

Committee Meetings & Correspondence December 1988

USA S 1832-52



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

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James E. Gutman
Anne Arundel Co.

Ronald Karasic
Baltimore City

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Thomas Jarvis
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Cecil Co.

Samuel Y. Bowling
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Victor K. Butanis
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Samuel E. Turner, Sr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

December 2, 1988

Dear Commission Member:

The next meeting of the Chesapeake Bay Critical Area Commission will be on December 7, 1988, at 1:00 p.m., at the Department of Agriculture, 50 Harry S Truman Parkway, Annapolis. The copy of the Agenda for the Meeting is enclosed. The Minutes of the Meeting of November 30th will be distributed at the Meeting, and time will be given to you to read them.

Please come promptly to the Meeting as there will be votes to be taken.

Sincerely,

Sarah J. Taylor, Ph.D.
Executive Director

SJT/jjd

Enclosure

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

December 7, 1988

1:00 - 4:00 p.m.

- | | | |
|-------------|---|--|
| 1:00 - 1:20 | Approval of Minutes of
November 30, 1988 ✓
<i>Dorch. Co. Amendment letters ✓</i> | Robert Price
Vice-Chairman |
| 1:20 - 1:40 | Vote on Town of Denton ✓
Program | Sarah Taylor/
Panel |
| 1:40 - 2:00 | Vote on Town of
Federalburg Program ✓ | Dawn McCleary/
Panel |
| 2:00 - 3:00 | Presentation of State
Projects:

Fuel Storage Building,
Sandy Point State Park
Anne Arundel County

Emergency Boat Ramp
Point Lookout & Tanner Creek
St. Mary's County

Boat Facility/Boat Ramp
St. George's Island <i>Russell Pt.</i>
St. Mary's County | Deborah O'Dea,
Waterway Improvement
Division, DNR |
| 3:00 - 4:00 | Old Business
Processing, Procedures and
Amendments Panel Meeting
Septic Panel Meeting
Dorchester County Program
Amendments
DOT MOU
MPA/Baltimore City MOU
Status Report on CAC Programs

New Business | Robert Price
Vice-Chairman

Robert Price
Vice-Chairman |

Next Meeting: December 21, 1988, Tidewater Inn, Easton, Maryland

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
November 30, 1988

The Chesapeake Bay Critical Area Commission met at the Department of Housing and Community Development, Annapolis, Maryland. The meeting was called to order by Vice-Chairman Robert Price Jr., with the following Members in attendance:

J. Frank Raley, Jr.	Thomas Jarvis
Shepard Krech, Jr.	Albert Zahniser
James E. Gutman	G. Steele Phillips
Victor Butanis	Ronald Karasic
Kathryn Langner	Ronald Hickernell
Carolyn Watson for Parris Glendening	Secretary Brown of DNR
Deputy Secretary Cade of DHCD	Robert Schoeplein of DEED
Robert Perciasepe of DOE	Secretary Lieder of DSP

Vice-Chairman Price asked Ms. Janet McKegg of Forest, Park and Wildlife Division, DNR, to present a request for general approval of two agency programs, concerning the development of FPWS Resource Conservation Plans, and Timber Harvesting Plans. Ms. McKegg explained that both plans were written to meet the requirements of COMAR 14.19., and to be used by field staff and the District Forestry Board, as written policy and criteria when they are approving timber harvesting plans.

She further explained that for the District Forestry Board forest management plan approval process, FPWS has formally asked that they be allowed to call the plans that the Forestry Board approves, a "Timber Harvest Plan".

Mr. Raley asked if FPWS is asking the Forestry Boards to approve these plans on a case-by-case basis instead of the Commission?

Ms. McKegg answered that the Critical Area Law states that forest management plans must be approved by the FPWS through the District Forestry Boards. FPWS is requesting a general approval for the process that the Forestry Boards are going to use to approve those plans.

Mr. Raley asked if this process will give the Commission some oversight of what FPWS has approved, and whether that information will be submitted to the Commission? Ms. McKegg answered that the Commission always has oversight, but there is no special process for information to be sent to the Commission, and maybe that is something that FPWS can consider.

Mr. Gutman asked, in the past, what has been the nature of the review of any harvesting that has been done, to ensure that the plan was in no way violated, and what have been the number of instances where FPWS has taken action because of a violation? Ms. McKegg answered that there has never before been the precedent of a requirement for a timber harvest plan, such as the criteria require. The only requirement so far for timber harvests, have been sediment and erosion control regulations, and those are enforced either by the county or by the Water Resources Administration of DNR.

Mr. Gutman asked how will it be ensured that there will be review of the execution of plans in the field, and that no violations occur? Ms. McKegg answered that the only authority that the Forestry Board and FPWS has is to approve a plan. The Counties have, for any timber harvest that occurred, required the landowners to have a grading permit, so whoever enforces the grading and soil erosion control ordinance will have the authority to ensure compliance.

Mr. Gutman said that he had felt the Commission should be more concerned with the enforcement aspect, before approval of any process such as this proposed one.

Mr. Epstein answered that the criteria and all local Programs are designed so that enforcement is the local jurisdictions' responsibility, not State agencies'.

Mr. Phillips asked Ms. McKegg to clarify the responsibility of Forestry Boards, and what their role is in this process. Ms. McKegg answered that the Forestry Boards are established by State law. Up until this point, the Board has never had any formal authority for approving plans. She said that FPWS is asking that when a timber harvest is going to occur, the forester submit a timber harvest plan to an FPWS Bay Watershed Forester assigned to each of the Critical Area counties, in order for the Bay Watershed Forester to check the plan's compliance with the criteria's requirements. Then the Bay Watershed Forester will submit the Timber Harvest Plan with background information, to the Forestry Board. The Forestry Board will then compare the content of the Timber Harvest Plan with the local jurisdiction's Critical Area protection requirements and the requirements of COMAR 14.15., and on this basis, approve or disapprove the Timber Harvest Plan, and return it to the landowner with recommendations if they are needed.

Mr. Phillips asked if there was a contention or difference of opinion between a party and the Forestry Board concerning a particular plan, would an appeal process have to be gone through? Ms. McKegg answered affirmatively.

Mr. Zahniser asked if there was no other enforcement, other than the grading inspector of the county? Ms. McKegg answered, generally, not. Mr. Zahniser then asked how would the State enforce any form of regeneration of the forest that has already been cut, once the development phase takes place? Ms. McKegg answered that she foresees that the county would approve the site development and part of the site development plan addresses reforestation. The Bay Forester is concerned with that process of reviewing afforestation requirements, and can inspect the planting.

Mr. Gutman expressed a concern that even if enforcement authority is the responsibility of the county, the County may not have the training or expertise to handle grading permits, etc.

Mr. Phillips said that sometimes these expert registered foresters need to be hired and it is important to have on-site review by foresters.

Ms. McKegg explained that the other process for which the FPWS is applying for general approval Resource Conservation Planning covering 10 - 15 years, to inform the owners of ways to improve their land for resource conservation. She said that generally, the only development that will emanate from this plan will be waterfowl impoundments.

A Panel was chosen to review the submissions, comprising of Steele Phillips, Ch., Shepard Krech, Bob Perciasepe, Bill Bostian, and James Gutman.

The Minutes of the Meeting of November 16, 1988 were approved as written.

Vice-Chairman Price asked Mr. Epstein to present the By-Laws Amendments. Mr. Epstein said that he had informed the Commission of the Attorney General's opinion on the voting requirements, and the Commission had requested Mr. Epstein to change the By-Laws to reflect that opinion, and he had done so. Mr. Epstein then read to the Commission the change as follows:

A quorum shall be one member more than a majority of the full authorized membership of the Commission. A quorum of a panel of the Commission shall be three members. The Commission or a panel of the Commission may not hold a public hearing unless a quorum is present, nor may the Commission or its panels take any official action unless a quorum is present and a majority of the members present and eligible to vote concur in, or vote for, the action.

Secretary Lieder pointed out that the Commission can suggest that the Law be changed if it is not in agreement with the the way the Commission wants to operate.

A motion was made and seconded that the amendment to the By-Laws be approved. The vote was 16:0 in favor.

A motion was made and seconded that draft language be developed and submitted to the General Assembly for their consideration in the upcoming term, to allow the Commission to retain the voting procedures that it has been using in the past.

Deputy Secretary Cade suggested that a trial period of perhaps one year, be had, to see what the ramifications of the new voting procedure would be.

Secretary Lieder said that the previous method encouraged the presence of the entire Commission, and that the issues that the Commission vote upon are too important to not have the involvement of the whole Commission.

A call for the question was asked, and the motion to seek legislation that would allow the Commission to revert to the previous voting procedure prior to the Attorney General's Opinion, was defeated 10:6.

Vice-Chairman Price asked Mr. Davis to report on Cecil County's Program amendments. Mr. Davis said that because an official notice had not been submitted to the Commission by the last Commission meeting date, no decision on the amendments had been made by the Commission. Since then, the County had prepared a transmittal letter requesting the Commission to take action. He reported that the Planning Commission had held its hearing.

Deputy Secretary Cade asked if the Planning Commission is the authority to approve amendments? Mr. Davis answered affirmatively.

Vice-Chairman Price said that the amendments are then returned to the County Commissioners to adopt.

Deputy Secretary Cade suggested that perhaps the Commission should look at the County's procedure of having its Planning Commission submitting amendments to the Commission, and then to the County Commissioners, and that the Commission require changes to that process.

Secretary Lieder concurred that it would be useful to have enumerated the process in each county which require Commission action before action by the County.

Mr. Epstein said that for Program approval, the Commission had required the governing body to forward the Program to it.

A motion was made and seconded that Commission acknowledge receipt of the November 22nd letter which recommends Commission approval of two actions of Cecil County recommended by the Planning Commission, and that the Commission, in accordance with our established procedures, hold a public hearing, thereon. The vote was 15:1 approved.

Vice-Chairman Price then asked Mr. Schoepflein to report on the Program Amendments for Dorchester County. Mr. Schoepflein distributed the Panel recommendations to the Commission and gave background information on the actions of the County pertaining to the subdivisions issue. He informed the Commission that a meeting was held between the Dorchester County Panel members, and Dorchester County planning staff. The Panel recommends that:

- 1) The County must amend its Program to delete the last paragraph in its final Program (on page 39) as it was not adopted in accordance with Section 8-1809(e) and the Commission had not approved it; or,
- 2) The County must amend its adopted Program to include the approved addition to the subdivision ordinance titled S140-51 (page B7); or
- 3) In the alternative, the County may adopt a new Program amendment.
- 4) Until the provisions relied upon for consideration of the exemption or grandfathering of the three proposed growth allocation amendments is adopted and approved by the County and this Commission, the Commission cannot approve the three growth allocation amendments currently before it.

Mr. Schoeplein added that on the premise that the County does change its Program, then the interim subdivisions will be treated as follows:

- 1) All subdivision acreage will be applied to or deducted from the County's growth allocation;
- 2) Those subdivisions will not be subject to density considerations, nor will there be a strict application of contiguous location guidelines of the criteria;
- 3) It is to be expressly understood that all water-dependent facility specifications and all habitat protection specifications do apply and will be applied to these subdivision developments, and the Commission reserves its right to seek enforcement of such requirements at any time.

Mr. Raley asked if the County Commissioners agreed to these contingencies, why was a letter needed to be sent to them informing them of what the Commission is requesting?

Vice-Chairman Price answered that it was not the County Commissioners who agreed to the Panel recommendations, but the County Planning staff, and that the Commission panel was informed that the County Commissioners will merely consider the recommendations of the Panel.

Mr. Hickernell asked if the Panel has reviewed the three specific applications, and if one of these three options is taken, does the Panel feel that the applications are acceptable?

Vice-Chairman Price said that the problem is the County cannot ask for an award of growth allocation, because the County did not look at any locational criteria, and the proposed subdivisions do not comply with the local Critical Area Program, in that they are not clustered. The County wanted to grandfather these subdivisions, but they did not exist when the Program was adopted. Now the County desires a mix of grandfathering and an award of growth allocation.

Ms. Karen Phillips, assistant planner for Dorchester County, said that the County is only exempt from density requirements and clustering requirements, and a moratorium was not adopted. She said that these subdivisions had achieved preliminary plat approval by the County and had gone through interim findings.

Mr. Warren Rich said that he thought, as of the last Commission Meeting, that the only issue was that of the County's growth allocation.

Mr. Hickernell asked whether the Panel can specifically advise the County that these subdivisions are a grandfathering issue?

Mr. Schoepflein answered that in a letter of transmittal to Dorchester County, in addition to the Panel's recommendation, it should be indicated that except for clustering and density, all other aspects (i.e., habitat and water-dependent facilities) of Critical Area statutes shall apply to these subdivisions.

A motion was made and seconded that the Commission send a letter of transmittal to the Commissioners of Dorchester County requesting that the County appropriately and properly amend its Program, as noted above. The letter shall include a reference to the understanding that the interim subdivisions shall be exempted from clustering and density requirements; nothing here alters any requirements for development activities set out in COMAR 14.15.03 Water-Dependent Facilities, and 14.15.09 Habitat Protection of the criteria; that growth allocation shall apply to the interim subdivision; and that the entire acreage of each shall be counted against such allocation.

The developer for one of the subdivisions said that he was concerned about the length of time it was taking for the Commission to make a decision on the Program, and asked when a decision would be made? Secretary Brown answered that the Commission cannot take a vote until the County has done what is requested of them, not just intimated its intent.

A call for the question was asked, and the vote was 13 in favor, with 1 abstention.

Vice-Chairman Price asked Mr. Bob Dannecker, Capitol Programs, DNR, to present a proposal to erect a waterfowl monument in the City of Cambridge, Dorchester County. Mr. Dannecker said that the Past Shooter's Council of the Grand National Waterfowl Hunt had made the proposal, and wanted to have the structure erected by December 11, 1988. He explained that the entire structure would consist of 16 life-size flying geese and approximately four life-size flying mallard ducks attached to a bronze dead tree, and will encompass an area of 60' x 60'.

Mr. Gutman asked what the distance would be between the monument and the mean high water line? Mr. Dannecker answered 165 feet.

Secretary Brown explained that the Department of Natural Resources felt the need to inform the Commission of this sculpture because it will be erected in the Critical Area.

A motion was made and seconded to approve the project to erect the monument in Dorchester County. The vote was 12:0 in favor.

Vice-Chairman Price asked Mr. Davis to report on the bridge on Moneymake Creek in Talbot County (a locally sponsored project). Mr. Davis reported that the staff is still reviewing the County Program. He said that the project is consistent with the requirements of the Program as it is developed so far, and the the County would like a sense of the Commission approval in order to move forward with the project.

A motion was made and seconded to approve the process the County is using in reparation of the Bridge.

Vice-Chairman Price asked Mr. Zahniser, Panel Chairman, to report on St. Mary's County, Point Lookout pier. Mr. Zahniser reported that the Panel had made a site visit. He said that the fishing pier is quite large, and the site plan that the Commission will be voting on is not a comprehensive one, only showing the pier, but more parking and bath facilities, etc., will have to be constructed. The Panel feels that approval of the fishing pier should be made with the condition that these other support facilities must be presented to the Commission during the planning stage. He said that those conditional facilities are:

- 1) a fishing cleaning station (to be placed in a convenient location);
- 2) a comfort station that will have to be constructed.

