

Commission Meetings & Corresp.

Dec 1989

MSA_51832-65



JOHN C. NORTH, II
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MARYLAND 21401
974-2418 or 974-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

COMMISSIONERS

Thomas Osborne
Anne Arundel Co.

James E. Gutman
Anne Arundel Co.

Ronald Karasic
Baltimore City

Ronald Hickernell
Baltimore Co.

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 Glendinger
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.

William Corkran, Jr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

November 20, 1989

Dear Commission Member:

The December 6th meeting of the Chesapeake Bay Critical Area Commission will be held at 1:00 p.m. at the Commission Office, 275 West Street, Suite 320, Annapolis, Maryland. A separate Subcommittee notice will be mailed to you for that Wednesday morning.

Enclosed are the following items pertaining to the meeting:

- 1) Agenda for the Meeting;
- 2) Minutes of the Meeting of October 4th;
- 3) Unofficial Minutes of November 1st; and
- 4) An attachment containing the proposed language and concepts for changes to the criteria.

In reference to item #4, please review it carefully and come prepared to vote on the items where a vote is necessary. It contains concepts and language for changes to the criteria that the Oversight Committee and a Subcommittee have agreed to. It also contains items that the Oversight Committee deferred for further discussion at its meeting on November 20th with staff and me.

I look forward to seeing you on December 6th.

Sincerely,

Judge John C. North, II
Chairman

CABINET MEMBERS

Wayne A. Cawley, Jr.
Agriculture

Robert Schoepfle
Employment and Economic Development

Robert Perciasepe
Environment

Ardath Cade
Housing and Community Development

Torrey C. Brown, M.D.
Natural Resources

Ronald Kreitner
Planning

JCN/jja
Enclosures

FINAL AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

275 West Street
Suite 320
Annapolis, Maryland

December 6, 1989

9:30 - 4:30 p.m.

9:30 - 11:30	Special Issues Subcommittee	James Gutman, Ch./
10:00 - 11:30	Project Evaluation Subcommittee	Samuel Bowling, Ch./ Kathryn Langner, Ch./ Ren Serey
10:30 - 11:30	Program Amendments Subcommittee	Victor Butanis, Ch./ Pat Pudelkewicz
11:00 - 12:00	MOU-MDOT	James Gutman, Ch.
12:00 - 1:00	Lunch	
12:45 - 1:00	Elkton Panel	James Gutman, Ch./ Anne Hairston
1:00 - 1:10	Approval of the Minutes of September 6 and October 4, 1989	John C. North, II Chairman

POLICIES, MOU'S & GENERAL APPROVALS

1:10 - 2:15	Vote on Policy to Extend the 1,000' Critical Area Boundary	James E. Gutman/ Anne Hairston <i>Pass</i> <i>10,000'</i>
	Vote on MOU with Waterway Improvements Division and General Approval for Piers and Ramps	Samuel Bowling, Ch./ Abi Rome <i>Pass</i>
	Vote on General Approval - FPWS and District Forestry Board	G. Steele Phillips/ Anne Hairston <i>Pass</i> <i>w/conditions</i>
	Vote on MOU with Public Service Commission	Pat Pudelkewicz <i>Pass</i>
2:15 - 2:45	Vote on Changes to the Criteria	James E. Gutman/ Ren Serey/Charlie Davis <i>Pass</i>

(See other side)

PROJECT EVALUATION

2:45 - 3:00 *Wye Research Education Center (Coofm) Pass*
Vote on Martin State Airport, *Pass* Samuel Bowling, Ch./
(Baltimore County) Kathryn Langner, Ch./
Abi Rome

Vote on Pocomoke Sound Samuel Bowling, Ch./
Wildlife Management Area *Pass* Kay Langner, Ch./
Disposal Site Abi Rome

Vote on Washington Suburban Samuel Bowling, Ch./
Sanitary Commission's Water *Pass* Kathryn Langner, Ch./
Pumping Station Dawnn McCleary

(need vegetation plan)

PROGRAM REVIEW & AMENDMENT

3:00 - 4:00 Vote on Beverly Estates - William Bostian, Ch./
Growth Allocation *Pass* Thomas Ventre
(Dorchester County)

Vote on St. Mary's County *Pass* James Gutman, Ch./
Program Ren Serey

~~Vote (Tentative) on Towns of William Bostian, Ch./
Sharptown and Mardela Thomas Ventre
Springs Program~~

Vote on Town of Elkton *Pass* James Gutman, Ch./
Program Amendment Anne Hairston

4:00 - 4:30 Old Business John C. North, II
New Business Chairman

Next Commission Meeting: January 3, 1990

CHESAPEAKE BAY CRITICAL AREA COMMISSION

SUBCOMMITTEE MEETINGS

275 West Street
Suite 320
Annapolis, Maryland

- 9:30 - 11:30 Special Issues Sarah Taylor
James Gutman, Ch./Parris Glendening (Carolyn Watson)/Bill Bostian/
Nailor)/ Bob Perciasepe (Rick Nailor)/
Bob Price/Skip Zahniser/Torrey Brown/Wayne Cawley (Louise Lawrence)
- 9:30 - 11:30 Project Evaluation Ren Serey
Samuel Bowling, Ch./Kathryn Langner, Ch./Bill Corkran/Tom Jarvis/Steele Phillips/Russell Blake/Ardath Cade/Bob Schoeplein
- 10:30 - 11:30 Program Amendments Pat Pudelkewicz
Victor Butanis, Ch./Shepard Krech/Ron Adkins/Ron Kreitner (Larry Duket)/Ron Hickernell/J. Frank Raley
- 11:30 - 12:30 MOU Panel Sarah Taylor
James Gutman, Ch./Sam Bowling/Skip Zahniser/Shepard Krech/Bill Corkran/Bob Perciasepe (Rick Nailor)
- 11:30 - 12:30 Forest Management Panel Anne Hairston
Steele Phillips, Ch./James Gutman/Bill Bostian/Shepard Krech/Bob Perciasepe (Rick Nailor)
- 12:45 - 1:00 Elkton Panel Anne Hairston
James Gutman, Ch./Kay Langner/Victor Butanis/Louise Lawrence/Ron Hickernell

UNOFFICAL MEETING OF THE
CHESAPEAKE BAY CRITICAL AREA COMMISSION

November 1, 1989

The Chesapeake Bay Critical Area Commission met at the University of Maryland, College of Estuarine and Environmental Sciences, Horn Point, Cambridge, Maryland. The following Members were in attendance:

Chairman John North	William Corkran
Thomas Jarvis	Samuel Bowling
Kathryn Langner	Robert Price, Jr.
Victor Butanis	Shepard Krech, Jr.
James E. Gutman	G. Steele Phillips
↳ Louise Lawrence	William Bostian
Deputy Secretary Cade	Ronald Adkins
Natalie McPherson for	Larry Duket for
for Robert Schoeplein	Ron Kreitner
Carolyn Watson for	Deputy Secretary Cade
Parris Glendening	

Chairman North explained that because there was not a quorum of voting Commission members, there would not be any votes taken that day, and that the meeting was necessarily an unoffical one.

Chairman North then introduced Ms. Karen Phillips and Mr. Steve Dodd of the Dorchester County Planning Office and thanked them for the County's hospitality to the Commission and for the chance to inspect and enjoy the offerings of Horn Point.

Ms. Anne Hairston distributed to the Commission, two requests for general approval from the Forest, Park and Wildlife Service concerning Timber Harvest Plan preparation and District Forestry Board approval of the plans, a memorandum by two Assistant Attorneys General of DNR, and the staff report on the general approvals for these plans. A policy for the extension of the Critical Area was also described by Ms. Hairston.

Chairman North asked Ms. Pat Pudelkewicz to report on the MOU with the Public Service Commission and the Department of Natural Resources. Ms. Pudelkewicz distributed the final draft and reported that the staff had been working with the Public Service Commission since the Spring. She explained that in accordance with the State and Local Regulations, the granting of a Certificate of Public Convenience and Necessity for power plants by the Public Service Commission is viewed as a State project and the Critical Area Commission has to approve projects in the Critical Area. The MOU sets up the process and coordinates among the three agencies (Critical Area Commission, Department of Natural Resources, and the Public Service Commission), the review of these applications.

Mr. Gutman asked if there have been any of these certificates issued since the adoption of the State and Local Regulations. Ms. Pudelkewicz replied that she was not aware of any, and that they were not issued frequently. She said that Baltimore Gas and Electric informed the PSC that they were going to be submitting an application this Fall. Mr. Epstein added that there were one or two projects that would be appearing in the near future. Ms. Pudelkewicz remarked that not only are these applications voluminous, but they are submitted in phases. The Critical Area Commission would only be involved in the siting phase and environmental impact stage.

Chairman North asked Ms. Abi Rome to report on the mosquito control activities proposed by the Department of Agriculture. Ms. Rome distributed a staff report listing the potential advantages and disadvantages of Open Marsh Water Management, and a memorandum from Secretary Cawley to the Commission, responding to Commission staff memo's concerns. She reported that the Department of Agriculture had requested an MOU and General Approval for the mosquito control activities that the Department does.

Dr. Krech asked if it was known that mosquitoes have developed resistance to the sprays that are currently being used. Dr. Stan Joseph said that a shift could be seen concerning the mortality of the mosquito population as a result of some of the presently used insecticides.

Mr. Phillips remarked that mosquito control was an extremely important issue in Dorchester and Somerset Counties.

Mr. Sean McKewen of Forest, Park and Wildlife Service made the comment that the Service had had some concern with the activities of the Department of Agriculture in the past, but there now is a good on-going relationship and cooperation between the Departments.

Mr. Gutman asked Mr. McKewen what those past concerns entailed. Mr. McKewen answered that OMWM on individual sites had shown to be potentially detrimental to specific species.

Chairman North asked Mr. Ren Serey to report on the proposed changes to the criteria. Mr. Serey distributed a listing of the concerns that the staff and the Legislative Oversight Committee discussed and identified as possible changes to the criteria and to the Law. He reported that the Chairman and Executive Director had met with the Oversight Committee several times to review these changes. Some of the changes were agreed to by the Committee, and in regard to the other changes, it was requested by the Committee that the staff write specific language and rationale.

Mr. Epstein noted that some of these issues were those that were raised as a result of the hearings that the Oversight Committee held around the State.

Deputy Secretary Cade asked how the Commission makes changes to the criteria. Mr. Epstein answered that to date, there was no mechanism for making substantive changes to the criteria. There needs to be a change in the Law to allow the Commission to do so. He said, if necessary, legislative changes to accomplish this had been approved by the Commission this past Summer, and that a draft was being refined.

Mr. Bostian asked if the draft was designed so that the Commission would propose amendments that would then have to be passed on to the Legislature. Mr. Epstein answered that the process would be that of any other State agency.

Chairman North then asked Ms. Rome to report on the Pocomoke Sound dredging disposal in the Pocomoke Sound Wildlife Management Area, in Somerset County. Ms. Rome introduced Mr. John Wolf of Capital Programs, and Mr. Gary Marshall, project manager of the Baltimore Corps of Engineers.

Mr. Marshall reported that the proposal was to hydraulically dredge 40,000 cubic yards of sandy material from the mouth of the Pocomoke River and place it on a previously approved and utilized channel maintenance spoil area on a DNR site. The spoil would be piped through a 12" PVC pipe that runs from the water across 50 feet of sparsely vegetated Buffer.

Mr. Marshall reported that the Corps had \$1.5 million to dredge the Pocomoke River and also Crisfield Harbor. He explained that the project is scheduled to be open for bidding very shortly and that the right of entry needed to be signed. In order to obtain this, Mr. Marshall said that it was necessary to have Commission approval.

Chairman North asked if a general consensus of the Commission's approval would be sufficient to obtain this, given the lack of a quorum to take an office vote. Mr. Wolf answered that it was his understanding that a right of entry was to be granted after Commission approval, prior to bid opening, but he would need to confirm this with Mr. Mike Nelson, Assistant Secretary of DNR.

Chairman North suggested that Mr. Wolf make the necessary telephone call to Mr. Nelson.

Mr. Adkins asked if the project required Commission approval because it was his understanding that the project was not considered development, and that the site had always been for dredge disposal.

Mr. Epstein answered that the staff felt that the "development" was not the site itself, or the addition of dredge spoil to an already permitted disposal area, but rather, it was the 12" PVC pipe that ran across the Buffer that was considered development.

Chairman North then asked Mr. Ventre to report on the growth allocation requests for Beverly Estates and Kenneth R. Cox in Dorchester County. Mr. Ventre reported that the Panel held its public hearing, and recommends approval.

Mr. Bostian, Panel Chairman, noted that the growth allocation request for Beverly Estates would miss the 90-day time frame, as there could not be a vote this day. However, there was no objection to the requests by the Panel.

It was suggested that a letter be sent to the County Commissioners informing them of the endorsement of the Panel, and of those Commission members present.

Deputy Secretary Cade reported that she and Mr. Wolf had spoken to Secretary Brown, who assured that, on the basis of an affirmative consensus of Commission members present, he would authorize the issuance of a right of entry prior to the project's bid opening.

A show of hands was given to show that the members present approved the project for Pocomoke Sound Dredge Disposal.



William Donald Schaefer
Governor

Melvin A. Steinberg
Lt. Governor

Wayne A. Cawley, Jr.
Secretary

Robert L. Walker
Deputy Secretary

STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE

MEMORANDUM

TO: Critical Area Commission Members

FROM: Wayne A. Cawley, Jr. *Wayne*

DATE: November 1, 1989

SUBJECT: Comments on October 24, 1989 Memorandum to Critical Area Commission from Abi Rome

When I received my copy of the subject memorandum, I asked my Mosquito Control staff to review Ms. Rome's comments or concerns and to respond to them. Dr. Joseph, Chief, Mosquito Control, in MDA has provided, as part of the Department's request for general approval by the Commission, a detailed description of mosquito control activities in Maryland. I would like to remind you that, by State law, I am required to conduct programs that will provide mosquito control in Maryland. My staff scientists have developed a control program to provide optimal control of mosquitoes. Our mosquito control activities are monitored and evaluated regularly and we use management techniques or insecticides that have been demonstrated to be effective and to cause no unreasonable adverse effects to the environment. We test and evaluate new methods or materials and use the ones that are acceptable and effective.

Mosquito control must be conducted in the Critical Area because mosquitoes, especially salt marsh mosquitoes, do not remain localized, but will migrate long distances to areas of human population. Salt marsh mosquitoes can fly more than 20 miles from their source. That is why it is so important to control mosquitoes at their source (site of reproduction) using open marsh water management or using insecticides to control larvae, rather than try to control them as adult mosquitoes in inhabited areas.

The following are brief responses to the concerns and suggestions expressed by Ms. Rome regarding mosquito control activities in the Critical Area:

1. Open marsh water management (OMWM) techniques used by the Department minimize hydrological effects and preserve natural plant species zonation in managed areas. Current techniques have been developed based on results of extensive monitoring studies conducted in Chesapeake Bay marshes. It has never been demonstrated that OMWM created additional upland.

50 HARRY S TRUMAN PARKWAY, ANNAPOLIS, MARYLAND 21401

(301) 841-5700
Baltimore/Annapolis Area



(301) 261-8106
Washington Metro Area

MEMO: Critical Area

November 1, 1989

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2. Ponds are an integral part of OMWM, not only in Maryland, but in other states where the technique is utilized, such as New Jersey and Delaware. Location of ponds is determined by the pattern of specific mosquito breeding sites as shown by entomological surveys. Ponds are constructed in areas of densely clustered mosquito breeding sites primarily to provide a reservoir for year-round survival of mosquito-eating fish. Although mosquito control is our primary concern, we have cooperated with staff members of the Department of Natural Resources who requested MDA to incorporate ponds into OMWM plans for waterfowl habitat improvements, e.g., shallow pond depths to promote the growth of submerged aquatic vegetation (SAV) and islands within the pond for waterfowl nesting and resting sites. These ponds often are the only areas on high marshes that provide habitat for SAV growth. Fish, shrimp, crab and other important aquatic resources thrive within the ponds, often reaching high populations.

Ponds on the high marshes of the Chesapeake Bay are particularly important habitat for dabbling ducks, i.e., black ducks, blue wing teal and gadwall. Enhancement of the high marsh habitat resulting from pond construction is beneficial to the waterfowl resource and is an accepted management technique of the waterfowl management program within the Maryland Department of Natural Resources. There is no evidence that OMWM ponds lead to higher waterfowl harvest by hunters. The ponds are generally scattered and located in remote areas not easily accessible to hunters.

3. OMWM should not be precluded from Natural Heritage areas. It is MDA's position that OMWM is the most environmentally sound and cost effective technique available for salt marsh mosquito control and represents the only effective form of biocontrol technique for salt marsh mosquitoes. It should be pointed out that OMWM has been evaluated and accepted as a safe and effective mosquito control measure in other states. In New Jersey, it has been implemented on Brigantine and Barnegat National Wildlife Refuges. In Delaware, it is being used on Bombay Hook and Prime Hook National Wildlife Refuges and in New England, the Massachusetts Audubon Society endorses OMWM as a technique of choice for salt marsh mosquito control.

4. Insecticides, to be effective when used for mosquito control, must be toxic to mosquitoes. However, MDA uses only those insecticides that have met the criteria established by the U.S. Environmental Protection Agency (EPA) for registration, i.e., that the product, when used according to label directions, does not cause unreasonable adverse effects to humans or to the environment. We observe and monitor the areas receiving an insecticide application and have not detected adverse impacts of the insecticides on non-target organisms. Insecticides to be applied to wetland areas in Maryland are subject to review by the Maryland Department of the Environment and Department of Natural Resources as permits are required by State regulation for use of toxics in wetland areas or waters of the State. Insecticides, when properly used, pose much less hazard to human and animal health than do mosquito-borne diseases in Maryland.

5. It is documented that integrated pest management (IPM) techniques used in Maryland are effective in reducing mosquito populations and protecting the public from mosquito-borne disease. It is not possible to eliminate all mosquitoes from the state and this is not a goal of the Mosquito Control Program. We endeavor to suppress the population below established nuisance thresholds.

Open marsh water management or larviciding (applying insecticides to kill mosquito larvae) have been shown to reduce by 90 to 100% mosquito larval populations within the treatment area. Aerial applications of adulticide (insecticides applied to kill mosquito adults) produce similar reductions of adult mosquito populations. Ground ultra-low-volume adulticiding is less effective than aerial spraying, but much more economical. Without organized mosquito control efforts, portions of Maryland would be virtually uninhabitable due to mosquito annoyance. The risk due to mosquito-borne disease would be greatly magnified. A case in point is Assateague Island National Seashore, Worcester County, where mosquito control is not practiced as a matter of federal agency policy. Salt marsh mosquito populations are greater here than anywhere else in Maryland.

In 1989, light trap collections exceeding 50,000 mosquitoes per night were recorded on Assateague Island. Mosquito numbers were so great that campers and others who went to Assateague Island seeking recreation were forced to leave. Eastern equine encephalitis (EEE), a disease transmitted by mosquitoes, killed 10% of the wild pony population on Assateague. Acting upon advice from the Federal Center for Disease Control and the State Department of Health & Mental Hygiene, the National Park Service requested MDA to conduct emergency mosquito control efforts. Aerial spraying of Assateague Island resulted in a dramatic decrease of adult mosquitoes and interruption of the disease transmission cycle. Chincoteague National Wildlife Refuge requested and received similar control efforts. Environmental monitoring on Assateague National Seashore and Chincoteague Refuge revealed no adverse impact on non-target organisms of the use of insecticides.

6. We welcome constructive input from DNR's Forest Park & Wildlife Agency or from any source. Under the current permit review process for application of insecticides to wetlands, or the use of OMWM, the Department of Natural Resources and Department of the Environment have regulatory authority, i.e., each agency reviews MDA applications for permits and responds to the applications.

7. Plans for OMWM activities are site specific. OMWM plans are uniquely designed for individual marshes and show the general layout of the management to be done. Input from other state and federal agencies is welcome during the planning and permit review process.

MEMO: Critical Area
November 1, 1989
Page 4

8. Extensive monitoring of OMWM systems has been done in Maryland and in other states, including New Jersey, Delaware, Massachusetts and North Carolina. If monitoring studies are carried out in Maryland, an independent research agency should conduct the studies. Funding for this type of study is not available within the existing MDA budget. If it is agreed that such a study is necessary adequate funds would have to be approved by the legislature.

9. If the results of such a monitoring study recommend program changes, MDA would consider such recommendations and would incorporate those techniques that will maintain or improve the environmental features and provide acceptable mosquito control.

10. Under IPM concepts, spraying is only initiated when mosquito populations exceed established action levels. (See response number 4.) The use of Bacillus thuringiensis israelensis (BTI) in our program is important, but it has limited use in the salt marsh environment due to poor efficacy and high cost. All pesticide applications are conducted under the direction of professional entomologists and certified pesticide applicators who undergo annual training.

11. Good suggestion! The Critical Area Commission should be represented on the Maryland Mosquito Control Advisory Committee. Input from the Commission will be welcomed by the Department.

