

Public Hearings - Baltimore City Critical Area Protection Program 1987 MSA 51830-1

CHESAPEAKE BAY CRITICAL AREA COMMISSION

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In the matter of Baltimore City :  
Critical Area Protection Program :  
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Thursday, March 12, 1987

Pursuant to Notice, the above-entitled hearing was held before SOLOMON LISS, CHAIRMAN, at the War Memorial Building, Paul C. Wolman Room, Lexington and Gay Streets, Baltimore, Maryland 21202, commencing at 7:15 p.m.

PRESENT:

Wicomico County

ARDATH CADE

Assistant Secretary, Department of Economic and Community Development

ALBERT "SKIP" ZAHNISER

Calvert County

JAMES E. GUTMAN

Anne Arundel County

MARY G. DOLAN

Chief, Coastal Resources Planning

REPORTED BY: Geoffrey L. Hunt

*Hunt Reporting Company*

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J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL

JUDSON P. GARRETT, JR.  
CHARLES O. MONK, II  
DENNIS M. SWEENEY  
DEPUTY ATTORNEYS GENERAL



*Lee's comments  
Baltimore*

THOMAS A. DEMING  
ASSISTANT ATTORNEY GENERAL  
COUNSEL TO SECRETARY

M. BRENT HARE  
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MARIANNE D. MASON  
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STATE OF MARYLAND  
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THE ATTORNEY GENERAL  
DEPARTMENT OF NATURAL RESOURCES  
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ANNAPOLIS, MARYLAND 21401  
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February 25, 1987

M E M O R A N D U M

TO: Marcus B. Pollock, Administrative Officer,  
Chesapeake Bay Critical Areas Commission Staff

FROM: Lee R. Epstein, Assistant Attorney General

SUBJECT: Review of Baltimore City Critical Area Management Program

I have reviewed the submitted Baltimore City Critical Area Management Program (CAMP), and offer the following comments. Please note that these comments are not developed in detail, since my review of the local program, except for one or two legal aspects, was not accomplished in detail. The manner in which this review progresses is by certain numbered paragraphs; these numbers correspond to handwritten numbers which I have placed in the margin of my copy of the CAMP, which I am attaching to this memorandum.

First, please allow me to note a generalized comment. It seems that Baltimore City is loathe to request a buffer exemption as provided in COMAR 14.15.09.01C(8). The Commission developed that exemption provision precisely to accommodate highly developed urban areas such as may occur in and around cities like Baltimore, Cambridge, Salisbury, and others. It seems to me that the tenor of much of Baltimore's program is to permit significant development within the buffer, without seeking such an exemption. While we should not quibble about nomenclature, I believe such a request on their part is necessary.

Following are my numbered comments.

(1) The question here is how much of the Waterfront Industrial Area is currently used for industry, port related, or other high intensity activities? I believe that the criteria mandate that even if land is currently zoned for a high intensity use, but is concomitantly currently undeveloped for those uses, it most likely would not be eligible for designation as an intensely developed use. (IDA).

(2) This question relates to the format of this document and what it contains or fails to contain. I am not certain what "anticipated actions" mean. In order to submit a complete program to the Commission, the City must be prepared to fully commit to a course of action. In a related vein, one cannot tell what the process envisioned here

comprises, or what the proposed ordinance that sets up the process looks like. This is the case for many of these seeming recommendations. As the Commission staff and the Commission have discussed on numerous occasions, complete programs are required for their review; these would normally and nominally require the submittal of draft ordinances, plans, and any other documents which would control the Critical Area Program or process. Finally in regard to #2, there does not seem to be included here an inventory of these named habitat areas. For example, how big an area does each comprise, where does it appear exactly on the map (rather than a set of stars)?

(3) It is stated that "existing stormwater systems will be improved ..." and that five projects are currently underway. For Commission review purposes I would think it would be necessary to state where current improvements are occurring, and where future ones are programmed or planned.

(4) In a related vein, I think the Commission would need to have some detail on the construction programs that have begun and on those which are only in the capital programming or planning phases.

(5) This paragraph notes that the system has been designed; the question is, when will it go into effect?

(6) Similar to a comment made above, how will this requirement for new marinas be implemented? When will it be implemented, through what ordinance or other program, process, etc.? I.e., where will these requirements be found?

(7) and (8) The question here is whether there are any immediate plans for acquisition or designation. Are there parcels currently programmed? What does "considered" mean?

(9) This paragraph may prove the most significant stumbling block for the approval of the Baltimore City Program. The CAMP states that "the City must encourage maximum redevelopment of industrial land ...[and] it would place an unreasonable burden on the city to reserve all its industrial land within the Critical Area for water dependent industrial development only." The question for consideration here is, is not such a burden required for all jurisdictions? What about Anne Arundel County and its Marley Neck Area, or Dorchester County's huge Resource Conservation Area? I am not sure the Commission would agree that "maximum development" of all industrially zoned but long unused land on the water must necessarily be approved or at least not all of it; some would need to be reserved, unless some kind of a limited Section 8-1807(b) exclusion is sought by the City.

(10) What are the City's "efforts to control" the development of marinas? How does its zoning ordinance and marina master plan (the only part of which is provided is a map of marinas) manage marina development? Also see comment # 14.

(11) Words like "encourage" or "as possible" do not evidence a firm committment. The Commission thus is unable to determine with any degree of assurance the nature and extent of the program in this regard.

(12) This portion states that one would still be able to develop in the buffer up to 50% even if that development is a non-water dependent use. I think such might be inimical to the buffer requirements in the criteria.

(13) Similarly, I am not sure an actual hardship exists where the buffer comprises just 15% of an entire development site, although the CAMP provides that if such is the case, the developer may develop within the buffer providing that offsets are presented.

(14) Much more is needed in this program concerning water dependent facilities development in the buffer. Chapter Three's requirements in the criteria are significant and extensive, and include programs or a process for planning for these facilities, which is not evident here. This comment relates to that of Number 10.

✓ (15) I do not agree with the statement made that Baltimore City-owned lands necessarily "comply with the buffer requirements because they are developed for a public purpose". Chapter 9 of the criteria explains in detail the policies behind the buffer requirement and the ways of meeting it; a simple statement of "public purpose" just doesn't cut it.

Please note once again that comments (12) through (15) are all related to the problem with the way the Buffer is handled. COMAR 14.15.09.01C(8) provides for a local exemption from Buffer requirements if the local jurisdiction can demonstrate certain matters to the satisfaction of the Commission. If necessary, this is the way in which development in the Buffer should probably be handled.

(16) This section is the only portion of the CAMP which provides language on grandfathering. Unfortunately, I do not believe that it incorporates all of the requirements for grandfathering which the Commission has required through its Chapter 2, Regulation .07. For example, there is no language here concerning "abandonment for more than one year". There is also no language concerning the grandfathering of single dwellings on single parcels. (Perhaps such is not applicable in the Baltimore situation, but at least the discussion of this matter is required.) Third, there is no discussion of the grandfathering criteria with regard to the vesting of rights or other serial grandfathering matters. If the local program was just to provide a stricter grandfathering requirement that proposed in the criteria, it must discuss and provide such provisions for the Commission's adequate review.

(17) I do not agree with the statement that "the State Critical Area Legislation includes provisions for environmental offsets in these cases". The Criteria do provide for a buffer exemption in some cases. In the Commission's regulations, however, offsets are meant to be provided merely for water quality purposes. Buffers serve additional functions, as Chapter 9 discusses in some detail. I am not saying here that some kind of an imaginative offset program should not be formulated, but merely that development in the Buffer is stringently regulated by the Buffer's criteria.

✓ (17a) In a related vein, I don't believe that, generally, the Chesapeake Bay Critical Areas Commission should be involved in evaluating "alternative offset projects". Any such review programs should be the City's, and I do not believe that Commission involvement would be appropriate.

(18) Frankly, I am not just sure how this is meant to work. For example, I am not sure what benefit private property owners would receive when they allow buffer offset projects. Who would grant what to whom? What is the exchange here? Would they receive a credit towards offset requirements if future development takes place in portions of the buffer on their land?

(19) I believe the CAMP needs to set out how the runoff pollution offset fund would be used, for what purposes, and in what planned or programmed facilities.

February 25, 1987

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Finally, please note that I have found no provision in this program for variances, which are required in accordance with the criteria at Chapter 11. Similarly, there seems to be missing a number of Chapter Ten's requirements. For example, was there an inventory done of non-tidal or tidal wetlands, threatened and endangered species, sand and gravel resources, watersheds of anadromous fish spawning streams? Is there any evidence here of the City's review of all of its plans and ordinances, and a determination as to how each would need to be changed to structure its critical area program. Are Chapter Ten's "findings" requirement at 14.15.100 in evidence here? Is there any notice here of county/municipal discussions and coordination?

I trust that your and other commission staff's review of this program will uncover other problems which may need to be addressed. These are offered merely to assist you, and do not provide a complete criterion-by-criterion review.

LRE/jtd

attachment



OFFICE OF ENVIRONMENTAL PROGRAMS  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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TTY FOR DEAF: Balto. Area 383-7555  
D.C. Metro 565-0451

Adele Wilzack, R.N., M.S., Secretary

April 2, 1987

William M. Eichbaum, Assistant Secretary

The Honorable Solomon Liss, Chairman  
Chesapeake Bay Critical Areas Commission  
Department of Natural Resources  
Tawes State Office Building, D-4  
Annapolis, MD 21401

Dear Judge Liss:

Thank you for the opportunity to review Baltimore City's Critical Area Management Program. The Program is thorough and well-organized.

In general, the City's draft program provides the necessary framework for carrying out the State water quality goal and objectives for stormwater control within Intensely Developed Areas as contained in the State Critical Area Criteria. Nevertheless, there are certain specific cases in which greater emphasis on improving water quality is recommended. These are listed below:

1. p. 2 Waterfront Revitalization Area - The statement is made that "a hard-edged urban public promenade is planned for the full length of the area" and that, therefore, stormwater filtering benefits of the Buffer are precluded. It is recommended that alternatives to this approach be investigated. While it is recognized that existing portions of the promenade may prevent the realization of the 100-foot Buffer goal, attempts should be made to modify the urban design for the remaining undeveloped portions of the Buffer to maximize pollutant removal benefits.
2. p. 23, D.I. Waterfront Revitalization Area - The last sentence in this section should be revised to read: When this cannot be accomplished on the site, the developer must pay into the offset fund at the same rate as the estimated cost of the stormwater management system or negotiate an alternative offset as outlined in Section IV (B)(2)."
3. pp. iv, 18, 19 Marinas - The map on p. 19 shows the extensive area designated for recreational marina development as identified through the City's marina master planning process. However, the only requirement for new marinas clearly spelled out in the draft Critical Area program is that pertaining to the installation of aeration systems. It is strongly recommended that this be expanded to include a requirement that pumpout facilities be provided in order to remove onboard sewage from docked vessels. (It is assumed that the provision of onshore sanitary facilities through the City's existing marina review process.)

*Mary - This is the original. Could you make a copy of this + send it back. Thx. Sarah*

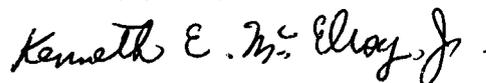
Also storage and handling of any toxic compounds (e.g. bottom paint, petroleum products, etc.) should be carried out in such a way so as to minimize the potential for water pollution either through accidental spillage or conveyance of toxic materials by stormwater runoff.

4. pp. 32, 33, 34 Runoff Pollution Reduction Offset Program - In this section of the draft program, it is noted that the City "will provide developers with methodologies for computing existing and proposed pollutant loadings,..." Reference is made to a "Critical Area Runoff Pollution Control Manual" which is to become an addendum to the City's existing Stormwater Management Manual. In this regard, it should be noted that, at the request of the State Critical Area Commission, the Water Management Administration, in cooperation with the Metropolitan Washington Council of Governments, is developing statewide guidance on the stormwater 10% pollutant load reduction goal of the Critical Area Criteria. The draft of an interim guidance document is due to be completed on or before April 15. This document will provide a uniform procedure for pollutant load assessment and guidance concerning pollutant removal efficiencies of various best management practices. Subsequent work related to this effort will address the establishment of an offset program. (A complete report, incorporating the interim guidance document and recommended offset mechanisms, will be available in June.) It is recommended, therefore, that the City's draft program be amended to: a) reflect the forthcoming availability of the State's interim and final guidance documents and b) note that the City's "Critical Area Runoff Pollution Control Manual" shall be further developed or modified to ensure consistency with the State's guidance.