The other conditions are:

- 1) that a minimal amount of tree clearing shall be done for the facility, that any trees that are cleared must be replaced in the park; and

2) that adequate parking be provided. The Commission states that the area will have to filter its runoff. The Panel suggested that the existing blacktop be removed, and porous bricks set in sand be recommended.

A motion was made and seconded that the Commission approve the project to include the Panel recommendations. The vote was 12:0 in favor.

UNDER OLD BUSINESS

Dr. Taylor announced that the Commission hearing for Kent County Program amendments is scheduled for December 5th, 1988.

Dr. Taylor reported on the Meeting of the Oversight Committee on November 29th. She said that there was a discussion of clearing of trees in the Critical Area. The Oversight Committee is proposing to introduce a Bill pertaining to replacement of trees in the Critical Area should property owners clear their properties without authorization from the County and the State. She said that she would provide a copy of the bill to the Commission.

Mr. Zahniser said that he felt the Commission had made an error in allowing auxilliary septic systems on lots that may not have direct development on them. He also said that he does not agree with location of systems outside of the Critical Area. He suggested that the Panel reconvene to reconsider Options #2 and #3, which the Commission approved at its last Meeting.

A motion was made and seconded that the Commission rescind prior approval and refer the action back to the Panel. The vote was 12 in favor with 1 abstention.

There being no further business, the Meeting was adjourned.

CHESAPEAKE BAY CRITICAL AREA REGULATIONS

DISCUSSION

OF

RELATIVE CRITERIA

CHOPTANK RIVER BRIDGE

WATERFOWL MONUMENT

November 29, 1988

Presented by:

*Robert B. Dannecker &
William D. Triggs, Jr.*
Maryland Department of Natural Resources
Capital Programs Administration

Chesapeake Bay Critical Area Criteria

Discussion of Relative Criteria for Choptank River Bridge Waterfowl Monument

BACKGROUND

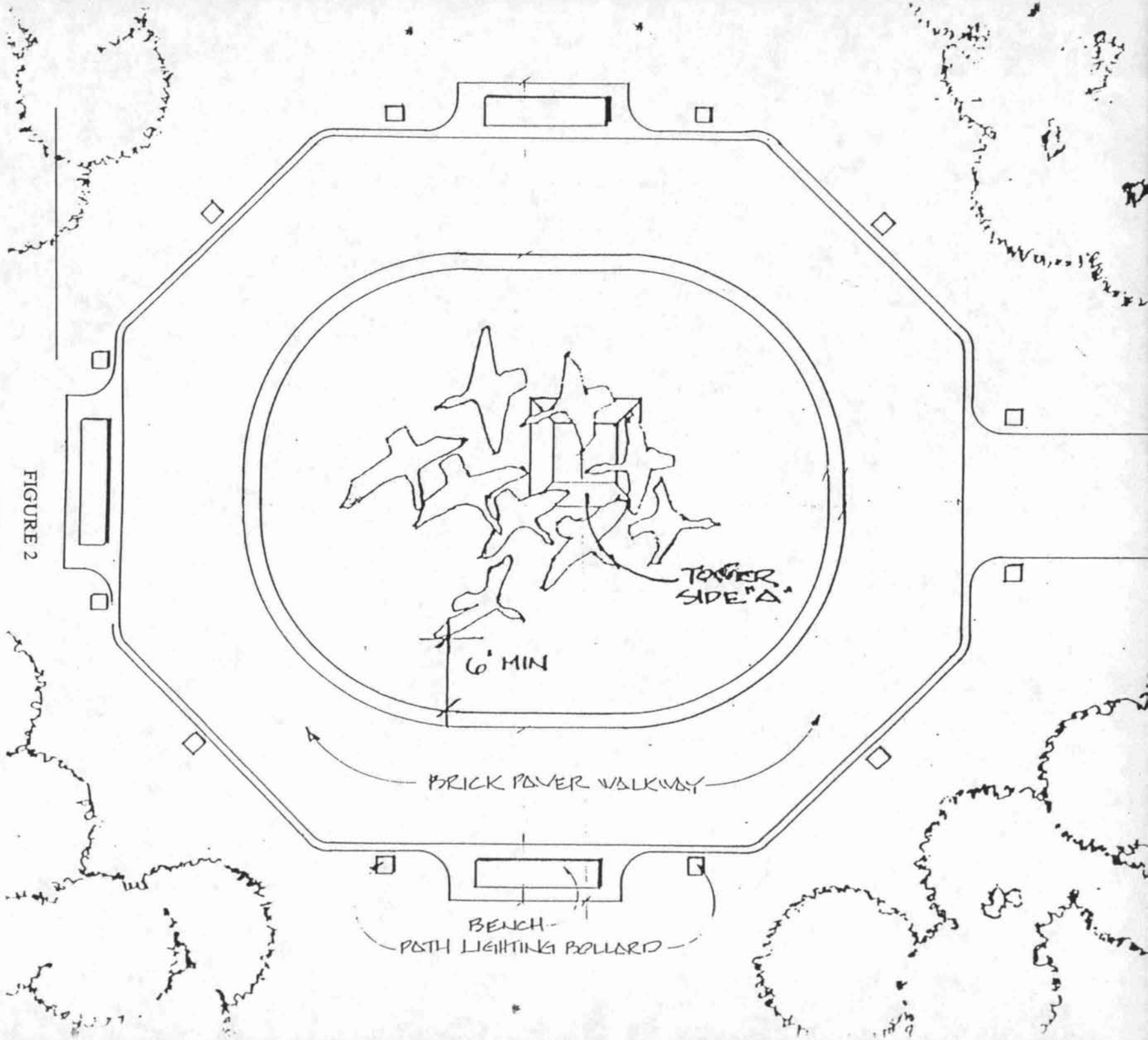
The Past Shooter's Council of the Grand National Waterfowl Hunt has proposed to erect a waterfowl monument on the west side of U.S. Route 50 as you enter Cambridge, Maryland from the Frederick C. Malkus Bridge. George Northup of Jackson, Wyoming, nationally known sculptor and hunter, has been commissioned to do the monument which is to consist of approximately 16 life size flying geese and approximately four life size flying mallard ducks attached to a bronze dead tree by stainless steel rods (see figure 1, page 2 and figure 2, page 3).

The monument will be located within a pond to be constructed on the site and three benches will be constructed around a brick walkway surrounding the pond. The entire structure will encompass an area of 60' x 60'.

The site for the proposed monument is a old dredge disposal area which was recently used by the Maryland State Highway Administration as an equipment lay down area during construction of the recently completed Frederick W. Malkus bridge. The site is essentially a barren sandy area with little or no vegetation.

It is the intention of the Grand National Waterfowl Hunt to erect the structure by December 11, 1988.

FIGURE 2
PAGE 3



REGULATORY COMPLIANCE

The purpose of this report is to examine the proposed project in light of the Critical Area Regulations. The following paragraphs refer to COMAR 14.19.01 through 14.19.08 "REGULATIONS FOR DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS". The appropriate sub paragraph is referenced on the left and the response is on the right. For simplicity, the contents of the sub paragraph is not included here and a copy of the referenced Regulation is therefore required in order to review this document.

Chapter 5, .01 General Provisions

sub para A

The proposed development is consistent with the criteria described in Regulations .03-.14 as detailed for appropriate sections below.

Chapter 5, .02 Commission Review

sub para C

The project is located within Dorchester County, Maryland. The County has been advised of the project and have no objections.

Chapter 5, .03 Development

sub para B(1)(b)

The proposed development is intended to be a display monument to be visible from the Choptank River Bridge. Therefore, due to the intrinsic nature of the project, it is required to be located within the Critical Area.

sub para B(1)(e)

The project is so small in scope that it does not require any other State or Federal approvals. The project will disturb less than 100 cubic yards and less than 5000 square feet of earth and is thus exempt from the requirement for a sediment and stormwater management approval from the Maryland Department of the Environment. Regardless, the construction of the project will be approached so as to minimize sediment pollution.

- sub para B(2)(b) Stormwater management: As indicated the project is so small as to be exempt from Stormwater Management Regulations. There will be no adverse impacts to stormwater runoff resulting from this project.
- sub para B(2)(g) There will be no clearing of trees associated with this project.
- sub para B(3) There are no sections under this subparagraph which strictly apply to this project. None of the sections under this subparagraph will be violated.
- sub para B(4)(a) Soil erosion and sediment control: As previously stated, a soil erosion and sediment control plan approval was not required due to the small surface area disturbance. Sediment control features will be used during construction when practical. No equipment will be permitted within the 100 foot buffer strip of the Choptank River.
- sub para B(4)(b) Stormwater runoff: As previously stated, stormwater management approval is not required for this project. There are no provisions within the project to limit stormwater runoff as the project is expected to have no measurable effect on the quantity or quality of stormwater runoff.
- sub para B(5) The proposed project will have no adverse off-site impacts to the Critical Area Program of the local jurisdiction. Any impacts will be limited to the area of the monument.

Chapter 5, .04 Water Dependent Facilities

- sub para A(1) The proposed monument is not a Water Dependent Facility nor is it within the buffer as defined by the Regulations.

Chapter 5, .09 Buffer

The area chosen for erection of the monument is outside of the 100 foot buffer zone defined by the Regulations. Therefore, this section of the Regulations is not applicable.

Chapter 5, .10 Non-Tidal Wetlands

sub para A&B

There are no non-tidal wetlands associated with this project. of the Choptank.

Chapter 5, .11 Threatened and Endangered Species in Need of Conservation

sub para B(1)

There will be no threatened or endangered species affected by this project.

Chapter 5, .12 Plant and Wildlife Habitat

Sub Para B(1)(a)

There are no colonial water bird nesting areas at the proposed site.

Sub Para B(1)(b)

This provision of the regulation addresses the existence of historic waterfowl staging and concentration areas in tidal waters. There will be no impacts to waterfowl staging areas resulting from this project.

Sub Para B(1)(c) There will be no existing riparian forests affected by this project.

Sub Para B(1)(d) The forest area used by interior dwelling birds will not be affected by this project.

Sub Para B(2)(f) Existing Natural Heritage Areas will not be altered due to the development associated with this project.

Chapter 5.13 Anadromous Fish Propagation Waters

Sub Para B(1) Anadromous fish spawning areas will not be affected by this project.

Sub Para B(2)(a) The installation of riprap or other artificial surfaces onto the bottom of natural streams is not a part of this project.

Sub Para B(2)(b) This project will not involve the channelization of any streams or rivers.

Chapter 5.14 Natural Parks

Sub Para B This project is not associated with the development of a natural park.

DORCHESTER COUNTY

The panel recommends these specific changes to the Amended Program.

1) The County must amend its Program to delete the last paragraph on Page 39 as it was not adopted in accordance with Section 8-1809 (e) in that the Commission had not approved it.

2) The County must amend its adopted Program to include the approved addition to the subdivision ordinance titled S140-51 Page B7.

3) In the alternative the County may adopt a new program amendment.

and approved by the County and their

4) Until the provisions relied upon for consideration of the exemption or grandfathering of the three proposed amendments is adopted, ~~this Commission cannot approve the amendments as complying with the criteria.~~

the Commission

currently before it.

three growth allocations



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.
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Wicomico Co.
- Russell Blake
Worcester Co.

November 28, 1988

Mr. David Flowers
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Fourth Floor
Towson, Maryland 21204

Re: Owl Corporation
Stansbury Park, Dundalk

Dear Mr. Flowers:

The forest establishment plan for the Owl Corporation has been reviewed by this office and appears to meet the requirements of the criteria and the local Program.

Our only concern is that the Corporation follow and maintain the plan as submitted. Given the history of permit violations on the site, the Commission urges that the County closely inspect the work and follow up to see that the plan is maintained.

We appreciate the way in which you and Mr. Robert Sheesley have handled the situation, and thank you for keeping us informed.

Sincerely,


Sarah J. Taylor, Ph.D.
Executive Director

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

SJT/jjd

cc: Commission Members
Robert Sheesley

bcst

* 100 acres will be reserved to convert

existing Limited Development Areas to Intensely Developed Areas for nonresidential uses.

- * 2,300 acres will be reserved for future residential development elsewhere in the Resource Conservation Areas.

Commitment of the estimated net 2,300-acre growth allocation reserved for Resource Conservation Areas will be phased over approximately 12 years, beginning December 1, 1985, to minimize the impacts of new development on the Critical Area. The annual award of growth allocation will not exceed 200 acres. Any portion of the intended allocation for one year that is unused for any reason may be added to the intended allocation for the next year.

The approval of development projects requiring a commitment of some of the county growth allocation will be responsive to a series of locational criteria, including among others: Adjacency to established Limited Development Areas (or Intensely Developed Areas, as the case may be); availability of public or community water and sewer systems; good road or highway accessibility; the presence of appropriate physical and environmental features on the tract of land and nearby; and adequate measures to minimize adverse environmental impacts resulting from development.

4. Determination of Growth Allocation Deductions

The distribution of the available county growth allocation is expected to be geographically widely dispersed throughout the Critical Area. County experience with development proposals and events in the past three years in general, and especially in 1987 and early 1988, suggests that the available growth allocation may be quickly consumed. How quickly the growth allocation will be used up is a function of the methodology that will be used to determine the acreage of new developments that must be deducted from the total allocation available.

The methodology used to calculate the amount of land area involved in conversion of a Resource Conservation Area to a Limited Development Area in a development project is of particular importance in Dorchester County, not only because of the net 2,300-acre limit on the aggregate amount of land area that may be converted but more importantly because of the

THE COUNTY COMMISSIONERS OF DORCHESTER COUNTY

COUNTY OFFICE BUILDING
P. O. BOX 26
CAMBRIDGE, MARYLAND 21613
PHONE 228-1700



CALVIN TRAVERS, PRESIDENT
JACK C. COLBOURNE, VICE PRESIDENT
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Asrah F. J. J. J.

ROBERT K. LLOYD
ADMINISTRATIVE ASSISTANT
E. THOMAS MERRYWEATHER
ATTORNEY
RICHARD D. HARRINGTON
DEPUTY ATTORNEY

June 10, 1988

The Honorable Solomon Liss, Chairman
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
Department of Natural Resources
Tawes State Office Building, D-4
Annapolis, Maryland 21401

Dear Judge Liss,

Pursuant to the Chesapeake Bay Critical Area Law (Natural Resources Article, Section 8-1809; Approval and Adoption of Program), the Dorchester County Commissioners held a public hearing to consider adoption of the Chesapeake Bay Critical Area Protection Program. At the conclusion of the hearing, the County Commissioners unanimously voted to adopt the Program (and Ordinances) and to forward same to the Critical Area Commission for their formal approval. The Commissioners placed two conditions on their approval; (a) that the enclosed revisions be incorporated into the final version of the County Ordinance(s) and (b) that the County's approval is contingent upon final program approval by the Commission.

