Commission Meetings & Corresp. Mar 1990 MSA_S1830-68

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

February 23, 1990

Dear Commission Member:

The next meeting of the Chesapeake Bay Critical Area Commission is scheduled for March 7, 1990 at Great Oak Landing, Chestertown, Maryland. A map is enclosed for your use.

Also enclosed are the Agenda for the meeting, a draft version of the oil and gas regulations, (upon which our April 1990 meeting will be based) the Minutes from February 7, 1990, and several items of information that Governor Schaefer wanted to have distributed to all advisory committees, boards and commissions.

We will being with the subcommittee meetings at 9:30 in the morning, followed by lunch, and the regular full membership meeting in the afternoon. I look forward to seeing you at Great Oak Landing **and request that you call Ms. Peggy Mickler at 301-974-2426 by March 5th if you cannot attend.**

Very truly yours,

John C. North, II

Judge John C. North, II
Chairman

JCN/pgm

Enclosures

PRELIMINARY AGENDA

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Great Oak Landing
Chestertown, Maryland

March 7, 1990 1:00 - 4:30 p.m.

9:30 - 10:45	MOU - MDOT Subcommittee Meeting	
10:30 - 12:00	Project Evaluation Subcommittee	
10:30 - 12:00	Program Amendment Evaluation Subcommittee	
10:45 - 12:00	Special Issue Subcommittee	
12:00 - 1:00	Lunch	

AFTERNOON

1:00 - 1:10	Approval of the Minutes of February 7, 1990	John C. North, II Chairman
	PROGRAM AMENDMENTS AND IMPLEMENTATION	
1:10 - 1:30	Vote on Town of Chesapeake Beach - Map Amendments (4)	Samuel Bowling, Ch./ Susan Lawrence
1:30 - 1:50	Vote on St. Mary's Co. Map Amendment for Maryland Rock Industries	James E. Gutman, Ch./ Ren Serey
	PROJECT EVALUATION	
1:50 - 2:15	Vote on Kent Island Environmental Center	Katherine Langner, Ch./ Samuel Bowling, Ch./ Ren Serey
	REGULATIONS AND LEGISLATION	
2:15 - 2:45	Oil and Gas Draft Regulations	James E. Gutman/Lee Epstein/Sarah Taylor
2:45 - 3:15	Legislative Update	John C. North, II Chairman
3:15 - 3:30	Old Business	John C. North, II Chairman
	New Business New Members	Sarah Taylor Executive Director

Next Commission Meeting: April 4, 1990, Annapolis, Maryland

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
February 7, 1990

The Chesapeake Bay Critical Area Commission met at the Chesapeake Bay Critical Area Commission Office, 275 West Street, Annapolis, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

Roger Williams
Joseph Elbrich
Victor Butanis
Sheapard Krech, Jr.
James E. Gutman
Parris Glendening
Ronald Adkins
Larry Duket of MOP
Robert Schoeplein of DEED
Deputy Secretary Griffin of DNR
Deputy Secretary Cade of DHCD
Russell Blake
Robert Price, Jr.
William Corkran
William Bostian
Samuel Bowling
Ronald Hickernell
Rick Naylor of DOE
Fred Samadani for Secretary Cawley
Albert Zahniser

The Minutes of the Meeting of January 3rd were approved as written with the correction that Mr. Joseph Elbrich's title should read "Planning Administrator for Environmental and Special Projects of the Anne Arundel County Planning and Zoning Office".

Chairman North introduced Mr. Fred Samadani of the Department of Agriculture, and the new Commission member from Kent County, Mr. Roger Williams.

Chairman North asked Mr. Gutman and Mr. Serey to report on St. Mary's County mapping changes. Mr. Gutman reported that the Commission had received some revisions that had been requested by the County. He said that the revisions consisted of some technical errors addressed in the text, and some trivial mapping errors. Mr. Gutman said that the Panel agreed with staff that the changes would be appropriate, but there remained one mapping issue to be resolved.

Mr. Serey explained that the County's Program was approved by the Commission at the December meeting. The Law provided that between approval and local adoption, the jurisdiction may present changes to the Program and those changes would be treated as ratified changes. If the Commission does not approve or disapprove those changes within 30 days, they would be deemed approved. He said that there were administrative changes such as an official description of maps at a scale of 1 inch equaling 600 feet, Growth Allocation procedures which require sewer service for change to IDA for residential purposes, and deleting points in Growth Allocation competition for performance outside of the Critical Area.

Mr. Serey explained that the technical corrections were several that make the County's Program consistent with the criteria. He said that they were, essentially, changes in numbers and dates. The staff recommends that the Commission approve the text changes conditionally upon incorporation by the County of the correct dates for completion of Soil Conservation and Water Quality Plans.

Mr. Serey said that the map revisions concerned two parcels corrected to include small, qualifying portions of LDAs designated RCA through an oversight; two parcels changed from RCA to LDA after reevaluation according to approved mapping rules; and one parcel changed from LDA to RCA after reevaluation according to approved mapping rules. Mr. Serey then explained about the Maryland Rock parcel. He said that the parcel was being used for the processing of sand and gravel from the mine adjacent to the Critical Area. The parcel had been designated RCA and IDA at various times by the County. Mr. Serey then introduced Mr. Jeff Jackman of St. Mary's County Planning Office to describe the parcel and the County's proposed change from RCA to IDA.

Mr. Jackman explained that on February 6th, 1990, the St. Mary's County Commissioners voted to submit to the Commission a change from RCA to IDA for 22 acres. This acreage represents the water-dependent facility on the site. The facility consists of a wharf and barge-loading area, a conveyor belt, an area for stockpiling sand and gravel, and several ponds used to recycle wash water. The County's Critical Area mapping rules, approved by the Commission in December, 1989, provide that water-dependent facilities over 20 acres are mapped IDA.

Mr. Serey said that the Panel recommended that the proposal for IDA be rejected.

Mr. Gutman said that it was brought forward during the hearing that the public was opposed to the existing operations.

Mr. Zahniser said that the sand and gravel operation was depleating, so that the operations would revert to another use. The waterway that the operation fronts on is primarily agricultural and low density use. He said that the Panel felt that to have 22 acres in IDA use and potential would strain the waterway and the area.

Mr. Bostian asked if the operations would continue until it was fully depleated. Mr. Serey answered that that was unknown at this time, because the processing operations existed on the parcel, and material could be brought to the site from elsewhere.

Mr. Bowling answered that the operation would probably continue for some time. The rest of the area is relatively quiet and undisturbed.

Mr. Elbrich asked if the classification were changed would it prohibit that use. Mr. Jackman answered that it was the County's understanding that the continued operation of Maryland Rock would be subject to the zoning authorization supported by the courts and the Board of Appeals.

Mr. Douglas Brossman, representative for the property owner, said that entire 22-acre parcel needed to be considered as a whole, and that the use had been in existence since 1985.

Mr. Price asked how the County classified the land use. Mr. Jackman answered that it was referred to as a water-dependent facility because of the barge-loading operation. Mr. Price then asked if it would make a difference if there was no water-dependent facility. Mr. Jackman answered that, but for the barge-loading operation, it would be a sand and gravel operation permissable in the RCA.

Mr. Blake asked if the concern was what the future land use would be when the sand and gravel operation ceased. Mr. Serey answered that that was the concern of the citizens.

Chairman North suggested that the Commission broach the issue at the next Commission meeting when there would be adequate time to discuss the matter.

A motion was made and seconded that the Commission take the full 30-day period provided by the Critical Area Law, before reaching a decision on the St. Mary's County's proposed change. The Commission expressed an interest that the County consider a split LDA/RCA designation whereby approximately five acres surrounding the wharf area would be designated LDA and the remaining area would remain RCA. The Commission did not reject the proposal as submitted. The vote was 15 in favor with 1 opposed.

Chairman North asked Mr. Elbrich and Ms. Hairston to report on Harford County's Program amendment. Mr. Elbrich reported that a public hearing had been held on February 1st. He said that three amendments were being considered. They were a text change in the Program regarding policies for the dispersal of growth allocation, and two requests for growth allocation. Ms. Hairston reported that the changes in the Program language included incorporating several policies regarding distribution of growth allocation.

Ms. Hairston said that two projects had been submitted to the Commission for approval of growth allocation. The County had a total of 278 acres of growth allocation, 60 of which were used during Program development. The current proposal was for 57.8 acres of growth allocation. Both projects were part of a planned unit development started in the 1970's. She said that one project, Riverside Business Park, owned by Bata Land Company, required 31.8 acres of growth allocation and was proposed to change from RCA to IDA. She said that the area was on the outer periphery of the Critical Area, adjacent to an IDA within the Critical Area, but it met the intent of being in an RCA. It was an extension of an existing business park and was close to an existing IDA across Route 40. She said that the project would exceed the 10% pollution reduction required for stormwater in an IDA by upgrading an existing stormwater facility for the entire business park by 30%. The improvement would be realized at a site outside of the Critical Area, although stormwater would be managed onsite as well. Ms. Hairston said that Habitat Protection Areas were generally being avoided, although the forested riparian area being partially cleared could potentially be Forest Interior Dwelling Bird Habitat. No known threatened or endangered species were present. She said that the clearing would not further fragment the forest and the riparian habitat would be preserved. Half of the project is on cleared fields, but 14.8 acres of forest was expected to be cleared. The forest cleared would be replaced on a 1:1 basis, although this is not required for IDAs. Some highly erodible soil series were mapped in this area, but site-specific testing of the soils had shown that the K-value was below .37, indicating that this map unit was not highly erodible. An area of 10.2 acres, mostly nontidal wetlands, was being excluded from the growth allocation request. She said that the areas were adjacent to other undeveloped areas; those were owned by Bata Land Compny, and were unlilkely to be developed, but covenants had not been presented in the amendment package.

Ms. Hairston reported that the other project, Phase II Residential, required 26 acres of growth allocation and was changing from RCA to IDA. Eighty-two detached single family homes were proposed, and the average density within the Critical Area would be 3.2 dwelling units per acre. The houses would be clustered in groups of four, using a flag lot concept to minimize impervious surfaces. She said that it was adjacent to an existing IDA and would meet the 10% pollution reduction requiremnt for IDAs with a combination of onsite and offsite stormwater management. The parcel was completely forested, and 17 acres were expected to be cleared. She said that impervious surfaces were expected on 5.8 acres of the cleared area. Steep slopes were being avoided, although small inclusions of erodible

soils may be disturbed. The 300-foot Buffer to tidal waters for projects receiving growtrh allocation was not being met in all areas. Some of the proposed lots encroached on the Buffer, although no physical disturbance, such as houses, would be in the Buffer. The forested riparian area could be potential forest interior dwelling bird habitat, although no known threatened or endangered species were present. She said that all forest cleared would be replaced on a 1:1 basis, although it was not required in an IDA. Fourteen acres were being excluded from the growth allocation request; they were adjacent to a 65-acre scenic easement owned by Bata Land Company, but specific covenants had not been included in the amendments.

Ms. Hairston reported that the Panel recommended approval with the conditions that the covenants restricting development were placed on at least 20 acres of contiguous land in the Critical Area, containing and adjacent to the areas excluded from the two growth allocation requests, and that covenants restricting tree clearing were placed on the portion of lots within the 300-foot Buffer from tidal waters for the Phase II Residential project.

Mr. Duket asked why an IDA density was given to the Phase II project. Ms. Hairston answered that it was difficult to meet the impervious surface limitations, and that it did not meet LDA criteria.

A motion was made that pursuant to Natural Resources Article §8-1809(h), the Commission approve the proposed text changes to the Harford County Critical Area Program document, and approve 57.8 acres of growth allocation in Harford County on two parcels of land owned by Bata Land Company, subject to the conditions that covenants restricting development are placed on at least 20 acres of contiguous land in the Critical Area containing and adjacent to the areas excluded from the two growth allocation requests; and that covenants restricting tree clearing are placed on the portion of lots within the 300-foot Buffer from tidal waters for the Phase II Residential project. The vote was unanimously in favor.

Chairman North asked Mr. Ventre to report on the Dorchester County Program amendment and changes to the County Zoning Ordinance. Mr. Ventre reported that a hearing had been held in January on the County's growth allocation/land reclassification for a residential subdivision (Deep Water, Phase II). He said that the County was requesting the allocation or reclassification of 12.1 acres for a residential subdivision. The proposed subdivision was situated on a peninsula surrounded by waters of Fishing Creek and Church Creek. The eastern and western thirds

of the site lay within the Critical Area and were classified as LDA and RCA, respectively. The middle third of the site lay outside of the Critical Area.

Mr. Ventre said that the developers of Deep Water, Phase II proposed to subdivide 34.37 acres into 14 building lots and roadways. The request for growth allocation and reclassification applied to 12.1 acres at the western end of the site, which was presently classified as RCA. Land immediately adjacent to the north of the request was classified LDA. He said that the Phase II lots would be served by a single onsite private wastewater treatment system, presumably of the bermed infiltration pond type. The area indicated for the effluent pond would be situated on the middle portion of the site outside of the Critical Area lines. The average size of the 13 building lots was 2.09 acres.

Mr. Ventre reported that a staff site visit had been made. The area was very flat with no particular instances of habitat or forestation.

Mr. Schoeplein remarked that during the public hearing, there was no opposition from the public concerning the change in classification.

A motion was made and seconded that the Commission approve the local award of Growth Allocation and reclassification of land in the Dorchester County Critical Area awarded by the County Commissioners on 12.1 acres for the subdivision known as "Deep Water, Phase II". The vote was unanimously in favor.

Mr. Ventre then reported on Dorchester County's amendment to the local implementing ordinance. He said that this would add new language to the zoning ordinance, including a review procedure for non-subdivision growth allocation requests. He said that there was an eligibility procedure in the subdivision ordinance, but not one for a non-subdivision.

A motion was made and seconded that the Commission approve the proposed amendment to the Dorchester County Zoning Ordinance adding new language regarding the eligibility of non-subdivision development for growth allocation. The vote was unanimously in favor.

Chairman North then asked Ms. Pudelkewicz to report on the Town of Betterton's Program amendment and zoning ordinance. Ms. Pudelkewicz reported that the amendment addresses the process for review and approval of an application for growth approval and amendments to the Critical Area Program. Previously, the process called for the Planning Commission to submit amendments and

growth allocation requests to the Critical Area Commission, without prior approval by the Mayor and Town Council. She explained that this program amendment changed the process by having the Mayor and Town Council take action on an amendment/growth allocation and then submit it to the Critical Area Commission. She said that the amendment also indicated typographical and editorial corrections to the Bettertown Critical Area Program.

Ms. Pudelkewicz said that a hearing had been held and there was no public comment.

A motion was made and seconded that the Commission approve the Town of Betterton's amendment to its zoning ordinance. The vote was unanimously in favor.

Chairman North then asked Dr. Taylor to report on the Senate and House Bills before the Legislature. Dr. Taylor explained HB 684 which recognized that the Critical Area Commission had established a "1 du/20 acres density" in RCAs. It also recognized that for some jurisdictions, the density could be increased in the RCAs. The Bill recognized that there are severely eroding shorelines around the Bay and it provided authority to increase the dwelling unit density in RCAs to encourage the installation of shore erosion control measures.

Deputy Secretary Cade asked if there was a provision in the Bill that required shore erosion control. Dr. Taylor answered negatively. She said that the Special Issues Subcommittee did not recommend approval of the Bill as it encouraged dwelling units in a severely eroding area without requiring that shore erosion control measures be taken.

A motion was made and seconded that the Commission not support HB 684. The vote was 18 in favor with Deputy Secretary Cade and Mr. Naylor abstaining.

Dr. Taylor then reported on Senate Joint Resolution 12 and House Joint Resolution 16, which provide a tax credit program. The Senate Bill applies a property tax credit program, and the House Bill is a State income tax credit program. The intent was to create a tax credit program to be developed for landowners who, due to the implementation of the Critical Area Program and Nontidal Wetlands Program, have suffered hardships from not being able to use their real property in certain ways, including restrictions on development and timber harvesting. It provides that the Department of Assessments and Taxation develop a proposed program through which an individual or family can obtain a State tax credit for donating certain real property in the Critical Area to the State.

It was asked of Deputy Secretary Griffin what DNR's position to the Resolution was. Deputy Secretary Griffin replied that DNR had voiced opposition to these resolutions because the burden of managing a number of properties would be overwhelming and because there already exist ways in which individuals could donate development rights to their properties, such as to the Maryland Environmental Trust and other existing trusts throughout the State.

A motion was made and seconded that the Commission not support House Joint Resolution 16. The vote was 15 in favor with 3 opposed and Deputy Secretary Cade and Mr. Schoeplein abstaining.

A motion was made and seconded that the Commission not support Senate Joint Resolution 12. The vote was 15 in favor with 3 opposed and Deputy Secretary Cade and Mr. Schoeplein abstaining.

Dr. Taylor then reported on House Bill 125 which provided for a property tax credit on land that was subject to timber harvesting restrictions under the Critical Area Program and the Nontidal Wetlands Program. The property tax credit would be equal to 100% of that amount of the tax that would apply to the property that could not be harvested.

Mr. Hickernell felt that the Commission should not take a position on the Bill.

Deputy Secretary Griffin said that DNR was opposed to the Bill as it felt it set an unfavorable precedence of remuneration for resource protection.

Mr. Hickernell said that the Commission should be careful to not always be in oppositon to Bills proposing remuneration for loss to some of the public who may be economically impacted by the Critical Area Program, and the Legislature needs some leeway in order to respond to its constitutent's plight.

A motion was made and seconded that the Commission not take a position on HB 125. The vote was 9:8 in favor.

Dr. Taylor reported on Senate Bill 182 and House Bill 175 which provide for compensation to landowners for the financial loss resulting from certain prohibitions against the cutting or commercial harvesting of trees in the Buffer of the Critical Area. She said that one condition was that there must be a contract exsting on those trees that were to be harvested but

were prohibited from being harvested. The value of the trees at the time they would be cut would be the basis for compensation. The method of determining the value would be to conduct two appraisals. If the appraisers could not agree, then a court of competant jurisdiction was to make the decision.

