

Commission Meeting & Corresp.

May 1986

MSA-S1832-21

Panel  
first  
access

AGENDA

Department of Agriculture  
50 Harry S. Truman Prkwy  
Annapolis, Maryland

May 14, 1986

4:00 - 7:00 p.m.

- 1. ✓ Approval of the Minutes of April 2, 1986 Chairman Solomon Liss
- 2. ✓ Presentation of Handbook, Subcommittee Report Florence Beck Kurdle,  
Dr. J. Kevin Sullivan
- 3. ✓ Presentation of Members for Evaluation Committee for Baseline Economic Study Ronald Hickernell,  
~~Marcus Mallock~~  
Bob Price
- 3. Presentation of Mapping Policies Charles Davis

New Business

- 1. Appointment of Subcommittee to Develop State Regulations Chairman Solomon Liss
- 2. Appointment of Subcommittee to Work on Policy Statements Focusing on County/Municipality Relations Chairman Solomon Liss

*Sarah*  
Brings date

- ✓ Old Business Chairman Solomon Liss
- 1. Approval of Panels for Local Program Development (Based on Changes Telephoned In)

Next Meeting - June 4th, Dept. of Agriculture

✓ = action item

Thank Helene Tenner for taking the minutes + her support. Veronica Nicholls will be taking over minutes. Working with Helene Tenner on coordinating public information + education efforts of Commis as part of MCZMP. Also work with her & CRAC special T.F.

Darlene Finch

*Commiss  
mtg*

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
April 2, 1986

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture, Annapolis, Maryland. The meeting was called to order by Chairman Solomon Liss, with the following members in attendance:

Ronald Hickernell  
Parris N. Glendening  
Ardath Cade  
James E. Gutman  
Robert Price, Jr.  
Shepard Krech, Jr.  
Samuel Turner, Sr.  
Clarence "Du" Burns  
Robert S. Lynch  
Harry T. Stine

William Eichbaum  
Torrey C. Brown  
J. Frank Raley, Jr.  
John Luthy, Jr.  
Constance Lieder  
Barbara O'Neill  
Ann Sturgis Coates  
Florence Beck Kurdle  
Wayne Cawley, Jr.

Chairman Liss announced that Dr. Sarah Taylor was at a Legislative hearing at which they were waiting to hear a final vote on the criteria. The minutes from the last meeting were approved with the correction that it was noted that Mary Walkup had been present at the February meeting. Chairman Liss told the Commission that the Law requires that regulations be drawn for review of certain kinds of State projects before September, 1987. Dr. Kevin Sullivan, Scientific Advisor, indicated that the Commission would receive draft material on this issue in about six weeks. The regulations would apply to any development taking place in the Critical Area by State agencies.

Dr. Sullivan also mentioned that the Handbook Subcommittee has reviewed the handbook draft and made recommendations to the Commission staff. A copy of the Handbook would be available for discussion and approval at the at the May meeting.

Charles Davis, Principal Planner, proceeded to review a draft mapping policy for the Commission. A hand-out was provided and Mr. Davis indicated that the Commission should finalize the policies by next month. A discussion of these issues and policies ensued. The first recommended policy drew considerable comment from the Commission. The draft policy indicated that the Commission would only consider requests for exclusion from the Critical Area Program at the time that a local program is submitted for approval. Mr. Davis explained that the staff felt that the Commission should have all information available for a program, rather than using a piecemeal approach. Robert Lynch pointed out that a local jurisdiction would want to do it right up-front so that they wouldn't have to do a program for an area which might be excluded. Constance Lieder also agreed that the mapping must be done right away. Florence Kurdle pointed out

that if the Commission reviews the mapping in context of a program, it may give the Commission a good picture, but the mapping must come first. William Eichbaum pointed out that the Commission would not want to be 'nickel and dimed' into piecemeal decision making and should not have to make a decision without viewing the entire program. Constance Lieder pointed out that this would not be so, that local governments must make decisions about the current status of land, and that it makes sense to allow local jurisdictions to get approval on basic mapping. Chairman Liss asked whether a subcommittee should be formed on this issue, since it seemed to be fairly controversial, but at this time, the Commission did not feel one was necessary. William Eichbaum requested legal advice on whether there actually was an option on approving mapping without review of a complete program. Assistant Attorney General, Lee Epstein, advised that on first reading, the law might not preclude early approval, but that it would prove a significant administrative burden. Mr. Epstein agreed to look into the matter further.

Mr. Davis pointed out that the second policy would allow local governments to write down the basis upon which they make decisions with regard to applying mapping rules. He said that the mechanisms do not need to be uniform, but the approach and the objectives need to be consistent in each county. There seemed to be concensus on this policy.

The third policy related to scales of maps submitted to the Commission. James Gutman indicated that the Commission staff might be able to approve scale requirements. Mr. Davis pointed out that most local governments are using a tax map scale (1"=600').

There was no comment on the fourth policy relating to requirements to map new Intensely Developed Areas and Limited Development Areas.

The fifth policy related to guidance and review procedures by staff and Commission while plans are being developed. Parris Glendening indicated that in order to get a County Council to review a program, the County would need to know whether it preliminarily meets the guidelines set out by the Commission and that a two-step approval might be necessary by local governments, preliminary, and then final. He asked whether the panel of five that would be appointed to review a local government plan could give preliminary recommendations to the local governments. Chairman Liss indicated that this is a policy matter that might be possible. It was agreed that further discussion was needed, and that a process would need to be worked out for such an issue. Critical Area Commission

Chairman Liss then thanked the Governor, his staff, specifically Ellen Fraites, as well as Dr. Taylor for the hard work which has been undertaken during the Legislative session. Ellen Fraites said that she thought that the Commission staff had been exceptional, and that a real team effort had occurred among all of those involved. She pointed out that there was still a lot of misinformation. Torrey Brown suggested that local government officials attend the hearings and briefings so that they would be more familiar with the local government plans prior to their being submitted for approval.

There was no comment on the sixth policy. The seventh policy related to requirements of local governments to submit maps or inventories to the Commission. Torrey Brown said that it is reasonable for the Commission not to expect duplication from the local governments, but that it should be certain that they are clear on which information is being used, especially with regard to what is on the ground as of December 1985.

Chairman Liss said at the Commission's May meeting, all of these policies would be reviewed and acted upon by the Commission. William Eichbaum suggested that the Commission also think about how local jurisdiction information comes in and how it will fit onto computers and existing data bases.

Ellen Fraites then provided a status report on the bills in the legislature relating to Critical Areas. She said that after the public hearings, the leadership and the Eastern Shore Delegation had met with the Governor, and that they had felt that there was some sympathy and options for flexibility. They were advised, however, that the Governor did not want to weaken the criteria. Ms. Fraites said that a series of meetings were held to determine where the real concerns were and what areas needed to be looked at. It became clear that the 2½% growth allocation would not work in some jurisdictions because they lack sufficient Intense and Limited Development Areas. The following bills were then reviewed:

HB1434  
HB1495  
HB1496  
HB1345

With regard to the quorum issue, the question of legal opinions was raised to determine whether public meetings did in fact constitute a Commission meeting. Mr. Epstein discussed the two conflicting legal opinions on this issue, but noted that the Attorney General's Office had just issued an official opinion supporting the viewpoint of the Commission's counsel. Chairman Liss said that he would clarify the few legal issues that were Critical Area Commission

still unclear.

Chairman Liss then indicated that the economic impact of the criteria needed to be addressed by the Commission. Baseline information and a further analysis is needed, and Marcus Pollock has drafted a request for proposal for a study to be undertaken. Chairman Liss said that \$50,000 from the budget had been cut by the Legislature for this item and that the Commission needed to make two decisions: 1) whether it agreed that the study should be made, and 2) how it should be funded. Marcus Pollock, Administrative Officer, discussed specifics for a study and told the Commission that on February 21st, the Commission advertised that a request for proposal was being solicited. 21 inquiries were made, and a pre-proposal conference was held. He proposed that a review committee be created to review the proposals. A number of individuals were slated for the committee. J. Frank Raley said that a member of the business community should be on the committee. Ellen Fraites said that she would take the request for funding the Economic Study to the Governor's Council on the Bay at their May 2nd meeting to see if additional State support could be generated.

There being no Old Business, the meeting was adjourned.

These Minutes were prepared by Helene Tenner.

May 14, 1986

final draft

CHESAPEAKE BAY CRITICAL AREA COMMISSION

PROGRAM REVIEW POLICIES

MAP DEVELOPMENT & PANELS

*O.K.  
unanimous*

Issue #1 REQUESTS TO EXCLUDE PORTIONS OF THE PRELIMINARY  
PLANNING AREA FROM THE CRITICAL AREA REQUIREMENTS AS SPECIFIED IN  
NATURAL RESOURCES ARTICLE § 8-1807

COMMISSION POLICY:

The Commission will consider requests for exclusion from the Critical Area Program at the time that a local program is submitted for approval. The Commission's decisions will be based on the procedures stated in Natural Resources Article 8-1807.

[notes:

- \* Guidance concerning program and map development will be available thru the Commission staff who will consult with the Commission panels.
- \* As a condition of excluding certain developed areas, the local jurisdiction must show that "...the imposition of a program would not substantially improve protection of tidal water quality or conservation of fish, wildlife, or plant habitats...". This requirement can only be judged by the Commission after the proposed local program is known.]

Issue #2 ADDITIONAL MAPPING RULES USED BY THE LOCAL  
JURISDICTIONS FOR CLASSIFYING INTENSELY DEVELOPED AREAS, LIMITED  
DEVELOPMENT AREAS, AND RESOURCE CONSERVATION AREAS

*OK  
unanimous*

COMMISSION POLICY:

Local jurisdictions may develop additional mapping rules as they are needed and shall apply them consistently during their map development process. Local jurisdictions must demonstrate in their program that the additional mapping rules are consistent with the Commission's objectives and policies for the particular category (that is: Intensely Developed Area, Limited Development Area, or Resource Conservation Area) to which they apply.

Issue #3 SCALE OF MAPS OF INTENSELY DEVELOPED AREAS, LIMITED DEVELOPMENT AREAS AND RESOURCE CONSERVATION AREAS TO BE SUBMITTED TO THE COMMISSION

*adopted  
unanimously*

COMMISSION POLICY:

So that information on the maps submitted to the Commission is unambiguous, the maps must be sufficiently detailed so that landowners and agencies that implement the local program can readily identify into which classification a particular parcel falls.

Issue #4 REQUIREMENTS TO MAP THE ENTIRE ALLOCATION OF NEW INTENSELY DEVELOPED AREAS AND LIMITED DEVELOPMENT AREAS

*work on  
it*

COMMISSION POLICY:

Because each local jurisdiction may choose to manage its future development within its Critical Area using different techniques, the Commission will not insist that the entire ALLOWABLE allocation of new Intensely Developed Areas and Limited Development Areas be mapped as part of the local jurisdiction's initial submittal to the Commission. However, any areas subsequently proposed as new Intensely Developed Areas or Limited Development Areas must be FIRST MAPPED ON THE COMPREHENSIVE ZONING MAP AND submitted to the Commission for approval in compliance with Natural Resources Article § 8-1809 (g).

[notes:

- \* House Bill No. 1434 (1986) requires that "New Intensely Developed or Limited Development Areas to be located in the Resource Conservation Area shall...be designated on the Comprehensive Zoning Map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with §8-1809(g) of this subtitle."
- \* Natural Resources Article § 8-1809(g) reads:  
"(g) Proposed amendments.-- Each jurisdiction shall review and propose any necessary amendments to its program, including local zoning maps, at least every 4 years. Amendments shall be submitted to and acted on by the Commission in the same manner as the original program."]

*approve in concept  
now & it becomes  
applicable subject to  
Commission review.*

Issue #5 REVIEW PROCEDURES FOR LOCAL CRITICAL AREA PROTECTION PROGRAMS, INCLUDING MAPS SHOWING INTENSELY DEVELOPED AREAS, LIMITED DEVELOPMENT AREAS AND RESOURCE CONSERVATION AREAS.

COMMISSION POLICIES:

The Commission will provide guidance to a local jurisdiction during its program development process, if assistance is requested by that local jurisdiction.

Guidance to the local jurisdiction will be primarily through the Commission staff who will consult with the panel assigned to that jurisdiction.

The Commission will vote on the approval of a local program only after the jurisdiction has submitted its full program.

DROP--[Commission will approve a local program only by an approval of a majority of a quorum of the full Commission.]

Local jurisdictions will have an opportunity to present their proposed local program to the full Commission.

[notes:

- \* Official actions of the Commission or a panel require a quorum to be present and a majority concur in or vote for the action. Programs will take forever to develop if tentative approvals are requested by local jurisdictions on portions of a local program.
- \* If partial submission of a local program is officially allowed, then the review, tracking and approval of programs will become at least doubly complex. Separate decision on each submitted portion of the local program will require a public hearing.
- \* The quorum language reflects the language of House Bill NO. 1345. The quorum requirements of the Commission's by-laws are not satisfied by this previously proposed policy. This issue should be discussed separately from this policy statement.
- \* The exact format for local jurisdictions to present their programs to the full Commission needs to be determined. If each jurisdiction (there are 60) requests a 15-minute presentation, this policy would commit the full Commission to 15 hours of listening--in addition to the multitude of meetings and discussion sessions that will be required during the period of "90-day intervals" that the Commission has to review programs.]

*maintain by laws  
policy as they  
exist  
I opposed  
Ordath  
Cade.*

Issue #6 DETAIL AND SCALE OF MAPS AND INVENTORIES OF NATURAL RESOURCES USED FOR LOCAL PROGRAM DEVELOPMENT

*adopted  
unanimously*

COMMISSION POLICIES:

For purposes of development of the local Critical Area Protection Program, the local jurisdiction should use inventories and maps based on best available information from existing sources, particularly State agencies. WHERE INFORMATION IS WHOLLY LACKING, LOCAL JURISDICTIONS SHOULD ACQUIRE SUFFICIENT INFORMATION TO ESTABLISH A REASONABLE BASIS FOR RESOURCE MANAGEMENT DECISIONS WITHIN THEIR PROGRAM.

In addition, a local jurisdiction should include in its program, procedures to consider, during the review of a project, new or revised inventories of natural resources that may become available after the local jurisdiction develops its initial Critical Area Protection Program.

If comprehensive inventories of relevant natural resources are not available when a local jurisdiction develops its Critical Area Protection Program, local jurisdictions should require applicants of projects to inventory those natural resources at their project site prior to project approval.

[notes:

- \* Much information is available through State agencies, if, however, it is lacking, program development monies can and should be use to acquire the necessary information for basic resource management decisions.
- \* The programs should be designed so that new information can be included in the decision making process.]

Issue #7 REQUIREMENTS TO SUBMIT TO THE COMMISSION MAPS OR INVENTORIES OF RESOURCES AS REQUIRED IN COMAR 14.15.10.01 A

COMMISSION POLICY:

A local jurisdiction should submit as part of its program, maps and inventories to be used in its program implementation. Maps and inventories supplied by State agencies need not be re-submitted unless they are reformed, remapped, or revised by the local jurisdiction as part of its local program development process.

*adopted  
unanimously*

[note:

\* Natural Resources Article § 8-1809(j) states that:  
"(j) Program to be available for public inspection.-- Copies of each approved program, as it is amended from time to time, shall be maintained by the local jurisdiction and the Commission (staff emphasis) in a form available for public inspection."

\* Natural Resources Article § 8-1811 and 8-1812 ,in combination, require the Commission to assure that local programs are being followed. Consequently, the Commission must have copies of any special documents that the local jurisdictions are using to make their decisions.

May 14, 1986

CHESAPEAKE BAY CRITICAL AREA COMMISSION

PROGRAM REVIEW POLICIES

MAP DEVELOPMENT & PANELS

Issue #1 REQUESTS TO EXCLUDE PORTIONS OF THE PRELIMINARY PLANNING AREA FROM THE CRITICAL AREA REQUIREMENTS AS SPECIFIED IN NATURAL RESOURCES ARTICLE § 8-1807

COMMISSION POLICY:

The Commission will consider requests for exclusion from the Critical Area Program at the time that a local program is submitted for approval. The Commission's decisions will be based on the procedures stated in Natural Resources Article §8-1807.

Issue #2 ADDITIONAL MAPPING RULES USED BY THE LOCAL JURISDICTIONS FOR CLASSIFYING INTENSELY DEVELOPED AREAS, LIMITED DEVELOPMENT AREAS, AND RESOURCE CONSERVATION AREAS

COMMISSION POLICY:

Local jurisdictions may develop additional mapping rules as they are needed and shall apply them consistently during their map development process. Local jurisdictions must demonstrate in their program that the additional mapping rules are consistent with the Commission's objectives and policies for the particular category (that is: Intensely Developed Area, Limited Development Area, or Resource Conservation Area) to which they apply.