Copies of the Program have previously been forwarded to your staff under separate cover. We shall await your response to our submittal prior formal enactment of the proposed ordinances.

Sincerely,

THE COUNTY COMMISSIONERS OF DORCHESTER COUNTY

Calvin Travers
Calvin Travers,
President

CT:jh

Attachments

Recommended Changes to Volume II of the
Dorchester County Critical Area Protection
Program based on the June 7 letter from
the Board of Realtors

S. 140-51, pg. B-7, add new paragraph under Section A:

" .5 Subdivision plats which were received prior to the effective date of this ordinance and which, by action of the Dorchester County Planning Commission, have had growth allocation reserved from them, shall not be subject to the design provisions of this ordinance. However, growth allocation for any subdivision not yet approved as of the effective date of this ordinance will require the approval of both the County and the Critical Area Commission prior to granting final plat approval."

S. 155-47a.E(2), change to read:

"(2) The minimum required land area for a cluster development shall be twenty (20) acres in the Resource Conservation Area."

S. 155-47a.E(4), delete reference to "public buildings, structures, and facilities" unless specifically required in the Criteria.

Pg. B-17 (Not a part of the official sub regs.). Special Evaluation Criteria and Rating Methodology. Eliminate criterion 11-13.

COPIED FROM ATTACHMENT TO LETTER FROM PRESIDENT
OF DORCHESTER COUNTY COMMISSIONERS TO CHAIRMAN OF
C.B.C.A.C., LETTER DATED "JUNE 10, 1988".

* 100 acres will be reserved to convert existing Limited Development Areas to Intensely Developed Areas for nonresidential uses.

* 100 acres will be reserved to convert existing Resource Conservation Areas to Intensely Developed Areas for nonresidential uses.

* 2,200 acres will be reserved for future residential development elsewhere in the Resource Conservation Areas.

Commitment of the estimated net 2,200-acre growth allocation reserved for residential development in Resource Conservation Areas will be phased over approximately 11 years, beginning December 1, 1985, to minimize the impacts of new development on the Critical Area. The annual award of growth allocation for residential development will not exceed 200 acres, and the annual award of growth allocation for nonresidential uses will not exceed 20 acres. Any portion of the intended allocation for one year that is unused for any reason may be added to the intended allocation for the next year.

The approval of either residential or nonresidential development projects requiring a commitment of some of the county growth allocation will be responsive to a series of locational criteria, including among others: Adjacency to established Limited Development Areas (or Intensely Developed Areas, as the case may be); availability of public or community water and sewer systems; good road or highway accessibility; the presence of appropriate physical and environmental features on the tract of land and nearby; and adequate measures to minimize adverse environmental impacts resulting from development.

Subdivision plats that were undergoing evaluation by the Dorchester County Planning Commission prior to the effective date of the Dorchester County Critical Area Protection Program will not be subject to the density provisions of the Zoning Ordinance or to the growth allocation provisions of the Subdivision Regulations. These subdivisions must have had growth allocation reserved for them and must have been designed to conform to the Maryland Critical Area Criteria. Additionally, approval must have been granted for the preliminary plat in the case of major subdivisions, and for the findings of fact required by Natural Resources Article 8-1813 in the case of minor subdivisions.

MOTION TO AMEND THE BY-LAWS

A motion is hereby made to amend the Commission's by-laws at Article V, concerning quorum and voting requirements. This motion is made pursuant to an Attorney General's Opinion of October 7, 1988, which concluded that the Commission could not apply a voting requirement different from that set out in the Critical Area law at §NR8-1804(e).

The amended Article shall read as follows:

A quorum shall be one member more than a majority of the full authorized membership of the Commission. A quorum of a panel of the Commission shall be three members. The Commission or a panel of the Commission may not hold a public hearing unless a quorum is present, nor may the Commission or its panels take any official action unless a quorum is present and a majority of the members present and eligible to vote concur in or vote for the action.

BY-LAWS OF THE CHESAPEAKE BAY CRITICAL AREAS COMMISSION

Approved December 5, 1984

ARTICLE I. NAME AND PURPOSE

The name and purpose of the Commission are set forth in Natural Resources Article, Section 8-1801 through 8-1816 of the Annotated Code of Maryland (Chapter 794, Laws of 1984).

ARTICLE II. MEMBERSHIP, TERM, VOTING

The Commission is composed of those 25 members provided for in Natural Resources Article, Section 8-1804. The term of appointments is as stated in the Natural Resources Article, Section 8-1804 and Section 2 of Chapter 794, Laws of 1984. A member may appoint a designee for the purpose of attending meetings in the member's absence. The designation shall be made in writing to the Chairman. Designees shall not have voting rights. Each member is entitled to one vote on matters before the Commission.

ARTICLE III. OFFICERS, METHODS OF SELECTION, TERMS OF OFFICE

The Chairman is appointed by the Governor as provided for in Natural Resources Article, Section 8-1804(a). The Chairman shall preside at all meetings and hearings of the Commission and shall have the duties normally conferred by parliamentary usage of such office. The Chairman may designate another member of the Commission to assume the powers and duties of the Chairman during the absence or incapacity of the Chairman.

ARTICLE IV. MEETINGS

Meetings of the Commission shall be held at the call of, and at the time and place specified by the Chairman. Except in the event of an emergency requiring immediate action, the Chairman shall give each member at least ten (10) days advance notice of any meetings. The Chairman shall call a special meeting when requested to do so by at least five (5) members of the Commission or as specified in Section 8-1812(a), of the Natural Resources Article. The Commission is subject to the State's Open Meetings Law. Written minutes shall be prepared for all of its meetings. The minutes and other files and records of the Commission are subject to the State's Public Information Law, Article 76A, Subsection 1 et. seq.. Annotated Code of Maryland.

Roberts Rules of Order, current edition, shall govern the meetings and hearings of the Commission and to all other cases to which they are applicable and in which they are not inconsistent with the by-laws and rules of procedure.

ARTICLE V. QUORUM AND VOTE REQUIRED FOR COMMISSION ACTION

A quorum shall be a majority of all the voting members. On all issues, other than amendment of the by-laws, a simple majority of the voting members shall decide the question.

ARTICLE VI. FUNDING, STAFF SUPPORT

The Commission shall have staff as provided in Natural Resources Article, Section 8-1805.

ARTICLE VII. COMMITTEES

The Chairman may appoint from among the members of the Commission such committees as the Chairman feels are necessary to properly conduct the business of the Commission and to perform the tasks assigned to the Commission.

ARTICLE VIII. AMENDMENTS

These by-laws may be amended by an affirmative vote of two-thirds (2/3rds) of the Commission, except that they may not be amended in any way that would render them inconsistent with Subtitle 18, Natural Resources Article. Proposed amendments shall be mailed to Commission members at least two weeks in advance of the meeting at which action is to be taken.

ARTICLE IX. PRESERVATION

These by-laws, upon approval of the Commission shall be appended to and become a part of the minutes of the Commission and shall remain in effect until rescinded or amended. The Executive Director of the Commission shall provide for the printing of copies of the by-laws and shall provide each member of the Commission with a copy thereof.



*Please
make
copies
for
Commission
Meeting.*

4 November, 1988

Sarah J. Taylor, Ph.D.
Executive Director
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tawes State Office Building D4
Annapolis MD 21401

Dear Sarah:


I have hesitated writing this letter for a week and am still somewhat lost for words. I have just received what must have been one of the Judge's last letters, it was very kind. Please give my best to all the lovely folks at the Commission as well as my thoughts for their and the Commission's future. I must admit, I very much miss my weekly trip to the Bay and the swirl of issues surrounding it. One gets rusty very quickly.

In the last CRAC meeting I attended, Larry Whitlock suggested developing a video presentation focusing upon the Bay in general and the Commission's work in particular. In case Marcus has not had a chance to show you our thoughts, I want to get a copy to you.

This is probably not the time for thinking great thoughts or new ideas, however, your and the Commission's blessings on it or an improved version is a necessary beginning for me to be able to go out and seek funds or discuss the concept with Maryland Public Television.

Again, by best to Kevin, Charlie, Veronica and Jeniver.

Sincerely yours,


Patrick Beaton Ph.D.
Research Professor

THE FUTURE OF THE CHESAPEAKE BAY:

*A Proposed Video Presentation of the Findings of the
Chesapeake Bay Critical Areas Commission's
Two-Year Economic Impact Study*

by

W. PATRICK BEATON
CENTER FOR URBAN POLICY RESEARCH
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

and

MARCUS POLLOCK
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

The Center for Urban Policy Research Rutgers, working in cooperation with the Maryland Chesapeake Bay Critical Areas Commission has completed a Baseline Economic Impact study for new land use controls along the Bay. When entering into the study, it was recognized that the Chesapeake Bay is used as home, playground, means of commerce, fishery and finally as the repository for the nutrient rich effluent of public and private sewers for the populations of six states.

Much activity affecting the Bay comes from outside the state. However, Maryland is the state with the greatest stake in the improvement of the Bay. Much of the current point and non-point source pollution originates from within Maryland. The status of the various sources of such pollution will be determined by the type, level, and best management practices incorporated in new development. The quality of this development rests in the joint actions of the Commission in conjunction with Maryland's local jurisdictions. In addition, it must be recognized that political pressure requiring other states to improve their use of the Bay depends upon a united Maryland electorate supporting both their governor's negotiations with counterparts in the neighboring states and similar efforts of their congressional representatives in Washington.

The Baseline study finds that development along the Bay is indirectly encouraged and directly accommodated by the establishment and operation of the Critical Areas Commission. Generous grandfathering provisions in the law have provided for an inventory of developable parcels within the Critical Areas, while the gradual use of the growth increment provisions of the law will add to this inventory. Urbanization will continue to occur within the waterfront sector of Maryland's Chesapeake Bay.

The work finds that the Critical Areas policies reinforce an existing spatial separation of citizens by wealth. Waterfront property in desirable areas of the Bay is well over one hundred percent the price of comparable upland real estate. Waterfront owners are guaranteed access to the Bay; inlanders must rely on negotiations with developers or the enforcement of public access provisions with the Commission's development criteria.

Political support for the continued improvement of water quality within the Bay must include the votes of inlanders. At the same time, the economic development aspirations of the entire eastern shore must be recognized as contingent upon the land development decisions and actions permitted by the Commission in conjunction with their county and municipal governments. All citizens must recognize that they have an important role to play in the development along the Bay. High quality development with public access will permit Bay-related inland development to occur. Exclusionary development will result in a narrow block of voters supporting the upgrading of the Bay.

The mechanism proposed to advance the goals of the state of Maryland as implemented through the Chesapeake Bay Critical Areas Commission is a public television/VCR compatible video presentation. It will be designed for both a general viewing audience and in its shorter version, for city and county planning commissions, libraries, and public school social studies classes.

PROPOSAL

It is proposed that a set of 15-30 minute video presentations of these findings and conclusions be prepared. The video described in the proposal to follow will be constructed for the Bay as a whole; the other four videos will represent the specific conditions of each of the four major regions within Maryland's Chesapeake Bay.

The purpose of the set of video presentations is to move citizens to actively involve themselves in the clean up of the Bay. The first video will be an overview of the issues surrounding the Bay as a whole. It must identify the land development issues that influence the quality of water and life in and around the Bay. With the issues specified, the range of *policies and regulations affecting land development will be reviewed and a view of the future explored.* The four region specific videos will be relatively short 10 to 15 minute films. Each must identify the elements of local critical area policies, show places where citizen monitoring must take place and show the types of destructive activities that can occur if critical area criteria are not followed.

The theme for the proposed Chesapeake Bay video is as follows:

1. Population growth around the Bay is inevitable with or without the Critical Areas legislation.
2. Growth can take the form it has on the New Jersey shore or in the form envisioned by the Critical Areas criteria. In New Jersey the following practices are commonplace:
 - a) Elimination of public access to the ocean and bay waterfront.
 - b) Purposeful or inadvertent incremental destruction of wetlands.
 - c) Excessive removal of trees and shrubs from the development sites and buffer.
 - d) Loss of endangered species habitat.
 - e) Development in erosion hazard areas.
 - f) Destruction of submerged aquatic vegetation.
 - g) Filling of intermittent stream corridors.
 - h) Location of roads, sewers, water lines and parking lots that accelerate pollution runoff and siltation into the Bay.
3. With or without the Critical Areas Criteria, new development will continue and exacerbate the current income stratification between waterfront dwellers and inlanders.

4. Waterfront owners are guaranteed access to the Bay, inlanders are not.
5. Inlanders have expressed a desire to use the Bay. For such access to occur, open space wetland and critical scenic parcels must be in the public domain. Trails and stairways must be constructed where needed, public piers and mooring facilities made in adequate supply around the bay, handicapped accessways constructed, and environmental education facilities and historic buildings reconstructed and maintained. In urban areas such as Cambridge, Oxford, St. Mary's, Centerville, North, East and St. Michaels, existing marine service facilities need to be maintained, bay front or river front explanades constructed or linked with shopping centers, and appropriate signs indicating points of access and environmental/historical points of interest located.
6. Inland development with assured access to the Bay will promote an improved economy for current residents especially those living on the Eastern Shore.
7. Where development can be shifted uplands due to assured access to the Bay, *pressure of environmentally-sensitive areas can be reduced.*
8. However, absent a vigorous Maryland State, Critical Areas Commission and local campaigns to acquire waterfront land for public use and to incorporate public waterfront open space in waterfront subdivisions, Inlanders will be effectively blocked from enjoyment of Bay as they have been in Lake Tahoe, Nevada.
9. Political support by inland voters will be essential for the solution of many Chesapeake Bay problems such as sludge disposal from waste water treatment plants and interstate flows of sludge, toxic chemicals, fertilizers and pesticides.
10. Citizens living within the Critical Areas and those living uplands must both actively adopt of Chesapeake Bay, segment by segment, to ensure that all elements of the Critical Areas policy are continuously followed. When a sufficient majority of our voters feel they have a stake in the Bay, then legislative and executive action on the more difficult and costly problems can be broached.

MANAGEMENT OF PROJECT

The five video presentations:

- 1) The Future of the Chesapeake Bay;
- 2) Guiding the Future of the Upper Eastern Shore;
- 3) Guiding the Future of the Lower Eastern Shore;
- 4) Guiding the Future of the Metropolitan portion of the Chesapeake Bay, and
- 5) Building the Future of the Southwestern Shore,

will be produced and scripted by Patrick Beaton of the Center for Urban Policy Research of Rutgers University and Mr. Marcus Pollock of the Chesapeake Bay Critical Areas Commission. On-site filming will be performed by Maryland Public Television. File footage showing the geography and sources of environmental stress will be used where possible. Either an overflight of the Bay from the Virginia Capes to the farmlands of the Susquanna River in Pennsylvania or a segment of film from a shuttle overflight of the region will be used to show the extent of the region. The interstate nature of some of the

pollution problems will be acknowledged with a short emphasis on political solutions involving the Governor and Congress. The major effort across all films will be the solution of the intrastate sources of environmental economic and social stress in and around the Bay. This will be done by filming examples of the successes and failures in the bay and elsewhere interspersed with the commentary of respected political, governmental and scientific persons. In addition, the observations and comments of local residents, those living on the waterfront and uplands of the Critical Areas, watermen, farmers and marina operators and boat owners will be integrated into the performances.