Dr. Taylor said that the Special Issues Subcommitee had reviewed these Bills and felt that both should be opposed.

A motion was made and seconded that the Commission oppose House Bill 175 and Senate Bill 182. The vote was 14:3 in favor.

Chairman North reported on the meeting with the Joint Oversight Committee concerning the Commission's request to ask the Committee to reconsider the position it had taken with respect to the fashion by which criteria may be amended. The Commission had suggested that amendments to the criteria be made by its own action, which would include holding a series of regional public hearings, with review by the Administrative, Executive and Legislative Review Committee. The Special Issues Subcommittee felt that its original position was correct.

UNDER NEW BUSINESS

Dr. Taylor reported on several Bills that the Commission needed to review that would be presented in the Legislature:

HB 1060 - The Bill increases the impervious surface coverage in certain cases in the Limited Development Area and the Resouce Conservation Area from 15% to 25%.

HB 1061 - The Bill provides for a continued assessment and study of the Critical Area Program by the Joint Committee on Chesapeake Bay Critical Areas. This assessment is to occur every two years with a report of findings and recommendations to the Legislative Policy Committee.

HB 1062 - The Bill provides for a more simplified way in which the Commission can address changes proposed by a local jurisdiction to its Critical Area Program.

HB 1063 - The Bill provides that changes to the criteria can be made by the Commission; however, such changes will require the approval of the entire General Assembly during its next session, through Joint Resolution or if the Resolution is not approved, delay in their effect will be for one year with resubmittal required. Six public hearings are also required.

Dr. Taylor requested that any comments be submitted to the staff within the next week and a half.

A motion was made and seconded that the Commission approve the concept of House Bills 1060-1063, proposed for Legislation. The vote was 14 in favor with Deputy Secretary Cade, Deputy Secretary Griffin, and Mr. Schoeplein abstaining.

The Panel for Chesapeake Beach was chosen comprising James Gutman, Joseph Elbrich, Louise Lawrence, Skip Zahniser, and Sam Bowling as Chairman.

The Panel for Cecil County was chosen comprising Victor Butanis, Rick Naylor, Roger Williams, Louise Lawrence, and Bob Schoeplein as Chairman.

There being no further business, the meeting was adjourned.

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14.15.02 Development In the Critical Area

.01 Introduction.

The Commission is charged with the development of criteria that will accommodate growth, and also provide for the conservation of habitat and the protection of water quality in the Critical Area. In this Chapter, criteria are proposed for directing, managing, and controlling development (e.g., residential, commercial, industrial and related facilities) so that the adverse impacts of growth in the Critical Area are minimized. These criteria are based on the general policies found in Regulation 02.

.02 General Policies.

A. In order to recognize already existing land uses and development in the Critical Area, the Commission recognizes these three types of development areas:

(1) Intensely Developed Areas;

(2) Limited Development Areas; and

(3) Resource Conservation Areas.

B. Within each jurisdiction, intense development should be directed outside the Critical Area. Future intense development activities, when proposed in the Critical Area, shall be directed towards the Intensely Developed Areas.

← needs to be defined

C. Additional low intensity development may be permitted in the Limited Development areas, but shall be subject to strict regulation to prevent adverse impacts on habitat and water quality.

← needs to be clarified

D. Development shall be limited in the Resource Conservation Area, which shall be chiefly designated for agriculture, forestry, fisheries activities, other resource utilization activities and for habitat protection.

clarify what is meant

E. Local jurisdictions shall identify each of the three areas within their jurisdiction based on the criteria to follow, and develop policies and programs to achieve the objectives as proposed by the Commission.

F. Certain new development, or redevelopment activities or facilities, because of their intrinsic nature, or because of their potential for adversely affecting habitats or water quality, may not be permitted in the Critical Area except in Intensely Developed Areas under Regulation .03 of this Chapter, and only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that ~~there~~ will be ~~a net improvement~~ in water quality ~~to the adjacent body of water~~. These activities include, the following:

it ~~A net improvement~~ CONTRIBUTE TO

(1) Non-maritime heavy industry;

(2) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants; or

(3) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot Buffer.

(4) Local jurisdictions may preclude additional development activities that they consider detrimental to water quality or fish, wildlife, or plant habitats within their jurisdictions.

Re-examine intent of this section

Examine the intent of this section for large privately owned regional facilities such as Power companies

Clarify how this section affects public utilities that must cross through RCA/LDA lands

G. Certain new development activities or facilities, or the expansion of certain existing facilities, because of their intrinsic nature, or because of their potential for adversely affecting habitat and water quality, may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem. These include:

(1) Solid or hazardous waste collection or disposal facilities; or

(2) Sanitary landfills.

H. Existing, permitted facilities of the type noted in §G(1) and (2), above shall be subject to the standards and requirements of the Maryland Department of ~~Health and Mental Hygiene,~~ under COMAR Title 10.

Define if rubble fill are considered solid waste

Define Solid waste.

← the Environment.

.03 Intensely Developed Areas.

A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

(1) Housing density equal to or greater than four dwelling units per acre;

(2) Industrial, institutional, or commercial uses are concentrated in the area; or

(3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

C. In developing their Critical Area Programs, local jurisdictions shall follow these policies when addressing Intensely Developed Areas:

(1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;

(2) Accommodate additional development of the type and intensity designated by the local jurisdiction provided that water quality is not impaired;

(3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas under COMAR 14.15.09 and Resource Conservation Areas under Regulation .05 of this Chapter;

(4) Conserve and enhance fish, wildlife, and plant habitats, as identified in COMAR 14.15.09, to the extent possible, within Intensely Developed Areas; and

(5) Encourage the use of retrofitting measures to address existing stormwater

D. In developing their Critical Area Programs, local jurisdictions shall use the following criteria for Intensely Developed Areas:

(1) Local jurisdictions shall develop a strategy to reduce the impacts on water quality that are generated by existing development. This shall include an assessment of water quality and impacts to biological resources prompted by community redevelopment plans and progams and may further include a public education program, the implementation of urban best management practices, and the use of such techniques are as outlined in §D(9)(a), below.

(2) Development and redevelopment shall be subject to the Habitat Protection Area criteria prescribed in COMAR 14.15.09.

(3) ~~Stormwater.~~

(a) The local jurisdiction shall require, at the time of the development or redevelopment, technologies as required by applicable State and local ordinances to minimize adverse impacts to water quality caused by stormwater runoff.

Local jurisdictions shall use the current techniques available to reduce stormwater runoff from existing or new development

(b) In the case of redevelopment, if these technologies do not reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to redevelopment, then offsets shall be provided.

(c) In the case of new development, offsets as determined by the local jurisdiction shall be used if they reduce pollutant loadings by at least 10 percent of the predevelopment levels.

(d) Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that their benefits are obtained within the same watershed, and that the benefits can be determined through the use of modelling, monitoring, or other computation of mitigation measures.

(4) If practicable, permeable areas shall be established in vegetation, and whenever possible, redevelopment shall reduce ~~existing~~ levels of pollution.

(5) Areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, should be maintained and, if possible, encouraged to be established within Intensely Developed Areas.

however they should not occur in the Buffer unless they are water-dependent.

(6) Ports and industries which use water for transportation and derive economic benefits from shore access, shall be located near existing port facilities. Local jurisdictions may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or local jurisdiction and is consistent with the provisions of COMAR 14.15.03.03, 14.15.03.04, 14.15.03.05, 14.15.09, and other State and federal regulations.

(7) Local jurisdictions shall be encouraged to establish, with assistance from the State, programs for the enhancement of biological resources within the Critical Area for their positive effects on water quality and urban wildlife habitat. These programs may include urban forestry, landscaping, gardens, wetland, and aquatic habitat restoration elements.

(8) To the extent practicable, future development shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.

(9) When the cutting or clearing of trees ~~in forests and developed woodland areas~~ is associated with current or planned development activities, the following shall be required:

(a) Establishment of programs for the enhancement of ~~forest and developed woodland resources~~ such as programs for urban forestry (for example, street tree plantings, gardens, landscaping, open land buffer plantings);

(b) Establishment by regulation that development activities shall be designed and implemented to minimize destruction of ~~forest and woodland vegetation~~; and

(c) Protection for existing forests and developed woodlands identified as Habitat Protection Areas in COMAR 14.15.09.

.04 Limited Development Areas.

A. Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired. These areas shall have at least one of the following features:

(1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;

(2) Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;

(3) Areas meeting the conditions of Regulation .03A, but not .03B, above;

(4) Areas having public sewer or public water, or both.

B. In developing their Critical Area Programs, local jurisdictions shall follow these policies when addressing Limited Development Areas:

(1) Maintain, or if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;

(2) Maintain, to the extent practicable, existing areas of natural habitat; and

(3) Accommodate additional low or moderate intensity development if:

(a) This development conforms to the water quality and habitat protection criteria in §C, below; and

(b) The overall intensity of development within the Limited Development Area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and ~~land use currently~~ established in the area.

C. In developing their Critical Area Programs, local jurisdictions shall use all of the following criteria for Limited Development Areas:

(1) For all development activities in the Limited Development Areas, the jurisdiction shall require that the developer identify any environmental or natural feature described below, and shall meet all of the following standards of environmental protection:

(a) Criteria as provided for the Habitat Protection Areas in COMAR 14.15.09, and those for the Water-Dependent Facilities in COMAR 14.15.03.

(b) 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.

(c) All development activities that must cross or affect streams shall be designed to:

(i) Reduce increases in flood frequency and severity that are attributable to development;

(ii) Retain tree canopy so as to maintain stream water temperature within normal variation;

(iii) Provide a natural substrate for streambeds; and

(iv) Minimize adverse water quality and quantity impacts of stormwater.

(d) All development sites shall incorporate a wildlife corridor system that connects the largest undeveloped, or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in COMAR 14.15.09. Local jurisdictions shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts, and other organizations.

(2) For the cutting or clearing of trees in forests and developed woodland areas which are associated with current or planned development activities in the Limited Development Area, all jurisdictions shall:

(a) Require that the developer consider the recommendations of the Maryland Forest, Park and Wildlife Service when planning development on forested lands;

(b) Provide regulations that development activities be designed and implemented to minimize destruction of woodland vegetation; and

(c) Provide protection for forests and developed woodlands identified as Habitat Protection Areas in COMAR 14.15.09.

(3) For the alteration of forest and developed woodland in the Limited Development Area, the jurisdiction shall apply all of the following criteria:

(a) The total acreage in forest coverage within a jurisdiction in the Critical Area shall be maintained or, preferably, increased.

(b) All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis.

(c) That no more than 20 percent of any forest or developed woodland may be removed from forest use, except as provided in §C(4), below. The remaining 80 percent shall be maintained through recorded, restrictive covenants or similar instruments.

(d) Developed woodland vegetation shall be conserved to the greatest extent practicable.

(4) For replacement of forest and developed woodland, if more than 20 percent is removed from forest use, the following formula shall apply: a developer may clear or develop more forest than otherwise permitted to be disturbed, if the total forest area removed from forest use is not increased by more than 50 percent of the area permitted to be disturbed in §C(3)(c) above, provided that the afforested area shall consist of 1.5 times the ~~total surface acreage of~~ the disturbed forest or developed woodland area, or both.

additional amount cleared above 20%

(5) In addition, local jurisdictions shall adhere to the following criteria for forest and woodland development:

(a) Local programs shall make provision for surety to be provided by owners or developers in an amount acceptable to the local jurisdiction and suitable to assure satisfactory replacement as required by §C(4), above;

(b) Grading permits shall be required before forest or developed woodland is cleared;

(c) Forests which have been cleared before obtaining a grading permit, or that exceed the maximum area allowed in §C(4) shall be replanted at three times the areal extent of the cleared forest;

(d) If the areal extent of the site limits the application of §C(3), C(4), and C(5)(c), above, alternative provisions or reforestation guidelines may be developed by the local jurisdiction, if they are consistent with the intent of COMAR 14.15.05, to conserve the forest and developed woodland resources of the Critical Area. Alternative provisions may include fees-in-lieu provisions if the fee is adequate to ensure the restoration or establishment of an equivalent forest area;

(e) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent;

(f) All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants, or other protective instruments;

(g) The developer shall designate, subject to the approval of the local jurisdiction, a new forest area on a part of the site not forested; and

(h) The afforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments.

(6) Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies in §B, above.

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(7) For stormwater runoff, man-caused impervious areas shall be limited to 15 percent of the site. ← changed via 15% impervious amendment.

(8) Local jurisdictions should allow for modifications in road standards to reduce potential impacts to the site and Critical Area resources, where the reduced standards do not significantly affect safety.

(9) To reduce the extent of impervious areas and maximize areas of natural vegetation, cluster development shall be considered when planning for future development.

(10) Development may be allowed on soils having development constraints if it includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish, or wildlife habitat.

D. In developing their Critical Area Programs, the local jurisdictions shall refer to all of the following complementary existing State laws and regulations:

(1) For soil erosion and sediment control (COMAR 08.05.1): ← change to make current.

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

(b) Jurisdictions shall require ~~erosion control~~ as the basis of sediment control plans within the Critical Area. ← sediment capture techniques

(2) For stormwater runoff (COMAR .08.05.05): ← change to make current.

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

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

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

.05 Resource Conservation Areas.

A. Resource Conservation Areas are those areas characterized by nature-dominated environments ~~(that is,~~ wetlands, forests, abandoned fields) and resource-utilization activities ~~(that is,~~ agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features: ← such as ~~for example~~

(1) Density is less than one dwelling unit per 5 acres; or

(2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

B. In developing their Critical Area Programs, local jurisdictions shall follow these policies when addressing Resource Conservation Areas:

(1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;

(2) Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;

(3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and

(4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

C. In developing their Critical Area Programs, local jurisdictions shall use all of the following criteria for Resource Conservation Areas:

(1) Land use management practices shall be consistent with the policies and criteria for Habitat Protection Areas in COMAR 14.15.09, the policies and criteria for Agriculture in COMAR 14.15.06, and the policies and criteria on Forestry in COMAR 14.15.05

(2) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.

(3) Local jurisdictions are encouraged to develop tax or other incentive/disincentive programs to promote the continuation of agriculture, forestry, and natural habitats in Resource Conservation Areas.

(4) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provisions, and/or additional means to maintain the land area necessary to support the protective uses.

(5) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in §C(4), above, shall be allowed in Resource Conservation Areas. Additional land may not be zoned for industrial or commercial development, except as provided in Regulation .06, below.

(6) Local jurisdictions shall develop a program to assure that the overall acreage of forest and woodland within their Resource Conservation Areas does not decrease.

(7) Development activity within the Resource Conservation Area shall be consistent with the criteria for Limited Development Areas in Regulation .04.

(8) Nothing in this regulation shall limit the ability of a participant in the Agriculture Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than 1 dwelling unit per 20 acres.

.06 Location and Extent of Future Intensely Developed and Limited Development Areas.

A. Intensely Developed and Limited Development Areas may be increased subject to these guidelines:

(1) The area of expansion of Intensely Developed or Limited Development Areas, or both, may not exceed an area equal to 5 percent of the county's portion of the Resource Conservation Area lands that are not tidal wetlands or federally owned;

(2) When planning future expansion of Intensely-Developed and Limited Development Areas, counties in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.

B. When locating new Intensely Developed or Limited Development Areas, local jurisdictions shall use these guidelines:

(1) New Intensely Developed Areas should be located in Limited Development Areas or adjacent to existing Intensely Developed Areas;

(2) New Limited Development Areas should be located adjacent to existing Limited Development Areas or Intensely Developed Areas;

(3) No more than one half of the allocated expansion may be located in Resource Conservation Areas;

(4) New Intensely Developed Areas and Limited Development Areas should be located in order to minimize impacts to Habitat Protection Areas as specified in COMAR 14.15.09 and in an area and in a manner that optimizes benefits to water quality;

(5) New Intensely Developed Areas should be located where they minimize their impacts to the defined land uses of the Resource Conservation Area;

(6) New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11.

B. Local jurisdictions shall establish grandfather provisions as part of their local Critical Area Programs. Except as otherwise provided, local jurisdictions shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the local Critical Area Program notwithstanding the density provisions of this Chapter. A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of the program approval to be developed with a single family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of the approved local program:

(1) Any land on which development activity has progressed to the point of the pouring of foundation footings or the installation of structural members;

(2) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985, and land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval prior to June 1, 1984, provided that:

(a) The local jurisdiction develops as part of its program, procedures to bring these lands into conformance with the local Critical Area Program insofar as possible, including the consolidation or reconfiguration of lots not individually owned, and these procedures are approved by the Commission, or

(b) If any such land has received a building permit subsequent to December 1, 1985 but prior to local program approval, and is located in a Resource Conservation Area, that land must be counted by the local jurisdiction against the growth increment permitted in that area under COMAR 14.15.02.06, unless the Commission determines at the time of the program approval that steps had been taken to conform the development to the criteria in this Subtitle insofar as possible;

(3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval between June 1, 1984 and December 1, 1985; and

(4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiciton's final approval after December 1, 1985, provided that either development of any such land conforms to the criteria in this subtitle, or the area of the land is counted by the local jurisdiction against the growth increment permitted under COMAR 14.15.02.06.

C. For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in COMAR 14.15.02.

D. Nothing in this regulation may be interpreted as altering any requirements for development activities set out in COMAR 14.15.03 and 14.15.09 of this Subtitle.

site plan or

given site approval or site plan or

given site plan approval or site plan or

given site plan approval or site plan or

Issue: Uses in Resource Conservation Areas

Proposed Solution:

1) Clarified uses currently allowed in the RCA as specified in the Criteria

2) Add in two new uses in the RCA:

(a) Dwelling units existing as of 12/1/85 may be used for non-residential uses provided that those uses are incorporated by amendment into the local program; and

(b) Public recreational activities, with stated provisions.

Suggested location to insert in Criteria:

COMAR 14.15.02.05

See attached.

.05 Resource Conservation Areas.