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Because each local jurisdiction may choose to manage its future development within its Critical Area using different techniques, the Commission will not insist that the entire allowable allocation of new Intensely Developed Areas and Limited Development Areas be mapped as part of the local jurisdiction's initial submittal to the Commission. However, any areas subsequently proposed in the Resource Conservation Area as new Intensely Developed Areas or Limited Development Areas must be designated on the comprehensive zoning map submitted to the Commission as part of its application for Program approval in compliance with Natural Resources Article § 8-1809 (g), and House Bill 1434.

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Guidance to the local jurisdiction will be primarily through the Commission staff who will consult with the panel assigned to that jurisdiction.

The Commission will vote on the approval of a local program only after the jurisdiction has submitted its full program.

The Commission will approve a local program only by an approval of a majority of the full Commission.

Local jurisdictions will have an opportunity to present their proposed local program to the full Commission.

Issue #6 DETAIL AND SCALE OF MAPS AND INVENTORIES OF NATURAL RESOURCES USED FOR LOCAL PROGRAM DEVELOPMENT

COMMISSION POLICIES:

For purposes of development of the local Critical Area Protection Program, the local jurisdiction should use inventories and maps based on best available information from existing sources, particularly State agencies. Where information is wholly lacking, local jurisdictions should acquire sufficient information to establish a reasonable basis for resource

management decisions within their programs.

In addition, a local jurisdiction should include in its program, procedures to consider, during the review of a project, new or revised inventories of natural resources that may become available after the local jurisdiction develops its initial Critical Area Protection Program.

If comprehensive inventories of relevant natural resources are not available when a local jurisdiction develops its Critical Area Protection Program, local jurisdictions should require applicants of projects to inventory those natural resources at their project site prior to project approval.

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**A GUIDE TO THE CHESAPEAKE BAY  
CRITICAL AREA CRITERIA**

**Chesapeake Bay Critical Area Commission**

**May, 1986**

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# A GUIDE TO THE CHESAPEAKE BAY CRITICAL AREA CRITERIA

## CHAPTER 1 INTRODUCTION

The Chesapeake Bay Critical Area Protection Program (Natural Resources Article §§ 8-1801-8-1816) was passed by the General Assembly in 1984 because of concern about the decline of certain natural resources of the Chesapeake Bay. Recent studies by the U. S. Environmental Protection Agency and others have shown that this decline is related to the intensity of human activities within the watershed of the Bay. In order to begin to address these sources of impact, the General Assembly designated a geographical area around the tidal waters of the Chesapeake Bay and its tributaries as the "Critical Area". It directed that new development in this area be such as to minimize impacts on the Bay's water quality and plant, fish and wildlife habitat. Pursuant to the requirements of the Act, the Chesapeake Bay Critical Area Commission was established to develop criteria for guiding local jurisdictions in developing programs for the Critical Area.

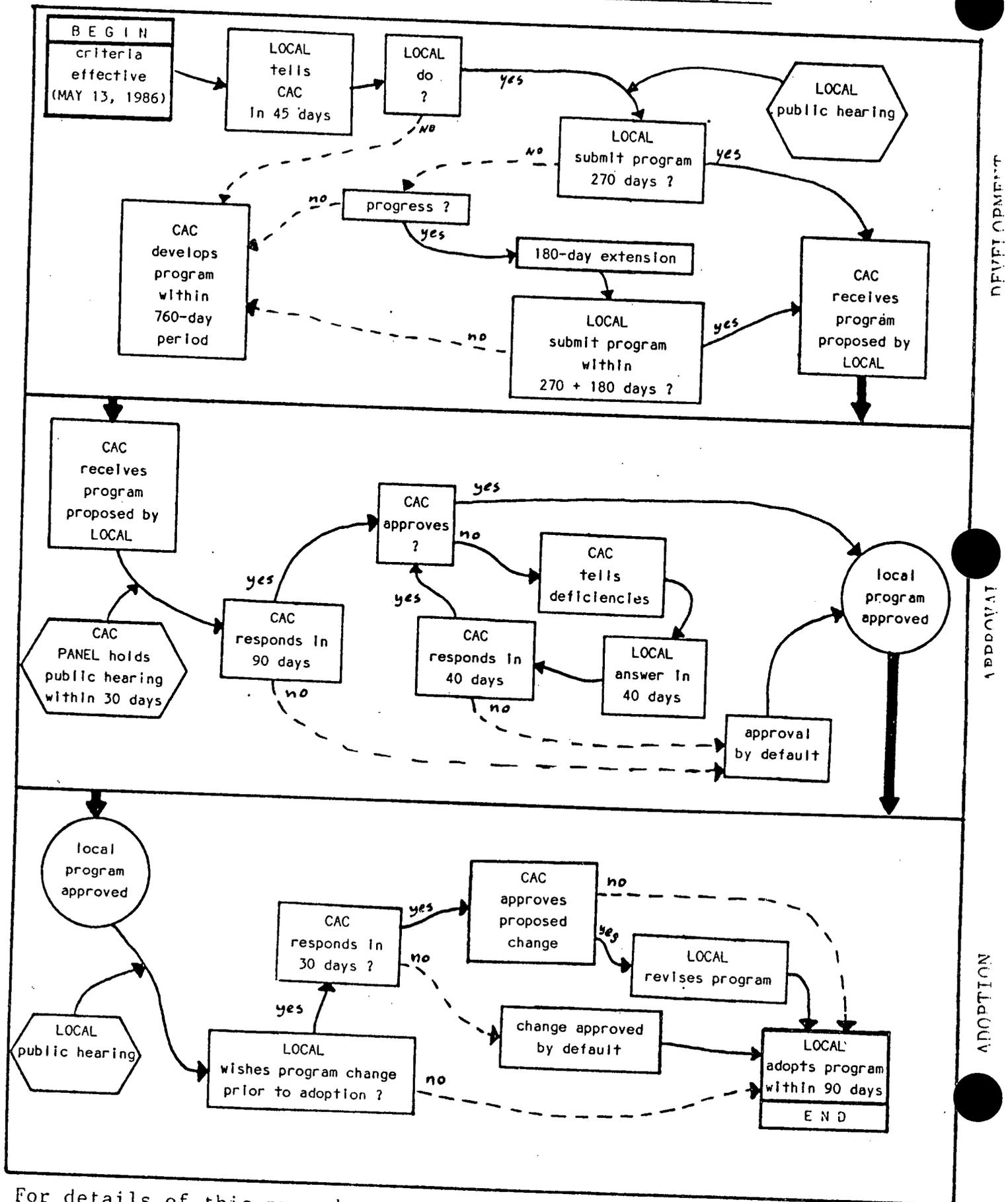
The purpose of this report is to serve as a guide to these criteria for local jurisdictions, State agencies, and other interested organizations or individuals. It is organized according to the chapters of the regulations and discusses the background and rationale for each; the requirements of the criteria; exceptions to such requirements; and suggestions for developing and implementing local programs. The Guide includes changes made to the 1984 Critical Area Law by the Maryland General Assembly during its 1986 Legislative Session, which have the effect of altering certain of the criteria promulgated by the Critical Area Commission.

A summary of the actions required by local jurisdictions to develop their Critical Area Programs is shown in Appendix A. Additional overall local program requirements, and guidelines for the granting of variances, are described in Chapters 10 and 11 of the criteria (COMAR 14.15.10 and COMAR 14.15.11). The sequence of actions for the development, approval and adoption of local programs is shown in Figure 1.

Sources of technical information which might be helpful in developing local programs, will be published as a separate document by the Commission.

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
Sequence of actions for the  
DEVELOPMENT, APPROVAL and ADOPTION  
of local Critical Area Protection Programs

Figure 1



For details of this procedure see Natural Resources Article § 8-1809.

## CHAPTER 2 DEVELOPMENT IN THE CRITICAL AREA

### INTRODUCTION

The Critical Area law states that there is a critical and substantial State interest in fostering more sensitive development activity along the Chesapeake Bay shoreline so as to minimize damage to water quality and natural habitats. The Commission was directed to establish land-use policies for development in the Critical Area which would accommodate growth and address the fact that even if pollution from development is controlled, the number, movement and activities of persons in the Critical Area can create adverse environmental impacts. In this Chapter are criteria which will accommodate the growth of human-built environments, but also provide for the conservation of fish, wildlife and plant habitats and minimize adverse impacts on water quality. These criteria describe:

1. A regional land management strategy based on classifying all Critical Area lands into one of three categories of land use intensity (i.e., Intensely Developed, Limited Development and Resource Conservation Areas) and design criteria and program objectives tailored to each of these areas;
2. Limits on the extent to which intense land disturbances can expand; and
3. The types of development activities that are to be grandfathered.

### DESIGNATING AREAS

The criteria require that local jurisdictions identify which of their lands in the Critical Area are Intensely Developed Areas, Limited Development Areas, or Resource Conservation Areas. The mapping of such areas is a required element of all local Critical Area Program submissions. Initial designations are to be based on land uses existing on December 1, 1985, according to the following criteria:

#### Intensely Developed Area (IDA)

IDA's include any area of 20 or more contiguous acres, or the entire upland portion of a municipality within the Critical Area (whichever is less) where residential, commercial, institutional and/or industrial development is predominant and relatively little natural habitat occurs. In addition, the area is to have one of the following characteristics:

1. Housing density is equal to or greater than four dwelling units per acre;
2. Industrial, institutional or commercial uses are concentrated in the area; or
3. Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

#### Limited Development Area (LDA)

LDA's include any area currently developed in low or moderate intensity uses that contain areas of natural plant and wildlife habitat and where the quality of run-off from such areas has not been substantially altered or degraded. In addition, the area is to have at least one of the following characteristics:

1. Housing density between one unit per five acres up to four dwelling units per acre;
2. Area not dominated by agriculture, wetland, forest, barren land, surface water or open space;
3. Areas having the characteristics of the Intensely Developed Area, but less than 20 acres in extent; or
4. Areas having public water or sewer or both.

#### Resource Conservation Area (RCA)

RCA's are any area predominated by wetlands, forests, and forestry activities, abandoned fields, agriculture, fishery activities, or aquaculture. In addition the area is to have at least one of the following characteristics:

1. Housing density less than one dwelling unit per five acres; or
2. The dominant land use is agriculture, wetland, forest, barren land, surface water or open space.

#### Other Mapping Requirements

In addition to the mapping and designation of these areas, the local jurisdiction should indicate the location of any of the Habitat Protection areas described in Chapter 9 of the criteria. Information should also be provided at the time of program submittal showing the total acreage of the three areas as of December 1, 1985, within the jurisdiction and how much exists at the date of submittal. Such figures should exclude lands in the Critical Area which are tidal wetlands or in federal ownership. These data will be used to determine the jurisdiction's future growth allocation (as described in:

Regulation .06) and to assess how the grandfathering allowed, pursuant to Regulation .07, has affected that growth allocation.

The criteria do not specify the detail or scale at which the mapping should be made or, with the exception of the Intensely Developed Area, the minimum size of each area. These decisions are left to the local jurisdictions.

### CRITERIA REQUIREMENTS

The criteria contain limitations and conditions for the kinds of new growth or redevelopment that may occur in the Critical Area generally, and in each of the three development areas. These are summarized below. Program implementation strategies and examples of various approaches that local jurisdictions might use are outlined in the Program Implementation section which follows.

Critical Area (General) - Certain new development activities, or the expansion of existing ones, are allowed in the Critical Area only if no environmentally acceptable alternative exists outside the Critical Area and such facilities are needed to correct an existing water quality or wastewater management problem. These are:

1. Solid or hazardous waste collection or disposal facilities, and
2. Sanitary landfills.

Intensely Developed Area - New intense development in the Critical Area should be directed in or near Intensely Developed Areas. The criteria generally allow for such development (or redevelopment) provided that water quality is improved over that of pre-existing development levels, any Habitat Protection Areas are conserved to the extent possible, and expansion of such areas into the Resource Conservation Area is minimized. The criteria also require that local jurisdictions establish a strategy for reducing any adverse impacts on water quality resulting from existing development.

For new development (or redevelopment) the criteria require stormwater management; minimizing the destruction of forests and developed woodlands, particularly those identified as Habitat Protection Areas; and use of cluster development to the extent practical. The criteria promote increased public access to the water, provide for the location of ports and industries which use water for transportation, and encourage programs to be established for enhancing biological resources.

Limited Development Area - New low or moderate intensity development is permitted in the Limited Development Area if such development does not increase the overall intensity of

development beyond the level already established and does not change the prevailing character of the area as identified by the current density and land use. Thus, continuing development and infill is permitted at the low and moderate intensities that already characterize those areas.

In providing for new low or moderate intensity development, the criteria require that means be developed to protect water quality and stream habitat; minimize the cutting or clearing of trees in forests and developed woodlands and maintain or expand the total acreage of forest cover in the jurisdiction's Limited Development Area; limit the amount of impervious surfaces created on a site; protect the Habitat Protection Areas described in Chapter 9; limit development on steep slopes and soils having development constraints; and observe other existing State laws and regulations concerning soil erosion and stormwater management.

Resource Conservation Area - Some new growth is permitted in this area if it is residential in character and if the resulting overall density does not generally exceed one dwelling unit per 20 acres. New or expanded industrial or commercial facilities are not permitted and additional land may not be zoned for such purposes except in association with the provisions for expansion of development described in Regulation .06 and discussed below. New development in the Resource Conservation Area must be consistent with all of the criteria described for development in Limited Development Areas.

In addition to these limitations on new development, the criteria require agricultural and forestry protection programs, and programs to assure that the overall acreage of forest and woodlands does not decrease.

Expansion of Development - The criteria provide that Intensely Developed and Limited Development Areas may be expanded in the future. The total area of expansion may not exceed an area equal to 5% of the portion of the County's Resource Conservation Area lands that are not tidal wetlands or federally owned. No more than one-half of this allocated expansion may occur directly in the Resource Conservation Area. An example of this allocation for a hypothetical county would be as follows:

	<u>ACRES</u>
County A: Total Critical Area	50,000
Intensely Developed Areas	5,000
Limited Development Areas	15,000
Resource Conservation Areas	30,000

Expansion Formula:

Total Resource Conservation Area	30,000
Lands in Tidal Wetlands and federally owned	-10,000
Net Resource Conservation Area	<u>20,000</u>
5% Growth Expansion	x.05
Total Growth Allowed:	<u>1,000</u>
Allowed in RCA	500
Allowed in LDA	500

In addition to the size (acreage) of expansion, the criteria also provide for the location of any expanded development. These are summarized as follows:

Category  
New IDA's

Location Criteria

- \* In existing LDA'S or adjacent to existing IDA'S.
- \* Minimize impacts to Habitat Protection Areas and RCA's.
- \* Should be at least 300 feet from tidal waters or tidal wetlands if located in the RCA. (Note: this is merely directory, not mandatory).

New LDA's

- \* Adjacent to existing LDA's or IDA's.
- \* Minimize impacts to Habitat Protection Areas.
- \* Should be at least 300 feet from tidal waters or tidal wetlands if located in the RCA. (Note: same as above).

Finally, the criteria require that in planning for the future expansion of IDA's and LDA's, the counties are to establish a process for accommodating the growth needs of municipalities within their jurisdictions.

The Maryland General Assembly made certain changes to the criteria requirements for new development discussed above. The changes apply only to the following jurisdictions: Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties. In

these counties, if it is demonstrated that the one-half of the 5% growth allocation cannot be located in or adjacent to LDA's, or adjacent to IDA's, as provided for in the criteria, then that growth may occur in the jurisdiction's RCA. In order for this to occur, two conditions need to be satisfied:

- 1) The jurisdiction must demonstrate to the Commission in its Critical Area Program that new IDA's or LDA's cannot meet the location criteria listed previously (e.g., that they can only be located in RCA's and at locations not adjacent to existing IDA's or LDA's). Factors which might be involved in such a demonstration could include development constraints caused by soil or topographic conditions, a lack of sewer capacity adjacent to existing developed areas, a lack of existing developed areas, or inconsistencies with the local general development plan.
- 2) The developer of lands in the RCA which represent expansion of development must cluster such development.

#### PROGRAM IMPLEMENTATION

The Commission recognizes that a number of approaches are possible to implement the requirements of this Chapter. Moreover, considerable variation exists among local jurisdictions in the scope and extent of their current enabling regulations or ordinances. Accordingly, the following discussion provides general guidance for local program development and attempts to highlight approaches to implementing the minimum requirements contained in the criteria. The Commission expects that local programs are not likely to be oriented or organized in exactly this manner.

General - There are three overall requirements for local Critical Area programs in Chapter 2; 1) mapping the three development areas, 2) providing that new intense development should be directed outside the Critical Area, and 3) ensuring that new or expanded solid or hazardous waste collection or disposal facilities or sanitary landfills are not permitted unless no environmentally acceptable alternative exists outside of the Critical Area or that such facilities are needed to correct an existing water quality or wastewater management problem.

