

Committee Meetings & Correspondence December 1987

USA S 1832-40

*Commissioner*



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

COMMISSIONERS

- William Boston  
Wicomico Co.
- Ann Sturgis Coates  
Town of Snow Hill
- Clarence Du Burns  
Baltimore City
- James E. Gutman  
Anne Arundel Co.
- Parris Glendonig  
Prince George's Co.
- Ronald Hickernall  
Baltimore Co.
- Shepard Krech, Jr.  
Talbot Co.
- Florence Beck Kurdle  
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- John Luthy, Jr.  
Dorchester Co.
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- Robert R. Price, Jr.  
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- J. Frank Reay, Jr.  
St. Mary's Co.
- Harry T. Stine  
Charles Co.
- Samuel E. Turner, Sr.  
Talbot Co.
- Lloyd S. Tyler, III  
City of Crisfield
- Mary Roe Walkup  
Kent Co.
- Albert W. Zahniser  
Calvert Co.

November 25, 1987

Dear Commission Member:

The next Commission meeting will be on December 2, 1987 from 1:00 - 6:00 p.m. at the Department of Agriculture Building, 50 Harry S Truman Parkway, Annapolis.

We will be voting on several Programs at the meeting which are noted on the agenda.

I look forward to your attendance.

Sincerely,

Solomon Liss  
Chairman

CABINET MEMBERS

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

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

Department of Agriculture  
50 Harry S Truman Parkway  
Annapolis, Maryland

1:00 - 1:15	Approval of Minutes of November 18th	Solomon Liss Chairman
1:15 - 1:35	Discussion and Vote on Kent County Program	Charles Davis/ Panel
1:35 - 2:15	Discussion and Vote on Betterton, Millington, Rock Hall, Easton, and Oxford	Kevin Sullivan/ Charles Davis/ Panel
2:15 - 2:40	Discussion and Vote on Baltimore County Program	Marcus Pollock Panel
2:40 - 3:00	Discussion and Vote on the 10% Stormwater Runoff, Guidance Paper No. 5	Kevin Sullivan
3:00 - 3:10	Break	
3:10 - 4:10	Presentation of Cecil County Program and Four Towns	Michael Pugh/ Kevin Sullivan
4:10 - 4:40	Presentation of Centreville Program	Redman/Johnston and Associates/ Charles Davis
4:40 - 5:20	Presentation of Elkton and Chesapeake Beach	McCrone/Carolyn Watson
5:20 - 6:00	Presentation of Pocomoke City	Redman Johnston and Associates/ Ed Phillips
6:00 - 6:15	New Business Old Business	Solomon Liss Chairman

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
November 18, 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:

Ronald Karasic	Samuel Bowling
James Gutman	J. Frank Raley, Jr.
Victor Butanis	Albert W. Zahniser
G. Steele Phillips	Ronald Adkins
Wallace Miller	Thomas Osborne
Samuel E. Turner, Sr.	Shepard Krech, Jr.
Parris Glendening	Secretary Constance Lieder
Depty. Secretary Ardath Cade	Robert Price, Jr.
Eric Van De Verg for	William Bostian
Secretary Randall Evans	Russell Blake

The Minutes of November 4th meeting were approved.

Chairman Liss asked Baltimore County to present their Program to the Commission. Mr. Tim Dugan, Baltimore County Office of Planning and Zoning was introduced and began the presentation with an explanation of the County's mapping approach.

Mr. Osborne asked if a person owns a piece of land with ownership extending beyond the Critical Area, would he be allowed to cluster develop? Mr. Dugan answered affirmatively.

It was then asked whether the local Programs are allowed to include more than 1,000' as part of their Critical Area?

Mr. Epstein explained that the 1,000' area is defined by the statute as the "initial planning area", but that each jurisdiction may extend the area to be included as its Critical Area in its local Program.

Mr. Zahniser asked how much Growth Allocation the County has. Mr. Dugan answered approximately 450 acres.

Dr. Sullivan was asked to introduce the ordinances for the Towns of St. Michaels and Greensboro and Tony Redman of Redman/Johnston Associates was asked to answer possible questions. Dr. Sullivan presented and reviewed a marked-up version of the two Program, as it came out of the panels for the two Towns.

Mr. Gutman asked if there were any outstanding mapping issues. Mr. Redman said that there were none.

Secretary Lieder made a motion that any changes to a Program's mapping, particularly when the Growth Allocation is used, that would constitute an amendment to the Program, and therefore, would require approval by the Commission. The motion was seconded, and carried, 14:4.

Mr. Glendening was asked to give a report on the meeting and hearing of St. Michaels. Mr. Glendening said that the panel was given a site visit, and that the general consensus of the panel was that the Town had been mapped correctly. The hearing went well, with a small debate regarding their RCA.

Mr. Adkins reported on the meeting and hearing of the Town of Greensboro. He said that one issue was the wording of the "modified buffer" section of the Program, and that there was concern regarding the Town's Park and Fairground. There were no mapping disputes per se.

A motion was then made to tentatively approve the Towns of Greensboro's and St. Michaels's local Critical Area Programs conditioned upon the Towns, and their consultants undertaking to make all changes recommended by the Commission, as set out in the staff report of November 18, 1987, endorsed by the panels for the two Towns. The Programs shall be finally approved upon submission, within 30 days, of the finally changed Program documents and ordinances.

Ms. Watson was asked to give an updated report on the proposed revisions to the regulations for notification of project applications. She distributed a memo that included the revisions generated by suggestions from the Environmental Matters Committee and two written comments from Dorchester County's Department of Planning and Zoning, and the Maryland Institute of Homebuilders, Inc. She said that these revisions will be incorporated into the regulations and submitted to the AELR Committee by the end of November.

Chairman Liss began the discussion of the status of the Kent County Program by introducing Wallace Miller who proceeded to bring to the attention of the Commission, a letter that was sent from the Kent County Commissioners to Chairman Liss on November 10th. The letter stated that the Kent County Commissioners were of the opinion that their Program was approved by default since the Critical Area Commission had not rendered a decision on their Program within 90 days of the date that they had delivered the Program to the Commission. Chairman Liss explained that in late

Summer, the Commission had unanimously agreed to a Program review process whereby the 90-day interval would only begin once the Commission staff had determined that the Program submitted was a complete Program. The actual starting date of the 90-day interval would begin on the day that the Commission staff deemed the Program complete and had informed the jurisdiction, in writing, of that fact.

Mr. Adkins brought to the Commission's attention that the procedural agreement of the Commission specified that the completeness review by the staff would be a short interval of several days, and in this case, the completeness review for Kent County took six weeks. He suggested that our policies and procedures should be revised to accurately reflect the time period for the review to take place. Chairman Liss said that this will be examined and that it would be discussed at the next meeting. However, he said that our review process was a reasonable interpretation of the Law, and suggested that the remaining issues be discussed further, between staff and Kent County staff, in order for the Commission to vote upon Kent County's Program at the next commission meeting.

Mr. Miller said that he had no objections to discussing the Program, but reiterated the concerns in the County's letter. Mr. Epstein then noted that he had, upon request, given advice of counsel to the Commission, that its process was statutorily correct. He also noted that a Program must meet minimum element requirements of the statute and the regulations before it could even be considered a Program, and that it was the Chairman's opinion that the Kent Program did not meet these requirements until early September, when the County was so notified; the 90 days began running at that time. A draft entitled Proposed Kent County Critical Area Program: Program Review, Outstanding Issues, November 18, 1987 was then distributed to the Commission, and Mr. Davis briefed the Commission on the outstanding issues. Chairman Liss said that there did not appear to be any issues that could not be readily resolved. He directed Mr. Davis to meet with the County planners, if Mr. Miller had no objections. Mr. Miller agreed that they should meet.

Mr. Price was then asked to give a report on the status of the Growth Allocation Subcommittee. Mr. Price said that no firm decisions have been made as yet, and that the Subcommittee will be meeting on November 30th.

Critical Area Commission  
Minutes - 11/18/87  
Page Four

UNDER NEW BUSINESS

Mr. Bostian asked what the status was of Commission attendance, and what notification is given to absentee Commission members? Chairman Liss answered that he believed attendance to have been at least 60%, and that State Departments have designees. Mr. Bostian pointed out that not all designees have the ability to vote. Mr. Epstein reviewed the statute's membership section. Chairman Liss said that voting privileges are given by the Governor and that it is the duty of each State Department to request a replacement if attendance is to be a continuing problem. Mr. Bostian suggested that the Chairman look into the matter further.

There being no further business, the meeting was adjourned.



JUDGE SOLOMON LISS  
CHAIRMAN

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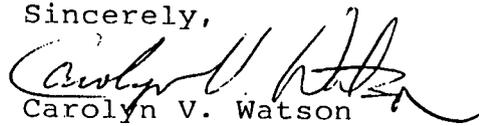
- William Bostian  
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- Albert W. Zahniser  
Calvert Co.

November 17, 1987

Dear Commission Member:

Attached are revisions to the regulations for notification of project applications. The revisions are the result of comments generated from the Environmental Matters Committee and two written comments received from Dorchester County's Department of Planning and Zoning, and the Maryland Institute of Homebuilders, Inc.

Sincerely,

  
Carolyn V. Watson  
Regional Planner

CVW/jjd

Attachments

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

REPROCESSED

Subtitle 20 CHESAPEAKE BAY CRITICAL AREA COMMISSION

Notification of project

14.20.01 Applications for Project Approval

Authority: Natural Resources Article, §8-1811, Annotated Code of Maryland

Notice of Proposed Action [87-215-P]

The Chesapeake Bay Critical Area Commission proposes to adopt new Regulations .01 — .04 under a new chapter, COMAR 14.20.01 Applications for Project Approval.

Section 8-1811 of the Critical Area Law requires the Commission to establish regulations identifying those classes of applications for local project approval of which it wishes to receive notification. The following are the proposed Commission regulations governing the standards for the selection of those projects which the Commission will want to review once the local Critical Area Programs have been approved. These regulations apply to applications for projects approval on privately-owned lands within the Critical Area, and are expected to become effective on or before October 1, 1987. ~~December 1, 1987~~ March 21, 1988.

These regulations

local

which are to be approved or disapproved by the local government.

Estimate of Economic Impact

I. Summary of Economic Impact.

These regulations will benefit the State by affording the Commission a way in which to oversee local program implementation. They will also provide a mechanism to keep the Chairman of the Commission apprised of proposed development within the Critical Area, and to allow the Chairman to initiate or intervene in any administrative, judicial, or other original proceeding or appeal in this State concerning a project approval in the Chesapeake Bay Critical Area, pursuant to Natural Resources Article §8-1812.

Some increased costs may be incurred by the applicant, the local jurisdiction, and the Chesapeake Bay Critical Area Commission. The applicant will be affected minimally with the responsibility for producing one additional copy of the application for development. The local jurisdiction will need to allocate staff time for the submittal of applications to the Commission, and for the preparation of quarterly summaries. It is expected that the Chesapeake Bay Critical Area Commission will be most affected with its need to delegate staff time for the review of and response to all submitted applications, and for the review of the required quarterly summaries.

Semi-annual

The semi-annual report will allow the Commission to monitor development that is occurring in the Critical Area and to evaluate the effectiveness of the criteria

II. Types of Economic Impacts.

Revenue (+) Expense (-) Magnitude

A. On issuing agency: Review of development applications and quarterly summaries (-) \$25,000 — \$30,000

B. On other State or local agencies affected: Submittal of applications and preparation of quarterly reports (-) \$240,000 — \$360,000

Benefit (+) Cost (-) Magnitude

C. On regulated industries or trade groups: (-) \$0 — 5,000
D. On other industries or trade groups affected: NONE
E. Direct and indirect effects on public: NONE

Semi-annual

III. Assumptions. (Identified by Impact Letter and Number from Section II):

Semi-annual

A. The amount indicated ~~will be a budget enhancement request~~ to review and process submitted applications for project approval and quarterly reports. While most of these reviews can be handled by existing staff, it is anticipated that some will be beyond the ability of current staff to evaluate and will be done on a contractual basis.

is contained in the Commission's budget

Semi-annual

B. The amount indicated reflects the fact that the 60 jurisdictions will each have a staff person spend up to 20 percent of work time in the submittal of applications to the Commission and in the preparation of quarterly reports. It is expected that, pursuant to Chapter 794, Laws of 1987, the FY 89 budget will contain monies to assist the local jurisdictions in implementing their critical area programs. The amounts indicated above are not an enhancement, but rather would be a portion of the monies that should be allocated to jurisdictions for their program implementation under the regular budgeting process.

C. The regulated groups (applicants) will be affected minimally with the responsibility for producing one additional application for development.

Expenses reflect processing of the applications, mailing expenses and preparation of reports.

### Opportunity For Public Comment

Written comments may be sent to Dr. Sarah Taylor, Executive Director, Chesapeake Bay Critical Area Commission, 580 Taylor Avenue, D-4, Annapolis, Maryland 21401, or telephone (301) 974-2426, Monday through Friday, 9 a.m. to

4 p.m. Public comment must be received not later than September 16, 1987, at 4 p.m.

If sufficient interest is shown, a public hearing will be held. Copies of these proposed regulations are available from Dr. Taylor at the address given above.

February 4, 1988

#### .01 Definitions.

A. As used in this chapter, the following terms have the meanings indicated.

#### B. Terms Defined.

##### (1) Application.

(a) "Application" means whatever initial forms, documents, plats, or other materials that are officially submitted to the local authority for the approval of subdivision plats, site plans, grading permits, rezoning (including the consideration of areas within floating zones), the issuance of zoning permits, special exceptions, and conditional use permits.

(b) "Application" includes substantial changes to the items in §B(1)(a), above.

(c) "Application" does not include those materials submitted for the approval of building permits.

(2) "Buffer" means all lands and waters defined by the local jurisdiction's approved Critical Area Program pursuant to COMAR 14.15.09.01.

(3) "Business unit" means a non-residential building used for office space, wholesale, or retail marketing.

(4) "Chairman" means the Chairman of the Chesapeake Bay Critical Area Commission.

(5) "Commission" means the Chesapeake Bay Critical Area Commission.

(6) "Critical area" means all lands and waters defined by the local jurisdiction's approved Critical Area Program pursuant to Natural Resources Article, §8-1807, Annotated Code of Maryland.

(7) "Development" means any construction, reconstruction, modification, extension, or expansion of buildings or structures, land excavation, land clearing for non-agricultural or non-forestry purposes, land improvements, or any combination of these.

(8) "Executive Director" means the Executive Director of the Chesapeake Bay Critical Area Commission.

The activities must not unduly affect the condition or use of dry land, land under water, or any structure.

(9) "IDA" means those properties that were designated by the local jurisdiction and approved by the Critical Area Commission as intensely developed areas.

(10) "LDA" means those properties that were designated by the local jurisdiction and approved by the Critical Area Commission as limited development areas.

(11) "RCA" means those properties that were designated by the local jurisdiction and approved by the Critical Area Commission as resource conservation areas.

(12) "Residential use" means the use of a structure by one or more persons for the purpose of maintaining a common household. The cooking or sanitary facilities of the structure are only for the use of the occupants of the structure.