A. Resource Conservation Areas are those areas characterized by nature-dominated environments (~~that is,~~ such as wetlands, forests, abandoned fields) and resource-utilization activities (~~that is,~~ such as agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features:

(1) Density is less than one dwelling unit per 5 acres; or

(2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

B. In developing their Critical Area Programs, local jurisdictions shall follow these policies when addressing Resource Conservation Areas:

(1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;

(2) Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;

(3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and

(4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

C. In developing their Critical Area Programs, local jurisdictions shall use all of the following criteria for Resource Conservation Areas:

(1) Resource utilization activities permitted in the Resource Conservation Area are: agriculture, forestry, fisheries activities, aquaculture and surface mining.

(2) Other activities permitted in the Resource Conservation Area are: passive recreation, such as nature study, and hunting and trapping, and nature-oriented education.

(3) Land use management practices associated ~~with these activities~~ with the activities in (1) and (2) shall be consistent with the policies and criteria for Habitat Protection Areas in COMAR 14.15.09, the policies and criteria for Agriculture in COMAR 14.15.06, and the policies and criteria on Forestry in COMAR 14.15.05, the policies and criteria for Water-Dependent Facilities in COMAR 14.15.03, and the policies and criteria on Surface Mining in COMAR 14.15.07.

9114-5206

(4) Public recreational activities are permitted in Resource Conservation Areas provided that:

(a) All structures, parking areas, on-site sewage disposal facilities, impervious surfaces, and any additional acreage needed to meet the development requirements of the Criteria are clustered within a development envelope, ~~and the area~~

which shall use Growth Allocation and shall be mapped as Limited Development Area or Intensely Developed Area.

(b) ~~Land~~ areas outside ~~not included within~~ the development envelope described in (a) above shall not be substantially altered. Development activities shall not occur in these areas.

(c) Specific uses and criteria permitted under § C(4) shall be incorporated ~~into a local jurisdiction's Program as a~~ as an amendment into a local jurisdiction's Critical Area Program.

(5) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provisions, and/or additional means to maintain the land area necessary to support the protective uses.

(6) Non-residential uses may be permitted in dwelling units existing as of December 1, 1985 provided that such uses are incorporated by amendment into a local jurisdiction's Critical Area Program.

Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, surface mining, or residential development not exceeding the density specified in §C(5), above, shall be allowed in Resource Conservation Areas.

Additional land may not be zoned or used for industrial development, except as provided in Regulation .06, below or for commercial development, except as provided in this section (C) or Regulation .06, below.

(7) Development activity within the Resource Conservation Area shall be consistent with the criteria for Limited Development Areas in Regulation .04.

(8) (e) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.

(9) (f) Local jurisdictions are encouraged to develop tax or other incentive/disincentive programs to promote the continuation of agriculture, forestry, and natural habitats in Resource Conservation Areas.

(10) (g) Local jurisdictions shall develop a program to assure that the overall acreage of forest and woodland within their Resource Conservation Areas does not decrease.

(11) (h) Nothing in this regulation shall limit the ability of a participant in the Agriculture Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than 1 dwelling unit per 20 acres.

10-20-01

Issue: Grandfathering projects that do not receive ~~site p~~ subdivision approval as the normal part of the development process.

Proposed Solution: See attached

Suggested location to insert in Criteria:

COMAR 14.15.02.07
See attached

shall establish a process to accommodate the growth needs of the municipalities.

B. When locating new Intensely Developed or Limited Development Areas, local jurisdictions shall use these guidelines:

(1) New Intensely Developed Areas should be located in Limited Development Areas or adjacent to existing Intensely Developed Areas;

(2) New Limited Development Areas should be located adjacent to existing Limited Development Areas or Intensely Developed Areas;

(3) No more than one half of the allocated expansion may be located in Resource Conservation Areas;

(4) New Intensely Developed Areas and Limited Development Areas should be located in order to minimize impacts to Habitat Protection Areas as specified in COMAR 14.15.09 and in an area and in a manner that optimizes benefits to water quality;

(5) New Intensely Developed Areas should be located where they minimize their impacts to the defined land uses of the Resource Conservation Area;

(6) New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11.

B. Local jurisdictions shall establish grandfather provisions as part of their local Critical Area Programs. Except as otherwise provided, local jurisdictions shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the local Critical Area Program notwithstanding the density provisions of this Chapter. A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of the program approval to be developed with a single family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of the approved local program:

(1) Any land on which development activity has progressed to the point of the pouring of foundation footings or the installation of structural members;

(2) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985, and land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval prior to June 1, 1984, provided that:

(a) The local jurisdiction develops as part of its program, procedures to bring these lands into conformance with the local Critical Area Program insofar as possible, including the consolidation or reconfiguration of lots not individually owned, and these procedures are approved by the Commission, or

(b) If any such land has received a building permit subsequent to December 1, 1985 but prior to local program approval, and is located in a Resource Conservation Area, that land must be counted by the local jurisdiction against the growth increment permitted in that area under COMAR 15.15.02.06, unless the Commission determines at the time of the program approval that steps had been taken to conform the development to the criteria in this Subtitle insofar as possible;

(3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval between June 1, 1984 and December 1, 1985; and

(4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiciton's final approval after December 1, 1985, provided that either development of any such land conforms to the criteria in this subtitle, or the area of the land is counted by the local jurisdiction against the growth increment permitted under COMAR 14.15.02.06.

C. For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in COMAR 14.15.02.

D. Nothing in this regulation may be interpreted as altering any requirements for development activities set out in COMAR 14.15.03 and 14.15.09 of this Subtitle.

14.15.03 Water

ports, the intake and outfall structures of power plants, water-use industries,

TO: Commission Members

FROM: Chesapeake Beach Critical Area Commission Staff and Panel

SUBJECT: Chesapeake Beach Map Amendments

DATE: March 7, 1990

DESCRIPTION: On December 21, 1989, the Town of Chesapeake Beach held a public hearing in reference to proposed Critical Area map amendments, at which no public comment was received. On January 18, 1990, the Critical Area Commission received a complete program amendment submission from the Town of Chesapeake Beach requesting that the four locations discussed below be designated as Buffer Exempt on the Town's Critical Area Maps.

Panel members Sam Bowling (Chairman), Joe Elbrich, Jim Gutman, Louise Lawrence, and Skip Zahniser were designated at the February 7, 1990 meeting of the Critical Commission. A panel hearing was held in the Town of Chesapeake Beach, on Thursday February 22, 1990. All panel members attended the hearing. There was no public comment at the hearing. John Hoffman, Town Engineer, described the locations that are being considered for map amendment and correction.

LOCATIONS:

(1) HARBOR ROAD AND HOWLIN PROPERTY, CAPTAIN'S QUARTERS - A portion of this IDA designated parcel borders a tidal wetland. Townhouses have been proposed for the upland portion of the site. The portion of the property that borders the wetland involves a portion of an existing parking lot and an area adjacent to the parking lot for a total of approximately 5,500 square feet. Existing conditions within that part of the Buffer are that of a partially vegetated field, with common herbaceous plants and small shrubs. The land has been created by dredged material, as indicated by soil boring information from the site. An unpaved road crosses the Buffer, which leads to a Town water treatment facility. There are no trees in this area. According to information provided from Coastal Resources Inc., the functions of the Buffer to provide wildlife habitat are being poorly met by the existing Buffer. The developers are proposing to replace 1-2 feet of the surface fill material with soils suitable to permit re-vegetation with indigenous woody plants and trees for a distance of 25 feet, along a 250 foot strip adjacent to the tidal wetland, which will provide for limited wildlife habitat. This proposed 25' wide vegetated strip will help only slightly to reduce nutrient and sediment runoff from the uplands, but is not expected to significantly improve the situation over existing conditions since it is so narrow. Engineering designs have been developed by Advanced Surveys, Inc., to address stormwater management, using a wetland-type retention pond adjacent to the 25' filter strip.

(2) BAYCREST SUBDIVISION, BLOCK 13 - The portion of this parcel being requested for Buffer exemption designation involves an area located along an inland, bulkheaded tidal basin which is adjacent to a portion of the property along the shoreline of the Chesapeake Bay currently designated as Buffer Exempt. The land in this area is not vegetated, except for scattered clumps of high tide bush growing through the deteriorating bulkhead. According to Coastal Resources, Inc., the functions of the Buffer to filter upland runoff and provide wildlife habitat are not being met by the existing buffer. Proposed development on the site involves removal of the part of the deteriorating bulkhead along the tidal basin shoreline, and regrading, stabilization, and planting with wetland vegetation to enhance habitat. The property is nearly devoid of vegetation and has been used as a parking lot, boat launching area, and garage for many years. The soil is compacted throughout nearly all of the site, making approximately 84% of the site impervious at this time. There is no wildlife habitat on the site, however the adjacent shallow waters provide some habitat for wading birds, ducks, small fish and mammals. The site is currently designated as IDA.

(3) NORTH CHESAPEAKE BEACH SUBDIVISION, BLOCK/LOTS - 1/16, 1/17, 2/10, 2/11, & 3/8 - This request for Buffer Exemption is located in an area that is subdivided into small parcels which are developed with single family homes. The portions of these lots next to tidal wetlands are maintained lawns with a few trees. Essentially there is no functioning buffer on these lots for either habitat provision or stormwater runoff reduction. This site is currently designated as LDA.

(4) FISHING CREEK - A justification for the mapping correction is documented on page (9)-12 of the approved Town's Critical Area Program, which states the justification for a Buffer Exemption designation along currently intensely developed, used, and bulkheaded portions of the Creek. The areas proposed to be mapped as Buffer Exempt are intensely used and bulkheaded, with the exception of the Naval boat dock. A permit has been issued by the Army Corps of Engineers to bulkhead this section of Fishing Creek as well.

COMMISSION ACTION NEEDED: The Commission is required to approve, disapprove, or approve with conditions the proposed amendments within 90 days of submisison, that is by April 19, 1990.

RELATIONSHIP TO STATE LAW/CRITERIA AND LOCAL PROGRAM: Each location has specific characteristics which determine the suitablility of the site for designation as Buffer Exempt, which will be discussed below. COMAR 14.15.09.C.(8) states that "...local jurisdictions may request an exemption of certain

portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential,industrial, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions stated in COMAR 14.15.09.B. The functions listed include (1) Provide for the removal or reduction of 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) Maintain an area of transitional habitat between aquatic and upland communities; (4) Maintain the natural environment of streams; and (5) Protect riparian wildlife habitat. According to the local Critical Area Program, an Exemption means an act of the Town Council, approved by the Critical Area Commission, that relieves an area of Chesapeake Beach from compliance with the full Buffer provisions, and subject to Development Standards in Buffer Exemption Area, listed on pages 53-57 of the Amendments to Chesapeake Beach's Zoning Ordinance, and on pages (9)-12 through (9)-14 of Town of Chesapeake Beach, Chesapeake Bay Critical Area Protection Program.

ISSUES: Panel members raised the concern that an undesirable precedent may be set by designating single family lots as Buffer Exemption Areas simply because they have lawns and trees existing within the 100' Buffer. If the lots in North Chesapeake Beach Subdivision are designated as Buffer Exempt, property owners would not be required to go through a variance procedure to redevelop their propoerty. However, they would be subject to the Development Standards for Buffer Exemption Areas as listed in the Zoning Ordinance Amendments to implement the Town's Critical Area Protection Program (See attachment).

STAFF RECOMMENDATION: The staff recommends approval of the Buffer Exemption designation for all of the proposed sites, based on the fact that the parcels meet the requirements of COMAR 14.15.09.C.(8), and that development and redevelopment standards are specified for areas so designated in the local program, which includes offsets. Conditions similar to these standards and required offsets may or may not be required in the case of a variance being granted for future alteration of these sites within the Buffer. The standards do no allow for the drastic intensification of development which currently exists in Buffer Exemption Areas.

PANEL RECOMMENDATION: To be stated during the Commission meeting.

STAFF REPORT

March 7, 1990

Jurisdiction: St. Mary's County

Issue: Program changes before local adoption

Recommendation: APPROVAL

Discussion:

The St. Mary's County Critical Area Program was approved by the Commission on December 6, 1989. Local adoption is required within 90 days of Commission notification of the approved action (December 13, 1989). Within the allowed period before adoption, the County is authorized to propose changes to its Program.

St. Mary's County has proposed the following changes:

1) Text clarification and map corrections as outlined in the attached Staff Report distributed February 7, 1990; and

2) Redesignation of 22 acres from RCA to IDA, based on corrected application of approved mapping rule.

The approved Critical Area Program provides that water-dependent facilities existing prior to December 1, 1985 and larger than 20 acres shall be designated IDA. The County submits that under this rule, a 22-acre portion of a site measuring approximately 35 acres within the Critical Area was incorrectly designated RCA. For purposes of this discussion, the parcel is referred to as the Maryland Rock property.

The 22-acre area for which the County proposes IDA designation includes: a wharf and barge-loading facility, sand and gravel processing facilities, stockpile areas, wash ponds and a conveyor system which transports processed material to the barges. This area is described by the County as a water-dependent facility.

Previous discussions and presentations before the Commission concerning the Maryland Rock property have involved several issues, including:

- whether the existing use was industrial, thereby qualifying the site as IDA;
- whether a conditional use permit for sand and gravel mining on adjacent land pertained also to this site; and
- assuming the processing facility existed as a legal nonconforming use, whether it could continue unhindered under either IDA or RCA designation.

Staff recommendation for APPROVAL is based on the County's determination that the 22 acres proposed for change constitute a water-dependent facility which qualifies as IDA. This change is consistent with the approved Critical Area Program.

Contact person: Ren Serey

RS:msl

STAFF REPORT

February 7, 1990

Jurisdiction: St. Mary's County

Issue: Program changes before local adoption

Recommendation: APPROVAL

Discussion: St. Mary's County proposes changes to its approved Critical Area Program as permitted under Section 8-1809(e) of the Critical Area Law. This section provides that a jurisdiction may propose changes after Commission approval but before local adoption. The Commission must approve the changes, or disapprove them in writing within 30 days of receipt. If no action is taken by the Commission, a proposed change is deemed approved. Changes may not be adopted locally without Commission approval.

The County's proposed changes were received February 7, 1990. The changes include the following:

1. Administrative additions: official description of maps at scale of 1 inch equals 600 feet, Growth Allocation procedures which require sewer service for change to IDA for residential purposes, and deleting points in Growth Allocation competition for performance outside of Critical Area.

2. Technical corrections: Areas may qualify for IDA designation at time of original mapping if residential density was three dwelling units per acre with water and sewer service; County amendment procedures; acknowledging that existing nonconforming uses may continue; intra-family transfers must contain qualifying acreage within Critical Area; required date for Soil Conservation and Water Quality Plans; policies for creating new agricultural land now consistent with

Criteria; definition of water-dependent facilities.

3. Map revisions: two parcels corrected to include small, qualifying portions of LDAs designated RCA through oversight; two parcels changed from RCA to LDA after re-evaluation according to approved mapping rules; one parcel changed from LDA to RCA after reevaluation according to approved mapping rules.

Contact person: Ren Serey

STAFF REPORT

January 7, 1990

Applicant: State Highway Administration

Project: Chesapeake Bay Environmental Education/ Visitors' Center

Recommendation: APPROVAL

Discussion:

The State Highway Administration proposes to construct an environmental education/visitors' center on Kent Island. The site is located on Queen Anne's County parkland and will be leased from the County. The park is designated by the County as Resource Conservation Area. The immediate surrounding area will remain in agricultural use.

Critical Area impacts of the project include:

- 11.3 acres of disturbed area during construction of the building, parking lot and access road;
- less than 15% impervious area;
- 50% afforestation within the Buffer; a 300 foot Buffer is provided, as required by Queen Anne's County;
- .22 acres of nontidal wetlands filled for access road; mitigation performed on-site;
- no disturbance of slopes over 15%;
- access within the Buffer provided by permeable footpaths and boardwalks; to be used for supervised educational purposes only;
- protection of historic waterfowl concentration area to be coordinated with Department of Natural Resources;
- stormwater runoff to be managed for water quality.

Contact person:

Ren Serey

STAFF REPORT

February 7, 1990

Jurisdiction: St. Mary's County

Issue: Program changes before local adoption

Recommendation: APPROVAL

Discussion: St. Mary's County proposes changes to its approved Critical Area Program as permitted under Section 8-1809(e) of the Critical Area Law. This section provides that a jurisdiction may propose changes after Commission approval but before local adoption. The Commission must approve the changes, or disapprove them in writing within 30 days of receipt. If no action is taken by the Commission, a proposed change is deemed approved. Changes may not be adopted locally without Commission approval.

The County's proposed changes were received February 7, 1990. The changes include the following:

1. Administrative additions: official description of maps at scale of 1 inch equals 600 feet, Growth Allocation procedures which require sewer service for change to IDA for residential purposes, and deleting points in Growth Allocation competition for performance outside of Critical Area.

2. Technical corrections: Areas may qualify for IDA designation at time of original mapping if residential density was three dwelling units per acre with water and sewer service; County amendment procedures; acknowledging that existing nonconforming uses may continue; intra-family transfers must contain qualifying acreage within Critical Area; required date for Soil Conservation and Water Quality Plans; policies for creating new agricultural land now consistent with

Criteria; definition of water-dependent facilities.

3. Map revisions: two parcels corrected to include small, qualifying portions of LDAs designated RCA through oversight; two parcels changed from RCA to LDA after re-evaluation according to approved mapping rules; one parcel changed from LDA to RCA after reevaluation according to approved mapping rules.

Contact person: Ren Serey

Note: [means delete]
Bold = means added

Revised 3/5/90

MEMORANDUM OF UNDERSTANDING

BETWEEN

MARYLAND DEPARTMENT OF TRANSPORTATION AND

THE CHESAPEAKE BAY CRITICAL AREA COMMISSION

AUTHORITY: Natural Resources Article, Section 8-1814, Annotated Code of Maryland; COMAR 14.19.05

THIS AGREEMENT, entered into this _____day of _____, 1990 memorializes the understanding reached by the Maryland Department of Transportation (hereafter, "the Department") and the Chesapeake Bay Critical Area Commission (hereafter, "the Commission").

