

Public Hearings - Prince George's County - Chesapeake Bay Critical Area Program 1987 MSA - 51030-20

1 BEFORE THE CHESAPEAKE BAY CRITICAL AREA COMMISSION

2 -----  
3 RE: PRINCE GEORGE'S COUNTY :  
4 CHESAPEAKE BAY CRITICAL :  
5 AREA PROGRAM :  
6 -----

7 Wednesday, September 16, 1987

8 Pursuant to Notice, the above-entitled  
9 hearing was held before the Chesapeake Bay Critical  
10 Area Commission, Hearing Room, County Administration  
11 Building, Upper Marlboro, Maryland, 20772, commencing  
12 at 7:00 p.m., there being present:

13 COMMISSION MEMBERS PRESENT:

14 ALBERT ZAHNISER, Chairman  
15 PARRIS GLENDENING, Commissioner  
16 RANDALL EVANS, Commissioner  
17 SAMUEL Y. BOWLING, Commissioner  
18 ROBERT R. PRICE, Commissioner

19  
20 REPORTED BY: MARIAN C. HUNT, NOTARY PUBLIC  
21

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P R O C E E D I N G S

1  
2 MR. GLENDENING: Ladies and gentlemen, if we  
3 might begin the public hearing.

4 First, a quick note of introduction. I'm  
5 Parris Glendening, Prince George's County Executive.  
6 This is the panel of the Chesapeake Bay Critical Area  
7 Commission. We have had a series of work sessions and  
8 public hearings, both through my office, and through the  
9 County Council, on the proposed Prince George's County  
10 Chesapeake Bay Critical Area program. This panel is  
11 made up of members of the Commission for the purpose of  
12 recommending to the full Commission either adoption, or  
13 changes of the program.

14 Before turning over to the Chairman of the  
15 panel, I would like to make a couple of very brief  
16 comments from the county's perspective.

17 I have been pleased to serve on the Critical  
18 Area Commission. We have worked with the community, and  
19 I am convinced that a program has come up that meets the  
20 needs of the county, at the same time, though, makes a  
21 significant step forward in terms of protecting not only

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1 the Bay, but the Patuxent, Potomac, and Anacostia River.  
2 We have a great deal of support in the county for this  
3 program, and hope that this will be the next to the last  
4 step in terms of the process.

5 I would specifically like to commend our staff  
6 who has worked for a long time, and under a great deal  
7 of pressure to make sure that, with modesty, that Prince  
8 George's County had the first program in, and I believe  
9 the best program in terms of implementing the statewide  
10 expectations.

11 I would like, at this time, to recognize Gene  
12 Lauer, who is the head of the Department of  
13 Environmental Resources, and ask Gene if he would  
14 introduce the key staff members who have worked on this  
15 as well.

16 MR. LAUER: Yes, I sure will. Mike  
17 Pawlukiewicz of my staff, who was really the project  
18 manager and lead person on this; Linda Brondson from my  
19 staff, the environmental planner; Craig Price from the  
20 County Council, who we worked very closely with in the  
21 process; Rebecca Gardner, also from the Council, who has

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1       been intimately involved in the last few months in this;  
2       Dave Bourdon, sitting in the back, manager of the Soil  
3       Conservation District; I also have John Markovich, who  
4       is a Critical Area forester with the State DNR. I  
5       might -- everybody else is gone here. I might also  
6       introduce Bud Dutton, who is the Commissioner on the  
7       Patuxent River Commission, who we coordinated with and  
8       cooperated with very closely; and, again, as Parris  
9       said, they are the ones that really deserve a pat on the  
10      back for getting the program in on time, and its  
11      comprehensiveness.

12               MR. GLENDENING: Okay. Let me again thank  
13      you and the staff from the various departments, and the  
14      public input that we have had in terms of extraordinary  
15      professional performance here. I might add that the  
16      proof of that, in part, is, and for a program that has  
17      generated a great deal of controversy elsewhere in the  
18      state, we have several interesting citizens who are here  
19      to observe, and two citizens who have signed up to  
20      speak, and I think that part of that is a testament to  
21      your and your staff professionalism, and to the effort

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1 to build a concensus here in the community on this as  
2 well.

3 At this time, I would like to turn the  
4 microphone over to Albert Zahniser, who is chairing this  
5 particular panel.

6 MR. ZAHNISER: Good evening. It's a pleasure  
7 to be here. I would like to introduce the members of  
8 the Critical Area Commission's panel that will be  
9 hearing this presentation, and receiving your comments,  
10 and taking them to the Commission at-large.

11 On my right is Parris Glendening, and no  
12 surprise to you by any means; and Randall Evans --  
13 Secretary Randall Evans of the State Department of  
14 Economic and Employment Development; Mr. Sam Bowling, a  
15 representative from Charles County; and, Mr. Bob Price,  
16 a representative from Queen Anne's County.

17 We have a legal purpose in being here. Under  
18 the Critical Area's law, it is a requirement that a  
19 five-member panel hear public comment from each local  
20 jurisdiction, and the section of the law -- the Critical  
21 Area's law is Section 8-1809.

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1           There is a court recorder here this evening  
2 that will be recording your responses and comments; and  
3 when you come forward, I would hope that you use the  
4 microphone, and present yourself, and state your name.

5           The record for Prince George's County will be  
6 held open for two weeks after this hearing so that  
7 written testimony can be sent to the Critical Area  
8 Commission Office, and the address is number 580 Taylor  
9 Avenue, D-4, Annapolis, Maryland, 21401. If you care to  
10 make a response in writing concerning the Prince  
11 George's County Critical Area package, send it to that  
12 address, and it will be available after the meeting.

13           Progressing on, I would like to now turn the  
14 meeting over to Mike -- I'm going to have a difficult  
15 time with this name -- Pawlukiewicz -- is that close? --  
16 who will give a brief discussion of the Prince George's  
17 County plan, and its effect.

18           Michael?

19           MR. PAWLUKIEWICZ: Does this work?

20           CHAIRMAN ZAHNISER: The other one is the  
21 microphone.

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1 MR. PAWLUKIEWICZ: This is the microphone.  
2 Okay. I guess I'm going to face the audience. Is that  
3 okay?

4 CHAIRMAN ZAHNISER: That's fine.

5 MR. PAWLUKIEWICZ: I hope -- no, let's leave  
6 it like this. Let's leave it like this because the  
7 people are going to have to come up to testify later.

8 I have handouts, and I've tried to go through  
9 the audience and see that everybody got one, which is  
10 basically a two-sided -- one-page, two sides, that is an  
11 outline of our Critical Area program. I'm going to try  
12 and cover that very quickly right now so that you have  
13 kind of a comprehensive overview of what it is we have  
14 put together to meet the criteria of the Chesapeake Bay  
15 Critical Area Commission, and the statute that was  
16 drafted in 1984.

17 Our program consists of four components.  
18 There is the legislation, which consists of three bills;  
19 there is a manual called the "Conservation Manual,"  
20 which defines the conservation planning process for the  
21 Chesapeake Bay Critical Area; there is a data base, some

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1 of which you see around you, of maps, but also including  
2 a computerized data base, which is somewhere else in the  
3 building; and, a plan and overview document. I actually  
4 have two copies of the document here, and, certainly,  
5 people will be able to look at those later if they wish.  
6 The overview document is just kind of a historic  
7 document -- a document for historic purposes that puts  
8 together all of the requirements of the criteria; it  
9 says how the county addressed them. The Conservation  
10 Manual, however, is not a manual, or a guidebook, but  
11 rather the law. The way we have set up our program, the  
12 manual is -- the words themselves in the manual are  
13 required; what the manual asks you to do is a  
14 requirement of law, and not simply a guidance book.