The mapping requirements of the criteria were described previously. Because designation of the three areas provides the basis for the entire Critical Area Program, this should be done at the earliest stage of program development. The actual mapping must be submitted for approval to the Commission, along with the rationale and/or criteria used to make such designations.

\*In regard to new intense development, the Commission expects local jurisdictions to develop criteria for defining such development and to show that these activities are generally

directed outside of the Critical Area. This does not mean that all new intense development is prohibited in the Critical Area because the criteria provide that some of those activities may be located in an Intensely Developed Area. However, the intent of this policy is to generally encourage the siting of new activities and developments of an intense nature away from the Critical Area. Evidence of such policies would be the local jurisdiction's general development plan, zoning regulations, water and sewer plans, or growth management programs that focus new intense development outside of the Critical Area.

\*For solid or hazardous waste collection or disposal facilities or sanitary landfills, local jurisdictions should adopt by regulation, or other appropriate means, the limitation contained in the criteria.

Intensely Developed Area - As previously indicated, although new intense development and redevelopment is permitted in this area, the criteria require that special attention be given to improving the water quality of run-off from existing and proposed development. The criteria contain no limitations on the kinds of new development which may occur in such areas, aside from those excluded from the Critical Area altogether. It should be noted however, that non-maritime heavy industry, transportation facilities, and utility lines [except those provided for in Regulation .02.F.(2)], and permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities, may only be located in Intensely Developed Areas.

In developing their programs, local jurisdictions should address the criteria requirements for existing development, new development or redevelopment, and enhancement programs. These are summarized as follows:

1. Existing Development:

- \* Encourage use of retrofitting measures to address any existing stormwater problem (this generally applies to areas developed prior to the adoption of existing stormwater management regulations). Measures might include installation of new stormwater infiltration areas, frequent vacuuming of street and parking lots and other approaches identified in the National Urban Run-off Program. The Water Resources Administration in the Department of Natural Resources and the Office of Environmental Programs in the Department of Health and Mental Hygiene will be able to provide information and assistance on this subject. In their program submission, local jurisdictions should show evidence that they have examined their Intensely Developed Areas to determine if such problems exist and indicate the corrective measures proposed for such problems.

\* Assess the extent to which existing development is causing adverse water quality impacts and develop strategies for reducing these impacts. Existing data and information from State and federal agencies, or private groups, may be used to make this assessment. Local programs should include the same type of information as indicated above for stormwater management problems. The criteria suggest several corrective measures including urban forestry programs and public education.

2. New Development or Redevelopment:

\*Require technologies to be utilized as required by existing State and local ordinances to minimize adverse water quality impacts caused by stormwater run-off. Specifically, such technologies must reduce pollutant loadings by at least 10% below that of pre-development levels. In their program submission, the local jurisdiction should demonstrate that a process has been developed to determine the water quality conditions at a site prior to development or redevelopment.

\*If these technologies do not achieve the minimum 10% pollutant loading reduction, the jurisdiction shall require offsets either on or off the site. The offsets, when considered in addition to the technologies used above, should achieve at least the 10% pollutant reduction required, but the reductions must occur in the same drainage area as the site. Local jurisdictions should specify the means to be used by a developer to determine the water quality benefits of offset measures. They may include modelling, monitoring or other appropriate techniques.

\*Require that future development shall use, to the extent practicable, cluster development practices to reduce impervious surfaces and maximize areas of natural vegetation.

\*Provide that where the cutting or clearing of trees associated with current or planned development occurs on one acre or more that the local jurisdiction has regulations, ordinances or other means to: 1) minimize such cutting or clearing; and 2) enhance the forest or developed woodland resources of site of the development (i.e., street tree planting, increased landscaping requirements and other urban forestry practices). The protection of any Habitat Protection Area which might be disturbed by the current or planned development is also required.

\*Provide that new ports, and industries which use water for transportation and derive economic benefits from shore access, are to be located near existing port facilities and at sites for which an exemption from the Buffer requirements has been granted by the Commission. Other sites planned for future port facilities may be identified if it can be shown that such use will provide significant economic benefit to the State or local jurisdiction and, further, that the sites proposed would qualify for the Buffer exemption. A request for the Buffer exemption should accompany the designation or identification of any such sites proposed in local programs.

### 3. Enhancement Programs

\*Provide by regulation or other appropriate means that, where practicable, permeable areas shall be established in vegetation.

\*Maintain existing areas of public shoreline access; encourage new ones to be established. Programs to accomplish this purpose should be developed and could include public access requirements for redevelopment or new development projects proposed at the shoreline. Bicycle and foot paths, boat ramps, and small waterfront parks are other examples of access improvements that may be provided by public authorities or private developers.

\*Establish programs to enhance biological resources. These programs, to be developed with the assistance of the Maryland Forest, Park and Wildlife Service, the Tidewater Administration, the Department of Health and Mental Hygiene and other appropriate State agencies, should propose general policies for enhancing the natural qualities of a site when it is proposed for new development or redevelopment. Programs may also include the targeting of specific sites for restoration (i.e., degraded wetlands) or community-based programs such as tree planting or landscaping. The jurisdiction's proposed enhancement measures should be described in their program submission.

Limited Development Area - In this area, new development is permitted if the prevailing character and density of land use in the area is maintained, if the total acreage in forest cover is maintained or increased, and if water quality and habitats are not adversely affected. Generally, the criteria require that when new development is planned or proposed, that certain environmental or natural features in the project area be identified and measures taken to protect or conserve them. The following discusses each of these features and indicates the responsibilities of the proposer of development and the local jurisdiction in protecting these resources.

1. Habitat Protection Areas (as defined in Chapter 9 of the criteria)

\* A developer is required to determine whether any such areas exist on the project site or, if off-site, whether they could be adversely affected by the proposed project. Where such areas are present, the following standards are to be applied:

- a) Roads, bridges and utilities may not be located in these areas unless no feasible alternative exists, except that such construction is not permitted at all in the Buffer (described in COMAR 14.15.09.01). Where these activities must cross such areas, they must be designed, constructed and maintained to protect the habitats, to provide maximum erosion protection, and to maintain hydrologic processes and water quality.
- b) The developer shall protect any wildlife corridors which may be present (as described in Chapter 9, Regulation 04.)
- c) The developer must protect any Habitat Protection Area located in forests and developed woodlands.

2. Streams (Tributary Streams as defined in Chapter 1) - Generally, development activities that cross or affect streams would not be expected to cause adverse impacts on streams because they would not be permitted in the Buffer (e.g., within at least 100 feet of streams). However, where they are permitted, such as water-dependent facilities or development in areas exempted from the Buffer requirements, or where the scale or intensity of the project is large, the developer is required to do the following:

\*If the project involves development activities which would cross or effect streams, the developer is required to identify any such stream in the project area, including those off-site, which might be affected by the project.

\*The developer is required to show that the development will:

- a) not cause increases in the frequency and severity of floods;
- b) retain existing tree canopy;
- c) provide for the retention of the natural substrate for streambeds; and

- d) minimize adverse impacts to water quality and storm water runoff.
3. Wildlife Corridors - The criteria require that all development sites incorporate a wildlife corridor system that connects the largest undeveloped part of the site, or the most vegetated part, with similar tracts of land adjacent to the site. The system may consist of the corridors mentioned above which have been identified in Chapter 9. Two actions are required to implement this criterion:
- \* The developer should be required to provide for the retention of wildlife corridors in designing a project;
  - \* The local jurisdiction shall ensure the maintenance of such corridors by appropriate means (i.e., requiring the establishment of conservation easements, restricted covenants recorded homeowner association maintenance agreements, and the like)
4. Forests and Developed Woodlands (As defined in Chapter 1 of the Criteria)

The intent of these criteria is to maintain, or preferably increase, the total acreage in forested coverage in the local jurisdiction's Limited Development Area. On any given site proposed for development, the criteria limit the amount of forest and developed woodland that may be removed and provide guidelines for replacement and, where appropriate, for afforestation on sites where no forest exists. Following is a summary of these requirements:

\*If no forest exists on the site, the developer shall establish a forest or developed woodland on at least 15% of the site at a location to be approved by the local jurisdiction, and this afforested area is to be maintained in a forested condition through appropriate protective instruments (e.g., easements, restrictive covenants or other recorded owner agreements);

\*If a forest or developed woodland exists on the site and the development proposed will involve the cutting or clearing of such trees, the developer is required to:

- a) Designate the forest or developed woodland on the proposed site plan;
- b) Obtain a grading permit before cutting or clearing occurs; and

- c) Seek comments on the project from the Maryland Forest, Park and Wildlife Service and consider the recommendations made by the Service. Such comments would address road layout, retention or removal of particular trees or stands of trees, future management practices and the like.

\*Cutting or clearing may then be allowed to occur providing that:

- a) All forests cleared or developed are to be replaced on not less than an equal area basis at a location within the local jurisdiction's Critical Area.
- b) No more than 20% of the forest or developed woodland within the site proposed for development may be removed (except as provided for in (c) below) and the remaining 80% is to be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants);
- c) A developer may propose clearing up to 30% of the forest or developed woodland on a site, but the trees removed in excess of 20% must be replaced at the rate of 1.5 times the amount removed.  
  
(For example, on a 100 acre wooded site, if the developer proposes clearing 25 acres, it would be required that replacement be made of 27.5 acres. The additional 2.5 acres would be afforested offsite at a location determined by the local jurisdiction);
- d) If more than 30% of the forest on a site is cleared, the forest is required to be replanted at 3 times the total areal extent of the cleared forest;
- e) If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the requirement in (d) above.

The above requirements for conserving forests and developed woodlands should be implemented by regulation by the local jurisdiction. In addition, local jurisdictions are required to adopt certain other programs. These are:

\*Provisions for surety to be provided by owners or developers in an amount suitable to assure that replacement of forests and developed woodlands occurs when more than 20% of such areas are removed from a

site.

\*Alternative provisions or guidelines for implementing the replanting requirements described above where the areal extent of a site prevents such replanting on that site. Such provisions can include fees-in-lieu requirements adequate to ensure, and dedicated specifically to, the restoration or establishment of an equivalent forest area. The local jurisdiction should also determine those areas within their Critical Area where reforestation would be practical and effective in achieving the goal of maintaining or increasing the forest coverage of the Critical Area. The Maryland Forest, Park and Wildlife Service can assist local jurisdictions in developing such a program.

5. Steep Slopes

\*Development is not permitted on steep slopes (those greater than 15% percent) unless it can be shown that such development is the only effective way to maintain or improve the stability of the slope, and is consistent with the density, water quality and habitat protection policies for Limited Development Areas (See Regulation .04.B. of the criteria).

6. Soils With Development Constraints

\*Development on such soils should be discouraged, but may be allowed if adequate mitigation measures are implemented to address the identified constraints and if the development will not adversely affect water quality or plant, fish and wildlife habitat.

7. Other Requirements

In addition to the identification and protection of the features discussed above, local programs are to include the following requirements or measures in regulating new development in their Limited Development Areas:

\*Man-made impervious surfaces may not exceed 15% of the site proposed for development. In addition, on lots of less than one acre which are in a subdivision approved after June 1, 1986, impervious surfaces may be allowed on up to 25% of the lot, provided that impervious surfaces on the whole parcel that is subdivided do not exceed 15%.

\*Local jurisdictions should consider allowing for modification to (e.g., reduction of) existing road standards so that the extent and effect of new development is minimized. Such modifications could include reduced road widths or providing for permeable

surfaces, but the reduced standards must not significantly affect safety.

\*Local jurisdictions should consider requiring clustering of future development;

\*Local jurisdictions are required to refer to the existing State laws and regulations listed in the criteria governing sediment control and stormwater management.

### Resource Conservation Area

By definition, the Resource Conservation Area (RCA) is dominated by farmland, forests, wetlands, and barren land and supports resource utilization and recreation activities. The intent of the criteria is to protect these lands and activities for the water quality and habitat protection benefits they provide within the Critical Area. The criteria address two general issues: 1) limitations on the nature and intensity of new development activities which can occur in these areas, and 2) programs to conserve or enhance land-uses and activities appropriate for RCA's. These are summarized as follows:

1. Development - The criteria provide that all existing industrial and commercial facilities, including those supporting resource utilization activities (agriculture, forestry, aquaculture or fisheries) may continue to exist in an RCA. The Commission assumed that relatively few industrial or commercial facilities not associated with the resource utilization activities, will be located in a jurisdiction's RCA. Existing residential uses may also continue. Future development is limited as follows:
  - \* New industrial or commercial facilities are not permitted and additional land may not be zoned for these purposes unless that land is designated for intense or limited development as part of the jurisdiction's future growth allocation. (See Section below on Expansion of Development).
  - \* New residential development is permitted if the density of such development generally does not exceed one dwelling unit per 20 acres. Within this limit, the local jurisdiction may determine minimum lot sizes.
  - \* There are two circumstances where the one dwelling unit per 20 acres density may be exceeded:
    - a) A local jurisdiction may, if it wishes, permit the area of private wetlands located on a property to be used in determining the density of development

on that property provided that:

- (1) the density of development on the upland portion of the property does not exceed 1 dwelling unit per 8 acres; and
  - (2) State Wetlands Maps must be used to determine the extent of the private wetlands.
- b) A local jurisdiction may, if it wishes, develop and implement a program providing for the subdivision of parcels of land to be conveyed to family members in which the resulting density of development would exceed 1 dwelling unit per 20 acres. This provision is discussed further on page 19.
- \* Local jurisdictions are encouraged to consider and use various means to maintain the land area in protective land uses. In combination with zoning, these could include transfer of development rights, clustering, the use of density bonuses outside the RCA's, or other measures.
  - \* New development activity in the RCA shall conform to the same standards as those set forth in the criteria for Limited Development Areas as previously described. Local jurisdictions should provide for this requirement by regulation or other appropriate means.
2. Conservation or Enhancement Programs - Local jurisdictions are required or encouraged to develop the following measures or programs to assist in achieving the criteria's goals for Resource Conservation Areas;
- \* Require that land management practices are consistent with the requirements for agriculture, forestry and habitat protection as described in Chapters 5, 6, and 9 of the criteria.
  - \* Promote the use of agricultural and conservation easements. This could be implemented in a number of ways including participation in the Maryland Agricultural Land Preservation Program or seeking the assistance of the Maryland Environmental Trust in developing a conservation easement program.
  - \* Develop incentive or disincentive programs, as appropriate, to promote the continuation of agriculture and forestry and to protect natural habitats. Incentive measures could be developed in conjunction with the easement programs mentioned above. Disincentive measures might include

differential taxation which favor agricultural and forest lands.

- \* Develop programs to ensure that the overall acreage of forests and woodland does not decrease. Such programs could be implemented in conjunction with the replanting requirements described for the Limited Development Area; areas in the RCA could be designated for any off-site planting required by the LDA criteria.

### EXPANSION OF DEVELOPMENT

The criteria dealing with the extent and location of any expanded development in the Critical Area were described previously. Local jurisdictions are not required to designate such areas in the development of their programs if they do not wish to propose for expansion of development at that time. However, before any such areas can be developed, they must be mapped and submitted to the Commission for approval. This submission should include an analysis of the manner in which the areas designated conform to the locational criteria previously described and the extent to which the proposed expansion was developed in coordination with the municipalities and accommodates their growth needs. The submission should also indicate how such an expansion affects the total growth allocation in the jurisdiction's Critical Area.

### INTRAFAMILY TRANSFERS

The Maryland General Assembly made certain changes to the Critical Area Law in 1986, to permit the subdivision of certain lands in the Resource Conservation Area into parcels to be conveyed to family members. These changes specify the requirements and provisions for a local intrafamily transfer program and the specific number of such transfers which are permissible. These are discussed below.

\*Local Programs - If a local jurisdiction wishes to include provisions for intrafamily transfers in the Critical Area, such provisions must be submitted to and approved by the Commission and must include:

- 1) Conditions of approval for such transfers which require that:
  - a) a covenant run with the deed which states that the subdivision was for the purpose of creating a bona fide intrafamily transfer;

- b) once a transfer is made to a family member, a subsequent transfer cannot be made unless to a member of the owner's immediate family; and
  - c) conveyance of the lot to a third party as security for a mortgage or deed of trust is not to be prevented under the program.
- 2) Standards and procedures by which the jurisdiction will permit the subsequent conveyance of lots to persons other than immediate family members. The standards and procedures must assure that:
- a) the lot was created as part of a bona fide transfer and not with the intent of subdividing for commercial sale; and
  - b) a change in circumstances has occurred since the original transfer which warrants an exception. Such a change could occur because it is not inconsistent with the intent of the intrafamily program, or that other circumstances are present and the action would not be inconsistent with the criteria that support the protective land uses and the natural habitats of the Resource Conservation Area.