There are several additional comments we have with reference to whether or not the City's Program satisfies the Commission's criteria:

1. The Actions That Trigger Critical Area Review in the Executive Summary and on p.21 do not include Site Plans, Specific Exceptions, and the Inclusion of Areas Within Floating Zones. Perhaps these should be added to the consistent with 14.15.01.01(54).
2. The Developer Requirements for a Waterfront Revitalization Area and for Non-Water Dependent Use on pp. iii and iv of the Executive Summary do not appear to satisfy the requirements of 14.15.09.01(C)(2).

Sincerely yours,



Kenneth E. McElroy, Jr., Director  
Planning and Analysis  
Office of Environmental Programs

KEM/cjk

cc: Mr. William M. Eichbaum  
Ms. Marie Halka



Department of Natural Resources  
MARYLAND FOREST, PARK & WILDLIFE SERVICE  
Tawes Office Building  
Annapolis, Maryland 21401

TORREY C. BROWN, M.D.  
SECRETARY

DONALD E. MACLAUHLAN  
DIRECTOR

M E M O R A N D U M

April 16, 1987

6130

TO: John Griffin, Deputy Secretary  
FROM: Donald E. MacLauchlan, Director, FPWS DEM  
SUBJECT: Baltimore City's Proposed Critical Area Program

We have reviewed the proposed Baltimore City Critical Area Program. The program addresses all the forest and wildlife habitat considerations mandated by the Critical Area law. Specifically, the plan provides for the retention of existing forest habitat and the creation of new or enhanced habitat through the planting of early successional forest vegetation within 100 feet of tidal waters. The program also calls for the identification and protection of any existing forest habitat that is being proposed for significant development. Trees lost to development will be replaced on a 2:1 basis.

Finally, the plan provides specifications for buffer establishment which will serve wildlife needs and provide protection to water quality.

DEM/fdb

cc: Verna Harrison, Assistant Secretary  
James B. Roberts, State Forester  
Gary Taylor, Associate Director  
James Klunk, Asst. Chief, Resource Protection



**Maryland Department of Natural Resources**

William Donald Schaefer  
*Governor*

Tawes State Office Building  
Annapolis, Maryland 21401

Torrey C. Brown, M.D.  
*Secretary*

John R. Griffin  
*Deputy Secretary*

April 21, 1987

MEMORANDUM TO: Dr. Sarah Taylor, Executive Director  
Critical Areas Commission

FROM: John Griffin *JRG/m*

SUBJECT: Baltimore City's Proposed  
Critical Area Program

Please find attached copies of additional memos commenting on the Baltimore City program.

Upon reflection, it is not surprising to me that our units have very little to say - the reason being that it would take a unit a considerable amount of time to compare the various provisions of criteria against the city's program.

Please let me know next week how things look for the May 6th meeting.

Thanks.

JRG/vm  
cc: Tom Deming



TW  
**Maryland Department of Natural Resources**

**Tidewater Administration**

Tawes State Office Building  
580 Taylor Avenue  
Annapolis, Maryland 21401

William Donald Schaefer  
Governor

Torrey C. Brown, M.D.  
Secretary

April 16, 1987

MEMORANDUM:

TO: John Griffin  
FROM: Elder Ghigiarelli, Jr. *EG*  
SUBJECT: Baltimore City - Proposed Critical Area Program

In general, I feel the City has done a commendable job in preparing its draft program. Considering the primarily developed state of the City's shoreline area, as well as the economic considerations of the Port environment, implementation of the Program should serve to reduce pollutant loadings in the harbor area and ultimately contribute to improved water quality conditions.

The following specific comments are offered regarding compliance with the Critical Area Criteria:

1. The City has essentially classified its entire Critical Area into three types of development areas: (a) Waterfront Revitalization Areas; (b) Waterfront Industrial Area; and (c) Resource Conservation Areas. Page 2 of the Program points out that the City's Critical Area falls into two of the three categories outlined in the criteria: Intensely Developed Areas and Resource Conservation Areas; and Intensely Developed Areas are sub-divided into the Waterfront Industrial Area; Classifying Resource Conservation Areas as development areas appears to conflict with the City's intent to preserve these areas, particularly those which include designated habitats of local significance and habitat receiving areas (pgs. 6-10).
2. The City is essentially requesting exemption from the Buffer - related criterion which prohibits new development activities within the Buffer except for those necessarily associated with water-dependent facilities. Because of the current low demand for new port - related (water - dependent) facilities, the City feels it would be an unreasonable requirement to reserve all its land within the Critical area for water - dependent industrial redevelopment only (pg 18). This does not appear to be adequate justification for the City's proposal

MEMORANDUM:  
John Griffin  
Page -2-

April 16, 1987

to allow non-water-dependent activities within the Buffer. The Criteria does not require the City to reserve all its land in the Critical Area for water - dependent facilities; only that within the 100 foot Buffer. Additional information/justification would seem necessary to support the City's proposal in this regard.

EG/dcw

cc: Verna Harrison  
Paul Massicot  
Jacob Lima



# Chesapeake Bay Foundation

"Environmental Defense - Environmental Education - Land Preservation"

162 Prince George Street • "The Church" • Annapolis, Maryland 21401  
301-268-8816 (Annapolis) 269-0481 (Balto.) 261-2350 (Wash., D.C.)

April 1, 1987

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*Pennsylvania Coordinator*

Judge Solomon Liss  
Critical Area Commission  
Tawes Office Building, D-4  
Taylor Avenue  
Annapolis, Md 21401

Dear Judge Liss:

The Chesapeake Bay Foundation would like to submit these comments on the Baltimore City Critical Area Management Plan. I apologize for the tardiness of the comments, but the program took longer than anticipated to review because of the unique nature of the program and the fact that it is the first to be submitted. We hope these comments prove useful to you and the Commission as you evaluate the program. Please call us if you have any questions.

Sincerely,

Sandy Hillyer  
Director Lands Programs

Comments on the  
Baltimore City  
Critical Area Management Program  
Chesapeake Bay Foundation  
April 1, 1987

General Comments

The Chesapeake Bay Foundation would like to preface its comments on the Baltimore City Program with some general comments. CBF understands that urban programs, such as Baltimore City's, may present special difficulties in review and evaluation in comparison to programs for larger, more rural and diverse planning areas. Accordingly, we believe that the Commission is required to make certain policy decisions prior to the approval of this program.

The Baltimore City Program brings this need to the surface because it fails to meet the requirements of several criteria. Specific criteria requirements which are lacking include such things as the detailed inventories and maps for non-tidal wetlands, forest resources, tributary streams, steep slopes and significant habitat areas. In addition, other criteria requirements were modified to adapt them to an area where redevelopment will be the principal change in land use. These criteria modifications in the Baltimore City Program include such things as the designations of development areas other than the three defined in the Criteria and the relaxation of buffer requirements through offsets.

CBF does not find these substantive modifications particularly disturbing for urban areas. However, any approval for a plan which includes these modifications may set a precedent for making ad hoc, program by program, exceptions to the Criteria. This may send a signal that the Commission is prepared to consider, on a case by case basis, any departure from the Criteria proposed by a local program.

We submit that the Commission has two choices for dealing with the special circumstances presented by an urban area. The first is to grant an urban exception to the Criteria to Baltimore City as specified in Section 8-1807. This would exempt Baltimore City from the strict interpretation of the Criteria, but would still leave them the option of implementing the draft program. The second choice is for the Commission to articulate a policy that clearly limits the special treatment sought by Baltimore to urban areas only. In setting these policies, it is preferable for the Commission to adopt statewide guidelines governing when,

where and under what circumstances these exceptions would be considered. An alternative, but less desirable approach, would be for the Commission to approve Baltimore's program with an explanation in the record that would limit the rationale for doing so.

We make these general comments to insure that early program approvals do not set precedents that jeopardize the integrity of future plans. We urge caution on the part of the Commission and suggest that policies be clearly stated where appropriate.

### Specific Comments

#### Section III

##### B. Actions That Trigger Critical Area Review

CBF believes that actions which trigger a critical area review should be comprehensive and should meet the requirements of the Act as provided for in Section III A of the Baltimore City Program. However, we submit that the definition of "significant development" (Section III B) should include any new paving or building in the buffer, not just those over 5,000 square feet. The definition of "significant development" as provided in this section would exempt many projects within the most sensitive part of the critical area (the buffer) from any provisions of the Criteria at all.

#### Section III

##### D. Requirements by Development Area

##### 3. Resource Conservation Areas

The Program states that in the Resource Conservation Area, development within the buffer will be limited to water-dependent facilities for public use. Since these RCA areas are the only remaining natural areas in the Baltimore City critical area, we urge that requirements for development in their buffers be much more stringently and more clearly defined than by the expansive term "water-dependent facilities." For instance, this term may be interpreted to allow either a developer or the City to build a marina intended for public use in an RCA buffer. We submit that the City should define more narrowly the uses allowed in RCA buffer area by restricting such development to less disruptive, more passive public uses.

### Section III

#### F. Public Lands and Easements

This section states that all lands within the Waterfront Revitalization Area and Waterfront Industrial Area, which are owned fee simple by Baltimore City, automatically comply with the buffer requirements because they are developed for a public purpose. We do not believe that the City should automatically exclude themselves from the responsibility to protect the buffer simply because they provide public access. The City should not necessarily be required to contribute to the offset fund, but a commitment to more environmentally sensitive use of the buffer in these areas would better serve the goals of the program.

### Section. IV

#### B. Buffer Offset Program

The Buffer Offset Program as presented in the management program is a comprehensive and innovative solution to a dilemma which urban areas face in meeting the buffer requirements of the Criteria. In an urban area with very little wildlife or existing habitat, an extensively bulkheaded shoreline, and an existing stormwater system which intercepts much of the runoff, a naturally vegetated buffer may not serve the purpose for which it was intended. In addition, areas which were in impervious surface or hard packed due to heavy industrial traffic may not be easily converted to natural vegetation during redevelopment. For these reasons, CBF believes that the offset program represents a workable solution which will be of long term benefit to the city through habitat improvements in the receiving areas.

However, CBF is very concerned about the precedent which may be set by the use of buffer offsets. As stated in the general comments, we believe that offsets are appropriate in urban areas, but under no circumstances should they be allowed as a general policy in Limited Development Areas or Resource Conservation Areas. In fact, depending on a jurisdictions interpretation of the density provisions for mapping development areas, offsets may not be appropriate for all Intensely Developed Areas.

In short, CBF believes that any approval of buffer offsets in a local program should be approved after consideration of the issues as presented in our general comments. The approval of buffer offset provisions in an early program, without consideration of these issues, might encourage inappropriate use of these offsets in programs subsequently submitted to the Commission by other local jurisdictions.

Summary Comments

Perhaps the best method to review a draft program is to compare it to the Directives for Local Program Development, Section 14.15.10 of the Criteria. Those requirements as met by the Baltimore City plan are as follows:

- .01 A Require an inventory and mapping of 12 resources - The program includes only the mapping of the 3 development areas, although the other maps may have been submitted separately and many of the required maps may not be appropriate to an urban area.
- .01 C Requires a list of specific local program objectives and time schedule - This is provided for in the program.
- .01 D Requires coordination of local permitting and approval processes - This is provided for in Section V(E).
- .01 E Requires specific resource management plans - Except for the water-dependent facilities plan, these resource management plans are not applicable. Baltimore City's plan for water-dependent facilities, set out in Section II E, is sketchy but probably adequate.
- .01 F Requires review of existing plans and ordinances to insure consistency - This is provided for in Section V(C).
- .01 G Requires statement of local agencies involved and their responsibilities - This is provided for in Section V(A).
- .01 H Requires demonstration that program is enforceable - This is provided in Section V(A).
- .01 I Requires cooperative agreements with State and federal agencies. - This is provided in Section V(E).

Other requirements under Section 14.15.10 are not mandatory.

CBF believes that the Baltimore City program, as submitted, adequately meets the requirements of the Act and the Criteria, with the exceptions noted above. We commend Baltimore City for the speed and commitment which they have shown toward the implementation of this program.