15 First of all, the legislation, as I said,  
16 consists of three bills: one is the overlay zoning bill,  
17 which I'll explain in some detail; a subdivision  
18 ordinance, which brings the Conservation Manual into the  
19 county code; and, a bill, which ties together a lot of  
20 other components of the county code like the grading  
21 ordinance, and the subdivision -- or rather the

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1 stormwater management ordinance, and other ordinances  
2 that need to be just brought up to-date with respect to  
3 the Critical Area program, but it also includes an  
4 agricultural ordinance that implements the county's  
5 obligation to require farmers to -- in the Critical Area  
6 to implement soil erosion/water quality plans on their  
7 farms.

8           To begin with, I guess the most important  
9 legislation is the Chesapeake Bay Critical Area overlay  
10 zone, and the specific zoning maps are over here -- the  
11 first three maps on the wall -- and up here are color-  
12 coded maps that are perhaps easier to read; and, again,  
13 you may get a chance later to get a closer look at  
14 these.

15           I just want to -- I hope you can see the  
16 colors on this map. The green area is the area the  
17 criteria refer to as "resource conservation"; the pink  
18 is what we call "limited development area"; and the red  
19 is "intense development." This is the existing pattern  
20 of development. You can see, on this map, the Anacostia  
21 River, and the Potomac River, and those two maps over

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1 there are the Patuxent River. As you can see, the  
2 Patuxent River is essentially entirely green, entirely  
3 resource conservation, and it is the county's intention  
4 to limit growth as much as possible in that area, and we  
5 have instituted the resource conservation, or we're  
6 recommending the resource conservation overlay zone be  
7 established in the Patuxent River along all of that  
8 green area. Here, you can see the green on the Potomac,  
9 and even in the Anacostia is also resource conservation.  
10 The other colors you see on these map, the yellow is  
11 federal land, which is specifically excluded from the  
12 program, and the blue is tidal wetlands, which is also  
13 excluded from the program because it's regulated in  
14 other areas.

15 Our overlay zone says that the zoning -- "the  
16 resource conservation overlay zone will have residential  
17 uses at a density no greater than one dwelling unit per  
18 20 acres"; and whatever the zoning is under that overlay  
19 zone, the density still would be one dwelling unit per  
20 20 acres. Largely, in the Patuxent especially, we're  
21 mostly looking at open space zoning, or five-acre lots.

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1 That would be down-zoned, essentially, to 20 acres.

2 In the Potomac River, we see resource  
3 conservation areas that are of higher -- potentially  
4 higher allowable densities like RR and RE zoning, and  
5 perhaps higher density, but those would also be limited  
6 to one dwelling unit per 20 acres.

7 In the limited development overlay zone,  
8 existing zoning would be allowed to develop at existing  
9 allowable densities up to four dwelling units per acre,  
10 which is the limit of the limited development overlay  
11 zone; and the intense development zone, development  
12 would be allowed to occur at the existing zoning as long  
13 as certain water quality standards were met.

14 The criteria specifically allow that for every  
15 -- for whatever total resource conservation area we  
16 designate, we will be allowed a five percent growth  
17 increment in the Critical Area. Our calculations show  
18 that we have put aside enough resource conservation area  
19 in Prince George's County to allow a growth increment --  
20 in other words, a conversion from resource conservation  
21 to limited development, or from limited development to

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1 intense development -- of a total of 320 acres. The  
2 criteria say that half of that can take place in the  
3 resource conservation zone, and the other half in the  
4 limited development zone. So, in other words, we have a  
5 growth allocation that we can use of 120 acres -- 160  
6 acres of resource conservation can be converted, and 160  
7 acres of limited development can be converted.

8 Okay. The next, the subdivision ordinance, as  
9 I said, institutes the Conservation Manual, and the  
10 conservation planning process, which will be used for  
11 development in this resource conversation overlay zone.

12 The next item on the outline is the actual  
13 Conservation Manual itself, and this is the place where  
14 all of the elements of the criteria -- all of the  
15 specific standards that the Commission has put forward  
16 have been drawn into this manual as the method by which  
17 we will enforce the Chesapeake Bay Critical Area  
18 criteria. It's laid out in such a way that a developer  
19 -- anyone desiring to develop land, if they wanted a --  
20 if they came to the county for a grading permit, the law  
21 would require that anyone who was issued a grading

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1 permit must first have an adequately executed  
2 conservation plan.

3           This book demonstrates how, and gives specific  
4 instructions on how to prepare a conservation plan. The  
5 conservation plan must be approved by the Planning  
6 Board. Normally, we would expect this to happen during  
7 the subdivision process, but in those cases where a  
8 subdivision isn't necessary, an applicant going for a  
9 grading permit would be told to go to the Planning Board  
10 and apply for a conservation plan; he would be helped  
11 through the conservation planning process by department  
12 planning staff, and the subdivision review committee --  
13 and all of those steps are outlined in this book: where  
14 to go; what the process entails; and, then, a step-by-  
15 step explanation of how the conservation planning  
16 process occurs.

17           And the chapters of the book are divided into  
18 simple, direct chapters that will direct people on how  
19 to prepare their plans. The chapters are called "How to  
20 Prepare a Site Inventory," a "Buffer Delineation"  
21 chapter; "Habitat Protection"; "Vegetation Protection";

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1 "Soil Erosion"; "Storm Water Management"; and, finally,  
2 "Mitigation." And then, at the end, there is a chapter  
3 on how to bring all of those elements together into one  
4 comprehensive conservation plan; how to go to the  
5 subdivision review committee to establish the final  
6 delineation of that conservation plan, and then get it  
7 approved by the Planning Board. Once the Planning Board  
8 has approved it, then a grading permit can be issued for  
9 that site.

10 Now, the next step, and a very important one  
11 is that the Prince George's County grading ordinance  
12 currently requires an in the field preconstruction  
13 conference prior to the issuance of the permit. This is  
14 to insure that soil erosion and sedimentation practices  
15 are properly placed so that an inspector will go --  
16 currently, this is required in the law -- an inspector  
17 will go out with the superintendent of the site, and go  
18 over the site, and point out exactly where erosion  
19 practices and sediment control practices will be put in  
20 place, and then that's all settled, and a grading permit  
21 is issued. We see that the same practice will occur

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1 with respect to the Conservation Manual: the  
2 conservation practices will be identified, the buffers  
3 identified, wetlands, steep slopes, vegetation  
4 protection practices, et cetera, will all be identified  
5 prior to the issuance of the grading permit, and then  
6 monitored closely with frequent inspections.

7 That's the essence of our Conservation Manual,  
8 and the conservation planning process, which is,  
9 finally, tied together in the conversation agreement  
10 whereby the applicant agrees to all of the measures that  
11 have been put forward, agrees to all appropriate bonds  
12 and fees that would be required, and then after the  
13 conference -- the in the field conference --  
14 preconstruction -- the grading permit would be issued.

