

Committee Meetings & Correspondence July 1987

USA S1832-35



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JUDGE SOLOMON LISS
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING, D-4
ANNAPOLIS, MARYLAND 21401
301-269-2418 or 269-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

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June 22, 1987

Dear Commission Member:

The July meeting of the Chesapeake Bay Critical Area Commission is scheduled for the 1st of July from 4:00 - 6:00 p.m., at the Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis. Minutes from the June 3rd meeting are attached.

The item of importance is approval from the Commission to repromulgate the State and Local Agency Critical Area Program Regulations in draft form. As this requires a vote of the membership, I urge all of you to attend.

Please bring with you the June 3rd draft of the "Changes Proposed to State and Local Agency Critical Area Program Regulations" distributed at the last meeting. An extra copy is provided in this packet.

I look forward to seeing you on the 1st.

Sincerely,

Solomon Liss / SGL
Solomon Liss,
Chairman

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

SL/jjd

Enclosures

AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

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

July 1, 1987

4:00 - 6:00 p.m.

1. Approval of the Minutes of
June 3rd
Solomon Liss
Chairman
2. Presentation and Discussion on
the Changes Proposed to State and
Local Agency Critical Area Program
Regulations
J. Kevin Sullivan
3. Update on the Classes of Application
for Project Approval of Which the
Commission Wishes to Receive Notice
Carolyn Watson
4. New Business
Solomon Liss
Chairman, Lee
Epstein
 - a) Supreme Court Decision
5. Old Business
Solomon Liss
Chairman
 - a) Review Process

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
June 3, 1987

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:

Thomas Jarvis	Victor Butanis
Robert Price, Jr.	Samuel Bowling
Ronald Hickernell	Assistant Secretary Cade
G. Steele Phillips	Samuel Turner, Sr.
Shepard Krech	Albert Zahniser
Kay Langner	Secretary Lieder
Deputy Secretary Eichbaum	James E. Gutman
Secretary Brown	William Bostian
Parris Glendening	Thomas Osborne
Ronald Karasic for	Louise Lawrence for
Judge Brown	Secretary Cawley

The minutes of May 6th meeting were approved as written.

Under New Business

Lee Epstein discussed the matter of interpreting certain criteria concerning the definition of Limited Development Areas. The criterion in question concerns an area's "having public sewer or...water, or both". Mr. Epstein, in an advice of counsel memo to Chairman Liss, noted that the phrase means "sewer or water lines must be present in the ground; planned or programmed construction is not enough to trigger this criterion. This clarification was sought by one of the counties, and Chairman Liss wanted to send copies of the advice to the other local jurisdictions. A motion was made and seconded to authorize the Chairman to send the memo to the jurisdictions, and all were in favor.

Mr. Epstein then referred to correspondence by Linda Nabb of Dorchester County to DNR, requesting clarification of Natural Heritage Areas with respect to the Critical Area. Mr. Epstein explained that the Heritage Program has identified and designated Natural Heritage Areas, and that it is the responsibility of each jurisdiction to propose its own management and protection program for these areas, under the local Critical Area Program. It was suggested that Chairman Liss send a clarifying letter together with the correspondence from Ms. Nabb, to all local jurisdictions. A motion was made and seconded and all were in favor.

The Commission had received correspondence requesting the explanation of what constitutes a completed Program. Dr. Taylor said that the intent of responses she drafted was to clarify the status of local programs, and she shared a memo that was proposed to be sent to all jurisdictions for this purpose.

Dr. Taylor then informed the Commission that Kay Langner would be taking Ann Coates' place on the County/Municipal Subcommittee.

Under Old Business

Dr. Sullivan was then asked to give a status report on the State Regulations. He said that he has received comments from various agencies as well as the Commission staff. He then proceeded to discuss each of the changes with the Commission. It was decided that the Commission would review the remainder of the changes and vote upon them at the next Commission meeting.

Mr. Nick Motta and Mr. Lonnie Darr of the Department of Environmental Resources of Prince George's County were then introduced to give a presentation of their computer assisted database and digitized mapping and geographic information system. They demonstrated a custom-written mapping concept that they had developed for retrieval of information regarding property boundaries as they relate to the Critical Area. The program DRAGONFLY has quantitative data used to interact with the graphical information, LACEWING, to create graphics (maps).

Mr. W. Patrick Beaton of Rutgers University was then introduced to report on his study of the impact of the Critical Area Legislation on county real estate markets. He presented preliminary data on land sales in several Critical Area counties and pointed out that more definitive information would be presented to the Commission in the Fall.

