Critical Area Commission
Ocean City Convention Center
Ocean City, Maryland
July 10, 2002

SUBCOMMITTEES

10:30 a.m. – 11:15 a.m. Project Evaluation Subcommittee

Members: *Bourdon, Witten, Giese, Goodman, Cooksey, Setzer, Graves, Jackson, McLean, Andrews, Jones, Rice, Pugh*

Maryland Port Administration: New Cargo Shed at South Locust Point Marine Terminal (Baltimore City)	Dawnn McCleary
City of Baltimore: Gwynns Falls Trail (Phase III) - Conditional Approval	Dawnn McCleary

10:30 a.m. – 11:15 a.m. Program Implementation Subcommittee

Members: *Foor, Myers, Bailey, Evans, Barker, Wynkoop, Johnson, Lawrence, Duket, Samorajczyk, Wenzel, Stephens*

Queen Anne's County: Buffer Exemption Area (BEA) Map Amendment (Tax Map 57)	LeeAnne Chandler
Town of Denton: Map Changes for Critical Area Boundary Extension and Annexation	Roby Hurley
Wicomico County: Richardson Property Growth Allocation (Continuation of Concept Review)	LeeAnne Chandler

11:15 a.m. – 12:15 p.m. Panel: St. Mary's County Comprehensive Review

Wanda Cole
Mary Owens

Members: *Setzer, Cooksey, Lawrence, Witten*

12:00 p.m. – 1:00 p.m. LUNCH

Critical Area Commission
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AGENDA

1:00 p.m. – 1:05 p.m.	Approval of Minutes for June 5, 2002	John C. North, II Chairman
1:05 p.m. – 1: 30 p.m.	Introduction of Guests and New Members	John C. North, II

PROJECTS

1:30 p.m. – 1:45 p.m.	VOTE: Maryland Port Administration: New Cargo Shed at South Locust Point Marine Terminal (Baltimore City)	Dawnn McCleary
1:45 p.m. – 2:00 p.m.	VOTE: City of Baltimore: Gwynns Falls Trail (Phase III) - Conditional Approval	Dawnn McCleary

PROGRAMS

2:00 p.m. – 2:30 p.m.	Amendment: St. Mary's County Comprehensive Review	Mary Owens Wanda Cole Panel Members
2:30 p.m. – 2:40 p.m.	Refinement: Queen Anne's County - Buffer Exemption Area (BEA) Map Amendment (Tax Map 57)	LeeAnne Chandler
2:40 p.m. – 2:50 p.m.	Refinement: Town of Denton - Map Changes for Critical Area Boundary Extension and Annexation	Roby Hurley

OLD BUSINESS

2:50 p.m. – 3:00 p.m.	Legal Update	Marianne Mason, Esq.

NEW BUSINESS

3:00 p.m. – 3:15 p.m.	Coastal Bays Advisory Committee	Ren Serey
3:15 p.m.	Adjourn	

Chesapeake Bay Critical Area Commission
People's Resource Center
Department of Housing and Community Development
Annapolis, Maryland 21401
June 5, 2002

Approved

The full Critical Area Commission met at the People's Resource Center, Maryland Department of Housing and Community Development in Crownsville, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in Attendance:

Dave Bourdon, Calvert County; Dave Cooksey, Charles County, Judith Evans, Western Shore Member-at-Large; Dr. James C. Foor, Queen Anne's County; William Giese, Dorchester County; Robert Goodman, DHCD, Charles Graves, Baltimore City, Joseph Jackson, Worcester County; Paul Jones, Talbot County, Douglas Stephens, Wicomico County, Q. Johnson, Eastern Shore Member-at-Large; William Rice, Somerset County; Sherry Appel for Samuel Wynkoop, Prince George's County; Barbara Samorajczyk, Anne Arundel County; Gary Setzer, Maryland Department of the Environment; Larry Duket, Maryland Department of Planning; Louise Lawrence, Maryland Department of Agriculture; James McLean, Maryland Department of Business and Economic Development; Lauren Wenzel, Maryland Department of Natural Resources, Jack Witten, St. Mary's County
Meg Andrews, Maryland Department of Transportation.

Not in Attendance:
Margo Bailey, Kent County,
Philip Barker, Harford County;
Mike Pugh, Cecil County,
Andrew Myers, Caroline County

The Minutes of May 1, 2002 were approved as read.

Chairman North introduced Ms. Ryan Bellarin, a legal intern in the office of Commission Counsel, Marianne Mason. A Certificate of Appreciation and a Governor's Citation were presented by the Chairman to Mr. John Olszewski, who retired from the Commission.

Mary Owens presented for Vote St. Mary's College's request to designate a site for a new boathouse structure, access road and parking area, boat storage area and a sand volleyball court as a Buffer Management Area. This designation will facilitate effective utilization of the waterfront while accommodating the various programmatic uses within the building and maintaining a 25-foot setback. The designation will also allow for the use of several small stormwater facilities that can be incorporated into the design of the project and will work physically and aesthetically with the design of the site and the building. Mitigation will be provided. The existing pattern of development in the area prevents the Buffer from fulfilling the functions set forth in the Criteria. Best management practices for stormwater will be provided. There are no known threatened or endangered plant or animal species that will be affected by the designation. There are no other Habitat Protection Areas, other than the Buffer, that will be affected and the project is consistent with COMAR 27.02.05. Bob Goodman moved to approve the BMA designation for

waterfront project at St. Mary's College. The motion was seconded by Bill Giese and carried unanimously.

Dawnn McCleary presented for Vote the proposal by the Maryland Port Administration to replace the 5,600 square foot filter strip with a bioretention facility along the Colgate Creek shoreline in Baltimore City at Dundalk Marine Terminal which is proposed to be incorporated into the Colgate Creek Slope Protection contract. She said that this change will improve water quality, show a reduction in phosphorous, increase habitat through the use of wetland plantings and enhance the entire 100-foot Buffer. MDE reviewed and approved the modification to the old contract to add the bioretention facility on May 13, 2002. This is a conditional approval required under the Commission's regulations for State and local agency projects when proposed development activities do not satisfy all regulations in full. The project is in conformance with the State Criteria and the City of Baltimore's Critical Area Program except for impacts to the 100-foot Buffer. The proposed bioretention will be vegetated with native species. The bioretention will provide habitat through wetlands plantings and reduce phosphorous and add native vegetation to the Buffer. Bob Goodman moved to approve MPA's request for a bioretention facility as presented in the staff report. The motion was seconded by Bill Giese and carried unanimously.