CWP:djb

PROJECT REPORT

November 1, 1989

PROJECT

Pocomoke Sound Dredge Disposal

SITE

Pocomoke Sound Wildlife Management Area, Somerset County

APPLICANTS

Capital Programs Administration, Department of Natural Resources
U.S. Army Corps of Engineers

PROJECT DESCRIPTION

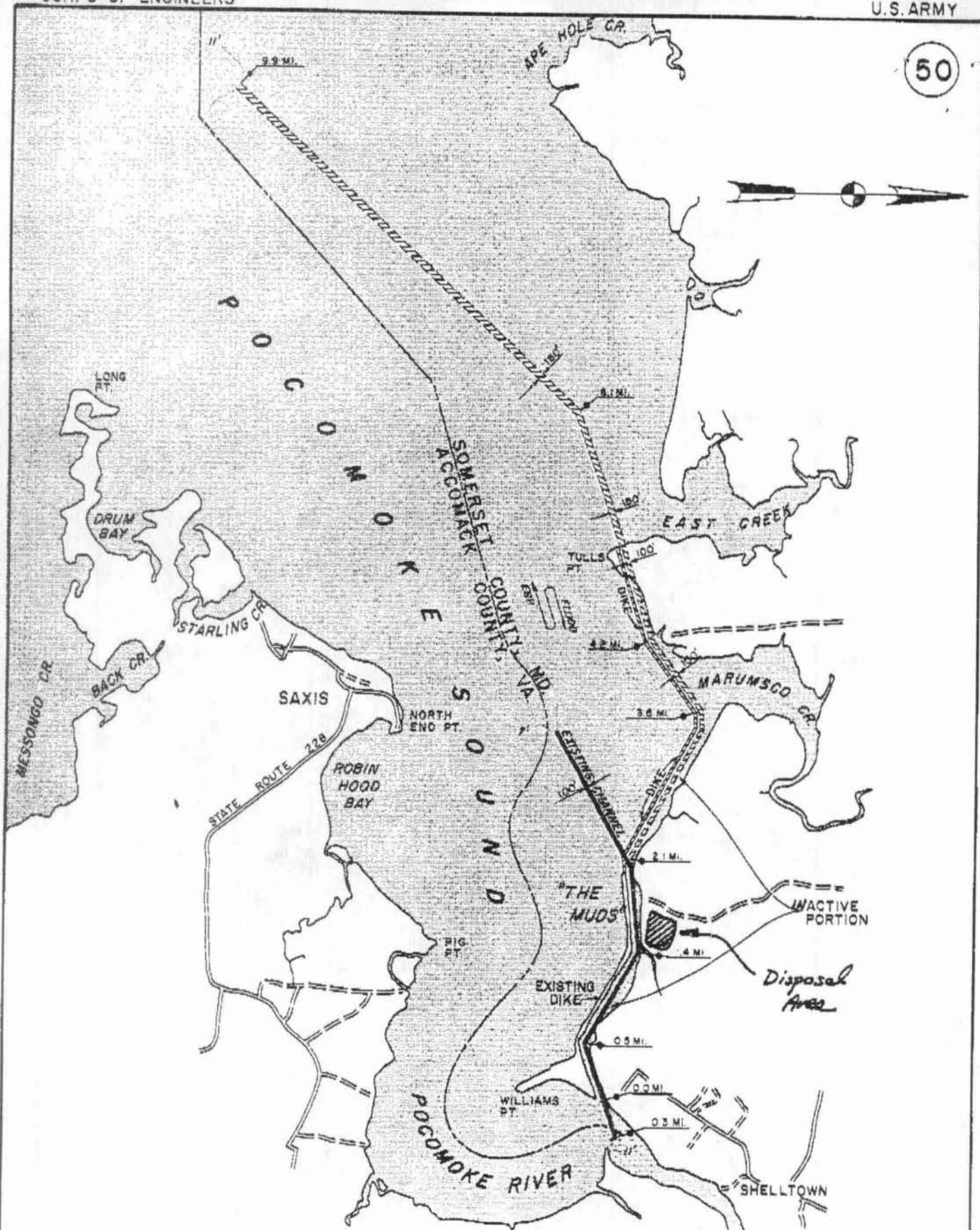
40,000 cubic yards of sandy material from the mouth of the Pocomoke River is to be hydraulically dredged and placed on a previously approved and utilized channel maintenance spoil area. The site is a 17-acre upland diked disposal area which is currently covered with Phragmites. The spoil will be piped through a 12-inch PVC pipe placed on the ground. It will run from the water across ca. 50 feet of sparsely vegetated buffer and then another 50 feet along an existing unpaved road to the disposal site. No vegetation will be disturbed. Water quality of the effluent will be monitored to ensure that suspended solids are kept at a minimum.

STAFF/SUBCOMMITTEE RECOMMENDATION

Approve, as proposed

STAFF CONTACT

Abi Rome



POCOMOKE RIVER, MD. & VA.

PROJECT DEPTH 11'
NEW WORK REMAINING TO BE DONE

REVISED: SEPTEMBER 1985

IN 2 SHEETS SHEET 1

SCALE OF FEET
2000 0 2 4 6 8000

SOUNDINGS ARE IN FEET
DATUM PLANE IS LOCAL M.L.W.

BALTIMORE DISTRICT OFFICE BALTIMORE, MD.

General Approval of
Mosquito Control Activities,
Department of Agriculture

Abi Rome

Changes to the Criteria

James E. Gutman/
Sarah Taylor/Staff

PROJECT EVALUATION

3:00 - 3:30

Vote on Martin State Airport,
(Baltimore County)

Samuel Bowling, Ch./
Kathryn Langner, Ch./
Abi Rome

Pocomoke Sound Dredge
Disposal (Somerset County)

Samuel Bowling, Ch./
Kathryn Langner, Ch./
Abi Rome

Vote on Washington Suburban
Sanitary Commission Sewage
Treatment Plant

Samuel Bowling, Ch./
Kathryn Langner, Ch./
Dawnn McCleary

Annacostia River Park
Dredge Disposal Site,
Prince George's Co. MNCPPC

Samuel Bowling, Ch/
Kathryn Langner, Ch./
Ren Serey

PROGRAM REVIEW & AMENDMENT

3:30 - 3:45

Vote on Beverly Estates -
Growth Allocation
(Dorchester County)

Tom Ventre

Vote on Kenneth R. Cox -
Growth Allocation
(Dorchester County)

Tom Ventre

3:45 - 4:00

Old Business
New Business

John C. North, II
Chairman

Next Commission Meeting: December 6, 1989, Tidewater Inn, Easton

FINAL AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

University of Maryland
College of Estuarine and Environmental Sciences
Horn Point
Cambridge, Maryland

November 1, 1989

9:30 - 4:00 p.m.

9:30 - 11:30	Special Issues Subcommittee	Lecture Hall
9:30 - 11:30	Project Evaluation Subcommittee	Center Operations Conference Room
10:30 - 11:30	Program Amendments Subcommittee	Classroom 2
11:30 - 12:30	Lunch	Center Operations Porch
12:15 - 12:30	Dorchester Co. Amendments Panel	Center Operations Conference Room
12:30 - 1:30	Tour of Horn Point Facilities	

Commission Meeting: Lecture Hall
Coastal & Estuarine Science Building

1:30 - 1:40	Approval of the Minutes of September 6 and October 4, 1989	John C. North, II Chairman
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POLICIES, MOU'S & GENERAL APPROVALS

1:40 - 1:50	Vote on Policy to Extend the 1,000' Critical Area Boundary	James E. Gutman/ Anne Hairston
	Vote on MOU with Waterway Improvements Division and General Approval for Piers and Ramps	Samuel Bowling, Ch./ Abi Rome

UPDATES & DISCUSSION

1:50 - 3:00	MOU with the Public Service Commission	Pat Pudelkewicz
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(See other side)

PROPOSED WAYS TO ADDRESS CHANGES SUGGESTED IN
1989 OVERSIGHT COMMITTEE LOCAL HEARINGS

<u>CHANGE</u>	<u>RESPONSE</u>	<u>STATUS WITH COMMISSION HOW TO HANDLE</u>
1. Minor individual and zoning map adjustments should not need protracted scrutiny by Commission, nor require extended hearings	Propose amendments to Law: "Program Amendment" (e.g., change in zoning map not consistent with local Critical Area Program designation, use of Growth Allocation) and a "Program Refinement" (change in zoning map consistent with adopted Program, use of Growth allocation according to Commission policy, minor word change, or clarification). Local govt. indicates whether change is an amendment or a refinement. Decision as to what category applies is the Chairman's, with review from Commission members. This will eliminate cumbersome hearing process.	Change in Law. Has full Commission approval.
2. Localities need adequate, assured State funding to meaningfully implement the Critical Area Law	Commission Chair will keep Gov.'s Office informed as to need. Oversight Committee to send letter	N/A
3. Growth Allocation made in accordance with approved local plans, should need no further Commission approval	Propose amendments to Law: identifying this specific situation as a Program Refinement falling under Chairman and staff review but not requiring full Commission approval. Examples: 1) if the local Program identifies the growth area ahead of time & and maps it for Commission approval as part of its Program & incorporates the full growth allocation policy of the Commission as part of its Program; 2) if the local govt. intends to subtract 100% of the land acreage changes from one zone to another.	Change in Law. Has Subcommittee approval & full Commission approval.

4. Relax from 15%, to perhaps 25%, the impervious surface limit for small (say, 1/4 or 1/2 acre) lots, especially those improved prior to 12/01/85

improved
Certain lots of 1/2 acre or less, ~~whether improved or unimproved~~, and in existence prior to 12/1/85 shall be allowed a maximum of 25% impervious surface on the lot.

Change in Law.
Remove § 1803.
3C. Has Subcommittee approval. Also involves change in criteria.

A variance will be required for the impervious limit to be exceeded on these lots with mitigation specified by local government.

For lots over 1/2 acre, the 15% (original criterion) must be maintained.

5. Require graduated replacement schedule for tree clearing on lots of less than one acre. For example, for any lot greater than 1,000 sq. ft. require 1.1 to 1.0 replacement for less than 30% clearing, 1.5 to 1.0 for 30% to 49% clearing, and 3.0 to 1.0 for more than 40% clearing.

On certain lots 1/2 acre or less, which were in existence prior to 12/1/85, cutting or clearing of forest or woodland greater than 20% up to 30% will require afforestation on a 1:1 basis for forest disturbed. Cutting or clearing 30% - 40% will require afforestation 1.5 times the total disturbed forest, and cutting or clearing beyond 40% requires afforestation at 3 times the total disturbed forest. Keep original ratio for lots greater than 1/2 acre.

Has Subcommittee approval.
Change in criteria.

6. Study the possibilities for protecting rapidly eroding Bayfront land.

Propose to have local govts. identify critically eroding Bayfront land using US Army Corps of Engineers recent study. Propose that local jurisdictions, with State Shore Erosion Control Program identify these sites in order of priority and direct Shore Erosion Control Loan Fund monies toward these priority problem areas. Criteria for designating areas of problem priority: 1) rate of erosion; 2) economic cost to property owner; 3) water quality impact

Has Subcommittee approval.
Change in criteria.

from erosion; 4) habitat (fish, wildlife, plant) affected or lost due to erosion Local govt. should propose, as part of its local Program, how to handle problem, i.e., directing use of growth allocation to the area, cost-sharing with SECP, use of TDR's with density bonuses & use of growth allocation.

7. Do not necessarily require community piers instead of small individual ones: long piers might sometimes interfere with watermen.

Criteria do not require community piers over individual ones. Need to clarify language. Also need to revamp slips and moorings formula for non-commercial boat docking & storage facilities. Use 1 slip for each 50' of shoreline for a subdivision in IDAs and LDAs, & 1 slip for each 300' in RCAs. Remove table. Require community piers to: a) adhere to a formula for parking as is required for a marina; b) follow Dept. of Environment regulations for sanitary facilities as required for a marina; c) conduct an environmental assessment for location of piers; d) assess depth of the water to see if appropriate for storage of vessels; e) not disturb SAV and shellfish beds. Clarify that non-water dependent uses include housing of any kind in the water, parking, stores, restaurants.

Needs Subcommittee approval. Change in criteria.

Propose that Boatels not be located in the Buffer as they are dry-storage and should set back 100'.

8. When Critical Area regulations and Non-tidal Wetland Laws both apply, clarif. is needed on how to proceed

Propose changes to criteria to: 1) Reference Federal Manual to resolve regulatory confusion for indentifying & managing non-tidal wetlands. 2) Redefine definition to reflect non-tidal wetlands law.

Has Subcommittee approval. Change in criteria.

9. In IDAs, find ways for new construct. or redevelopment to meet 10% runoff reductions without necessarily needing to resort to forested offsets.

Reference the Guidance Paper No. 5 "A Framework for Evaluating Compliance with the 10% Rule in the CBCA".

Also, specifically include a list of option offsets:
1) constructing a new retrofit stormwater BMP;
2) retrofit or improve an existing stormwater structure;
3) establish a forested filter strip; 4) retrofit an existing stormdrain system; 5) create new wetlands; 6) restore degraded wetlands; 7) revegetate areas where impervious surfaces have been removed, or other acceptable measures that meet water quality & habitat goals of an IDA and achieve the objective of the 10% reduction.

Has Subcommittee approval. Change in criteria

10. Critical Area staff should be paired with specific localities. This would sharpen knowledge of local conditions and preferences.

Agreed. Will look at ways to restructure after this meeting with Oversight Committee.

N/A

11. Further definitions are needed in criteria, for example: "dwelling unit", "clearing", "commercial use", including classif. of such uses as "churches" "senior citizen centers", "community centers" and "day care centers".

Definition for "clearing", "dwelling unit" being developed. "Commercial use", "churches", "senior citizen centers", "community centers" and "day care centers" are to be incorporated by definition by local govt. into a local Program. They are to be defined by the local govt. and be permitted in RCA if certain conditions are met and growth allocation is used. Non-residential uses may be permitted in a dwelling unit existing as of 12/1/85 provided that such uses are incorporated by amendment into a local jurisdiction's Critical Area Program

Subcommittee needs to review. Will require change in criteria.

12. For consistency, remove the 15% impervious cover limit from law's section 18.03.3C to bring it into conformity with variances under COMAR 14.15.11

Agree

Change the Law. Subcommittee approval.

13. Clarify where in the Critical Area the slope is measured (for purposes of establishing buffer widths, etc.)

Propose that the Buffer width be determined by taking the average width derived from measuring the slope at the toe and top. This is for slopes greater than 15%. Also propose that local govts. identify areas where the application of the full Buffer width plus 4' for every degree change in slope would pose an unreasonable hardship on the property for building. Local govt. in these instances can propose a maximum Buffer width as an amendment to Program. This can also be used for highly erodible soils.

Change in the criteria. Subcommittee approval.

14. Explicitly detail regulations for townhouses & commercial units.

Not needed. Must really determine how PUD's are to be handled. Incorporate PUD's into Grandfathering language of criteria by referencing site plan approval stage.

Needs Subcommittee approval. Change in criteria.

15. Advertise and clarify "how", "when", & "where" the State formally becomes part of local land use decision-making

No changes needed. Handle by workshops & Guidance Paper.

N/A

16. In the section on stormwater runoff, change the regulatory citation from COMAR 08.05.05 to COMAR 26.09.02

Agree.

Change criteria. Subcommittee approved.

17. Legislative
charge the Joint
Legislative
Oversight Committee
on CBCA with holding
local hearings every
other year.

Agree

Change Law.
Subcommittee
approved

18. Appoint the
Secretary of
Transportation as
an Ex-Officio
voting member of
the CBCAC.

Agree

Change Law.
Subcommittee
approved.

MOSQUITO CONTROL ACTIVITIES PROPOSED BY
DEPARTMENT OF AGRICULTURE

Summary of:

Potential
Advantages

Reduces potential for disease in humans and livestock

Part of an Integrated Pest Management System (IPM) program (integrates a variety of control methods at an ecosystem level)

Open Marsh Water Management (OMWM) can provide long-lasting control and reduce need for spraying

OMWM can provide habitat for waterfowl, fish and SAV

OMWM can increase habitat diversity

By allowing tidal flushing, OMWM can improve water quality

Sprays are relatively nonpersistent in the environment (i.e., no long-term DDT-like chemicals are used)

Potential
Disadvantages

Spraying can have adverse ecological effects on nontarget organisms and can disrupt food chain

OMWM changes character of marsh and ecosystem functioning, including surrounding area

OMWM can result in invasion of undesirable vegetation

OMWM can inadvertently shift wetlands toward upland by affecting hydrology and, hence, vegetation

OMWM, if performed on a widespread basis, cannot be easily remedied if adverse effects result

OMWM and spraying could adversely affect sensitive areas such as NHAs

OMWM created to target game species (e.g., waterfowl) could introduce additional human disturbance on ecosystem

Long-term use of spraying can lead to the development of mosquito resistance

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MARYLAND PUBLIC SERVICE COMMISSION,
THE CHESAPEAKE BAY CRITICAL AREA COMMISSION, AND
THE MARYLAND DEPARTMENT OF NATURAL RESOURCES

AUTHORITY: Natural Resources Article, Section 8-1814, Annotated Code of Maryland; Article 78, §54A and 54B, Annotated Code of Maryland; Natural Resources Article, §3-306, Annotated Code of Maryland; COMAR 14.19.04.01 and 14.19.07.02E; and COMAR 20.80.02.03D.

THIS AGREEMENT, Dated _____, 1989, memorializes the understanding reached by the Maryland Public Service Commission, the Chesapeake Bay Critical Area Commission, and the Maryland Department of Natural Resources,

WHEREAS, the Public Service Commission is responsible for the issuance of a Certificate of Public Convenience and Necessity for power plants, as defined below, and

WHEREAS, the Critical Area Commission is vested with the authority for implementing the State's Chesapeake Bay Critical Area Protection Program, and

WHEREAS, the Department of Natural Resources is responsible for making a study and investigation of, and for forwarding recommendations regarding, a proposed Certificate, to the Public Service Commission, and

WHEREAS, the Critical Area Commission has approval authority over certain State or local agency development actions within the designated Critical Area that have not been subject to project approval by the local jurisdiction under an approved Critical Area program, and;

WHEREAS, Critical Area regulations (COMAR 14.19.01.01B54) identify the issuance of a Certificate of Public Convenience and Necessity by the Maryland Public Service Commission that allows the construction of a power plant as a "State and local agency action," and

WHEREAS, Critical Area regulations (COMAR 14.19.07.02E) require the Critical Area Commission to hold joint hearings, as appropriate, with the Public Service Commission for the purposes of reviewing applications for power plants, and

NOW, THEREFORE, be it resolved that the parties named above hereby mutually agree to the following:

A. DEFINITIONS

1. "Power plant" means property or facilities constituting an integral plant or unit for the generation of electric energy, including any new generation unit that would be added to an existing generation facility and transmission facilities.
2. "Project" means power plant.

3. "Application" means an application for a Certificate of Public Convenience and Necessity issued by the Public Service Commission.

B. GENERAL OBJECTIVE

The objective of this Memorandum of Understanding is to establish a process for coordination between the Public Service Commission, the Chesapeake Bay Critical Area Commission, and the Department of Natural Resources for the review and approval of applications for Certificates of Public Convenience and Necessity for power plants in the Chesapeake Bay Critical Area.

C. NOTICE OF APPLICATION

1. The Maryland Public Service Commission will amend its regulations and whatever forms, letters, or other materials it uses to inform applicants as to the process used or requirements imposed for the formal review of an application for a Certificate of Public Convenience and Necessity, to indicate the additional requirements, authority, and any changes to process or procedure noted hereunder, for power plants wholly or partly within the Chesapeake Bay Critical Area. Until such time as the Public Service Commission regulations are amended for this purpose, the procedures described in this Memorandum of Understanding in "C. Notice of Application" and "D. Issues to be Addressed in Application" will apply on a provisional basis.

2. The Maryland Public Service Commission will notify the Chesapeake Bay Critical Area Commission in the event of:
 - a. Receipt of an application for a Certificate of Public Convenience and Necessity for a power plant wholly or partly within the Critical Area; and,
 - b. Request by an applicant for the establishment of a Project Coordinating Committee for the purpose of gaining a Certificate of Public Convenience and Necessity for a power plant wholly or partly within the Critical Area.
3. The Public Service Commission will send a copy of an application for a Certificate of Public Convenience and Necessity to the Critical Area Commission within ten (10) working days of its receipt by the Public Service Commission.
4. If phased proceedings are requested by the applicant and approved by the Public Service Commission, the applicant may submit to the Public Service Commission a partial application as per COMAR 20.80.02.03. Typical phases of a project application may be: 1) siting of a project; (2) need for a project; 3) cost of and financing for the project and alternatives under the proposed plan; and (4) environmental impact of the project. The Critical Area Commission will only review and approve those phases of the application dealing with the siting and environmental

impact of the project when all or part of each of these phases falls under the regulatory jurisdiction of the Critical Area Commission.

D. ISSUES TO BE ADDRESSED IN APPLICATION

1. If a Project Coordinating Committee is established to guide an applicant in the preparation and submittal of an application for a Certificate of Public Convenience and Necessity, whenever the project is wholly or partly within the Critical Area, the Critical Area Commission will be a member of this Committee, and will notify the applicant of the Critical Area criteria which need to be addressed.
2. If a Project Coordinating Committee is not established, the Public Service Commission will notify the applicant of the requirement to contact the Critical Area Commission to identify issues which must be addressed in the application as per COMAR 14.19.04.02.

E. JOINT HEARINGS

1. The Public Service Commission and the Critical Area Commission will hold joint hearings as required by COMAR 14.19.07.02E.
2. Any advertisement by the applicant of hearings arranged by the Public Service Commission, shall be coordinated with the Critical Area Commission.
3. Any public or adjudicatory hearings held pursuant to Article 78, §54A or B, Annotated Code of Maryland, involving Critical Area land may be jointly hosted by the

Public Service Commission and the Critical Area Commission. It will be the general practice for the Critical Area Commission to empower the Public Service Commission Hearing Examiner to represent the Critical Area Commission. Critical Area Commissioners, or a designated panel of Commissioners, may attend any such hearings at their discretion.

4. The Critical Area issues to be addressed will be agreed upon by the Critical Area Commission and the Department of Natural Resources in a scoping meeting to be attended by Chesapeake Bay Critical Area Commission staff, Critical Area Commission panel, and Department of Natural Resources staff.

The Department of Natural Resources is hereby granted the authority to develop, evaluate, and report to the Public Service Commission and to the Chesapeake Bay Critical Area Commission on whatever Critical Area-related information is required under COMAR 14.19, in cooperation and coordination with Critical Area Commission staff. Cross examination undertaken at hearings on behalf of Department of Natural Resources shall also cover Critical Area matters and concerns, in coordination with Critical Area Commission staff.

5. A copy of the complete hearing transcript for the Public Service Commission hearing will serve as the Critical Area Commission record of proceedings made pursuant to COMAR 14.19.07.03B.

6. Immediately at its issuance, a copy of the hearing examiner's Proposed Order will be forwarded to the Commission, and will serve as the primary basis for panel and full Commission discussions.

F. APPROVAL OF PROJECT APPLICATION

1. The full Critical Area Commission shall make its final determination by majority vote of approval, disapproval, or approval with conditions, of a project for a power plant in the Critical Area.

G. TIME FRAME

1. The Critical Area Commission shall automatically be granted an extension to the time frame for review of the project as specified in COMAR 14.19.07.04B.
2. The additional time afforded the Critical Area Commission to review a project and make a determination will be consistent with the time frame required by the Public Service Commission to review an application and make a determination. This time frame will extend to sixty (60) days beyond the receipt of the hearing examiner's Proposed Order by the Critical Area Commission unless otherwise agreed by the two agencies.

H. AMENDMENT OF THIS MEMORANDUM

This Memorandum of Understanding may be amended in writing, by the agreement of all parties hereto, at any time.