15 The maps and data base are a key element. In  
16 the maps and data base area is our CADDIS program. It's  
17 a "Computer Assisted Data Base and Digitized Information  
18 System," which uses computer-based graphics to establish  
19 the entire Chesapeake Bay Critical Area and all of the  
20 important overlay parameters, including lot lines,  
21 vegetation, woodlands, wetlands, steep slopes, buffer

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1 areas, as a base line of information for any person who  
2 wants to do work in the Critical Area. They would come  
3 to the Park and Planning Commission, and be given the  
4 base line data, and then asked to go out and supplement  
5 with on-the-site evaluation and further delineation of  
6 conservation areas in preparation for the conservation  
7 plan. And, additionally, you see the maps around us  
8 that show all of the various environmental features in a  
9 format that is more accessible to a public gathering  
10 such as this.

11 Finally, the final document in the package is  
12 the Critical Area plan and policy overview, which, as I  
13 mentioned earlier, is kind of a historic document which  
14 goes through all of the specific requirements of the  
15 Chesapeake Bay Critical Area criteria, requirements  
16 dealing with, for instance, shore erosion protection,  
17 water dependent facilities; there is a summary in here  
18 of how our development process would occur in the  
19 Critical Area; there are chapters on forest preservation  
20 and woodland protection, agricultural protection. I  
21 neglected to mention in great detail about the

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1 agricultural protection program, but we are, as I said,  
2 requiring the quality water and soil conservation plans  
3 within five years, and DER will be the enforcement  
4 agency for that program. Also outlined in here is the  
5 habitat protection program, and a brief description of  
6 our inventory and mapping program. Finally, the draft  
7 ordinances are in the back of this book on the blue  
8 pages.

9 Now, we have submitted this program to the  
10 Chesapeake Bay Critical Area Commission, and the staff.  
11 We have been -- since July 31st, which was the date of  
12 submission, we have had frequent meetings with the  
13 staff, and with our counsel, and the counsel of the  
14 staff to go over what deficiencies there might in our  
15 program, or how to strengthen it, or what things we may  
16 have overlooked, and we have identified several areas  
17 where the program will need revision. We, at the time  
18 of submission, anticipated that we would want to revise  
19 several aspects of it ourselves simply because the time  
20 table was so very tight for preparation and submission  
21 of the program. We have been over this very carefully

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1 with the Commission staff, and we have come up with a  
2 whole list of revisions that we will be making. We will  
3 be making them cheerfully. We have no problems with any  
4 of the revisions we have been asked to make, and that  
5 revised program will be brought to the Commission, as  
6 well as the one that is specifically the subject of this  
7 public hearing tonight.

8 I would like to ask Ms. Linda Bronsdon, if she  
9 is here -- here she is -- okay -- to come up at this  
10 time, and explain some of the more important revisions  
11 that have been asked for, and how we are going to deal  
12 with those.

13 MS. BRONSDON: For the record, my name is  
14 Linda Bronsdon, and I'm a planner with the Department of  
15 Environmental Resources.

16 I would like to list the responses to the 31  
17 issues that will incorporate as changes to what has  
18 already been submitted to the Commission. I will simply  
19 state the issue. There is a written memorandum that  
20 provides further detail to what the original comment was  
21 from the Commission, and what the full response will be

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1 in order to meet the Commission's requested change.

2 The first comment concerns the use of grading  
3 permits for boat ramps, and shore erosion protection.

4 The second comment concerns the prohibition of  
5 heavy industry. The second comment, "B," concerns the  
6 prohibition of solid and hazardous waste, which is  
7 identified in our county solid waste program; and "2c"  
8 is also on the solid waste program. Commercial  
9 harvesting is the concern in "2d," which is required --  
10 which now requires a forest management plan.

11 The third comment concerns the protection of  
12 non-tidal wetlands, and we will incorporate a change to  
13 provide criteria for adverse effects.

14 Comment four concerns prohibitions of, again,  
15 commercial harvesting; and, again, the response is  
16 incorporated within a forest management plan.

17 Comment five concerns the maintenance --  
18 perpetual maintenance in accordance with the  
19 conservation plan, and the conservation plan will  
20 provide the management options of public dedication,  
21 easements, covenants, or other legal documents.

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1                   Comment six concerns the existing process of  
2 subdivision review for development concepts in Prince  
3 George's County.

4                   Comment number eight concerns the stricter  
5 criteria of the county's for nonconforming uses.

6                   Comment nine concerns structural versus  
7 nonstructural shore erosion protection measures, and the  
8 preference for nonstructural is to provide  
9 nonstructural unless not effective.

10                  Comment ten concerns the mapping of forest  
11 areas, which has occurred.

12                  Comment 11 specifically concerns the use of  
13 agricultural practices, which will be added to the  
14 Conservation Manual.

15                  Comment 12 is a question regarding the  
16 reclamation of surface mines, and the county has an  
17 existing policy for reclamation plans, which is a  
18 clarification.

19                  Comment 13 concerns the future surface mining  
20 operations, and the county will implement the  
21 requirements of the state's four criteria.

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1           Comment 14, it concerns timber harvesting  
2 operations, and the clarification of buffer versus  
3 waterway protection zones.

4           Comment 15 are the minimum requirements of a  
5 buffer management plan.

6           Comment 16 concerns clarification of  
7 preservation versus mitigation plans, and adds the  
8 requirement that state agencies and local agencies have  
9 a referral process before the local jurisdiction  
10 designates such areas.

11           Comment 17 provides a standard for adversely  
12 effecting wetlands and its wildlife.

13           Comment 18 concerns the Natural Heritage  
14 areas, and the Conservation Manual will be amended to  
15 include a process of identification, including a public  
16 hearing, which is the concern in comment 19.

17           Comment 20 concerns the requirements to assure  
18 protection measures for future designations of  
19 threatened and endangered species.

20           Comment 21, as well as 22, 23, and 24, concern  
21 corrections to the table of uses within our legislation,

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1 which will occur.

2           Comment 26 concerns the prohibition of the  
3 placement of dredged spoils.

4           Comment 27 concerns additional protection  
5 measures, which is an existing policy document known as  
6 the "Patuxent River Watershed Protection Plan."

7           Comment 28 concerns the targeting of  
8 stormwater management retrofit projects. This was a  
9 clarification. The targeting has been deleted, and it  
10 is explained that the current capital improvement  
11 program implements the county's policies.

12           Comment 29 concerns the mapping in the  
13 overview document, which will be replaced with maps that  
14 have legends.

15           Comment 30 concerns the change in the May 13th  
16 date to December the 1st, 1985, as required by the  
17 state.

18           And the last and final comment concerns the  
19 definition of "terms." The glossary, which will be  
20 added to the Conservation Manual, will reference and  
21 incorporate the definitions, as contained in the state's

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1 regulations.

2 Thank you. Any questions?

3 MR. PAWLUKIEWICZ: I would like to just point  
4 out, again, that this document that was just kind of  
5 skimmed over is available here tonight; and if anybody  
6 wants that to read, specifically, the detailed comments  
7 that were made, and our specific detailed responses to  
8 those comments, you certainly are free to have a copy.  
9 And I would like to point out that we responded to all  
10 of the comments, and there are no more -- my  
11 understanding is that we have responded to the  
12 satisfaction of at least the Critical Area staff, and  
13 that there are no outstanding comments, except -- do you  
14 have any, Joyce? There were some comments made by the  
15 Critical Area Attorney General -- Assistant Attorney  
16 General, and I guess we'll talk about those.

