AGENDA

Chesapeake Bay Critical Area Commission
January 9, 1991

1:00 - 1:10	Approval of the Minutes of December 5, 1990	John C. North, II, Chairman
1:10 - 1:30	Growth Allocation Amendment - Dorchester County - RCA to LDA (DC-A 18)	Tom Ventre/ Bob Schoeplein, Ch.
1:30 - 1:50	Growth Allocation Amendment - Dorchester County - RCA to LDA (DC-A 19)	Tom Ventre/ Bob Schoeplein, Ch.
1:50 - 2:10	15%-25%Impervious Surface Refinement & Changes to Buffer Protection Language -Town of Greensboro	Claudia Jones
2:10 - 2:40	Updates: 1) Pool Application, Dorchester County 2) The Wharf at Handy's Point, Kent County 3) Bellanca, Kent County 4) Queenstown Golf Course, Queen Anne's County 5) Pethel Variance (shed in the Buffer) A.A. County	George Gay, Asst. Attorney General
2:40 - 3:00	Findings of Fact - Approval By Commission Members	George Gay, Asst. Attorney General/ John C. North, II, Chairman
3:00 - 3:30	Discussion of the Commission on the 2020 Legislation	John C. North, II, Chairman
3:30 - 3:45	Old Business New Business	John C. North, II, Chairman

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
December 5, 1990

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

Russell Blake
Samuel Y. Bowling
Joseph J. Elbrich, Jr.
James E. Gutman
Shepard Krech, Jr.
Kathryn D. Langner
Robert R. Price, Jr.
Albert W. Zahniser
Lorena Heip
for Parris Glendening
Albert W. Zahniser
Robert Schoeplein of DEED
Assist. Secretary Naylor
of Dept. of Environment

William J. Bostian
Victor K. Butanis
Ronald Hickernell
William H. Corkran, Jr.
Deputy Sec. Cade of DCHD
G. Steele Phillips
Michael J. Whitson
Roger W. Williams
Louise Lawrence
of Dept. of Agriculture
Larry Duket for
Ronald Kreitner of
Maryland Office of Planning

The Minutes of the meeting of November 7, 1990 were approved as written.

Chairman North asked Mr. Tom Ventre to report on the Pool in the Buffer in Dorchester County.

Mr. Ventre said that the Critical Area Commission received a notice of a variance request from Dorchester County in October, 1990 for the construction of a private swimming pool in the Buffer at a private residence. He stated that the problems in granting the request, as pertains to the Dorchester Code and the Critical Area Regulations, were pointed out and the local staff was informed that a denial would be recommended. Mr. Ventre said that the Board of Zoning Appeals in Dorchester County approved the request for variance anyway and the Critical Area was notified of that decision. It was then recommended to the Chairman of the Critical Area Commission that an appeal be filed. He said that an appeal was filed by Mr. George Gay, Assistant Attorney General for the Commission and that the appeal is pending in the Circuit Court of Dorchester County on the question of appropriateness of the grant of variance for the pool.

Mr. Ventre said that there appeared to be no extenuating circumstances. He said that the opinion of the Commission Staff was that there is sufficient space or area on other sections of the lot that could accommodate the pool and would minimize the intrusion into the Buffer. These comments were forwarded to the Board of Appeals but without any effect. He said that after a consultation with the Dorchester staff, the staff reported that there were no swimming pools in place on adjacent properties, which would have made this request more acceptable if there had been other pools.

Mr. George Gay stated that a Petition on Appeal has to be filed within 10 days of the filing of the Order for Appeal and will be due in the Court House on the 7th of December.

Mr. Joseph Elbrich reported that his office had received a decision which was a denial of a variance request in Anne Arundel County and the Courts upheld that the petitioner could not have a swimming pool in the Buffer and that case could be examined.

Mr. Ventre said that the Calvert County Board recently denied a request for a pool and the denial was upheld by the Calvert County Circuit Court as well, and that a subsequent request was denied in Dorchester County which caused him to believe that the requests must be treated on a case by case basis.

Chairman North reported that Mr. Gay suggested that the Commission be called upon to approve and ratify the action which Chairman North directed be taken.

Chairman North called the question. Mr. Gutman made the motion to approve and Dr. Krech seconded the action taken by Chairman North to appeal the local decision of granting a variance for a pool in the Buffer in Dorchester County. The vote was 19 (Deputy Secretary Cade not present at this time) in favor and Mr. G. Steele Phillips abstained.

Chairman North asked Mrs. Susan Barr to report on Arrowhead in Calvert County.

Mrs. Barr reported that the issue with Arrowhead Estates in Calvert County was a local map discrepancy Issue. She said that on December 22, 1989 she had 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. Mrs. Barr stated that 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 indicated the boundary extending landward approximately 100 to 200 feet less on the property than the State wetlands maps indicated. She said that 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. She said that on 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 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. Mrs. Barr stated that Mr. Epstein further indicated 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." She said that 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. Mrs. Barr said that 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 but, 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." Mrs. Barr further explained that on 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 and following a site visit, had determined that the wetland-upland boundary was 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. She said that on March 19, 1990 , Chairman 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; the 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. In the letter, 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 lands 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. Chairman North 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.

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

She said that on October 22, 1990, Doldon Moore, of DNR-Tidal Wetlands Division submitted comments to Calvert County in reference to a preliminary site plan proposal, Arrowhead Estates. He stated 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 stated 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.

Mrs. Barr stated that on 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 was in error, due to the fact that this land was 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, which has been approved for the Transfer Zone.

She said that the proposed future action by the Critical Area Commission is to attend, with Doldon Moore of DNR-Tidal Wetlands, the Calvert County Planning Commission meeting (on January 16th) 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.

Mr. Robert Price ask if the County had commented.

Mrs. Barr said no, but they approved the transfer zone as they relied on their County maps as being correct.

Mr. Jim Gutman asked if there is a specific Critical Area line approved either by DNR or the Critical Area Commission.

Mrs. Barr replied that it is still somewhat fuzzy because of a mapping error inherent when working at a 1/100 scale. She stated that she had been informed that the boundary lines that are set are the mapped private tidal wetlands line and 1,000 feet landward.

Mr. Bowling asked if that isn't what the Criteria require and Mrs. Barr said that a map is required but under Title IX the State Wetland Boundaries vs. the Private Wetland Boundaries do not have to be mapped, and are legally determined by definition, but are often mapped correctly on the State Wetland

Maps.

Mr. Gutman stated that he believed in order to move forward there should be one map that DNR and Critical Area supports.

Dr. Sarah Taylor, Executive Director, Chesapeake Bay Critical Area Commission, explained that there is one map. There is no discrepancy at the State level and the map is the 1971 Wetland Blue Line Maps seen in the Wetlands Division of the Department of Natural Resources. They have the 1,000' mark delineated on them. She said that there was a problem when the scaled maps are transposing information onto a base scale, such as the 1:2000 and the 1:600; and that another problem was that Calvert County had developed a sophisticated computer mapping system; however, when they set up the grids for their maps, the line was not accurately transposed in a number of areas, therefore the Critical Area delineation would sometimes be out in the middle of the water and basically not correct. In the review of these maps as the Critical Area Staff was going through the program review process, these discrepancies both obvious as well as borderline were raised with the County and the County was told that they would have to make sure the lines are fitting with the 1,000' wetlands maps which is the legal map that the Critical Area Program is based upon. The County did make the corrections in some areas, but not in other areas.

Mrs. Barr said that Calvert County was making an effort to make the changes to the 1:600 maps that were referenced in the original review, but a definition can still be relied on to legally determine State Wetland boundaries.

Mr. Bowling asked how much land was involved in the disputed boundary location.

Mrs. Barr stated approximately 7 acres.

Mr. Zahniser stated that the Calvert County Zoning Code does not allow transfer zoning in the Critical Area. He suggested that a letter be sent to the County stating where the Critical Area line is located. There has been no subdivision even though the property has been designated a transfer zone.

Mr. Bowling suggested they be advised to use growth allocation.

Mr. Bostian asked if Mr. Moore had determined whether the Blue Line Map delineation was correct.

Mrs. Barr replied yes, the State map has been determined to be accurate.

Mr. Elbrich said that the developer is using the line on the Critical Area maps and plotting from that line rather than measuring 1,000 ft. from the wetlands.

Mrs. Barr stated that they were using a computer generated map, a 1:600'scale.

Mr. Gutman asked if the computer generated map had the Commission's full endorsement.

Mrs. Barr said that the 1:600 never did but the 1:2000 did which were also computer generated.

Mr. Zahniser stated that getting accuracy was nearly impossible because of the broad brush radius and he believes that the State maps should be used and then a physical measurement made. Further, he stated that the County should be apprised of such and reinforced by stating that it would be brought before the Court if the area was subdivided without growth allocation. He stated that Calvert County is not abiding by its own zoning regulations because there is no agricultural transfer zone in the Critical Area.

Mrs. Barr stated that following the January 16th meeting with the Zoning Commission wherein the position of the Critical Area will again be stated, a letter from Chairman North will be forwarded, stating again what the options are.

Chairman North asked Mr. Thomas Ventre to report on the 15 - 25% Impervious Surface Refinements.

Mr. Ventre stated that the City of Crisfield, the Town of Secretary, the Town of Vienna, and the Town of Princess Anne have made application to amend their local ordinances to incorporate the new impervious surface limitations mandated by the State statute in the 1990 Session of the General Assembly. That Statute directed the local jurisdictions to amend their programs accordingly. Chairman North agreed that he would consider all of these as refinements rather than as amendments to expedite the process for local approval. Mr. Ventre said that the submittals have been reviewed and everything is in order. He said that the questions that were raised pertained to curiosities and requirements of the language and whether it had to be verbatim. He said that they have all been introduced locally and many of them are on the basis of emergency legislation so that when the new legislation is passed by their respective town commission it will become effective, which for most, will be before the December 31st deadline, mandated by the State Statute.

Chairman North reminded the Commission members that there is a provision in the Law that states that the Critical Area Commission may vote to override the Chairman's determination in refinement matters at the first meeting where a quorum is present following that determination.

There was no objection to the determination.

Chairman North asked Mr. Ventre to address the Dorchester County Growth Allocation.

Mr. Ventre said that for the members of the Dorchester panel who were present, there would be a panel meeting and that it had not been scheduled yet. He stated that there were two requests from the County for Growth Allocation.

Chairman North asked Ms. Pudelkewicz to report on the Growth Allocation in Talbot County, Tilghman-on-the-Chesapeake.

Ms. Pudelkewicz said that 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. She said that the property is currently zoned RCA, and that the existing land use is an agricultural field. Ms. Pudelkewicz said that this piece of property is proposed to be zoned VC (Village Center), Limited Development Area. She said that 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 which requires that at least 25% of the perimeter land boundary of the subject parcel be adjacent to an LDA zone. Ms. Pudelkewicz said that 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. Ms. Pudelkewicz said that this area lies within the amended Tilghman Sewerage Service Area and that 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.

Ms. Pudelkewicz stated that an environmental assessment was done of the entire parcel in 1987. A public hearing was held by a panel of Commission members in October, 1990. No public came to the meeting and there was no public comment at that time. The Forest, Parks and Wildlife Service reviewed the growth allocation and has indicated that no Habitat Protection Area issues existed on-site; however, they have recommended that the

corridors of existing woodland be maintained. She explained that 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. Ms. Pudelkewicz said that the panel and Commission staff recommended deducting 25.5 acres of growth allocation, which is part of a parcel, for the following reasons: 1) it is a designated growth area; 2) it meets the adjacency requirement; 3) it is in a sewer service extension area; 4) there are no HPA issues; and 5) the entire development envelope, including roads, entire lots, and open space, are being included in the deduction.

A motion was made and seconded to approve the request for growth allocation for Talbot County of 25.5 acres. The vote was unanimously in favor.

Chairman North asked Ms. Dawnn McCleary to update the Commission on the Maryland Stadium Authority.

Ms. McCleary stated that on Dec. 3 a meeting was held between the Maryland Stadium Authority, the Chesapeake Bay Critical Area Commission Staff, Maryland Department of the Environment and R K & K regarding alternative stormwater management methods. She said that the first alternative proposed was additional green space of approximately 3 1/2 acres. However, the problem with this alternative was that there was not enough space available and space would have to be taken from the allotted parking area. She said that the second alternative was an off-site retention pond but in order to do this the Stadium Authority would have to get an easement that would cost over $600,000. Ms. McCleary stated the third alternative would be to extend the detention pond, but the cost would be approximately $400,000 and require the removal of about 300 parking spaces. She said that an alternative of adding approximately 70 water-quality inlets would require tremendous maintenance and cost about $700,000. Porous paving with sand underneath was considered as well, however, the cost was about $500,000 and would not accommodate very heavy storms. A sixth alternative, and the preferred one, was inserting water quality inlets into the existing Fremont storm drains. She said that the inlets, which are very heavy and large, would have grease traps in them and the only problem was that the City would have to agree to it, and also agree on some type of maintenance program. She stated that from an engineering standpoint, the inlets may not work, but the cost is about $200,000. Ms. McCleary said that a total of 70 acres would be treated for water quality including the 10 1/2 acres of Critical Area. The rest of the site would have some other alternative combinations or a stormwater management waiver would have to be requested. She said that a meeting with the Secretary of MDE and Mr. Bruce Hoffman was being held that day (Dec. 5) to work out some stormwater management alternatives for that site but she did not know what the results would be.

Mr. Gutman asked how long it would take MDE to come up with their determination of what is going to be required.

Mr. Rick Naylor said that he couldn't comment since he did not know what took place at the meeting held that day (Dec 5).

Mr. Gutman said that because the Commission had agreed to an extension of two days before final action of the Commission, which appeared to be not enough time, what would be the correct time frame for extension that would allow completion before action of the Commission.

Chairman North said that action could be taken by the next Commission meeting.

Mr. Gutman said that he wanted there to be an opportunity for the task force to fully comprehend whatever decision was made by MDE so that the

Commission would have an opportunity to examine that decision to see if it creates any problem for the Critical Area. Mr. Gutman also stated that believed that 30 days may not be enough time.

Chairman North stated that there may be some argument that there is not enough time, and if there is some problem encountered, the Commission could find yet another continuance.

Mr. Gutman said that he believed that because of all the alternatives that have to be researched to arrive at the best solution, he thinks 60 days is a more realistic time frame and he made a motion to extend the time frame to 60 days unless it was possible to make a determination in a lesser period.

The motion was seconded by Chairman North. The vote was unanimously in favor.

Chairman North asked Ms. Elizabeth Zucker to update the Commission on the Oil and Gas Regulations.

Ms. Zucker reminded the Commission that the Department of Natural Resources is working on a set of regulations for the entire State of Maryland for oil and gas drilling and that set of regulations is almost completed and should be ready for the promulgation process in the next few weeks. She said that the Assistant Attorney General's Office has stated that they believe that both the Critical Area Regulations and the DNR Regulations should be published in the Maryland Register by the first of the year.

