attached letter). At a later date Lorely Beach Community Association requested that we withdraw our opposition because they had made a settlement with JWP Environmental Services and were no longer opposing the addition to the rubblefill.

Now new owners are proposing a new fill. They really are not reclaiming anything, however, for they are going to dig a seventy foot deep hole and take out over 900,000 cubic yards of dirt and sell the excess. To do all this in a state park is deorable. To do this with the understanding that there will be contamination of the waterways and wetlands is worse.

My association formed out of concerns for the deterioration of our community and way of life. We were deeply concerned about the health of Bird River and it tributaries. Our members spent thousands of dollars to ensure that the Honeygo landfill would be lined and that the Honeygo tributary of Bird River would be protected against landfill contamination. Now, the state is saying it's okay to pollute the very rivers we have fought to protect and to have restored. It is not okay. It is disgraceful for the State, on State Park land where there is no question that the ground water will be polluted, to say that a little pollution won't hurt, why bother to line any fill? Isn't it time the state lives up to its promise to the community under its proposed regulations and require that all

Pet Proffer # 3

MICROFILMED

fills, especially ones so close to the bays and rivers we have sworn to resotre, be lined? There are millions of dollars being made here. Millions have been made at taxpayer's expense and apparently you are willing to have millions more made despite the contamination issue.

I would like to remind MDE of the letter I received from Richard W. Collins concening him needing our community's help in preparing an amendment to Comar requiring liners in all landfills. The state geologist gave a report on November 17, 1994 at a meeting held by the Department of the Environment concerning the need for liners in all landfills in which he emphasized the need for requiring a liner. (See attahed letter and copy of Comar regulation).

My Association is willing to have it's experts submit to you the documentation that will support the contamination. Already, their review of the application suggests that the soil will not contain the leachate from the fill. Rusting metals will leach through the soils and turn the streams red. This is exactly what your department wanted to prevent by offering legislation and regulations. I cannot understand how you came to approve this, but you should be ashamed, and we will oppose it even if you are willing to let the pollution continue.

Respectfully,

Adam E. Paul, Sr.

President

PIPER & MARBURY

CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3010
410-539-2530
FAX 410-539-0489

WASHINGTON
NEW YORK
PHILADELPHIA
LONDON
EASTON MD

WRITER'S DIRECT NUMBER

410-576-1792

October 20, 1993

RECEIVED

OCT 22 1993

SOLID WASTE DIVISION

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John L. Lewis
Planner II
Baltimore County Department of
Permits and Licensing
111 W. Chesapeake Avenue
Room 100
Towson, MD 21204

Re: Days Cove Rubblefill

Dear Mr. Lewis:

We are writing on behalf of Days Cove Reclamation Company in connection with the proposed vertical extension of the Days Cove Rubble Landfill. We understand that the County has not issued the certification requested in connection with Days Cove's pending Maryland Department of the Environment ("MDE") permit application because of concerns relating to compliance with the Critical Areas law. The Critical Areas Commission has confirmed its view that the requested vertical extension does not trigger Critical Areas requirements. We are writing to urge the County to issue the certification as soon as possible because the landfill is nearing full capacity.

The pending permit application deals solely with an increase in the height of the rubble landfill. No additional critical area will be affected. The State Department of Natural Resources ("DNR") specifically described Days Cove's request for vertical extension to the Critical Areas Commission in correspondence dated March 19, 1993, which is attached. The Commission responded that because this "minor redevelopment" of an existing facility would impact no

additional Critical Area, no Commission approval would be required. The Commission's March 26, 1993 letter is attached.

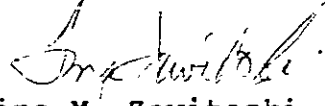
Under the State regulations promulgated by the Critical Areas Commission, new development and expansion of waste disposal facilities are generally not permitted in the Critical Area, with some exceptions. COMAR 27.01.02.02. "Redevelopment," a defined term, is not prohibited. The view expressed by the Commission in its March 26, 1993 letter to DNR confirms that the "new development and expansion" prohibition is not triggered by the proposed vertical-only extension of the Days Cove facility.

The Baltimore County Code does not itself address this issue (see Sections 26-436 et seq. and 14-256 et seq.). Section 105 of the Baltimore County Zoning Regulations prohibits the "establishment or expansion" of waste disposal facilities in Critical Areas. Redevelopment that does not affect any additional critical area, like that proposed by Days Cove, is not prohibited by either the County or State regulations.

The proposed vertical height extension will not change the footprint of the existing facility; it will not affect additional critical areas. The proposed activity is not subject to either the State or County prohibitions against expansions into critical areas. Inasmuch as the Critical Areas Commission has expressed its view that the proposed activity is not subject to Commission approval, we urge you to issue the required certification to MDE as soon as possible.

Thank you for your attention to this matter. We know that you have been dealing with Roger Copp at Dames & Moore regarding this request and both he and I would be pleased to discuss any of these issues with you at your earliest convenience.

Very truly yours,


Gina M. Zawitoski

cc: Mr. Edward Dexter
(via Certified Mail/Return Receipt Requested)

Section 105--PROHIBITED USES - THE ESTABLISHMENT OR EXPANSION OF
THE FOLLOWING USES IS PROHIBITED IN ALL CHESAPEAKE BAY
CRITICAL AREAS: [Bill No. 32, 1988.]

- A. Solid or hazardous waste collection or disposal facilities
[Bill No. 32, 1988.]
- B. Sanitary landfills [Bill No. 32, 1988.]
- C. Permanent sludge hauling, storage or disposal facilities
other than those associated with waste water treatment
facilities [Bill No. 32, 1988.]
- D. Transportation facilities, and utility transmission
facilities, except those necessary to serve permitted
uses. [Bill No. 32, 1988.]

DEMCHAK/Extmdb



William Donald Schaefer
Governor

Maryland Department of Natural Resources

Tawes State Office Building
Annapolis, Maryland 21401

Torrey C. Brown, M.D.
Secretary

John R. Griffin
Deputy Secretary

February 10, 1994

Margaret L. Demczak
Assistant Secretary
JWP Environmental Services Company
6425 Days Cove Road
White Marsh, Maryland 21162

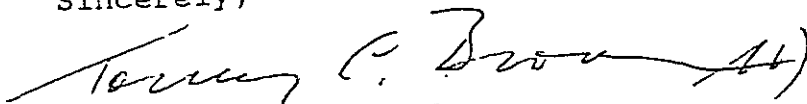
RE: Days Cove Rubble Landfill
Lease Agreement
Gunpowder Falls State Park
Baltimore County

Dear Ms. Demczak:

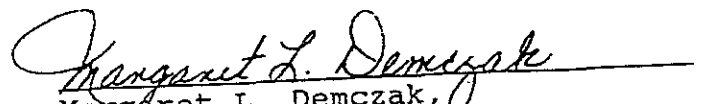
This is formal notification that the Lease Agreement dated February 19, 1992 by and between the State of Maryland to the use of the Department of Natural Resources and JWP Environmental Services Company is hereby renewed for an additional one (1) year term effective February 19, 1994 through February 18, 1995. Such renewal shall be under the same terms and conditions of the Lease Agreement and any executed lease amendment(s) (if applicable).

Thank you for your continued assistance.

Sincerely,


Torrey C. Brown, M.D.

Accepted and acknowledged this
17th day of February, 1994.


Margaret L. Demczak,
Assistant Secretary
JWP Environmental Services Company

C:\DOCS\BHD\CRBLLS.2RN

cc: Michael J. Nelson
Earl Copenhaver
Bruce Holmgren
Jean Lipphard
Jodi O'Day
Steve Sholl



MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore, Maryland 21224
(410) 631-3000
**RECEIVED
EXECUTIVE OFFICE**

Parris N. Glendening
Governor

1995 JUN -8 P 4: 44

Jane T. Nishida
Secretary

June 6, 1995

Ms. Margaret L. Demczak
Days Cove Reclamation Company
6425 Days Cove Road
White Marsh MD 21162

Dear Ms. Demczak:

The Maryland Department of the Environment, Waste Management Administration (WAS), received ten copies of the Phase III Permit Application Report for the proposed horizontal expansion of the Days Cove rubble landfill located at 6425 Days Cove Road, White Marsh, Baltimore County, Maryland. These reports were prepared and submitted on your behalf by Dames & Moore, Inc. Please refer to the document control number 1994-WRF-0347-0 when writing WAS regarding this application.

Copies of this letter and these reports have been transmitted to all interested agencies for their review and comments. A Phase III joint plan review meeting has been scheduled for Thursday, June 15, 1995 at 10:00 a.m. at this office. All interested agencies are invited to attend this meeting. Any written comments regarding the Phase III permit application should be submitted to WAS by Friday, June 30, 1995.

If you have any questions, please call Mr. A. Hussain Alhija, Project Manager, at (410) 631-3364.

Sincerely,

Ed M. Dexter For:

Edward M. Dexter, Chief
Solid Waste Compliance Division

EMD:AHA:lak

cc: See Next Page

MICROFILMED

Ms. Margaret L. Demczak
Page 2

cc: The Honorable C.A. Dutch Ruppertsberger (w/encl.)
The Honorable John Griffin (w/encl.)
Dr. Peter Dunbar (w/encl.)
Dr. Emery T. Cleaves (w/encl.)
Dr. Margaret L. Sherrard (w/encl.)
Mr. Robert D. Miller (w/encl.)
Mr. Herbert Freiburger (w/encl.)
Mr. Bill Hahn (w/encl.)
Mr. James Dieter (w/encl.)
Mr. Steve Gebhardt
Mr. Richard W. Collins *RWC*
Ms. Hilary Miller
Mr. Mitch McCalmon

EXHIBIT "A"

MICROFILMED

APPENDIX F
Construction Drawings

MICROFILMED

IN THE MATTER OF
THE APPLICATION OF
WHITE MARSH CIVIC ASSN.,
ET AL - PETITIONERS
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE SOUTH
SIDE DAYS COVE ROAD, 5300'
EAST OF CENTERLINE OF PULASKI
HIGHWAY (6425 DAYS COVE ROAD)
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-132-SPH

ORDER OF DISMISSAL

This matter comes to this Board on appeal from a decision of the Zoning Commissioner in Case No. 96-132-SPH in which Petitioner's request for special hearing relief was denied.

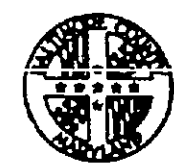
WHEREAS, the Board is in receipt of a dismissal of appeal dated September 11, 1996 and an amendment to dismissal to include all original Appellants, dated September 12, 1996, filed by J. Carroll Holzer, Esquire, on behalf of Petitioners White Marsh Civic Association, Harewood Park Community Association, and Nottingham Improvement Association, Inc., Appellants, (copies of which are attached hereto and made a part hereof); and

WHEREAS, said Counsel for Appellants requests that the appeal filed in this matter be dismissed as of September 10, 1996;

IT IS HEREBY ORDERED this 25th day of September, 1996 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

[Signature]
[Signature]
[Signature]



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 25, 1996

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 96-132-SPH
White Marsh Civic Assn., et al

Dear Mr. Holzer:

Enclosed please find a copy of the Order of Dismissal issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,
Charlotte E. Bianco
Kathleen C. Bianco
Legal Administrator

encl.

cc: White Marsh Civic Association
and Adam Paul
Harewood Park Community Association
and Joe McGraw
Nottingham Community Association
and Marie Simoes
John B. Gontrum, Esquire
Warren K. Rich, Esquire and
Jennifer L. Wurzbacher, Esquire
Days Cove Reclamation Company
Pamela D. Anderson
/Assistant Attorney General
John Griffin, Secretary /DNR
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia M. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING
3/3 Days Cove Road, 5300' E of
the c/l of Pulaski Highway
(6425 Days Cove Road)
11th Election District
5th Councilmanic District
White Marsh Civic Assn., et al
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-132-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on a Petition for Special Hearing for that property known as 6425 Days Cove Road, located in the vicinity of Pulaski Highway and the Gunpowder Falls State Park in White Marsh. The property is owned by the State of Maryland to the use of the Department of Natural Resources (DNR). Unlike the vast majority of Petitions for zoning relief which come before this Zoning Commissioner, the subject Petition was not presented by the property owner. Rather, the Petitioners are identified as three community groups, and three individuals who reside in the vicinity. The civic associations identified as the Petitioners are the White Marsh Civic Association, through Adam Paul, its President; the Harewood Park Community Association, through Joe McGraw, its President; and, the Nottingham Community Association, through Marie Simoes, its President. In addition to identifying those respective officers as Presidents of the named community associations, those individuals are also identified within the Petition as individual Petitioners, as taxpayers of and residents in, eastern Baltimore County.

As to the Petition for Special Hearing, the Petitioners request a determination by this Zoning Commissioner as to "...whether a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources (DNR), in an R.C.2 zone, is subject to the zoning regula-

ORDER RECEIVED FOR FILING
Date 9/25/96
By [Signature]

tions of Baltimore County, and therefore, must have a special exception in conformance with Section 1A01.2C(18) of the Baltimore County Zoning Regulations (B.C.Z.R.)"

Following the filing of the Petition for Special Hearing, the matter was scheduled for a public hearing, as required by Baltimore County law. Furthermore, proper notice of the public hearing was advertised in The Jeffersonian and the property was posted to advise the public of the hearing.

Appearing at the public hearing were Adam Paul, Joe McGraw, and Marie Q. Simoes, individually and on behalf of their respective community associations. A number of other residents of the surrounding community and members of the Associations also appeared. Collectively, these associations and individuals were represented by J. Carroll Holzer, Esquire. Also appearing at the requisite public hearing were Wayne Knight and Charles Volpe on behalf of the Honeygo Reclamation Company. Those individuals and that company own property in the vicinity which is being developed as a landfill. Messrs. Knight and Volpe as well as their company requested permission to intervene and participate in the hearing. The intervenors were represented by John B. Gontrum, Esquire. Although reserving on the issue of standing as it relates to both the Petitioners and intervenors, I allowed Mr. Gontrum to participate in this case. Appearing on behalf of the Department of Natural Resources (DNR) was Pamela D. Anderson, Esquire, from the Office of the Attorney General. Warren Rich, Esquire, Private Counsel retained by the Days Cove Reclamation Company (DCRC), also appeared and participated at the hearing. Mr. Rich's client is the Operator/Lessor of the proposed landfill.

ORDER RECEIVED FOR FILING
Date 9/25/96
By [Signature]

- 2 -

BACKGROUND & FACTS

The Petition for Special Hearing has presented a series of complex legal issues to be considered by this Zoning Commissioner. These will be discussed hereinafter; however, the factual history and proposed use of the property is largely not in dispute. The record of this case will show that there was limited testimony and evidence offered at the public hearing. A summary of the history of the property was agreed to by the parties by stipulation. Moreover, recognizing the complexity of the legal analysis necessary, the parties requested an opportunity to submit written memoranda following the hearing. Lengthy memoranda were received from all parties in a sequence agreed to at the public hearing. These memoranda have been carefully read and considered by me in my evaluation of this case. A review of those memoranda as well as the stipulations entered at the hearing disclose the following relevant facts.

The property under consideration is a 27-acre parcel, zoned R.C.2, located in the Gunpowder State Park in Baltimore County. As noted above, the property is owned by the State of Maryland, to the use of the Department of Natural Resources (DNR). The State acquired the site as part of a larger tract of land that it purchased from the Smuck family in 1986. The deed evidencing that transfer and attachments thereto were appended to the memoranda submitted by the parties.

Prior to the sale of the property to the State from the Smuck family, certain areas of the overall tract had been mined for sand and gravel and other areas were utilized for sludge disposal and mixing. A portion of the tract was also operating as a landfill. The operator of that landfill is Mr. Rich's client, the Days Cove Reclamation Center

(DCRC). Apparently, the principals of that company were members of the Smuck family and/or their assigns. Under the terms of the sale to the State, the operators retained the right to continue to operate the existing rubble landfill for a period not to exceed 6 and 1/2 years, or until proceeds of \$4,000,000 was earned, whichever occurred first. Moreover, a reservation of the mineral rights for a 12-acre parcel was also provided within the deed, as well as the grantor's right to utilize the sludge mixing area, as permitted by the State Department of Health and Mental Hygiene (DHMH), for a period not to exceed 4 and 1/2 years from the date of the closing of the sale.

From the memoranda and documents offered, two factual conclusions are reached which bear on the issue presented. First, the existing rubble landfill is not located within or on the 27-acre parcel which is the subject of the special hearing request. That is, the proposed landfill use will be on a different portion of the overall tract. Although labeled an expansion of the existing landfill, the new landfill proposes utilization of different lands, albeit within the same overall tract previously owned by the Smuck family. This fact eliminates a conclusion that the new landfill could be nonconforming or otherwise grandfathered. (See Section 104, B.C.Z.R.) Secondly, it is clear that a portion of the 27-acre parcel under consideration was utilized in the past for the sludge disposal and mixing operation. In this regard, it is averred by the State and proposed landfill operator that these disturbed areas need restoration and reclamation before the site can be utilized as active park land. The property owners therefore suggest that the proposed use of the 27 acres is not strictly a for profit landfill business, but a means to reclaim and restore park land, a State function.

ORDER RECEIVED FOR FILING
Date 9/25/96
By [Signature]

- 4 -

Although the right to continue to operate the landfill has expired under the deed of conveyance, the landfill continues in operation. Apparently, the State and the DCRC renegotiated this issue at the time the DCRC's right to continue operations on the site expired under the deed. Thus, the existing landfill operation is continued under a contract between the present owners (State of Maryland) and the DCRC.

In 1994, the DCRC approached the State about expanding the rubble landfill to the subject area. The operators and the State agreed that the proposed expansion would allow the State to reclaim the sludge site for park land, in addition to meeting the need for additional rubble fill capacity in Baltimore County.

On November 28, 1994 and January 30, 1995, DCRC submitted to the Maryland Department of the Environment (MDE) an application for a refuse disposal permit for this site. By July 1995, MDE's Waste Management Administration had completed its review of Phase 1 (Permit Application) and Phase 2 (Geologic and Hydrologic Report) for the refuse disposal permit and considered these submissions to be complete. The State had also begun its review of Phase 3 (engineering plans and specifications).

On July 12, 1995, the Director of MDE's Waste Management Administration, Richard Collins, wrote to Baltimore County Executive C. A. "Dutch" Ruppertsberger to advise him of the status of the permit application. This letter has been submitted as an exhibit, attached to the memorandum offered by DCRC. In that letter, Mr. Collins advised of the status of the application and stated that "...because this facility is situated on State-owned property, the prerequisite for a Statement of Conformity with the County's local zoning and land use requirements will

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Date 9/25/96
By [Signature]

- 5 -

not be required." Needless to say, the Petitioners and the intervenors heartily disagree with this conclusion.

ISSUES:

1) Zoning Commissioner's Jurisdiction: A threshold issue raised by the DCRC, as well as the Attorney General's Office, relates to the jurisdiction of this Zoning Commissioner to entertain the Petition for Special Hearing. Simply stated, the DCRC and Attorney General's Office aver that the Zoning Commissioner lacks jurisdiction to consider the issue presented in the Petition for Special Hearing. The arguments offered in support of this position are contained within the respective memoranda. For reasons set forth below, I disagree with this assertion and conclude that jurisdiction is proper.

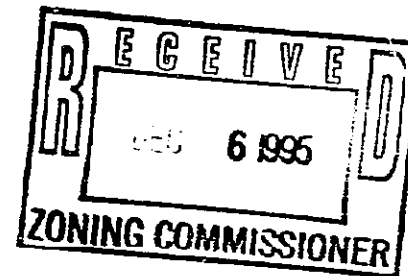
Baltimore County is a chartered County, subject to the general provisions of Article 25A of the Annotated Code of Maryland. Subsection 5 of Article 25A delineates the express powers granted to and conferred upon any chartered County under the provisions of Article XI(A) of the Maryland Constitution. Among the powers conferred to Baltimore County are powers relating to planning and zoning. (See Article 25A, Section 5(X)).

This Section recognizes the policy of the State that orderly development and use of land requires comprehensive regulation through the implementation of planning and zoning controls. Moreover, it is indicated that these controls should be implemented by local government, i.e., the County. Thus, it is clear that the County, not the State, regulates the use of land within the borders of the subdivision. It is also of note that this grant of power does not permit the County to exercise other powers not specifically granted within Article 25A, Section 5(X), nor is the County or its officers to engage in an activity which is beyond their

ORDER RECEIVED FOR FILING
Date 9/25/96
By [Signature]

- 6 -

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 268-6666
December 4, 1995



Clerk of the Office of Zoning
Commissioner of Baltimore County
Old Court House
400 Washington Avenue
Towson, MD 21204

RE: Days Cove Rubble Landfill/Gunpowder Falls State Park
Case No. 96-132-SPH

Dear Sir or Madame:

It has come to my attention that when our Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda was filed with your office on or about November 29, 1995, Counsel for the People, Peter Max Zimmerman, was inadvertently left off of the Certificate of Service and therefore was not served with a copy of the Memorandum.

I enclose for the record a Certificate of Service reflecting that Mr. Zimmerman has this date been forwarded a copy of the Memorandum.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Jennifer L. Wurzbacher
Jennifer L. Wurzbacher

JLW:piy
enclosure

cc: J. Carroll Holzer, Esquire
John B. Contrum, Esquire
Pamela D. Andersen, Esquire
Peter Max Zimmerman, Esquire

dayzavva:ccf

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 1995 a copy of the Memorandum of Law in Response to the Petitioners' and Intervenor's Memoranda was mailed, postage prepaid, to Peter Max Zimmerman, People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204.

Jennifer L. Wurzbacher
Jennifer L. Wurzbacher

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 268-6666
December 4, 1995

VIA FEDERAL EXPRESS

J. Carroll Holzer, Esquire
Holzer and Lee
305 Washington Avenue, Ste. 502
Towson, MD 21204

RE: Days Cove Rubble Landfill/Gunpowder Falls State Park
Case No. 96-132-SPH

Dear Mr. Holzer:

We enclose a copy of our Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda, originally mailed on November 29, 1995. Due to a typographical error on the mailing label, the post office has returned the document to us. (See enclosure). We received the returned package today.

I apologize for the delay in your receiving this and hope that this has not caused you any inconvenience.

Very truly yours,

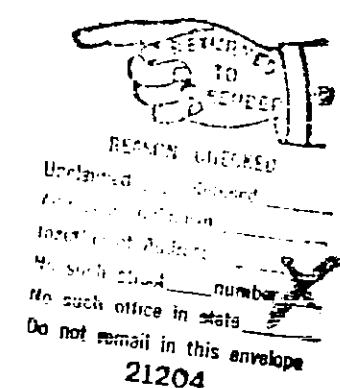
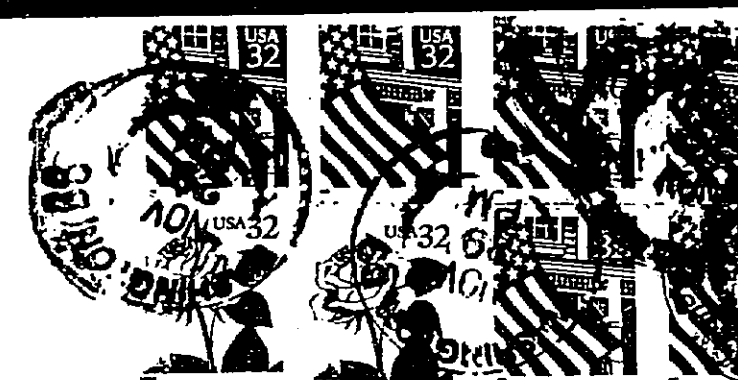
Jennifer L. Wurzbacher
Jennifer L. Wurzbacher

JLW:piy

Enclosures

cc: Clerk, Zoning Commissioner's Office

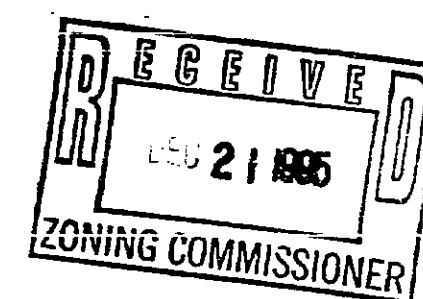
West Street
P.O. Box 589
Annapolis, MD 21404-0589



J. Carroll Holzer, Esquire
Holzer and Lee
5 Washington Avenue, Suite 502
Towson, Maryland 21204

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 268-6666

December 20, 1995



VIA FACSIMILE & FIRST CLASS MAIL
The Honorable Lawrence Schmidt
Zoning Commissioner's Office
Old Court House
400 Washington Avenue, Rm. 112
Towson, Maryland 21204

Re: Days Cove Rubble Landfill--Case No. 96-132-SPH

Dear Mr. Schmidt:

We write on behalf of Days Cove Reclamation Company ("DCRC") to correct a misrepresentation of fact in the Response Memorandum of Wayne Knight and Honeygo Reclamation Center ("Intervenor's Response Memorandum").

Intervenor's contend in their Response Memorandum that:

The State's Memorandum, however, is very incorrect in its characterization that the applicant (DCRC) is running the existing landfill. The current landfill is permitted to a separate corporate entity, JWP Enterprises, Inc., and no corporate identity or relationship has been alleged. Consequently, the State is letting a new entity come in to operate a new landfill.

Intervenor's Response Memorandum at 2. See also Id. at 5-6 (responding to DCRC's Memorandum).

Intervenor's assertion is false. The current refuse disposal and groundwater discharge permits for the Days Cove Rubble Landfill were issued in October 1994 to JWP Environmental Services Company ("JWP-ES"). In December 1994, JWP-ES was acquired by DCRC and Weston Investments. Through this

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 268-6666

Jennifer L. Wurzbacher

April 30, 1996

Baltimore County
Board of Appeals
Room 49
400 Washington Ave.
Towson, Maryland 21204
Attn: Ms. Kathleen Bianco

RE: Case No. 6425 Days Cove Rd.