PUBLIC SERVICE COMMISSION

Chairman

CHESAPEAKE BAY CRITICAL AREA
COMMISSION

Chairman

DEPARTMENT OF NATURAL RESOURCES

Secretary

Potential changes to PSC regulations to expressly add Critical Area concerns into the documentation supplied by applicants

- COMAR 20.80.01.03 - Add new "M. Information, evaluations, and findings necessary to demonstrate compliance with COMAR 14.19.04."
- *COMAR 20.80.02.02.B - Add new "(15) The Chesapeake Bay Critical Area Commission (three copies)."
- COMAR 20.80.03.05 - Add new "F. Evaluation of compliance with Critical Area requirements."
- COMAR 20.80.04.02 - Delete "and" at the end of F., and add "; and" at the end of G. Add new "H. Location of portions, if any, within the Chesapeake Bay Critical Area, and any of its Habitat Protection Areas."
- COMAR 20.81.01.02 - Add in N., after "... Natural Resources," ", and Critical Area, together with any of their Habitat Protection Areas."
- *COMAR 20.81.01.04 - Add in a new (10) and change existing (10) to "(11)": "(10) Chesapeake Bay Critical Area Commission; and"

[COMAR 14.19.07.02.D and COMAR 20.80.02.03.D as authority.]

*Will be handled by defining Critical Area Commission.

POLICY FOR
EXTENSION OF THE CRITICAL AREA

ABH 10-4-89 Revised

Alternative Courses of Action

When the Chesapeake Bay Critical Area Commission receives proposed program amendments from jurisdictions to extend the Critical Area, some logical basis is needed on which to make a decision. The Commission can address the issue of extension of the Critical Area through regulations, guidelines, a general policy statement, or a combination. The section of the law which addresses extensions, 8-1807, does not give specific authority for the Commission to develop and issue regulations on the subject, so guidelines for the jurisdictions and general policy are more appropriate treatments initially. Because the growth allocation issue has been addressed through guidelines, not regulations, this approach will be familiar to the jurisdictions. Guidelines also allow the jurisdictions some flexibility for interpretation and modification to support the Critical Area goals in their specific situation. Guidelines should eventually be converted into regulations for a clearer legal basis for decisions.

Suggestions for potential guidelines or regulations follow, based on the criteria and previous county approaches.

General Policy

General policy should be based on the goals of the criteria and the findings. Extension of the Critical Area should result in improvement in water quality or water quality protection, improvement in plant or wildlife habitat, or reduced adverse human impact. The proposed extension should be considered on its merits for environmental protection as it affects the area proposed for extension and the existing adjacent Critical Area.

The final test for a proposed extension should be that, in the view of the Commission, the benefits from the additional resource protection (from the local program restrictions or further deed restrictions or dedications) exceed the negative impact of any additional development allowed. The benefits must be sufficiently documented and provisions made to ensure their continuance.

Proposed
Guidelines For Extension of the Critical Area

The following are suggested characteristics or reasons to add land to the Critical Area. These reasons are to protect or improve plant and wildlife habitat and water quality or to minimize impact from the number and movement of people in the Critical Area. Some administrative requirements, such as proper documentation, must be met (Part A). A proposal to extend the Critical Area must meet one or more of the primary reasons in each category of Part B, which consist of habitat protection, water quality, or impact-minimizing guidelines. Administrative consistency reasons (Part C) can support the primary reasons in part B.

Underlined sections have been added.

PART A: Administrative Requirements

Proposals should meet all these requirements.

- 1) The proposal is supported by competent and material evidence on its benefits for resource protection.
- 2) The proposal is not arbitrary or capricious, but rather improves resource protection on primarily undeveloped land.
- 3) The extended area is not eligible for growth allocation, and does not generate growth allocation.
- 4) The extended area should be added as RCA, and any development must meet all criteria requirements. Underlying zoning must conform with the RCA designation (or be changed to conform).
- 5) A finding must be made by the Critical Area Commission that the additional resource protection offered by the proposal to extend the Critical Area exceeds any potential detriment from development allowed.

PART B: Primary Reasons for Extending the Critical Area

All proposals must include one or more guideline from each of the following three categories of Habitat Protection, Water Quality, and Minimizing Impact of Growth as the basis for extending the Critical Area.

Habitat Protection Guidelines:

- 1) The proposed extension includes a Natural Heritage Area or other area valuable for plant or wildlife habitat which is or will be permanently protected from development. Examples are land having a conservation easement and land donated for a natural park.
- 2) The proposed extension protects desirable areas of habitat (e.g., those categories outlined in Habitat Protection Criteria: non-tidal wetlands, threatened and endangered species, other significant plant and wildlife habitat, and watersheds of anadromous fish spawning streams). Priority will be given to large, unfragmented areas or corridors because these areas conserve forest and wildlife habitat most effectively. Priority will also be given where the extension significantly enhances existing Habitat Protection Areas. Restrictions should be assured by conservation easements or, if easements are unavailable, placed on the deed to prevent future development in areas extended for habitat protection.
- 3) The proposed extension protects an area with unique or scarce plant or wildlife habitat for the jurisdiction, even if the area is not the typical habitat protection area according to the local program or the criteria. The habitat value should be protected by conservation easements or deed restrictions.
- 4) The proposed extension includes a plan to protect and enhance existing habitat value through deed restrictions or dedications, and a wildlife management plan. A time-frame for implementing the plan agreed upon between the land-owner and the jurisdiction must be included in the proposal. The time-frame must be previous to or paralleling any development.

Water Quality Guidelines:

- 5) The proposed area extends the Critical Area to compensate for past shoreline erosion. In areas where the shoreline has been eroding, the official line is changed from the State Wetland Boundaries map line to 1000 feet from the current shoreline. Extensions granted because of shoreline erosion should include a plan with timeline and implementation details for shoreline protection.

6) The proposed extension protects non-tidal wetlands, erodible soils, steeply sloping (> 15%) areas, land bordering tributaries to the Bay or other areas which are key to local protection of water quality due to hydrologic characteristics.

7) The extension protects a larger ecological system, such as low-lying wetland areas, where the original Critical Area would be inadequate to protect water quality in that area. The proposal should show hydrologic connections in circumstances relating to large wetland systems.

Guidelines minimizing impact from the number and movement of people in the Critical Area:

8) The extension prevents substantial development adjacent to the original Critical Area (e.g., land zoned for high density to be developed at the RCA density if the Critical Area is extended). The proposal must demonstrate that the extended area is unprotected from development and is likely to be subdivided.

9) The dwelling units allowed by extending Critical Area acreage are built in the extended area, not in the original Critical Area, unless the extended area has extraordinary habitat or water quality value such as in B 1, 2, 3, 5, 6 and 7 above.

PART C: Supporting Reasons for Extending the Critical Area

A proposal may include the following reasons for extending the Critical Area in addition to at least one of the primary reasons. Supporting reasons cannot be the sole reason for extensions.

Consistency Guidelines

1) The proposed extension is completely or mostly surrounded by the Critical Area (e.g., an inholding).

2) The proposed extension extends the Critical Area to the limits of a property or properties partially inside the original Critical Area.

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OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

(301) 974-2251
October 31, 1989

MEMORANDUM

TO: Judge John C. North, II, Chairman
Chesapeake Bay Critical Area Commission
Donald MacLauchlan, Assistant Secretary, MFPWS

FROM: Pamela P. Quinn *PPQ*
Lee R. Epstein *LE*
Assistant Attorneys General

RE: Forestry Boards - Chesapeake Bay Critical Area

The Commission recommended in April 1989 that the General Approvals sought by the Forest Service regarding timber harvest plans be returned to the Service for certain changes and for clarification of certain legal issues. In this memorandum, we address the legal issues posed and recommend alternative action in response to our legal conclusions.

1. Question: Which timber harvesting activities in the Critical Area are subject to review by the District Forestry Boards?

Conclusion: In discussions of this issue we have heard the view that the District Forestry Boards traditionally were limited to reviewing "harvesting plans" for commercial timber cutting operations, that is, for operations conducted by the forest products industry. But we have also considered whether the District Forestry Boards became empowered by the Critical Areas law to review all timber harvests, ranging from major commercial operations to the cutting of timber incidental to any development project wherein the cut timber is sold for economic gain. After review of the relevant language of the Natural Resources Article, including §8-1808(c)(10), regulations promulgated under it, and Subtitle 6 of Title 5, creating the District Forestry Boards, we have concluded that Forestry Boards should have a review function for harvesting of timber by private forest landowners as well as commercial loggers, but that harvesting incidental to residential

and commercial development projects is not within the Forestry Boards' approval authority. In addition, the Forestry Boards' review function will be limited to the actual harvesting element of a forest management plan for privately owned forest lands, as distinct from the long term forestry practices integral to a management plan.

Discussion

A. Forestry Boards' Jurisdiction Over the Harvesting of Timber as a Crop

Section 8-1808(c) of the Natural Resources Article enumerates the elements of the program by which local jurisdictions are to implement protection of the Chesapeake Bay Critical Area. In part, subsection (c) provides that: "At a minimum, a [local jurisdiction's] program sufficient to meet goals stated in subsection (b) includes: * * * (10) Provisions requiring that all harvesting of timber in the Chesapeake Bay Critical Area be in accordance with plans approved by the district forestry board." (Emphasis added). Neither Section 8-1808(c) nor any other section of the Critical Area statute defines "harvesting of timber" or "district forestry board." Since the Natural Resources Article at Subtitle 6 of Title 5, a part of the code pre-dating the Critical Area law by decades, provides for District Forestry Boards, there can be little doubt that the boards named in §8-1808(c)(10) are the same boards identified in §5-601, §5-605 and §5-606. Reading §8-1808(c)(10) using the definitions found in §5-601, and the functions of the district boards found in §5-606, one can begin to understand the meaning of §8-1808(c). Section 5-606(a)(7) provides that one function of the District Forestry Boards is to "receive and pass on proposed work plans for cutting forest lands." In turn §5-601(e) defines "woodlands or forest lands" to mean "any land of an area of 3 acres or more held by the same owner and primarily devoted to the growth of forest products."^{1/} The Critical Area statute does not purport to amend the basic structure or function of the District Forestry Boards as established in Subtitle 6 of Title 5. It expands their role.

Given this cross-reference to District Forestry Boards, the basic process by which Forestry Boards assess timber harvest plans Statewide does not change when the harvest is planned for land within the Critical Area, but there are new, significant considerations. Because the basic process is directly applicable, this memorandum will briefly examine the composition, history and standing of the District Forestry Boards within the Department of Natural Resources. District Forestry Boards are

^{1/} The Critical Areas Commission's regulations require forest management plans for all timber harvesting "occurring within any 1 year interval and affecting 1 or more acres of forest and developed woodland in the Critical Area." COMAR 14.15.05.03C(1).

units of the Department of Natural Resources, Forest, Park and Wildlife Service. The Department, having divided the State into forest conservancy districts, has established a District Forestry Board consisting of at least five members for each conservancy district. §5-605. The term of membership is three years, and the Department may discontinue District Boards for cause at any time. Id. The Department, in particular the Forest, Park and Wildlife Service, shall direct and coordinate the activities of the District Boards. §5-603. District Boards are to advise owners of woodlands of satisfactory methods of cutting woodlands and are to assert the method "found best adapted." §5-608(e). The Forest, Park and Wildlife Service hears appeals from the recommended decisions of the local Boards. §5-603. Any aggrieved person may then appeal the final decision of the Forest, Park and Wildlife Service after it has reviewed the local Board's recommended decision. §5-603. Local Boards may suggest "rules and regulations" concerning forest practices, but the Department has been given the actual authority to promulgate the regulations to enforce Subtitle 6 of Title 5. §5-604, §5-608(b)(6). Thus, throughout their history, the District Forestry Boards have been viewed as advisory units of the Department, and not independent regulatory bodies. The Forest, Park and Wildlife Service has utilized the expertise of the Boards and has relied on the Boards' recommended decisions when timber harvest plans have been submitted to the Department for consideration. Therefore, throughout this memorandum, when reference is made to the duties, powers and functions of the District Forestry Boards, it is the Department's duties, powers and functions which are under discussion. A citation to the authority of the District Forestry Boards is a citation to the authority of the Department of Natural Resources, Forest, Park, and Wildlife service under Natural Resources Article, Subtitle 6 of Title 5.

With this background of the District Forestry Boards in mind, we now turn to the activities of the Boards which are relevant to reviewing timber harvest plans on land in the Critical Area. The principal focus of any District Forestry Board is clear. It helps advise landowners in the local district (defined as "any person owning woodlands, located in the state") with regard to their forest and tree crop problems. §5-606(a)(2). Forestry boards may establish safeguards for proper forestland use, such as (1) providing for restocking after cutting; (2) providing for the reservation of a sufficient number of growth stock for future growth and cutting; and (3) preventing or limiting clear-cutting to protect watersheds or to maintain suitable growing stock to insure natural reproduction.^{2/} §5-

^{2/} In the Critical Area Commission's regulations "clear cutting" means the "removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut, from advanced regeneration on stump sprouts, or from planting of seeds or seedlings of man." COMAR 14.15.01A(9). It may be significant that "clear cutting"
Cont'd

606(b)(7). There are references in §5-606 to development of wildlife cover and other conservation measures, but the District Boards' main business under Subtitle 6 of Title 5 appears to be to promote practices aimed at production of a cash crop while applying conservation measures.

As an overseer of forest lands primarily dedicated to the "growth of forest products", District Boards would appear to have no role, at least under Subtitle 6 of Title 5, in the cutting of trees associated with various kinds of development projects. Section 5-610 of the Natural Resources Article provides:

This subtitle does not apply to clearing woodlands for reservoirs, military, naval, agricultural, communication and transmission lines, industrial sites, railroads, residential, or recreational purposes; nor does it apply to maple tree camps or to the business of gathering maple sugar or syrup.

We find no language in the Critical Area statute or in the Commission's regulations which nullifies this "exemption" provision.

Subtitle 6 of Title 5 does, however, give the District Boards a role in reviewing the harvesting segment of management plans for forest lands dedicated to commercial production of timber whether owned by individuals or operated by timber products companies. Section 5-606(a)(7) provides that District Forestry Boards shall "receive and pass on proposed work plans for cutting forest lands." Although the Department has not fully activated this function of District Forestry Boards in the past, the Critical Area law brings this latent activity into the spotlight. The Forestry Board's review of cutting plans under §5-606(a)(7) is consistent with the Department's overall mission under Subtitle 6 of fostering the forest products industry, and it is consistent with other programs adopted in Maryland to administer forest conservation and management practices on privately owned forest land.^{3/} The programs which are

^{3/} Section 5-606 (b) (7) authorizes a district forestry board "or its agent" to establish safeguards to prevent or limit clearcutting.

However, any rule dealing with clear-cutting shall establish a procedure by which any operator of forest land may secure a permit to clear-cut particular lands upon proof that he has a bona fide intention of devoting the land to other than forest use; that the lands are appropriate for the proposed use; and that devoting the lands to the new use will not seriously interfere with the protection of the

administered by the Forest, Park and Wildlife Service include the Forest Conservation Management Program ("FCMA") under Tax Property Article, §8-211 et seq.; Woodland Incentive Program ("WIP") under Natural Resources Article, §5-301 et seq.; and the Reforestation and Timber Stand Improvement Certification ("Certification") program under Natural Resources Article, §5-219 and Tax-General Article, §§10-206 et seq.

The FCMA program allows landowners of 5 or more contiguous acres to place the tract under a conservation and management plan for a minimum of 15 years. The purpose of the management plan is to keep and develop the land as productive woodland, resulting in the sale of timber and also in preservation of open and wooded areas. The program is now part of the Tax-Property Article because the incentive for a landowner's committing to a FCMA is a tax break. The assessed value of the woodland is not increased for the period covered by the agreement. The management plan, which is integral to the agreement or contract, may commit the owner to different management practices in different sections of the tract. For example, one section may be managed to support wildlife, one section may be manipulated to produce firewood, while a third may be weeded, thinned and protected as a Christmas tree plantation. Or a landowner may have the single purpose of increased timber production. Thus, for some landowners, the ultimate management step may be harvesting trees on a portion of a tract.^{4/}

If that tract lies within the Critical Area (§8-1808(c)(10) and §5-606(a)(7)), the timber cutting operation, if any, contemplated by a particular FCMA would be subject to the Forestry Board's review. The General Approval Request which the Forest, Park and Wildlife Service has prepared for the District Forestry Boards offers a terminology for the cutting operation. A "timber harvest plan" is distinct from a "forest management plan." As long as this distinction is maintained, only those FCMA's which contemplate a timber cutting phase will be submitted for the Forestry Board's review. The majority of FCMA's will not

^{4/} The statute creating the FCMA contemplates that harvesting may occur. It provides that an FCMA will be terminated and the tract reassessed as a penalty if "timber is harvested, unless harvested according to the plan developed by the Department of Natural Resources." §8-211(i)(1)(i), Tax-Property Article.

be subject to this process.

District Boards may also review timber harvest plans for woodlands managed under the Woodland Incentive Program ("WIP"). Under WIP, the Forest Service may offer cost share assistance to landowners of "nonindustrial"^{5/} private woodlands who institute approved practices to ensure the development, management, and protection of those woodlands. Natural Resources Article, §5-301 et seq. Likewise, certain tracts of land will be eligible for favorable income tax treatment under the reforestation program called the Certification program. Natural Resources Article, §5-219. By agreement with the Forest, Park and Wildlife Service, a person or corporation owning between 10 to 500 acres, that is used as commercial forest land or is capable of growing a commercial forest, may seek certification from the Service that timber stand improvement activities have been instituted on the land. The certificate serves as notification to the Comptroller that the person or corporation is eligible for an "income tax subtraction modification" under §10-208 or 10-308 of the Tax-General Article.

The WIP program and the certification program share at least two common characteristics. Each program calls for the development of a forest or woodland management plan for the affected land. §5-219(c)(2) and §5-304(1). And each program has as one of its purposes the production of timber and forest resources essential to the economy of the State. §5-219(b) and §5-302(a)(2). The forest management plans used to implement a WIP proposal or a Timber Stand Improvement Certification proposal do not necessarily include timber harvesting plans. However, those plans which do culminate in harvesting operations in the Critical Area must be subject to review by the appropriate Forestry Boards.

Local Forestry Boards will, of course, review timber harvest plans for forest or woodlands in the Critical Area even if the tract in question has not been subject to a special program such as an FCMA, or a Woodland Incentive Plan, or a Timber Stand Improvement Certificate. Some of those harvest plans will be prepared by the Maryland Forest, Park, and Wildlife Service, while some will be prepared by private licensed foresters. In any case, the baseline criteria for whether such plans come within the Forestry Board's purview are whether timber harvesting (1) will occur in any 1 year interval and (2) will affect 1 or more acres in forest and developed woodland (defined, respectively, at COMAR 14.15.01.01B(26) and (20)) in the Critical Area. COMAR 14.15.05.

^{5/} Excluded from participation in WIP is "a corporation or a subsidiary of a corporation that manufactures forest products or provides utility services or is capable of producing crops of commercial timber." §5-301(e)(2).

B. Tree-Clearing in the Critical Area

We have observed above that the two relevant statutes, the Critical Area statute and the Forest Conservancy District statute, arguably identify timber harvesting as an activity distinct from the land clearing activities which precede the construction of housing developments, office buildings, etc. Even though large forest tracts may be significantly affected or eliminated by either activity, "timber harvesting" envisions the raising of a crop with the planned replanting of that crop. This distinction arguably also appears in the Commission's regulations. The definition of "clearcutting" creates images of a farmer harvesting his crop.

"Clearcutting" means the removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut, from advanced regeneration or stump sprouts, or from planting of seeds or seedlings by man.

COMAR 14.15.01B(9) (emphasis added). "Commercial harvesting" is defined as "a commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain." COMAR 14.15.01B(12). It is unclear whether the Commission intended that timber cutting associated with development projects be included in "commercial harvesting." The argument can be made for inclusion as well as for exclusion. Timber cutting for development is as frequent an activity, if not a more frequent activity, as commercial logging operations.

The terms "clearcutting" and "commercial harvesting" seem to be used in the regulations to help describe limits or conditions for manipulation of forests in the Critical Area for production purposes. COMAR 14.15.05.03 establishes the Criteria pursuant to which local programs are to provide for "Forest and Woodland Protection." Specifically, "local policies and programs for tree cultural operations in the Critical Area shall include . . . a Forest Management Plan . . . [and] a Sediment Control Plan . . .". COMAR 14.15.05.03C (emphasis added.) (A more detailed analysis of the standards that Forestry Boards are to apply in reviewing timber harvesting plans will be provided later in this memorandum). The regulations require that the Forest Management Plan^{6/} be reviewed and approved by the Maryland Forest, Park and Wildlife Service through the District Forestry Boards and the

^{6/} The Criteria define "forest management" as the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transportation, wildlife habitat, etc. COMAR 14.15.01B.(28). Clearing for development is not mentioned.

project forester . . ." The plan must address "mitigation" through forest management techniques, including scheduling the size, the timing and the intensity of cuts. The Sediment Control Plan must conform to the "Standard Erosion and Sediment Control Plan for Harvest Operations," and must be implemented in accordance with specifications set out by the Maryland Forest, Park and Wildlife Service.^{7/} The other context in which the terms "commercial harvesting" and "clearcutting" are used is COMAR 14.15.09. This regulation sets out the criteria for protection of the buffer and for preservation of "Habitat Protection Areas." In the Buffer, cutting or clearing of trees is 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 landward edge of the Mean High Water Line of tidal waters and perennial tributary streams, or the edge of tidal wetlands, provided that this cutting does not occur in the Habitat Protection Areas described in COMAR 14.15.09.02, .03, .04, and .05 and that the cutting is conducted pursuant to the requirements of COMAR 14.15.05 and in conformance with a buffer management plan prepared by a registered, professional forester and approved by the Maryland Forest, Park and Wildlife Service.^{8/}

COMAR 14.15.09 C(5)(a).

The buffer management plan must minimize disturbance of stream banks and shorelines, maximize replanting and regeneration, and prevent the creation of logging roads and skid trails. These same standards are applicable to commercial harvesting of trees permitted to the edge of intermittent streams. COMAR 14.15.09.C(5)(b).

These regulations make no mention of clearing trees for development. Management plans for "commercial harvesting" and "clearcutting" should be subject to the Forestry Boards' consideration. Development projects are not, if we are correct in our understanding of the regulations. Because development, in the sense commonly referred to as commercial or residential development, may result in the clearing of trees it is understandable that such predevelopment clearing might appear to be the Forestry Boards' business. The counties' approved

^{7/} A Sediment Control Plan shall be required for all harvests of 5,000 square feet or more of disturbed area in the Critical Area.
^{8/} As a unit of the Maryland Forest, Park and Wildlife Service, the District Boards could be assigned the function of reviewing buffer management plans.

Critical Area programs, for the most part, reflect that the Forestry Boards' review does not encompass clearing trees for development. At least one exception is Baltimore County's program, which provides for the referral of plans, for the cutting or clearing of trees for development, to the District Forestry Board.