THIS AGREEMENT is based upon the Findings of the General Assembly as noted in Natural Resources Article § 8-1801 (a)(1)-(9) which declares that:

(1) The Chesapeake Bay and its tributaries are natural resources of great significance to the State and the nation;
(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;
(3) The capacity of these shoreline and adjacent lands to withstand the continuing demands upon them, without further degradation to water quality and natural habitats is limited;
(4) National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region;
(5) Those portions of the Chesapeake Bay and its tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore-Washington metropolitan corridor;
(6) The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake Bay and its tributaries;
(7) The restoration of the Chesapeake Bay and its tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and

adjacent lands;
(8) The cumulative impact of current development is inimical to these purposes; and
(9) There is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habitats.

WHEREAS, the Department is responsible for the planning, funding, and administration of the State's transportation activities pursuant to the Transportation Article, and

WHEREAS, the Department **(to be completed by the Maryland Department of Transportation).**

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

WHEREAS, the Commission has established regulations for development undertaken by State and local agencies in the Critical Area which has not been subject to approval by a local jurisdiction with an approved Critical Area program, and

WHEREAS, the Commission is vested with the authority to approve, deny, or request modifications to State agency actions resulting in development on State-owned lands based on assessment of the extent to which the project conforms with COMAR 14.19.05, and to grant general approval for certain programs or classes of such activities,

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

GENERAL OBJECTIVE

This memorandum constitutes an agreement to clarify the terms and procedures by which the Department will conduct development activities in the Critical Area to ensure that they are consistent with the Commission's criteria for protecting the water quality and plant and wildlife habitat of the Chesapeake Bay. [In] **It** also sets out the process [which will] **to** be used **by** both parties in order for the Department to gain approval of the Commission for certain projects in the Critical Area. [Finally, this memorandum establishes the responsibilities of each of the parties relative to the Commission's general approval process.]

AFFECTED MODAL ADMINISTRATIONS IN THE MARYLAND DEPARTMENT OF TRANSPORTATION

1) State Highway Administration
2) Maryland Transportation Authority
3) State Aviation Administration
4) State Railroad Administration
5) Mass Transit Administration
6) Maryland Port Administration

THE DEPARTMENT AGREES:

1) To provide the Chairman of the Commission with a copy of the Maryland State Report on Transportation (SRT), consisting of the Maryland Transportation Plan and the Consolidated Transportation Program, each January.

2) To distribute the initial list of projects that the Commission has determined to be in the Critical Area to the various modal administrations within the Department for their review. Staff of the modal administrations shall consult with the Commission regarding the location, scale, status, etc. of the listed projects in order to confirm the need for Commission review. Within three weeks of receiving the Commission's list, the Department will submit a finalized listing of projects subject to Commission approval.

3) To consult with the Commission during the planning and design stages of all projects subject to Commission approval to clarify the effects that the Critical Area criteria will have on the proposed development. The Department will include Commission staff at inter-agency review sessions and at other meetings involving siting and impacts of projects in the Critical Area. The Department will also send the Commission all environmental reports and documents that are distributed to other State agencies for review. **As projects are reviewed by the staff of the Commission, there will be close communication (phone and letter) with the modal administration in discussing the information or in requesting more information.**

4) For all projects impacting the Critical area a monitoring program will be mandated. Every affected water body will be sampled for Total Suspended Solids on a quarterly basis beginning on the date the project is listed in the Consolidated Transportation Program. Results will be tabulated just prior to the start up of the project to obtain the base load prior to construction. In the course of construction excedence of this base load will be prohibited - penalties will be imposed for violation by the contractor.

[4)] **5)** When design is 50% completed or when all information required by the Commission and listed in Appendix A is available, whichever is sooner, to submit to the Chairman of the Commission site plans, a Critical Area Report, and a request for Commission approval. The report shall include all the requested site

information (in Appendix A), findings which demonstrate that the development is consistent with the Critical Area criteria, and the timeframe for project design and construction.

[5)] **6)** To notify the Chairman of the Commission of any changes in the plans as approved[.] **or of changes that occur during construction of the project.** Input will be sought from Commission staff and recommendations, if any, will be [considered.] **adopted.**

[6)] **7)** To send a copy of the Notice to Proceed to the Chairman of the Commission three weeks prior to initiating construction of projects.

[7)] **8)** To notify the Commission of projects not listed in the Maryland State Report on Transportation, **but which occur in the Critical Area,** [to consult with Commission staff as to the effects of the Critical Area criteria,] and to follow the approval process as outlined in this MOU.

[8) To work with the Commission to develop a general approval agreement for certain classes of development. This may include projects involving rehabilitation or maintenance of existing facilities, repairing of roads, installation of traffic signals, signs, navigational equipment, etc. and some of the State Highway Administration projects designated as Categorical Exclusions. The request for general approval will define the scale, scope, and nature of projects to be included, and this will be determined through joint consultations between the Department and the Commission. The general approval document will also include an assessment of the extent to which the proposed projects will be consistent with the criteria in COMAR 14.19.03-.14 and a process by which development planning, design, and construction will occur.]

9) That until a general approval request has been granted by the Commission, all development projects shall be submitted to the Commission for approval following the procedures described above and in COMAR 14.19.05.

THE COMMISSION AGREES:

1) To review the Maryland State Report [of] **on** Transportation submitted to it in January, and to determine which projects lie within the Critical Area and require Commission approval. The Chairman will, within 2 weeks of receipt of the SRT, send the Office of Transportation Planning a list of such projects.

2) To participate in meetings and inter-agency review sessions which deal with transportation projects in the Critical Area and to provide comment and guidance regarding the impact of the criteria on these projects.

3) To respond to the Department regarding the completeness of a project submittal within [five] **ten** working days of its receipt. If incomplete, Commission staff will notify the modal administration proposing the development of the type of additional information needed. Within five working days of when the submittal is determined to be complete, the Chairman of the Commission will send a letter stating its completeness to the director of the relevant modal administration with a copy to the Office of Transportation Planning.

4) To send copies of the site plan and Critical Area Report to the local jurisdiction(s) impacted by the project and to solicit comments from those jurisdictions.

5) To notify the Department of its decision to approve, deny, or approve with conditions the project within 30 days of receiving it or, if the project is substantial and/or has potential adverse impacts on the Critical Area, to make a decision with 90 days. If more than 30 days is required, the Commission shall notify the Department within 15 days of receiving the complete project submittal, regarding the timeframe needed.

6) To contact the appropriate modal administration and the Office of Transportation Planning by letter from the Chairman of the Commission if violations occur during construction or maintenance activities[.] **and the Commission is notified of the problem by the public.** The appropriate state or local enforcement agency will receive a copy of the communication, and Commission staff will continue to be involved until the problem is resolved. **Copies of complaints filed with the Office of Transportation Planning, that pertain to projects in the Critical Area, shall also be provided to the Critical Area Commission by the Office of Transportation Planning.**

[7) To grant general approval for certain classes of development to be determined jointly by the Commission and the Department and spelled out in a separate general approval request.]

7) No General Approval shall be granted until a reassessment of the project notification process takes place in 2 years.

MODIFICATIONS TO SCOPE

This Memorandum of Understanding may be amended at any time. Modifications must be made in writing and must be agreed upon by both by parties.

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.

Chesapeake Bay Critical Area Commission

_____

Judge John C. North II, Chairman

Maryland Department of Transportation

_____

Richard H. Trainor, Secretary

Approved as to form and legal sufficiency
this _____ day of _____.

_____

Assistant Attorney General

BOARD OF
ST. MARY'S COUNTY COMMISSIONERS
P.O. BOX 653 • GOVERNMENTAL CENTER • LEONARDTOWN, MARYLAND 20650
(301) 475-4464

March 7, 1990

Judge John C. North, II, Chairman
Chesapeake Bay Critical Area Commission
275 West Street, Suite 320
Annapolis, Maryland 21401

Dear Judge North:

On March 6, 1990, the Board of County Commissioners reconsidered its previous decision to designate a portion of that property designated as Parcel 123 on Tax Map 48 as IDA. By a vote of three (3) to one (1), with one (1) member absent, the County Commissioners voted to classify the entire parcel as RCA. On December 6, 1989 the Critical Area Commission approved the RCA classification for this parcel, and we would ask that you disregard our request of February 6, 1990 to classify a portion of the property as IDA.

In response to your letter of February 27, 1990, the Board of County Commissioners hereby amends its February 6, 1990 request for certain modifications to our Critical Area Ordinance; the accompanying page details the changes we now ask the Commission to consider.

Very truly yours,

CARL M. LOFFLER, JR., President

JOHN G. LANCASTER, Commissioner

RODNEY THOMPSON, Commissioner

March 6, 1990

Following is a description of additional modifications to the November 21, 1989 draft of the St. Mary's County Ordinance for the Chesapeake Bay Critical Area Program approved by the Board of County Commissioners. Language to be added is in bold face and underlined; language to be deleted is stricken through.

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PART FOUR: AGRICULTURAL PROTECTION ELEMENT

.....

St. Mary's County Soil Conservation District

.....

4. Identify and notify those farms in the critical area without approved plans by **May 13**, 1991 that they are in violation of this ORDINANCE, and forward that information to the Critical Area Commission and the Office of Planning and Zoning.

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.....

4. The applicant demonstrates that prior to December-1990 **May 13, 1991** a soil conservation and water quality plan will be prepared and implemented on all portions of the site which remain in agricultural use;

.....

STATE OF MARYLAND
CRITICAL AREA COMMISSION
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

MEMORANDUM

February 22, 1990

TO: Critical Area Commission

FROM: Elizabeth Zucker

SUBJECT: Oil and Gas Regulations

Attached, please find copies of the following:

1) Draft regulations for oil and gas development in the Critical Area;
2) The section of the Oil and Gas statute that gives us the mandate for the regulations.

Your review and comments on the draft regulations are respectfully requested. We will be discussing the regulations at the April Commission meeting. You will find handwritten notations in the margin of the document to alert you to certain items or issues that may be discussed at the meeting.

Over the past several months, the Special Issues Subcommittee has been examining various policies and issues that have arisen during the development of the regulations. Two major issues are described here:

1) Should drilling be completely prohibited within the Critical Area?
   The Subcommittee decided that the statute does imply that drilling could occur in the Critical Area; however, it should be only under very unique circumstances and very strictly regulated.
2) Which land-use designations are appropriate for drilling?
   It was decided that drilling is a resource utilization land use and would occur in any land-use designation.

These two issues may be reviewed at the April meeting. Please note that during the meeting, we would like to keep the discussion on an issue/policy level. Any typographical errors or wording changes can be provided to me at another time, at your convenience.

I take this opportunity to thank you for your cooperation and efforts in this matter. If you have questions on oil and gas technology or procedures, please let me know and I can provide you with reference material.

/jjd
Attachments

GAS + OIL STATUTE (Refer to Section 6-104.2 below)

§ 6-103. Authority of Department to adopt rules and regulations.

The Department may enforce effectively the provisions of this subtitle through the adoption and promulgation of rules and regulations. The Department may not prorate or limit the output of any gas or oil well. (An. Code 1957, art. 66C, §§ 676, 688; 1973, 1st Sp. Sess., ch. 4, § 1; 1988, ch. 777.)

Effect of amendment. — The 1988 amendment, effective July 1, 1988, reenacted the section without change.

§ 6-104. Drilling well and disposing of well's products — Permit required; impact study.

A person may not drill any well for the production or underground storage of gas or oil in the State without obtaining a permit from the Department of Natural Resources under the terms and conditions and on the forms the Department prescribes. The Department may require an applicant to submit environmental impact studies for the purpose of evaluating an application. The permit serves as the permit required under the provisions of Title 9, Subtitle 13 of the Environment Article, dealing with well drillers. A person may not dispose of any product of a gas or oil well without the necessary permits issued by the Department of Natural Resources or the Department of the Environment. (An. Code 1957, art. 66C, § 677; 1973, 1st Sp. Sess., ch. 4, § 1; 1977, ch. 185, § 1; 1983, ch. 583, § 2; 1987, ch. 306, § 15; 1988, ch. 6, § 11; ch. 777.).

Effect of amendments. — The 1983 amendment, effective July 1, 1983, substituted "Title 9, Subtitle 13 of the Health-Environmental Article" for "Title 8 of this article" in the second sentence.

The 1988 amendment, effective July 1, 1988, inserted "of Natural Resources" in the first sentence; inserted the present second sentence; and substituted "the necessary permits" for "a permit" and added "of Natural Resources or the Department of the Environment" at the end of the last sentence.

Editor's note. — Section 15, ch. 306, Acts 1987, effective July 1, 1987, provides that "the publishers of the Annotated Code of Maryland are directed to propose a plan for the correction of numerical and similar nonnumerical cross-references throughout the Annotated Code that refer to provisions found in the Environment Article." Pursuant to § 15 of ch. 306, appropriate changes have been made in the section.

Section 11, ch. 6, Acts 1988, approved Feb. 18, 1988, and effective from date of passage, provides that "the General Assembly of Maryland ratifies and enacts the corrections undertaken by the publishers of the Annotated Code pursuant to §§ 15 and 16 of ch. 306 of the Acts of the General Assembly of 1987."

§ 6-104.1. Same — Application for permit.

(a) *In general.* — An applicant for a permit to drill a well under § 6-104 of this subtitle shall submit an application in a manner satisfactory to the Department. The application shall include:

(1) Certification by the applicant that the applicant has notified, in writing, each landowner and leaseholder of real property that borders the proposed drillable lease area of the applicant's intention to file an application for permit to drill a well, provided that an applicant for a proposed well in an underground storage reservoir existing on January 1, 1988 need only notify the owners or leaseholders of property within 2,000 feet of the proposed well;

(2) A copy of the applicant's written notice to landowners and leaseholders under paragraph (1) of this subsection, which includes:

(i) A description of the location and boundaries of the proposed drillable lease area sufficiently detailed for the proposed operation to be easily located by local residents;

(ii) The location where the application is available for public inspection; and

(iii) Notice that any interested person may submit written comments and requests for a public hearing to the Department for at least 30 days after the date of the applicant's notice; and

(3) Written approval by the local zoning authority that all local planning and zoning requirements are met.

(b) *Hearing.* — If a public hearing is requested, the Department shall:

(1) Notify the applicant and any person who requested the hearing of the date, time, and location of the hearing; and

(2) Publish the date, time, and location of the hearing in a newspaper of general circulation in the area of the proposed operation.

(c) *Department action.* — (1) The Department shall:

(i) Approve or reject the permit application; and

(ii) Notify the applicant and any participants in the public hearing of the Department's decision.

(2) Within 30 days of the Department's decision, any person adversely affected by the decision may request an adjudicatory hearing.

(3) The Department shall conduct the hearing in accordance with the provisions of Title 10, Subtitle 2 of the State Government Article.

(d) *Judicial review.* — If an applicant or a person with an interest which is or may be adversely affected has participated in the administrative proceedings provided under subsection (c) of this section as an objector and is aggrieved by the decision of the Department to issue or deny a permit, the applicant or person shall have the right to judicial review in accordance with the provisions of Title 10, Subtitle 2 of the State Government Article. (1988, ch. 777.)

Editor's note. — Section 2, ch. 777, Acts 1988, provides that the act shall take effect July 1, 1988.

§ 6-104.2. Same — Chesapeake Bay Critical Area.

(a) *Additional requirements for permit.* — In addition to other applicable provisions of law, a person may not obtain a permit for the drilling of an oil or gas well under § 6-104 of this subtitle in the Chesapeake Bay Critical Area, as defined under § 8-1807 of this article, and may not drill for oil or gas exploration in the Chesapeake Bay Critical Area unless:

(1) The Chesapeake Bay Critical Area Commission provides written approval of the proposed drilling;

(2) The applicant completes an environmental impact study that includes a comprehensive analysis of the potential for any adverse environmental effects as a result of the drilling;

(3) The Department consults the governing body of the county in which the drilling will occur; and [redacted]

(4) The Department considers any written recommendations of the Chesapeake Bay Critical Area Commission and the governing body of the county in which the drilling will occur.

(b) *Commission to adopt criteria.* — By January 1, 1991, the Chesapeake Bay Critical Area Commission shall adopt criteria that assures the protection of land and water resources in the Critical Area and that shall apply throughout the Chesapeake Bay Critical Area for:

(1) Production of oil or natural gas on lands or waters leased by the State; and

(2) Exploration or production of oil or natural gas on any lands in the Critical Area.

(c) *Environmental impact study.* — (1) In addition to other applicable provisions of law, an applicant for any production or exploratory drilling that will occur on, in, under, or through the Chesapeake Bay Critical Area, including wells drilled outside the Critical Area by a method known as slant drilling that will pass through the Critical Area, shall complete and submit with the application an environmental impact study that addresses the potential for any adverse environmental effects on the Critical Area as a result of the drilling.

(2) (i) The Department shall forward a copy of the permit application and the environmental impact study referred to in subsection (c) (1) to the Critical Area Commission for its review and comment.

(ii) The Department shall consider and comment in writing on the objections and concerns of the Critical Area Commission before issuing a permit under this subsection. (1988, ch. 777.)

Cross reference. — See Editor's note to § 6-104.1 of this article.

§ 6-104.3. Same — Chesapeake Bay or tributaries.

Notwithstanding any other law, a person may not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. (1988, ch. 779.)

Editor's note. — Chapter 779, Acts 1988, designated this section as § 6-104.1, but since §§ 6-104.1 and 6-104.2 had previously been added by ch. 777, Acts 1988, the section added by ch. 779 has been designated as § 6-104.3 herein.

Section 2, ch. 779, Acts 1988, provides that the act shall take effect July 1, 1988.

§ 6-105. Duties of permittee; bond of permittee.

(a) *In general.* — Every holder of a permit to drill for gas or oil shall:

(1) Submit a completion report on forms to be supplied by the Department within 30 days after the drilling of a well has been completed;

(2) Submit cutting samples at the request of the Department;

(3) Notify the Department when a well is about to be abandoned;

(4) Seal and plug the well in a manner approved by the Department;

(5) Post a performance bond to the State in the amount of at least $10,000 for each oil or gas well, or at least $50,000 as a blanket bond for all of the permit holder's oil or gas wells, with good and sufficient surety, as provided in subsection (c) (1) of this section, conditioned upon compliance with the provisions of this subtitle; and

(6) Obtain and keep in effect liability insurance coverage in an amount not less than $300,000 for each person and $500,000 for each occurrence or accident to pay damages for injury to persons or damage to property caused by the drilling, production operations, or plugging of all of the permit holder's gas or oil wells in the State.