She reminded the Commission members that they had voted on a proposed resolution to go forward to the General Assembly proposing a prohibition of oil and gas drilling in the Critical Area and the status is that the proposal will be taken to the Environmental Matters Committee of the General Assembly when they meet in January. She stated that at the request of the State of Virginia Legislative Services, the Critical Area Staff was asked to brief a subcommittee of Virginia's General Assembly on Maryland's Oil and Gas Regulations. She said that she as well as Ken Schwarz, Maryland Geological Survey and a representative from DNR went to Richmond and gave them a brief overview of Maryland's and the Critical Area's regulations. She said that the State of Virginia has a two year moratorium on oil and gas in their tidewater region. She said that within a two year period the subcommittee of their General Assembly will be reviewing various information sources on drilling. As part of that process, the Critical Area Commission was asked to give them an overview of the Critical Area Regulations. She reported that there is a rumor that there is drilling proposed in Charles County and there has been some inquiry from the Baltimore Sun newspaper regarding that rumor and there were questions asked by the Sun in general about the State and the Critical Area regulations which may generate articles.

Chairman North asked the Commission Assistant Attorney General, Mr. George Gay to bring the Commission current on the Wharf at Handy Point.

Mr. Gay said that at the Commission meetings of October and November the Commission members were updated on this project by Ms. Pat Pudelkewicz. Reminding the Commission, he said that the Planning Commission of Kent County granted final site plan approval to the corporate entity, The Wharf at Handy Point, allowing primarily the construction of a parking area and a boat storage facility in the Buffer. He said that the Critical Area issues, Habitat Protection issues, steep slope issues, etc., were taken into consideration and on October 4, 1990 a final site plan approval was granted and on that same day the Zoning Administrator for Kent County granted the applicant a zoning certificate enabling the applicant to begin construction. He said that he believed that both those authorizations were contrary to the local program and as a result, with the prior

authorization of the Chairman and the Commission, an appeal was noted from both decisions. The Planning Commission 's decision went to the Circuit Court and the appeal from the Zoning Administrator's decision, pursuant to the County Ordinance, went to the Board of Zoning Appeals. The appeal to the Circuit Court was heard on November 8, 1990. Judge Wise heard from the applicant and from the Commission as well as from the Planning Commission which intervened the day of argument. He reported that Judge Wise had stated that he was hoping to get his opinion out within 30 days of the argument. He said that an opinion should be in the Circuit Court before December 10th. He said that the appeal from the Zoning Administrator's decision was taken because the Commission felt that the Zoning Administrator had separate and distinct duties and responsibilities under the ordinance, separate and distinct duties from those which the Planning Commission had and that the Administration failed to affect them properly. He reported that the appeal to the Board of Zoning Appeals is pending and a motion to dismiss in that matter would be heard on December 10th.

Chairman North asked Mr. Gay to give an update to the Commission on the Queenstown Golf Course.

Mr. Gay stated that the County Commissioners of Queen Anne's County have approved a Declaration of Restrictions and Covenants which addressed satisfactorily and thoroughly the five points of concern of the Critical Area Commission. The Declaration of Restrictions and Covenants have been recorded in the Land Record Office of Queen Anne's County. He said that there is an appeal pending from the Critical Area Commission's decision to recommend approval to the Board of Zoning Appeals in Queen Anne's County and that appeal was noted by Mr. Murphy on behalf of protesting neighbors. A Motions Hearing in that case would be heard on December 18th. He said that the Critical Area Commission would play an inactive role in that hearing and that the Board of Zoning Appeals decision to enable the developer to go forward was dated October 25th and the deadline for appealing that was November 25th approximately. He had no information that that decision had or had not been appealed.

Chairman North asked Ms. Anne Hairston and Mr. G. Steele Phillips to update the Commission on Timber Harvest and Resource Conservation Plans.

Ms. Hairston explained that December a year ago, two General Approvals from the Forest, Park and Wildlife Service (FPWS) were approved by the Critical Area Commission with a condition that within a year the approvals would be resubmitted with any changes recommended by a task force from Forest, Park and Wildlife Service, District Forestry Board members, Soil Conservation Districts, the local jurisdictions and the Critical Area Commission. She said that the approvals were: 1) A General Approval for the Forest, Park and Wildlife Service to prepare Resource Conservation Plans, an overall resource management plan, and Timber Harvest Plans - forest management plans called for in the Criteria; 2) A General Approval for the District Forestry Boards to approve only the Timber Harvest Plans. Ms. Hairston explained that the general approvals define the policies and procedures that the FPWS and the District Forestry Boards use in reviewing and approving Timber Harvest Plans. The General Approvals replace a process now in the Criteria wherein State and local agencies require certification of consistency with the local program for every plan. She said that a simplified manual was developed not as an official part of the general approval, but for the District Forestry Boards to use when reviewing Timber Harvest Plans and without the complex language. She outlined the six substantive changes recommended by the task force:

1) The approval process for Timber Harvest Plans. It gives more authority to the District Forestry Boards in approving the routine plans and specifies notification procedures to the FPWS. Plans with unresolved conflicts in management recommendations or critical area criteria must be approved by the Assistant Secretary of the FPWS.

2) Conflict Resolution Procedure, sets out a procedure for resolving conflict.

3) Length of Approval. The recommendation was for a 3 year approval validity. The Natural Heritage Program and Wildlife Division did not support that change. The longer approval length will give loggers more time to find an appropriate season and soil moisture for logging without damaging the area.

4) Water-dependency for mitigation of nontidal wetlands. The change would be the removal of water-dependency as one of the tests for whether mitigation can occur. The language would be limited to the circumstances under which timber harvests are likely to occur.

Ms. Louise Lawrence asked who would determine when mitigation is needed and what BMPs would be used to avoid the need for mitigation.

Ms. Hairston replied that Best Management Practices are now being worked on for timber harvests. Currently, Soil Conservation Districts implement BMP recommendations throughout the Erosion and Sediment Control Plans and that is not expected to change.

5) Variance Language. Expands some of the references to include all possible FPWS representatives and clarify applicant/
reviewer identity for site-specific circumstances.

6) Variance for access through buffers coincident with other HPAs. Extends variance procedure to address special situations where the Buffer is coincident with another Habitat Protection Area.

Mr. G. Steele Phillips made a motion to approve the panel recommendations subject to the review by the Attorney General's office.

Chairman North informed the Commission members that the Assistant Attorney General for the Commission, Mr. George Gay, advised him that there are a few points that he should look into from a technical point of view and has suggested that action be deferred until the next Commission meeting after the Commission members have had an opportunity to examine the new approval documents. He will be prepared to discuss them and review any questions raised. Mr. Gay also suggested that there may be an issue or two that would require additional time beyond the next meeting into a second meeting.

Mr. Gay stated that he had been asked by several persons to review the General Approval package and its changes. He said that he did review the changes and will discuss them with Ms. Hairston and Dr. Taylor, Natural Heritage, and Jeff Horan of FPWS, to get some background information. After doing that, he needed further time to consider the appropriateness of changes #4, 5, and 6. Number 6, which concerns access through the Buffer, is at least "problematic" as written.

Chairman North asked if, in view of Mr. Gay's suggestions, Mr. Phillips would care to withdraw his motion.

Mr. Bostian asked that Mr. Gay think in terms of not doing away with the recommendations just because they don't fit the Criteria but that if the Criteria needed to be changed, it might be worth considering. He said that Private landowners are not taking the opportunity to use FPWS because they have heard horror stories coming out of Dorchester County as a result of

having Wildlife and Natural Heritage getting into the act on Timber Harvest Plans. In other areas landowners are not going to the foresters and saying come and take a look at my woods with me. The opportunity for managing timber is being lost because more people are involved. He said that some people that have money are hiring private consultants to manage their harvest, but the people who don't have money don't know what they are doing with their timber.

Mr. Phillips withdrew his motion.

Chairman North said that the matter would be brought before the Commission for a final disposition at the next meeting if Mr. Gay is prepared at that time, but at the following meeting at the latest if Mr. Gay is prepared.

Chairman North asked Ms. Louise Lawrence, Maryland Department of Agriculture (DOA) to update the Commission on Soil Conservation and Water Quality Plans.

Ms. Lawrence said that the tracking reports from March and September of 1990 shows the progress of soil conservation on a quarterly basis, and that the end of the year results would not be available until January, 1991. She said that they report in January on several parameters: acreage and conservation plans completed. She explained that the Department of Agriculture is trying to develop something that will define an "AG Unit" or "a farm" and at this time they are asking all Soil Conservation Districts to use the same criteria for counting "farms" so that there could be consistency of reporting that would enable the DOA to judge what the need is in the districts for assistance. She reported that some specifics that are very obvious are about a 45% achievement rate with 7 - 8 months left in terms of the legal requirement for finishing the plan. She said that the work load has been a problem as well as the budget and that they have not been able to get additional staff for the Critical Area workload .

Mr. Gutman asked if any attention was being given to measuring the benefits of nutrient reductions and resource protection.

Ms. Lawrence said that they do have another reporting system that relates to acres protected by the Soil Conservation Plan, whereas the farmer has agreed over a certain period of time to emplace a certain number of Best Management Practices to make his farm as good as he can in terms of resource protection. She said that they also track the BMPs as they are applied and classified into Critical Area vs. non-Critical Area.

Mr. Gutman said that in nutrient removal and the effort to curtail nitrogen that is leaving farmlands and possibly getting into the Bay, a number of programs Baywide are trying to address the removal of nitrogen from treatment plants. He said that the mechanism and how to go about doing it are understood and there are results, but what the BMPs are achieving on farms is only partially understood.

Ms. Lawrence said that some of the complications between BMPs and the Bay jurisdictions is that Virginia and Pennsylvania have associated a nutrient equation to nitrogen and phosphorus related to "tons of soil managed", and Maryland has not because there are a lot of questions about how to correlate those things and how they vary with different kinds of physiographic information soils, etc. She said that a committee from different resource agencies, MDE, MDA, DNR, is trying to figure out how to count that and so for the time being, the Maryland Department of Agriculture is still doing "tons of soil, tons of manure".

Dr. Krech asked what percent of farms have taken advantage of Conservation Reserve Programs.

Ms. Lawrence said a very small percentage, accounted for in economic

terms. She said that the Conservation Reserve Program was more of a boom for farms in the midwest that were looking for some ways of coping with provisions of the Food Security Act which required them to cut down erosion on highly erodible soils. By taking the worst soils out of production and getting paid for it, they were actually complying with Federal Requirements under that legislation. In Maryland where there are 3,000 acres of highly erodible soils, there were some management techniques used to allow them to meet those obligations and so they were under less pressure to take these lands out of productivity. The techniques would be balanced against what ever kind of compensation they could devote to development purposes because the Federal contract is for 10 years and the penalties to get out from under the contract are quite extensive and complicated.

OLD BUSINESS

No old business was presented.

NEW BUSINESS

Chairman North appointed a panel for Cecil County for a hearing on a mapping mistake, meeting sometime late December or early in January. Those appointed: Mr. Roger Williams, Mr. Victor Butanis, Mrs. Kay Langner, Mr. Robert Price and Mr. William Corkran.

It was also suggested that the next Critical Area Commission meeting should be held on January 9th instead of January 2nd because that is the day after the New Year Holiday. There were no objections.

Chairman North said that although technically it is not a matter that is the business of the Critical Area Commission, and yet at the suggestion of Mr. Jim Gutman, copies of the proposed Maryland Growth and Chesapeake Bay Protection Act of 1991 were disseminated. Chairman North said that in the Fall of 1989, the Governor appointed a Commission to examine the report of the 2020 Commission and to make recommendations with respect to legislation stemming out of the predictions and prognostications and visions of the 2020 panel. He said that this new body was named the Maryland Growth Commission and he, Judge North, was named by the Governor as a member of that Commission along with a number of Secretaries: the Secretary of Agriculture, DNR, Environment, etc., as well as other individuals throughout the State involving private business persons, environmentalists, developers and a number of people from every walk and section of the State. Chairman North stated that this Growth Commission has met a number of times throughout the past year with most meetings open to the public. He told the Commission members that the Growth Commission had received a great many reports concerning all aspects of the Maryland economy and ecology. He said that the Chairman, Mike Barnes, appointed a Draft Committee headed by Skip Frye, Queen Anne's County, to develop something specific in which the rest of the Commission could get its teeth. He said that there are analogies to be drawn between this Proposed Act and the Critical Area Law as we have it, although it is not totally analogous. He said that he is purposefully soliciting any comments or suggestions the Commission members may have concerning this report and he advised the members of a general meeting open to the Public on Saturday, 15th of December in the Joint Legislative Hearing Room, beginning at 10:00 a.m.

There being no further business, the meeting was adjourned.

January 9, 1991

Mr. John Lee Carroll
Citizens for the Preservation of Queenstown Creek, Inc.
P.O. Box 199
Queenstown, Maryland 21658

Dear Mr. Carroll:

On March 26, 1990, the Queen Anne's County Department of Planning and Zoning forwarded to the Critical Area Commission a copy of site plans and supporting documentation submitted to the County for approval of a golf course on certain Resource Conservation Area lands in the County. The County asked the Commission for a determination whether golf course development is an appropriate RCA use under the Commission's Criteria. A panel of 3 Commission members held a hearing on this issue.

At its meeting on July 6, 1990, the Commission approved the Panel's Report, which stated that the golf course proposed by the Washington Brick and Terra Cotta Company was an appropriate use within the Resource Conservation area. The Panel Report also recommended several conditions, including:

A. Even if it were possible to place some dwellings at a density not exceeding one per twenty acres in that portion of the Resource Conservation Area occupied by the golf course, this should not be permitted. The additional use of this portion of the Resource Conservation Area for residential development would represent a compounding of permissible uses, and raise serious questions about the consistency of such

compounded use with the goals for resource protection in the Resource Conservation Area.

B. Existing water dependent facilities on Queenstown Creek should not be permitted to be used or expanded for access for the golf course. Again this would represent a compounding of uses in the Resource Conservation Area and raise the same serious questions noted above.

The above-quoted recommendations addressed the Commission's concern that, if a golf course ~~was~~ were to be developed on RCA land, other uses of RCA land that are authorized by the Criteria should not be permitted on the same site.

The Queen Anne's County Planning Commission approved the golf course but did not condition its approval upon Washington Brick's compliance with the Critical Area Commission's recommendations. The Critical Area Commission subsequently authorized intervention in an appeal of the approval of the site plan, in order to have the recommended conditions made applicable to the development and use of the golf course.