There being no further business, the meeting was adjourned.

AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

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

July 1, 1987

4:00 - 6:00 p.m.

1. Approval of the Minutes of June 3rd
Solomon Liss
Chairman
2. Presentation and Discussion on the Changes Proposed to State and Local Agency Critical Area Program Regulations
J. Kevin Sullivan
3. Update on the Classes of Application for Project Approval of Which the Commission Wishes to Receive Notice
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4. New Business
Solomon Liss
Chairman, Lee Epstein
a) Supreme Court Decision
5. Old Business
Solomon Liss
Chairman
a) Review Process

Distributed during
the June 3rd mtg.

Changes Proposed
to State and Local
Agency Critical Area
Program Regulations

for
Critical Area Commission
Review: June 3, 1987



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TORREY C. BROWN, M.D.
SECRETARY

JOHN R. GRIFFIN
DEPUTY SECRETARY

STATE OF MARYLAND

DEPARTMENT OF NATURAL RESOURCES

ENERGY ADMINISTRATION
POWER PLANT SITING PROGRAM

TAWES STATE OFFICE BUILDING
ANNAPOLIS 21401

(301) 269-2261

May 8, 1987

Dr. Sarah Taylor, Executive Director
Chesapeake Bay Critical Area Commission
580 Taylor Avenue, D-4
Annapolis, MD 21401

Dear Dr. Taylor:

I offer the following comments on the proposed regulations, "Chesapeake Bay Critical Area Commission - Development in the Critical Area Resulting from State and Local Agency Programs," on behalf of the Power Plant Research Program (PPRP).

Section 14.19.04, "State or Local Agency Actions Resulting in Major Development on Private Lands or Lands Owned by Local Jurisdictions," describes regulations concerning the licensing of power plants. Section 14.19.04.02.B states that approval for development in the Critical Area must be sought from the Commission. While the regulations set forth the information which must be submitted by the applicant, they are silent on the review process. In the extreme, one could assume this review could involve hearings on various findings and documentation provided by the applicant. It is conceivable that such a review could duplicate the extensive review process required by the Public Service Commission (PSC) prior to the granting of a Certificate of Public Convenience and Necessity authorizing construction. Such duplication would not be in the public interest.

PPRP suggests that the regulations be revised to either accept findings of fact as determined by the PSC or require joint hearings with the PSC. The PSC regulations were recently revised to accommodate such joint hearings. These revisions were designed to accommodate legislation (both federal and state) enacted subsequent to PSC law which requires additional approvals or permits in the licensing of power plants.

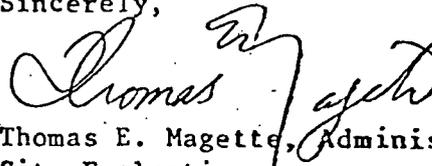
Section 14.19.04.02.C(2) of the proposed regulations states that an applicant should submit an evaluation of a project's effect on the appropriate local jurisdiction's growth allocation. It is our understanding that Critical Area Commission staff have taken the position that a power plant site would not be considered a part of a local jurisdiction's growth allocation. If this is correct, we would like to request that this position be officially noted for the record. If this is the position of the Critical Areas Commission, can it

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be assumed that construction of a power plant would have no effect on a local jurisdiction's growth allocation? The regulations should be clarified on this point.

Section 14.19.04.02E states that the Commission shall approve, deny, or request modifications to a proposed development. There is no indication, however, of the length of time during which the review shall be conducted. The Commission should be bound to deliver a decision within some specific time, e.g., 120 days, of the completion of the record.

Sincerely,



Thomas E. Magette, Administrator
Site Evaluation

TEM:ra

cc: Michael F. Hirshfield
Thomas C. Andrews
Marianne Mason
Pam Quinn
John Dorsey, PSC

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Comment: PPRP letter

① Judge Liss believes that joint hearings between the CAC and the PSC are appropriate. The following addition to 14.19.07 is suggested:

.02 Review Procedures.

A. For the purpose of reviewing the development proposals listed in Regulation .01, above, the Commission may establish panels, pursuant to Regulation .03, below, or it may undertake these reviews by the full Commission.

B. The Commission may seek public comment on proposals for development and may hold public hearings for this purpose except that any proposed development that adversely affects the growth allocation of a local jurisdiction, as described in COMAR 14.15.02.06, shall require a public hearing.

C. If appropriate, public hearings shall be held in the local jurisdiction in which the proposed development would be located. If the development is located in, or would affect, more than one jurisdiction, the Chairman shall decide in which of the jurisdictions the hearing should be held.

