

Committee Meetings & Corresp.

Dec 1990

MSA_51832-77

AGENDA

DECEMBER 5, 1990
Chesapeake Bay Critical Area Commission
275 West Street, Suite 320
Annapolis, Md.

1:00 - 1:10 Approval of Minutes
November 7, 1990 John C. North, II
Chairman

PROJECTS

1:10 - 1:30 Appeal - Pool In the
Buffer. Dorchester Co.
Tentative Tom Ventre, Planner

1:30 - 2:00 Briefing - Arrowhead
Calvert County Susan Barr, Planner

PROGRAM AMENDMENTS/REFINEMENTS

2:00 - 2:15 City of Crisfield: 15 - 25%
Impervious Surface - Refinement Tom Ventre, Planner

2:15 - 2:30 Town of Secretary: 15 - 25%
Impervious Surface -Refinement Tom Ventre, Planner

2:30 - 2:45 Town of Vienna: 15 - 25%
Impervious Surface -Refinement Tom Ventre, Planner

2:45 - 3:00 Town of Princess Anne:
15 - 25% Impervious Surface -
Refinement Tom Ventre, Planner

3:00 - 3:10 Growth Allocation: Dorchester Co.
RCA to LDA Tom Ventre, Planner

3:10 - 3:20 Growth Allocation-Talbot Co.
Tilghman on the Chesapeake (RCA to LDA) Pat Pudelkewicz, Planner

UPDATES

3:20 - 3:35 Maryland Stadium Authority
Dawnn McCleary, Planner
David Chapin, MSA

3:35 - 3:40 Oil and Gas Regulations
Liz Zucker, Scientific
Advisor

3:40 - 3:50 Wharf at Handy Point
Kent County George Gay, AAG
Pat Pudelkewicz, Planner

3:50 - 4:00 Queenstown Golf Course
George Gay, AAG

4:00 - 4:25 General Approvals - Timber
Harvest & Resource Conservation
Plans Anne Hairston, Planner
Steele Phillips

4:25 - 4:40 Soil Conservation and W & Q Plans
Louise Lawrence,
Dept. of Agriculture

4:40 - 5:00

Old Business

John C. North, II,
Chairman

New Business

John C. North, II,
Chairman

Growth Commission DRAFT Legislation

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
November 7, 1990

The Chesapeake Bay Critical Area Commission met at Drayton Manor in Worton, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

John C. North, II, Chairman	Samuel Y. Bowling
Ronald Adkins	William H. Corkran, Jr.
James E. Gutman	Shepard Krech, Jr.
Thomas L. Jarvis	G. Steele Phillips
Kathryn D. Langner	Albert Zahniser
Michael J. Whitson	William Bostian
Roger W. Williams	Larry Duket for
Victor K. Butanis	Ronald Kreitner
Carolyn Watson	Robert Schoeplein of DEED
for Parris Glendening	Assist. Secretary Naylor
Deputy Secretary Griffin	of DOE
of DNR	Robert R. Price, Jr.
Ronald Hickernell	Deputy Secretary Cade
Joseph J. Elbrich, Jr.	of DCHD

The Minutes of the Meeting of October 3, 1990 were approved as written. Chairman North asked Ms. Dawnn McCleary to give an update to the Commission on the Stadium Authority.

Ms. McCleary stated that there had been some changes made to the Stadium site and she introduced Mr. David Chapin of MSA who outlined those changes.

Mr. Chapin updated the Commission on the changes made to the Stadium site. He requested an extension of the review and approval period from the Commission because the changes to the site were made subsequent to the 90 days limitation for approval after initiation of the project (which would fall two days before the next Commission meeting). He said that in refining the plans for the site, MSA had worked with DOE and with the Commission staff and there may be further changes and that he believed that it would be best to present a unified plan at the next Commission meeting.

Mr. Chapin stated that the Stadium is about 85 acres with a project disturbance of 90 acres. He said that there had been a reduction of impervious surface, based on minor changes, to 21% post-development as opposed to 17% predevelopment within the 1,000 Critical Area zone. In addition, an extended stormwater retention pond at the south end of the site is being proposed.

Mr. Gutman stated that he was concerned about a design that would work well with the proposed baseball stadium but Mr. Chapin could not guarantee what the design or methodology for addressing water quality would be once there was a design developed for a football stadium. He stated that he believed an extension for a period of consideration would be appropriate.

A motion was made by Deputy Secretary Ardath Cade and seconded by Ms. Kathryn Langner to extend, beyond the normal 90 days, the period of consideration for the Maryland Stadium Authority. The vote was unanimously in favor.

Chairman North asked Ms. Claudia Jones to report on the Department of General Services Refueling Station.

Ms. Jones said that the Department of General Services was requested to select a site to serve as a central fueling location for State vehicles located at the State office complex in Annapolis as part of a State-wide Fuel

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Management Program initiated by the Governor to reduce dollars spent by State government on energy consumption. She said that the preferred central fueling site was at the Tawes building on Taylor Avenue in Annapolis; however, that site is located entirely within the Critical Area and it was determined that the primary re-fueling site should be located outside of the Critical Area.

Ms. Jones reported that the Department of General Services proposed a second gasoline dispenser to be connected to the Maryland State Police Barracks' existing 12,000 gallon gasoline tank - the site being in the Annapolis City limits with the majority of the site in the Critical Area. She described the site as being surrounded by intensely developed area. She reported that the Department of General Services has proposed the construction of a shallow marsh to remove sediments and other pollutants from the site before flowing into an existing storm drain to an outfall at College Creek. Ms. Jones said that trees will also be planted along the State Archives service road across the street. She said that the installation would not require an increase in tank capacity and the dispenser would be placed above ground on four 12" diameter concrete cylinders. She said that the Buffer would not be impacted as the work would be 830 feet from College Creek.

Ms. Jones said that the Critical Area Commission staff's recommendation was for approval of the project.

Chairman North pointed out that the total net impervious surface would be very moderate.

Ms. Jones said very minor, about 12 square feet.

A motion was made by Ms. Kathryn Langner and seconded by Mr. Samuel Bowling to approve the proposal of the Department of General Services refueling station as proposed. The vote was unanimously in favor.

Chairman North asked Ms. Elizabeth Zucker to report on the University of Maryland Horn Point Lab - Environmental Education Center.

Ms. Zucker reported that the University currently has an aquatic research facility at Horn Point and they are now proposing to add a residential environmental educational center on the property to be part of an existing program between the University of Maryland and the public school system which works to increase public awareness and involvement in environmental issues. She said that the center will provide overnight facilities so that students from all over the State will be able to participate in an extended environmental educational program. She said that the proposal includes 4 buildings: an activities center, comfort station and 2 dormitories (Two additional dormitories may be added at a future date). She reported that a parking lot would be established and existing roads accessing Dupont Lane and Horn Point Road would be widened and resurfaced for vehicular traffic and that wastewater would be treated by connecting the education facility to the existing Horn Point treatment plant. She said that the entire proposed facility is within the Critical Area of Lake's Cove and she detailed notable aspects of the project:

- Buildings, roads and parking lots would be located in open fields. No forest vegetation would be removed to establish structures.
- New structures would be located a minimum 300 feet from Lake's Cove.
- The total area of impervious surface on the site after development of the project would not exceed 15% of Horn Point's Critical Area.
- Application has been made to the Corps of Engineers for a permit to widen the existing road where it crosses a small area of wetlands.

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- Stormwater quality would be managed through infiltration or extended detention. Plans are under review by MDE.
- The Forest, Park and Wildlife Service has been contacted about Habitat Protection Areas. The project would not affect the 2 endangered species occurring on the Horn Point property.
- Dorchester County's Planning Office has submitted a letter of consistency with the local Critical Area Program.

She stated that the recommendation of the Critical Area Commission staff was for approval with conditions: that a Corps permit be obtained; that approval of stormwater management by MDE be finalized; and, that the Commission receive documentation on both actions.

Mr. Jim Gutman asked if the conditions were not already in the law.

Mr. John Coffey, University of Maryland, replied yes.

Ms. Zucker said that by stating the conditions they served as a reminder.

Ms. Kathryn Langer made a motion and Mr. Samuel Bowling seconded the motion to approve the University of Maryland Residential/Environmental Education Center at Horn Point proposal with conditions recommended by the Critical Area Commission staff. The vote was unanimously in favor.

Chairman North asked Ms. Susan Barr to report on State Highway Administration, Route 313, Eldorado to Galestown.

Ms. Barr stated that the MD State Highway Administration is proposing to widen and resurface MD 313 in Dorchester County from Eldorado to near Galestown, just west of the Nanticoke River crossing into Wicomico County. She reported that the roadway is currently 22 feet wide with narrow shoulders, and would be widened to 24-feet with 8-foot shoulders. Ms. Barr said that the project occurs within the Chesapeake Bay Critical Area in three (3) locations which are designated Resource Conservation Areas. She described the condition of the project area: no threatened or endangered species have been identified within the project corridor; twenty-two percent, or 8.57 acres of right-of-way are located within the Critical Area. She said that the total additional disturbance within the Critical Area by this project amounts to approximately 4.62 acres and that non-tidal wetlands impacts total .09 acres, and tidal wetlands impacts total .01 acres. A Section 404 permit application was submitted to the Corps of Engineers on 5/1/90. Corps of Engineers and DNR wetland mitigation would be determined upon approval of the permit. Subsequent to the Section 404 joint permit being issued, MD-Department of the Environment would begin the required water quality study. The road crosses Becky Taylor Branch or Creek, a perennial tributary to Marshyhope Creek with a width of 10-15 feet, and a depth of 0.5 to 1.5 feet. This stream has never been sampled for the presence of anadromous fish, but the potential exists for these fish to migrate upstream. Time of year construction restrictions for Class I waters and anadromous fish spawning periods will be adhered to from February 15th to June 30th, inclusive. Narrow strips of woodlands, totalling 0.31 acres will be removed within the Critical Area. A standard sediment and erosion control plan for the project includes procedures specified by SHA and DOE, and has been developed in accordance with Maryland's Standards and Specifications for Soil Erosion and Sediment Control. This plan is currently being reviewed by DOE.

She said that the Commission staff's recommendation was for approval of the project subject to the following conditions that were modified in subcommittee that morning.

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1) That wetland mitigation be as specified by Corps of Engineers and the Wetlands Division of DNR, for much less than an acre.

2) That natural vegetation replacement within the 100-foot Buffer from Becky Taylor Branch be specified.

3) She said that since State Highway does have to post bond for tree replacement at the time of project construction, there would be no necessity for further forest replacement conditions.

She said that representatives of State Highway were on hand to answer any questions and she introduced Sharon Preller of State Highway Administration.

Mr. William Bostian asked when the project was expected to begin.

Ms. Preller said that the advertisement date is March, 1991.

Ms. Kay Langner made a motion and Mr. Samuel Bowling seconded to approve the Maryland State Highway Administration project proposing to widen and resurface MD 313 in Dorchester County from Eldorado to near Galestown, first subject to the condition that the buffer disturbed along Becky Taylor Branch be planted with natural vegetation and second, to request at the presence of threatened and endangered species and habitat in the vicinity of the site which may be affected by construction be checked through DNR, Forest, Park and Wildlife Service. The vote was unanimously in favor.

Chairman North asked Ms. Pat Pudelkewicz to give an update on the Wharf at Handy Point.

Ms. Pudelkewicz stated that Mr. George Gay was not able to give the update to the Commission on the Wharf at Handy Point as he was working on the case to be heard the following morning before the Circuit Court of Kent County.

She gave a brief description of the case. She said that the Wharf at Handy Point proposal is for an expansion of an existing marina to add an overflow parking lot and a dry boat storage area. The zoning on the property is limited marine district, LDA zone - 4.6 acres. The entire site is 29.5 acres. It was originally submitted as 22.5 acres; however, through a lot line adjustment the site increased to 29 acres. She said that the site is both RCA and LDA; the portion in LDA is zoned Limited marine and is 4.6 acres and the remainder is RCA.

Ms. Pudelkewicz said that the project proposes to clear 2 acres of forested Buffer in the LMD zone for the overflow parking and the boat storage facility, which are non-water dependent uses. In May, when the project came to the Commission for review, a letter was written to the Kent County Planning Commission opposing the project for a number of reasons: 1) non-water dependent uses in the Buffer; 2) clearing of forest land in the Buffer; 3) steep slopes - averaging between 25%-50%; 4) a forest interior-dwelling bird issue; and, 5) an endangered plant species - Talldock-which was located in the marsh below the area proposed to be cleared, as late as 1987. She said that in August, the Commission staff appeared before the Kent County Planning Commission to oppose the project; however, preliminary approval was granted at that time. The Commission Staff went back again on October 4th to oppose the final site plan approval but the final site plan approval was granted as well. The Critical Area Commission filed an appeal of the Planning Commission's decision, and also applied for a "Stay-of-Action" until the Appeal could be heard before the Court. In appearing before the Circuit Court Judge for the "Stay-of-Action", the appellees entered a motion that the Critical Area Commission did not have the authority to appeal the case. The Circuit Court Judge ruled in favor of the Commission to appeal the case. Before the argument for the "Stay-of-Action" was heard, the Judge agreed to

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a compromise, which was to expedite hearing the appeal, thus making it unnecessary to obtain a "Stay-of-Action". The appellees agreed not to begin construction until a decision was reached at an appeal hearing on the Planning Commission's decision.