Dear Ms. Bianco:

Please enter the appearance of Warren K. Rich, Jennifer L. Wurzbacher, and the law firm of Rich & Henderson, P.C. on behalf of Days Cove Reclamation Company in the above-referenced matter.

Very truly yours,

Jennifer L. Wurzbacher
Jennifer L. Wurzbacher
5/3/96

cc: Pamela D. Anderson, Esq.
J. Carroll Holzer, Esq.
Mr. Arnold Jablon

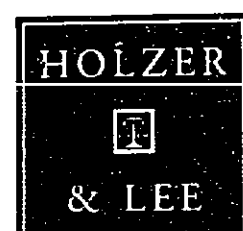
RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
844 West Street
P.O. Box 589
Annapolis, Maryland 21404-0589
(410) 267-5900 - Facsimile (410) 267-5901
Baltimore (410) 268-6666

FACSIMILE TRANSMITTAL

TO: THE HONORABLE LAWRENCE SCHMIDT FAX: (410) 887-3468
FROM: JENNIFER L. WURZBACHER FAX: (410) 267-5901
DATE: December 20, 1995 3 pages (including this cover sheet)

CONFIDENTIALITY NOTE: This facsimile is intended only for the person or entity to which it is addressed. Dissemination, distribution, or copying of this facsimile or the information herein by anyone other than the intended recipient is prohibited.

If there are any problems regarding this transmission, please call (410) 267-5900 immediately.



LAW OFFICES
J. CARROLL HOLZER, P.A.
TOWSON, MD 21204
(410) 525-5515
FAX: (410) 525-5515

TOWSON OFFICE
111 WEST CHESAPEAKE AVENUE
TOWSON, MD 21204
(410) 525-5515
FAX: (410) 525-5515

April 16, 1996
#6910

Arnold Jablon, Director
Department of Permits and
Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petition for Special Hearing, Day's Cove
Case No. 96-132-SPH

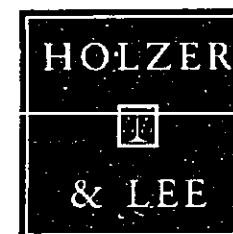
Dear Mr. Jablon:

On behalf of my clients, White Marsh Civic Association, Nottingham Improvement Association and Harewood Park Community Association, I herewith file an appeal to the County Board of Appeals from the decision of the Zoning Commissioner in the above matter rendered on March 21, 1996. I am also enclosing a check in the amount of \$210 made payable to Baltimore County for the costs of the appeal. If you have any questions, please call me at 825-6961.

Very truly yours,
J. Carroll Holzer

JCH:clg
cc: White Marsh Civic Assn.
Nottingham Improvement Assn.
Harewood Park Community Assn.

Post-It Fax Note	7671	Date	4/16/96	Page	1
To	ROSENTHAL	From	J. CARROLL HOLZER		
Co-Dept	HEADQUARTERS	Co	BY W. RICH		
Phone	410-525-5515	Phone	410-525-5515		
Fax	410-525-5515	Fax	410-525-5515		



LAW OFFICES
J. CARROLL HOLZER, P.A.
TOWSON, MD 21204
(410) 525-5515
FAX: (410) 525-5515

TOWSON OFFICE
111 WEST CHESAPEAKE AVENUE
TOWSON, MD 21204
(410) 525-5515
FAX: (410) 525-5515

September 10, 1996
#6910

Kathleen C. Bianco
Administrative Assistant
County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland, 21204

Re: Case No. 96-132-SPH, White Marsh Civic Assn., et al.
6425 Days Cove Road

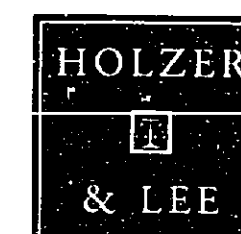
Dear Ms. Bianco:

My clients in the above captioned matter, Petitioners White Marsh Civic Association and Harewood Park Community Association, hereby withdraw their appeal to the Board of Appeals for Baltimore County in case No. 96-132-SPH scheduled for Tuesday, September 17, 1996 at 10:00 a.m.

If you should have any questions, please call me at 825-6961.

Very truly yours,
J. Carroll Holzer

JCH:clg
cc: Warren Rich, Esq.
Adam Paul
Joe McGraw
Pamela Anderson, Esq.
People's Counsel for Baltimore County



LAW OFFICES
J. CARROLL HOLZER, P.A.
TOWSON, MD 21204
(410) 525-5515
FAX: (410) 525-5515

TOWSON OFFICE
111 WEST CHESAPEAKE AVENUE
TOWSON, MD 21204
(410) 525-5515
FAX: (410) 525-5515

September 12, 1996
#6910

Kathleen C. Bianco
Administrative Assistant
County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland, 21204

Re: Case No. 96-132-SPH, White Marsh Civic Assn., et al.
6425 Days Cove Road

Dear Ms. Bianco:

By way of this letter, I would like to amend my letter of dismissal of the above appeal filed with the Board of Appeals yesterday, September 11, 1996 to also include the dismissal of the Nottingham Improvement Association, Inc. Thus, for the record, all of the Appellants have dismissed their appeal, and it will not be necessary for the Board to conduct a hearing on Tuesday, September 17 at 10:00 a.m. I appreciate your assistance in this matter.

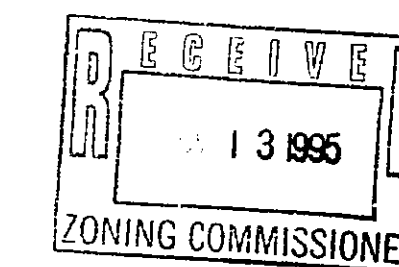
Very truly yours,
J. Carroll Holzer

JCH:clg
cc: Warren Rich, Esq.
Adam Paul
Joe McGraw
Pamela Anderson, Esq.
People's Counsel for Baltimore County



The Greater Kingsville Civic Association, Inc.

P.O. BOX 221 KINGSVILLE, MARYLAND 21087



November 9, 1995

Mr. Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
400 Washington Avenue
Towson, Maryland 21204

Ref: Days Cove Rubble Landfill
Case 796-132-SPH

Dear Mr. Schmidt:

On September 20, 1995 the board of the Greater Kingsville Civic Association unanimously voted to oppose the granting of a permit to expand the rubble landfill at Days Cove.

We support the concerns raised by the White Marsh and Nottingham Associations and want our position recorded before you in the matter of Days Cove.

Thank you for your consideration.

Very truly yours,
Nancy Hastings
President

NILES, BARTON & WILMER

ATTORNEYS AT LAW

93 MAIN STREET - P.O. BOX 569
ANNAPOLIS, MARYLAND 21404
301-266-3000

(PRINCIPAL OFFICE)
200 N. HANOVER STREET
BALTIMORE, MD 21201
FROM BALTIMORE 220-1810

1415 N. STREET, N.W.
WASHINGTON, D.C. 20005
FROM WASHINGTON 220-1138

September 24, 1985

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
Office of Planning & Zoning
Towson, MD. 21204

Dear Mr. Jablon:

This is a follow up of our conversation this morning. Sometime ago I was party to a three-way conversation between you and the People's Counsel of Baltimore County. In that conversation Ms. Freedman indicated that there was no need for a public hearing regarding a change in the site plan for the Allender Road sand and gravel operation and it is my understanding that you agreed with her position. Your agreement was premised upon the fact that the project would require approval by the State and local health department representatives.

I have subsequently had conversations with Mr. Forrest, who indicated that this matter would be the subject of further proceedings before the local and State health offices. Under the circumstances further zoning actions are not required. I would appreciate your confirming these facts by return letter.

Yours very truly,

Warren K. Rich

WKR/cac

Niles, Barton & Wilmer

TO: Edward Dexter
Chichang Chen
A. Crenomni
Joseph Smuck
Stanley Smuck

FROM: Warren K. Rich

DATE: October 8, 1985

RE: Allender Road Sand and Gravel
Operation

Enclosed for each of you is a
copy of my letter of September 24, 1985
addressed to Mr. Jablon, and also a
copy of Mr. Jablon's response dated
September 26, 1985 in reference to the
above-captioned matter.

Warren K. Rich

NOV-16-'95 THU 14:17 10:MD E ATTY GEN OFF TEL NO:410 631 3943 HB18 P03



MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore, Maryland 21224
(410) 631-3000

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

July 12, 1995

The Honorable C.A. Dutch Ruppersberger
Baltimore County Executive
Court House
Towson MD 21204

Dear County Executive Ruppersberger:

This letter is to advise you of the current status of the permit application for the proposed horizontal expansion of the Days Cove Rubble Landfill located at 6425 Days Cove Road, White Marsh, Maryland.

The Maryland Department of the Environment (MDE), Waste Management Administration (WAS), is presently reviewing permit applications for a State Refuse Disposal Permit and a State Discharge Permit for the proposed expansion. These applications were submitted by Dames and Moore on behalf of the applicant, Days Cove Reclamation Company, to WAS on November 28, 1994 and January 30, 1995, respectively.

WAS has completed review of the Phase I (permit application) and Phase II (Geologic and Hydrogeologic Report) for the Refuse Disposal Permit and considers these reports to be complete. WAS is currently reviewing the Phase III (Engineering Plans and Specifications) that we received on May 24, 1995. Please note that a Phase III joint plan review meeting for this phase of the permit application was held on June 15, 1995.

An Informational Meeting was held by WAS regarding this permit application on Tuesday, March 14, 1995. The purpose of the Informational Meeting was to provide an opportunity to the public to obtain information about the permit applications and MDE's permit review process.

Section 9-210(a), as amended, of the Environment Article, Annotated Code of Maryland requires that the Department report the findings of its preliminary technical review in writing to the County and that the County must provide a written statement to the Department affirming that the proposed facility is in conformance with approved County solid waste management plan. On April 14, 1995 WAS received a written statement from the County

NOV-16-'95 THU 14:18 10:MD E ATTY GEN OFF TEL NO:410 631 3943 HB18 P04

The Honorable C.A. Dutch Ruppersberger
Page 2

to this effect. Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

If you have any questions, please call Dr. Hedy V. Alavi, Ph.D., Acting Chief, Design and Certification Division, at (410) 631-3364.

Sincerely,

RW Collins

Richard W. Collins, Director
Waste Management Administration

RWC:ARA:nh

cc: Mr. Arnold Jablon
Ms. Margaret L. Demozak
Mr. Steve Gebhardt

power under other public general law, public local law, or otherwise, nor can the County preempt or supersede the regulatory authority of any State department or agency under public general law.

In furtherance of the grant of powers pursuant to Article 25A, Section 5 of the Annotated Code of Maryland, the Baltimore County Charter was adopted. Therein, the Office of the Zoning Commissioner was established (Section 522 - Baltimore County Charter). The Baltimore County Code was enacted, in part, to regulate and define the powers and responsibilities conferred to Baltimore County. Title 26 of the Code regulates planning, zoning, and subdivision control, including a further defining of the Zoning Commissioner's responsibilities and conduct of office. Lastly, the Baltimore County Zoning Regulations (B.C.Z.R.) were enacted to provide specific regulations for the use of land in Baltimore County and to delineate and define the Zoning Commissioner's duties. In addition to the authority to consider Petitions for Variance and Special Exception, the B.C.Z.R., by Section 500.7 therein, permits the Zoning Commissioner "...to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Clearly, the language of this regulation is broad and the authority of the Zoning Commissioner in the land use realm is far-reaching. The meaning of the words is clear; the Zoning Commissioner may conduct such hearings and issue such Orders as, in his discretion, are necessary for the proper interpretation and implementation of the Baltimore County Zoning Regulations (B.C.Z.R.).

Section 102 of the B.C.Z.R. defines the scope of the regulations. Section 102.1 states that "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in

conformity with these regulations, and this shall include any extension of a lawful nonconforming use." Moreover, Section 103.2 indicates that "When any public use ceases, or, when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these regulations." (emphasis added)

In my judgment, resolution of the jurisdictional issue is simple. In effect, the Petitioners and the Intervenor ask whether the subject land can be utilized, as proposed, and whether such utilization would be in conformity with the B.C.Z.R. It is the applicability of Section 102.1 of the B.C.Z.R. to this proposed use which is at issue. As a corollary, the question presented is whether the 27 acres at issue have ceased to be publicly used, and, under the proposal, will be utilized for private purposes. Thus, an interpretation of Section 103.2 of the B.C.Z.R. is necessary.

Clearly, it is these two Sections, considered in conjunction, which must be interpreted and applied to the facts presented. The Zoning Commissioner, pursuant to Section 500.7 of the B.C.Z.R., is clearly the proper person to interpret these Sections, as applied to the facts presented. The DCRC's position, as supported by the Attorney General's Office, begs the rhetorical question, "If the Zoning Commissioner is not the proper authority to interpret and apply the B.C.Z.R., who would be?"

Moreover, the mere fact that this statute (i.e., Sections 102.1 and 103.2 of the B.C.Z.R.) need be interpreted does not remove the issue from the Zoning Commissioner's jurisdiction. To the contrary, the general rule is that where the issue is one of statutory construction, an exhaustion of administrative remedies is required before Court intervention is

permitted. See e.g., Arundel Corporation v. County Commissioners, 323 Md. 504 (1991). In Maryland Commission on Human Relations v. Mass Transit Administration, 294 Md. 225 (1982), the Court discussed the doctrine of exhaustion of administrative remedies. The Court noted "Although there may be cases in some other jurisdictions supporting the trial court's view that administrative remedies need not be exhausted if the question is one of statutory interpretation like that presented here, this view is contrary to the settled law of Maryland. This Court has consistently held that statutorily prescribed administrative and judicial review remedies must be exhausted in cases involving the interpretation of statutory language." Citations omitted, Pages 232-233. For these reasons, it is clear that the Zoning Commissioner has jurisdiction to consider this issue.

In further support of this conclusion, it is to be noted that all parties extensively briefed the issue of whether the operation of the proposed landfill was a public or private use. Among the cases cited by all parties were Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Marker, 316 Md. 683 (1989) and Youngstown Cartage Company v. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975). It is of note that both of these cases found their way to the Appellate Courts as appeals from the Circuit Court for Baltimore County. Moreover, a review of the opinions issued in those cases show that both started as proceedings before the Zoning Commissioner of Baltimore County. Subsequently, the cases were appealed to the County Board of Appeals, then on to the Circuit Court, and so on. Although those opinions do not directly address the jurisdictional issue, the genesis of both cases was the fundamental consideration of whether a proposed use was insulated from the B.C.Z.R. by the State's immunity from the zoning regulations.

That is, the same fundamental issue was under consideration. In those cases, the Zoning Commissioner was the first level at which this question was addressed, and the matter proceeded thereafter, ultimately to the powers that be in Annapolis. I see no reason that this case should take a different jurisdictional/procedural route.

2) Standing: The second issue raised by DCRC and the Attorney General's Office relates to an alleged lack of standing of the Petitioners and intervenors to raise the issue presented. For reasons stated hereinafter, this argument also cannot be sustained.

In considering the standing issue, again a review of Section 500.7 of the B.C.Z.R. is necessary. In addition to establishing the Zoning Commissioner's jurisdiction, that Section provides that "The power given hereunder shall include the right of any interested person to Petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises, or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." (emphasis added) This language is broad and sweeping. It allows any "interested" person to Petition for an interpretation of the B.C.Z.R. as it may bear on any rights whatsoever of that person. This office has long held that Petitions may be filed, not just by property owners, but by any individual or entity which avers that it may be affected by a certain land use. Any reasonable nexus to the subject property will support standing.

It is undisputed that the operation of a landfill brings about an impact on the vicinity in which it is located. At the very least, a landfill use generates vehicular traffic, brought about by the transporta-

tion of items to be disposed of within the fill by the operators' customers. Thus, the surrounding road system suffers an impact. Moreover, environmental considerations are primary, hence, the significant scope of review afforded to the Maryland Department of the Environment (MDE) in considering and approving all permits to operate and establish landfills. Whether these environmental impacts may affect surrounding properties is an issue.

Based on these factors, in my judgment the Petitioners and Intervenor possess the requisite interest to bring the Petition. I do concur with DCRC that economic competition is not a factor which raises a legitimate "interest"; however, there is more at issue here than the economic impact of the proposed landfill on business at the Honeygo Reclamation Center. Rather, it is generally the criteria identified in the special exception review process (B.C.Z.R., Section 502.1) which support the Petitioners'/Intervenor's interest in this case. Within its memorandum, DCRC cites a line of cases in support of its claim that the Petitioners and intervenors lack standing. One case, Brynairski v. Montgomery County, 247 Md. 137 (1966), is recognized as a leading case in Maryland. Other cases cited include Richmark Realty v. Whitliff, 226 Md. 273 (1960), Tang and Sons Builders, Inc. v. Taylor, 203 Md. 628 (1993), and Crozier v. City Commissioner's of Prince George's County, 202 Md. 501 (1952). Although the principals espoused in these cases are self-evident, they are not applicable here. The cases cited discuss the standing of an "aggrieved party" which has instituted an appeal. Indeed, much of DCRC's memorandum discusses that concept. While it is true that appeals might, in some circumstances, be limited to "aggrieved persons", a showing of aggrieved party status is not required at the Zoning Commissioner's level.

As noted above, only a claim that a party has a reasonable interest is required under Section 500.7 of the B.C.Z.R.

3) The Impact of Title IX, Environment Article, Annotated Code of Maryland: Having resolved the preliminary issues relating to jurisdiction and standing, attention is next directed towards the merits of this case. Specifically, inquiry need be made as to whether the B.C.Z.R. are applicable to the proposed use.

In addressing this issue, Counsel for the Intervenor first argues that the precise language contained within the Environment Article of the Annotated Code of Maryland requires application of the B.C.Z.R. to the proposed use.

The Environment Article codifies the vast array of State laws which regulate impacts to the natural environment of the State. Title 9 of the Article regulates Water, Ice and Sanitary Facilities. Title 9, Subtitle 2 specifically defines the required regulation by the State. As the Intervenor notes, Section 9-201 of the Article defines person as including "...the Federal government, a State, County, municipal corporation, or other political subdivision." Thus, for the purposes of the regulations contained within Title 9, the State of Maryland is a "person". Further on, Section 9-204 of the Article requires that a person shall have a permit issued by the Secretary of the Department of Natural Resources (DNR) before that person installs, alters or extends a landfill. (See Section 9-204.(d)) The Intervenor then goes on to note that Section 9-210 of the Article designates the prerequisites for the issuance of a permit. Among other requirements, that Section states that the Secretary may not issue a permit to install, alter or materially extend a landfill until the County in which the landfill is located has provided the Department a

written statement that the landfill, a) meets all applicable zoning and land use requirements; and, b) is in conformance with the County's solid waste plan. In the Intervenor's eyes, these Sections, read in conjunction, require the State (a designated person) to obtain a permit, and that such permit can be issued only after compliance with the County zoning and land use requirements.

Both the State and DCRC dispute such a reading of the law. They point to the use of the word "applicable" within Section 9-210.(4)3.i as dispositive. They argue that the B.C.Z.R. are not applicable by virtue of the State's well-settled immunity from local zoning regulations.

Clearly, this issue hinges upon an interpretation of the statute. For their part, the Intervenor has presented a lengthy statement of the legislative history of Section 9-210. It is claimed that this history supports a finding consistent with their reading of the statute.

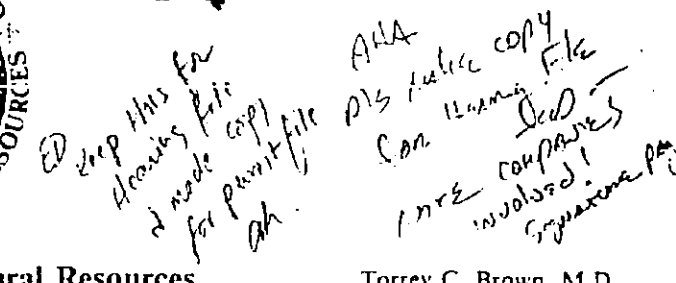
It is well-settled that the cardinal rule of statutory construction is to ascertain and carry out the intent of the legislature. See Stapleford v. Hyatt, 320 Md. 388 (1933). In making such judgment, the language of the statute and the natural and ordinary meaning of same must be considered. See Harford v. University, 318 Md. 525 (1990). Most importantly, the Courts have held that if there is no ambiguity or obscurity of the language of a statute, there is no need to look elsewhere to ascertain the intent of the legislative body. See Montgomery County v. Buckman, 333 Md. 516 (1994). Thus, it is only when there is an ambiguity or obscurity in the language of the statute should an examination of the legislative history of the act be undertaken.

I find no ambiguity or obscurity here. It is clear that the legislature intended that permits be issued only upon certification that

applicable County zoning and land use requirements were met. The statute does not go beyond that plain direction, and cannot be construed to constitute a waiver of the State's well-settled immunity from zoning regulations. Quite simply, I do not read that section as broadly as the Intervenor. I do not perceive, based on the plain language presented, a legislative intent to waive the well-established rule of law that the State is immune from local zoning regulations. Such a waiver in my judgment would require a clear mandate within the statute. It is not present here. The use of the word "applicable" suggests that only those regulations which are legally binding on a person need be satisfied.

Moreover, even a reading of the legislative history of Section 9-210 is not supportive of the Intervenor's argument. To the contrary, it appears that earlier versions of the present law did not utilize the word "applicable" in describing the zoning regulations which must be applied before a permit is issued. That is, it is only in more recent versions of the statute has the term "applicable" been employed. In my judgment, this evolution does not evidence a waiver of the State's immunity, rather, a recognition of same. Thus, the plain language of Title 9, Environment Article, Annotated Code of Maryland, does not, in and of itself, mandate a conclusion that the B.C.Z.R. are applicable in this instance.

4) Pre-emption: A brief comment is in order about the doctrine of pre-emption, which essentially provides that the State, by its regulation of a given activity, prohibits other regulation of that activity by a local jurisdiction. A review of the Environment Article discloses no language from which a conclusion may be drawn that the State has pre-empted the field of landfill regulation. In this field, there is no pre-emption, be it express or implied. The Court of Appeals holdings in Ad + Soil,



Telephone: (410) 974-3581
DNR TTY for the Deaf: 301-974-3683

TDD FOR THE DEAF (410) 631-3009

"Together We Can Clean Up"

Recycled Paper

SM602A, LS

SITE VICINITY MAP
DAYS COVE RUBBLE LANDFILL EXPANSION

DAMES & MOORE

96-132-5 PTH

130

Baltimore County, Maryland, (County) Plaintiff, by its undersigned attorneys, hereby moves this Honorable Court, pursuant to Rules BB70

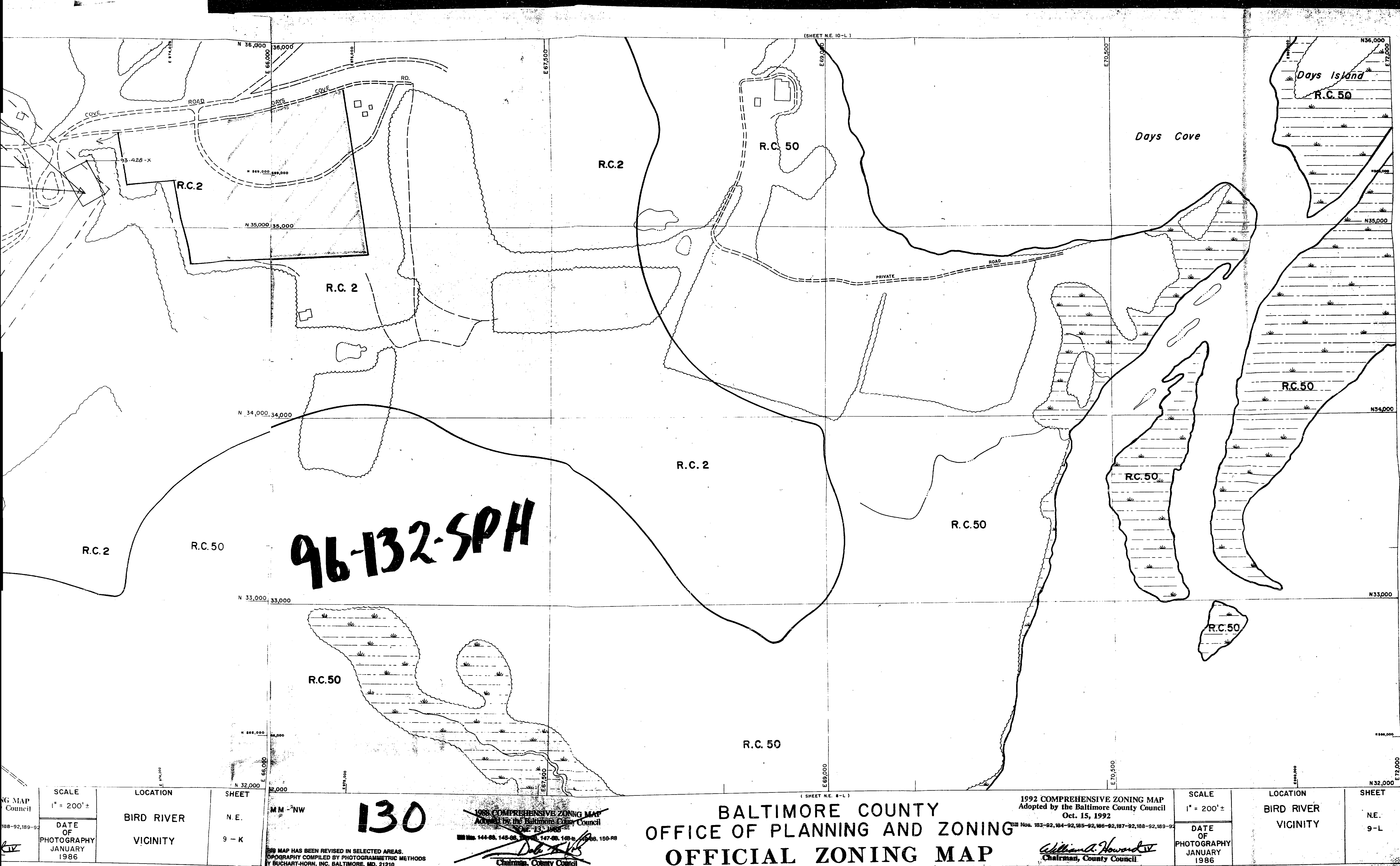
Baltimore County, Maryland, (County) Plaintiff, by its undersigned
cneys, hereby moves this Honorable Court, pursuant to Rules BB70