(13) "Subdivision" means the division of a parcel of land into two or more lots for the purpose of transfer of ownership or for development. This includes subdivision pursuant to Natural Resources Article, §8-1808.2, Annotated Code of Maryland, and the creation of a condominium regime pursuant to Real Property Article, §11-101 et seq., Annotated Code of Maryland.

### .02 Application Requirements.

A. The applicant or local approving authority shall submit a copy of a local application to the Executive Director for all categories set forth in Regulation .03 of this Chapter.

B. The application shall be accompanied by a completed cover sheet on a form to be developed by the staff of the Commission. This form may be revised by the staff at any time with the approval of the Chairman or the Executive Director.

C. The Chairman or Executive Director may, at any time, request additional information from either the local approving authority or the applicant if it is necessary for accurate evaluation of the proposed action.

D. Once an application is submitted to the Executive Director pursuant to these regulations, the Chairman, Executive Director, and staff may, after notifying and obtaining approval of the property owner, inspect the subject property.

E. After receipt of a copy of an application from the applicant or local approving authority, the Commission shall send written notice of receipt to the applicant and to the local approving authority before the close of the next business day. A failure of the Commission to send a timely notice shall render §F of this regulation inapplicable as to that application.

F. The local approving authority may not process an application, ~~a copy of which shall be sent to the Commission,~~ until it has received notice of receipt from the Commission, ~~and any action of the local approving authority in violation of this section shall be void.~~

which has been

Any

for notification

To expedite this process, the local jurisdiction may phone the Commission to verify receipt of any given application.

### .03 Categories of Applications of Which the Commission Wishes to Receive Notification.

A. Developments, Subdivisions, and Site Plans Requiring Project Approval.

(1) The local approving authority, or the applicant, shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the critical area, except those specified in §A(2), below.

(2) The following types of developments, subdivisions, and site plans are exempted from §A(1), above, if the proposed development, subdivision, or site plan does not result in a physical disturbance to the buffer:

(a) The following developments, subdivisions, or site plans that would occur wholly or partially within IDAs:

(i) A single family dwelling unit;

(ii) A structure which is accessory to a single family dwelling unit which may include, but is not limited to, a pool, garage, porch, shed, or tennis courts;

(iii) Development in which the land disturbance does not exceed 15,000 square feet.

(iv) Subdivisions resulting in 10 lots or less, or 10 dwelling units or less.

(b) The following developments, subdivisions, or site plans that would occur wholly or partially within LDAs:

(i) Those listed in §A(2)(a)(i) — (iii), above.

(ii) A subdivision resulting in three lots or less which does not affect the local jurisdiction's growth allocation.

(c) Developments, subdivisions, or site plans occurring wholly or partially within RCAs for which the land disturbance does not exceed 5,000 square feet.

B. Rezoning. Including Floating Zones. The local approving authority, or the applicant, shall submit a copy of all initial and subsequent applications for rezoning and floating zones that would occur wholly or partially within the critical area.

C. Special Exceptions, Conditional Uses, or Zoning Variances. The local approving authority, or the applicant, shall submit a copy of all applications for special exceptions or conditional uses which allow industrial, commercial, institutional, non-residential, or multifamily uses that would occur wholly or partially within an LDA or an RCA.

D. Variances. The local approving authority, or the applicant, shall submit a copy of all applications for variances from the local critical area program.

#### .04 Requirements for Quarterly Information on Developments and Subdivisions Within the Critical Area.

A. The local jurisdiction shall submit to the Executive Director, on a quarterly basis, a summary of all applications which have been approved for developments or subdivisions within the critical area, including those developments and subdivisions which are exempted in Regulation .03A(2) of this chapter.

B. The summary in §A shall include at least the following information for each:

(1) Development on an existing parcel:

(a) Name and address of property owner;

~~(b) Address of property;~~

~~(c) Parcel and tax map, ID-number, of development property;~~

~~(d) Designation of property before development (IDA, LDA, RCA);~~

~~(e) Designation of property after development (IDA, LDA, RCA);~~

~~(f) Total acreage of property;~~

~~(g) Total acreage of land disturbed on developed property;~~

~~(h) Type of development proposed which may include, but is not limited to, residential, business, industrial, redevelopment, or mixed.~~

(2) Subdivision for development purposes where buildable lots are created:

(a) Name and address of property owner;

(b) Name and address of developer;

~~(c) Address of property before subdivision;~~

~~(d) Parcel and tax map, ID-number of property before subdivision;~~

~~(e) Designation of property before subdivision (IDA, LDA, RCA);~~

~~(f) Designation of property after subdivision (IDA, LDA, RCA);~~

~~(g) Total acreage of property before subdivision;~~

~~(h) Total number of lots created;~~

~~(i) Total number of building lots created;~~

~~(j) Total number of dwelling units to be developed;~~

~~(k) Range of lot sizes (acres);~~

~~(l) Average size of building lots (acres);~~

Semi-annual

Semi-annual (by January 1<sup>st</sup> and by June 30<sup>th</sup>)

block and parcel data

block and parcel data

(k) ~~Linear~~ Linear waterfrontage, in feet, of property before subdivision;

(l) ~~Type~~ Type of development proposed which may include, but is not limited to, residential, business, industrial, or mixed;

(m) ~~Total~~ Total number of acres disturbed or to be disturbed as a result of development.

(3) Subdivision for non-development purposes where building lots are not created.

(a) Name and address of property owner;

(b) ~~Address of property before subdivision;~~

(c) Parcel and tax map ID number of property before subdivision;

(d) Designation of subject property (IDA, LDA, RCA);

(e) Total acreage of property before subdivision;

(f) Total number of lots created as a result of subdivision;

(g) Range of lot sizes.

~~C. The local jurisdiction shall indicate which developments and subdivisions affect its growth allocation. Information shall be given on how many acres are involved for each project and how many acres of growth are remaining.~~

SARAH J. TAYLOR  
Executive Director

Chesapeake Bay Critical Area Commission

Tax map, block and parcel data of property before subdivision;

The local jurisdiction shall summarize all approved applications which affect its growth allocation. Information shall be given on the amount of growth used and the amount of growth allocation remaining for the local jurisdiction.

## APPENDIX SEVEN

Add the following information to SECTION 1. ESTABLISHMENT OF ZONES, PROVISION FOR OFFICIAL ZONING MAP:

### 3. Official Critical Area Overlay District Maps —

Official Critical Area Overlay District Maps shall be prepared and maintained in force as part of the Official Zoning Maps of the Town. They shall delineate the extent of the Critical Area

Overlay District ("O") that shall correspond to the Chesapeake Bay Critical Area.

a. Within the designated Critical Area, all land shall be assigned one of the following land use management classifications:

- {1} Intensely Developed Area (IDA)
- {2} Limited Development Area (LDA)
- {3} Resource Development Area (RCA)

The land use management classifications shall be as designated in the Town of St. Michaels Chesapeake Bay Critical Area Program, as amended. The Critical Area Overlay District Maps may be amended by the Town Commissioners in compliance with amendment provisions in this ordinance, the Maryland Critical Area Law and Critical Area Criteria.

b. The Critical Area shall include all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- {1} All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- {2} All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and
- {3} Modification to these areas through inclusions or exclusions proposed by the Town of St. Michaels and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

4. Changing the Official Critical Area Overlay District Maps - The Town Commissioners may elect to adjust the Critical Area Boundary to delete areas of the Town from the Critical Area District only at such time as new Official Wetland Maps are adopted by the State of Maryland or an area of the Critical Area has been approved for exclusion. The Town Commissioners may also elect to add areas to the Critical Area at any time. ~~Such~~ changes shall be treated as amendments to the Critical Area Overlay District ("O") on the Official Critical Area Overlay District Map for the Town of St. Michaels.

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and may be accomplished only after review and approval by the Critical Area Commission.

Any 2d  
subst  
or

Add the following item to SECTION 3. APPLICATION OF ZONE REGULATIONS

6. Roads shall be located to avoid disturbances to "Habitat Protection Areas" as described in the Town of St. Michaels Critical Area Program. When no alternative exists and such infrastructure must cross or be located in a Habitat Protection Area the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists.

Add as Subsection "g", Non-Conforming Lots in the Critical Area to SECTION 4 - NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND.

An individual lot or parcel of land located within the Town of St. Michaels Critical Area Overlay District ("O") may be improved with a single family dwelling and related accessory uses in a Resource Conservation Area (RCA) and otherwise developed in accordance with Section 5.10 in a Limited Development (LDA) and an Intensely Developed Area (IDA) provided they comply with the provisions of Section 6.17 ~~Special Buffering Requirements~~ and further provided they comply with the following criteria:

- a. Any legally buildable single lot or parcel of record established in the Town of St. Michaels prior to (date of the Town Critical Area Program Approval) may be improved or developed with **one** single family residence.
- b. Any lot on which development activity has legally progressed to the point of pouring foundation footing or installation of structural members, prior to adoption of the ~~St. Michaels~~ Critical Area Program, will be permitted to complete construction as per existing development approvals (e.g., building permit).
- c. Development may take place on lots created prior to 1 June 1984 subject to the limitations on permitted uses contained in Section 5.10 and subject to the provisions of Section 6.17. However, any development of such lands must comply "insofar as possible" with the Critical Area Criteria if the development occurs between 1 December 1985 and the time the local program is approved. Development after (insert date of Town Critical Area Program approval) on land subdivided prior to 1 June 1984 must comply with the use provisions of Section ? and the provisions of Section ?
- d. Development may take place on lots subdivided between 1 June 1984 and 1 December 1985, for which "interim findings" (Critical Area Law, Section 8-1813) have been made by the Town of St. Michaels Planning Commission, the Town Board of Appeals, or the Town Commissioners.

Buffer Exempt Area provisions

Add "10.", below, to SECTION 5 ZONE REGULATIONS :

10. Critical Area Overlay District - 0

The purpose of the Critical Area Overlay District ("O") is to implement zoning regulations and measures designed to protect and enhance water quality and habitat resources located within the Town's Critical Area. The geographic area for which the following district regulations apply shall be those lands and waters located within one thousand feet of the landward boundaries of all tidal

waters, tidal wetlands and tributary streams in the Critical Area as designated on the St. Michaels Critical Area Overlay District Maps.

The intent of this district is to provide special regulatory protection for the resources located within the Town Critical Area and to foster more sensitive development activity ~~at~~<sup>in</sup> shoreline areas. Another objective is to minimize adverse impacts to water quality and natural habitats.

A Land Use Management District Classifications

1) Within the Town of St. Michaels Critical Area Overlay District ("O") there shall be three land use management area classifications: 1) Intensely Developed Areas (IDAs); 2) Limited Development Areas (LDAs); and 3) Resource Conservation Areas (RCAs) which shall be as shown on the Official Critical Area Maps.

2) These land use management areas correspond to the definitions established in the Chesapeake Bay Critical Area Criteria, as amended, for each area and specifically as identified on the Town of St. Michaels Critical Area maps, adopted as part of the Town's Critical Area Program. Mapped land use management area classifications are based on land uses established on or before 1 December 1985, except for areas where the land classification may be changed by granting the Growth Allocation (GA) ~~and~~ floating zone district classification. The following regulations shall be applied based on the specific land management classification.

COMAR 14.15

B. Density Provisions

1) Density in the Intensely Developed Areas (IDAs) shall be as established in the underlying base zone.

2) The density of development and minimum lot sizes permitted within a Limited Development Area (LDA) shall be governed by prescriptive densities within the applicable underlying base zoning districts. However, in underlying base zoning districts that permit residential use, density may not exceed 3.99 units per acre. Determination of density shall be based on the gross site area of the parcel prior to development ~~for subdivision~~ <sup>for subdivision</sup> ?

3) Residential <sup>dwelling</sup> densities in Resource Conservation Areas (RCAs) shall not exceed one (1) unit per twenty (20) acres regardless of densities permitted in applicable underlying base zones, except as provided below. Determination of density shall be based on the gross site area of the parcel, excluding tidal wetlands, except that in determining residential densities for a site, private wetlands may be included in the calculation of one (1) unit per twenty (20) acre density, provided the development density on the upland portion of the site does not exceed one (1) dwelling unit per eight (8) acres.

4) Minimum lot sizes shall be governed by standards applicable to the underlying base zoning districts.

5) The one (1) <sup>dwelling</sup> unit per twenty (20) acre density limitation shall not prevent a bona fide intrafamily transfer subject to the following

limitations:

d) Intrafamily transfers will be permitted on parcels of land in *St. Michaels* where it is shown that the parcel was recorded on or before 1 March 1986 and such parcel is at least seven (7) acres and not more than sixty (60) acres in size.

→ b) A bona fide intrafamily transfer shall be subject to the <sup>all</sup> requirements of the Town of *St. Michaels* Subdivision Regulations and a notation shall be placed on the final subdivision plat denoting the lot(s) that are created under these provisions.

c) Subdivision of land under the bona fide intrafamily transfer provisions contained herein shall be subject to the following limitations:

i) Parcels 7 acres to less than 12 acres cannot be subdivided into more than a total of 2 lots.

ii) Parcels 12 acres to less than 60 acres cannot be subdivided into more than 3 lots.

d) A lot created pursuant to these provisions may not be subsequently conveyed to any person except as provided herein:

→ i) Where the conveyance is to a member of the owner's immediate family.

need definition

ii) Where the conveyance of the lot is as part of a default on a mortgage or deed of trust.

e) Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. In addition, any lot created under this section may not be transferred or sold to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property, unless and until the Planning Commission has determined that the following can be conclusively proved:

i) A change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer when such circumstances are consistent with the warrants and exceptions contained herein, or;

ii) Other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCAs warrant an exception.

→ f) Deeds of transfer shall include the provisions contained in <sup>(4)</sup> above as covenants which shall restrict the subsequent transfer or sale of a lot or lots created pursuant to the intra-family transfer provisions contained herein to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property.

re-number

C. General Regulations

in Section 6.19.b (Buffer Exemptions Area Provisions)

1) Except as provided below, uses, accessory use and special exception uses permitted shall be those permitted within the applicable underlying base zoning district as shown on the Official Zoning Maps.