\*Specific Conditions - The local jurisdiction's intrafamily transfer program can only be made from parcels of land that were on record as of March 1, 1986, and which are 7 acres or more and less than 60 acres in size. On such lands the following intrafamily transfer conditions shall be applied:

- a) A parcel that is 7 acres or more and less than 12 acres in size may be subdivided into 2 lots;
- b) A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into 3 lots;
- c) The lots may be created at any time;
- d) No greater subdivision of such parcels may be allowed; and
- e) That the subdivisions, made as part of a bona fide transfer, be subject to local approval under Article 66B or Article 28 of the Code, or under any subdivision control provisions of a charter county.

### GRANDFATHERING

The Critical Area Law includes as a required element, that local programs would have to contain provisions relating to the grandfathering of development at the time the program is adopted or approved by the Commission. Generally, grandfathering refers

to provisions which allow certain pre-existing uses to continue even though they may be inconsistent with a new law. The criteria in this section provide for the conditions under which development in the Critical Area is to be grandfathered by local jurisdictions. These requirements are summarized as follows:

- \* An individual wishing to build a single house on his lot may do so.
- \* Individual parcels of land not part of a subdivision are grandfathered.
- \* Subdivision of land approved prior to June 1, 1984, is grandfathered. Building on the land, however, must comply insofar as possible with the criteria if it is done after December 1, 1985, and prior to Program approval. Otherwise, it will count against the growth allocation if it is in the Resource Conservation Area. If building occurs after the local program is approved, it must comply with the procedures described in the local program.
- \* Subdivision of land is grandfathered if it is approved between June 1, 1984, and the date of local program approval. However, it must comply with the "interim findings" requirements of the Critical Area law (§8-1813) and subdivision of land approved after December 1, 1985, must conform to the criteria or count against the growth increment.
- \* Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members is grandfathered.
- \* Existing land uses may continue, but expansion may require a variance.

In their Critical Area Programs, local jurisdictions are required to establish the grandfather provisions contained in this section. It is also required that local jurisdictions will have determined, as of December 1, 1985, which of their lands in the Critical Area fall into the three development areas previously described in this Chapter (e.g., IDA, LDA, and RCA). From that date to program submittal, a tally or accounting should be maintained of grandfathered and developing parcels so that a determination can be made of the effects of such development on the jurisdiction's growth allocation. Absent such an accounting, it is possible that a local jurisdiction may lose any growth allocation it could get at the time of program approval.

## CHAPTER 3 WATER-DEPENDENT FACILITIES

### INTRODUCTION

Certain land uses can only occur at or near the shoreline because of their intrinsic dependence on water or their need for access to water. The nature of such uses (i.e., port facilities, marinas) can bring about disturbances and negative impacts to wildlife and aquatic resources. These criteria describe the design and locational standards under which certain water-dependent activities may be permitted within the Critical Area.

This Chapter contains the requirement that local plans describe a process for identifying areas that are suitable for water-dependent facilities. It also contains requirements for 1) new, expanded or redeveloped industrial or port-related facilities; 2) marinas and other commercial maritime facilities; 3) community piers and other related non-commercial boat docking and storage facilities; 4) public beaches and other public water-oriented recreation or education areas; 5) research areas; and 6) fisheries facilities. In addition to establishing environmental siting and design standards, the criteria direct the distribution of new water-dependent uses based on existing patterns of land use. It is the intent of the criteria to prevent development activities from occurring on the shoreline unless they depend on such a location by their nature, and to regulate water-dependent development so that adverse impacts on water quality and habitats are minimized.

### CRITERIA REQUIREMENTS

The criteria for water-dependent facilities contain two general kinds of requirements for local jurisdictions: 1) developing a plan for approving areas suitable for water-dependent facilities, and 2) adopting regulations which limit new development occurring in the Buffer to that which is water-dependent and which minimizes adverse environmental impacts. Also required are regulations which restrict the siting of certain new water-dependent facilities on the shoreline. These requirements are discussed in the following section.

Plans for Water-Dependent Facilities - Under the requirements of Section .04, local jurisdictions are required to develop a plan, related policies and implementation programs whereby shoreline areas would be identified as to their suitability for new or expanded water-dependent facilities. While it may do so, the plan need not necessarily result in a prior determination of sites suitable for such facilities. Instead, it must describe a process whereby the various factors shown in Section .04B are considered in planning for water dependent facilities. (This will be discussed further under Program Implementation). This process must involve re-evaluation

of existing zoning to determine if the current or projected future use of areas presently designated for these facilities is consistent with the policies of this Chapter.

Specific Requirements - Generally, the criteria provide that only those development activities which are water-dependent are to be allowed within the Buffer described in Chapter 9. In addition to the water-dependency requirement, new or expanded development activities are permitted in the Buffer if they:

- a) meet a recognized private right or public need;
- b) minimize adverse impacts on water quality and fish, plant and wildlife habitat;
- c) locate non-water-dependent aspects of the project (i.e., parking lots) outside the Buffer to the extent possible; and
- d) conform to the local plan for water-dependent facilities mentioned above.

In addition to this overall requirement, the criteria specify where various classes of water-dependent facilities may be sited according to the development areas described in Chapter 2 (e.g., Intensely Developed, Limited Development and Resource Conservation Areas), but providing such facilities meet the requirements of items a-d above. These are summarized in Table 1.

#### PROGRAM IMPLEMENTATION

In order to implement the requirements of this Chapter, it is suggested that the following procedures be used.

Plan for Water-Dependent Facilities - As indicated previously, local jurisdictions will be expected to develop a process which considers eight factors (Section .04B) in planning for areas which would be suitable for water-dependent facilities. These factors are: 1) water circulation patterns and salinity regimes; 2) flushing characteristics; 3) wetlands, submerged aquatic plant beds and other important aquatic habitat; 4) water quality, 5) shellfish beds; 6) the effects of any dredging needed; 7) placement of dredged material spoil; and 8) the natural transport of sand.

The intent of this requirement is to enable local jurisdictions to determine where new or expanded water-dependent facilities should not be sited because adverse impacts to water quality or aquatic habitats would occur. This requirement is not necessarily intended to be a site-specific evaluation of a particular proposed project although it may be used for that purpose. Instead, it is intended to be a general assessment, in

TABLE I  
 LOCATIONAL REQUIREMENTS FOR  
 WATER-DEPENDENT FACILITIES

<u>WATER-DEPENDENT FACILITY</u>	<u>BUFFER AREA* PERMITTED</u>	<u>COMMENT</u>
Industrial and Port Related Facilities (New, Expanded, Redeveloped)	IDA	May be permitted only in shoreline areas exempted from the Buffer requirement
Marinas and other Commercial Maritime Facilities ( <u>New</u> )	IDA LDA	-
Marinas and other Commercial Maritime Facilities ( <u>Expanded</u> )	IDA LDA RCA	Permitted in RCA only if net improvement in water quality is achieved
Community Piers (New and Expanded)	IDA LDA RCA	Subject to limitations on slip density
Public Beaches and Other Public Water- Oriented Recreation Areas (New)	IDA LDA RCA conditions	Allowed in LDA and RCA under certain
Research Areas (New)	IDA LDA RCA	Provided that non-water- dependent features are located outside of Buffer
Fisheries Facilities	IDA LDA RCA	

\*Key: IDA - Intensely Developed Areas  
 LDA - Limited Development Areas  
 RCA - Resource Conservation Areas

a planning context, of areas where such facilities are likely to be inappropriate. Such an assessment should rely on generally available and already existing information. (Sources of such information are listed at the end of this Guide.) Local jurisdictions are not required to conduct, or otherwise provide for, new studies necessary to collect information that is unavailable from State or federal agencies or other appropriate sources.

The nature of the local planning process for water-dependent facilities is not explicitly stated in the criteria and the Commission intended that each jurisdiction should have the flexibility to develop a process which would meet its particular conditions. However, these plans should have the following minimum elements:

- 1) A planning process should be described that will result in the identification of shoreline areas suitable for the location of those water-dependent facilities permitted to occur in the Buffer as listed in Table I.
- 2) The process must include consideration of the environmental impact factors listed in Section .04B of the criteria in identifying areas suitable for water-dependent facilities.
- 3) The process must include the re-evaluation of areas currently zoned or approved for such facilities to determine if such areas conform to the evaluation factors and the other requirements of this Chapter.
- 4) Mechanisms should be proposed for implementing the finding that certain areas are suitable or unsuitable for these facilities. Re-zoning is an example of such an implementing mechanism.

Specific Requirements - In addition to the local plan, implementation of the criteria will require certain other actions by local jurisdictions. These are listed below:

- 1) Provide by regulation or other appropriate means that only those water-dependent facilities described in Sections .06, .07, .08, .09 and .10 (e.g., marinas, community piers, public beaches, research areas and fisheries activities) shall be permitted in the Buffer described in Chapter 9.
- 2) Provide by regulation or other appropriate means that the requirements for each water-dependent facility described in Sections .06 - .10 shall be observed.
- 3) Request, at the time of local program submission, exemption from the Buffer requirements as provided for in COMAR 14.15.09.C.(8) if the exempted area will be

designated for new, expanded or redeveloped industrial, or port-related water-dependent facilities.

- 4) Identify, with the assistance of appropriate state agencies, areas with high potential for aquaculture. Where such areas exist and are now used for aquaculture, the local programs shall provide programs that protect these areas from degradation by other types of land or water use or by adjacent land and water uses.

#### SOURCES OF ASSISTANCE

The following agencies will be able to provide the information necessary to meet the requirements of this chapter:

##### Water Resources Administration (WRA)

Water circulation patterns, salinity regimes and flushing characteristics - This information is generally available, but in a variety of forms and locations (e.g., The Johns Hopkins University, University of Maryland, several State agencies). The WRA will serve as a central source of these data for local jurisdictions who are developing Critical Area Programs. Tidal Wetlands - Maps are currently available within each jurisdiction. If needed, additional copies may be obtained from WRA. Updated maps are now being prepared by the WRA and are expected to be completed in late 1987.

##### Tidewater Administration (TID)

Shellfish beds, submerged aquatic vegetation beds - Oyster bars are shown on maps from TID, Fisheries Division. Clam bed locations are also available from the same source, but because such beds are subject to year-to-year fluctuations, their location would need to be updated on an annual basis. SAV bed information is available from TID, Coastal Resources Division. Aquatic areas suitable for aquaculture - TID, Fisheries Division, will make available general guidelines for the location of such areas.

Department of Agriculture (DOA) - Land areas suitable for aquaculture - The DOA will make available general guidelines for the location of such areas.

## CHAPTER 4 SHORE EROSION PROTECTION

### INTRODUCTION

The Commission recognized that some parts of the Chesapeake Bay shoreline are undergoing severe erosion and that bulkheads and other structural erosion control measures are, in some situations, the only practical and effective means for achieving erosion control. However, because those structures can cause disturbance to the aquatic environment, their use should be limited to those areas where they are needed and where alternative non-structural measures would not be practical or effective. Non-structural measures include vegetative stabilization, grading and alteration of near shore vegetation.

The criteria contained in this Chapter relate to the identification of the erosive characteristics of shorelines so that areas are delineated where no significant erosion is occurring and which would not need protection measures; where non-structural control measures can be utilized effectively; and areas where erosion is so severe, or local conditions of fetch, soils and slopes are such, that only structural measures would be practical and effective. Identifying such areas has three purposes: 1) maintaining the natural character of the shore and adjacent aquatic habitats; 2) discouraging unneeded shoreline alterations; and 3) alerting property owners or prospective buyers of waterfront land to the relative extent of erosion occurring and the measures generally appropriate for controlling such erosion.

### DESIGNATION

The criteria in this Chapter require local jurisdictions, with the assistance of State or federal agencies, to map their shoreline areas within the Critical Area in order to designate those which have the following characteristics:

- 1) Areas where no significant erosion is occurring (e.g., the area is eroding at a rate of less than two feet per year);
  - a) Areas where no appreciable erosion is occurring and no erosion control measures are necessary or warranted;
  - b) Areas where appreciable erosion is occurring and where non-structural measures would be practical and effective;
  - c) Other areas where appreciable erosion is occurring

and where non-structural measures would be impractical or ineffective in controlling erosion;

- 2) Areas of significant shore erosion (e.g., the area is eroding at a rate of 2 feet or more per year);
  - a) Eroding areas where only structural measures would be practical and effective;
  - b) Other eroding areas where non-structural measures would be practical and effective;

Information for accomplishing this designation and mapping is available as follows: The Maryland Geological Survey will make 1" = 2,000' scale maps available to local jurisdictions showing shoreline areas with significant historic rates of erosion (e.g., rates of 2 feet or more per year). The maps are generally based on erosion rates occurring between the 1840's and 1940's although for some areas, the information was updated in the 1970's. The maps show the degree of historic erosion (slight, low, medium and high) but for purposes of implementing the Critical Area Criteria, all areas with rates exceeding 2 feet per year can be considered the same (e.g., as significantly eroding). It should be noted that some areas shown as historically eroding have since been protected with control measures and are not presently eroding. However, such areas will still be prone to erosion if these measures are not adequately maintained.

The Geological Survey maps cannot be used directly to precisely define areas where structural or non-structural measures are practical and effective. However, the Tidewater Administration (DNR), will make available general guidelines for identifying areas that are suitable for vegetative stabilization. The Capital Programs Administration (DNR), will have information concerning the selection of suitable types of structural measures. As the criteria indicate, the evaluation of an individual shore erosion measure would have to be accomplished on a site-specific basis and is not a requirement for local Critical Area Programs.

#### PROGRAM IMPLEMENTATION

Following this mapping, local jurisdictions are to establish policies for achieving erosion control appropriate to the characteristics of each shoreline area mapped above. These objectives are summarized in Table 2.

TABLE 2

Erosion Control Measures  
Appropriate to Various Shoreline Conditions

<u>Erosion Condition</u>	<u>Erosion Control Recommendation</u>
1. No appreciable erosion	No measures needed.
2. No significant erosion (Rates less than 2 feet per year)	Non-structural measures preferred wherever practical and effective; structural measures generally not encouraged
3. Significant erosion (Rates 2 feet per year or greater)	Non-structural measures to be considered; if not practical and effective, structural measures may be installed provided that the measure used best provides for conservation of fish and plant habitat.

The criteria do not specify the particular policies or programs which local jurisdictions are to adopt for meeting these objectives. Appropriate measures could include, but are not limited to:

1. Revisions in subdivision regulations to address shore erosion measures proposed as part of a project;
2. Revisions to building permit requirements where the jurisdiction requires such permits for erosion measures;
3. Revisions to grading permits where such permits are required for shore protection measures;
4. Requiring permits for shore erosion measures placed in the Buffer; or
5. Dissemination of public education materials focusing on the use of structural and non-structural erosion control measures.

The particular policies adopted or proposed should be included in the local jurisdiction's Critical Area Program document.

**CHAPTER 5  
FOREST AND WOODLAND  
PROTECTION**

**INTRODUCTION**

The Chesapeake Bay Critical Area Act recognizes that forests are protective land uses which provide significant water quality and wildlife habitat benefits. In developing the Critical Area criteria, it was the objective of the Commission to conserve forests and woodlands to the extent possible so that these benefits could be maintained, or preferably enhanced. Accordingly, criteria were proposed to minimize the cutting or clearing of trees associated with development activities and in important habitat protection areas.

**CRITERIA REQUIREMENTS**

There are two general requirements in this Chapter. One is for the development of a Forest Preservation Plan; the second is that timber harvesting on one acre or more occurring within any one year interval is to be conducted under a Forest Management Plan and all harvests on 5,000 square feet or more of disturbed area must have a Sediment Control Plan. In addition to the requirements of this Chapter, the Criteria contain other references to the cutting or clearing of trees. These include limitations on the extent of forest cover that can be removed by new developments in the Limited Development Area [Chapter 2, Regulations 04.C(2), (3), (4) and (5)]; protection and enhancement of forests and woodlands in the Intensely Developed Areas [Chapter 2, Regulation .03C(7), (8) and (9)]; and the habitat protection requirements in Chapter 9. Implementation of the requirements of Chapters 2 and 9 are discussed in those chapters.

Forest Preservation Plan - Local jurisdictions are to develop a Forest Preservation Plan as part of their Critical Area Program when forests or developed woodlands occur within their jurisdiction. If such resources do not exist, the Plan is not required, although consideration of forest resources (i.e., tree planting programs) may still be required where re-development or new development occurs in Intensely Developed Areas.

The Plan requires the identification and designation (i.e., mapping) of forests and developed woodlands in the jurisdiction. Forests and developed woodlands of less than one acre are not required to be identified. Forests which include the Habitat Protection Areas described in Chapter 9 must also be identified. Finally, the Plan is required to propose incentive programs for conserving forest land and for converting other land uses to forested conditions.