**Maryland Department of Natural Resources**

**Water Resources Administration**  
Tawes State Office Building  
Annapolis, Maryland 21401  
Telephone: 974-3846

William Donald Schaefer  
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Torrey C. Brown, M.D.  
Secretary

James W. Peck  
Director

April 14, 1987

4-16  
TO: Sarah Taylor

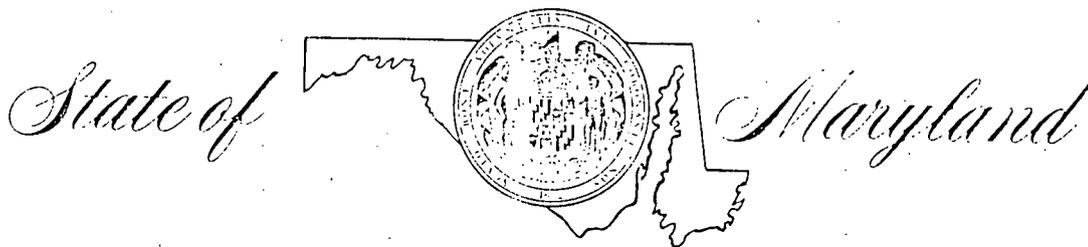
MEMORANDUM:

TO: Thomas C. Andrews  
FROM: James W. Peck  
SUBJ: Baltimore City's Proposed Critical Area Program

The draft copy of Baltimore City's CAP has been reviewed by appropriate units in the Water Resources Administration.

The plan is consistent with <sup>WRA</sup> program activities and regulatory authorities.

cc: C. A. Wheeler  
W. S. Burgess



OFFICE OF ENVIRONMENTAL PROGRAMS  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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Adele Wilzack, R.N., M.S., Secretary

April 2, 1987

William M. Eichbaum, Assistant Secretary

The Honorable Solomon Liss, Chairman  
Chesapeake Bay Critical Areas Commission  
Department of Natural Resources  
Tawes State Office Building, D-4  
Annapolis, MD 21401

Dear Judge Liss:

Thank you for the opportunity to review Baltimore City's Critical Area Management Program. The Program is thorough and well-organized.

In general, the City's draft program provides the necessary framework for carrying out the State water quality goal and objectives for stormwater control within Intensely Developed Areas as contained in the State Critical Area Criteria. Nevertheless, there are certain specific cases in which greater emphasis on improving water quality is recommended. These are listed below:

1. p. 2 Waterfront Revitalization Area - The statement is made that "a hard-edged urban public promenade is planned for the full length of the area" and that, therefore, stormwater filtering benefits of the Buffer are precluded. It is recommended that alternatives to this approach be investigated. While it is recognized that existing portions of the promenade may prevent the realization of the 100-foot Buffer goal, attempts should be made to modify the urban design for the remaining undeveloped portions of the Buffer to maximize pollutant removal benefits.
2. p. 23, D.1. Waterfront Revitalization Area - The last sentence in this section should be revised to read: When this cannot be accomplished on the site, the developer must pay into the offset fund at the same rate as the estimated cost of the stormwater management system or negotiate an alternative offset as outlined in Section IV (B)(2)."
3. pp. iv, 18, 19 Marinas - The map on p. 19 shows the extensive area designated for recreational marina development as identified through the City's marina master planning process. However, the only requirement for new marinas clearly spelled out in the draft Critical Area program is that pertaining to the installation of aeration systems. It is strongly recommended that this be expanded to include a requirement that pumpout facilities be provided in order to remove onboard sewage from docked vessels. (It is assumed that the provision of onshore sanitary facilities through the City's existing marina review process.)

April 1987

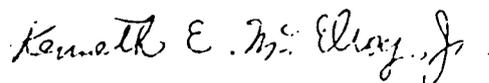
Also storage and handling of any toxic compounds (e.g. bottom paint, petroleum products, etc.) should be carried out in such a way so as to minimize the potential for water pollution either through accidental spillage or conveyance of toxic materials by stormwater runoff.

4. pp. 32, 33, 34 Runoff Pollution Reduction Offset Program - In this section of the draft program, it is noted that the City "will provide developers with methodologies for computing existing and proposed pollutant loadings,..." Reference is made to a "Critical Area Runoff Pollution Control Manual" which is to become an addendum to the City's existing Stormwater Management Manual. In this regard, it should be noted that, at the request of the State Critical Area Commission, the Water Management Administration, in cooperation with the Metropolitan Washington Council of Governments, is developing statewide guidance on the stormwater 10% pollutant load reduction goal of the Critical Area Criteria. The draft of an interim guidance document is due to be completed on or before April 15. This document will provide a uniform procedure for pollutant load assessment and guidance concerning pollutant removal efficiencies of various best management practices. Subsequent work related to this effort will address the establishment of an offset program. (A complete report, incorporating the interim guidance document and recommended offset mechanisms, will be available in June.) It is recommended, therefore, that the City's draft program be amended to: a) reflect the forthcoming availability of the State's interim and final guidance documents and b) note that the City's "Critical Area Runoff Pollution Control Manual" shall be further developed or modified to ensure consistency with the State's guidance.

There are several additional comments we have with reference to whether or not the City's Program satisfies the Commission's criteria:

1. The Actions That Trigger Critical Area Review in the Executive Summary and on p.21 do not include Site Plans, Specific Exceptions, and the Inclusion of Areas Within Floating Zones. Perhaps these should be added to the consistent with 14.15.01.01(54).
2. The Developer Requirements for a Waterfront Revitalization Area and for Non-Water Dependent Use on pp. iii and iv of the Executive Summary do not appear to satisfy the requirements of 14.15.09.01(C)(2).

Sincerely yours,



Kenneth E. McElroy, Jr., Director  
Planning and Analysis  
Office of Environmental Programs

KEM/cjk

cc: Mr. William M. Eichbaum  
Ms. Marie Halka



# Chesapeake Bay Foundation

"Environmental Defense - Environmental Education - Land Preservation"

162 Prince George Street • "The Church" • Annapolis, Maryland 21401  
301-268-8816 (Annapolis) 269-0481 (Balto.) 261-2350 (Wash., D.C.)

April 1, 1987

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*Virginia Executive Director*

Thomas P. Sexton III  
*Pennsylvania Coordinator*

Judge Solomon Liss  
Critical Area Commission  
Tawes Office Building, D-4  
Taylor Avenue  
Annapolis, Md 21401

Dear Judge Liss:

The Chesapeake Bay Foundation would like to submit these comments on the Baltimore City Critical Area Management Plan. I apologize for the tardiness of the comments, but the program took longer than anticipated to review because of the unique nature of the program and the fact that it is the first to be submitted. We hope these comments prove useful to you and the Commission as you evaluate the program. Please call us if you have any questions.

Sincerely,

Sandy Hillyer  
Director Lands Programs

Comments on the  
Baltimore City  
Critical Area Management Program  
Chesapeake Bay Foundation  
April 1, 1987

General Comments

The Chesapeake Bay Foundation would like to preface its comments on the Baltimore City Program with some general comments. CBF understands that urban programs, such as Baltimore City's, may present special difficulties in review and evaluation in comparison to programs for larger, more rural and diverse planning areas. Accordingly, we believe that the Commission is required to make certain policy decisions prior to the approval of this program.

The Baltimore City Program brings this need to the surface because it fails to meet the requirements of several criteria. Specific criteria requirements which are lacking include such things as the detailed inventories and maps for non-tidal wetlands, forest resources, tributary streams, steep slopes and significant habitat areas. In addition, other criteria requirements were modified to adapt them to an area where redevelopment will be the principal change in land use. These criteria modifications in the Baltimore City Program include such things as the designations of development areas other than the three defined in the Criteria and the relaxation of buffer requirements through offsets.

CBF does not find these substantive modifications particularly disturbing for urban areas. However, any approval for a plan which includes these modifications may set a precedent for making ad hoc, program by program, exceptions to the Criteria. This may send a signal that the Commission is prepared to consider, on a case by case basis, any departure from the Criteria proposed by a local program.

We submit that the Commission has two choices for dealing with the special circumstances presented by an urban area. The first is to grant an urban exception to the Criteria to Baltimore City as specified in Section 8-1807. This would exempt Baltimore City from the strict interpretation of the Criteria, but would still leave them the option of implementing the draft program. The second choice is for the Commission to articulate a policy that clearly limits the special treatment sought by Baltimore to urban areas only. In setting these policies, it is preferable for the Commission to adopt statewide guidelines governing when,

where and under what circumstances these exceptions would be considered. An alternative, but less desirable approach, would be for the Commission to approve Baltimore's program with an explanation in the record that would limit the rationale for doing so.

We make these general comments to insure that early program approvals do not set precedents that jeopardize the integrity of future plans. We urge caution on the part of the Commission and suggest that policies be clearly stated where appropriate.

### Specific Comments

#### Section III

##### B. Actions That Trigger Critical Area Review

CBF believes that actions which trigger a critical area review should be comprehensive and should meet the requirements of the Act as provided for in Section III A of the Baltimore City Program. However, we submit that the definition of "significant development" (Section III B) should include any new paving or building in the buffer, not just those over 5,000 square feet. The definition of "significant development" as provided in this section would exempt many projects within the most sensitive part of the critical area (the buffer) from any provisions of the Criteria at all.

#### Section III

##### D. Requirements by Development Area

##### 3. Resource Conservation Areas

The Program states that in the Resource Conservation Area, development within the buffer will be limited to water-dependent facilities for public use. Since these RCA areas are the only remaining natural areas in the Baltimore City critical area, we urge that requirements for development in their buffers be much more stringently and more clearly defined than by the expansive term "water-dependent facilities." For instance, this term may be interpreted to allow either a developer or the City to build a marina intended for public use in an RCA buffer. We submit that the City should define more narrowly the uses allowed in RCA buffer area by restricting such development to less disruptive, more passive public uses.

### Section III

#### F. Public Lands and Easements

This section states that all lands within the Waterfront Revitalization Area and Waterfront Industrial Area, which are owned fee simple by Baltimore City, automatically comply with the buffer requirements because they are developed for a public purpose. We do not believe that the City should automatically exclude themselves from the responsibility to protect the buffer simply because they provide public access. The City should not necessarily be required to contribute to the offset fund, but a commitment to more environmentally sensitive use of the buffer in these areas would better serve the goals of the program.

### Section. IV

#### B. Buffer Offset Program

The Buffer Offset Program as presented in the management program is a comprehensive and innovative solution to a dilemma which urban areas face in meeting the buffer requirements of the Criteria. In an urban area with very little wildlife or existing habitat, an extensively bulkheaded shoreline, and an existing stormwater system which intercepts much of the runoff, a naturally vegetated buffer may not serve the purpose for which it was intended. In addition, areas which were in impervious surface or hard packed due to heavy industrial traffic may not be easily converted to natural vegetation during redevelopment. For these reasons, CBF believes that the offset program represents a workable solution which will be of long term benefit to the city through habitat improvements in the receiving areas.

However, CBF is very concerned about the precedent which may be set by the use of buffer offsets. As stated in the general comments, we believe that offsets are appropriate in urban areas, but under no circumstances should they be allowed as a general policy in Limited Development Areas or Resource Conservation Areas. In fact, depending on a jurisdictions interpretation of the density provisions for mapping development areas, offsets may not be appropriate for all Intensely Developed Areas.

In short, CBF believes that any approval of buffer offsets in a local program should be approved after consideration of the issues as presented in our general comments. The approval of buffer offset provisions in an early program, without consideration of these issues, might encourage inappropriate use of these offsets in programs subsequently submitted to the Commission by other local jurisdictions.

Summary Comments

Perhaps the best method to review a draft program is to compare it to the Directives for Local Program Development, Section 14.15.10 of the Criteria. Those requirements as met by the Baltimore City plan are as follows:

- .01 A Require an inventory and mapping of 12 resources - The program includes only the mapping of the 3 development areas, although the other maps may have been submitted separately and many of the required maps may not be appropriate to an urban area.
- .01 C Requires a list of specific local program objectives and time schedule - This is provided for in the program.
- .01 D Requires coordination of local permitting and approval processes - This is provided for in Section V(E).
- .01 E Requires specific resource management plans - Except for the water-dependent facilities plan, these resource management plans are not applicable. Baltimore City's plan for water-dependent facilities, set out in Section II E, is sketchy but probably adequate.
- .01 F Requires review of existing plans and ordinances to insure consistency - This is provided for in Section V(C).
- .01 G Requires statement of local agencies involved and their responsibilities - This is provided for in Section V(A).
- .01 H Requires demonstration that program is enforceable - This is provided in Section V(A).
- .01 I Requires cooperative agreements with State and federal agencies. - This is provided in Section V(E).