2) Buildings, structures, and parking areas are prohibited within the Buffer except the following:

a) Boat houses, community piers, individual private piers, docks, launching ramps, and mooring facilities.

except where community piers are provided in a new development

i) For community piers, only the following uses may be located in the Buffer:

- ix. mooring buoys and slips
- x. docks, piers, launching ramps, access roads, and paths
- xi. loading/unloading areas

ii) Where community or individual slips, piers, or mooring buoys are to be provided in a subdivision that is approved after (date of the Town Critical Area Program approval), the number of slips, piers, mooring buoys shall be the lesser of (i) or (ii) below:

i. One slip for each fifty (50) feet of shoreline in the subdivision in Limited Development Area (LDA) and one slip per each 300 feet of shoreline in the subdivision in the Resource Conservation Area (RCA); or

ii. A density of slips, piers, or mooring buoys to platted lots or dwellings within the subdivision in the Critical Area District according to the following schedule:

Platted Lots or Dwellings in the Critical Area	Slips and Moorings
up to 15	1 for each lot
16 - 40	15 or 75 %, whichever is greater
41 - 100	30 or 50 %, whichever is greater
101 - 300	50 or 25 %, whichever is greater
over 300	75 or 15 %, whichever is greater

~~b) Where permitted, commercial marinas, expansion of existing commercial marinas in Resource Conservation Area (RCA), and use accessory structures, such accessory uses being limited to twenty five (25%) percent of the first floor area. Non-water-dependent uses and activities~~

may not be located in the Buffer. Only the following uses which are considered "water-dependent" may be located in the Buffer:

- i) moorings buoys and slips;
- ii) docks, piers, launching ramps, access roads and paths;
- iii) loading and unloading areas;
- iv) fueling areas;
- v) fresh water and ice;
- vi) phone and electric service;
- vii) sewage pump-out, dockside toilets/lockers;
- viii) marina office;
- ix) waterfront restaurant, <sup>where permitted</sup> ~~special exception~~;
- x) clubhouse including lockers and lockerooms;
- xi) marina railways and travel lifts;
- xii) wet covered repair shops; and
- xiii) automated "high and dry" storage facilities;

c) Beaches, bath houses, and related structures.

remove: these are not water-dependant

→ 3) <sup>new</sup> Industrial uses, expansion of existing industrial uses, ~~located in the Buffer~~, or expansion of existing maritime industrial uses in Resource Conservation Areas (RCAs). Only the following industrial and port related water-dependent facilities may be located within the Buffer:

*shall not be permitted in the Buffer.*

- a) i) Docks, piers, and access roads;
- ii) Freight staging areas;
- iii) Rail lines;
- iv) Dry docks;
- v) Fueling areas; and
- vi) Public access areas;

4) No structure connected to the shoreline, such as a dock, pier, boathouse, etc., shall extend outward from the mean high waterline more than twenty five (25%) percent of the distance to the Mean High Water Line on the opposite shore, or more than three hundred (300) feet, which

ever is the lesser distance. Notwithstanding this provision, no dock or pier shall extend to within the boundaries of any defined navigation channel established by a state or federal agency.

~~No natural vegetation shall be removed nor shall the slope of the land surface be altered in the Buffer including clearing of existing natural vegetation to create new agriculture lands, except that commercial harvesting of trees is permitted with a Forest Management Plan to the edge of intermittent streams and to within fifty (50) feet of the Mean High Water Line or tidal wetlands when harvesting involves clearcutting of loblolly pine and tulip poplar and selective cutting of other species. In addition, limited cutting or clearing of trees is permitted for the following purposes:~~

- 5) ~~For personal use, limited to five hundred (500) square feet, providing that Buffer functions are not impaired and trees cut are replaced;~~
- i) 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;
  - ii) In conjunction with horticultural practices used to maintain the health of individual trees;
  - iii) To provide access to private piers;
  - iv) To install or construct an approved shore erosion protection device or measure; or
  - v) To protect forests from extensive pest or disease infestation or threat from fires, *provided that such cutting is conducted pursuant to recommendations of the Maryland Department of Natural Resources or Agriculture*

*In addition, limited cutting or clearing of trees is permitted for the following purposes in the Buffer*

- 6) The following uses are prohibited:
- a) i) Solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles;
  - ii) Sanitary landfills; ~~and~~
  - iii) Sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities.
  - iv) New commercial or related maritime facilities in the Buffer within Resource Conservation Areas (RCAs); ~~and~~

V) New industrial and maritime industrial uses in the Buffer in Resource Conservation Areas (RCAs); and

vi) The application of sludge in the Buffer.

**D. Development Standards in Intensely Developed Areas (IDAs)**

i) All uses shall be subject to the following development standards and/or conditions in addition to those established in other sections of this ordinance. Development and redevelopment in those areas designated Intensely Developed (IDA) shall be subject to the following standards, *except* ~~that~~ development on grandfathered lots must comply with these regulations insofar as possible as determined by the Planning Commission:

a) All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical area;

b) ~~No structure or uses associated with development in an Intensely Developed Area shall be permitted within the Buffer when development would bring about or cause an increase in impervious surfaces, or reduce the area that can be maintained or established in vegetative cover, (unless the site meets the requirements and standards permitting the Modified Buffer).~~ *is within a Buffer Exemption Area;*

c) ~~Development and redevelopment shall be subject to the Habitat Protection Criteria prescribed in COMAR 14.15.09 and those habitat protection guidelines in the Town of St. Michaels Critical Area Program;~~

d) ~~Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve the following standards:~~

~~Development proposals shall demonstrate that the Best Management Practices for stormwater management (ten (10%) percent reduction of pre-development pollutant loadings (see Stormwater Management Ordinance for computation methodology).~~ *M. King Feb 14/09*

~~Development shall demonstrate that practices for stormwater management will reduce pre-development pollutant loadings by ten (10%) percent;~~

e) ~~Development and redevelopment projects shall delineate those site areas not covered by impervious surfaces and that are to be maintained or established in vegetation (where vegetation is not proposed the developer shall demonstrate why plantings for such portions of the site are impracticable--the types of planting and vegetation proposed shall be in accordance with guidelines established in "g)" below;~~

f) ~~A minimum twenty-five foot buffer shall be established around all non-tidal wetlands as identified in the Town of St. Michaels Critical Area Program. This buffer shall be expanded to a maximum of fifty feet and include all sensitive areas which consist of hydric soils, steep slopes or highly erodible soils.~~

*add a new(g) per attached*

*if* Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore

*new(h) Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site.*

erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:

*within which development activities or other activities etc. (see 14.15.09 .02.C.(3)(b))*

137 A

g) Development and redevelopment projects ~~that~~ or other land disturbances proposed in the drainage area of a non-tidal wetland shall minimize alterations to the surface or subsurface flow of water into and from the wetland and shall not cause impairment of the water quality of the plant and wildlife habitat value of the wetland.

i) Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or

ii) Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used.) If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

*Handwritten scribbles*

*Handwritten scribbles*

**E. Development Standards in Limited Development Areas (LDAs)**

1) (LDA) Development and redevelopment in an area designated Limited Development shall be subject to the following standards. Grandfathered lots must comply with these regulations insofar as possible as determined by the Planning and Zoning Commission:

*except that*

- a) All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical Area;
- b) Site development shall be designed to assure that those features or resources identified as Habitat Protection Areas are afforded protection as prescribed in the habitat protection element of the Town of *St. Michaels* Critical Area Program;
- c) Roads, bridges and utilities serving development shall be so located as to avoid disturbances to habitat protection areas. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas, the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists;
- d) All development activities which cross, or are located adjacent to, tributary streams in the Critical Area shall:

i) not be located in the Buffer but be designed in a manner to reduce increases in flood frequency and severity;

ii) provide for the retention of natural streambed substrate;

iii) minimize adverse impacts to water quality and storm water runoff; and

iv) retain the existing tree canopy ~~in the Buffer~~;

*Handwritten arrows pointing to items 2) and 3)*

2) Development activities shall be located and designed to provide for the maintenance of the wildlife and plant habitats on the existing site <sup>to</sup> maintain continuity with those on adjacent sites. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site;

*and*

3) Forest and developed woodlands, as defined by the Town Critical Area Program, shall be created or protected in accordance with the following:

a) When no forest exists on the site, at least fifteen (15%) percent of the gross site area shall be afforested. The location of the afforested area should be designed to reinforce protection to habitats on the site or to provide connections between forested areas when they are present on adjacent sites;

When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan (the developer shall submit plans for development and areas to be cleared to the Maryland Forest, Park and Wildlife service for comments and recommendations and shall transmit the comments to the Planning and Zoning Commission). A grading permit shall be issued prior to any clearing or cutting associated with proposed development and in addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions. *must be obtained*

*is strictly limited to the minimum required*

i) All forests cleared or developed shall be replaced on not less than an equal area basis on the site or on an alternative site approved by the Planning and Zoning Commission. When the ~~area~~ development pad is ~~created~~ and cleared areas are reforested to the extent possible a forest area shall continue to be considered a developed woodland and no replacement shall be required;

ii) No more than twenty (20%) percent of the forested or developed woodland within the site proposed for development may be removed (except as provided for ~~in~~ below) and the remaining eighty (80%) percent shall be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants). Removal of forest or developed woodland cover in the Buffer is prohibited;

iii) The clearing of forest or developed woodlands up to twenty (20%) percent shall be replaced on an area basis of one to one--a developer may propose clearing up to thirty (30%) percent of the forest or developed woodland on a site, but the trees removed in excess of twenty (20%) percent must be replaced at the rate of 1.5 times the area removed;

iv) If more than thirty (30%) percent of the forest on a site is cleared, the forest is required to be replanted at three (3) times the total areal extent of the cleared forest;

v) If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the requirements above

vi) Surety in the form of a performance bond or other means acceptable to the Town Attorney shall be provided in the Public Works Agreement in an amount suitable to assure forest replacement as required;

vii) The forests and developed woodlands required to be retained or created through afforestation shall be maintained through restrictive covenants, easements, or similar instruments in a form approved by the Town Attorney;

c) ~~iii)~~ Development on slopes greater than fifteen (15%) percent shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability;

d) ~~iv)~~ Impervious surfaces shall be limited to fifteen (15%) percent of the gross site area. However, impervious surfaces on any lot not exceeding one (1) acre in size in a subdivision approved after 1 June 1986 may be up to twenty five (25) percent of the lot; and

e) ~~v)~~ A minimum twenty-five foot buffer shall be established around all non-tidal wetlands as identified in the Town of St. Michael's Critical Area Program. ~~This Buffer shall be expanded to a maximum of fifty feet and include all sensitive areas which consist of hydric soils, steep slopes or highly erodible soils.~~



*adjacent* add f) per comment on P. 137  
add (g) per comment on P. 137

erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:

xii) Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or

xiii) Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used.) If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

**F. Development Standards in Resource Conservation Areas (RCAs) -**

Development and redevelopment in Resource Conservation Areas shall be subject

to the same development standards applicable to the Limited Development Areas (LDAs). Grandfathered developments comply with these regulations insofar as possible as determined by the Planning and Zoning Commission.

**G. Woodland Reforestation and Afforestation Standards -**

Where reforestation or afforestation is required the following minimum standards within the Critical Area District shall be used.

1) For each acre of land, where woodlands must be replaced or established by the developer, plantings shall be done using one (or a combination) of the following approaches to providing forest cover:

a) If the purpose is to plant an extensive area in forest cover, then the following plantings shall be made for each acre: loblolly pine planted at eight (8) foot intervals in rows eight (8) feet apart.

b) If the purpose is to plant an area in a more diverse stratified forest cover, then the planting plan should include a canopy layer, an understory layer, and a shrub layer. The plant species comprising each layer shall be taken from lists available from the Town of St. Michaels Planning Commission or the local Maryland Bay Watershed Forester. The following plantings shall be made for each acre:

i) four (4) canopy trees with a minimum 2.5 inch caliper;

ii) twenty (20) canopy trees with a minimum height range of one (1) to two (2) feet;

iii) twenty (20) understory trees with a minimum of five (5) feet;

~~twenty-five (25) shrubs with a minimum height of eleven (11) inches~~

2) Planting Plans, Bonds and Inspections - A planting plan shall be submitted, by the developer, to the appropriate approving authority for approval and must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a licensed forester, landscape architect, or an experienced landscape designer.

The planting plan must be prepared in coordination with the approved site plan or preliminary and final subdivision plat and shall show:

→ see attached alternate language

140 A

1) The replacement or establishment of forests or developed woodlands shall assure a diversified plant community, but may include other types of <sup>tree</sup> plantings where necessary to correct an existing ~~erosion~~ or soil stabilization problem. Standards for such plantings shall include the following:

If utilized,  
a) ~~loblolly~~ pine plantings shall be made at eight (8) foot intervals in rows eight (8) feet apart;

b) Diverse forest plantings shall include a canopy layer, an understory layer and a shrub layer. The plant species ----- etc.

a) The site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements and the general location of structures and uses of abutting properties;

ii) Existing and proposed grades;

iii) Existing vegetative cover to be retained and the location, general size and type of such vegetation;

iv) The methods for protecting plant materials after construction;

v) A plant schedule <sup>and plan</sup> listing <sup>of</sup> plants to be used giving their botanical and common names, size at time of planting, and quality of each;

vi) An indication of whether plants are balled and burlapped, container grown or bare root; and

vii) An indication of the spacing and location of all proposed trees, shrubs and ground covers.

### Plant Materials and Planting Schedule

1) Although plant types should be chosen from the recommended plant list available from the Planning ~~and Zoning~~ Commission or the ~~Maryland State~~ Bay Watershed Forester, plant types that vary from this list may be substituted with the approval of the ~~Local~~ Bay Watershed Forester. Plants for afforestation or reforestation shall be approved by the Bay Watershed Forester for suitability in regard to the eventual size and spread, susceptibility to diseases and pests, and adaptability to existing soil and climate conditions. 10221

2) All planting should be done in the months of March and April of each year. For the first two (2) years steps should be taken to control competing vegetation. Technical assistance from the State's Bay Watershed Forester is highly recommended.

3) The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and cost estimate, the developer or owner shall enter into an agreement with the Town of St. Michaels to provide plantings as required. The agreement shall be in form and substance as approved by the Town and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of one hundred and twenty percent (120%) of proposed plant materials, labor and maintenance costs.

4) If all afforestation or reforestation is not completed within two (2) years after the first spring planting date following recordation, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited, for if a bond or surety has been posted, payment in full to the Town shall be ordered. The funds, so received, shall be used by the Town to defray the cost of providing the approved Buffer afforestation or reforestation for the site.

5) If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be a continuing obligation of the property owner.

6) All bonds or other forms of surety shall be in a form acceptable to and approved by the Planning and Zoning Commission ~~Town Commission~~.

7) All security posted will be held for a period of two (2) years after installation of the planting, to assure the proper maintenance and growth. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted to the extent necessary to replace the dead plant materials.

141A

- 8) The Planning ~~and Building~~ Commission or their designee may from time to time release those portions of the surety which may be appropriate.
- 9) Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.
- 10) All plantings shall be inspected by Town or the Bay Watershed Forester upon notification by the developer or owner and shall be approved according to the following standards:
- The planting shall adhere to the approved plan. Substitutions or revisions may be made with the approval of the Bay Watershed Forester or the Planning Commission.
  - All plants shall be protected from vehicular encroachment by wheelstops, curbs or other barriers unless distance provides adequate protection.
  - No planting shall result in vegetative growth exceeding thirty-six (36) inches in height, within thirty (30) feet of any street intersection or otherwise obstruct sightlines.

→ ~~511.11~~ Water-Dependent Facilities:

→ All applications for development of Commercial Marinas or other water-related uses in the Critical Area must include the following information:

- 1) Water depth contours shown at two (2) foot intervals at mean low water taken by sounding (unless otherwise specified by the Town Planning Commission).
- 2) Existing and proposed regraded surface of the land.
- 3) Location of natural features (such as streams, wetlands (tidal and non-tidal), drainage easements, vegetative and tree cover.
- 4) Land within the 100 year floodplain.
- 5) Location of all existing and proposed structures.
- 6) Location of all existing or proposed site improvements including storm drains, culverts, retaining walls and fences.

