

Committee Meetings & Correspondence July 1988

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Mtg.*



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
974-2418 or 974-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

COMMISSIONERS

Thomas Osborne
Anne Arundel Co.

James E. Gutman
Anne Arundel Co.

Ronald Karasic
Baltimore City

Albert W. Zahniser
Calvert Co.

Thomas Jarvis
Caroline Co.

Kathryn D. Langner
Cecil Co.

Samuel Y. Bowling
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G. Steele Phillips
Dorchester Co.

Victor K. Butanis
Harford Co.

Wallace D. Miller
Kent Co.

Parris Glendening
Prince George's Co.

Robert R. Price, Jr.
Queen Anne's Co.

J. Frank Raley, Jr.
St. Mary's Co.

Ronald D. Adkins
Somerset Co.

Shepard Krech, Jr.
Talbot Co.

Samuel E. Turner, Sr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

July 1, 1988

Dear Commission Member:

The next Meeting of the Chesapeake Bay Critical Area Commission is scheduled for Wednesday, July 6, 1988, at the Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis. We will begin promptly at 1:00 p.m. The Agenda of the Meeting and the Minutes of the Meeting of June 29th are enclosed.

Please note that there are several votes scheduled for the Meeting, so once again, I urge your attendance and prompt arrival.

Also enclosed is a draft of another Guidebook. This one applies to the establishment of Natural Parks. Please read the draft carefully, and provide Dr. Sarah Taylor with your comments by no later than July 6, 1988, the following Commission Meeting.

Sincerely,

Solomon Liss
Solomon Liss
Chairman

SL/jjd

Enclosures

CABINET MEMBERS

Wayne A. Cawley, Jr.
Agriculture

J. Randall Evans
Employment and Economic Development

Martin Walsh, Jr.
Environment

Ardath Cade
Housing and Community Development

Torrey Brown
Natural Resources

Constance Lieder
Planning

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

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

July 6, 1988

1:00 - 3:30 p.m.

- 1:00 - 1:10 Approval of Minutes of June 29, 1988 Solomon Liss Chairman
- 1:10 - 1:45 Votes on Caroline County Program and Federalsburg Program Sarah Taylor/ Panel *etc*
- 1:45 - 2:15 Vote on Wicomico County Program Kevin Sullivan/ Panel *etc sent*
- 2:15 - 2:30 Break
- 2:30 - 3:15 Presentation of the Economic Baseline Study Dr. Patrick Beaton, Rutgers University
- 3:15 - 3:30 Old Business - *City of Annapolis - etc to Judge*
New Business *Solomon Liss*
Halestown Resolution *Chairman*
Intervention - 1 page filing Lee Epstein

Next Commission Meeting: July 20th, Department of Agriculture
Annapolis, Maryland

Marcus Pollock - leaving July 7th

*August 3rd
P.G. Co. Growth
Allocation -
Chesapeake Beach*

*July 20th
next meeting
① Leonardtown Final Approval
② Church Creek Final Property
③ Annapolis - Brown Property
④ Project - old Age Home
Kent County*

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
June 29, 1988

The Chesapeake Bay Critical Area Commission met at the Tidewater Inn, in Easton, Maryland. The meeting was called to order by Chairman Solomon Liss with the following Members in attendance:

Wallace Miller
William Bostian
G. Steele Phillips
Ronald Hickernell
Samuel Bowling
Ronald Karasic
Russell Blake
Carolyn Watson for
Parris Glendening
Louis Lawrence for
Secretary Cawley.

Victor Butanis
Samuel Turner, Sr.
Thomas Osborne
Thomas Jarvis
James Gutman
Albert Zahniser
Ronald Adkins
Larry Duket for
Secretary Lieder
Robert Schoeplein of DEED
~~Robert Peciasepe of DOE~~
Robert Price

Bob Price

The Minutes of the Meeting of June 15, 1988 were approved as written.

Chairman Liss asked Dr. Kevin Sullivan to report on the status of Wicomico County. Dr. Sullivan said that the Panel met for the first time that day. Mr. Butanis, Panel Chairman, said that some mapping issues and other matters need still to be resolved. The Panel will continue to work with the County on its Program.

Chairman Liss asked Mr. Marcus Pollock to report on the status of the Program for the City of Annapolis. Mr. Pollock said that there had been a few remaining issues to be concluded, but the City and Panel have since come to an agreement, and all outstanding issues have been remedied. He then introduced Ms. Eileen Fogarty, Director of Planning, and Mr. Mike Myron, Chairman of the Planning Commission, to speak to the Commission regarding the City's design and intention in the development of its local Program.

Mr. Price, Panel member, reported that the Panel had reviewed the amendments and agreed that all requested changes had been made. He said that he was not certain as to how the City will protest the Commission's request for an RCA designation of the Brown Property, but that it is the Panel's recommendation to adopt the City of Annapolis' Program, provided that change is accepted by Annapolis.

Chairman Liss explained that the Commission would soon be receiving a letter from the Mayor of Annapolis, and that the City will be requesting a hearing before "Sewer Court" as to whether

the disputed area of the Brown property should be included in the Critical Area as RCA.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve the City of Annapolis' local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, the City of Annapolis shall adopt the Program together with all relevant ordinance changes. The vote was 16:0 in favor, with 1 abstention.

Chairman Liss asked Dr. Taylor to report on the Town of Denton's Program. Dr. Taylor distributed the staff comments on the Program to the Commission. She said that there are a number of issues concerning the Program that need to be remedied, and some obscurity that needs to be clarified.

Mr. Butanis, Panel Chairman, said that the Panel concurs with the staff-recommended changes, and the suggestion that the Program be returned to the Town for these changes to be made.

A motion was made and seconded that the Commission believes the local Program for the Town of Denton is a good one, but for final approval pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests the Town of Denton to make the changes recommended by the staff report and endorsed by the panel. Pursuant to Section 8-1809(d)(3), such changed Program must be re-submitted to the Commission within 40 days and only after at least one additional public hearing has been held concerning the changes made to the originally submitted Program, relevant ordinances and plans. The vote was 16:0 in favor.