As a final step in this analysis, we hypothesize a circumstance in which a subdivision proposal involving the clearcutting of a timber stand is submitted to a District Forestry Board. Can the requirements the Board would impose be consistent with the subdivision requirements imposed by the local governmental body? For example, why would a District Forestry Board impose on a developer, clearing trees for building, a forest management plan calling for "management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation, and reforestation"? COMAR 14.15.05.03C(1).

The Commission's regulations are, in fact, specific about the Criteria to be applied to development projects. In intensely developed areas, "[w]hen the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities", the local jurisdiction is required (1) to establish enhancement programs such as street tree planting; (2) to establish regulations for "development activities" to minimize destruction of forests; and (3) to protect existing forests and woodlands in Habitat Protection Areas. COMAR 14.15.02.03D(9). In limited development areas, for the cutting or clearing of trees in forests or woodlands associated with current or planned development, all jurisdictions must (1) require the developer to "consider the recommendations of the Maryland Forest, Park and Wildlife Service;" (2) provide regulations that require the design of a development to minimize destruction of vegetation; and (c) protect Habitat Protection Areas. COMAR 14.15.02.04C(2). The forest land cleared by a developer is subject to a specific replacement formula and to other specific reforestation requirements. COMAR 14.15.02.04C(3)-(5). In resource conservation areas, limitation on development projects are required to be even more stringent. COMAR 14.15.02.05.

Given such specificity in the rules applicable to development, if the District Forestry Boards attempted to recommend the imposition of requirements on predevelopment timber harvests, the Boards might find themselves stepping into the shoes of local jurisdictions. The District Forestry Boards' role should be confined to assessing the adequacy of commercial harvesting operations whether conducted by commercial loggers or landowners whose property has been dedicated to forest cultural activities.

2. Question: What requirements or standards will District Forestry Boards impose in assessing timber harvest plans?

Conclusion: The Critical Area Commission's regulations and the provision for Forest Conservancy Districts in Subtitle 5 of Title 6 of the Natural Resources Article provide sources of authority for imposition of environmental standards on private timber harvests.

Discussion: As discussed in the first section of this memorandum, the Critical Area statute has carved out a distinct role for District Forestry Boards. Counties and other local jurisdictions are to refer and defer to the Forest, Park and Wildlife Service acting through Forestry Boards where timber harvesting plans are concerned. (Certain local programs as adopted appear to impose some requirements not consistent with the Forestry Boards' role, but arguably any such requirements will be pre-empted by conditions imposed under the Forestry Board process.) Section 8-1808(c)(10) requires that one element of a local jurisdiction's program will be a provision "requiring that all harvesting of timber in the Chesapeake Bay Critical Area be in accordance with plans approved by the district forestry board; . . ." The District Boards were created and their activities were defined in the 1940's. Thus, in trying to discover the standards against which a Board, and ultimately the Department, will measure a timber harvest plan in the Critical Area, substantive requirements may be found in three places: the Forestry Boards' organic statute (Subtitle 6 of Title 5); the Critical Area statute; and the Critical Area Criteria.^{9/}

A. Standards in the Forest Conservancy District Statute

From the organic statute, the criteria to be applied to timber harvesting plans are:

(7) . . . safeguards for proper forest land use, such as those intended to:

(i) Provide for adequate restocking, after cutting, of trees of desirable species and condition;

(ii) Provide for reserving for growth and subsequent cutting, a sufficient growing stock of thrifty trees of desirable species to keep the land reasonably productive; and

^{9/} In addition to requirements specified in these three sources, regulations may be suggested by the District Boards and adopted by the Department establishing "forest practice[s] to accomplish objectives set forth in this subtitle [6] and to carry out policies established by the Department." §5-606(b)(6). The Department has not yet adopted such regulations.

(iii) Prevent clear-cutting, or limit the size of a tract to be clear-cut in areas where clear-cutting will seriously interfere with protection of a watershed, or in order to maintain a suitable growing stock to insure natural reproduction. §5-606(b)(7).

Somewhat overlapping standards are set out in §5-608(b).

(b) Requirements. - Each person to whom this subtitle applies shall:

(1) Leave conditions favorable for regrowth. Any forest land on which cuttings are made shall be left by the operator in a favorable condition for regrowth, in order to maintain sufficient growing stock to supply raw materials for industry and furnish employment for forest communities continuously, if possible, or without long interruption;

(2) Leave young growth. As far as feasible, every desirable seedling and sapling shall be protected during logging operations. Except where unavoidable in logging, immature trees may not be cut for any purpose except to improve the spacing, quality, and composition or conditions for restocking, or to obtain timber or wood for home use;

(3) Arrange for restocking land after cutting by leaving trees of desirable species of suitable size singly, or in groups, well distributed and in a number to secure restocking. If the board approves, however, clear-cutting may be performed;

(4) Maintain adequate growing stock after partial cutting or selective logging. Rules and regulations of the Department, defining standards of forest practice to obtain and maintain adequate growing stock in the different forest types, may vary with different forest types of the State;

(5) Provide for leases and timber cutting rights. The provisions of this subtitle and any rule or regulation promulgated under it apply to the owner of the land or stumpage, and to any person whose operation is in timber, trees, or wood held under a lease or cutting rights . . .

* * *

Any owner or operator on his own forest property or property leased to him, may develop and inaugurate his own alternate plan of management and employ standards and methods to accomplish the purpose of this subtitle, as specified in paragraphs (2), (3), and (4) of this section, provided the plan is submitted on forms the Department furnishes to the board having jurisdiction and the board accepts the plan as one which gives reasonable assurance of accomplishing the purposes of this subtitle. In arriving at its decision, the board shall consider, among other factors, economic conditions of the area in which the land is situated, the valuation and rates for tax purposes, and social and economic effects of the proposed alternate plan. A landowner may present working plans for cutting and management of his forest to the board for approval. These plans shall be for the period prescribed by the Department. The Department shall furnish the necessary forms. Free advice and assistance of the Department is available to forest owners as far as possible; and

(6) Make application for inspection.

(Emphasis added.)

The inspection called for in item (6) is to be conducted by a representative of a local Forestry Board.

(c) Application for inspection. -- Within three years, but not less than 30 days preceding a cutting, the owner of woodlands or his agent may apply to the board for inspection of the woodlands, its approximate acreage, and the proposed cutting plan.

(d) Examination of application for inspection. - Within 30 days after receipt of the application required under subsection (c), the board shall make or cause to be made by a qualified person, an examination of the woodlands covered in the application. The board, within a reasonable time, shall advise the owner or his agent, in writing, of the most practical and satisfactory method of cutting the woodland and assent to the method found best adapted.

Concerning environmental standards, there are references to the Boards' developing "comprehensive forest management plans for conservation of soil resources and for control and prevention of soil erosion within the county or district; . . ." (§5-606(b)(5)). There is also a duty placed on the Forestry Board to "assist private owners of forest land by advice as to the construction of flood control measures, seeding and planting waste slopes, abandoned lands and development of wildlife by planting food or cover producing trees, bushes and shrubs." §5-606(a)(6). And Boards are empowered during their review to prevent or limit clear-cutting "in areas where clear-cutting will seriously interfere with protection of a watershed, or in order to maintain a suitable growing stock to ensure natural reproduction." §5-606(b)(8)(iii). Timber management in this section of the Natural Resources Article is mainly viewed as a form of production management. But the forest conservation program found at Subtitle 6 of Title 5 was enacted for statewide application, at a time when a specialized region such as the Critical Area was not contemplated and at a time when threats to the environment were not as acute.

In view of the General Assembly's declared policy in the Critical Area law of minimizing damage to water quality and natural habitat, it is inconceivable that conservation of the means of production was all the General Assembly had in mind in requiring local Critical Area programs to refer timber harvesting plans to the District Forestry Board. The intent must have been that, when the District Forestry Board, acting in behalf of the Forest, Park and Wildlife Service, review timber harvest plans for land located in the Critical Area, the Board should impose conditions balancing the two goals: protection of the productive aspect of forestland and protection of water quality and wildlife habitat. Such balancing would be consistent with the conservation policy statements in Subtitle 6 of Title 5.

§5-602 * * * It is the policy of the State to encourage economic management and scientific development of its forest and woodlands to maintain, conserve, and improve the soil resources of the State so that an adequate source of forest products is preserved for the people. Floods and soil erosion must be prevented and the natural beauty of the State preserved. Wildlife must be protected, while the development of recreational interest is encouraged and the fertility and productivity of the soil is maintained. The impairment of reservoirs and dams must be prevented, the tax rate preserved, and the welfare of the people of the State sustained and promoted. * * *

§5-603 * * * The Department and the district boards shall cooperate with existing public agencies in forest management practices, flood

control, recreation, wildlife management, and related activities. * * *

Thus, we find in the Forestry Boards' organic statute a policy of multiple goals.

Is there then any authority in Subtitle 6 of Title 5 for the Department to either adopt regulations consistent with the goal of the Critical Area law or to enforce requirements which may already be found in the Commission's Criteria? Section 5-604 empowers the Department to "promulgate rules and regulations to administer this subtitle." Local Boards may suggest "tentative" rules, but they do not promulgate them. §5-606(b)(6). The policy enunciated in the subtitle is to encourage economic management and scientific development of sources of forest products, to prevent floods and erosion, to protect wildlife, and to assure that forest product operators will leave conditions favorable for regrowth, provide adequate restocking, leave young growth, etc.

Despite the absence of a specific list of standards in §5-604 which the Department might use to promulgate regulations to protect non-tidal wetlands, threatened or endangered species, or plant and habitat protection, the General Assembly obviously intended in §8-1808(c)(10) that local programs require all harvesting of timber to be in accordance with plans reviewed by the District Forestry Boards and approved by the Department implementing regulations adopted by the Department under §5-604 consistent with the Critical Area law.

Such legislative intent can be derived, even where specific language is lacking, from the mere fact of the General Assembly's including a direct requirement in the Critical Area Law for District Forestry Board approval (and by implication, the Department's approval) for timber harvests in the Critical Area. The General Assembly is presumed to have had, and to have acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute. Mayor and City Council of Baltimore v. Hackley, 300 Md. 277 (1984), appeal after remand 70 Md. App. 111, cert. denied, 309 Md. 605 (1987); Board of Education of Garrett County v. Lendo, 295 Md. 55 (1982). It must be presumed, for example, that the legislature was fully aware of the Department's already existing rulemaking authority when it wrote the requirement into the Critical Area law, and also, presumably, expected that such authority would fit into the overall resource protection regime soon to be created. Thus, our advice is that Subtitle 6 of Title 5 can be read with §8-1808(c)(10) to provide authority for rulemaking proceedings in which the Department in behalf of the District Boards may adopt specific environmental standards applicable to timber harvests in the Critical Area. If we were to conclude that the General Assembly provided no mechanism in the Critical Area statute or in Subtitle 6 of Title 5 whereby the Department could establish standards to apply to timber harvest

plans, we would be concluding that Section 8-1808(c)(10) is a nullity. Maryland appellate courts, in addressing legislative intent, will not presume that, in enacting a statute, the General Assembly intended to create an ineffective or invalid law. Swarthmore Co. v. Kaestner, 258 Md. 517 (1970); First Nat. Bank of Md. v. Shpritz, 63 Md. App. 623 (1985).

B. Standards in the Critical Area Commission's Regulations

We will next discuss whether the Department acting through the District Board process can, in its review of timber harvest plans, impose conditions derived directly from the Critical Area statute or the Criteria as an alternative to a rulemaking proceeding under Section 5-604. Given the vicissitudes of the rulemaking process, you no doubt want us to consider whether some less complex method of implementing the Forest Conservancy District program is already authorized by existing statutes and regulations.

The proposed "General Approval", if adopted, would require the Forestry Boards' recommended decision and the Department's final decision to impose conditions on timber harvesters that, inter alia, protect Habitat Protection Areas under COMAR 14.15.09, provide Forest and Woodland Protection under 14.15.05 and expand the Buffer under certain circumstances.^{10/} The problem in finding that these are the requirements which must be imposed on timber harvesting operations is that the prefatory language to each of these regulations is: "In developing their Critical Area Programs, local jurisdictions shall use the following criteria." Nowhere in the Criteria at COMAR 14.15.01, et seq., is there any directory language providing that the Department or its Forestry Boards "shall use the following Criteria." The one regulation which approaches but does not state such a directive is COMAR 14.15.05.03:

C. Where forests or developed woodland occur within the local jurisdiction's Critical Area, local policies and programs for tree cultural operations in the Critical Area shall include all of the following:

(1) 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

^{10/} Expanding the buffer when sensitive topography or other special circumstances are involved is a program found at COMAR 14.19.05.09, that is, regulations applicable to State agencies on state land or a state project.

Forest, Park and Wildlife Service through the District Forestry Boards and the project forester, and filed with an appropriate designated agency within the local jurisdiction. Plans shall 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 jurisdictions. To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation, and reforestation.

(2) A Sediment Control Plan shall be required for all harvests of 5,000 square feet or more of disturbed area in the Critical Area, including harvesting on agricultural lands. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations." The operations shall be implemented in accordance with specifications set out by the Maryland Forest, Park and Wildlife Service, and enforced by the Department of Natural Resources or the local jurisdiction.

(3) The cutting or clearing of trees within the 100-foot Buffer, as described in COMAR 14.15.09, shall be in accordance with that Chapter.

(Emphasis added.)

If the Department's and the Forestry Boards' review were premised solely on this regulation, one way to read it is that each District Board, on a case by case basis, will have to determine the content of the local jurisdiction's program in which a timber harvest is planned. The requirements in that local program applicable to forest management plans will dictate the requirements which the Department under the Forestry Board process will impose. Under this interpretation the Department is not authorized to impose requirements beyond those encompassed in the program of the local jurisdiction.^{11/} Although this approach

^{11/} Procedural requirements such as time limits for filing documents and hearing procedures can be adopted under Subtitle 6 of Title 5. The procedural regulations of the Boards and the Department would be independent of procedural requirements of the local jurisdictions, and would arguably pre-empt local rules in
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may appear circular, presumably it is a workable system since the programs of local jurisdictions must contain elements protective of forest and woodlands in order to have obtained the Commission's approval. One casualty of this approach is that if a local program does not provide for buffer extensions or special wetland criteria, for example, then the Forestry Board and the Department may not have a basis for imposing such conditions. A particular Board's review would be confined to the limits of the program elements of a local jurisdiction's protective measures for forest and woodland. Theoretically, then, each District Forestry Board in the Critical Area might apply somewhat different Criteria depending on the standards adopted by the local jurisdiction. If the District Forestry Board process is to derive the requirements which they will impose on timber harvesters from local programs under COMAR 14.15.05C, does that arrangement comport with the §8-1808 language mandating provisions in local programs "requiring that all harvesting of timber in the Chesapeake Bay Critical Area be in accordance with plans approved by the district forestry boards."? The answer is "yes", if the forestry boards are merely processing agencies, but "no", if the General Assembly intended the Forestry Board process to play a role independent of the local program.

Because the General Assembly's intent does appear to be to give the District Forestry Board process a status independent of local programs, there is a second and better reading of COMAR 14.15.05C. When it states that "plans shall include measures to protect surface and groundwater quality," the Commission's regulation is directing the Department acting through the District Boards to apply the Criteria in reviewing and adopting each forest management plan. In this scenario, the District Forestry Boards will not be bound to any standards in the local programs (although they must be consistent to the extent feasible), but rather each Board will recommend to the Department what conditions to apply to a particular case to "address mitigation through forest management techniques." COMAR 14.15.05 does not authorize the Department, acting through local Boards, to adopt regulations setting standards, but it states broad criteria against which the District Boards and the Department are to condition forest management plans. This scenario would allow the exercise of discretion by the Department in deciding whether a harvesting plan meets the Criteria in COMAR 14.15.05 and 14.15.09. This interpretation also argues for the Department's ability to set down specific requirements for the District Board process in a General Approval sanctioned by the Commission. If so, the District Boards may simply proceed to process timber harvest plans upon the Commission's adoption of this "General Approval." No further rulemaking need occur. Although the preceding analysis seems to open the way to resolve the question posed at the beginning of this part (B), it actually begs the question: How can the Commission's regulations adopting criteria

applicable to local jurisdictions authorize the Department, i.e., a State agency to impose detailed requirements on timber operators, where those requirements have not been subject to a rulemaking proceeding? Therefore, we would caution that using the COMAR 14.15.05/"General Approval" combination as a premise for the imposition of standards in the District Board process as a permanent program is not without risk. However, this approach seems to offer a sound framework for a temporary program for the period before regulations are adopted by the Department.

C. Conclusions & Recommendations

In summary, the Critical Area statute does not specify what standards are to be imposed when District Forestry Boards and the Department review timber harvest plans. Nor does it specify that the Department has authority to adopt regulations establishing requirements for timber harvests. However, the statute which created District Forestry Boards, now found at §§5-601 - 5-610, gives the Department rulemaking authority to further the goals of conserving the environment while fostering timber production. Measures protective of the Critical Area may be adopted under §5-606 premised on the argument that legislative intent supports the Department's adoption of such regulations for the Forestry Board review process.

The Commission's Criteria at COMAR 14.15.05 are detailed in their protection of forests and woodlands, while the Criteria at COMAR 14.15.09 state measures aimed at protecting the buffer, non-tidal wetlands, endangered species, and other wildlife. Although appearing to be a substantial source of conditions which District Boards and the Department can apply to harvest plans, each of the COMAR sections is prefaced with the language that "local jurisdictions shall use the . . . criteria. . ." There is no such nexus to District Forestry Boards except arguably when the passive voice is used requiring, for example, that "plans shall include measures to protect . . . Habitat Protection Areas . . ." COMAR 14.15.05.03C can be read to provide that District Boards and the Department will be bound exclusively by the standards set in each local plan, but we prefer the interpretation that District Forestry Boards process may operate within the broad criteria stated in COMAR 14.15.05.03C until regulations are adopted. In either case, "the Criteria" do not per se authorize (and probably could not authorize) the Department to adopt regulations establishing more detailed standards. (Such regulations and standards will be based on any number of relevant materials or outside sources -- including the Commission's Criteria.) It is problematic, however, whether the General Approval, with its more detailed requirements, is alone a proper mechanism for the fleshing out of the 14.15.05.03C Criteria and then imposing them in timber plans as a permanent program.

In conclusion, several alternative actions are available. First, the District Forestry Boards (the Department) can assert

that S5-604 (in combination with the legislative intent) authorizes the adoption of Departmental regulations incorporating Critical Area environmental standards into policies and procedures for the District Forestry Boards to utilize. In the interim, the Commission can adopt the proposed General Approval, invoking COMAR 14.15.05.03C on the ground that it allows the Department to flesh out the broad criteria for the District Boards until the formal regulations take effect. Or similarly invoking COMAR 14.15.05.03C, the Commission can adopt a General Approval that directs that the District Boards (the Department) look to each local jurisdiction's standards, imposing those standards on individual timber harvests plans.

3. Question: What is the relationship, if any, between the "Forest, Park and Wildlife Service Resource Conservation Plans and Timber Harvest Plans: Request for General Approval" and "The District Forestry Board - Forest, Park and Wildlife Service Forest Management Plan Approval Process: Request for General Approval."

Conclusion: Approval of either Request is not dependent upon the approval of the other Request. They are independent procedures, and the Commission may act on one Request without taking any action on the second.

Discussion: This memorandum has addressed at length the role of the District Boards in reviewing timber harvest plans. The General Approval sought by the Forest, Park and Wildlife Service for the District Board process would enable District Boards to review plans as presented to them and as finally approved by the Department without in each case seeking the approval of the Critical Area Commission. The Forest, Park and Wildlife Service is also, in a separate document, seeking a General Approval to eliminate the need to solicit the Commission's approval each time one of its units drafts or develops a Resource Conservation Plan or Timber Harvest Plan. Although these two governmental functions may appear similar, we are told they are not dependent on one another.

In the latter case, the Forest, Park and Wildlife Service is offering for the Commission's review those internal activities which may be viewed as discretionary assistance programs. The Forest Service often prepares resource conservation plans and timber harvest plans when requested to do so by private landowners and local jurisdictions. If the Forest Service agrees to provide assistance, it will follow the steps and apply the criteria outlined in the "Request for General Approval." If the Forest Service undertakes to develop a management plan, then it is committed by the General Approval to adhere to those guidelines. No rulemaking is anticipated because the landowners or local jurisdictions are not obligated to accept the plan as prepared by the Forest Service.

However, as we have discussed extensively above, the process by which District Forest Boards review and the Department approves timber harvest plans is premised in statutory and regulatory mandates which the landowner may not chose to ignore.

At this point in the process, the important conclusion is that the "General Approval" for the Forest Service action is independent of and need not be considered with the "General Approval" for the District Forestry Boards.

Please consider this memorandum advice of counsel and not an Opinion of the Attorney General.

PPQ/cjw

SUBJECT: GENERAL APPROVALS FOR RESOURCE CONSERVATION PLANS AND
TIMBER HARVEST PLANS FOR THE FOREST, PARK, AND WILDLIFE SERVICE
AND THE DISTRICT FORESTRY BOARDS

STATUS: Resubmittal of Revised Draft

ACTION: Vote by the Commission when General Approvals are
satisfactory.

STAFF REPORT

Anne Hairston

November 1, 1989

SUMMARY:

One General Approval outlines policy and procedures by which the Forest, Park, and Wildlife Service (FPWS) will prepare and review Resource Conservation Plans and Timber Harvest Plans. The other General Approval outlines policy and procedures for the District Forestry Boards (DFB) to recommend approval of Timber Harvest Plans. Since the last draft, a memorandum on the legal issues has been prepared by the Attorney General's Office, which has affected the response to Commission comments. The general approvals will not involve timber harvest plans submitted in conjunction with a development project, so all information relating to development criteria has been deleted.

FPWS General Approval:

The comments of the Commission have been addressed in this draft. Detailed information on the review process is included as requested. In the buffer expansion section, plantations are excluded and a process for relief from the buffer expansion restriction is created. The wording currently uses the term "variance", which should be changed to "conditional approval", consistent with terminology in COMAR 14.19.06 (p.11 and p.20^{pp. 23}). Procedures for identifying non-tidal wetlands are included to clarify that field rather than map delineation will determine

wetland types and boundaries. Internal problem resolution and appeal procedures have been clarified.

DFB General Approval:

The DFB General Approval addresses the major issues of the Commission comments. The process section has not been expanded greatly because the DFB does not prepare the Timber Harvest Plans. The major change is that the Assistant Secretary of FPWS will have final approval of the plans, and the DFB will recommend approval or disapproval. The DFB has been given the opportunity to suggest amendments. This procedure was considered appropriate because the authority for the DFB is from FPWS and it will avoid conflicts of interest for the DFB members. The memo from the Attorney General's Office suggests that the state-based authority of the DFB allows the general approval guidelines to preempt local requirements where less strict. A conditional approval procedure has been established to allow relief from specific buffer extension requirements, so the most apparent local/state conflict is addressed. Plans are valid for two years, with no clauses for the FPWS to change it. The Commission will receive approved plans; the document should specify that a completed checklist and Coordination Form will be included.