- 7) Description, method and location of water supply and sewerage disposal facilities.
- 8) Mean high and mean low water line.
- 9) All existing and proposed piers, buoys, launching ramps, shore protection structures.
- 10) Location and dimensions of all areas to be dredged including present and proposed depths.
- 11) Volume of dredge spoil to be removed, type of material, location and dimensions of disposal area(s) including dikes.
- 12) Location of all existing and proposed land-base building and structures on the site and a description of uses and activities to be conducted in each.
- 13) Location and dimensions of all boat launching ramps.
- 14) Location and dimensions of all boat slips and mooring buoys.
- 15) Location of fuel dock and gasoline storage tanks.
- 16) Location of all required buffers/yards/building restriction lines.
- 17) An environmental assessment report which indicates how the proposed project achieves the following criteria:

- a) ~~(X)~~ That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- b) ~~(X)~~ That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
- c) ~~(X)~~ That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- d) ~~(X)~~ 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) ~~(X)~~ That shellfish beds will not be disturbed or be made subject to disturbance that will render them unsuitable for harvesting;
- f) ~~(X)~~ 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) ~~(X)~~ That dredged spoil, except for sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area; and
- h) ~~(X)~~ That interference with the natural transport of sand will be minimized.

141B

~~141A~~ 141B

~~141A~~

Add "11.", below, to SECTION 5 ZONE REGULATIONS:

11. Growth Allocation District - GA

The Growth Allocation district ("GA") shall be a floating zone. The floating zone is not mapped but is designated for use in areas classified as Resource Conservation Areas (RCA) and/or Limited Development Areas within the Town of St. Michaels Critical Area Overlay District ("O"). The purpose of the floating zone is to permit a change in the land management classification established in the Critical Area Overlay District on specific sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification. Only projects which have been approved by the Town Commissioners for award of the Critical Area Growth Allocation are eligible for floating zone designation.

The Growth Allocation district ("GA") provides for changing the land management classification of Resource Conservation Areas (RCA) and Limited Development Areas (LDA) in the Critical Area District ("O"). The Growth Allocation district ("GA") shall only be permitted on sites or portions of sites which ~~have been awarded growth through the annual growth allocation design competition and which have been approved as amendments to the~~ St. Michaels Critical Area Program. Granting of the Growth Allocation ("GA") district classification shall further be limited as set forth below.

by the  
Critical  
Area Commission

a. Growth Allocation District ("GA") - 5

The following provisions shall apply to the Growth Allocation ("GA") district:

1) Submission Requirements

- a) Five (5) copies of the request for growth allocation and "GA" floating zone classification and all required items for submission shall be submitted to the Town of St. Michaels Planning and Zoning Commission.

b) Concept plans, site plans and subdivision plats shall be prepared as per the applicable requirements of the Zoning Ordinance and/or Subdivision Regulations.

2) Procedure for Processing GA District Applications :

a) All grants of the floating zone district by the ~~Town Commissioners~~ shall meet the same procedural requirements as for amending the Critical Area Overlay District, contained in Section ~~5-10-16f~~

b) Development projects submitted for "GA" district classification and growth allocation shall be processed as follows:

i) All applications will be reviewed <sup>by the Planning Commission</sup> for consistency with the Town of ~~St. Michaels~~ Comprehensive Plan, the Town of ~~St. Michaels~~ Critical Area Program, and the Town of ~~St. Michaels~~ Zoning Ordinance, ~~by the Town Commissioners~~ <sup>The Commission</sup> shall make a determination of consistency and make additional recommendations concerning conditions of approval. <sup>shall also review the application according to the guidelines contained in COMAR 4.15.02.06.B.</sup>

ii) After revising the site plan or plat based on the Planning Commission Review, the developer shall submit a preliminary site plan or plat.

iii) The Planning Commission shall then hold a public hearing on all submissions. Submissions shall include the following:

- Presentation of projects by the developers;
- Staff review comments ~~and scoring~~ <sup>omit</sup> and
- Public comments.

iv) The Planning Commission will then make its final recommendation and forward the application to the ~~Mayor and Council~~ <sup>Town Commissioners</sup>.

v) The ~~Mayor and Council~~ <sup>Town Commissioners</sup> shall hold a public hearing on the proposed development projects and the "GA" district classification approved by the Critical Area Commission. The hearing shall include the following:

- Presentation of projects by the developers;
- Planning Commission recommendations;
- Critical Area Commission recommendations; and
- Public comments.

<sup>need to provide for prior CAC review</sup>

vi) The ~~Mayor and Council~~ <sup>Town Commissioners</sup> will then make the final decision on awarding growth allocation and grant the floating zone request. The ~~Mayor~~ <sup>Town</sup> ~~Council~~ <sup>Commissioners</sup> may establish conditions of approval to accompany the "GA" district classification, including a time limitation for completion of the proposed project.

a) The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

d) Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations.

b) Concept plans, site plans and subdivision plats shall be prepared as per the applicable requirements of the Zoning Ordinance and/or Subdivision Regulations.

2) Procedure for Processing GA District Applications :

a) All grants of the floating zone district by the ~~Town Commissioners~~ shall meet the same procedural requirements as for amending the Critical Area Overlay District, contained in Section ~~14.15.02.06.B~~

b) Development projects submitted for "GA" district classification and growth allocation shall be processed as follows:

i) All applications will be reviewed <sup>by the Planning Commission</sup> for consistency with the Town of ~~St. Michaels~~ Comprehensive Plan, the Town of ~~St. Michaels~~ Critical Area Program, and the Town of ~~St. Michaels~~ Zoning Ordinance, ~~by the Town Planning Commission.~~ <sup>The Commission shall also review the application according to the guidelines contained in COMAR 14.15.02.06.B.</sup> The Planning and Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

ii) After revising the site plan or plat based on the Planning Commission Review, the developer shall submit a preliminary site plan or plat.

iii) The Planning Commission shall then hold a public hearing on all submissions. Submissions shall include the following:

- Presentation of projects by the developers;
- Staff review comments ~~and scoring~~ and <sup>omit</sup>
- Public comments.

iv) The Planning Commission will then make its final recommendation and forward the application to the ~~Mayor and Council~~ <sup>Town Commissioners</sup>.

v) ~~The Mayor and Council~~ <sup>Town Commissioners</sup> shall hold a public hearing on the proposed development projects and the "GA" district classification approved by the Critical Area Commission. The hearing shall include the following:

- Presentation of projects by the developers;
- Planning Commission recommendations;
- Critical Area Commission recommendations; and
- Public comments.

vi) ~~The Mayor and Council~~ <sup>Town Commissioners</sup> will then make the final decision on awarding growth allocation and grant the floating zone request. <sup>AL may</sup> The ~~Mayor and Council~~ <sup>Town Commissioners</sup> may establish conditions of approval to accompany the "GA" district classification, <sup>including a time limitation for completion of the proposed project.</sup>

a) The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

d) Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations.

Add the following information to SECTION 6.  
 SUPPLEMENTAL ZONE REGULATIONS:

→ 19 ~~13~~. Special Buffer ~~and~~ Requirements -

a. The following special yard requirements shall apply within the Critical Area Overlay District ("O"):

→ (1) Except as provided for water-dependent facilities in Section 5.10.c ~~that have been granted a Buffer exemption~~ and lots of record as set forth in Section 19, new development activities, including structures, roads, parking areas, impervious surfaces, and septic systems are not permitted in the Buffer.

(2) ~~When the Buffer is not fully forested on a parcel of land,~~ The Buffer shall be expanded to include contiguous sensitive areas on the parcel. This expansion will occur whenever new land development or other land disturbing activities, such as clearing natural vegetation for agriculture or mining, are proposed ~~in the Buffer.~~

~~permitted for such development.~~ *The expanded Buffer must be shown on plans required for such development.*

~~twenty (20) acres or more of RCA designated land,~~ Sensitive areas have the following features: 1) Hydric soils and soils with hydric properties as designated by the Soil Conservation Service; 2) Highly erodible soils with a K value greater than .35; and 3) Steep slopes greater than fifteen percent (15%). ~~The Buffer shall be expanded according to the following rules:~~

→ leave in →

When the site of the proposed land disturbance drains to a slope greater than fifteen (15) percent contiguous to the Buffer, the Buffer shall be expanded four (4) feet for every percent of slope over fifteen (15) percent or to the top of slope, whichever is greater, but in no case more than ten (10) feet beyond the top of the slope greater than fifteen (15) percent.

(b) Where the site of the proposed land disturbance drains to the Buffer not fully covered by forest or developed woodland, the Buffer shall be expanded from one hundred (100) feet to one hundred fifty (150) feet, or to the upland limit of adjacent hydric soils, soils with hydric properties, and erodible soils, whichever is less. The Buffer will be expanded to include those soils lying in the drainage area between the proposed land disturbance and the Buffer.

(c) The applicant may provide afforestation in the Buffer as an alternative to expanding the Buffer to include hydric soils, soils with hydric properties, and erodible soils, provided that no area of hydric soils is classified as a nontidal wetland. Afforestation must be in accordance with Section

Qualifying grandfathered lots shall be required to comply with the Buffer expansion provisions contained herein insofar as possible as determined by the Town of St. Michaels Planning Commission.

b. Buffer Exemption Area Provisions:

(1) The following special provisions apply in the Buffer Exemption Areas in the IDA, LDA or RCA.

(a) Permitted Uses:

(i) New development or redevelopment (consistent with the provisions of Section 5.10) provided that the Development and Redevelopment Rules and Offsetting Requirements set forth below are observed.

(ii) Shore Erosion Protection Measures provided that such measures are consistent with the Town's shore erosion protection policies ~~described in Section 5.10~~ and provided that the measures <sup>have</sup> all applicable state and federal permits. <sup>2</sup> have obtained

(iii) Cutting or Clearing of Trees for the following purposes only:

• 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 protect ~~facets~~ <sup>trees</sup> from extensive pest or disease infestation; ~~threat from fires~~

• To permit the development or redevelopment allowed above to be constructed or installed.

(b) Prohibited Uses:

• Water Polluting Activities including, but not limited to, storage of vehicles, fuel or chemicals.

(C) Development and Redevelopment Rules:

(i) Existing Structures - The expansion <sup>in the Buffer Exemption Area</sup> or redevelopment of existing structures may not increase impervious surfaces shoreward of the existing structure and shall not result in greater than a 25 percent increase in the total site area in impervious surfaces as existed

at the time of adoption of the Town's Critical Area Program. Offsetting of such increased impervious surfaces, shall as described below, shall be required.

(ii) Removal of Existing Structures - When a structure within the Buffer Exemption Area is removed or destroyed, it ~~shall~~ <sup>may</sup> be replaced, insofar as possible, no closer than 100 feet from the edge of tidal waters, tidal wetlands or tributary streams. In such cases where a setback line exists as defined by structures on adjacent lots or parcels, the structure may not be replaced shoreward of that line. Any impervious surfaces created greater in extent to the pre-existing impervious surfaces within the Buffer Exemption Area shall be offset as described below.

(iii) New Development - New development in the Buffer Exemption Area shall, ~~insofar as possible~~, minimize the shoreward extent of ~~imperious~~ impervious surfaces insofar as possible taking into consideration existing Town yard setback requirements and other such factors. In no case may such impervious surfaces be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels.

(iv) Offsetting Requirements: New development or redevelopment in the Buffer Exemption Area which causes impervious surfaces as described above shall be required to offset for such development as follows:

1. The extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, ~~or~~ or shall be established and maintained, in natural vegetation, and

2. Natural vegetation of an area twice the extent of the impervious surface created in the Buffer Exemption Area shall be planted in a Buffer Exemption offset Area or other location as may be determined by the Town. The Town may collect fees in lieu of such planting.

10. Add the following information to SECTION  
THE BOARD OF APPEALS, POWERS AND  
DUTIES:

5. ~~VARI~~ Variance from <sup>the</sup> Critical Area Overlay  
District provisions.

a. ~~5.~~ In addition, due to special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area Overlay District ("O") would result in unwarranted hardship to a property owner, the Board of Appeals may grant a variance from the provisions of the Critical Area Overlay District. Variance requests in the Critical Area Overlay District shall not be granted unless the decision is based on the following additional criteria:

- (1) That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions within the Critical Area Overlay District ("O") would result in unwarranted hardship which is not generally shared by owners of property in the same management areas (i.e., IDA, LDA, RCA) of the Critical Area.
- (2) That strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in the same management area within the Critical Area District.
- (3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
- (4) That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.
- (5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical District, and that the granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program and associated ordinances as well as ~~State law and~~ ~~regulations adopted under~~ Subtitle 18 of the Natural Resources Article and COMAR 14.15.
- (6) That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

b. A variance requested within the Critical Area Overlay Zone will not be granted by the Board of Appeals unless and until:

- (1) A completed application ~~form~~ for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District ("O") shall not be heard unless the State's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.
- (2) The Board of Appeals shall find that the reason set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structures. In making this determination for variance requests in the Critical Area Overlay District ("O"), the Board of Appeals shall consider the following as tantamount to a minimum variance:

(a) That the granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands, or tributary streams in the Critical Area as is feasible; and,

(b) That the applicant takes steps to mitigate impacts, insofar as possible, including:

(i) Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis;

(ii) Afforestation of areas of the site so that at least fifteen (15) percent of the gross site is forested; and,

(iii) Implementation of any mitigation measures which relate to ~~Habitat Protection Areas, Threatened or Endangered Species, Species in Need of Conservation, and Plant and Wildlife Habitats~~ as delineated in the Town of ~~St. Michaels~~ Critical Area Program, and recommended by State agencies, are included as conditions of approval.

(c) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(d) For variances in the Critical Area Overlay District ("O"), the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this ordinance and the Town of ~~St. Michaels~~ Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(e) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by Certified Mail and furnished a copy of the said application.

(3) In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate which comply with the intent of this ordinance and the Town of ~~St. Michaels~~ Critical Area Program. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance.

*Amend, renumber, and rephrase SECTION 19. DEFINITIONS to include the following definitions:*

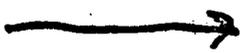
Afforestation means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas that are not presently in forest cover.

Anadromous fish means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

Best Management Practices (BMPs) means conservation practices or systems of practices and management measures that control soil loss and reduce water

quality degradation caused by nutrients, animal waste, toxic substances, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

Buffer (spelled with a capital B) means a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area Overlay District ("O"), the minimum Buffer is a continuous area located immediately landward of tidal waters (measured from the Mean High Water Line), tributary streams in the Critical Area, and tidal wetlands and has a minimum width of one hundred (100) feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in the Zoning Ordinance.



add Buffer Exemption Area

Community piers means boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

Conservation easement means a non-possessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.

Critical Area means all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all state and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and
- c. Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Critical Area Commission means the Maryland Chesapeake Bay Critical Area Commission.

Density means the number of dwelling units per acre of gross area of a development tract.

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

Development or development activities means any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination thereof, including the subdivision of land.