17 MS. HOPE: Before I get started with those --  
18 I'm Joyce Hope. I'm with the county's Office of Law --  
19 there is a car out front that is parked with its lights  
20 on. It's license plate TSP 466; and if it belongs to  
21 any of you, I would advise that you go out and correct

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1 that.

2 The Associate Attorney General that is  
3 advising the Critical Area Commission has presented the  
4 county with approximately 16 points of concern, and they  
5 are as follows:

6 They address the time implementation for a  
7 piecemeal rezoning request for the overlay zone.

8 They reflect the question of whether or not --  
9 whether or not, during a piecemeal request by an  
10 applicant for an overlay zone, what sort of burden of  
11 proof will be used; whether or not it's a standard  
12 mistake change rule, or whether or not a different  
13 burden of proof will be required.

14 They note the fact that the Commission needs  
15 to be -- does not need to be notified of all growth  
16 expansions; that that is something that is totally  
17 within the -- of the county.

18 They note the fact that the county legislation  
19 needs to be revised to reflect new marinas that should  
20 be permitted within the buffer -- excuse me -- to  
21 prohibit new marinas in the buffer of the resource

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1 conservation areas.

2 They regard the fact that the county has  
3 chosen to make more restrictive than the state  
4 legislation the county's grandfathering provisions.

5 They note the fact that the county's table of  
6 uses must be changed to reflect industrial uses in the  
7 intense development zone.

8 They must -- our legislation must be corrected  
9 in order to show that in lieu of -- as currently stated,  
10 it looks as if the county is granting certain  
11 exemptions. Those exemptions are only within the  
12 authority of the Commission to grant, and we must  
13 therefore ask for those exemptions to occur.

14 They deal with the fact that the county --  
15 they deal with the operation of sand and gravel  
16 operations within the Critical Area.

17 They deal with the elements of an intrafamily  
18 transfer provisions, and what that has to do with is the  
19 fact that in our legislation we have not set out the  
20 specific procedure which must be followed, and we will  
21 change that accordingly so that the procedure to apply

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1 for an exemption for an intrafamily transfer will be  
2 available upon reading the documentation.

3 There is a typo regarding agricultural land  
4 management.

5 There is an incorrect citation in the building  
6 code regarding a particular location of the Critical  
7 Area.

8 We need to elaborate our fee in lieu process,  
9 and we will do that.

10 There were some concerns raised addressing the  
11 county Comprehensive Solid Waste Management Plan. Those  
12 concerns have all been alleviated, and that is a  
13 separate document in legislation.

14 The county has been advised to require that  
15 grading permits are now going to be necessary for the  
16 erection of boat ramps in the Critical Area.

17 There is certain boilerplate language that has  
18 to do with the shore erosion control, which we may have  
19 to delete from our legislation and will do so.

20 There are certain portions of the Conservation  
21 Manual that, in defining certain things, appear to be

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1 less strict in definition than the policy and overview  
2 document. We will correct that by using the identical  
3 language contained within the policy and overview  
4 document, and placing that in the Conservation Manual  
5 definitions.

6 They deal with the fact that the county  
7 requires a forest management plan for all undeveloped  
8 woodland in the Critical Area.

9 They deal with the fact that as far as surface  
10 mining is concerned, the county deleted a requirement  
11 that surface mining may not be contained in areas where  
12 there are highly erodable soil. That will be corrected  
13 in accordance with the criteria.

14 And there were some concerns addressed  
15 regarding Natural Heritage areas in that our  
16 legislation, again, did not make specifically clear as  
17 to the procedures to be followed to place a Natural  
18 Heritage area. Those procedures will again be  
19 delineated in our legislation.

20 And that basically were the concerns that were  
21 -- the legal concerns that were addressed by the

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1 Attorney General's Office regarding the county's  
2 Critical Area program.

3 MR. PAWLUKIEWICZ: Mr. Chairman, I believe  
4 that is all the staff has to present at this time,  
5 unless you have some questions, or --

6 CHAIRMAN ZAHNISER: Thank you very much. Are  
7 there any questions from the panel?

8 PANEL MEMBERS: No.

9 CHAIRMAN ZAHNISER: Earlier, I had an  
10 oversight. I did not introduce Carolyn Watson, the  
11 Critical Area Commission staff planner who has been  
12 working very closely with Prince George's County, and  
13 has found that the Planning Department of Prince  
14 George's County has been very cooperative in assisting  
15 her in her task.

16 Now, it's time to hear testimony from the  
17 audience. I would like to say that if you have any  
18 individual problem for a parcel of land that you have,  
19 that you take that up with the planning staff of your  
20 county, and we are here to hear statements on the  
21 general policy of the county that is in question to be

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1 adopted.

2 At present, we only have two speakers listed.  
3 One is -- number one is Erich Schmidt. Would you please  
4 come forward?

5 If you would, state your name for the  
6 recorder.

7 MR. SCHMIDT: Erich Schmidt. I want to say we  
8 have some problem with the perking procedures in this  
9 county. Here is 57 pages here. There is not one single  
10 lot being shown just how it could be perked; not one  
11 single lot could be perked when you follow these  
12 restrictions. I'm very concerned about that. I have  
13 fought the Health Department for over two years. I  
14 cannot get a perk test. I can't get a perk test, and I  
15 have houses all around me, and I can't get -- not  
16 cooperate whatsoever. I have a very serious problem. I  
17 can't build. I can't do nothing. All I can do is pay  
18 taxes. That's all I can do, and I'm very concerned  
19 about this. Fifty-six pages. It was drafted by a perk  
20 tester, Mr. Oliver. I'm very concerned about this. He  
21 is interested only to have as many tests as possible for

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1 him to make money. I'm very concerned about this, and I  
2 think it would be wise for the county to open this a  
3 little bit more up because all of the sewerage -- less  
4 sewerage for the Bay is better than more. I feel this  
5 way, personally. Thank you.

6 CHAIRMAN ZAHNISER: Thank you, Mr. Schmidt.  
7 If you have difficulty with the county, I'm sure that  
8 the Planning Department, and the administrators will be  
9 able --

10 MR. SCHMIDT: I've been fighting for two  
11 years. I can get no place.

12 CHAIRMAN ZAHNISER: Thank you, sir. The next  
13 speaker is Steve Bunker.

14 MR. BUNKER: Mr. Glendening, members of the  
15 Commission. My name is Steve Bunker with the Chesapeake  
16 Bay Foundation. The Chesapeake Bay Foundation is a  
17 nonprofit conservation organization with about 40,000  
18 members Baywide. As you probably well know, we  
19 supported the passage of the Critical Areas Act; we made  
20 recommendations on, and supported the criteria through  
21 the General Assembly; and, now, we're actively reviewing

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1 all of the local Critical Area programs as each come to  
2 the Commission.

3 We would like to congratulate Prince George's  
4 County on being one of the first counties to submit  
5 their plan, and I understand there is some controversy  
6 as to who actually was the first person to submit their  
7 plan, but I think it really does show the resolve of  
8 Prince George's County in submitting their plan in a  
9 timely fashion.