Ms. Pudelkewicz said that Mr. George Gay has prepared a legal brief on the Critical Area issues in the case. One of the issues the Critical Area Commission is arguing is the authority of the Kent County Planning Commission to solely make the final decision on the site plan, when the Kent County Zoning Ordinance lists 7 Agencies who must review a site plan. Another issue is non-water dependent uses in the Buffer. She said that there is a clause in the Critical Area criteria, which also occurs in the Kent County Zoning Ordinance, which states that in-so-far-as-possible, non-water dependent uses or structures that are associated with water dependent projects are located outside the Buffer. The in-so-far-as-possible clause is what the Kent County Planning Commission wrestled with. The claim of the appellees in the attorney's brief is that the overflow parking lot and dry boat storage area are water-dependent uses. They did not zero in on the "in-so-far-as-possible" clause, but are stating that the uses are water-dependent. The Critical Area Commission contends that these are non-water-dependent uses. The remaining area of the Limited Marine District is the only area where this project can now expand and it is all in the Buffer. The appellees did not apply for growth allocation to put the overflow parking into the RCA. Last year, Ms. Pudelkewicz said, they did apply for comprehensive rezoning process during the comprehensive rezoning in the county. A little over 12 acres was requested to be rezoned into the marina district; however, the County Commissioners denied the request. With regard to applying for growth allocation, however it has never been done. She said that the in-so-far-as-possible clause doesn't apply here because the appellees haven't done everything possible to try to get these uses out of the Buffer. In addition, the endangered plant species should be resolved as to whether or not this plant really exists at this location. She said that the Court cannot substitute its judgement for that of the Planning Commission and that in this case, it has to be shown that the Planning Commission was acting in an arbitrary and capricious manner in granting this approval.

Mr. Gutman stated that he was concerned that if the decision at the hearing the following day was against the Commission, would there be a time limit to appeal and would that limit occur before the December Commission meeting.

Chairman North responded that while the hearing was scheduled for November 8th, there was a good possibility that an opinion would not be forthcoming on that day. He said that it was more likely than not that the matter would be taken under advisement for a period of several weeks or even longer. But, possibly, an opinion could be rendered tomorrow. He said there were 30 days in which to note an appeal. He said that as soon as he is contacted by Counsel, George Gay, as to the decision, and if it is against the Commission, probably an appeal would be appropriate but he would confer with Mr. Gay for his recommendation and if it is jointly concluded that an appeal is in order, then Chairman North would authorize Mr. Gay to proceed with an appeal and look to the Commission members to sustain that decision at the next meeting.

Mr. Adkins asked how far the Buffer had been expanded.

Ms. Pudelkewicz said that it had expanded through the LDA Zone and into the RCA Zone. The entire remainder of the site was expanded Buffer.

Mr. Adkins asked if the rezoning application was in the RCA part of the site.

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Ms. Pudelkewicz replied, yes.

Mr. Adkins then asked if the current underlying zoning would allow accessory uses to a marina in it.

Ms. Pudelkewicz said that it would not, that when the program was originally approved this site was zoned RCD. After the County's program was approved and adopted Kent County came in for a mistake in mapping to the Commission and it was approved and changed from RCA to LDA - Limited Marine District. If the site would have remained RCA, the Criteria would allow for expansion of an existing marina within the RCA. The Kent County Program also permits that. The zoning ordinances established now state that if there was an existing marina in RCD, they could have expanded, but because it is a limited marine district - they can't expand from the LDA into the RCA.

Mr. Adkins stated that he didn't believe that the growth allocation would be helpful if the underlying zoning would not allow for this.

Ms. Pudelkewicz stated that growth allocation allows expansion from RCA to LDA.

Mr. Adkins asked if in any correspondence it has been recommended that they apply for growth allocation.

Ms. Pudelkewicz replied, not for this particular case.

Mr. Zahniser recommended that the Commission suggest to Kent County that they apply for growth allocation on a more practical site where not so many trees would be cleared nor such a large hill next to the water be removed.

Chairman North replied that suggestion has been made but fallen on deaf ears so far.

OLD BUSINESS

Chairman North reminded the Commission members of an upcoming tour of The Lady Maryland Foundation in Baltimore and asked them to submit their names if interested in the tour to Ms. Dawnn McCleary.

Ms. McCleary informed the Commission members that the date for the tour will be sometime in November.

Deputy Secretary Cade suggested that while in Baltimore, the members might also get a briefing on the Christopher Columbus Center on Pier 5.

Mr. Bowling suggested holding a Commission meeting in Baltimore and combine it with a tour of both facilities.

The Commission members agreed that it was a good idea.

Mr. Gutman asked for an update on the June, 1990 draft of the Oil and Gas Regulations. He stated that the Commission has worked very hard to meet its deadlines to have them go before the General Assembly, and he would like some clarification on the Commission's stand in meeting its charge of a January 1, 1991 deadline for adoption.

Chairman North stated that Mr. Tom Deming has the Regulations on his desk and it is believed that because of Lee Epstein's departure and the fact that there was a considerable delay in obtaining a replacement, that in the interim Mr. Deming has been swamped with his several responsibilities. Chairman North stated that he would call Mr. Deming to see if matters could be expedited.

Mr. Gutman asked if the Commission has fulfilled it's responsibilities for the Oil and Gas Regulations.

Chairman North replied, yes it has.

NEW BUSINESS

There being no new business, the meeting was adjourned.

Attendees

December 5, 1990
Chesapeake Bay Critical Area Commission

North, John C., II
Blake, Russell
Bostian, William J.
Bowling, Samuel Y.
Butanis, Victor K.
Cade, Ardath
Corkran, William H. Jr.
Elbrich, Joseph J. Jr.
Larry Duket for Ron Kreitner
Gutman, James E.
Hickernell, Ronald
Zahniser, Albert W.
Lawrence, Louise
Langner, Kathryn D.
Naylor, Richard P.
Phillips, G. Steele
Price, Robert R. Esquire
Schoeplein, Robert
Whitson, Michael J.
Williams, W. Roger
Krech, Dr. Shepard J.

Sarah J. Taylor, Ph.D.
Peggy G. Mickler
George Gay, Assist. Attorney
Hugh Smith
Lorena Hiep for Parris
Glendening
Dawnn McCleary
Elizabeth Zucker
Pat Pudelkewicz
Anne Hairston
Susan Barr
Tom Ventre

STAFF REPORT

Arrowhead Estates, Local Map Discrepancy Issue

JURISDICTION: Calvert County

STAFF CONTACT: Susan L. Barr

DESCRIPTION/HISTORY:

December 22, 1989 - Susan (Lawrence) Barr requested advice of counsel from Lee Epstein, Assistant Attorney General, regarding a development proposal in Calvert County which had been submitted to the County for preliminary review. After the local Environmental Planner, Dr. David Brownlee, referenced the State wetlands maps which have the Critical area boundary drawn on them, it became evident that the Calvert County Critical Area maps indicate that the boundary extends landward approximately 100 to 200 feet less on the property than the State wetlands maps indicate. The developer has proposed using a portion of the property that was indicated on the County maps as being outside of the Critical Area, for a density transfer as per the local Zoning Ordinance provisions for Density Transfer Zones.

January 16, 1990 - Lee Epstein responded with advice of counsel, explaining that the Critical Area boundary must be correctly delineated, using the definition of State wetlands, and any mapped Private wetland boundaries as is required under Title 9 of the Natural Resources Article, and proceeding 1,000 feet landward; and that the DNR wetlands maps could be used as guides in this regard. He also went on to indicate that "A local critical area mapping designation that fails to meet these geographical standards is void ..., since it directly contravenes the terms of the statute.", and that "...in Maryland, local ordinances which clearly conflict with or contravene public general law are deemed constitutionally invalid." The Commission approved local Critical Area maps for planning purposes as prescribed in the Critical Area Law, which were submitted by the County at the 1:2000 scale. The maps which are currently used by the County are at the 1:600 scale, and errors which were not evident at the 1:2000 scale are now evident at the 1:600 scale. Even so, Lee went on to say that "...any Commission approval or ratification of inappropriate local critical area mapping is ineffective, and cannot somehow validate the local mistake.", and that he did not believe that "a landowner may rely on a local map which is known to reflect a Critical Area boundary that does not meet the standards set in the Critical Area law."

January 19, 1990 - Doldon Moore, of DNR-Tidal Wetlands Division sent a letter to Mark Howard, of Baseline Engineering, in reference to the Arrowhead property. Following a site visit, he had determined that the wetland-upland boundary is fixed as per the delineated boundary line on State wetland Map 46, for Calvert County, which shows the tidal wetlands boundary associated with the headwater drainage area of Hunting Creek.

March 19, 1990 - Judge North sent a letter to Frank Jaklitsch, Calvert County Director of Planning and Zoning, in response to

questions that were raised during a March 9, 1990 meeting with Calvert County Attorney, Alan Handen; Assistant Attorney General, Lee Epstein; Critical Area Commission Chairman, Judge North; Executive Director, Dr. Sarah Taylor; Environmental Planner, Dr. David Brownlee; and, Commission staff, Ren Serey, and Susan (Lawrence) Barr. He stated that the Critical Area boundary must be correctly delineated as per Map 46, and that all applicable local Critical Area Criteria must be applied to all land located within that boundary. He also informed Mr. Jaklitsch that if the County decided to proceed with approval of the Arrowhead Transfer Zone with full knowledge of the map discrepancy, then the only administrative remedy available for alleviation of the situation would be through the use of the County's Growth Allocation, which must be applied to the portion of the project which would not meet the density restrictions of the Resource Conservation Area within which it is located. He also mentioned the fact that the Commission only reviewed 1:2000 scale maps, on which such errors as are now evident at the County's 1:600 scale would not have been detected.

September 25, 1990 - County Commissioners signed Resolution No. 40-90, Establishment of Transfer Zone, on the Arrowhead property, based on the erroneous Critical Area boundary.

October 22, 1990 - Doldon Moore, of DNR-Tidal Wetlands Division submits comments to Calvert County in reference to a preliminary site plan proposal, Arrowhead Estates. He states that the County Critical Area line shown on the site plan is incorrect as per the delineated wetlands and the official wetlands boundary Map 46. He also states that in order to facilitate the review of the tidal wetlands boundary, the wetlands which are located on the Virginia Cox property and any other parcel that would be utilized in determining the 1,000-foot Critical Area line must be shown.

November 14, 1990 - Following staff review of the preliminary subdivision proposal for Arrowhead Estates, comments were forwarded to the County indicating the fact that as a result of the Critical Area boundary being incorrectly delineated, the approved Transfer Zone allowing increased density on a portion of the property shown as being outside of the Critical Area is in error, due to the fact that this land is actually located within the Critical Area; and, that Critical Area density limitations are proposed to be exceeded on that portion of the property which is located within the Critical Area and has been approved for the Transfer Zone.

PROPOSED FUTURE ACTION BY THE COMMISSION:

Commission staff and Doldon Moore of DNR-Tidal Wetlands will attend the Calvert County Planning Commission meeting during which the Preliminary Subdivision Plan for Arrowhead Estates is scheduled to be considered, in order to restate the position of the Commission in reference to the proper delineation of the Critical Area boundary on this site, and the County's option to use Growth Allocation for the portion of the site which does not meet the development Criteria.

STAFF REPORT

JURISDICTION: Talbot County

PROGRAM AMENDMENT: Growth Allocation - Tilghman on the Chesapeake
25.5 acres

DESCRIPTION: The Talbot County Council has approved 25.5 acres of growth allocation for a portion of a residential subdivision named Tilghman on the Chesapeake, owned by Avalon Limited Partnership. The property is currently zoned RC, Resource Conservation. Existing land use is agricultural field. It is proposed to be zoned VC (Village Center), a Limited Development Area. The site is located on Tax Map 44 A, p/o parcel 4 (see attached map).

The project lies adjacent to the existing VC boundary of Tilghman, and meets the adjacency requirement for growth allocation in the Talbot County Critical Area Zoning Ordinance. The ordinance requires that at least 25% of the perimeter land boundary of the subject parcel be adjacent to an LDA zone.