Drainageways are defined as minor watercourses that are defined either by soil type or by the presence of intermittent or perennial streams or topography that indicates a swale where surface sheet flows join.

Environmental Assessment means a comprehensive report that describes the natural features and characteristics of a proposed development site, the changes that will occur as the result of proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and mitigation measures to be taken to minimize undesirable impacts to the environment.

means any activity that materially affects the condition or use of dry land, land under water, or any structure.

Fisheries activities means commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales; product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

Forest means a biological community dominated by trees and other woody plants covering a land area of one (1) acre or more. This also includes forests that have been cut but not cleared.

Forest management means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

Forest practice means the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

Grandfathered describes the status accorded certain properties and development activities that are of record prior to the date of adoption of the Zoning Ordinance or provisions of the Zoning Ordinance.

Growth Allocation means:

- a. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; also
- b. An act of the Town Commissioners, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the Critical Area Overlay District to another land management classification which allows an increase in the permitted density.

Habitat Protection Areas

Highly erodible soils means soils with a slope greater than 15 percent; or those soils with a K value greater than 0.35 with slopes greater than 5 percent.

Hydric soils means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

Immediate Family

Land clearing means any activity that removes the vegetative ground cover.

Marina means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

Mean High Water Line means the average level of high tides at a given location.

Natural Vegetation means plant communities that develop in the absence of human activities.

Natural features means components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains,

aquatic life, and wildlife.

Non-tidal wetlands refers to those lands in the Critical Area (excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland) farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat) where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season, and that are usually characterized by one or both of the following:

include the Buffer, Non-Tidal wetlands, Threatened and Endangered Species and Species in Need of Conservation, Plant and Wildlife Habitat and Anadromous Fish Spawning Propagation Waters as defined COMAR in 14.15.09

a. At least periodically, the lands support predominantly hydrophytic vegetation; and/or

b. The substrate is predominantly undrained hydric soils.

Offsets means structures or actions that compensate for undesirable impacts.

Open space means land and water areas retained for use as active or passive recreation areas in an essentially underdeveloped state.

Open water means tidal waters of the State that do not contain tidal wetlands and/or submerged aquatic vegetation.

Pad, development means the area of a lot, within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed the remaining area of the lot must be maintained in natural vegetation.

Physiographic features means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

Redevelopment means the process of developing land that is or has been developed.

Reforestation means the establishment of a forest through artificial reproduction or natural regeneration.

Shore Erosion Control Measures mean any of number of structural and nonstructural methods or techniques for controlling the erosion of shoreline areas. More specifically the term refers to:

a. Nonstructural - Creation of an intertidal marsh fringe channelward of the existing bank by one of the following methods:

1. Vegetation -- Planting an existing shore with a wide band of vegetation;
2. Bank Sloping/Vegetation -- Sloping and planting a non-wooded bank to manage tidal water contact, using structures to contain sloped materials if necessary; and
3. Contained Beach -- Filling alongshore with sandy materials, grading, and containing the new beach to eliminate tidal water contact with the bank.

b. Structural

1. Revetment -- facing laid on a sloping shore to reduce wave energy and contain shore materials;
2. Bulkhead -- excluded due to adverse impacts to the near-shore marine environment, except in the following special cases:
  - (a) Where erosion impact is severe and high bluffs and/or dense woodland preclude land access, bulkheads can be installed by shallow-draft barge and pile driver; and
  - (b) In narrow, manmade lagoons for activities that require frequent interchange between boats and land.

Steep slopes means slopes of 15 percent or greater incline.

Tidal wetlands means state wetlands that are defined as any land under the navigable waters of the state below the Mean High Water Line, affected by the regular rise and fall of tide, and private wetlands that defined as any land not considered 'state wetlands' bordering or lying beneath tidal waters, that is subject to regular or periodic tidal action and supports aquatic growth. Private wetlands includes wetlands transferred by the state by a valid grant, lease, patent, or grant confirmed by Article 5 of the Declaration of Rights of the Constitution to the extent of the interest transferred. The term "regular or

periodic tidal action" means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by the wind or any other circumstance.

Topography means the existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

Tributary streams means perennial and intermittent streams in the Critical Area that are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the Town of St. Michaels

Water-dependent facilities means structures or works associated with industrial, maritime, recreational, educational, or fisheries activities which the Town of St. Michaels has determined require location at or near the shoreline within the Buffer.

Wildlife corridor means a strip of land having vegetation that provides habitat and a safe passageway for wildlife.

B. THE TOWN OF ST. MICHAELS SUBDIVISION <sup>REGULATIONS</sup> ~~ORDINANCES~~  
AMENDMENTS

The following amendments will be incorporated into the Town of St. Michaels Subdivision ~~Ordinances~~ REGULATIONS:

ARTICLE I,

Add the following item to <sup>v</sup> Section 101 Intent :

- ~~(f)~~ (f) ...; and
- (g) protect wetlands, streams, areas of steep slopes, highly erodible (and other soils with development constraints), shorelines, and plant and wildlife habitats within the Town

~~Add the following item to Section 200 General~~ : Critical area.

~~Section 200~~ Amend, renumber, and realphabetize ~~Section~~ ARTICLE II - DEFINITIONS to include the following:

Afforestation means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas that are not presently in forest cover.

Anadromous fish means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

Buffer (spelled with a capital B) means a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area Overlay District ("O"), the minimum Buffer is a continuous area located immediately landward of tidal waters (measured from the Mean High Water Line), tributary streams in the Critical Area, and tidal wetlands and has a minimum width of one hundred (100) feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in the Zoning Ordinance.

add Buffer Exemption Area

Community piers means boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

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- a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all state and

private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;

- b. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and

- c. Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Critical Area Commission means the Maryland Chesapeake Bay Critical Area Commission.

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Development  
Development or development activities means any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement, or any combination thereof, including the subdivision of land.

Drainage ways are defined as minor watercourses that are defined either by soil type or by the presence of intermittent or perennial streams or topography that indicates a swale where surface sheet flows join.

Environmental Assessment means a comprehensive report that describes the natural features and characteristics of a proposed development site, the changes that will occur as the result of proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and mitigation measures to be taken to minimize undesirable impacts to the environment.

Fisheries activities means commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

Forest means a biological community dominated by trees and other woody plants covering a land area of one (1) acre or more. This also includes forests that have been cut but not cleared.

Forest management means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

means any activity that materially affects the condition or use of dry land, land under water, or any structure.

Forest practice means the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

Grandfathered describes the status accorded certain properties and development activities that are of record prior to the date of adoption of the Zoning Ordinance or provisions of the Zoning Ordinance.

Growth Allocation means:

- a. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; also
- b. An act of the Town Commissioners, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the Critical Area Overlay District to another land management classification which allows an increase in the permitted density.

Habitat Protection Areas  
Highly erodible soils means soils with a slope greater than 15 percent; or those soils with a K value greater than 0.35 with slopes greater than 5 percent.

Hydric soils means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

Land clearing means any activity that removes the vegetative ground cover.

Marina means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

Mean High Water Line means the average level of high tides at a given location.

Natural Vegetation means plant communities that develop in the absence of human activities.

Natural features means components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Non-tidal wetlands refers to those lands in the Critical Area (excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland) farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat) where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season, and that are usually characterized by one or both of the following:

- a. At least periodically, the lands support predominantly hydrophytic vegetation; and/or
- b. The substrate is predominantly undrained hydric soils.

Offsets means structures or actions that compensate for undesirable impacts.

Open space means land and water areas retained for use as active or passive recreation areas in an essentially underdeveloped state.

Open water means tidal waters of the State that do not contain tidal wetlands and/or submerged aquatic vegetation.

include the buffer,  
the Non-Tidal Wetlands,  
Threatened and Endangered  
Species and Species in  
Need of Conservation  
Plant and Wild life  
Habitats, Amphibious  
Fish Propagation  
Waters as defined  
in COMAR 14.15.04.

Pad development means the area of a lot, within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed the remaining area of the lot must be maintained in natural vegetation.

Physiographic features means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

Redevelopment means the process of developing land that is or has been developed.

Reforestation means the establishment of a forest through artificial reproduction or natural regeneration.

Shore Erosion Control Measures mean any of number of structural and nonstructural methods or techniques for controlling the erosion of shoreline areas. More specifically the term refers to:

a. Nonstructural - Creation of an intertidal marsh fringe channelward of the existing bank by one of the following methods:

1. Vegetation -- Planting an existing shore with a wide band of vegetation;
2. Bank Sloping/Vegetation -- Sloping and planting a non-wooded bank to manage tidal water contact, using structures to contain sloped materials if necessary; and
3. Contained Beach -- Filling alongshore with sandy materials, grading, and containing the new beach to eliminate tidal water contact with the bank.

b. Structural

1. Revetment -- facing laid on a sloping shore to reduce wave energy and contain shore materials;
2. Bulkhead -- excluded due to adverse impacts to the near-shore marine environment, except in the following special cases:
  - (a) Where erosion impact is severe and high bluffs and/or dense woodland preclude land access, bulkheads can be installed by shallow-draft barge and pile driver; and
  - (b) In narrow, manmade lagoons for activities that require frequent interchange between boats and land.

Soil Conservation and Water Quality Plans means land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

- a. How the landowner plans to treat a farm unit;
- b. Which Best Management Practices the land owner plans to install to treat undesirable conditions; and
- c. The schedule for applying Best Management Practices.

Steep slopes means slopes of 15 percent or greater incline.

Tidal wetlands means state wetlands that are defined as any land under the navigable waters of the state below the Mean High Water Line, affected by the regular rise and fall of tide, and private wetlands that defined as any land not considered 'state wetlands' bordering or lying beneath tidal waters, that is subject to regular or periodic tidal action and supports aquatic growth. Private wetlands includes wetlands transferred by the state by a valid grant, lease, patent, or grant confirmed by Article 5 of the Declaration of Rights of the Constitution to the extent of the interest transferred. The term "regular or

"periodic tidal action" means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by the wind or any other circumstance.

Topography means the existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

Tributary streams means perennial and intermittent streams in the Critical Area that are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the Town of St. Michaels.

Water-dependent facilities means structures or works associated with industrial, maritime, recreational, educational, or fisheries activities which the Town of St. Michaels has determined require location at or near the shoreline within the Buffer.

Wildlife corridor means a strip of land having vegetation that provides habitat and a safe passageway for wildlife.

Add the following information under ARTICLE V -  
DESIGN STANDARDS:

Section 511 Standards For Development in the  
Chesapeake Bay Critical Area

(4) In addition to the other provisions of the Town Zoning Ordinance and Subdivision Regulations, the following will apply to all subdivisions of land located within the Town of St. Michaels Critical Area:

(1) Where a tract of land bordering tidal water, tidal wetlands, or tributary streams in the Critical Area is to be subdivided and a Buffer exemption has not been granted by the Critical Area Commission, a Buffer ~~width~~ of at least one hundred (100) feet shall be established in natural vegetation (except areas of the Buffer which are planted in vegetation where necessary to protect, stabilize, or enhance the shore line). No development, including septic systems, impervious surfaces, parking areas, roads, or structures, are permitted in the Buffer. However, approved development or expansion of a water-dependent facility, as defined in the Town of St. Michaels Zoning Ordinance, is excepted from these Buffer provisions.

- (2) If the lot ownership extends to the water, wetlands, or streambed then the Buffer shall be included in the required setback distance for building on that lot, except in the case of water-dependent facilities. Where the Buffer is to be owned and maintained by a Home Owners or similar appropriate organization, the required setback distance shall be measured from the property line separating that lot from the designated Buffer. This Buffer, when not included in the lots, may be included in the calculating gross density.

- (3) ~~When the Buffer is not fully forested, it will be expanded to include contiguous sensitive areas, ponds, and other hydrologic features in the R-1A land use classification.~~ **The Buffer**

This expansion will occur whenever new land development or other land disturbing activities, such as clearing natural vegetation for agriculture or mining, are proposed. The expanded Buffer must be shown on plans required for such development or activities. Sensitive areas are defined as follows: 1) Hydric soils and soils with hydric properties as designated by the Soil Conservation Service; 2) Highly erodible soils with a K value greater than .35; and 3) Steep slopes greater than 15 percent. The Buffer shall be expanded according to the following rule:

**For steep slopes**

- When the site of the proposed land disturbance drains to a slope greater than fifteen (15) percent contiguous to the Buffer, the Buffer shall be expanded four (4) feet for every percent of slope or to the top of slope, whichever is greater, but in no case more than ten (10) feet beyond the top of the slope greater than fifteen (15) percent.

- (ii) ~~When the site of the proposed land disturbance drains to the Buffer, not fully covered by forest or developed wetland, the Buffer shall be expanded from one hundred (100) feet to one hundred fifty (150) feet, or to the upland limit of adjacent hydric soils, soils with hydric properties, and erodible soils, whichever is less.~~

- (iii) ~~The applicant may provide afforestation in the Buffer as an alternative to expanding the Buffer to include hydric soils, soils with hydric properties, and erodible soils, provided that no area of hydric soils is classified as a non-tidal wetland. Afforestation must be in accordance with the Town of St. Michaels Zoning Ordinance.~~

- (iv) All subdivisions in the St. Michaels Critical Area shall be subject to the Habitat Protection criteria and guidelines prescribed in the Town of St. Michaels Critical Area Program.

- (v) The subdivider shall be required to identify stormwater management practices appropriate to site development which achieve the following standards:

- In areas designated Intensely Developed Area on the Town of St. Michaels Official Critical Area Map the subdivider shall demonstrate that the best management practices for stormwater assure a ten (10) percent reduction of pre-development pollutant loadings.

• The subdivider shall delineate those site areas not covered by impervious surfaces to be maintained or established in vegetation. Where vegetation is not proposed the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in as part of the St. Michaels Critical Area Program.

• The subdivision shall be designed to assure those features or resources identified as Habitat Protection Areas are afforded protection as prescribed in the Habitat Protection Element of the Town of St. Michaels Critical Area Program.

(4) Roads, bridges and utilities serving lots shall be located to avoid disturbances to Habitat Protection Areas. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Area the developer shall demonstrate how impacts to Habitats have been minimized and that no feasible alternative location of such infrastructure exists.

(5) All roads, bridges, lots or other development which cross or are located adjacent to tributary streams in the Critical Area shall:

(i) Not be located in the Buffer and designed in a manner to reduce increases in flood frequency and severity.

(ii) Provide for the retention of natural streambed substrate.

(iii) Minimize adverse impacts to water quality and storm water runoff.

(iv) Retain existing tree canopy ~~in the Buffer adjacent to tributary streams~~

(6) Lots and open space areas shall be located and designed to provide for maintenance of existing site wildlife and plant habitats and continuity with those on adjacent sites. Existing wildlife corridors shall be identified on proposed development plats. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site.

(7) Impervious surfaces in subdivisions located in Limited Development Area (LDA) of the Town of St. Michaels Critical Area shall be limited to fifteen (15) percent of the gross site area proposed for development, except that impervious surfaces on any lot not exceeding one (1) acre in size in a subdivision approved after 1 June 1986 may be up to twenty-five (25) percent of the lot.