Other requirements under Section 14.15.10 are not mandatory.

CBF believes that the Baltimore City program, as submitted, adequately meets the requirements of the Act and the Criteria, with the exceptions noted above. We commend Baltimore City for the speed and commitment which they have shown toward the implementation of this program.



MARYLAND  
DEPARTMENT OF STATE PLANNING

301 W. PRESTON STREET  
BALTIMORE, MARYLAND 21201-2365

WILLIAM DONALD SCHAEFER  
GOVERNOR

CONSTANCE LIEDER  
SECRETARY

April 6, 1987

*March  
FyD  
S*

*Sarah  
FyD*

M E M O R A N D U M

TO: Solomon Liss, Chairman  
Chesapeake Bay Critical Area Commission

FROM: Edwin L. Thomas *ELT*

SUBJ: Comments on Baltimore City's Draft Critical Area Management Program

Baltimore City should be congratulated for submitting its draft program in a timely manner. This memorandum contains several general observations and a number of detailed points are attached.

Commission decisions on the first programs it acts on will be very important. The jurisdictions who have yet to submit their programs will adapt their behavior accordingly.

The City's draft program is very general representing a conceptual approach. It doesn't include all the elements set out in §8-1809(c) of the Natural Resources Article nor was it prepared in accord with 14.15.10 of the criteria. For example, the City has not at this point included the comprehensive zoning map or the new or amended regulatory provisions required by §8-1808(c). The criteria outlines the accomplishment of much more detailed mapping and inventory work than is evidenced by the submitted program. There doesn't seem to be a definitive map of the critical area as a substantive point of beginning.

The focus of the 100 foot buffer area is inappropriate. The buffer should remain undisturbed, with allowance for buffer disturbances only in hardship cases. The draft program invites development in the buffer by highlighting an "offset" rate structure that neither acts as a disincentive to buffer disturbance, nor provides sufficient money to achieve meaningful offsets that will have long term benefits.

If there are unique circumstances applicable to Baltimore City to justify variation from the criteria, they need to be abundantly described. Every jurisdiction either is or perceives itself as unique. Deviation from the protection program requirements should be approved only with great care and deliberation.

Solomon Liss  
April 6, 1987  
Page Two

The City's draft program is dated February 5th; we received it for review on March 18th. I hope it will be possible to give us a longer review period as added programs are submitted.

If there are questions, please call.

ELT:ph

Attachment

cc: Secretary Constance Lieder  
Dr. Sarah Taylor

DETAILED COMMENTS  
ON  
BALTIMORE CITY'S DRAFT  
CRITICAL AREA MANAGEMENT PROGRAM

1. Page i, paragraph 4: The City's identification of "actions that trigger critical area review differs from the definition of "project approval" in §8-1802 of the Natural Resources Article. While it would seem permissible for the City to be more inclusive than provided of the law (i.e., to include certain applications for building permits), it would not seem to be proper for the City to be less inclusive (i.e., to exclude site plans or special exceptions). Inclusion of renewal plans should be considered. It is not clear regarding item 6) whether the "stormwater management review" requirement for determining when building permits outside of the buffer area will be examined is meaningful. This is an example of where the program relies without justification on existing regulations rather than indicating the need to amend or strengthen existing regulations to accomplish the critical area criteria.
2. Page i, paragraph 3 and related map: The program has devised a classification system similar but different from that contained in the criteria. Consistency can be gained by including the revitalization and industrial areas as subitems within the IDA category. Are there no limited development areas in the City?
3. Page ii, Figure 1: The map should be clarified so it does not mislead the viewer into thinking that RCA's are "Proposed Development Areas."
4. Page iii, Paragraph 1: The City appears to have excluded some projects by defining them as insignificant actions. The significant - insignificant division requires further explanation and justification. All development should occur with special provisions to achieve improved water quality conditions.
5. Page 8: The Habitat Protection element is to be funded by the buffer offset program. Although some moneys would be generated to improve existing habitat areas, the program ignores the possibility that construction in the buffer may adversely affect water quality, degrading the downstream habitats that the draft program is trying to enhance. The buffer in developed/developing areas must work as a complement to habitat protection, not as a funding mechanism. The program lacks the specificity of criteria 14.15.09.
6. Page 17, E: This element only says that the City will encourage development consistent with the intent of the law. It does not provide the guidance required by the criteria (e.g., how will the City deal with cumulative impacts - see 14.15.03.02.B).
7. Page 27, c: The provisions for "hardship cases" aren't all that different from "as of right" provisions found elsewhere in the draft program.

8. Page 29, G: The grandfathering provisions allow the improvement of existing structures or operations within the buffer without requiring runoff pollution reduction, buffer establishment or offsets. Would this permit expansion with negative impacts without compliance with critical area standards?
9. On page 31, the term "interim offset program" is used without giving any meaningful explanation of that term.



RUKERT  
TERMINALS  
CORPORATION

P.O. Box 5163  
Baltimore, Maryland 21224  
(301) 276-1013  
TWX 710-234-1681 "RUKERT BAL"

March 23, 1987

Dr. Sara Taylor  
Executive Director of the  
Chesapeake Bay Critical  
Area Commission  
Tawes State Office Building D-4  
Annapolis, Maryland 21401

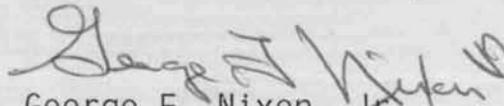
Dear Dr. Taylor:

Enclosed please find a copy of our testimony which we presented at the public hearing sponsored by the State Critical Area Commission which was held on Thursday, March 12, 1987. Also enclosed is a copy of our letter to Mr. Larry Reich, Director, Planning Commission expressing our interest in the Critical Area Management Program.

Thank you.

Very truly yours,

Rukert Terminals Corporation

  
George F. Nixon, Jr.  
Executive Vice-President

GFN/1k

Enclosure



**RUKERT  
TERMINALS  
CORPORATION**

P.O. Box 5163  
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(301) 276-1013  
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March 17, 1987

Mr. Larry Reich, Director  
Planning Commission  
Department of Planning  
8th Floor  
222 East Saratoga Street  
Baltimore, Maryland 21202

Dear Sir:

On March 12, 1987, a representative of our Company testified at your public hearing at the War Memorial Building as to our feelings about the Draft Critical Area Management Program. We attach to this letter a copy of our comments.

It is our fondest desire to see a healthy and prosperous Chesapeake Bay and any work to achieve this goal should be supported. We should also bear in mind that the lifeblood of Baltimore City and the state of Maryland is the active working waterfront. Many thousands of jobs and many billions of dollars are created by the waterfront industry in the Baltimore harbor. Our Company, which was started in 1921, is one of the largest privately owned operations still on the Baltimore waterfront. We have always been active and interested in not only the development of the port but also the city and the state. We now ask that the city and the state support us by making special exception to the Critical Area Management Program by grandfathering new port related maritime development which would remove the hardship placed on us by the proposed offset program.

We solicit your reaction to this idea and suggest that we meet person to person to further discuss this topic.

Very truly yours,

Rukert Terminals Corporation

George F. Nixon, Jr.  
Executive Vice-President

GFN/1k

cc: Mary Dolan - Chief, Coastal Resources Planning  
Bernard Berkowitz - Bedco  
Don Hammen - City Council  
Mimi DiPietro - City Council  
David Wagner - Maryland Port Administration

Page 2  
continued

cc: Ron Kreitner - Mayor's Office  
Mark Wasserman - Governor's Office  
Randy Evans - Secretary, Department of Economic & Community  
Development  
Bill Hellman - Secretary, Maryland Department of Transportation

I HAVE COME HERE TONIGHT REPRESENTING RUKERT TERMINALS CORPORATION AND WILL EXPRESS OUR CONCERN ABOUT THE NEGATIVE IMPACT OF THE BALTIMORE CITY CRITICAL AREA MANAGEMENT PROGRAM. PAGE #2 OF THE DRAFT REPORT STATES "THAT THE CITY IS ENCOURAGING THE REDEVELOPMENT OF THE WATERFRONT INDUSTRIAL AREA FOR PART OF ITS CITY WIDE EFFORT TO RETAIN LOCAL JOBS FOR INDUSTRY". THE REQUIREMENTS FORCED UPON THE WATERFRONT INDUSTRIES UNDER THIS NEW PROGRAM SEEMS TO BE IN CONFLICT WITH THIS STATEMENT.

NOT ONLY IS THE 10% STORM WATER QUALITY IMPROVEMENT IN THE THOUSAND FOOT BUFFER ZONE OF CONCERN TO US, BUT THE SUGGESTED 100 FOOT BUFFER ZONE IS ALMOST IMPOSSIBLE TO LIVE WITH.

BEING A LONG ESTABLISHED WATERFRONT FAMILY BUSINESS IN BALTIMORE WE FEEL THREATENED BY THE REQUIREMENTS TO PLANT VEGETATION WITHIN THE 100 FOOT ZONE AS IT IS VIRTUALLY IMPOSSIBLE TO RUN MARITIME PIERS AND WAREHOUSES THROUGH SUCH AN AREA. OUR PENALTY FOR NOT BEING ABLE TO ACCOMODATE VEGETATION MANIFESTS ITSELF IN THE FORM OF A FINE OF \* \$108,900.00 PER ACRE. WE FEEL THAT THE PROPOSED REGULATIONS ARE TOO CONSTRICTING ON PRIVATE SECTOR PORT RELATED BUSINESSES AND ASK THAT A NEW SET OF CRITERIA BE ESTABLISHED IN THIS AREA. WE ARE MORE THAN WILLING TO WORK WITH BALTIMORE CITY IN ESTABLISHING NEW REGULATIONS THAT WILL MUTUALLY BENEFIT ALL CONCERNED.

\* \$2.50 sq. ft. x 43,560 sq. ft. in an acre

P R O C E E D I N G S

1  
2 CHAIRMAN LISS: May I have your attention,  
3 please? Ladies and gentlemen, I want to welcome you  
4 here to the hearing this evening. The hearing is  
5 somewhat unusual. It's being held pursuant to Section  
6 8-1809D of the Critical Areas Law, and it provides that  
7 the Commission shall hold a hearing on the proposed  
8 program in the affected locality when that program has  
9 been delivered to the Commission as the prospective  
10 program of the particular local jurisdiction, and so  
11 this hearing is called pursuant to that section, and we  
12 are prepared to hear from those who have any comment to  
13 make on the proposals as made by the City of Baltimore.

14 Let me first introduce to you the members of  
15 the panel who will be sitting tonight and includes  
16 myself as Chairman, Mr. William Bostian of Wicomico  
17 County, Miss Ardath Cade of the Department of Economic  
18 and Community Development, Mr. Jim Gutman of Anne  
19 Arundel County and Mr. Skip Zahniser of Calvert County.

20 The hearing this evening will begin with an  
21 explanation of the proposals suggested by the City of

*Hunt Reporting Company*

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Severna Park, Maryland 21146  
(301) 647-8300



1 Baltimore, to be made by Miss Mary Dolan who is the head  
2 of the Coastal Resources & Environmental Planning of  
3 the City of Baltimore, and as you will note scattered  
4 around the room are a number of exhibits, in addition  
5 to which there are several other additional information  
6 that will be presented to you, and we have a feeling  
7 that when that has been completed, you will have at  
8 least a basic idea of what it is that the City of  
9 Baltimore is proposing with respect to its critical  
10 areas.

11           Now as to the manner in which the hearing will  
12 be conducted, we have prepared a sheet at which all  
13 persons who attend are asked to note their names and  
14 their addresses and also to indicate whether or not  
15 they wish to testify. Those who do wish to testify, we  
16 request, please, that they come forward and speak into  
17 the microphone on the floor. The reason we're making  
18 that request is because a record is being made of  
19 these proceedings, and the reporter has indicated that  
20 in order to be certain that he has the accurate record  
21 of what has been said and done here today, it is

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1 necessary that anybody who has anything to say speak  
2 directly into the microphone.

3           Please, we ask you, if you can, to keep your  
4 testimony within the limits of approximately five  
5 minutes. We know that's not a great deal of time, but  
6 we have no way of knowing how many people will appear,  
7 and we have no way of knowing how many will want to  
8 testify, and in order to be certain that we are able to  
9 give everyone an opportunity to be heard, we ask you to  
10 restrict what you have to say to any new material that  
11 may be presented after we have begun the hearing. With  
12 those explanations, I'm going to turn the meeting over  
13 to Miss Dolan who will make an explanation to you of  
14 the program as suggested by the City of Baltimore.  
15 Miss Dolan.