Claudia Jones presented for Vote the proposal by the Somerset County Commissioners to upgrade the Tylerton Wastewater Treatment Plant on Smith Island by the U.S. Army Corps of Engineers and the Maryland Department of Natural Resources. The project will rehabilitate an existing treatment plant and create a secondary treatment system. This project meets the requirements for a conditional approval for a project located in the Critical Area Buffer. Bob Goodman moved to approve the request to upgrade the Tylerton Wastewater Treatment Plant as presented. The motion was scconded by Bill Rice and carried unanimously.

Wanda Cole presented for Vote the proposal by the State Highway Administration (SHA) to construct a 9.5 acre nontidal wetland mitigation site, of which 3.89 acres are located in the Critical Area of Indian Creek, a Natural Resource Management Area, in Charles County. This project is to mitigate for impacts to nontidal wetlands which will be caused by highway improvements to MD 5 and MD 506. The site provides public benefits. Ms. Cole described the project and told the Commission that the mitigation site does not lie within the 100' Buffer for tributary streams. There are no other Habitat Protection Areas present, no forest clearing will occur and no Critical Area mitigation plantings will be required. Wetland mitigation plantings will be guaranteed. Bob Goodman moved to approve the project as presented in the staff report. The motion was seconded by Bill Rice and carried unanimously.

Mary Owens presented information on the four year Comprehensive Review for St. Mary's County's Critical Area Ordinance and Buffer Management Overlay. She said that the panel has met . She said that there are still issues to be worked out, about 30 issues out of 60, and it is hoped that this will be resolved and on the agenda in July for a vote.

Old Business

Commission Counsel Marianne Mason updated the Commission on legal affairs. She said that the Ed Lewis case in Wicomico County is at the Court of Special Appeals. This is the case where Mr. Lewis built 7 cabins in the Buffer without permits. The Commission prevailed at the Board of Appeals and in the Circuit Court. Mr. Lewis has filed his brief in the Court of Special Appeals and Ms. Mason will file the Commission's brief soon. The argument is in September.

In the Old Trails case in Harford County, 56 houses are proposed in the Buffer on steep slopes. She said that testimony is completed and that the hearing examiner directed that post hearing briefs be filed. A 70 page brief has been filed for the Commission, working with the Harford County law office and the County Peoples' Counsel.

There also is a case in Anne Arundel County involving a variance for antiquated lots in Herald Harbor. A second night of hearings are scheduled and she is to return in August.

New Business

Ren Serey reported on the new Coastal Bays Bill which passed and he said that the Governor has signed the bill and it is now in effect, and Ocean City and Worcester County are now a part of the "Critical Area for the Chesapeake and Atlantic Coastal Bays". He said that two new members will be appointed from the Coastal Bays and will serve on an Advisory Committee if the Commission establishes one. Both Ocean City and Worcester County will have the same provisions as the rest of the jurisdictions have but they also have discretionary authority concerning issues such as transferring growth allocation, requiring the Critical Area Buffer outside the 1000' line, and limiting private piers over tidal wetlands. Ren will prepare a proposal concerning an Advisory Committee for the Commission's consideration at its July meeting.

Chairman North reminded the Commission that the Day on the Bay on the Maryland Independence is on track for June 18, 2002. He announced that the July meeting of the Commission will be held at the Convention Center in Ocean City and that the August meeting is scheduled to be held at the Living Classrooms Foundation in Baltimore.

There being no further business, the meeting adjourned.

Minutes submitted by: Peggy Mickler, Commission Coordinator

CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT
July 10, 2002

APPLICANT:	Department of Transportation Maryland Port Administration (MPA)
PROPOSAL:	New Cargo Shed at South Locust Point Marine Terminal
JURISDICTION:	Baltimore City
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Dawnn McCleary
APPLI CABLE LAW\ REGULATIONS:	COMAR 27.02.05 (State Agency Action Resulting in Development on State-Owned Land)

DISCUSSION:

The project site is located in the southeast sector of Baltimore City at the Maryland Port Administration's South Locust Point Marine Terminal (See attached site plans.) The purpose of the project is to construct a new cargo shed extension south of an existing cargo shed within the South Locust Point Marine Terminal. The new building extension will be approximately 100,000 square feet. The current site for the proposed 100,000 square foot cargo shed exists as a bituminous surface that is used as a storage area for container vehicles. The project lies entirely within the Critical Area and is classified an Intensely Developed Area.

Critical Area staff reviewed the Worksheet A for the 10% calculations and determined them to be correct. The existing "Cargo Shed Extension" was deducted from the calculations because the 10% Rule was addressed via an extended detention pond that was constructed back in 1998.

The proposed cargo shed will require MPA to remove 10.33 lbs of phosphorus. Since mitigation cannot take place on site, the pollutant removal requirements will be mitigated at selected sites within the Critical Area at other locations. These proposed sites for mitigation will be reviewed and approved by Critical Area Commission staff.

There are no threatened and endangered species, Habitat Protection Areas or Buffer impacts on site. Stormwater Management and Sediment and Erosion Control Plans are pending approval from the Maryland Department of the Environment.

Chesapeake Bay Critical Area Commission

STAFF REPORT
July 10, 2002

APPLICANT:	Baltimore City Department of Planning and Recreation and Parks (BCDPR)
PROPOSAL:	Gwynns Falls Trails (Phase III)
JURISDICTION:	Baltimore City Department of Planning and Recreation and Parks
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Dawnn McCleary
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.06 Conditional Approval of State or Local Agency Programs in the Critical Area

DISCUSSION:

Project Background:

The City of Baltimore is preparing to construct Phase III of the Gwynns Falls Trail, the last segment of the 14-mile hiker\biker trail that will connect Gwynns Falls\Leakin Park to the Inner Harbor and the Patapsco River. The trail will link thirty neighborhoods with over 2000 acres of parkland, including Gwynns Falls Leakin Park, Leon Park, Carroll Park and the Middle Branch Park system. Phase I of the trail is complete and Phase II is under construction. This final phase will bring the trail from Carroll Park to the Middle Branch of the Patapsco River, where the trail will travel north to the Inner Harbor and south to the Harbor Hospital.