(8) Development on slopes greater than fifteen (15) percent shall be prohibited unless such development is demonstrated to be only effective way to maintain or improve slope stability.

(9) No clearing or grading is permitted in the Buffer nor on steep slopes and hydric or highly erodible soils for other than agricultural practices, not involving the clearing of natural vegetation in the Buffer, or commercial forestry practices in the Buffer between March 1 and ~~May 15~~ June.

(10) Land to be subdivided shall be designed and improved in reasonable conformity to existing topography, in order to minimize grading, cut and fill, and to retain, insofar as possible, the natural contours, minimize storm water run-off and conserve the natural cover and soil. No soil, sand or gravel shall be removed from any lots shown on any subdivision plat, except in accordance with the provisions of the Sediment Control Plan approved by the Soil Conservation District Board.

(11) Subdivision and development in the Town of St. Michael's Critical Area are encouraged to increase natural vegetation on the development site.

(12) Subdivisions located in Limited Development Areas (LDAs) and Resource Conservation Areas (RCAs) are required to meet the following minimum standards for forest and developed woodlands. Forest and developed woodlands as defined by the Town of St. Michael's Critical Area Program shall be created or protected in accordance with the following.

(i) When no forest exists on the site, at least fifteen (15) percent of the gross site area shall be afforested. The location of the afforested area should be designed to reinforce protection to site habitats or provide connections between forested areas when they are present on adjacent sites.

(ii) When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan. The developer shall submit plans for development and areas to be cleared to the Maryland Forest, Park and Wildlife Service for comments and recommendations and shall transmit comments to the Town of St. Michael's Planning and Zoning Office. A grading permit shall be obtained prior to any clearing or cutting associated with proposed development. In addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions.

- All forests cleared or developed shall be replaced on not less than an equal area basis, either on the site or on another site approved by the Planning Commission except that if clearing on a fully forested lot is limited to a development pad of 10,000 square feet or less and cleared areas are reforested to the extent possible, the forest shall be considered a developed woodland and no replacement required.
- No more than 20 percent of the forested or developed woodland within the site proposed for development may be removed (except as provided for in (c) below) and the remaining 80 percent shall be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants). Removal of forest or developed woodland cover in the Buffer is prohibited.
- Clearing of forest or developed woodlands up to 20 percent shall be replaced on an area basis of one to one. A developer may propose clearing up to 30 percent of the forest or developed woodland on a site, but the trees removed in excess of 20 percent must be replaced at the rate of 1.5 times the amount removed either on the site or on another site approved by the Planning Commission.
- If more than 30 percent 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.
- 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.
- All reforestation and/or afforestation shall be included in a planting plan.

~~Under ARTICLE IV - PROCEDURE, PART B.~~

~~PRELIMINARY PLAT~~

In ~~the~~ ARTICLE III - APPLICATION AND PLAT REQUIREMENTS, under Section 803 Preliminary Plat, include the following information:

(e) For proposed subdivisions located in the Critical Area, the following additional information will be shown on the Preliminary Plat as applicable:

- (1) An area or vicinity map showing such information as the names and numbers of adjoining roads, streams, banks, bodies of water, subdivisions, election districts, or other landmarks sufficient to clearly identify the location of the property.
- (2) A boundary survey plat of the entire site at a scale that provides legibility without undue size and which shows the following:
  - (i) Existing topography at two (2) or five (5) foot contour intervals.
  - (ii) Existing and proposed regraded surface of the land;
  - (iii) Location of natural features such as streams, major ravines, drainage patterns, and within the area to be disturbed by construction, trees measuring greater than 12" in diameter to be retained;
  - (iv) Floodplain boundaries (100 year);
  - (v) Location and areal extent of all soils exhibiting the following characteristics as determined by the Soil Survey:
    - Septic Limitations.
    - Wet soils.
    - Hydric Soils and soils with hydric properties, and
    - Highly erodible soils (soils on slope greater than 15 percent or soils on slope greater than 5 percent with "K" values greater than 0.35), and

(3) A detailed drawing showing:

- (i) Location, proposed use, and height of all buildings (delineate all existing buildings and structures);
- (ii) Location of all parking and loading areas, with ingress and egress drives thereto;
- (iii) Location of outdoor storage (if any);
- (iv) Location of recreation facilities (if any);
- (v) Location of all existing or proposed site improvements, including storm drains, culverts, retaining walls, fences, stormwater management facilities, as well as any sediment and erosion control structures and shore erosion structures.
- (vi) Description, method, and location of water supply and sewerage disposal facilities;
- (vii) Location, size, and type of all signs; and
- (viii) Location, size, and type of vehicular entrances to the site;
- (ix) In addition to the information required above, the detailed drawing shall show the following information on Site Plans for development in the Critical Area Overlay District ("O"):

- Location of the Critical Area Overlay District Boundary, the Buffer and other buffer areas, open space areas, forested areas and landscaping (the plan shall show all areas to be maintained as landscaping and the type of plantings to be provided and the means by which such landscaping will be permanently maintained shall be specified);

- 
- Location of all contiguous forested areas adjacent to the site;
  - Location of tidal and non-tidal wetlands on the site;
  - Location of existing water-dependent facilities on and adjacent to the site, including the number of existing slips and moorings on the site;
  - The location and extent of existing and/or proposed erosion abatement approaches;
  - **Location of plant and wildlife habitat** as defined in the Towns Critical Area Program;
  - Known locations of the habitat of any threatened or endangered species or species in need of conservation on or adjacent to the site, or within 1/4 mile of the site in the case of bald eagle habitats; and
  - Location of anadromous fish spawning stream(s) on or adjacent to the site and a delineation of the watershed area of the stream on the site;
  - A detailed drawing locating shore erosion abatement techniques to be included with the site plan.

(4) Computations of:

- (i) Total lot area;
- (ii) Building Floor area for each type of proposed use;
- (iii) Building ground coverage (percentage);
- (iv) Road area;
- (v) Number and area of off-street parking and loading spaces; and
- (vi) General open space area.
- (vii) In addition to the computations required above, the following additional computations will be submitted with all site plans for development in the Critical Area Overlay District ("O"):
  - Total area in the Critical Area Overlay District ("O");
  - Total man-caused impervious surfaces areas and percentage of site;
  - Separate computations of the total acres of existing forest cover in the Buffer and in the Critical Area;

- Total area of the site that will be temporarily disturbed during development and area that will be permanently disturbed. Disturbed is defined as any activity occurring on an area which may result in the loss of or damage to existing natural vegetation.

(5) Commercial or Industrial uses must include:

- (i) Specific uses proposed;
- (ii) Maximum number of employees for which buildings are designed;
- (iii) Type of energy to be used for any manufacturing processes;
- (iv) Type of wastes or by-products to be produced by any manufacturing process;
- (v) Proposed method of disposal of such wastes or by-products;
- (vi) Location of outdoor lighting facilities; and
- (vii) Other information as may be specified in the regulations for industrial or ~~Town of St. Michaels~~ <sup>Commercial uses in the Town of St. Michaels zoning ordinance</sup>

(viii) An Environmental Assessment Report which provides a coherent statement of how the proposed development addresses the goals and objectives of the Chesapeake Bay Critical Area Program. At a minimum the Environmental Assessment shall include:

- A statement of existing conditions, e.g., amount and types of forest cover, amount and type of wetlands, discussion of existing agriculture activities on the site, soil types, topography, etc;
- Discussion of proposed development project, including number and type of residential units, amount of impervious surfaces, proposed sewer treatment and water supply, acreage devoted to development, proposed open space and habitat protection areas;
- A discussion of the proposed development's impacts on water quality; and
- Documentation of all correspondence and findings.

(6) In addition to the information above, the Preliminary Site Plan shall be accompanied by the following when the subdivision or development is proposed in the Critical Area, as required:

- (i) A planting plan for reforested and afforested areas and Forest Management Plan with the comments of the Bay Forester;
- (ii) A Habitat Protection Plan including the comments of the Maryland Forest, Park and Wildlife Service and the Maryland Heritage Program;
- (iii) A preliminary Stormwater Management Plan;
- (iv) A preliminary Sediment and Erosion Control Plan;
- (v) A Shore Erosion Protection Plans - complete specification for proposed shore erosion work;

Add the following item to SECTION 805. Final Plat:

(e) Information to be shown for subdivisions in the Critical Area:

- (1) For subdivisions in the Critical Area the following shall be tabulated:
  - (i) Total area of the subdivision or parcels to be recorded in the Critical Area District.
  - (ii) Total number of lots in the Critical Area District.
  - (iii) Residential density in the Critical Area District.
- (2) For subdivisions in the Critical Area, accurate outlines (metes and bounds, where required) of any common or reserved areas or portions of lots to be maintained by

Covenant, easement, or similar approved instrument, in permanent forest cover, including existing forested areas, reforested areas, and afforested areas.

(3) For subdivisions in the Critical Area, accurate outlines (metes and bounds, where required) of any areas to be maintained as permanent wildlife and plant habitat protection areas.

(4) In addition to the information above, the final site plan or subdivision plat for development in the Critical Area Overlay District ("O") shall be accompanied by the following as appropriate to the site:

- 
- 
- (i) ~~A Forest Management Plan including the comments of the Bay Watershed Forester, required when a proposed development site contains or will contain forest or developed woodland area.~~ **2nd 2 Forest Management Plan for that site;**
  - (ii) A Habitat Protection Plan including the comments of the Maryland Forest, Park and Wildlife Service, required when a habitat protection area (not including the Buffer) is on or adjacent to the site;
  - (iii) A Stormwater Management Plan;
  - (iv) A Sediment and Erosion Control Plan; and
  - (v) A Planting Plan.

Add ~~B. to~~ SECTION 14:

B. Amending the Land Use Management Classifications for the Critical Area Overlay District ("O")

The Town Commissioners may from time to time amend the land use management classification of properties in the Critical Area Overlay District ("O"). All such amendments, with the exception of assigning the "GA" District, shall also be approved by the Maryland Chesapeake Bay Critical Area Commission (Critical Area Commission) as established in Subsection 8-1809 of the Critical Area Law, Subtitle 18. ~~No such amendment shall be granted without approval of the Critical Area Commission.~~ Standards for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18 Subsection 8-1809 (i). The Critical Area Commission process for approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, Subsection 8-1809 (d). 1809(h)

In addition, the Town's Commissioners shall review and propose any necessary amendments, as required, to the land management classifications at least every four (4) years. At this time, the Town shall forward comprehensive zoning maps showing those areas granted growth allocation.

*to the Critical Area Commission*  
C. Amendment Procedures for Land Use Management Classifications in the Critical Area Overlay District ("O")

When a land use management classification amendment is requested (except under the "GA" District provisions contained in Section 5.11), the Planning and Zoning Commission shall first hold a public hearing related thereto, at which parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. Proposed amendments shall first be submitted to the Planning and Zoning Commission. The applicant shall then present the proposed amendment for review by the Planning and Zoning Commission which shall hold a public hearing, ~~and submit its recommendation along with the amendment request to the Maryland Critical Area Commission.~~ *or a change in the C.A.B. Board*

Following approval of a proposed amendment(s) ~~by the Critical Area Commission~~, the Town Commissioners shall hold a public hearing related thereto, at which parties in interest and citizens shall an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town.

In addition the Planning and Zoning Commission shall post the notice of their respective public hearings on the property(s) for which the such amendment is requested and shall, to the extent possible based on best available information, all property owners immediately contiguous to the applicant shall be notified by Certified Mail and furnished a copy of the said application.

D. Requirements for Amendment Procedures for Land Use Management *Pg Breathe*

#14

Classifications in the Critical Area Overlay District ("O")

~~Land Use Management Classification~~ When considering a proposed change of land use management classification, i.e., Intensely Developed Area (IDA), Limited Development Area (LDA) or Resource Conservation Area (RCA) the Town Commissioners shall not approve amendments unless it is found that there was a mistake in the original classification, or the site will be granted the Growth Allocation ("GA") floating zone district classification (see Section 5.11).

~~Amend, renumber, and realphabetize SECTION 19.B. to include the following definitions:~~

Afforestation means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas that are not presently in forest cover.

Anadromous fish means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

Best Management Practices (BMPs) means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxic substances, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

Buffer (spelled with a capital B) means a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area Overlay District ("O"), the minimum Buffer is a continuous area located immediately landward of tidal waters (measured from the Mean High Water Line), tributary streams in the Critical Area, and tidal wetlands and has a minimum width of one hundred (100) feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in the Zoning Ordinance.

Community piers means boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

Conservation easement means a non-possessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.

Critical Area means all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all state and

Changes to the Official Critical Area District Maps

The ~~County~~ <sup>Town</sup> Commissioners may elect <sup>to</sup> amend the Critical Area District Boundary as shown on the Critical Area District Maps to delete areas of the ~~County~~ <sup>Town</sup> from the Critical Area Overlay District when it can be demonstrated that the Critical Area, as mapped on the Official Critical Area District Maps, is incorrectly drawn. Evidence sufficient to warrant a determination of a mistakenly drawn Critical Area Boundary Line shall be based on and substantiated by either the Official State Wetland Maps, new Official State Wetland Maps adopted by the State of Maryland, or written concurrence by the State of Maryland that the Official State Wetland map(s) is incorrect. However, the amended Critical Area Boundary shall, at a minimum, encompass all areas set forth in to Section 3, a. and b. above. - ?

The ~~County~~ <sup>Town</sup> Commissioners may also elect to add areas to the Critical Area at any time. Addition or deletion of areas from the Critical Area District shall be processed as amendments to the CA-1 Critical Area District as per Section 13.3. - ?

The ~~County~~ <sup>Town</sup> Commissioners may also approve applications for the GA Growth Allocation Floating Zone and thereby change the land management classification of properties within the Critical Area. Such changes shall be done in accordance with Section 6.15. and Section 13. 3. of this ordinance.

?

PROPOSED KENT COUNTY CRITICAL AREA PROGRAM

PROGRAM REVIEW - OUTSTANDING ISSUES November 18, 1987

GENERAL COMMENTS

1. Kent County is now preparing a "Development and Building Handbook" that is referenced throughout their program. This handbook will be referenced in their zoning ordinance and consequently will be officially adopted as part of their strategy to regulate development-related impacts occurring in their Critical Area. While the precise language of the Handbook is not now known, the document is to contain many of the policy statements that are found within the submitted program, descriptions of the various types of ordinances and processes that will regulate development, particularly as they relate to the protection of water quality and fish, plant and wildlife habitats. It will also contain descriptions of appropriate techniques for protecting these resources. The standards and procedures that are to occur in this Handbook must be consistent with the final approved statements in their changes to regulations, consequently the County has viewed the Handbook as one of its implementation products rather than a "driving" instrument for program direction.

2. Throughout the Submitted Program any items occurring under the titles of "Local Policies" must be included into a specific document that will clearly state who or what approval process is affected by those policies.

3. Copies of the base document of all implementing tools (Comprehensive Plan, Zoning Ordinance, Subdivision Regulations, etc.) were submitted by the County. However, the wording for new sections of these documents is found scattered in the Critical Area Program Document. In some cases, the local Program proposes whole new sections to these documents. In the case of the Zoning Ordinance the County is in the midst of reorganization and revision. In no case are any of their proposed changes to regulations in a form complete and ready for adoption, although the program (after several changes and clarifications) contains most of the precise wording needed to effect changes to the local regulations. The Commission needs to decide the adequacy of the currently submitted form of the regulations.