The Critical Area Commission reached agreement with Washington Brick that it would voluntarily subject the property to the Commission's recommendations through a Declaration of Restrictions and Covenants to the County. Based on this assurance, the Commission's intervention was terminated. In consultation with Commission counsel, Washington Brick developed language which in pertinent part restricts water access to the property so long as the property is designated Resource

Conservation. The Declaration of Restrictions and Covenants was accepted by the County on November 27, 1990.

You have pointed out that the pertinent language might conceivably permit the reclassification of a portion of the property to Limited Development (LDA) and the gaining of water access through this means. Counsel advises me that we could not have required a condition restricting LDA use since no proposal for LDA use was before the Commission.

In order to respond to your concern, I wish to reiterate that it is the position of the Commission that there should not be water access to the property which would lead to a compounding of permissible RCA uses on the site. As long as a golf course occupies all of the site as indicated in the plans reviewed by the Commission, I am sure the Commission members would take an exceedingly dim view of any future application by the developer to reclassify to LDA the area around the existing dock and boathouse. However, the Commission cannot and will not take up the question you pose unless and until an application to do something like you fear is before the Commission.

I will provide a copy of this letter to the members of the Commission and I will ask that it be made a part of the minutes of the next meeting of the Commission.

Very truly yours,

Judge John C. North
Chairman

MEMO

TO: Sarah and Judge North
RE: Proposed MD Growth and Chesapeake Bay Protection Act

FROM: Staff
DATE: 12-13-90

The staff has prepared a list of specific comments on the proposed language, which will be submitted in written form shortly. The following is a summary of the staff's major concerns with the draft legislation, consisting of six points.

1) The designation of Sensitive Areas must be expanded to include threatened species, species in need of conservation, and Natural Heritage Areas as designated by the Secretary of Natural Resources under COMAR 08.03.08. This expansion is needed to assure support of existing State and federal programs and legislation. This major endeavor in growth management and environmental protection should not weaken current plant and wildlife habitat protection efforts by an omission of this nature.

2) Sensitive Areas should be overlays, rather than separately mapped areas. Site-specific information is often necessary to determine the presence and actual boundaries of sensitive resources, and mapping scales necessary for jurisdiction-wide program maps will not accurately reveal this information. Information available on sensitive resources may also change over time, and these resources must be protected even if original maps do not designate them as Sensitive Areas.

3) Local jurisdictions should be allowed to be more restrictive than the state statute. Regional differences exist in the severity of need for protection or identification of growth areas, and the flexibility to be more restrictive should be granted. Furthermore, there are many existing local programs to protect sensitive resource areas that are more restrictive than this proposed legislation. These local programs must not be weakened.

4) In general, the directives for natural resource protection should be strengthened. Effective implementation cannot occur without clear statements as to actions required. Such terms as "encourage" and "should consider" need to be replaced with language that will assure that the desired resource protection actions will occur.

5) Language on density of 1 unit per twenty acres should clarify that clustering should be used to achieve these densities where practicable. Clustering is an important mechanism to preserve sensitive resource areas and open space and minimize public expenditures for infrastructure.

6) More realistic time frames are needed for review, and a time frame for other steps in the review process (including notification for receipt of a program and determination of

completeness) should be specified.

We are also interested in assuring that coordination between this act and the Critical Area Program will occur, particularly for planning efforts and infrastructure projects. We realize that the act contains a mechanism for the Office of Planning to coordinate with the Critical Area Commission, and would like to offer our support, cooperation, and experience for implementing this ambitious program.

STATE OF MARYLAND
CRITICAL AREA COMMISSION
WEST GARRETT PLACE, SUITE 320
275 WEST STREET
ANNAPOLIS, MD 21401
(301) 974-2426

TO: Judge North/Sarah Taylor

FROM: CAC Staff

SUBJECT: Line-item Comments on Growth Commission Report

DATE: December 18, 1990

The staff had some suggestions for specific language changes to the proposed Maryland Growth and Chesapeake Bay Protection Act, outlined below. This memo is meant to supplement our memo of December 13, which itemized our broader concerns.

p. 2, Sec. 15-101, item (m): "Infill" as used in the definition of redevelopment should be defined, especially in terms of area.

p. 3, Sec. 15-102, item (4): This item should also emphasize the cost-savings for government services (in addition to ability) when local land planning is implemented.

p. 3, Sec. 15-102, item (7): In the second sentence, change "may" to "will" to make this finding a definitive basis for the legislation.

p. 4, Sec. 15-103, item (4): With wildlife and waterfowl habitat, add plant habitat, because State and local programs protect rare plant habitats as well as wildlife habitats.

p. 5, Sec. 15-103, item (9): Add "in accordance with this Title", to specify the context of the local planning efforts.

p. 5, Sec. 15-104, item (a)(1): Add "Critical Area jurisdictions shall not be excluded from participation in Subtitle 6" or similar language, to assure that investments in infrastructure will not stop at the Critical Area line. Regional planning efforts should also include the Critical Area, because the remainder of the region will be affected by development within the Critical Area, and estimates of population or resources are often for the entire region, including the Critical Area.

p. 6, Sec. 15-201, item (b): Silviculture is not included in the definition for agricultural activities, but may be needed, especially for non-commercial forestry practices on farms, which are not addressed elsewhere in the language.

p. 7, Sec. 15-201, item (e): Change last phrase to "protect plant and animal habitat".

p. 7, Sec. 15-201, items (h) and (i): Critical habitats should be expanded to include threatened species, species in need of conservation, and Natural Heritage Areas at a minimum, to avoid weakening efforts of existing State and federal programs and legislation. Protection should not be limited to 5 sites, since biological requirements of a particular species may depend on greater levels of protection. Sections 205 and 208 should also reflect these changes.

p. 7, Sec. 15-201, item (j): The last phrase should be changed to say "planted or established", to allow for areas being naturally regenerated. Limits for area or tree size would make the definition easier to implement, particularly relative to clearing during construction.

p. 8, Sec. 15-201, item (n) and (u): Add "or as determined by site survey", because streams should have buffers even if they were omitted on the topographic map.

p. 8, Sec. 15-201, item (t): Use the term "tidal waters of the Chesapeake Bay Critical Area" instead of "tidal waters of the Chesapeake Bay and its tributaries" for clarity, because the terms are not necessarily synonymous.

p. 9, Sec. 15-201, item (y): Repeat the term "top of normal bank" in items (1) and (2), for clarity.

p. 10, Sec. 15-203, items (2) and (3): The term "development rights utilized" should be clarified or explained.

p. 11, Sec. 15-204, item (b): This item should be clarified to read that Developed or Growth Areas may include uses on septic systems, to avoid misinterpretations that would qualify an area as a Developed or Growth Area because it is on an approved septic system.

p. 11, Sec. 15-205, item (3): See comment for p. 7, (h) & (i).

p. 11, Sec. 15-207, item (a): This item should be strengthened to read that jurisdictions will identify the listed areas and require maintaining those areas unless no alternative exists. Item (4) should include plant habitat. The phrase "whenever preservation .... offered by the developer" should be eliminated. Add (6), "other resources identified by the local jurisdiction".

p. 11, Sec. 15-207, item (b): This item should be deleted.

p. 12, Sec. 15-208: Local jurisdictions should be allowed to be more strict than the statute. Otherwise, a conflict exists with Sections 104(a)(2), 105(a), and 213(5)(xiii)(4), which refer to the powers given to local governments to provide extra resource protection in exchange for density.

p. 12, Sec. 15-209, item (a): The reference to one dwelling unit per twenty acres should specify that this is a density requirement, not a lot-size requirement, and that clustering is encouraged.

p. 12, Sec. 15-210, item (c): In (1), clarify whether a structure can be enlarged upwards or not. In (2), the intent is not clear relative to critical habitat areas. Adding language such as "measures may not be implemented if they adversely affect a critical habitat area" might help.

p. 13, Sec. 15-210, item (c), cont.: In (4)(iii), Forest Management Plans should be termed Timber Harvest Plans to use current Forest, Park, and Wildlife Service terminology. In (5)(i), say "streams and stream buffers". In (6), structures allowed under this clause should have no other alternative building site, and the density limitation should not apply to single lots under 20 acres. In (8)(i), single residential dwellings should not be exempted.

p. 14, Sec. 15-210, item (c), cont.: In (8)(ii), change "may" to "shall" to require local governments to establish such programs.

p. 15, Sec. 15-212, items (4) and (5): Recreation and open space requirements should also be incorporated into these items.

p. 16, Sec. 15-212, item (7): Eliminate item (ii). See comment for p. 12, Sec. 15-208.

p. 16, Sec. 15-213, item (2): Suggest scales of 1" = 600' for resource maps, to allow easy overlay with tax maps and addition to geographic information systems. Towns may need to be at 1" = 200' for appropriate resolution. The section should also state that the maps should be guides, especially if Sensitive Areas are mapped, because on-site determinations must be made for accurate boundaries and locations.

p. 17, Sec. 15-213, item 5(ii): Change "give due consideration to preserving" to "preserve". Add plant habitat, colonial waterbird nesting sites, and forest-interior-dwelling-bird habitat.

p. 18, Sec. 15-213, item (6)(ii): Change "not be prohibited" to "used where practicable". Specify the use of deed restrictions and conservation easements or other restrictive instruments for conservation of resources.

p. 19, Sec. 15-215: More specific timeliness should be established. Our suggested timeframe follows, to replace items (1) - (5) for (a). In (a), 60 days should be changed to 148 days. Item (6) should be renumbered to (8).

(1) Within 7 days of receipt of a local Program, the Office of Planning shall notify the local jurisdiction that the local Program has been received.

(2) Within 14 days from the date the notice of receipt of a local Program is sent, the Office of Planning shall notify the local jurisdiction that the Program is complete, or shall return the Program to the local jurisdiction with a list of incomplete items.

(a) A determination by the Office of Planning that a local Program is complete shall not be interpreted as approval of the local Program.

(3) Within 7 days from the date the notice that a local Program is complete is sent, the Office of Planning shall distribute the local Program to the Interagency Growth and Resource Management Committee.

(4) Within 45 days from the date a local Program is sent to the members of the Interagency Growth and Resource Management Committee, comments shall be provided to the Office of Planning.

(5) Within 15 days from receipt of comments in (4) above, the Office of Planning shall consolidate the comments and provide a copy to the local jurisdiction.

(6) Within 30 days from the date comments are sent to the local jurisdiction, a review conference shall be held with the local jurisdiction.

(7) Within 30 days from the date of the review conference, the Office of Planning shall issue final comments with a statement of approval, approval with conditions, or disapproval.

p. 21, Sec. 15-217, item (c): The section should specify that if new species are designated, amendments must be made to the local programs within 1 year to protect these species and their habitat.

/jjd

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TO: Judge North/Sarah Taylor

FROM: CAC Staff

SUBJECT: A Few Additional Line-item Comments on Growth Commission Report

DATE: December 21, 1990

p. 1, Sec. 15 - 101, item (d): The definition of development should include the definition of "Non-structural Land Alteration", item (r) on p. 8. At various places in the legislation only the term "development" is used; however, the intent of the language is to include both structural and non-structural alterations. By not combining the two definitions, there will be frequent misinterpretations of the scope of the legislation's intent.

p. 16, Sec. 15 - 212, item (6): Add "Identify land requirements for recreation and open space". These requirements or needs are currently presented in each county's Recreation and Open Space Plan.

p. 17. Sec. 15 - 213, item (5)(i): Add "Local jurisdictions shall ensure adequate size of growth areas to allow for resource protection".

p. 24, Subtitle 4: Critical Area Commission staff believe the establishment of a Growth Management Appeals Board is a good mechanism to deal with appeals.

/jjd

DRAFT

Governor William Donald Schaefer:

I am delighted to make this report on the Governor's Commission on Growth in the Chesapeake Bay Region. Our mission was to "prepare specific recommendations for the management of growth and environmental resources in the state." The last 15 months have been among the most exciting and challenging of my life, and I appreciate the opportunity you gave me to work with some of the state's best and most dedicated citizens.

To accomplish its mission, the Commission approached its work in a deliberate and participatory fashion. During our first six months, we reviewed state and local plans and programs relative to growth, economic development and environmental protection. Next we held a series of five regional meetings to solicit public input from citizens and elected officials. Then, having heard from people across the state, we began to develop the specific approach that resulted in draft legislation for a bill entitled the "Maryland Growth and Chesapeake Bay Protection Act of 1991."

This draft recommendation was released and distributed in the fall to over 5,000 citizens, elected officials and planners across the state. A hearing (held on December 15, 1990), public meetings, and review sessions were held with thousands of Marylanders participating and offering their comments.

The **Maryland Growth and Chesapeake Bay Protection Act of 1991** here presented for your consideration contains many changes made as a result of the concerns and suggestions expressed during the public review period. The Act and related recommendations will meet the requirements of the 1987 Chesapeake Bay Agreement and satisfy your charge to us. It will result in:

- Establishing a statewide growth and Chesapeake Bay management system designed to achieve a balance between protecting the environment and encouraging economic development.

- Maintaining the fundamental zoning and land use decision making powers of local governments.

- Providing predictability and certainty for developers and citizens regarding growth and land use change.

- Reducing expenditures for infrastructure.

- Strengthening existing population centers and limiting the pressure on rural and natural resources.

(over)

The Act will achieve these results through the establishment of statewide standards and land classifications to be applied by local governments through interim and permanent Growth and Resource Management Programs. Specific provisions have been included to protect property rights and landowner equity. Technical and financial assistance will be provided to local governments to aid in preparing programs. The Act creates a growth management infrastructure fund to help meet needs created in carrying out the programs. We propose that an Interagency Growth and Resource Management Committee be legislatively created to assure that state government conducts its activities compatibly with approved local programs.

We urge you to submit legislation in 1991 to enact our recommendations. This legislation could take two forms:

- The bill can be enacted in its entirety.

- The bill can be phased-in over a period of two years.

While there has been near-universal acceptance of the basic principles and intent of the legislation, there has been widespread public discussion over the timing of its implementation. Both options will direct growth in Maryland, to achieve the 2020 Visions, while the phased-in approach allows for additional public input and regulatory fine-tuning.

The Commission has been particularly attentive to the cost implications associated with our proposals. The attached report of the Commission's Finance Committee, and subsequent letter from the Secretary of the Department of Budget and Fiscal Planning Charles L. Benton addresses this topic.

In the coming weeks, the Commission will continue to refine its proposals to insure that stewardship of the land and the Bay becomes a universal ethic. Finally, the Commission will prepare a summary report and provide the technical documentation that explains and supports its proposals.

The members of the Commission are available to continue to work and will assist, in any way possible, as the General Assembly considers this legislative initiative. You provided the 32 members of this Commission with a seldom-found opportunity to make a significant, and lasting, contribution to the quality of life that all Marylanders enjoy. You made it our job to insure this quality of life for the future. For this we thank you.