Much of the final phase is along existing city streets and requires only signing and striping of existing asphalt. There is a portion along the Middle Branch frontage that provides critical waterfront access and requires construction of a 10-foot wide asphalt trail within the Critical Area Buffer, as well as maintenance of the existing asphalt trail in the Middle Branch Park. The project site for the proposed development activity totals 42.25 acres.

Six acres are in the Intensely Developed Area and 39.25 acres are in the Resource Conservation Area. Conditional approval is not required for the portions of the trail that are located within the IDA because the City's IDA is also designated as a Buffer Exemption Area. Conditional approval is required for the portions of the trail in the RCA because this area is not similarly designated in the City's Critical Area Management Program.

Proposed Development Activity in the 100-foot Buffer:

The trail will involve the construction of 1,580 square feet of new impervious surface within the RCA portion of the 100-foot Buffer of the Middle Branch and the Patapsco River and the construction of a 200-foot by 10-foot wide bridge over the Middle Branch with minor associated grading within the 100-foot Buffer. The new impervious surface in the RCA will provide a ten-foot wide multi-use trail that meets American Association of State Highway and Transportation Officials safety guidelines. The trail improves the safety of bike and pedestrian access to the water-dependent uses at the Middle Branch Park public boathouse and fishing dock. Some portions of the trail are completely new whereas others involve the relocation of existing pathways to facilitate better recreational use of the area. As part of this project, forest vegetation will be established in areas that are currently maintained as mowed lawn.

This project also includes emplacing 60 feet of stone revetment within a maximum of 7.5 feet channelward of the main high waterline The revetment is to correct a shore erosion problem in front of Harbor Hospital where a section of the existing riprap revetment has failed. (This portion of the project is not part of the conditional approval request because shore erosion control measures are permitted activities.)

Summary

The Gwynn's Falls Trail (Phase III) provides important waterfront access to the Middle Branch and critical linkages to other city trails and parks. The impacts to the Critical Area have been addressed through the proposed stormwater management measures, elimination of currently eroding areas, and mitigation planting.

Conditional Approval Process

Conditional approval is required under the Commission's regulations for State and local agency projects when proposed development activities do not satisfy all regulations in full. The conditional approval process is set out in COMAR 27.02.06. In order to qualify for consideration by the Commission for conditional approval, the proposing agency must show that the project or program has the following characteristics:

(1) That there exists special features of a site or there are other special circumstances such that the literal enforcement of these regulations would prevent a project or program from being implemented:

There exists both special features and special circumstances on this site that preclude the BCDPR from accomplishing enhanced water access and trail linkages without impacts to the 100-foot Buffer within the RCA. In many places, the City does not own land outside of the Buffer, so there are no alternative locations outside the Buffer. In other areas, existing development limits the area available for recreational trail use. The portions of the trail within the 100-foot Buffer have been designed to provide the safest connections to existing trails and parks and to enhance public access to the water. There are no feasible alternative locations to gain access to the water-dependent marina, fishing pier, and scenic overlook platforms.

(2) That the project or program otherwise provides substantial public benefits to the Chesapeake Bay Critical Area Program;

This project is providing substantial public benefits as it is increasing educational and recreational opportunities for the public within the Middle Branch of the Patapsco River, including providing access that is not currently available. The increased width of the trail will allow safer use of the bridge for fishing, walking, and getting to and from work at Harbor Hospital and nearby Fairfield and South Baltimore.

(3) That the project and program is otherwise in conformance with this subtitle.

This project is in conformance with the State criteria and the City of Baltimore Critical Area Management Program except for the impacts to the 100-foot Buffer. Impacts to the 100-foot Buffer require 3:1 mitigation. The City is proposing to mitigate at a 3:1 ratio for both the disturbance in the Buffer in the RCA and the disturbance within the City. There is a total of 1,580 square feet of new impervious surface within the 100-foot Buffer in the RCA. At 3:1, the proposed mitigation for all Buffer impacts is 78,900 square feet (1.81 acres).

The Commission must find that the conditional approval request contains the following:

(1) That a literal enforcement of the provisions of this subtitle would prevent the conduct of an authorized State or local agency program or project;

A literal enforcement would prevent the City of Baltimore from constructing the portions of this trail that are located within the Buffer in the RCA, thereby limiting recreational public access opportunities that are encouraged by the Critical Area Program.

This project also provides the only safe method of connecting the existing pathways that already exist within the 100-foot Buffer.

(2) There is a process by which the program or project could be so conducted as to conform insofar as possible, with the approved local Critical Area program or, if the development is to occur on State-owned lands, with the criteria set forth in COMAR 21.02.05; and

Impacts to the 100-foot Buffer within the Critical Area are not consistent with the City's Critical Area Management Program; however, all disturbances have been minimized and extensive mitigation is proposed. In order to offset impacts to habitat and water quality that are associated with development in the Buffer, the City is proposing stormwater management measures, elimination of currently eroding areas, and extensive areas of mitigation planting.

(3) Measures proposed to mitigate any adverse effects of the project or program on an approved local Critical Area program or, if on State owned lands, on the criteria set forth in COMAR 27.02.05.

The City is proposing measures to mitigate for the impacts to the 100-foot Buffer. The City will develop a Buffer Management Plan, landscaping plans and site plans as necessary to implement the mitigation. The City is proposing 26,300 square feet of disturbance within the Critical Area Buffer and approximately 78,900 square feet of mitigation. The City will be mitigating in the following areas:

- Replanting 43,900 square feet in the Critical Area in the same vicinity as the disturbance is occurring in the Middle Branch Park adjacent to the Hanover Street Bridge; and,

- Establishing a 40,000 square no-mow zone between the trail and the Middle Branch in existing Middle Branch Park. Manicured lawn is currently being maintained right up to the Middle Branch and this area will be allowed to naturally regenerate with native trees and shrubs.

Based on the information submitted by the City Department of Planning, it appears that this conditional approval request is consistent with COMAR 27.02.06, the Commission's regulations for Conditional Approval of State or Local Agency Programs in the Critical Area.