PLEASE PRINT CLEARLY

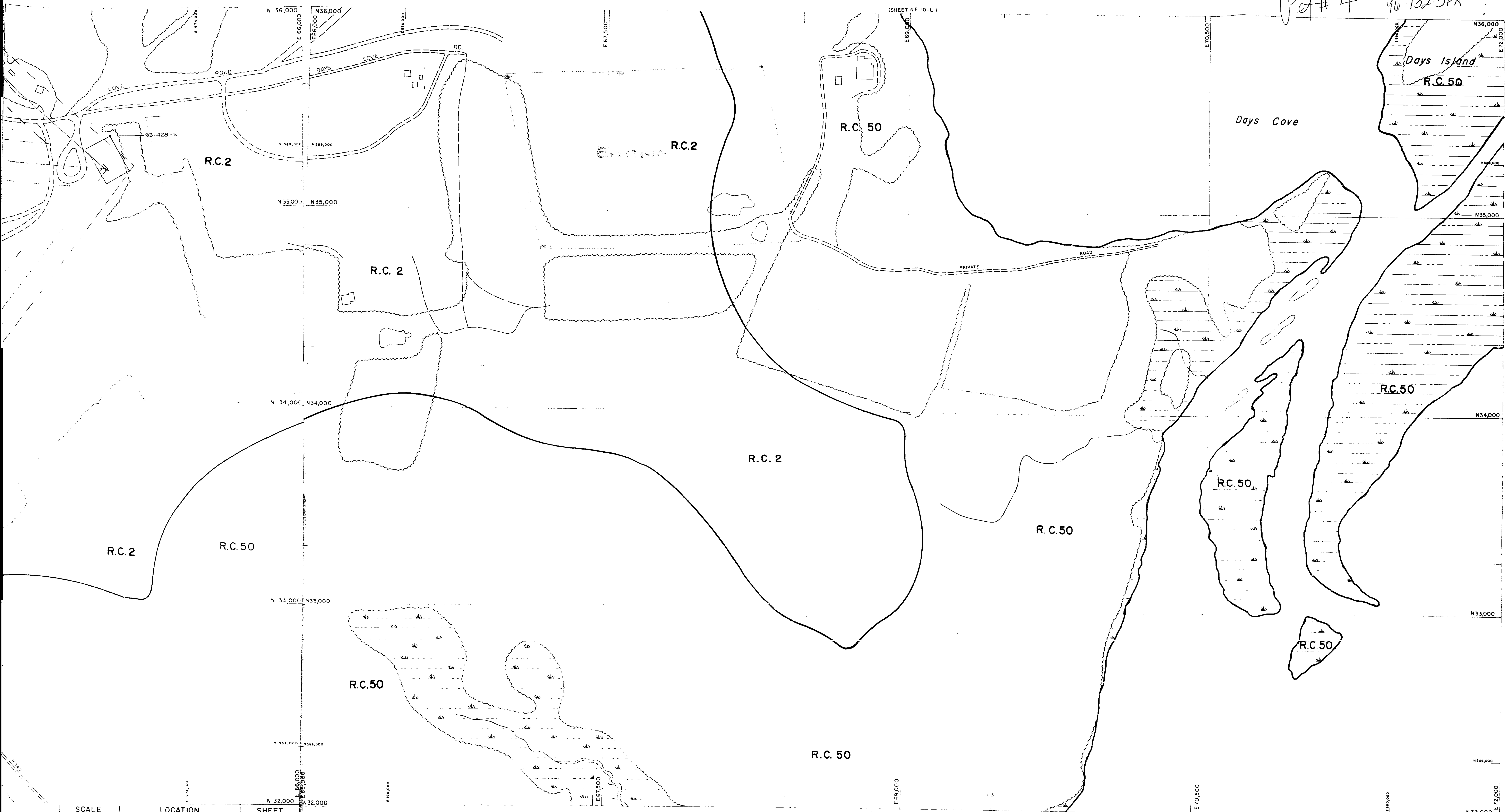
PETITIONER(S) SIGN-IN SHEET

6912 N. River Dr. 21230


Printed with Soybean Ink



Pet # 4 96-132-5PH



SCALE 1" = 200' ± DATE OF PHOTOGRAPHY JANUARY 1986	LOCATION BIRD RIVER VICINITY	SHEET N.E. 9-K	MM - NW THIS MAP HAS BEEN REVISED IN SELECTED AREAS. TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS BY BUCHART-HORN, INC. BALTIMORE, MD. 21210	~~1988 COMPREHENSIVE ZONING MAP~~ ~~Adopted by the Baltimore County Council~~ ~~Oct. 13, 1988~~ ~~Bill Nos. 144-89, 145-89, 146-89, 147-89, 148-89, 149-89, 150-89~~ ~~<i>[Signature]</i>~~ ~~Chairman, County Council~~	BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP	1992 COMPREHENSIVE ZONING MAP Adopted by the Baltimore County Council Oct. 15, 1992 Bill Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92 <i>William A. Howard IV</i> Chairman, County Council	SCALE 1" = 200' ± DATE OF PHOTOGRAPHY JANUARY 1986	LOCATION BIRD RIVER VICINITY	SHEET N.E. 9-L
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June 6, 1995

Ms. Margaret L. Demczak
Days Cove Reclamation Company
6425 Days Cove Road
White Marsh MD 21162

Dear Ms. Demczak:

The Maryland Department of the Environment, Waste Management Administration (WMA), received ten copies of the Phase III Permit Application Report for the proposed horizontal expansion of the Days Cove rubble landfill located at 6425 Days Cove Road, White Marsh, Baltimore County, Maryland. These reports were prepared and submitted on your behalf by Dames & Moore, Inc. Please refer to the document control number 1994-WRF-0347-0 when writing WAS regarding this application.

Copies of this letter and these reports have been transmitted to all interested agencies for their review and comments. A Phase III joint plan review meeting has been scheduled for Thursday, June 15, 1995 at 10:00 a.m. at this office. All interested agencies are invited to attend this meeting. Any written comments regarding the Phase III permit application should be submitted to WAS by Friday, June 30, 1995.

If you have any questions, please call Mr. A. Russain Alhija, Project Manager, at (410) 631-3364.

Sincerely,

Edward M. Dexter for:
Edward M. Dexter, Chief
Solid Waste Compliance Division

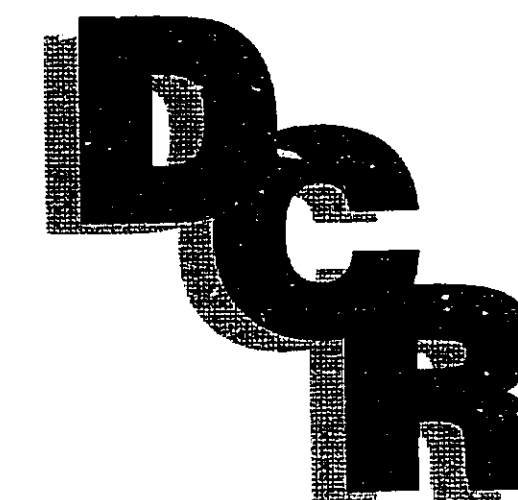
EMD:AHA:lak

cc: See Next Page

Phase III Permit Application

DAYS COVE RUBBLE LANDFILL EXPANSION
Baltimore County, Maryland

Prepared for:



DAYS COVE RECLAMATION CO.
6425 Days Cove Road
White Marsh, MD 21162

Prepared by:

Dames & Moore, Inc.
7101 Wisconsin Avenue
Bethesda, Maryland 20814

MAY 1995

RECEIVED

MAY 24 1995

SOLID WASTE DIVISION

RECEIVED

MAY 24 1995

SOLID WASTE DIVISION

DAMES & MOORE

TABLE OF CONTENTS

PHASE III PERMIT APPLICATION

SECTION 4.0

EXHIBIT "A"

AGREEMENT OF LEASE

FOR MIXED SLUDGE STORAGE SITE

THIS AGREEMENT OF LEASE (hereinafter referred to as "this Lease"), made this 1st day of July, 1991, by and between the STATE OF MARYLAND to the use of the DEPARTMENT OF NATURAL RESOURCES (hereinafter referred to as "the Landlord"), and ENVIRO-GRO TECHNOLOGIES COMPANY, a Maryland Corporation, formerly known and organized as Enviro-Gro Technologies, a Maryland partnership (hereinafter referred to as "the Tenant"),

WITNESSETH, THAT FOR AND IN CONSIDERATION of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, in its "as is" condition, all of that real property, situate and lying in Baltimore County, Maryland, which consists of approximately 24+ acres of land as shown on a plat attached hereto as Exhibit A (hereinafter referred to as "the Premises"), being a portion of a tract of land (hereinafter referred to as "the Land") described in a deed dated December 29, 1986, from Stanley J. Smuck, Joseph I. Smuck and ROC Corporation to the Landlord and recorded in the Land Records of Baltimore County, Maryland in Liber 7378, folio 048. The Premises is generally improved with the following improvements: the pads and roadways necessary for conducting a sludge mixing and storage operation. This Lease does not convey to Tenant any interest in or to any mineral rights.

Page 1 of 32

EXHIBIT "B"

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
WATER RESOURCES ADMINISTRATION
SURFACE MINING PERMIT



RENEWAL

SURFACE MINING PERMIT NO.	86-SP-0236-2
PERMIT EFFECTIVE DATE	April 15, 1986
PERMIT EXPIRATION DATE	April 30, 1999

Pursuant to Title 7, Subtitle 6A of the Natural Resources Article, Annotated Code of Maryland (1983 Replacement Volume and 1991 Supplement), the Water Resources Administration hereinafter referred to as "the Administration" hereby renews the above referenced surface mining permit;

PERMITTEE: JWP Environmental Services Co.
6425 Days Cove Road
White Marsh, Maryland 21162

The permittee is authorized to engage in a Surface Mining Operation known as Days Cove Land Reclamation Project and located: 1.3 miles east of US Route 40 on Days Cove Road in Baltimore County; as described in the approved Mining and Reclamation Plan dated April 29, 1994 and drawings dated December 9, 1993 and prepared by Dames & Moore. The permit area shall not exceed 54.55 acres as shown on the aforementioned Mining and Reclamation Plan and drawings.

DNR/WRA 0145

EXHIBIT "C"

Baltimore County Government
Department of Public Works



111 West Chesapeake Avenue
Towson, MD 21204-4604

March 10, 1995

Mr. Kenneth R. Binnix
Days Cove Reclamation Company
P.O. Box 1669
Annapolis, MD 21404

Dear Mr. Binnix:

Transmitted herewith is your executed copy of the operating agreement on the County's removal of manufactured topsoil from your site to the Eastern Sanitary Landfill and the grinding by DCRCo of woody waste delivered by the County. A copy of the agreement is being transmitted to the County Office of Central Services for the issuance of a purchase order.

If you have any questions, contact the Landfill Manager, Arthur K. (Bud) Sproles at 887-6036.

Sincerely yours,

Charles K. Weiss
Charles K. Weiss, Chief
Bureau of Solid Waste Management

CKW/SGL/kmh
Enclosure
cc: Thomas H. Hamer (w/o Enclosure)
Arthur K. Sproles
Stephen P. Myer (w/o Enclosure)
MINNIX/SCITXT

EXHIBIT "D"

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Greening Highway • Baltimore, Maryland 21224
(410) 631-3000

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

July 12, 1995

The Honorable C.A. Dutch Ruppersberger
Baltimore County Executive
Court House
Towson MD 21204

Dear County Executive Ruppersberger:

This letter is to advise you of the current status of the permit application for the proposed horizontal expansion of the Days Cove Rubble Landfill located at 6425 Days Cove Road, White Marsh, Maryland.

The Maryland Department of the Environment (MDE), Waste Management Administration (WAS), is presently reviewing permit applications for a State Refuse Disposal Permit and a State Discharge Permit for the proposed expansion. These applications were submitted by Dames and Moore on behalf of the applicant, Days Cove Reclamation Company, to WAS on November 28, 1994 and January 30, 1995, respectively.

WAS has completed review of the Phase I (permit application) and Phase II (Geologic and Hydrogeologic Report) for the Refuse Disposal Permit and considers these reports to be complete. WAS is currently reviewing the Phase III (Engineering Plans and Specifications) that we received on May 24, 1995. Please note that a Phase III joint plan review meeting for this phase of the permit application was held on June 15, 1995.

An Informational Meeting was held by WAS regarding this permit application on Tuesday, March 14, 1995. The purpose of the Informational Meeting was to provide an opportunity to the public to obtain information about the permit applications and MDE's permit review process.

Section 9-210(a), as amended, of the Environment Article, Annotated Code of Maryland requires that the Department report the finding of its preliminary technical review in writing to the County and that the County must provide a written statement to the Department affirming that the proposed facility is in conformance with approved County solid waste management plan. On April 14, 1995 WAS received a written statement from the County

"Together We Can Clean Up"

EXHIBIT "E"

Baltimore County Government
Department of Environmental Protection
and Resource Management

401 Bosley Avenue
Towson, MD 21204
Bureau of Air Quality & Waste Management
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

(410) 887-3733
(410) 887-3775
FAX (410) 887-4817

December 7, 1993

Ms. Margaret L. Demczak, Manager
JWP Environmental Services Company
6425 Days Cove Road
White Marsh, MD 21090

Re: County Landfill Permit

Dear Ms. Demczak:

A determination has been made by the Baltimore County Office of Law that a local landfill permit is no longer required for the existing Days Cove Road Rubble Landfill nor for any proposed extensions of the landfill which involve property owned by the State of Maryland. As a result, this office will no longer require a landfill permit application for your facility and is returning your letter of Credit for the existing landfill site. Also, enclosed is a letter authorizing you to request cancellation of the Letter of Credit.

Please contact me at 887-3745 if you have any questions or need additional information concerning this matter.

Very truly yours,
Eugene G. Siewierski, Supervisor
Waste Management Section

EGS/mbb
cc: Deborah Kendall, Permits & Licenses
John Lewis, Zoning Office
Bruce Holmgren, D.N.R., Taxes Office Bldg., 580 Taylor Ave, Annapolis, MD 21401
DEMCAK/txtmdd

EXHIBIT "F"

AMENDMENT TO AGREEMENT OF LEASE

THIS AMENDMENT TO AGREEMENT OF LEASE (this "Amendment"), made this 12th day of March, 1995, by and between the State of Maryland, to the use of the Department of Natural Resources (the "Landlord"), and JWP Environmental Services Company, a Maryland Corporation formerly known as Enviro-Gro Technologies Company (the "Tenant").

WITNESSETH WHEREAS, by Lease Agreement dated February 19, 1992, by and between the Landlord and Enviro-Gro Technologies (now known as JWP Environmental Services Company), and approved by the State of Maryland Board of Public Works on February 19, 1992 as Item 15-L of the Department of General Services Real Estate Agenda (the "Lease"), the Landlord leased to the Tenant approximately 24 acres of land located in Baltimore County, Maryland, as more fully described in the Lease (the "Premises"), for the purpose of continuing to operate a rubble landfill which existed on the Premises prior to the time the Landlord acquired the Premises, and

WHEREAS, on January 15, 1993 the Tenant filed Articles of Amendment with the State Department of Assessments and Taxation to change its corporate name from Enviro-Gro Technologies Company to JWP Environmental Services Company; and

WHEREAS, by letter agreement dated February 12, 1993 the Tenant exercised its first option to renew the Lease for a period of one year in accordance with section 1.1.1. of the Lease, and

WHEREAS, the Landlord and the Tenant wish to acknowledge that the business operations conducted by the Tenant on the Premises is being managed on the Tenant's behalf by Days Cove Reclamation Company; and

WHEREAS, the Landlord and the Tenant wish to acknowledge that the acreage being used by the Tenant in its rubblefill operation is greater than the original 24 acres more or less of land originally leased to the Tenant under the Lease; and

WHEREAS, the Landlord desires to add additional terms and conditions in the Lease and the Tenant is willing to agree to certain additional terms and conditions as more specifically described herein; and

WHEREAS, pursuant to Section 14.3 of the Lease the parties may amend the Lease by an instrument executed and delivered by each party to the Lease; and

WHEREAS, the parties mutually agree to enter into this Amendment for the purpose of acknowledging a change in the name of the corporate Tenant; increasing the amount of acreage constituting

1

**DAYS COVE RUBBLE LANDFILL
INTERAGENCY AGREEMENT**

THIS INTERAGENCY AGREEMENT, made this 24th day of June, 1993, by and between the Maryland Environmental Service of the Maryland Department of Natural Resources ("Service") and the Public Lands Administration of the Maryland Department of Natural Resources ("Public Lands");

WHEREAS, Public Lands is the owner of a parcel of real property located in Baltimore County, Maryland (the "Property"); and

WHEREAS, Public Lands has leased the Property to a private company (the "Operator") for use as a rubble landfill (the "Landfill"); and

WHEREAS, the Operator has requested that Public Lands extend the term of the lease for the Property, and also allow it to extend the useful life of the Landfill; and

WHEREAS, upon completion of operations the Landfill will be subject to closure, capping and post closure monitoring and maintenance pursuant to COMAR 26.04.07; and

WHEREAS, Public Lands has requested that the Service provide technical services to Public Lands in evaluating and monitoring the Operator's operation of the Landfill and the Operator's proposed closure and post-closure operation and maintenance plan; and

WHEREAS, Public Lands has requested that the Service provide financial review services to Public Lands in evaluating and monitoring the Operator's Landfill revenues, expenses and closure/post-closure financial assurance mechanisms.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish a contractual relationship whereby the Service shall provide to Public Lands technical and fiscal review services related to the operation, development, closure and post-closure monitoring and maintenance of the Landfill.

1

RE: PETITION FOR SPECIAL EXCEPTION
for Controlled Excavation
N/S Taylor Mount Road (Allender
Road) and the S/S of Big
Gunpowder Falls,
11th District
Harry A. Smuck,
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5166-X

OPINION

The petitioner in this case seeks a special exception in an R-40 zone to conduct controlled excavation of sand and gravel deposits. The petition was granted with restrictions by the Zoning Commissioner on April 13, 1962, from which decision the pro- testants are appealing.

The subject property is located in the Loreley section of the Eleventh Election District of Baltimore County. It is at the eastern end of Allender Road, also known as Taylors Mount Road, on the south side of Big Gunpowder Falls, near its confluence with the Gunpowder and Bird Rivers. The property is actually on a peninsula. The tip end is owned entirely by the petitioner, constituting 720 acres, of which 579 acres is the subject of this petition and is identified on a plot entered as petitioner's exhibit #1.

The zoning map in effect for the area is the Eleventh District map adopted by the County Council on August 1st, 1966. The subject tract, as well as adjoining property, had been previously zoned R-6 but on the latest map they are reclassified to R-40. This is a rural area and much of the cleared land is cultivated for growing farm crops.

Counsel for the petitioner called Captain Paul Reincke of the Baltimore County Fire Prevention Bureau; Mr. Timothy Margerum, Chief, Division of Engineering, Baltimore County Department of Health; Mr. Hugo Leim, Jr., Traffic Expert; and Mr. Bernard Medaury, realtor-appraiser, to testify as expert witnesses. Without going into any lengthy discourse of their testimony, it was their consensus that Section 502.1 of the Zoning Regulations would not be violated by granting the petition. However, Mr. Leim testified that it would be desirous to widen Allender Road from 18 to 24 feet. He testified that Baltimore County has appropriated funds to make such an improvement for 1300 feet from Pulaski Highway to Loreley Beach Road. This testimony was further verified by introduction of petitioner's exhibit #14, a copy of minutes of the Baltimore County Executive Board meeting approving project directive #2936. He further testified that since the Nottingham case was heard (1962-#5109-X), traffic signals had been in- stalled at the intersection of Pulaski Highway and Allender Road.

Mr. Medaury stated that the proposed excavation could not be seen by the residents of Loreley Beach and would not adversely affect their property values. Their

APPENDIX F
Construction Drawings

AMIR KAHN :
CATHERINE A. KAHN
HOWARD GOLDSTEIN
and
SAMUEL GOLDSTEIN
Plaintiffs
v.
ROBERT PERCIASEPE
RICHARD W. COLLINS
ENVIRO-GRO TECHNOLOGIES
and
SKIP PEEPER
Defendants
and
DEPARTMENT OF NATURAL RESOURCES
Intenor Defendant

IN THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
Case No.: 75/337/91 CSP 1374

BALTIMORE COUNTY, MARYLAND
Plaintiff
v.
ENVIRO-GRO TECHNOLOGIES
and
CHARLES L. PEEPER
and
STEVE PEEPER
Defendants
and
DEPARTMENT OF NATURAL RESOURCES
Intenor Defendant

MOTION FOR INTERLOCUTORY AND PERMANENT INJUNCTION

Baltimore County, Maryland, (County) Plaintiff, by its undersigned attorneys, hereby moves this Honorable Court, pursuant to Rules 8870

AMIR KAHN :
CATHERINE A. KAHN
3939 Falls Road
Baltimore, Maryland 21211
HOWARD GOLDSTEIN
12015 Ridge Valley Drive
Owings Mills, Maryland 21117
and
SAMUEL GOLDSTEIN
12015 Ridge Valley Drive
Owings Mills, Maryland 21117
Plaintiffs
v.
ROBERT PERCIASEPE, Secretary
RICHARD W. COLLINS, Acting Director
Department of Environment
Hazardous and Solid Waste
Management Administration
2500 Broening Highway
Baltimore, Maryland 21224
ENVIROGRO TECHNOLOGIES
Post Office Box 24145
Baltimore, Maryland 21227
and
SKIP PEEPER
3159 Troyer Road
White Hall, Harford County,
Maryland 21161
Defendants
v.
BALTIMORE COUNTY, MARYLAND
a body corporate and politic
400 Washington Avenue
Towson, Maryland 21204
Plaintiff
v.
ENVIRO GRO TECHNOLOGIES
1540 Caton Center Drive
Baltimore, Maryland 21227

IN THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
Case No.: 75/337/91 CSP 1374

IN THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
Case No.: 75/337/91 CSP 1374

FILED APR 23 1991

IN THE MATTER OF:
DAYS COVE RUBBLE LANDFILL
EXPANSION
GUNPOWDER FALLS STATE PARK
* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No.: 96-132-SPH

PETITIONERS' MEMORANDUM

STATEMENT OF FACTS
On November 28, 1994, Days Cove Reclamation Company filed a Refuse Disposal Permit Application with the Maryland Department of the Environment. With the application, a Phase I Preliminary Report also was filed with the Maryland Department of the Environment. The application and report pertained to a 27 acre parcel zoned R.C.2 on which a 17 acre or 20 acre landfill was proposed. The property is currently owned by the State of Maryland to the use of the Department of Natural Resources, for the use of the Gunpowder State Park and is proposed to be leased to Days Cove Reclamation Company. Under the terms of the proposed lease agreement, the project would be operated solely by Days Cove Reclamation Company. The Company would determine the tipping fees, hire the personnel, determine the appropriate customer base, and accept or reject fill material in its sole discretion. Also under the proposed lease, The Maryland Environmental Service would be

The application called for a 17 acre rubble land fill but the materials filed with the application called for a 20 acre landfill.

LAW OFFICE
HOLZER AND LEE
1700 HARRINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204
410-276-6961
FAX 410-835-4923

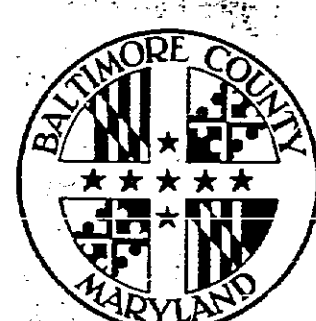
STATE OF
MARYLAND
CLERK

RUBBLE 1111 area and 1111 BRIDGE PARK adjacent to same as specified by the Department of Natural Resources as well as place electric underground adjacent to berm and road, and:
(5) to execute a confirmatory deed citing legal description of the property within 30 days after receipt of survey.
In exchange for which, Grantee agrees to name the environmental education center The Harry A. Smuck Sr. Environmental Education Center.
AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
TRANSFER TAX NOT REQUIRED
DIRECTOR OF FLORIDA
BALTIMORE COUNTY, MARYLAND
Per [Signature]
Date 11/27/94 Sec. 11-891
EXA. A

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

MICROFILMED

Nottingham Improvement Association, Inc.

(NOTTINGHAM)
Baltimore, Maryland 21237
November 7, 1995

My name is Mario Simoes, and I live at 1314 Spotswood Road in Nottingham, Maryland. That community is part of the White Marsh area. I am president of the Nottingham Improvement Association, on the Board of Directors of the White Marsh Civic Association, and an officer of the Eastern Baltimore County Community Council comprised of numerous community groups in Eastern Baltimore County.

I have been concerned for years over the proliferation of landfills and waste disposal facilities in Eastern Baltimore County. Over a dozen and a half such facilities exist contaminating in varying degrees our air and water for the greater good of the area. The time has come to say enough, especially when we are talking of using our parkland as a refuse site.