D. At a hearing, the Commission or its panel shall hear the comments of the public concerning the proposed development and may entertain a presentation by the sponsoring State or local agency. The Commission shall limit comment by the public to relevant matters within the scope and purview of the Commission and shall make and keep a full record of the proceedings.

E. For purposes of reviewing applications for power plants in the Critical Area, the Commission shall hold joint hearings, as appropriate, with the Public Service Commission. The Critical Area Commission may establish a panel for this purpose as provided for in Regulation .03 below.

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② It is agreed that Commission approval of development in an area classified as RCA by a local jurisdiction should not reduce the jurisdiction's RCA acreage nor should it diminish the growth allocation acreage. The following changes are suggested:

14.19.04 State or Local Agency Actions Resulting in Major Development on Private Lands or Lands Owned by Local Jurisdictions

.01 Definition.

"Major development" means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area Program of a local jurisdiction. This development includes, but is not limited to, airports, power plants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.

.02 Criteria.

A. New major development which is caused by State or local agency actions shall, to the extent practical, be located outside the Critical Area.

B. If the siting of this development in the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area, the State or local agency responsible for the development, or the agency proposing a capital project, or the private sponsor, shall seek approval for the development from the Commission.

C. In seeking approval, the agency or the private sponsor shall submit the following information to the Commission:

(1) Findings, supported by adequate documentation, showing the extent to which the project or development is consistent with the provisions and requirements of the Critical Area Program of the local jurisdiction within which it is located; and

(2) An evaluation of the effects of the project on the Critical Area Program of the local jurisdiction, or jurisdictions within which it is located, including any effects on the jurisdiction's growth allocation as described in COMAR 14.15.02.06.

D. Upon receipt of a request for approval, the Commission shall seek comments on the proposed development from the affected local jurisdictions and from the general public.

E. The Commission shall approve, deny, or request modifications to, the proposed development based on an assessment of the effects of the development on the criteria described in COMAR 14.15, and on the approved local Critical Area Program which may be affected by the development. Appeal of the Commission's decision may be made according to the provisions of COMAR 14.15.02.06.

F. Commission approval of development in an area that has been designated as Resource Conservation Area by the local jurisdiction shall not have the effect of diminishing the acreage of Resource Conservation Area within that jurisdiction nor diminishing the acreage of growth allocation as described in COMAR 14.15.02.06.

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Also, for state-owned lands:

ON REGULATIONS

(1) The commencement of construction or the issuance of requests for proposals for site design, development, or engineering;

(2) Before the final project planning phase for a major transportation capital project as defined in Transportation Article, §2-103.1, Annotated Code of Maryland.

C. If the Commission finds that the development as proposed or modified is inconsistent with these regulations, then that development may not proceed.

D. Appeals of the Commission's final decision may be made according to the procedures set forth in COMAR 14.19.08.

E. Rather than seeking approval for individual projects or actions as provided in §B, above, State agencies may seek a general approval from the Commission for programs or classes of activities that result in development on State-owned lands in the Critical Area. Agencies wishing to apply for general approval shall submit the following information to the Commission:

(1) A description of the program or class of activities;

(2) An assessment of the extent to which development resulting from the program or class of activities will be consistent with the criteria described in Regulations .03 — .14 of this chapter; and

(3) A proposed process by which the program or class of activities could be so conducted as to conform with the requirements of the regulations cited above.

F. The Commission may seek comments from any affected local jurisdictions in the Critical Area, or from the general public, on any proposed general approval for State agency programs or activities.

G. The Commission may approve requests for general approval upon considering the comments of the affected local jurisdictions and after finding that the programs or activities conform with the requirements of Regulations .03 — .14 of this chapter. In approving these requests, the Commission may condition, or request modifications to, the program or class of activities. The Commission may also establish a termination date for any general approval and specify the conditions by which an agency shall be required to seek renewal of a general approval.

H. Appeal of the Commission's decision may be made in accordance with the provisions of COMAR 14.19.08.

Commission approval of development on any State-owned lands that have been designated by a local jurisdiction as Resource Conservation Area shall not have the effect of diminishing the acreage of Resource Conservation Area within that jurisdiction.

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③ Project review period is already provided for in 14.19.07. No change is needed.