Chairman Liss then asked Mr. Ed Phillips to report on the the Program for Dorchester County. Mr. Phillips said that the Panel has met several times to address the elements in the Program that needed clarification or restructuring.

Mr. Steven Dodd, Planning Director, explained the County's methodology for counting its Growth Allocation.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve Dorchester County local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, Dorchester County shall adopt the Program together with all relevant ordinance changes. The vote was 16:0 in favor, with 1 abstention.

Chairman Liss reported that two of the small Towns in Dorchester County, Brookview and Eldorado, had signed the Resolution seeking exclusion from the Critical Area Law, suggested by the Commission.

A motion was made and seconded that the Commission accept the Resolution as an exclusion of the Town of Brookview. The vote was 17:0 in favor.

A motion was made and seconded that the Commission accept the Resolution as an exclusion of the Town of Eldorado. The vote was 17:0 in favor.

Mr. Ed Phillips reported that the remaining Towns will soon be forwarding their signed Resolutions to the Commission.

Chairman Liss then asked Mr. Davis to report on Queen Anne's County's Program. Mr. Davis discussed some of the issues that had been addressed in the last several months.

Mr. Price, Panel Chairman, said that the requested changes have been made, and the Panel would agree that the Program was ready for acceptance.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve Queen Anne's County's local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, Queen Anne's County shall adopt the Program together with all relevant ordinance changes. The vote was 17:0 in favor.

Mr. Bill Riggs, President of the County Commissioners, said that he was satisfied with the Program and feels that both the Commission and the staff for Queen Anne' had worked hard to attain a worthy end.

Chairman Liss asked Mr. Adkins to report on the Program for Somerset County. Mr. Adkins presented the position of the County, that they believed the Program for Somerset County should be approved by default, because the 90-day review period had already expired.

Chairman Liss then explained the timing involved in the 90-day review period. He said that because of a lack of a Panel quorum, a Panel meeting could not be held before this Commission Meeting, and suggested that the Panel meet during the break period to discuss the staff recommended written changes that Mr. Ed Phillips had prepared to distribute.

After the break, Chairman Liss asked the Somerset County Panel to report on its findings. Mr. Hickernell said that it was the suggestion of the Panel to return the Program to Somerset County for reconsideration of various items identified by the staff. He then pointed out the most significant issues that needed attention.

A motion was made and seconded that the Commission believes the local Program for Somerset County is a good one, but for final approval pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests Somerset County to make the changes recommended by the staff report and endorsed by the Panel. Pursuant to Section 8-1809(d)(3), such changed Program must be re-submitted to the Commission within 40 days and only after at least one additional public hearing has been held concerning the changes made to the originally submitted Program, relevant ordinances and plans. The vote was 15 in favor with 1 opposed. Mr. Adkins asked that it be recorded that he was opposed to the acceptance of the motion, and that he be recorded as voting against the motion.

UNDER NEW BUSINESS

Chairman Liss made note to the Commission of the report by the Chesapeake Bay Foundation, regarding the activities of the Commission, etc.

Chairman Liss reported that the Commission is scheduled to appear before the Legislative Oversight Committee on July 19th.

Mr. Gutman asked if there were any specific recommendations in the report for the Commission. Chairman Liss answered that there was nothing specific, the report was a general overview of Commission activities to date.

Chairman Liss asked Dr. Taylor to report on the Susquehanna State Park Boat Ramp Panel meeting and site visit. Dr. Taylor asked the Panel Chairman, Mr. Zahniser, to explain about the boat ramp, and what the Panel's suggested improvements were.

A motion was made and seconded to approve the recommendations of the Panel for improvement of the Susquehanna State Park Boat Ramp. The vote was 16:0 in favor.

Chairman Liss then asked Ms. Dawnn McCleary to present the draft Guidance Paper on Natural Parks. A panel was chosen to work with Ms. McCleary on the paper to complete it in final form. The Panel consists of James Gutman, Chairman, Ron Karasic,

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Shepard Krech, Sam Bowling, Wally Miller, and Tom Osborne, with Dr. Sullivan to give such assistance as might be required.

UNDER OLD BUSINESS

Chairman Liss explained that a study had been authorized by the Governor, to be made of the rationale for the 1 du/20 acres density criterion, as a result of the questions of the Legislature. He introduced Mr. Bob Gray and Ms. Lucy Vinis, of Resource Consultants, Inc., who had compiled the report, and asked Mr. Gray and Ms. Vinis to present their findings.

Mr. Price asked to whom would the report now be directed? Chairman Liss answered that it was delivered to the Commission, pursuant to the contract, but that it would be available to interested parties.

There being no further business, the Meeting was adjourned.



7/6/88

JUDGE SOLOMON LISS
CHAIRMAN

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J. Randall Evans
Employment and Economic Development

Martin Walsh, Jr.
Environment

Ardath Cade
Housing and Community Development

Torrey Brown
Natural Resources

Constance Lieder
Planning

July 13, 1988

Dear Commission Member:

The next Meeting of the Chesapeake Bay Critical Area Commission is scheduled for Wednesday, July 20, 1988, at the Department of Agriculture Building, 50 Harry S. Truman Parkway, Annapolis. We will begin promptly at 1:00 p.m. The Agenda of the Meeting and the Minutes of the Meeting of July 6th are enclosed. Also enclosed is a letter concerning a grandfathering issue for Chestertown.

I look forward to seeing you on the 20th.

Sincerely,

Sol
Solomon Liss
Chairman

SL/jjd

Enclosures

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

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

July 20, 1988

1:00 - 3:30 p.m.