For years the Department of Natural Resources coveted the Days Cove property as a resource for the Gunpowder State Park. It was such a jewel that they gave up their Master Plan adopted in 1983 for the sake of acquiring Days Cove. Now, they want to dig it up and put in a landfill. This is not the filling of an old quarry, of which we have many. This is not the reclamation of land. This is the using of land so that private entities can profit heavily. I have seen the trucks with out-of-state tags lined up waiting to get into the nearby rubble fill, so I do not know how you can say this is for our benefit. I know you can not regulate to keep them out.

I believed it when I was told by the Department that all

Pet. Proffer #1

WHITE MARSH CIVIC ASSOCIATION

P.O. Box 314
White Marsh, Maryland 21162

Mayor and Department of the Environment
Waste Management Administration

The White Marsh Civic Association wishes to go on record as supporting the Bowerman-Loreley Beach Community in their opposition to the renewal of the State Refuse Disposal and State Discharge permits to JWP Environmental Services Company. JWP operates Days Cove Rubble Landfill located at 6425 Days Cove Road.

Opposition is based on several facts concerning the operation of a rubble landfill at that location.

1. The fact that the rubble landfill did not have a liner when originally constructed.
2. The landfill was developed in an area that had once been a sand and gravel mining operation. Because of this, there is a possibility of leachate from the rubblefill getting into the ground water.
3. The fact that the landfill is close to the Bird River, the possibility of leachate from the landfill further polluting the river is a concern.
4. The fact that people living across the Bird River in Bird River Beach, have had problems with their drinking water from wells being fouled by ground water seepage is a concern.
5. The fact that fish caught in the Bird River were tasted and found to be unfit for human consumption, is a concern. The fish had lacerated livers.
6. The fact that leachate forms when the materials placed in a landfill become wet from rain or snow. It is our belief that it is physically impossible to keep all water from draining into the materials in a rubble landfill.
7. The fact that the four or five other landfills had the water tested in their test wells and it was found that they all contained the same 22 substances in varying quantities that are typical to rubble landfills, is a concern.
8. The fact that the area being used is parkland owned by the State of Maryland, we feel that it should not be leased for other purposes.

Pet Proffer #2

WHITE MARSH CIVIC ASSOCIATION

P.O. Box 314
White Marsh, Maryland 21162

September 19, 1995

Maryland Dept. of the Environment
Waste Management Administration

My name is Adam Paul, and my address is 10404 Vincent Farm Lane in White Marsh. I am the President of the White Marsh Civic Association in the area this landfill is being placed. Several years ago our organization first became aware of the existing rubble fill and opposed the vertical addition to it at the request of the Loreley Beach Community Association (See attached letter). At a later date Loreley Beach Community Association requested that we withdraw our opposition because they had made a settlement with JWP Environmental Services and were no longer opposing the addition to the rubblefill.

Now new owners are proposing a new fill. They really are not reclaiming anything, however, for they are going to dig a seventy foot deep hole and take out over 900,000 cubic yards of dirt and sell the excess. To do all this in a state park is deplorable. To do this with the understanding that there will be contamination of the waterways and wetlands is worse.

My association formed out of concerns for the deterioration of our community and way of life. We were deeply concerned about the health of Bird River and its tributaries. Our members spent thousands of dollars to ensure that the Honeygo landfill would be lined and that the Honeygo tributary of Bird River would be protected against landfill contamination. Now, the state is saying it's okay to pollute the very rivers we have fought to protect and to have restored. It is not okay. It is disgraceful for the State, on State Park land where there is no question that the ground water will be polluted, to say that a little pollution won't hurt, why bother to line any fill? Isn't it time the state lives up to its promise to the community under its proposed regulations and require that all

Pet Proffer #3

Inc. v. County Commissioners, 307 Md. 307 (1986) and Harker, supra, are dispositive in reaching this conclusion. More importantly, both the State (DNR's Memorandum, Pg. 5) and DCRC (Memorandum, Pg. 20, Note 9) concede that pre-emption is not applicable in this case.

5) Applicability of the B.C.Z.R. (Public versus Private Use):
The final issue presented is the most difficult. Its resolution will determine the outcome and constitutes the hub of the case. Its resolution requires an inquiry into the nature of the proposed operation.

It is clear that the State, as sovereign, is exempt from the reach of the B.C.Z.R. It is well-settled that the State is not bound by an enactment of the General Assembly, unless the enactment specifically includes the State, or manifests a clear and undisputable intention that the State is to be bound. See City of Baltimore v. State, 281 Md. 217 (1977) and Harker, supra. Thus, in nearly all cases it must be concluded that an activity conducted on the sovereign's land is exempt from the reach of the B.C.Z.R.

Moreover, it is clear that the State has not affirmatively waived its immunity from the provisions of the B.C.Z.R. In my judgment, none of the provisions of the Environment Article constitute such a waiver. As stated in City of Baltimore and Harker, supra, such waiver must be specifically and clearly provided or manifested by a clear and unambiguous intention. There is no manifestation or waiver in this case.

Finding no waiver of its immunity, an examination of the case law is next necessary in order to determine whether there may be an exemption from the general rule of law. Chronologically, the first case which came about to discuss this issue arose before the Court of Special Appeals of Maryland in 1975. At that time, the Court considered Youngstown Cartage

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Company v. North Point Peninsula Community Coordinating Council, 34 Md. App. 624 (1975). In that case, the State Highway Administration (SHA) acquired a parcel of land adjacent to North Point Boulevard in eastern Baltimore County. The SHA acquired the property with the intent of utilizing same for road improvements and other clearly identifiable State purposes. For one reason or another, however, the land was not so immediately used. In order to generate income, and to put the property to some immediate use, the SHA then leased the land to the Youngstown Cartage Company for a monthly fee. It is clear from the Court's opinion that the utilization of the property by the Youngstown Cartage Company was for strictly private purposes. The Company operated a trucking terminal on the property. The SHA clearly had no involvement in the operation of the business, which was undoubtedly a private enterprise.

The case came before the Court to consider whether the B.C.Z.R. were applicable to the subject use. The Court concluded that it was. The Court discussed the concepts of public use versus private use and concluded that the property was not utilized for public purposes. The Court noted that "The public has no right to enter upon or make use of the subject property so long as Appellant remains a lawful tenant thereof. The State is but the landlord of the Appellant until such time as the State sees fit to terminate the lease agreement and rent to another, use the property for its own purpose, or divest itself of title." (Page 630). Thus, the B.C.Z.R. were held to apply. Upon the facts as found in Youngstown, an exemption was carved from the settled rule of law recognizing the State's immunity. This exemption allowed County regulations to apply when the State's role was limited to landlord status, and the property was utilized solely for private enterprise purposes.

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The next case relating to this subject arose from Baltimore City. That case, Mayor and City Council of Baltimore v. State of Maryland, 281 Md. 217 (1977), tested the applicability of the Baltimore City zoning regulations to a State-owned piece of property. In that matter, the State acquired a piece of property on which a jail was to be constructed. A dispute ensued as to whether the Baltimore City zoning regulations were applicable. In deciding the case, the Court restated the well-worn premise noted above, namely, that the State is not bound by an enactment of the General Assembly unless it clearly waived its immunity. Determining that there was no such waiver in this case, the Court concluded that Baltimore City had no authority to subject the State's use of the property to the zoning ordinance. The use identified in Mayor and City Council, infra, was clearly a public use, to be operated on State land by the sovereign.

A third case arose in 1978 before the Court of Special Appeals. That case also arose from Baltimore City, namely, Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978). As in the case with Youngstown Cartage and Mayor and City of Baltimore, infra, the property at issue was owned by the State. In that case, the State Department of Juvenile Services purchased a property in Baltimore City and determined to rent same to a private, non-profit charitable organization (e.g. the Campfire Girls). The property was to be used as a home for teenage girls who had been committed by the Juvenile Court to the jurisdiction of the Department of Juvenile Services. The Court discussed the impact of Youngstown Cartage and Mayor of Baltimore City, infra. The Court's opinion organized the operation and proposed use of the property by the Campfire Girls organization. Moreover, the Court again discussed the definition of "public use".

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Apparently, the Court gave great weight to the fact that the Campfire Girls was a charitable corporation and that, although a private organization, the Campfire Girls was carrying out the will of the General Assembly by providing homes for teenage children. After full discussion, the Court concluded that the zoning regulations of Baltimore City were inapplicable.

The most recent case in this arena is Harker, supra. That case arose out of Baltimore County and this Zoning Commissioner participated in that matter while a member of the County Board of Appeals. In fact, I authored the opinion rendered by the Board in that case. Unlike the prior three cases, Harker involved privately owned property. The Methodist Board was under contract with a State agency to provide facilities for children in need. Again, the question was presented as to whether the local zoning regulations were applicable. After full discussion, the Court of Appeals concluded that the Methodist Board was not entitled to invoke the State's immunity from the Baltimore County Zoning Regulations (B.C.Z.R.).

Within its memorandum, DCRC cites the Harker opinion as dispositive on the issue presented. DCRC extracts from the Court's opinion a single statement, namely, that the State's sovereign immunity "...does not turn on the use being made of the property by the party claiming the exemption, but upon its ownership by the State." Id. at 695. Thus, DCRC claims that since the land under question is State-owned, immunity from the B.C.Z.R. must attach. I disagree.

Although indeed the Harker Court penned such a statement, DCRC has misconstrued the context in which that statement was made. Unlike Youngstown Cartage, City of Baltimore v. State, and City of Baltimore v. State Department of Health and Mental Hygiene, the issue presented in

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Harker did not involve State land. As noted above, the property under consideration in Harker was owned by a private entity. The opinion in Harker emphasizes the fact of that ownership and notes that the Methodist Board attempted to utilize the State's immunity for its own protection and insulation from the B.C.Z.R. It was in this context that the Harker Court observed that the immunity arises from the ownership of land, and not the activity which occurs thereon. If DCRC's argument was adopted and the Harker language strictly followed, the holding in the Youngstown Cartage decision would be overturned and the analysis undertaken by the Court in City of Baltimore v. State and City of Baltimore v. State Department of Health and Mental Hygiene unnecessary. I do not believe that the Court of Appeals intended such a result in Harker. In my judgment, the mere proof of ownership by the State in this case is not the sole factor to be considered. An analysis of the potential activity on the site need be undertaken, as was done by the Court in the three cases which have considered public/private use on State-owned land.

In this respect, the positions of the parties are crystallized. For their part, the Petitioners and Intervenor's aver that the landfill operation is strictly a private enterprise. They note that DCRC is a for-profit corporation, unlike the Campfire Girls. Like the Youngstown Cartage operation, DCRC pays rent to the State. The Petitioners and Intervenor's allege that the State is not a partner in the use of the facility, the State does not control the use of the facility, and that the facility operates as a private entity. Moreover, although the Petitioners and Intervenor's acknowledge that DCRC's operation results in some public benefit, they claim that the benefit is no different from other benefits resultant from other private enterprises. For example, a privately operat-

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ed golf course, while providing some public use and benefit, is nonetheless considered a private enterprise and subject to the B.C.Z.R. Although a golf course increases the tax base in Baltimore County, provides recreational and social activities to the citizens of the County, and confers similar benefits, it is, nonetheless, a private enterprise and subject to the B.C.Z.R. In a similar vein, the Petitioners and Intervenor's argue that the proposed use is likewise subject to the regulations.

Obviously the State and DCRC disagree. It is their position that utilization of the site as a landfill will facilitate the reclamation of the property previously disturbed by the sludge disposal operation. Thus, they believe that the landfill's operation is intertwined with the use of the property as parkland. Moreover, DCRC notes that the proposed use fills a significant public need by providing landfill space otherwise unavailable in Baltimore County. Moreover, it raises revenue for DNR, to be utilized for improving the State park system and other public purposes.

Some of these arguments are compelling and others are not. I take particular issue with the State and DCRC's position that utilization of this landfill furthers a park purpose. The land previously used for sludge disposal could be reclaimed by means other than operating a landfill. Removal of the sludge and regrading of the property would reclaim the site to useable park area. As the Petitioners and Intervenor's correctly note, digging a large fill area, filling same with concrete, debris and other items, is not necessary to reclaim the land for useable parkland.

In the final analysis, however, it must be noted that Youngstown Cartage, infra, is the sole authority in Maryland from which an exemption has been carved from the State's immunity. It is the only case involving State-owned land where it was determined that local zoning regulations do

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not attach. Although the Court's opinion is not as detailed about the features of the Youngstown Cartage operation as would be preferable, it is abundantly clear that it was strictly a private enterprise, utilizing the State Highway Administration property. There was no regulation by the State of the business activity and the use by Youngstown Cartage did not further an ultimate public purpose, e.g., the reclamation of land for future public park-type uses. The Youngstown Cartage operation was a 100 percent private enterprise and the State's sole gain was the receipt of rental income. To the contrary, the use at issue can best be labeled a public/private hybrid. There is no doubt that DCRC is a private enterprise and that its desire to rent this land stems from its desire to turn a profit. Nonetheless, the public use and ultimate benefit here is far more significant than in Youngstown Cartage. It is recognized that the land will be returned in better condition for utilization as public parkland. Moreover, the business of DCRC in operating this facility is significantly more regulated and of a public nature than the Youngstown Cartage operation of a truck terminal.

The State's sovereign immunity is a precept which is well-settled and from which an exemption should be carved only in limited circumstances. The Court's exemption based upon the facts presented in Youngstown Cartage is appropriate. The facts presented here are not as compelling. I do not believe that they are sufficient to allow me to expand the exemption from the State's immunity developed in Youngstown Cartage. Thus, the Petition for Special Hearing must be denied. I must conclude that the B.C.Z.R. cannot be applied to this use.

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Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested in the Special Hearing must be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of March, 1996 that a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources (DNR), in an R.C.2 zone, is not subject to the zoning regulations of Baltimore County, and thus, the Petition for Special Hearing be and is hereby DENIED.

LES:bjs


LAWRENCE R. SCHMIDT
Zoning Commissioner
for Baltimore County

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rubble landfill in Harford County. The fill was permitted under local zoning and originally was part of the county's solid waste master plan. After review by the State, it was decided to release the permit, and the county rescinded its previous inclusion of the project in the solid waste master plan. These facts were at the heart of Holmes v. Maryland Reclamation Associates, Inc., 90 Md. App. 120, 600 A.2d 864 (1992). The decision came down from the Court of Special Appeals in January, 1992, and two pieces of legislation were introduced to offset its determination that local government had no say after an initial review. Chapter 516 of the 1992 Laws of Maryland was enacted to require the Department to comply with notice and hearing provisions to and within the local jurisdiction (App. 9-11). It also required the State to hold its permit review in abeyance until the County had completed its review of the project and had certified that all requirements had been met. Very clearly, the Department was not to issue a permit until the local jurisdiction had its review of the permit. No longer could the Department issue a permit because the county was unresponsive.

Chapter 636 of the 1992 Laws of Maryland was a Senate Bill that also rewrote Section 9-210 (App. 12-15). Initially, it seems that there was an intent to eliminate Section 9-204, but it ultimately was left unamended. Consequently, the local jurisdiction now has a definitive role to play in the process of permitting landfills and must take action in order for permits to be released.

The Annotated Code is explicit in requiring all persons to have permits to operate a landfill. All persons must apply to the Secretary of Environment. Before the Secretary can issue a permit, it must be shown that all local zoning and land use requirements have been met and that local jurisdictions have been informed of the inquiry. The State is explicitly included as a person who must file for a permit, and consequently, even if the state were operating this particular landfill instead of a private operator it would be required to go through the public process and to obtain a permit.

Landfills clearly have an impact on local communities. In some zones in Baltimore County they are not permitted except as accessory uses, and in no zone are landfills permitted except by special exception. The problems caused by the lack of ability of Harford County to control a landfill in its jurisdiction lead the General Assembly in response to its constituents to give land use control over landfills to local jurisdictions and to give a threshold determination in the state permit process.

The application of the permitting process to private operators is not disputed. Section 9-211 makes a distinction between private operators of landfills and public operators in the bonding requirements. Only private operators may be required to post bonds. In this case there is a private operator subject to state permitting requirements going through the process. Just because the applicant is on public land, there is no exemption from the permit. In fact whether the land is public or private

is not a meaningful distinction on the permitting process as local zoning requirements must be met. The state has subjected itself to the permitting process, and accordingly the use of its land is subject to local review for this purpose.

II. EVEN IF THE STATE LAND WOULD BE EXEMPT FOR A STATE PURPOSE, IT IS NOT EXEMPT FROM LOCAL ZONING WHEN USED FOR A PRIVATE PURPOSE, AND THE OPERATION OF A LANDFILL BY PRIVATE OPERATORS IS A PRIVATE PURPOSE.

There are three (3) types of land use cases that may arise when government property is involved. There is government property used for governmental purposes. There is government property leased to a private entity to conduct governmental operations. There is government property leased to private individuals for private purposes. This case falls within the last category.

This is not a case of pre-emption. Just because the use is heavily regulated, the regulations in and of themselves do not preclude local scrutiny. Even if the statutes were not as explicit as they are with respect to local jurisdiction involvement, the regulation by the State of landfills is intended to protect the populace of the state from the use and not the use from the people. The case of Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 513 A.2d 893 (1986), is controlling precedent to this case. In Ad + Soil the operator of a sewage sludge storage facility was held subject to

local zoning in spite of a pre-emption argument. The company had contracted with a public agency for the exclusive dumping of its waste material. A permit had been obtained under the old wording of Section 9-210(b) to operate a sludge facility despite local zoning. No one paid attention to the local zoning ordinances except the local authorities. After attempts were made to resolve the issue in federal courts, it was decided to go through the administrative process. The company acknowledged that there was no explicit statement in the state legislation denying local jurisdictions authority over the subject matter, but it maintained that such pervasive state regulation was present to preclude local zoning overview. The Court in finding for the local jurisdiction quoted Section 9-502(c) of the Environment Article, which section is equally applicable to this case, 307 Md. 327 (1986). That section states:

Any rule or regulation adopted under this subtitle does not limit or supersede any other county, municipal, or State law, rule, or regulation that provides greater protection to the public health, safety or welfare.

The Court also recognized that as the law then existed the Department was required to consider local zoning laws. 307 Md. 327 (1986).

The Ad + Soil case determination was followed and expanded upon in Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 683, 561 A.2d 219 (1989). In Harker the applicant for a child care facility tried to bring itself under the pre-emption doctrine because the applicant was a

non-profit organization providing services regulated by the State. Unlike Ad + Soil the applicant was a not for profit organization, and the proposed use of the property was promoted by state law and regulation. The applicant claimed its proposed use served a governmental purpose, and, therefore, should not be regulated. The Court of Appeals by upholding the Board of Appeals and the Circuit Court disagreed. The Court found that there was no pre-emption despite the intervention of the State in the proceedings on behalf of the applicant. There was no express pre-emption in the statutes and no implied pre-emption. The Court also did not find that the local zoning laws in and of themselves conflicted with state regulation. As the Court noted:

This is not a case of a political subdivision prohibiting by local law what a State by public general law has permitted. The BCZR does not prohibit the operation of child care facilities; rather, it expressly allows such facilities to operate subject to compliance with zoning regulations. Board of Child Care v. Harker, 316 Md. 683, 561 A.2d 219 (1989).

Government property used by the government for its purposes also is not at issue here. In Mayor and City Council of Baltimore v. State of Maryland, 281 Md. 217, 378 A.2d 1326 (1977), the Court of Appeals determined that the regulations of Baltimore City did not apply to the State's use of its land for a correctional facility. This case reiterated long-standing authority to the effect that the zoning authority of local jurisdictions comes from the State, and that provision of the enabling legislation does not expressly or implicitly indicate

that the State as sovereign is to be bound by it. The Court stated; "In this regard, it is a basic and long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound. 281 Md. 217, 223 (1977).

In this case in addition to an express inclusion of the State as an entity required to go through the permitting process, it must be recognized that it is not the State that is the applicant. A private corporation, operating for profit and not in partnership with the State is the entity seeking permit approval.

This case, therefore, resolves itself into whether the operation of the site by a private entity is a public governmental function or a private function. If it is the former then it is not regulated; if it is the latter, it is regulated.

Baltimore County Zoning Regulations (BCZR) clearly contemplate the use of public property for private purposes subject to local zoning. First, the comprehensive zoning maps include all lands whether privately or publicly held. Although some of the sites are not regulated, others are. Zoning even extends over public waterways as an extension of local zoning on the land. Harbor Island Marina v. Calvert County, 286 Md. 303, 319, 407 A.2d 738 (1979). Section 103.2 of the BCZR states:

When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings

shall not be used for private purposes until they shall have been zoned in conformance with these regulations.

In Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624 (1975), the Court of Special Appeals held that the State's immunity from local zoning was forfeited when it leased its property to a private entity for private purposes. In that case the State Highway Administration leased property for which it had no current use to the Youngstown Cartage Company for a trucking terminal. SHA received rent for the use of the site. Just as in this case and in Harker, supra the State appeared to tell the County that it lacked jurisdiction. Judge McDaniel, then on the Circuit Court, quoted Section 103.2 of the BCZR as cited above, and affirmed the Deputy Zoning Commissioner and the Board on the fact that the facility was subject to local jurisdiction. The Court of Special Appeals in affirming the Circuit Court stated that the issue as later presented in Mayor and City Council of Baltimore had not yet been decided in the State and was not before the Court, for the land was being used for private purposes by a private entity. The Court indicated that the public has no right to use the facility or to go on the land as long as the tenant remains in possession. The Court concluded:

The State Highway Administration is but the landlord of the appellant until such time as the State sees fit to terminate the lease agreement, terminate the lease agreement and lease to another, use the property for its own purposes, or divest itself of title.

... We conclude that when the State acquires land and then leases or rents that land to a private person or concern for

a private use, the land is subject to local zoning ordinances or regulations so long as it is so leased or rented. Youngstown Cartage Co. v. North Point Peninsula, etc., 24 Md. App. 624, 332 A. 2d 718, 721 (1975).

A few years later in City of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978), the Court of Special Appeals revisited the issue of State owned property leased to a private entity and the application of local zoning. In this case the Department of Juvenile Services (DJS) purchased property in Baltimore City as part of its state-mandated program to care for the predelinquent child. DJS then rented the property to the Campfire Girls Council, a non-profit organization, to operate the facility for girls in need of assistance.

In City of Baltimore the Court distinguished Youngstown and found that a public purpose did exist for the use of the property. The Court recognized the need for a Youngstown determination to protect the community from "deplorable" situations of private uses conflicting with local community uses. City of Baltimore v State Department of Health, 38 Md. App. 570, 381 A.2d 1188 at 1190 (1978). In that case, however, the Court of Special Appeals found that DJS had a mandate, which it intended to fulfill by having the non-profit organization run the facility. The Circuit Court's findings of fact that the facility served a public purpose were affirmed.

The Court of Special Appeals recognized that the term "public use" did not pertain to public accessibility to the site.



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

March 21, 1996

(410) 887-4386

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
S/S Days Cove Road, 5300' E of the c/l of Pulaski Highway
(Department of Natural Resources' property at 6425 Days Cove Road)
11th Election District - 5th Councilmanic District
White Marsh Civic Association, et al, Petitioners
Case No. 96-132-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: White Marsh Civic Assoc., Harewood Park Community Assoc., Nottingham Community Assoc., through Mr. Adam Paul, Mr. Joe McGraw, and Ms. Marie Q. Simoes, respectively.

Mr. John Griffin, Secretary, Department of Natural Resources
Tawes State Office Building, 580 Taylor Ave., Annapolis, Md. 21401;
Mr. J. Joseph Curran, Jr., Attorney General, and
Ms. Pamela D. Anderson, Assistant Attorney General, State of Maryland
200 St. Paul Place, Baltimore, Md. 21202

John B. Gontrum, Esquire, Romadka, Gontrum & McLaughlin
814 Eastern Boulevard, Baltimore, Md. 21221

DEPRM; People's Counsel; File

IN THE MATTER OF: * BEFORE THE
DAY'S COVE RUBBLE LANDFILL * ZONING COMMISSIONER
EXPANSION * OF
GUNPOWDER FALLS STATE PARK * BALTIMORE COUNTY
* Case No.: 96-132-SPH

REPLY OF MEMORANDUM OF PETITIONER

The Petitioners, having received the Memorandum of Law in response to their petition from Counsel for Days Cove Reclamation Company late, hereby submits a brief reply.

The Memorandum from Day's Cove Reclamation Company appears to concede that the determination of this case rests upon what constitutes a "public use" and, therefore, that the public use question is the issue before the Zoning Commissioner. Petitioners do not accept nor concede the fact that every landfill is per se a public use and that simply because the applicant in this Case, Day's Cove Reclamation Company, desires to place a landfill on public property, that that, in and of itself, satisfies the case law requirement for the determination of a public use. Clearly every landfill does not qualify as a public use, particularly under the proffered factual situation in this case in which the State is operating a State park in which the landfill will be located.

Clearly what is needed in this case in addition to the hearing already held on November 7 is the State and the Day's Cove Reclamation Company be required to come forward and disclose the factual basis for the operation and the need of this proposed landfill. Many questions still exist on this record as to the factual basis of how the site is to be used, leased, and to what extent state oversight is or is not involved in this case.

LAW OFFICE
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In a review of the Youngstown Cartage Company v. North Point case, it is clear that the determination of the issue of public use rests upon a factual foundation.

WHEREFORE, Petitioners respectfully submit that the Zoning Commissioner should convene an additional hearing for the purpose of obtaining whatever factual information all sides desire to present to further create a record for purpose of a determination of the core issue of "public use."

For an explanation as to why this brief reply memorandum is late in accordance with the Zoning Commissioner's previous ruling, please see the letter of December 4, 1995, from Jennifer L. Wurzbacher Representing Days Cove Reclamation Company.