4. Although the County has worked very successfully with the Soil Conservation District for many years, and is highly likely to continue to do so, the proposed program does not clearly indicate the expectations that the program places on the SCD for accomplishing some of the local program objectives. Kent County must clearly define the role of the Kent County Soil Conservation District in 1) monitoring the inventory of agriculture land within the Critical Area, 2) developing Soil Conservation and Water Quality Management Plans, and 3) implementing County policies that relate to management of non-tidal wetlands,



22,7 A revised summary sheet of growth allocation was submitted that indicated that Kent County has reserved growth allocation acreages requested by Chestertown (84 acres), Rock Hall (66.73 acres), and Betterton (82.78 acres). The proposed locations for these requests have been indicated on maps and include both lands located internal to the Town boundaries and some areas soon to be annexed. Kent County should submit to the Critical Area Commission as part of its program evidence that the County Commissioner have granted these requests. Evidence may include copies of existing correspondence to the Towns about these matters or copies of the minutes of meetings where these decisions were made.

21,39 The new Zoning and Subdivision ordinance must clearly indicate that development in Resource Conservation Districts is subject to the same design and implementation constraints as those required for Limited Development Areas as per COMAR 14.15.02.05 C(7).

23,36 This Section should clearly indicate Kent County's strategy to assure that grandfathered lots comply with the local program in so far as possible. In addition, two situations that the Criteria specify as grandfathered were omitted. See COMAR 14.15.02.07b(2)(a)&(b).

23 The County had only a few, scattered lots that were approved between December 1, 1985 and the time of program submittal. This was primarily so because a moratorium was enacted that prohibited development in RCAs for densities greater than 1 du per 20 acres. In order to estimate the growth allocation used up by these disjunct lots, the County estimated that on average, the area disturbed by these lots could be estimated by the actual area of improvements (including homesite, septic area, driveway) plus some surrounding area that would represent an area of disturbing influences. On average, and based on the specific type of development that occurred, the combined area was estimated to be approximately 1/2 acre per lot. This procedure was developed solely to estimate development during the interim period. This County will not necessarily use this same approach when it develops its growth allocation process--which will be subject to Commission approval.

25,9 The description of the Buffer must indicate that it is a "minimum" buffer.

27,29 The buffer exemption for the waterfront portions of the existing IDA was requested in a follow-up letter from the County Planning Director on November 3, 1987. Most of the site is in an industrial use, namely docking and offloading facilities for fuel and fertilizer. The current use prevents the Buffer from achieving the intended effects. Note: the County must also propose alternative measures for achieving the water quality and habitat benefits that are claimed to be lost by this exemption.

32,25 Kent County plans to use the Historic Shoreline Erosion

Rate Maps as the initial flagging mechanism for prescribing the appropriate techniques for shoreline protection. Those maps contain the best available information at this time. A site visit will be necessary to verify the appropriate technique. Since the Kent County Soil Conservation District is the primary agency that will be assisting landowners with shore erosion matters, Kent County government should clearly indicate to the District that the implementation of shore erosion measures must be consistent with County policy.

32,26 Kent County should specify that the County Policies for shore erosion protection are COMAR 14.15.04.03b(1)-(5).

35,18 Kent County must revise the wording of this section so that all Habitat Protection Areas within the County are protected whether or not they appeared on the specific Habitat Protection Areas Map.

35,31 The Kent County Sediment Control Ordinance should be revised so that it clearly requires sediment control plans and permits for forest harvests of 5000 sq. ft. or more.

35,41 Kent County must add to their program the specific restrictions for commercial harvesting in the buffer, in particular COMAR 14.15.09.01 C(5)(a).

37,1-9 Kent County must modify its policy concerning appropriate BMPs so that the choice of BMPs also minimizes adverse effects on protected plant, fish and wildlife habitats.

37,45 Kent County should clearly indicate to the Kent County Soil Conservation District to consider the recommendations in the appropriate 208 Water Quality Plan when prescribing land management practices.

38,16&19 The section that specifies the "conditions for which agricultural practices may be exempt from the Sediment Control Ordinance" must be reworded so that a farmer will know what is required before and after 1991 and/or before or after a plan is in place.

38,16 This Section should be clearly written so that it applies to the individual landowner.

41,47 This section should state that the interval of mining impact should not exceed 25 years.

44,11 The definition of the Buffer must clearly state the reference points from which it is measured, namely, the Mean High Water Line of tidal wetlands, tributary streams and tidal wetlands.

45,31-32 This element must be deleted since clearing of additional land in the buffer for agricultural uses is prohibited by the Criteria (COMAR 14.15.09.01C(4)(e)).

45,42-54 This section should clearly indicate which activities that alter the vegetation within the buffer will require a Forest Management Plan.

46,7 The 25-foot filter strip required for agriculture must also be required along tributary streams.

46,15-18 The local program must specify the specific conditions for replacing the 25-foot filter strip. See COMAR 14.15.09.01C(4)(e).

47,40-46 The Local Program should state the same specific conditions for which cutting can occur as stated in the Criteria, particularly COMAR 14.15.09.01C(5)(e)-(g).

48,1-7 Kent County must include in its ordinances provisions for the establishment of the minimum 100-foot buffer if agricultural land is developed.

52,59 Kent County needs to specify the process for all situations whereby a non-tidal mitigation plan could be approved.

57,31 Since the Development Handbook is to be part of the Zoning Ordinance, it must be approved by the Critical Area Commission before it is locally enacted.

59 The Development Handbook should include the standards and recommendations that are found within the Commission's Guidance Papers.

62,45 The plan must indicate that Soil Conservation And Water Quality Management Plans shall be implemented by 1991

66,31 This section should indicate that Intrafamily transfers apply in RCAs only.

66 As part of the approval of the Intrafamily Transfer process, State Law requires the County to first "establish standards and procedures by which the (County) will permit the subsequent conveyance of lots to persons other than the immediate family members." As proposed, the Intrafamily Transfer Provision of the local program merely mimics the objectives spelled out in the law.

*Commission meeting*



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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- James E. Gutman  
Anne Arundel Co.
- Parris Glendening  
Prince George's Co.
- Ronald Hickernell  
Baltimore Co.
- Shepard Krech, Jr.  
Talbot Co.
- Florence Beck Kurlie  
Anne Arundel Co.
- Thomas L. Jarvis  
Caroline Co.
- John Luthy, Jr.  
Dorchester Co.
- Robert S. Lynch  
Harford Co.
- Barbara W. O'Neill  
Cecil Co.
- Robert R. Price, Jr.  
Queen Anne's Co.
- J. Frank Ralay, Jr.  
St. Mary's Co.
- Harry T. Stine  
Charles Co.
- Samuel E. Turner, Sr.  
Talbot Co.
- Lloyd S. Tyler, III  
City of Crisfield
- Mary Roe Walkup  
Kent Co.
- Albert W. Zahniser  
Calvert Co.

December 9, 1987

Dear Commission Member:

The next meeting of the Commission is scheduled for December 16, 1987, from 1:00 - 5:00 p.m. in the Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis. The Agenda for this meeting is enclosed, together with the Minutes from the December 2nd meeting. The Chesapeake Bay Foundation provided us with copies of their latest Bay Watcher Bulletin which may be of interest to you. A copy is enclosed.

Please note that we have 5 more panels to appoint. The jurisdictions and proposed hearing dates are:

- |               |                     |
|---------------|---------------------|
| January 14th  | Calvert County      |
| January 21st  | Anne Arundel County |
| January 27th  | Town of Church Hill |
| February 11th | City of Annapolis   |
| February 25th | Town of Queenstown  |

Please assist us by looking at your calendar and volunteering to be on a panel.

I look forward to seeing you on the 16th. As it is close to the Holiday Season, we will have refreshments provided.

Sincerely,  
*Solomon Liss*  
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

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

Department of Agriculture  
50 Harry S Truman Parkway  
Annapolis, Maryland

December 16, 1987

1:00 - 5:00 p.m.

- |  |  |   |
|--|--|---|
| 1:00 - 1:15  | Approval of Minutes of December 2, 1987  | Solomon Liss<br>Chairman                                |
| 1:15 - 2:15  | Presentation and Discussion of Harford County Critical Area Program  | County Officials,<br>Marcus Pollock,<br>Panel           |
| 2:15 - 3:00  | Presentation and Discussion of Town of <del>Elkton</del> <sup>Chesapeake Beach</sup> Critical Area Program | McCrone, Inc.,<br>Carolyn Watson,<br>Panel              |
| <del>3:00 - 3:45</del>   | <del>Presentation and Discussion of Town of Chesapeake Beach Critical Area Program</del>                   | <del>McCrone, Inc.,<br/>Carolyn Watson,<br/>Panel</del> |
| <del>3:00 - 4:00</del><br><del>3:45 - 4:00</del>                           | Break for Refreshments   |   |
| <del>4:00 - 5:00</del>   | Presentation and Discussion of Queen Anne's County Critical Area Program                                   | Barry Perkel,<br>Joe Stevens,<br>Charlie Davis          |
| <del>4:00 - 4:15</del><br><del>5:00 - 5:20</del><br><del>4:15 - 4:40</del> | Update - Growth Allocation Subcommittee  | Robert Price<br>Carolyn Watson                          |
| <del>5:20 - 6:00</del><br><del>4:40 - 5:15</del>                           | Presentation and Discussion of City Cambridge Program  | Redman/Johnston,<br>Assoc.,<br>Ed Phillips,<br>Panel    |
| <del>5:15 - 5:45</del><br><del>6:00 - 6:30</del>                           | Presentation and Discussion of Town of Havre de Grace Critical Area Program                                | Marcus Pollock  |
| <del>5:45 - 6:00</del><br><del>6:30 - 6:45</del>                           | Old Business<br>New Business   |   |

Next Meeting: January 6, 1988 at Great Oak Landing, Chestertown, Maryland

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held  
December 2, 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:

Kathryn Langner	Shepard Krech, Jr.
Secretary Constance Lieder (DSP)	William Bostian
James E. Gutman	Parris Glendening
G. Steele Phillips	Victor Butanis
Robert Perciasepe (D of E)	Russell Blake
Louise Lawrence for	Ronald Karasic
Secretary Cawley (D of A)	Wallace Miller
J. Frank Raley, Jr.	Ronald Adkins
Robert Schoeplein for	Samuel Turner
Secretary Randall Evans (DEED)	Ronald Hickernell
Secretary Torrey Brown (DNR)	Thomas Osborne
Asst. Sec. Ardath Cade (DHCD)	

Chairman Liss then asked for comments of the Minutes of November 18th. Mr. Adkins propped three additions. The first was that of reflecting the Commission vote for tentative approval of the Town of Greensboro's Program as being 19:0, and the Commission vote for tentative approval of the Town of St. Michaels' Program as being 19:0. The second addition was that of the Commission vote of 14:0 in favor of the submittal of the re-proposed regulations for notifications of project applications to the Maryland Register and the AELR Committee. Third, Mr. Adkins referred the Commission to Page Three of the Minutes, stating that Page Three should reflect the vote taken by the Commission on growth allocation: "that any changes to a Program's mapping, particularly when the growth allocation is used, would constitute an amendment to the Program, and therefore would require approval by the Commission". (In actuality, Page Two of the Minutes does reflect that discussion, and further states that the a vote was taken and carried 14:4 to that effect). The changes were accepted by the Commission and the Minutes were then approved.

Chairman Liss stated that there would now begin discussion and vote on Baltimore County's Protection Program. Mr. Marcus Pollock proceeded to outline staff comments on the Program as agreed to by the Baltimore County Panel after three panel meetings and several staff meetings. Three central issues remain to be handled by the County together with the other items contained in the staff comments of November 6, 1987. They are:

- 1) the County has extended its Critical Area boundary to include sensitive natural resources outside the minimum 1,000-foot Initial Planning Area, but has not presented a written technical justification for that extension. This justification is necessary.
- 2) there are missing elements as required in Section 14.15.10 of the criteria such as: a) statement of Program objectives, b) time frame for implementation, c) responsibilities and roles of the various units of government in implementing the County Program, d) a strategy to be established by the County to address water quality impacts derived from existing structures in the IDA, and
- 3) there may be issues around the interpretation of mapping "having presence of sewer and water" which will be dependent upon the opinion of the Attorney General as requested by the Commission.

Mr. Pollock reported that the County has indicated a willingness to incorporate these points into its Program.

Mr. Gutman asked if the County had received these comments prior to that day's Commission Meeting? Mr. Pollock answered affirmatively. Mr. Gutman then asked if the County had given any indication as to how long it would take them to respond to these issues? Mr. Pollock answered that it was unknown at this point. However, Mrs. Andrea Van Arsdale, the planner for Baltimore County, stated that the County would be able to respond in about two to three weeks pending approval of the County Attorney and County Council vote on Appendix J and K in 1 1/2 weeks.

Mr. Raley asked if the panel was recommending the denial of Baltimore County's Program based on the nature of the comments? Mr. Pollock answered that the County be given more time to make the changes if we reject the Program at this point. Chairman Liss intervened to suggest that perhaps the Commission should consider tentative approval of the County's Program based on the action taken by the Commission at the last meeting on Greensboro and St. Michaels. A motion was then distributed for tentative approval of Baltimore County's Program for Commission consideration. He then read the motion as follows:

"The Commission believes the Baltimore County Program to be a good one, but in order for the Baltimore County Program to receive full Commission approval, the Commission requests Baltimore County to make the changes recommended by the

staff report of November 6, 1987, and endorsed by the panel. Pursuant to §8-1809 (d)(3) of the Critical Area Law, such changed Program must be submitted back to the Commission within 40 days of the date of notification by the Commission, and only after at least one additional local public hearing\* has been held concerning the changes made to the originally submitted Program, relevant proposed local ordinances, and plans. Upon resubmission with all changes, the Program shall be subject to final approval. (\*The local jurisdiction should note that it may use the hearing on implementation of its ordinances, set out in Section 8-1809(e), for the hearing requested above. That is, the hearing required for passage of the local ordinances in final form may include the hearing on these proposed changes to the Program. Before final local legislative action, however, the local jurisdiction is required to resubmit the Program to the Commission for final approval)."

Chairman Liss then again summarized the three issues concerning the County Program which are remaining: 1) the matter of "presence of water and sewer" for LDAs which is pending an opinion of the Attorney General, 2) the use of growth allocation and how it shall be considered pending a decision of the Commission subcommittee on Growth Allocation, and 3) the extension of the Critical Area boundary beyond the 1,000-foot limit pending receipt by the Commission of Baltimore County's technical justification for the extension. He then introduced Mr. Howard Alderman, Jr. of the firm of Levin, Gann, and Hankin representing the Shapiro family, property owners on the Back River Neck Peninsula, who have a concern about the extension of the 1,000-foot boundary across their property on the Peninsula restricting their ability to build. Mr. Alderman presented a letter, expressing the concern of his clients to each Commission Member in attendance. The letter was distributed to each Member and Chairman Liss stated that it would be addressed by the Commission together with the technical information provided by the County.