Sincerely,

Michael Barnes
Chairman

FROM:MD OFFICE OF PLANNING TO:CBCAC

PROPOSED CHANGES BY RICHARD ALTER

PROPOSED CHANGES TO LEGISLATION IN SUPPORT OF INCENTIVES TO GROWTH WITHIN DEVELOPED AND GROWTH AREAS

1. In support of streamlining the approval process, and assuring consistency, predictability and speed in this process:

Section 15-213 Performance Criteria, (5) Developed and Growth Areas:, (xiii), 2. should be revised to read (new language in caps, deleted language in brackets):

Contain measures to optimize the efficiency and timeliness of development review and approval in the Developed and Growth Areas. Such measures SHALL include, but [are] not BE limited to, expedited or consolidated subdivision review and building permits;

2. In support of consistency in standards for 1. Roads 2. Wetlands 3. Schools 4. Trees 5. Storm Water Management:

Section 15-607 Infrastructure Fund Grants subsection (d), add the following (new language in caps):

(6) ELIGIBLE COSTS SHALL BE THOSE OF IMPROVEMENTS NECESSARY TO MEET STANDARDS SPECIFIED BY REGULATIONS GOVERNING GRANTS, ADOPTED BY THE OFFICE OF PLANNING IN CONSULTATION WITH THE STATE DEPARTMENT OF TRANSPORTATION, THE STATE DEPARTMENT OF THE ENVIRONMENT, THE STATE DEPARTMENT OF EDUCATION AND THE STATE DEPARTMENT OF NATURAL RESOURCES.

4. Relaxation of requirements governing setbacks and right of ways in growth areas:

Section 15-213 Performance Criteria (5) Developed and Growth Areas: (xiii) (4) should be revised to read (new language in caps, deleted language in brackets):

[Provide] PERMIT reductions [for] IN REQUIRED setbacks and lot sizes DURING subdivision REVIEW, PLANNED UNIT DEVELOPMENT REVIEW AND approval AND ZONING AMENDMENT PROCESSES AND IN CONDITIONAL USE AND SPECIAL EXCEPTION PROVISIONS UNDER ZONING, [if needed to achieve a higher standard of environmental protection than would otherwise be reached.] WHERE THE PURPOSES OF THESE ORDINANCES CAN BE ACHIEVED, WHILE FACILITATING A MORE EFFICIENT USE OF LAND AND ASSURING PROTECTION OF THE ENVIRONMENT.

5. Maintain integrity of available land supply for development.

Section 15-213 Performance Criteria (5) Developed and Growth Areas: revise Section (i) as follows (new language in caps):

(i) The Developed and Growth Area shall be limited to an area adequate to support the development and population anticipated for the 20-year period. IF AT ANY TIME A LOCAL JURISDICTION FINDS THAT THE DEVELOPED AND GROWTH AREA IS INADEQUATE TO SUPPORT THE DEVELOPMENT AND POPULATION ANTICIPATED FOR THE NEXT FIFTEEN YEARS, AND DEMONSTRATES THIS INADEQUACY TO THE OFFICE OF PLANNING, THE LOCAL JURISDICTION SHALL REDEFINE THE DEVELOPED AND GROWTH AREA TO ASSURE THAT THE AREA IS ADEQUATE TO SUPPORT THE DEVELOPMENT AND POPULATION ANTICIPATED FOR AT LEAST A 15-YEAR PERIOD, BUT FOR NO MORE THAN A 20-YEAR PERIOD, SUBJECT TO THE APPROVAL OF THE OFFICE OF PLANNING. IF AT ANY TIME THE OFFICE OF PLANNING FINDS THAT THE DEVELOPED AND GROWTH AREA IS INADEQUATE TO SUPPORT THE DEVELOPMENT AND POPULATION ANTICIPATED FOR THE NEXT FIFTEEN YEARS, THE OFFICE OF PLANNING SHALL DIRECT THE LOCAL JURISDICTION TO REDEFINE THE DEVELOPED AND GROWTH AREA TO ASSURE THAT THE AREA IS ADEQUATE TO SUPPORT THE DEVELOPMENT AND POPULATION ANTICIPATED FOR AT LEAST A 15-YEAR PERIOD, BUT FOR NO MORE THAN A 20-YEAR PERIOD, SUBJECT TO THE APPROVAL OF THE OFFICE OF PLANNING.

6. Consistency within the growth area on a regional basis - i.e. A I-95 planning corridor, including common rules for Anne Arundel, Howard, Montgomery and Prince Georges Counties.

In Section 15-212 Program Components, (3) Interjurisdictional Compatibility, add (new language in caps):

THIS COMPONENT SHALL ALSO DEMONSTRATE STEPS TAKEN TO ASSURE THE CONSISTENCY OF LOCAL ZONING AND SUBDIVISION REQUIREMENTS AND STANDARDS AND STANDARDS FOR DETERMINING ADEQUACY OF PUBLIC FACILITIES WITH THOSE OF ADJACENT LOCAL JURISDICTIONS.

SUMMARY OF LEGISLATIVE CONCEPT FOR PHASED IMPLEMENTATION

An alternative to the introduction of the Governor's Commission on Growth drafting committee's legislative proposal would be the introduction of a bill to phase the implementation of the Maryland Growth and Resource Management Program. Phasing would permit the immediate establishment of the Program. The second phase would be the development of regulations which would provide for additional opportunity to refine detailed standards included in the original proposal.

The major features of a phased approach would be to:

- o Institute the Interim Program as of July 1, 1991.

- o Protect Sensitive Areas beginning July 1, 1991.

- o Establish the Commission to obtain public and local government input and make recommendations to the Governor regarding:

    - definition of the land classifications
    - program components
    - program performance criteria

  The current content of the full bill regarding these items will be issued as part of the Commission's report and forms the beginning point for the Commission's public review process.

- o Authorize the Office of Planning to complete action on these elements through the issuance of regulations.

- o Require local governments to prepare programs in accord with the regulations.

- o Enact the program approval, amendments, monitoring, appeals, enforcement, grandfathering, special exception, planning grants, infrastructure fund, and interagency committee provisions as approved through January 2, 1991 by the Commission.

January 4, 1991

State Government Article: Title 15

PROPOSED MARYLAND GROWTH AND CHESAPEAKE BAY PROTECTION ACT OF 1991

Subtitle 1. Definitions; general provisions; local powers 1
§15-101 Definitions (1); §15-102 Findings (2); §15-103 Statement of Purposes (4); §15-104 Scope of Title; conflicts with Federal requirements (5); §15-105 Additional Powers to Local Jurisdictions (5)

Subtitle 2. Growth Management, Environment, and Resource Protection 6

Part I - Definitions 6
§15-201 Definitions (6)

Part II - Establishment of Land Classification System 9
§15-202 Established (9); §15-203 Developed Areas (10); §15-204 Growth Areas (10); §15-205 Sensitive Areas (11); §15-206 Rural and Resource Areas (11)

Part III - Conditions Applicable to Land Classification Areas 11
§15-207 Conditions Applicable to All Areas (11); §15-209 Rural and Resource Areas (12); §15-210 Sensitive Areas (12)

Part IV - Programs - Preparation, Adoption, Approval 15
§15-211 Procedure for Adoption (15); §15-212 Program Components (15); §15-213 Performance Criteria (17); §15-214 Program Submission (21); §15-215 Program Approval (21); §15-216 Enforcement (22); §15-217 Amendments and Modifications (22); §15-218 Monitoring (23); §15-219 Penalties (24)

Subtitle 3. Interim Programs 24
§15-301 Definitions (24); §15-302 Established (25); §15-303 Development; Zoning Changes (25); §15-304 Maps (26); §15-305 Community Stabilization Program (26); §15-306 Penalties (26)

Subtitle 4. Appeals 27
§15-401 Established (27); §15-402 Membership (27); §15-403 Jurisdiction (28); §15-404 Appeal Procedures (28); §15-405 Powers and duties (30); §15-406 Appeals to Circuit Court (30); §15-407 Budget; staff (30)

Subtitle 5. Grants 30
§15-501 Planning Grants, In General (30)

Subtitle 6. Growth Management Infrastructure Fund 31
§15-601 Definitions (31); §15-602 Findings; purpose (31); §15-603 Fund Established (32); (32); §15-604 Appropriation and Approval (32); §15-605 Application for Fund Grants (33); §15-606 Governing Criteria for Approval of Competitive Grants (34); §15-607 Eligibility Standards for Infrastructure Fund Grants (34); §15-608 Ineligible Uses for Infrastructure Grants (36); §15-609 Use of Grants for Redevelopment Financing (36); §15-610 Rules and Regulations (37)

Subtitle 7. State Agency Responsibilities 37
§15-701 Established (37); §15-702 Membership; staff (37); §15-703 Powers and duties (37); §15-704 General responsibilities of State agencies (38); §15-705 General Authority and Duties of Office of Planning (39)

Subtitle 8. Grandfathering 40
§15-801 Building Permits of Record (40); §15-802 Subdivision Plats of Record (40); §15-803 Parcels of Record in the Interim Rural and Resource Area and Rural and Resource Area (41)

Subtitle 9. Intrafamily transfers 41
§15-901 Intrafamily transfers (41)

Subtitle 10. Severability 42
§15-1001 Severability, In General (42)

Subtitle 1. Definitions; general provisions; local powers

§15-101 Definitions

(a) In general. In this Title, the following words have the meanings indicated.

(b) Adequate Public Facilities Ordinance. "Adequate Public Facilities Ordinance" means an ordinance which controls phasing and timing of development by specifying level of service standards for certain public facilities and conditioning development approval upon a finding that the infrastructure is present or will be provided within an established time period to serve the proposed development.

(c) Cluster Development. "Cluster Development" means the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel.

(d) Development. "Development" means the act of building structures or installing site improvements both public or private, or substantial alteration of structures.

(e) Development Right. "Development Right" means the ability to improve a parcel of real property measured in dwelling units or units of commercial or industrial space existing because of zoning classifications in effect on April 15, 1991.

(f) Incentive Zoning. "Incentive Zoning" means a provision in a local zoning ordinance granting economic and land use incentives, such as an increase in density, to developers who build units for moderate income households, or who provide project or community amenities.

(g) Local Jurisdiction. "Local Jurisdiction" means any county or municipality in the State with zoning powers, or LaVale, an unincorporated taxing district with zoning powers.

(h) Office of Planning. "Office of Planning" means the Maryland Office of Planning.

(i) Person. "Person" means an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

(j) Program. "Program" means a county or municipal Growth and Resource Management Program adopted by the local governing body and approved by the Office of Planning pursuant to this Title.

(k) Mixed Use Development. "Mixed Use Development" means a single, high density development project, commercial in nature, which includes two or more types of uses.

(l) Planned Unit Development. "Planned Unit Development" means a residential development project comprised of housing of different types and densities, and some commercial uses. A Planned Unit Development plan is negotiated by a local jurisdiction and a developer, and established prior to development.

(m) Redevelopment. "Redevelopment" means the act of building, rebuilding, or altering structures or installing site improvements both public or private on land which has been previously developed, or development of infill parcels.

(n) State. "State" means the State of Maryland.

(o) Transfer of Development Rights. "Transfer of Development Rights" means a program where an unused development right may be removed from one parcel and transferred to another.

(p) Transportation Demand Management. "Transportation Demand Management" means any method of reducing demand for road capacity during the peak period, including alternative work hours programs, carpools, vanpools, subsidized transit passes, preferential parking, and peak parking charges.

(q) Zoning Ordinance. "Zoning Ordinance" means the local ordinance which controls the division of land into zones according to present and future planned use or development of properties and is enabled in this Title, Article 25A, Article 28, or Article 66B of the Annotated Code of Maryland.

§15-102 Findings

The General Assembly finds and declares that:

(1) It is necessary to enact this legislation to protect the health, safety, welfare, and quality of life of the citizens of Maryland; protect the Chesapeake Bay and the environment of the State; address where possible earlier damages to the environment; and encourage appropriate commercial and economic development, in order to positively accommodate anticipated growth.

(2) The environment and natural resources of the State, most notably the Chesapeake Bay, but also its forests, agricultural lands, wetlands, waters, fisheries, wildlife, air, minerals and other related resources, are vital to the State's economy. A healthy environment, along with these natural resources and

traditional patterns of development have defined the quality of life that the citizens of Maryland treasure and seek to protect.

(3) The State has a vital interest in ensuring that an improved method of land use planning and growth management is established as quickly as possible, and which builds on the strong foundation of local land use planning, protects unique aspects of the State's heritage and environment, including cultural, historical, or archaeological resources, encourages appropriate uses of the State's natural resources, guides sound economic development, and ensures prosperity for Maryland's citizens in all regions of the State.

(4) Recent patterns of scattered development threaten the integrity of not only the Chesapeake Bay, but also the State's environment and natural resource base, the ability of local and State government to provide necessary public services, the long-term viability of the State's economy, and the high quality of life that Maryland's citizens enjoy. These issues must be addressed promptly and in a systematic way since population will continue to grow.

(5) Legislation must be accompanied by an increasing awareness of all Marylanders that their activities directly affect the health of the Bay. In order to reverse current trends, a new ethic to protect the land and the Bay is needed.

(6) The revitalization and redevelopment of Maryland's older, declining developed areas is critical to Maryland's future. The full and effective use of developed areas will conserve land, promote an improved quality of urban life, and relieve growth pressures in resource areas. Any program of growth management must promote opportunities for housing and employment so that these areas can achieve optimum growth.

(7) Growth, environment, and resource management policies should be applied consistently across the State. General categories of land use established by the State and implemented by a local jurisdiction will enhance planning for orderly development and reduce development costs.

(8) As a result of the Chesapeake Bay Agreement, signed by the Governor in 1987, a report was issued that established the following six linked visions to protect the environment and natural resource base of the State while simultaneously encouraging the future growth and economic development of the State:

VISION I: Development is concentrated in suitable areas;
VISION II: Sensitive areas are protected;
VISION III: Growth is directed to existing population centers in rural areas and resource areas are protected;

VISION IV: Stewardship of the Bay and the land is a universal ethic;
VISION V: Conservation of resources, including a reduction in resource consumption, is practiced throughout the region; and
VISION VI: Funding mechanisms are in place to achieve all other visions.

(9) In 1989, the Governor appointed the Commission on Growth in the Chesapeake Bay Region to:

(i) Review the findings of the Bay Agreement's Year 2020 Panel of Experts and determine their application to Maryland;
(ii) Identify a comprehensive listing of growth issues that the State must address to the year 2020; and
(iii) Prepare specific recommendations and an action agenda of the steps Maryland must take to provide for a healthy economy and expand efforts to improve the environmental quality of the Chesapeake Bay.

§15-103 Statement of Purposes

The General Assembly declares that the purposes of this Title are to:

(1) Establish a Growth and Resource Management Program for the State which will serve to foster efficient development, encourage redevelopment, conserve land-based resources, protect sensitive areas, and thereby address the goals of the Chesapeake Bay Agreement.