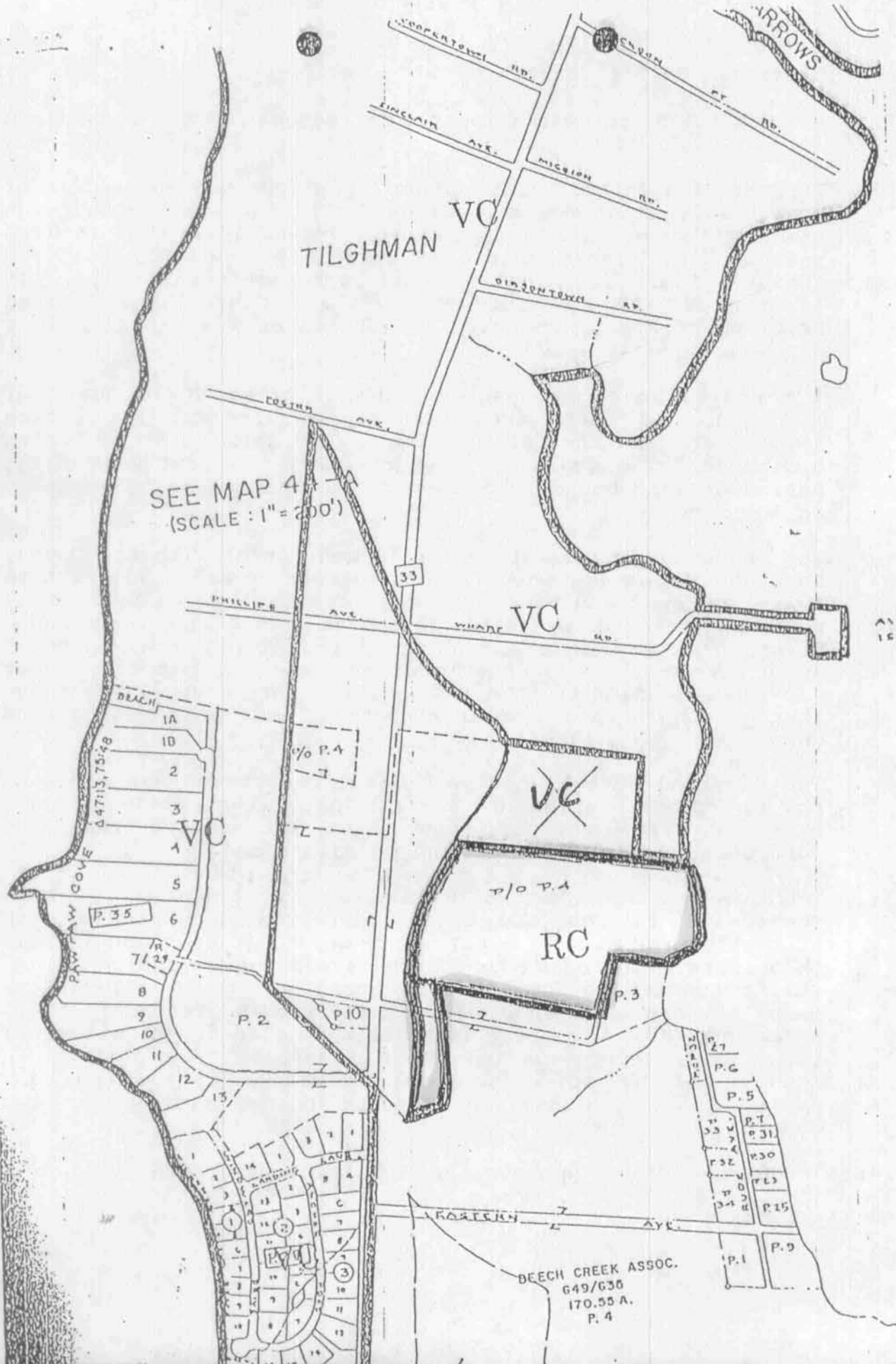
The proposed growth allocation is consistent with the County Comprehensive Plan, which directs growth to areas adjacent to existing towns and villages, and to areas served by central water and sewerage systems. This area lies within the amended Tilghman Sewerage Service Area. The County Comprehensive Sewer and Water Plan provides for immediate priority sewer service extension to this area. The County Council has ruled that growth in this area is compatible with surrounding land uses.

The Maryland Forest, Park and Wildlife Service has reviewed the growth allocation and has indicated that no HPA issues exist on-site; however, they have recommended that the corridors of existing woodland be maintained.

The Growth Allocation Policy, adopted by the Critical Area Commission in February 1988, addresses deducting growth allocation for part of a parcel; however, it does not address this issue with regard to phased development. The panel and staff recommend deducting 25.5 acres of growth allocation, which is part of a parcel, for the following reasons: it is a designated growth area; it meets the adjacency requirement; it is in a sewer service extension area; there are no HPA issues; and the entire development envelope, including roads, entire lots, and open space, are being included in the deduction.

PANEL RECOMMENDATION: Approval of 25.5 acres of growth allocation

STAFF CONTACT: Pat Pudelkewicz



SEE MAP 4
(SCALE: 1" = 200')

TILGHMAN VC

VC

~~VC~~

RC

BEECH CREEK ASSOC.
649/636
170.55 A.
P. 4

PAWPAW COVE

ARROWS

COOPERSTOWN RD.

LINCOLN AVE.

MICHIGAN RD.

DINWIDDIE RD.

EASTON AVE.

PHILLIPS AVE.

WHARF RD.

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BEACH

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

11-1-90

INTRODUCTION

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

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

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

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

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

1. A description of the program or class of activities;
2. An assessment of the extent to which development resulting from the program or class of activities will be consistent with COMAR 14.15;

3. A proposed process by which the program or class of activities will be conducted so as to conform with the requirements of COMAR 14.15.

This information is contained in the following section.

DESCRIPTION

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

One of the methods used to carry out these mandates is providing technical assistance to landowners and local jurisdictions on wildlife management, forest management, and protection of special habitats and threatened and endangered plants and animals. This assistance often takes the form of a written Resource Conservation Plan or a Timber Harvest Plan. The class of activities covered by this General Approval is the preparation of Timber Harvest Plans and Resource Conservation Plans by the FPWS staff.

Resource Conservation Plans

The Resource Conservation Plan is developed by a FPWS biologist or forester who is guided by State laws, State regulations, FPWS policies, and the objectives of the landowner. The plan is prepared for a specific property and may cover a number of years. The Resource Conservation Plan is a consolidation of the previously-used forest management plan and wildlife management plan. It includes management and protection recommendations for forests, wildlife and wildlife habitat, and threatened and endangered species and species in need of conservation and their habitats, and for special natural communities. Management and protection measures included in the plan are based on the current level of knowledge and best

management practices within each profession. Where these practices conflict, the process described in a following section assures that the plan recommends the practice that constitutes the best use or protection of the resources involved. The types of development that may arise as a result of implementation of a Resource Conservation Plan are waterfowl impoundment construction and timber harvests. Only those Resource Conservation Plans which result in the construction of waterfowl impoundments will be sent to the Critical Area Commission and the local jurisdiction. Timber harvesting which occurs as a result of Resource Conservation Plans will be reviewed and approved through the District Forestry Board- Forest, Park, and Wildlife Service General Approval for Timber Harvest Plan Approval Process.

Timber Harvest Plan

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

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

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

The Timber Harvest Plan is prepared by a FPWS licensed forester who is guided by State laws, State regulations, FPWS policies, the objectives of the landowner, and a local jurisdiction's Critical Area Resource Protection Program. It prescribes how a timber harvest operation will be conducted so that it will conform to a local jurisdiction's Critical Area Resource Protection Program. A Timber Harvest Plan is required

for any harvest occurring within any one year interval and affecting one or more acres in forest and developed woodland in the Critical Area. Timber Harvest Plans are approved by the Forest, Park and Wildlife Service through the District Forestry Board and the Bay Watershed Forester. The format for a Timber Harvest Plan, which lists the elements which must be addressed in the plan, appears in Appendix A. The format for the Buffer Management plan, required when harvesting occurs in the Buffer, appears in Appendix B.

ASSESSMENT OF CONSISTENCY WITH COMAR 14.15

An assessment of the extent to which development resulting from the program will be consistent with COMAR 14.15 is required for a general approval. Development resulting from the implementation of Resource Conservation Plans with waterfowl impoundment recommendations or Timber Harvest Plans is usually within the definition listed in COMAR 14.19.01.01.B(13)(b-c): "Any activity that materially affects the condition and use of dry land" or "...land under water." The definition of development as it applies to Resource Conservation Plans and Timber Harvest Plans can be further described as "the implementation of resource management practices which change the profile, species composition, water regime, or primary use of a particular site." Therefore, this section will assess the extent to which resource management practices that change the profile, species composition, water regime, or primary use of a site will be consistent with COMAR 14.15. The two types of development which occur due to the implementation of Resource Conservation Plans are timber harvests and waterfowl impoundments. In addition, Resource Conservation Plans may include recommendations which affect habitat protection areas and which utilize agricultural practices. Timber Harvest Plans will affect forests and may affect habitat protection areas. Therefore, the following portions of the Criteria will be addressed: Forest and Woodland Protection (COMAR 14.15.05); Agriculture (COMAR 14.15.06), and Habitat Protection Areas (COMAR 14.15.09).

Forest and Woodland Protection

Resource Conservation Plans will often include forest management practices and Timber Harvest Plans will always include forest management practices. Forest management recommendations will follow these policies:

1. Maintain and increase the forested vegetation of the Critical Area;
2. Conserve forests and developed woodlands and provide for expansion of forested areas;

3. Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation and other resources can be maintained, recognizing that, in some cases, these uses may be mutually exclusive.

Timber Harvest Plans will include measures to protect surface and groundwater quality. The plan will indicate whether harvest operations will affect Habitat Protection Areas designated by the local jurisdiction and will incorporate protection measures as specified by the local jurisdiction's Critical Area Protection Plan. Habitat Protection Areas described in COMAR 14.15.09 but not yet designated by the local jurisdiction will be brought to the local jurisdiction's attention for their action. Harvests occurring within the Buffer require a buffer management plan and will be in accordance with COMAR 14.15.09.01. The plan will schedule the timing, intensity and size of harvests so that continuity of habitat will be assured. In compliance with the local jurisdiction's program, the plan will state that a Sediment Control Plan developed according to the State "Standard Erosion and Sediment Control Plan for Harvest Operations" will be required for all harvests of 5,000 square feet or more of disturbed area. The Erosion and Sediment Control Plan is developed by the local Soil Conservation District Office.

The incorporation of the above measures in the forest management section of Resource Conservation Plans and in Timber Harvest Plans will assure that the development resulting from implementation of plans fully meet the criteria in COMAR 14.15 for forest and woodland protection.

Agriculture

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

1. Assure that the creation of new agricultural lands is not accomplished:
 - A. By diking, draining, or filling or any class or subclass of palustrine wetlands, as described in COMAR 14.15.09.02, which have a seasonally flooded or wetter water regime, unless mitigation as provided for in COMAR 14.15.09.02 is accomplished;
 - B. By clearing of forests or woodland on soils with a slope greater than 15%; or on soils with a "K"

value greater than 0.35 and a slope greater than 5%;

- C. If the clearing will adversely affect water^{the} quality or will destroy plant and wildlife habitat as defined in COMAR 14.15.09;
 - D. By the clearing of existing natural vegetation within the Buffer as defined in COMAR 14.15.09.
2. Assure that Best Management Practices for the control of nutrients, pesticides, and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and, shall minimize adverse effects on plant, fish, and wildlife resources.
 3. Agricultural practices occurring within the Buffer shall be in conformance with COMAR 14.15.09.01.C.04.

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

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

Habitat Protection Areas

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

Forest and wildlife management practices recommended in Resource Conservation Plans and Timber Harvest Plans may affect HPAs. When, during the development of a Resource Conservation Plan or Timber Harvest Plan, a potential candidate for a HPA is found, the plan will incorporate measures to avoid disturbance to the area. The local jurisdiction will be notified of its presence so that it may be considered for designation. For existing HPAs, the management recommendations will incorporate the following policies and criteria.

Buffer

All Resource Conservation Plans and Timber Harvest Plans will delineate the minimum 100-foot Buffer (referred to henceforth as "Buffer") landward from the Mean High Water Line of tidal waters, tributary streams, and tidal wetlands. The following policies will be adopted:

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

The following criteria will be incorporated into Resource Conservation Plans and Timber Harvest Plans to protect the Buffer.