Chesapeake Bay Critical Area Commission

STAFF REPORT
July 10, 2002

APPLICANT:	St. Mary's County
PROPOSAL:	Comprehensive Review of the St. Mary's County Critical Area Ordinance and Maps
JURISDICTION:	St. Mary's County
COMMISSION ACTION:	Vote
PANEL:	Gary Setzer (Chair), David Cooksey, Louise Lawrence, and Jack Witten
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF RECOMMENDATION:	Approval with Conditions
STAFF:	Wanda Cole
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article, § 8-1809(g)

DISCUSSION:

St. Mary's County has recently completed the required four-year review of their Critical Area Program. The review included the County's Zoning Ordinance document and the Critical Area maps. St. Mary's County does not have a Critical Area Program document. Calculation of the acreage of the three land use categories and evaluation of the status of the County's growth allocation was conducted. Of the 42,994 acres within the Critical Area, 1,380.25 acres are IDA, 7,992.56 acres are LDA, and 33,621.19 acres are RCA. The County has awarded 143.05 acres of growth allocation (35.69 were used by the Town of Leonardtown), and there are 1,546.7 acres remaining. An updated resource inventory has not been provided at this time.

PROGRAM:
The County does not have a separate Critical Area Program document. The Critical Area Criteria are incorporated into the County's Zoning Ordinance.

ZONING ORDINANCE:
The County's Critical Area regulations are fully incorporated into the recently approved St.

Mary's County Comprehensive Zoning Ordinance. The recently approved ordinance replaces the existing St. Mary's County Zoning Ordinance, which was adopted in August 1990. The new ordinance includes substantial revisions to the chapters pertaining to the Critical Area in order to clarify some vague language, provide a list of uses permitted in the Resource Conservation (RCA), change the County's process for the award of growth allocation, incorporate provisions for Buffer Management Overlay areas, and outline some specific regulations for certain water-dependent facilities. The County has reorganized various provisions of the ordinance in order to facilitate more effective implementation, but the format of the document remains relatively unchanged.

MAP CHANGES:
The County has completed a comprehensive rezoning of the entire County. No Critical Area overlay designations were changed; however, many of the underlying zoning districts were renamed although there were no changes in district boundaries. The Critical Area boundary was extended on Tax Map 52 to include the entire parcel where the Shannon Farms PUD is proposed. This extension is the result of an effort to provide additional protection to Forest Interior Dwelling Species (FIDS) habitat that was located outside the Critical Area on this site. The maps were updated to include previously awarded growth allocation. As part of the renaming of the zoning districts, the County's land use table was clarified and revised to include new uses and eliminate others. The County is establishing Buffer Management Overlay (BMO) areas and has provided maps, photographs, and justifications of areas proposed as BMOs. There are a total of 21 areas, and Commission staff has visited the areas. The maps and photographs will be available for review at the Commission meeting.

HISTORY:
The County's original Critical Area Ordinance was adopted on March 27, 1990. No Buffer Management Overlay areas were established at that time. Although the County voluntarily made several text changes to their Critical Area Ordinance in 1992, this is the first comprehensive review of the St. Mary's County Critical Area Program that has been approved locally. The Critical Area Commission has been working with the County on this review since 1995. The St. Mary's County Planning Commission held a hearing on the proposed changes in December 2001 and recommended approval to the County Commissioners. The Board of County Commissioners held hearings on February 26 and 27, 2002 and submitted the final ordinance to the Commission on April 18, 2002. Chairman North appointed a panel and they held a public hearing on May 23, 2002. Several citizens testified at the public hearing, and relevant issues raised at the hearing and identified in written comments were reviewed by staff. Following the hearing, Commission staff met with County staff and a second panel meeting was held on June 21, 2002. Issues raised at the public hearing and with County staff were discussed and most of the issues have been resolved. Based on the panel's discussion, necessary changes are included below as conditions of approval.

Conditions #1, #16, and #17 have not been accepted by County staff and warrant additional

discussion. Condition #1 pertains to the transfer of development rights from grandfathered parcels less than 20 acres in the RCA to other properties both inside and outside the RCA. Condition #16 pertains to burial grounds as a permitted use in the RCA. Condition #17 pertains to charter fishing facilities with three or more boats and 12 or more customers as a permitted use in the RCA. The panel will be meeting in the morning to finalize their recommendation to the full Commission.

Staff recommends approval of the St. Mary's County Comprehensive Zoning Ordinance with the following conditions:

CONDITIONS OF APPROVAL:

1. Section 26.2.2 (d) - Add the following language after the last sentence. **"Property within the Resource Conservation Area of the Critical Area may not transfer development rights from a lot of record that does not meet the density provisions of one unit per 20 acres."**

2. Section 40.1.1 - In the last sentence, strike out all wording starting with "yet regulate activities…" and add **"and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."**

3. Section 41.1.1 – Delete and replace with, **"This chapter applies to the St. Mary's County Chesapeake Bay Critical Area, the same being all water of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article; and all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tide designated under Title 9 of the Environment Article."**

4. Section 41.2.3.a - Revise the last sentence to read, **"Consolidation of lots in common ownership shall not be required when impacts to steep slopes or Habitat Protection Areas would result or would increase as a result of the consolidation proposal."**

5. Section 41.3.d (4) - Delete "as program refinements."

6. Section 41.4.3 – Add the language in Section 41.5.3(i)(3) (as amended below) in order to allow the replacement of impervious surfaces within the Buffer without a variance in Intensely Developed Areas.

7. Section 41.5.3.i (3) – Add to paragraph (a) and (b) in the first line **"grandfathered"** before "parcel" and add, **"The applicant shall provide evidence in the form of a sealed**

survey or photograph that the impervious surfaces to be replaced existed as of March 27, 1990."

8. Section 41.6.4 – Revise the third sentence to read, **"Private tidal wetlands and nontidal wetlands may be used for density calculations to the extent that the density of development on the upland portion of the parcel may not exceed 1 dwelling unit per 8 acres, and the area of private tidal wetlands shall be estimated on the basis of vegetative information as designated on the official State tidal wetland maps."**

9. Section 41.6.4.a (2)(c) - In the first sentence, insert **"intra-family transfer"** after "lot is created subject to the" and before "provisions of the Critical Area program."