10 We have reviewed the plan and the maps, and we  
11 find that the document is concise, well drafted, and,  
12 most importantly, easily implementable. We have done a  
13 preliminary review of the maps. We would like to  
14 further review the maps, but, in general, we find them  
15 accurate and comprehensive. We're very impressed with  
16 the CADDIS geographic information system that has been  
17 developed by the county. We think not only are the  
18 initial maps important in defining the resources, and  
19 also defining the various development areas, but we do  
20 believe that this type of system is very critical site-  
21 specific planning after the Critical Area program is in

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1 place, and we congratulate the county in moving ahead  
2 with this program. It's very impressive.

3 We have reviewed the plan. I think one of the  
4 most interesting things about it is it is very simple.  
5 It's very concise. It's very simple. It's very short,  
6 and, yet, it closely follows the criteria, and includes  
7 almost all of the components of the criteria. The most  
8 impressive part of the plan, I believe, is the method  
9 for implementation. We have been -- the Chesapeake Bay  
10 Foundation has been very concerned with the issue of  
11 enforcement and implementation. As you know, it  
12 involves a number of different county agencies; in fact,  
13 it involves agencies that the county generally does not  
14 have direct control over like the Soil Conservation  
15 District, and the Soil Conservation Service, and we're  
16 very impressed with the aspects of the program that  
17 deals with the Conservation Manual, the conservation  
18 agreement, and the conservation plan. We believe that  
19 this will insure accurate enforcement, and the use of  
20 the grading permit to key the whole process, we think is  
21 very important. We believe it will catch many of the

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1 projects and site plans that might otherwise be  
2 overlooked.

3           It also eliminates one of the trickier aspects  
4 of enforcement, and that is trying to get all of the  
5 various agencies involved in review to coordinate among  
6 themselves, and I understand the county also has a  
7 comprehensive site plan review process where all of the  
8 agencies get together and discuss an individual project,  
9 and all of the inspectors, as I understand it, are very  
10 well versed in various aspects of what the other  
11 reviewing agencies' duties are, and so they can work in  
12 conjunction with each other.

13           We will submit further comments. We do have  
14 some questions, and some comments on the plan. We will  
15 submit those to the Critical Area Commission, and to the  
16 county, but, in general, we do believe it's a very well-  
17 drafted comprehensive plan. I would like to  
18 congratulate the Department of Environmental Resources,  
19 the Maryland National Capital Park and Planning  
20 Commission, and all of the other county agencies  
21 involved, and I also would like to congratulate the

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1 County Executive, Parris Glendening, for not only  
2 working with this county to develop this plan in a  
3 timely fashion, but also for all of his actions on the  
4 Critical Area Commission. Thank you.

5 CHAIRMAN ZAHNISER: Thank you, Mr. Bunker. I  
6 would like to hold this meeting open for another ten  
7 minutes to see if anyone else has had a change of heart,  
8 and would like to speak concerning the Critical Area  
9 plan for Prince George's County. Meanwhile, I would  
10 like to make sure that everyone has an opportunity, or  
11 has signed up as being a participant here at this  
12 particular meeting, and I would like to reiterate that  
13 you can submit written comment for the next two weeks to  
14 the Critical Area Commission. We have the address up  
15 here of where you can send it, and we invite you to do  
16 so. This panel will be considering all comments from  
17 the public, and, hopefully, in the month of October, we  
18 will come to some decision on Prince George's County's  
19 plan.

20 Once again, we would like to keep this meeting  
21 open for ten minutes to see if anyone else would like to

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1 speak.

2 MS. SCHWIEN: I have one problem. The  
3 Critical Area, they have one group of Critical Area that  
4 applies to the Bay, and then the one that we fought over  
5 years ago, are they different?

6 CHAIRMAN ZAHNISER: I don't understand "the  
7 one we fought over years ago," but --

8 MS. SCHWIEN: Well, you know, say three, or  
9 four, or five years ago, the State Department claimed  
10 that we had to have critical areas. You know what I  
11 mean -- areas that we should preserve. Does this  
12 Critical Area we're talking about now include all of  
13 that, or just the part that is set up for the Bay area?

14 CHAIRMAN ZAHNISER: No, it does not. This  
15 Critical Area is just concerned with a 1,000 foot back  
16 from the Bay and wetlands.

17 MS. SCHWIEN: Okay. That's what I wanted to  
18 know. Thank you.

19 MR. BERCKNER: My name is Carl Berckner, and I  
20 have just a question.

21 CHAIRMAN ZAHNISER: Excuse me a second. Is

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1 the court recorder ready to hear further testimony?

2 THE REPORTER: Yes.

3 MR. BERCKNER: Of course, I don't know much  
4 about this program, and my family has land along the  
5 shore, and 1,000 feet would take over half of it so that  
6 you could not do anything with it, is what I understand.  
7 Is that correct, no building can take place within 1,000  
8 feet of the shore?

9 CHAIRMAN ZAHNISER: No, sir, that's not the  
10 case. Your best bet would be to get together with the  
11 Planning Department of the county, and have a  
12 clarification on what options are available to you, but  
13 that is not the case.

14 MR. BERCKNER: Because we're concerned that  
15 that would wipe out the value of what land you have.

16 CHAIRMAN ZAHNISER: That's a very valid  
17 concern, but that isn't the case, and I'm sure the  
18 Planning Department would love to meet with you.

19 MR. BERCKNER: Is there a general restriction?  
20 I mean -- or it's in this folder that you submitted.

21 MR. PAWLUKIEWICZ: We could take after -- if

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1 you would care, after the meeting, we can get together  
2 and go over the maps, and find your property --

3 MR. BERCKNER: Okay. All right.

4 MR. PAWLUKIEWICZ: -- and we can tell you all  
5 about it.

6 CHAIRMAN ZAHNISER: Thank you. There seems to  
7 be no further comments concerning the Prince George's  
8 County Critical Area package, or program. I certainly  
9 appreciate your attendance here, and your interest. The  
10 panel certainly appreciates the cooperative spirit that  
11 the staff of Prince George's County has had, and they  
12 can be proud of themselves being one of the first -- one  
13 of the first counties --

14 (Laughter.)

15 CHAIRMAN ZAHNISER: -- to submit their plan,  
16 and we will take the plan, and what we have learned  
17 today back to the Commission, and, hopefully, we'll have  
18 a positive recommendation for you.

19 I would like to thank everyone; and at this  
20 time, we have fulfilled our obligation of having a  
21 public hearing on the county's Critical Area plan, and

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do I hear a movement for adjournment?

PANEL MEMBER: So moved.

CHAIRMAN ZAHNISER: We are adjourned.

(Whereupon, at 8:10 p.m., the proceedings  
in the above-entitled matter were adjourned.)

- - -

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CERTIFICATE OF NOTARY

I, Marian C. Hunt, the officer before whom the foregoing testimony was taken, do hereby certify that the witnesses whose testimony appears in the foregoing transcript appeared before me; that the testimony of said witnesses was taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said testimony is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

*Marian C. Hunt*  
Notary Public in and for the  
State of Maryland

My Commission Expires:

*July 4, 1990*

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THE PRINCE GEORGE'S COUNTY GOVERNMENT

Division of Environmental Planning  
Department of Environmental Resources  
(301) 952-3730

*First speaker*

M E M O R A N D U M

September 16, 1987

To: Carolyn V. Watson, Regional Planner  
Chesapeake Bay Critical Area Program

Via: Michael Pawlukiewicz  
Land and Water Resources

From: Linda Bronsdon, AICP *LB*  
Land and Water Resources

Re: Responses to comments on Proposed Program

*me + Second speaker*

Thank you for your letter of August 27, 1987, and for the two worksessions regarding the thirty-one staff comments on Prince George's County Critical Area Program. As you know, we are preparing a user-friendly Conservation Manual and a streamlined Program for local adoption following the Commission's approval. The current Overview document will stand as the official record should questions of legislative intent arise in the future. Additional information to be contained in the Overview will be by Errata and not be a separate reprinting.