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

- C. The filter strip shall be expanded by a distance of 4 feet for every 1% of slope for slopes greater than 6%;
 - D. The filter strip shall be maintained until the landowner implements an approved Soil and Water Conservation Plan which includes a program of Best Management Practices for the specific purpose of improving water quality and protecting plant and wildlife habitat. These Best Management Practices shall achieve the water quality and habitat protection objectives of the 25-foot vegetated filter strip.
 - E. Clearing of existing natural vegetation in the Buffer is not allowed.
4. Cutting or clearing of trees within the Buffer shall be prohibited except that:
- A. Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the Mean High Water Line of tidal waters, perennial tributary streams, and the edge of tidal wetlands. Harvesting in the Buffer must be in conformance with a Buffer management plan prepared by a licensed forester and approved by the Forest, Park and Wildlife Service. The plan shall be required for all commercial harvests within the Buffer regardless of the size of the area to be cut.
 - i. Where the minimum 100-foot Buffer is not coincident with another type of Habitat Protection Area, the Buffer Management Plan shall contain the following minimum requirements:
 - a. Disturbance to stream banks and shorelines shall be avoided;
 - b. The area disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the Buffer;
 - c. Cutting does not involve the creation of staging areas, logging roads and skid trails within the Buffer.

- ii. Cutting may not occur in other types of Habitat Protection Areas which overlap the minimum 100 foot Buffer, including portions expanded beyond 100 feet.
 - B. Commercial harvesting of trees by any method may be permitted to the edge of intermittent streams provided that the cutting is conducted according to the above provisions;
 - C. Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer, and provided that the trees are replaced on an equal basis for each tree removed;
 - D. Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion;
 - E. Horticultural practices may be used to maintain the health of individual trees;
 - F. Other cutting techniques may be undertaken within the Buffer under the advice of the Department of Agriculture and the Department of Natural Resources if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.
5. The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas, such as steep slopes, undrained hydric soils associated with other sensitive areas, highly erodible soils, threatened and endangered species habitat, and plant and wildlife habitat, where development or disturbance may impact streams, wetlands, or other aquatic environments. In other words, Buffer expansion is required primarily for two reasons: protection of water quality and protection of plant and wildlife habitat. The following section describes the criteria that the FPWS will use to determine the necessity of expanding the Buffer for forest management purposes.
- A. Where contiguous slopes 15% or greater occur, the Buffer shall be expanded 4 feet for every percent

of slope, or to the top of the slope whichever is greater in extent.

- B. The Buffer will be expanded for the following wetlands because of high plant and wildlife habitat value and protection of water quality.
- i. All wetlands with sweet bay (Magnolia virginiana) as a dominant or codominant species;
 - ii. All PFO2 (needle-leaved deciduous) wetlands with naturally-occurring (not planted) trees, e.g. bald cypress (Taxodium distichum);
 - iii. PFO4 (needle-leaved evergreen) wetlands with naturally-occurring (not planted) Atlantic white cedar (Chamaecyparis thyoides) or bald cypress;
 - iv. All non-tidal wetlands influenced by oceanic tides; i.e., those with water regime modifiers N (flooded daily by tides), R (seasonal tidal), S (temporary tidal), T (semipermanent tidal), and V (permanent tidal);
 - v. All non-tidal wetlands with surface water throughout the growing season in most years, or wetter; i.e., PFOH (permanent), PFOG (intermittently exposed), PFOF (semipermanent), PFOV (intermittently flooded/temporary), PFOY (saturated/semipermanent/seasonal), and PFOZ (intermittently exposed/permanent);
 - vi. PFOB wetlands (saturated); used to describe bogs and some seeps;
 - vii. PFOE wetlands (seasonal saturated); surface water is present for extended periods, especially early in the growing season, and the water table remains near the surface during the remainder of the year;
 - viii. PFO1 (broad leaved-deciduous), PFO1/4 (broad-leaved deciduous and needle-leaved evergreen), and PFO4 (needle-leaved evergreen) wetlands with water regime modifiers A (temporary) or C (seasonal) with the following conditions:

- a. PFO1A wetlands occurring on the floodplains of intermittent or permanent streams, rivers, or tributaries;
 - b. with State- or Federally-listed threatened or endangered species and species in need of conservation;
 - c. within Natural Heritage Areas unless otherwise recommended by the Maryland Natural Heritage Program;
 - d. within other Plant and Wildlife Habitats of Local Significance unless otherwise recommended by the local jurisdiction;
 - f. contiguous with bayside ponds;
 - g. with seeps;
 - h. with naturally-occurring (not planted) stands of bald-cypress or Atlantic white-cedar;
 - i. with old growth forest, as defined by the FPWS (see Appendix C);
 - j. with seasonal ponds or seasonally flooded flatwoods associated with seasonal ponds;
 - k. with steep slopes;
 - l. with highly erodible soils.
- C. The Buffer will be expanded to include steep slopes (15% or greater) or highly erodible soils adjacent to the wetlands protected by the Buffer expansion.
- D. When BMPs are used to protect water quality, the Buffer need not be expanded for the following types of wetlands because of their relatively low plant and wildlife value.
- i. PFO4J wetlands (the driest type);
 - ii. PFO4D wetlands (seasonally flooded, well-drained)

- iii. PFO1, PFO1/4, and PFO4 wetlands with water regime modifiers A or C except for those situation listed in section B above.
- E. Buffer expansion for all other wetlands will be determined by the FPWS on a case-by-case basis according to the plant and wildlife habitat value and potential for adverse impacts to water quality.
- F. When a literal enforcement would result in unwarranted hardship to a landowner, the landowner may request a variance from the Buffer expansion rules. This request is made through the Bay Watershed Forester, the Bay Wildlife Biologist, or Natural Heritage Ecologist, and is approved or disapproved by the Assistant Secretary of the FPWS.
 - i. The variance request shall:
 - a. describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - b. verify that a literal enforcement of these rules will deprive the landowner of rights commonly enjoyed by other in similar areas;
 - c. be accompanied by the recommendations of the Wildlife Division, the Natural Heritage Program, and the Forestry Division on the granting or denial of the variance request;
 - ii. The variance request will be forwarded to the Assistant Secretary of the FPWS for approval;
 - iii. The granting of the variance shall not confer upon the landowner any special privilege that would be denied to other landowners within the Critical Area.
 - iv. The granting of a variance will not adversely affect water quality or fish, wildlife or plant habitat within the Critical Area.
- 6. All roads, bridges, and utilities that must cross a Buffer 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. Where any road, bridge, or utility must cross a buffer coincident with another type of Habitat Protection Area, a variance must be obtained through the process described in 5F, above.

Non-Tidal Wetlands

All Resource Conservation Plans and Timber Harvest Plans will identify non-tidal wetlands as described in COMAR 14.15.09.02.C.(3)(a)(i-ii). Existing farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat purposes are excluded from these regulations. Wetlands of importance to plant, fish, wildlife and water quality will be protected by utilizing the following criteria when Resource Conservation Plans and Timber Harvest Plans are written.

1. At least a 25-foot buffer is maintained around identified non-tidal wetlands where harvesting or other activities which may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities will not adversely affect the wetland. To show that harvesting will not adversely affect the wetland, the Plan should list the specific BMPs used to avoid impacts to the hydrologic regime, water quality, or wildlife habitat.
2. The hydrologic regime and water quality of identified non-tidal wetlands are protected by providing that development activities or other land disturbances in the drainage area of the wetlands will minimize alterations to the surface or subsurface flow of water into and from the wetland and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.
3. If the use of BMPs cannot prevent permanent adverse impacts to the wetlands, the harvest may occur under the following circumstances. The harvest or associated activity such as road-building must be of substantial economic benefit, the impacts to the wetlands must be unavoidable and necessary, and a mitigation plan must be prepared and carried out. These activities include, but are not limited to, development activities, tree cutting operations, and those agricultural operations permitted under COMAR 14.15.06.02C and D for which mitigation is required. The plan shall specify mitigation measures that will provide water quality

benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished on-site or near the affected wetland where possible.

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

Threatened and Endangered Species and Species in Need of Conservation

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

1. A protection area is designated around each of the habitats within which development activities and other disturbances shall be prohibited unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats;
2. Special provisions are included for protection in forest management recommendations;
3. Landowners may enter conservation easements or other cooperative agreements which provide protection.
4. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.

Plant and Wildlife Habitat

All Resource Conservation Plans and Timber Harvest Plans will identify the types of plant and wildlife habitat listed below:

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

The following policies will guide the development of the plans.

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

The following criteria will be incorporated into Resource Conservation Plans and Timber Harvest Plans.

1. Buffer areas, generally of 1/4 mile in radius, are established for colonial water bird (heron, egret, tern and glossy ibis) nesting sites so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.

2. Protection measures are provided, including a buffer area where appropriate, for other plant and wildlife habitat sites.
3. Forest management recommendations in the Plan protect and conserve those forested areas required to support wildlife species identified above, and the wildlife that inhabit or use the areas. These recommendations should assure that development activities, or the clearing or cutting of trees which might occur in the areas, is conducted so as to conserve riparian habitat, forest interior wildlife species, and their habitat.
4. Corridors of existing forest or woodland vegetation are maintained to provide effective connections between wildlife habitat areas.
5. Those plant and wildlife habitats considered to be of significance by local jurisdictions are protected by appropriate means.
6. Natural Heritage Areas are protected from alteration due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained.
7. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.

Anadromous Fish Propagation Waters

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

1. Protect the instream and stream bank habitat of anadromous fish propagation waters;
2. Promote land use policies and practices in the watershed of spawning streams within the Critical Area

which will minimize the adverse impacts of development on the water quality of the streams; and

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

The following criteria will be incorporated into Resource Conservation Plans and Timber Harvest Plans.

1. Concrete riprap or other artificial surfaces are not installed onto the bottom of natural streams unless it can be demonstrated that water quality and fisheries habitat can be improved.
2. Channelization or other physical alterations which may change the course of circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
3. The discharge of sediments into streams is minimized to the extent possible.
4. The natural vegetation of the watershed is maintained or, where practicable, increased.
5. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. If practical, existing barriers shall be removed (COMAR 08.05.03.05).
6. The construction, repair, or maintenance activities associated with bridges, or other stream crossings which involve disturbance within the Buffer or which occur instream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15.

The incorporation of the above policies and measures in the management recommendations of Resource Conservation Plans and timber management plans will assure that the development resulting from the implementation of the plan will fully comply with the criteria in COMAR 14.15.09 for Habitat Protection Areas.

PROCESS

Resource Conservation Plans

The process for assuring that Resource Conservation Plans conform to the Criteria is largely handled within the FPWS. Plans are developed according to FPWS Policy No. 90-115 and Circular 90-134. The circular establishes a process which

requires that development of Resource Conservation Plans be coordinated between the Cooperative Forestry Division, Wildlife Division, and Natural Heritage Program. Briefly, the procedure is a notification process that informs all three divisions that a Resource Conservation Plan is going to be developed for a particular property. The notification allows the divisions to review the landowners objectives and to locate the property to assess the likelihood of natural elements of significance to their division occurring on the site. The division then makes a decision of the level of involvement required of them.

The circular also states that plans developed for properties located within the Critical Area must conform to COMAR 14.15. Consulting the guidance papers published by the Critical Area Commission and in-house management guidelines during the development of the plan is encouraged. Utilizing professionals from other units and agencies, such as Tidewater Administration, Department of Agriculture, Soil Conservation Districts, and local governments is urged.

In addition, the circular requires that any conflict in recommendations which may occur during the development of the plan be referred up through each Division's chain-of-command until a resolution is reached. A Site Review Group as described in Appendix H may also be formed to help resolve conflicts. For plans within the Critical Area, the basis for the resolution shall be compliance with the intent of COMAR 14.15, the local jurisdiction's Critical Area Protection Program and other pertinent state laws and regulations.

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

A detailed account of the FPWS in-house procedure for developing Resource Conservation Plans follows.

Procedure For Developing FPWS Resource Conservation Plans

Activities Included in this Procedure: Any request from a landowner or manager for written recommendations that address the management (including protection) of a property made to a FPWS employee is subject to the following procedure. The collective

recommendations for a property developed through this procedure will be called a Resource Conservation Plan. In other words, any request for management or protection recommendations for a parcel of land that is made to wildlife managers or biologists, project or Bay watershed foresters, or Natural Heritage ecologists that results in written recommendations will invoke this process. Examples of plans involved include forest resource management plans (including those done for FCMAs and updates for previously written plans) wildlife management plans (including waterfowl habitat improvement plans) and plans for management or protection of threatened or endangered species, species in need of conservation, Natural Heritage Areas or other sensitive habitats.

Activities Exempt from this Process

1. Pine reforestation plans (plans which address only reforestation and not any other management practice) for harvests conducted under the Seed Tree Law;
2. Wildlife Habitat Improvement Program planting agreements;
3. Natural Heritage Registry agreements when a management plan is not requested by the landowner.

Regional Coordinator: By mutual agreement, each region will select one Regional Coordinator from among the region's Wildlife, Cooperative Forestry, and Natural Heritage personnel. This person will be responsible for maintaining copies of the Coordination Forms which will serve as the official record of Resource Conservation Plan activity.