16           MISS DOLAN: Good evening Judge Liss and  
17 Commissioners. Welcome to Baltimore. I want to remind  
18 those of you who are here there are extra copies of the  
19 draft proposal in the rear at the table, and those are  
20 available for you to take away from this meeting.

21           I'd urge those of you who are in the back

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1 perhaps to come forward if you are interested in seeing  
2 the slides. Of course, you're welcome to stay where  
3 you are, but it will be easier to see some of the  
4 exhibits if you're a little closer.

5 Baltimore City's Critical Area Management  
6 Program attempts to balance two goals for some of the  
7 great resources we have to offer in Baltimore City.  
8 Let me start with the slides. Can I get the lights?

9 (Whereupon, there was a slide show.)

10 MISS DOLAN: Those goals as we realize, number  
11 one, were on the Chesapeake Bay. Those goals include  
12 the protection of that resource and the contribution to  
13 its cleanup as much as the Baltimore City can do to  
14 protect that resource. And the other main goal is to  
15 revitalize and maintain the Port of Baltimore so that  
16 we can continue the economic growth of this area.

17 To understand existing conditions of the City,  
18 you must really understand the Port of Baltimore. The  
19 Port contributes approximately 79,000 jobs to the City of  
20 Baltimore and surrounding areas. Three hundred million  
21 dollars in state and local taxes are collected in the

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1 Port of Baltimore, and approximately ten percent of all  
2 the goods and services produced in the State of  
3 Maryland are related to the Port.

4 We have fifty-two miles of shoreline in  
5 Baltimore City's Critical Area, eighty-two percent of  
6 which were fully developed by 1945 and virtually ninety  
7 to ninety-five percent are developed now.

8 The existing industrial climate of the City is  
9 somewhat of concern to us. You see the City here as it  
10 was in the 1930's, the Inner Harbor with a very  
11 active wharf right downtown, but between 1980 and 1985  
12 we lost thirty-five thousand jobs. We've lost Maryland  
13 Shipbuilding and Drydock. We've lost the Bethlehem  
14 Steel Key Highway Shipyards and Allied Chemical, and  
15 we've lost Western Electric, four very large employers  
16 for the City of Baltimore. These leave not only vacant  
17 facilities along the shoreline but also leave very  
18 little possibility for natural habitat to take over  
19 in those areas.

20 The City's recovery is based on continuing  
21 improvement of the Maryland Port Administration

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1 Facilities and the expansion of the Port, keeping the  
2 existing industries such as Proctor and Gamble, you see  
3 here and attracting new business and industry, for  
4 instance in the Port Covington area, which we are  
5 trying to do.

6 The other thing we're doing is focusing on the  
7 revitalization of some of the older industrial areas in  
8 the heart of the City for mixed use development such as  
9 you see happening down along in the Canton area now.

10 The environment has, indeed, paid heavily for  
11 the development of the Port of Baltimore. We do not  
12 dismiss that. We have a shoreline that is virtually  
13 completely in structure. There's very little natural  
14 habitat along that shoreline. Most open areas are  
15 covered in either paving or compacted surfaces and  
16 don't really allow for the water quality benefits as  
17 the buffer that the Critical Area seeks to protect  
18 would provide.

19 Very few areas of natural habitat such as this  
20 remains in the City. In fact, only nineteen acres of  
21 hundreds of acres we used to have in the Harbor still

*Hunt Reporting Company*

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1 exist. In fact, we have created additional wetland  
2 habitats in the City, some twenty acres of which since  
3 1980, to compensate for the fill projects that we have  
4 had to accommodate for water dependent uses in the  
5 City, but water quality has suffered from past abuse.  
6 There's no doubt about it. Fortunately, the days of  
7 this kind of activity are at an end.

8 We have, however, a history of polluted  
9 sediments that continues to plague the Harbor and its  
10 water quality. Most of the -- you see the trash  
11 problem which is a continuing problem coming from storm  
12 drains, not only in the City, but throughout the  
13 counties which drain into the City, but also most of  
14 our shoreline is in structure, has been put in concrete  
15 rubble or riprap or stabilized by bulkheads.

16 So in developing our Critical Area Plan we had  
17 three real main objectives -- to retain the buffer and  
18 protect it wherever possible and create new vegetation  
19 along the shoreline in the areas where we have that  
20 opportunity where development currently does not exist,  
21 to assess the requirements of the law in such a way

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1 that it would not constitute an unwarranted hardship on  
2 the needed development, to sustain the City and to  
3 develop a meaningful offset program to assure that that  
4 development would continue to occur and revitalize the  
5 City. To that end and along the lines of the Critical  
6 Area Legislation, we have proposed a series of  
7 development area types related to the law, and this  
8 depicts the entire critical area for the City. We have  
9 resource conservation areas as outlined in the  
10 Legislature. Mainly these are parks and flood plain  
11 properties for the City. We proposed dividing the  
12 intensely developed category, which really composes the  
13 remainder of the City, into two subdividing and into two  
14 different types, the revitalization area in tan which  
15 is basically the downtown area, and I'll describe those  
16 in a little detail in a minute, and the industrial  
17 area, which is shown in gray on this map which indicate  
18 areas of existing industrial development.

19 Let me show you some slides that illustrate  
20 the development area types. The revitalization area  
21 composes about eight miles of our shoreline. This is

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1 the oldest part of the Port and many of these areas  
2 have very shallow lots. You'll see, for instance, in  
3 this case the lots are in most cases less than three  
4 hundred feet deep, and the buffer would be a  
5 substantial part of these lots. There is virtually no  
6 industrial use that is planned, reuse that is planned  
7 for these areas since these areas are old industries,  
8 are small industries, and what we're seeing as  
9 redevelopment proposals are the more mixed use and  
10 commercial kinds of development that you see in the  
11 Inner Harbor.

12           There are urban renewal ordinances governing  
13 the development throughout this area to protect  
14 obviously the City's interest in these areas and to  
15 provide a public walkway extending the length of the  
16 revitalization area. There is no natural buffer  
17 existing in this area, and we would try and do as much  
18 of the buffer as possible associated with new  
19 development, but in this area it is going to be very  
20 difficult due to the density of the land and use and  
21 also the cost of the property which ranges from five

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1 hundred thousand to a million dollars an acre in this  
2 area.

3           The waterfront industrial area conversely is  
4 approximately thirty-five miles, proposes the bulk of  
5 our shoreline, thirty-five miles of the fifty-two miles  
6 of shoreline. It is fully developed and for the most  
7 part almost one hundred percent impervious to runoff.  
8 The rain simply falls on these areas and runs off  
9 mostly in paving and compacted soils. These areas,  
10 however, are larger properties. They have the abilities  
11 in some cases to accommodate a buffer because they have  
12 storage areas on the property. They are zoned for  
13 heavy industry and are used that way, as you can see in  
14 this slide, and for the most part have a structured or  
15 stabilized shoreline of concrete rubble, bulkheads or  
16 other materials.

17           The resource conservation area, which is very  
18 precious to us, is basically, as I said before, composed  
19 of large city parks in natural areas. The remaining  
20 natural areas, recreation areas, that we have developed  
21 and are currently using for the public and areas of

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1 natural vegetation or second growth vegetation now we  
2 want to protect.

3 I think that's the end of the slides, and let  
4 me describe briefly to you what guidelines we would  
5 propose for development in each of those areas.

6 The map you see here depicts those types of  
7 areas. As I spoke of before, the revitalization area  
8 which goes from the corner of Boston and Clinton Streets  
9 around to the southern boundary of the Key Highway  
10 property; the industrial area which composes most of the  
11 area shown in gray; and the resource conservation areas  
12 which are focused on the Patapsco River proper, the  
13 Gwynns Falls as it comes down and meets the Bay -- and  
14 that's the estuary portion here -- the Patapsco River;  
15 Middle Branch Park, which is part of this; the head  
16 waters of Colgate Creek which are park property; and  
17 Fort Armistead Park, we're proposing for resource  
18 conservation.

19 The buffer and the Critical Area are shown  
20 schematically here. The Critical Area is a thousand  
21 feet in length all the way around up the tidal limit of

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1 the tributary streams. The buffer area is the  
2 delineated by the State Legislation as one hundred feet  
3 of that one thousand feet.

4 The area that we would like to protect, or in  
5 the City, as much as possible recreate, is an area that  
6 has a natural shoreline as much as possible, has an  
7 intertidal zone between high tide and low tide where  
8 grasses can grow, and then a forest in the area behind  
9 that that will not only allow runoff to be filtered  
10 through that area but also will provide a habitat in and  
11 of itself.

12 The development guidelines we propose in the  
13 revitalization area, as I mentioned in the tan on the  
14 map -- the first thing I mention is that all existing  
15 development is grandfathered and will not have to meet  
16 any of these requirements, and that the only people who  
17 will have to meet these requirements are those that are  
18 making significant developments. Significant  
19 development is defined as they are investing fifty  
20 percent or more of their assessed value in the property  
21 as far as the revitalization of that property is

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1 concerned, or they are disturbing more than five  
2 thousand square feet in the buffer, the first hundred  
3 feet away from the water, or disturbing more than ten  
4 thousand square feet in total on the property. So if  
5 you meet those categories of significant development,  
6 then you would have to meet the guidelines that we have  
7 here. If your development is smaller than that, if  
8 you're putting up a garage in your back yard or a parking  
9 pad or a swimming pool or something like that, it would  
10 not be controlled. You're not doing significant  
11 development. We would review it, and in most cases we  
12 might have a suggestion or two, but there will be no  
13 regulatory effort at getting you to meet these  
14 requirements.

15 In the revitalization area, basically we're  
16 looking at in the area I said, as I said, is very  
17 shallow and for the most part was really -- it's going  
18 to be very difficult for us to keep buildings out of  
19 the buffer. There are many many buildings there  
20 already now. What we're proposing is to allow  
21 buildings in the buffer only if the developer can

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1 provide an offset to the City, and this is required by  
2 the legislation. So we have an area where we would  
3 allow building in the buffer. We would try and get the  
4 developer to incorporate as much vegetation into the  
5 buffer as possible. We would exclude the promenade  
6 easements which is required throughout the  
7 revitalization area from their obligations. So this  
8 area would not be assessed at all. Any area that they  
9 put in vegetation within the buffer would be subtracted  
10 from the total obligation as well. Any area that was  
11 left would be assessed at a rate of \$2.50 a square foot  
12 and put into a fund which would be used to create  
13 wildlife sanctuaries, wooded areas, whatever we can  
14 create in these resource conservation areas and also  
15 along the existing industrial shoreline as much as we  
16 could. We're going to try and encourage industrial  
17 developers and have actually had some come forward who  
18 are interested in putting this vegetation along the  
19 shoreline so that they could create habitat even though  
20 they are not required to by law because they may not be  
21 doing significant development.

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1           In the waterfront industrial area, we  
2 essentially have two kinds of situations. We have a  
3 buffer area that has some vegetation in it. We also  
4 have areas that have no vegetation. For the most part  
5 that's the case -- no vegetation in the buffer. If we  
6 have a water-dependent facility being constructed in  
7 this area, for instance, we would -- that would be  
8 allowed to be constructed because its water dependent  
9 use automatically would allow that to be constructed in  
10 the buffer, but we would ask that the same amount of  
11 land that was used for the construction there be  
12 replaced in vegetation preferably on the property, if  
13 possible, or in this case we would probably allow them  
14 to go outside the buffer with that vegetation because  
15 of the limited space. If this area were already in use,  
16 we may even allow them to put most of it outside of the  
17 buffer. There's a lot of flexibility built into this,  
18 and we would have to accommodate it to the site, the  
19 individual sites that would be proposed on.

20           And virtually the same situation would exist  
21 here where there's no vegetation in the buffer, although

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1 they may, if this area is not already used for some  
2 purpose, they may put all that vegetation in the  
3 buffer.

4 In areas where, if they can't put any  
5 vegetation on the property at all, then we would ask  
6 them to contribute at the rate of \$2.50 a square foot  
7 for the portion of the buffer that they are building.  
8 If a non-water dependent use is proposed, we would  
9 obviously encourage it to be built outside of the  
10 buffer. If it is built outside of the buffer, there is  
11 no obligation on the part of that developer for the  
12 buffer requirements. We do have storm water management  
13 requirements that are uniform throughout the area which  
14 I'll explain in a minute.