Some omissions which should be added are including local maps of HPAs as well as COMAR 14.15.09 (p.4), correcting a reference in DFB procedures to [Maryland Public Ethics Law, Title 40A, Section 3-101, Annotated Code of Maryland](p.16), and including information on enforcement responsibility for these guidelines.

RECOMMENDED ACTION: Approval with the above-noted changes.

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 describe FPWS plans which prescribe how a timber harvest operation is to be conducted.

Although commercial harvesting is defined in the Criteria [COMAR 14.15.01.b(12)] timber harvesting, the term used in COMAR 14.15.05.03.C(1), is not defined. To clarify when a timber harvest plan is required, the following definition of timber harvesting will be adopted: any tree cutting operation affecting one or more acres of forest or developed woodland within any one year interval that disturbs 5,000 or more square feet of forest floor.

The timber harvest plan is prepared by a registered professional forester who is guided by State laws, State regulations, 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 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 timber harvest plans is usually within the definition listed in COMAR 14.19.01.01.B(13)(b): "Any activity that materially affects the condition and use of dry land". The definition of development as it applies to 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. Timber harvest plans will affect forests and may affect habitat protection areas. Therefore, the following portions of the Criteria will be addressed: Forest and Woodland Protection (COMAR 14.15.05) and Habitat Protection Areas (COMAR 14.15.09).

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

COMAR 14.15.09 requires local jurisdictions to identify and designate Habitat Protection Areas (HPAs). It also requires them to establish protection measures for HPAs. The FPWS has been active in providing information on identification and protection of HPAs.

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

All timber harvest plans must 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 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:
 - 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 the edge of tidal wetlands. Harvesting in the Buffer must conform 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 another type of 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 other types of Habitat Protection Areas which overlap 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 and 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, undrained hydric soils associated with other sensitive areas, 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 (needle-leaved deciduous) wetlands with naturally-occurring (not planted) trees, e.g. bald cypress (Taxodium distichum);
 - iii. PFO4 (needle-leaved evergreen) wetlands with naturally-occurring (not planted) 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 threatened or endangered species and species in need of conservation;
 - 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 naturally-occurring (not planted) stands of bald cypress or Atlantic white cedar;
 - i. with old growth forest, as defined by the FPWS (see Appendix A);
 - 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 relatively 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.
 - F. The district forestry board may recommend to the Assistant Secretary, FPWS, that he grant a conditional approval varying from the Buffer expansion rules when a literal enforcement would result in unwarranted hardship to a landowner consistent with COMAR 14.19.06. Details are provided in the process section.
6. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.

Non-Tidal Wetlands

All timber harvest plans must identify non-tidal wetlands as described in COMAR 14.15.09.02.C.(3)(a)(i-ii). Existing farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat purposes are excluded from these regulations.

The district forestry boards will adopt as a policy that wetlands of importance to plant, fish, wildlife and water quality shall be protected.

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

1. Maintain at least a 25-foot buffer around identified non-tidal wetlands where 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. 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 are water-dependent and of substantial economic benefit, and 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.
4. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.

Threatened and Endangered Species and Species in Need of Conservation

All timber harvest plans must 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. 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. Designation of a protection area around each of the habitats 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.
4. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.

Plant and Wildlife Habitat

All timber harvest plans must 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 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 a variety of 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 district forestry boards will use the above policies and following criteria to determine the adequacy of protection measures for plant and wildlife habitat in the timber harvest plans.

1. Establish buffer areas, generally of 1/4 mile in width, 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. Protect 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.
7. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.

Anadromous Fish Propagation Waters

All timber harvest plans must 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 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 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 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 08.05.03.05).
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 08.05.03.11B(5), shall be prohibited between March 1 and June 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 an action 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 (Appendix B) and the buffer management plan checklist (Appendix C) 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 Recommendation: 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 meets the provisions of the local jurisdiction's Critical Area Protection Program. Timber harvest plans must meet the following standards before the district forestry board can recommend that the plan be approved by the

Assistant Secretary, Forestry, Parks, Wildlife and Natural Heritage.

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 harvest 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 recommend to the Assistant Secretary that the plan or a modified plan be approved or disapproved. The district forestry board may submit substantiating comments to the Assistant Secretary along with its recommendation. An affirmative vote of a simple majority of the board members eligible to vote is required for the district forestry board to approve the board's recommendation. The bay watershed forester will forward the board's recommendation, comments and the timber harvest plan to the Assistant Secretary for final action.

Upon approval of the plan the property owner will be notified in writing by the bay watershed forester and the plan will be filed with the designated agency within the local jurisdiction and the Critical Area Commission.

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 for two years 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 decision made by the Assistant Secretary of the FPWS 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.

10/30/89

Appendix A

Old Growth Forest Definition

An old growth ecosystem is one in which:

1. The dominant trees in the canopy are approaching biological maturity;
2. There is a preponderance of shade tolerant species in all age/size classes;
3. There are randomly distributed light gaps
4. There is a high degree of structural diversity
5. There is a large accumulation of dead wood, standing and down, accompanied by decadence in live dominant trees;
6. Pit and mound topography can be observed, if the soil conditions permit it.

(Taken from "Report of the Old Growth Committee," Forest, Park & Wildlife Service, August 8, 1989)

APPENDIX B

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

Non-tidal Wetlands (con't)

YES NO

- ___ ___ b. Non-tidal wetlands delineation conforms with local Critical Area Protection Program
- ___ ___ 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

APPENDIX C

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

SUBJECT: GENERAL APPROVALS FOR RESOURCE CONSERVATION PLANS AND
TIMBER HARVEST PLANS FOR THE FOREST, PARK, AND WILDLIFE SERVICE
AND THE DISTRICT FORESTRY BOARDS

STATUS: Resubmittal of Revised Draft

ACTION: Vote by the Commission when General Approvals are
satisfactory.

STAFF REPORT

Anne Hairston

November 1, 1989

SUMMARY:

One General Approval outlines policy and procedures by which the Forest, Park, and Wildlife Service (FPWS) will prepare and review Resource Conservation Plans and Timber Harvest Plans. The other General Approval outlines policy and procedures for the District Forestry Boards (DFB) to recommend approval of Timber Harvest Plans. Since the last draft, a memorandum on the legal issues has been prepared by the Attorney General's Office, which has affected the response to Commission comments. The general approvals will not involve timber harvest plans submitted in conjunction with a development project, so all information relating to development criteria has been deleted.

FPWS General Approval:

The comments of the Commission have been addressed in this draft. Detailed information on the review process is included as requested. In the buffer expansion section, plantations are excluded and a process for relief from the buffer expansion restriction is created. The wording currently uses the term "variance", which should be changed to "conditional approval", consistent with terminology in COMAR 14.19.06 (p.11 and p.20^{pp. 23}). Procedures for identifying non-tidal wetlands are included to clarify that field rather than map delineation will determine

Wetland types and boundaries. Internal problem resolution and appeal procedures have been clarified.

DFB General Approval:

The DFB General Approval addresses the major issues of the Commission comments. The process section has not been expanded greatly because the DFB does not prepare the Timber Harvest Plans. The major change is that the Assistant Secretary of FPWS will have final approval of the plans, and the DFB will recommend approval or disapproval. The DFB has been given the opportunity to suggest amendments. This procedure was considered appropriate because the authority for the DFB is from FPWS and it will avoid conflicts of interest for the DFB members. The memo from the Attorney General's Office suggests that the state-based authority of the DFB allows the general approval guidelines to preempt local requirements where less strict. A conditional approval procedure has been established to allow relief from specific buffer extension requirements, so the most apparent local/state conflict is addressed. Plans are valid for two years, with no clauses for the FPWS to change it. The Commission will receive approved plans; the document should specify that a completed checklist and Coordination Form will be included.

Some omissions which should be added are including local maps of HPAs as well as COMAR 14.15.09 (p.4), correcting a reference in DFB procedures to [Maryland Public Ethics Law, Title 40A, Section 3-101, Annotated Code of Maryland](p.16), and including information on enforcement responsibility for these guidelines.

RECOMMENDED ACTION: Approval with the above-noted changes.

PANEL REPORT

December 6, 1989

JURISDICTION: St. Mary's County
ISSUE: Commission vote on program
RECOMMENDATION: APPROVAL

DISCUSSION:

The Commission, at its meeting on October 4, 1989, voted to return the submitted Critical Area Program to St. Mary's County for necessary changes. These changes included the following:

- 1) for minor and single-lot subdivisions, deduct growth allocation on the basis of the entire lot created;
- 2) determine specific acreage totals for each Critical Area designation category;
- 3) require grandfathered Planned Unit Developments to meet requirements of rezoning approval and of the County's Program (except density limitations);
- 4) provide a complete mineral resources element;
- 5) correct technical mistakes and omissions, as specified in returned program.

St. Mary's County has completed the above changes and conducted a final public hearing before resubmission of its program to the Commission.

No map changes were required. The panel's previous concerns regarding the mapping methodology were addressed and resolved earlier. The earlier method of mapping Limited Development Areas included a density averaging technique which increased the LDA substantially beyond areas developed as of December 1, 1985. The revised method designates LDAs consistent with other approved programs.

The County Office of Planning and Zoning is hiring a Critical Area planner who will be responsible for program implementation. Comprehensive rezoning is nearing completion. This process will result in a new County Zoning Ordinance which will include the Critical Area ordinance.

ELKTON MAP AMENDMENT

ABH 12-6-89

ISSUE DESCRIPTION:

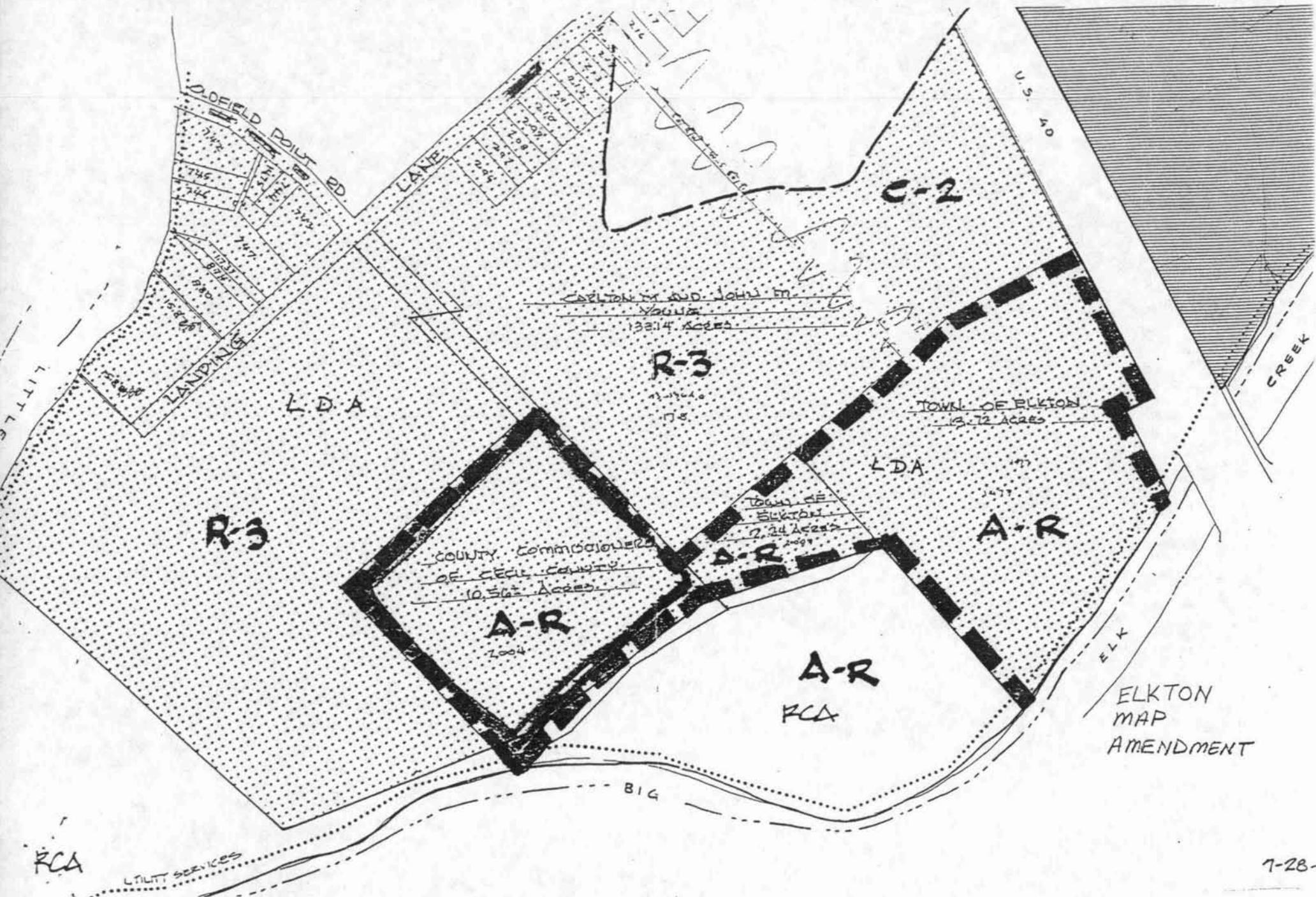
The Town of Elkton in Cecil County has requested a change, due to mistake, of 26.52 acres from LDA to IDA. The acreage consists of 3 parcels containing the Town Sewage Treatment Plant and the Cecil County Detention Center. These uses existed before December 1, 1985. The area under consideration is developed fully, although there is room for some expansion of existing uses.

The classification of these parcels and surrounding agricultural fields was hotly debated during program development, with most of the area ending up as LDA. These parcels and their existing uses were certainly not overlooked, but an argument may be made that LDA was not the correct designation for the institutional uses. None of the adjacent agricultural fields are included in this amendment, so that the riverfront fields retain an RCA status and the fields adjacent to town retain an LDA status.

COMMISSION ACTION: Vote before January 1, 1990.

PANEL RECOMMENDATION:

The panel recommends approval of the change by mistake of the 26 acres. The area meets the minimum qualifications for IDA, and the classification of institutional uses as IDA is consistent with the mapping rules in the Elkton Critical Area Program. Other areas of IDA are adjacent, so new areas are not being opened up for future IDAs. Denial of the change could limit expansions of the sewage treatment plant, which may not be in the best interests of environmental protection. The mistake in question would not be an oversight during mapping, but rather, a failure to treat the institutional uses separately.



ELKTON
MAP
AMENDMENT

STAFF REPORT

November 1, 1989

COMMISSION ACTION

Vote on Memorandum of Understanding and General Approval

APPLICANT

Department of Natural Resources
Boating Administration
Waterway Improvement Program

DESCRIPTION

The MOU outlines the procedures that the Waterway Improvement Program and the Critical Area Commission will use for the submission, review and approval of development which utilizes Waterway Improvement funds in the Critical Area. It refers to the accompanying request for general approval.

The general approval request identifies the types and scope of projects (i.e., boat ramps and marinas) which would qualify for general approval, sets standards for development that are consistent with the Critical Area criteria, and describes the procedures for project submission and review.

RECOMMENDATION

Approval

STAFF CONTACT

Abi Rome

PROJECT REPORT

December 6, 1989

PROJECT

New Laboratory and Office Building at the Wye Research and Education Center, Queen Anne's County

APPLICANT

University of Maryland

SITE

Decoursey Cove, Wye Narrows (see map)
Wye Research and Education Center

The 5.23 acre site currently contains eight buildings--offices, laboratories, sheds, and barns. While the land adjacent to the buildings is paved with bituminous paving, most of the rest of the property is grass. There are a few areas of scattered trees, a small orchard, and two areas of tidal marsh.

PROPOSAL

The plan is to remove three of the buildings and the bituminous paving and to construct a 11,840 sq. ft. laboratory and office building and 40-car parking lot. Some grading will be required but all disturbance will be kept out of the buffer. Total imperviousness will be ca. 12% of the site. Although not in an Area of Intense Development, the 10% pollutant loading reduction will be accomplished. Stormwater runoff will increase but outfalls will be directly into tidal waters. To provide mitigation for the increase in stormwater discharge and to satisfy the reforestation requirements, trees and shrubs will be planted in the buffer and elsewhere. This will increase the forested area from 8.7% of the site to 19% of the site. In addition, a 3 ft.-wide gravel drip strip will be run along the sides of the bulding to collect run-off.

COMMISSION ACTION RECOMMENDATION

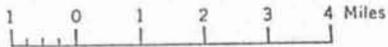
Approved as proposed.

STAFF CONTACT

Abi Rome

QUEEN ANNES COUNTY, MARYLAND

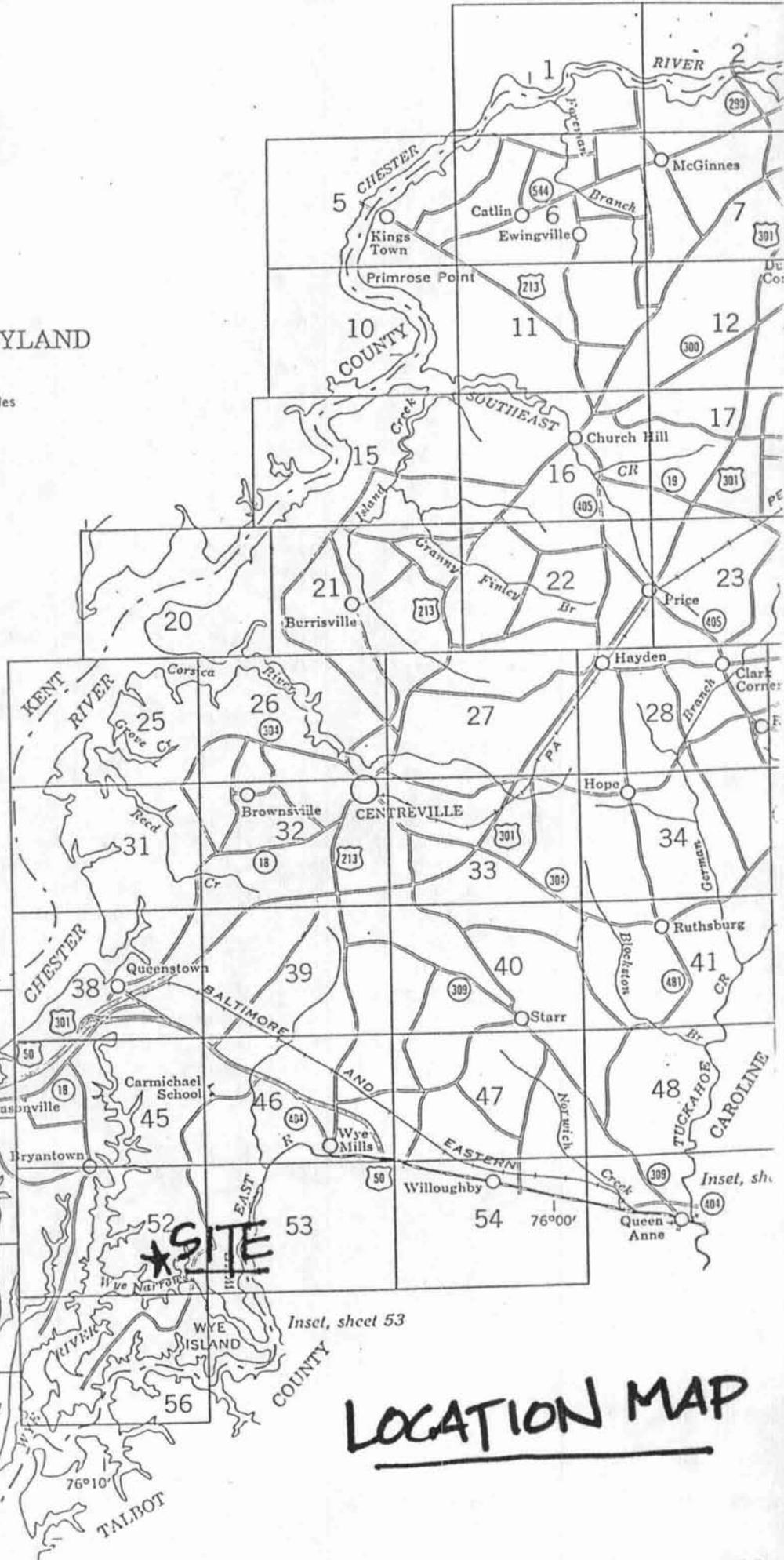
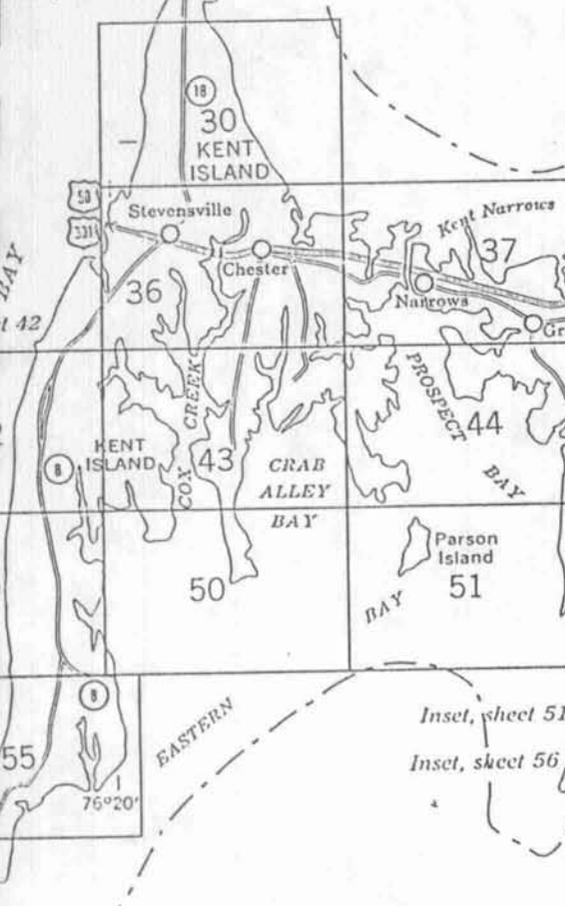
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LOCATION MAP

HOUSE OF DELEGATES

8lr1339

No. 1249

M1

By: Delegate Guns
Introduced and read first time: February 5, 1988
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 7, 1988

CHAPTER 234, Acts of 1988

AN ACT concerning

Joint Committee on Chesapeake Bay Critical Areas - Study on the Chesapeake Bay Critical Area Program

FOR the purpose of ~~expanding~~ the authority of the Joint Committee on Chesapeake Bay Critical Areas; requiring the Joint Committee on Chesapeake Bay Critical Areas to meet with certain persons to study and make certain determinations concerning certain aspects of the Chesapeake Bay Critical Area Protection Law; requiring the Joint Committee to report its ~~findings~~ findings and recommendations to the Legislative Policy Committee on or before specified dates; ~~providing for the staff of the~~ and generally relating to ~~the~~ the Joint Committee on Chesapeake Bay Critical Areas.