(b) *Regulations.* — The Department may adopt regulations to increase the minimum amounts of:

(1) Performance bonds under subsection (a) (5) of this section; and

(2) Liability insurance coverage under subsection (a) (6) of this section.

(c) *Bond; insurance.* — A holder of a permit to drill for gas or oil may:

(1) Post the performance bond under subsection (a) (5) of this section in:

(i) Cash;

(ii) Certificates of deposit;

(iii) Letters of credit from any bank or other savings institution; or

(iv) Any other good and sufficient security; and

(2) Provide for their own liability insurance under subsection (a) (6) of this section. (An. Code 1957, art. 66C, § 678; 1973, 1st Sp. Sess., ch. 4, § 1; 1988 ch. 777.)

Effect of amendment. — The 1988 amendment, effective July 1, 1988, designated the introductory language as subsection (a); rewrote subsection (a) (5); and added subsections (a) (6) (b), and (c).

§ 6-106. Location of wells.

(a) *Distance from property boundary.* — A well for the production or underground storage of gas or oil may not be drilled on any property nearer than 1,000 feet to the boundary of the property except by agreement with the owners of the gas and oil on adjacent lands.

(b) *When well may be located close to property boundary.* — On property on which it is impossible to locate a well the required distance from the boundary, and where no agreement with the owners of the gas and oil on adjacent lands has been made, a well may be located nearer than 1,000 feet to the boundary with the consent of the Department. However, when any permit to drill a well nearer than 1,000 feet to the boundary has been applied for, the Department shall notify every landowner, royalty owner, or leaseholder

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DRAFT

INTRODUCTION

In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Protection Law (Natural Resources Article §8-1801 - 8-1816). The Critical Area Law provides the State of Maryland with a regional, land planning strategy for protecting and enhancing the water quality and natural habitats of the Chesapeake Bay and its tidal tributaries. The quality and productivity of the Bay have declined dramatically over the past several decades as a result of cumulative human impacts from intensified land-use and development. The Critical Area Law recognizes environmentally sensitive land-use planning as an effective natural resource protection tool with great potential for improving the ecological integrity of the Chesapeake Bay through the management of development activities.

The 1984 Law defines the Critical Area as the waters of the Bay and its tributaries to the head of tide, the land under these waters, and all land and water within 1,000 feet of the mean high tide or the edge of tidal wetlands. As mandated by the Law, development within the Critical Area must proceed in a manner that minimizes adverse effects to the water quality and natural habitats of the Chesapeake Bay.

The 26-member Critical Area Commission was created under the Law and was directed to establish regulatory criteria for development within the Critical Area. Two sets of land-use criteria have been developed. COMAR 14.15.01 - 14.15.11, effective May 13, 1986, are regulations for private lands within the Critical Area. These criteria are implemented by local jurisdictions under Commission-approved local Critical Area Programs. COMAR 14.19.01 - 14.19.08 are regulations for development actions undertaken by State and local agencies and are implemented by the Critical Area Commission.

The Critical Area criteria encompass a wide range of development and land-use activities. However, when the criteria were first established, the Chesapeake Bay region, historically, was not an area of hydrocarbon exploration and production. Thus,

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the original criteria do not specifically address activities associated with oil and natural gas development. Therefore, in the late 1980's, when the Bay region became an area of oil and gas exploration interest, the Maryland General Assembly passed Natural Resources Article §6-103 - 6-114, the Gas and Oil Law. Under Section 6-104.6 of the Gas and Oil Law, the Critical Area Commission was directed to establish a specific set of criteria for protecting the Bay's water quality and natural habitats from activities associated with oil and gas exploration and production in the Critical Area.

The following regulations apply to oil and gas exploration and production activities proposed for private, local and State lands within the Critical Area. These regulations will become effective on .

COMAR 14.25.01
General Provisions
.01 Definitions

A. As used in these regulations, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Abandoned well" means a well no longer in use or a dry hole.

(2) "Access road" means a paved or unpaved route from a public road to the wellsite.

(3) "Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

(4) "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to

freshwaters in order to spawn.

(5) "Applicant" means the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, partnership, firm, association, public or private corporation, or any other entity that, under these regulations, requests permission to conduct oil and gas development activities and is responsible for such activities in the Chesapeake Bay Critical Area.

(6) "Areas of Intense Development" means those areas where residential, commercial, institutional, or industrial uses predominate and little natural habitat exists as designated for State-owned lands pursuant to COMAR 14.19.05.03.

(7) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, toxics, and sediment.

(8) "Blowout" means an uncontrolled flow of gas, oil, or other well fluids into the atmosphere. A blowout occurs when formation pressure exceeds the pressure applied to it by the column of drilling fluid.

(9) "Blowout prevention equipment" means devices attached to the top of the well casing which can be closed and shut off to control pressure at the wellhead.

(10) "Brine" means a solution containing appreciable amounts of NaCl and/or other salts (that is, salt water).

(11) "Casing" means steel pipe used to prevent liquids or gas from entering a well; to prevent the walls of the hole from sloughing off or caving; and to prevent produced liquids or gas from escaping from the well.

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(12) "Colonial nesting water birds" means herons, egrets, gulls, pelicans, terns, and glossy ibis. For purposes of nesting, these birds congregate (that is, "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

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

(14) "Critical Area" means all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. It includes:

(a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;

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

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

(15) "Cuttings" means fragments of rock produced in the wellhole by the abrasive or cutting actions of the drill bit and brought to the surface by the drilling fluid.

(16) "Directional drilling" means intentional deviation of a well hole from the vertical. With controlled directional drilling, it is possible to reach subsurface areas remote from the point where the drill bit enters the earth.

This is also called slant drilling.

(17) "Drilling fluid" means a fluid circulated within the wellhole to remove cuttings from the hole and to cool the drill bit. Fluids can consist of a mixture of clay, water, and other chemical additives. Air, gas, or water can be used as drilling fluid.

(18) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

(19) "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.

(20) "Environmental assessment" means an orderly evaluation of comprehensive, site-specific data to determine if a proposed project or action is likely to have a significant effect on natural resources and the environment.

NOTE: To avoid confusion all HPA definitions have been kept the same as blue/green regs - even nontidal wetlands despite new DNR regs

(21) "Explosives" means normal commercial explosives, blasting agents, and detonators.

(22) "Forest" means a biological community dominated by trees and other woody plants. This also includes forests that have been cut, but not cleared.

(23) "Forest interior dwelling birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

(24) "Gas" means all natural gas and other fluid hydrocarbons, not defined as oil, which are produced from a natural reservoir.

(25) "Habitat Protection Areas" means those terrestrial, aquatic and wetland natural resources of significance that have been designated for protection within the Critical Area. As described

in COMAR 14.25.03 of this Subtitle, Habitat Protection Areas include the minimum 100-foot Buffer from tidal waters, tidal wetlands, or tributary streams; threatened and endangered species and their habitats; and species in need of conservation and their habitats; nontidal wetlands; anadromous fish spawning streams; colonial waterbird nesting sites; historic waterfowl staging and concentration areas; forest interior dwelling bird habitat; riparian forests; large forested areas (100 acres or more); Natural Heritage Areas; plant and wildlife of local significance; and any areas identified in the future as one of the above.

(26) "Highly erodible soils" means those soils with slopes greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

(27) "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

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

(29) "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in wet habitats).

(30) "Intensely Developed Areas" means those areas where

residential, commercial, institutional, or industrial uses predominate and little natural habitat exists as designated for private and locally-owned lands under a local jurisdiction's Critical Area program and COMAR 14.15.02.03.

(31) "K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

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

(33) "Mean high water line" means the average level of high tides at a given location.

(34) "Natural Heritage Area" means any communities of plants or animals which are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

(35) "Natural vegetation" means those plant communities that develop in the absence of human activities.

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

(37) "Nonpoint source pollution" means pollution generated by diffuse land-use activities rather than from an identifiable or discrete origin or source. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge.

(38) "Nontidal wetlands" means those lands in the Critical Area, excluding tidal wetlands regulated

under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. These regulations apply to the Palustrine class of nontidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979) and as identified on the National Wetlands Inventory maps, or which may be identified by site survey at the time of application for an oil and gas development activity. These lands are usually characterized by one or both of the following:

(a) At least periodically, the lands support predominantly hydrophytic vegetation;

(b) The substrate is predominantly undrained hydric soils.

NOTE: A new resource identified for protection via DNR nontidal regs

(39) "Nontidal wetlands of special State concern" means those nontidal wetlands within the Critical Area having exceptional ecological or educational value of Statewide significance as designated by the Maryland Department of Natural Resources.

(40) "Off-road land operations" means non-marine land activities conducted where there are no existing roads.

(41) "Offsets" means structures or actions that compensate for undesirable impacts.

(42) "Oil and gas" means with respect to the expressions "oil and gas" or "oil or gas", the word "and" includes the word "or" and the word "or" includes the word "and", unless the context clearly requires another meaning.

(43) "Oil and gas development" means the construction or substantial alteration of oil and gas exploration and production facilities or structures, or any

activity associated with oil and gas exploration and production that materially affects the condition and use of natural resources within the designated Critical Area.

(44) "Oil and gas development activities" means human activities that result in disturbances to natural resources in conjunction with the construction or substantial alteration of oil and gas exploration and production facilities and structures.

(45) "Palustrine" means all non-tidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.

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

(47) "Pipeline corridor" means a linear area, including easements or right-of-ways, designated as a course or route for the location of a pipeline system.

(48) "Plat" means a map drawn to scale, showing specified projected and existing features.

(49) "Plugging" means the placement of physical or mechanical plugs into a well at specified intervals to prevent contamination of freshwater or oil and gas zones; or to prevent the interzone migration of fluids; or to prevent the flow of fluids to the surface.

(50) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of water-borne commerce.

(51) "Portable equipment" means devices that can be carried separately by one individual during an oil and gas development activity.

(52) "Reclamation" means the reasonable protection and rehabilitation of all land subject to disruption from exploration and production of an oil and gas resource.

(53) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.

(54) "Reserve pit" means a waste pit, usually an excavated earthen-walled pit, lined with plastic or other impervious material to prevent contamination of the soil or groundwater.

(55) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

(56) "Sediment and Erosion Control Plan" means a written plan with appropriate maps and cross-sections which describes how erosion and transportation of sediment is to be controlled and the time or schedule of the control activities.

(57) "Seismic operations" means the application of vibratory energy from any source to determine if conditions exist for the subsurface entrapment of oil or gas.

(58) "Separator" means an apparatus used for separating oil, gas, water, and other materials, as it is produced.

(59) "Shot hole" means a bore hole in which an explosive is placed for generating seismic waves during a seismic survey.

(60) "Species in need of conservation" means those plant, fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, §§ 10-2A-06 and 4-2A-03, Annotated Code of

Maryland.

(61) "Steep slopes" means slopes of 15 percent or greater incline.

(62) "Stormwater Management Plan" means a written plan with appropriate maps, and cross-sections which describes how the quality, volume and rate of stormwater runoff is to be managed and controlled and the time or schedule of the control activities.

(63) "Stratigraphic test well" means a hole drilled to gather engineering, geological or hydrological information including but not limited to structural, porosity, permeability and geophysical data.

(64) "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.

(65) "Transportation facilities" means anything that is built, installed, or established to provide a means of travel from one place to another.

(66) "Tributary streams" means those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7 ½ minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.

(67) "Underground storage" means the injection and storage of gas and oil in a geological stratum beneath the surface of the earth.

(68) "Utilities" means fixed structures associated with a wellsite that convey or distribute resources, wastes, or both, including, electric lines, water conduits, and sewer lines, but not including pipelines for transporting produced oil and gas from the wellhead.

(69) "Waterfowl" means birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from

aquatic plants and animals.

(70) "Well" as used in these regulations without a qualifying adjective means a hole drilled into the earth for the purpose of producing oil or gas, whether it obtains production or is a dry hole.

(71) "Wellsite" means the general area around a well which has been modified from its natural or existing condition, and includes the drilling or production pad, pits, pipe storage area, storage and fuel tank area, processing equipment sites, trailer locations, and vehicle parking areas.

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

.02 Explanation of Certain Terms.

Every provision of this Subtitle constitutes part of the "criteria" within the meaning and intent of Natural Resources Article §6-104.2 ~~(a)~~, Annotated Code of Maryland, whether that provision is termed a "definition", "general policy", "policy", or "criteria".

COMAR 14.25.02

Oil and Gas Development in the Critical Area

.01 Introduction

The Critical Area Commission recognizes oil and gas development as a resource-based land use with the potential for both economic benefit as well as significant adverse environmental effects. The Commission is charged with establishing criteria for protecting the water quality and natural habitats of the Critical Area from activities associated with oil and gas development. In this Chapter, criteria are presented for controlling and managing oil and gas exploration and production activities so that potential adverse environmental impacts resulting from these activities are avoided, or if necessary, minimized. The criteria are based on the General

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.02 General Policies

A. Definitions

(1) "Oil and gas exploration" means the preliminary phase of oil and gas development which includes activities conducted to locate potential oil and gas bearing geological strata. Exploration activities include, but are not limited to, geophysical surveys, stratigraphic test drilling and exploratory well drilling.

(2) "Oil and gas production" means those activities associated with the extraction and processing of oil and gas in commercial quantities. Production activities include, but are not limited to, the construction and maintenance of production wellsites, access roads, pipelines, storage, processing, and treatment facilities. For purposes of these regulations, production does not include activities that occur or structures that are utilized once oil and gas are processed or refined for distribution and use as marketable products.

NOTE: This statement set limits of our purview →

B. Criteria

(1) Oil and gas exploration and production structures and activities shall, to the extent possible, be located outside of the Critical Area.

(2) If the siting of an oil and gas exploration or production development project in the Critical Area is unavoidable because of locational requirements that cannot be satisfied outside of the Critical Area, the applicant responsible for the oil and gas development project shall seek written approval for the project from the Commission.

(3) Certain oil and gas development activities or facilities, because of their intrinsic nature, or because of their potential for adversely affecting

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water quality and natural habitats, shall not be permitted in the Critical Area. These activities include:

NOTE: No exceptions are provided for here →

(a) Subsurface injection for the disposal of brine or any other waste fluids in or under the Critical Area;

(b) New oil refinery facilities or oil and gas processing plants;

(c) Oil and gas production storage areas except those small facilities necessary to separate or treat oil and gas at a production wellsite, as approved by the Commission; and

(d) Ancillary facilities associated with oil and gas production pipelines, including, but not limited to, gas separation and dehydration plants, pump stations and compressor facilities, except those small facilities necessary for location at a production wellsite as approved by the Commission.

* PLEASE Read Carefully

This sets "arena" for allowing drilling to occur in C.A. under certain conditions

(4) Drilling activities for oil and gas exploration and production shall not be permitted in the Critical Area unless it is clearly and sufficiently demonstrated by an applicant proposing such activities that the public benefits derived from utilizing resources within the Critical Area outweigh potential risks of adverse environmental effects, and:

(a) An alternative location of the oil and gas development outside of the Critical Area will be more environmentally damaging; or

(b) An alternative location of the activity outside of the Critical Area is not possible or feasible as a result of:

(iii) Existing federal, State, local or private land-use restrictions, laws, or regulations; or

(ii) Technical constraints and hardships.

(5) An applicant's proposal to the Commission for conducting oil and gas exploration and production activities within the Critical Area shall be accompanied by all necessary information as required in COMAR 14.25.04 of this Subtitle, including a detailed alternative site analysis for proposed wellsites.

(6) The applicant shall provide the Commission with a signed affadavit that clearly indicates that the applicant is responsible for:

(a) The accuracy and completeness of all submitted information; and

(b) The proper implementation of all proposed plans and activities, including any conditions placed on the Commission's approval (if an approval is to be granted), to ensure that the water quality and natural habitats of the Critical Area are protected from potential adverse effects of the oil and gas development.

(7) An applicant that proposes directional drilling into or through the Critical Area from a wellsite located outside of the Critical Area shall provide the Commission with a written environmental assessment of any potential adverse effects from the directional drilling operations.

(8) All oil and gas development activities shall conform to criteria designated for Habitat Protection Areas as outlined in COMAR 14.25.03 of this Subtitle.

(9) The applicant shall acquire all applicable local, State and federal permits and approvals and coordinate all permitting activities with the Critical Area Commission.

(10) If certain local, State or federal permits have not been obtained by the applicant at the time of the Commission's final decision, then the acquisition of

such permits shall become a condition of the Commission's written approval, if an approval is to be granted.

(11) Seismic survey and drilling operations shall conform to requirements of Natural Resources Article §6-103-6-114, Annotated Code of Maryland and COMAR 08.11.08 The applicant shall obtain all applicable permits from the Maryland Department of Natural Resources prior to the commencement of seismic survey and drilling activities in the Critical Area.

.03 Geophysical Survey Operations

A. Definitions

(1) "Geophysical survey operations" means preliminary field studies conducted during the exploration phase of oil and gas development projects that are performed to obtain data on potential oil and gas-bearing geological strata within a particular region. Geophysical survey operations include geologic mapping, magnetic surveys, gravity surveys, magnetotelluric exploration, geochemical sampling and seismic surveys.

(2) "Survey lane" means the passageway or course traversed by field personnel for the transport and placement of portable equipment during geophysical survey operations.

B. Criteria

Geophysical survey operations shall be designed to avoid or, if necessary, minimize impacts to water quality and fish, wildlife and plant habitat in the Critical Area. For the development and implementation of survey operation plans, an applicant shall use all of the following criteria:

(1) Existing roads shall be utilized for survey operations involving heavy equipment and vehicles. No new roads shall be created for passage of

vehicles or heavy equipment.