Forest Management Plans - A Forest Management Plan is required for all timber harvesting in the Critical Area occurring within any one year interval on one acre or more of land. The Plan is to be prepared by a registered professional forester and reviewed by the Maryland Forest Park and Wildlife Service through the District Forestry Board and the project forester, and filed with the local jurisdiction. The Plans are to include measures to protect water quality and the Habitat Protection Areas designated in Chapter 9, including provisions for preserving the continuity of habitat both geographically and over time.

Timber harvests disturbing an area of 5,000 square feet or more are to be conducted under a Sediment Control Plan. The Plan is to be developed according to existing State guidelines entitled "Standard Erosion and Sediment Control Plan". Implementation of the Plan is to be done pursuant to specifications established by the local jurisdiction or the Maryland Forest Park and Wildlife Service. These sediment control provisions are already required under existing State statutes and are usually handled by the local Soil Conservation District Office.

It should also be noted that timber harvesting operations will need to observe the requirements of Chapter 9 when they occur in, or may effect, a Habitat Protection Area.

#### PROGRAM IMPLEMENTATION

In developing programs to meet the requirements of this Chapter, it is suggested that local jurisdictions use the following process.

Forest Preservation Plan - The first element of the Preservation Plan is to identify and designate forests and developed woodlands of one acre or more in the jurisdiction. The Commission recognizes that the designation of developed woodlands may be difficult in areas where residential structures are obscured by tree cover. The criteria allow for local jurisdictions to determine their own mapping rules for developed woodlands; however, the criteria used in such rules should be shown in the local program document. The Maryland Forest, Park and Wildlife Service will be able to assist local jurisdictions in these designations.

In addition, local jurisdictions must identify those forest and woodland areas which are defined in Chapter 9 as Habitat Protection Areas. This can be accomplished by overlaying the habitat areas onto the map or other designation device used to identify forests and woodlands.

Following this inventory, local jurisdictions should develop a means of communicating information to owners of forest and developed woodlands about: 1) the requirements for Sediment

Control and Forest Management Plans; 2) the limitations on cutting of trees which may be necessary in the Habitat Protection Areas; and 3) the provisions of Chapter 2 which limit the clearing of trees associated with new development in LDA's and RCA's.

The second element of the Forest Preservation Plan is the development of programs to provide incentives for conserving forest land and for the conversion of other land uses to forested conditions. Such programs could consist of: 1) urban forestry programs on redeveloped lands or in existing neighborhoods; 2) tree planting on publicly- owned barren land; 3) developing community programs for tree plantings in the Buffer; and 4) implementation of the afforestation requirements discussed in Chapter 2.

Forest Management Plans - Aside from notifying landowners of the requirements for Forest Management and Sediment Control Plans, the local jurisdictions are not required to be involved in the development of such Plans, except where cutting is proposed in a Habitat Protection Area. In those instances, the protection requirements developed pursuant to implementing Chapter 9 should be adequate to protect such areas. However, local jurisdictions are required to designate a local agency with which the Forest Management Plans will be filed. This requirement will provide local jurisdictions with an opportunity to review these plans, ensure their consistency with local Critical Area Program objectives, and to serve as the basis for any subsequent enforcement action which may be necessary by the jurisdiction if the timber harvesting or other practices do not conform with the Plans.

## CHAPTER 6 AGRICULTURE

### INTRODUCTION

As in the case of forestland, agriculture is described in the Critical Area Act as a protective land use. The Commission's overall goal with respect to agriculture was to seek to preserve existing agricultural land in the Critical Area, but to provide for the management of these lands so that non-point source pollution resulting from agricultural activities is minimized and natural habitats are conserved. The regulations provide that within five years of the effective date of the criteria, farms in the Critical Area have in place, and be implementing, a Soil Conservation and Water Quality Plan and associated Best Management Practices.

### CRITERIA REQUIREMENTS

Generally, the criteria impose three requirements with respect to agriculture in the Critical Area: 1) identification of agricultural lands and establishment of programs for maintaining such lands in agricultural use; 2) assuring that farming in the Critical Area is conducted pursuant to a Soil Conservation and Water Quality Plan and that Best Management Practices are used on each farm; and 3) establishing specific requirements for farming to protect water quality and to conserve fish, plant and wildlife habitat. These are discussed in the following section.

Agricultural Protection Plan - Local governments are to identify and map any farm lands within their jurisdiction in the Critical Area. The regulations do not specify a minimum parcel size for such lands, thus local governments should establish criteria for identifying any land which supports activities meeting the definition of agriculture. In order to carry out other provisions of the local program, the ownership of the agricultural lands should also be determined.

An Agricultural Protection Plan is also required. In addition to the inventory and mapping required above, the Plan should also:

- 1) Overlay the Habitat Protection Areas designated in Chapter 9 onto the agricultural lands and provide for their protection;
- 2) Contain measures for encouraging the protection of agricultural lands (i.e., preventing their conversion to non-farming uses);

3) Incorporate the agricultural components of the State 208 Water Quality Plan into any existing local water quality plans; and

4) Require that on farms where timber harvesting is proposed, Forest Management Plans are to be prepared which are consistent with the requirements of Chapters 5 and 9 of the criteria.

The Agricultural Protection Plan is to be part of the local Critical Area Program submission and it will be reviewed by the Critical Area Commission.

Soil Conservation and Water Quality Plans and Best Management Practices - Within five years of the effective date of the criteria each farm, or portion thereof, in the Critical Area is required to have in place and be implementing a currently approved Soil Conservation and Water Quality Plan and a program of Best Management Practices approved by the local Soil Conservation District. Such plans and practices are to be developed or updated following the effective date of the criteria. Plans developed prior to that date should be reviewed by the Soil Conservation District to determine whether they conform to the requirements of the criteria. Where a landowner has signed up as a conservation district cooperator, but the District is unable to develop a plan within the required five years, the landowner may continue farming provided that the goals of the Law and all of the other policies and requirements of Chapter 6 are being met.

Specific Requirements - The criteria contain additional specific provisions governing farming activities in the Critical Area. They are:

- 1) Existing farms are to establish, as a required Best Management Practice, a minimum 25-foot vegetated filter strip landward from tidal waters, tidal wetlands or tributary streams. The filter strip is to be maintained until the Soil Conservation and Water Quality Plan for the farm is being implemented, provided that the Plan achieves equivalent water quality and habitat protection objectives. Other requirements for the filter strip are described in Chapter 9 of the criteria.
- 2) New farmland is not allowed to be created if it would involve any of the following:
  - a) diking, draining or filling of non-tidal wetlands (see Chapter 9 for further details);
  - b) clearing of forests or woodlands on soils with steep slopes (15 percent or greater) or on such soils with a slope of greater than five percent which also have a "K" value greater than 0.35;

- c) clearing of existing natural vegetation in the Buffer; or
- d) clearing of land that would adversely affect or destroy the Habitat Protection Areas described in Chapter 9.

### PROGRAM IMPLEMENTATION

There are three requirements for local jurisdictions regarding agriculture in the Critical Area. These are developing the Agriculture Protection Plan; ensuring adoption of Soil Conservation and Water Quality Plans; and adopting certain regulations governing the creation of new agricultural land. It is suggested that the following procedures be used to fulfill these requirements.

Agriculture Protection Plan - The first element of the plan is the identification and mapping of agricultural lands. Local jurisdictions, in identifying such lands, should consider using aerial photographs, field surveys, consultation with the Soil Conservation District or the local Agricultural Land Preservation Advisory Board, or other means to identify agricultural land use as of December 1, 1985. This date is important because it is likely that lands in agriculture as of that time will have to be included as part of the Resource Conservation Area as required in Chapter 2. If such lands are converted to non-farm uses between that date and the preparation of local plans, local jurisdictions should indicate this fact and record such conversions in their program submission. The local jurisdiction should also establish a process by which this information can be updated periodically so that future changes in the amount of agricultural land in the Critical Area can be determined.

Following completion of the inventory and mapping, the local jurisdiction should determine the name and address of each owner of farm land so that the requirements of the Critical Area Program can be disseminated to those persons. The local jurisdictions in cooperation with the local Soil Conservation District and the Maryland Department of Agriculture, will need to inform such persons that they will have to do the following:

- 1) Apply to the local Soil Conservation District (or other qualified agent) so they can prepare a Soil Conservation and Water Quality Plan and a program of Best Management Practices, and
- 2) If not present, or if a currently approved Soil Conservation and Water Quality Plan is not being implemented to provide the same level of protection, establish a minimum 25-foot vegetated filter strip. (Land owners should be requested to consult the Soil

Conservation District to determine technical requirements for the filter strip.)

In addition, owners of farmland should be informed of the other specific requirements of the criteria restricting the clearing of new agricultural land and the requirements for Forest Management Plans for those farms which harvest timber.

The second element of the Agricultural Protection Plan is to identify where the Habitat Protection Areas designated in Chapter 9 occur on agricultural lands, including lands which are part of a farm, but which are in non-farm uses (i.e., forests and non-tidal wetlands). This can be done in conjunction with the inventory process described for the various habitats listed in Chapter 9. Once these Areas are identified, farm management measures must be such as to protect them.

The third Plan requirement is for the adoption of programs for protecting agricultural lands and for protecting water quality and plant and wildlife habitat. At a minimum, such programs should accomplish the following:

- 1) Incorporate the agricultural components of the State 208 Water Quality Plan into local water quality plans, if any exist. Where such local plans do not exist, this requirement can be met by providing that the Soil Conservation and Water Quality Plans developed by the local Soil Conservation District are consistent with the regional 208 plan for the jurisdiction.
- 2) Develop measures that encourage the protection of agricultural lands. These measures could include participation in the State's Agricultural Land Preservation Program or programs of the Maryland Environmental Trust, and encouraging Critical Area farms to form Agricultural Districts; developing local programs for accomplishing such purposes; enacting local ordinances which give agriculture preference over other uses; and affording tax incentives to owners of farmland. These, or other measures which might be adopted, should be included as part of the local jurisdiction's Critical Area Program submission.
- 3) Provide protection for the Habitat Protection Areas designated in Chapter 9. Generally, these protection measures would be the same as those required in Chapter 9 for each of the habitat areas. Those measures specific to agriculture (i.e., the 25-foot filter strip, restrictions on clearing in the Buffer, mitigation requirements for disturbance to non-tidal wetlands) are discussed in Chapter 9 and local jurisdictions need only reference that Chapter in this part of the Plan.

- 4) Require that a Forest Management Plan be prepared for timber harvests on farms which affect one acre or more in any one year interval and that such plans conform to the requirements of Chapters 5 and 9. This requirement can be met by reference to those Chapters.

Soil Conservation and Water Quality Plans - Local jurisdictions are to indicate in their Program submission that the owners of farmland in the Critical Area have been informed of the requirement that they will need an approved Soil Conservation and Water Quality Plan, on such lands in the Critical Area, and that the Plan must be implemented within five years of the effective date of the criteria. It is the responsibility of the Soil Conservation District to prepare (or approve) the Plan and promote adoption of the Best Management Practices necessary to implement the Plan. If the District is unable to implement this requirement because of manpower limitations or other similar reasons, the owner of farmland may continue to farm provided:

- 1) all of the other requirements of this Chapter are being met; and
- 2) that the person is encouraged to use the practices listed in COMAR 14.15.06.03(5). However, if the landowner is unwilling to have a plan prepared and implemented, then that person may be subject to legal action by the local jurisdiction, or by the Department of Health and Mental Hygiene if the farm is in violation of State water quality requirements.

Specific Requirements - Local jurisdictions shall establish by regulation or other appropriate means, the following requirements:

- 1) Prohibit the diking, draining, or filling of any class or subclass of palustrine wetlands which have a seasonally flooded or wetter water regime, as described in COMAR 14.15.09.02, in order to create new agricultural land unless mitigation is accomplished, as provided for in COMAR 14.15.09.02. (See Chapter 9 for further details).
- 2) Provide that the creation of new agricultural land is not accomplished by the clearing of forests or woodlands or soils with a slope of greater than 15% or on soils with a "K" value greater than .35 and a slope greater than 5%.
- 3) Require that within five years of criteria approval, all farms in the Critical Area have in place and are implementing an up-to-date Soil Conservation and Water Quality Plan.

- 4) Require that no clearing of new farmland can be accomplished within the Buffer described in COMAR 14.15.09.01.

## CHAPTER 7 SURFACE MINING

### INTRODUCTION

Surface mining, mainly for sand and gravel, exists within the Critical Area. Additional deposits of these mineral resources are available for future extraction. In general, surface mining operations are regulated under existing State law. The Commission recognized that these resources make a significant contribution to the State's economy, but also recognized that mining operations, if not properly managed, can result in sedimentation and other adverse impacts on aquatic resources.

### CRITERIA REQUIREMENTS

The criteria impose two requirements on local jurisdictions. The first is that lands are to be identified and mapped which contain known mineral resources but which are not now being used for mining operations. The intent of this requirement is to prevent use of such lands for purposes which would limit their future availability for mineral extraction. The mapping should also indicate where Habitat Protection areas, as defined in Chapter 9, exist over such mineral reserve areas and thus preclude the use of such areas for mining. Local jurisdictions should also indicate, to the extent it would be possible at the time of critical area program development, the anticipated post-excavation use of such lands. Where such post-excavation development for residential, commercial, or industrial purposes is proposed, it should conform to the criteria in Chapter 2.

The second requirement is for local jurisdictions to identify areas that are unsuitable for future sand and gravel operations and to prohibit such operations from occurring therein. The unsuitable areas include the Buffer and other Habitat Protection Areas described in Chapter 9; areas of highly erodible soils; and areas of existing agriculture or forestry use which, if converted to mineral extraction, could not be used for farming or forestry for 25 years or more. The latter requirement means that if a mining operation is proposed on existing farm land or forest land, and the mining operation including reclamation, could not be completed within 25 years, then that operation should not be allowed. The intent of this requirement is to encourage mining operations to minimize the extent of land disturbed at any one time and to provide for reclamation as soon as possible after extraction is completed.

The only requirement in the criteria for existing sand and gravel operations is that they observe, to the extent possible, the 100-foot Buffer and existing State and local regulations.

## PROGRAM IMPLEMENTATION

Existing Mining Operations - Local jurisdictions should notify existing operations of the requirement that the Buffer should be observed to the fullest extent possible. In turn, the legal owner or operator of the operation should be required to certify to the local jurisdiction that all such operations are observing the Buffer, and where they are not, the conditions which exist that prevent them from observing this requirement. It would not be sufficient to claim inconvenience or minor economic hardship as a causal factor, since the criteria require observance of the Buffer to the extent possible.

Future Mining Operations - It is suggested that local jurisdictions address future mining operations using the following process:

1. Request from the Department of Natural Resources, Maryland Geological Survey (see below) maps or other information which allow identification of mineral resources in the Critical Area. If no such mineral resources exist, then further action is not required.
2. If potential mineral resource sites are present, provide for the following:
  - a) Adopt appropriate regulations which declare that new surface mining operations shall be prohibited on highly erodible soils defined in Chapter 1 and in the Buffer and other Habitat Protection Areas defined in Chapter 9;
  - b) Map the potential resource sites so that their extraction potential can be considered when other forms of development are proposed for such sites.
  - c) Propose to the Critical Area Commission at the time of local program submission the anticipated post-excavation use of mineral resource sites (if known) and signify that if development of a site is anticipated, that such development will meet the requirements of Chapter 2; and
  - d) Where mineral resource sites are overlaid by productive agriculture or forest lands, provide, through regulation or other appropriate means, that mining of such sites shall be required to be completed within 25 years and the site returned to its former agricultural or forest use.

## SOURCES OF ASSISTANCE

Most of the information required to implement the requirements of this Chapter is available from the Department of Natural Resources. The location of unexploited or potentially available mineral resources is being mapped and such maps will be made available by the Maryland Geological Survey. Maps have generally been completed for the Western Shore counties; Eastern Shore areas are expected to be finished in 1987. The identity of owners of existing mining operations is available from the Surface Mining Division of the Water Resources Administration. Advice on measures which may be required of existing operations in order to observe the Buffer requirements is also available at the Surface Mining Division.

## CHAPTER 8 NATURAL PARKS

### INTRODUCTION

A significant problem associated with the long-term recovery of the Bay ecosystem is the fact that many impacts to the Bay originate in the upland areas beyond the Critical Area.

It is difficult for the people contributing to these impacts to perceive that they are the source of some of the Bay's problems because they are usually separated by distance and time from the location of the impact.

Visits to Natural Parks can be opportunities for people to acquire a personal understanding of the processes and potential benefits of coastal habitat and Bay resources. These experiences can improve the quality of the Bay's resources by instilling a realistic attitude toward the natural environment and therefore, can influence the actions of park visitors who live throughout the Bay's watershed - particularly the way they treat soil and water resources. For some of the Bay's problems, education is the only answer. These criteria encourage the establishment of Natural Parks within local jurisdictions.