In this day of massive media exposure and short attention spans, we recognize that only a first quality presentation will drive home to the citizens of Maryland the efforts required to reclaim the Bay for future generations. The role of the sponsors in these efforts is to both provide the necessary resources as well as to guide the results to the desired end. To that end, sponsors will be asked to provide a representative to be a member of a steering committee. The steering committee will be given monthly progress reports. The contents of the monthly progress reports will be presented on a review and approve basis. Future work will be contingent upon this approval.

It is estimated that the cost of producing the five video presentation will be approximately ninety thousand dollars.



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

November 14, 1988

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
Charles Co.

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.

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

The Honorable Torrey C. Brown, M.D.
Secretary, Department of Natural Resources
Tawes State Office Building
Annapolis, Maryland 21401

Dear Secretary Brown:

Enclosed please find an Appeal which we have noted on a decision by the Dorchester County District Forestry Board to approve a timber harvesting plan for the Estate of Monroe Lakes.

The Board "approved" the plan on the evening of November 10, 1988, and this is the first business day after such approval. We wanted to note the appeal quickly both to expedite your consideration, for the property owners' benefit, and to inform all concerned, including the County Highway Department, so that the harvesting can be stayed until a decision is rendered. (Please note that we do not object to the removal of timber already cut to date, and that such removal activity is not contested under this appeal.)

By copies of this letter and the enclosure, I have notified the property owners, the County, and the logging company of this appeal. Please let us know how and when you wish to proceed on this appeal.

Sincerely,

Robert R. Price, Jr.

Robert R. Price, Jr.
Acting Chairman

cc: Elvin Thomas, Administrator
Dorchester County Highway Department

Dr. Virgie Lake Camper
Monroe Lake Heirs

Ronald Bridge
R & R Bridge Logging Co., Inc.

APPEAL OF
THE DECISION OF THE
DORCHESTER COUNTY DISTRICT
FORESTRY BOARD
IN THE MATTER OF THE
TIMBER HARVEST PLAN OF
THE ESTATE OF MONROE LAKES

* BEFORE
* TORREY C. BROWN, M.D.
* SECRETARY OF
* THE DEPARTMENT
* OF NATURAL RESOURCES
*

APPEAL

COMES NOW the ~~Chesapeake Bay~~ *Chesapeake Bay Critical Area Commission* ("Commission"), Robert R. Price, Jr., Acting Chairman, by its attorneys J. Joseph Curran, Jr., Attorney General and Lee R. Epstein, Assistant Attorney General, and files this, its appeal in the above-captioned matter.

1. On November 10, 1988, the District Forestry Board of Dorchester County gave its "approval" to a timber harvesting plan for the above-noted estate.
2. The plan purportedly approved provides for the cutting of about 181 acres of timber, which timber would be chipped and used for fuel. About 80 acres of the tract are in the Dorchester County Critical Area.
3. The entire wooded area provides habitat for the Federally and State-designated endangered species, the Delmarva fox squirrel.
4. The State Critical Area regulations, at COMAR 14.15.05.03C, (the "Criteria") require protection of endangered species habitat through Forest Management Plans in the Critical Area. The Dorchester County Critical Area Program at Chapter V D. 3, provides for protection of these species and their habitats. The Dorchester County Forestry Ordinance, at Section 6.1B provides for protection of these natural habitats.
5. The Maryland Forest, Park and Wildlife Service ("FPWS") prepared a harvesting Plan for the landowner that would preserve a 50 foot buffer or corridor in the

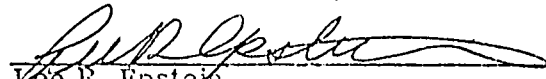
Critical Area to ameliorate the effects of the loss of the larger habitat area on the endangered animals. Such buffer constituted approximately 3 acres of reserved timber, out of about 178 acres to be cut over.

6. The Dorchester County District Forestry Board, against the recommendations of FPWS and the U.S. Fish and Wildlife Service, changed the FPWS plan to permit cutting the entire acreage, and proposed to approve this altered Plan.

7. The Commission, by the authority of Natural Resources Article §8-1812, Annotated Code of Maryland, and under Natural Resources Article §5-603, Annotated Code of Maryland, files this appeal of the District Board's "approval" of the cutting Plan to the Secretary of the Department of Natural Resources, and seeks to reinstate the original Plan prepared by the FPWS with the habitat buffer intact.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General



Lee R. Epstein
Assistant Attorney General
Department of Natural Resources
Tawes State Office Building
Annapolis, Maryland 21401
(301) 974-2251

APPEAL OF
THE DECISION OF THE
DORCHESTER COUNTY DISTRICT
FORESTRY BOARD
IN THE MATTER OF THE
TIMBER HARVEST PLAN OF
THE ESTATE OF MONROE LAKES

BEFORE
TORREY C. BROWN, M.D.
* SECRETARY OF
* THE DEPARTMENT
* OF NATURAL RESOURCES
*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of November, 1988 forwarded copies of the Chesapeake Bay Critical Area Commission's Appeal by first class mail, postage pre-paid, to the following: Monroe Lake Heirs, c/o Dr. Virgie Lake Camper, 824 Washington Street, Cambridge, MD. 21613; Mr. Ronald Bridge, R & R Bridge Logging Co., Inc., Hobbs Road #3, Salisbury, MD. 21801; Mr. Elvin Thomas, Administrator, Dorchester County Highway Department, 5435 Handley Road, Cambridge, MD. 21613.



Lee R. Epstein

APPEAL OF * BEFORE
THE DECISION OF THE * TORREY C. BROWN, M.D.
DORCHESTER COUNTY DISTRICT * SECRETARY OF
FORESTRY BOARD * THE DEPARTMENT
IN THE MATTER OF THE * OF NATURAL RESOURCES
TIMBER HARVEST PLAN OF *
THE ESTATE OF MONROE LAKES *

STAY PENDING APPEAL

An appeal having been filed by the Chairman of the Critical Areas Commission, the November 10, 1988 approval of the Dorchester County District Forestry Board, for a Timber Management Plan for the Estate of Monroe Lakes, is hereby stayed pending my further consideration of this matter.

Torrey C. Brown, M.D.
Secretary

PANELS THAT ARE ALIVE AND WELL

I. PANELS TO REVIEW STATE PROJECTS

Master Plan Gunpowder Falls State Park (Days Cove)

Tom Osborne, Ch.	James Gutman
Ardath Cade	Bob Schoeplein
Victor Butanis	Abi Rome - <u>Staff</u>

Point Lookout Fishing Pier

Skip Zahniser, Ch.	Sam Bowling
Ardath Cade	James Gutman
Frank Raley	Abi Rome - <u>Staff</u>

Mosquito Mgt. Program

Connie Lieder, Ch.	Wayne Cawley
Torrey Brown	Shepard Krech
Steele Phillips	Sarah Taylor - <u>Staff</u>

II. PANELS TO HANDLE POLICIES & PROCEDURES

Accommodation of Additional Sewage Into Critical Area

Parris Glendening, Ch.	Bob Perciasepe
Kay Langner	Wayne Cawley
James Gutman	Bill Bostian
Shepard Krech	Sarah Taylor - <u>Staff</u>

Review Amendments, Project Notification Procedures
& Hearing Process

Parris Glendening, Ch.	Wally Miller
Sam Bowling	John Griffin
Ron Adkins	Sarah Taylor - <u>Staff</u>

Natural Parks Guidance Paper

James Gutman, Ch.	Wally Miller
Ron Karasic	Tom Osborne
Shepard Krech	Dawnn McCleary - <u>Staff</u>
Sam Bowling	

Regulations on the Drilling of Oil & Gas in Critical Area



III. PANELS TO REVIEW LOCAL PROGRAMS & AMENDMENTS

Dates to Aim For

Program by 11/16/88

Centreville

Shepard Krech, Ch.	Russell Blake
Bob Price	John Griffin
Tom Osborne	Charlie Davis - <u>Staff</u>

Programs by 11/30/88

Indian Head

Bob Schoeplein, Ch.	Sam Bowling
Parris Glendening	Ron Karasic
Ardath Cade	Ren Serey - <u>Staff</u>
Frank Raley	

Mardella Springs/Sharptown

Shepard Krech	Steele Phillips
Wally Miller	Russell Blake
Victor Butanis	Ed Phillips - <u>Staff</u>

Queenstown

Kay Langner, Ch.	Shepard Krech
Connie Lieder	Ron Adkins
Ardath Cade	Charlie Davis - <u>Staff</u>

Salisbury

Bill Bostian, Ch.	Bob Schoeplein
Torrey Brown	Shepard Krech
Tom Osborne	Ed Phillips - <u>Staff</u>

Somerset County

Bob Price, Ch.	Ron Karasic
Shepard Krech	Russell Blake
Bill Bostian	Ed Phillips - <u>Staff</u>

Wicomico County

Victor Butanis	Russell Blake
Shepard Krech	Wally Miller
Steele Phillips	Ed Phillips - <u>Staff</u>

Program by 11/30/88

Worcester County

Bill Bostian, Ch.	Victor Butanis
Russell Blake	Bob Price
Ron Adkins	Sarah Taylor - <u>Staff</u>

Programs by 12/7/88

Caroline County

Victor Butanis, Ch.	Wayne Cawley
Ron Karasic	Bob Price
Tom Jarvis	Sarah Taylor - <u>Staff</u>

Chestertown

Tom Osborne, Ch.	Louise Lawrence
Bob Perciasepe	Kay Langner
Vitor Butanis	Charlie Davis - <u>Staff</u>

Denton

Ardath Cade, Ch.	Wayne Cawley
Steele Phillips	Victor Butanis
Shepard Krech	Sarah Taylor &
Tom Jarvis	Dawnn McCleary - <u>Staff</u>

Elkton

Ron Karasic, Ch.	Victor Butanis
James Gutman	Frank Raley
Sam Turner	Ren Serey - <u>Staff</u>

Federalburg

Ardath Cade, Ch.	Wayne Cawley
Shepard Krech	Steele Phillips
Victor Butanis	Sarah Taylor &
Tom Jarvis	Dawnn McCleary - <u>Staff</u>

North Beach

Ardath Cade, Ch.	Tom Osborne
Ron Karasic	Torrey Brown
Bob Schoeplein	Anne Hairston &
	Sarah Taylor - <u>Staff</u>

Snow Hill

Kay Langner, Ch.	Ron Adkins
Wally Miller	Russell Blake
Bill Bostian	Sarah Taylor - <u>Staff</u>

Program by 12/7/88

St. Mary's County

James Gutman, Ch.	Skip Zahniser
Sam Bowling	Frank Raley
Bob Percisepe	Ren Serey - <u>Staff</u>

Programs by 12/21/88

Cecil Co. Amendments

Connie Lieder, Ch.	Victor Butanis
Ron Adkins	James Gutman
Louise Lawrence	Charlie Davis - <u>Staff</u>

Charles County

James Gutman, Ch.	Skip Zahniser
Connie Lieder	Bob Schoeplein
Parris Glendening	Ren Serey - <u>Staff</u>

Church Hill

Shepard Krech, Ch.	John Griffin
Russell Blake	Ron Adkins
Bob Price	Charlie Davis - <u>Staff</u>

Dorchester County Amendments

Bob Schoeplein, Ch.	Sam Bowling
Shepard Krech	Bob Price
Bill Bostian	Ed Phillips - <u>Staff</u>
Connie Lieder	

Hillsboro/Queen Anne

Ardath Cade, Ch.	Shepard Krech
Torrey Brown	Bob Price
Louise Lawrence	Charlie Davis - <u>Staff</u>

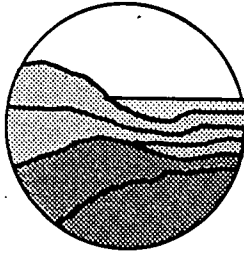
Kent County Amendments

Victor Butanis	Ron Karasic
Torrey Brown	Kay Langner
James Gutman	Charlie Davis - <u>Staff</u>

Talbot County

James Gutman, Ch.	Ron Karasic
Shepard Krech	Bob Price
Wally Miller	Charlie Davis - <u>Staff</u>

*file w/
Nov 30.
Commis
Mtg.*



Maryland Department of Natural Resources

Forest, Park and Wildlife Service
Tawes State Office Building
Annapolis, Maryland 21401

William Donald Schaefer
Governor

Torrey C. Brown, MD
Secretary

Donald E. MacLauchlan
Assistant Secretary

November 28, 1988

Mr. Bob Price, Vice Chairman
Chesapeake Bay Critical Area Commission
580 Taylor Avenue
Annapolis, MD 21401

Dear Mr. Price:

The Critical Area Criteria for State Lands and State Programs (COMAR 14.19) requires that development of local significance on private land or land owned by local jurisdictions which is caused by State agency actions be consistent with the provisions and requirements of the Critical Area Program of the local jurisdiction within which the development is proposed. The criteria also allows state agencies to seek a general approval from the Commission for programs that result in the development of local significance in the Critical Area.

Enclosed you will find ten copies of requests for general approvals for two of the Forest, Park & Wildlife Service's programs. Please accept these documents for action by the Critical Area Commission. In addition to meeting the requirements of COMAR 14.19, these documents will serve as policies and standards for the activities of the staff of the Forest, Park and Wildlife Service and the members of the district forestry boards.

Please direct your comments and recommendations to Ms. Janet McKegg of the Cooperative Forestry Management Division. You may reach her at 974-3776.

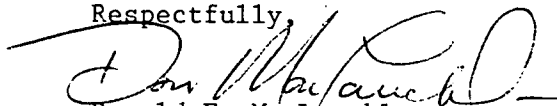
Telephone: 301-974-2330

DNR TTY for Deaf: 301-974-3683

Mr. William Price, Chairman
Critical Area Commission
Page 2

As a natural resource conservation unit, the Forest, Park and Wildlife Service is in full support of the intent of the Critical Area Law and offers its cooperation in the Law's implementation. I feel that the requests for general approvals confirm that attitude and are submitted to you and the Commission in that light.

Respectfully,

A handwritten signature in dark ink, appearing to read "Don MacLauchlan". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Donald E. MacLauchlan
Assistant Secretary
Forest, Park and Wildlife Service

THE DISTRICT FORESTRY BOARD - FOREST,
PARK AND WILDLIFE SERVICE FOREST MANAGEMENT PLAN APPROVAL
PROCESS: REQUEST FOR GENERAL APPROVAL

INTRODUCTION

The Critical Area Law was passed by the Maryland General Assembly in 1984 with the following purposes:

1. To establish a Resource Conservation Program for the Chesapeake Bay and its tributaries to foster more sensitive development for certain shorelines to minimize damage to water quality and natural habitats; and
2. To implement the Resource Protection Program on a cooperative basis between State and local governments.