Respectfully submitted,

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 21st Day of December, 1995, a copy of the foregoing Reply of Memorandum of Petitioner was mailed, postage pre-paid, to: Warren Rich, Esquire, P.O. Box 819, Stevensville, Maryland 21666, and to Pamela Anderson, Esquire, Assistant Attorney General, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 and John Gontrum, Esquire, Romadka, Gontrum & McLaughlin, 814 Eastern Blvd., Baltimore, Maryland 21221.

J. Carroll Holzer

DAYS COVE REPLY.MEM

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IN THE MATTER OF: * BEFORE THE
DAYS COVE RUBBLE LANDFILL * ZONING COMMISSIONER
EXPANSION * OF
GUNPOWDER FALLS STATE PARK * BALTIMORE COUNTY
* Case No.: 96-132-SPH

RESPONSE MEMORANDUM OF WAYNE KNIGHT AND HONEYGO RECLAMATION CENTER

The Memoranda filed by the State of Maryland, Department of Natural Resources (hereinafter referred to as the "State") and by Days Cove Reclamation Center (hereinafter referred to as "DCRC") both concede a fundamental point of Petitioners,' which is that mere State ownership of the property does not constitute immunity from local zoning oversight. Because there is a fundamental disagreement over whether the facility will operate as a "public" or a "private" use, a factual hearing is necessary to determine the means of operation of the facility.

The Memorandum of the State

The State's Memorandum opens with a statement as to how environmentally valuable and sensitive the area surrounding the subject site is. It is important to realize that the parcel of property on which the proposed landfill is to be located was never approved previously for a landfill use. Another tract had been used, and the deed conveying that parcel allowed that use on that tract to continue. The deed did not give permission for other such activities, but rather provided for their termination.

No one contests that the State gets revenue from the site or

that the revenue is not put to "good" use. Presumably, the State does not lease land to private interests for nothing unless the interest is a state public use. Rent would be appropriate if the use is a private use. The fact that no lease has been drawn as yet for this site is irrelevant, however, because the applicant (DCRC) in its application for use is using the previous lease as a model, and that lease clearly sets the use up as one privately operated and maintained. It is clear even from the State's memorandum that the role of the State is very passive, that of the landlord.

The State's Memorandum, however, is very incorrect in its characterization that the applicant is running the existing landfill. It is not. The current landfill is permitted to a separate corporate entity, JWP Enterprises, Inc., and no corporate identity or relationship has been alleged. Consequently, the State is letting a new entity come in to operate a new landfill. Whatever non-conforming use status the old landfill may have enjoyed can not be transferred to a new operator/lessee on a new site. The documentation offered including the application filed by DCRC supports this fact.

Finally, there is no showing that the current rubble landfill was in fact in compliance with the local regulations when taken over by the state. In point of fact such landfill could only have been in compliance if it had been adjudicated as non-conforming because it was located then in R.C. 2 and R.C. 50 zones, neither of which permitted the operation of that landfill as proposed.

The State's memorandum also fails to adequately distinguish

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Youngstown Cartage Co. v. North Point Peninsula Community Co-ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975), based on the facts presented. In both cases the situation involved state-owned property on which public use was deferred. In Youngstown, the State deferred the public use for highways, and instead leased the property to a private entity that put the property to productive, revenue-generating use. In this case the State also is deferring the public, park use until the landfill is capped and completed. To say that the property is being "reclaimed" is ridiculous. Assuming that the site has been used in the past for sludge storage and mixing with soil, if it truly was the goal of this project to reclaim or restore the site, the legitimate restoration or reclamation could not possibly involve the further removal of almost one million (1,000,000) cubic yards of soil, down to a depth of seventy feet below existing grades. How can this be justified as "reclamation"? This is not one of the quarries that the State claims is on the properties they purchased.

We agree obviously with the State in its statement as to the purpose of parks and its responsibilities. The statements made on the second page of the State's Argument, however, should be matched with the statements made on the first page of the memorandum. The proposal is to put in an unlined rubble landfill without County review to ensure that there are no environmental hazards from the previous use of the property. The cure is worse than the existing problem. If the purity and pristine nature of the park, its serenity, its ecological importance are truly important to the

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State, how can the State justify putting in an unlined, privately operated landfill and state that this serves the purpose of the park? The mere allegation does not make it so. The revenues of leasing the site may serve a the State's purpose but not this precise use.

Nowhere in the authority of the Department of Natural Resources, Park Administration is there authority to run landfills in the parks. As the State concedes, this is the only landfill proposed in the State on park property. There are currently fifteen (15) rubble landfills operated in the State, and not one is owned and run by the State. In reality, this is not part of a statutory program, nor part of a state solid waste disposal authority, nor part of a state program. The proposed landfill will serve as a revenue producer only and should be viewed on the merits in that light alone.

The proposed lease and use in this case is much more akin to the facts of Youngstown than to the facts contained in Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978). This use is very similar to the examples of disruption cited in footnote number 1 at 381 A.2d 1190 in that case if state-owned property is put to private purposes without local zoning supervision. Presumably, the examples cited in that footnote also serve needed, economic development purposes and would, if the situation arose and were economically valuable, be similarly justified by the State as public uses.

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Finally, it is clear that if the State reasoning applies, then the mere statement by a state official that the local jurisdiction should remove itself should cause the County to neglect its own charter and mandate. The State law does indeed say that the County must determine if the use conforms to applicable zoning requirements. The property is zoned on the zoning maps.

The purpose of this hearing is to determine if the local zoning requirements do in fact apply. That determination should be made if the facts indicate that the use is not a public use serving purposes of legislation mandating state action. The legislation's own wording could not be clearer, and an interpretation is justified only if there is ambiguity. This is the rare case where the State is explicitly defined as a "person" subject to the application process. If the State is subject to the process, then for the words to have any meaning, it too must be subjected in this matter to local zoning regulations.

The Memorandum of Days Cove Reclamation Center

The Memorandum filed by DCRC follows the State Memorandum on the substantive argument, and the previous discussion is equally applicable. The statements of the Department of the Environment are not binding upon local zoning officials as to the law, and especially not when local zoning officials have been charged with the responsibility of zoning overview.

There are factual statements in the Memorandum, however, which again are simply not supported. The site is not "open to the public" in the same way that a restaurant or convenience store is

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open. Presumably loads may be rejected in the complete discretion of the operator. Interestingly, the DCRC memorandum, while stating that this matter is a new matter, continues to refer to the conditions at the existing landfill operated by a separate company. While it rejects comparisons, its rationale for being is based on the existing landfill and its contracts and agreements. There is no statement, however, that the operations will be identical.

The bulk of DCRC's memorandum is devoted to jurisdictional and standing issues. The Baltimore County Zoning Regulations are very broad in the scope given the Zoning Commissioner. Clearly, under B.C.Z.R. Section 500.7, jurisdictional issues are issues for consideration by the Commissioner in special hearings. The Zoning Commissioner has complete discretion to hold hearings on his own motion or on the Petition of others on matters that effect the enforcement of the regulations. When the State code says that the rubble landfill proposed must meet applicable zoning regulations, and those regulations permit the use only by special exception, it is a matter for the Zoning Commissioner. It otherwise might be argued by DCRC that a suit for injunction and mandamus is inappropriate due to failure to exhaust administrative remedies.

The standing issue equally is a non-issue. Baltimore County by statute has a very broad standing provision in zoning and development matters. That standing is not contained in other County regulations nor in many State regulations. Nevertheless this is a County zoning case, and in this County an "interested person" includes community groups and taxpaying residents of the

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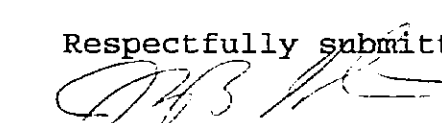
County. This Petition was brought by taxpayers and community groups, which included this area as part of their territory. Just because the property is surrounded by State-owned land DCRC can not claim immunity from concerned citizens. Finally, because a special hearing may be raised even by the Zoning Commissioner on his own, any person should be allowed to assist in the presentation of the matter for the consideration of the Commissioner.

It is our position that the state legislation on its face delegates the responsibility for zoning decisions on landfills to local jurisdiction, even those landfills on state property. Even if express delegation, however, is not found, the determination of whether the proposed use at this location is a public use serving a public purpose, is a matter to be determined after a factual review of the conduct of the use.

In conclusion, Intervenor do not argue that there is not a monetary benefit to the state due to this use. We concede that the money that will be generated by this project will probably be used for worthwhile causes and that some will be returned to the County. We even concede that a rubble landfill in and of itself does serve a valuable purpose. Until technology and recycling develop, there is a need for these facilities. Need alone, however, does not determine a public purpose. There is a need for trucking facilities, a need for rendering facilities, for steel manufacturers and many other types of economic development. This use, however, has been singled out in both State law and in local law as having particular, potential adverse impacts on the

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community, and for that reason, unlike so many other uses, the statutes and regulations have singled this use out for close scrutiny and review. To deny this statutorily-mandated review to the local jurisdiction on a matter so particularly defined defies logic and is contrary to the responsibilities of the local jurisdiction and its statutory duty. All that is being sought is that this use at this location be the subject of the review that the law mandates as necessary to protect the welfare of the people of the County and of the State.

Respectfully submitted,

John B. Gontrum
Attorney for Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 1995, a copy of the foregoing Memorandum was mailed by first class mail, postage prepaid to Warren Rich, Esq., attorney for Days Cove Reclamation, P.O. Box 819, Stevensville, Maryland 21666, and to Pamela D. Andersen, Esq. Assistant Attorney General, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 and to J. Carroll Holzer, Esq., attorney for Petitioners, Suite 502, 305 Washington Avenue, Towson, Maryland 21204-4740.


John B. Gontrum

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IN THE MATTER OF: * BEFORE THE ZONING
DAY'S COVE AREA OF GUNPOWDER * COMMISSIONER OF
FALLS STATE PARK
6425 DAY'S COVE ROAD * BALTIMORE COUNTY
FIFTH COUNCILMANIC DIST. * CASE NO. 96-132-SPH
* * * * *

RESPONSE MEMORANDUM OF THE STATE OF MARYLAND, DEPARTMENT OF NATURAL RESOURCES

Comes now, the State of Maryland, Department of Natural Resources, by its attorneys, J. Joseph Curran, Jr., Attorney General and Pamela D. Andersen, Assistant Attorney General, and responds to the memoranda submitted by the petitioners and intervenors in the above captioned matter.

Facts

On December 29, 1986, the State of Maryland purchased approximately 737 acres of land from Joseph and Stanley Smuck and the ROC Corporation, a Smuck family corporation. The land purchased from the Smucks borders on the confluence of the Big and Little Gunpowder Falls, one of only a few true river deltas in the State. The area, known as the Days Cove Area of Gunpowder Falls State Park, is significant for the diversity of habitats it contains. These include extensive marshes, both tidal and nontidal, a floodplain, wooded areas, a lake and open fields. Many consider this natural setting unsurpassed on the western shore of the Chesapeake Bay so it is being developed as an environmental study area.

At the time the State purchased the property, the Smucks had an active sludge mixing operation, a sand and gravel mining operation and a rubble landfill on the property. The Smucks retained the mineral rights (except for a 12 acre site containing critical habitat) with the right to

mine for sand and gravel for the next ten years. The deed also specified that the Smucks were allowed to continue operating the rubble landfill until they had made \$4,000,000 or 6 1/2 years had passed whichever came first. The \$4,000,000 mark was reached in 1993 and at that time the State entered into a lease with the company which had operated the landfill for the Smucks for the continued operation of the landfill. As the lessor, the State gets a percentage of the tipping fee. The County gets 10% of the State's revenue pursuant to Natural Resources Article, Section 5-212.

After many months of operating the landfill for the State, the tenant, Days Cove Reclamation Company, came to the Department with a proposal that the landfill be expanded in size onto the area which had been used for sewage sludge mixing and is now used as a site for storing the mixed sludge. The Department of Natural Resources agreed to allow the tenant to pursue getting a permit from the Maryland Department of the Environment for an expansion but has not yet taken a new lease or lease amendment to the Board of Public Works for its approval. No lease document has even been drafted yet.

Before the Department of the Environment issued the permit for the expansion of the rubble landfill, several individuals and civic associations petitioned for a special public hearing on whether or not the site proposed for expansion of the rubble landfill should be subject to the Baltimore County zoning regulations and this proceeding ensued. The current rubble landfill was in compliance with the zoning regulations at the time of its acquisition by the State. Following the acquisition, Baltimore County discontinued regulating the rubble landfill's operation.

The landfill is open to the public for use but there are operating rules which customers must comply with just as there are rules at all State parks which must be followed. The State's tenant works with the State Park Service on coordinating operation of the rubble landfill with the

management of the State Park. The Maryland Environmental Service provides daily technical inspection services for the Department of Natural Resources pursuant to a contract for services.

Argument

At the hearing on December 7, the Zoning Commissioner reviewed the case law governing the application of local zoning regulations to State property. He determined that the Baltimore County zoning enabling legislation did not grant the County express authority to regulate State property, therefore, the County zoning regulations could only apply if the State could be shown to have waived its sovereign immunity from local regulation by not allowing the property proposed for the expanded landfill to be put to a public use.

The only case in which such a waiver has been found by a Maryland appeals court is Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975). In Youngstown, unlike the property at issue here, a State agency was not using the property in any manner. The entire tract was leased out and the privately operated facility was not open to the public. The State Highway Administration had leased all of the property to a trucking company to use for its own business because the Administration was not yet ready to build a road on the property. The property in this case is a public park and the facility at issue is a rubble landfill which is open to the public for use.

The facts in this case are much closer to those in Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978) in which the Court of Special Appeals held that a State owned house leased to a private entity to operate a home for girls adjudicated to be "children in need of supervision" was exempt from local zoning because the use made of the property was public and it served a public purpose. In Mayor, the Department of Health and Mental Hygiene was statutorily responsible for the care of

the children staying in the home. In this case, the Department of Natural Resources is statutorily responsible for the promotion, administration and management of State-owned or leased parks. Natural Resources Article, Section 5-201. The Department is required to use and develop parks in a manner which protects and promotes the health, safety, economy and general welfare of the people of the State. Natural Resources Article, Section 5-102. The Department is fulfilling these responsibilities by including the rubble landfill in the Days Cove Area of Gunpowder Falls State Park.

The operation of the landfill is compatible with the existing uses of the Park. It does not interfere with the present recreational and educational activities in the Days Cove Area. The income it generates has allowed the Department to develop an Environmental Education Center and use the delta created by the confluence of the Big and Little Gunpowder Falls to be an educational tool. Just as the original landfill caused the reclamation of an area which had been mined for sand and gravel, the expansion of the landfill will allow the State to reclaim a disturbed area of the Park used as a sludge mixing site prior to the State's purchase of the property. The reclamation will ensure that there are no unknown pending environmental hazards and cause the area to be landscaped to conform to the Park plan.

It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of the local economy, preservation of the natural beauty, and promotion of the recreational and leisure interest throughout the State. Natural Resources Article, Section 5-102. The State complied with that policy when it allowed the rubble landfill to continue operating within the confines of a State park. Currently there are no other rubble landfills within the County and 75% of the waste deposited in the rubblefill originated in Baltimore County. Use of this rubble landfill saves capacity at the nearby County owned Eastern

Landfill. Convenient and economical rubble landfills keep down construction costs and promote the local economy. The landfill is a part of the State's Solid Waste Management Plan and fulfills an identified waste management need.

Other State owned facilities used for business-like activities have been determined to be exempt from local zoning regulations by the Maryland Attorney General. In 62 Op.A.G. 45 (1977) the Attorney General opined that a liquor dispensary owned and operated by the Wicomico County Liquor Control Board, which was a State entity, was not subject to local zoning regulation even though it was a business enterprise. Similarly, in 78 Op.A.G. (1993) [Opinion No. 93-017, May 25, 1993] the Attorney General found that a fraternity house purchased by the University of Maryland and leased to a private entity for student housing was not subject to local zoning because it fulfilled a public purpose. Opinions of the Maryland Attorney General are not binding on the courts or in this local zoning proceeding but the Maryland Court of Appeals has held that they are entitled to careful consideration. Podds v. Shamer, 339 Md. 540, 663 A.2d 1318 (1995).

The petitioners also argue that Environment Article, Section 9-210(a) requires all refuse disposal systems to comply with county zoning and land use requirements regardless of who owns and operates the system and for what purpose. The statute requires the Department of the Environment to get a written statement from a county that a proposed refuse disposal system "meets all applicable county zoning and land use requirements" before the Department can issue a permit for the system. Environment Article, Section 9-210(a)(3)(i) (emphasis added). The petitioners have failed to acknowledge that the statute says all "applicable" zoning requirements. In this situation, there are no applicable zoning requirements.

The Department of the Environment does not agree with the petitioners' interpretation of

Section 9-210(a). Furthermore, it does not consider Baltimore County zoning regulations to be applicable in the permit pending for the rubble landfill expansion. See the attached letter of Richard W. Collins, Director of the Waste Management Administration, Maryland Department of the Environment. The statutory interpretation of the administrative agency administering the statute is entitled to great deference. B & O Railroad v. Bowen, 60 Md. App. 299, 482 A.2d 921 (1984).

A second argument made by the petitioners is that because the Maryland Environmental Service has a contract with the Department of Natural Resources to inspect the rubble landfill, Natural Resources Article, Section 3-104(v) requires the Department to comply with local zoning requirements. Section 3-104(v) prohibits the Service from constructing, establishing or operating any new solid waste disposal project within the boundaries of any county or municipal corporation without the express consent of the governing body of the county or municipal corporation. It does not apply in this situation because the Service did not construct or establish the rubble landfill nor does it operate the landfill. The Service merely provides technical inspection services to the Department of Natural Resources just as it does for many private businesses and local governments in addition to owning and operating its own projects.

The petitioners have also cited numerous cases on preemption for authority that the County can regulate the location of landfills. The Department has not addressed the preemption issue in this memorandum because no one is arguing that the State has preempted the field of local zoning of solid waste disposal facilities. The argument is that local zoning is not applicable to a State owned rubble landfill in a State park that is open to the public and is used for public purposes.

For these reasons, the State of Maryland Department of Natural Resources respectfully requests the Zoning Commissioner to hold that the Baltimore County zoning regulations do not apply to the rubble landfill within Gunpowder Falls State Park.

Respectfully submitted,
J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

Pamela D. Andersen
Pamela D. Andersen
Assistant Attorney General
Dept. Of Natural Resources
580 Taylor Avenue
Annapolis, Maryland 21401

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 1995 a copy of the foregoing Response of the State of Maryland, Department of Natural Resources was mailed first class, postage pre-paid to J. Carroll Holzer, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for the Petitioners, to John B. Gontrum, Romadka, Gontrum & McLaughlin, 814 Eastern Blvd., Baltimore, Maryland 21221, Attorney for Wayne Knight and Honeygo Reclamation Company, to Peter Max Zimmerman, Room 47, Courthouse, 400 Washington Avenue, Towson, Maryland 21204, People's Counsel, and to Warren K. Rich, Rich and Henderson, 844 West Street, P.O. Box 589, Annapolis, Maryland 21404-0589, Attorney for Days Cove Reclamation Company.

Pamela D. Andersen
Pamela D. Andersen
Assistant Attorney General

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

IN THE MATTER OF	)	
DAYS COVE RUBBLE LANDFILL	)	
Gunpowder Falls State Park	)	Case No. 96-132-SPH
Days Cove Road	)	
11th Election District	)	

MEMORANDUM OF LAW IN RESPONSE TO PETITIONERS' AND INTERVENORS' MEMORANDA

Days Cove Reclamation Company ("DCRC") hereby submits this Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda.

At the November 7 hearing and in their respective legal memoranda, Petitioners and Intervenor's have argued that Baltimore County's Zoning Ordinance applies to the Days Cove Rubble Landfill. Because Petitioners and Intervenor's cannot escape the sizeable body of case law holding that State-owned property put to a "public use" is immune from local zoning laws, they have focused on two arguments: (1) that the State has somehow waived its sovereign immunity with respect to rubble landfills; and (2) that the installation of this rubble fill on State park lands does not constitute a "public use."

BACKGROUND

The proposed expansion of the Days Cove Rubble Landfill is the latest step in an effort to reclaim for park land property that previously was used for mining and sludge mixing, while at the same time operating a rubble fill. Rubble placed at Days Cove is largely inert construction and demolition debris. This material is placed in areas that were previously disturbed, which is brought up to a specified grade, capped and revegetated for park purposes.

The site of the proposed expansion (the "Site") is a 27 acre parcel located in Gunpowder State Park in Baltimore County. The Maryland Department of Natural Resources ("DNR") acquired the Site as part of a larger tract of land that it purchased from the Smuck family in 1986. Prior to their sale to the State and for a short period thereafter, certain areas of the property were mined for sand and gravel and other areas were utilized for sludge mixing. See Sludge Site Lease (Exhibit "A") and Mining Permit (Exhibit "B"). These activities resulted in the removal of top soils, sand, and gravel from the subject property, and lowered the grade of the affected areas. Disturbed areas needed restoration and reclamation before use as active parkland.

To aid in the reclamation of a portion of the former mining area, DNR leased that portion of the property to Enviro-Gro Technologies Company, a predecessor of DCRC, for the purpose of operating the Days Cove Rubble Landfill. Operation of the rubble landfill, which began in 1992, has restored that area to its natural grade.

The Days Cove Rubble Landfill is open to the public. In addition to accepting rubble transported by individuals and commercial haulers, Days Cove accepts brush and wood waste from neighboring Eastern Sanitary Landfill, which is owned and operated by the County. See Operating Agreement Between Baltimore County and DCRC (Mar. 8, 1995) (Exhibit "C").

In 1994, DCRC approached DNR about expanding the rubble landfill to the area encompassing the former sludge-mixing site. DCRC and DNR agreed that the proposed expansion would allow the State to reclaim the sludge site for park land, in addition to meeting the need for additional rubble fill capacity in Baltimore County and its environs.

On November 28, 1994 and January 30, 1995, DCRC submitted to the Maryland Department of the Environment ("MDE") applications for a Refuse Disposal Permit for the Site. By July 1995, MDE's Waste Management Administration ("WAS") had completed its review

of Phase I (permit application) and Phase II (geologic and hydrologic report) for the Refuse Disposal Permit and considered those submissions to be complete. WAS had also begun its review of Phase III (engineering plans and specifications) for the permit. At that time, Richard Collins, Director of WAS, wrote to Baltimore County Executive Dutch Ruppersberger to advise him of the status of the permit application. See Letter from R. Collins to C.A. Ruppersberger (Jul. 12, 1995) (Exhibit "D"). In that letter, Collins explained that:

Section 9-210(a), as amended, of the Environment Article, Annotated Code of Maryland requires that the Department report the findings of its preliminary technical review in writing to the County and that the County must provide a written statement to the Department affirming that the proposed facility is in conformance with approved County solid waste management plan. On April 14, 1995 WAS received a written statement from the County to this effect. Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

Id. at 1-2. The State requested no further input from the County with respect to the Refuse Disposal Permit.

Contrary to Petitioners' and Intervenor's assertions, no "proposed lease" has been negotiated or drafted. It is

anticipated that, like the current lease for the existing rubble fill, the lease for Site will set a level of rent based on the fees generated by the rubble fill. It is also likely that the Maryland Environmental Service will continue to play a role in monitoring disposal and placement of waste. Finally, the expansion, like the existing rubble fill, will be open to the general public and ultimately used for active park purposes.

The primary opposition to the rubble fill expansion have been Petitioners and Intervenor's. Petitioners are three neighborhood associations and their respective leaders. Two out the three association leaders named in the Petition live two or more miles from the Landfill. The third lives more than three quarters of a mile from the Landfill. None of the neighborhood associations named in the Petition has identified any interest independent of those of its members that is affected by the issue presented. Intervenor's are a reclamation company and its operator. Intervenor's plan to construct a competing rubble landfill three miles from the Days Cove Rubble Landfill. These remote and purely competitive interests have driven the process that has resulted in the instant proceedings and do not provide a basis for standing.

ARGUMENT

I. THE ZONING ADMINISTRATION LACKS JURISDICTION TO CONSIDER THE ISSUE RAISED BY PETITIONERS AND INTERVENORS.

The subject matter jurisdiction of the Baltimore County Zoning Commission is established by the State Enabling Act and by the Baltimore County Charter, Baltimore County Code, and Baltimore County Zoning Regulations ("BCZR's"). None of these authorities confers upon the Zoning Commission the power to consider the issue presented in this case.

Article 25A of the Maryland Code (the State Enabling Act) confers upon chartered counties, including Baltimore County, the power to enact and provide for enforcement of local laws. Md. Code Ann., Art. 25A § 5(A). Section 5(X) of the statute confers the specific power to enact local laws relating to zoning and planning. This section of the statute clarifies, however, that it does not "authorize the county or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise" or "to preempt or supersede the regulatory authority of any State department or agency under any public general law." Id. § 5(X) (v) 3 & 4.

Neither the Charter, Code, or Zoning Regulations of Baltimore County grant the Zoning Commissioner the power to entertain a petition or issue an order in the absence of an adjudicatory "case or controversy." See Balto. Cty. Charter § 26-121; Balto. Cty. Code § 26-121; BCZR Part 500. Rather, as set forth in the BCZRs, the Zoning Commissioner has the specific authority to consider applications for building permits (§ 500.1), petitions for zone and district classification and reclassification of property, and special exceptions (§ 500.2), applications for use permits (§ 500.4). In addition to these powers, the Zoning Commissioner is granted the authority to conduct hearings and issue orders in matters "involving any violation or alleged violation or non-compliance with any zoning regulations, or on the proper interpretation thereof" (§ 500.6) and in situations where, "in his discretion, [it is] necessary for the proper enforcement of all zoning regulations" (§ 500.7). An order issued pursuant to these authorities is subject to the right of appeal to the County Board of Appeals. §§ 500.6 & .7.