15 If that buffer -- if that -- for reasons of  
16 site constraints that development must enter the  
17 buffer, we would immediately ask that that non-water  
18 dependent use replace an amount equal -- we would  
19 immediately ask that that development revegetate fifty  
20 percent of the buffer. If there's already vegetation  
21 in the buffer, then they would only have to do the

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1 remainder of that fifty percent on that property so it  
2 would be -- if they already have vegetation it would be  
3 a very small requirement. If they don't have  
4 vegetation on the property already and they must, for  
5 reasons of site constraints, put their building in the  
6 buffer, then we would ask that they do fifty percent of  
7 the buffer in vegetation immediately.

8 Now if there are other developments already  
9 existing in here, again, we would have some  
10 flexibility to put the vegetation elsewhere on the  
11 property as long as a substantial portion of it happens  
12 in the buffer. The idea is to make sure that these  
13 vegetation areas do touch the water's edge so that we  
14 create that habitat that is so vital to the Bay.

15 In the resource conservation area, as I said,  
16 most public park lands and in some cases flood plain  
17 lands upon which you really can't build anything anyway  
18 because of the flood plain restrictions, we would ask  
19 that the only development that is allowed to occur  
20 there would be a public facility for public use such as  
21 for instance the New Water Resources Center that we

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1 built and the Middle Branch. We would obviously ask  
2 those areas to be restricted to areas of -- keep out of  
3 the areas of existing trees so that we maintain  
4 existing habitat in the area. We would also ask that  
5 any development in the buffer be restricted to water-  
6 dependent development: boat ramps, access to a pier, a  
7 public walkway, for instance. Outside of the buffer,  
8 again, only for public facilities for public use, we  
9 would ask that vegetation be planted or contributed to  
10 an offset fund on a one-to-one basis for the area  
11 disturbed outside of the buffer, on a two-to-one basis  
12 for the area inside the buffer. So there's an obvious  
13 disincentive to stay away from the buffer. That's what  
14 we would like to do -- keep people out of the buffer.  
15 That's the intent of the law.

16           The storm water pollutant reduction  
17 requirements for the intensely developed areas require  
18 -- the state law requires that we reduce for all new  
19 development the pollutant loadings from the properties  
20 by ten percent. In other words, your new development  
21 should contribute only ninety percent of the pollution

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1 contributed by the previous development. That can be  
2 accomplished in a number of ways.

3           We've got a Standard Practices Manual that can  
4 show you ways to do that. We've got a standard  
5 methodology for determining that. If you feel that you  
6 have a reason to say that you're reducing pollution  
7 more than our model shows, you can certainly prove that  
8 to us by your own sampling or other source of accepted  
9 methodology, but we do have a simple straight forward  
10 way of calculating that so you don't have to get  
11 involved with any high-powered scientific studies  
12 involved in that.

13           The offset program, as I said, is a flexible  
14 program. Right now we've got it delineated such that  
15 we really do want plant areas in these barren areas.  
16 For instance, there are flood plain areas where we have  
17 removed houses, bought and relocated homes because of  
18 the flood hazard. Those areas are virtually barren.  
19 There are a number of landfills that are virtually  
20 barren and don't provide any wildlife habitat. Now we  
21 would like to rejuvenate those areas -- plant them.

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1 The \$2.50 a square foot provides money not only for the  
2 planting but for careful environmental design of those  
3 areas and for maintenance of those areas so that they  
4 can continue to be a productive part of the habitat,  
5 and we can replace any trees that die or things of that  
6 sort.

7 I think that's a pretty full and complete  
8 description of the program. I'd be happy to answer any  
9 questions of the Commission.

10 CHAIRMAN LISS: Anyone on the Commission have  
11 any questions?

12 (No response.)

13 CHAIRMAN LISS: All right. Thank you very  
14 much, Miss Dolan.

15 Now the first person who indicated they want  
16 to be heard is Mr. -- the Rukert Terminal Company, Mr.  
17 William Bienert. Mr. Bienert. How are you, sir?

18 MR. BIENERT: Good evening, sir. My name is  
19 William Bienert, and I'm Vice President of Rukert  
20 Terminals Corporation. Unfortunately, tonight the  
21 gentleman that was supposed to be here was Mr. Bud

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1 Nixon or George Nixon, our Executive Vice President,  
2 who's fully aware and fully involved in the state and  
3 city governments, if you will, and all the programs,  
4 and he generally is the spokesman for our facility.  
5 However, due to unforeseen circumstances, he is  
6 unavailable tonight so he's requested me to come before  
7 you and submit the following. This will take  
8 approximately maybe a minute.

9 I have come here tonight representing Rukert  
10 Terminals Corporation and will express our concern  
11 about the negative impact of the Baltimore City  
12 Critical Area Management Program. Page 2 of the draft  
13 report states: "That the City is encouraging the  
14 redevelopment of the waterfront industrial area for  
15 part of its city-wide effort to retain local jobs for  
16 industry." The requirements forced upon the waterfront  
17 industries under this new program seem to be in  
18 conflict with the statement. Not only is the ten  
19 percent storm water quality improvement in the thousand-  
20 foot buffer zone of concern to us, but the suggested  
21 one hundred foot buffer zone is almost impossible to

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1 live with. Being a long established waterfront family  
2 business of approximately sixty-five years in Baltimore  
3 City, we feel threatened by the requirements to plant  
4 vegetation within the hundred-foot zone as it is  
5 virtually impossible to run maritime piers and  
6 warehouses through such an area. Our penalty for not  
7 being able to accommodate vegetation itself in the form  
8 of a fine of \$108,900.00 per acre, and that's \$250.00  
9 per square foot for 43,550 square feet -- or sixty  
10 square feet to the acre.

11 We feel that the proposed regulations are too  
12 restricting on private-sector, port-related businesses  
13 and ask that a new set of criteria be established in  
14 this area. We are more than willing to work with  
15 Baltimore City in establishing new regulations that  
16 will mutually benefit all concerned.

17 CHAIRMAN LISS: All right. Thank you Mr.  
18 Bienert. Let me make one point to you.

19 Anyone who's here and who wants to be heard  
20 and who wants at some later date to file a written  
21 statement in addition to the one that you've made

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1 today, we'll keep the record open for approximately two  
2 weeks so that if Mr. Nixon wants to file an additional  
3 information with us, we'll be glad to have it, and I  
4 would assume that the City will be in touch with you  
5 and will be discussing your objections.

6 MR. BIENERT: All right, sir.

7 CHAIRMAN LISS: And let's hope that some way  
8 to work out the objections will be found.

9 MR. BIENERT: Thank you, sir.

10 CHAIRMAN LISS: Thank you very much for coming  
11 down. We appreciate it

12 MR. BIENERT: Thank you.

13 CHAIRMAN LISS: Now the second gentleman who  
14 asked to be heard is a gentleman from whom we've heard  
15 frequently, Mr. Steve Bunker of the Chesapeake Bay  
16 Foundation. Mr. Bunker.

17 MR. BUNKER: Judge Liss and members of the  
18 Commission, my name is Steve Bunker with the Chesapeake  
19 Bay Foundation.

20 First off, I'd like to congratulate Baltimore  
21 City in being the first Critical Areas Plan to be

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1 submitted to the Commission. I don't think that's a  
2 reflection on any of the other jurisdictions, but I do  
3 think it shows a commitment of Baltimore City to the  
4 Critical Areas Program. We would like to submit more  
5 detailed comments, written comments, to the Commission  
6 at a later date, but I would like to express one  
7 concern of the Foundation. We do have some concerns  
8 about the buffer offset provisions in the Baltimore  
9 City plan. We agree with Mary Dolan that buffer  
10 offsets are certainly appropriate for an urban  
11 environment where the ability of the soil to absorb  
12 water is limited, and many of these areas already have  
13 storm water management systems. In addition, the  
14 habitat potential is very minimal for a buffer in an  
15 urban environment. However, we are concerned about the  
16 precedent that buffer offsets may have for the  
17 development and approval of later plans. We are  
18 concerned that other jurisdictions outside of urban  
19 environments may consider the buffer offset provisions  
20 as an accepted policy of the Commission and apply them  
21 to more rural areas, particularly limited development

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1 areas or resource conservation areas.

2 We are not suggesting that Baltimore City  
3 change their plan, and we're not suggesting that the  
4 Commission not approve the plan. We are suggesting  
5 that the Commission adopt a policy on approval of the  
6 Baltimore City plan as to under what circumstances they  
7 are going to accept buffer offsets. We would encourage  
8 you to only accept them in an urban area, particularly  
9 in an intensely developed area, and not to consider  
10 buffer offsets in limited development areas or resource  
11 conservation areas. Once again, we are not objecting  
12 to Baltimore City's use of buffer offsets, but we are  
13 concerned with the precedent that offsets may provide  
14 for future development and approval of plans. As I  
15 said, we'll submit comments at a later date. Thank  
16 you.

17 CHAIRMAN LISS: All right, fine. Obviously,  
18 the Foundation will have the same two-week period in  
19 which to file its written comments, and I might suggest  
20 that if you have specific ways in which to achieve the  
21 result that you suggest, the Commission and its

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1 Committee tonight will be more than happy to look them  
2 over and to consider them in deciding whether or not to  
3 approve the plan as prepared.

4 Is there anyone else who is here this evening  
5 who wants to be heard? We've got a number of people  
6 who indicated by signing in they are here, but so far  
7 the only two who have indicated they wanted to be heard  
8 are the two that I've already called on. Is there  
9 anyone else who wants to make any comment?

10 What is it the preacher says? Speak now or  
11 forever hold your peace.

12 MISS DOLAN: Not forever, just until the next  
13 public hearing.

14 (Laughter.)

15 MISS DOLAN: Hopefully, before the City  
16 Council.

17 CHAIRMAN LISS: All right. I think what we'll  
18 do in order to make certain that we're not foreclosing  
19 anyone from an opportunity to be heard is to keep the  
20 meeting open until eight o'clock to see if anybody else  
21 straggles in, and if anyone else wants to be heard in

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1 the meantime, I will ask the reporter to remain, will  
2 ask you to remain, and it might not be a bad idea maybe  
3 if we could enter into an informal discussion with Mary  
4 and with the other people who are interested and see if  
5 we can come up with a solution to some of the problems  
6 that undoubtedly exist when you are trying to draw a  
7 program that's going to cover everybody in every  
8 situation. We'll take a ten-minute recess and then see  
9 if anyone else has come in. All right.

10 (Whereupon, a short recess was taken.)

11 CHAIRMAN LISS: There being no further  
12 business before this hearing at the moment, I hereby  
13 exercise my prerogative and declare the hearing closed.  
14 Thank you very much for coming. We appreciate it, and  
15 I'm sure we'll be hearing more about this as time goes  
16 on.

17 (Whereupon, at 8:00 p.m. the above-  
18 entitled hearing was adjourned.)  
19  
20  
21

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March 12, 1987

Mr. Larry Reich  
Director  
Baltimore Department of Planning  
222 East Saratoga Street  
Baltimore, Maryland 21201

Dear Mr. Reich:

Enclosed you will find a copy of my testimony on Baltimore City's Critical Area Management Program, to be entered into the record of the Chesapeake Bay Critical Area Public Hearing scheduled for tonight at the War Memorial Building.

It would be appreciated if you would forward our position to the Critical Area Commission Hearing Officer. Thank you.

Sincerely,

David A. Wagner  
Port Administrator

DAW/kyj

MAR 12 1987

MPA TESTIMONY ON BALTIMORE CITY  
CRITICAL AREAS REGULATIONS  
CHESAPEAKE BAY CRITICAL AREA COMMISSION PUBLIC HEARING  
March 12, 1987

My name is David Wagner and I am the Administrator of the Maryland Port Administration. I am submitting testimony tonight on behalf of the Private Port Industry of Baltimore.

I have reviewed the proposed critical area program for Baltimore City and I fully support its objectives. I recognize that there is indeed a need to improve the water quality of the Bay and to protect the wildlife habitat along the shorelines. MPA is now in the process of working very closely with the State Critical Area Commission to insure that future development of our facilities is consistent with that program.