COMMISSIONERS

Robert M. Potter
Chairman

Robert P. Will
Vice Chairman

Henry T. Arrington
Ada Koonce Blumenschein
Gilbert B. Lessenco
Jesse L. Maury

Richard G. Hovevar
General Manager



B
WASHINGTON SUBURBAN
SANITARY COMMISSION

4017 Hamilton Street • Hyattsville, MD 20781 • (301) 699-4000
Department of Engineering • 8103 Sandy Spring Rd. • Laurel, MD 20707

May 12, 1987

Dr. Sarah Taylor
Executive Director
Chesapeake Bay Critical Areas Commission
580 Taylor Avenue, D-4
Annapolis, Maryland 21401

Dear Dr. Taylor:

The Washington Suburban Sanitary Commission has completed its review of the proposed regulations for guiding development by State agencies within the Critical Areas and wishes to thank you for the opportunity. In reading the regulations, it is evident that many hours and much thought went into their evolution. You and your staff are to be commended.

We wish to bring to your attention, however, one item that we believe could drastically impact our legal mandate to supply sewage treatment capabilities to Prince George's and Montgomery Counties. As you are aware, the WSSC plans expansion of its water and sewer facilities based on ten year growth projections approved by the two County governments. While there are no plans for expansions at either the Western Branch (Patuxent River) or Piscataway (Potomac River) wastewater treatment facilities, which are both within the Critical Areas, you can be assured that sometime in the future one or both will have to be physically enlarged. Our concern lies in the fact that although agreements can be reached between the CAC and this agency allowing some construction in the Critical Areas around our plants, in the distant future when all of the participants involved in such an agreement are gone, a strict interpretation of the regulations by a future CAC could preclude expansions at Western Branch and Piscataway. This could have a drastic economic impact throughout the bi-County area.

Western Branch and Piscataway plants are our only facilities within the Critical Areas and represent a small percentage of the total Critical Areas in Prince George's County. We also have a critical need to locate our facilities in these areas; sewerage system termination points and a finished water outfall adjacent to the Patuxent and Potomac mandates this.

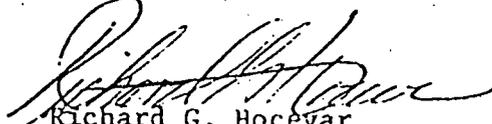
It is our request that the CAC consider adding language to the proposed regulations allowing limited development within the Critical Areas for public safety and health reasons (e.g., water or wastewater treatment) given that proper justification is supplied and mitigative measures required. We will be glad to meet with any of your staff to discuss this further so that mutually agreeable language can be developed. Our contact for your staff would be Mr. William Kennedy of our Environmental Services Unit. He can be reached on (301) 441-4370.

B
Dr. Sarah Taylor
May 12, 1987
Page 2

It is not our intention to delay the CAC in this important endeavor to protect the Chesapeake Bay, instead we only wish to point out what we see from a local viewpoint as a potentially negative impact on Prince George's and Montgomery Counties.

Our general assessment of these regulations is that they will aid in protecting lands along the tidal areas of the Chesapeake Bay from uncontrolled development, and in a majority of cases, will enhance those areas with afforestation. We wholeheartedly endorse the concept of the Critical Areas Law and look forward to working with the Critical Areas Commission.

Sincerely,


Richard G. Hovevar
General Manager

cc: Parris Glendening

B

Comment: WSSC letter

The criteria limit new, expanded or redeveloped water-dependent industrial facilities to Areas of Intense Development (AID). The construction of a new STP facility, or the expansion of an existing one, would therefore be prohibited if the project was to occur outside of an existing AID.

WSSC comments raise a larger issue; that is how to accommodate new intense development outside of existing AID's? In other words, how to incorporate the concept of "growth allocation" on State-owned lands. In the case of WSSC, this would involve STP's. For DNR it might involve new recreation facilities that could not be installed under the criteria governing development outside existing AID's (e.g. the LDA development criteria in 14.15).

Language is proposed to resolve this issue.

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(a) For soil erosion and sediment control (COMAR 08.05.01):

(i) In order to prevent soil erosion and sedimentation, a Soil Erosion and Sedimentation Control Plan shall be required whenever a development within the Critical Area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the requirements of Natural Resources Article, §§8-1101 — 8-1108, Annotated Code of Maryland. Sediment control practices shall be appropriately designed to reduce adverse water quality impact.

(ii) Agencies shall require erosion control as the basis of sediment control plans within the Critical Area.

(b) For stormwater run-off (COMAR 08.05.05):

(i) Limitation on Stormwater Run-Off. Development may not cause downstream property, watercourses, channels, or conduits to receive stormwater run-off at a higher volume or rate than would have resulted from a 10-year storm were the land in its predevelopment state.

(ii) Storage Capacity. All stormwater storage facilities shall be designed with sufficient capacity to achieve the water quality goals of this subtitle and to eliminate all run-off caused by the development in excess of that which would have come from the site if it were in its predeveloped state.