(2) Implement a land classification system to ensure the orderly and efficient development of the State by defining areas within the State where growth and development will be fostered and those areas in which environment and resource protection measures will further limit growth and development.

(3) Provide for efficient and environmentally sensitive development in the Growth and Developed Areas, so that the new households and jobs essential to maintaining a sound economy in Maryland can be accommodated.

(4) Complement and enhance the protection afforded by existing State and local programs to agricultural lands, forested areas, tidal and non-tidal wetlands, tidal floodplains, anadromous fish spawning areas, submerged aquatic vegetation, wildlife and waterfowl habitat, lands dedicated to natural resource and open space purposes, and mineral and resource extraction areas by establishing rural and resource areas.

(5) Provide local jurisdictions with the tools and resources to plan for and accommodate increasing population, and to manage existing and future development;

(6) Provide State agencies and local jurisdictions with a framework which ensures coordinated and cooperative growth management, redevelopment, environment, and resource protection in accordance with this Title.

(7) Require State agencies to direct infrastructure investments consistent with this Title.

(8) Require growth, environment, and resource management programs of all local jurisdictions exercising planning and zoning powers in a manner consistent with this Title.

(9) Provide for an orderly transition, to begin July 1, 1991 and to be completed by December 31, 1993, from a local jurisdiction's current system of land use planning to planning in the context of a program for management of growth and protection of resources.

§15-104 Scope of Title; conflicts with Federal requirements

(a) Effects on State Law

(1) This Title applies to all land and water area of the State except areas governed by the Chesapeake Bay Critical Area Protection Law (Natural Resources Article, § 8-801 through 8-1816).

(2) Except as expressly authorized in this Title, this Title shall not repeal or amend, but is in addition to existing laws, programs, regulations, permits, and other approval requirements of the State.

(b) Effects on Federal Law

(1) A provision of this Title that conflicts with a Federal requirement for the grant of Federal funds to a local jurisdiction, to the State, or to a State unit is inoperative to the extent of the conflict and with respect to a unit that the conflict directly affects.

(2) To the extent necessary to comply with a conflicting Federal requirement, a local jurisdiction or State unit may modify a notice, timing, hearing, or related procedural requirement of this Title.

§15-105 Additional Powers to Local Jurisdictions

(a) A local jurisdiction is expressly authorized to use the following techniques to manage growth:

(1) adequate public facilities ordinances;

(2) requirements for off-site improvements or dedication of land or money in lieu thereof;

(3) purchase and transfers of development rights;

(4) incentive zoning;

(5) cluster development;

(6) planned unit developments;

(7) mixed use development; and

(8) transportation demand management.

(b) The items enumerated in subsection (a) above are not intended to limit a local government's ability to continue current practices not specified in this section or to adopt other methods for managing growth by ordinance or other means.

Subtitle 2. Growth Management, Environment, and Resource Protection

Part I - Definitions

§15-201 Definitions

(a) In general. In this subtitle, the following words have the meanings indicated.

(b) Agricultural Activity. "Agricultural Activity" means farming activity including plowing, tillage, cropping, seeding, cultivating, and harvesting for production of food and fiber products (except forest products); the grazing, raising, and fencing of livestock; aquaculture; sod production; Christmas trees; nursery; and other products cultivated as part of a recognized commercial enterprise.

(c) Approval. "Approval" means a final decision of compliance of a local Program with this Title, and issued in writing by the Office of Planning.

(d) Approval with Conditions. "Approval with Conditions" means a final decision of compliance of local Program with this Title contingent upon requirements set forth in writing by the Office of Planning.

(e) Best Management Practices. "Best Management Practices" means conservation practices or systems and management measures that control soil loss, reduce water quality degradation, and protect wildlife habitat.

(f) Capital Improvement Program. "Capital Improvement Program" means a multi-year program which includes public works and major capital improvement projects to be undertaken or recommended to be undertaken by the State or any local jurisdiction whether funded by bond authorizations, operating budget funds, or capital leases. Public improvements include any construction, maintenance, or repair of any building, structure, or other public work: 1) owned or constructed by the State or local government or any unit of State or local government; or 2) acquired or constructed in whole or in part with State or local funds.

(g) Commercial. "Commercial" means wholesale and retail trade, finance, insurance and real estate, and services.

(h) Critical Habitat for Endangered Species. "Critical Habitat for Endangered Species" means a habitat occupied by a current State-listed endangered species which is known from five or fewer sites or by a Federally-listed species which:

(1) is restricted in its potential to increase in numbers due to limited mobility rates; and

(2) will benefit from critical habitat area designation due to its biological requirements.

(i) Critical Habitat Area. "Critical Habitat Area" means a Critical Habitat for Endangered Species and its surrounding protection area. A Critical Habitat Area shall:

(1) be likely to contribute to the long-term survival of the species;

(2) include an adjacent buffer which is deemed by the Secretary of the Department of Natural Resources, in consultation with the local jurisdiction in which the site is located, to be the minimum necessary to insure the protection of the species;

(3) be likely to be occupied by the species for the foreseeable future; and

(4) constitute habitat of the species which is deemed critical under Title 10, Subtitle 2A, § 6 of the Natural Resources Article.

(j) Forest. "Forest" means a biological community dominated by trees and woody plants, including areas that have been cut, but not cleared; and areas planted in seedlings.

(k) Forestry. "Forestry" means the planting, seeding, maintenance, or harvesting of forest resources for non-commodity benefits or commodity benefits, including cutting, transporting, milling, and storing wood and wood products.

(l) Impact Fee. "Impact Fee" means a charge levied against new residential, commercial, or industrial development to pay for off-site capital improvements necessitated by the development.

(m) Industrial. "Industrial" means contract construction, manufacturing, transportation, communication, electric, gas, and sanitary services.

(n) Infrastructure. "Infrastructure" means the basic facilities needed for the growth and functioning of a community, including but not limited to water, sewerage, solid waste, utilities, transportation facilities, schools, parks, and public safety.

(o) Intermittent Stream. "Intermittent Stream" means a stream in which surface water is absent during a portion of the year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geological Survey.

(p) Mineral Resource and Extraction Area. "Mineral Resource and Extraction Area" means land identified by a local jurisdiction under Article 66B, §3.05(a)(1)(v).

(q) Moderate Income Household. "Moderate Income Household" means a household that has an annual income that is 80% or less of the median income of the State or the Metropolitan Statistical Area in which the household is located, whichever is higher.

(r) Natural Vegetation. "Natural Vegetation" means those plant communities that develop in the absence of human activities, or planted to establish a natural plant community that is indigenous to the site.

(s) Non-structural Land Alteration. "Non-structural Land Alteration" means any activity that materially affects the condition or use of dry land, land under water, or Natural Vegetation.

(t) Non-tidal Wetland. "Non-tidal Wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether a wetland is a non-tidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended.

(u) One hundred Year Floodplain. "One Hundred Year Floodplain" means an area along or adjacent to a stream or a body of water, except tidal waters of the State, that is capable of storing or conveying floodwaters during a 100-year frequency storm event. A 100-year flood is a flood which has a 1% chance of being equalled or exceeded in any given year. Except for Class III Waters (Natural Trout Streams), a body of water with a watershed less than 400 acres is excluded.

(v) Perennial Stream. "Perennial Stream" means a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geological Survey.

(w) Planned Sewer Service Area. "Planned Sewer Service Area" means an area designated to receive sewer service within 5 years in the most recent State-approved county Water and Sewerage Plan.

(x) Residential Density. "Residential Density" means the number of housing units permitted by zoning, divided by the total acreage in the residential portion of the Growth Areas. The residential portion shall include the total number of acres where the following are permitted: residential housing units of any type or density and land required in the local subdivision ordinance such as roads, open space, buffers, rights-of-way, and all other land set-asides; and residentially related uses such as churches, schools, and public facilities and lands.

(y) Steep Slopes. "Steep Slope" means an area with a slope of 25% or more covering an area of at least 5,000 square feet.

(z) Stream Buffer. "Stream Buffer" means all lands lying within the distances indicated below, measured from the top of each normal bank of a perennial stream or top of each normal bank of an intermittent stream:

(1) in Interim Rural and Resource Areas and subsequently in the Rural and Resource Areas, 100 feet from the banks of perennial streams and of intermittent streams; and

(2) in Interim Growth and Development Areas, and subsequently in Growth Areas and Development Areas, 100 feet from the banks of perennial streams and 50 feet from the banks of intermittent streams.

(aa) Subdivision. "Subdivision" means any division of a parcel of land into two or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

(bb) Tidal Wetlands. "Tidal Wetlands" means any land not considered a "State wetland" bordering on or lying beneath tidal waters other than the Chesapeake Bay and its tributaries, which is subject to regular or periodic tidal action and supports aquatic growth.

Part II - Establishment of Land Classification System

§15-202 Established

(a) Land in the State shall be classified consistent with the provisions established in this Title.

(b) Land within a local jurisdiction shall be designated in accord with the following four categories:

(1) Developed Areas, which are largely committed to existing uses, although some may contain substantial opportunities for infill, increasing density, or redevelopment,

(2) Growth Areas, which contain new residential, commercial, and industrial development over the next 20 years,

(3) Rural and Resource Areas, which require special management because of the value of their contribution to the economy as well as to the environment of the State, or

(4) Sensitive Areas, which require special protection because of outstanding natural features or characteristics.

§15-203 Developed Areas

Developed Areas include all lands which are:

(1) within the boundaries of a municipality as of July 1, 1991; or
(2) contiguous areas of 500 acres or more with at least 75% of their development rights utilized; or
(3) adjacent to municipal boundaries, with at least 75% of their development rights utilized; and which are in one or more of the following land covers:
(i) residential development of two dwelling units or more per acre;
(ii) commercial and industrial uses including associated storage areas, yards, and parking areas;
(iii)institutional uses including schools, colleges, and universities, military installations, transportation facilities, churches, medical and health facilities, correctional facilities, government offices and facilities; and
(iv) golf courses, recreation areas, and cemeteries.

§15-204 Growth Areas

(a) Growth Areas include undeveloped areas or areas with less than 75% of their development rights utilized, and which, in conjunction with Developed Areas, are needed to accommodate planned growth for no more than a 20 year period, and which;

(1) are either adjacent to Developed Areas or specifically designated for concentrated new development; and

(2) are served with a community sewerage system as of July 1, 1991, or are planned predominantly for a community sewerage system which serves 50 or more residential units, or will have sewer service a community sewerage system which serves 50 or more residential units within the 20 year period.

(b) Existing and new uses on approved and functioning septic systems may be included within the Developed and Growth Areas, consistent with the density requirements established for Growth Areas.

§15-205 Sensitive Areas

Sensitive Areas include:

(1) 100 year floodplains;

(2) intermittent and perenniai streams and their buffers;

(3) critical habitats of endangered species; and

(4) steep slopes.

§15-206 Rural and Resource Areas

Rural and Resource Areas include all land not otherwise classified as Developed, Growth, or Sensitive Areas.

Part III - Conditions Applicable to Land Classification Areas

§15-207 Conditions Applicable to All Areas

(a) During project review, whenever preservation of undeveloped portions of a site is required or offered by the developer, the local jurisdiction shall encourage that, to the extent practicable, the portions preserved maintain the contiguity with adjacent lands, of:

(1) stream valleys;
(2) forested tracts;
(3) connections between recreation, open space, or forested tracts;
(4) wildlife habitats; or
(5) land in agricultural preservation programs.

(b) This section may not serve to limit development in the Growth Areas.

§15-208 Developed and Growth Areas

(a) In a Developed or Growth Area, a local jurisdiction may not adopt or enforce a more strict definition or a standard of protection of the four Sensitive Areas which are defined in this Title that would prevent the development or non-structural land alteration that is permitted in §15-210.

(b) In a Developed or Growth Area, a local jurisdiction may not adopt or enforce public facilities standards which exceed standards established by the State.

§15-209 Rural and Resource Areas

(a) Zoning in Rural and Resource Areas shall permit development of no more than one dwelling unit for every twenty acres. A local jurisdiction may enforce a lesser density in the Rural and Resource Areas that has been established by local ordinance.

(b) In a Rural and Resource Area, except for amendments approved pursuant to a comprehensive rezoning, an amendment to a zoning map may be granted by a local jurisdiction only on proof of mistake.

§15-210 Sensitive Areas

(a) Beginning on July 1, 1991, all Sensitive Areas in a local jurisdiction shall be controlled under the requirements of this section.

(b) This section describes the specific types of development or non-structural land alterations that are permitted in Sensitive Areas. All other development or non-structural land alteration in Sensitive Areas is prohibited except as provided in subsections (c) and (d).

(c) In any Sensitive Area:

(1) Existing structures may be removed, restored, repaired, maintained, or enhanced, provided that the area occupied by a structure may not be enlarged unless the enlargement is done in conjunction with the establishment of best management practices which reduce the level of negative environmental impacts, such as runoff, which existed prior to enlargement.

(2) Natural resources and environmental protection, management, monitoring, restoration, and enhancement may be implemented, provided that in critical habitat areas the measures may be implemented only in relation to Critical Habitats for Endangered Species or as mandated by law; and

(3) Agricultural activity existing, or planned as part of a conventional rotational cycle, or on areas set aside under a formal program for agriculture authorized by the United States Department of Agriculture or the Maryland

Department of Agriculture, as of July 1, 1991 shall be allowed, provided that any construction or substantial alteration of the land is done in accordance with (d)(1)(ii) below.

(d) In addition to activities authorized in subsection (c):

(1) In 100 Year Floodplains:

(i) New structures or alteration of existing structures for transportation facilities, transmission lines, and sewer, water, and gas lines may be constructed in the Sensitive Area only if no practicable or feasible alternative exists for locating the structure outside of the Sensitive Area. If a structure must be located in a Sensitive Area, disturbance of the Sensitive Area shall be minimized.

(ii) Construction and alteration of the land for agricultural purposes, including installation of best management practices, shall be allowed in accordance with provisions of a Soil Conservation and Water Quality Plan, approved by the local Soil Conservation District.

(iii) Non-structural land alteration for commercial forestry shall be allowed in accordance with provisions of a Forest Management Plan, prepared by a registered forester or landscape architect, that is approved by the Department of Natural Resources and assures protection of natural resources in the Sensitive Area. In stream buffers, no commercial forestry activities may be undertaken within 50 feet of the banks of intermittent and perennial streams, except that activities may be undertaken to permit forest conservation practices consistent with an approved Forest Management Plan. Disturbance of a Sensitive Area shall be minimized.