The projected calendar of events includes the panel public hearing and Commission review on October 7 and 21, 1987. Following Commission action, anticipated on October 21, a public hearing before the Council will be held in accordance with our Code requirements and in accordance with the State's requirement for a local hearing on the changes.

The following responses repeat the comments contained in your letter of August 27, 1987.

This copy shows the phrases which I highlighted for inclusion in the record, just in case you couldn't hear ~~the~~<sup>the</sup> specifics.

Please call me on 952-3730 if you have any questions.  
Jinda Bronsdon

Comment #1: What types of activities require a grading permit? Does this include the construction of boat ramps and the installation of shore erosion protection devices?

Response:

Current Code provisions require a grading permit for any construction involving footings. The Critical Area Program will now require grading permits for boat ramps and soil erosion protection devices, which will be added to the Table of Uses on page 44 of the legislation (CB-72).

The Conservation Manual will state the requirement for grading permits for boat ramps and protection devices within the Overview for Section 6: Soil Erosion (page 39 of the rewrite).

Comment #2: The following regulations were found in the Plan and Policy Review Overview Document with no legislation or requirements in the Conservation Manual to support.

- 2a) Non-maritime heavy industry, transportation facilities, utility transmission facilities, and sludge facilities are only permitted in IDA's where they contribute to the improvement of water quality or receiving waters.

Response:

The Errata will stipulate the above prohibition on page B-4 of the Overview.

The legislation, CB-74, will add the prohibitions to Section 27-548.14. L-D-O Zone (page 42, line 13) and to Section 27-548.15. R-C-O Zone (page 42, line 12). The restriction subject to water quality improvement will be added to Section 27-548.13. I-D-O Zone (page 40, line 20). These three inserts will be item (2) under (b) uses.

The Table of Uses on page 44 of CB-72 will have the prohibition on non-maritime heavy industry under (3) Industrial, with the "X" under I-D-O having footnote #3: "unless the use contributes to the improvement of water quality or receiving waters". The Table of Uses will have a fourth category identified as "other uses" listing transportation facilities, utility transmission facilities and sludge facilities, shown as prohibited under R-C-O and L-D-O, and prohibited under I-D-O with the same #3 footnote.

The Conservation Manual will state the applicable restriction under Subsection 7.1 Intense Development Overlay Zone, Subsection 7.2 Limited Development Overlay Zone, and Subsection 7.3 Resource Conservation Overlay Zone (rewrite pages 43-45).

- 2b) Solid and hazardous waste collection or disposal facilities and sanitary landfills are prohibited in the Critical Area.

Response:

The County's adopted Solid Waste Program has been provided to the Commission. This document incorporates all requirements for solid waste and hazardous waste collection or disposal facilities and landfills and specifically prohibits such uses from the Critical Area of Prince George's County.

- 2c) If applicable, existing sanitary landfills or solid waste collection or disposal facilities are subject to COMAR Title 10, administered by the Department of Health and Mental Hygiene.

Response:

Again, the County's adopted Solid Waste Program is the controlling policy statement. Should the Commission require an amendment to the legislation to specify restrictions on landfills and collection/disposal facilities, the appropriate place would be the Table of Uses on page 44, under category (4) Other Uses, as proposed in the response to 2a.

- 2d) Commercial Harvesting by selection or by the clear-cutting of Loblolly Pine and Tulip Poplar may be permitted within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams or the edge of tidal wetlands.

Response:

The requirements for a Forest Management Plan for tree harvesting operations in Prince George's County have been re-written pending the approval of the Bay Forester. This had been an Appendix and is now referenced in the Conservation Manual as a separate policy document in Section 2.2 Buffer Requirements (rewrite page 12); within the Overview of Section 4: Vegetation Protection (re-write page 23), and within the Preservation Plan and Mitigation Plan Subsections (rewrite pages 50 and 51).

In the revised requirements for Forest Management Plans, a second paragraph will prohibit harvesting within the Critical Area or buffer areas and cross-references back to the Conservation Manual. This paragraph will include the above provisions for Loblolly Pine and Tulip Poplar.

Comment #3: The Conservation Manual only offers protection to non-tidal wetlands identified in the Critical Area inventory", yet the program includes protection for those non-tidal wetlands which may be found by site inventory or other means.

Response:

The Conservation Manual describes non-tidal wetlands under Subsection 1.2 (rewrite pages 5 and 6) and regulates non-tidal wetlands by buffer delineation (pages 13 and 14). On page 14, the widening of buffers to include contiguous steep slopes or 100 year floodplains will be changed from a "may" to a "shall" in a. and b.

Also on page 14, the current statements under f. and g. will be reversed and re-written as follows:

- f. Encroachment into non-tidal wetland buffers requires a finding by the Planning Board that the activity will not adversely affect the water quality or hydrologic regime of wetlands or the habitat value.
- g. Unavoidable alterations to non-tidal wetlands shall be mitigated by providing water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered. The mitigation shall be on-site or within the same watershed as the affected wetland.

Comment #4. Conservation planning requirements for commercial harvesting are set forth in the Conservation Manual. The use of the Conservation Manual is triggered by the requirement for a grading permit or subdivision application, yet the legislation (CB-74) exempts commercial harvesting from requiring a grading permit. How are the regulations governing commercial harvesting to be enforced?

Response:

As described in the Response to 2d, above, tree harvesting operations (defined as a disturbance of 5,000 square feet) require a Forest Management Plan. This requirement is crossed referenced in the Conservation Manual. The procedure for coordinating a Forest Management Plan with a Conservation Agreement is spelled out in this separate policy document. The requirements for commercial harvesting are not contained in the Conservation Manual due to the unique and special treatment of the use.

Comment #5: Legislation needs to assure that forested areas protected at the time of development are protected in the future.

Response:

The Conservation Manual requires designated forests to be maintained in accordance with the Conservation Plan (rewrite page 35, d.6.)

The Overview of Section 8 on Conservation Plans will stipulate that protection of forested areas in the future is a requirement and will list public dedication, easements, covenants or other legal documents as means for assuring protection.

Comment #6: It is not clear how the program specifically addresses the location, design, and construction of roads, bridges and utilities that are associated with development activities.

Response:

This review procedure is currently a requirement of any development activity in the County. The Subdivision Review Process carefully addresses design and landscaping requirements, right-of-way placement and traffic impacts, environmental protection measures, stormwater management, preservation of historic resources, dedication of parkland and/or hiker/biker trails, on-site recreational and open-space areas, parking and berming, water and sewer requirements, bonding, and public notice.

The current development review process in Prince George's County has been in existence since 1978 and is coordinated by the Maryland-National Park and Planning Commission. The Subdivision Review meetings are open to the public and are scheduled twice a month.

Comment #7: What is a STET woodland?

Response:

Typographical errors have been corrected in the re-write of the Manual.