10. Section 41.7.2.b – Add after "... in depth that are" **"within subdivisions of at least nine lots, at least half of which are developed, and contain Buffer intrusion caused by the existing principal structure; or".** Delete paragraph (1). Re-codify paragraph (2) as (c), and change "at least" to **"less than."**

11. Section 41.7.5.b (1) - Add the statement, **"A Planting Plan must be submitted to the Critical Area Commission for review with the site plan in accordance with the provisions of COMAR 27.03.01.03."**

12. Section 41.8.3 – Add the following language to this section, **"A five to ten year site plan indicates a five to ten year future for a given site. The plan is submitted for review by the Department of Planning and Zoning as a Concept Plan in accordance with Article 6 of this ordinance."**

13. Section 41.8.4.c(1) – Change "Critical Area" to "Resource Conservation Area."

14. Section 41.9.6.b (3) – Insert after "... an RCA designation", **"and the land is permanently protected (i.e. by easement)."**

15. Section 51.3.2 – Under general standards, delete reserved and add, **"In the RCA, the uses must be associated with an agricultural use on the same property."**

16. Section 51.3.19.a – Add, **"(4) In the RCA, this use shall be limited to 20,000 square feet of impervious surface area (roads and parking) or 15% of the site whichever is less."**

17. Schedule 50.4 (#97) – Change "18 customers" to **"12 customers."** Delete "RCA" from Schedule 50.4.

18. Schedule 50.4 (#98) – Delete "except on-site restaurants" from the "Description."

19. Sections 51.3.100 and 51.3.109 – Add the following provisions:

    "d. **New or expanded community marinas and other noncommercial boat-docking and storage may be permitted in the Buffer provided that:**

    (1) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;

    (2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;

    (3) The facilities are associated with a residential development approved by the County for the Critical Area and consistent with all the Critical Area provisions of this ordinance; and

    (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities.

20. Section 51.3.103.a - Add the following to "General standards", **"The industrial activities shall be incidental to a primary water-dependent fishery activity."**

21. Section 51.3.113 - Add the following "General standard", **"In the RCA, this use must be associated with a use permitted in the RCA and shall not be occupied on a permanent, year-round basis."**

22. Section 52.2.1 – Insert after "... or of amendments thereto", **"or in the Critical Area as of December 1, 1985,".**

23. Section 71.2.3.b – Add the following new paragraph, **"The County shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area to the Critical Area Commission in accordance with the provisions of COMAR 27.01.01.03."**

24. Section 71.2.4.a (2) - Delete "if present, from adjacent slopes greater than 15 percent or from wetlands or hydric soils." Add in its place **"expanded, if necessary, in accordance with the Buffer expansion provisions of 71.8.2(a)(1)."**

25. Section 71.2.4.f (1) - Restate as, **"The 100-foot Critical Area Buffer expanded, if necessary, for contiguous steep slopes, hydric and highly erodible soils, and nontidal**

wetlands in accordance with the provisions of 71.8.2 (a)(1)."

26. Section 71.4.2.a (2) - Delete all wording after "from each bank, and" and insert, **"expanded, if necessary, in accordance with the provisions of 71.8.2(a)(1)."**

27. Section 71.4.2.b - Delete all wording after "does not exist," and insert, **"the Buffer shall be established in native, forest vegetation."**

28. Section 71.4.2.c – Insert after, "All development activities in the LDA", **"and RCA".**

29. Section 71.5.2.a - Restate as, **"A 100-foot buffer shall be preserved from the landward edge of tidal wetlands and shall be expanded, if necessary, in accordance with the provisions of 71.8.2(a)(1)."**

30. Section 71.5.2.d - **"For projects in the Critical Area, new development activities may not be permitted in the 100-Buffer and expanded Buffer unless the project is a water-dependent facility or a variance is granted in accordance with the provisions of Chapter 24 and the mitigation requirements below."**

31. Section 71.7.2.b – Insert before "Installation of best management practices …", **"Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope."**

32. Section 71.7.3.b - Delete "or to prevent erosion of highly erodible soils" and delete "in addition to meeting the following standards:" Re-codify paragraphs "(1)" and "(2)" as "c" and "d"

33. Section 71.8.2 - Change "is hereby established" to **"shall be established."** Add, **"The Buffer shall be established or managed to perform the functions set forth in COMAR 27.01.09.01.B."**

34. Section 71.8.2.a (1) - The expansion criteria given for steep slopes is incorrect. Delete "above 15 percent" from the second sentence.

35. Section 71.8.2.c(5) – Add after "… or other buffer functions", **"as set forth in COMAR 27.01.09.01.B …"**

36. Section 71.8 – Insert the following provisions as Section 2 and renumber Sections 2 through 7.

"2. **Forest Interior Dwelling Specics (FIDS) habitat, colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests, important habitats designated by State or federal agencies, and plant and wildlife habitats of local significance shall be conserved and protected in accordance with the provisions of COMAR 27.01.09.04.**

37. Section 71.8.2.c – Insert the following language after paragraph (5), and renumber paragraphs (5) through (8) as (1) through (4):

"d. **Buffer Management Plans. A Buffer Management Plan shall be required to establish the procedures and proposed planting for all alterations and cutting in the Buffer, development activities in the Buffer, and establishment of a vegetated Buffer in areas of new development that are presently without a Buffer. A Buffer Management Plan shall be approved by the Department of Planning and Zoning and may include, but is not limited to, Planting Agreements, landscape plans, bonding instruments, and or fees-in-lieu agreements.**

38. Section 71.8.3.a(1) - Delete and restate as, **"Forests at least 50 acres in size with 10 or more acres of forest interior habitat (i.e., forest width greater than 300 feet from the nearest forest edge), where the majority of the forest tract should be dominated by pole-sized or larger trees (5 inches or more in diameter at breast height), or have a closed canopy; and ..."**

39. Section 71.8.3.a (2) - Delete the last sentence ("The stream within...")

40. Section 71.8.3.d (2) - Change "May" to "April." Add **"This time restriction may be expanded from February to August if certain early-nesting FIDS are present."**

41. Section 71.8.7.a – Insert the following language after, "...shall be protected ..." and before, ... as follows:" **"in accordance with COMAR 27.01.09.05.B".**