(2) Foot travel, portable equipment and hand clearing of vegetation shall be utilized for off-road operations within the Critical Area.

(3) Clearing of vegetation shall be confined to the minimum area needed for foot travel of survey crews and safe transport and use of portable equipment.

(4) Survey lanes that are cleared of woody vegetation, shall be replanted or allowed to naturally revegetate.

(5) Survey operations involving heavy equipment, vehicles or explosives shall not be conducted in areas of slopes greater than 15%.

(6) Soil disturbance resulting from survey operations shall be restored to pre-existent or enhanced natural drainage patterns and conditions immediately upon completion of the survey operation.

(7) Survey lanes shall be aligned to avoid, to the extent possible, areas of wildlife activity including Habitat Protection Areas.

(8) Survey operations shall not be conducted within the Buffer, as described in COMAR 14.25.03.01 of this Subtitle.

(9) Survey operations involving heavy equipment, vehicles or explosives shall not be conducted during the breeding or spawning season of fish and wildlife within Habitat Protection Areas, as determined by the Maryland Department of Natural Resources and the local jurisdiction.

(10) Survey operations involving explosives, vehicles or heavy equipment, shall not be conducted within nontidal wetlands including a minimum 25-foot buffer to nontidal wetlands, unless otherwise approved by the Commission.

(11) Unless otherwise approved by the Commission under the advice of the Maryland, Forest, Park and

Wildlife Service, seismic survey operations shall not be conducted within 500 feet of historic waterfowl staging and concentration areas and anadromous fish spawning streams.

(12) Hazardous materials and contaminants that are necessary to geophysical survey operations shall be stored in a location outside of the Critical Area.

(13) For geophysical operations within the Critical Area, the applicant shall provide the Commission with an Environmental Assessment and Exploration Plan pursuant to COMAR 14.25.04 of this Subtitle.

.04 Wellsite Construction and Drilling

C. Definitions

(1) "Exploration drilling" means structures and activities associated with a well that has been drilled to obtain data on potential oil and gas-bearing geological strata in an unproved area.

(2) For purposes of these regulations, stratigraphic test well drilling is considered to be a type of exploration drilling.

(3) "Production drilling" means structures and activites associated with a well that has the potential to bear oil and gas in commercial quantities and that has been established or converted for such purposes.

(4) For purposes of these regulations, drilling of wells for underground storage of gas and oil is considered a type of production drilling.

(5) These regulations shall apply to all wellsites that are partially or wholly located within the Critical Area.

* Any comments?

D. Policies

In the design and implementation of exploration and production drilling activities, the applicant proposing such activities within the Critical Area shall assure that:

(1) All possible measures have been taken to minimize

adverse effects to water quality and fish, plant and wildlife habitat from clearing of vegetation, disruption of soils, construction of structures, and the presence of human activity and noise;

(2) Water quality and natural habitats are protected from all sources of pollution including, but not limited to, sedimentation and siltation, chemical storage, use and spillage, the storage and disposal of solid and liquid wastes and the production, storage or transportation of produced oil and gas; and

(3) Drilling activities are conducted in a manner that provides for timely and complete reclamation of a site.

E. Criteria.

Exploration and production drilling activities shall be designed, implemented, and maintained to first avoid, then if necessary, minimize adverse effects to water quality and natural habitat in the Critical Area. At a minimum, drilling activities shall be conducted according to the following criteria:

(1) To the extent feasible, existing roads shall be utilized for wellsite access.

(2) Construction of new roads shall be permitted only after the applicant has demonstrated to the Commission that additional roads are necessary for the establishment and maintenance of wellsite structures and drilling activities.

(3) Access roads, bridges, and utilities shall not be aligned to cross streams, the 100-year floodplain, and Habitat Protection Areas unless no other feasible alternative exists.

(4) All roads, bridges, and utilities that must cross a Habitat Protection Area or the 100-year floodplain shall be located, designed, constructed, and maintained so as to provide maximum erosion

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protection, minimize negative impacts to wildlife, aquatic life and their habitats, and maintain hydrologic processes and water quality.

(5) All roads, bridges and utilities that must cross or affect streams shall be designed to:

(a) Reduce increases in flood frequency and severity that are attributable to the project;

(b) Retain tree canopy so as to maintain stream water temperature within normal variation;

(c) Provide a natural substrate for streambeds; and

(d) Minimize adverse water quality and quantity impacts of stormwater.

(6) The wellsite construction pad shall be limited to the minimum area required to conduct drilling operations, store equipment and supplies, and contain waste material.

(7) Unless otherwise approved by the Commission, neither the wellsite nor any of its associated facilities shall be located within a designated Habitat Protection Area as determined by the Department of Natural Resources and the local jurisdiction.

(8) Drilling activities, including construction of a wellsite and access roads, shall be prohibited during the breeding season and times of high concentrations of wildlife populations in Habitat Protection Areas as determined by the Maryland Department of Natural Resources and the local jurisdiction.

(9) All structures and activities associated with wellsite access and drilling, including pipelines, shall be located:

(a) A minimum 500 feet from the Mean High Water of tidal waters or the landward edge of tidal wetlands and tributary streams;

(b) A minimum 150 feet from the upland limit of non-tidal wetlands, the top of the bank of streams,

Please comment Too strict or Not strict enough. → Based on average of similar setbacks in other States

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and the edge of the 100-year floodplain.

(10) The Commission may require that distances in Sections C(9)(a) and (b) of this Regulation, be increased to include areas of contiguous sensitive resources such as steep slopes and highly erodible soils whose presence or disturbance may result in significant adverse effects to water quality or aquatic habitat and resources.

(11) Development of the wellsite and access roads on slopes greater than 15%, as measured before development, shall be prohibited.

(12) For the design and construction of wellsites and access roads, the applicant shall utilize the following criteria to minimize destruction of forest vegetation:

Please read (12) carefully and comment

(a) The applicant shall consult with the Maryland Forest, Park and Wildlife Service when planning and constructing a wellsite and access roads located on forested lands.

(b) To the extent possible, oil and gas development sites, including reclamation activities, shall maintain or create a wildlife corridor system that connects the largest undeveloped, or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in COMAR 14.25.03 of this Subtitle. Wildlife corridors shall be maintained through the establishment of conservation easements, or similar protective instruments, to the extent practicable.

(c) Except as provided for in Section C(12)(d) of this Regulation, all forest vegetation cleared for a wellsite and access roads shall be

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replaced in the Critical Area at a total of not less than two times the areal extent removed and in accordance with the following schedule:

(i) (iii) At the time of wellsite construction, on not less than an equal area basis within an offset area designated by the applicant and approved by the Critical Area Commission; and

(ii) At the time of well plugging, on not less than an equal area basis, onsite, as part of a reclamation plan for the wellsite and access roads.

(d) The applicant may propose reforestation of less than an equal area basis for onsite reclamation of the wellsite and access roads at the time of well plugging pursuant to Section C(12)(c)(ii) of this Regulation, provided that:

(i) Additional reforestation is made in the offset area described in Section C(12)(c)(iii) of this Regulation, to ensure that a total of two times the area of forest removed has been replaced; and

(ii) The proposed reforestation in the offset area will provide the benefits of improved water quality and enhanced wildlife habitat within the Critical Area.

(e) At the time of reclamation, wellsites having less than 15% forested areas before oil and gas development, shall be planted to provide woodland cover of at least 15% of the site, either in an area onsite or within an offset area approved by the Commission.

(f) The applicant shall fully warrant the success of reforestation for at least three complete

growing seasons.

(g) All reforested areas shall be maintained to the extent practicable, through conservation easements, restrictive covenants, or other protective instruments.

(13) A Sediment and Erosion Control Plan shall be designed and implemented to prevent soil erosion and sedimentation resulting from wellsite and access road construction. The Plan shall be approved by the local Soil Conservation District or the Maryland Department of the Environment, as appropriate. At a minimum, the plan shall demonstrate:

(a) Minimal disturbance to soils for the construction and maintenance of roads and structures and the implementation of drilling activities;

(b) Proper removal and long-term storage of topsoil for wellsite reclamation;

(c) Location of soil disturbance away from steep slopes;

(d) Adequate use of temporary sediment control measures until permanent controls are established;

(e) Immediate restabilization of all exposed soils, including stored topsoil;

(f) Proper use of ground stabilization fabric and gravel, where appropriate;

(g) An adequate schedule for inspection and maintenance of erosion control measures throughout the entire drilling operation;

(h) Consistency with State and local sediment and erosion control requirements and regulations; and

(i) No significant adverse effects to water quality and aquatic habitat as a result of sedimentation and soil erosion from construction and drilling

activities.

(14) A Stormwater Management Plan shall be designed and implemented using Best Management Practices to contain all stormwater runoff onsite, with zero discharge of runoff from the wellsite. The Stormwater Management Plan shall be reviewed by appropriate officials from the Maryland Department of the Environment. At a minimum, the Plan shall include provisions for:

(a) Adequate use of temporary stormwater management measures during construction of roads and wellsites until permanent measures are established;

(b) Measures to contain all stormwater runoff onsite, including a system of bermed diversion ditches completely surrounding the wellsite;

(c) Adequate collection of contaminated stormwater runoff, including runoff from washing of equipment and vehicles, into portable, impervious containers and disposal offsite out of the Critical Area;

(d) Inspection and monitoring activities to ensure zero discharge of runoff from the site throughout the entire drilling operation; and

(e) Any additional measures for improving or maintaining water quality and aquatic habitat of surrounding waterbodies.

(15) The wellsite shall include a lined emergency reserve pit. The liner of the reserve pit shall be of a material of adequate strength to ensure that leakage of fluids or tearing will not occur.

(16) The reserve pit shall be utilized only for the temporary containment of drilling materials or other contaminants in the event of an emergency.

(17) Immediately following an emergency event, all contents of the reserve pit shall be collected in

impervious containers and transported to an approved facility outside of the Critical Area.

(18) Dikes shall be established around all storage tanks containing oil or other potential contaminants, regardless of location. The dike's capacity shall be two times the tank's storage volume.

(19) The tank storage area shall be impervious and constructed in a manner to ensure that contaminants do not move into surface or groundwaters of the Critical Area.

(20) The entire wellsite shall be adequately fenced to prevent access by wildlife and unauthorized persons.

(21) Fluids, including stormwater runoff, shall not be discharged from the wellsite into surface or groundwaters of the Critical Area.

(22) Drilling fluids shall consist of air, water, or brine (that is, no chemical additives) unless the applicant demonstrates that drilling is otherwise not technically feasible.

(23) All drilling wastes, including contaminated stormwater runoff, shall be collected in portable, impervious containers and immediately transported for disposal at an approved facility outside of the Critical Area. Drilling wastes, including the liner of the emergency reserve pit, shall not be buried within the Critical Area.

(24) Blowout preventor equipment, sufficient to meet any reasonably foreseeable geological condition or situation, shall be utilized on all wells drilled within the Critical Area.

(25) Blowout and spill containment and recovery equipment shall be located and maintained in a readily accessible area in or adjacent to all wellsites within the Critical Area.

(26) A Pollution Prevention and Contingency Plan for blowouts and spills as specified in COMAR

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14.25.04.02I of this Subtitle, shall be submitted by the applicant for approval by the Critical Area Commission. The Commission shall seek comments on the Plan from the Maryland Department of the Environment, Department of Natural Resources, and the local jurisdiction, including local fire prevention personnel.

(27) The Commission shall seek comments from the Maryland Department of Natural Resources and the Maryland Department of the Environment on the potential effects of drilling operations and techniques on groundwater resources within the Critical Area, including effects to groundwater from directional drilling that will enter or pass through the Critical Area from a wellsite located outside of the the Critical Area.

(28) A public hearing, as described in COMAR 14.25.05.02, may be held by the Commission to consider comments on all exploration and production drilling wellsites that may be wholly or partially located within the Critical Area.

Will the Commission want a hearing on all wellsites?

.05 Wellsite Reclamation

A. Policy

(1) The applicant shall prepare and implement a Reclamation Plan for all wellsites and access roads. The Reclamation Plan shall specify mitigation measures that will provide plant and wildlife habitat and water quality benefits equivalent to or greater than those derived from the areas that were disturbed or altered.

(2) The Reclamation Plan shall address immediate measures (that is, measures taken while the wellsite is in use), interim measures (for example, measures taken to convert an exploration wellsite to a production wellsite), and final measures (that is,

measures taken once an exploration or production well is finally abandoned and plugged).

B. Criteria

(1) An applicant shall use all of the following criteria in the development and implementation of a Reclamation Plan:

(a) All liquid and solid waste and debris shall be safely transported and disposed of within an approved facility outside of the Critical Area.

(b) All impervious surfaces, including access roads, shall be removed, unless otherwise approved by the Critical Area Commission and the local jurisdiction.

(c) Topsoil shall be replaced to ensure the healthy functioning of replanted vegetative communities.

(d) Pre-development drainage patterns shall be restored to original or enhanced natural conditions.

(e) A Sediment Erosion Control Plan and Stormwater Management Plan shall be submitted as part of the Reclamation Plan.

(f) The Reclamation Plan shall include a Reforestation Plan for the wellsite (including access roads) and an offset area as required under Regulation .04C(12)(a) through (g) of this Chapter. The Reforestation Plan shall be designed and implemented to meet the following minimum criteria:

(i) Revegetation measures shall provide for wildlife habitat enhancement, including the incorporation of a forested wildlife corridor system.

(ii) Unless otherwise approved by the Commission, under the advice of the Maryland Department of Natural Resources, native, local species of

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forest vegetation shall be replanted. Plantings shall include a mixture of canopy, understory, shrub, and groundcover species.

(iii) Under approval of the Commission, a Reforestation Plan may include areas designated for the establishment of forests through natural regeneration.

(iv) The applicant shall design and implement a monitoring program to ensure 80 percent survival of plants after three complete growing seasons. The monitoring program shall provide for replanting of dead or dying plants and removal of exotic or nuisance species.

(2) The Critical Area Commission shall seek comments on the Reclamation Plan from the Maryland Department of Natural Resources, the Maryland Department of the Environment, the local Soil Conservation District, and the local jurisdiction.

(3) The Commission may require that the applicant post a performance bond in an amount suitable to ensure compliance with reclamation provisions.

(4) Unless otherwise approved by the Commission, the applicant shall:

(a) Commence implementation of the final measures of the Reclamation Plan within 30 days following cessation of drilling operations; and

(b) Complete final Reclamation Plan measures and activities within 90 days following the cessation of drilling operations.

.06 Pipelines

A. Policies

(1) The following criteria apply to pipelines that are

This should be interpreted in light of the statute

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proposed for location in the Critical Area and that are associated with production of oil and natural gas within and under the Critical Area and any lands and waters leased by the State.

(2) Pipelines shall be considered the environmentally preferred method of transport of produced oil and gas within the Critical Area.

Policy

(3) Pipelines that must be located in the Critical Area shall be designed to cross through the Critical Area in the shortest and most direct route possible.

(4) An applicant proposing use of a pipeline system shall assure that all feasible measures have been taken to prevent and reduce environmental impacts to water quality and natural habitat from:

(a) The disruption of vegetation and soils during the routing of pipeline corridors and pipeline construction; and

(b) The release of chemicals as a result of pipeline spills or breaches.

(5) To reduce the need for future pipeline systems and thereby minimize cumulative environmental impacts from pipeline construction and operation, the applicant shall:

(a) Utilize existing pipelines and corridors where feasible;

(b) Construct new pipelines to be multiple-user, where feasible; and

(c) Restrict new pipeline construction to corridors that have undergone comprehensive, regional environmental review for technically feasible and environmentally preferred routing.

B. Criteria

An applicant shall utilize the following criteria in the design, location and operation of pipelines within the Critical Area.

(1) The applicant shall consider spill volumes,

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durations, and trajectories in relation to drainageways in selecting a pipeline corridor.

(2) Pipelines shall, to the extent possible, be located in or adjacent to existing roads, railroads, existing pipelines, or utility transmission right-of-ways.

(3) The applicant shall identify natural resources and habitat including all Habitat Protection Areas occurring along the proposed pipeline corridor.

(4) Pipelines shall be located to avoid Habitat Protection Areas, streams and the 100-year floodplain, unless no feasible alternative exists.

(5) Pipelines that must cross Habitat Protection Areas shall be located, designed, constructed, and maintained so as to provide maximum erosion protection; to minimize negative impacts to wildlife, aquatic life, and their habitats; and to maintain hydrologic processes and water quality.

(6) Pipeline corridors that must cross or affect streams shall be designed to:

(a) Reduce any increases in flood frequency and severity that are attributable to pipeline placement;

(b) Retain tree canopy so as to maintain stream water temperature within normal variation;

(c) Provide a natural substrate for streambeds; and

(d) Minimize adverse water quality and quantity of stormwater.

(7) All pipelines located in the Critical Area shall be buried with a minimum cover of 36 inches in soil.

(8) Pipelines that must cross surface waters shall be buried to a depth sufficient enough to avoid exposure by scouring, grounding of vessels, anchors, fishing and shellfish activities and any other potential obstacles or activities on the bottom of waters within the Critical Area.

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(9) The Commission shall require that the applicant utilize:

(a) Automatic shut-off valves, increased pipe thickness, corrosion protection, or other safety measures to minimize the amount of potentially spilled materials; and

(b) Any other special design or construction measures to best accommodate sensitive or fragile habitat.

(10) Herbicides or other potentially toxic materials shall not be used in the establishment or maintenance of pipeline corridors located within the Buffer.

(11) In the design, construction and operation of pipelines, the applicant shall utilize the following criteria to minimize destruction of forest vegetation:

(a) All forested areas within a pipeline corridor that are either temporarily or permanently disturbed during construction or operation of pipelines shall be replaced on not less than an equal area basis within the Critical Area.

(b) All forested areas of a pipeline corridor that must be cleared and be kept clear of forest vegetation for purposes of pipeline maintenance, shall be replaced in the Critical Area on not less that an equal area basis in an offset area approved by the Commission.