The Law created the Critical Area Commission and directed it to promulgate criteria to guide local jurisdictions in their Resource Protection Program development and which set minimum requirements for program approval. Article 8-1814 requires the Commission to establish regulations for development undertaken by State and local agencies which has not been subject to review by a local jurisdiction under an approved Resource Protection Program.

COMAR 14.19.03.02.A requires that development of local significance on private land or lands owned by local jurisdictions which is caused by State or local agency actions shall be consistent with the provisions and requirements of the Critical Area Program of the local jurisdiction within which the development is proposed. COMAR 14.19..03.01.A allows state agencies to seek a general approval from the Commission for programs or classes of activities that result in development of local significance in the Critical Area. Therefore, the Department of Natural Resources Forest, Park and Wildlife Service (FPWS) submits the following request for a general approval of its forest management plan approval process.

COMAR 14.19.03.01.B requires that the following information be supplied to the Commission:

1. A description of the program or class of activities;
2. An assessment of the extent to which development resulting from the program or class of activities will be consistent with COMAR 14.15;
3. A proposed process by which the program or class of activities will be conducted so as to conform with the requirements of COMAR 14.15.

This information is contained in the following section.

DESCRIPTION

The Critical Area Law required that local jurisdictions incorporate the following in their Critical Area Resource Protection Programs: "Provisions requiring that all harvesting of timber in the Chesapeake Bay Critical Area be in accordance with plans approved by the district forestry board" [(Natural Resources Article 8-1808(c)(10)]. The Critical Area Commission included this provision in COMAR 14.15.05.03.C.(1), stating:

A Forest Management Plan shall be required for all timber harvesting occurring within any 1 year interval and affecting 1 or more acres in forest and developed woodland in the Critical Area. The Plans shall be prepared by a registered professional forester and be reviewed and approved by the Maryland Forest, Park and Wildlife Service through the District Forestry Boards and the Project Forester.

The Critical Area Law and regulations use the term "forest management plan" to describe a document which outlines how and where a timber harvest will occur. Traditionally, the Maryland Forest, Park and Wildlife Service (FPWS) and the forestry profession use "forest management plan" to refer to a plan that makes forest management recommendations for the forest land of an entire property over a long period, usually 15-20 years. A plan for a timber harvest operation typically includes information only on the forest being harvested.

The intent of the section of the Critical Area Law which requires approval of harvest operations was to assure that timber harvests occurred with a minimum of adverse environmental impacts. Because the intent is to review timber harvests and not long term forest management operations, the term "timber harvest plan" will be used in place of "forest management plan" to refer to the type of plan the district forestry boards approve.

The FPWS has developed a process which the district forestry boards shall use to approve timber harvest plans for properties within the Critical Area. This process assures that the plans approved by the boards conform to the local Critical Area Resource Protection Programs and that requirements for approval are consistent from plan to plan.

ASSESSMENT OF CONSISTENCY WITH COMAR 14.15

An assessment of the extent to which development resulting from the program will be consistent with COMAR 14.15 is required for a general approval. "Development" resulting from the approval of timber harvest plans is usually within the definition listed in COMAR 14.19.01.01.B(13)(b-c): "Any activity that materially affects the condition and use of dry land" or "...land under

water." The definition of development as it applies to timber harvest plans can be further described as "the implementation of forest management practices which change the profile, species composition, or water regime of a particular site." Therefore, this section will assess the extent to which forest management practices that change the profile, species composition, or water regime of a site will be consistent with COMAR 14.15. Timber harvest plans may include recommendations effecting forests and habitat protection areas and so the Forest and Woodland Protection (COMAR 14.15.05) and Habitat Protection Areas (COMAR 14.15.09) sections of the Criteria will be addressed.

Forest and Woodland Protection

The district forestry boards are directed to use the following policies and criteria for guidance during the approval process. The district forestry board will use the local jurisdiction's Critical Area Resource Protection Program and ordinances for guidance when they provide more restrictive or specific policies and criteria.

The district forestry boards will adopt the following policies to guide their decisions on timber harvest plans.

1. Maintain and increase the forested vegetation of the Critical Area;
2. Conserve forests and developed woodlands and provide for expansion of forested areas;
3. Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation and other resources can be maintained, recognizing that, in some cases, these uses may be mutually exclusive.

The district forestry board shall use the following criteria to guide their decisions of timber harvest plans. Timber harvest plans shall include the following information and measures to be considered for approval:

1. Incorporation of protection measures for surface and groundwater quality;
2. A determination of whether the activities will disturb or affect Habitat Protection Areas (HPAs) as identified in COMAR 14.15.09;
3. Incorporation of protection measures for HPAs as specified by the local jurisdiction;

4. Provision that the timing, intensity and size of the harvest is planned so that continuity of habitat will be assured.
5. Confirmation that a Sediment Control Plan developed according to the State "Standard Erosion and Sediment Control Plan for Harvest Operations" will be implemented for all harvests of 5,000 square feet or more of disturbed area.
6. Harvests occurring within the Buffer will be in accordance with COMAR 14.15.09.01.

The utilization of the above policies and criteria in the review of timber harvest plans by the district forestry boards assure that approved plans will fully comply with the criteria in COMAR 14.15 for forest and woodland protection and the local jurisdiction's Critical Area Protection Program and ordinances.

Habitat Protection Areas

Timber harvest plans will often effect habitat protection areas (HPAs) as defined by COMAR 14.15.09. The district forestry boards are directed to adopt the following policies and criteria for protection of habitat protection areas as guidance during the timber harvest plan approval process. The district forestry board will use the local jurisdiction's Critical Area Resource protection Program and ordinances for guidance when they provide more restrictive or specific policies and criteria.

Buffer

The district forestry boards will adopt the following policies for protection of the Buffer.

1. Recognize that the Buffer removes or reduces sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
2. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
3. Recognize that the Buffer maintains an area of transitional habitat between aquatic and upland communities;
4. Maintain the natural environment of streams;
5. Protect riparian wildlife habitat.

The district forestry boards will use the following criteria to determine the adequacy of protection measures for the Buffer included in the timber harvest plan.

1. New development activities, including roads, parking lots, and other impervious surfaces will not be permitted in the Buffer;
2. The Buffer shall be maintained in natural vegetation, but may include planted natural vegetation where necessary to protect, stabilize, or enhance the shoreline;
3. Cutting or clearing of trees within the Buffer shall be prohibited except that commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the Mean High Water Line of tidal waters, perennial tributary streams, and tidal wetlands. Harvesting in the Buffer must be in conformance with a Buffer management plan prepared by a registered professional forester and approved by the Forest, Park and Wildlife Service. The plan shall be required for all commercial harvests within the Buffer regardless of the size of the area to be cut.
 - A. Where the minimum 100-foot Buffer is not coincident with a Habitat Protection Area, the Buffer Management Plan shall contain the following minimum requirements:
 - i. Disturbance to stream banks and shorelines shall be avoided;
 - ii. The area disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the Buffer;
 - iii. Cutting does not involve the creation of staging areas, logging roads and skid trails within the Buffer.
 - B. Cutting may not occur in Habitat Protection Areas within the minimum 100 foot Buffer, including portions expanded beyond 100 feet.
4. The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas, such as steep slopes, hydric soils, highly erodible soils, threatened and endangered species habitat, and plant and wildlife habitat, where development or disturbance may impact streams, wetlands,

or other aquatic environments. In other words, Buffer expansion is required primarily for two reasons: protection of water quality and protection of plant and wildlife habitat. The following section describes the criteria that the district forestry board will use to assess the necessity of expanding the Buffer for timber harvest purposes.

- A. Where contiguous slopes 15% or greater occur, the Buffer shall be expanded 4 feet for every percent of slope, or to the top of the slope whichever is greater in extent.
- B. The Buffer will be expanded for the following wetlands because of high plant and wildlife habitat value and protection of water quality.
 - i. All wetlands with sweet bay (Magnolia virginiana) as a dominant or codominant species;
 - ii. All PFO2 wetlands [needle-leaved deciduous; e.g. bald cypress (Taxodium distichum)];
 - iii. PFO4 wetlands (needle-leaved evergreen) with Atlantic white cedar (Chamaecyparis thyoides) or bald cypress;
 - iv. All non-tidal wetlands influenced by oceanic tides; i.e., those with water regime modifiers N (flooded daily by tides), R (seasonal tidal), S (temporary tidal), T (semipermanent tidal), and V (permanent tidal);
 - v. All non-tidal wetlands with surface water throughout the growing season in most years, or wetter; i.e., PFOH (permanent), PFOG (intermittently exposed), PFOF (semipermanent), PFOV (intermittently flooded/temporary), PFOY (saturated/semipermanent/seasonal), and PFOZ (intermittently exposed/permanent);
 - vi. PFOB wetlands (saturated); used to describe bogs and some seeps;
 - vii. PFOE wetlands (seasonal saturated); surface water is present for extended periods, especially early in the growing season, and the water table remains near the surface during the remainder of the year;

viii. PFO1 (broad leaved-deciduous), PFO1/4 (broad-leaved deciduous and needle-leaved evergreen), and PFO4 (needle-leaved evergreen) wetlands with water regime modifiers A (temporary) or C (seasonal) with the following conditions:

- a. PFO1A wetlands occurring on the floodplains of intermittent or permanent streams, rivers, or tributaries;
- b. with State- or Federally-listed species;
- c. within Natural Heritage Areas unless otherwise recommended by the Maryland Natural Heritage Program;
- d. within other Plant and Wildlife Habitats of Local Significance unless otherwise recommended by the local jurisdiction;
- f. contiguous with bayside ponds;
- g. with seeps;
- h. with bald cypress or Atlantic white cedar;
- i. with a stand of trees having the largest size class of the dominant species exceeding two feet in diameter at breast height;
- j. with seasonal ponds or seasonally flooded flatwoods associated with seasonal ponds;
- k. with steep slopes;
- l. with highly erodible soils.

C. The Buffer will be expanded to include steep slopes (15% or greater) or highly erodible soils adjacent to the wetlands protected by the Buffer expansion.

D. When BMPs are used to protect water quality, the Buffer need not be expanded for the following types of wetlands because of their low plant and wildlife value.

i. PFO4J wetlands (the driest type)

ii. PFO4D wetlands (seasonally flooded, well-drained)

iii. PFO1, PFO1/4, and PFO4 wetlands with water regime modifiers A or C except for those situation listed in section B above.

E. Buffer expansion for all other wetlands will be determined by the FPWS on a case-by-case basis according to the plant and wildlife habitat value and potential for adverse impacts to water quality.

Non-Tidal Wetlands

The district forestry boards will adopt as a policy that those non-tidal wetlands of importance to plant, fish, wildlife and water quality in the Critical Area shall be protected.

The district forestry boards will use the following criteria to determine the adequacy of protection measures included in the timber harvest plan for non-tidal wetlands of importance to plant, fish, wildlife and water quality.

1. A buffer of a minimum of 25 feet is designated around non-tidal wetlands where timber harvesting or other activities which may disturb the wetlands or the wildlife contained therein shall be prohibited unless it can be shown that these activities will not adversely affect the wetland.
2. The hydrologic regime and water quality of non-tidal wetlands are protected by providing that timber harvesting activities or other land disturbances in the drainage area of the wetlands will minimize alterations to the surface or subsurface flow of water into and from the wetland and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.
3. Mitigation is provided for operations which, as a result of their being of substantial economic benefit, will cause unavoidable and necessary impacts to the wetlands. The plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, on-site or near the affected wetland.

Threatened and Endangered Species and Species in Need of Conservation

The district forestry boards will adopt as a policy that those species in need of conservation and threatened and endangered species and their habitats in the Critical Area shall be protected.

The district forestry boards will use the following criteria to determine the adequacy of protection measures included in the timber harvest plan for species in need of conservation and threatened and endangered species.

1. A protection area is designated around each of the habitats occurring in the within or adjacent to the timber harvest site within which timber harvesting activities and other disturbances shall be prohibited unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats;
2. Special provisions for protection are included in forest harvest operations.

Plant and Wildlife Habitat

The district forestry boards will adopt the following policies for the protection of plant and wildlife habitat.

1. Conserve wildlife habitat in the Critical Area;
2. Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
3. Protect those wildlife habitat types which are required to support the continued presence of various species;
4. Protect those wildlife habitat types and plant communities which are determined by local jurisdiction to be of local significance; and
5. Protect Natural Heritage Areas.

The above policies and following criteria shall be applied for the plant and wildlife habitat listed below.

1. Colonial water bird nesting sites;
2. Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands;
3. Existing riparian forests (for example, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands or the Bay shoreline and which are documented breeding areas);
4. Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for

example, relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);

5. Other plant and wildlife habitats determined to be of local significance; and
6. Natural Heritage Areas which have been designated.

The district forestry boards will use the following criteria to determine the adequacy of protection measures for plant and wildlife habitat in the timber harvest plan.

1. Buffers are established for colonial water bird (heron, egret, tern and glossy ibis) nesting sites so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
2. Protection measures, including buffers where appropriate, for other plant and wildlife habitat sites established by the local jurisdiction's Critical Area Protection Program or the FPWS are utilized;
3. Management techniques which have as their objective protecting and conserving those forested areas required to support wildlife species identified above are utilized;
4. Corridors of existing forest or woodland vegetation which provide effective connections between wildlife habitat areas are designated;
5. Protection measures for those plant and wildlife habitats considered to be of significance by local jurisdictions established by the local jurisdiction's Critical Area Resource Protection Program or the FPWS are utilized;
6. Natural Heritage Areas are protected from alteration so that the structure and species composition of the areas are maintained.

Anadromous Fish Propagation Waters

The district forestry boards will adopt the following policies for the protection of anadromous fish propagation waters.

1. Protect the instream and stream bank habitat of anadromous fish propagation waters;
2. Promote practices in the watershed of spawning streams within the Critical Area which will minimize the adverse

impacts of timber harvest operations on the water quality of the streams; and

3. Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

The district forestry boards will use the following criteria to determine the adequacy of protection measures for anadromous fish propagation waters.

1. The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
2. Channelization or other physical alterations which may change the course of circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
3. Minimize, to the extent possible, the discharge of sediments into streams; and
4. Maintain, or if practicable, increase the natural vegetation of the watershed.
5. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. If practical, the removal of existing barriers shall be effected (COMAR 08.05.03.02).
6. The construction, repair, or maintenance activities associated with bridges, or other stream crossings which involve disturbance within the Buffer or which occur instream, as described in COMAR 08.05.03.09B(4), shall be prohibited between March 1 and May 15.

The utilization of the above policies and criteria in the review of timber harvest plans by the district forestry boards assure that approved plans will fully comply with the criteria in COMAR 14.15 for Habitat Protection Areas and the local jurisdiction's Critical Area Protection Program and ordinances.