BY repealing and reenacting, with amendments,

Article - Natural Resources
Section 8-1808(d)
Annotated Code of Maryland
(1983 Replacement Volume and 1987 Supplement)

Preamble

WHEREAS, In 1984 a 25-member Chesapeake Bay Critical Area Commission was created and charged with drafting criteria that would guide development in the critical areas of the State; and

Chapter 234 of the Acts of the General Assembly of 1988
Section 1, 2, and 3

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
Strike-out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

codifying and expanding the

at certain times

BY repealing and reenacting, with amendments

HOUSE BILL No. 1249

1 WHEREAS, The Commission promulgated criteria in December
2 1985, which was approved by the General Assembly during the 1986
3 session; and

4 WHEREAS, Those criteria were used by the 16 counties and 44
5 municipalities having land within the critical areas in the
6 development of their local critical area protection programs; and

7 WHEREAS, It is the intent of the General Assembly that all
8 local jurisdictions submit and obtain approval of their local
9 critical area protection programs from the Commission as required
10 by the original criteria; and

11 WHEREAS, The approval of these local critical area
12 protection programs will set in motion the final implementation
13 stage of the entire Chesapeake Bay Critical Area Protection
14 Program; and

15 WHEREAS, It is now time to determine if changes need to be
16 made so as to make the Chesapeake Bay Critical Area Protection
17 Program more effective in the protection of water quality and
18 habitat of the Chesapeake Bay and its tributaries; and

19 WHEREAS, It is also time to assess whether changes are
20 needed to address the special characteristics and needs of the
21 individual counties and municipalities having land within the
22 critical areas while at the same time keeping within the spirit
23 and intent of the original criteria; now, therefore,

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That-- the Laws of Maryland read as follows:

26 Article - Natural Resources

27 8-1808.

28 (d) (1) The Commission shall promulgate by regulation on or
29 before December 1, 1985, criteria for program development and
30 approval, which are necessary or appropriate to achieve the
31 standards stated in subsection (b) of this section. Prior to
32 developing its criteria and also prior to adopting its criteria,
33 the Commission shall hold at least 6 regional public hearings,
34 one in each of the following areas:

35 (i) Harford, Cecil, and Kent counties;

36 (ii) Queen Anne's, Talbot, and Caroline
37 counties;

38 (iii) Dorchester, Somerset, and Wicomico
39 counties;

40 (iv) Baltimore City and Baltimore County;

1 (v) Charles, Calvert, and St. Mary's counties;
2 and

3 (vi) Anne Arundel and Prince George's counties.

4 During the hearing process, the Commission shall
5 consult with each affected local jurisdiction.

6 (2) The President of the Senate and the Speaker of
7 the House shall appoint 5 senators and 5 delegates respectively
8 to serve as the Joint Committee on Chesapeake Bay Critical Areas.
9 The Joint Committee shall be staffed by the Department of
10 Legislative Reference. The Commission shall meet with the Joint
11 Committee on Chesapeake Bay Critical Areas periodically as the
12 Committee requests to review development and implementation of
13 the criteria for program development.

lower case

14 (3) THE JOINT COMMITTEE MAY STUDY AND MAKE
15 RECOMMENDATIONS TO THE LEGISLATIVE POLICY COMMITTEE ON ANY OTHER
16 AREA OF THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM IT
17 CONSIDERS APPROPRIATE.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) ⁽⁴⁾ The Joint Committee on Chesapeake Bay Critical Areas
20 shall meet with the Critical Areas Commission, representatives of
21 counties and municipalities having land within the critical
22 areas, and any other interested parties to study and determine:

23 (1) ^(I) Whether adequate flexibility exists under the
24 current criteria to meet the special characteristics and needs of
25 the individual counties and municipalities having land within the
26 critical areas;

27 (2) ^(II) Whether the current timetable for review of
28 approved local critical area protection programs is adequate to
29 meet the special characteristics and needs of the individual
30 counties and municipalities having land within the critical
31 areas; and

32 (3) ^(III) Whether the criteria need to be strengthened in
33 any area so as to make the Chesapeake Bay Critical Area
34 Protection Program more effective in the protection of the water
35 quality and habitat of the Chesapeake Bay and its tributaries.

36 (b) ⁽⁵⁾ The Joint Committee shall study and determine the
37 appropriate future role of the Chesapeake Bay Critical Area
38 Commission, including:

39 (1) ^(I) Whether the Chesapeake Bay Critical Area
40 Commission should remain an autonomous organization or be
41 incorporated into an existing executive agency;

42 (2) ^(II) How long the current oversight role of the
43 Chesapeake Bay Critical Area Commission should continue; and

ALL CAPS

IN THE LEGISLATIVE INTERIM AFTER
THE 1991 SESSION AND EVERY
SECOND YEAR AFTER THAT DATE,
THE

ALL CAPS

4
1 { [3] Whether the current appeal process is the most
2 effective appeal process to meet the goals of the Chesapeake Bay
3 Critical Area Protection Law.

4 ~~(c) The Joint Committee may also study any other area of~~
5 ~~the Chesapeake Bay Critical Area Protection Program it considers~~
6 ~~appropriate.~~

7 [c] The Joint Committee shall report its preliminary
8 findings and recommendations to the Legislative Policy Committee
9 on or before January 1, 1989.

10 [d] The Joint Committee shall report its final findings
11 and recommendations to the Legislative Policy Committee on or
12 before January 1, 1990.

13 ~~(E) Staff for the Joint Committee shall be provided by the~~
14 ~~Department of Legislative Reference.~~

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act
16 shall take effect July 1, [1988] 1990.

(G) THE JOINT COMMITTEE SHALL
REPORT ITS FINDINGS AND RECOMMENDATIONS
TO THE LEGISLATIVE POLICY COMMITTEE
ON OR BEFORE JANUARY 1, 1992 AND ON
OR BEFORE JANUARY 1 OF EVERY SECOND
YEAR AFTER THAT DATE.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

POLICY FOR
EXTENSION OF THE CRITICAL AREA

ABH 12-6-89 Revised

Alternative Courses of Action

When the Chesapeake Bay Critical Area Commission receives proposed program amendments from jurisdictions to extend the Critical Area, some logical basis is needed on which to make a decision. The Commission can address the issue of extension of the Critical Area through regulations, guidelines, a general policy statement, or a combination. The section of the law which addresses extensions, 8-1807, does not give specific authority for the Commission to develop and issue regulations on the subject, so guidelines for the jurisdictions and general policy are more appropriate treatments initially. Because the growth allocation issue has been addressed through guidelines, not regulations, this approach will be familiar to the jurisdictions. Guidelines also allow the jurisdictions some flexibility for interpretation and modification to support the Critical Area goals in their specific situation. Guidelines should eventually be converted into regulations for a clearer legal basis for decisions.

Suggestions for potential guidelines or regulations follow, based on the criteria and previous county approaches.

General Policy

General policy should be based on the goals of the criteria and the findings. Extension of the Critical Area should result in improvement in water quality or water quality protection, improvement in plant or wildlife habitat, or reduced adverse human impact. The proposed extension should be considered on its merits for environmental protection as it affects the area proposed for extension and the existing adjacent Critical Area.

The final test for a proposed extension should be that, in the view of the Commission, the benefits from the additional resource protection (from the local program restrictions or further deed restrictions or dedications) exceed the negative impact of any additional development allowed. The benefits must be sufficiently documented and provisions made to ensure their continuance.

Proposed Guidelines For Extension of the Critical Area

The following are suggested characteristics or reasons to add land to the Critical Area. These reasons are to protect or improve plant and wildlife habitat and water quality or to minimize impact from the number and movement of people in the Critical Area. Some administrative requirements, such as proper documentation, must be met (Part A). A proposal to extend the Critical Area must meet one or more of the primary reasons in each category of Part B, which consist of habitat protection, water quality, or impact-minimizing guidelines. Administrative consistency reasons (Part C) can support the primary reasons in part B.

Underlined sections have been added.

PART A: Administrative Requirements

Proposals should meet all these requirements.

- 1) The proposal is supported by competent and material evidence on its benefits for resource protection.
- 2) The proposal is not arbitrary or capricious, but rather improves resource protection on primarily undeveloped land.
- 3) Extended areas that are not nontidal wetlands or publicly-owned land can count towards growth allocation.
- 4) The extended area should be added as RCA, and any development must meet all criteria requirements. Underlying zoning must conform with the RCA designation (or be changed to conform).
- 5) A finding must be made by the Critical Area Commission that the additional resource protection offered by the proposal to extend the Critical Area exceeds any potential detriment from development allowed.

PART B: Primary Reasons for Extending the Critical Area

All proposals must include one or more guideline from each of the following three categories of Habitat Protection, Water Quality, and Minimizing Impact of Growth as the basis for extending the Critical Area.

Habitat Protection Guidelines:

1) The proposed extension includes a Natural Heritage Area or other area valuable for plant or wildlife habitat which is or will be permanently protected from development. Examples are land having a conservation easement and land donated for a natural park.

2) The proposed extension protects desirable areas of habitat (e.g., those categories outlined in Habitat Protection Criteria: non-tidal wetlands, threatened and endangered species, other significant plant and wildlife habitat, and watersheds of anadromous fish spawning streams). Priority will be given to large, unfragmented areas or corridors because these areas conserve forest and wildlife habitat most effectively. Priority will also be given where the extension significantly enhances existing Habitat Protection Areas. Restrictions should be assured by conservation easements or, if easements are unavailable, placed on the deed to prevent future development in areas extended for habitat protection.

3) The proposed extension includes a plan to protect and enhance existing habitat value through deed restrictions or dedications, and a wildlife management plan. A time-frame for implementing the plan agreed upon between the land-owner and the jurisdiction must be included in the proposal. The time-frame must be previous to or paralleling any development.

Water Quality Guidelines:

4) The proposed area extends the Critical Area to compensate for past shoreline erosion. In areas where the shoreline has been eroding, the official line is changed from the State Wetland Boundaries map line to 1000 feet from the current shoreline. Extensions granted because of shoreline erosion should include a plan with timeline and implementation details for shoreline protection.

5) The proposed extension protects non-tidal wetlands, erodible soils, steeply sloping (> 15%) areas, land bordering tributaries to the Bay or other areas which are key to local protection of water quality due to hydrologic characteristics.

Guidelines minimizing impact from the number and movement of people in the Critical Area:

6) The extension prevents substantial development adjacent to the original Critical Area (e.g., land zoned for high density to be developed at the RCA density if the Critical Area is extended). The proposal must demonstrate that the extended area is developable land.

7) The dwelling units allowed by extending Critical Area acreage are built in the extended area, not in the original Critical Area, unless the extended area has greater habitat or water quality value (e.g., a Natural Heritage Area, sensitive wetlands) than the original Critical Area.

PART C: Supporting Reasons for Extending the Critical Area

A proposal may include the following reasons for extending the Critical Area in addition to at least one of the primary reasons. Supporting reasons cannot be the sole reason for extensions.

Consistency Guidelines

1) The proposed extension is completely or mostly surrounded by the Critical Area (e.g., an inholding).

2) The proposed extension extends the Critical Area to the limits of parcel(s) partially inside the original Critical Area.

EXTENSION OF THE CRITICAL AREA POLICY
SUGGESTED CHANGES

ABH 12-6-89

DESCRIPTION OF ISSUE:

The Commission has received several requests for expanding the Critical Area beyond the 1000-foot line, both during and subsequent to program development. This policy was developed to give the Commission a logical basis on which to accept or reject proposals from the local jurisdiction to extend the Critical Area. The policy is meant to limit additions of land to parcels which would further the program's goals with regard to water quality, habitat, and minimizing human impact. Resource protection on the parcel must exceed potential detriment from the additional development allowed in the Critical Area.

Under the current policy, land must be added as RCA, but no growth allocation is generated. For each approved parcel, the Commission must make a finding that resource protection exceeds potential detriment. The guidelines outline ways in which a parcel can meet the three goals of the Critical Area Law (habitat, water quality, and minimum impact). A parcel must use at least one guideline to meet each of the three goals. Additions of land to include inholdings or expand to the boundaries of a parcel are allowed, but only when the three goals are met.

COMMISSION ACTION NEEDED: Vote to adopt the policy when it is satisfactory.

CHANGES TO THE DRAFT:

The following changes were made:

1) Growth allocation is allowed for extended areas, excluding nontidal wetlands and publicly-owned land.

2) Habitat Protection guidelines include addition because of Natural Heritage Areas, potential Habitat Protection Areas, or preparation and implementation of a Wildlife Management Plan. Addition because of habitat unique to the jurisdiction even if it is not classed as an HPA was allowed, but was not considered necessary since the Wildlife Management Plan option may be able to be used in such instances. This reason was omitted to simplify the guidelines.

3) Similarly, the guideline which referred to addition because of a larger ecological system, was omitted because Guideline B(5) may apply to such circumstances. Most larger systems of interest would qualify as nontidal wetlands or lands bordering tributaries. Omission of Guideline B(7) may reduce the vagueness of the Water Quality Section.

PANEL RECOMMENDATION:

The Special Issues Subcommittee recommends approval of the policy with the above changes made.

**PROJECT EVALUATION
STAFF REPORT**

APPLICANT:

Washington Suburban Sanitary Commission (WSSC) of Prince George's County.

DATE: DECEMBER 6, 1989

LOCATION/HISTORY OF PROJECT(S):

Location:

Western Branch WWTP, 6600 Crain Highway, Upper Marlboro Maryland

Project Review(S):

WSSC is a Bi-County agency established in 1918 by an act of the State General Assembly. It is charged with the responsibility of providing water and sanitary sewer service within the Washington Suburban Sanitary District (WSSC) which includes nearly all of Montgomery and Prince George's County.

PROJECT REVIEW(S):

There is a proposed new Water Pumping Station (0.028 acres) right next to the existing Western Branch of the Waste Water Treatment Plant which is in an area of Intense Development under the State and Local Regulations.

WSSC expected that the existing non-point source pollutant loadings be reduced by at least 10%. Since WSSC reviewed the site and plans with staff of the Watershed Protection Branch of the Prince George's County's Department of Environmental Resources, they concluded that modifying the existing stormwater drain system is not feasible.

STAFF RECOMMENDATION:

The site to be replanted (0.50 acres adjacent to the project) was previously graded for staging and construction trailers as part of the treatment plants nitrogen removal. The Critical Area staff recommends that WSSC design a draft and final replanting plan of the above site that has been disturbed. This plan will be reviewed by the Commission staff and Prince George's County.

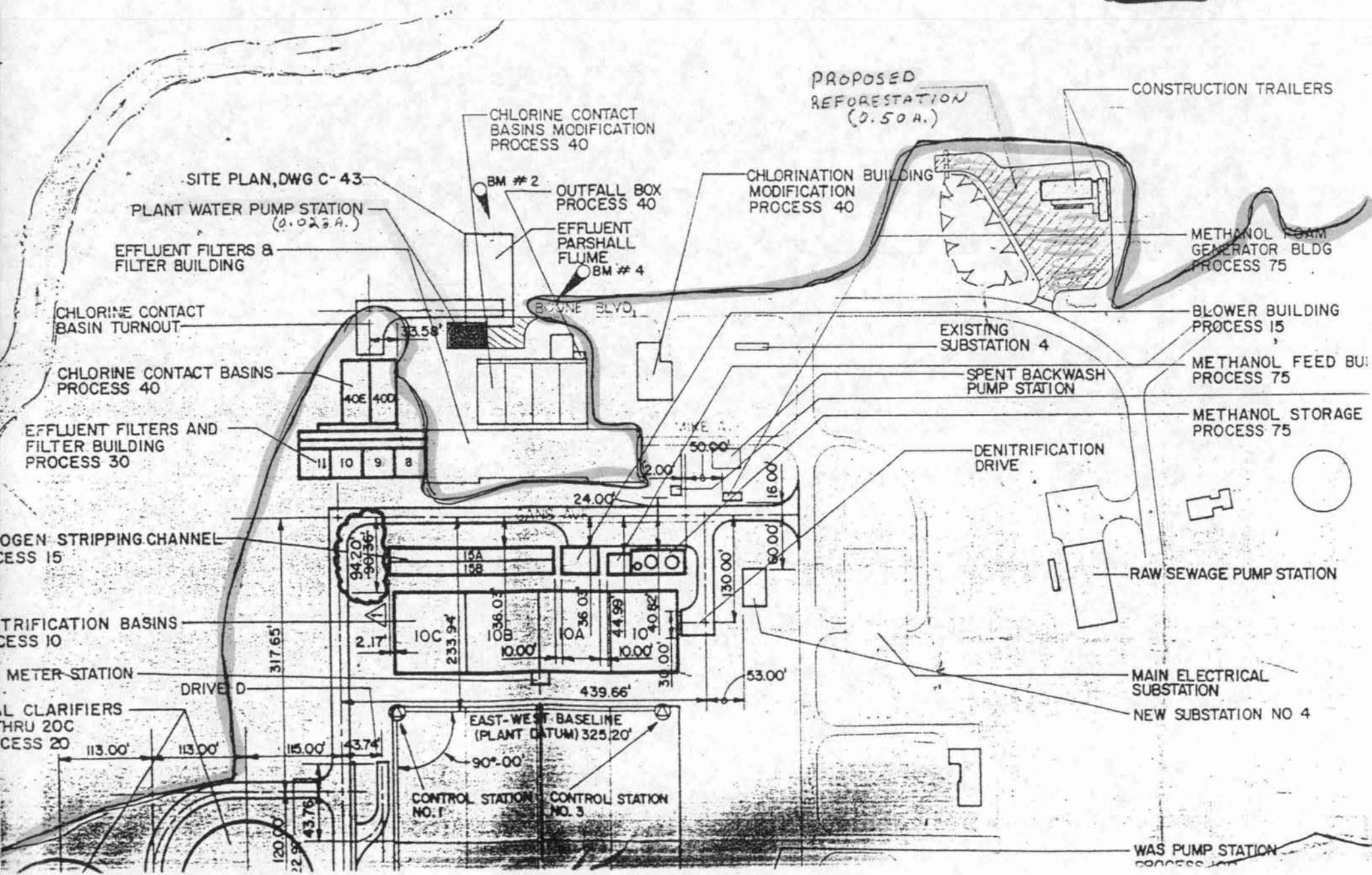
CON'T STAFF REPORT PAGE 2

CONDITIONS:

That the planting plan be finalized with Prince George's County, the County's bay forester, and Submitted to the Critical Area staff for Critcial Area Program consistency.

CRITICAL AREA STAFF PERSON(S):

DAWNN McCLEARY



SITE PLAN, DWG C-43

PROPOSED REFORESTATION (0.50 A.)

CONSTRUCTION TRAILERS

CHLORINE CONTACT BASINS MODIFICATION PROCESS 40

CHLORINATION BUILDING MODIFICATION PROCESS 40

PLANT WATER PUMP STATION (0.023 A.)

OUTFALL BOX PROCESS 40

METHANOL FOAM GENERATOR BLDG PROCESS 75

EFFLUENT FILTERS & FILTER BUILDING

EFFLUENT PARSHALL FLUME

CHLORINE CONTACT BASIN TURNOUT

EXISTING SUBSTATION 4

BLOWER BUILDING PROCESS 15

CHLORINE CONTACT BASINS PROCESS 40

METHANOL FEED BU: PROCESS 75

EFFLUENT FILTERS AND FILTER BUILDING PROCESS 30

SPENT BACKWASH PUMP STATION

METHANOL STORAGE PROCESS 75

NOGEN STRIPPING CHANNEL PROCESS 15

DENITRIFICATION DRIVE

TRIFICATION BASINS PROCESS 10

RAW SEWAGE PUMP STATION

METER STATION

L CLARIFIERS THRU 20C PROCESS 20

EAST-WEST BASELINE (PLANT DATUM) 325.20'

MAIN ELECTRICAL SUBSTATION

NEW SUBSTATION NO 4

CONTROL STATION NO. 1

CONTROL STATION NO. 3

WAS PUMP STATION PROCESS 10

DRIVE D

BOYNE BLVD.