Process:

1. When a landowner or land manager requests information on a Resource Conservation Plan, a pre-visit letter (Appendix D) will be sent to him. This letter will be sent immediately following the initial contact and before any site inspection is scheduled. The letter will be signed by the employee with whom the initial contact was made. That employee becomes the FPWS lead representative.
2. The Landowner's Information Form will be returned to the FPWS lead representative and therefore his or her name and address must be put on the self-mailing form before it is sent.
3. Upon receipt of the completed Landowner's Information Form, the FPWS lead representative will complete a Coordination Form (Appendix E). All of the listed information must be included on the form. It will allow each of the other two divisions' personnel to check the location of the property and make an informed decision on the level of involvement

required. Both the Landowner's Information Form and the Coordination Form will be sent to the Regional Coordinator.

4. The Regional Coordinator will enter the dates indicated on the Coordination Form. He will retain a copy of the Coordination Form for his records and send a copy of the Coordination Form and the Landowner's Information Form to the appropriate person in the other two divisions and to the FPWS Associate Director, Chesapeake Bay Program. The Regional Coordinator must send out the forms within 3 working days of receiving them.
5. The contacts for the other two divisions must respond in writing to the FPWS lead representative within 10 working days of the receipt of their forms to state their intended involvement in the plan. (Note that this is their intended involvement, not their management recommendations.) For example, one may ask to make a site visit, decline participation, or provide written comments. A response must be made to the FPWS lead representative even when no involvement will occur. NO RESPONSE IS NOT ACCEPTABLE.
6. The FPWS lead representative will remain the unit's primary contact with the landowner. If a site inspection is needed by either of the other division personnel, it will be arranged through the FPWS lead representative. The lead representative may request that an employee in another division take the lead in developing a plan if that division's expertise better suits the landowner's needs. In particular, on properties with a designated Natural Heritage Area or threatened or endangered species site (other than bald eagle nests or Delmarva fox squirrel habitat) the Natural Heritage conservation biologist will be the lead representative.
7. Written recommendations must be given to the lead representative within 30 days of the date that the Coordination Form and Landowner's Information Form was sent from the Regional Coordinator's office. The recommendations must be in a format that is compatible with the Resource Conservation Plan format. The lead representative will include the other division's recommendations in the plan with no change in content. If conflicts or questions occur, the lead representative will contact the author of the recommendations for clarification.
8. If a conflict arises that cannot be resolved in the field, the problem will be referred through the chain of command until an agreement is reached, with the option of forming a Site Review Group as described in Appendix H.

The Chain of command is as follows:

- A. First level - Bay Watershed Forester; Bay Wildlife Biologist; and Regional Ecologist;
- B. Second level - Regional Forester; Wildlife Habitat Coordinator; Regional Ecologist;
- C. Third level - State Forester; Director, Wildlife Division; Director, Natural Heritage Program;
- D. Fourth level - Assistant Secretary, Forestry, Parks, Wildlife & Natural Heritage.

For resolving conflicts for plans for properties in the Critical Area, the basis of resolution will be the Critical Area Law, the Critical Area Criteria, the local jurisdiction's Critical Area Protection Program, Critical Area guidance papers, and other pertinent state laws and regulations.

- 9. When a literal enforcement would result in unwarranted hardship to a landowner, the landowner may request a variance from the Buffer expansion rules. This request is made through the Bay Watershed Forester, the Bay Wildlife Biologist, or Natural Heritage Ecologist, and is approved or disapproved by the Assistant Secretary of the FPWS.
 - i. The variance request shall:
 - a. describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - b. verify that a literal enforcement of these rules will deprive the landowner of rights commonly enjoyed by other in similar areas;
 - c. be accompanied by the recommendations of the Wildlife Division, the Natural Heritage Program, and the Forestry Division on the granting or denial of the variance request;
 - ii. The variance request will be forwarded to the Assistant Secretary of the FPWS;
 - iii. The granting of the variance shall not confer upon the landowner any special privilege that would be denied to other landowners within the Critical Area.

- iv. The granting of a variance will not adversely affect water quality or fish, wildlife or plant habitat within the Critical Area.
10. Should a site which qualifies as a Habitat Protection Area but has not been designated by the local jurisdiction be located during the development of the plan, the FPWS representative will notify the local jurisdiction. The notification will include the type of HPA, a short description, location, and landowner. If the HPA will be disturbed by activities in the Resource Conservation Plans, protection measures will be recommended. These recommendations will also be forwarded to the local jurisdiction. The local jurisdiction will decide if a public hearing to designate the HPA and protection measures is in order.
11. Occasionally a discrepancy occurs between the wetland designation on the USFWS National Wetlands Inventory (NWI) Maps and the actual conditions in the field. In this situation the person developing the plan will describe in the plan the designation on the NWI map, the corrected designation, and a brief explanation of why the change is appropriate. This information will also be sent to the DNR's Water Resources Administration - Nontidal Wetland Division for their use. When differences of opinion on classification of wetlands occurs, the Nontidal Wetlands Division will be consulted as the authority.
12. Each Regional Forester or the Wildlife Habitat Coordinator may establish a review process within the region for completed plans.
13. A copy of Resource Conservation Plans that recommend designation of a Habitat Protection Area or that include proposed protection measures will be sent to the Critical Area Commission and the appropriate office of the local jurisdiction.
14. A copy of Resource Conservation Plans that result in the construction of waterfowl impoundments will be sent to the Critical Area Commission for its review. The Resource Conservation Plan will be sent at the time that applications for permits for impoundment construction are submitted to Water Resources Administration, Army Corps of Engineers, local Soil Conservation District or other permitting agencies. A copy of the Resource Conservation Plan will also be sent to the appropriate office of the local jurisdiction at the time of permit application.

It is through the above process that the FPWS Resource Conservation Plans will be developed so as to conform with the requirements of COMAR 14.15.

Timber Harvest Plans

Timber Harvest Plans are developed according to FPWS Policy No. 90-116 and Circular 90-135. The circular establishes a process which requires that development of Timber Harvest Plans be coordinated between the Cooperative Forestry Division, Wildlife Division, and Natural Heritage Program. Briefly, the procedure is a notification process that informs all three divisions that a Resource Conservation Plan is going to be developed for a particular property. The notification allows the divisions to locate the property to assess the likelihood of natural elements of significance to their division occurring on the site. The division then makes a decision of the level of involvement required of them.

The circular also states that plans developed for properties located within the Critical Area must conform to COMAR 14.15. and The District Forestry Board - Forest, Park and Wildlife Service Forest Management Plan Approval Process: Request for General Approval. Consulting the guidance papers published by the Critical Area Commission and in-house management guidelines during the development of the plan is encouraged. Utilizing professionals from other units and agencies, such as Tidewater Administration, Department of Agriculture, Soil Conservation Districts, and local governments is urged.

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

Timber Harvest Plans must be approved by the District Forestry Board. Plans must conform to the local jurisdiction's Critical Area Resource Protection Program to be approved by the District Forestry Board, and should therefore also conform to the Criteria.

A detailed account of the FPWS in-house procedure for developing Timber Harvest Plans follows.

Procedure for Developing FPWS Timber Harvest Plans

1. When a landowner requests a Timber Harvest Plan for a property within the Critical Area from a Bay Watershed Forester, the forester will complete a coordination form (Appendix E). All of the listed information must be included on the form. It will allow each of the other two divisions' personnel to check the location of the property and make an informed decision of the level of involvement required. The forester will send the coordination form to the Regional Coordinator.
2. The Regional Coordinator will enter the dates indicated on the Coordination Form. He will retain a copy of the Coordination Form for his records and send a copy of it to the appropriate person in the other two divisions. The Regional Coordinator must send out the forms within 3 working days of receiving them.
3. The contacts for the other two divisions must respond in writing to the forester within 10 working days of the receipt of their forms to state their intended involvement in the plan. (Note that this is their intended involvement, not their management recommendations.) For example, one may ask to make a site visit, decline participation, or provide written comments. A response must be made to the forester even when no involvement will occur. NO RESPONSE IS NOT ACCEPTABLE.
4. The forester will remain the unit's primary contact with the landowner. If a site inspection is needed by either of the other division's personnel, it will be arranged through the forester.
5. Written recommendations must be given to the forester within 30 days of the date that the Coordination Form and was sent from the Regional Coordinator's office. The recommendations must be in a format that is compatible with the Timber Harvest Plan format. The forester will include the other divisions' recommendations in the plan with no change in content. If conflicts or questions occur, the forester will contact the author of the recommendations for clarification.
6. The Timber Harvest Plan must address all of the items in the Timber Harvest Plan Checklist (Appendix F). For harvests occurring in the Buffer, the plan must address all of the items in the Buffer Management Plan Checklist (Appendix G).
7. If a conflict arises that cannot be resolved in the field, the problem will be referred through the chain of command until an agreement is reached, with the option of forming a Site Review Group as described in Appendix H..

The Chain of command is as follows:

- A. First level - Bay Watershed Forester; Bay Wildlife Biologist; and Regional Ecologist;
- B. Second level - Regional Forester; Wildlife Habitat Coordinator; Regional Ecologist;
- C. Third level - State Forester; Director, Wildlife Division; Director, Natural Heritage Program;
- D. Fourth level - Assistant Secretary, Forestry, Parks, Wildlife & Natural Heritage.

The basis of resolution will be the Critical Area Law, the Critical Area Criteria, the local jurisdiction's Critical Area Protection Program, Critical Area guidance papers, the FPWS Resource Conservation Plan and Timber Harvest Plan: Request for General Approval, and other pertinent state laws and regulations.

- 8. When a literal enforcement would result in unwarranted hardship to a landowner, the landowner may request a variance from the Buffer expansion rules. This request is made through the bay watershed forester, the bay wildlife biologist, or Natural Heritage ecologist, and is approved or disapproved by the Assistant Secretary of the FPWS.
 - i. The variance request shall:
 - a. describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - b. verify that a literal enforcement of these rules will deprive the landowner of rights commonly enjoyed by other in similar areas;
 - c. be accompanied by the recommendations of the Wildlife Division, the Natural Heritage Program, and the Forestry Division on the granting or denial of the variance request;
 - ii. The variance request will be forwarded to the Assistant Secretary of the FPWS;
 - iii. The granting of the variance shall not confer upon the landowner any special privilege that

would be denied to other landowners within the Critical Area.

iv. The granting of a variance will not adversely affect water quality or fish, wildlife or plant habitat within the Critical Area.

9. Occasionally a discrepancy occurs between the wetland designation on the USFWS National Wetlands Inventory (NWI) Maps and the actual conditions in the field. In this situation the person developing the plan will describe in the plan the designation on the NWI map, the corrected designation, and a brief explanation of why the change is appropriate. This information will also be sent to the DNR's Water Resources Administration - Nontidal Wetland Division for their use. When differences of opinion on classification of wetlands occurs, the Nontidal Wetlands Division will be consulted as the authority.
10. Each Regional Forester or the Wildlife Habitat Coordinator may establish a review process within the region for completed plans.
11. Each person involved in preparing the plan shall work closely with the landowner to explain why Habitat Protection Area protection measures or other required practices are included in the plan. Should a landowner disagree with the content of the plan, either during its development or after it is delivered, the forester may give the landowner the information collected for the plan and advise him that he should contact a consulting forester.
12. Upon completion of the plan and gaining the landowner's acceptance of the plan, the forester will submit it to the District Forestry Board for their review and action.

It is through the above process that FPWS Timber Harvest Plans will be developed so as to conform with the requirements of COMAR 14.15.

11-1-90

APPENDIX A

TIMBER HARVEST PLAN

FOR

PHONE NUMBER

IN

COUNTY

ON

ACRES

LOCATED AT

PREPARED BY

PHONE NUMBER

DATE

TIMBER HARVEST PLAN

LANDOWNER _____

STAND NO. _____ ACREAGE _____

DOMINANT SPECIES _____

SOILS _____

SLOPE RANGE _____

TYPE OF HARVEST _____
(Clearcut, Shelterwood, Deferred Rotation, Seed Tree, Thinning,
Selection, Diameter Limit, etc.)

CURRENT BASAL AREA _____ POST HARVEST BASAL AREA _____

DHB OF DOMINANT TIMBER SIZE CLASS _____

PROPOSED SITE PREPARATION METHOD _____

PROPOSED REGENERATION METHOD AND DESIRED RESULTS _____

OTHER LAWS AND ORDINANCES APPLY IN TO THE HARVEST SITE (SEED
TREE, FCMA, ETC.) _____

A SEDIMENT AND EROSION CONTROL PLAN FOR FOREST HARVEST OPERATIONS
HAS BEEN/WILL BE PREPARED FOR SUBMITTAL TO THE _____
COUNTY SOIL CONSERVATION DISTRICT FOR ITS REVIEW AND APPROVAL.
WORK WILL BE DONE IN COMPLIANCE WITH THE APPROVED PLAN.