- | | | |
|-------------|---|--|
| 1:00 - 1:10 | Approval of Minutes of
July 6, 1988 | Solomon Liss
Chairman |
| 1:10 - 1:20 | Votes on Programs for the
Towns of Mardella Springs
and Sharptown | Kevin Sullivan/
Panel |
| 1:20 - 2:20 | City of Annapolis Hearing -
Brown Property | Solomon Liss,
Chairman/Thomas
Deming/Lee Epstein/
Eileen Fogarty, City
of Annapolis
Planning Director |
| 2:20 - 3:00 | Presentation and Discussion
of Policy Implications:
Peninsula United Methodist
Homes - Chestertown | Charles Davis |
| 3:00 - 3:15 | Break | |
| 3:15 - 3:30 | Old Business
New Business | Solomon Liss
Chairman |

Next Commission Meeting: August 3rd, Department of Agriculture
Annapolis, Maryland

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held

July 6, 1988

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:

Samuel Turner, Sr.	Thomas Jarvis
G. Steele Phillips	Samuel Bowling
Wallace Miller	Victor Butanis
Ronald Karasic	William Bostian
James Gutman	Ronald Hickernell
Parris Glendening	Kathryn Langner
Albert Zahniser	Thomas Osborne
Robert Price	Robert Perciasepe of DOE
Deputy Secretary Cade of DCHD	Larry Duket for
Robert Schoeplein of DEED	Secretary Lieder
Torrey Brown of DNR	

The Minutes of the Meeting of June 29th were approved with the change of Robert Price instead of Robert Perciasepe as an attendee.

Chairman Liss asked Dr. Taylor to report on the Program for Caroline County. Dr. Taylor said that the Panel had met to review the suggested comments of the staff. She said that the Program needs correction, and outlined the major items that would have to be addressed. The major items included:

1) the misunderstanding of grandfathering as it relates to the criteria; 2) the permission given to build in the Buffer and exempt this criterion by the Town; 3) mapping of selected areas as IDD and LDD when they should be RCA; and 4) language for certain aspects on implementation and enforcement. Mr. Butanis, Panel Chairman, said that the Panel concurs with the staff comments, and recommends the Program be returned to the County.

Mr. Gutman asked if there were any mapping issues? Dr. Taylor answered that State Planning questioned the classification of certain properties depicted on the submitted tax maps, and asked that the County re-examine the maps. She said that the Panel, together with the consultant, will be doing so.

A motion was made and seconded that the Commission believes the local Program for Caroline County is a good one, but for final approval pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests the County to make the changes recommended by the staff report and endorsed by the Panel. Pursuant to Section 8-1809(d)(3), such changed Program must be re-submitted to the Commission within 40 days and only after at least one additional public hearing has been held concerning the Critical Area Commission

changes made to the originally submitted Program, relevant ordinances and plans. The vote was 17:0 in favor.

Dr. Taylor was then asked to report on the Program for the Town of Federalsburg. She distributed to the Commission, the staff comments on the Program, and said that the concerns with Federalburg's Program are basically the same as those of Caroline County's Program, such as the Buffer Exemption, and the misunderstanding of what is being grandfathered. She said that statements were made in the Program concerning additional development within the Town from an annexation perspective, and that the Program needs to state what amount of growth allocation the County is giving to the Town to accommodate growth in the future.

Mr. Butanis, Panel Chairman, said that the Panel endorses the staff comments on the Program.

A motion was made and seconded that the Commission believes the local Program for the Town of Federalsburg is a good one, but for final approval pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests the Town of Federalsburg to make the changes recommended by the staff report and endorsed by the Panel. Pursuant to Section 8-1809(d)(3), such changed Program must be re-submitted to the Commission within 40 days and only after at least one additional public hearing has been held concerning the changes made to the originally submitted Program, relevant ordinances and plans. The vote was 17:0 in favor.

Chairman Liss asked Dr. Sullivan to report on the Program for Wicomico County. Dr. Sullivan said that the Panel has met and reviewed the staff comments. He then summarized what the Panel felt to be the main concerns.

Mr. Butanis, Panel Chairman, said that the Panel agrees with the comments of the staff report, and recommend that the Commission return the Program to address those issues. Specifically with respect to the growth allocation, the County should be given some direction as to how to modify the Program to conform to the Commission's guidelines, but the Panel at this time, has not decided precisely what should be recommended to the County.

A discussion then ensued regarding the adverse ramifications of the County employing its method of counting growth allocation.

Mr. Butanis suggested that the Panel meet to discuss this contention and attempt to find a solution to the problem when submitting the comments to the County.

A motion was made and seconded that the Commission believes the local Program for Wicomico County is a good one, but for final approval pursuant to Section 8-1809(d)(2) of the Critical Area Law, the Commission requests the County to make the changes recommended by the staff report and endorsed by the Panel. Pursuant to Section 8-1809(d)(3), such changed Program must be re-submitted to the Commission within 40 days and only after at least one additional public hearing has been held concerning the changes made to the originally submitted Program, relevant ordinances and plans. The vote was 17:0 in favor.

Chairman Liss reported that the Resolution seeking exclusion from the Critical Area Law had been signed by the Mayor of the Town of Galestown, dated June 27, 1988, and had been received by the Commission Office.

A motion was made and seconded that the Commission accept the Resolution as an exclusion of the Town of Galestown. The vote was 16:0 in favor.

Chairman Liss asked Mr. Epstein to report on the Notice of Intervention that the Commission has filed in a pending matter.

Mr. Epstein explained the circumstances concerning a developer's proposal in Kent County, to subdivide Langford Farm. The matter had received earlier Commission attention, but of a limited nature based on the question asked by the County concerning subdivision lines. The County Planning Commission, on June 2, approved a preliminary plat that in the staff's and Chairman Liss' view, failed to fully account for the requirements set out in the County's Critical Area Program, its Zoning Ordinance, and its Land Subdivision Ordinance. Therefore, it was Chairman Liss' decision to intervene in that action by filing an appeal with the Circuit Court, which he had done. Mr. Epstein then set out the authority of the Chairman to intervene, as provided in the Critical Area Law, and the fact that the Commission could require the Chairman to withdraw such intervention, if it so chose.