The issue raised in the pending Petition is whether the BCZRs apply to a parcel of State-owned property that is leased to a private entity for the purpose of operating a rubble landfill. The only substantive question to be resolved is the scope of the

State's immunity from the application of local zoning regulations.

Most importantly, neither Petitioners nor Intervenors have presented a case or controversy, only a pure question of law. This issue, furthermore, does not require the interpretation of the local regulations. Nor does it concern the alleged violation of or non compliance with those regulations. The County has already confirmed that the existing landfill does not require local approvals and the proposed expansion has not yet taken place. It is not a question of proper exercise of enforcement authorities. Rather, stripped of Petitioners' spin, the issue presented is purely one of State law.

Moreover, Petitioners claim that provisions of Maryland's Environment Article have effected a waiver of its sovereign immunity where rubble landfills are concerned. Implementation and interpretation of these provisions has been committed to the regulatory authority of the Maryland Department of Environment ("MDE"). Consequently, in light of the explicit language of the Enabling Act, this issue is clearly beyond the County's power to consider. See Art § 5(X)(v)4.¹

¹ Through this proceeding, Petitioners and Intervenors are (continued...)

II. PETITIONERS AND INTERVENORS LACK STANDING TO RAISE THE ISSUE PRESENTED.

Under the general rules of standing applied by the Maryland courts, a party that would rest its right to sue on its status as a "resident," "park user," or "citizen" must establish through evidence in the record that the alleged public wrong sought to be addressed created special damages to the plaintiff different from that suffered by the public at large. Rogers v. Maryland National Capital Park & Planning Comm'n, 253 Md. 687, 691 (1968).² The applicable statutory provisions supplement these standing limitations in the present case.³

(...continued)
really challenging the State's conclusion in the context of the Refuse Disposal Permit application that the subject property is immune from local zoning. Their attempted "end run" around the appropriate appeal process and final decision requirements should not be countenanced by this tribunal.

² In order to establish standing based on a party's status as a taxpayer, it is necessary to show that the statute or action challenged results in an increase in the party's taxes. Kerpelman v. Bd. Of Public Works, 261 Md. 436, 442-43 (1971). No one has suggested in this case, nor could they establish, that the exemption of Days Cove from zoning regulations would increase Petitioners' or Intervenors' taxes.

³ The BCZRs limit standing to petition the Zoning Commissioner to an "interested person" who seeks to determine his or her rights in property in Baltimore County "insofar as they are affected by these regulations." BCZR § 500.7. Further, only a person "aggrieved" by a decision of the Zoning Commissioner has (continued...)

The Court of Appeals has applied a two-pronged test that a plaintiff must meet to establish standing to challenge a zoning action. Brynairski v. Montgomery Cty., 247 Md. 137, 144-145 (1966). First, he must show that he has a personal or property interest that will be adversely affected by the zoning action. Id. Second, he must demonstrate that his personal or property interest will be harmed by the zoning act in a way that is distinct from the harm that the general public will suffer. Id.

Under this test, standing generally has been limited to the owners of property located adjacent to or in close proximity to the subject activity, who can establish that the activity will cause them special damage--i.e., devaluation of their property.⁴ By contrast, courts have held that complainants lacked standing

(...continued)
the right to appeal that decision to the County Board of Appeals. BCZR § 500.10. The State Enabling Act limits standing to challenge decisions of the County Board of Appeals to persons "aggrieved by" a decision of the Board. Md. Code Ann., Art 25A § 5(U); Shore Acres Imp. Ass'n v. Anne Arundel Cty Bd. Of Appeals, 251 Md. 310 (1971).

⁴ 318 Md. at 92; see also Richmark Realty v. Whittliff, 226 Md. 273, 278 (1950) (complainants owned lot 200 feet from the subject property); Zang & Sons Builders, Inc. v. Taylor, 203 Md. 628, 633 (1952) (complainants owned property directly across the road from subject property); Crozier v. City Comm'r of Prince George's Cty., 202 Md. 501, 509 (1952) (complainants owned property adjacent to or in close proximity to subject property).

where their property is so distant from the activity that any claim of decreased property value would be conjectural.⁵

None of the individual Petitioners or Intervenors in this case would be able to establish a personal or property interest that would be adversely affected by a determination that the Days Cove Rubble Landfill is not subject to local zoning regulations. Two out of three of the individual petitioners live more than two miles from the landfill. The other lives almost a mile away. Each of their residences is separated from the landfill by the Bird River, intervening park land, and other residential property. Intervenors intend to open a competing rubble landfill on property that is approximately three miles from the subject property. To the extent that Intervenors have any affected interest, it is purely competitive and, therefore, not cognizable under the zoning regulations. In addition, Intervenors' facility remains in the planning stages; rendering their interest entirely prospective and speculative.

⁵ 318 Md. At 92; see also Pressman v. Baltimore, 222 Md. 330, 332-37 (1959) (evidence of standing "scant" where some complainants lived 1-4 blocks from highway across from subject property and others lived more than a mile away); Loughborough Dev. Corp. v. Rivermass Corp., 213 Md. 239, 241-43 (1956) (complainants lived approximately ¼ mile from and out of sight of subject property and residential zone and public park and stream lay between subject property and complainant's property).

Nor can the individual Petitioners or Intervenors establish that they will be affected by the decision in a way that is distinct from the rest of the public. Petitioners' rights to use and enjoy Gunpowder State Park are no different than other residents of the County or State. Their rights to use the rubble landfill are no different than those of any other County residents. Finally, because their properties are located at a considerable distance from the landfill, Petitioners cannot begin to show that the value of their properties would be diminished by a determination that the landfill is exempt from zoning requirements.

In Maryland, moreover, an organization cannot acquire standing to appeal simply because one or more of its members has standing. Clyburn Arboretum Ass'n v. Mayor & City Council of Balto., 106 Md. App. 183, 188 (1995) (citing Citizens Planning & Housing Ass'n v. County Exec., 273 Md. 333, 345 (1974)). Rather, an organizational plaintiff must establish standing based on its own personal or property interests. Id. In the instant case, none of the petitioning neighborhood associations have alleged a personal or property interest separate from those of the individual Petitioners.

In short, neither Petitioners nor Intervenors have established that they are "interested persons" or that they would be "aggrieved" by an adverse decision in this case. Accordingly, they have failed to establish the requisite standing to advance the Petition.

III. DAYS COVE RUBBLE LANDFILL IS EXEMPT FROM BALTIMORE COUNTY ZONING REGULATIONS.

A. The State is Immune From the Application of Local Zoning Laws.

It is a fundamental principle of statutory construction that the State is not bound by an act of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intent that the State is to be bound. See, e.g., Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Harker, 316 Md. 683 (1989). In Lomax v. Comptroller of the Treasury, 323 Md. 419 (1991), the question was raised as to whether State government was bound by a State provision which exempted certain pension funds from the act of garnishment. In concluding that the State was not subject to these general statutory provisions, the Court quoted with approval the words of Justice Story in State v. Milburn, 9 Gill 105 (1850):

General Acts of the Legislature are meant to regulate and direct the acts and rights of citizens, and in most cases, the reasoning applicable to them applies with very different, and often contrary force, to the government itself. It appears to me, therefore, to be a safe rule, founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the Act."

Id. at 118.

The Maryland Court of Appeals has applied this rule a number of times in the context of zoning matters. In Harker, the Court of Appeals concluded that Article 25A of the Maryland Code, which grants Baltimore County its zoning authority, neither specifically provides nor implies that the State is intended to be subject to its provisions. 316 Md. at 691. In fact, the Court noted, Section 5(X)(2)(v)(4) of the statute provides that the County's zoning powers shall not "preempt or supersede the regulatory authority of any State department or agency under any public general law." Id. In Glascock v. Baltimore County, 321 Md. 118 (1990), the Court of Appeals, applying this reasoning, held that the Legislature did not intend the County to be bound by its own zoning regulations for the construction of a communications tower. In short, the State of Maryland has not

waived its sovereign immunity from Baltimore County's zoning regulations through its enabling legislation.

B. The State Has Not Waived Its Sovereign Immunity Through Any Provisions of the Environment Article.

Petitioners and intervenors appear to contend that certain provisions of the Environment Article subject the State to Baltimore County zoning regulations when a rubble landfill or other refuse disposal system is concerned. But the language and the purpose of the provisions to which these parties refer defy their argument.

Section 9-210(a) states that:

The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under Sec. 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

- (3) The county has completed its review of the proposed refuse system, and has provided to the Department a written statement that the refuse disposal system:
 - (i) Meets all applicable county zoning and land use requirements; and
 - (ii) Is in conformity with the county solid waste plan.

Md. Env't Code Ann. § 9-210(a) (emphasis added).

Nowhere does the statute specifically name the State or manifest a clear and indisputable intent to bind the State.

Accordingly, under the general principle announced in *Harker and Lomax*, only one conclusion can be reached: Section 9-210(a) does not waive the State's sovereign immunity from the application of local zoning laws.

The Legislature's use of the word "applicable" in Section 9-210(a) confirms that the statute does not seek to affect the scope of applicability of a county zoning ordinance. In short, this provision confers no additional zoning authority upon the County. It merely obligates the County to certify that a planned refuse disposal system is in compliance with those zoning requirements, if any, that apply.⁶

Consistent with this reasoning, the Maryland Department of the Environment ("MDE") MDE interprets Section 9-210(a) as providing no requirement that the County certify compliance with zoning regulations where a refuse disposal facility is located on State-owned property. In fact, MDE expressed this view in the

⁶ Intervenor's provide a lengthy discussion of the legislative history of section 9-210(a) that attempts to emphasize the importance of the local jurisdiction's role in the State permitting process. Nothing in their analysis or the legislative history to which they cite even remotely suggests that this statute was intended to expand the scope of the County's zoning authority.

context of this very case in a July 12, 1995 letter to Baltimore County Executive Ruppertsberger, stating:

Please note that because this facility is situated on State-owned property, the prerequisite for a statement of conformity with the County's local zoning and land use requirements will not be required.

Letter from Richard W. Collins, Dir., MDE Waste Management Administration, to Hon. C.A. Dutch Ruppertsberger, Balto. Cty Exec. at 2 (Jul. 21, 1995). As the administrative agency charged with implementing the statute, MDE is entitled to considerable deference in its interpretation of Section 9-210. *B. & O.R.R. v. Bowen*, 60 Md. App. 299 (1984).

Thus, in the instant case, no action on behalf of the County was required, or authorized, under the statute.⁷

⁷ Intervenor's seem to suggest that the County may have effected a waiver of the State's sovereign immunity through their drafting of the zoning ordinance or through their 1991 application for an injunction in a case involving sludge application in Gunpowder Falls State Park. It is important to note, however, that the County cannot waive the State's sovereign immunity. Moreover, in 1993, the County re-evaluated its position and concluded that local zoning regulations do not apply to State-owned land. See letter from Eugene G. Siewierski, Supervisor, Waste Management Section, Balto. Cty Dept. Env'tal Pro. and Resource Mgt. to Margaret L. Demczak, Mgr., JWP Environmental Services Co. (Dec. 7, 1993) (Exhibit "E").

C. The State's Immunity from Local Zoning Laws Extends to State-Owned Land Leased to a Private Entity to Operate a Rubble Fill.

The case law in Maryland makes clear that, first and foremost, the right to exemption based on the State's sovereign immunity "does not turn on the use being made of the property by the party claiming the exemption, but upon its ownership by the State." *Board v. Harker*, 316 Md. at 695. In this case, State-ownership of Gunpowder Falls State Park, on which Days Cove is situated, is undisputed.

As Petitioners and intervenors appear to acknowledge, moreover, the State's immunity from local zoning laws extends to any State-owned property that is put to a "public use," even if the use is undertaken by a private entity. See *City of Baltimore v. State Board of Health and Mental Hygiene*, 38 Md. App. 570 (1978). The primary test employed by the courts to determine whether an undertaking constitutes a "public use" is, quite basically, whether it constitutes a "use by the public." *Id.* at 576.⁸ "Use by the public," the courts have held, is "not susceptible to any one single, all-inclusive definition." *Id.*

⁸ Another test for determining "public use," the "public benefit" test, has been limited to Land Development and Redevelopment projects such as slum clearance. *Id.*

The applicable case law makes it clear, however, that the focus of the public use analysis is the benefits that could accrue to the general public as a result of the use. See, e.g., *Williams v. Anne Arundel County*, 334 Md. 109 (1994) (applying "public use" test in the context of a special community benefit tax).

There is no question that the development and preservation of state park lands is a valid public purpose. See Md. Nat. Resources Code Ann. § 5-102. It is also beyond dispute that the encouragement of economic development and use of the State's natural resources for the improvement of the local economy are valid public purposes. See *Id.* Finally, it is clear that the condemnation of land for use as a landfill is a public use. See *County Commissioners of Frederick Cty v. Schrodal*, 320 Md. 202

(1990).⁹ The proposed expansion of the Days Cove Rubble Landfill falls within each of these categories of public use.

First, the Site is located in Gunpowder Falls State Park. The landfill expansion will advance the State's interest in facilitating park uses by allowing the State to reclaim an area of the Park that was used as a sludge mixing site prior to the State's acquisition of the property. DNR, which is charged with the proper use, development, and preservation of parks and other natural resources, concurs that the expansion of the landfill will advance these interests. See Letter from Pamela D. Anderson, Esq., Assistant Attorney General, to Arnold Jablon, Dir. Balto. Cty Dept. Of Permits and Dev. Mgt. at 1 (Oct. 27, 1995) (hereinafter "Anderson Letter") (Exhibit "F").

⁹ Petitioners and intervenors confuse the concepts of preemption and public use. Citing *Ad-Soil, Inc. v. County Commissioners*, 307 Md. 307 (1986), they seem to argue that the State has not preempted local regulation of solid waste; therefore, landfills are not always public uses.

DCRC does not contend in this proceeding that the State has preempted all local regulation of solid waste disposal. DCRC's argument is that the State has never conferred upon the County zoning authority over rubble landfills on State-owned property. It need not be established that the State took back from the County through preemption something that was never given in the first place.

Second, the State and County will derive considerable economic benefit from the operation of the expanded Days Cove Rubble Landfill. First, the lease for the Site will require DCRC to pay the State a percentage of its revenues. Those monies will be placed in the Department of Natural Resources' general fund and, thus, inure to the benefit of all residents of the State. The income generated from the existing operation already has allowed DNR to develop an Environmental Education Center at Gunpowder State Park. Second, by DNR's analysis, there currently are no other rubble landfills in Baltimore County and 75% of the waste deposited in the rubble fill originates in the County. As DNR has pointed out, convenient and economical rubble landfills hold down construction costs and promote the local economy. See Anderson Letter.

Fourth, the State and County will derive a substantial benefit from the increased disposal capacity provided by the expansion. The landfill is part of the State's Solid Waste Management Plan and fulfills an identified waste management need. In its Operating Agreement with DCRC, the County has acknowledged a desire "to reduce, and preferably eliminate, brush and wood waste from entering [Eastern Sanitary Landfill] and consuming landfill capacity." The agreement seeks to advance the County's

goal by requiring DCRC to accept brush and wood waste for recycling or disposal in the rubble landfill.

Petitioners and intervenors argue, however, that the Days Cove Rubble Landfill is not a public use because, they allege, it is open only to haulers approved by the landfill and DCRC retains control over the entities from whom it accepts contracts. Petitioners' Memorandum at 6; Intervenor's Memorandum at 16.

Petitioners and intervenors misstate the facts. Days Cove Rubble Landfill is, and will continue upon expansion to be, open to the general public. Importantly, DCRC is bound by contract with the County:

to accept brush and wood waste delivered to the [rubble landfill] by the County and which has been generated by County residents or municipal agencies, or generated on-site at the [adjacent Eastern Sanitary Landfill] from clearing activities and to chip, grind, reuse, recycle, or market the chips as a commodity. Alternatively, DCRC must dispose of at the [rubble landfill] whatever quantity of chipped or ground material is not otherwise utilized.

Operating Agreement Between Baltimore County and Days Cove Reclamation Company (Mar. 8, 1995). The only limitations on access that DCRC has ever imposed have been for the purpose of ensuring public safety, non-exceedance of disposal capacity, and compliance with State-imposed regulatory obligations.

Petitioners and Intervenor also misinterpret the term "public use." The courts have noted that "public use" is not synonymous with the physical use or access by the public." Id. at 575. In fact, the courts have noted that "[t]here are many State-owned facilities where the public, in the sense of the average citizen, has 'no right to enter' absent a special permission received from competent authority." Id. Limitations on access that promote safe and effective operation do not defeat the public character of a given use. See Id. (noting acceptable limitations on access to penal institutions, courthouses, Comptrollers' offices, police station investigation rooms, and the records rooms of the Department of Motor Vehicles).¹⁰ The restrictions placed on the general public's access to the Days Cove Rubble Landfill are clearly not of a nature that would undermine the public nature of the use.

Petitioners further contend that the proposed rubble fill expansion is not a public use because "the private entity operating the fill is a for-profit corporation" that has the

¹⁰ These reasonable restrictions on public access stand in stark contrast to the purely private uses identified by the courts in case like Youngstown Cartage Co. v. North Point Peninsula Community Co-ordinating Council, 24 Md. App. 624 (1975) (use of State-owned property as a commercial trucking terminal).

right to set its prices and operating hours and "is not dependent on any state agency for referrals, nor is there any guarantee of business." Petitioners' Memorandum at 8.

Importantly, the courts have held that "[t]he fact that some private enterprise or person will also benefit from an acquisition via condemnation will not convert the public character to private." City v. Board of Mental Hygiene, 38 Md. App. at 575. Accordingly, the Court of Appeals upheld under a public use analysis:

- the condemnation of 323 acres of private land for use as an industrial park; Prince Georges Cty v. Collington Crossroads, Inc., 275 Md. 171 (1975);
- the condemnation of land for a privately owned railroad spur or line; Riden v. Phila. B & W.R.R., 182 Md. 336 (1943); New Central Coal Co. v. George's Creek Coal & Iron Co., 37 Md. 537 (1873); and
- the condemnation of land situated on the shore of the Patapsco River for the construction of wharves, piers, docks, warehouses and buildings to be rented to private users; Marchant v. Baltimore, 146 Md. 513 (1924).

In light of this precedent, any private benefit that DCRG realizes from operation of the Landfill does not convert this overwhelmingly public use into a private one.

CONCLUSION

For the foregoing reasons, the Zoning Commissioner for Baltimore County should dismiss the pending Petition or, alternatively, hold that the Baltimore County Zoning Regulations do not apply to the Days Cove Rubble Landfill.

Respectfully Submitted,


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PETITION FOR SPECIAL HEARING * BEFORE THE
IN THE MATTER OF : * ZONING COMMISSIONER
DAYS COVE RUBBLE LANDFILL * OF BALTIMORE COUNTY
GUNPOWDER FALLS STATE PARK *
DAYS COVE ROAD * CASE NO. 96-132-SPH
11TH ELECTION DISTRICT *

MEMORANDUM OF LAW

STATEMENT OF CASE

This case arose out of a Petition for Special Hearing filed by the Nottingham Improvement Association, the White Marsh Civic Association, the Harewood Park Improvement Association and various individuals asking the Zoning Commissioner for Baltimore County to take jurisdiction over a proposed rubble landfill in an R.C. 2 zone. At the hearing held on November 7, 1995, appearances were entered by counsel for the Petitioners, by the State Attorney General representing the Department of Natural Resources, and by counsel for the lessee and operator of the proposed facility. In addition, intervention was granted to Wayne Knight and Honeygo Reclamation Company, on whose behalf this memorandum is filed.

STATEMENT OF FACTS

Intervenor Wayne Knight and Honeygo Reclamation Company hereby expressly adopt the Statement of Facts contained in the Memorandum submitted by counsel for Petitioners. At the hearing it was not contested that the proposed rubble fill, which also

will contain wood chipping, will be located on a 27 acre parcel of state owned land for the benefit of the Department of Natural Resources. The property was part of a larger tract conveyed for consideration to the Department of Natural Resources for the Gunpowder State Park.

An application was filed by Days Cove Reclamation Company, a private corporation unaffiliated with the State of Maryland, to lease and operate a waste disposal facility on the state property. The facility would be operated as a private facility under lease with the State of Maryland, subject to approval by the Board of Public Works, and subject to State Regulation as set forth in the Environment Article of the Annotated Code of Maryland.

The application submitted by Days Cove Reclamation referred to existing lease arrangements between the State and JWP Environmental Services Co., a subsidiary of JWP, Inc., a Delaware Corporation, for the existing facility, and claimed that the proposed facility, although separated from the state facility by a privately owned parcel of 12 acres, would be an "expansion". The proposed site was not part of the original application site permitted by Baltimore County in the 1960's. Exhibits introduced indicated that Maryland Environmental Services (MES) would be retained by the private operator to monitor the facility for the benefit of the Department of Natural Resources.

It also was undisputed that the operation of the facility is "for profit" with the State receiving a percentage of the fees

charged customers as "rent". No other connection to the State except for required permitting is alleged.

The subject property was subjected to a sludge handling permit issued to Enviro-Gro Technologies, Inc., and some of the topsoil was mixed with sludge and removed. The site plans filed with the application indicate the elevations existing and proposed in the excavation of the site and the refilling of the pit. According to the application a hole seventy (70) feet deep will be excavated involving the removal from the site of 700,000 cubic yards of excess material not needed as cover. In all, over 1.6 million cubic yards of space will be filled.

The application of the private company restricts the kinds of materials it will accept and notes that they are restricting the customers it accepts to prolong the life of the fill. Haulers bringing material to the fill must be approved by the operator, and there are no conditions in the leases or applications restricting material to that generated by the State or by any governmental entity.

DISCUSSION

I. THE ANNOTATED CODE OF MARYLAND SPECIFICALLY SUBJECTS STATE OWNED PROPERTIES TO LOCAL ZONING REVIEW WHEN USE OF THE PROPERTY INVOLVES LANDFILLS.

Landfill Regulation is contained in Title 9 of the Environment Article of the Annotated Code of Maryland. Section 9-201(d) of the title defines "Person" as follows: "Person"

includes the federal government, a state, county, municipal corporation, or other political subdivision." A "Refuse Disposal System" is defined by Section 9-201(e) to include a landfill. Section 9-204(d) requires that a "person" must have a permit issued by the Secretary of the Environment before commencing construction of a refuse disposal system. Section 9-210(a) states in pertinent part as follows:

The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under Sec. 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

- (3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:
 - (i) Meets all applicable county zoning and land use requirements; and
 - (ii) Is in conformity with the county solid waste plan.

The legislative history of these sections and of Title 9 clearly indicate a two-fold intention on the part of the legislature. First, the legislators were clearly concerned with the environmental impact of landfill systems and wanted it to be closely regulated by the State, particularly for water and air contamination. Second, the legislators were very concerned over the community impact of landfills. Consequently, the statutes require extensive notification provisions and public hearings. Just as important, however, was the requirement that local zoning regulations be brought to bear on the proposed land use.

Landfill regulations initially required zoning compliance in Chapter 661 of the Laws of Maryland, 1970 (App. 1-2). Section

394A of the Article 43 of the Annotated Code of Maryland was amended to provide as follows:

The Department of Health shall not issue a permit for a land fill unless it has complied with all county zoning and land use requirements of the county in which the proposed landfill is to be located and has an affirmative statement that the board of county commissioners or the county council does not oppose the permit.

The section remained the same throughout the 1970's and was amended only with respect to sludge facilities. The problem with it was that it did not articulate who was supposed to represent non-opposition and what happened after a permit was issued. Chapter 412 of the 1988 Laws of Maryland substantially rewrote the section to close to its current wording. Section 9-210 a(2) was amended to require a written statement from the applicant that the refuse disposal system conforms to the solid waste master plan and meets all applicable zoning and land use requirements (App. 3-5). That requirement from the applicant, however, was soon amended by Chapter 358 of the 1989 Laws of Maryland (App.6-8). That amendment changed the requirement from an applicant's representation that all was well with local zoning and permitting to a requirement that the county certify that all local zoning and land use regulations had been met as well as conformance with a solid waste master plan. It was not clear, however, whether the Secretary had to notify the County of the progress of the permit or had to wait for a local jurisdiction's response.

In the early 1990's an application was filed to permit a

Obviously, the public could not access the home for girls any more than it could the trucking facility. The question, therefore, was whether the use of the site was in furtherance of public benefit. Even this concept, however, was narrowly construed. It could, for instance, be argued that trucking facilities have a public benefit in easing transportation or that slaughter houses (also referred to by the Court) have a public purpose. The issue of public benefit, however, is one of connecting the use of the site by the private operator with the furthering legislation of the state in owning the site. It was the decision of the court that DJS by acquiring the site and then renting it was "carrying out the will of the General Assembly". 381 A.2d 1188 at 1192 (1978). It contrasted this situation from Youngstown, supra, where avoidance of local ordinances "...would be to permit the sovereign to trample willy-nilly over the zoning ordinances of the municipalities to the possible detriment of the public health, safety and general welfare." 381 A.2d 1188 at 1190 (1978).

The principles of these cases were later applied by Baltimore County in applying to the Circuit Court for an Injunction in a case against Enviro-Gro Technologies and the Department of Natural Resources, for the spreading of sludge on another part of the Gunpowder Falls State Park. That case also involved a lease of State-owned property, where a for-profit operator would use the site for a heavily regulated operation. Court records indicate that the injunction was granted based on

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the County's jurisdiction under R.C. zoning. Baltimore County Circuit Court Case No. 91 CSP 1375. A copy of the Motion and Memorandum filed by Baltimore County is attached (App. 16-31).

These cases directly relate to the subject site and case. The State of Maryland, Department of Natural Resources, acquired the property for a park, not a landfill. The deed explicitly stated that the existing commercial uses on the site would cease after a defined period. Possibly because the State desired the revenue from the site, at some point it permitted continued commercial operations, but the proposed facility has nothing to do with completing the existing facility, which originally had been permitted by the county as a private facility.