PROCESS

References

A number of references will be made available to board members to assist them in the review of forest management plans. These include:

1. Forest Conservation and Management in the Critical Area, Critical Area Commission Guidance Paper #4;
2. Guidelines for Protecting Non-tidal Wetlands in the Critical Area, Critical Area Commission Guidance Paper #3;
3. A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area, Critical Area Commission Guidance Paper #1;
4. Habitat Management Guidelines for Forest Interior Breeding Birds of Coastal Maryland, Forest, Park and Wildlife Service, Wildlife Technical Publication 88-1;
5. Standard Erosion and Sediment Control Plan for Harvest Operation, Maryland Forest, Park and Wildlife Service;
6. Critical Area Protection Program for the local jurisdictions;
7. Critical Area Criteria, COMAR 14.15;
8. This document.

These documents will help members make valid judgments on the adequacy of timber harvest plans.

District Forestry Board Operating Rules

Open Meetings: All actions taken on timber harvest plans must occur in an open meeting that has been advertised in advance (State Government Article Title 10, Subtitle 5, "Open Meeting Law"). These actions must be recorded in the meeting minutes, which will be considered the official record.

Voting Eligibility: Members shall not participate in a decision on a timber harvest plan if the plan affects:

1. Any business entity in which the board member has a direct financial interest of which he may reasonably be expected to know;
2. Any business entity of which the board member is an officer, director, trustee, partner or employee, or in which he knows any of the following relatives have such an interest: spouse, parent, minor child, brother or sister;
3. Any business entity with which the board member or, to his knowledge, any of the above listed relatives is

negotiating or has any arrangement concerning prospective employment;

4. Any business entity which is a party to an existing contract with the board member, or which the board member knows is a party to a contract with any of the above-named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the board member and his official State duties;
5. An entity, either engaged in a transaction with the State or subject to regulation by the agency of which the board member is an official, in which a direct financial interest is owned by another entity in which the board member has a direct financial interest, if he may be reasonably expected to know of both direct financial interests;
6. Any business entity which the board member knows is his creditor or obligee, or that of the above-named relatives, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the board member or any of the above-named relatives. [Adapted from State Government Article Title 3, Conflicts of Interest, Sec. 3-101(a)].

When a member is ineligible to vote, he must state that he is withdrawing from voting and request that his withdrawal be recorded in the meeting minutes.

If a disqualification pursuant to the above-described situations leaves the board with less than a quorum capable of acting, the disqualified person shall disclose the nature and circumstances of the conflict and may participate or act [State Government Article, Title 3, Conflicts of Interest, Sec. 3-101(b)].

Quorum: A quorum consists of three board members or 50% of the board's membership, whichever is greater, eligible to vote.

Plan Submission: Timber harvest plans, including plans developed by FPWS foresters, consulting foresters, and industrial foresters, will be submitted to the bay watershed forester for the county in which the property is located. The bay watershed forester will stamp the plan with the date received.

Plan Review: The bay watershed forester will review the plan for sufficiency using the timber harvest plan checklist (attached) for guidance. The bay watershed forester may return the plan to the property owner or the submitting forester if it is found to

contain insufficient information. The bay watershed forester will send copies of sufficient plans to the designated representatives of the FPWS Wildlife Division and Natural Heritage Program for their comments. To facilitate discussion of plans at the board meetings, the bay watershed forester may send copies of plans, completed checklists, and comments to board members in advance of the meetings.

Plan Approval: The timber harvest plan should be presented to the district forestry board within five weeks of submission. The bay watershed forester will present timber harvest plans and any FPWS comments for action to the forestry board at its monthly meeting. The district forestry board will review the plan and determine if it meet the provisions of the local jurisdiction's Critical Area Protection Program. Timber harvest plans must meet the following standards before they can be approved by the forestry board.

1. Each item on the Timber Harvest Plan Checklist and the Buffer Management Plan Checklist (if a harvest is recommended within the Buffer) must be addressed.
2. Procedures described in the plan must conform with the local jurisdiction's Critical Area Protection Program.
3. The timber management plan must conform with the local jurisdiction's Forest and Woodland Protection Program.
4. Habitat Protection Area protection measures must meet the local jurisdiction's Critical Area Protection Program standards.

The district forestry board shall approve or disapprove plans as submitted.

An affirmative vote of a simple majority of the board members eligible to vote is required for plan approval. Upon approval of the plan the property owner will be notified in writing and the plan will be filed with the designated agency within the local jurisdiction.

Plans that are not approved will be returned to the property owner or submitting forester by the bay watershed forester along with the forestry boards recommendations.

Length of Approval: Plan approvals shall remain valid until such time, if ever, locations of Habitat Protection Areas on or adjacent to the harvest site change or as stated in the local jurisdiction's Critical Area Protection Program or ordinance.

Plan Appeal: Landowners of properties for which timber harvest plans are not approved and who disagree with the

recommendations made by the FPWS or the district forestry board may appeal the decision to the Secretary of the Department of Natural Resources. A letter shall be sent to the Secretary explaining the nature of the disagreement.

11/28/88

TIMBER HARVEST PLAN CHECKLIST

YES NO

LANDOWNER, FORESTER, AND LOCATION

- 1. Landowner's name, address & telephone
- 2. Location & acreage of harvest site
- 3. Registered professional forester's name, address & telephone
- 4. Forester's stamp or seal

MAP(S) WITH THE FOLLOWING FEATURES

- 1. North arrow
- 2. Locality or distinguishing landmarks
- 3. Public & private roads
- 4. Property boundary
- 5. Harvest site boundary
- 6. Critical Area boundary if within scope of map
- 7. Slopes greater than 15%
- 8. Habitat Protection Area Boundaries

HABITAT PROTECTION AREAS

- 1. Minimum 100-foot Buffer
 - a. Buffer within or adjacent to harvest site
 - b. Buffer delineation conforms with local Critical Area Protection Program (including Buffer expansion requirements)
 - c. If tree cutting is proposed in the Buffer, a Buffer Management Plan is included
- 2. Non-tidal Wetlands
 - a. Non-tidal wetlands within or adjacent to harvest site
 - b. Non-tidal wetlands delineation conforms with local Critical Area Protection Program

Non-tidal Wetlands (continued)

YES NO

- ___ ___ c. Harvesting proposed in the wetland
- ___ ___ d. If answer to "c" is yes, the following is included in the plan
 - ___ ___ i. US Fish & Wildlife Service wetland classification type
 - ___ ___ ii. Dominant tree species
 - ___ ___ iii. Dominant understory species
 - ___ ___ iv. DBH of dominant timber size class
 - ___ ___ v. BMPs to be used to mitigate impacts to the wetland described
- ___ ___ e. Measures taken to prevent alterations to the habitat value or hydrologic regime adequate
- ___ ___ f. Mitigation measures for wetland alterations, if necessary, acceptable
- 3. Threatened & Endangered Species & Species in Need of Conservation Habitat
 - ___ ___ a. This type of HPA occurs within or adjacent to harvest site
 - ___ ___ b. Delineation of Habitat Protection Areas for these species conforms to the local Critical Area Protection Program
 - ___ ___ c. FPWS recommendations attached
- 4. Forest Interior Dwelling Species Habitat
 - ___ ___ a. This type of HPA occurs within harvest site
 - ___ ___ b. Delineation conforms with the local Critical Area Protection Plan

Forest Interior Dwelling Species Habitat (continued)

YES NO

___ ___ c. If habitat is present, presence of forest interior dwelling birds assumed

OR

___ ___ d. If habitat is present, a survey was conducted to determine use by forest interior dwelling birds

___ ___ e. Survey report attached

___ ___ f. Protection measures conform to local Critical Area Protection Program

5. Colonial Nesting Waterbird Habitat

___ ___ a. This type of HPA occurs within or adjacent to harvest site

___ ___ b. Delineation conforms with local Critical Area Protection Program

___ ___ c. Protection measures conform to local Critical Area Protection Program

6. Plant and Wildlife Habitat of Local Significance

___ ___ a. This type of HPA occurs within or adjacent to the harvest site

___ ___ b. Delineation conforms with the local Critical Area Protection Program

___ ___ c. Protection measures conform to the local Critical Area Protection Program

7. Natural Heritage Areas

___ ___ a. This type of HPA occurs within or adjacent to harvest site

___ ___ b. Delineation conforms with local Critical Area Protection Program

___ ___ c. FPWS Natural Heritage Program recommendations attached

Natural Heritage Areas (continued)

YES NO

___ ___ d. Protection measures conform to local Critical Area Protection Program

8. Anadromous Fish Propagation Waters

___ ___ a. This type of HPA occurs downstream from or within harvest site

___ ___ b. Delineation conforms with local Critical Area Protection Program

___ ___ c. Protection measures conform to local Critical Area protection program

HARVEST OPERATION

___ ___ 1. Harvest method listed (ie, clearcut, shelterwood)

___ ___ 2. Plan confirms that regeneration will occur

___ ___ 3. Plan confirms that harvest will be conducted according to an approved Sediment & Erosion Control Plan

___ ___ 4. Plan confirms that BMPs will be used to protect water quality

___ ___ 5. Wildlife corridors are provided

___ ___ 6. Requirements for habitat continuity of the local Critical Area protection program met

CRITICAL AREA BUFFER MANAGEMENT PLAN CHECKLIST

YES NO

GENERAL SITE DESCRIPTION

- 1. Acreage of harvest site within the Buffer
- 2. Slope of land beside water course
- 3. Type of water course (ie, tidal, tidal wetland)
- 4. Dominant tree species
- 5. Dominant timber size class

HARVEST OPERATION

- 1. Harvest type (ie, clearcut, selection)
- 2. Plan confirms that disturbance to stream banks and shorelines will be avoided
- 3. Plan confirms that a regeneration method that will reestablish the wildlife habitat value of the Buffer will be used
- 4. Plan confirms that no logging roads or skid trails will be located in the Buffer

HABITAT PROTECTION AREAS WITHIN THE BUFFER

- 1. Delineation of habitat protection areas conforms with local Critical Area protection program
- 2. Plan confirms that no harvesting will occur within HPAs and their setback within the Buffer

FOREST, PARK AND WILDLIFE SERVICE
RESOURCE CONSERVATION PLANS AND TIMBER HARVEST PLANS:
REQUEST FOR GENERAL APPROVAL

INTRODUCTION

The Critical Area law was passed by the Maryland General Assembly in 1984 with the following purposes:

1. To establish a resource conservation program for the Chesapeake Bay and its tributaries to foster more sensitive development for certain shorelines to minimize damage to water quality and natural habitats; and
2. To implement the Resource Protection Program on a cooperative basis between State and local governments.

The law created the Critical Area Commission and directed it to promulgate criteria to guide local jurisdictions in their Resource Protection Program development and which set minimum requirements for program approval. Article 8-1814 requires the Commission to establish regulations for development undertaken by State and local agencies which has not been subject to review by a local jurisdiction under an approved Resource Protection Program.

COMAR 14.19.03.02.A requires that development of local significance on private land or lands owned by local jurisdictions which is caused by State or local agency actions shall be consistent with the provisions and requirements of the Critical Area Program of the local jurisdiction within which the development is proposed. COMAR 14.19.03.01.A allows state agencies to seek a general approval from the Commission for programs or classes of activities that result in development of local significance in the Critical Area. Therefore, the Department of Natural Resources Forest, Park and Wildlife Service (FPWS) submits the following request for a general approval of the resource conservation plans and timber harvest plans which are generated to recommend sound resource management actions to private landowners and local jurisdictions.

COMAR 14.19.03.01.B requires that the following information be supplied to the Commission:

1. A description of the program or class of activities;
2. An assessment of the extent to which development resulting from the program or class of activities will be consistent with COMAR 14.15;
3. A proposed process by which the program or class of activities will be conducted so as to conform with the requirements of COMAR 14.15.

This information is contained in the following section.

DESCRIPTION

Maryland law established the Department of Natural Resources in part to conserve wildlife, threatened and endangered species, and forests for the benefit of the people of the State. The Secretary of the Department of Natural Resources is responsible for the conservation and management of wildlife and wildlife resources (Annotated Code of Maryland, Article 10-201). Furthermore, the Secretary has been given the authority to adopt rules and regulations to protect, conserve, research and maintain viable populations of non-game, threatened and endangered plants and wildlife, and plant and wildlife species in need of conservation (Annotated Code of Maryland, Article 10-2A-02). Article 5-603 directs the Department to administer forest conservation practices on privately-owned forest land. Article 5-607 sets down the duties of a forester, among which are making plans for management and reforestation of forest, woodlot, and tree crop orchards, assisting landowners in the marketing of their forest products, and enlist the cooperation of landowners in protection of their forests from fire, insects, and disease.

One of the methods used to carry out these mandates is providing technical assistance to landowners and local jurisdictions on wildlife management, forest management, and protection of special habitats and threatened and endangered plants and animals. This assistance often takes the form of a written resource conservation plan or a timber harvest plan.

Resource Conservation Plans

The resource conservation plan is developed by a FPWS biologist or forester who is guided by State laws, State regulations, FPWS policies, and the objectives of the landowner. The plan is prepared for a specific property and may cover a number of years. The resource conservation plan is a consolidation of the previously-used forest management plan and wildlife management plan. It includes management and protection recommendations for forests, wildlife and wildlife habitat, and threatened and endangered species and species in need of conservation and their habitats, and for special habitats. Management and protection measures included in the plan are based on the current level of knowledge and best management practices within each profession. Where these practices conflict, the process described in a following section assures that the plan recommends the practice that constitutes the best use or protection of the resources involved.

Timber Harvest Plan

The Critical Area Law and regulations use the term "forest management plan" to describe a document which outlines how and where a timber harvest will occur. Traditionally, the Maryland Forest, Park and Wildlife Service (FPWS) and the forestry profession use "forest management plan" to refer to a plan that makes forest management recommendations for the forest land of an entire property over a long period, usually 15-20 years. A plan for a timber harvest operation typically includes information only on the forest being harvested.

The intent of the section of the Critical Area Law which requires approval of harvest operations was to assure that timber harvests occurred with a minimum of adverse environmental impacts. Because the intent is to review timber harvests and not long term forest management operations, the term "timber harvest plan" will be used in place of "forest management plan" to describe FPWS plans which prescribe how a timber harvest operation is to be conducted.

The timber harvest plan is prepared by a FPWS registered professional forester who is guided by State laws, State regulations, FPWS policies, the objectives of the landowner, and a local jurisdiction's Critical Area Resource Protection Program. It prescribes how a timber harvest operation will be conducted so that it will conform to a local jurisdiction's Critical Area Resource Protection Program. A timber harvest plan is required for any commercial harvest occurring within any one year interval and affecting one or more acres in forest and developed woodland in the Critical Area. Timber harvest plans are approved by the Forest, Park and Wildlife Service through the district forestry board and the project forester.