Mr. Price asked if the Department of Natural Resources became involved at the request of the County? Mr. Epstein answered affirmatively.

A motion was made and seconded to authorize the Commission to proceed with the intervention. The vote was 14 in favor with 2 abstentions, being that of Mr. Wallace Miller, and Deputy Secretary Cade, because she had only just arrived at the Meeting and was not familiar with the issue being voted upon.

Critical Area Commission
Minutes - 7/6/88
Page Four

Chairman Liss reported that the Commission Office has received correspondence from the Mayor of Annapolis, asking for an opportunity for the Annapolis delegation to appear before the Commission at the next meeting, in a "special hearing" to discuss the Brown Property.

An announcement was made of the resignation of Mr. Marcus Pollock from the Commission staff, as he will now be working as Director of Operations for the Anne Arundel County Housing Authority.

Chairman Liss introduced Dr. Patrick Beaton, of the Urban Policy Research Program of Rutgers University, who has been developing the economic baseline study of the Critical Area and asked that he present his findings.

Dr. Beaton first presented information about the control region known as the Pinelands of New Jersey. He then spoke of the database and the methodology used in comparing Maryland information within the control region. Two conclusions were presented based on the analysis of data for Maryland: 1) that the value of parcels in the Critica Area as compared to parcels outside the Critical Area increased, with some contribution by the Critical Area program criteria; 2) that parcels with single family dwellings rose significantly, but this was probably due largely to proximity to the metropolitan areas of Baltimore and Washington, with some contribution through the Critical Area program.

There being no further business, the meeting was adjourned.



JUDGE SOLOMON LISS
CHAIRMAN

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July 13, 1988

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Wicomico Co.

Russell Blake
Worcester Co.

Dear Commission Members:

The Town of Chestertown has brought to my attention a matter that I feel requires a discussion and decision at the next Commission meeting, July 20, 1988.

The Town of Chestertown is now revising its draft program based on the Commission's comments of June 10, 1988. As part of that process the Town is concerned about how those changes may affect a particular project that the Town has been encouraging for the past four years, and that has received certain Town approvals. The Town is concerned that certain revisions to the program may result in significant financial setbacks to the project and perhaps a loss of the project.

In particular the Town wishes to grandfather the approved Planned Unit Development (PUD) located on land owned by Penninsula United Methodist Homes, Inc.

From the Critical Area Commission perspective there are apparently two main issues:

One source of uncertainty on this particular project is the fact that the approval for a Planned Unit Development does not neatly correspond to the grandfathering categories stated in the Commission's Criteria, particularly since this Planned Unit Development does not require subdivision per se.

Secondly, even if this project is grandfathered, that fact per se does not eliminate the requirement to comply with other Habitat Protection Area requirements (COMAR 14.15.02.07 D) and other requirements of the Town's Program.

CABINET MEMBERS

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Agriculture

J. Randall Evans
Employment and Economic Development

Martin Walsh, Jr.
Environment

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Housing and Community Development

Torrey Brown
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Planning

Commission Members

July 13, 1988

Page Two

Based on a discussion with CAC staff, the closest grandfathering category for this project is the following:

(COMAR 14.15.02.07B(2))

"Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985...provided that:

- (a) the local jurisdiction develops as part of its program, procedures to bring these lands into conformance with the local Critical Area Program insofar as possible..., or
- (b) If any such land has received a building permit subsequent to December 1, 1985 but prior to local program approval, and is located in a Resource Conservation Area, that land must be counted against the growth increment permitted in that area under COMAR 14.15.02.06."

Although no subdivision per se is required for this project, this proposed use--because it is a Planned Unit Development--required the approval of the Chestertown Board of Appeals. The Town Manager has stated that as part of the decision, the Board of Appeals considered the requirements of Natural Resources Article §8-1813. However, the Town approvals were based on the strategy that was contained in the proposed Chestertown Critical Area Program that was submitted to the Critical Area Commission--some parts of which the Town was asked to change. Consequently, the project, as approved by the Town, will not now comply with all the changes to the Chestertown Critical Area Program. Consequently, if the Town proceeds on a quick pace to revise and return the Program to the Commission for approval, then the project is not likely to have begun construction or perhaps even have obtained all necessary building permits.

The Town believes that it is reasonable to grandfather this project based on the following factors:

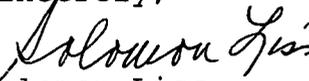
- 1) The project is located on a "legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985" COMAR 14.15.02.07B(2);
- 2) The project has been approved for the proposed use " in accordance with density requirements in effect prior to the adoption of the local program..." through the Chestertown Board of Appeals approval, COMAR 14.15.02.07B;

Commission Member
July 13, 1988
Page Three

- 3) As part of the Board of Appeals decision, the Board considered the requirements of Maryland Annotated Code, Natural Resources Article §8-1813;
- 4) Since this land, as of December 1, 1985 had the characteristics of a Resource Conservation Area and clearly the proposed project will result in a more intense use, the Town has requested and received growth allocation from Kent County to apply to this site [in the spirit of COMAR 14.15.02.07 B92)(b)];
- 5) Because of the particular marketing strategy for the proposed use as a retirement community, many of the units have already been secured by interested persons based on the site plan that was approved by the Chestertown Board of Appeals, last year;
- 6) Despite the fact that the final improvement plan and building permits have not been fully approved, and may not be totally approved prior to the Critical Area Commission's approval of the Chestertown Critical Area Program, this project has been planned for over three years by the landowners and encouraged by both the Town and County because it is a highly desirable and needed asset to the community;
- 7) One difference between the site plan that was approved by the Chestertown Board of Appeals and the revisions to the local program is the Buffer distance. The Town Board of Appeals required a buffer less than 100' in portions of the site because it considered the presence of the fringe marsh that completely surrounds the site to be an ameliorating factor; and
- 8) The landowners have operated in good faith with the Town to address environmental concerns specified by the existing ordinances and policies.