(iv) In 100 year floodplains, structures and non-structural land alterations appurtenant to mineral resource extraction areas, agriculture, stormwater management facilities, dams and reservoirs, water supply and wastewater facilities, flood management activities or facilities, and publicly owned or operated recreational facilities may be allowed provided that:

(1) they are outside of stream buffers unless done in accordance with (ii) above; and
(2) disturbance of the 100 year floodplain is minimized.

(2) On steep slopes, new structures other than those permitted in (1)(i) may be constructed if construction disturbs a total of 5,000 square feet or less of steep

slope area, or are done in accordance with (1)(ii), and are limited to one structure per 20 acres.

(3) In stream buffers, roads, causeways, or boat ramps that are necessary for recreational access to a stream may be permitted, provided that the area disturbed by development or non-structural land alteration is minimized.

(e) Establishment of natural vegetation in stream buffers

(1) During the Interim Growth Management Period, and subsequently after a Program becomes effective, when development or non-structural land alteration of land containing a stream buffer is proposed for any purpose other than agriculture, forestry, or construction of a single residential dwelling, the proposal will be approved by the local planning authority only if it establishes, through plat conditions and deed restrictions:

(i) that maintain an existing buffer in natural vegetation or establish a new buffer; and

(ii) that the buffer will be perpetually maintained in natural vegetation.

(2) Local governments may establish programs to encourage landowners to establish and maintain natural vegetation in stream buffers.

(f) If a parcel or parcels of land includes Sensitive Areas to the extent that any reasonable use of the land is prohibited by the requirements of this section, the owner of the land may apply in writing to the local jurisdiction in which the property is located for a special use exception.

(1) In the application the owner shall describe the proposed special use and shall demonstrate that:

(i) the lot was recorded on or before July 1, 1991;

(ii) if the local jurisdiction in which the property is located has adopted a program for the transfer of development rights, the owner has made a good faith effort to sell the developments rights and has been unsuccessful;

(iii) special physical circumstances or conditions exist that are unique to the parcel, such as the size and shape of the parcel in relationship to the Sensitive Area boundary;and

(iv) the request is not based upon conditions or circumstances which are the result of actions taken by the owner.

(2) The local jurisdiction may not approve the application unless it finds that:

(i) the proposed special use is generally consistent with the purposes and intent of this Title and with the provisions of the local jurisdiction's Program;

(ii) adverse impacts to the Sensitive Area are minimized through development design, best management practices, or other appropriate mitigation measures.

(3) Before making a decision on an application for a special exception permit, the local jurisdiction shall send a copy of the application to the Office of Planning for comment.

(4) A local jurisdiction shall provide for public notice on an application.

(5) An appeal of a grant or a denial of a special use exception shall be taken in accordance with the applicable laws and procedures of the local jurisdiction, with notice to the Office of Planning. A decision by a Board of Appeal or a local legislative body may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure.

Part IV - Programs - Preparation, Adoption, Approval

§15-211 Procedure for Adoption

(a) A local jurisdiction having planning and zoning powers shall develop and adopt a Growth and Resource Management Program (the "Program") by December 31, 1993. A local jurisdiction shall advertise and hold at least one public hearing prior to adoption of the Program. Planning grants created in subtitle 5 may be utilized for this purpose.

(b) A municipality which has planning or planning and zoning powers, may, with the concurrence of the county, assign this responsibility to the county by October 31, 1991.

(c) Counties are required to implement the Interim Growth and Resource Management Program (the "Interim Program"), established in subtitle 3 of this Title.

(d) Municipalities are not required to implement an Interim Program.

(e) County and municipal zoning ordinances, zoning maps, subdivision regulations, site review ordinances, and other land use regulations shall be in conformance with a local jurisdiction's Program within 12 months of approval.

(f) Capital improvement programs, if any, shall be in conformance with a local jurisdiction's approved Program.

§15-212 Program Components

Each adopted Program shall include the following components:

(1) Information and Assumptions: This component shall be a description of current land uses and primary land cover; existing population; household and employment characteristics; projections of future growth or redevelopment including population, housing and employment targets; and a summary of the overall infrastructure, community facilities, and public open space needed to support the projections, including those required to promote new growth within a local jurisdiction's Developed Area. A local jurisdiction may also identify unique cultural, historical, or archaeological resources which may be affected by new development. This information shall serve as the data and assumptive base for all other program components.

(2) Program Map: This component shall illustrate on a map the classification of all the land of the county or municipality which is outside of the Chesapeake Bay Critical Area, consistent with §15-202 through §15-206 of this subtitle.

(3) Interjurisdictional Compatibility: This component shall describe how the adopted Program is compatible with the Programs of adjacent local jurisdictions, as well as identify areas where programs are incompatible either because decisions have been deferred pending the outcome of further study, or there is an impasse.

(4) Program Implementation: This component shall describe revisions to existing and proposed plans, programs, policies, and regulations that the local jurisdiction will use to implement the Program. These revisions shall include, where applicable, comprehensive and master plan amendments, comprehensive Water and Sewerage Plan amendments, amended zoning maps and ordinances, and amended subdivision, site plan review, and building code ordinances and regulations.

(5) Developed and Growth Areas: This component shall:

(i) identify the amount and location of land required to meet the 20 year residential and non-residential needs of the local jurisdiction while taking advantage of every reasonable opportunity to fully utilize and infill land in the Developed and Growth Areas;

(ii) identify the specific infrastructure required in the Developed and Growth Areas to support development for the first five year period; documentation of all budget commitments made in support of infrastructure provision; recommended adjustments to the State's capital program to support the proposed development or redevelopment; and local priorities for State assistance;

(iii) describe how a local jurisdiction proposes to provide sewer service to areas not currently served;

(iv) for municipalities except the City of Baltimore, contain a delineation of those areas beyond corporate limits proposed for annexation in order to accommodate growth;
(v) include a program of incentives to ensure commercial and industrial development sufficient to support residential growth;
(vi) include a program of incentives to ensure the availability of housing affordable to moderate income households and, where applicable, to promote community redevelopment; and
(vii) present any design standards for preservation of natural resources located within development sites that are used as part of the local jurisdiction's development approval process.

(6) Rural and Resource Areas: This component shall:

(i) describe how the local jurisdiction will promote and preserve farming, farmland, trees, forests, forestry, and mineral resources;
(ii) designate priority areas for farmland preservation, and describe local priorities for the expenditure of agricultural preservation monies;
(iii) designate priority areas for reforestation and forest protection;
(iv) identify measures to limit development in Rural and Resource Areas;
(v) identify land required to meet the economic needs of resource-based industries. These industries include agriculture, forestry, and mineral extraction; and
(vi) describe provisions for cluster development and indicate how these will encourage the design of individual and regional developments that achieve harmony with the natural environment, and with the existing community and regional character.

(7) Sensitive Areas: This component shall:
(i) document how the requirements of this Title have been integrated in the existing regulations of the local jurisdiction; and
(ii) describe any stricter standards of protection for Sensitive Areas in Rural and Resource Areas adopted or to be adopted by the local jurisdiction.

§15-213 Performance Criteria

An approved Program or Program amendment shall meet all of the following performance criteria:

(1) Information and Assumptions: Projections for population and employment growth across Developed, Growth, and Rural and Resource Areas shall reflect the purposes of this Title. Local population projections shall be based upon official

projections provided by the Maryland Office of Planning pursuant to State Finance and Procurement Article, § 5-306, "Population Projections." Where projections of households diverge from those provided to a local jurisdiction by the Office of Planning, the local jurisdiction shall provide the rationale for the divergence as well as the strategy developed to achieve the proposed target.

(2) Program Map: The map provided shall be at a scale and contain adequate referent points to illustrate clearly the categories of all lands in the local jurisdiction, except Sensitive Areas too small to be mapped. The Office of Planning shall adopt regulations for preparation of the Program map.

(3) Interjurisdictional Compatibility: Where interjurisdictional issues remain unresolved due to a deferral or an impasse, the Program shall document the nature of the work in progress to resolve an open issue or the efforts made toward impasse resolution.

(4) Program Implementation: Specific actions needed to implement the Program, their timing, parties responsible for implementation, and the fiscal implications of those actions shall be identified.

(5) Developed and Growth Areas: For these areas:

(i) The Developed and Growth Area shall be limited to an area adequate to support the development and population anticipated for the 20-year period.

(ii) A local jurisdiction shall give due consideration to preserving, to the maximum extent possible, contiguous forested areas of 100 acres or more; tidal and non-tidal wetlands; tidal floodplains; anadromous fish spawning areas; submerged aquatic vegetation; wildlife and waterfowl habitat; lands dedicated to natural resource and open space purposes; and agricultural land.

(iii) In Metropolitan Statistical Area Counties with a current household population of 100,000 or greater, an average density of at least 3.5 dwelling units per acre shall be zoned for the Growth Areas. In MSA Counties with a current household population of less than 100,000, an average residential density of at least 3.0 dwelling units per acre shall be zoned for the Growth Areas. In non-MSA counties, an average residential density of at least 2.5 units per acre shall be zoned for the Growth Areas. In all municipalities, an average residential density of at least 3.5 dwelling units shall be zoned for new development. Actual dwelling unit yield shall be at least 80% of the permitted residential density. This provision shall not apply in zones where densities exceed 3.5 units per acre.

(iv) In Metropolitan Statistical Area counties with a current household population of 100,000 or greater, at least 75 percent of new households shall be located in the Developed and Growth Areas. In MSA counties, with a current household population of less than 100,000, at least 65 percent of new households shall be located in the Developed and Growth Areas. In non-MSA counties, at least 50 percent of new households shall be located in the Developed and Growth Areas.

(v) In addition to residentially zoned land, sufficient land for commercial and industrial uses shall be provided within a county's Growth Areas to sustain a minimum ratio of 1.4 jobs per household based upon the household and employment projections as provided in (i), above. The Office of Planning shall adopt regulations describing the means for a local jurisdiction to calculate the acreage. This section shall not limit the amount of a county's Growth Area which is designated for commercial and industrial development.

(vi) If the application of a county's population projections to the density requirement established in (iii) above results in a Growth Area of less than 2,000 acres, a jurisdiction may designate a Growth Area of up to 2,000 acres.

(vii) A development strategy shall be included which encourages the provision of housing affordable to households of all income levels throughout the jurisdiction and creates a balance between housing affordability and ability of those employed in the jurisdiction. At least 15 percent of new residential development in a local jurisdiction shall be accessible to moderate income households. A local jurisdiction may provide a density bonus or other incentives to developers who assist a local jurisdiction in meeting this standard by offering housing for moderate income households.

(viii) Development incentives shall be included which will encourage balanced growth of households, commerce, and industry.

(ix) A development strategy shall be included which shows how at least 15% of new residential development will be accessible to moderate income households.

(x) Where appropriate, specific areas targeted for redevelopment or infill development shall be identified.

(xi) Consistent with public safety requirements, actual public and environmental needs, and changes in technology, a program of flexible

subdivision and public works standards which will minimize clearing, grading, impervious surfaces, and excessive infrastructure shall be included.

(xii) If a local jurisdiction is authorized to levy impact fees and chooses to do so, no building moratorium shall be imposed in any area in which a fee is levied.

(xiii) Efficiency performance standards shall be established for development in Growth and Developed Areas, including provisions that:

1. Allow accessory apartments, home occupations, convenience retail, day care centers, and mixed use development under locally developed ordinances;
2. Contain measures to optimize the efficiency and timeliness of development review and approval in the Developed and Growth Areas. Such measures include, but are not limited to, expedited or consolidated subdivision review and building approvals;
3. Allow cluster development under locally developed ordinances; and
4. Provide reductions for setbacks and lot sizes at subdivision approval if needed to achieve a higher standard of environmental protection than would otherwise be reached.

(6) Rural and Resource Areas: For these areas:

(i) Development in the Rural and Resource Area shall be limited to no more than one residential unit per 20 acres.

(ii) At time of subdivision, cluster development shall not be prohibited, and when applied, shall achieve at least 85% preservation of agriculture, forest, or open space.

(iii) A local jurisdiction shall permit:

1. only those commercial, industrial, and institutional uses that serve the needs of rural residential, agricultural, forestry, mineral extraction, and recreation uses; and
2. water, wastewater treatment, solid waste disposal, and other essential utilities and facilities serving a general public need.

(7) Sensitive Areas

(i) Local development approval regulations must be adopted which assure preservation of Sensitive Areas in a manner consistent with this Title.

(ii) For Sensitive Areas within Developed and Growth Areas, a local jurisdiction shall establish the following programs for parcels partially or wholly located within a Sensitive Area:

1. Clustering on the non-Sensitive portion of the property to achieve the density otherwise permitted on the parcel.

2. A program for transfer of development rights to a receiving area outside the Sensitive Area.

3. Special use exception as established in §15-210.

§15-214 Program Submission

(a) The local jurisdiction shall submit 10 copies of its Program to the Office of Planning.

(b) By December 31, 1991, a local jurisdiction shall advise the Office of Planning of its proposed schedule for submission of its Program. The schedule may be amended in consultation with the Office of Planning.

§15-215 Program Approval

(a) In consultation with the Interagency Growth and Resource Management Committee, the Office of Planning shall coordinate and complete the State's review within 60 days after receipt of the Program documents from a local jurisdiction.

(1) If documents are incomplete, the Office of Planning may request additional information from a local jurisdiction.

(2) All State agencies that are members of the Interagency Growth and Resource Management Committee shall provide their review and comments on a local Program to the Office of Planning within the same 60 day period described in (5) below.

(3) Comments shall be presented to the local officials within 30 days of the State's receipt of a local jurisdiction's Program.

(4) A review conference between the State and a local jurisdiction shall be held within 40 days of the State's receipt of a local jurisdiction's Program.

(5) Based upon the results of the review conference, the Office of Planning shall issue within 60 days of the State's receipt of a local jurisdiction's Program final comments with a statement of approval, approval with conditions, or disapproval.

(b) If the Office of Planning disapproves a Program, it shall clearly state reasons for disapproval and specific actions required to ensure approval of the Program.

§15-216 Enforcement

(a) Violators of the provisions of Programs approved by the Office of Planning shall be subject to prosecution or suit by local authorities, who may invoke the sanctions and remedies afforded by State or local law.

(b) Whenever the Director of the Office of Planning has reason to believe that a local jurisdiction is failing to enforce the requirements of a Program applicable to a particular development, the Director shall serve notice to the local jurisdiction. If within 30 days after service of notice, the local jurisdiction has failed to initiate an action to remedy or punish the violation, the Director may refer the matter to the Attorney General.

(c) Upon referral of an alleged violation under subsection (b) of this section, the Attorney General may invoke any sanction or remedy available to local authorities, in any court in which the local authorities would be authorized to prosecute or sue the violator.

(d) In addition to any other sanction or remedy available, the Attorney General may bring an action in equity to compel compliance or restrain non-compliance, and to compel restoration of lands or structures to their condition prior to any modification which was done in violation of provisions of a Program.