MIKE

DRIVE D

EAST-WEST BASELINE (PLANT DATUM) 325.20'

90°-00'

DRIVE D

CONTROL STATION NO. 1

CONTROL STATION NO. 3

DRIVE D

EAST-WEST BASELINE (PLANT DATUM) 325.20'

90°-00'

DRIVE D

CONTROL STATION NO. 1

CONTROL STATION NO. 3

DRIVE D

EAST-WEST BASELINE (PLANT DATUM) 325.20'

90°-00'

DRIVE D

CONTROL STATION NO. 1

CONTROL STATION NO. 3

DRIVE D

EAST-WEST BASELINE (PLANT DATUM) 325.20'

90°-00'

DRIVE D

CONTROL STATION NO. 1

CONTROL STATION NO. 3

DRIVE D

EAST-WEST BASELINE (PLANT DATUM) 325.20'

90°-00'

DRIVE D

CONTROL STATION NO. 1

CONTROL STATION NO. 3

DRIVE D

EAST-WEST BASELINE (PLANT DATUM) 325.20'

90°-00'

DRIVE D

CONTROL STATION NO. 1

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PROJECT REPORT

November 1, 1989

PROJECT

Pocomoke Sound Dredge Disposal

SITE

Pocomoke Sound Wildlife Management Area, Somerset County

APPLICANTS

Capital Programs Administration, Department of Natural Resources
U.S. Army Corps of Engineers

PROJECT DESCRIPTION

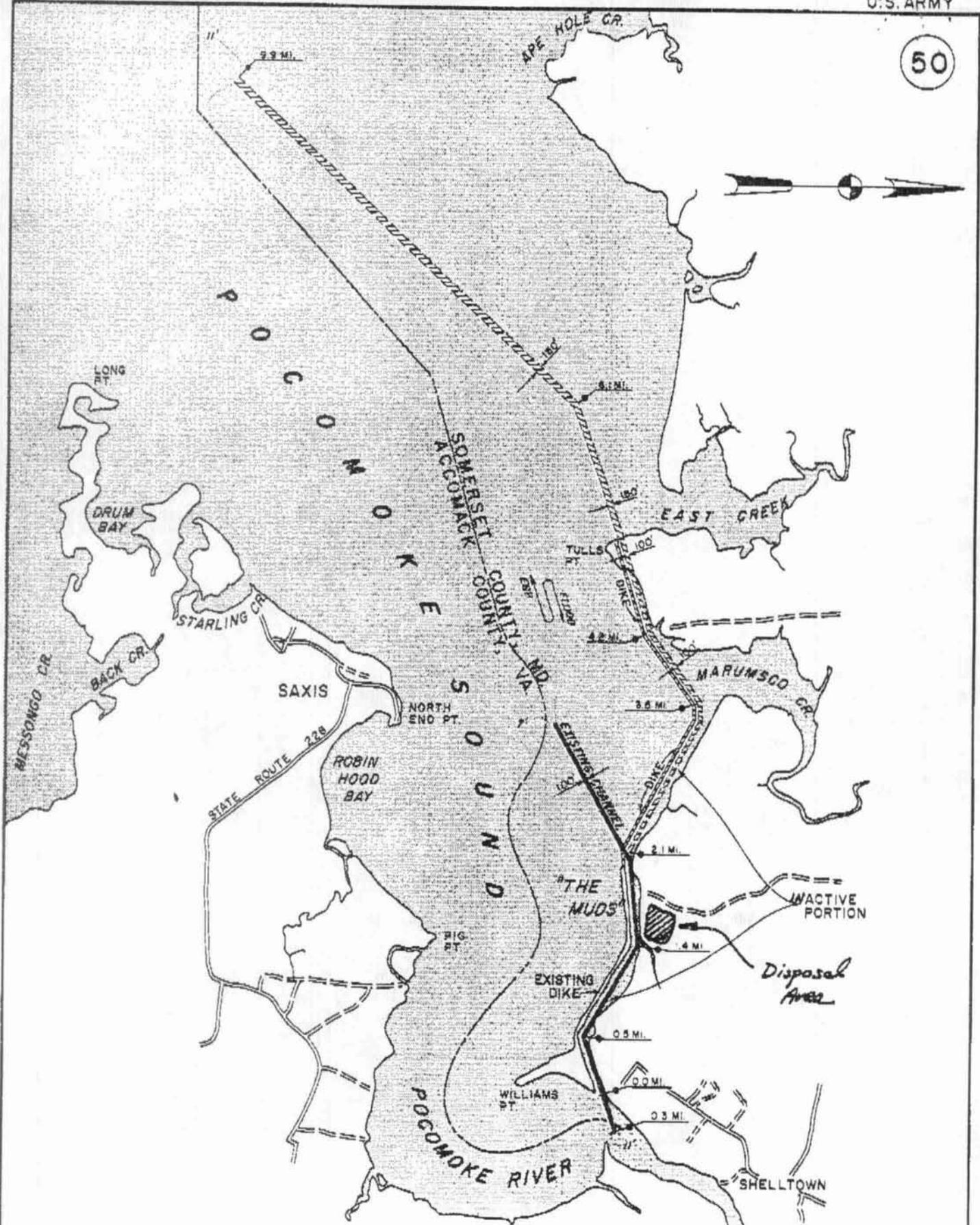
40,000 cubic yards of sandy material from the mouth of the Pocomoke River is to be hydraulically dredged and placed on a previously approved and utilized channel maintenance spoil area. The site is a 17-acre upland diked disposal area which is currently covered with Phragmites. The spoil will be piped through a 12-inch PVC pipe placed on the ground. It will run from the water across ca. 50 feet of sparsely vegetated buffer and then another 50 feet along an existing unpaved road to the disposal site. No vegetation will be disturbed. Water quality of the effluent will be monitored to ensure that suspended solids are kept at a minimum.

STAFF/SUBCOMMITTEE RECOMMENDATION

Approve, as proposed

STAFF CONTACT

Abi Rome



PROJECT DEPTH 11'
 [Hatched pattern] NEW WORK REMAINING TO BE DONE

SOUNDINGS ARE IN FEET
 DATUM PLANE IS LOCAL M.L.W.

POCOMOKE RIVER, MD. & VA.

REVISED: SEPTEMBER 1985

IN 2 SHEETS SHEET 1

SCALE OF FEET
 2000 0 2 4 6 8000

BALTIMORE DISTRICT OFFICE BALTIMORE, MD.

PROJECT EVALUATION SUBCOMMITTEE REPORT

November 1, 1989

PROJECT: Navigational Aids at Martin State Airport,
Middle River, Baltimore County

APPLICANT: State Aviation Administration, Maryland
Department of Transportation

RECOMMENDATION: Vote to approve as proposed

PROPOSAL:

To install two electronic navigational instruments on a grassy area between two runways 920+ ft. from mean high tide of Frog Morter Creek.

1. Localizer (to provide lateral guidance for landing aircraft during poor weather) - consisting of an antennae array system (53 ft. long by 11 ft. wide) and an electronics equipment unit housed in a shelter building (8 ft. x 14 ft) to be placed on a concrete pad
2. Distance Measuring Equipment (measures and displays the slant range distance between a transponder equipped aircraft and the ground station) - consisting of an antenna (19 ft. tall on a 4 ft. x 4 ft. base) and electronic equipment housed in the above-mentioned shelter building

In addition, approximately 400 ft. of 2 ft. wide trenches will be excavated to run power cables for these navigational aids.

STAFF CONTACT:

Abi Rome

STAFF REPORT

SUBJECT: MOU between Maryland Public Service Commission, Chesapeake Bay Critical Area Commission, and the Maryland Department of Natural Resources

ISSUE: Vote by Critical Area Commission on MOU

STAFF

RECOMMENDATION: Approval of MOU

DISCUSSION:

Critical Area regulations (COMAR 14.19.01.01.B.54) identify the issuance of a Certificate of Public Convenience and Necessity (CPCN) by the Maryland Public Service Commission (PSC) that allows the construction of a power plant in the Critical Area as a State action, thereby requiring Critical Area Commission (CAC) approval. The regulations also require the CAC to hold joint hearings, as appropriate, with the PSC for the purposes of reviewing applications for power plants.

The purpose of the MOU is to establish a process for coordination between the PSC, CAC and DNR for the review and approval of applications for CPCN's for power plants in the Critical Area. DNR is included in this agreement due to its responsibility for making a study and investigation of a CPCN, especially with regard to environmental issues.

Since early spring 1989, representatives of the PSC, CAC and DNR have been working to prepare this MOU. It has now been finalized to staffs' satisfaction.

The PSC will amend its regulations to include the CAC in the process and procedure for formal review of an application for a CPCN. Until such time, the procedures in the MOU regarding "Notice of Application" and "Issues to be Addressed in Application" will apply.

The MOU also addresses the process and procedures for joint hearings, approval of the project application, and the time frame for review and approval. Key provisions include:

1. The PSC hearing examiner is empowered to represent the CAC.
2. DNR is granted the authority to develop, evaluate, and report to the PSC and the CAC on whatever Critical Area-related information is required in COMAR 14.19, in coordination with CAC staff.

STAFF CONTACT: Pat Pudelkewicz

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MARYLAND PUBLIC SERVICE COMMISSION,
THE CHESAPEAKE BAY CRITICAL AREA COMMISSION, AND
THE MARYLAND DEPARTMENT OF NATURAL RESOURCES

AUTHORITY: Natural Resources Article, Section 8-1814, Annotated Code of Maryland; Article 78, §54A and 54B, Annotated Code of Maryland; Natural Resources Article, §3-306, Annotated Code of Maryland; COMAR 14.19.04.01 and 14.19.07.02E; and COMAR 20.80.02.03D.

THIS AGREEMENT, Dated _____, 1989, memorializes the understanding reached by the Maryland Public Service Commission, the Chesapeake Bay Critical Area Commission, and the Maryland Department of Natural Resources,

WHEREAS, the Public Service Commission is responsible for the issuance of a Certificate of Public Convenience and Necessity for power plants, as defined below, and

WHEREAS, the Critical Area Commission is vested with the authority for implementing the State's Chesapeake Bay Critical Area Protection Program, and

WHEREAS, the Department of Natural Resources is responsible for making a study and investigation of, and for forwarding recommendations regarding, a proposed Certificate, to the Public Service Commission, and

WHEREAS, the Critical Area Commission has approval authority over certain State or local agency development actions within the designated Critical Area that have not been subject to project approval by the local jurisdiction under an approved Critical Area program, and;

WHEREAS, Critical Area regulations (COMAR 14.19.01.01B54) identify the issuance of a Certificate of Public Convenience and Necessity by the Maryland Public Service Commission that allows the construction of a power plant as a "State and local agency action," and

WHEREAS, Critical Area regulations (COMAR 14.19.07.02E) require the Critical Area Commission to hold joint hearings, as appropriate, with the Public Service Commission for the purposes of reviewing applications for power plants, and

NOW, THEREFORE, be it resolved that the parties named above hereby mutually agree to the following:

A. DEFINITIONS

1. "Power plant" means property or facilities constituting an integral plant or unit for the generation of electric energy, including any new generation unit that would be added to an existing generation facility and transmission facilities.
2. "Project" means power plant.

3. "Application" means an application for a Certificate of Public Convenience and Necessity issued by the Public Service Commission.

B. GENERAL OBJECTIVE

The objective of this Memorandum of Understanding is to establish a process for coordination between the Public Service Commission, the Chesapeake Bay Critical Area Commission, and the Department of Natural Resources for the review and approval of applications for Certificates of Public Convenience and Necessity for power plants in the Chesapeake Bay Critical Area.

C. NOTICE OF APPLICATION

1. The Maryland Public Service Commission will amend its regulations and whatever forms, letters, or other materials it uses to inform applicants as to the process used or requirements imposed for the formal review of an application for a Certificate of Public Convenience and Necessity, to indicate the additional requirements, authority, and any changes to process or procedure noted hereunder, for power plants wholly or partly within the Chesapeake Bay Critical Area. Until such time as the Public Service Commission regulations are amended for this purpose, the procedures described in this Memorandum of Understanding in "C. Notice of Application" and "D. Issues to be Addressed in Application" will apply on a provisional basis.

2. The Maryland Public Service Commission will notify the Chesapeake Bay Critical Area Commission in the event of:
 - a. Receipt of an application for a Certificate of Public Convenience and Necessity for a power plant wholly or partly within the Critical Area; and,
 - b. Request by an applicant for the establishment of a Project Coordinating Committee for the purpose of gaining a Certificate of Public Convenience and Necessity for a power plant wholly or partly within the Critical Area.
3. The Public Service Commission will send a copy of an application for a Certificate of Public Convenience and Necessity to the Critical Area Commission within ten (10) working days of its receipt by the Public Service Commission.
4. If phased proceedings are requested by the applicant and approved by the Public Service Commission, the applicant may submit to the Public Service Commission a partial application as per COMAR 20.80.02.03. Typical phases of a project application may be: 1) siting of a project; (2) need for a project; 3) cost of and financing for the project and alternatives under the proposed plan; and (4) environmental impact of the project. The Critical Area Commission will only review and approve those phases of the application dealing with the siting and environmental

impact of the project when all or part of each of these phases falls under the regulatory jurisdiction of the Critical Area Commission.

D. ISSUES TO BE ADDRESSED IN APPLICATION

1. If a Project Coordinating Committee is established to guide an applicant in the preparation and submittal of an application for a Certificate of Public Convenience and Necessity, whenever the project is wholly or partly within the Critical Area, the Critical Area Commission will be a member of this Committee, and will notify the applicant of the Critical Area criteria which need to be addressed.
2. If a Project Coordinating Committee is not established, the Public Service Commission will notify the applicant of the requirement to contact the Critical Area Commission to identify issues which must be addressed in the application as per COMAR 14.19.04.02.

E. JOINT HEARINGS

1. The Public Service Commission and the Critical Area Commission will hold joint hearings as required by COMAR 14.19.07.02E.
2. Any advertisement by the applicant of hearings arranged by the Public Service Commission, shall be coordinated with the Critical Area Commission.
3. Any public or adjudicatory hearings held pursuant to Article 78, §54A or B, Annotated Code of Maryland, involving Critical Area land may be jointly hosted by the

Public Service Commission and the Critical Area Commission. It will be the general practice for the Critical Area Commission to empower the Public Service Commission Hearing Examiner to represent the Critical Area Commission. Critical Area Commissioners, or a designated panel of Commissioners, may attend any such hearings at their discretion.

4. The Critical Area issues to be addressed will be agreed upon by the Critical Area Commission and the Department of Natural Resources in a scoping meeting to be attended by Chesapeake Bay Critical Area Commission staff, Critical Area Commission panel, and Department of Natural Resources staff.

The Department of Natural Resources is hereby granted the authority to develop, evaluate, and report to the Public Service Commission and to the Chesapeake Bay Critical Area Commission on whatever Critical Area-related information is required under COMAR 14.19, in cooperation and coordination with Critical Area Commission staff.

Cross examination undertaken at hearings on behalf of Department of Natural Resources shall also cover Critical Area matters and concerns, in coordination with Critical Area Commission staff.

5. A copy of the complete hearing transcript for the Public Service Commission hearing will serve as the Critical Area Commission record of proceedings made pursuant to COMAR 14.19.07.03B.

6. Immediately at its issuance, a copy of the hearing examiner's Proposed Order will be forwarded to the Critical Area Commission, and will serve as the primary basis for panel and full Commission discussions.

F. APPROVAL OF PROJECT APPLICATION

1. The full Critical Area Commission shall make its final determination by majority vote of approval, disapproval, or approval with conditions, of a project for a power plant in the Critical Area.

G. TIME FRAME

1. The Critical Area Commission shall automatically be granted an extension to the time frame for review of the project as specified in COMAR 14.19.07.04B.
2. The additional time afforded the Critical Area Commission to review a project and make a determination will be consistent with the time frame required by the Public Service Commission to review an application and make a determination. This time frame will extend to sixty (60) days beyond the receipt of the hearing examiner's Proposed Order by the Critical Area Commission unless otherwise agreed by the two agencies.

H. AMENDMENT OF THIS MEMORANDUM

This Memorandum of Understanding may be amended in writing, by the agreement of all parties hereto, at any time.

PUBLIC SERVICE COMMISSION

Chairman

CHESAPEAKE BAY CRITICAL AREA
COMMISSION

Chairman

DEPARTMENT OF NATURAL RESOURCES

Secretary

Potential changes to PSC regulations to expressly add Critical Area concerns into the documentation supplied by applicants

- COMAR 20.80.01.03 - Add new "M. Information, evaluations, and findings necessary to demonstrate compliance with COMAR 14.19.04.
- *COMAR 20.80.02.02.B - Add new "(15) The Chesapeake Bay Critical. Area Commission (three copies)."
- COMAR 20.80.03.05 - Add new "F. Evaluation of compliance with Critical Area requirements."
- COMAR 20.80.04.02 - Delete "and" at the end of F.; and add "; and" at the end of G. Add new "H. Location of portions, if any, within the Chesapeake Bay Critical Area, and any of its Habitat Protection Areas."
- COMAR 20.81.01.02 - Add in N., after "... Natural Resources," ", and Critical Area, together with any of their Habitat Protection Areas."
- *COMAR 20.81.01.04 - Add in a new (10) and change existing (10) to "(11)": "(10) Chesapeake Bay Critical Area Commission; and"

[COMAR 14.19.07.02.D and COMAR 20.80.02.03.D as authority.]

*Will be handled by defining Critical Area Commission.



Sent to all jurisdictions

JOHN C. NORTH, II
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MARYLAND 21401
974-2418 or 974-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

COMMISSIONERS

December 19, 1989

Thomas Osborne
Anne Arundel Co.

James E. Gutman
Anne Arundel Co.

Ronald Karasic
Baltimore City

Ronald Hickernell
Baltimore Co.

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.

William Corkran, Jr.
Talbot Co.

William J. Bostian
Wicomico Co.

Russell Blake
Worcester Co.

The Honorable Dewey Blades
Commission President
P O Box 86
Vienna, Maryland 21869

Dear President Blades:

Enclosed is a copy of the Policy for Extension of the Critical Area as approved by the Commission members on December 6, 1989.

Please use this policy as a basis for your decision to expand the 1,000-foot Critical Area Boundary. The Critical Area Commission will be using this policy as the basis for approving or denying this form of Program Amendment.

If you have any questions, please do not hesitate to call Ms. Anne Hairston on the Commission staff at (301) 974-2426.

Very truly yours,

J. C. North, II
Judge John C. North, II
Chairman

SJT/JCN/jjd

cc: Critical Area Commission
Critical Area Staff
Circuit Rider, Upper Eastern Shore
Circuit Rider, Lower Eastern Shore

CABINET MEMBERS

Wayne A. Cawley, Jr.
Agriculture

Robert Schoepflein
Employment and Economic Development

Robert Perciasepe
Environment

Ardath Cade
Housing and Community Development

Torrey C. Brown, M.D.
Natural Resources

Ronald Kreitner
Planning

POLICY FOR
EXTENSION OF THE CRITICAL AREA

Adopted 12-6-89

ABH

Alternative Courses of Action

When the Chesapeake Bay Critical Area Commission receives proposed program amendments from jurisdictions to extend the Critical Area, some logical basis is needed on which to make a decision. The Commission can address the issue of extension of the Critical Area through regulations, guidelines, a general policy statement, or a combination. The section of the law which addresses extensions, 8-1807, does not give specific authority for the Commission to develop and issue regulations on the subject, so guidelines for the jurisdictions and general policy are more appropriate treatments initially. Because the growth allocation issue has been addressed through guidelines, not regulations, this approach will be familiar to the jurisdictions. Guidelines also allow the jurisdictions some flexibility for interpretation and modification to support the Critical Area goals in their specific situation. Guidelines should eventually be converted into regulations for a clearer legal basis for decisions.

Suggestions for potential guidelines or regulations follow, based on the criteria and previous county approaches.

General Policy

General policy should be based on the goals of the criteria and the findings. Extension of the Critical Area should result in improvement in water quality or water quality protection, improvement in plant or wildlife habitat, or reduced adverse human impact. The proposed extension should be considered on its merits for environmental protection as it affects the area proposed for extension and the existing adjacent Critical Area.

The final test for a proposed extension should be that, in the view of the Commission, the benefits from the additional resource protection (from the local program restrictions or further deed restrictions or dedications) exceed the negative impact of any additional development allowed. The benefits must be sufficiently documented and provisions made to ensure their continuance.

Proposed Guidelines For Extension of the Critical Area

The following are suggested characteristics or reasons to add land to the Critical Area. These reasons are to protect or improve plant and wildlife habitat and water quality or to minimize impact from the number and movement of people in the Critical Area. Some administrative requirements, such as proper documentation, must be met (Part A). A proposal to extend the Critical Area must meet one or more of the primary reasons in each category of Part B, which consist of habitat protection, water quality, or impact-minimizing guidelines. Administrative consistency reasons (Part C) can support the primary reasons in part B.

Underlined sections have been added.

PART A: Administrative Requirements

Proposals should meet all these requirements.

- 1) The proposal is supported by competent and material evidence on its benefits for resource protection.
- 2) The proposal is not arbitrary or capricious, but rather improves resource protection on primarily undeveloped land.
- 3) Five percent of extended areas that are not nontidal wetlands or publicly-owned land can generate growth allocation for the county.
- 4) The extended area should be added as RCA, and any development must meet all criteria requirements. Underlying zoning must conform with the RCA designation (or be changed to conform).
- 5) A finding must be made by the Critical Area Commission that the additional resource protection offered by the proposal to extend the Critical Area exceeds any potential detriment from development allowed.

PART B: Primary Reasons for Extending the Critical Area

All proposals must include one or more guideline from each of the following three categories of Habitat Protection, Water Quality, and Minimizing Impact of Growth as the basis for extending the Critical Area.

Habitat Protection Guidelines:

1) The proposed extension includes a Natural Heritage Area or other area valuable for plant or wildlife habitat which is or will be permanently protected from development. Examples are land having a conservation easement and land donated for a natural park.

2) The proposed extension protects desirable areas of habitat (e.g., those categories outlined in Habitat Protection Criteria: non-tidal wetlands, threatened and endangered species, other significant plant and wildlife habitat, and watersheds of anadromous fish spawning streams). Priority will be given to large, unfragmented areas or corridors because these areas conserve forest and wildlife habitat most effectively. Priority will also be given where the extension significantly enhances existing Habitat Protection Areas. Restrictions should be assured by conservation easements or, if easements are unavailable, placed on the deed to prevent future development in areas extended for habitat protection.

3) The proposed extension includes a plan to protect and enhance existing habitat value through deed restrictions or dedications, and a wildlife management plan. A time-frame for implementing the plan agreed upon between the land-owner and the jurisdiction must be included in the proposal. The time-frame must be previous to or paralleling any development.

Water Quality Guidelines:

4) The proposed area extends the Critical Area to compensate for past shoreline erosion. In areas where the shoreline has been eroding, the official line is changed from the State Wetland Boundaries map line to 1000 feet from the current shoreline. Extensions granted because of shoreline erosion should include a plan with timeline and implementation details for shoreline protection.

5) The proposed extension protects non-tidal wetlands, erodible soils, steeply sloping (> 15%) areas, land bordering tributaries to the Bay or other areas which are key to local protection of water quality due to hydrologic characteristics.

Guidelines minimizing impact from the number and movement of people in the Critical Area:

6) The extension prevents substantial development adjacent to the original Critical Area (e.g., land zoned for high density to be developed at the RCA density if the Critical Area is extended). The proposal must demonstrate that the extended area is developable land.

7) The dwelling units allowed by extending Critical Area acreage are built in the extended area, not in the original Critical Area, unless the extended area has greater habitat or water quality value (e.g., a Natural Heritage Area, sensitive wetlands) than the original Critical Area.

PART C: Supporting Reasons for Extending the Critical Area

A proposal may include the following reasons for extending the Critical Area to a particular boundary when the primary reasons in Part B are satisfied. Supporting reasons cannot be the sole reason for extensions.

Consistency Guidelines

1) The proposed extension is completely or mostly surrounded by the Critical Area (e.g., an inholding).

2) The proposed extension extends the Critical Area to the limits of parcel(s) partially inside the original Critical Area.