(iii) Stormwater management measures shall be consistent with the requirements of Natural Resources Article, §8-11A-01 et seq., Annotated Code of Maryland.

(5) If development on State owned lands will result in adverse off-site impacts on the Critical Area Program of a local jurisdiction, the agency proposing or sponsoring the development shall include with the project description and findings, as described in Regulation .02 of this chapter, the following information:

(a) A description of the expected off-site impacts on the Critical Area Program of any affected local jurisdiction;

(b) A description of any adverse impacts on a local jurisdiction's growth allocation;

(c) A description of the alternatives pursued by the agency to minimize off-site impacts on a local jurisdiction's Critical Area Program, including any measures proposed to mitigate these impacts.

(6) State agencies may propose to the Commission the establishment of new Areas of Intense Development on State-owned lands. Such a proposal must be accompanied by a description of the development planned for such Areas and shall demonstrate that:

a) The development cannot be located outside the Critical Area or in an existing Area of Intense Development;

b) The development provides substantial public benefits and contributes to achieving the goals of the Chesapeake Bay Critical Area Program; ~~and~~

c) The development is consistent with the requirements of § B(2) above and all other applicable requirements of this chapter; and

d) Clustering or other site design measures and practices are to be used to ensure that impervious surfaces, tree clearing, and construction on hydric soils, steep slopes or other sensitive areas, are minimized to the maximum extent practicable.

B

Phone Comment from WSSC:

They are exempt from the requirement of having to obtain grading permits from Prince George's County. (per Bill Kennedy)

Suggest these changes in 14.19.05.03(3)(f)
(ii) and (iii)

(f) In addition, the agency shall adhere to the following criteria for forest and woodland development:
(i) The agency shall assure satisfactory replacement as required by §B(3)(d), above;

(ii) Grading permits ^{if} ~~shall be~~ required before forest or developed woodland is cleared. ^{shall be obtained}

^{required}
(iii) Forests which have been cleared before obtaining a grading permit, or that exceed the maximum area allowed in §B(3)(e), above, shall be replanted at three times the areal extent of the cleared forest;
(iv) If the areal extent of the site limits the application of §B(3)(d), (e), and (f), above, alternative provisions or reforestation guidelines may be developed by the agency if they are consistent with the intent of this chapter to conserve the forest and developed woodland resources of the Critical Area:

~~(v) If the areal extent of the site limits the application of §B(3)(d), (e), and (f), above, alternative provisions or reforestation guidelines may be developed by the agency if they are consistent with the intent of this chapter to conserve the forest and developed woodland resources of the Critical Area:~~



HARFORD COUNTY GOVERNMENT

DEPARTMENT OF PLANNING AND ZONING

May 7, 1987

21

Dr. Sarah Taylor, Executive Director
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
580 Taylor Avenue, D-4
Annapolis, MD 21401

RE: REQUEST FOR COMMENTS - DRAFT REGULATIONS
PURSUANT TO SECTION 8-1814

Dear Dr. Taylor:

This letter is in response to your recent request for input on the proposed draft Critical Areas regulations pertaining to development projects proposed by State and local agencies within the Critical Areas.

Overall, while we believe that the regulations adequately reflect the Commission's Criteria, we do have some specific concerns with some of the proposed language, particularly as it relates to requirements for notification of, or input from, affected local governments. We believe that it is important for local jurisdictions to have an opportunity to review proposed State projects for conformance with local Critical Areas plans and policies.

The following specific comments are offered for your review, with all wording additions being underlined:

1. Section 14.19 05 01 (D) & (E):
 - (D) "At an early stage in the project planning process, agencies shall consult with the Commission and the local government having jurisdiction within which the development is proposed in order to determine...."
 - (E) ~~The Commission's~~ These comments,"
2. Section 14.19 05 02 (F):
"The Commission may shall seek comments from any" Local comments shall also be requested on individual projects on State-owned lands.
3. Section 14.19 06 01 (A):
 - (A) "If development is proposed...from the Commission." The Commission shall require that a public hearing be held for each conditional approval request in order to afford an opportunity for the public and affected local governments to comment on such projects or programs.