Chestertown wishes to quickly resolve this matter so that it can return its revised program to the Critical Area Commission for approval. Please be prepared to discuss this matter at the Commission meeting on July 20th so that we can resolve this issue.

Sincerely,


Solomon Liss
Chairman

SL/jjd

STAFF COMMENTS ON

FEDERALSBURG

7/6/88

1. There needs to be a distinction between the portion of the Program that is to be implemented as regulation vs. the portion to be implemented as guidelines.
2. The area mapped as LDD in the northeast corner of the Town above Tanyard Branch should be RCD and not LDD. The area appears to be a large undeveloped parcel under one ownership without community water and sewer and is adjacent to the Idylwild Wildlife Demonstration Area.
3. The areas in the southern portion of the Town directly below the railroad tracks and extending along both sides of Marshyhope Creek to the southern Town boundary are mapped IDD. These areas contain conditions which may be more suited for a combination of LDD and RCD designation.
4. The Buffer exemption and variance provisions in the Town's Program are disconnected, unclear, and unspecified. The Town should specify and consolidate provisions which require, where possible, a full or modified Buffer on nonconforming grandfathered lots when redevelopment or new development is proposed. In addition, offsetting enhancements of areas outside the Buffer or in other Buffer areas could be suitable mitigation alternatives if Buffer requirements are not possible on a grandfathered lot.
5. The various statements through the Town's Program which indicate that existing developments and grandfathered developmental actions are exempt from the requirements of the CBCA law and regulations are incorrect. Proposed development and improvements in existing developed and grandfathered areas should be required to comply with the CBCA Program requirements to the maximum extent possible. The Grandfathering/Buffer Exemption Existing Development section is confusing, especially item #2 which relates to individual parcels not part of a subdivision. Presumably, item #2 encourages reconfiguration of nonconforming lots in undeveloped subdivisions.
6. Several statements in the Town's Program indicate that the Town will not provide enforcement for certain CBCA Criteria requirements such as farm and forestry best management practices. The Town believes that appropriate federal and State authorities should assume these enforcement responsibilities. The Town's position regarding the enforcement responsibilities in these areas may be inconsistent with the provisions in the CBCA Criteria, and should be carefully reviewed.
7. The Town apparently will adopt its CBCA Program by reference in appropriate plans and ordinances. These references have not yet been drafted. These references will need to be reviewed by the CBCA staff prior to the Commission's approval of the Program.

8. There should be a growth allocation section in the Program because the program talks about potential development and annexation. How much growth will be needed and where will the Town get it and what commitment does it have from the County to enable it to grow?
9. Federalburg identifies enforcement actions which will be initiated through a MOU with the Office of Environmental Programs. The agency currently responsible for enforcing water quality compliance is the Maryland Department of the Environment. It is unclear whether MDE's mandate is flexible enough to enforce compliance with Federalburg Critical Area Program if a water quality violation does not exist.

PAGE BY PAGE COMMENTS:

- pg 5. It is assumed that the town will be conducting the field checks prior to rendering a decision (under maps, underlined statement).
- pg 6. Reexamine the designation of the mapping in the third and fourth paragraphs and refer back to the comments numbered 2 and 3.
- pg. 7. The non-tidal wetlands species maps and determinations should refer to the USFWS designations which are the basis for the criteria and not the Army Corps of engineers.
- pg. 8 Protection of habitats mentioned in the first continuing paragraph is afforded by the Forest, Park and Wildlife Service and not solely by the Heritage Program. The Heritage Program is a part of the FPWS.
- pg. 9. Not much is presented on the development levels for the Town. A few statements in this section at the bottom of the page might be helpful.
- pg. 31. The ability to increase a site by over 15% depends on where the site is located. If it is in the IDD, the increase over 15% is acceptable. If the site is in the LDD or RCD, the increase of impervious surfaces over 15% does not comply with the criteria. The distinction needs to be made.
- pg 35. There is no mention made of the 10% stormwater criterion for the IDD. This must be included in the Program and must be adhered to. Ordinance # 136 may not be enough.
- pg. 39 What happened to the mentioning of utility transmission lines for development or redevelopment that must show a net improvement in water quality if it is to be allowed in the C.A.? Also quote 14.15.02G in full. As it stands it is not entirely correct.

- pg. 40. Reference at the top to the Dept. of Health and Mental Hygiene should read Department of the Environment.
- pg. 40. Existing developments are not exempt from the criteria. This is an incorrect statement under Existing Developments (first sentence).
- pg 40. Number 1 is incorrect. Remove "to the extent practical".
- pg 40. Minor building alterations and additions to existing structures outside the buffer but within the 1000 foot Critical Area are not exempt from the Critical Area regulations. Compliance is also not an "encouragement" activity. Compliance must be adhered to. If not, development will count against the growth allocation.
- pg. 41. What are allowable expansions in the buffer of impervious surfaces that are governmental uses? This is unclear. In fact, the criteria do not allow for increases in impervious surface in the buffer unless the use is water dependent. Item a.
- pg. 41. The Town cannot grant a buffer exemption without showing the Commission where it wants to exempt uses in the Buffer. The Commission is the only body which can approve Buffer Exemptions and must see the exemption areas mapped before giving final approval to the Program. After the Commission approves the exemption, the Town can grant a variance to the applicant. This process may also be done on a case by case basis, but again, the Commission must approve the exemption before the Town grants the variance. Item b.
- pg 41. Item d, Compliance is not an "encouragement" activity. Compliance is to be mandated.
- pg. 41. Replacement of destroyed structures in the Buffer and the provisions that follow in 4. a. are not in compliance with the criteria. Replacement of structures whether by need because of an Act of God, or by choice must not be in the Buffer unless there is no other place to put them. A variance can be granted to place these structures in the 100 foot Buffer however, mitigation for this must be attained and a variance must be granted to do so. The lot depth and hardship are situations to which this can apply.
- pg. 42. Impervious surfaces in the Buffer, and increases in impervious surface are not allowed in LDD or RCD unless there is no other alternative. A variance must be requested for this situation.
- pg. 42. New developments in the IDD must comply with the 10% storm-water runoff criterion.
- pg 44. The Army Corps of engineers regulations do not account for habitat protection areas. The Town must do so under the criteria.
- pg. 44. The Buffer is not to be reduced from the 100 foot minimum width. This width must hold unless conditions are such that a variance is needed to alter the width.