42. Section 72.3.1.a (3) – Delete (a).

43. Section 72.3.3 (a)(2)(b) lines 17 and 19 - Delete the words "basis per square foot".

44. Section 72.3.4 (b) - Delete the first sentence and replace with, **"Removal of invasive and noxious species by hand may be permitted without mitigation if the understory is allowed to naturally regenerate. Within the Buffer, the removal of invasive and noxious species requires approval of a Buffer Management Plan in accordance with the provisions of Section 71.8.2.c.9"**

45. Section 72.3.5.c, line 19 - Change "Schedule 72.3.4" to "Schedule 72.3.5."

46. Section 72.3.5, Schedule 72.3.5 - Delete **"seedlings or".**

47. Section 73.2.2 - Add item (d): **"Clearing of existing natural vegetation in the Buffer."**

48. Section 73.2.4 - In the first sentence, delete "allowed to naturally regenerate… landowner." Replace with, **"established. In establishing the Buffer, management measures, including but not limited to, natural regeneration, shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in COMAR 27.01.09."**

49. Section 74.1.1 - The correct COMAR citation needs to be provided: COMAR 27.01.07.

50. Chapter 90 - Add the following language to the definitions for perennial and intermittent streams, after " … quadrangle map published by the United States Geologic Survey", **"or more detailed maps or studies at the discretion of the local jurisdiction."**

51. Chapter 90 – Add the following definition, **"Sensitive Areas. Tributary streams and their buffers, nontidal wetlands, Wetlands of Special State Concern and their buffers, floodplains, floodways, coastal high hazard areas, hydric soils, soils with hydric inclusions, highly erodible soils, the Chesapeake Bay Critical Area, Habitat Protection Areas, Natural Heritage Areas, and forest and woodland cover."**

ST. MARY'S COUNTY

GROWTH ALLOCATION USED				
PROJECT	**DATE**	**AMEND. #**	**CHANGE**	**ACRES**
Growth allocation total				**1689.75**
Avenmar	10/91	SMA-5	RCA to LDA	16.00
St. Winifred Estates	11/92	SMA-9	RCA to LDA	15.22
Christmas Hill	11/92	SMA-10	RCA to LDA	6.32
McGuyver's Subdivision	7/93	SMA-13	RCA to LDA	1.50
Maydel Manor	7/93	SMA-14	RCA to LDA	6.00
Calvert Estates-Chesapeake Industrial Park	7/93	SMA 15	LDA to IDA	9.25
St. Clement's Woods*	6/94	SMA-16	RCA to LDA	1.50
Lacey Property	4/97	SMA-19	RCA to LDA	1.50
Gardiner's Place	4/97	SMA-20	RCA to LDA	17.77
Wrightson Farm	7/98	SMA-22	RCA to LDA	3.00
Eagan Subdivision	3/01	SMA-23	RCA to LDA	6.30
Eppard*	1/02	SMA-3	RCA to LDA	6.00
Lore's Landing*	1/02	SMA-8	RCA to LDA	6.00
Total used by County to date				**96.36**
Leonardtown				
Tudor Hall Village (Hotel site)	11/98	LEA-2	LDA to IDA	4.05
Tudor Hall Village (Remainder)	10/99	LEA-3	LDA to IDA	31.64
Total used by Town of Leonardtown to date				**35.69**
Total used to date				**132.05**
St.Mary's County Growth Allocation Remaining				**1557.70**

*These projects were deemed approved via a consent decree between the Commission and St. Mary's Co.

Last updated 7/5/2002

Summary of Vacant Resource Conservation Area Parcels by size range as noted.

Use type per MD Property View	Vacant Resource Conservation Area Parcels						
	Total Count	**<.5 ac**	**.5 < 1 ac**	**1 <= 2 ac**	**2 <= 3 ac**	**3 <= 4 ac**	**4< 5 ac**
Agricultural	**26**	--	--	10	5	7	4
Commercial	**4**	1	1	1	--	--	1
Exempt	**64**	53	3	3	2	1	2
Exempt commercial	**2**	1	1	--	--	--	--
Marsh land	**3**	--	--	--	2	1	--
Residential (in common use, no value)	**34**	11	1	13	1	5	3
Residential	**795**	433	107	123	48	50	34
TOTALS	**928**	**499**	**113**	**150**	**58**	**64**	**44**

Support

Chesapeake Bay Critical Area Commission

STAFF REPORT
July 10, 2002

APPLICANT:	Queen Anne's County
PROPOSAL:	Refinement – BEA Map Amendment
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Approval
STAFF:	LeeAnne Chandler
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809(h)(2)(ii) – Proposed program amendments and refinements and COMAR 27.01.09.01(C)(8) – Buffer Exemption Areas

DISCUSSION:

Queen Anne's County is proposing a map amendment to extend a Buffer Exemption Area to include three properties within the Kent Narrows area. The three properties (Parcels 444 (Lot 2), 472, and 457 on Tax Map 57) line a tidally influenced canal. The canal was created in the early 1970's out of private tidal wetlands. The Buffer along the south side of the canal is impacted by human activity and is proposed to be designated Buffer Exempt. The County Planning Commission held a public hearing on the proposal in April. No public comment was received. The Planning Commission made a favorable recommendation to the County Commissioners. The County Commissioners granted conceptual approval and sent it to the Critical Area Commission for review.

The County Planning Commission made a number of findings in their favorable recommendation to the County Commissioners. These findings include the following:

1. The land abutting the canal on the south side is designated as Intensely Developed Area (IDA) which is defined in the Queen Anne's County Code, Title 14, *Environmental Protection*, as an area where residential, commercial, institutional and/or industrial developed land uses predominate and where relatively little natural habitat occurs.

2. The parcels abutting the south side of the canal contain no other Habitat Protection Areas besides the Buffer. There is very little riparian habitat on the south side of the canal. Manicured lawn and some herbaceous vegetation dominate. No forested areas exist on the site.

3. The majority of the land area abutting the south side of the canal appears to have been mowed lawn or gravel surface from 1985 to the present. The impervious areas are within 100-feet of the shoreline. The existing conditions prevent the Buffer from providing the water quality benefits of a functioning Buffer.

4. Aerial photos from 1985 show Parcel 444 (Lot 2) as a mowed lawn up to the edge of the canal. Parcel 472 is almost completely covered with impervious surfaces associated with an existing boat repair business. Parcel 457 is a County-owned property that is improved with a building and a large parking area. Due to the existing uses, human activities occur right up to the shoreline. These activities effectively eliminate any transitional habitat between the aquatic and upland communities.