### PROGRAM REQUIREMENTS

The criteria require local jurisdictions to:

- 1) Identify areas within their Critical Area where Natural Parks could be established; and
- 2) Consider conserving, through various means, the geological and biological resources of such areas which exemplify coastal ecosystems. In managing natural parks, the criteria suggest that priority should be given to providing a quality education experience, and protecting significant natural features, rather than maximizing visitation.

In considering areas where Natural Parks could be established, local jurisdictions may propose use of existing federal, State or locally-owned public lands for these purposes. For example, some existing parks or wildlife areas, because of their special features could serve as natural parks and development of educational programs that illustrate the functions of estuarine ecosystems of these areas would fulfill the intent of the criteria. The Maryland Forest, Park, and Wildlife Service and the Capital Programs Administration of the Department of Natural Resources will be able to assist local jurisdictions in establishing such programs.

**CHAPTER 9  
HABITAT PROTECTION AREAS**

**INTRODUCTION**

This section contains policies and criteria for conserving or protecting fish, plant and wildlife habitat as required by the Critical Area Law. Protection is to be provided for habitats of national, Statewide, or local significance or for those which are not already regulated by other State or federal programs.

**HABITAT PROTECTION AREA PLAN**

Local jurisdictions are required to identify and provide protection for the habitat areas described in the five sections of this Chapter. A Habitat Protection Area Plan is also required by the provisions of Chapter 10, Regulation 01.E.(4). The criteria do not contain specific requirements for the content and form of such a Plan, however it should contain the following minimum elements, each of which are discussed in the sections to follow:

1. Buffer management guidelines (as described on p.49) and regulations proposed or adopted to protect the integrity of the Buffer;
2. A Non-Tidal Wetland Protection Program (see p.54);
3. Regulations proposed or adopted to protect the habitats of any threatened or endangered species or species in need of conservation;
4. A Plant and Wildlife Protection Program (see p.62);
5. Regulations adopted or proposed for the protection of anadromous fish spawning streams and their watersheds.

Each of the above elements may be described by reference to appropriate sections of this Chapter. Other minimum elements are:

6. Evidence that the local jurisdiction has considered the presence of contiguous habitats in adjacent jurisdictions and provided for joint protection measures where appropriate.
7. Evidence that the local jurisdiction has developed a means for applying, to the extent possible, the protection requirements of this Chapter to those developments described under Grandfathering in Chapter 2, Regulation .07.

8. A description of how this plan is incorporated into the local process for considering and approving development projects.

## REGULATION 01: BUFFER

### INTRODUCTION

A Buffer is a required element of the Critical Area law, and hence, of the Program. Generally, buffers are areas of natural or planted vegetation that are used to separate land and water uses and to filter pollutants in land run-off before they enter receiving waters.

Buffers have been established in a number of shoreline protection programs in other states and regions. Each differs with respect to its functions and widths and the kinds of activities permitted to occur within them. In some programs, buffers were established partly for scenic or aesthetic purposes, a function not provided for under the Critical Area law. In others they have been prescribed to protect water quality or fish and wildlife resources.

An extensive review of these other programs was undertaken to determine which of the buffer concepts would be applicable to the Chesapeake Bay and the Maryland Critical Area Program. The Commission determined that a buffer, to fulfill the objectives of the Law, should serve the following functions: filter land run-off; prevent disturbance to wetlands, shorelines and stream banks; maintain an area of transitional habitat between aquatic and upland communities; protect stream water quality; and protect riparian habitat.

How wide must a buffer be to provide all of these functions? The buffer width of other programs varies depending on the resources being protected and type of activity or disturbance being addressed. For example, a minimum 150-foot buffer has been recommended between septic systems and streams where nitrate pollution is a problem. For wildlife protection, a 300-foot corridor or buffer has been used in certain instances. For commercial logging on flat land, a 50-foot buffer is often recommended. The Commission decided that a 100-foot wide minimum buffer would be appropriate for Maryland conditions in order to enable this area to fulfill the desired functions indicated above and the objective of the Law.

### CRITERIA REQUIREMENTS

The criteria generally require the establishment of a minimum 100-foot naturally vegetated or planted buffer landward from the Mean High Water Line of tidal waters or from the edge of tidal wetlands or tributary streams. The tidal limits are shown on the State Wetland Maps. Streams are those perennial and intermittent streams in the Critical Area which are so noted on the most recent U. S. Geological Survey 7½ minute topographic quadrangle maps or as noted on more detailed maps or studies

cited by the local jurisdiction. The Buffer must be expanded to include adjacent hydric or highly erodible soils or steep slopes as defined in the criteria.

Within the Buffer, new development activities are generally not permitted including structures, roads, parking areas and other impervious surfaces, mining and related facilities, septic systems and the substantial alteration of existing facilities or structures. Also, no clearing of new agricultural land within the Buffer is permitted. However, as indicated in Chapter 3, certain activities and structures necessarily associated with water-dependent facilities may be permitted within the Buffer. In addition, commercial harvesting of trees beyond the first 50 feet of the Buffer along tidal waters and perennial streams and to the edge of intermittent streams is allowed under certain circumstances and provided that the cutting is conducted pursuant to a buffer management plan. Similarly, cutting of trees in the Buffer is allowed for personal use, providing that such trees are replaced on an equal basis; for horticultural purposes; to prevent stream blockage or damage to buildings from falling trees; to install needed shore erosion protection measures; to prevent extensive pest or disease infestation; or to prevent a threat from fire. A summary of allowed and restricted activities in the Buffer is shown in Table 3.

In some parts of the Critical Area, residential, commercial or industrial uses already exist within the Buffer area and in such cases, all of the functions of the Buffer, as stated above, could not be served. In these areas, local jurisdictions may request an exemption from the Buffer requirements, providing that alternative measures for achieving the water quality and habitat protection goals of the Buffer are proposed. Such measures may include public education programs for shorefront homeowners which would address topics such as minimizing fertilizer run-off from lawns or the value of leaving natural vegetation at the shoreward edge of the property. Other appropriate measures could include neighborhood-sponsored habitat protection or water quality programs. Where these exempted areas are re-developed, the criteria require that the Buffer be established.

In addition to the above exemption, the Critical Area Law specifically provides that existing agriculture be allowed to continue within the Buffer area. However, as a Best Management Practice, the criteria require the establishment of a minimum 25-foot vegetated filter strip on all existing agricultural fields within the Buffer. Guidelines for the composition and width of the filter strip are described in the criteria. This strip is to be maintained until the Soil Conservation and Water Quality Plan, required for all farms in the Critical Area, is being implemented and specifies alternative measures for achieving water quality and habitat protection goals equivalent to the filter strip. It is anticipated that the Commission will work with the Soil Conservation Service and the Maryland Department of Agriculture to develop guidelines for such alternative measures. In regard

TABLE 3  
ALLOWED, RESTRICTED AND PROHIBITED  
USES IN THE BUFFER

<u>TYPE OF USE</u>	<u>RESTRICTIONS</u>
1. New Development Activities (Structures, roads, parking areas, impervious surfaces, mining and septic systems)	Not allowed, except for water-dependent facilities (See below)
2. Alteration of Existing Structure	Minor alterations allowed; substantial alteration prohibited
3. Agriculture (Except livestock operations)	Existing farming and construction of farm-related structures permitted, except that a 25-foot filter strip is required to be established. (This strip may later be modified or eliminated). New or expanded farming operations which require the cutting or clearing of existing natural vegetation in the Buffer are prohibited.
4. Agriculture (Livestock operations)	Feeding and watering must be set back 50 feet from the water's edge; grazing is permitted, providing that it does not disturb stream banks or shorelines.
5. Commercial Harvesting	Allowed only for selection cutting or the clearcutting of Loblolly pine to within 50 feet of the shoreline or perennial streams or to the edge of intermittent streams, providing that the cutting does not occur in a Habitat Protection Area described in this Chapter and is done pursuant to a buffer management plan.
6. Other Cutting or Clearing of Trees	Allowed only for the following purposes:

\* For personal use providing that Buffer functions are not impaired and trees cut are replaced;

\* To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank.

\* In conjunction with horticultural practices used to maintain the health of individual trees.

\* To provide access to private piers;

\* To install or construct an approved shore erosion protection device or measure.

\* To install or construct a water-dependent facility.

\* To protect forests from extensive pest or disease infestation or threat from fires.

\* To manage the Buffer so that it can achieve its habitat and water quality functions.

7. Water-Dependent Facility

Allowed subject to the requirements and limitations of Chapter 3.

8. Shore-Erosion Protection Device or Measure

Allowed subject to the requirements and limitations of Chapter 4.

to livestock, the criteria require that the feeding and watering of livestock be set back 50 feet from tidal waters and tributary streams, but that grazing is permitted within the Buffer provided that such grazing does not disturb stream banks, shorelines or Habitat Protection Areas described in this Chapter. Also, implementation of a grassland and manure management program is required for livestock operations in the Buffer.

New agricultural land cannot be created by the cutting or clearing of existing natural vegetation within the Buffer. When agricultural activity ceases, or agricultural land is proposed to be used for other purposes, the Buffer is required to be established. Thus, where new residential development of existing farm land occurs, the Buffer requirements would have to be observed.

### PROGRAM IMPLEMENTATION

The criteria provide for the establishment and management of the Buffer. It is suggested that local jurisdictions use the following process in meeting these requirements.

1. Establish the Buffer - Using the State's tidal wetlands maps, local jurisdictions should delineate the Buffer on tax maps or other appropriate instruments so that property owners and local officials are aware of the Buffer boundary. The area of the Buffer along intermittent streams should be specifically designated in order to note where commercial timber harvesting operations may be permitted to the edge of such streams, if they meet the other requirements of this section.
2. Determine Buffer Management Guidelines - The criteria require that the Buffer is to be managed to fulfill the following functions:
  - a) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in run-off entering the Bay and its tributaries;
  - b) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
  - c) Maintain an area of transitional habitat between aquatic and upland communities;
  - d) Maintain the natural environment of streams; and
  - e) Protect riparian wildlife habitat.

Generally, a relatively mature forested condition with

understory vegetation and an undisturbed forest floor would best enable the Buffer to fulfill these functions. Achieving such a condition should be the goal of buffer management plans prepared for any commercial harvesting in the Buffer and should guide cutting that is conducted by private land owners for personal use. The Commission recognizes, however, that particular conditions of existing development, microclimate, shore erosion and adjacent land use will affect the extent to which these conditions can be maintained or achieved. In order to provide for these differences, local jurisdictions should develop overall management guidelines for the Buffer area along their shorelines, and include a description of such guidelines as part of the Habitat Protection Plan referred to in Chapter 10 and discussed in the Introduction to this Chapter.

The Buffer Management guidelines should be developed in cooperation with the Coastal Resources Division of the Tidewater Administration and the Maryland Forest, Park and Wildlife Service. They should specify management goals for the Buffer area based on the following factors:

- a) Presence of habitat protection areas as identified in this Chapter (e.g., non-tidal wetlands, habitats of threatened and endangered species and species in need of conservation, plant and wildlife habitat areas, anadromous fish spawning streams).
  - b) Contiguous riparian forests.
  - c) Buffer providing a wildlife corridor or connecting mature forest areas.
  - d) Extent of adjacent disturbance (i.e., extensive residential or other development).
  - e) Adjacent agricultural lands.
  - f) Rate of shoreline erosion.
3. Establish Buffer Regulations - Local jurisdictions are required to provide, by regulation or other appropriate means, that the Buffer restrictions described in this Section shall be observed. Other restrictions, limitations, or non-regulatory means (e.g., community oriented programs) proposed pursuant to managing the Buffer to achieve the goals previously stated, should be included in the local program submission.
4. Buffer Exemption - The criteria provide that if the existing pattern of residential, industrial, commercial, or institutional development prevents the Buffer area from fulfilling the functions listed earlier, the local jurisdiction may request an exemption of such areas from the Buffer requirements. In requesting an exemption,

the local jurisdiction would need to do the following:

- a) Demonstrate that existing development patterns prevent the Buffer from fulfilling its functions; and
- b) Propose alternative measures for achieving the water quality and habitat protection functions of the buffer. Alternative measures may include, but are not limited to, urban forestry, stormwater management, erosion control, and public education programs. The Maryland Forest, Park and Wildlife Service, the Commission staff, and the Coastal Resources Division of the Tidewater Administration will be able to assist local jurisdictions in developing such alternative measures.

It should also be noted that any new, expanded or redeveloped industrial or port-related water-dependent facility planned by the local jurisdiction could only occur in an area exempted from the Buffer requirements. If such developments are planned, local jurisdictions should include this information in their program submission.

## REGULATION 02: NON-TIDAL WETLANDS

### INTRODUCTION

Non-tidal wetlands are valuable areas for fish and wildlife habitat, are vital to the maintenance of water quality in adjacent or downstream waters and provide flood control benefits. No Statewide measures have heretofore been instituted to protect these areas. In these criteria, the Commission has identified certain types of non-tidal wetlands which have significance for the protection of water quality and habitat and has provided for their protection. Protection measures include a requirement for establishing buffers around the wetlands and minimizing land disturbances in their watersheds.

### IDENTIFICATION

The criteria apply to those non-tidal wetlands classified as "palustrine", a term used to describe fresh-water wetlands that contain trees, shrubs, emergent plants or lichens and such wetlands occurring in tidal waters of very low salinity (less than one-half parts of salt per 1,000 parts of water). The other types of wetlands and deep water habitats which are not addressed by these criteria include: Marine (occurring in the open ocean); Estuarine (occurring in estuaries such as the Chesapeake Bay); Riverine (occurring in river channels); and Lacustrine (occurring in lakes or resevoirs). Generally, Palustrine wetlands are called fresh-water marshes, swamps or bogs, as distinguished from the tidal wetlands found throughout most of the Bay. They occur at or near the heads of tributary streams, or in depressions in upland areas where the water table is at, or near the surface or where the soil or substrate is covered by shallow water at some time during the growing season. There are eight classes of Palustrine wetlands, however, these criteria only address four of these: Aquatic Bed, Emergent, Forested, and Scrub-shrub. Details of the wetlands classification system may be found in the following publication:

Classification of Wetlands and Deepwater Habitats of the United States, Publication FWS/OBS-79/31, December 1979, Fish and Wildlife Service, U. S. Department of the Interior.

Non-tidal wetlands in the Critical Area have been mapped by the U.S. Fish and Wildlife Service as part of the National Wetlands Inventory using the classification system described in the above publication. The maps are at a scale of 1" = 2,000' and are housed in and copies are available from, the Wetlands Division of the Water Resources Administration, Maryland Department of Natural Resources. Each wetland is delineated and identified by a code which indicates the system, class, subclass and water regime of that wetland. The wetlands afforded protection in the Critical Area Program have the characteristics shown in Table 4.

TABLE 4

Non-Tidal Wetland Types  
 Afforded Protection in the  
 Critical Area

Ecological System	Palustrine (P)
Class	Aquatic Bed (AB)
Subclass	All Subclasses (1-7)
Class	Emergent (EM)
Subclass	All Subclasses (1-6)
Class	Scrub/Shrub (SS)
Subclass	All Subclasses (1-7)
Class	Forested (FO)
Subclass	All Subclasses (1-7)

The criteria require local jurisdictions to identify and provide protection for the Palustrine wetlands of one acre or larger, which are described above and identified on the National Wetlands Inventory Maps. Other such non-tidal wetlands of any size not shown on the Inventory Maps must also be protected if it can be shown by site survey or other means at the time of application for a development activity, that the wetland is hydrologically connected to streams, tidal wetlands or tidal waters. Finally, protection measures are required for other non-tidal wetlands which are determined to be of special significance to fish, wildlife or plant habitat by the Maryland Natural Heritage Program, the Coastal Resources Division, or the Maryland Forest, Park and Wildlife Service of the Department of Natural Resources, the local jurisdiction, or other appropriate agencies. It is expected that the latter identifications will be made prior to the completion of the local jurisdiction's Critical Area Program. If such wetlands are subsequently found or identified, and protection measures are required, local hearings must be held to consider public comments on these measures.

The Commission recognizes that the scale of the National Wetlands Inventory (1" = 2,000') may be too large to permit an identification of a wetland for regulatory purposes (e.g., for evaluation of a subdivision proposal). Rather than conducting a field check of each wetland prior to submitting their Critical Area Program, local jurisdictions may wish to use the wetland maps as "flags", and propose a process for site survey at the time an activity is proposed which could disturb a wetland.