- pg. 46. Steep slopes and construction on them cannot occur on slopes exceeding 15% not the 25% as mentioned in the Program. This does not comply with the criteria. Item 4.
- pg. 46. The increase in impervious surfaces in 6 (b) does not comply with the criteria. This must be changed.
- pg. 48. Under (c) labeled IDD, the 10% stormwater reduction criterion must be used.
- pg. 49. (2) Refer to the 10% stormwater guidebook which does present techniques.
- pg. 50. How is item 8, shoreline access to be encouraged? The statement is fine. How is it going to be carried out?
- pg. 51. (ii) Statement does not comply with the criteria. The 100 foot Buffer is to be honored. A variance is used if the lot depth is not enough.
- pg. 51. Driveways are not water dependent and should not be allowed in the Buffer. (iii)
- pg. 51. Ancillary structures and accessory structures should not be able to be placed in the Buffer either, unless they are water dependent. (iv).
- pg. 52. Item 2 (a) and (b). What happened to the equal area basis criterion for replacement of trees?
- pg. 53. IDD (a) What if replacement of trees does cause a hardship on the applicant, then what will the Town do? Where are the alternative provisions?
- pg. 57. The listing of plants for the filter strip should be checked with the sediment control and stormwater management division in the Department of the Environment to see if they are all effective. There is doubt on the part of the FPWS that all species are effective.
- pg. 57. Is construction going to be allowed in the Buffer? It seems as if the only case the applicant must prove is hardship to enable construction to happen. This is not tough enough. Item 4.
- pg. 65. Only density is grandfathered. Provisions such as 14.15.02 and 14.15.09 apply. See specific comments on this page which pertain to the same statement made here.
- pg 67 Be consistent with the use of SCWQP. There are various terms that are used interchangeably and they should be consistent. Also, Sediment Control District should be Soil Conservation District. Reference should be made to the 50' livestock watering and feeding Buffer in addition to the 25' Buffer which is mentioned for agriculture.

- pg. 68. Viewsheds cannot be created in the criteria. Remove (d).
- pg. 68 Item (g) is not in compliance with the criteria nor is item (h).
- pg. 71. Again, the Town cannot give an automatic Buffer Exemption. The Commission is the body that must approve of the Exemption. The Town can grant a variance once Commission approval is given.
- pg. 71. Provisions for expanding the Buffer were not included in this section.
- pg. 77. The non-tidal wetlands definition should follow the USFWS stated criterion. Non-tidal wetlands review, field inspection, and monitoring is accomplished through the Wetlands Division of the Water Resources Administration and not through the Coastal Resources Division or Heritage Program.
- pg. 78. Top of the page. These activities are not automatically exempted. Proposers of these activities must first prove that the project is of substantial economic benefit, and then propose mitigation measures.
- pg. 78 See note for pg. 77.
- pg. 79. Again, the Corps review process does not necessarily incorporate Habitat Protection Area protection measures. Some statement that habitat measures will be incorporated should be made.
- pg. 79. How will mitigation be guaranteed or maintained?
- pg. 79. The hearings process for existing sites or new sites must be denoted here and adhered to pursuant to the criteria.
- pg. 83. Need the definitions. The policy statement needs to be in the regulations to establish a legal standard.
- pg. 83 etc. All references to Heritage Program should read FPWS as the Heritage Program is part of the FPWS and the FPWS has broader perview.
- pg. 84. The hearing process for existing areas or new areas must be adhered to in the criteria.
- pg. 87. The hearings process established in the criteria must be adhered to here as well.
- pg. 89. The dates are as noted in the report for non-disturbance of fish spawning.
- pg. 94. What is the status of the variance noted on this page in the paragraph prior to B.
- pg. 97. This section should require the developer to provide surety provide for wildlife corridors, require the comments of the FPWS on development sites, or provide for afforestation on unforested lots.

- pg. 97. The FPWS has approval authority only for Management Plans associated with commercial timber harvests, not for the clearing or cutting of trees associated with development.
- pg. 102. The Shore Erosion Control Program in Capital Programs may want to be referenced here under Funding Availability for Structural Solution.
- pg. 113. The Department of Agriculture does not do dog kennels. The Town will have to monitor and regulate them.
- pg. 115. The SCS and the SCD are non regulatory. They are technical assistance agencies. This should be reflected.
- pg. 123. The variance needs to be amended to include all of the provisions of COMAR 14.15.11.A. and specific situations for the granting of the variance need to be delineated pursuant to the comments made in this staff report.
- pg. 126 The criteria state that only the density provisions of the criteria are grandfathered. Development on grandfathered lots must be in conformance with the Critical Area criteria and the local Program standards. The Town does not have the authority to grant buffer exemptions. It can only grant variances pertaining to the buffer exemption.