(c) Forested areas that occur within the minimum 100-foot Buffer or its extension, as described in COMAR 14.25.03.01 of this Subtitle, and which must be cleared and kept free of forest vegetation for pipeline maintenance, shall be replaced at a rate of two times the total surface area of forested area disturbed. Replacement of forested Buffer shall be made in

an offset area approved by the Commission.

(d) Offset areas for forest replacement, as designated by the applicant, shall include, in order of descending preference:

(i) Areas within the 100-foot Buffer or its extension;

(ii) An area that would create a wildlife corridor or enhance an existing wildlife corridor;

(iii) Areas designated for reforestation by a local jurisdiction under its local Critical Area Program; or

(iv) Other areas within the Critical Area.

(e) Locally native, forest vegetation shall be replanted, and shall include a mixture of canopy, understory, shrub and groundcover species.

(f) The applicant may propose reestablishment of forest through natural regeneration in certain areas, as approved by the Commission.

(g) The applicant shall be responsible for monitoring the pipeline corridor and offset areas to assess the success of reforestation. The monitoring shall be done on an annual basis until it has been determined that 80 percent of the vegetation has survived at least three complete growing seasons. Monitoring activities shall include replanting of dead or dying plants and removal of exotic or nuisance species.

(h) The Commission may require the posting of a performance bond by the applicant in an amount sufficient to ensure compliance with these provisions.

.07 Water Dependent Facilities

A. Definition

(1) "Water-dependent facilities" means those structures or works associated with oil and gas development that require location at or near the shoreline within the Buffer specified in COMAR 14.25.03.01 of this Subtitle. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.

(2) For the purposes of this Subtitle, water-dependent activities include, but are not limited to:

(a) Industrial or port-related facilities for the maritime transport of produced oil and gas; and

(b) Marinas and boat docking facilities associated with oil and gas development activities including:

(i) Staging areas for temporary storage and handling of equipment and materials for construction of a specific oil and gas development project; and

(ii) Facilities for oil spill containment and recovery operations.

(3) "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances as defined in COMAR 14.25.03.01 of this Subtitle.

B. Criteria

The following criteria apply to water-dependent facilities that are proposed for location within the Critical Area and that are associated with exploration and production of oil and natural gas within and under the Critical Area and any lands and waters leased by the State.

Please note in light of the statute

(1) New or expanded water-dependent facilities associated with oil and gas development may not occur in the Buffer of the Critical Area, unless it

can be shown that:

(a) Adverse effects on water quality, and fish, plant, and wildlife habitat are minimized; and

(b) In so far as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the Buffer.

(2) Industrial or Port-Related Facilities for Maritime Transport of Produced Oil and Gas.

NOTE: Do we want to limit marine transport facilities to IDA's or provide for other areas that could possible be more environmentally prefered after a comprehensive review. Should we require Growth Allocation in areas other than IDA? Should we be more/less restrictive with marine transport in general??

(a) New, expanded, or redeveloped water-dependent industrial or port-related facilities for maritime transport of produced oil and gas, or the replacement of such facilities, may only be permitted to occur in the Buffer in Areas of Intense Development or Intensely Developed Areas and only if:

(i) The facility is subject to the requirements of Section B.(1) of this Regulation; and

(ii) The area proposed for the facility has been exempted from the Buffer requirements by the local jurisdiction under its Critical Area Program as outlined by COMAR 14.15.09.01C(8) or by the Commission for State-owned lands under COMAR 14.19.05.09.B(8).

(b) The Commission shall consider proposals for a new marine transportation facility for produced oil and gas only after it has been clearly demonstrated that:

* (i) Current methods of oil and gas transport, including existing marine facilities are not adequate to meet a recognized public need for the transportation of oil and gas produced within the Critical Area;

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(ii) The proposed use of marine transport is temporary until a regional or interstate pipeline system is established;

(iii) A comprehensive, regional environmental review has been completed with the assistance of appropriate State and federal agencies to ensure that the proposed site has the least potential for environmental damage as compared to alternative sites located outside of and within the Chesapeake Bay system;

(iv) All oil and gas storage structures associated with the marine transport facility shall be located outside of the Critical Area with a pipeline connecting the storage structures to the marine docking area;

(v) The facility shall accommodate multiple-users to the extent feasible;

(vi) Proposed structures and activities meet all local, State and federal regulations for hazardous material transportation facilities and activities;

(vii) The facility has ready access to the most effective, state-of-the-art spill containment and recovery equipment; and

(viii) An adequate Pollution Prevention and Contingeny Plan, as described in COMAR 14.25.04.02I of this Subtitle, has been prepared and will be implemented for the facility.

(c) The Commission shall obtain public comment on all proposed maritime oil and gas transportation facilities

through an advertised public hearing as described in COMAR 14.25.05.02 of this Subtitle.

(3) Marinas and Other Boat Docking Facilities Associated with Oil and Gas Development.

(a) New or expanded marinas and boat docking facilities associated with oil and gas development may be permitted in the Buffer within Areas of Intense Development and Intensely Developed Areas subject to the requirements of Section B.(1) of this Regulation.

(b) New or expanded marinas or boat docking facilities associated with oil and gas development may not be permitted in the Buffer in locations other than Areas of Intense Development or Intensely Developed Areas except as follows:

(i) Small water-dependent facilities for the sole use of storing oil spill containment and cleanup equipment and emergency crew transport facilities, including crew boat operations, may be permitted in the Critical Area in locations that would facilite and expedite offshore emergency operations, as approved by the Commission and the local jurisdiction.

Should we require Growth Allocation?

(ii) Expansion of existing marinas or boat docking facilities for the establishment of oil and gas development may be permitted to occur outside Areas of Intense Development or Intensely Developed Areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will

result in an overall net improvement in water quality at or leaving the site of the marina or docking facility.

(c) New and existing marinas or boat docking facilities associated with oil and gas development shall meet the sanitary requirements of the State Department of Health and Mental Hygiene as required in COMAR 10.17.02.

(d) New marinas or boat docking facilities associated with oil and gas development shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

(e) New and expanded marinas and boat docking facilities shall provide site-specific measures for protecting water quality and aquatic habitat from potential release of chemicals and products associated with oil and gas development, including discharge from contaminated spill containment and recovery vessels and equipment.

(4) An applicant proposing new or expanded water-dependent facilities for the Critical Area shall provide the Commission with written documentation that the following factors were adequately considered and addressed in identifying areas suitable for such facilities:

(a) That all possible measures have been taken to minimize potential adverse effects to water quality, wetlands and aquatic habitat from the storage, use, or inadvertent spill or leakage of chemicals and products associated with oil and gas development activities, including the release of oil from contaminated spill containment and recovery vessels and equipment;

(b) That the activities will not significantly alter existing water circulation patterns or salinity regimes;

(c) That the water body upon which these activities are proposed has adequate flushi new or expanded water-dependent facilities are proposed for the Critical Area, the applicant proposing such development shall provide the Commission with written documentation that the following factors were adequately considered and addressed in identifying areas suitable for such facilities:

(d) That all possible measures have been taken to minimize potential adverse effects to water quality, wetlands and aquatic habitat from the storage, use, or inadvertent spill or leakage of chemicals and products associated with oil and gas development activities, including the release of oil from contaminated spill containment and recovery vessels and equipment;

(e) That the activities will not significantly alter existing water circulation patterns or salinity regimes;

(f) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;

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

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

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

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

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

(i) Backfill for permitted shore erosion protection measures;

(ii) Use in approved vegetated shore erosion projects;

(iii) Placement on previously approved channel maintenance spoil disposal areas; and

(iv) Approved beach nourishment;

(l) That interference with the natural transport of sand will be minimized.

(5) Proposed site plans for water-dependent facilities shall comply with the following complementary State and local laws and regulations for development within the Critical Area:

(a) In the local jurisdiction's Critical Area Program as specified in COMAR 14.15.02 and .03; or

(b) In COMAR 14.19.05.03. and .04, for State or local projects.

(6) Proposed water-dependent facilities shall conform to all criteria for Habitat Protection Areas as outlined in COMAR 14.25.03 of this Subtitle.

COMAR 14.25.03
Habitat Protection Areas
.01 Buffer

A. Definition. "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and

managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.

B. Criteria. An applicant planning or proposing oil and gas development on Critical Area lands, shall use the following criteria:

(1) A minimum 100-foot Buffer shall be established landward from the mean high water line of tidal waters, or the landward edge of tributary streams, and tidal wetlands.

(2) Oil and gas development activities, including impervious structures such as buildings, roads, or parking areas are not permitted in the Buffer, except for those necessarily associated with water-dependent facilities, pursuant to COMAR 14.25.02.07 of this Subtitle.

(3) The use of heavy equipment, vehicles, or explosives associated with oil and gas development is not permitted in the Buffer.

(4) The storage and use of chemicals associated with oil and gas development activities, such as pesticides or petrochemicals, are prohibited in the Buffer.

(5) The Buffer shall be maintained in natural vegetation.

(6) Cutting or clearing of trees within the Buffer shall be prohibited, except that:

(a) Limited cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private or government piers, or a water-dependent facility, providing the device, measure, or facility has received all necessary local State and federal permits and providing that the area cut is the minimum necessary to provide sufficient access to the facility;

(b) Individual trees may be removed which are in danger of falling and causing damage to

structures, or which are in danger of falling and thereby causing the blockage of streams, or resulting in accelerated shore erosion;

(c) Horticultural practices may be used to maintain the health of individual trees;

(d) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the Maryland Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

(7) Where agricultural use of lands within the area of the Buffer ceases and such lands are proposed to be converted to other uses associated with oil and gas development, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation.

(8) The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. In the case of contiguous slopes of 15 percent or greater, the Buffer shall be expanded four feet for every one percent of slope, or to the top of the slope, whichever is greater in extent.

.02 Nontidal Wetlands.

A. Definition.

(1) "Nontidal wetlands" means those lands in the Critical Area, excluding tidal wetlands, regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season, and which are

THIS SECTION CLOSELY FOLLOWS BLUE/GREEN REGS. * INDICATES NEW CRITERIA

usually characterized by one or both of the following:

(a) At least periodically, the lands support predominantly hydrophytic vegetation;

(b) The substrate is predominantly undrained hydric soils.

(2) Excluded from these regulations are existing farm ponds and other existing man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat purposes.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria for protecting nontidal wetlands:

(1) The applicant shall identify with the assistance of the Department of Natural Resources, the following nontidal wetlands which may be affected by the oil and gas development:

(a) Nontidal wetlands of 1 acre or larger classified as Palustrine Aquatic Bed, Palustrine Emergent, Palustrine Forested and Palustrine Scrub-shrub as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979, Fish and Wildlife Service, U.S. Department of the Interior) and as identified on the National Wetlands Inventory Maps;

(b) Nontidal wetlands, not mapped on the National Wetlands Inventory, which may be found, by site survey or other means at the time an oil and gas development activity is proposed or planned, to be hydrologically connected, through surface or subsurface flow, to streams, tidal wetlands, or tidal waters; or are nontidal wetlands determined to be of special importance to fish, wildlife, or plant habitat by the Maryland

Department of Natural Resources, or other appropriate agencies.

(c) Nontidal wetlands of special State concern as designated by the Maryland Department of Natural Resources.

(2) The applicant shall develop protection measures for the nontidal wetlands identified above as follows:

(a) Except as provided for in Sections B(2)(b) and (c) of this Regulation, a minimum 25-foot buffer around identified nontidal wetlands shall be established. Oil and gas development structures or activities which may disturb the wetlands or the wildlife contained therein, shall be prohibited in the nontidal wetland and its buffer unless it can be shown that these activities will not adversely affect the wetland.

(b) A minimum 150-foot buffer shall be maintained between nontidal wetlands and all structures and activities associated with exploration and production wells and drilling activities.

(c) A minimum 200-foot buffer shall be maintained between and oil and gas drilling structures or activities and nontidal wetlands of special State concern.

(d) The minimum buffer described in Sections B(2)(a) through (c) of this Regulation shall be expanded to include contiguous, sensitive areas such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact the nontidal wetland to be protected.

(e) Measures shall be taken to protect the hydrologic regime and water quality of identified nontidal wetlands by providing that oil and gas development activities 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, fish and wildlife habitat value of the wetland.

(f) The applicant shall provide for the preparation and approval of a mitigation plan for activities or operations which, as a result of their being water-dependent or of substantial public benefit, will cause unavoidable and necessary impacts to the wetlands. The plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, on-site or near the affected wetland.

(g) The applicant shall seek comments on mitigation plans from the Maryland Department of Natural Resources, and where appropriate, the Maryland Department of the Environment, and the U.S. Fish and Wildlife Service. Upon finding that the plan as proposed, or as may be modified to address the comments of these agencies, provides mitigation sufficient to accomplish the objectives of this Regulation, then the Commission shall direct the applicant to implement the plan.

(h) Mitigation plans prepared pursuant to Section B (2)(f) and (g) of this Regulation shall be submitted for approval to the Commission prior to their being implemented.

* (3) The applicant shall provide the Commission with a copy of all permits and written correspondence with appropriate local, State and federal agencies that are involved in regulating a nontidal wetland that may be affected by the proposed oil and gas development project.

.03 Threatened and Endangered Species and Species in Need of Conservation

A. Definition.

(1) "Species in need of conservation" are those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation by the Secretary of the Maryland Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Articles §§ 10-2A-03, and 4-2A-03, Annotated Code of Maryland.

(2) "Threatened species" are any species of fish, wildlife or plants designated as such by regulation by the Secretary of the Department of Natural Resources which appear likely, within the forseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. § 1531 et seq., as amended.

(3) "Endangered species" are any species of fish, wildlife or plants which have been designated as such by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the federal Endangered Species Act, cited above.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria to protect endangered and threatened species, species in need of conservation and their habitat:

(1) The applicant shall identify, with the assistance of

the Department of Natural Resources and the local jurisdiction, any habitats of threatened or endangered species, or species in need of conservation, that may be affected by the oil and gas development or activity.

(2) The applicant shall develop a plan for the protection of the habitats of species in need of conservation and threatened and endangered species as may be identified pursuant to Section B (1) of this Regulation. The applicant shall seek review and comments on the plan from the Maryland Department of Natural Resources.

(3) These plans shall consist of one or both of the following elements:

(a) Designation of a protection area around each of the habitats within which oil and gas development activities and associated disturbances shall be prohibited unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats;

(b) Development of site-specific measures for providing protection of habitats of species in need of conservation and endangered, and threatened species which shall include the following:

(i) Measures for protecting potentially affected species and habitat from destruction of vegetation and disturbance to soils during construction, operation and maintenance of an oil and gas development facility;

(ii) Provisions, including temporal restrictions or limitations, to protect potentially affected species and their habitat from human disturbance and

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noise;

(i) Measures for ensuring that species and habitat are protected from all sources of pollution associated with oil and gas development activities including storage, use and spillage of chemicals, disposal of solid and liquid waste, and the production, storage and transportation of produced oil and gas.

.04 Plant and Wildlife Habitat

A. Definition.

(1) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic features as provided for in Section B of this Regulation.

(2) "Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area as provided for in Section B of this Regulation.

B. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria for protecting plant and wildlife habitat:

(1) The applicant, with the assistance of the Department of Natural Resources and the local jurisdiction, shall identify the following plant and wildlife habitats that may be affected by the oil and gas development or activity:

(a) Colonial water bird nesting sites;

(b) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and nontidal wetlands;

(c) 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 forest interior dwelling bird breeding areas);

(d) 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);

(e) Other areas which may in the future be identified by local, State and federal agencies as important plant or wildlife habitat areas; and

(f) Natural Heritage Areas which have been designated by the Maryland Department of Natural Resources and the local jurisdiction.

(2) The applicant shall develop protection measures for the plant and wildlife habitats identified above as follows:

(a) Establish buffer areas for colonial water bird nesting sites so that such sites are protected from the adverse impacts of oil and gas development activities including:

(i) Potential release of oil or other toxic materials and waste; and

(ii) Disturbance from noise and human activity during the breeding season;

(b) Provide that oil and gas development activities including new water-dependent facilities are so located as to prevent disturbance to sites of significance to wildlife such as historic staging and concentration areas for waterfowl, and that waterfowl and their habitat are protected from the inadvertent release of oil or

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other contaminants associated with oil and gas development;

(c) Provide protection measures including a buffer area where appropriate, for other plant and wildlife habitat sites identified in Section B(1)(e) of this Regulation;

(d) Protect and conserve those forested areas required to support wildlife species identified above in Section B(1) (c) and (d) of this Regulation, by developing management plans which have as their objective, conserving the wildlife that inhabit or use the areas. The plans should assure that oil and gas development activities, including the clearing or cutting of trees which might occur in the areas, is avoided or, if necessary, conducted so as to conserve riparian habitat, forest interior wildlife species, and their habitat.

(e) Establish temporal restrictions or limitations on oil and gas development activities and noise during the breeding season or during high concentrations of populations of sensitive wildlife.

(f) Establish to the extent practical, that when conducting oil and gas development activities, including the cutting or clearing of trees in forested areas, corridors of existing forested vegetation be maintained to provide effective connections between wildlife habitat areas.

(g) Protect Natural Heritage Areas from alteration or disturbance due to oil and gas development activities so that:

(i) The structure and species composition of the Areas are maintained; and

(ii) Plant, wildlife, and aquatic habitat and water quality of Natural Heritage

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Areas are not degraded by the release of oil or other contaminants.

(3) The applicant shall prepare and implement a site-specific Pollution and Prevention and Contingency Plan, pursuant to COMAR 14.25.04.02I of this Subtitle for the protection of all plant and wildlife habitat that may be adversely affected by the inadvertent release of hydrocarbons and other chemicals associated with oil and gas development.

.05 Anadromous Fish Spawning Streams.

C. Definition. "Anadromous fish propagation streams" means 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 streams are designated by the Tidewater Administration of the Department of Natural Resources.

D. Criteria. An applicant planning or proposing oil and gas development on lands within the Critical Area shall use the following criteria to protect anadromous fish spawning streams:

(1) The applicant shall, with the assistance of the Department of Natural Resources, identify whether the oil and gas development will occur in the watersheds of anadromous fish spawning streams.