5. The County property (Parcel 457) is already Buffer Exempt along the open water of Kent Narrows. It seems that if that property qualified as a BEA along the Narrows, it should also qualify along the canal. The canal is also partially bulkheaded, as it is along the Narrows.

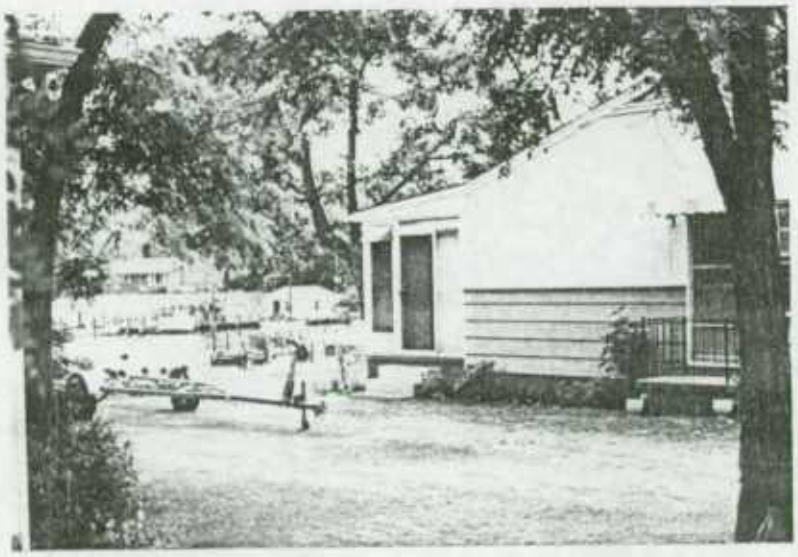
In addition to the findings of the Planning Commission, it appears that the surrounding pattern of development (commercial and active recreational uses) on the south side of the canal supports this designation. Busy marinas, boat yards, and restaurants characterize both the eastern and western shorelines of Kent Narrows. This pattern of development extends to the southern side of the canal. Similarly, it is clear that there is a distinct change in the pattern of development on the north side of the canal such that any further extension of the BEA would not be supported by site conditions.

If this BEA designation is approved, the Buffer would be reduced to 50 feet according to the County Code. Any development or redevelopment in the BEA would be subject to mitigation including: 1) The extent of the lot or parcel shoreward of the new development or redevelopment shall be established and maintained in natural vegetation; and 2) Natural vegetation of an area twice the extent of the impervious surface must be created on the property or other similar location approved by the Planning Director.

Chairman North has determined that this map amendment can be approved as a refinement to the County's Critical Area Program and he is seeking the Commission's concurrence.

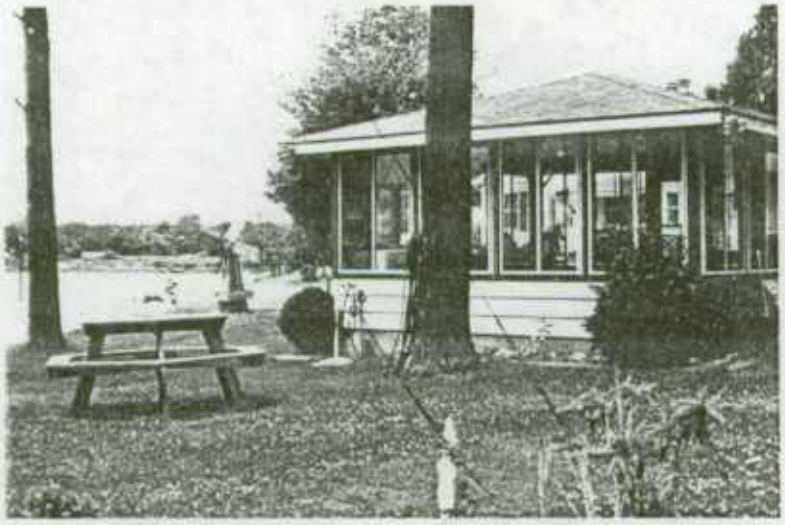
The Leverings

Photos taken during analysis of areas for Buffer management overlay designation (Fall 1995)



Colton'sPoint

Photos taken during analysis of areas for buffer management overlay designation (Fall 1995)



xxxxx Proposed Buffer Exemption Area

1999 Aerial Photo

Chesapeake Bay Critical Area Commission

STAFF REPORT
July 10, 2002

APPLICANT: Town of Denton

PROPOSAL: Map Changes for Annexation and Boundary Correction

JURISDICTION: Town of Denton

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Roby Hurley

APPLICABLE LAW/ REGULATIONS: Natural Resources Article §8-1809(h)

DISCUSSION:

The Town of Denton has recently completed an amendment to its Critical Area Map. The changes resulted from an annexation and discovery of a mistake on the Critical Area boundary line. The changes to the map include an adjustment in the map scale, movement landward of the Critical Area boundary line near Maryland Avenue, and adding an annexed area just outside of the Critical Area

Initially the annexed area was believed to encompass land within the Town Critical Area and in fact appeared that way on the Caroline County maps. However, the mapping consultant determined during the process of adjusting the scale of the Critical Area map and using more detailed parcel information that the annexed parcels were located just outside the Critical Area. In order to include the annexed area on a single sheet, a smaller scale had to be used. The current Critical Area map is 1"= 200' and the proposed map is 1"=300'.

The Town is also taking this opportunity to correct a mistake in the location of the Critical Area boundary line. The original mapping contractor failed to include a small tidal stream, known as Kerr's Branch in the recent mapping effort, and this mistake is being corrected. This amendment is not a result of any changes to the 1972 State Wetlands Maps, it simply reflects the correct delineation of the Critical Area boundary from the edge of tidal wetlands. The map change adds parts of three lots into the Critical Area.

The Town Commissioners held a public hearing on May 6, 2002. There were no public comments received. The Town Commissioners approved the new Critical Area Map on May 6, 2002.