STAFF COMMENTS ON THE LOCAL CRITICAL
AREA PROGRAM FOR CAROLINE COUNTY
7/6/88

1. The County proposes a subtraction method whereby one acre of land will be subtracted from Growth Allocation for each new building lot that increases the density of an RCD parcel beyond the one dwelling unit per twenty acres standard. The County is also considering the use of a procedure which would permit minor subdivisions in RCD districts at densities greater than the one in twenty standard. The RCD lands for these minor subdivisions would not be reclassified to LDD, but a record would be kept in order to compute subtraction of the subdivisions from Growth Allocation. State Planning does not agree with these proposals. The methods for utilizing Growth Allocation should be consistent with the Critical Area Criteria. In RCD areas where densities greater than one per twenty are proposed, application requests for redesignations to LDD should be required. In addition, computation of subtraction from Growth Allocation should be in accordance with the subtraction method published in the Commission's February 1988 Guidelines for Counting Growth Allocation.
2. The buffer exemption provisions, in the County's program, are unclear and unspecified. The County should specify provisions which require, where possible, a full or modified buffer on nonconforming grandfathered lots when redevelopment or new development is proposed. In addition, offsetting enhancements of areas outside of the buffer or in other buffer areas could be a suitable mitigation alternative if buffer requirements are not possible on a grandfathered lot.
3. The provision for variance on page 137 of the county's program, which allows development in the Buffer, should be more detailed to indicate what specific types of development and under what conditions such development would be allowed through the variance procedure.
4. On pages 104, 110, 126, 127, and 139 of the program, the County indicates that it will not provide enforcement for certain criteria requirements such as farm and forestry best management practices. The County believes that appropriate federal and State authorities should assume these enforcement responsibilities. The County's position regarding its enforcement responsibilities in these areas may be inconsistent with the provisions in the criteria, and should be carefully reviewed.
5. The County proposed to adopt the program by reference in appropriate ordinances and plans. These references apparently have not yet been drafted. These references will need to be reviewed by the staff prior to the Commission's approval of the County Program.
6. The County has mapped 82% of its Critical Area as RCD. Generally, the County's CBCA classifications seem correct. In a limited number of cases, however, mapped LDD areas appear to be more suited for RCD designations. Attached for the County consideration is a list of LDD parcels which may be suitable for

for reclassification to RCD.

7. The width of the Critical Area and the Buffer is measured from the edge of tidal waters, as opposed to the edge of tidal waters, tidal wetlands, and tidal tributaries. This effectively reduces the size of the Critical Area and the Buffer.
8. References to the Department of Health and Mental Hygiene should read Department on the Environment.
9. The DNR Waterway Construction Agency is the Shore Erosion Control Program, and all references should be changed to reflect that in dealing with Shore Erosion.
10. There needs to be some consistency used with respect to the required Soil Conservation and Water Quality Plan. Other terms are used such as agricultural land management plan. All should be changed to be consistent so as not to be confusing.
11. The typification of non-tidal wetlands is from the USFWS reports and not from the Army Corps of Engineers. This must be changed to reflect the criteria.
12. The non-tidal wetlands program is administered in the State through the Water Resources Administration, Wetlands Division. This group can do the assessment, field checks and monitoring. The responsibility is not with the Coastal Resources Division or with the Heritage Program.
13. The criteria require the County adopt regulations regarding retention of forests and developed woodland and commercial tree cutting. Harvesting will not be regulated by the Bay Watershed Forester.
14. The Soil Conservation Districts and the Soil Conservation Service are technical assistance agencies in nature and not enforcing. This should be reflected in the Program document under sections pertaining to agriculture.
15. Again, density was grandfathered. Existing developments and new developments must conform to the criteria. References in the text should reflect this. They are noted on the pages as well.
15. Clustering needs to be referred to in the development section of the Program.
16. The hearings process for non-tidal wetlands, threatened and endangered species and species in need of conservation as well as for plant and wildlife habitat need to be added procedurally and for implementation purposes into the document.
17. A Buffer exemption can only be granted by the Commission. Once that is done, whether in advance or on a site by site basis, the County can grant the variance.

PAGE BY PAGE COMMENTS:

1. Page 7, Item 2a. Existing plans and regulations are to be made consistent with the Critical Area Program, not vice-versa.

2. Page 8, et. al. In the 6th paragraph, the terminology "non-tidal wetlands" should be used in place of "upland wetland".

3. Page 11. As noted previously, the landward extent of the Buffer should be at least a minimum of 100 feet landward from the edge of tidal waters, tidal wetlands, and tidal tributaries.

Also, species that are "categorized and mapped as endangered in Maryland" only comprise a part of the group of species that are to be afforded protection by this section. The reference would more accurately be made to rare, threatened, and endangered species and species in need of conservation.

4. Page 12. Forest and woodland protection is not specifically a function of the forestry and tree farm industry. All types of development, especially residential development, play a part in this as well.

5. Page 13, 1st paragraph. It is laudable to take a "positive" approach to Program implementation, but it should be recognized that ultimately it is the County's responsibility to be a "watchdog" to ensure compliance with the Criteria as reflected in its Program.

6. Growth and Development section, page 1, 2nd paragraph. The inland boundary of the Critical Area is 1000 feet from the edge of tidal waters or tidal wetlands. If just measured from the edge of tidal waters, it may not extend sufficiently inland in many areas.

7. Growth and Development, page 3, item 1. There must be a mechanism to ensure that the construction of single family dwellings on existing lots provides protection for the Buffer and other Habitat Protection Areas.

Also, in the last paragraph, construction in waterways is regulated by the Corps of Engineers and the Water Resources Administration, not the Tidewater Administration.

8. Growth and Development, page 4, item 2. A 25 foot wildlife corridor is not likely to be sufficient in many cases. Depending on the species, a corridor of 100 or more feet may be needed.

9. Growth and Development, page 5, 2nd paragraph. The Criteria require the replacement of forest cover on a 1:1 basis, not as required by the Bay Forester.

Also, in item 7, the Criteria generally prohibit development on slopes 15% or greater, not 25% or greater. Before development is allowed on soils with development constraints, adequate mitigation measures must be implemented to avoid adverse impacts to water quality, and plant or wildlife habitats.