ASSESSMENT OF CONSISTENCY WITH COMAR 14.15

An assessment of the extent to which development resulting from the program will be consistent with COMAR 14.15 is required for a general approval. "Development" resulting from the implementation of resource conservation plans or timber harvest plans is usually within the definition listed in COMAR 14.19.01.01.B(13)(b-c): "Any activity that materially affects the condition and use of dry land" or "...land under water." The definition of development as it applies to resource conservation plans and timber harvest plans can be further described as "the implementation of resource management practices which change the profile, species composition, water regime, or primary use of a particular site." Therefore, this section will assess the extent to which resource management practices that change the profile, species composition, water regime, or primary use of a site will be consistent with COMAR 14.15. Resource conservation plans may include recommendations effecting forests and habitat protection areas and utilizing agricultural practices. Timber harvest plans will effect forests and may effect habitat protection areas. Therefore, the following

portions of the Criteria will be addressed: Forest and Woodland Protection (COMAR 14.15.05), Agriculture (COMAR 14.15.06), and Habitat Protection Areas (COMAR 14.15.09).

Forest and Woodland Protection

Resource conservation plans will often include forest management practices and timber harvest plans will always include forest management practices. Forest management recommendations will follow these policies:

1. Maintain and increase the forested vegetation of the Critical Area;
2. Conserve forests and developed woodlands and provide for expansion of forested areas;
3. Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation and other resources can be maintained, recognizing that, in some cases, these used may be mutually exclusive.

Timber harvest plans will include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas as identified in COMAR 14.15.09, and incorporate protection measures for these areas as specified by the local jurisdiction. Harvests occurring within the Buffer will be in accordance with COMAR 14.15.09.01. The plan will schedule the timing, intensity and size of harvests so that continuity of habitat will be assured. In compliance with the local jurisdiction's program, the plan will state that a Sediment Control Plan developed according to the State "Standard Erosion and Sediment Control Plan for Harvest Operations" will be required for all harvests of 5,000 square feet or more of disturbed area.

The incorporation of the above measures in the forest management section of resource conservation plans and in timber harvest plans will assure that the development resulting from the implementation of the plan fully meets the criteria in COMAR 14.15 for forest and woodland protection.

Agriculture

Resource conservation plans may occasionally include agriculture practices, such as planting grains, to improve wildlife habitat. Agricultural recommendations will follow these policies:

1. Assure that the creation of new agricultural lands is not accomplished:

- A. By diking, draining, or filling or any class or subclass of palustrine wetlands, as described in COMAR 14.15.09.02, which have a seasonally flooded or wetter water regime, unless mitigation as provided for in COMAR 14.15.09.02 is accomplished;
- B. By clearing of forests or woodland on soils with a slope greater than 15%; or on soils with a "K" value greater than .35 and a slope greater than 5%;
- C. If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in COMAR 14.15.09;
- D. By the clearing of existing natural vegetation within the Buffer as defined in COMAR 14.15.09.

2. Assure that Best Management Practices for the control of nutrients, pesticides, and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and, shall minimize adverse effects on plant, fish, and wildlife resources.

3. Agricultural practices occurring within the Buffer shall be in conformance with COMAR 14.15.09.01.C.04.

Biologists recommending agricultural practices will consult with the local Soil Conservation District as necessary to assure that those practices are in compliance with existing Soil and Water Conservation Plans or that all appropriate BMPs have been utilized.

The incorporation of the above measures in the wildlife management section of the resource conservation plan will assure that the development resulting from the implementation of the plan fully meets the criteria in COMAR 14.15 for agriculture.

Habitat Protection Areas

Resource conservation plans and timber harvest plans will often include protection measures for habitat protection areas (HPAs) as defined by COMAR 14.15.09. Forestry and wildlife management practices recommended in these plans may effect HPAs. Management recommendations will adopt the following policies and criteria for HPAs.

Buffer

All resource conservation plans and timber harvest plans will delineate the minimum 100-foot Buffer (referred to henceforth as

"Buffer") landward from the Mean High Water Line of tidal waters, tributary streams, and tidal wetlands. The following policies will be adopted:

1. Recognize that the Buffer removes or reduces sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
2. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
3. Recognize that the Buffer maintains an area of transitional habitat between aquatic and upland communities;
4. Maintain the natural environment of streams;
5. Protect riparian wildlife habitat.

The following criteria will be incorporated into resource conservation plans and timber harvest plans to protect the Buffer.

1. New development activities, including roads, parking lots, and other impervious surfaces will not be permitted in the Buffer;
2. The Buffer shall be maintained in natural vegetation, but may include planted natural vegetation where necessary to protect, stabilize, or enhance the shoreline;
3. Agricultural recommendations will:
 - A. Maintain a 25-foot vegetated filter strip measured landward from the Mean High Water Line of tidal waters or tributary streams or from the edge of tidal wetlands, whichever is further inland;
 - B. The filter strip shall be composed of trees with a dense ground cover or a thick sod of grass, and shall be managed to provide water quality benefits and habitat protection consistent with the policies listed above. Noxious weeds, including Johnson grass, Canada thistle, and multiflora rose which occur in the filter strip may be controlled by authorized means;
 - C. The filter strip shall be expanded by a distance of 4 feet for every 1% of slope for slopes greater than 6%;

- D. The filter strip shall be maintained until the landowner implements an approved Soil and Water Conservation Plan.
- 4. Cutting or clearing of trees within the Buffer shall be prohibited except that:
 - A. Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the Mean High Water Line of tidal waters, perennial tributary streams, and tidal wetlands. Harvesting in the Buffer must be in conformance with a Buffer management plan prepared by a registered professional forester and approved by the Forest, Park and Wildlife Service. The plan shall be required for all commercial harvests within the Buffer regardless of the size of the area to be cut.
 - i. Where the minimum 100-foot Buffer is not coincident with a Habitat Protection Area, the Buffer Management Plan shall contain the following minimum requirements:
 - a. Disturbance to stream banks and shorelines shall be avoided;
 - b. The area disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the Buffer;
 - c. Cutting does not involve the creation of staging areas, logging roads and skid trails within the Buffer.
 - ii. Cutting may not occur in Habitat Protection Areas within the minimum 100 foot Buffer, including portions expanded beyond 100 feet.
 - B. Commercial harvesting of trees by any method may be permitted to the edge of intermittent streams provided that the cutting is conducted according to the above provisions;
 - C. Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer, and provided that the trees are replaced on an equal basis for each tree removed;

- D. Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion;
 - E. Horticultural practices may be used to maintain the health of individual trees;
 - F. Other cutting techniques may be undertaken within the Buffer under the advice of the Department of Agriculture or the Department of Natural Resources if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.
5. The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas, such as steep slopes, hydric soils, highly erodible soils, threatened and endangered species habitat, and plant and wildlife habitat, where development or disturbance may impact streams, wetlands, or other aquatic environments. In other words, Buffer expansion is required primarily for two reasons: protection of water quality and protection of plant and wildlife habitat. The following section describes the criteria that the FPWS will use to determine the necessity of expanding the Buffer for forest management purposes.
- A. Where contiguous slopes 15% or greater occur, the Buffer shall be expanded 4 feet for every percent of slope, or to the top of the slope whichever is greater in extent.
 - B. The Buffer will be expanded for the following wetlands because of high plant and wildlife habitat value and protection of water quality.
 - i. All wetlands with sweet bay (Magnolia virginiana) as a dominant or codominant species;
 - ii. All PFO2 wetlands [needle-leaved deciduous; e.g. bald cypress (Taxodium distichum)];
 - iii. PFO4 wetlands (needle-leaved evergreen) with Atlantic white cedar (Chamaecyparis thyoides) or bald cypress;
 - iv. All non-tidal wetlands influenced by oceanic tides; i.e., those with water regime modifiers N (flooded daily by tides), R (seasonal tidal),

S (temporary tidal), T (semipermanent tidal), and V (permanent tidal);

- v. All non-tidal wetlands with surface water throughout the growing season in most years, or wetter; i.e., PFOH (permanent), PFOG (intermittently exposed), PFOF (semipermanent), PFOW (intermittently flooded/temporary), PFOY (saturated/semipermanent/seasonal), and PFOZ (intermittently exposed/permanent);
- vi. PFOB wetlands (saturated); used to describe bogs and some seeps;
- vii. PFOE wetlands (seasonal saturated); surface water is present for extended periods, especially early in the growing season, and the water table remains near the surface during the remainder of the year;
- viii. PFO1 (broad leaved-deciduous), PFO1/4 (broad-leaved deciduous and needle-leaved evergreen), and PFO4 (needle-leaved evergreen) wetlands with water regime modifiers A (temporary) or C (seasonal) with the following conditions:
 - a. PFO1A wetlands occurring on the floodplains of intermittent or permanent streams, rivers, or tributaries;
 - b. with State- or Federally-listed species;
 - c. within Natural Heritage Areas unless otherwise recommended by the Maryland Natural Heritage Program;
 - d. within other Plant and Wildlife Habitats of Local Significance unless otherwise recommended by the local jurisdiction;
 - f. contiguous with bayside ponds;
 - g. with seeps;
 - h. with bald cypress or Atlantic white cedar;
 - i. with stands having the largest size class of the dominant species exceeding two feet in diameter at breast height (stands developing into old growth forests);

- j. with seasonal ponds or seasonally flooded flatwoods associated with seasonal ponds;
 - k. with steep slopes;
 - l. with highly erodible soils.
- C. The Buffer will be expanded to include steep slopes (15% or greater) or highly erodible soils adjacent to the wetlands protected by the Buffer expansion.
- D. When BMPs are used to protect water quality, the Buffer need not be expanded for the following types of wetlands because of their low plant and wildlife value.
 - i. PFO4J wetlands (the driest type);
 - ii. PFO4D wetlands (seasonally flooded, well-drained)
 - iii. PFO1, PFO1/4, and PFO4 wetlands with water regime modifiers A or C except for those situation listed in section B above.
- E. Buffer expansion for all other wetlands will be determined by the FPWS on a case-by-case basis according to the plant and wildlife habitat value and potential for adverse impacts to water quality.

The guidance of the above policies and incorporation of the above criteria during the generation of resource conservation plans and timber harvest plans will assure that the development resulting from the implementation of the plan will be in full compliance with COMAR 14.15.09.

Non-Tidal Wetlands

All resource conservation plans and timber harvest plans will identify non-tidal wetlands as described in COMAR 14.15.09.02.C.(3)(a)(i-ii). Wetlands of importance to plant, fish, wildlife and water quality will be protected by utilizing the following criteria when resource conservation plans and timber harvest plans are written.

- 1. Maintain at least a 25-foot buffer around identified non-tidal wetlands where development activities or other activities which may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities

will not adversely affect the wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands.

2. Protect the hydrologic regime and water quality of identified non-tidal wetlands by providing that development activities or other land disturbances in the drainage area of the wetlands will minimize alterations to the surface or subsurface flow of water into and from the wetland and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.
3. Provide for the preparation of a mitigation plan by the proposer of activities or operations which, as a result of their being of substantial economic benefit, will cause unavoidable and necessary impacts to the wetlands. These activities include, but are not limited to, development activities, tree cutting operations, and those agricultural operations permitted under COMAR 14.15.06.02C and D for which mitigation is required. The plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, on-site or near the affected wetland.

Threatened and Endangered Species and Species in Need of Conservation

All resource conservation plans and timber harvest plans shall identify habitats of those species designated as species in need of conservation, threatened, or endangered by the Secretary of Department of Natural Resources or by the federal Endangered Species Act. These species and their habitats will be protected by utilizing the following criteria when resource conservation plans and timber harvest plans are written.

1. Designation of a protection area around each of the habitats occurring in the jurisdiction within which development activities and other disturbances shall be prohibited unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats;
2. Include special provisions for protection in forest management recommendations;
3. Encourage landowners to enter conservation easements or other cooperative agreements which provide protection.

Plant and Wildlife Habitat

All resource conservation plans and timber harvest plans will identify the types of plant and wildlife habitat listed below:

1. Colonial water bird nesting sites;
2. Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands;
3. Existing riparian forests (for example, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands or the Bay shoreline and which are documented breeding areas);
4. Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example, relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);
5. Other plant and wildlife habitats determined to be of local significance; and
6. Natural Heritage Areas which have been designated.

The following policies will guide the development of the plans.

1. Conserve wildlife habitat in the Critical Area;
2. Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
3. Protect those wildlife habitat types which are required to support the continued presence of various species;
4. Protect those wildlife habitat types and plant communities which are determined by local jurisdiction to be of local significance; and
5. Protect Natural Heritage Areas.

The following criteria will be incorporated into resource conservation plans and timber harvest plans.

1. Establish buffer areas for colonial water bird (heron, egret, tern and glossy ibis) nesting sites so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.

2. Provide protection measures including a buffer area where appropriate, for other plant and wildlife habitat sites;
3. Protect and conserve those forested areas required to support wildlife species identified above by developing management recommendations which have as their objective, conserving the wildlife that inhabit or use the areas. These recommendations should assure that development activities, or the clearing or cutting of trees which might occur in the areas, is conducted so as to conserve riparian habitat, forest interior wildlife species, and their habitat.
4. Maintain corridors of existing forest or woodland vegetation be maintained to provide effective connections between wildlife habitat areas.
5. Protect by appropriate means those plant and wildlife habitats considered to be of significance by local jurisdictions.
6. Protection Natural Heritage Areas from alteration due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained.

Anadromous Fish Propagation Waters

All resource conservation plans and timber harvest plans will identify anadromous fish propagation waters, which are defined as those streams that are tributary to the Chesapeake Bay where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch, shad and river herring) occurs or has occurred. The following policies will guide the development of the plans.

1. Protect the instream and stream bank habitat of anadromous fish propagation waters;
2. Promote land use policies and practices in the watershed of spawning streams within the Critical Area which will minimize the adverse impacts of development on the water quality of the streams; and
3. Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

The following criteria will be incorporated into resource conservation plans and timber harvest plans.

1. The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated

that water quality and fisheries habitat can be improved.

2. Channelization or other physical alterations which may change the course of circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
3. Minimize, to the extent possible, the discharge of sediments into streams; and
4. Maintain, or if practicable, increase the natural vegetation of the watershed.
5. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. If practical, the removal of existing barriers shall be effected (COMAR 08.05.03.02).
6. The construction, repair, or maintenance activities associated with bridges, or other stream crossings which involve disturbance within the Buffer or which occur instream, as described in COMAR 08.05.03.09B(4), shall be prohibited between March 1 and May 15.

The incorporation of the above policies and measures in the management recommendations of resource conservation plans and timber management plans will assure that the development resulting from the implementation of the plan will fully comply with the criteria in COMAR 14.15 for Habitat Protection Areas.

PROCESS

Resource Conservation Plans

The process for assuring that resource conservation plans conform to the Criteria is largely handled within the FPWS. Plans are developed according to FPWS Policy No. 89-101 and Circular 89-101. These documents will be made available upon request. The circular establishes a process which requires that development of resource conservation plans be coordinated between the Cooperative Forestry Division, Wildlife Division, and Natural Heritage Program. Briefly, the procedure is a notification process that informs all three divisions that a resource conservation plan is going to be developed for a particular property. The notification allows the divisions to review the landowners objectives and to locate the property to assess the likelihood of natural elements of significance to their division occurring on the site. The division then makes a decision of the level of involvement required of them.

The circular also states that plans developed for properties located within the Critical Area must conform to COMAR 14.15.