Dr. Sarah Taylor

May 7, 1987

Page 2

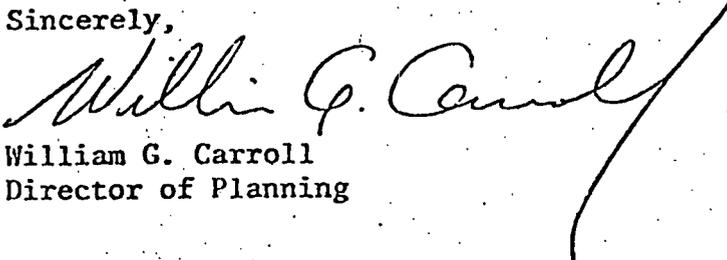
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4. Section 14.19 07 04 (D):
"Certain development.... In these cases...and shall notify the full Commission and any affected local government of his decision within 15 days."

5. Section 14.19 08 02 (B):
(B) "The Commission shall afford...within 15 days of the reconsideration. Affected local governments shall be notified of any requests for reconsideration or notices of appeal, and provided an opportunity to make comments on the proposed reconsideration."

We appreciate having the opportunity to review these proposed regulations, and we hope that our comments are useful. Should you have any questions, please let me know.

Sincerely,



William G. Carroll
Director of Planning

WGC:RAM/lms

CC: Andy Meyer
Earl Bradley

Comments: Harford County letter

① Early consultation with the Commission on planned projects is intended to be conducted informally and it would not be appropriate to mandate such consultation with the ~~Commission~~ local jurisdiction. However the Commission may ask an agency to notify the jurisdiction where such notice is warranted. No action recommended.

② suggest adopting the first change which refers to General Approvals. suggest no action on the second change which would require local notice of all projects on State-owned lands.

shall

F. The Commission ~~may~~ seek comments from any affected local jurisdictions in the Critical Area, or from the general public, on any proposed general approval for State agency programs or activities.

G. The Commission may approve requests for general approval upon considering the comments of the affected local jurisdictions and after finding that the programs or activities conform with the requirements of Regulations .03 -- .14 of this chapter. In approving these requests, the Commission may condition, or request modifications to, the program or class of activities. The Commission may also establish a termination date for any general approval and specify the conditions by which an agency shall be required to seek renewal of a general approval.

H. Appeal of the Commission's decision may be made in accordance with the provisions of COMAR 14.19.08.

③, ④, ⑤

Suggest adopting each of these changes.

③

14.19.06 Conditional Approval of State or Local Agency Programs in the Critical Area

.01 Criteria.

A. If development is proposed to be undertaken or caused in the Critical Area by State or local agency actions and this development is prohibited from occurring by the criteria in this subtitle, the agency proposing the development may seek conditional approval for the project or program from the Commission.

B. In order to qualify for consideration by the Commission for conditional approval, it shall be shown by the proposing or sponsoring agency that the project or program has the following characteristics:

(1) That there exist special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented;

(2) That the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program; and

(3) That the project or program is otherwise in conformance with this subtitle.

C. The conditional approval request shall, at a minimum, contain the following:

(1) A showing that the literal enforcement of the provisions of this subtitle would prevent the conduct of an authorized State or local agency program or project;

(2) A proposed process by which the program or project could be so conducted as to conform, insofar as possible, with the approved local Critical Area Program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 14.19.05; and

(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area Program or, if on State-owned lands, on the criteria set forth in COMAR 14.19.05.

D. The Commission shall hold a public hearing on any request for conditional approval in accordance with the requirements of COMAR 14.19.07.02 and .03.

E. The Commission shall approve, deny, or request modifications to the request for conditional approval based on the following factors:

(1) The extent to which the project or program is in compliance with the requirements of the relevant chapters of this subtitle;

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D. Certain development projects, in order to be undertaken, may require Commission review and approval within a time frame less than that provided in §B, above. In these cases, the Chairman shall be authorized to approve, deny, or condition the request for development and shall notify the full Commission of his decision within 15 days.

and any affected local jurisdiction

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.02 Appeals From Commission Disapproval of Proposed Development.

A. Pursuant to COMAR 14.19.03.01A, 14.19.04.02E, and 14.19.05.02D, a State or local agency or private sponsor whose proposal for development has been disapproved by the Commission may appeal the disapproval to the full Commission for reconsideration.

B. The Commission shall afford the agency another opportunity to be heard on the matter, before the full Commission, within 30 days of receipt of notice of appeal, and shall issue its final decision in writing within 15 days of the reconsideration.

C. A State or local agency, or other party aggrieved by the final decision on reconsideration, may bring whatever appeal or civil action may be appropriate before the courts of this State.

Affected local governments shall be notified of any requests for reconsideration or notices of appeal and shall be afforded an opportunity to comment on such requests or notices.