EXPLAIN HOW THE PROPOSED HARVEST WILL PROVIDE FOR WILDLIFE
CORRIDORS AND CONTINUITY OF HABITAT: _____

Habitat Protection Areas (HPA)

Note if harvesting is to occur in or adjacent to any of the following:

- A. 100 foot Buffer _____
- B. Non-tidal Wetland (NTW) or its buffer _____
- C. Threatened & Endangered Species Habitat _____
- D. Forest Interior Dweller Habitat _____
- E. Colonial Nesting Bird Habitat _____
- F. Plant and Wildlife Habitat of Local Significance _____
- G. Natural Heritage Area _____
- H. Anadromous Fish Propagation Waters _____

For each item noted above, include an attachment with the following information.

- a. Delineation of the HPA within the stand.
- b. How the harvest will be modified to conform with the HPA protection requirements.
- c. Attach the appropriate survey information and/or FPWS recommendations for "C,D, & G".
- d. If harvesting is to be done in the 100 foot buffer or expanded buffer attach a Buffer Management Plan.
- e. If a harvest is to be done in a NTW, include the Wetland Classification, Dominant understory vegetation, BMP's and mitigation measures for wetland alteration.

APPENDIX B

BUFFER MANAGEMENT PLAN

LANDOWNER _____

STAND NO. _____ ACREAGE _____

DOMINANT SPECIES _____

SOILS _____

TYPE OF WATER COURSE _____

SLOPE RANGE _____

TYPE OF HARVEST _____

CURRENT BASAL AREA _____ POST HARVEST BASAL AREA _____

DBH OF DOMINANT TIMBER SIZE CLASS _____

PROPOSED SITE PREPARATION METHOD _____

PROPOSED REGENERATION METHOD AND DESIRED RESULTS _____

THIS REGENERATION METHOD WILL REESTABLISH THE WILDLIFE HABITAT
VALUE OF THE BUFFER BY _____

THE SEDIMENT AND EROSION CONTROL PLAN WILL CONFIRM THAT NO
LOGGING ROADS OR SKID TRAILS WILL BE LOCATED IN THE BUFFER AND
THAT STREAM BANKS AND SHORELINES WITHIN THE BUFFER WILL REMAIN
UNDISTURBED.

NO HARVESTING WILL OCCUR WITHIN HPA'S AND THEIR SETBACKS WITHIN
THE BUFFER.

APPENDIX C

OLD GROWTH FOREST DEFINITION

An old growth ecosystem is one in which:

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

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

APPENDIX D

PRE-VISIT LETTER FOR FPWS RESOURCE CONSERVATION PLAN

In response to your inquiry about developing a management plan for your property, I would like to explain the assistance that the Maryland Forest, Park and Wildlife Service can provide. Our biologists, ecologists, and foresters provide land-use recommendations in three broad areas of natural resource management: wildlife management, forest management, and protection of special plant and wildlife habitat. Our goal is to give you information and recommendations that will allow you to make full use of your land to meet your objectives in an environmentally sound manner.

More than 90% of Maryland's land is in private ownership. As natural resource managers, we feel that helping landowners understand the basics of good stewardship is the best way to assure that all of the components of our natural world are perpetuated. Therefore, if you request our assistance, we'll work with you to develop a useful and understandable plan that meets your objectives.

The process that is used to develop the plan, called a Resource Conservation Plan, is as follows. First, we'll meet to discuss your objectives and the current and projected use of your property. During this meeting we may take a brief walk around your property. Later I'll return to make one or more site inspections to collect detailed information on existing conditions. This information will allow me to make specific management recommendations. Other Forest, Park and Wildlife Service personnel may become involved in development of the plan according to your objectives and the resources on your property.

When the plan is written, it will be given to you for review. I will ask that you call me when you have read it so that I can answer questions, make revisions, and help you get started.

The most important step in this process is determining your objectives. An acceptable plan can be developed only if I understand how you intend to use the property. Attached is a brief form that lists some of the objectives for which we are often asked to develop plans. Please spend some time thinking about your own objectives. When you've made your decisions, please complete the form. Write in any objectives that are not on the form. Then, circle your single most important objective. You may also check off any other objectives that interest you. Finally, complete the short site description and return the form to me. When I receive it, I'll call to set up our initial meeting.

Appendix D (cont.)

The information you return will allow me to prepare for our first meeting. Two other items will help prepare you: First, review the description of Forest, Park & Wildlife Service programs that is enclosed. It may suggest some options you may want to pursue. Second, if possible, please have a map, tax plat, or aerial photo available for our meeting.

I'm looking forward to working with you, and hope to be hearing from you soon.

Sincerely,

Name

Title

Division

Maryland Forest, Park and Wildlife
Service

Appendix D (cont.)

SAMPLE RESOURCE CONSERVATION PLAN OBJECTIVES

Provide passive recreation opportunities (such as nature trails, nature observation, photography, wildflower identification)

Provide wildlife habitat

Provide firewood and timber products for my own use

Protect special plant and wildlife habitat (such as endangered species habitat or uncommon plant communities)

Enter into a conservation easement

Qualify for tax incentives

Harvest timber

Manage for a future timber harvest

Improve hunting opportunities

Others

OVER

Appendix D (cont.)

Site Description

Name: _____

Mailing Address: _____

Telephone No: Home: _____ Work: _____

Call: Day: _____ Evening: _____

Property Location (for example, County, nearest road, other landmarks) _____

Current Land Cover and Approximate Acreage

Acres		Acres	
_____	Forest	_____	Residence & Yard
_____	Idle Fields	_____	Marsh
_____	Agricultural Fields	_____	Other (Describe)

Total Acreage: _____

FOLD

Appendix D (cont.)

MARYLAND FOREST PARK & WILDLIFE SERVICE
LANDOWNER ASSISTANCE PROGRAMS

Forestry - Related Programs

The Forest Conservation and Management Agreement (FCMA):

Provides for a frozen property tax assessment at the woodland/agricultural rate (approximately \$100.00 per acre), if the landowner enters into a contract with the DNR - Forest, Park and Wildlife Service for a minimum fifteen (15) year period. During this time the owners agree to manage their woodland according to the Resource Conservation Plan. The forestland must include contiguous acres (excluding one acre for the homesite) to be included in the FCMA program.

The Maryland Income Tax Modification for Reforestation and Timber Stand Improvement:

Allows owners or lessees of forest land in Maryland to deduct double the cost of reforestation and timber stand improvement from their federal adjusted gross income for Maryland income tax purposes. To be eligible, you must own or lease between 10 and 500 acres of forest land in Maryland, install forest management practices on 10 to 100 acres and maintain the practice for no less than 15 years. Only the direct cost of installing the practice may be deducted, not including the taxpayers own labor.

The Woodland Incentives Program (WIP): Is a cost share program which provides funding up to 75% of the cost of forest management practices. These practices may include: site preparation, reforestation, plantation release and timber stand improvement. Cost sharing is authorized for those activities not receiving other cost share assistance for the same practice on the same acreage and those activities aimed at long term forest production.

Wildlife-Related Programs

Wildlife Habitat Improvement Project (WHIP): Reimburses farmers for leaving certain grains and grasses in the field to provide food for game animals. Interested landowners must submit bids to be considered for acceptance into the program. Offered only in Frederick, Carroll, Calvert, and Dorchester Counties, expansion to most counties is expected over the next five years.

Upland Habitat Restoration Program (UHRP): Provides year-around habitat needs of pheasants, quail, and rabbits on each individual farm. The incentive is tailoring land management suggestions to fit into a variety of programs including WHIP, Acreage Conservation Reserve, and Conservation Reserve Program. Farm plans are provided when requested by landowner. At this time the program is offered only in Central and Southern Maryland.

Appendix D (cont.)

Acres For Wildlife: Provides an opportunity for landowners and Maryland Forest, Park and Wildlife personnel to collectively promote and restore wildlife habitats. Of special concern are those areas used by wildlife for nesting and shelter from weather and predators. Acres for Wildlife solicits participants from all 23 counties.

Maryland Waterfowl Restoration Program: Provides a means of helping private landowners restore and enhance wetland habitats to benefit waterfowl. Biologists provide technical assistance by on-site inspection, permit application and review of engineering design as well as follow-up on completed projects. To create financial incentives the program allows qualified participants to deduct the full cost of any improvements or activities outlined in an approved plan from their taxable income (non-cash charitable income contributions).

APPENDIX E

FOREST, PARK AND WILDLIFE SERVICE
COORDINATION FORM

Submitted by: _____

Division: _____ Phone: _____

Landowner Or Land Manager _____

Address _____

County _____ Tax Map No. _____ Parcel No. _____

Maryland Grid Coordinates _____

____ RESOURCE CONSERVATION PLAN

Critical Area Property; Yes _____ No _____

Estimated Acreage: _____

____ TIMBER HARVEST PLAN

Harvest Site Acreage: _____

Resource Conservation Plan Completed (Date) _____

COMMENTS:

TO BE COMPLETED BY REGIONAL COORDINATOR:

Date Received: _____

Date Forwarded to:

Conservation Biologist _____

Bay Wildlife Biologist _____

Bay Watershed Forester _____

District Wildlife Manager _____

Project Forester _____

Associate Director, Chesapeake Bay Program _____

APPENDIX F

TIMBER HARVEST PLAN CHECKLIST

YES NO

LANDOWNER, FORESTER, AND LOCATION

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

MAP(S) WITH THE FOLLOWING FEATURES

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

HABITAT PROTECTION AREAS

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

Appendix F, Non-tidal Wetlands (cont.)

YES NO

- ___ ___ b. Non-tidal wetlands delineation conforms with local Critical Area Protection Program
- ___ ___ c. Harvesting proposed in the wetland
- ___ ___ d. If answer to "c" is yes, the following is included in the plan

 - ___ ___ i. US Fish & Wildlife Service wetland classification type
 - ___ ___ ii. Dominant tree species
 - ___ ___ iii. Dominant understory species
 - ___ ___ iv. DBH of dominant timber size class
 - ___ ___ v. BMPs to be used to mitigate impacts to the wetland described
- ___ ___ e. Measures taken to prevent alterations to the habitat value or hydrologic regime adequate
- ___ ___ f. Mitigation measures for wetland alterations, if necessary, acceptable
- 3. Threatened & Endangered Species & Species in Need of Conservation Habitat

 - ___ ___ a. This type of HPA occurs within or adjacent to harvest site
 - ___ ___ b. Delineation of Habitat Protection Areas for these species conforms to the local Critical Area Protection Program
 - ___ ___ c. FPWS recommendations attached
- 4. Forest Interior Dwelling Species Habitat

 - ___ ___ a. This type of HPA occurs within harvest site
 - ___ ___ b. Delineation conforms with the local Critical Area Protection Plan

Appendix F, Forest Interior Dwelling Species Habitat (cont.)

YES NO

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

OR

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

___ ___ e. If d. is YES, survey report attached

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

___ ___ g. FPWS Wildlife recommendations attached

5. Colonial Nesting Waterbird Habitat

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

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

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

___ ___ d. FPWS Wildlife recommendations attached

6. Plant and Wildlife Habitat of Local Significance

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

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

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

7. Natural Heritage Areas

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

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

___ ___ c. FPWS Natural Heritage Program recommendations attached

Appendix F, Natural Heritage Areas (cont.)

YES NO

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

8. Anadromous Fish Propagation Waters

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

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

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

HARVEST OPERATION

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

___ ___ 2. Plan confirms that regeneration will occur

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

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

___ ___ 5. Wildlife corridors are provided

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

Block for Reviewer Names;

	Name	Date
Bay Watershed Forester	_____	_____
Nat. Heritage Ecologist	_____	_____
Wildlife Biologist	_____	_____
Forestry Board Chairman	_____	_____

APPENDIX G

BUFFER MANAGEMENT PLAN CHECKLIST

YES NO

GENERAL SITE DESCRIPTION

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

HARVEST OPERATION

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

HABITAT PROTECTION AREAS WITHIN THE BUFFER

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

APPENDIX H

CONFLICT RESOLUTION PROCEDURES

A Timber Harvest Plan may include activities which conflict with the local Critical Area Program or the State Critical Area Criteria. Conflicts may also occur among management recommendations from reviewers. Potential areas of conflict are likely to include, but are not limited to, issues such as:

- Map delineations
- Expanded buffers
- Nontidal wetlands
- Threatened and endangered species habitat
- Natural Heritage Areas
- Forest-interior-dwelling birds
- Colonial nesting water birds

In disputes on map delineations of Habitat Protection Areas, field delineations should be conducted to establish accurate boundaries. A properly conducted field delineation will supercede map delineations, because most of the mapping was intended to be a guide to the location of HPAs, not an exact determination of boundary. For example, there may be a discrepancy between the wetland designation on the USFWS National Wetlands Inventory (NWI) Maps and the actual conditions in the field. In this situation the person developing the plan will describe in the Plan the designation on the NWI map, the corrected designation, and an explanation of why the change is appropriate. This information will also be sent to the DNR's Water Resources Administration - Nontidal Wetland Division for their use. When differences of opinion on classification of wetlands occur, the Nontidal Wetlands Division will be consulted as the authority.