However, as with the implementation of any program of this nature, there must be a balancing of both public and private needs. A very large part of the responsibility we bear as the Maryland Port Administration is to represent the interests of the Private Port Industry. As such, our function is to work with the private facility owners in helping them to remain competitive which in turn insures the long-term development of the port. It is only through further facility improvements and new development that the Port of Baltimore can continue to improve its competitive position in the international transportation marketplace. An improved competitive position means more cargo,

Page Two

more jobs and increased revenue to the State of Maryland, Baltimore City and its citizens.

For this reason I must express our serious concerns with the \$2.50 per square foot charge that is proposed for port development within the buffer when new vegetation cannot be established. Port development cannot take place anywhere but in the buffer; therefore, by its very nature, port development does not have the choice but to locate in the buffer area.

Futhermore, this fee is being implemented at the time when the maritime industry is facing a difficult financial situation. The local maritime industry has been facing a fiercely competitive environment and must be extremely cost conscious if it is to remain viable. As a result, MPA has lowered its charges at the state owned terminals. The proposed fee by the Critical Area Program would make it prohibitive for the maritime industry to fund the type of development projects that they need to implement to remain competitive. It would increase the land costs for maritime development by over \$100,000 an acre, thereby making such improvements cost prohibitive.

Page Three

Such a cost increase will represent significant additional cost to prospective developers and will have a significant impact on the competitive position of the industry which funds itself in direct competition with other ports where land is already less expensive and cost factors are more favorable. Given this situation the port as a whole will suffer and our position as an international port will be compromised.

It is with this thought in mind that I ask the Baltimore City and Critical Area Commission to consider the serious implications of the proposed fee to the port industry and to reconsider the proposed offset charge of \$2.50 per square foot.

Thank you for your consideration.

CHESAPEAKE BAY CRITICAL AREA COMMISSION

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In the matter of Baltimore City :  
Critical Area Protection Program :  
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Thursday, March 12, 1987

Pursuant to Notice, the above-entitled hearing was held before SOLOMON LISS, CHAIRMAN, at the War Memorial Building, Paul C. Wolman Room, Lexington and Gay Streets, Baltimore, Maryland 21202, commencing at 7:15 p.m.

PRESENT:

Wicomico County

ARDATH CADE  
Assistant Secretary, Department of Economic  
and Community Development

ALBERT "SKIP" ZAHNISER  
Calvert County

JAMES E. GUTMAN  
Anne Arundel County

MARY G. DOLAN  
Chief, Coastal Resources Planning

REPORTED BY: Geoffrey L. Hunt

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P R O C E E D I N G S

1  
2 CHAIRMAN LISS: May I have your attention,  
3 please? Ladies and gentlemen, I want to welcome you  
4 here to the hearing this evening. The hearing is  
5 somewhat unusual. It's being held pursuant to Section  
6 8-1809D of the Critical Areas Law, and it provides that  
7 the Commission shall hold a hearing on the proposed  
8 program in the affected locality when that program has  
9 been delivered to the Commission as the prospective  
10 program of the particular local jurisdiction, and so  
11 this hearing is called pursuant to that section, and we  
12 are prepared to hear from those who have any comment to  
13 make on the proposals as made by the City of Baltimore.

14 Let me first introduce to you the members of  
15 the panel who will be sitting tonight and includes  
16 myself as Chairman, Mr. William Bostian of Wicomico  
17 County, Miss Ardath Cade of the Department of Economic  
18 and Community Development, Mr. Jim Gutman of Anne  
19 Arundel County and Mr. Skip Zahniser of Calvert County.

20 The hearing this evening will begin with an  
21 explanation of the proposals suggested by the City of

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1 Baltimore, to be made by Miss Mary Dolan who is the head  
2 of the Coastal Resources & Environmental Planning of  
3 the City of Baltimore, and as you will note scattered  
4 around the room are a number of exhibits, in addition  
5 to which there are several other additional information  
6 that will be presented to you, and we have a feeling  
7 that when that has been completed, you will have at  
8 least a basic idea of what it is that the City of  
9 Baltimore is proposing with respect to its critical  
10 areas.

11 Now as to the manner in which the hearing will  
12 be conducted, we have prepared a sheet at which all  
13 persons who attend are asked to note their names and  
14 their addresses and also to indicate whether or not  
15 they wish to testify. Those who do wish to testify, we  
16 request, please, that they come forward and speak into  
17 the microphone on the floor. The reason we're making  
18 that request is because a record is being made of  
19 these proceedings, and the reporter has indicated that  
20 in order to be certain that he has the accurate record  
21 of what has been said and done here today, it is

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1 necessary that anybody who has anything to say speak  
2 directly into the microphone.

3           Please, we ask you, if you can, to keep your  
4 testimony within the limits of approximately five  
5 minutes. We know that's not a great deal of time, but  
6 we have no way of knowing how many people will appear,  
7 and we have no way of knowing how many will want to  
8 testify, and in order to be certain that we are able to  
9 give everyone an opportunity to be heard, we ask you to  
10 restrict what you have to say to any new material that  
11 may be presented after we have begun the hearing. With  
12 those explanations, I'm going to turn the meeting over  
13 to Miss Dolan who will make an explanation to you of  
14 the program as suggested by the City of Baltimore.  
15 Miss Dolan.

16           MISS DOLAN: Good evening Judge Liss and  
17 Commissioners. Welcome to Baltimore. I want to remind  
18 those of you who are here there are extra copies of the  
19 draft proposal in the rear at the table, and those are  
20 available for you to take away from this meeting.

21           I'd urge those of you who are in the back

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1 perhaps to come forward if you are interested in seeing  
2 the slides. Of course, you're welcome to stay where  
3 you are, but it will be easier to see some of the  
4 exhibits if you're a little closer.

5 Baltimore City's Critical Area Management  
6 Program attempts to balance two goals for some of the  
7 great resources we have to offer in Baltimore City.  
8 Let me start with the slides. Can I get the lights?

9 (Whereupon, there was a slide show.)

10 MISS DOLAN: Those goals as we realize, number  
11 one, were on the Chesapeake Bay. Those goals include  
12 the protection of that resource and the contribution to  
13 its cleanup as much as the Baltimore City can do to  
14 protect that resource. And the other main goal is to  
15 revitalize and maintain the Port of Baltimore so that  
16 we can continue the economic growth of this area.

17 To understand existing conditions of the City,  
18 you must really understand the Port of Baltimore. The  
19 Port contributes approximately 79,000 jobs to the City of  
20 Baltimore and surrounding areas. Three hundred million  
21 dollars in state and local taxes are collected in the

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1 Port of Baltimore, and approximately ten percent of all  
2 the goods and services produced in the State of  
3 Maryland are related to the Port.

4 We have fifty-two miles of shoreline in  
5 Baltimore City's Critical Area, eighty-two percent of  
6 which were fully developed by 1945 and virtually ninety  
7 to ninety-five percent are developed now.

8 The existing industrial climate of the City is  
9 somewhat of concern to us. You see the City here as it  
10 was in the 1930's, the Inner Harbor with a very  
11 active wharf right downtown, but between 1980 and 1985  
12 we lost thirty-five thousand jobs. We've lost Maryland  
13 Shipbuilding and Drydock. We've lost the Bethlehem  
14 Steel Key Highway Shipyards and Allied Chemical, and  
15 we've lost Western Electric, four very large employers  
16 for the City of Baltimore. These leave not only vacant  
17 facilities along the shoreline but also leave very  
18 little possibility for natural habitat to take over  
19 in those areas.

20 The City's recovery is based on continuing  
21 improvement of the Maryland Port Administration

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1 Facilities and the expansion of the Port, keeping the  
2 existing industries such as Proctor and Gamble, you see  
3 here and attracting new business and industry, for  
4 instance in the Port Covington area, which we are  
5 trying to do.

6 The other thing we're doing is focusing on the  
7 revitalization of some of the older industrial areas in  
8 the heart of the City for mixed use development such as  
9 you see happening down along in the Canton area now.

10 The environment has, indeed, paid heavily for  
11 the development of the Port of Baltimore. We do not  
12 dismiss that. We have a shoreline that is virtually  
13 completely in structure. There's very little natural  
14 habitat along that shoreline. Most open areas are  
15 covered in either paving or compacted surfaces and  
16 don't really allow for the water quality benefits as  
17 the buffer that the Critical Area seeks to protect  
18 would provide.

19 Very few areas of natural habitat such as this  
20 remains in the City. In fact, only nineteen acres of  
21 hundreds of acres we used to have in the Harbor still

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1 exist. In fact, we have created additional wetland  
2 habitats in the City, some twenty acres of which since  
3 1980, to compensate for the fill projects that we have  
4 had to accommodate for water dependent uses in the  
5 City, but water quality has suffered from past abuse.  
6 There's no doubt about it. Fortunately, the days of  
7 this kind of activity are at an end.

8 We have, however, a history of polluted  
9 sediments that continues to plague the Harbor and its  
10 water quality. Most of the -- you see the trash  
11 problem which is a continuing problem coming from storm  
12 drains, not only in the City, but throughout the  
13 counties which drain into the City, but also most of  
14 our shoreline is in structure, has been put in concrete  
15 rubble or riprap or stabilized by bulkheads.

16 So in developing our Critical Area Plan we had  
17 three real main objectives -- to retain the buffer and  
18 protect it wherever possible and create new vegetation  
19 along the shoreline in the areas where we have that  
20 opportunity where development currently does not exist,  
21 to assess the requirements of the law in such a way

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1 that it would not constitute an unwarranted hardship on  
2 the needed development, to sustain the City and to  
3 develop a meaningful offset program to assure that that  
4 development would continue to occur and revitalize the  
5 City. To that end and along the lines of the Critical  
6 Area Legislation, we have proposed a series of  
7 development area types related to the law, and this  
8 depicts the entire critical area for the City. We have  
9 resource conservation areas as outlined in the  
10 Legislature. Mainly these are parks and flood plain  
11 properties for the City. We proposed dividing the  
12 intensely developed category, which really composes the  
13 remainder of the City, into two subdividing and into two  
14 different types, the revitalization area in tan which  
15 is basically the downtown area, and I'll describe those  
16 in a little detail in a minute, and the industrial  
17 area, which is shown in gray on this map which indicate  
18 areas of existing industrial development.

19 Let me show you some slides that illustrate  
20 the development area types. The revitalization area  
21 composes about eight miles of our shoreline. This is

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1 the oldest part of the Port and many of these areas  
2 have very shallow lots. You'll see, for instance, in  
3 this case the lots are in most cases less than three  
4 hundred feet deep, and the buffer would be a  
5 substantial part of these lots. There is virtually no  
6 industrial use that is planned, reuse that is planned  
7 for these areas since these areas are old industries,  
8 are small industries, and what we're seeing as  
9 redevelopment proposals are the more mixed use and  
10 commercial kinds of development that you see in the  
11 Inner Harbor.

12           There are urban renewal ordinances governing  
13 the development throughout this area to protect  
14 obviously the City's interest in these areas and to  
15 provide a public walkway extending the length of the  
16 revitalization area. There is no natural buffer  
17 existing in this area, and we would try and do as much  
18 of the buffer as possible associated with new  
19 development, but in this area it is going to be very  
20 difficult due to the density of the land and use and  
21 also the cost of the property which ranges from five

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1 hundred thousand to a million dollars an acre in this  
2 area.

3           The waterfront industrial area conversely is  
4 approximately thirty-five miles, proposes the bulk of  
5 our shoreline, thirty-five miles of the fifty-two miles  
6 of shoreline. It is fully developed and for the most  
7 part almost one hundred percent impervious to runoff.  
8 The rain simply falls on these areas and runs off  
9 mostly in paving and compacted soils. These areas,  
10 however, are larger properties. They have the abilities  
11 in some cases to accommodate a buffer because they have  
12 storage areas on the property. They are zoned for  
13 heavy industry and are used that way, as you can see in  
14 this slide, and for the most part have a structured or  
15 stabilized shoreline of concrete rubble, bulkheads or  
16 other materials.

17           The resource conservation area, which is very  
18 precious to us, is basically, as I said before, composed  
19 of large city parks in natural areas. The remaining  
20 natural areas, recreation areas, that we have developed  
21 and are currently using for the public and areas of

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1 natural vegetation or second growth vegetation now we  
2 want to protect.

3 I think that's the end of the slides, and let  
4 me describe briefly to you what guidelines we would  
5 propose for development in each of those areas.