DEPARTMENT OF NATURAL RESOURCES

MEMORANDUM OF UNDERSTANDING

Authority: Natural Resources Article, Section 8-1814, Annotated Code of Maryland; COMAR 14.19.03 through .07

THIS AGREEMENT, entered into this 19 day of December, 1989, by and between the

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE BAY CRITICAL AREA COMMISSION
275 West Street, Suite 320
Annapolis, Maryland 21401
hereinafter called "Commission"

and the

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
BOATING ADMINISTRATION
WATERWAY IMPROVEMENT PROGRAM
905-A Commerce Road
Annapolis, Maryland 21401
hereinafter called "Waterway Improvement"

WHEREAS, the Commission is responsible for guiding local jurisdictions in developing programs for the Critical Area and for establishing regulations for development undertaken by State and local agencies which has not been subject to approval by a local jurisdiction with an approved Critical Area Program, and

WHEREAS, Waterway Improvement is responsible for the dispersement of Waterway Improvement funds for projects that benefit the boating public within the State of Maryland, and

WHEREAS, Waterway Improvement undertakes a large number of its projects within the Critical Area which is defined as all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides of the Chesapeake Bay and its tributaries, and

WHEREAS, the Commission is vested with the authority to approve, deny or request modifications to certain classes of proposed development based on an assessment of the extent to which the project conforms with COMAR 14.19.05., and

WHEREAS, State agencies may seek General Approval from the Commission for programs or classes of activities that result in development on State-owned lands in the Critical Area.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained be it agreed by and between the parties hereto as follows:

ARTICLE I GENERAL SCOPE OF MEMORANDUM

This memorandum constitutes an agreement between the Commission and Waterway Improvement to establish guidelines which Waterway Improvement will abide by when planning projects within the Critical Area and for the Commission to grant General Approval for programs or classes of activities that fall within the parameters established in Attachment A: "Guidelines for General Approval."

ARTICAL II - DETAILED SCOPE OF MEMORANDUM

A. Waterway Improvement Agrees:

1. To consult with the Commission in the initial planning stages on proposed projects which may be significantly affected by the Critical Area criteria. It will submit to the Commission a map showing the project site location, a conceptual drawing of the proposed development and a short description of work to be done.
2. To submit to the Commission for review and comments, a list of projects located on State lands contained in the annual capital budget once they are approved by the Legislature. The list will designate which projects qualify for general approval, as established in Attachment A: "Guidelines for General Approval."
3. To proceed with projects applied for under the general approval only after Commission affirmation has been received.
4. To explain to the Commission why certain projects do not meet the general approval criteria and to submit them individually for Commission review and approval. The submissions shall include a description of the project, site plans, and findings that the development is consistent with the relevant Critical Area criteria. The procedure to be followed is that outlined in COMAR 14.19 and explained in Attachment C: "Procedural Guidelines for State Agencies Proposing Development on State-owned Lands."

B. The Commission Agrees:

1. To provide comments to Waterway Improvement on the effects of the criteria on proposed development during the initial planning stages.

2. To notify Waterway Improvement of receipt of the list of proposed projects in the annual capital budget that have been approved by the Legislature within 10 days of receipt by the Commission.
3. To respond to Waterway Improvement within 60 days of receipt of the above-mentioned list regarding approval of the assessment of project qualification on general approval and granting authorization to proceed with submission of those not qualifying for general approval.
4. To grant general approval to Waterway Improvement for the classes of activities that fall within the parameters established in Attachment A of this Memorandum.
5. To allow certain projects which do not strictly adhere to the General Approval Guidelines established in Attachment A, but in which the differences are minor, to be submitted under the General Approval procedure.
6. To follow the procedures outlined in COMAR 14.19 and explained in Attachment C of this Memorandum to approve (sometimes with conditions) or to deny proposed development based upon its consistency with the Critical Area regulations (COMAR 14.15 and COMAR 14.19).

ARTICLE III - MEMORANDUM REPRESENTATIVES

The following individuals shall have authority to act under this Memorandum for their respective parties:

Commission Sarah J. Taylor
 Executive Director
 Chesapeake Bay Critical Area Commission
 275 West Street - Suite 320
 Annapolis, Maryland 21401
 Phone: (301) 974-2426

Waterway
Improvement Robert P. Gaudette
 Director
 Waterway Improvement Program
 Boating Administration
 905-A Commerce Road
 Annapolis, Maryland 21401
 Phone: (301) 841-5607

ARTICLE IV - MODIFICATIONS TO SCOPE

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

ARTICLE V - MERGER

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

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

State of Maryland
Department of Natural Resources
Chesapeake Bay Critical Area Commission

By *John C. North, II* (SEAL)
Judge John C. North, II

Aligail Plume
WITNESS

State of Maryland
Department of Natural Resources
Boating Administration
Waterway Improvement Program

By *Bruce A. Gilmore* (SEAL)
Bruce A. Gilmore

Shelton C. Cream
WITNESS

Approved as to form and legal sufficiency

this 19~~th~~ day of December, 1989

[Signature]
Assistant Attorney General

ATTACHMENT A

GUIDELINES FOR GENERAL APPROVAL

OF

PROJECTS

SUBMITTED BY THE WATERWAY IMPROVEMENT PROGRAM

TO THE

CHESAPEAKE BAY CRITICAL AREA COMMISSION

INTRODUCTION

The Maryland Department of Natural Resources, Waterway Improvement Program is responsible for funding the construction and rehabilitation of public boating facilities on State-owned/leased lands within the State of Maryland. Typical projects undertaken by the Waterway Improvement Program include boat ramps, marinas, piers and other facilities that are of direct benefit to the boating public. Funding for these projects are obtained through boat titling levies and revenues from marine motor fuel taxes paid by the boating public. Because of the intrinsic nature of its operation, many projects funded by the Waterway Improvement Program on State-owned/leased lands are located within the Critical Area as defined in Natural Resources Article 8-1807.

The Chesapeake Bay Critical Area Protection Program was passed by the General Assembly in 1984 to address the impact of land use practices and policies in a designated 1,000 foot corridor around the tidal waters of the Chesapeake Bay and its tributaries. The Critical Area Commission is responsible for establishing criteria for guiding local jurisdictions in developing programs for the Critical Area and for approving, denying or requesting modifications to actions resulting in development by State or local agencies that have not been subject to project approval under an approved local program.

Under COMAR 14.19.05, State Agency Actions Resulting in Development on State-Owned Lands, the Critical Area Commission may grant General Approval To State Agencies for programs or classes of activities that result in development on State-owned lands in

the Critical Area. This document contains guidelines for General Approval of Projects proposed by the Waterway Improvement Program and located on State-owned/leased lands in the Critical Area.

DESCRIPTION OF PROGRAM/CLASS OF ACTIVITIES

The Waterway Improvement Program funds projects that are of benefit to the boating public, and therefore many of the projects contain facilities that are both water dependent and non-water dependent. Under the guidelines set forth in this document, all non-water dependent facilities will in so far as possible be located outside of the buffer as established in COMAR 14.19.05.09. As long as projects conform to the Standards set forth in this document (pages 4 through 6); projects applicable for General Approval are:

1. Renovations of existing structures in which the square footage is not expanded by more than 15%;
2. Those projects which may include additional facilities but are limited to activities which do not:
 - a) disturb habitat protection areas (excluding the buffer as established in COMAR 14.19.05.09);
 - b) increase the number of boat ramps by more than one;
 - c) increase the number of parking spaces by 50 or 100%, whichever is less;
 - d) create a decrease in water quality (other than that which may occur during construction);
 - e) change or add to existing repair and/or maintenance facilities; and
 - f) change or add to fuel distribution or fuel sales; and
3. New projects that do not:
 - a) include slips;
 - b) have more than 100 parking spaces;

- c) provide repair and maintenance facilities;
- d) include fuel distribution or fuel sales;
- e) contain non-water dependent facilities which disturb the buffer resulting in a decrease in water quality or a loss of plant and wildlife habitat;
- f) disturb habitat protection areas, not including the buffer;
- g) contain more than two boat ramps; and
- h) propose develop on slopes which are greater than 15%.

DEVELOPMENT CONSISTENCY WITH COMAR 14.19.05.03-.14

Projects which are granted General Approval from the Critical Area Commission will be planned, designed and constructed in such a manner as to conform to all of the policies and requirements of the Critical Area Commission as set forth in COMAR 14.19.05. In addition to the guidelines listed in this attachment, the following Standards shall apply to all projects seeking General Approval.

Standards For General Approval

A. Buffer

1. Non-water dependent facilities, including comfort stations, small buildings and parking lots, will be located outside of the buffer. The only exceptions allowed will be those activities that:

- a) provide for stability or structural integrity of the shoreline (e.g. revetments or bulkheads);
- b) provide for necessary vehicular access to the water-dependent facility (e.g. access roads); and
- c) provide access for handicapped persons.

To offset any decrease in buffer function, natural vegetation including woody species will be planted on site within the buffer to improve water quality. If it is not feasible to plant in the buffer, an area of equal size will be vegetated on site within the Critical Area.

2. Stormwater from impervious surfaces within the buffer will be directed away from the waterway by use of diversions (e.g. berms, grassed and rocked waterways, etc.).

3. Whenever feasible, pervious surfaces (e.g. gravel, porous

paving and interlocking bricks) will be utilized in place of impervious surfaces.

B. Stormwater Management/Sediment and Erosion Control

1. Stormwater management structures will be designed to retain at a minimum, the first inch of rainfall.
2. Pursuant to Environmental Article 4-101 et. seq., Annotated Code of Maryland, sediment and erosion control plan approval will be obtained from the appropriate agency prior to construction.
3. Stormwater runoff will be directed to stormwater management structures (e.g. sediment ponds, retention ponds and infiltration ponds or ditches).
4. When constructing new bulkheads channelward of existing bulkheads, filter strips will be established with gravel or other pervious material between the existing and the new bulkhead.

C. Forestry Practices

1. Development activities will be designed and implemented to minimize destruction of trees and woody vegetation.
2. Live trees required to be removed within the buffer as a result of development will be replaced on not less than an equal area basis.
3. Areas cleared of trees and woody vegetation for development in the critical area (excluding the buffer) will be replaced on not less than an equal area basis.
4. No more than 20% of any area with trees or woody vegetation will be removed unless reforestation is conducted by the standards

described in Number 5 below.

5. Up to 30% of any area with trees or woody vegetation may be removed provided that 1.5 times the disturbed area is reforested in the Critical Area.
6. On sites where there are no trees or woody vegetation, planting will be conducted so that 15% of the site is in trees or woody vegetation.

D. Miscellaneous

1. Within the Critical Area, facilities will be clustered wherever possible.
2. For projects not in areas of intense development, impervious areas will be limited to 15% of the site.
3. Landscaping, for the most part, will be conducted with native plants and shade trees. In addition:
 - a) shade trees will be used for vegetative cover where appropriate, and
 - b) parking lot islands will be vegetated with native plants and shade trees.
4. All required Federal, State and local permits (e.g. grading, sediment and erosion control, stormwater management, wetlands and waterway construction) will be obtained prior to the commencement of construction.
5. All projects submitted for General Approval will adhere to COMAR 14.19.05.04, that is, those regulations dealing with water-dependent facilities.

ATTACHMENT B

PROCEDURE FOR SUBMITTING

TO THE

CHESAPEAKE BAY CRITICAL AREA COMMISSION

FOR

GENERAL APPROVAL

PROCEDURE FOR SUBMITTING WATERWAY IMPROVEMENT PROJECTS TO THE
CHESAPEAKE BAY CRITICAL AREA COMMISSION FOR GENERAL APPROVAL

Waterway Improvement will notify the Critical Area Commission of all proposed projects at an early stage in the project planning process. For proposed projects where site conditions or other factors raise special concerns regarding conformance with the Critical Area Criteria as set forth in COMAR 14.19.05, Waterway Improvement will consult with the Commission for review and comment prior to legislative approval of the annual capital budget.

After the annual capital budget is approved by the Legislature, a list of all legislatively approved projects and site maps for each project will be forwarded to the Commission. A short description of each project will be included with the list. The description will detail the scope and size of the proposed project. The above-mentioned list will designate which projects meet the general approval criteria as set forth in this document. The Commission will acknowledge receipt of the list within ten (10) days of receiving it. The Commission will then review the list and notify Waterway Improvement of its concurrence within sixty (60) days of receipt. Projects not included in the annual capital budget will be submitted to the Commission at an early stage in the project planning process, and will state whether the project meets general approval criteria or should be submitted for presentation to the Commission.

Proposed projects authorized for general approval will be submitted to the Critical Areas staff for review when designs are approximately 50% completed. The staff may request modifications to the 50% design drawings if they do not adhere to the guidelines set forth in this document. When all conditions have been met to the Critical Area staff's satisfaction, the Critical Area Commission Chairman will notify Waterway Improvement to proceed with the project.

Final site plans along with copies of the State & Federal Wetlands permits,

will be submitted to the Commission when the project design phase is completed.

*For additional information on the submittal process, please refer to Figure 1 and Attachment C.

ATTACHMENT C

PROCEDURAL GUIDELINES FOR COMPLYING WITH CRITICAL AREA COMMISSION REVIEW
OF STATE AGENCY ACTIONS RESULTING IN DEVELOPMENT ON STATE-OWNED LANDS

PROCEDURAL GUIDELINES FOR COMPLYING WITH
CRITICAL AREA COMMISSION REVIEW OF
STATE AGENCY ACTIONS RESULTING IN
DEVELOPMENT ON STATE-OWNED LANDS

COMAR 14.19 contains regulations for development projects in the Critical Area proposed by State and local agencies. It describes the procedures and criteria which the agencies must follow under the Chesapeake Bay Critical Area Law (NRA§8-1801-1816). The purpose of this paper is to clarify the process by which State Agencies (hereafter, "the Agency") will work with the Critical Area Commission ("the Commission") to receive approval for development (defined below) on State-owned land. It is intended to supplement the above-mentioned regulations and shall not preempt anything in this subtitle.

The regulations (COMAR 14.19.01) define development as:

- (a) the construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures;
- (b) any activity that materially affects the condition and use of dry land; or
- (c) any activity that materially affects the condition and use of land under water within the designated Critical Area.

Conceptual project planning phase

1) In the early, conceptual stages of planning development or in acquiring or disposing of land within the Critical Area, the Agency should familiarize itself with the findings and purposes of the Critical Area Law and with the regulations in COMAR 14.19. It should consider the effects of development on the water quality and the plant and wildlife habitat of the Chesapeake Bay and realize that it will be required to demonstrate that proposed actions are consistent with the criteria in COMAR 14.19.05.03-14. (Note that not all criteria will apply in every project.)

2) During this initial planning phase, the Agency should confer with Commission staff in order to clarify the regulations or for other assistance. When the Agency has drawn up a concept plan or at some other early stage in project planning (i.e., when there is something substantive to convey), the Agency should submit to the Commission a description of the proposed project and a preliminary site design sketch. A narrative addressing the requirements and recommendations specified in the criteria is also recommended in order to facilitate Critical Area review. Finally, the contact person from the Agency and the proposed time frame for the project should be specified. This constitutes the consultation mandated under COMAR 14.19.05.01D.

3) Commission staff will notify Commission members of receipt of the proposal and may contact certain Commission members in order to form a review committee for the project. A meeting with Agency staff may also be scheduled. Although the Commission staff does not speak for the Commission, it may make recommendations to the Agency prior to submission of the plan to Commission members. In accordance with COMAR 14.19.05.01E, the Commission shall submit to the Agency any comments it may have regarding the extent to which the proposed project appears to be in conformance with the criteria in COMAR 14.19.05. These comments shall not prevent the Agency from seeking funds, or from acquiring or disposing of lands.

4) In cases in which the proposed project is inconsistent with the criteria in COMAR 14.19.05, the Agency may wish to seek conditional approval for the proposed action. The Agency must determine whether the project meets the requirements for conditional approval (as outlined in COMAR 14.19.10.01B). Specifically, it must be prepared to demonstrate that the project provides substantial public benefits to the Chesapeake Bay Critical Area Program and that special circumstances exist that prevent the project from being conducted in conformance with the criteria. The Agency shall then justify its request for conditional approval by addressing the points in COMAR 14.19.06.01C. Subsequent procedure follows that outlined below with the additional requirement for a public hearing in the local jurisdiction in which the development would be located.

Submission of projects for approval

5) When the Agency feels that it is ready, and prior to the earliest occurring stage of plan development listed in COMAR 14.19.05.02B, it shall formally submit the development proposal to the Commission. The submission shall include the site plan, a written description of the development, and an explanation of findings demonstrating that the project is consistent with the criteria in COMAR 14.19.05.03-14. Thirty copies of the narrative sections and three copies of the site plan may be requested.

6) The Commission staff will have 5 days in which to determine whether the submission is complete and to notify the Agency. Once the determination of completeness has been made, the timed review period shall begin. As described in COMAR 14.19.07.04B & C, the Commission will, in most cases, have 30 days in which to review and give notice of decision to the Agency. Projects of substantial complexity and potential adverse impact on the Critical Area may require additional review time. Sixty additional days will be provided as long as the Commission notifies the Agency within 15 days of the receipt of the completed proposal. Finally, if the project will adversely affect a local jurisdiction's growth allocation or if a conditional approval is being requested, the Commission will be afforded 90 days in which to respond. The Agency will be notified if growth allocation is to be affected.

7) Agency staff may be invited to attend a Commission meeting (usually the first Wednesday of each month) in order to present the project to the full Commission. It will be asked to describe the development, showing the design plans developed thus far, and to answer any questions. A subcommittee of Commissioners will be assigned to review the project and to give recommendations to the full Commission.

8) The Commission will send a copy of the site plan and accompanying narrative to the head of the government in the local jurisdiction in which the project is located. It will also send copies to the local planning director. Comments will be solicited and must be received by the Commission within 15 days.

Commission review and decision-making

9) In order to carry out an informed review of the development proposal, the Commission may request a visit to the site. This will include the Commission subcommittee, a Commission staff member and the Agency staff assigned to the project. Agency staff should be prepared to give a tour of the site and to respond to any concerns that were raised at the Commission meeting. Alternatively, or in addition, the Commission may request a meeting with project engineers or architects to discuss some of the technical aspects of the plan.

10) In any case, the Commission subcommittee will meet in open session to discuss the proposal and to develop recommendations to be given to the full Commission regarding final approval. It may also conduct public hearings in the local jurisdiction and seek public comment on the plan.

11) The subcommittee will present its recommendations for approval, denial, or approval with conditions to the full Commission at its monthly meeting. Agency staff may choose to be present at the meeting in order to answer any further questions which arise. The Commission will vote on the proposal and the results of the vote will be sent to the Agency within 5 working days of the rendering of a decision. These will be in the form of a letter listing conditions made, if any, for approving the project, or reasons for denial.

Appeals

12) If a development proposal is denied by the Commission, the Agency may file an appeal within 30 days of receipt of the Commission's decision. The appeal should consist of a letter of explanation and/or technical materials specifically addressing the issues upon which the Commission based its denial of the project. Within 30 days of receipt of the appeal, the Agency will be given the opportunity to bring its case before the full Commission.

13) The Commission will notify the affected local jurisdiction of the appeal and will, once again, solicit comments. It will issue its final decision to the Agency in writing within 15 days of the reconsideration.

14) If necessary, and after the exhaustion of the above process, the State Agency or any other aggrieved party may bring an appeal or other appropriate civil action before the courts of the State.

CAC = CRITICAL AREA COMMISSION
 WWI = WATERWAY IMPROVEMENT PROGRAM
 CA = CRITICAL AREA
 GA = GENERAL APPROVAL

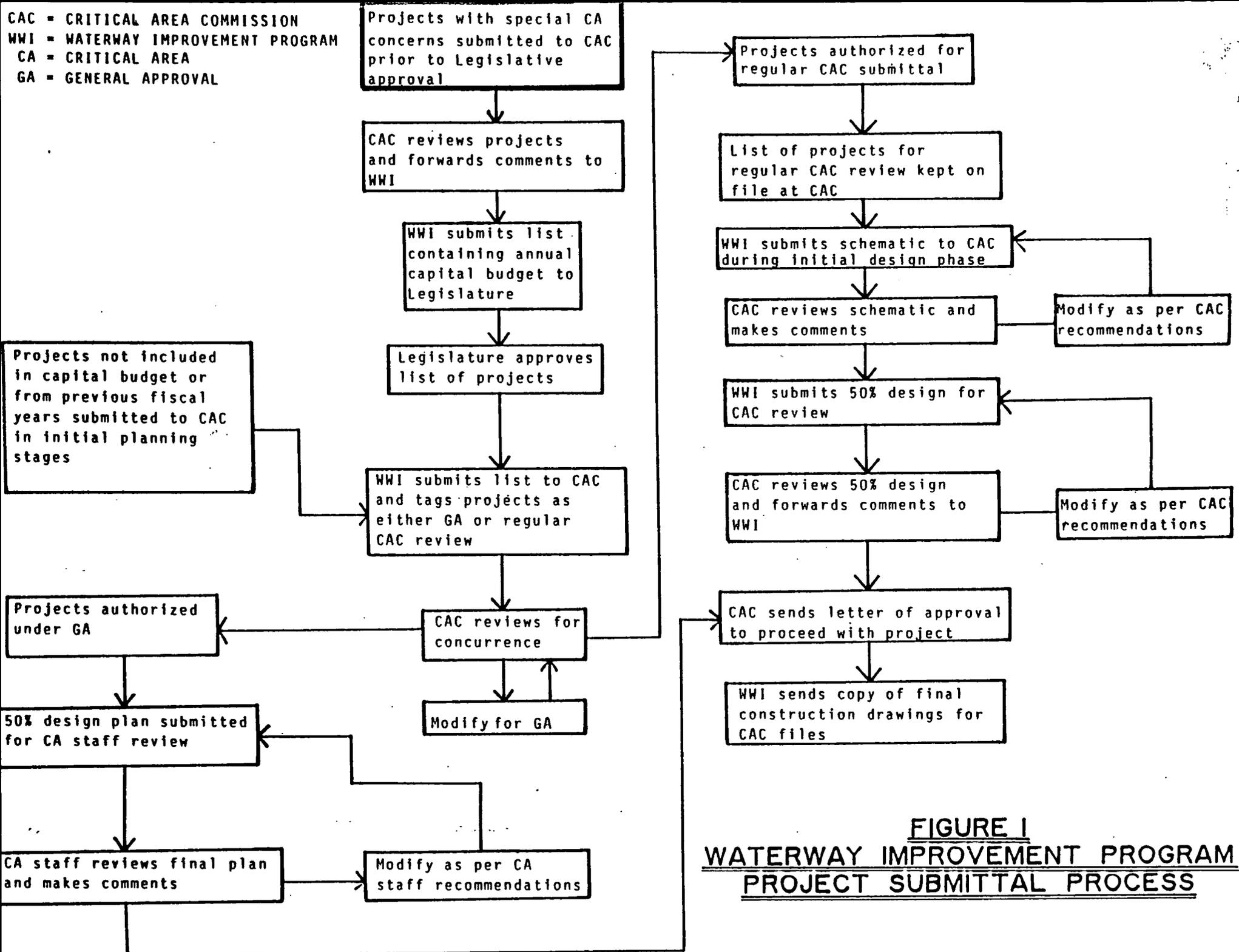


FIGURE 1
WATERWAY IMPROVEMENT PROGRAM
PROJECT SUBMITTAL PROCESS