The following procedure will be used to resolve conflicts. The normal procedure for preparing Timber Harvest Plans (summarized below) should be followed. For plans prepared by foresters outside the MD FPWS, the normal procedure for review would start at step 3), with comments solicited from the three divisions.

- 1) The landowner contacts the FPWS and describes management goals.
- 2) The lead FPWS representative is designated according to the stated goals.
- 3) The coordination process is initiated (Comments are sought from Forestry, Wildlife, and Natural Heritage).
- 4) Recommendations or comments from all divisions are sent to the Regional Coordinator, who sends them to the Lead Representative.

Appendix H (cont.)

- 5) Where management recommendations conflict, a Site Review Group may be formed to establish facts on existing conditions and open lines of communication among affected parties. Before a Site Review Group is formed, the three FPWS divisions should be made aware that conflicts exist in recommendations for a harvest, and an attempt made to merge the recommendations.

The Site Review Group should be made up of representatives from the three FPWS disciplines (Forestry, Wildlife, and Natural Heritage), the landowner or his agent, and the Forestry Board Chairperson or representative. Other agencies such as the Soil Conservation Service or Districts, Tidal Wetlands, Nontidal Wetlands, or the Critical Area Commission should be involved where their technical expertise would be useful in resolving an issue. Any affected party who disagrees with a suggested management recommendation should be able to request a Site Review Group.

Site Review Group Procedures

- a) Lead Representative suggests the composition of the Site Review Group (i.e., which additional agencies are appropriate to address the resource issue in question).
- b) Copies of plans are sent to all in Site Review Group.
- c) The Lead Representative arranges for a site visit.
- d) Views from all participants are presented at the site and discussed.
- e) A compromise among recommendations is attempted. If a compromise is reached, the District Forestry Board may approve the plan if consistent with the local Critical Area Program and the Critical Area Criteria, followed by notification to the FPWS as described in the approval process.
- f) If no compromise is reached, the alternative management recommendations should be presented by the lead representative at the Forestry Board meeting. The Forestry Board then makes a recommendation to the Assistant Secretary of the FPWS, who makes the final approval or disapproval decision.

Changes to the Requests for General Approval from the
Forest, Park, and Wildlife Service and District Forestry Boards

November 6, 1990

ABH

The Forest, Park, and Wildlife Service (FPWS) currently has two General Approvals from the Chesapeake Bay Critical Area Commission: one for the FPWS to prepare Resource Conservation Plans and Timber Harvest Plans, and one for the District Forestry Boards (DFBs) to approve Timber Harvest Plans. These General Approvals were approved by the Chesapeake Bay Critical Area Commission in December, 1989, with a condition that the FPWS was to resubmit the General Approval request in one year, with changes. These changes were to be made with the involvement of District Forestry Boards and other affected parties, so the FPWS formed a Task Force including District Forestry Boards, three divisions of FPWS, and the Critical Area Commission staff. Comments were also sought from county governments in the Critical Area.

The following changes are the result of the Task Force recommendations. Additionally, a manual was prepared as a working tool to help the District Forestry Boards with their review and approval of Timber Harvest Plans. Each of the six substantive changes is treated separately. The few minor editorial changes are not itemized here. The location of language changed or added in the General Approval documents is given for each change. The General Approval for the FPWS preparation of Resource Conservation and Timber Harvest Plans is referred to as the FPWS document. The General Approval for the District Forestry Board approval of Timber Harvest Plans is referred to as the DFB document. Below the location of the changes is listed the language as originally approved in December, 1989. This is followed by the new proposed language. The last item under the change is an explanation of the change and the reasoning behind it.

Change # 1: Approval process

Location: DFB Document, p. 17

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

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

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

Proposed language: The approval process is a partnership between the DFB and the FPWS, requiring the involvement of both. The Plan may be modified before approval by the DFB and the FPWS. The DFB may give its approval or disapproval of the Plan, with the FPWS being involved through appropriate notification, if conflicts are not present in the Plan. Conflicts may occur between the Plan and the Critical Area Criteria or the local Critical Area Program, or among the management recommendations from the FPWS divisions or submitting forester. If the DFB approves a plan without conflicts, approval becomes final upon notification of the FPWS as follows. The next business day, the Bay Forester must notify the Assistant Secretary of the FPWS through the Associate Director of the FPWS Chesapeake Bay Program of the outcome, including county, name of landowner, and acres to be harvested. A copy of the Plan as approved must be sent to the designated agency in the local jurisdiction (usually Planning and Zoning), and to the Associate Director of the FPWS Chesapeake Bay Program, who will maintain a file copy and will send a copy to the Critical Area Commission. When no conflict exists and the DFB approves the plan, a letter will be sent to the landowner signed by both the Bay Watershed Forester and the local Forestry Board Chairman notifying them of this approval, with a copy sent to the Associate Director of the FPWS Chesapeake Bay Program.

If any conflict with the Critical Area Criteria exists in the Plan, or management recommendations from the FPWS conflict, it must be sent to the Assistant Secretary of the FPWS for approval. Conflicts are identified and possibly resolved following the procedures described in Appendix D. Upon approval or disapproval of the plan, the property owner will be notified in writing by the Bay Watershed Forester.

Plans that are not approved will be returned to the property owner or applicant, with a letter from the Bay Watershed Forester and Chairman of the DFB, which includes DFB recommendations and the reasons for disapproval.

Explanation: The General Approval should reflect the roles of the FPWS and the DFB as partners in the approval process. The amended procedure allows the Boards to have an active role in approval, while retaining approval by the Assistant Secretary of the FPWS for plans with conflicts. The FPWS has the final authority and

responsibility for the decision, so is actively involved in plans with possible controversy. However, routine plans without potential for conflicts are processed more quickly. The proposed language is more specific about notification procedures, and reflects a more workable process for the parties involved.

Change # 2: Add Conflict Resolution Procedures

Location: DFB Document, Appendix D, referenced on p. 18
FPWS Document, Appendix H, referenced on p. 20, #8,
and p. 24, #7

Original language: No specific language. (Conflicts in management recommendations are referred through the chain of command in the FPWS.)

Proposed language: APPENDIX D (or H): CONFLICT RESOLUTION PROCEDURES

A Timber Harvest Plan may include activities which conflict with the local Critical Area Program or the State Critical Area Criteria. Conflicts may also occur among management recommendations from reviewers. Potential areas of conflict are likely to include, but are not limited to, issues such as:

- Map delineations
- Expanded buffers
- Nontidal wetlands
- Threatened and endangered species habitat
- Natural Heritage Areas
- Forest-interior-dwelling birds
- Colonial nesting water birds

In disputes on map delineations of Habitat Protection Areas, field delineations should be conducted to establish accurate boundaries. A properly conducted field delineation will supercede map delineations, because most of the mapping was intended to be a guide to the location of HPAs, not an exact determination of boundary. For example, there may be a discrepancy between the wetland designation on the USFWS National Wetlands Inventory (NWI) Maps and the actual conditions in the field. In this situation the person developing the plan will describe in the Plan the designation on the NWI map, the corrected designation, and an explanation of why the change is appropriate. This information will also be sent to the DNR's Water Resources Administration - Nontidal Wetland Division for their use. When differences of opinion on classification of wetlands occur, the Nontidal Wetlands Division will be consulted as the authority.

The following procedure will be used to resolve conflicts. The normal procedure for preparing Timber Harvest Plans (summarized

below) should be followed. For plans prepared by foresters outside the MD FPWS, the normal procedure for review would start at step 3), with comments solicited from the three divisions.

- 1) The landowner contacts the FPWS and describes management goals.
- 2) The lead FPWS representative is designated according to the stated goals (as described in FPWS Circular 90-134).
- 3) The coordination process is initiated (Comments are sought from Forestry, Wildlife, and Natural Heritage).
- 4) Recommendations or comments from all divisions are sent to the Regional Coordinator, who sends them to the Lead Representative.
- 5) Where management recommendations conflict, a Site Review Group may be formed to establish facts on existing conditions and open lines of communication among affected parties. Before a Site Review Group is formed, the three FPWS divisions should be made aware that conflicts exist in recommendations for a harvest, and an attempt made to merge the recommendations.

The Site Review Group should be made up of representatives from the three FPWS disciplines (Forestry, Wildlife, and Natural Heritage), the landowner or his agent, and the Forestry Board Chairperson or representative. Other agencies such as the Soil Conservation Service or Districts, Tidal Wetlands, Nontidal Wetlands, or the Critical Area Commission should be involved where their technical expertise would be useful in resolving an issue. Any affected party who disagrees with a suggested management recommendation should be able to request a Site Review Group.

Site Review Group Procedures

- a) Lead Representative suggests the composition of the Site Review Group (i.e., which additional agencies are appropriate to address the resource issue in question).
- b) Copies of plans are sent to all in Site Review Group.
- c) The Lead Representative arranges for a site visit.
- d) Views from all participants are presented at the site and discussed.
- e) A compromise among recommendations is attempted. If a compromise is reached, the District Forestry Board may approve the plan if consistent with the local Critical

Area Program and the Critical Area Criteria, followed by notification to the FPWS as described in the approval process.

- f) If no compromise is reached, the alternative management recommendations should be presented by the lead representative at the Forestry Board meeting. The Forestry Board then makes a recommendation to the Assistant Secretary of the FPWS, who makes the final approval or disapproval decision.

Explanation: Because the amended approval procedure handles plans with conflicts different than plans without conflicts, a process must be included to identify such situations. The procedure also directs that conflict resolution is attempted at the earliest possible opportunity, avoiding more explosive conflicts later, and allowing for more informed decision-making. This procedure describes when conflicts should be identified, the parties involved, organization and timing of efforts, and expected results. In the FPWS Document, the referral of conflicts through the chain of command is still retained, but Appendix H is mentioned as an option.

Change # 3: Length of Approval

Location: DFB Document, p. 18

Original language: Plan approvals shall remain valid for two years or as stated in the local jurisdiction's Critical Area Protection Program or ordinance.

Proposed language: Plan approvals shall remain valid for three years or as stated in the local jurisdiction's Critical Area Protection Program or ordinance.

Explanation: The change is made to allow a longer time for loggers to be able to cut a stand of timber under an approved plan. This change allows more opportunity to log wet areas when it will minimize damage and is consistent with timber sale contracts which are sometimes valid for three years. The Wildlife Division and the Natural Heritage Program do not agree with this recommendation, and are of the opinion that a two-year length of approval is more desirable. There is a small possibility that new Habitat Protection Areas, e.g. for bald eagles or Delmarva fox squirrels, could occur after two years, and they would not be taken into consideration with a three-year length of approval.

Change # 4: Water-dependency for mitigation of nontidal wetlands

Location: DFB Document, p. 10, #3
FPWS Document, p. 12, #3

Original language: Provide for the preparation of a mitigation plan by the proposer of activities or operations which are water-dependent and of substantial economic benefit, and will cause unavoidable and necessary impacts to the wetlands. These activities include, but are not limited to, development activities, tree cutting operations, and those agricultural operations permitted under COMAR 14.15.06.02C and D for which mitigation is required. The plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, on-site or near the affected wetland.

Proposed language: If the use of BMPs cannot prevent permanent adverse impacts to the wetlands, the harvest may occur under the following circumstances. The harvest or associated activity such as road-building must be of substantial economic benefit, the impacts to the wetlands must be unavoidable and necessary, and a mitigation plan must be prepared and carried out. These activities include, but are not limited to, development activities, tree cutting operations, and those agricultural operations permitted under COMAR 14.15.06.02C and D for which mitigation is required. The plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished on-site or near the affected wetland where possible.

Explanation: Timber harvests are unlikely to be able to meet the water-dependency criterion for allowing mitigation of nontidal wetlands because the harvest, although specific to a location, does not generally require access to water or a wetland. Agricultural activities are permitted to use mitigation to offset for necessary wetlands disturbance, although, like forestry operations, they are usually not water-dependent. The other conditions are relevant to forestry operations and applying those conditions would provide the appropriate protection for nontidal wetlands.

Change #5: Variance Language

Location: DFB Document, p. 9, #5F
FPWS Document, p. 12, #5F; p. 21, #9; p. 25, #8

Original language: The bay forester or bay wildlife biologist may request from the Assistant Secretary, FPWS, a variance from the Buffer expansion rules when a literal enforcement would result in unwarranted hardship to a landowner.