The motion to tentatively approve Baltimore County's Program was made and seconded. Mr. Raley then asked that if there is water and sewer in the ground, what classification did Baltimore County give to the land in question? He also asked if the County had accepted any Commission staff comments on this. Mr. Hickernell stated that the County basically followed the guidelines. Mr. Pollock added that just with density alone, the land under question would qualify for LDA designation. He also added that it would be important for the panel members to look at the area to see if they agree with that position. Mr. Hickernell then added that County staff would be reexamining the area and

developing the information necessary and that this would be closely reviewed by the new Department on the Environment.

Mr. Alderman then made a statement for the Shapiro family and stated that he was pleasantly surprised by the proposed action of the Commission. He asked the County to consider, and the Commission to pay particular attention to, a recommendation before the County's consultants and its own Department of Public Works that sewer and water be provided to the area to resolve a long-standing public health problem. He finished by stating that his clients supported the Critical Area Program and that his clients had a viable plan for their Critical Area in the 1,000 feet (8 lots in 176 acres). He said that the clients oppose the arbitrary extension of the boundaries without the technical justification for it.

Mr. Gutman then commented that in order for a property to be identified as Limited Development, it must be currently served by water or sewer and not be subject to some future plan for service. He concluded by stating that because of this reason, the property does not qualify as an LDA.

Mr. Alderman replied that the clients were not challenging the classification of the property within the 1,000-foot boundary, but rather the arbitrary extension of the boundary across the entire peninsula without justification.

Assistant Secretary Cade made two points to seek clarification. First, that a motion was on the floor, and that to her knowledge, there was nothing in the Law to prevent a community from extending its Critical Area boundary. Chairman Liss interjected that the Law permits that extension. Second, that under this motion as written, the Commission will be able to revisit this issue again and review the justification, and that an affirmative vote on the motion will not place the Commission in a difficult position later on.

Mr. Adkins then asked when would the Commission receive that justification? Chairman Liss replied that the justification would need to be part of the County's resubmittal to the Commission within the 40-day period, and that the Commission would have to decide when all of the facts are before it.

Secretary Lieder asked what the Commission would do if Baltimore County did not, upon resubmittal, address the still remaining issues to everyone's satisfaction in 40 days. Mr. Epstein replied that if these were not satisfied, the Commission could return the Program to the County. The motion which was made and seconded to tentatively approve Baltimore County's Program was voted upon and all were in favor. (19:0).

Chairman Liss then requested Mr. Tom Schueler of the Metropolitan Washington Council of Governments to present the final draft report on the application of the 10% Rule to Developments in the Critical Area. (The draft report had previously been distributed to the Commission for their review). Mr. Schueler distributed a summary to the Commission Members and summarized the Project. He stressed that this investigation was made at the request of the Commission early in 1987, and was funded by the Maryland Department of the Environment. He stated that because communities needed assistance in this area, the approach established was a simple one to apply. He outlined the steps of the study. He announced that a series of workshops would be held to train planners and engineers on how to use the 10% framework. There will be five workshops held in the Spring of 1988.

Mr. Bostian asked what kinds of projects were unable to meet on-site compliance since Mr. Schueler had stated that 24 sites out of 30 studied were able to comply. Mr. Schueler answered that they can be new development, or redevelopment projects representative of a very large change in impervious cover on a property.

Dr. Sullivan asked if there were any outstanding issues still to be addressed by the report that the Departments may have made? Mr. Schueler stated that other than a few minor changes, there are no major outstanding issues. Dr. Sullivan asked if a change was expected to be made in the methodology? Mr. Schueler answered negatively.

Chairman Liss commended Mr. Schueler and his staff for their excellent work. He then requested that the Commission authorize the staff to print and distribute the report as a guidebook to the various counties and municipalities to use as a reference in setting up their Programs. The motion to approve the report was made and seconded, and all were in favor. (19:0).

Mr. Davis then presented the staff report on the Kent County Program. He announced that County staff and he had met several times since November 18th, and had resolved all of the issues that remained. He said that the issues agreed upon were taking the language found internally in the document and packaging it to reflect the components of the local Program, and to include, as part of the Program, an outline for the development handbook proposed to be written by the County, as well as various guidance papers and correspondence that went back and forth between the Commission staff and the County. Also to be added to the Program were the mapping rules, the moratorium imposed by the County, letters between the Towns and the County specifying growth

allocation being provided by the County Planners to the developers during the Interim Findings process, and the comments on the reviewed ordinances and codes. Mr. Davis said that the County has agreed to combine its Critical Area Map mylars with its existing zoning map to define specific Critical Area designations. He then recommended that Kent County's Program be considered an acceptable one with the above mentioned changes to be incorporated.

Chairman Liss asked Mr. Davis if he had furnished the planners with the items that were mentioned to the Commission, and whether or not they had been disposed of adequately. Mr. Davis answered that the issues had been addressed. Chairman Liss said that the only remaining question is whether or not another local hearing need be held because of the difference in text between the originally submitted Program and the one to be approved by the Commission. Mr. Epstein responded that another hearing would be needed to publically address the changes, but that this could be combined with the hearing required in the Law for final implementation approval.

Mr. Gutman asked if there was a deadline for the hearing to be held. Chairman Liss answered that it would need to be held within a 40-day period.

Secretary Lieder said that she did not think she could approve the Program as she had not seen all of the concerns and was unsure as to what the conditions were upon which tentative approval could be given. She stated that her Department was concerned with grandfathering and the ordinances. Mr. Davis replied that he could answer any questions she might have. He was aware of the two points concerning State Planning. He said that the need for language to reflect two grandfathering situations had been added to the Program, and that the ordinances would be able to be found in one spot in the Program text.

Secretary Lieder said that the Kent County Program had no process to address rezoning and entertaining amendments to the Program. Mr. Galloway of Kent County said that it could be addressed by mistake. Secretary Lieder said that she had not seen the November recommendations of the staff and questioned if Kent County's Program would be returned to the Commission for review? Chairman Liss answered affirmatively. A motion was made and seconded to tentatively approve Kent County's Program as follows:

"The Commission believes the local Program for Kent County to be a good Program. However, in order to fully approve this Program, the Commission hereby notifies the County and

its consultant, pursuant to Natural Resources Article §8-1809(d)(3), that they must make the specific changes recommended by the Commission, as set out in the staff report of December 2, 1987, and endorsed by the panel for the County, in order for the Program to be fully approved by the Commission. The Program shall be submitted within 40 days of the date of notification by the Commission with the changed Program documents and ordinances, and after the County has held one additional public hearing\* concerning these changes. This action of the Commission shall be deemed a "tentative approval". (\*The local jurisdiction should note that it may use the hearing on implementation of its ordinances, set out in Section 8-1809(e), for the hearing requested above. That is, the hearing required for passage of the local ordinances in final form may include the hearing on these proposed changes to the Program. Before final local legislative action, however, the local jurisdiction is required to resubmit the Program to the Commission for final approval").

Mr. Gutman asked if the County was going to rewrite its entire Program to incorporate all of the changes in a uniform fashion. Mr. Davis said that the changes were all together. Chairman Liss said that staff would label the package Exhibit A so that everyone would know that the report was the complete package receiving tentative approval.

Secretary Lieder said that she was not certain that all of the Departmental concerns had been addressed. Chairman Liss said that he believed that the Commission should tentatively approve the Program because the County had made an honest attempt to address the issues. Secretary Lieder remarked that the approach to "tentatively approve" Programs in the future would undermine the ability for the Commission to disapprove a Program if issues were not resolved at the request of the Commission. Chairman Liss stated that if there is a serious matter, anyone on the Commission can introduce it, but the Commission should not disapprove a Program for minor issues, because of time restrictions.

Mr. Gutman suggested that the staff should be relied upon to handle the reviews and if a major problem arises, then the Commission can address it.

A vote to tentatively approve the Kent County Program was taken and all were in favor.

Mr. Miller then thanked the Commission on behalf of Kent County for their approval, and said that the County would comply with their requests. Chairman Liss thanked Mr. Miller and the County Planners for their excellent cooperation.

Dr. Sullivan then presented the staff and panel comments for the Towns of Oxford and Easton, and said that they were similar in nature. He reported that the Commission Members were mailed the final changes to the Programs, together with the proposed ordinance language and that since the mailing, changes in language have been proposed by the staff and panel to bring the Program more into conformance with the Critical Area Program. Dr. Sullivan stated that he has met with the consultants about these changes (Redman/Johnston Assoc.) and that the Towns endorse the changes as well.

He pointed out that the language for Easton and Oxford is as precise as the language approved by the Commission for St. Michaels at its last meeting. He stated that planting requirements for Oxford are not as detailed as for St. Michaels. Oxford does have a mitigation manual that it will use. For Easton, the language does not provide for a buffer exemption because there are no areas of that nature. There were originally mapping issues in Easton requiring an exemption, but they were resolved.

Dr. Sullivan then asked the Panel Chairman for Easton, Secretary Lieder, if there were any comments. Secretary Lieder questioned the classification of one of the properties in the Town of Easton. Her concern was resolved because staff of her Department had approved the classification. Dr. Sullivan asked if Chairman Liss, as Panel Chairman for Oxford, had any comments. Chairman Liss said that he believed all issues to be addressed.

Mr. Davis then reviewed the Rock Hall, Betterton, and Millington Plans with the Commission. He stated that comments had been made on the originally submitted document, complete with regulations to implement the Programs. He stated that staff reviewed the language to make certain that it was as uniform as possible. For example, the three Towns needed to include language for grandfathering. This was done. Maps were then referred to for the Towns.

No issues existed for Millington. For Betterton, there was initially an issue relating to a parcel of property labeled RCA, but which the owner believed should be LDA. The Town decided to keep it as an RCA and use its growth allocation to develop it as an LDA thus resolving the issue. A motion was made and Critical

seconded, that these Programs all be tentatively approved. Chairman Liss read the motion as follows:

"The Commission believes the local Programs for the Towns of Easton, Oxford, Betterton, Millington, and Rock Hall to be good Programs. However, in order to fully approve these Programs, the Commission hereby notifies each of the Towns, and their consultants, pursuant to Natural Resources Article §8-1809(d)(3), that they must make the specific changes recommended by the Commission, as set out in the staff report of December 2, 1987, and endorsed by the panels for each of the five Towns, in order for each of the Programs to be fully approved by the Commission. Each Program shall be submitted within 40 days of the date of notification by the Commission with the changed Program documents and ordinances, and after each of these local jurisdictions has held one additional public hearing\* concerning these changes. This action of the Commission shall be deemed a "tentative approval". (\*The local jurisdictions should note that they may use the hearing on implementation of their ordinances, set out in Section 8-1809(e), for the hearing requested above. That is, the hearing required for passage of the local ordinances in final form may include the hearing on these proposed changes to the Program. Before final local legislative action, however, the local jurisdictions are required to re-submit the Programs to the Commission for final approval").

Mr. Phillips asked if one motion was being made for all of the Towns. Chairman Liss answered affirmatively. Mr. Tony Redman of Redman/Johnston and Associates, expressed a concern that attempting to meet the 40-day time frame on the part of all of the Towns might be too difficult for both the resubmittal hearing and the implementation hearing. Chairman Liss suggested that the Commission could stagger the notifications to the Towns recognizing the facts that six hearings would need to be scheduled, Article 66B procedures would need to be followed, and that this is the holiday season when it is difficult to get Mayors and Councils together. Chairman Liss asked how much time would be needed? Mr. Redman said that they would speak to the Towns and establish an agenda for hearings. A vote was taken and all were in favor. (19:0).

Mr. Pugh, Planning Director for Cecil County, introduced the consultants who developed the County Program as Rogers, Golden and Halpern and Redman/Johnston and Associates. He mentioned that the County also had a Citizens Advisory Committee aid in developing their Program. Mr. Pugh then presented the process followed by the County for mapping and the mapping rules used.

Mr. Johnston of Redman/Johnston Associates, described the use of the 5% growth allocation. Of all the Critical Area lands in the RCA, 940 acres can be used for new growth under the 5% formula. Fifteen percent of the growth will go to municipalities. Twenty-five percent is to apply to small property owners, less than 100 acres. Sixty-five percent is retained for large developers and they must compete for it annually under a point system for design.

Mr. Raley asked how the Program actually worked to help compensate the small property owner. Mr. Johnston explained the process. Mr. Pugh pointed out that points are only given if a developer exceeds the criteria.

Mr. Johnston then proceeded to describe the process for using the growth allocation. Mr. Pugh introduced Mr. Pierson of Rogers, Golden, and Halpern to review the habitat features of the Program. He addressed the approach to identify water-dependent uses, and the principles to address shore erosion.

Mr. Pugh then introduced Ms. Susan McPheeters, and Ms. Janet Gleisner, of his staff, who presented the Programs for Perryville, North East, Charlestown, and Port Deposit.

Mr. Bostian asked how many building permits in the County had been granted for the Critical Area? Mr. Pugh answered that the County placed a moratorium on development in 1986. He guessed that approximately 40-50 new single family dwellings had been built under the grandfathering provisions with a fewer number for the Towns. Ms. Barbara O'Neill, former Cecil County Commission Member, asked Mr. Pugh to carefully evaluate the proposed project for Wiley Manufacturing in Port Deposit consisting of a 100-slip marina and stores. Mr. Pugh said that he would do so.

Mr. Redman then presented the Program for Centreville. He said that there was one major issue, that of development of the Cudner property into an Inn complex. Dr. Krech stated that the concerns that the panel heard at the Commission hearing were with extending the Cudner property into an RCA site, the buffer exemption, and the classification of the land on the other side of the road. Mr. Redman referred to a map of the site, explaining the issues. He recommended that the Commission look at the language in the Program document regarding the buffer exemption tests because they will have a bearing on the project proposed for the Town.

Mr. Johnston presented the Town of Pocomoke City's Program and stated that there was enough evidence for a determination to be made that the Town be granted an exclusion by the Commission under the Law. He explained those conditions.

Chairman Liss asked how difficult would it be to have the Town Officials, through a provision, to agree that when redevelopment occurs, it will comply with the Critical Area Program criteria insofar as possible to protect themselves and to show the citizenry that the Town will use some care in development later on? This would give the public some assurance.

Mr. Ed Phillips, staff regional planner for Pocomoke City, said that he believed that the exclusion request was justified.

Chairman Liss said that the Commission could grant the exclusion subject to the Town placing a provision in its zoning ordinance. That it will assure that new development or redevelopment occurring the Critical Area will comply with the Critical Area Program insofar as possible. This suggestion was considered likely by the consultant.

Dr. Krech commented on the field trip of the Town. It was decided that the panel would consider the Chairman's statement when it meets to discuss the Program.

UNDER NEW BUSINESS

Chairman Liss distributed invitations to the forthcoming signing of the Bay Agreement.

UNDER OLD BUSINESS

Mr. Davis announced the availability of local Programs for Oxford, Easton, Rock Hall, Millington and Betterton.

There being no further business, the meeting was adjourned.