Consulting the guidance papers published by the Critical Area Commission and in-house management guidelines during the development of the plan is encouraged. Utilizing professionals from other units and agencies, such as Tidewater Administration, Department of Agriculture, Soil Conservation Districts, and local governments is urged.

Finally, it requires that any conflict in recommendations which may occur during the development of the plan be referred up through each Division's chain-of-command until a resolution is reached. For plans within the Critical Area, the basis for the resolution shall be compliance with the intent of COMAR 14.15, the local jurisdiction's Critical Area Protection Program and other pertinent state laws and regulations.

If a project recommended in a resource conservation plan does not conform to COMAR 14.15 or to this document, the plan will be submitted to the Critical Area Commission for action.

COMAR 14.15.09.02.C.(4), 14.15.09.03.C.(3), and 14.15.09.04.C.(2). (c) state that designation of habitat and protective measures may not be accomplished unless the affected public is given an adequate opportunity to be heard. Resource conservation plans may recommend measures to protect a HPA from development, for example, a waterfowl impoundment. If the local jurisdiction has held no public hearing on the protection measures for the type of HPA to be impacted, the protection measures recommended in the plan may be subject to a hearing, and the FPWS will notify the appropriate agency within the local jurisdictions.

It is through the above process that the FPWS resource conservation plans will be developed so as to conform with the requirements of COMAR 14.15.

Timber Harvest Plans

Timber harvest plans are developed according to FPWS Policy No. 89-301 and Circular 89-301. These documents will be made available upon request. The circular establishes a process which requires that development of timber harvest plans be coordinated between the Cooperative Forestry Division, Wildlife Division, and Natural Heritage Program. Briefly, the procedure is a notification process that informs all three divisions that a resource conservation plan is going to be developed for a particular property. The notification allows the divisions to locate the property to assess the likelihood of natural elements of significance to their division occurring on the site. The division then makes a decision of the level of involvement required of them.

The circular also states that plans developed for properties located within the Critical Area must conform to COMAR 14.15. and The District Forestry Board - Forest, Park and Wildlife Service

Forest Management Plan Approval Process: Request for General Approval. Consulting the guidance papers published by the Critical Area Commission and in-house management guidelines during the development of the plan is encouraged. Utilizing professionals from other units and agencies, such as Tidewater Administration, Department of Agriculture, Soil Conservation Districts, and local governments is urged.

Finally, it requires that any conflict in recommendations which may occur during the development of the plan be referred up through each Division's chain-of-command until a resolution is reached. The basis for the resolution shall be compliance with the intent of COMAR 14.15, The District Forestry Board - Forest, Park and Wildlife Service Forest Management Plan Approval Process: Request for General Approval, the local jurisdiction's Critical Area Protection Program and other pertinent state laws and regulations.

Timber harvest plans must be approved by the district forestry board. Plans must conform to the local jurisdiction's Critical Area Resource Protection Program to be approved by the district forestry board, and should therefore also conform to the Criteria.

It is through the above process that the FPWS timber harvest plans will be developed so as to conform with the requirements of COMAR 14.15.

11/28/88



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

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Martin Walsh, Jr.
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Ardath Cade
Housing and Community Development

Torrey Brown
Natural Resources

Constance Lieder
Planning

December 14, 1988

Dear Commission Member:

The next Meeting of the Chesapeake Bay Critical Area Commission will begin at 1:00 p.m. on December 21, 1988, at the Tidewater Inn, Easton. An Agenda for the Meeting is enclosed. The Minutes of the Meeting of December 7th will be distributed at the Meeting.

Prior to the Meeting, there will be several Panel meetings scheduled. So far, there is a Septic Panel meeting scheduled for 10:30 in the morning at the Tidewater. I expect that meeting to last until 11:30, allowing time for other Panels to meet prior to the Meeting.

All of us on the Commission staff wish each and every one of you the best of Holidays and look forward to working with all of you in the New Year, as we meet new challenges.

Please telephone Jennifer at 974-2418 if you are unable to attend the Meeting, as we will need a quorum.

Please also note that lunch will be provided.

Sincerely,

Sarah J. Taylor, Ph.D.
Executive Director

CHESAPEAKE BAY CRITICAL AREA COMMISSION

AGENDA

Tidewater Inn
Easton, Maryland

December 21, 1988

12:00 - 5:00 p.m.

- | | | | |
|-------------|---|------------------------------------|--|
| 12:00 | Noon | | Lunch |
| 1:00 - 1:10 | Approval of the Minutes of December 7, 1988 | | Robert Price, Jr.
Vice-Chairman |
| 1:10 - 1:20 | Recognition of Members and Staff | ✓ | Robert Price, Jr.
Vice-Chairman |
| 1:20 - 1:40 | Vote on Town of Queenstown Program | ✓ approved | Marcus Pollock/
Panel |
| 1:40 - 2:00 | Vote on Talbot County Program | ✓ returned w/ changes good program | Charles Davis/
Panel |
| 2:00 - 2:20 | Vote on Worcester County Program | ✓ Tabled | Sarah Taylor/
Panel |
| 2:20 - 2:40 | Vote on Town of Chestertown Program | ✓ submitted only today | Sarah Taylor/
Panel |
| 2:40 - 3:15 | Queen Anne County Discussion | ✓ Approved 6-29-88 need ordinance | Joe Stevens + Planning Director
County Officials Steve Thompson
- consultant |
| 3:15 - 3:30 | Vote on Kent County Program Amendments | additional info needed | Charles Davis/
Panel |
| 3:30 - 3:45 | Vote on Days Cove Marina Master Plan | Jan. 4, | Abi Rome/
Panel |
| 3:45 - 4:00 | Break | | |
| 4:00 - 4:15 | Update on Septic Panel Meeting | ✓ | Sarah / Bill / Boston
Panel Members |
| 4:15 - 4:30 | Update on Natural Parks Study | | Dawn McCleary/
James Gutman |
| 4:30 - 4:45 | Old Business
Dorchester Co. Hearing
Cecil Co. Hearing | | Robert Price, Jr.
Vice-Chairman |

New Business

Next Meeting: January 4, 1989, 3:00 p.m.
275 West Street, West Garret Place, Suite 320
Annapolis, Maryland

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
December 7, 1988

The Chesapeake Bay Critical Area Commission met at the Department of Agriculture, 50 Harry S Truman Parkway, Annapolis, Maryland. The meeting was called to order by Vice-Chairman Robert Price Jr., with the following Members in attendance:

Thomas Jarvis	Wallace Miller
Ronald Karasic	Shepard Krech, Jr.
Samuel Bowling	Parris Glendening
G. Steele Phillips	Ronald Hickernell
William Corkran	Albert Zahniser
James E. Gutman	William Bostian
Victor Butanis	Kathryn Langner
Louise Lawrence for Secretary Cawley	Robert Schoeplein of DEED
	John Griffin of DNR

The Minutes of the Meeting of November 30th, 1988 were approved with the corrections concerning Point Lookout Pier that: 1) to filter the sediment pond would require additional removing of trees which was undesirable, and 2) that porous bituminous popcorn mix is unacceptable because it would clog with the sandy conditions in that area and there is no cleaning device. Another correction would be that the Commission hearing for Kent County Program amendments is scheduled for December 8th, 1988, and not the 5th.

Vice-Chairman Price introduced Mr. William Corkran of Talbot County.

Vice-Chairman Price then read correspondence of the Commission, sent to Dorchester County, as a result of the last meeting. The letter set out conditions for approving the growth allocation requirists, but stated that habitat protection would still need to be assured in the subdivision design. He said that upon receipt of the Commission's letter, the County Commissioners of Dorchester County took action and have now delivered a letter addressed to himself. He then read the letter which informed the Commission of the formal requests of the County Commissioners for Program Amendment.

Vice-Chairman Price said that the Panel will set a hearing date for the amendment.

Mr. Brossman, attorney for McKiel Point, urged the Commission to schedule the hearings as quickly as possible.

Mr. Gutman asked if the letter satisfies the issues that were raised, and that once the hearings take place, no further issues will arise with regard to growth allocation for these areas?

Dr. Taylor answered that for the subdivisions, the growth allocation and the amendment language per se, the staff feels that their concerns will have been addressed.

Vice-Chairman Price then asked Dr. Taylor to report on the Program for the Town of Denton. Dr. Taylor said that the Panel has met. The consultant had made all of the requested changes to the Program and the maps. Dr. Taylor asked Dr. Krech, Panel member, if he had anything to add. Dr. Krech concurred that the consultant, Bill Kirwin, had addressed all 47 items of the Program that needed change.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve Town of Denton's local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, the Town of Denton shall adopt the Program together with all relevant ordinance changes. The vote was 14:0 in favor.

Vice-Chairman Price asked Ms. McCleary to report on the Program for the Town of Federalsburg. Ms. McCleary reported that the suggestions from several Divisions of DNR have been incorporated together with staff recommended changes. Dr. Krech, Panel member agreed that the necessary changes had been made.

A motion was made and seconded that the Commission, pursuant to the Critical Area Law, Section 8-1809(d), approve the Town of Federalsburg local Critical Area Program, and direct that pursuant to Section 8-1809(e), within 90 days, the Town of Federalsburg shall adopt the Program together with all relevant ordinance changes. The vote was 14:0 in favor.

Vice-Chairman Price asked Mr. Davis to report on the status of Talbot County's Program. Mr. Davis reported that the Panel has held its required hearing and had met once to discuss the remaining issues. A review is still being made by staff and Panel, but a vote would be possible to take by the next Commission Meeting.

Vice-Chairman Price asked Mr. Ken Ropp and Ms. Deborah O'Dea of Waterway Improvement Division, DNR to report on four State projects.

Mr. Ropp made a presentation of the four projects, three of which are in St. Mary's County. Waterway Improvement Division is asking the Commission to evaluate the construction of a landing pier in St. Clements Island.

Mr. Zahniser asked what the cost of construction would be. Mr. Ropp answered that it was unknown at this time.

Mr. Gutman said that it was too difficult to discuss projects without due notice, and that if there were a number in a given geographical area, they should at least, be grouped for ease of Panel review. He asked if it were possible for the Commission to receive a list of all known projects that the State is working on at this time and that will have to be reviewed by the Commission.

Mr. Griffin answered that it was his understanding that presentations were merely to inform the Commission that these projects exist, and the Commission would then choose panels to review the projects.

Ms. Rome said that the staff is working on guidelines for the State agencies in order to let them know how and when, in their process, they should address the Commission and coordinate their actions.

Second, Mr. Ropp said that DNR is proposing construction of a concrete boat ramp with timber catwalks, comfort station, parking, and access road on St. George's Creek/Russell Point. He explained that dredging will be necessary, and spoil will be placed onto an upland parking lot disposal site.

In regard to the dredge spoil site, Mr. Gutman asked if there is provision for expansion, if in the future, there was found to be a need? Mr. Ropp answered that the area is well-delineated and expansion is not foreseen. If additional facilities are required, they could be located elsewhere.

Mr. Gutman asked what was the time frame on construction? Mr. Ropp answered the Fall of 1989, and there is plenty of time for process. He said that the only time-pressing project is in St. Clements, because of the demand for the facility.

Third, Mr. Ropp reported on proposal to construct an emergency boat ramp, access road, gravel access area, and timber catwalks at Point Lookout/Tanner Creek. He explained that part of the problem at Point Lookout is that there is sometimes call for emergency aid, and it is therefore necessary to have access to the people in need. Mr. Ropp said that this project will involve dredging, and there is a dredge containment site.

Mr. Zahniser asked why the existing road will not be used, instead of proposing the construction of a new one. Mr. Ropp answered that the present road is not on State property.

Fourth, Mr. Ropp explained the project to construct a fuel/paint storage building at Sandy Point State Park in Anne Arundel County. He said that there will be construction of a block building over an asphalt paved area, for the purpose of storing gas cans, oil storage, and paints. It will require utilities for heating. The gas cans will hold only 6 gallons each, and that there may be a total of 30 some cans.

Vice-Chairman Price asked where the cans will be filled. Mr. Ropp answered that they will be filled right at the fuel storage dock.

Mr. Gutman expressed concern about the building being placed in the Buffer. Mr. Ropp answered that one reason for this was to ensure security by making the building visible from an extant adjacent building. Since there are no windows in the back of the extant building, a fuel storage building would not be visible if it were away from the Buffer.

Mr. Gutman asked if windows could be put in the rear of the extant building. Mr. Ropp answered that that was a possibility.

Vice-Chairman Price reported that the panel to review these projects is comprised of Skip Zahniser, Chairman, Sam Bowling, Jim Gutman, Bill Corkran, and Bob Schoepflein, with Abi Rome as staff coordinator.

UNDER OLD BUSINESS

Dr. Taylor said that the proposed meeting date for the Amendments, Procedures, and Process Panel will soon be scheduled. The Panel is comprised of Parris Glendening, Sam Bowling, Ron Adkins, Wally Miller, John Griffin, and Connie Lieder.

Dr. Taylor reported that the Septic Panel meeting is proposed for December 21st, before the Commission Meeting. The Panel is comprised of Parris Glendening, Chairman, Kay Langner, Jim Gutman, Shepard Krech, Bob Perciasepe, Wayne Cawley, Skip Zahniser, and Bill Bostian.

Dr. Taylor then explained about the two Memoranda of Understanding that have been submitted. She said that one was with the Department of Transportation, and its desire to work with the Commission under the State regulations. Dr. Taylor suggested that the APP Panel review the MOU.

The other submittal was from the Maryland Port Administration. It was a draft memorandum with Baltimore City on how its projects in Baltimore City will be handled. She suggested the Baltimore City Panel review the draft MOU.

Dr. Taylor then gave a status report on the remaining Programs to be approved. She said that are 19 Programs remaining, with the anticipation of approximately 7 Programs to be approved at the next Commission Meeting. These Programs are Caroline County, Worcester County, Snow Hill, Talbot County, Chestertown and Queenstown, and possibly a few more.

In January, North Beach, Hillsboro, Elkton, Church Hill, Charles County and Indian Head are a possibility to be ready for a final vote.

Mr. Davis gave a status report on the Program for Queen Anne's County, and explained why it had not yet implemented its approved Program.

Vice-Chairman Price said that it had been understood that it would take approximately three months to complete the Program and have it implemented, during which time, the County has rescinded its development moratorium.

Mr. Epstein suggested that the Commission take over the Program and begin preparation of a Commission Program, now that six months, instead of the requisite three months, had passed, and since Commission review will take an additional amount of time. He also warned once again, that the Commission should strongly consider taking over the remaining unapproved Programs some time very soon.

Mr. Griffin suggested that the County Planners be invited to the next Commission Meeting to help resolve this issue.

A motion was made and seconded to invite Queen Anne's County to the December 21st Meeting to discuss the County Program and attempt to resolve the issue of Program development and implementation. The motion was unanimously approved.

Dr. Taylor reported on SB 93, the legislation that the Oversight Committee was proposing for the cutting or clearing of trees and equitable remedies.

Mr. Epstein said that if the Commission agrees substantively with the premise, the Bill would still likely need some work.

There being no further business, the meeting was adjourned.