- A. The variance request shall:
 - i. describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - ii. verify that a literal enforcement of these rules will deprive the landowner of rights commonly enjoyed by other in similar areas;
 - iii. be accompanied by the recommendations of the Wildlife Division and the Natural Heritage Program on the granting or denial of the variance request;
- B. The variance request will be forwarded to the Assistant Secretary through the normal chain of command;
- C. The granting of the variance shall not confer upon the landowner any special privilege that would be denied to other landowners within the Critical Area.
- D. The granting of a variance will not adversely affect water quality or fish, wildlife or plant habitat within the Critical Area.

Proposed language: When a literal enforcement would result in unwarranted hardship to a landowner, the landowner may request a variance from the Buffer expansion rules. This request is made through the Bay Watershed Forester, the Bay Wildlife Biologist, or Natural Heritage Ecologist, (in DFB document, reads: request made through the District Forestry Board) and is approved or disapproved by the Assistant Secretary of the FPWS.

- i. The variance request shall:
 - a. describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - b. verify that a literal enforcement of these rules will deprive the landowner of rights commonly enjoyed by other in similar areas;

- c. be accompanied by the recommendations of the Wildlife Division, the Natural Heritage Program, and the Forestry Division on the granting or denial of the variance request;
- ii. The variance request will be forwarded to the Assistant Secretary of the FPWS;
- iii. The granting of the variance shall not confer upon the landowner any special privilege that would be denied to other landowners within the Critical Area.
- iv. The granting of a variance will not adversely affect water quality or fish, wildlife or plant habitat within the Critical Area.

Explanation: The proposed language changes the party requesting the variance to the landowner. In the FPWS document, where plans are being prepared, the Bay Watershed Forester, the Bay Wildlife Biologist, or the Natural Heritage Ecologist are involved in the request; in the DFB document, where plans are being approved, the District Forestry Board is involved in the request. The language specifies that the Assistant Secretary of the FPWS approves or disapproves the variance request. These changes clarify the procedure.

Change #6: Variances for access through buffers coincident with other HPAs

Location: DFB document, p. 10, #6
FPWS document, p. 13, #6

Original language: All roads, bridges, and utilities that must cross a Buffer 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.

Proposed language: All roads, bridges, and utilities that must cross a Buffer 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. Where any road, bridge, or utility must cross a buffer coincident with another type of Habitat Protection Area, a variance must be obtained through the process described in 5F, above.

Explanation: The proposed language allows access through areas where 100-foot (or expanded) buffers overlap other types of Habitat Protection Areas. However, an applicant must obtain a variance in addition to meeting the criteria for roads, bridges, or utilities in buffers. In situations where prohibiting disturbance in these areas causes unwarranted hardship, it allows a remedy through the variance procedure adopted for buffer expansion rules. This language allows site-specific considerations and hardships to be taken into account, but has strict oversight to ensure protection of the resource. Each case is reviewed by the divisions in the FPWS to bring out resource protection issues, and the Assistant Secretary of the FPWS must make the judgement that the activity will not adversely affect water quality or fish, plant, or wildlife habitat.

CRITICAL AREA - AGRICULTURAL PLANNING
CUMULATIVE FIGURES TO SEPTEMBER, 1990

<u>COUNTY</u>	<u>TOTAL UNITS REQUIRING PLANS: #/ACRES</u>	<u>TOTAL UNITS COMPLETED: #/ACRES</u>	<u>PERCENTAGE COMPLETED: #/ACRES</u>
Anne Arundel	114/9514	68/6076	60/64
Baltimore County	80/7150	16/1490	20/21
Calvert	270/22400	105/12656	39/57
Caroline	187/24464	151/19385	81/79
Cecil	504/41859	339/27040	67/65
Charles	174/31476	52/14408	30/46
Dorchester	728/156219	40/7991	5/5
Harford	26/1991	26/1991	100/100
Kent	421/71116	141/32217	33/45
Prince George's	83/14698	83/14698	100/100
Queen Anne's	248/50482	197/44962	79/89
St. Mary's	371/43517	203/30299	54/70
Somerset	378/41969	214/26335	57/63
Talbot	665/83693	295/43774	44/52
Wicomico	324/26126	121/11813	37/45
Worcester	121/14454	83/11249	69/78
TOTAL	4694/660695	1989/305511	42/46

CRITICAL AREA - AGRICULTURAL PLANNING

AS OF MARCH, 1990

COUNTY	TOTAL UNITS REQUIRING PLANS #/ACRES	TOTAL UNITS COMPLETED #/ACRES	% COMPLETED #/ACRES
ANNE ARUNDEL	93/7899	43/4356	46/55%
BALTIMORE	80/7150	1/60	1.2%/.75%
CALVERT	287/26769	81/10,764	28/40
CAROLINE	187/24,464	128/19,528	68/80
CECIL	236/39,982	137/25,967	58/65
CHARLES	195/21,840	41/12,267	21/56
DORCHESTER	853/181,800	137/28,425	16/16
HARFORD	26/1991	17/1,161	65/83
KENT	421/71,116	76/18,601	18/26
PRINCE GEORGE'S	83/6,497	83/6,497	100/100
QUEEN ANNE'S	239/50,160	183/42,370	77/85
ST. MARY'S	400/58,282	186/30,169	47/52
SOMERSET	360/41,835	184/24,473	51/59
TALBOT	840/78,464	130/33,450	16/43
WICOMICO	501/25,672	323/17,483	65/68
WORCESTER	89/14,783	79/10,958	89/74
TOTALS	4,890/658,704	1,829/23,106	37.4/44.5

STORMWATER MANAGEMENT ALTERNATIVES

MARYLAND STADIUM AUTHORITY CAMDEN YARDS SPORTS COMPLEX	ADVANTAGES	DISADVANTAGES	APPROXIMATE COST (STORMWATER MANAGEMENT ONLY; DOES NOT INCLUDE MAINTENANCE COST)
STORMWATER MANAGEMENT ALTERNATIVES (IN ORDER OF M.D.E. PREFERENCES)			
ADDITION OF GREEN SPACE OR PERVIOUS GRID PAVERS	<ol style="list-style-type: none"> 1. Addition of 3.5 acres± of green space will decrease current proposed stadium impervious area to less than or equal to pre-stadium conditions. 2. Will not require costly revisions/retrofits to current stadium construction. 3. Reduces stormwater quantity. 	<ol style="list-style-type: none"> 1. Minimal additional green space available due to parking requirements. 2. Difficulty in maintaining grass growth with pavers. Manufacturers recommend pea gravel in lieu of grass for this level of use. 3. Pavers more expensive and less durable than typical bituminous paving section. 4. Snow removal requires specialized measures. 	\$600,000 (For pavers)
OFF-SITE CSX RETENTION POND	<ol style="list-style-type: none"> 1. Management of large drainage areas may be possible. 2. No loss of parking. 3. Not impacted by Football Stadium. 	<ol style="list-style-type: none"> 1. Requires flow splitter in Fremont Drain (see Modifications to Fremont Drain, see sheet 2). 2. Availability of CSX land for MSA purchase is unknown and may require lengthy negotiations (2 years). 3. Pond bottom elevation, groundwater and tidal backflow may render constructability and hydraulics infeasible. 4. See General Note #1 on sheet #2. 	\$600,000 <i>(not including land)</i>
EXTENDED DETENTION POND (ON OR OFF SITE)	<ol style="list-style-type: none"> 1. Management of large drainage areas may be possible. 2. Possibly no loss of parking. 3. Possibly not impacted by Football Stadium. 	<ol style="list-style-type: none"> 1. One pond to manage entire site will require flow splitter in Fremont Drain (see sheet 2). 2. On-site pond requires loss of approximately 300 parking spaces. 3. Minimal land available for ponds for each on-site drainage subarea. 4. See General Note #1 on sheet #2. 	\$400,000
WATER QUALITY INLETS	<ol style="list-style-type: none"> 1. Management provided at each inlet or subarea. (Does not require modification to Fremont Drain). 2. No loss of parking. 	<ol style="list-style-type: none"> 1. Numerous inlets needed (approximately 70). <i>could use fewer (55)</i> 2. Cost range is \$8,000 - \$20,000 per inlet. <i>and make some larger, but cost still same</i> 3. Regular maintenance is required. 4. See General Note #1 on sheet #2. 	\$700,000

STORMWATER MANAGEMENT ALTERNATIVES

MARYLAND STADIUM AUTHORITY CAMDEN YARDS SPORTS COMPLEX	ADVANTAGES	DISADVANTAGES	APPROXIMATE COST (STORMWATER MANAGEMENT ONLY, DOES NOT INCLUDE MAINTENANCE COST)
STORMWATER MANAGEMENT ALTERNATIVES (IN ORDER OF M.D.E. PREFERENCES)			
POROUS PAVEMENT WITH SAND AND UNDERDRAINS	<ol style="list-style-type: none"> 1. Reduces stormwater quantity. 2. No loss of parking. 	<ol style="list-style-type: none"> 1. Porous pavement will only manage parking lots and driveways (approximately 35 impervious acres) not rooftop or sidewalks. 2. Sand and underdrains under at porous paving adds significant cost. 3. Porous paving section may not be as durable as typical paving section. 4. Some maintenance required (vacuum sweeping). 5. See General Note # 1 below. 	<p>\$950,000 - <i>as cost lower, bec. double counting</i></p> <p>680,000⁺</p>
TRENCH DRAINS WITH SAND FILTERS AND UNDERDRAIN	<ol style="list-style-type: none"> 1. Management provided at each inlet or subarea. (Does not require modification to Fremont Drain). 2. No loss of parking. 	<ol style="list-style-type: none"> 1. Some maintenance required 2. Conveyance of large storms through filter and underdrain must be considered. 3. See General Note #1 below. 	<p>Cost unknown at this time.</p> <p>(Assume \$200/LF)</p> <p>probably - 500,000⁺</p>
MODIFICATIONS TO FREMONT DRAIN	<ol style="list-style-type: none"> 1. No loss of parking. 2. May not be impacted by Football Stadium. 3. Capacity of drain was significantly increased when Martin Luther King Jr. Boulevard design redirected majority of flow to Chatsworth Run Drain. 4. Possible modified Water Quality Inlet/Stone Filter. 	<ol style="list-style-type: none"> 1. Depth of invert will require significant excavation if flow splitters to ponds are required (approximately 15' of cut). 2. Tidal backflow through drain may impact hydraulics. 3. Groundwater depth in pond may have impact if flow splitter is required. 4. See General Note #1 below. 5. Baltimore City Department of Public Works must allow any modification. (Maintenance of modification by MSA may be required). 	<p>\$600,000 (w/ Flow splitter)</p> <hr/> <p>\$200,000 - \$300,000 (Modified Water Quality Inlet)</p>

GENERAL NOTES:

1. Some alternatives will only provide management of areas draining to the Fremont Drain. There are four areas that do not enter the Fremont Drain (approximately 16.6 impervious acres total). These areas are at the north end of the site where construction is currently underway and east of Howard Street. If revisions or retrofits to drainage systems currently under contract are required, then significant costs which have not been reflected in this study may be incurred.



William Donald Schaefer
Governor

Melvin A. Steinberg
Lt. Governor

Wayne A. Cawley, Jr.
Secretary

Robert L. Walker
Deputy Secretary

STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE

State Soil Conservation Committee

November 2, 1990

RECEIVED

NOV 7 1990

DNR
CRITICAL AREA COMMISSION

Dr. Sarah Taylor
Critical Area Commission
Department of Natural Resource
Tawes State Office Building
Annapolis, Maryland 21401

Dear Dr. Taylor: *Sarah*

Attached please find the latest information on soil conservation district progress in completing agricultural soil conservation and water quality plans in the Critical Area. I did follow up your phone request several months ago with an update of progress which I asked Ms. Mickler to give you after the July Commission meeting. I'm sorry it got misplaced.

Since I will be unable to attend the November meeting of the Critical Area Commission, I request that Commission discussion or questions about these figures be postponed until December. We still have some inconsistencies in our reporting system. I discussed my concern about Worcester County's re-interpretation of the Critical Area boundary with Tom Ventre in July. Please let me know if you have specific questions or additional information needs.

In regard to Queen Anne's Soil Conservation District planning in the Critical Area was made a priority for the last two years. They have sent out three direct mailings to all agricultural landowners in the Critical Area and publicized requirements in four of their newsletters in the past year. District staff indicate that approximately 50 plans need to be completed as of September 30, 1990 and they are working on an individual basis with landowners and operators to develop these plans.

If Mr. Price has specific information about the individuals who are unfamiliar with program requirements, I know the district would appreciate his assistance in further targeting their outreach efforts. It could be that in

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Page Two
Dr. Sarah Taylor
November 2, 1990

some instances tenant farmers are still unfamiliar with Critical Area requirements.

Please let me know if I can be of further assistance.

Sincerely,



Louise Lawrence
Executive Secretary

LL:rf
Attachment
cc: Rosemary Roswell

CRITICAL AREA - AGRICULTURAL PLANNING
 CUMULATIVE FIGURES TO SEPTEMBER, 1990

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