CHESAPEAKE BAY CRITICAL AREA COMMISSION
1804 West Street, Suite 100
Annapolis, Maryland 21401

MEMORANDUM

To: Program Subcommittee

From: LeeAnne Chandler

Date: June 21, 2002

Subject: Richardson Property Growth Allocation – Wicomico County

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As you may recall, several months ago staff from Wicomico County attended a Program Subcommittee meeting to discuss an unusual growth allocation situation. Subcommittee members requested additional information on soils, topography, and potential mitigation measures the property owner was considering. County staff will be attending the Subcommittee meeting on July 10, 2002. The project is again being brought to the Subcommittee for discussion only at this point. Issues for discussion include deduction methodology, size of the development envelope, and consistency with the Commission's policy on the use of growth allocation.

This potential project is located in Wicomico County along Quantico Creek. The subject property contained 73.41 acres, with 40.6 acres in the Critical Area, at the time Wicomico County adopted its Critical Area Program. A subdivision was recorded in 1992 which created two residential lots (as permitted by the 1 per 20 density) and an open space "residue" (Lot 3) in the Critical Area portion of the property. The property owner would now like to construct a dwelling on Lot 3 outside of the Critical Area. However, the only soils suitable for septic systems are within the Critical Area. An area of 0.33 acres of growth allocation would be necessary to provide for a septic reserve area and a "pipestem" to connect the house to the septic area.

SITE CONDITIONS

Topography - There are areas of steep slopes located directly along Quantico Creek. This area is protected by the Critical Area Buffer and expanded Buffer and no disturbance will occur in this vicinity. The remainder of the property has little or very gradual slopes.

Soils - Soils on the property include silt loam in the Othello, Mattapex and Matapeake series. According to the Wicomico County Soil Survey, nearly the entire area of the property outside of the Critical Area consists of Othello soils. Othello soils are hydric and have severe limitations for septic systems due to poor drainage and a high water table. Mattapex soils are characterized as moderately well-drained and very acidic that have severe limitations for septic systems. Lastly, Matapeake soils are well-drained and have moderate limitations for septic systems.

Vegetation – The site contains 3.2 acres of forest with the balance in agricultural uses. No trees will have to be cleared for the septic reserve area.

PROPOSAL

As stated above, the applicant would require 0.33 acres of growth allocation for a septic reserve area within the Critical Area to support a dwelling outside of the Critical Area. Alternative septic reserve areas have been investigated. The applicant has worked closely with the Wicomico County Health Department in trying to find a suitable location for a septic system outside the Critical Area. Two perc tests were conducted outside of the Critical Area and both failed to meet Health Department requirements. Other ideas explored include: resubdividing an adjacent lot that contains an existing septic system ; sharing the existing system; and building a mound system. Due to the poor soils in the area outside of the Critical Area, none of these options would meet Health Department requirements. (See attached letter from the Wicomico County Health Department.)

County staff has received information on some new septic technology as suggested by the Subcommittee in April. The system would reduce nitrates in the effluent entering the drain field within the Critical Area portion of the property. The County has stated that they will require use of such a system via a plat note if growth allocation for the septic reserve area is approved.

The applicant has indicated that he will use nitrate reduction technology to reduce the impact of a septic system on the environment. He has further indicated that an additional 0.72 acres of forest will be planted on site, within the Buffer. Additional trees within the Critical Area Buffer, down slope from the Sewage Reserve Area, will enhance the water quality benefits of the Buffer. The applicant may also investigate the possibility of participating in the CREP Program by establishing a 70-foot wide buffer along the agricultural ditch. This would amount to an additional 1.25 acres of forest.

County staff feels that the applicant has exhausted all available alternatives for the construction of his septic system and that the mitigation measures proposed will eliminate or drastically reduce any impact on the Critical Area from the proposed septic system.
Theoretically, the applicant could request up to 0.6 acres of growth allocation without having to deduct the entire acreage of the parcel within the Critical Area. This would allow 40 acres of Resource Conservation Area to remain in order to account for the two existing dwelling units.

The issue to be discussed at the subcommittee meeting is whether the proposal is consistent with the Commission's policy on Growth Allocation. County planning staff will attend the subcommittee meeting to participate in the discussion. A revised site plan is not currently available but it will be provided at the meeting.

July 10, 2002

MEMORANDUM

TO: Critical Area Commission

FROM: Ren Serey

SUBJECT: Coastal Bays Advisory Committee

As we discussed at the Commission meeting on June 5, 2002, the newly enacted Atlantic Coastal Bays Protection Act authorizes the Commission to create an advisory committee "to make recommendations to the Commission with respect to Atlantic Coastal Bays Critical Area Programs." Several Commission members made comments and suggestions concerning the make-up of an advisory committee. I have tried to incorporate these as much as possible into a set of recommendations.

Recommendations on an Atlantic Coastal Bays Advisory Committee

1. The Critical Area Commission would benefit from receiving advice and recommendations on the local Atlantic Coastal Bays Critical Area programs from an advisory committee of Commission members, local officials, citizens and members of various interest groups.

2. Despite the extensive membership the above list implies, the advisory committee should be small enough to function efficiently. An appropriate number might be 9-13 members, assuming that the entire membership will not attend each meeting.

3. The new law specifies that the two new Commission members from the Coastal Bays watershed must be on any advisory committee established. Having other Commission members on the committee as well would provide experienced guidance and help maintain a focus on Critical Area related matters.

4. Joe Jackson, who currently represents Worcester County on the Commission, should be on the advisory committee. He can provide guidance from the perspective of an experienced Commission member and a local elected official. David Cooksey, Dr. Foor and Q Johnson have expressed a willingness to serve, and should be included. Other Commission members should be included if they wish, or they could serve on an occasional basis in an unofficial capacity.

5. The Commission should solicit suggestions on advisory committee membership from the Worcester County Commissioners, the Mayor and Council of Ocean City, the Maryland Coastal Bays Program, the Coastal Bays Foundation and others.

6. The Commission should direct staff to try to organize the advisory committee during July, so that the Committee can meet to review and discuss the draft Critical Area programs that Worcester County and Ocean City are preparing. Initial members of the advisory committee should be appointed at the Commission's August meeting. The committee should have a chairman, who would coordinate with Chairman North, the standing subcommittees and staff regarding the committee's first meeting, and subsequently on an as-needed basis.

7. Additional meetings and scheduling should be left to the advisory committee to determine.