10. Growth and Development, Plan Submission section. The location of the 100-foot Buffer and the 25 foot buffer around non-tidal wetlands should be shown. Also, any mitigation measures needed should be submitted as part of the application. On page 8 (middle of page), mitigation is only appropriate for unavoidable impacts, not "minor" impacts.

11. Growth and Development, Limited Development District section, page 2. It is stated that rezoning will not be approved where the primary zoning district allows more than 4 dwelling units per acre. If this is intended to prevent an IDA situation, then zoning for industrial or commercial dominating uses should also be prohibited.

12. Growth and Development, Resource Conservation District section, page 1. In the next to last paragraph, any variance approved for expansion of existing uses must be consistent with the variance provisions of the Program Development Criteria.

13. Buffer Management. There is no mention of expansion of the Buffer adjacent to sensitive areas as required by the Criteria. It should also be noted that any exemption from the Buffer requirement must include appropriate compensatory measures and be approved by the Commission.

14. Pages 78-80, Non-Tidal Wetlands section. The Criteria require that forestry operations in non-tidal wetlands be undertaken in a manner that does not reduce their value for water quality protection or plant and wildlife habitat. Activities of substantial economic benefit in which impacts are demonstrated to be necessary and unavoidable may be allowed if adequate mitigation measures are employed. As regards implementation, the Corps of Engineers 404 process is not sufficient to protect non-tidal wetlands from the Critical Area Criteria perspective.

References to the Coastal Resources Division in this section should be changed to the Non-Tidal Wetlands Division, Water Resources Administration. Finally, mitigation is not necessarily 1:1 or 2:1 replacement and is not only at the discretion of the Corps of Engineers.

15. Pages 87-89, Plant and Wildlife Habitat section. More specific protective measures should be identified in the text for areas identified as important plant and wildlife habitat areas. Buffer areas should be required adjacent to colonial water bird nesting sites and waterfowl concentration and staging areas, and time-of-year restrictions placed on activities to avoid disturbance to these habitats. Measures such as those proposed in the Guidebook on Forest Interior Dwelling Species published by the Critical Area Commission should be required for forested areas likely to contain such species.

16. Page 91. The dates between which in-stream work is to be prohibited should be changed to March 1 - June 15.
17. Page 96. For expansion of marinas in RCA's to be allowed, measures must be proposed to ensure that there is a net improvement to water quality.
18. Page 98. The reference to shore erosion protection should not specify bulkheads.
19. Pages 99-100. There is no statement of the specific type of information that will be required concerning proposed marinas. The factors listed in COMAR 14.15.03.04 should be mentioned.
20. Page 101. The Coastal Zone Management Program does not issue permits and should be deleted from the first full paragraph.
21. Pages 103-106, Shoreline Erosion Protection. Because of its distance from Chesapeake Bay, it is likely that shoreline erosion is not a significant problem in the County. Thus, non-structural shore erosion control measures are probably well suited for the County's needs and should be the preferred method unless shown to be impractical or ineffective. The State's Non-Structural Shore Erosion Program should be mentioned as providing fifty-fifty matching grants to shoreline property owners for the installation of such measures.
22. Page 104. It appears that the County's policy is to delegate responsibility for developing and applying shore erosion control criteria, identifying problem areas, and funding control projects to the Coastal Resources Division. The County is responsible for these items as well as mapping areas according to erosion rates.
23. Page 105. Because the County's standards may be more restrictive than those of State and federal permitting agencies, the applicant should apply to the County first to avoid the possibility of having to re-apply at other levels.
24. Page 109. In the next to last paragraph, it is not clear what regulations on timber harvesting are being referred to. The Habitat Protection Areas chapter does not contain specific regulations for timber harvesting.
25. Page 110. According to the Criteria, the County retains ultimate responsibility for ensuring that Forest Management Plans provide for protection of water quality and Habitat Protection Areas.
26. Page 129, Implementation. In #1, permits are not generally required from the Corps of Engineers for the draining of agricultural lands. Thus, the County will need to work with the Soil Conservation District to ensure that adequate measures are incorporated into Soil Conservation and Water Quality Plans to

protect non-tidal wetlands and Habitat Protection Areas.

27. Page 131, Grandfathering. Items 1 and 2 are not totally accurate. The Criteria provide that the building of a single-family dwelling on a parcel of land that was legally of record as of December, 1985, is allowed if (1) a dwelling has not already been placed there; and (2) the provisions relating to the protection of Habitat Protection Areas, including the 100-foot Buffer, are met. If the Buffer requirements cannot be met, then either the conditions for a Buffer exemption must be met, or a variance requested.

A Buffer exemption may be granted if it can be shown that the existing pattern of development prevents the Buffer from fulfilling the water quality and habitat protection objectives, provided that alternatives measures for achieving the objectives are proposed. Any request for a Buffer exemption must be approved by the Commission. A request for a variance must meet the site specific hardship test of the variance provisions of the Criteria and it must be shown that granting the variance will not adversely affect water quality, and fish, plant or wildlife habitat.

28. Pages 135-137, Variance Provisions. The language of the provision relating to site-specific hardship conditions should be included in this section.

29. Pages 138-139, Program Implementation. It should be noted that funding will be provided to the County by the Critical Area Commission to allow the County to adequately implement and enforce the provisions of its Program.

30. Chapter VI, Growth Allocation. The policy adopted by the Critical Area Commission related to determining the amount of acreage to be counted against the County's growth allocation total should be followed.

Caroline County CBCA Map Review
LDA Parcel Designations Which May Be Suitable for
Reclassification to RCA

<u>TM#</u>	<u>Grid</u>	<u>Parcel</u>	<u>Acres</u>
18	12	15	20.7
18	12	8	13.7
18	6	153	41.3
23	21	29	43.5
28	4	45	65.9
28	4	43	34.0
28	10	46	33.8
37	2	77	29.0
37	14	61	39.4
41	9	57	15.1
41	9	58	21.5
46	5	11	121.0
52	2	94	45.1
52	1	75	27.6
61	9	151	44.9