(2) Where the development will occur in those watersheds, the following measures shall be used:

(a) Drilling wellsite structures and activities shall be located a minimum 500 feet from the top of the bank or edge of wetlands associated with anadromous fish spawning streams.

(b) Unless otherwise approved by the Commission under the advice of the Tidewater Administration of the Maryland Department of Natural Resources,

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seismic surveys shall be conducted a minimum of 500 feet from the top of the bank or edge of wetlands associated with anadromous fish spawning streams.

(c) 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.

(d) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.

(e) The applicant shall develop measures for avoiding adverse impacts of any activities occurring on those portions of any watershed within the Critical Area which drain into anadromous fish spawning streams. These measures shall address at least the following objectives:

(i) Minimize oil and gas development activities or disturbances in the watershed;

(ii) Maintain, or if practicable, improve water quality in streams;

(iii) Avoid, to the extent possible, the discharge of sediments into streams;

(iv) Protect water quality and aquatic habitat from adverse impacts from discharge, leakage, or spillage of toxic materials and waste associated with oil and gas development activities;

(v) Maintain, or if practicable, increase the natural vegetation of the watershed.

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(3) The applicant shall prepare and implement a site-specific Pollution Prevention and Contingency Plan, as described in COMAR 14.25.04.02I of this Subtitle, for protecting anadromous fish spawning streams from the storage, use or inadvertent release of hydrocarbons and other chemicals associated with oil and gas activities.

(4) The Commission may require the applicant to establish and maintain spill containment and recovery equipment in a location readily accessible to potentially affected spawning streams.

(5) The Commission may require the applicant to perform pre- and post-construction monitoring of water quality and aquatic habitat to detect any adverse environmental effects from a proposed activity.

(6) The applicant shall also comply with all of the following complementary State laws and regulations:

(a) The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. If practical, the removal of existing barriers shall be effected (COMAR 08.05.03.02).

(b) The construction, repair, or maintenance activities associated with stream crossings, such as bridges, pipelines, utilities and roads, which involve disturbance within the Buffer or which occur instream, as described in COMAR .08.05.03.09B(4), shall be prohibited between March 1 and June 15.

COMAR 14.25.04

Application Requirements

.01 General

A. An applicant proposing to conduct an oil and gas development activity within the Critical Area shall submit

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to the Commission all necessary information required in Regulation .02, of this Chapter and a signed affadavit pursuant to COMAR 14.25.02.02B(6) of this Subtitle.

B. The Commission shall coordinate the application review process under Memoranda of Understanding with the Maryland Department of Natural Resources, the Maryland Department of the Environment, and other State agencies.

C. The applicant shall be encouraged to undertake a pre-application consultation with members of the Commission or representative staff.

.02 Criteria

A. Environmental Assessment. An applicant proposing an oil and gas development acitivity for the Critical Area (including directional drilling in or under the Critical Area from a location outside of the Critical Area) shall provide the Commission with an Environmental Assessment of potential adverse ecological effects from the project. At a minimum, the assessment shall include maps and written documentation to address the following:

(1) The identification of existing natural features of the site and adjacent areas;

(2) The identification of Habitat Protection Areas described in COMAR 14.25.03 of this Subtitle, and as documented by written correspondence with the Maryland Department of Natural Resources and the local jurisdiction;

(3) A description of potential effects from proposed activities to terrestrial and aquatic resources, including Habitat Protection Areas within the Critical Area; and

(4) A description of mitigation measures, including protection plans for all identified Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle.

B. Exploration Plan. An applicant shall submit an

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Exploration Plan to the Critical Area Commission for review and approval of all proposed geophysical survey operations. At a minimum, the Plan shall include the following information:

(1) Proposed type, methods, equipment and timing of geophysical surveys including the number and type of vehicles;

(2) Map (at tax map scale of local jurisdiction) delineating the official Critical Area boundary, property lines within the area of exploratory investigations, survey lanes, equipment staging areas, and access routes to survey lanes;

(3) For seismic surveys involving use of explosives, the number and distance between shot points and timing of activities;

(4) A description of hazardous substance control, storage, cleanup and disposal, including fire prevention and control methods; and

(5) A proposed plan for revegetation of areas cleared of woody vegetation and restoration of disturbed soils and drainage patterns.

* C. Wellsite Alternative Analysis. An applicant shall provide the Commission with a written alternative site analysis for all exploration or production drilling structures and activities that are proposed for location within the Critical Area.

PLEASE REVIEW THIS SECTION CAREFULLY

(1) The alternative site analysis shall document:

(a) That alternative sites for the proposed project outside of the Critical Area have been examined during the initial planning phase of the oil and gas development project;

(b) That the applicant has made attempts to obtain land ownership interests, or mineral or other rights to locate the proposed wellsite on an alternative site outside of the Critical Area; and

(c) That the applicant has addressed criteria described in COMAR 14.25.02.02B(4) of this Subtitle;

(2) The alternative site analysis shall include a description of:

(a) The total number of alternative sites and the physical and economic requirements of the proposed site relative to the alternative sites analyzed;

(b) Efforts to first avoid and then minimize adverse environmental effects on water quality and natural habitat of the Critical Area through consideration of wellsite alignment or other site design; and

(c) Efforts made by the applicant to resolve technical hardships or land-use constraints imposed by restrictions or requirements of federal, State or local agencies or private interests.

D. Plan of Drilling Operations. A Plan of Drilling Operations for all proposed drilling activities shall be submitted to the Commission for review and approval. At a minimum, the Plan shall include the following:

(1) A site plan and plat of the wellsite (at a scale of not less than 1"=50') to show relative size and location of structures such as well, emergency reserve pit, storage tanks, utilities, pipelines, trailers, access road, berms and fencing. The site plan should show existing topography and proposed elevations. Existing man-made and natural features such as buildings, forest areas, soil types, drainageways, wetlands, agricultural fields, the Critical Area boundary, and identified Habitat Protection Areas within and adjacent to the site, should also be indicated on the plan.

(2) A map showing the alignment of any proposed access

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roads, including written justification for the road.

(3) A computation of the total surface coverage of forest existing on the wellsite (and access roads) before development and the total surface area of forest to be disturbed as a result of wellsite and access road construction;

(4) For roads and wellsites, a Sediment Erosion Control Plan, in accordance with COMAR 14.25.02.04C(13), and a Stormwater Management Plan, in accordance with COMAR 14.25.02.04C(14);

(5) A written description of drilling operations that addresses activities including, but not limited to, management of domestic wastes, drilling fluids and cuttings, casing specifications, handling of hazardous materials, emergency operations, and well-monitoring procedures.

(6) A written description of short-term and long-range plans for production including, but not limited to, potential for exploration wells to be converted to production, and method of transportation of hydrocarbons off-site.

E. Wellsite Reclamation Plan. The applicant shall prepare and submit a Reclamation Plan that addresses all criteria outlined in COMAR 14.25.02.05 of this Subtitle, and includes the following:

(1) A written description of methods and equipment used for disposal of liquid and solid waste material, removal of impervious surfaces including access roads, regrading of soils on the site, and topsoil replacement;

(2) A Sediment and Erosion Control Plan and Stormwater Management Plan;

(3) A Reforestation Plan that addresses criteria in COMAR 14.25.02.05B(1)(f) of this Subtitle, and provides information outlined in Section G, of this Regulation;

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(4) A proposed timetable for reclamation activities; and

(5) Provisions for a surety or bond, if required by the Commission, to cover any expenses incurred to implement the Reclamation Plan.

F. Pipeline Operations Plan. For oil and gas development activities that include pipelines, the applicant shall provide the Commission with a Pipeline Operations Plan that addresses all of the requirements of COMAR 14.25.02.06 of this Subtitle. The Plan shall include:

(1) A map or maps of sufficient scale to indicate the proposed location of the pipeline corridor, the Critical Area Boundary, tidal and nontidal wetlands, streams, the 100-year floodplain and any Habitat Protection Areas including the minimum 100-foot Buffer and its extension, that may occur in the vicinity of the proposed pipeline;

(2) Results of a comprehensive environmental review of possible pipeline corridor locations pursuant to COMAR 14.25.02.06.A.(5) (c) and B(1) through (4) of this Subtitle.

(3) A computation of the following surface area coverage of forest in accordance with COMAR 14.25.02.06B(11).

(a) Total area of forest existing in the entire pipeline corridor before pipeline construction;

(b) Total area of forest existing in the minimum 100-foot Buffer or its extension before pipeline construction;

(c) Total area of forest to be permanently removed from the pipeline corridor; and

(d) Total area of forest to be permanently removed from the 100-foot Buffer or its extension.

(4) A description of pipeline construction methods and equipment including a Sediment and Erosion Control Plan;

(5) A proposed timetable or schedule for pipeline construction and maintenance activities;

(6) A site-specific description of measures taken to mitigate potential impacts to streams and Habitat Protection Areas during construction, operation and maintenance of the pipeline system;

(7) A detailed description of emergency measures to be taken in the event of pipeline failure, leaks or fire, as outlined in a Pollution Prevention and Contingency Plan described in Section I of this Regulation; and

(8) A Reforestation Plan as described in Section G of this Regulation, for the pipeline corridor and any offset areas as required under COMAR 14.25.02.06B(11) of this Subtitle.

G. Reforestation Plan. A Reforestation Plan shall be prepared for wellsites, access roads, pipeline corridors and all offset areas as required under COMAR 14.25.02.06B (11) and COMAR 14.25.02.04C(12) of this Subtitle. The Reforestation Plan shall be prepared by a registered professional forester or registered landscape architect and, at a minimum, shall include:

(1) A plat of the wellsite, access roads, pipeline corridors, and offset areas showing the location, spacing, size and type of plant species and a detailed description of planting times and techniques;

(2) Provisions for an annual monitoring program to ensure 80 percent survival of plants after three growing seasons and the creation of a productive forest area. The monitoring program shall include provisions for the replanting of dead or dying plants and removal of exotic or nuisance species; and

(3) Provisions for a surety or bond if required by the Commission, to cover any expenses incurred to implement the Reforestation Plan.

(4) Description of covenants, easements or other

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instruments to be utilized for protecting reforested areas.

H. Water-Dependent Facilities Plan. For oil and gas development projects that are water-dependent, the applicant shall prepare a Water-Dependent Facilities Plan to document measures taken to address criteria outlined in COMAR 14.25.02.07 of this Subtitle. At a minimum, the Plan shall include the following:

(1) A site plan and plat of the proposed facility (at an appropriate scale) to show relative size and location of structures and activities including, but not limited to, piers, moorings, docking facilities, buildings, parking lots and other impervious surfaces, pipelines, equipment storage areas, and utilities. Existing natural features of the site, existing and proposed topography, the Critical Area boundary and all Habitat Protection Areas shall be included on the plat;

(2) A written description of the proposed project and a discussion of how criteria in COMAR 14.25.02.07B (1) through (3) are addressed, including results of a regional review and alternative site analysis for any proposed industrial or port-related maritime facilities for the transport of oil and gas;

(3) Identification and discussion of all factors listed in COMAR 14.25.02.07B(4) of this Subtitle, and an assessment of measures to be taken to assure that the proposed project will not adversely affect water quality and aquatic resources and habitat; and

(4) A Pollution Prevention and Contingency Plan as described in Section I of this Regulation.

I. Pollution Prevention and Contingency Plan. A Pollution Prevention and Contingency Plan shall be submitted by the applicant for all drilling, pipeline and water-dependent activities. Generally, the Plan shall address the types of materials used and encountered during oil and gas

development activities; the potential for spillage or environmental contamination; measures to be taken by the applicant to prevent pollution and spillage; and contingeny measures necessary to recover materials spilled or discharged. A schedule for the Plan's implementation shall be provided. The Plan shall include, but not be limited to, the following:

(1) A site-specific assessment of the likelihood and environmental consequences of a blowout or spill of the materials utilized during the oil and gas development project including:
   (a) Drilling, production, and plugging phases of a wellsite operation;
   (b) Construction, operation and maintenance of pipelines; and
   (c) Construction, operation and maintenance of water-dependent facilities.

(2) A description of the methods of containment for pollutant material (for example, produced brine, oil, drilling fluids), encountered or utilized during the:
   (a) Drilling, production, and the plugging phases of a wellsite operation;
   (b) Operation and maintenance of pipelines; and
   (c) Construction, use and maintenance of a water-dependent facility.

(3) A site-specific description of potential adverse environmental impacts from external factors such as floods, power failures, or unauthorized acts of third parties, as well as measures and equipment utilized to protect against potential problems.

(4) A description of preventative maintenance measures such as inspection routines and programs for training personnel in avoiding environmental impacts specific to the site.

(5) A detailed site-specific discussion of equipment and

measures to be taken in the event of a blowout or spill including equipment storage location, deployment activities, necessary cleanup contractors and a procedure for reporting potential or existing pollution incidents to appropriate local, State, and federal agencies. The discussion shall include specific contingency measures for all Habitat Protection Areas as described in COMAR 14.25.03 of this Subtitle, that potentially could be affected by a pollution incident.

(6) A schedule for updating the Plan to indicate the most current and planned activities at intervals mutually agreeable to the applicant and the Commission.

J. Additional Information. If certain concerns or issues are identified during the review process for a specific project, the Commission may require that the applicant provide further information in addition to that which is required under Sections A through I of this Regulation.

COMAR 14.25.05

Commission Review and Decision Process

.01 Applicant Proposal

PLEASE NOTE TIME FRAMES

A. The Commission shall receive and review proposals for oil and gas development by an applicant including information requirements as described in COMAR 14.25.04 of this Subtitle.

B. Before the close of business of the fifth working day following the receipt of an application, the Commission shall acknowledge receipt of the application in writing, by regular mail.

C. The Commission shall review the application to determine whether:

(1) The application contains all necessary information required in this Subtitle; and

(2) The information submitted is sufficient for the

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Commission to review the proposal.

D. Within 45 days of receipt of application, the Commission shall notify an applicant in writing whether the application is complete and whether the submitted information is sufficient.

E. If the application is incomplete or submitted information is insufficient, the Commission shall notify the applicant in writing, of the additional information needed.

F. The Commission, upon written notice to the applicant, may extend the 45-day time period noted in Section D of this Regulation when the following circumstances prevent full consideration of the application within the allotted period:

(1) Additional time needed to coordinate review by local, federal or other State agencies; or

(2) The proposed activity is of substantial complexity and the potential for adverse impacts to the Critical Area warrants additional consideration by the Commission.

.02 Review Procedures

A. The Commission may establish panels to assist in the review of oil and gas development applications pursuant to Regulation .03 of this Chapter or it may undertake such reviews by the full Commission.

B. The Commission may seek public comment on proposals for oil and gas development and may hold a public hearing for this purpose.

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

D. At a public hearing, the Commission or its panel shall hear the comments of the public concerning the proposed

oil and gas development and may entertain a presentation by the applicant. The Commission shall limit comment by the public to relevant matters within the scope and purview of the Commission and shall make and keep a full record of the proceedings.

E. For purposes of reviewing applications that require public hearings for other local, State or federal permits or requirements, the Commission may hold joint hearings, as appropriate. The Critical Area Commission may establish a panel for this purpose as provided for in Regulation .03 of this Chapter.

.03 Panels

A. The Chairman may appoint a panel of the Commission to review oil and gas development applications in Regulation .01 of this Chapter, and to make recommendations to the full Commission concerning approval, denial, or conditioning of the proposal. The panel shall consist of five Commission members.

B. A panel may conduct a public hearing on a proposal for oil and gas development in accordance with the provisions of Regulation .02B through E of this Chapter. The panel shall keep and provide to the full Commission a record of the proceedings.

C. The panel shall make its recommendations on the proposal known to the full Commission, which shall make the final determination by majority vote of approval, disapproval or approval with conditions within the time frames stated in Regulation .04 of this Chapter.

.04 Time Frame For Commission Review and Decisions

A. The Commission shall notify the applicant proposing oil and gas development of its decision to approve, deny, or approve with conditions the proposal in the time frames shown below. Failure to make such notice shall permit the oil and gas development to proceed as proposed without

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DOES THE COMMISSION WANT TO FORMALLY APPROVE ALL ACTIVITIES?

further Commission comment or approval.

(1) A proposal of geophysical survey operations as provided for in COMAR 14.25.02.03: 30 days from the Commission's determination that the application is complete;

(2) A proposal for all other oil and gas development activities within the Critical Area:

(a) 60 days from the Commission's determination that the application is complete; or

(b) 45 days from the closing date for receipt of written comments after a public hearing, if a hearing is held.

B. Certain oil and gas development activities of substantial complexity and potential adverse impact on the Critical Area may require additional time for review than provided for in Section A of this Regulation. In such cases, the Commission shall notify the applicant of the time frame needed to review the proposal within 15 days following:

(1) The Commission's determination that the applicant's proposal package is complete; or

(2) The closing date for receipt of written comments after a public hearing, if a hearing is held.

C. The additional time taken by the Commission for review of complex operations shall not exceed 60 days beyond that provided in Section A of this Regulation, unless expressly agreed to by the applicant.

Chapter 7 Appeals

.01 Appeals From Commission Disapproval of Proposed Oil and Gas Development

A. An applicant whose proposal for oil and gas exploration or production has been disapproved or unduly conditioned by the Commission may appeal, in writing, such disapproval or conditions to the full Commission for reconsideration, within 30 days of receipt of the Commission's decision.

B. The appeal shall set out in detail all exceptions to

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specific aspects of the Commission's decision, and shall provide in writing, all arguments and technical information relevant to such exceptions.

C. After receipt of an appeal, the Commission shall afford the applicant another opportunity to be heard on the matter before the full Commission, at the next Commission meeting at which a quorum is present. The Commission shall issue its final decision in writing within 30 days of such reconsideration. Affected local governments shall be notified of any appeals for reconsideration and shall be afforded an opportunity to comment in writing or at the reconsideration hearing.

D. Any person aggrieved by the final decision on reconsideration may bring whatever appeal or civil action may be appropriate before the courts of this State.

Please NOTE:
A section on Conditional approval (per the green regs) has not been included in these regs. Does the Commission ~~would~~ feel that such a "conditional or variance" mechanism should be included?

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