A further technical correction will delete the reference of findings "by the County" and insert "by the Planning Board". Also, the graphs and charts are being redone for the Manual, along with a new cover and chapter dividers. Subsequent additions to the Manual will include a Glossary, Table of Contents, a "Where to Turn for Help" page with addresses and phone numbers, and a cover page.

county is stricter

Comment #8: A non-conforming use policy, as required by COMAR 14.15.02.07, has not been addressed. In fact, where the Criteria specifically allow for the continuance of existing non-conforming uses, the County's program seems not to allow the continuance of an existing use if certain conditions are present.

Response:

This comment reflects a similar concern presented in memorandum from the Attorney General's Office, dated August 26, 1987. The Attorney General's Office has agreed that local requirements may be more restrictive than the State's. As a general response, this issue will be reviewed on a case-by-case basis before the District Council in accordance to local procedures.

Comment #9: Language in the Conservation Manual relating to shore erosion and control measures is weak. Language in the Plan and Policy Overview document is stronger and thus should be reflected in the Conservation Manual.

Response:

The chart on page 4-11 of the Overview allows for structural measures if non-structural erosion controls are not practical or effective. This phrase was inadvertently deleted from the original Conservation Manual. The rewrite of the Manual (page 40) deletes the chart layout and states the requirements as follows:

"... The following policies apply to Shore Erosion Protection Works within the Chesapeake Bay Critical Area:

- a. Public and private landowners are encouraged to protect rapidly eroding shorelines.
- b. Non-structural shore erosion protection measures are encouraged, where appropriate, in order to conserve and protect natural resources such as plant, fish and wildlife habitat.
- c. Vegetative stabilization is preferred over structural methods because of the positive environmental effects associated with its use.

"The Conservation Plan shall include an assessment of existing shoreline conditions and a determination of required erosion control measures. With a finding of no appreciable erosion, no control measure is needed.

"Non-structural measures are used to control erosion of less than two feet per year. If non-structural measures are not

effective, structural measures may be installed. The determination of control measures shall provide for conservation of fish and plant habitat..."

Comment #10: Have forest areas that are periodically flooded within State wetland boundary been mapped?

Response:

Yes. Type #22 forests were mapped under the Tidal Wetlands Program by Maryland Department of Natural Resources. Approximately 80 acres occur in Prince George's County. Copies are maintained by the Natural Resources Division of M-NCPPC.

Comment #11: It is not evident that agricultural landowners are encouraged to use the following practices until they obtain a Soil Conservation and Water Quality Management Plan:

- a) Proper nutrient rates
- b) Appropriate timing of nutrient application
- c) Reduced tillage practices
- d) Crop rotation
- e) Cover crop

Response:

The above provision, as well as a general statement concerning agricultural activities and Soil Conservation and Water Quality Plans, will be added to the Conservation Manual under the Overview of Section 7: Mitigation Measures (rewrite page 43). Referral to the Soil Conservation District will also be added.

Comment #12: Reclamation of surface mines has not been addressed.

Response:

The Errata will reference the requirement for a Reclamation Plan, as currently required by County Code, within the Sand and Gravel Chapter of the Overview.

Comment #13: In establishing criteria for determining where future surface mining operations would be unsuitable, the criterion of highly erodible soils, as required by COMAR, was not included.

Response:

This prohibition has broad policy implications, as sand and gravel deposits are under highly erodible soils in Prince George's County. The fourth criterion as presented in COMAR will be added to comply with the State's requirements.

Comment #14: The Conservation Manual allows timber harvesting to occur within 50 feet of intermittent streams, rivers, lakes, ponds, bogs, or marshes if the harvesting is conducted pursuant to a buffer management plan.

Response:

A "buffer" for tree harvesting operations refers to a "waterway protection zone" and provides for specific exemptions pursuant to a Forest Management Plan. As noted under 2d and 4, the requirements for tree harvesting have been re-written pending approval by the Bay Forrester) and the use of the word "buffer" has been deleted so as to avoid confusion with the Critical Area buffer.

Exemptions 1 through 6 on pages 12 and 13 of the rewrite refer to exemptions to waterway protection zones and will be deleted. Item d. will read as follows:

"Cutting or clearing of trees within the buffer shall be prohibited, except of Loblolly Pine and Tulip Poplars. No harvesting shall occur within 50 feet of the mean high tide line or the head of tidal marshes."

Comment #15: The minimum requirements of a buffer management plan are not consistent with the requirements set forth in the text of the Conservation Manual.

Response:

Again, corrections and clarifications have been provided in the re-write of the Timber Harvesting Plan, pending approval by the Bay Forrester. Further consistency with the Conservation Manual will be provided to specify prohibition within 50 feet within mean high tide line and within Habitat Protection Areas.

Comment #16: The preparation of mitigation plans for the disturbance to non-tidal wetlands is not sufficiently addressed by the Conservation Manual. The requirements for comments on mitigation plans should be reflected in the Conservation Manual.

Response:

The protection of non-tidal wetlands is by a Preservation Plan, and the mitigation of site development by afforestation, reforestation, or vegetation protection areas is by a Mitigation Plan. Both are specific requirements of a Conservation Plan in Prince George's County, as noted on the first page of the manual

with agency referrals

and repeated in Section 8 (rewrite page 49). Subsection 8.2 stipulates the requirements for a Preservation Plan. The first paragraph will be rewritten to read as follows:

"A Preservation Plan identifies areas for perpetual preservation and protection. The zoning restrictions for the specific overlay zone, as described in Section 7, serve as the foundation for a Preservation Plan and the buffers and protection measures for non-tidal wetlands and steep slopes, as presented in Section 2, are the supporting requirements.

"Preservation Plans and Mitigation Plans, as described below, require coordination with enforcement and protection agencies. Comments shall be sought from Maryland Department of Natural Resources, and where appropriate, from Maryland Department of the Environment, Maryland Department of Agriculture, Prince George's County Soil Conservation District, and U.S. Fish and Wildlife Service. Separate findings are required prior to the final execution of a Conservation Agreement. The required finding is the proposed mitigation plan, as may be modified, provides sufficient mitigation to accomplish the objectives of the Critical Area Program.

"A Preservation Plan consists of a text and a map, separate from the four maps developed in the site inventory. The map shall include the following...

Section 8.3 describes the requirements for a Mitigation Plan, which also consists of a map and text. The identification of protection measures (items f. and g.) will be moved to the text requirements and will list the options of public dedication, easements, covenants or other legal documents.

Comment #17: What is the standard for adversely effecting a wetland or its wildlife?

The response to Comment #3 provides the standard concerning adverse effects. Section 3 of the Manual will be retitled as "Buffers and Non-Tidal Wetlands" and the opening subsection (rewrite page 11) will read as follows:

"The Critical Area buffer is an existing, naturally vegetated area, or an area established in vegetation and managed to protect shorelines, wetlands and aquatic and terrestrial environments from disturbance. The standards for protecting wetlands and wildlife include the following:

- a. The maintenance of undisturbed areas for the removal or reduction of sediment, nutrients, and potentially harmful substances in runoff.

- b. Avoidance of adverse effect to wetlands, shorelines, streambanks, tidal waters, and aquatic resources by the development of a Conservation Plan and execution of a Conservation Agreement.
- c. Maintenance of the natural environment of streams and transitional habitats between aquatic and upland communities and the protection of riparian wildlife habitat.