CITY OF BALTIMORE

CLARENCE "DU" BURNS, Mayor



PLANNING COMMISSION
DEPARTMENT OF PLANNING

LARRY REICH, Director

8th Floor, 222 East Saratoga Street, Baltimore, Maryland 21201

May 22, 1987

Set up mtg.

Dr. Sarah Taylor, Executive Director
Chesapeake Bay Critical Area Commission
580 Taylor Avenue, D-4
Annapolis, MD 21401

Dear Dr. Taylor:

Re: Proposed Regulations Governing State and Local Development in the
Critical Area

The Department of Planning has reviewed the proposed regulations for development in the Critical Area resulting from state and local agency programs as published in the Maryland Register on April 10, 1987. The regulations proposed under 14.19.05.00, particularly as they apply to future development contemplated by the Maryland Post Administration, raise a very difficult issue for the City.

As you know, we are developing our local Critical Area Management Program (CAMP) with provisions for an ambitious offset program within our intensely developed areas. The City's proposed formula for determining the amount of the offset for a given development site is designed to discourage development within the Buffer while generating funds for environmental improvement programs throughout the harbor when such development is unavoidable. Both the offset program and the formula for determining the offset have generally met with local approval thus far. While there are a variety of reasons for the lack of any organized opposition to the City's proposed CAMP, there seem to be two major reasons why the proposal has fared so well to this point: 1) the program spells out clearly, the penalties for incursions into the Buffer; and 2) the program is perceived as being fair to all property owners -- both those in the Critical Area and those in the Buffer.

Your proposed regulations require all state agencies to apply directly to the Commission for Buffer exemptions and project approval without any specific guidelines for achieving the buffer functions by other means. Under the provisions as set forth in 14.19.05.09(8), it appears that state agencies and the Commission will negotiate the exemption for a given development project as well as general compliance with other criteria. Opportunities for local government participation are not clear.

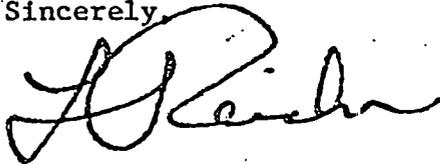
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Dr. Sarah Taylor, Executive Director
Chesapeake Bay Critical Area Commission
May 22, 1987
Page 2

The Maryland Port Administration is one of the major developers of port-related water-dependent uses in the City. Our concern is that we are establishing two sets of rules which may well foster a climate of mistrust along the waterfront. There is already evidence that some property owners feel they will be forced to endure much stricter penalties for developing within the Critical Area than their counterparts in state government. This is particularly disturbing to private port industries that compete in the same markets as MPA (i.e., Ruckert Terminals, Hobelmann, etc.). We are also concerned that such impressions fuel private disinvestment in the Port and will further weaken Baltimore's ability to attract new port-related industries. The City does not want to be put in the position of levying an additional charge (or development cost) on tax paying property that would not apply to comparable tax-exempt property.

I urge you to consider requiring state actions to be consistent with state-approved local Critical Area programs or develop state guidelines for achieving buffer functions that local governments can adopt where exemptions are necessary. I assure you that my staff will cooperate in any way necessary to insure that the City's proposed CAMP will offer the required flexibility to accommodate state development projects necessary to accommodate growth.

Sincerely,



Larry Reich
Director

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Mr. Ron Kreitner
Ms. Rachel Edds
Mr. Bob Perciasepe
Ms. Mary Dolan
Mr. Steven Frank (MPA)
Mr. Tony Serio (MPA)
Mr. Jim Heidel (MDOT)

Comment: Baltimore City letter

The Commission subcommittee that drafted these regulations concluded that any specific action by the Commission (i.e. granting a buffer exemption) on proposed development on State-owned lands should be based on the criteria in these regulations and not ~~on the local jurisdiction's~~ on the local jurisdiction's Critical Area Program.

It is recommended that the buffer exemption issue raised in this letter be handled through the MOU process with the Maryland Port Administration and in consultation with Baltimore City officials.

E

CAC staff comments:

1. Add "Marinas" to water-dependent facility section because such operations do exist on State-owned lands.

Suggested change: Add the following to 14.19.04

new (5)

Marinas and Other Water-Dependent Commercial Maritime Facilities

(a) A. New or expanded marinas and related facilities may be permitted in the Buffer within ~~Intensely Developed Areas and Limited Development Areas~~ subject to the requirements of Regulation ~~14.19.04~~ ^{0.9} above.

(b) B. New marinas or related maritime facilities may not be permitted in the Buffer within ~~Resource Conservation Areas~~, except as provided in Regulation ~~14.19.04~~ ^{0.9} below.