#### PROTECTION REQUIREMENTS

The criteria require two types of protection measures for the non-tidal wetlands identified above. First, a minimum 25-foot buffer is to be established around the wetland within which new development activities, or other activities which may disturb the wetland, are prohibited. To the extent practicable, the 25-foot buffer should be kept in, or returned to, natural vegetation. Encroachment into the 25-foot buffer may be permitted if findings are made that the activity proposed will not adversely affect the wetland or the wildlife contained therein.

In addition, local jurisdictions are required to protect the hydrologic regime of wetlands by minimizing land disturbances in their drainage areas. Such a disturbance might include a proposal to substantially increase the amount of impervious surfaces in the watershed of the wetland. In this instance, runoff from these surfaces should be controlled so that the pre-development surface and subsurface water regime of the wetland is maintained. Local jurisdictions should also require an applicant for a development activity in those watersheds to determine that the activity will not impair an off-site wetland.

## MITIGATION REQUIREMENTS

Alterations to non-tidal wetlands located within the Buffer are not permitted. Under some circumstances, alterations to non-tidal wetlands located outside the Buffer in the Critical Area may be permitted. Such alterations must be associated with activities or operations which are either 1) water dependent; or 2) of substantial economic benefit. The proposer of the activity must demonstrate that either of these conditions apply. It must also be shown that the alteration is both necessary and unavoidable in executing the activity or operation. That is, there are no alternative measures or sites available which could be used to avoid the wetland alteration. If, using these tests, the impact is still unavoidable, then the proposer of the activity is required to prepare a plan for mitigating the alteration.

Mitigation means compensating for the impact by replacing, or providing a substitute for, the wetland. The plan is to show measures to be used for providing water quality benefits and plant and wildlife habitat equivalent to that of the wetland to be altered or destroyed. The mitigation measure should be effected as near to the affected wetland as possible. Mitigation is not required for alterations to temporarily flooded or drier wetlands where the alteration is the result of diking, draining, or filling associated with the creation of new agricultural land. The grazing of livestock in the wetland is not generally considered to have adverse impacts because it is assumed that the grazing will occur infrequently.

Mitigation plans for non-agricultural activities which are submitted to local jurisdictions must be submitted for comment to the Coastal Resources Division of the Department of Natural Resources. Where the water quality function of the wetland is significant, the plan may also be submitted to the Office of Environmental Programs of the Department of Health and Mental Hygiene. The U.S. Fish and Wildlife Service, Annapolis Office, has particular experience and competence in wetlands mitigation and should, in most cases, also review such plans. If the local jurisdiction intends to approve a project, it must find that the plan as proposed or modified to address agency comments, provides sufficient mitigation, and it must direct the proposer to implement the required mitigation measures.

Mitigation plans for agricultural operations are to be reviewed by the local Soil Conservation District with the assistance of the Department of Natural Resources. However, the Commission expects that local jurisdictions will conduct the initial reviews of such proposed wetland alteration since the jurisdiction must evaluate the project with regard to its economic benefit and whether alternative measures exist to the project.

The Commission expects to provide guidance in the future to local jurisdictions for assessing whether projects represent "substantial economic benefits" and for determining the kinds of analyses that applicants should conduct to demonstrate that alternatives to the project were pursued and found not to be feasible.

**REGULATION 03: THREATENED AND ENDANGERED SPECIES AND SPECIES IN NEED OF CONSERVATION**

**INTRODUCTION**

Plant and animal habitat protection is required by the Critical Area Act. Elsewhere in the regulations (Regulation .04 of Chapter 9), criteria have been developed to protect certain plant and animal communities of Statewide significance. In this Regulation, the Commission addresses those particular species whose continued existence are in question, or are in jeopardy as determined by the Secretary of the Maryland Department of Natural Resources or the Secretary of the U. S. Department of the Interior. The limited distribution of the habitats of these species make them highly susceptible to local land disturbances. Protection measures are specified for the habitats of these species and a variety of approaches are suggested for local jurisdictions to develop programs to achieve their protection. Also included are provisions for public hearings in connection with local protection programs.

**IDENTIFICATION**

Designations of threatened and endangered species have been made by the Secretary of Natural Resources. Those which are known or thought to inhabit or occasionally use habitats in the Critical Area are the following:

<u>Species</u>	<u>Critical Area County of Existing Occurrence</u>
Bald Eagle	All but Baltimore
Delmarva Fox Squirrel	Cecil, Kent, Queen Annes, Talbot, Dorchester, Somerset, Wicomico Worcester
Peregrine Falcon	Dorchester, Somerset

No designations have been made of "species in need of conservation". However, candidate species are presently under review by the Department of Natural Resources and it is anticipated that some designations will be made in 1986. The Commission will review any such species to determine if they occur in the Critical Area and the extent to which they could be afforded protection under these criteria. The Commission will inform local jurisdictions if protection programs for such species will be required as part of the Critical Area Program. If additional species are designated by the Secretary in the future, local jurisdictions are required to develop protection measure within 12 months of the Secretary's designation.

## CRITERIA REQUIREMENTS

The criteria direct local jurisdictions to develop protection programs for all of the habitats of the species designated above which occur in the Critical Area within the jurisdiction. The Commission intended that such programs be a cooperative effort between local jurisdictions and State agencies, particularly the Maryland Natural Heritage Program and the Maryland Forest, Park and Wildlife Service, and any other appropriate agency or organization with expertise in the protection of these habitats.

Two approaches to habitat protection are proposed in the criteria. Local jurisdictions must use either of these or both where necessary. They are:

- 1) Designate a protection area around the habitat(s) where disturbance (such as from new development or the cutting of trees) would be prohibited unless it could be shown that such disturbances would not cause adverse impacts on the habitats or species being protected.
- 2) Develop protection programs which can include acquisition of the habitat, conservation easements, cooperative agreements with landowners, specific provisions in local regulations, and other such measures as listed in the criteria [Section C(2)(b)].

## PROGRAM IMPLEMENTATION

In order to develop the protection programs indicated above, local jurisdictions will need to have maps showing the location of the habitats. Such maps will be made available by the Maryland Forest, Park and Wildlife Service or the Maryland Natural Heritage Program. Protection measures for the habitats are to be developed in a joint effort between the local jurisdiction and these agencies.

Protection measures may be developed in either of two ways. Local jurisdictions may determine measures for each of the habitats during program development. In this case, the public hearing process on the local Critical Area Program will satisfy the public review requirement of the criteria. Alternatively, local jurisdictions may elect to defer development of protection measures for each habitat until such time as an activity is proposed which might adversely affect the habitat. If this approach is used, a process should be described in the program submission which would ensure that protection measures are applied in a timely and effective manner and that they would be subject to adequate public review.

## REGULATION 04: PLANT AND WILDLIFE HABITAT

### INTRODUCTION

The Critical Area Act requires that protection be given to wildlife and plant habitat. The Commission sought to focus this broad mandate by identifying, and providing protection for, only those plant and wildlife habitats which are of particular significance from a State-wide or local perspective owing to their uniqueness, rarity or likely diminution in the future, and which are not already protected or addressed by other existing programs. Under these guidelines, habitats identified for protection include: colonial water bird (herons, egrets, terns and glossy ibis) nesting areas; aquatic areas of historic waterfowl concentration; riparian forests (for example, forested areas of 300 feet in width along streams and the Bay's shoreline); relatively undisturbed, large forest patches (for example, those of 100 acres or more) which support breeding populations of forest interior dwelling birds (such as vireos, warblers, flycatchers and woodpeckers); certain plant and animal communities which are the best examples of their kind in Maryland; and other areas determined to be of local significance. In general, protection measures for these habitats permit some development and forestry activities to occur in or near such areas if they are conducted in a manner that conserves the wildlife and plants contained therein.

### IDENTIFICATION

The habitats required to be protected in this Section are as follows:

1. Colonial water birds (herons, egrets, terns and glossy ibis) - These species of birds congregate or colonize during the nesting season and such nesting sites are found in relatively few areas. Most of these sites have been identified and mapped by the Maryland Forest, Park and Wildlife Service and this information will be made available to local jurisdictions. The designations will be made on the State wetlands maps.
2. Waterfowl staging and concentration areas - The criteria require protection of waterfowl in their historic aquatic staging and concentration areas. Such areas have been identified and mapped by the Maryland Forest, Park and Wildlife Service and will be made available to local jurisdictions on the State wetlands maps. It is recognized that in some areas of historic concentration, waterfowl may not be present currently because of the disappearance of submerged aquatic vegetation beds. However, the Commission assumes that restoration of these beds is a possibility in the future and that

these areas should not be usurped by other uses.

3. Riparian forests - These forest areas are afforded protection where they contain breeding populations of forest interior dwelling birds. Such species are listed in Table 5. The criteria suggest that forests of 300 feet or more in width adjacent to the Bay shoreline, tidal wetlands or tributary streams would support populations of such birds. However, 300 feet is intended to be a general guideline and populations may be present in narrower forests or absent in wider ones.

The Maryland Forest, Park and Wildlife Service will be able to assist local jurisdictions in the mapping of those riparian forests likely to support forest interior dwelling birds. Designations will be made on the State wetlands maps. These designations may be considered as "flags" so that more detailed site surveys can be made at the time that a new development activity or timber harvesting is proposed in order to document the presence of these birds during the breeding season. It should be noted that such surveys can only be done during the breeding season and must be carried out using standard biological survey techniques. The Commission will, in the future, issue further guidance on the identification and protection of these species.

4. Large forest areas - The same requirements and considerations discussed above for riparian forests apply to these areas. The Maryland Forest, Park and Wildlife Service will assist local jurisdictions in mapping these areas. The mapping should include the identification of any existing forest corridors between riparian and upland forests or between upland forests, which may serve as corridors for the movement of the bird species shown in Table 5, as well as other animals.
5. Other important plant and wildlife habitat areas - The criteria provide that protection be given to other important plant or wildlife habitat areas which may, in the future, be identified by State and federal agencies. It is expected that the Commission will develop guidelines for including such habitat areas in the Critical Area Program and providing for their protection.
6. Other plant and wildlife habitat of local significance - Local jurisdictions are enabled to provide protection for plant and wildlife habitat areas determined to be of local significance. The criteria do not limit the kinds of habitats which may be afforded protection under this provision, however, such areas should be identified in the local Critical Areas Habitat Area Protection Plan.

TABLE 5

List of Forest Interior Dwelling Bird Species  
 Afforded Protection in the Critical Area

<u>COMMON NAME</u>	<u>SCIENTIFIC NAME</u>
Flycatcher, Acadian	<i>Empidonax virescens</i>
*Hawk, red-shouldered	<i>Buteo lineatus</i>
Ovenbird	<i>Seiurus aurocapillus</i>
*Owl, barred	<i>Strix varia</i>
*Redstart, American	<i>Setophaga ruticilla</i>
Tanager, scarlet	<i>Piranga olivacea</i>
Vireo, red-eyed	<i>Vireo olivaceus</i>
Vireo, yellow-throated	<i>Vireo flavifrons</i>
Warbler, black-and-white	<i>Mniotilta varia</i>
*Warbler, hooded	<i>Wilsonia citrina</i>
*Warbler, Kentucky	<i>Oporornis formosus</i>
*Warbler, Swainson's	<i>Limnothlypis swainsonii</i>
*Warbler, worm-eating	<i>Helmitheros vermivorus</i>
*Waterthrush, Louisiana	<i>Seiurus motacilla</i>
Whip-poor-will	<i>Caprimulgus vociferus</i>
Woodpecker, hairy	<i>Picoides villosus</i>
Woodpecker, pileated	<i>Dryocopus pileatus</i>

\* Species especially sensitive to disturbance

7. Natural Heritage Areas - These areas are communities of plants and animals which contain endangered or threatened species or species in need of conservation and which have been formally designated as Natural Heritage Areas by the Secretary of the Department of Natural Resources. No such areas have been designated to date. When they are, local jurisdictions will be notified and provided with appropriate maps and suggested Protection measures.

### PROTECTION MEASURES

The criteria require that certain protection measures be provided for the habitats listed previously.

For all of these habitats, local jurisdictions may wish to use the mapping or other designation described above to generally delineate such areas, but to develop site-specific protection measures only when a new development activity or other potential disturbance (i.e., timber harvesting) is proposed. If local jurisdictions elect this option, a process should be presented in their local program to ensure that the habitats would be adequately protected. Site-specific protection measures should be developed cooperatively by the local jurisdiction, and the Maryland Forest Park and Wildlife Service, the Maryland Natural Heritage Program, the Tidewater Administration, and where appropriate, the U. S. Fish and Wildlife Service.

1. Colonial water birds - Two measures are indicated in the criteria. First, the nesting habitats of these species should be protected from physical alteration such as from new development or from other activities such as timber harvesting. Second, these habitats should be protected from disturbance during the Spring nesting season. Disturbance to nesting birds might include construction activity and pile driving, activities that disrupt breeding birds and which can be fatal to young or cause flight by adults. It is recommended that protection measures for each site be developed cooperatively by the local jurisdictions and the Maryland Forest, Park and Wildlife Service.
2. Waterfowl staging and concentration areas - These are afforded protection only when new water-dependent facilities (as described in Chapter 3) are proposed which could adversely affect such areas. The criteria require that these facilities shall be so located as to avoid disturbance to waterfowl using these concentration areas.
3. Riparian forests - The criteria provide that where development activities or the cutting or clearing of trees occur in these areas, that such activities are conducted in a manner that conserves forest interior dwelling species and their habitat. A number of techniques or measures are

TABLE 5

List of Forest Interior Dwelling Bird Species  
Afforded Protection in the Critical Area

<u>COMMON NAME</u>	<u>SCIENTIFIC NAME</u>
Flycatcher, Acadian	Empidonax virescens
Ovenbird	Seiurus aurocapillus
*Hawk, red-shouldered	Buteo lineatus
*Owl, barred	Strix varia
*Redstart, American	Setophaga ruticilla
Tanager, scarlet	Piranga olivacea
Vireo, red-eyed	Vireo olivaceus
Vireo, yellow-throated	Vireo flavifrons
Warbler, black-and-white	Mniotilta varia
*Warbler, hooded	Wilsonia citrina
*Warbler, Kentucky	Oporornis formosus
*Warbler, Swainson's	Limothlypis swainsonii
*Warbler, worm-eating	Helmitheros vermivorus
*Waterthrush, Louisiana	Seiurus motacilla
Whip-poor-will	Caprimulgus vociferus
Woodpecker, hairy	Picoides villosus
Woodpecker, pileated	Dryocopus pileatus

\* Species especially sensitive to disturbance

suggested for accomplishing these purposes such as site design requirements, and specific protection provisions in Forest Management or Soil Conservation Plans. Protection also must be afforded to forested corridors between riparian areas and upland forests so that those areas can continue to serve as passageways between habitat areas.

4. Large forest areas - Protection measures are the same as No. 3 above.
5. Other plant and wildlife habitat - No specific protection measures are suggested for these habitats although a buffer area around such sites is required where it would be appropriate. It is anticipated that any habitats identified would be protected on a site-specific basis using best professional judgement. The Commission expects that when these areas are proposed by State or federal agencies for protection, that protection measures appropriate to the species and the site would accompany such proposals and would be implemented cooperatively with the local jurisdiction.
6. Plant and wildlife habitat of local significance - Protection measures for these habitats are left to the discretion of the local jurisdiction.
7. Natural Heritage Areas - These areas are to be protected from development activities or the cutting or clearing of trees by measures that would: a) maintain the structure of the plant community of the site; and b) ensure that the overall species composition of the plant and animal community is retained. No specific measures are proposed in the criteria.

#### PROGRAM IMPLEMENTATION

The criteria require local jurisdictions to develop a Plant and Wildlife Habitat Protection Program as an element of their Critical Area Program. The Commission expects that appropriate agencies in the Maryland Department of Natural Resources, and the U. S. Fish and Wildlife Service will assist in the development of these Programs. The Program has two elements, identification of the habitats and providing for their protection.

As indicated earlier, the maps or other material required for habitat identification will be furnished to local jurisdictions. The Commission also expects to have copies of these maps, therefore, unless they are reformatted or re-mapped, local jurisdictions need not submit them with their program document as long as they are adequately identified and dated. However, evidence should be presented to demonstrate that each of the habitats has been afforded protection.

Protection measures may be developed in either of two ways. Local jurisdictions may determine measures for each of the habitats during program development. In this case, the public hearing process on the local Critical Area Program may satisfy the public review requirement of the criteria. Alternatively, local jurisdictions may elect to defer development of protection measures for each habitat until such time as an activity is proposed which might adversely affect the habitat. If this approach is used, a process should be described in the program submission which would ensure that protection measures are applied in a timely and effective manner and that they would be subject to public review. In both cases, the Commission expects that the measures selected would result from a cooperative effort between the local jurisdictions and the appropriate State and federal agencies.