The proposed facility has nothing to do with the reclamation of land for use as a park. Digging a hole seventy (70) feet deep, digging out over a million and a half cubic yards of material, and replacing it with rubble and cover is not reclamation, nor does it fulfill any of the functions of a state park. It might be a different situation, for example, if this case involved the marina at the Hammerman portion of the State Park. That facility arguably provides recreation in furtherance of a state park purpose. This landfill furthers no park purpose.

The State also can not argue that because landfills are heavily regulated that they serve in and of themselves a state purpose. Landfills are subject to regulation not because they are so necessary but because they can have such deleterious effects on a community and its environment. The State itself

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runs no landfills in the metropolitan area. Through MES, a quasi-public corporation, it assists in the operation of some landfills, but the law forming MES makes its operation of landfills specifically subject to local government approval. Annotated Code of Maryland, Natural Resources Article, Sec. 3-104(v).

This case does not present any analogous facts to those before the Court of Special Appeals in City of Baltimore v. State Department of Health, 38 Md. App. 570, 381 A.2d 1188 (1978). The Department of Natural Resources under its open space program and Park program is not charged with locating and providing for landfills. Days Cove Reclamation Company is not the Campfire Girls Council. The private entity proposes to provide a service to business for a profit. The landfill will not have business referred to it by state agencies or courts; moreover, the private operator will get to pick and choose its source of material and contractors. The private operator gets to pick and choose its means of operation. Days Cove Reclamation Company is not operating under a direct state mandate to provide this service at this location. DJS was providing a mandated service at the site it acquired. It could not have put the site to some other unrelated purpose, such as a landfill, and escape local scrutiny.

There are creatures of the state such as solid waste authorities, where public entities including counties and municipalities acquire or operate waste disposal facilities. The state may further such entities, but it does so only with local

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approval. Consequently, the legislature intended that landfills in and of themselves did not need protection of legislation from public outcry, but that the public needed protection from landfills and necessary input. Far from ascribing a "public purpose" to landfills because they are so heavily regulated, it is the public that is sought to be protected and to have local zoning input.

In all important respects Days Cove Reclamation Company is operating a private operation for private gain. It had to apply to Baltimore County for inclusion on the solid waste master plan. It had to apply to the State for a permit to operate a waste disposal facility. It is privately liable and must provide liability insurance in the event of injury. It must provide security and has control over the operating hours of the facility per the application. It only provides the State with rental and provides for return of the property in a usable condition. The State does not set the tipping fees; the State does not control the users of the facility; the State is not a partner in the use of the facility; there is no requirement that the facility accept or reject refuse from any particular user or group of users. The facility operates as a private entity and is not distinguishable from any other private entity operating on state property. If this use were located on State property in the center of Timonium or Towson or Pikesville, would it not be subject to local regulation? Wouldn't the result be "deplorable" if the use as proposed and operated were located on State property in those

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areas? The state reviews the site not for compatibility with local zoning or with local land use regulations or with respect to compatibility to neighbors. It only regards the environmental aspects of the facility, and the county has a responsibility under the code to review the site. Maybe the use as located will have little impact, but that decision in itself is being denied the County if the argument of the operator and of the Department of Natural Resources is accepted.

It also can not be denied that the Department of Natural Resources is interested in the outcome of the case. As the landlord the rent generated over the life of the proposed fill will run into millions of dollars. Its opinion that there is no local jurisdiction is hardly disinterested. Anything that jeopardizes that economic interest is subject to attack.

Economic benefits, however, do not amount to public purpose any more than serving a public need serves a public purpose or a public use. Youngstown Cartage Company also provided rent to the State Highway Administration, which presumably was used in furtherance of its programs. That indirect benefit is not the "public use" or "public benefit" required for immunity. If so, Youngstown would have been decided differently. So too the fact that there was a public need or a public demand for the use is not the same as "public purpose". There is a need for transportation facilities and for most private enterprises; otherwise, these facilities would not exist. That "need" is not equivalent to public benefit or purpose.

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The County does permit landfills and has approved them. The County does not prohibit them from occurring. The question is whether some sites should be exempt from scrutiny and other sites should not. There clearly was no intent in the Environment Article to exempt certain sites or certain users from scrutiny either on a state or on a local level. The legislative intent to subject a landfill operation to strong public scrutiny is clear. To relieve it of scrutiny on such essentials as local land use control is in complete opposition to that intent.

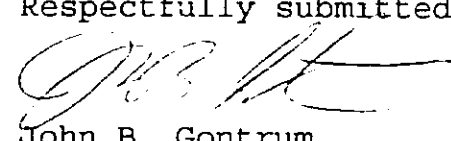
Even the operators of the existing landfill through their counsel recognized that local review would and should attach if there was an expansion of the facility. It also was recognized that local soil conservation services should review the site for its impact on sediment control and run-off. Should not the county development regulations pertaining to afforestation or reforestation also apply? Should not the setback criteria called for in the zoning regulations apply? As long as these regulations are not unreasonable or not unreasonably applied, it would seem that the legislative intent is to have them apply for the protection of the community.

CONCLUSION

In conclusion, the Zoning Commissioner for Baltimore County should exercise the duties and responsibilities conferred upon the office by the Zoning Regulations and take jurisdiction of the

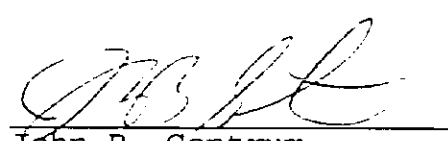
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subject proposed use as a proposed private use of state-owned property and as required by state law.

Respectfully submitted,

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Baltimore, Maryland 21221
Phone: 410-686-8274

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 1995, a copy of the foregoing Memorandum was mailed by first class mail, postage prepaid to Warren Rich, Esq., attorney for Days Cove Reclamation, P.O. Box 819, Stevensville, Maryland 21666, and to Pamela D. Andersen, Esq. Assistant Attorney General, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 and to J. Carroll Holzer, Esq., attorney for Petitioners, Suite 502, 305 Washington Avenue, Towson, Maryland 21204-4740.


John B. Gontrum

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IN THE MATTER OF:	* BEFORE THE
DAYS COVE RUBBLE LANDFILL	* ZONING COMMISSIONER
EXPANSION	* OF
GUNPOWDER FALLS STATE PARK	* BALTIMORE COUNTY
	* Case No.: 96-132-SPH
* * * * *	* * * * *

PETITIONERS' MEMORANDUM

STATEMENT OF FACTS

On November 28, 1994, Days Cove Reclamation Company filed a Refuse Disposal Permit Application with the Maryland Department of the Environment. With the application, a Phase I Preliminary Report also was filed with the Maryland Department of the Environment. The application and report pertained to a 27 acre parcel zoned R.C.2 on which a 17 acre or 20 acre landfill was proposed. The property is currently owned by the State of Maryland to the use of the Department of Natural Resources, for the use of the Gunpowder State Park and is proposed to be leased to Days Cove Reclamation Company. Under the terms of the proposed lease agreement, the project would be operated solely by Days Cove Reclamation Company. The Company would determine the tipping fees, hire the personnel, determine the appropriate customer base, and accept or reject fill material in its sole discretion. Also under the proposed lease, The Maryland Environmental Service would be

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The application called for a 17 acre rubble land fill but the materials filed with the application called for a 20 acre landfill.

paid to have an on-site monitor review the material accepted and its placement, and the Department of Natural Resources would receive a percentage of the fees generated as its rent.

In 1986, the parcel on which the 27 acre site is contained was purchased along with other parcels by the State of Maryland to the use of the Department of Natural Resources. The parcel at that time was part of a larger 138 acre tract owned by Stanley Holding Company. The property was then zoned R.C. 2. As a condition of the transfer, which cost the state Three Million Five Hundred Thousand Dollars (\$3,500,000.00), the Grantors were allowed to continue mining a nearby 12 acre site also conveyed for a period of ten years, the right to the sludge area, part of which was on the subject site, for a period of four and a half years, and the right to continue to operate a rubble landfill for a period of no longer than six and a half years. The rubble landfill was on an adjacent parcel separated from the subject site by a twelve (12) acre privately owned tract (Deed is attached hereto as Exhibit A).

The original landfill is still operating and has never been the subject of County review, possibly because of a non-conforming use. Despite being characterized in the application materials as "Expansion of Days Cove Landfill," the subject site has never been part of the existing landfill parcel or considered in the operating landfill's permits. In addition, the existing landfill is operated by a separate corporate entity. The sludge permits for the existing site were originally issued to a third entity and not renewed.

The 1992 Baltimore County Solid Waste Master Plan does contain approval of the subject site for a rubble landfill in addition to a review of other proposed and existing landfills. The Department of Public Works has indicated acceptance of the site by letter indicating that it was part of the plan. The proposal has been through three (3) phases of the state application process, and has had a public hearing on the proposed issuance of a permit. The County has indicated heretofore on the existing landfill that it has no jurisdiction, and has not taken jurisdiction of the proposed landfill to this point nor has it formally commented on the plan presented.

ISSUES PRESENTED

I. IS THE OPERATION OF A RUBBLE LANDFILL ON STATE-OWNED PROPERTY, BY A PRIVATELY OWNED AND OPERATED ENTITY, A "PRIVATE USE" OF STATE-OWNED PROPERTY AND SUBJECT TO LOCAL ZONING LAWS?

II. IF IT IS DETERMINED THAT THE PROPOSED RUBBLE LANDFILL WILL BE PUT TO PUBLIC USE, DO BALTIMORE COUNTY ZONING REGULATIONS NEVERTHELESS APPLY?

LEGAL ARGUMENT

I.

IS THE OPERATION OF A RUBBLE LANDFILL ON STATE-OWNED PROPERTY, BY A PRIVATELY OWNED AND OPERATED ENTITY, A "PRIVATE USE" OF STATE-OWNED PROPERTY AND SUBJECT TO LOCAL ZONING LAWS?

YES. WHEN THE STATE OF MARYLAND LEASES ITS PROPERTY TO A PRIVATE ENTERPRISE FOR THE OPERATION OF A RUBBLE LANDFILL, THE IMMUNITY OF THE SOVEREIGN FROM LOCAL ZONING LAWS CEASES TO EXIST, AND THE USE BECOMES SUBJECT TO THE LOCAL ZONING AUTHORITY.

The case law is very clear that publicly owned land used by the State or by its agencies for public purposes is not subject to local zoning authority absent a specific grant of power from the State. Mayor of Baltimore v. State, 281 Md. 217, 378 A.2d 1326 (1977). The County derives its local zoning authority from Article 25A, Section 5(X). That section also states, however, that the authority granted shall not be construed "To preempt or supersede the regulatory authority of any State department or agency under any public law." Annotated Code of Maryland, Article 25A, Section 5(X)(2)(v)4. Cf. Board of Child Care v. Harker, 316 Md. 683, 561 A.2d 219 (1989).

The Court of Appeals has never precisely addressed the issue of public land leased privately, but this subject has been addressed by the Court of Special Appeals. In City of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978), the Court of Special Appeals found that property owned by the State, to the use of the Department of Juvenile

Services, and leased to a non-profit organization pursuant to an agreement to provide care for juvenile girls in need of supervision, was exempt from local zoning. The Court indicated in its opinion that the purpose of the Department of Juvenile Services was furthered by the lease arrangement by taking care of the children in need of assistance. The Court of Special Appeals indicated that the use to which the property was put was a "public use". The public use occurs because the State is providing, through the lease of the property, the benefits required of it under State law for children in need of assistance. The Court also pointed out that the tenant was a charitable, non-profit corporation, not operating for private gain.

The Court of Special Appeals in City of Baltimore took great pains to distinguish the case from an earlier decision made in Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624, 332 A.2d 718 (1975). Youngstown Cartage arose in Baltimore County when a private trucking firm leased property from the State. The Court in Youngstown held that when the State acts in a proprietary capacity, or creates a landlord-tenant relationship with a private person or entity, the sovereign immunity usually accorded to the State is lost and the land must be used in accordance with local zoning and land use regulations. Youngstown Cartage Co. v. North Pt. Pen. Comm. Co. Council, 24 Md. App. 624, 332 A.2d 718 (1975). The Court of Special Appeals in Youngstown stated: "We conclude that when the State acquires land and then leases or rents that land to a

private person or concern for a private use, the land is subject to local zoning ordinances or regulations so long as it is so leased or rented. 24 Md. App. 624, 631 (1975).

Baltimore County's Zoning Regulations echo this theme in Section 103.2. That section states:

When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these regulations.

The operation by Days Cove Reclamation Company is not a public use. It is not a facility open to the public but rather it is open only to haulers approved by the landfill, and Days Cove Reclamation Company retains control over the entities from whom it accepts contracts. The existing rubble fill at Days Cove, operated by JWP Environmental Services Company, has haulers from whom it accepts materials and haulers from whom it does not accept materials. Not just anyone can use the facilities, and the subject site is so limited. A public use must extend to more than a legal use or a needed use. To be public, it must be a use with which the State is charged and which it entrusts to private entities.

City of Baltimore, supra, made it very clear that extremely obnoxious results could occur if all State-owned land ceased to be regulated by local authorities. The Court deemed such sovereign immunity extension "deplorable". It went on to pose this question: "Imagine the hypothetical situation wherein the State acquires a tract of land in a highly desirable residential area of the city and then leases it to a tannery or a slaughter house. The effect

on the surrounding area would be devastating." 381 A.2d 1188 at 1190 (1978). In Youngstown, the Court pointed out that the use inured to the private benefit of the tenant, not like a public utility such as a rail line, which is open to the public for public use.

The question presented by this case is whether the particular capacity in which the State-owned property is proposed to be used is "public" or "private" in nature. Landfills and the like are not considered public by their very nature. In Ad-Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 513 A.2d 893 (1986), the Court of Appeals was reviewing a claim by the operator of a sewage storage and distribution facility that it was immune from local zoning because the state had pre-empted the field. Despite the voluminous regulations regarding such storage in the state regulations, the local zoning authority was held to have a say in the regulation of such facilities. Similarly, the Jett farm in Baltimore County was not held to be exempt from regulation by virtue of the public use of its facility and the regulation by the State. Cf. Jett v. State of Maryland, 77 Md. App. 503, 551 A.2d 139 (1988). Consequently, despite being operated subject to state regulation, and despite having a legitimate purpose, privately owned waste disposal systems are not in and of themselves exempt from regulation, particularly land use regulation, merely because they are "public facilities". This should be contrasted with uses such as alternative living units or even the housing for the children in need of assistance, where

there is state legislation promoting these land uses.

The State of Maryland, Department of Natural Resources, clearly purchased the subject site as part of its strategy to acquire land for the Gunpowder Falls State Park, not to run a landfill. There is a waste authority under which the State could have purchased the site had it decided to do so. The State did not do so, however; and, the deed conveyance specifically terminates landfill rights in the private entity.

The private entity operating the fill is a for-profit corporation. The corporation has the right to select its customers and may reject loads brought to the site. The corporation has the right to set its operating hours and its prices. It may make as much money or as little as its prices and good management dictate. It is not dependent upon any state agency for referrals, nor is there any guarantee of business. How is this operation different from Jett's operation or from the rendering plant cited in City of Baltimore, supra? The R.C.2 zoning on the property was placed there presumably to prevent the very activity that is proposed under this permit application.

If the County now determines that it lacks jurisdiction in this case, then there will be no regulation over the land use and no review under Baltimore County's environmental regulations. If this is allowed to occur, then all landfills could be offered to the State, and none of the protection afforded by local government review would be applicable. How is this site different in concept from the Honeygo site recently litigated before the Zoning

Commissioner? That site has better access, public services of water and sewer, and is to be turned over to the County for a park. In addition, the Honeygo site also has the zoning permitting the land use.

For the County and the State to extend public benefit analysis to every disposer or even recycler of waste is absurd. Truckers presumably serve the public also, and for enough money, truckers will haul any legal item. Truckers, however, are not granted sovereign immunity, and neither should landfills which by their very nature may have a severe impact on the community. The public use findings of City of Baltimore cannot be made in this case.

II.

IF IT IS DETERMINED THAT THE PROPOSED RUBBLE LANDFILL WILL BE PUT TO PUBLIC USE, DO BALTIMORE COUNTY ZONING REGULATIONS NEVERTHELESS APPLY?

YES. BECAUSE THE GENERAL ASSEMBLY INTENDED THE ISSUANCE OF PERMITS FOR RUBBLE LANDFILLS TO BE CONDITIONED ON THE SATISFACTION OF COUNTY ZONING AND LAND USE REQUIREMENTS, BALTIMORE COUNTY ZONING REGULATIONS MUST BE MET.

Because landfills have such a pernicious effect on the surrounding area, they are one of the very few entities where the local jurisdictions have been given zoning authority over and beyond that contained in Article 25A. In fact, the conferral of review to local zoning on landfills makes no distinction between

public and private landfills. Even the state agency Maryland Environmental Service is legislatively made subject to local zoning and approval in obtaining its permits to operate. Annotated Code of Maryland, Natural Resources Article, Sec. 3-104(v). That section states:

Except as provided in Secs. 3-109 and 3-110 of this subtitle, the Service does not have any power to construct, establish, or operate any new solid waste disposal project within the boundaries of any county or municipal corporation without the express consent of the governing body or the county or municipal corporation.

Unlike other sections of the Code there is no specific pre-emption of local zoning regulations for rubble landfills.² In fact, Section 9-210 of the Environment Article of the Annotated Code of Maryland, which is the statute governing the issuance of permits for Refuse Disposal Systems, specifically requires that local zoning requirements be satisfied and states:

Section 9-210. Landfill Systems - Prerequisites for issuance of permit.

(a) The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under Sec. 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase 1 technical review of the proposed refuse disposal system;

² This is opposed to other environmental concerns in which the general Assembly has specifically preempted local zoning regulations. See Annotated Code of Maryland (Nat. Res.) § 3-705(d) (1990 Repl. Vol.).

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(2) The Department has reported the findings of its preliminary phase 1 technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse system:

(i) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan.

This language was adopted in 1992 with the purpose of the section being stated as follows:

FOR the purpose of prohibiting the Secretary of the Environment from issuing a permit to install, materially alter, or materially extend a refuse disposal system until the Department and the County each comply with certain requirements; and generally relating to the regulation of refuse disposal systems. Chapter 516, 636 Public Laws of the State of Maryland 1992

Interestingly, the COMAR regulations were adopted prior to the enactment of the language, and limit the participation of local government to a statement of general compliance and to inclusion in the local jurisdiction's solid waste master plan. They do not call for local comment on whether a proposed facility will meet all applicable county zoning and land use requirements as was intended by Sec. 9-210 (a)(3)(i) of the Environment Article. The article is very clear that these issues must be dealt with regardless of the origin of the facility.

The most recent Court of Special Appeals decision in the field, *Holmes v. Maryland Reclamation Associates, Inc.*, 90 Md. App. 120, 600 A.2d 864 (1992), is in agreement with the proposition that

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the local government does have zoning review of landfills despite government pre-emption over other areas. In that case the Court of Special Appeals found that the county could not come back in after the State had agreed to issue the permits and amend its solid waste master plan to delete a proposed landfill facility. The Court indicated that in that case that local zoning specifically permitted the proposed use. The Court expressly found it significant that the local zoning issues had been resolved prior to issuance of the state permit.

Consequently, despite the fact that rubble landfills are used by members of the public, are regulated by the State and serve a needed purpose, the State law specifically finds that their location within a community must meet local zoning regulations. There is nothing specifically exempting such facilities from local review, and indeed, the contrary is the case.

This particular facility could severely impact local resources and private property. The site was found sensitive enough by the County over a decade ago to limit additional rubble fills by placing R.C. 2 zoning upon it. The subsequent purchase by the State for a park certainly confirms its value as a public resource, and surely no one can construe that part of the purpose of the park system is to promote landfills. If Maryland Environmental Service, the Department of Natural Resources Agency, is specifically subjected to local government approval, then the operation of a landfill by a private entity under a lease whereby the state receives rent based on usage, is not intended to be exempt from

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local government regulation or review.

CONCLUSION

In conclusion, the County has a definite interest in reviewing the zoning of the Days Cove parcel and the proposed use. The interest is one protected by the legislature and approved by the Courts and should be exercised in this case.

Respectfully submitted,
J. Carroll Holzer, Esq.
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petitioners' Memorandum was submitted to all parties of record on the 7th Day of November, 1995.

J. Carroll Holzer

JCH:clg

13

IN THE MATTER OF

Day's Cove
6425 Day's Cove Road
5th Councilmanic District

BEFORE THE ZONING

COMMISSIONER OF

BALTIMORE COUNTY

CASE NO. 96-132-SPH

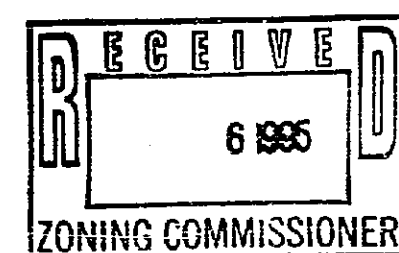
MOTION TO QUASH SUBPOENA

The Maryland Department of the Environment (MDE) moves to quash the subpoena directed to Jane T. Nishida, Secretary of MDE in this matter for the following reasons:

1. Ms. Nishida is not willing to testify in this matter and therefore will not appear pursuant to Zoning Commission Rule IIC.3.
2. Ms. Nishida was not properly served with the subpoena because it was served by certified mail because the return receipt was signed by an employee not authorized to accept service of process upon Ms. Nishida, and therefore she has not been summoned at least five days before the scheduled hearing on November 7, 1995, pursuant to Zoning Commission Rule IIC.3.
3. Ms. Nishida's testimony is not relevant because she has no personal knowledge of any facts relating or pertaining to Day's Cove. Non-relevance of expected testimony is grounds for denial of a request for a subpoena. *Whitless v. U.S.*, 221 A.2d 86 (D.C. App. 1966).
4. Ms. Nishida is not the custodian of the records requested in the supplemental sheet attached to the subpoena.

For these reasons the subpoena should be quashed.

Frank K. Belt
NORMA JEAN KRAUS BELT
Assistant Attorney General
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224
(410) 631-3048



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 1995, a copy of the foregoing Motion to Quash Subpoena was mailed, postage prepaid, to J. Carroll Holzer, Esquire, 305 Washington Avenue, #502, Towson, Maryland 21204.

Frank K. Belt
NORMA JEAN KRAUS BELT
Assistant Attorney General

IN THE MATTER OF

Day's Cove
6425 Day's Cove Road
5th Councilmanic District

BEFORE THE ZONING

COMMISSIONER OF

BALTIMORE COUNTY

CASE NO. 96-132-SPH

AFFIDAVIT

I, JANE T. NISHIDA, this 3 day of November, 1995, affirm under the penalties of perjury that:

1. I am over 18 years of age and competent to be a witness in this case.
2. I am not willing to testify in the hearing scheduled in this matter.
3. The person who signed the mail return receipt has never been authorized by me to accept service of process upon me.
4. I have no personal knowledge of any facts relating or pertaining to Day's Cove.
5. I am not the custodian of the records requested in the supplemental sheet attached to the subpoena.

Jane T. Nishida
JANE T. NISHIDA
Secretary
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224



Petition for Special Hearing to the Zoning Commissioner of Baltimore County

for the property located at 6425 Days Cove Road
which is presently zoned R.C. 2.

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve / determine whether a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources, in an R.C. 2. zone is subject to the zoning regulations of Baltimore County and must have a Special Exception in conformance with Section 1A01.2C18 of the Baltimore County Zoning Regulations.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

We do solemnly declare and affirm, under the penalties of perjury, that we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Owner:
Days Cove Reclamation Company
(Type or Print Name)

Legal Owner(s):
Department of Natural Resources
(Type or Print Name)
John Griffin, Secretary

Signature:
6425 Days Cove Road
Address:
White Marsh, MD 21162
City:
State:
Zipcode:
Petitioner:
White Marsh Civic Assoc., et al (attached)
Signature Attorney General:
J. Carroll Holzer, Esquire
(Type or Print Name)
Address:
200 St. Paul Place
Baltimore, MD 21202
Phone No.:

Signature:
Tawes State Office Building
580 Taylor Ave., Annapolis, MD 21401
(Type or Print Name)
(With copy to:) State of Maryland
J. Joseph Curran, Jr.,
Signature Attorney General:
200 St. Paul Place
Baltimore, MD 21202
Address:
Phone No.:

City:
Name, Address and phone number of legal owner, contract purchaser or representative to be contacted:
Name:
Address:
Phone No.:

ESTIMATED LENGTH OF HEARING:
Hearable for Hearing:
The following date: _____ Next Two Months
ALL _____ OTHER _____
REVIEWED BY: _____ DATE: _____

ORDER RECEIVED FOR FILING

Date: 9/21/95

By: WCR

Drop-off

NO REVIEW

9/21/95

WCR

PETITION FOR SPECIAL HEARING CONTINUED

96-132-SPH

This petition for Special Hearing is filed on behalf of the following community groups, all of whom currently are doing business in eastern Baltimore County and whose members are affected by the subject matter of this hearing:

White Marsh Civic Association
c/o Adam Paul, President
10404 Vincent Farm Lane
White Marsh, Maryland 21162

Harewood Park Community Association
c/o Joe McGraw, President
6912 North River Drive
Baltimore, Maryland 21220

Nottingham Community Association
c/o Marie Simoes, President
1314 Spotswood Road
White Marsh, Maryland 21162

It also is filed on behalf of the following individuals all of whom are residents and taxpayers in Eastern Baltimore County:
Adam Paul
10404 Vincent Farm Lane
White Marsh, Maryland 21162
Phone: 335-1404

Marie Simoes
1314 Spotswood Road
White Marsh, Maryland 21162

Joe McGraw
6912 North River Drive
Baltimore, Maryland 21220
Phone: 335-3352

The petitioners aver that the use of state-owned property is for private purposes and as such is controlled by the zoning on the property, R.C. 2. The petitioners further agree that the state receives rent for the use of the property making the property usable by the state in a proprietary, not governmental manner. That under the R.C. 2 zone the proposed uses of the property for a 20 acre rubble fill on a 27 acre site with a fill that is over 70 feet deep requiring the excavation of over 900,000 cubic yards of fill is not permissible. The further use of the site for individuals to bring wood waste onto the property for chipping and storage also is not a permitted use, and the Office of Planning and Zoning should exercise its jurisdiction to review the proposal.