§15-217 Amendments and Modifications

(a) At intervals of no less than five years, a local jurisdiction with an approved Program may prepare an amendment, and shall submit this amendment to the Office of Planning for approval.

(b) An amendment shall propose to amend the boundaries of the land categories within a local jurisdiction. Amendments shall not be approved by the Office of Planning unless:

(1) The jurisdiction demonstrates that development activity has been occurring in a manner consistent with the approved Program;

(2) The local jurisdiction demonstrates that it has taken advantage of every reasonable opportunity to redevelop lands and/or increase densities in the Developed and Growth Areas in order to accommodate the projected additional growth.

(3) The jurisdiction demonstrates that the undeveloped land within the Growth Area provides for less than 15 years' growth of households and necessary commercial and industrial development based on projections described in §15-213(1) above and a residential density of at least 3.5 units per acre; and

(4) The aggregate area available for development will not accommodate more than 20 years' growth of households and necessary commercial and industrial development based on projections §15-213(1) and a residential density of at least 3.5 units per acre; and

(5) The proposed addition to the Growth Area:

(i) is in a suitable area compatible with prior development or proposed concentrated new development;

(ii) has the least environmentally adverse impact which is practicable and feasible while still accommodating residential, commercial, and industrial growth; and

(iii) preserves to the maximum extent possible contiguous forested areas of 100 acres or more; tidal and non-tidal wetlands; anadromous fish spawning areas; tidal floodplains; submerged aquatic vegetation; wildlife and waterfowl habitat; lands dedicated to natural resource and open space purposes; and agricultural land.

(c) In its Program amendment, a local jurisdiction shall use the most current data available, including but not limited to, population and employment projections and location of Sensitive Areas, including designation of habitats of endangered species.

(d) A substantive change to a Program other than a boundary amendment shall be submitted to the Office of Planning as a Program modification during Program recertification as provided in §15-218 below. The Office of Planning shall adopt regulations for submission of Program modifications, including expedited approval of critical modifications.

§15-218 Monitoring

(a) A Program, once approved by the Office of Planning, shall be valid for three years.

(1) On or before 90 days prior to the end of the three year period, a local jurisdiction shall submit a report to the Office of Planning documenting progress toward achieving the goals of its Program.

(2) The report shall document the degree to which development has been occurring consistent with the performance criteria established in §15-213. If development has not been consistent with the performance criteria, the report must identify corrective action to be taken.

(3) The Office of Planning shall evaluate Program performance consistent with the purposes of this Title.

(b) Upon completion of its review, the Office of Planning shall certify local compliance, certify compliance with conditions, or certify that the local jurisdiction is out of compliance.

(c) During any period of non-compliance, the Interim Program or previously approved Program shall continue to govern.

(d) A local jurisdiction may appeal a finding of non-compliance to the Growth Management Appeals Board.

§15-219 Penalties

(a) During any period of non-compliance, as determined by the Office of Planning, the State may withhold State funds for development activities.

(b) The State may only withhold those funds that are substantially related to the programmatic area of non-compliance.

Subtitle 3. Interim Programs

§15-301 Definitions

(a) In general. In this Title, the following words have the meanings indicated.

(b) Interim Growth and Development Area. "Interim Growth and Development Area" means any area

(1) within the boundaries of a municipality existing as of July 1, 1991; or

(2) zoned as of April 15, 1991 for two or more residential units per acre or more and

(i) have existing sewer service as defined in the current county Water and Sewerage Plan, or

(ii) are planned for sewer service within 5 years as defined in the current county Water and Sewerage Plan; or

(3) contiguous with areas described in (1) or (2) of this section and zoned as of April 15, 1991 for between and including one and two residential units per acre and

(i) have existing sewer service as defined in the current county Water and Sewerage Plan, or

(ii) are planned for sewer service within 5 years as defined in the current county Water and Sewerage Plan; or

(4) zoned as of April 15, 1991 for commercial or industrial uses and

(i) have existing sewer service as defined in the current county Water and Sewerage Plan, or

(ii) are planned for sewer service within 5 years as defined in the current county Water and Sewerage Plan.

(c) Interim Rural and Resource Area. "Interim Rural and Resource Area" means an area not defined as Interim Growth and Development Areas or Sensitive Areas.

(d) Interim Growth Management Period. "Interim Growth Management Period" means the time between July 1, 1991 and December 31, 1993 or the date that a Program takes effect in a local jurisdiction, whichever is earlier.

§15-302 Established

Effective July 1, 1991, and until the Program is approved and enacted, all land in Maryland within the purview of this Title shall be classified in accord with the following three categories: Interim Growth and Development Area, Interim Rural and Resource Area, and Sensitive Area, consistent with the definitions of this subtitle.

§15-303 Development; Zoning Changes

(a) Within Interim Growth and Development Areas, development shall be governed by the local zoning ordinance, except in a Sensitive Area, where development shall be governed by the provisions of §15-209.

(b) Within Rural and Resource Areas, development shall be governed by the zoning in effect on April 15, 1991, except that:

(1) A local jurisdiction may approve residential development at a density of no more than one dwelling unit per 20 acres and shall require clustering of residential development on a parcel or contiguous parcels of land in multiples of 20 acres; and

(2) In a Sensitive Area, all development shall be governed by the provisions of §15-209.

(c) A local jurisdiction may not adopt a change in zoning for a parcel of land that would shift the parcel from an Interim Rural and Resource Area to an Interim Growth and Development Area except on proof of a mistake in the zoning that was in effect on April 15, 1991.

(d) A local jurisdiction's approval of subdivisions shall be consistent with the requirements of this section. The Office of Planning shall adopt regulations to provide for a local jurisdiction's certification of subdivision plats prior to recordation. Subdivision plats are not subject to approval by the Office of Planning.

§15-304 Maps

(a) The Office of Planning shall provide a local jurisdiction with a map which delineates the Interim Growth and Development Area and the Interim Rural and Resource Area for that jurisdiction.

(b) Maps prepared by the Office of Planning are illustrative only; the definitions of Interim Areas, in conjunction with current local zoning maps and current water and sewer maps as specified in the approved county Water and Sewerage Plan, shall govern development.

§15-305 Community Stabilization Program

(a) A municipality with a 1990 population of more than 20,000 people that has lost at least 10% of its population between 1970 and 1990 shall prepare and submit to the Office of Planning a Community Stabilization Program on or before June 30, 1992.

(b) This Program, which shall provide the basis for the growth estimates in §15-212(1), shall include:

(1) a community profile reflecting full utilization of municipal land to achieve:
- (i) the optimum land use mix;
- (ii) projected population;
- (iii) number of households;
- (iv) household income characteristics; and
- (v) estimated employment.

(2) a delineation of expected progress toward full utilization of municipal land planned for the 20 year period covered by the Program.

§15-306 Penalties

Failure to comply with the provisions of this subtitle may, at the discretion of the Office of Planning and in consultation with other State agencies, result in the withholding of State capital funds for development activities.

Subtitle 4. Appeals

§15-401 Established

There is a Growth Management Appeals Board in the Office of Planning.

§15-402 Membership

(a) The Board consists of seven members appointed by the Governor and approved by the Senate.

(b) Of the seven members,

(1) Four members shall have knowledge of and experience in any of the following disciplines: resource conservation, land development, property redevelopment, agriculture or other resource-based industry, environmental protection, or land use planning and growth management, one of whom shall be designated as Chair by the Governor.

(2) 1 shall be appointed from a list of candidates provided by the Maryland Association of Counties;

(3) 1 shall be appointed from a list of candidates provided by the Maryland Municipal League; and

(4) 1 shall be appointed from a list of candidates provided by the Office of Planning, and shall have experience in State government.

(5) The Governor may reject all candidates on a list provided under (2), (3), or (4) above, and may request the organization to provide a new list.

(c) A member of the Board may not be a current employee of a State agency, a county, or a municipality, or an elected official.

(d) Each member serves for a term of five years, and until a successor is appointed and qualifies.

(1) These terms are staggered as required by the terms of the members serving on the Board as of July 1, 1991.

(2) A member appointed to fill a vacancy in an unexpired term serves only for the remainder of that term serves only until a successor is appointed and qualifies.

(3) A member is eligible for reappointment, but may not serve for more than two full terms.

(e) Each member of the Board shall receive compensation as established in the annual State budget.

§15-403 Jurisdiction

The Board shall hear the following appeals:

(1) A local jurisdiction may appeal an Office of Planning rejection or approval with conditions of the local Program or amendments submitted by that jurisdiction.

(2) A neighboring jurisdiction may appeal an Office of Planning action on a local Program or amendments or Office of Planning action on such a Program if either has an adverse demonstrable effect on the neighboring jurisdiction.

(3) A municipality may appeal a local Program or Office of Planning action on a Program submitted by the county where the municipality is located.

(4) A county government may appeal a local Program or Office of Planning action on a Program submitted by a municipality located within its jurisdiction.

(5) A local jurisdiction may appeal a determination by the Office of Planning made under §15-215 of this Title.

(6) A local jurisdiction may appeal a finding of non-compliance made by the Office of Planning.

§15-404 Appeal Procedures

(a) A local jurisdiction that objects to an approval, approval with conditions, or rejection by the Office of Planning of a local Program shall notify the Board in writing, within 30 days after receipt of the Office of Planning's decision. Notification shall:

(1) identify any specific objections; and

(2) state whether the local jurisdiction is willing to negotiate with the Office of Planning to resolve the objections.

(b) Except as provided in this subsection, filing an appeal from a finding of non-compliance does not stay a decision of the State to withhold funds. The Board may grant a request by a local jurisdiction to stay a decision of the State to withhold funds only if the Board determines that withholding the funds would result in extreme hardship or have an adverse impact on public health or public safety.

(c) If a local jurisdiction is not willing to negotiate, the Board shall hear the appeal under State Government Article, §10-204 through §10-214. The Board may only reverse the decision of the Office of Planning as to a specific matter of objection if the Board finds that the decision:

(1) violates any provision of the United States or Maryland Constitution;
(2) exceeds the statutory authority of the Office of Planning; or
(3) was arbitrary and capricious in view of the purposes of this Title.

(d) If a local jurisdiction is willing to negotiate, the Board shall docket the appeal but take no action pending negotiation.

(e) If an appeal by a local jurisdiction concerns a Program of another local jurisdiction, both shall be entitled to participate in any negotiations with the Office of Planning.

(f) Negotiations to resolve objections shall be undertaken in good faith by participating local jurisdictions and by the Office of Planning and are to be resolved within 180 days of the date of appeal. For the purposes of this section, "good faith" means acting faithfully to the duties and responsibilities assigned under this Title.

(g) Negotiating sessions may be conducted with the assistance of a mediator if mediation is approved by both the participating local jurisdiction and the Office of Planning. Either the Office of Planning or a local jurisdiction may request a mediator at any time during negotiation. The function of the mediator is to encourage a voluntary settlement by the Office of Planning and the local jurisdictions. The mediator may not compel a settlement. The Board shall provide the names and qualifications of persons willing to serve as mediators. If the Office of Planning and the local jurisdictions cannot agree on the selection of a mediator, the Office of Planning and the local jurisdictions may request the Board to appoint a mediator.

(h) As to any objection not resolved through negotiation, a local jurisdiction may appeal to the Board as provided in (c) above, except that if the Board finds that the local jurisdiction negotiated in good faith on the matter of objection, the Board may elect to set aside the decision of the Office of Planning without regard to the factors enumerated in (c) above, and adopt an alternative decision that the Board finds consistent with this Title.

(i) An appeal of a finding of non-compliance that has resulted in the withholding of State funds shall be heard by the Board within 60 days after 1) the appeal has been docketed, or 2) termination of negotiation, whichever is later.

(j) Once an appeal has been filed by a local jurisdiction, any interested person may submit written views to the Board on that case. The Board shall review this submittal during its deliberations. The Board shall provide public notice of the filing of an appeal. This notice shall be governed in regulations adopted by the Office of Planning.

§15-405 Powers and duties

In addition to the other powers granted and duties imposed under this subtitle, the Board shall adopt regulations to govern appeal procedures, and to carry out the responsibilities set forth in this subtitle.

§15-406 Appeals to Circuit Court

A party aggrieved by a decision of the Board may appeal on the record to Circuit Court as provided in Maryland Rules B1-B13. The court may reverse the decision of the Board if it finds that the Board's decision

(1) violates any provision of the United States or Maryland Constitution;
(2) exceeds the statutory authority of the Board; or
(3) was arbitrary and capricious in view of the purposes of this Title.

§15-407 Budget; staff

(a) The Board annually shall prepare a budget request to perform its duties under this subtitle.

(b) The Board shall have staff as provided in the State budget.

Subtitle 5. Grants

§15-501 Planning Grants, In General

(a) A local jurisdiction shall be eligible for grants to assist with costs associated with preparation of its Interim Program, Program, or Program amendments. Planning grants shall be administered by the Office of Planning.

(b) The Office of Planning shall adopt regulations governing the distribution of grants.

Subtitle 6. Growth Management Infrastructure Fund

§15-601 Definitions

(a) In general. In this subtitle the following words have the meanings indicated.

(b) County Area. "County Area" means the county government and the governments of all eligible municipalities within the county's boundaries.

(c) Eligible Municipality. "Eligible municipality" means a municipality which:
(1) has planning or planning and zoning powers and has not assigned the responsibility to develop a Growth and Resource Management Program to the county; and
(2) provides capital type functions such as roads and water treatment.

(d) Fund. "Fund" means the Growth Management Infrastructure Fund.

(e) Competitive Grants. "Competitive Grants" means grants which are established on a competitive basis for Growth Areas and for Developed Areas.

(f) Formula Grants. "Formula Grants" means grants which are established on an entitlement basis.

(g) Wealth. "Wealth" has the same meaning as §5-202 of the Education Article.

§15-602 Findings; purpose

(a) The General Assembly finds and declares that:

(1) Local jurisdictions need assistance in implementing their Programs.

(2) A program offering State grants on both an entitlement basis and a competitive basis will encourage eligible projects. Grants may be expended to the extent a local jurisdiction has met or exceeded its local fiscal capacity and exhausted all other available resources for eligible projects.

(3) Local jurisdictions attempting to achieve the goals of their Programs face unique challenges in redeveloped areas. The characteristics of projects necessary to promote redevelopment differ from those needed to assist efficient growth. Therefore, the General Assembly declares that in the redevelopment areas financing mechanisms are eligible for grants.

(4) A State fund shall be established to provide grant money.

(b) The purpose of the fund is to provide infrastructure and redevelopment grants to local jurisdictions for use in implementation of their Programs, and which are used for eligible capital projects in accordance with regulations of the Office of Planning. Formula Grants will provide a more flexible fund to help jurisdictions implement their growth management strategies. Competitive Grants will focus on projects that encourage development in the targeted growth or redevelopment areas. Redevelopment areas may also include older neighborhoods that require some assistance to remain stable and healthy.