## **REGULATION 05: ANADROMOUS FISH PROPAGATION WATERS**

### **INTRODUCTION**

The Commission addressed the requirement of the Act to conserve fish habitat by considering, on a species by species basis, the extent to which fish habitat protection could be achieved by the Critical Area Program and whether protection measures would duplicate or overlap already existing State and federal programs. The Commission concluded that anadromous fish, because they spawn in or move through tributary streams in the Critical Area, could be effectively addressed in the program. Moreover, such species have substantial economic benefit to the State's economy, but have undergone severe declines in abundance over the past decade apparently due to deteriorating water quality. Maintaining or improving the quality of their spawning areas or their access to such areas was thus determined to be an appropriate Commission objective. The criteria contain protection measures to maintain or improve the physical condition of spawning streams, and to minimize land disturbances in the watersheds of such streams which may have adverse impacts on the water quality of spawning areas.

### **IDENTIFICATION**

Anadromous fish propagation waters are those streams tributary to the Bay where rockfish, yellow perch, white perch, shad and river herring spawn or where such spawning has occurred in the recent past. Identification of these streams has been made through field surveys conducted by the Fisheries Division of the Maryland Tidewater Administration. All tributary streams have been surveyed except for several on the lower Eastern Shore and that area will be completed in the Spring of 1986. The Tidewater Administration will provide this information to local jurisdictions. It should be noted that in some cases spawning occurs upstream from the initial planning area boundary for the Critical Area (e.g., beyond 1,000 feet upstream from the head of tide). The criteria require the protection of only those portions of the streams and their watersheds which are located within the Critical Area. However, local jurisdictions are encouraged to extend the protection measures to all portions of these watersheds.

### **PROGRAM IMPLEMENTATION**

The criteria contain two general categories of protection measures. One addresses activities occurring within streams, the other is concerned with disturbances on the land in the watersheds of such streams.

Stream Protection - The criteria propose four protection measures for stream and streambank habitats:

- 1) Prohibit the introduction or installation of concrete, riprap or other artificial surfaces onto the bottom of anadromous fish spawning streams. This requirement is intended to prevent the artificial alteration of stream bottoms so that natural conditions are maintained for fish passage to and from the spawning areas. It does not prevent the installation of devices or measures to control streambank erosion.
- 2) Prohibit channelization or other physical alterations which change the course, circulation, velocity and other characteristics of a stream if such an alteration would adversely affect the movement of anadromous fish.
- 3) Prohibit the construction or placement of dams or other structures that would interfere with fish movement. A similar requirement is contained in existing State law, but it applies only to streams draining watersheds of 400 acres or more. The criteria require this protection measure on all anadromous fish spawning streams in the Critical Area regardless of the size of their drainage areas.
- 4) Prohibit construction or repair activities from occurring within streams, or within the Buffer along such streams, between March 1 and May 15. This requirement is also similar to that of existing State Regulations except that the March 1st date is two weeks earlier than that provided for in COMAR 08.05.03.09B(4). It is expected that the latter soon will be revised to match the Critical Area criteria.

Local jurisdictions should, by regulation or other appropriate means, provide for the adoption of these stream protection measures.

Watershed Protection - In this section, local jurisdictions are required to develop policies and programs to minimize disturbances in the watersheds which drain into these streams. These policies and programs are to address the following:

- 1) Minimize development activities or other land disturbances;
- 2) Maintain or improve stream water quality;
- 3) Minimize the discharge of sediment to the stream; and
- 4) Maintain or increase the vegetative cover of the watershed.

The overall goal of these requirements is to promote a relatively undisturbed condition in these watersheds by limiting the extent of new development and maintaining as much natural vegetation as possible. The criteria do not contain explicit directions to local jurisdictions for developing appropriate policies and programs, but it is the Commission's intent that these watersheds should be targeted for special protection from disturbance and that any development which is proposed would be undertaken in a manner which is especially sensitive to potential individual and cumulative adverse effects on the stream's water quality. The policies and programs necessary to meet these objectives are required to be shown in the local jurisdiction's Critical Area Program as part of the Habitat Protection Area Plan. Also required is the mapping or other designation of the watershed areas of the streams within the Critical Area.

APPENDIX A

SUMMARY OF REQUIREMENTS FOR  
LOCAL CRITICAL AREA PROGRAMS<sup>1</sup>

CHAPTER

PROGRAM REQUIREMENT

2 (DEVELOPMENT)

- \* Map lands in Intensely Developed, Limited Development or Resource Conservation Areas; determine acreage in each category as of December 1, 1985; develop a method for keeping an account of changes in these categories.
  - \* Determine acreage of such lands which are tidal wetlands or in federal ownership.
  - \* Show location of any Habitat Protection Areas on such maps.
  - \* Establish policies for directing new intense development away from the Critical Area.
  - \* Provide by regulation, or other appropriate means, for the limitations required for new and expanded solid waste collection or disposal facilities or sanitary landfills.
- Intensely Developed Areas
- \* Identify any existing stormwater management problems and adopt corrective measures.
  - \* Identify any existing water quality problems caused by existing development and develop strategies for reducing these impacts.
  - \* Develop a means for determining water quality conditions at sites proposed for new development or redevelopment.
  - \* Require, by regulation or other means, that new development or redevelopment will reduce pollutant loadings by at least 10% below pre-development levels.
  - \* Require that future development will use cluster development practices to the extent practicable.

<sup>1</sup> This is a checklist only; the criteria themselves should be referred to for program development purposes.

- \* Provide that tree cutting associated with development is minimized and that forest resources of the site are enhanced.
- \* Provide for the siting requirements for new ports and industries using water for transportation; request exemption from the Buffer requirements where applicable.
- \* Provide by regulation or other appropriate means that permeable areas shall be established in vegetation, where practicable.
- \* Establish programs to maintain and enhance public access to the shoreline.
- \* Establish biological resource enhancement programs.

Limited Development Areas

- \* Provide that any new development proposed shall observe the requirements for identifying and protecting the following environmental or natural features:
  1. Habitat Protection Areas
  2. Streams
  3. Wildlife corridors
  4. Forests and developed woodlands
  5. Steep slopes
  6. Soils with development constraints
- \* Adopt other measures to address: limits on impervious surfaces; modifications to existing road standards; clustering of future development; and requiring observance of existing State laws and regulations governing sediment control and stormwater management.

Resource Conservation Areas

- \* Provide that new industrial or commercial facilities are not to be allowed in RCA's.
- \* Adopt regulations or programs which ensure that new development does not exceed a density of one dwelling unit per 20 acres.

- \* Consider and use various measure for maintaining lands in agriculture and forested uses.
- \* Require that new development shall conform to the standards set forth in the LDA.
- \* Develop programs to: 1) require land management practices consistent with the requirements of Chapters 5, 6, and 9 of the criteria; 2) promote the use of agricultural and conservation easements; 3) promote the continuation of forestry, agriculture and natural habitat; and 4) ensure that the overall acreage of forests and woodlands does not decrease.

#### Expansion of Development

- \* If no expansion of development is planned, no action is required.
- \* If expansion is to be proposed, the following information is required to be included:
  - 1) Show how the areas designated conform to the locational criteria for such expansion;
  - 2) Show how the proposed expansion was developed in coordination with, and meets the growth needs of, municipalities.
  - 3) Show how such expansion affects the jurisdictions total Critical Area growth allocation.
- \* If expansion of existing IDA's or LDA's into the RCA is to be proposed (see discussion on pp. 6-8) the jurisdiction is to show why such expansion cannot be sited according to the locational requirements in the criteria.

#### Intrafamily Transfers

- \* If a jurisdiction wishes to include provisions for intrafamily transfers of land in the Resource Conservation Area, it must submit to the Commission the following:
  - 1) Conditions of approval for such transfers (see pp. 18-19);
  - 2) Standards and procedures by which the jurisdiction will permit subsequent conveyance of lots to persons other than immediate family members, and
  - 3) Provisions for limiting the transfers to those Special Conditions listed on p. 19.

#### Grandfathering

- \* Establish, by appropriate means, the grandfathering provisions of the criteria.
- \* Determine the effects of any grandfathered or developing parcels on the jurisdictions growth allocation.

3. (WATER-DEPENDENT FACILITIES)
- \* Develop planning process for locating water-dependent facilities.
  - \* Provide by regulation or other appropriate means that water-dependent facilities will be permitted in the Buffer.
  - \* Provide by regulation or other appropriate means for the requirements governing each type of water-dependent facility described in Regulations .06 - .10.
  - \* Request Buffer exemption, if applicable.
  - \* Identify areas suitable for aquaculture.
4. (SHORE EROSION PROTECTION)
- \* Map shoreline areas according to erosion rates.
  - \* Adopt policies for achieving shore erosion control objectives.
5. (FOREST AND WOODLAND PROTECTION)
- \* Prepare Forest Preservation Plan
    1. Map or designate forests and developed woodlands
    2. Communicate requirements for Forest Management and Sediment Control Plans to landowners
    3. Develop incentives for converting other land uses to forests.
  - \* Designate a local agency with which Forest Management Plans will be filed.
6. (AGRICULTURE)
- \* Prepare Agriculture Protection Plan
    1. Identify and map agricultural lands.
    2. Communicate to agricultural land owners the requirements of the criteria.
    3. Identify any Habitat Protection Area on agricultural lands.
    4. Adopt programs to: Incorporate agricultural components of the State 208 Plan; protect agricultural lands; protect Habitat Protection Areas; require Forest Management Plans for timber harvests on farms.

- \* Direct agricultural land owners to have prepared Soil Conservation and Water Quality Plans.
  - \* Establish by regulation or other appropriate means, the requirements relating to:
    1. Alterations to non-tidal wetlands.
    2. Clearing of agricultural lands on erodible soils and steep slopes.
    3. Preparation of Soil Conservation and Water Quality Plans.
    4. Clearing of land in the Buffer.
7. (SURFACE MINING)
- \* Notify existing mining operations of the Buffer requirements.
  - \* Identify and map lands with known mineral resources.
  - \* Adopt limitations on future mining operations.
  - \* Consider protecting mineral resource sites with future extraction potential.
  - \* Propose post-excavation land use of mineral resource sites.
  - \* Provide by regulation or other appropriate means that mining of a site shall be completed within 25 years.
8. (NATURAL PARKS)
- \* Identify areas where Natural Parks could be established.
  - \* Consider conserving the geological and biological resources of such areas.
9. (HABITAT PROTECTION AREAS)
- Buffer
- \* Prepare Habitat Protection Area Plan.
  - \* Designate Buffer on appropriate instruments, (i.e., tax maps)
  - \* Develop Buffer Management Guidelines.
  - \* Establish by regulation or other appropriate means, the Buffer requirements.
  - \* Request Buffer exemption, where appropriate.

Non-Tidal Wetlands

- \* Identify non-tidal wetlands as described in the criteria.
- \* Establish by regulation or other appropriate means, the 25-foot buffer around non-tidal wetlands.
- \* Establish means to protect the watersheds of such wetlands when new development activities or other land disturbances are proposed.
- \* Establish means for requiring, reviewing, and implementing mitigation plans.
- \* Map the habitats of these species.

Threatened and  
Endangered Species  
and Species in Need  
Of Conservation

- \* Specify protection programs and specific measures for such habitats - or - describe a process for protecting such areas at the time an activity is proposed which could disturb the habitats.

Plant and Wildlife  
Habitat

- \* Identify and map or otherwise designate, the areas described in the criteria.
- \* Specify protection programs and specific measures for such areas - or - describe a process whereby protection can be provided at the time an activity is proposed which could disturb these habitats.

Anadromous Fish Spawning  
Streams

- \* Identify such streams and their watersheds in the Critical Area.
- \* Provide by regulation or other appropriate means, for the stream protection measures required.
- \* Adopt policies and programs to minimize disturbance in the watersheds of such streams.



JUDGE SOLOMON LISS  
CHAIRMAN

STATE OF MARYLAND  
**CHESAPEAKE BAY CRITICAL AREAS COMMISSION**  
DEPARTMENT OF NATURAL RESOURCES  
TAWES STATE OFFICE BUILDING  
ANNAPOLIS, MARYLAND 21401  
301-269-2418 or 269-2426

SARAH J. TAYLOR, PhD  
EXECUTIVE DIRECTOR

COMMISSIONERS

May 28, 1986

- William Bostian  
Wicomico Co
- Ann Sturgis Coates  
Town of Snow Hill
- Clarence Du Burns  
Baltimore City
- James E. Gulman  
Anne Arundel Co.
- Parris Glendening  
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- Mary Roe Walkup  
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Dear Commission Member:

This is to remind you that the next Commission Meeting will be on June 4th, 1986, at the Maryland Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis. It will begin at 4:00 p.m. and end by 6:00 p.m. A copy of the minutes of May 14th are enclosed for approval at the meeting and an agenda is enclosed as well. The agenda focusses on those topics which were requested at the May meeting.

Also provided is a copy of the final version of the Handbook entitled "A Guide to the Chesapeake Bay Critical Area Criteria" as approved at the last meeting as well as a final copy of the "Program Review Policies, Map Development and Panels".

I look forward to seeing you on the 4th of June.

Sincerely,

*Solomon Liss*  
Solomon Liss  
Chairman

SL/jjd

CABINET MEMBERS

- Torrey C. Brown, M.D.  
Natural Resources
- Wayne A. Cawley, Jr.  
Agriculture
- William Eichbaum  
Health and Mental Hygiene
- Ardath Cade  
Economic and Community Development
- Constance Lieder  
Planning

*Coastal Resources  
State Dept  
Div*

MEMORANDUM OF UNDERSTANDING

ENTERED INTO this 2nd day of May, 19 86, by and between the State of Maryland, Chesapeake Bay Critical Area Commission, D-4 Tawes State Office Building, Annapolis, Maryland 21401 (hereinafter "Commission",)

and the

State of Maryland, Department of Natural Resources, Tidewater Administration Coastal Resources Division, C-3 Tawes State Office Building, Annapolis, Maryland 21401 (hereinafter "Division").

ARTICLE I - GENERAL SCOPE OF MEMORANDUM

This memorandum constitutes an Agreement between the Commission and the Division to develop a consultation process concerning any and all consistency determinations made pursuant to §307(a) of the Federal Coastal Zone Management Act, that may affect the Chesapeake Bay Critical Area. Such consultation is required under Natural Resources Article §8-1814(b), Annotated Code of Maryland, the Chesapeake Bay Critical Area law.

ARTICLE II - MEMORANDUM REPRESENTATIVES

The following individuals shall have authority to act, in accordance with the terms of this Memorandum, for their respective parties:

Sarah J. Taylor, Executive Director  
Chesapeake Bay Critical Area Commission

Jacob N. Lima, Director  
Coastal Resources Division, Tidewater  
Administration

Should either or both of these representatives become unavailable, (a) substitute representatives(s) may be named by their respective supervisors(s), with adequate notice to the other representative.

ARTICLE III - DETAILED SCOPE OF MEMORANDUM

(1) The Division shall make available to the Commission, in a timely manner and prior to the issuance of formal State consistency determinations, proposed findings concerning any and all consistency determinations for federal actions which could in any way affect the Chesapeake Bay Critical Area. That area is defined as, at a minimum, all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide, all State and private wetlands, and all land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides, together with any inclusions or exclusions proposed by local jurisdictions and approved by the Commission.

(2) The Commission staff shall review the above-noted proposed findings and determine whether a review of the entire proposed federal action submission is necessary. If determined necessary, the Division shall make such submission available for

that review.

(3) Commission staff shall prepare a summary of its reviews for consideration at the next monthly Commission meeting, along with any recommendations on individual cases. After consideration by the full Commission, the Commission's recommendations, if any, shall be forwarded to the Division. The formal §307(a) consistency determination of the Secretary of the Department of Natural Resources may not be issued until the Commission's recommendations, if any, are received and taken into account. This process will constitute the consultation required under Natural Resources Article §8-1814(b), previously noted.

(4) In the case of State consistency determinations in which the State's allowed review period does not permit the delay that may be engendered by this full process, the consideration by and recommendation of the Chairman of the Commission, with notice to the full Commission, may substitute for the Commission's recommendation.

ARTICLE IV - MODIFICATIONS TO SCOPE

Any changes to this Memorandum must be made in writing and must be agreed to by both parties to the Memorandum.

ARTICLE VI - MERGER

This Memorandum embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations, referring to the subject matter, other than those contained herein.

IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed on the day and year first above written.

State of Maryland  
Chesapeake Bay Critical Area  
Commission

Veronica Nicholls  
WITNESS

By *Sarah J. Pyles* (SEAL)

State of Maryland  
Department of Natural Resources  
Tidewater Administration  
Coastal Resources Division

Susan E. Smith  
WITNESS

By *James J. Juma* (SEAL)

\_\_\_\_\_  
WITNESS

BY \_\_\_\_\_ (SEAL)

Approved as to form and legal  
sufficiency this 2nd day  
of May 1985.  
*Alfred M. Gault*  
Assistant Attorney General