(c) C. Expansion of existing marinas may be permitted ~~by local jurisdictions within Resource Conservation Areas~~ provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina.

(d) D. New and existing marinas shall meet the sanitary requirements of the State Department of Health and Mental Hygiene as required in COMAR 10.17.02.

(e) E. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

Areas of Intense Development

in ~~every~~ locations other than Areas of Intense Development

to occur outside Areas of Intense Development

2. Add "Fisheries Activities" to water-dependent facility section to account for possible new state initiatives in aquaculture and related activities on state-owned lands.

Suggested change to 14.19.04:

Add new section 9 as follows

(9)

~~Commercial~~ Water-dependent fisheries facilities including, but not limited to, structures for crab shedding, fish off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations, and fisheries activities, may be permitted in the Buffer, ~~in Intensely Developed, Limited Development, and Resource Conservation Areas~~

on state-owned lands



Also add Aquaculture to definition section.

B. Criteria.

(1) Except as provided in §B(3) and (4), below, new or expanded development on State-owned lands may occur in the Buffer if it can be shown that:

- (a) It is water-dependent;
- (b) The project meets a recognized public need;
- (c) Adverse effects on water quality, and fish, plant, and wildlife habitat are minimized; and
- (d) In so far as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the Buffer.

(2) If new or expanded water-dependent facilities are proposed on State-owned lands, the agency proposing the development shall consider all of the following factors in identifying areas suitable for these facilities:

- (a) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- (b) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;

(c) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;

(d) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

(e) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(f) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area, generally;

(g) That dredged spoil will not be placed within the Buffer except as necessary for:

- (i) Backfill for permitted shore erosion protection measures;
- (ii) Use in approved vegetated shore erosion projects;
- (iii) Placement on previously approved channel maintenance spoil disposal areas, and
- (iv) Beach nourishment; and
- (h) That interference with the natural transport of sand will be minimized.

(3) Evidence that the factors listed in §B(2), above, have been considered in planning for new or expanded water-dependent facilities shall be included in the agency's project description and statement of findings as provided in Regulation .02 of this chapter.

(4) New, expanded, or redeveloped water-dependent industrial or port-related facilities, or the replacement of these facilities, may only occur in the Buffer in Areas of Intense Development and only if:

- (a) The facility is subject to the requirements of §B(1), above; and
- (b) The area proposed for the facility has been exempted from the Buffer requirements by the Commission as set forth in Regulation .09 of this chapter.

(5) Public beaches or other public water-oriented recreation or education areas on State lands including, but not limited to, publicly-owned boat launching and docking facilities and fishing piers may be permitted in the Buffer if:

- (a) Adequate sanitary facilities exist;
- (b) Service facilities are, to the extent possible, located outside the Buffer;
- (c) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result; and
- (d) Disturbance to riparian and aquatic natural vegetation is minimized.

(6) Areas for passive recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer if service facilities are located outside of the Buffer.

(7) Water-dependent research facilities on State-owned lands may be permitted in the Buffer, if non-water dependent structures or facilities associated with these projects are, to the extent possible, located outside the Buffer.

.05 Shore Erosion Protection Works. (9)**A. Definition and Scope.**

(1) "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.

(2) The criteria below are not intended to apply to those structures necessarily associated with water-dependent facilities in Regulation .04 of this chapter.

B. Criteria.

(1) If shore erosion protection is planned on State-owned lands, the agency proposing the protection shall determine which of the following characteristics describes the shoreline area:

(a) Shoreline areas where no significant shore erosion occurs;

(b) Other eroding areas where non-structural measures would be a practical and effective method of erosion control; or

(c) Eroding areas where only structural measures would provide effective and practical erosion control.

(2) When shore erosion control is undertaken, the measures used shall be appropriate to accomplish the following objectives:

(a) Provide that structural control measures only be used in areas designated in §B(1)(c), above, where non-structural control measures would be impractical or ineffective;

(b) Provide that where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;

(c) Provide that non-structural measures be utilized in areas of erosion as described in §B(1)(b), above;

(d) Provide that structural erosion control measures not be permitted in areas where no significant erosion occurs; and

(e) Provide that if significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change may be used for sites in that area.

.06 Forest and Woodland Protection.**A. Definitions.**

(1) "Developed woodlands" means those areas of 1 acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

(2) "Forests" means biological communities dominated by trees and other woody plants covering a land area of 1 acre or more.

2. Add "Fisheries Activities" to water-dependent facility section to account for possible new state initiatives in aquaculture and related activities on state-owned lands.

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