"Within portions of the Critical Area, existing residential, commercial or industrial uses may preclude the establishment of a buffer. These areas shall be reviewed on a case by case basis for appropriate mitigation measures.

Comment #18: Natural Heritage Areas have not been addressed by the program.

Response:

The use of an evaluation zone for Natural Heritage Area will be added to the list under Rare, Threatened and Endangered Species (rewrite page 18).

A separate Subsection on Natural Heritage Areas will be added to Section 3, which will describe a process of identifying Natural Heritage Areas, referrals to review agencies, and the provision of a local public hearing on each designation.

Comment #19: The program does not recognize the process of holding a public hearing to designate and set forth protective measures for Threatened and Endangered Species, Non-Tidal Wetlands, and Wildlife Habitats.

Response:

As noted in the response to Comment #18, a separate Subsection will describe the requirement for a local hearing before the Planning Board for each designation. The protective measures will be unique for each area depending on the species, and will be developed, in part, through the referral process. The description will list the separate agencies.

Comment #20: No requirements have been set forth to assure that protection measures shall be adopted for Threatened and Endangered Species within twelve months of the date that the Secretary of Natural Resources designates additional species.

Response:

The Subsection on Rare, Threatened, Endangered Species (rewrite page 17) will have the following added as a second paragraph:

"Species identified in the future by the Maryland Department of Natural Resources as threatened and endangered will be protected through appropriate mitigation measures on a case-by-case basis in the development of Conservation Plans. If a future designation affects an established Natural Heritage Area, a local hearing before the Planning Board shall be held within twelve months for public notification of the new designation and subsequent protection measures.

Comment #21: The Table of Uses in CB-72 does not require Marinas and Community Piers to meet water dependent facilities criteria.

The definition of water-dependent uses is a requirement under the Table of Uses (page 43, line 5) and refers to the definition section of the Zoning Ordinance. This reference to a single, comprehensive, Definition Section (27-107.1) is a standard mechanism in our Code.

For greater clarification in the Manual, the list of requirements for water-dependent uses (rewrite page 46) will add the definition and criteria of a water dependent facility under item a., rather than by reference.

Comment #22: In the Table of Uses, new marinas and expansion of existing marinas should be separated. New marinas are not permitted in RCA's and existing marinas may only be expanded in RCA's under the COMAR conditions (14.15.03.08 A and B)

Response:

The Table of Uses is being modified. The Manual now discusses new and expanded marinas as a separate subsection (rewrite page 46). If separation is necessary, the change will be made here.

Comment #23: The Table of Uses prohibits fisheries activities in RCA's and LDA's. Critical Area legislation does not prohibit these activities in any land use areas.

Response:

We acknowledge the use of stronger local requirements beyond the State requirements for resolution by the Commission.

Comment #24: The Table of Uses prohibits industrial uses in LDA's. Perhaps the "x" was intended for RCA's instead of IDA's.

Response:

The corrected Table of Uses will show an "x" in all columns. Again, local requirements are more restrictive.

Comment #25: A process has not been included for considering the factors of COMAR 14.15.03.04.B.1-7, when planning for areas suitable for all water dependent activities.

Response:

Local requirements are more restrictive and provides for a case-by-case review through the special exception process.

Comment #26: The placement of dredged spoil has not been addressed.

Response:

The prohibition of placement of dredged spoil in the buffer will be added (under Subsection 2.2, Buffer Requirements, rewrite page 12)

Comment #27: It is not evident that additional protection measures have been set forth within the watersheds that drain into anadromous fish spawning streams in the Critical Area.

Response:

This additional protection exists within the Patuxent River Watershed Protection Plan. We will submit this to the record and reference it in the Errata.

Comment #28: It is indicated that stormwater management retrofit projects and urban forestry projects will be targeted for areas exempted from the buffer. Shouldn't this direction be reflected throughout the Conservation Manual in the appropriate sections?

Response:

The use of the word "targeted" has caused confusion and the policy statement has been deleted from the Overview on Buffer Delineation as rewritten in the response to Comment #17. The County does give priority to retrofit projects through our Capital Improvement Program. This is a rather unwieldy policy document, to be submitted to the record if so directed.

Comment #29: The maps delineating the requested areas for buffer exemptions are meaningless as presented. Perhaps written description of the areas on the maps would help clarify what is being reviewed.

Response:

New maps with a legend and a written description of what is being requested for exemption will be submitted with the Errata. A County-wide map has been prepared and is available for review.

Comment #30: It does not appear that all "otherwise buildable" lots that were of record before May 13, 1986 could be built upon after local program approval if they did not meet Critical Area regulations. The Commission's intent was to grandfather all buildable lots for a single family dwelling use or record prior to local program approval.

Response:

The Attorney General's Office and the County's Office of Law have agreed to revise the May 13, 1986 date to the State's date of December 1, 1985.

Comment #31: All terms defined by COMAR 14.15.01.01 that are used in the local program should be defined in the legislation either directly or by reference.

Response:

The State's definitions unique to the Critical Area Program are incorporated within the definition section of the Zoning Ordinance. To incorporate all definitions directly or by reference may interfere with the working definitions currently contained in the Zoning Ordinance. The Glossary to be included with the Manual will use COMAR's definitions and will reference the State's regulation in the Manual as these definitions will be unique to the Critical Area Program.

Name

Address

Do you wish to testify

Yes

No

1.

2.

3.

spoke 7404 Harpers Drive  
East Washington -  
Erzich H Schmidt

✓

Upper Marlboro MD  
20772

4. W.C. Dutton, Jr 8415 Water St

✓

Prince Georges Soil Conservation Dist

5. Daniel G. BOURDON

✓

PRINCE GEORGES SOIL CONSERVATION DISTRICT

6. W. S. Jung

✓

Prince Georges Soil Conservation District

7. Steve E. Dancy

✓

Soil Conservation Service

8. Douglas G. Gahn

✓

spoke  
STEVE BUNKER  
Chesapeake Bay Foundation  
162 Prince George St  
Annapolis, MD

✓

9. Steve Maggon  
Department of State Planning  
Southern Maryland Regional Office Charlotte Hall, Maryland

✓

10. ROBERT N. SCHWEPLIN  
DIRECTOR, OFFICE OF RESEARCH  
MARYLAND DEPT. OF ECONOMIC & EMPLOYMENT DEVELOPMENT  
ANNAPOLIS, MD.

11. Elizabeth Schwiien  
16400 8<sup>th</sup> Crainville Prince George's County  
Branburyville Md. 20613  
782-7459  
Public Hearing

spoke

Name	Address	Do you wish to testify	
		Yes	No
1. Herbert B. ROSENSTOCK	Temple Hills, 20748 5715 Jernice Lane		<input checked="" type="checkbox"/>
2. Jerry TePaske	1516 Firth St Lorne Cir Ft. Wash		
3. John MARKOVICH	Cedarville State Forest Rt. 4 Box 106-A BRANDYWINE, MD		<input checked="" type="checkbox"/>
4. Peggy Higgins	Forest Park & Wildlife P.O. Box 68 WYE MILLS MD 20699		<input checked="" type="checkbox"/>
5. Jim STARR	MNCPPE- Natural Resources Division Upper Marlboro 20772		<input checked="" type="checkbox"/>
6. David O. Percy	The Accokeek Foundation 3400 Bryan Point Rd. Accokeek, MD 20607		<input checked="" type="checkbox"/>
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