§15-603 Fund Established

The Growth Management Infrastructure Fund is established to effect a cooperative program between the State and a local jurisdiction as set forth in this subtitle.

§15-604 Appropriation and Approval

(a) The fund shall consist of monies appropriated in the annual budget.

(b) Monies in the fund shall be allocated as follows:

(1) 35% shall be allocated towards Formula Grants as described in this section.

(2) 25% shall be allocated to Competitive Grants for use in Growth Areas.

(3) 40% shall be allocated to Competitive Grants for use in Developed Areas.

(c) The Department of Budget and Fiscal Planning shall annually determine the allocation of Formula Grants among counties and eligible municipalities based on the following factors:

(1) The total of the Formula Grants shall be allocated to each county area in proportion to the growth in the number of households in the county area over the following five years, as projected by the Office of Planning, and adjusted inversely to the county area's wealth per household as a proportion of the State's wealth per household.

(2) Each eligible municipality shall receive a share of the county area allocation equal to the municipality's share of the county's population.

(3) The balance of the county area's share shall be paid to the county government.

(d) The amount of the Competitive Project Grant Fund shall be as provided in the annual State budget. At the time the budget is submitted, the Governor shall provide a list of projects which are intended to be funded during the fiscal year.

(1) The Board of Public Works shall have approval authority over projects.

(2) The list of proposed projects shall be recommended to the Board of Public Works by the Office of Planning in consultation with the Interagency Growth and Resource Committee.

(3) The list may be amended by the Board of Public Works.

§15-605 Application for Fund Grants

(a) Required Information. A local jurisdiction may not apply for fund grants unless it can demonstrate that:

(1) it is exercising a reasonable level of local fiscal effort and has exhausted all other resources for eligible projects which are available in a timely manner, prior to expending either the Formula or Competitive Grants;

(2) any funded project would not be feasible but for the financial assistance from the fund; and

(3) the project satisfies priorities of a local jurisdiction's infrastructure funding priorities as established in its Program, and subsequent triennial reports.

(b) Local Funding Requirements. A local government awarded a Competitive Grant shall share in the cost of the project for which the grant is awarded. The amount of the minimum required local share shall be a percentage of the total project cost, as follows:

(1) For counties, the local percentage shall be the same as the minimum local share required by the Board of Public Works for projects in that county funded under the Public School Construction Program, and

(2) For municipalities, the required local percentage shall be determined by dividing the per capita assessed value of real property in the municipality by the per capita assessed value of real property in the entire state.

(i) If the result exceeds 1.3, the required local percentage for that municipality shall be 50%.

(ii) If the result exceeds 1.0 and is less than or equal to 1.3, the required local percentage for that municipality shall be 45%.

(iii) If the result exceeds 0.7 and is less than or equal to 1.0, the required local percentage for that municipality shall be 35%.
(iv) If the result is less than or equal to 0.7, the required local percentage for that municipality shall be 25%.

(3) (i) No part of the required local share shall be provided, either directly or indirectly, from funds of the State, whether appropriated or unappropriated. No part of the required local share may consist of real property, in-kind contributions or funds expended prior to the award of the grant.
(ii) The Board of Public Works may waive (i) above if it determines that, in the case of a specific project, the requirements are not in the best interest of the State and the purposes of this Title.

§15-606 Governing Criteria for Approval of Competitive Grants

(a) In recommending approval of an application for a competitive grant to the Board of Public Works, the Office of Planning shall use as the governing criterion the degree to which objectives of the Program will be advanced. In applying this criterion, the Office of Planning shall consider at least the following factors:

(1) The degree to which more efficient growth patterns and denser growth will be achieved by the project:

(2) The degree to which available local funding sources will be committed to the project;

(3) The extent to which growth pressure is being experienced in developed and growth areas of the political subdivision;

(4) The fiscal situation of the applying political subdivision; and

(5) The degree of State assistance needed for the project.

§15-607 Eligibility Standards for Infrastructure Fund Grants

(a) Both Formula and Competitive Grants are intended to fund the costs of eligible projects which can not be fully met through traditional sources. Prior to expending either Formula or Competitive Grants a jurisdiction shall:

(1) demonstrate that it is exercising a reasonable level of local fiscal effort and exhausted all other resources for eligible projects which are available in a timely manner; and

(2) establish that any funded project would not be feasible but for the financial assistance from the fund.

(b) Projects shall correspond to the stated infrastructure funding priorities of the jurisdiction's Program and subsequent triennial reports.

(1) A local jurisdiction applying for Competitive Grants shall demonstrate that the project satisfies the priorities of its Program.

(2) A local jurisdiction receiving Formula Grants shall document in the triennial report that the projects funded by such grants meet the priorities of its Program.

(c) The following public infrastructure improvements are eligible for Competitive Grants:

(1) Construction or renovation of schools and day care centers;
(2) Construction or rehabilitation of sewerage systems;
(3) Construction or rehabilitation of water systems;
(4) Construction or rehabilitation of storm water management facilities;
(5) Construction or rehabilitation of transportation capital projects or related facilities, or acquisition of transit equipment; and
(6) Acquisition and clearance of land for redevelopment.

(d) The following public infrastructure improvements are eligible for Formula Grants:

(1) All items designated in subsection (c) of this section;

(2) Acquisition of land for resource conservation purposes consistent with the jurisdiction's Approved Growth and Resource Management Program;

(3) Acquisition and development of parks;

(4) Development or rehabilitation of capital facilities that are required to improve amenities in a developed neighborhood targeted for stabilization or redevelopment;

(5) Other capital improvements that have a minimum 15 year life and reasonably relate to the Program.

(e) Approval of Grants. The Office of Planning shall make the final determination as to whether a project is eligible for grant funds. Money spent on ineligible projects shall be refunded to the State.

§15-608 Ineligible Uses for Infrastructure Grants

(a) The following uses are ineligible for all infrastructure grants:

(1) Capital equipment other than transit equipment.
(2) Operating expenses of the local jurisdiction.
(3) Routine maintenance of existing capital facilities.
(4) Any use inconsistent with a Program.

(b) The Office of Planning will make the final determination as to eligibility of a project.

(c) The jurisdiction shall refund any state money spent on ineligible projects.

§15-609 Use of Grants for Redevelopment Financing

(a) Financing mechanisms may only be used in redevelopment areas.

(b) Eligible financing mechanisms for redevelopment for Formula and Competitive Grants may include the following:

(1) Preferred financing for home buyers.
(2) Preferred financing to promote economic development.
(3) Reduction of interest rates for housing and economic development projects for a specified time period.

(c) Approved uses for grants include, but are not limited to, the following:

(1) Grants may be provided to local jurisdictions to increase down payments, purchase loan insurance, reduce interest rates, or otherwise make a one-time payment to support a financing plan.

(2) Grants may be provided to local jurisdictions for the establishment of a revolving loan fund by the local government for redevelopment purposes. The jurisdiction may retain the loan proceeds upon repayment.

(3) Funds may be transferred to existing state loan programs to finance projects eligible under existing regulations.

(d) If the local jurisdiction provides loans, the terms and conditions shall be as follows:

(1) The loan shall bear interest at a rate determined to be necessary and reasonable for the project. In exceptional circumstances and at the discretion of

the Director of the Office of Planning, loans may be non-interest bearing or may be repayable in accordance with a deferred payment schedule; and

(2) All redevelopment financing of grants or loans shall be used to stimulate rehabilitation or production of housing and economic development projects that conform to the redevelopment goals of a local jurisdiction's Program.

§15-610 Rules and Regulations

The Office of Planning shall adopt regulations to carry out the purposes of this subtitle.

Subtitle 7. State Agency Responsibilities

§15-701 Established

There shall be an Interagency Growth and Resource Management Committee.

§15-702 Membership; staff

(a) The Interagency Growth and Resource Committee shall consist of:

(1) The Secretaries of the following agencies or their designees, provided that their designees shall hold the position of Deputy or Assistant Secretary:

Department of Agriculture
Department of Budget and Fiscal Planning
Department of Economic and Employment Development
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Natural Resources
Department of Transportation,

(2) a representative from the Office of the Governor, and

(3) the Director of the Maryland Office of Planning who shall serve as Chair.

(b) Staff support for the Interagency Growth and Resource Committee shall be provided by the Office of Planning.

§15-703 Powers and duties

(a) It shall be established to:

(1) coordinate the State's review of a local jurisdiction's Program and ensure that the review is completed within 60 days after receipt of the Program documents from a local jurisdiction;

(2) review the actions of individual agencies and certify compliance by those agencies with the requirements of §15-704;

(3) coordinate actions at the State level which affect the timing and location of growth and land development in the State by State agencies;

(4) resolve interdepartmental disagreements relating to activities that affect growth management;

(5) recommend to the Governor changes in the policies and procedures needed to support the State's growth management program;

(6) recommend amendments to State legislation;

(7) consider the request of local jurisdictions to review changes in the State's laws, policies, practices, and programs affecting growth management;

(8) review and make recommendations to the Office of Planning for the allocation of such infrastructure resources as are provided in this Title; and

(9) review and make recommendations to State agencies at the appropriate stage of their annual planning processes.

(b) The Interagency Growth and Resource Committee shall meet at least quarterly.

§15-704 General responsibilities of State agencies

All State agencies having a role in physical development or development approval shall:

(1) cooperate with the Office of Planning in the review of local jurisdiction's programs for growth management;

(2) assure that facilities programming, regulatory actions, and permit approvals are made in a manner consistent with approved programs;

(3) if appropriate, amend facilities plans to assure compatibility with approved local growth plans;

(4) in resource allocation, assign funding priority to local jurisdictions with approved Programs in such a way as to support the local priorities reflected in them;

(5) at the request of the Office of Planning, withhold resources otherwise planned for allocation to a local jurisdiction during periods of non-compliance with the Program; and

(6) review its legislation, regulations, policies, and practices; identify changes needed to bring the agency into conformance with this Title; and submit to the Office of Planning by October 1, 1991 documentation of needed changes and the proposed timing of those changes.

§15-705 General Authority and Duties of Office of Planning

The Office of Planning has all powers necessary for carrying out the purposes of this Title, including the power to:

(1) Adopt regulations to:
(i) assure local government and State agency compliance with the provisions of this Title by December 31, 1991; and
(ii) administer the program consistent with the purposes of this Title.

(2) Administer the proposed Growth Management Infrastructure Fund and the Planning Grant Program;

(3) Chair the Interagency Growth and Resource Committee and provide appropriate staff support to that committee;

(4) Provide technical assistance to local governments to achieve the provisions of this Title;

(5) Be the statewide repository of all approved Interim Programs and Programs and all State agency proposals, and shall make this information available upon request;

(6) Coordinate State agency review of local Programs;

(7) Recommend adjustments to either the local Program or the State capital program(s) to assure compatibility between State and local infrastructure development plans, as appropriate;

(8) Consult with local governments to resolve problems internal to their Programs or conflicts between local jurisdictions;

(9) Consult with the Critical Area Commission to ensure compatibility with its initiatives;

(10) Approve, approve with conditions, or disapprove the local jurisdiction's Programs;

(11) Conduct periodic compliance reviews and monitor triennially the local jurisdiction's performance and performance of State agencies in implementing approved Programs in accordance with §15-217;

(12) At intervals of no less than five years, review local jurisdictions' requests for expansion to the Growth Areas and approve or disapprove requests for expansion to the Growth Areas;

(13) Participate with the Department of the Environment and the Department of Natural Resources to develop a strategy to coordinate management of growth and development with water resource protection for individual watersheds throughout the State;

(14) In cooperation with other State agencies, take such enforcement actions as may be appropriate to gain compliance with this Title;

(15) Prepare Interim Maps as required in §15-304 of this Title; and

(16) Provide to local jurisdictions the population projections to be used in the development of their Programs, described in §15-212 and §15-213.

Subtitle 8. Grandfathering

§15-801 Building Permits of Record

A person who holds a valid building permit granted prior to the effective date of this Title may develop according to the terms of the permit provided that:

(1) the time period during which the permit is valid is finite and the time period was established by the local jurisdiction prior to January 1, 1991 and;

(2) is for a period, including extensions, not to exceed 24 months from July 1, 1991.

§15-802 Subdivision Plats of Record

(a) A person holding title to a parcel of land in the Interim Rural and Resource Area and subsequently in the Rural and Resource Area, for which a subdivision plat had been finally approved and recorded prior to July 1, 1991, may:

(1) subject to §15-801, develop any lots for which building permits had been obtained prior to July 1, 1991; and

(2) develop any section of the subdivided parcel, provided that infrastructure is installed within 24 months from July 1, 1991, or a binding public works agreement has been executed by July 1, 1991.

(b) Notwithstanding (a) above, if a developer is building a subdivision in phases, and infrastructure has been installed in at least one phase by July 1, 1991, any additional phase which has received preliminary plat approval may be developed in accordance with a local jurisdiction's approval process.

§15-803 Parcels of Record in the Interim Rural and Resource Area and Rural and Resource Area

Notwithstanding §15-801 and §15-802, a person who holds title of record to a parcel or contiguous parcels of land in the Interim Rural and Resource Area on July 1, 1991 and totalling 20 acres or less, may develop one residential unit on the total acreage.

Subtitle 9. Intrafamily transfers

§15-901 Intrafamily transfers

(a) Definitions.

(1) In General. In this section, the following words have the meanings indicated.

(2) Immediate family. "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

(3) Intrafamily transfer. "Intrafamily transfer" means a transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.

(b) A local jurisdiction may submit provisions as part of its Program by which an owner of a parcel of land in the Rural and Resource Area may be permitted to make intrafamily transfers, notwithstanding density limitations for Rural and Resource Areas established in this Title.

(1) A provision may only allow intrafamily transfers from parcels of land that were of record on April 15, 1991.

(2) A provision for intrafamily transfers shall require cluster development.

(c) A local jurisdiction shall require that, as a condition of approval:

(1) Any deed for a lot that is created by an intrafamily transfer shall contain a covenant that the lot is created subject to the provision of this section; and

(2) A lot created by an intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family, except under procedures established pursuant to subsection (d) of this section.

(d) If a local jurisdiction includes provisions for intrafamily transfers as part of its Program, the local jurisdiction shall establish standards and procedures by which the local jurisdiction will permit the subsequent conveyance of lots to persons other than immediate family members. The standards and procedures shall assure that:

(1) The lot was created as part of an intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and

(2) (i) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this Title, and that warrants the subsequent conveyance; or

(ii) other circumstances that are consistent with the purposes of this Title that warrant a subsequent conveyance.

Subtitle 10. Severability

§15-1001 Severability, In General

If any part of the application of this Title is held invalid, the remainder, or its application to other situations or persons, shall not be affected.