ZONING DESCRIPTION

96-132-SPH

Per the property owners the subject site consists of a 27 acre parcel on the south side of Days Cove Road bordering the eastern side of property owned by Baltimore County, known as the Eastern Sanitary Landfill, being parcel 416 on Tax Map 73 and bordered on the west by property owned by Barry L. Byrum, et al., being parcel 105 on Tax Map 73, the subject property being part of Tax Parcel 17 containing 126.93 acres and all of parcel 105 consisting of 2.2 acres of land, both contained on Tax map 73.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 96-132-SPH

Towson, Maryland

District: 11th Date of Posting: 4/11/96
Posted for: 11th
Petitioner: White Marsh Civic Association, et al.
Location of property: 6425 Days Cove Rd.
Location of Sign: Facing 2nd day of posting, 6425 Days Cove Rd.
Remarks:
Posted by: [Signature] Date of return: 4/16/96
Number of Signs: 1

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 001001
DATE: 4/16/96 ACCOUNT: Rec-1-6150
AMOUNT: \$ 175.00
RECEIVED FROM: J. Carroll Holzer
FOR: Appeal 96-132-SPH
BALANCE-FORWARD: \$175.00
VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 001002
DATE: 4/11/96 ACCOUNT: Rec-1-6150
AMOUNT: \$ 35.00
RECEIVED FROM: J. Carroll Holzer
FOR: Sign for Appeal 96-132-SPH
BALANCE-FORWARD: \$35.00
VALIDATION OR SIGNATURE OF CASHIER



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 12, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-132-SPH (Item 130)
6425 Days Cove Road
S/S Days Cove Road, 5300' E of c/l Pulaski Highway
11th Election District - 5th Councilmanic
11th Election District - 5th Councilmanic
Legal Owner: Department of Natural Resources
Contract Purchaser: Days Cove Reclamation Company
Petitioners: White Marsh Civic Association, et al.

Special Hearing to determine whether a privately operated rubble landfill leased from the State of Maryland, Department of Natural Resources, in a R.C.-2 zone is subject to the zoning regulations of Baltimore County and must have a special exception in conformance with Section 1801.2C18 of the Baltimore County Zoning Regulations.

HEARING: TUESDAY, NOVEMBER 7, 1995 at 2:00 p.m. in Room 118, Old Courthouse.

[Signature]
Arnold Jablon
Director

cc: J. Carroll Holzer, Esq.
Days Cove Reclamation Company
Department of Natural Resources/John Griffin
J. Joseph Duran, Jr., Esq.
Jennifer Wurzbacher, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

Hearing Room - Room 48 (410) 887-3180
Old Courthouse, 400 Washington Avenue

June 10, 1996

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), BOARD'S RULES OF PRACTICE & PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE.

CASE NO. 96-132-SPH WHITE MARSH CIVIC ASSN., ET AL -Petitioners
S/S Days Cove Road, 5300' E of c/l of Pulaski Highway (6425 Days Cove Road)
11th Election District
5th Councilmanic District

SPH -To determine whether privately operated rubble landfill leased from State of Maryland, Dept. of Natural Resources in R.C. 2 zone is subject to BCZR and therefore must have SE.

3/21/96 -Z.C.'s Order in which Petition for Special Hearing was DENIED (privately operated rubble landfill leased from State of Md, DNR in R.C. 2 zone is not subject to BCZR).

ASSIGNED FOR: TUESDAY, SEPTEMBER 17, 1996 at 10:00 a.m.

cc: J. Carroll Holzer, Esquire Counsel for Appellants /Petitioners
White Marsh Civic Association
and Adam Paul Appellants /Petitioners
Harewood Park Community Association
and Joe McGraw
Nottingham Community Association
and Marie Simoes
John B. Gontrum, Esquire Counsel for Honeygo Reclamation Co.
Warren K. Rich, Esquire and Counsel for Operator /Lessor
Jennifer L. Wurzbacher, Esquire
Days Cove Reclamation Company Operator /Lessor
Pamela D. Anderson
/Assistant Attorney General Counsel for State of Md., DNR
John Griffin, Secretary Department of Natural Resources
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Kathleen C. Bianco
Administrative Assistant



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 31, 1995

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 502
Towson, Maryland 21204

RE: Item No.: 130
Case No.: 96-132-SPH
Petitioner: White Marsh
Civic Assoc., et al

Dear Mr. Holzer:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on September 21, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,
[Signature]
M. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director October 10, 1995
Zoning Administration and
Development Management
FROM: J. Lawrence Pilson
Development Coordinator, DEPRM
SUBJECT: Zoning Item #130 - Days Cove Reclamation Company
6425 Days Cove Road
Zoning Advisory Committee Meeting of October 2, 1995

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Air Quality and Waste Management

The Days Cove Rubble Landfill, located at 6425 Days Cove Road, is operated by a private company on land leased from the State of Maryland, Department of Natural Resources. The existing landfill has not been subject to local environmental requirements since the land was purchased by the State. The County Office of Law is currently conducting research to determine whether or not this private landfill, located on State owned property, is subject to local permitting and regulatory requirements. If it is determined that local requirements do apply, the rubble landfill operation would be subject to the following:

1. Solid Waste Processing Facility permit for the wood waste processing portion of the landfill operation
2. Solid Waste Land Disposal Permit
3. Sediment Control Plans approved by the Soil Conservation District
4. Grading Permit
5. Storm Water Management Plans
6. Storm Water Management Permit
7. Security in accordance with the nature and extent of grading and storm water management

JLP:DF:sp
DAYSCOVE/DEPRM/TXTSRP

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: Oct. 13, 1995
Zoning Administration and Development Management
FROM: Robert W. Bowling, P.E., Chief
Development Plans Review
RE: Zoning Advisory Committee Meeting
for October 10, 1995
Items 123, 125, 126, 129, 130 and 131

The Development Plans Review Division has reviewed the subject zoning items and we have no comments.

RWB:ew



Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Hal Kassoff
Administrator

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 130 (WCR)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small
for Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department



700 East Joppa Road, Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 10/03/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: DEPARTMENT OF NATURAL RESOURCES

LOCATION: S/S DAYS COVE RD., S300' E OF CENTERLINE PULASKI HWY.
(6425 DAYS COVE RD.)

Item No. 130 Zoning Agenda: SPECIAL HEARING

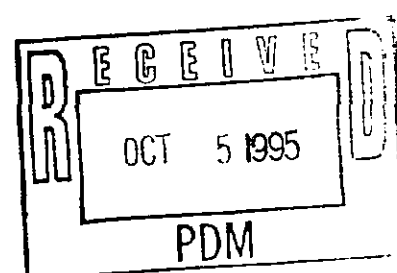
Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4821, RF-1160F

cc: File



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 3, 1995

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 502
Towson, MD 21204

RE: Preliminary Petition Review (Item #130)
6425 Days Cove Road
Legal Owner: Dept. of Natural Resources
Contract Purchaser: Days Cove
Reclamation Company
Petitioner: White Marsh Civic Assoc., et al.

Dear Mr. Holzer:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

1. A detailed sealed site plan (with checklist informational requirements) to a reasonable (engineers scale) dimension and a sealed zoning description, as required by the petition checklist, was not filed with this item.
2. Worthwhile comments cannot be made with insufficient information for zoning review.

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on Recycled Paper

J. Carroll Holzer, Esquire
October 3, 1995
Page 2

3. Be aware of all possible special exception requirements, inclusive of maximum permitted rubble landfill areas as limited by the Baltimore County Zoning Regulations.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

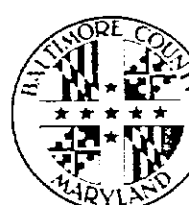
Very truly yours,

John L. Lewis
John L. Lewis
Planner II
Zoning Review

JLL:scj

Enclosure (receipt)

c: Zoning Commissioner



Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2524

April 22, 1995

Mr. John Griffin, Secretary
Department of Natural Resources
Towson State Office Building
585 Taylor Avenue
Annapolis, MD 21401

J. Joseph Curran, Jr., Esquire
Attorney General
Pamela D. Anderson, Esquire
Assistant Attorney General
State of Maryland
200 St. Paul Place
Baltimore, MD 21202

John B. Gontum, Esquire
Roudsda, Gontum and McLaughlin
814 Eastern Boulevard
Baltimore, MD 21221

RE: Petition for Special Hearing
S/S Days Cove Road,
S300' E of the c/l of Pulaski Highway
6425 Days Cove Road
11th Election District
11th Councilmanic District
White Marsh Civic Association, et al.
Petitioners
Case No. 96-132-SPH

Dear Mr. Griffin, Mr. Curran, Ms. Anderson, and Mr. Gontum:

Please be advised that an appeal of the above-referenced case was filed in this office on April 16, 1995 by J. Carroll Holzer, Esquire on behalf of the White Marsh Civic Association, Nottingham Improvement Association, and Hatfield Park Community Association. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals. "Board".

If you have any questions concerning this matter, please do not hesitate to contact the Board at 887-1180.

Arnold Jablon
ARNOLD JABLON
Director
Department of Permits and
Development Management

AJ:smm

cc: George Perdikakis, DEPM
People's Counsel

APPEAL

Petition for Special Hearing
S/S Days Cove Road,
S300' E of the c/l of Pulaski Highway
6425 Days Cove Road
11th Election District - 11th Councilmanic District
White Marsh Civic Association, et al - Petitioners
Case No. 96-132-SPH

Petition for Special Hearing
Description of Property
Zoning Plans Advisory Committee Comments

Petitioner(s) Sign-In Sheet

Petitioner's Exhibits: 1 - Baltimore County v. Enviro-Technologies, et al/Circuit Court #91 CSP 1375
2 - Fahn, et al v. Perleapaw, et al/Circuit Court No. 75/317/91 CSP 1374
3 - Petitioner's Memorandum/Statement of Facts
4 - Zoning Map (M.E. 9-1) to Accompany Petition for Special Hearing
5 - For Identification Only - Marked on Orange Cover of DMC Comments

Petitioner's Proffer(s): 1 - Nottingham Improvement Association, Inc. Correspondence dated November 7, 1995
2 - White Marsh Civic Association Correspondence dated January 25, 1995
3 - White Marsh Civic Association Correspondence dated September 19, 1995

Correspondence to A. Hussein Alhiya from Bruce Holgren dated April 9, 1995

Memorandum to Ed Dexter from Molly Cannon dated April 1, 1994

Memorandum to Chichang Chen from Warren K. Rich dated October 8, 1985

Phase III Permit Application Information and Reports Pertaining to Case including Sections 1.0 through 11.0, Appendix A through F with 12 construction drawings (Not Marked as Exhibits)

Memorandum of Law in Response to Petitioners' and Intervenor's Memoranda

Baltimore County Board of Appeals Opinion, Case No. 5166-X

Lease Agreement for Mixed Bludge Storage Site not dated

Lease Agreement for Rubble Landfill Site dated February 19, 1992

Days Cove Rubble Landfill Interagency Agreement dated June 30, 1993

Amendment to Lease Agreement dated September 27, 1993

Amendment to Lease Agreement dated March 18, 1994

Motion to Quash Subpoena dated November 6, 1995

Memorandum of Law for Hearing held on November 7, 1995

Correspondence to Zoning Commissioner from Pamela D. Anderson, Esq. dated November 23, 1995

Response Memorandum of Wayne Knight and Sonoway Reclamation Center for Baltimore County Case No. 96-132-SPH dated December 6, 1995

Reply of Memorandum of Petitioner for Case No. 96-132-SPH dated December 8, 1995

12 Miscellaneous Correspondence (Not Marked as Exhibits)

Zoning Map to be submitted with Petition for Special Hearing (Not Marked as Exhibits)

Zoning Commissioner's Order dated March 21, 1995 (Denied)

Notice of Appeal received on April 16, 1995 by J. Carroll Holzer, Esquire on behalf of White Marsh Civic Association, Nottingham Improvement Association, and Hatfield Park Community Association

cc: J. Carroll Holzer, Towson Office, 305 Washington Avenue, Suite 502, Towson, MD 21204
White Marsh Civic Association, c/o Adam Paul, President, 10404 Vincent Farm Lane, White Marsh, MD 21162
Hatfield Park Community Association, c/o Sue McLaw, President, 8912 March River Drive, Baltimore, MD 21220
Nottingham Community Association, c/o Marie Sloman, President, 1214 Spottedwood Road, White Marsh, MD 21162
Mr. John Griffin, Secretary, Department of Natural Resources, Towson State Office Building, 585 Taylor Avenue, Annapolis, MD 21401
J. Joseph Curran, Jr., Esquire, Attorney General, and Pamela D. Anderson, Esquire, Assistant Attorney General, State of Maryland, 200 St. Paul Place, Baltimore, MD 21202
John B. Gontum, Esquire, Roudsda, Gontum and McLaughlin, 814 Eastern Boulevard, Baltimore, MD 21221
People's Counsel of Baltimore County, N.S. 2010

Request Notification: Lawrence S. Schmidt, Zoning Commissioner
Arnold Jablon, Director of DEPM
George Perdikakis, Director of DEPM



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

September 26, 1985

Warren K. Rich, Esquire
93 Main Street
P.O. Box 589
Annapolis, Maryland 21404

RE: Allender Road Sand and
Gravel Operation
11th Election District

Dear Mr. Rich:

With reference to your letter of September 24, 1985, please be advised that your conclusion is correct and no zoning hearing will be required.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ/srl

✓

OCT - 2 1985



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

October 31, 1995

The Honorable Lawrence Schmidt
Zoning Commissioner's Office
Old Court House
Towson, Maryland 21204

RE: Case No. 96-132-SPH
Days Cove

Dear Mr. Schmidt:

I am in receipt of the attached letter from the Office of the Attorney General. The conclusion of that office is that the use and utilization of the above-referenced property as a landfill is exempt from local zoning regulations.

I have reviewed the letter and the case law, and it is the position of this department that, pursuant to the position taken by the Office of the Attorney General, we cannot impose Baltimore County's zoning regulations in the instant matter. If there is disagreement with the Office of the Attorney General, the appropriate forum to determine the application of local zoning to state-owned property is the courts.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Director

AJ:ljb

Attachment

cc: Pamela D. Anderson, Esquire
Warren K. Rich, Esquire
J. Carroll Holzer, Esquire
John Gontum, Esquire
Virginia Barnhart, Esquire
George Perdikakis

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on Recycled Paper

6/10/96 -Notice of Assignment for hearing scheduled for Tuesday, September 17, 1996 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire
White Marsh Civic Association
and Adam Paul
Harewood Park Community Association
and Joe McGraw
Nottingham Community Association
and Marie Simoes
John B. Gontrum, Esquire
Warren K. Rich, Esquire and
Jennifer L. Wurzbacher, Esquire
Days Cove Reclamation Company
Pamela D. Anderson
/Assistant Attorney General
John Griffin, Secretary /DNR
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

9/11/96 -Letter of Dismissal of appeal filed by J. Carroll Holzer on behalf of White Marsh Civic Association and Harewood Park Community Association, Appellants.
- T/C to S. Leese - original appeal indicated three community groups as Appellants /Petitioners (also included Nottingham Imp. Assn.); S. Leese will verify and get back to us.

9/12/96 -Amendment to letter of dismissal from J. Carroll Holzer; amending original letter to include Nottingham Imp. Association.
- Order of Dismissal to be issued by CBA.

RIGHT HAND SIDE
Pleadings

12/08/95
Reply of Memorandum of Petitioner
J. Carroll Holzer
(Response to Days Cove's Memorandum of Law in response to the petition.

12/06/95
Response Memorandum of Wayne Knight and Honeygo Reclamation Center
John Gontrum, Esq.
(Response to the State of Maryland, Department of Natural Resources and
Days Cove Reclamation Center Memoranda

11/29/95
Response Memorandum of the State of Maryland, Department of Natural
Resources
Joseph Curran, Jr., Attorney General and Pamela D. Anderson, Assistant
Attorney General.
(Response to Petitioners' and Intervenor's Memoranda)

11/29/95
Memorandum of Law in Response to Petitioners' and Intervenor's
Memoranda (with exhibits A thru F)
Jennifer L. Wurzbacher, Esq. on behalf of Days Cove Reclamation Company.

11/15/95
Memorandum of Law/Statement of Case
John Gontrum, Esq. on behalf of Wayne Knight and Honeygo Reclamation
Company.

11/07/95
Motion to Quash Subpoena
Norma Jean Kraus Belt, Esq. on behalf of the Maryland Department of the
Environment.

11/07/95 Pet No. 3
Petitioners' Memorandum/Statement of Facts
J. Carroll Holzer, Esq.

LEFT HAND SIDE
Exhibits and/or Proffers

03/18/94 Amendment to Agreement of Lease
between the State of Maryland to the use of the Department of Natural
Resources and JWP Environmental Services Company, Fka Enviro-Gro
Technologies Company.

09/27/93 Amendment to Agreement of Lease
between the State of Maryland to the use of the Department of Natural
Resources and JWP Environmental Services Company, Fka Enviro-Gro
Technologies Company.

06/30/93 Days Cove Rubble Landfill Interagency Agreement
between the Maryland Environmental Service of the Maryland Department
of Natural Resources and the Public Lands Administration of the
Maryland Department of Natural Resources.

02/19/92 Agreement of Lease for Rubble Land Fill
between Department of Natural Resources and Enviro-Gro Technologies

Pet. No. 1
Baltimore County v. Enviro-Technologies, et al
Circuit Court #91 CSP 1375

Pet. No. 2
Kahn, et al v. Perclasepe, et al/Circuit Court #75/337/91 CSP 1374

Pet. Proffer #3
Copies of various letters written from 1993 to 1995.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: April 9, 1997
Permits & Development Management
FROM: Charlotte E. Radcliffe
County Board of Appeals
SUBJECT: Closed File: Case No. 96-132-SPH
White Marsh Civic Assn., et al - Petitioners

As no further appeal has been taken regarding the subject
case, which was dismissed by Order dated September 25, 1996, we are
hereby closing the file and returning same to you herewith.

Attachment (Case File No. 96-132-SPH and brown wallet containing
exhibits and misc. correspondence)

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAVES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-

2501

October 27, 1995

Arnold Jablon, Director
Baltimore County Department of Permits
and Development Management
Development Processing County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Zoning of Gunpowder Falls State Park
Case Number: 96-132-SPH (Item 130)

Dear Mr. Jablon:

The Department of Natural Resources has been notified by your office that you have
scheduled a public hearing on the issue of whether or not County zoning regulations apply to the
rubble landfill the State maintains within Gunpowder Falls State Park. I am representing the
Department of Natural Resources in this matter and must inform you that it is the opinion of this
office that local zoning regulations do not apply to the rubble landfill.

The State of Maryland to the Use of the Department of Natural Resources owns the
rubble landfill. Currently it is operated by a private company pursuant to a lease with the
Department of Natural Resources which was approved by the Maryland Board of Public Works.
The landfill is open to the public and, in addition to regulatory inspections by the Maryland
Department of the Environment, its operation is monitored by the Maryland Environmental
Service at the request of the Department of Natural Resources.

The Department of Natural Resources is responsible for, among other things, the proper
use, development, and preservation of the forests, streams, valleys, wetlands, parks, scenic,
historic and recreation areas of the State. These are basic assets of the State and their proper use,
development, and preservation are necessary to protect and promote the health, safety, economy,
and general welfare of the people of the State. It is the policy of the State to encourage the
economic development and use of its natural resources for the improvement of local economy,

FAX (410) 974-5206

preservation of the natural beauty, and promotion of the recreational and leisure interest
throughout the State. Natural Resources Article, Section 5-102, Annotated Code of Maryland.
The rubble landfill meets this policy and fulfills a public need. Currently there are no other rubble
landfills within the County and 75% of the waste deposited in the rubblefill originated in
Baltimore County. Convenient and economical rubble landfills keep down construction costs and
promote the local economy. Furthermore, the landfill is a part of the State's Solid Waste
Management Plan and fulfills an identified waste management need.

The operation of the landfill is compatible with the existing uses of the Park. It does not
interfere with the present recreational and educational uses of the Days Cove Area. The income it
generates has allowed the Department to develop an Environmental Education Center and use the
nearby confluence of the Big and Little Gunpowder Falls rivers, one of only a few river deltas
Maryland, as an educational tool. This area has been designated as a State Critical Area by the
State Office of Planning and its wise use and preservation are of great concern to the Department.

Just as the original landfill caused the reclamation of an area which had been mined for
sand and gravel, the expansion of the landfill will allow the State to reclaim an area of the Park
used as a sludge mixing site prior to the State's purchase of the property. The reclamation will
ensure that there are no unknown pending environmental hazards and cause the area to be
landscaped to conform to the Park plan.

The Department acquired the property in the Days Cove Area of Gunpowder Falls State
Park with a number of existing private enterprise activities occurring on the properties, including a
sand and gravel mining operation and the continued use of the sludge mixing site as well as the
rubble landfill. As a condition of the sale and in order to protect the extensive wetland and upland
habitats, it was agreed to allow these uses to continue. They support the local economy and allow
wise use of the State's natural resources and public lands. They serve a valid public purpose of
the State and are not subject to local zoning.

The law in Maryland is that State property used for public purposes is not subject to the
controls and restrictions of local planning and zoning regulations, absent a specific grant of
authority from the General Assembly. *City of Baltimore v. State Dept. Of Health and Mental
Hygiene*, 38 Md. App. 570, 381 A.2d 1188 (1978); *City of Baltimore v. State*, 281 Md. 217, 378
A.2d 1396 (1977); *Youngstown Cartage Co. v. North Point Peninsula Community Coordinating
Council*, 24 Md. App. 624, 332 A.2d 296 (1975). In *Board of Child Care of the Baltimore Annual
Conference of the Methodist Church v. Harker*, 316 Md. 683, 691, 561 A.2d 219 (1989), the
Court of Appeals found that *Baltimore County's zoning enabling statute* neither specifically
provided nor clearly implied that the State was intended to be subject to its provisions.

In *City v. Dept. Health and Mental Hygiene*, supra, the property at issue was also owned
by the State and leased to a private entity. It was a home for six teenagers who had been
adjudicated "children in need of supervision" and the Court held that local zoning did not apply.
Similarly, 62 Op. A.G. 45 (1977) (a liquor dispensary operated by the Wicomico County Liquor
Control Board) and 78 Op. A.G. (1993) [Opinion No. 93-017, May 25, 1993] (a fraternity house
owned by the University of Maryland) opine that State owned property which is leased to a

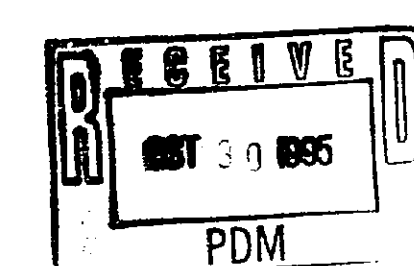
private entity can be considered to be used for public purposes in appropriate circumstances. The
rubble landfill is owned by the State and the public has a right to use it. Its existence plays an
integral role in the Department's comprehensive plan for and use of the Days Cove Area of
Gunpowder Falls State Park. It fulfills the State's need to provide facilities for the responsible
disposal of solid waste and the Department of Natural Resources' duty to "... unify, coordinate,
and promulgate policies, plans, programs, and practices which insure the development, wise use
and enjoyment of all the natural resources for greatest benefits to the State and its citizens."
Natural Resources Article, Section 1-101(b)(4), Annotated Code of Maryland.

For the reasons given we conclude that the Baltimore County zoning regulations do not
apply to the rubble landfill in Gunpowder Falls State Park and the Department respectfully
requests your office to cancel the public hearing scheduled on this matter. We are, of course,
happy to meet with you to discuss any concerns your office may have regarding the operation of
the landfill or its proposed expansion. This is not an Opinion of the Attorney General but I have
conferred with Jack Schwartz, Chief Counsel for Opinions, Advice and Legislation about the
matter and he is in agreement. Thank you for your consideration.

Very truly yours,

Pamela D. Andersen
Assistant Attorney General

cc: John R. Griffin
C.A. "Dutch" Ruppertsberger
Michael J. Nelson
George Perdikakas



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAVES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-

2501

November 1, 1995

Larry Schmidt
Zoning Commissioner
Baltimore County
Department of Permits and Development Management
Development Processing County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Public hearing on Case No.: 96-132-SPH (Item 130)
Days Cove Area of Gunpowder Falls State Park

Dear Mr. Schmidt:

This letter is to inform you that the State of Maryland, Department of Natural Resources
will not be attending the above referenced public hearing on November 7, 1995. The property is a
State park in public use and is not subject to local zoning regulations. The attached letter
explaining the Department's position was sent earlier to Arnold Jablon. Please be advised that
neither John Griffin nor Steve Cassard who have received subpoenas from your office will be
attending either.

Very truly yours,

Pamela D. Andersen
Pamela D. Andersen
Assistant Attorney General

Enclosure

cc: John R. Griffin
Steve Cassard
Michael J. Nelson

J. Carroll Holzer, Esq.
305 Washington Ave.
Towson, MD 21204

George Perdikakas
Arnold Jablon
Warren K. Rich

FAX (410) 974-5206