6 The map you see here depicts those types of  
7 areas. As I spoke of before, the revitalization area  
8 which goes from the corner of Boston and Clinton Streets  
9 around to the southern boundary of the Key Highway  
10 property; the industrial area which composes most of the  
11 area shown in gray; and the resource conservation areas  
12 which are focused on the Patapsco River proper, the  
13 Gwynns Falls as it comes down and meets the Bay -- and  
14 that's the estuary portion here -- the Patapsco River;  
15 Middle Branch Park, which is part of this; the head  
16 waters of Colgate Creek which are park property; and  
17 Fort Armistead Park, we're proposing for resource  
18 conservation.

19 The buffer and the Critical Area are shown  
20 schematically here. The Critical Area is a thousand  
21 feet in length all the way around up the tidal limit of

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1 the tributary streams. The buffer area is the  
2 delineated by the State Legislation as one hundred feet  
3 of that one thousand feet.

4 The area that we would like to protect, or in  
5 the City, as much as possible recreate, is an area that  
6 has a natural shoreline as much as possible, has an  
7 intertidal zone between high tide and low tide where  
8 grasses can grow, and then a forest in the area behind  
9 that that will not only allow runoff to be filtered  
10 through that area but also will provide a habitat in and  
11 of itself.

12 The development guidelines we propose in the  
13 revitalization area, as I mentioned in the tan on the  
14 map -- the first thing I mention is that all existing  
15 development is grandfathered and will not have to meet  
16 any of these requirements, and that the only people who  
17 will have to meet these requirements are those that are  
18 making significant developments. Significant  
19 development is defined as they are investing fifty  
20 percent or more of their assessed value in the property  
21 as far as the revitalization of that property is

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1 concerned, or they are disturbing more than five  
2 thousand square feet in the buffer, the first hundred  
3 feet away from the water, or disturbing more than ten  
4 thousand square feet in total on the property. So if  
5 you meet those categories of significant development,  
6 then you would have to meet the guidelines that we have  
7 here. If your development is smaller than that, if  
8 you're putting up a garage in your back yard or a parking  
9 pad or a swimming pool or something like that, it would  
10 not be controlled. You're not doing significant  
11 development. We would review it, and in most cases we  
12 might have a suggestion or two, but there will be no  
13 regulatory effort at getting you to meet these  
14 requirements.

15 In the revitalization area, basically we're  
16 looking at in the area I said, as I said, is very  
17 shallow and for the most part was really -- it's going  
18 to be very difficult for us to keep buildings out of  
19 the buffer. There are many many buildings there  
20 already now. What we're proposing is to allow  
21 buildings in the buffer only if the developer can

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1 provide an offset to the City, and this is required by  
2 the legislation. So we have an area where we would  
3 allow building in the buffer. We would try and get the  
4 developer to incorporate as much vegetation into the  
5 buffer as possible. We would exclude the promenade  
6 easements which is required throughout the  
7 revitalization area from their obligations. So this  
8 area would not be assessed at all. Any area that they  
9 put in vegetation within the buffer would be subtracted  
10 from the total obligation as well. Any area that was  
11 left would be assessed at a rate of \$2.50 a square foot  
12 and put into a fund which would be used to create  
13 wildlife sanctuaries, wooded areas, whatever we can  
14 create in these resource conservation areas and also  
15 along the existing industrial shoreline as much as we  
16 could. We're going to try and encourage industrial  
17 developers and have actually had some come forward who  
18 are interested in putting this vegetation along the  
19 shoreline so that they could create habitat even though  
20 they are not required to by law because they may not be  
21 doing significant development.

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1           In the waterfront industrial area, we  
2 essentially have two kinds of situations. We have a  
3 buffer area that has some vegetation in it. We also  
4 have areas that have no vegetation. For the most part  
5 that's the case -- no vegetation in the buffer. If we  
6 have a water-dependent facility being constructed in  
7 this area, for instance, we would -- that would be  
8 allowed to be constructed because its water dependent  
9 use automatically would allow that to be constructed in  
10 the buffer, but we would ask that the same amount of  
11 land that was used for the construction there be  
12 replaced in vegetation preferably on the property, if  
13 possible, or in this case we would probably allow them  
14 to go outside the buffer with that vegetation because  
15 of the limited space. If this area were already in use,  
16 we may even allow them to put most of it outside of the  
17 buffer. There's a lot of flexibility built into this,  
18 and we would have to accommodate it to the site, the  
19 individual sites that would be proposed on.

20           And virtually the same situation would exist  
21 here where there's no vegetation in the buffer, although

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1 they may, if this area is not already used for some  
2 purpose, they may put all that vegetation in the  
3 buffer.

4 In areas where, if they can't put any  
5 vegetation on the property at all, then we would ask  
6 them to contribute at the rate of \$2.50 a square foot  
7 for the portion of the buffer that they are building.  
8 If a non-water dependent use is proposed, we would  
9 obviously encourage it to be built outside of the  
10 buffer. If it is built outside of the buffer, there is  
11 no obligation on the part of that developer for the  
12 buffer requirements. We do have storm water management  
13 requirements that are uniform throughout the area which  
14 I'll explain in a minute.

15 If that buffer -- if that -- for reasons of  
16 site constraints that development must enter the  
17 buffer, we would immediately ask that that non-water  
18 dependent use replace an amount equal -- we would  
19 immediately ask that that development revegetate fifty  
20 percent of the buffer. If there's already vegetation  
21 in the buffer, then they would only have to do the

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1 remainder of that fifty percent on that property so it  
2 would be -- if they already have vegetation it would be  
3 a very small requirement. If they don't have  
4 vegetation on the property already and they must, for  
5 reasons of site constraints, put their building in the  
6 buffer, then we would ask that they do fifty percent of  
7 the buffer in vegetation immediately.

8 Now if there are other developments already  
9 existing in here, again, we would have some  
10 flexibility to put the vegetation elsewhere on the  
11 property as long as a substantial portion of it happens  
12 in the buffer. The idea is to make sure that these  
13 vegetation areas do touch the water's edge so that we  
14 create that habitat that is so vital to the Bay.

15 In the resource conservation area, as I said,  
16 most public park lands and in some cases flood plain  
17 lands upon which you really can't build anything anyway  
18 because of the flood plain restrictions, we would ask  
19 that the only development that is allowed to occur  
20 there would be a public facility for public use such as  
21 for instance the New Water Resources Center that we

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1 built and the Middle Branch. We would obviously ask  
2 those areas to be restricted to areas of -- keep out of  
3 the areas of existing trees so that we maintain  
4 existing habitat in the area. We would also ask that  
5 any development in the buffer be restricted to water-  
6 dependent development: boat ramps, access to a pier, a  
7 public walkway, for instance. Outside of the buffer,  
8 again, only for public facilities for public use, we  
9 would ask that vegetation be planted or contributed to  
10 an offset fund on a one-to-one basis for the area  
11 disturbed outside of the buffer, on a two-to-one basis  
12 for the area inside the buffer. So there's an obvious  
13 disincentive to stay away from the buffer. That's what  
14 we would like to do -- keep people out of the buffer.  
15 That's the intent of the law.

16           The storm water pollutant reduction  
17 requirements for the intensely developed areas require  
18 -- the state law requires that we reduce for all new  
19 development the pollutant loadings from the properties  
20 by ten percent. In other words, your new development  
21 should contribute only ninety percent of the pollution

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1 contributed by the previous development. That can be  
2 accomplished in a number of ways.

3           We've got a Standard Practices Manual that can  
4 show you ways to do that. We've got a standard  
5 methodology for determining that. If you feel that you  
6 have a reason to say that you're reducing pollution  
7 more than our model shows, you can certainly prove that  
8 to us by your own sampling or other source of accepted  
9 methodology, but we do have a simple straight forward  
10 way of calculating that so you don't have to get  
11 involved with any high-powered scientific studies  
12 involved in that.

13           The offset program, as I said, is a flexible  
14 program. Right now we've got it delineated such that  
15 we really do want plant areas in these barren areas.  
16 For instance, there are flood plain areas where we have  
17 removed houses, bought and relocated homes because of  
18 the flood hazard. Those areas are virtually barren.  
19 There are a number of landfills that are virtually  
20 barren and don't provide any wildlife habitat. Now we  
21 would like to rejuvenate those areas -- plant them.

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1 The \$2.50 a square foot provides money not only for the  
2 planting but for careful environmental design of those  
3 areas and for maintenance of those areas so that they  
4 can continue to be a productive part of the habitat,  
5 and we can replace any trees that die or things of that  
6 sort.

7 I think that's a pretty full and complete  
8 description of the program. I'd be happy to answer any  
9 questions of the Commission.

10 CHAIRMAN LISS: Anyone on the Commission have  
11 any questions?

12 (No response.)

13 CHAIRMAN LISS: All right. Thank you very  
14 much, Miss Dolan.

15 Now the first person who indicated they want  
16 to be heard is Mr. -- the Rukert Terminal Company, Mr.  
17 William Bienert. Mr. Bienert. How are you, sir?

18 MR. BIENERT: Good evening, sir. My name is  
19 William Bienert, and I'm Vice President of Rukert  
20 Terminals Corporation. Unfortunately, tonight the  
21 gentleman that was supposed to be here was Mr. Bud

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1 Nixon or George Nixon, our Executive Vice President,  
2 who's fully aware and fully involved in the state and  
3 city governments, if you will, and all the programs,  
4 and he generally is the spokesman for our facility.  
5 However, due to unforeseen circumstances, he is  
6 unavailable tonight so he's requested me to come before  
7 you and submit the following. This will take  
8 approximately maybe a minute.

9 I have come here tonight representing Rukert  
10 Terminals Corporation and will express our concern  
11 about the negative impact of the Baltimore City  
12 Critical Area Management Program. Page 2 of the draft  
13 report states: "That the City is encouraging the  
14 redevelopment of the waterfront industrial area for  
15 part of its city-wide effort to retain local jobs for  
16 industry." The requirements forced upon the waterfront  
17 industries under this new program seem to be in  
18 conflict with the statement. Not only is the ten  
19 percent storm water quality improvement in the thousand-  
20 foot buffer zone of concern to us, but the suggested  
21 one hundred foot buffer zone is almost impossible to

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1 live with. Being a long established waterfront family  
2 business of approximately sixty-five years in Baltimore  
3 City, we feel threatened by the requirements to plant  
4 vegetation within the hundred-foot zone as it is  
5 virtually impossible to run maritime piers and  
6 warehouses through such an area. Our penalty for not  
7 being able to accommodate vegetation itself in the form  
8 of a fine of \$108,900.00 per acre, and that's \$250.00  
9 per square foot for 43,550 square feet -- or sixty  
10 square feet to the acre.

11 We feel that the proposed regulations are too  
12 restricting on private-sector, port-related businesses  
13 and ask that a new set of criteria be established in  
14 this area. We are more than willing to work with  
15 Baltimore City in establishing new regulations that  
16 will mutually benefit all concerned.

17 CHAIRMAN LISS: All right. Thank you Mr.  
18 Bienert. Let me make one point to you.

19 Anyone who's here and who wants to be heard  
20 and who wants at some later date to file a written  
21 statement in addition to the one that you've made

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1 today, we'll keep the record open for approximately two  
2 weeks so that if Mr. Nixon wants to file an additional  
3 information with us, we'll be glad to have it, and I  
4 would assume that the City will be in touch with you  
5 and will be discussing your objections.

6 MR. BIENERT: All right, sir.

7 CHAIRMAN LISS: And let's hope that some way  
8 to work out the objections will be found.

9 MR. BIENERT: Thank you, sir.

10 CHAIRMAN LISS: Thank you very much for coming  
11 down. We appreciate it

12 MR. BIENERT: Thank you.

13 CHAIRMAN LISS: Now the second gentleman who  
14 asked to be heard is a gentleman from whom we've heard  
15 frequently, Mr. Steve Bunker of the Chesapeake Bay  
16 Foundation. Mr. Bunker.

17 MR. BUNKER: Judge Liss and members of the  
18 Commission, my name is Steve Bunker with the Chesapeake  
19 Bay Foundation.

20 First off, I'd like to congratulate Baltimore  
21 City in being the first Critical Areas Plan to be

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1 submitted to the Commission. I don't think that's a  
2 reflection on any of the other jurisdictions, but I do  
3 think it shows a commitment of Baltimore City to the  
4 Critical Areas Program. We would like to submit more  
5 detailed comments, written comments, to the Commission  
6 at a later date, but I would like to express one  
7 concern of the Foundation. We do have some concerns  
8 about the buffer offset provisions in the Baltimore  
9 City plan. We agree with Mary Dolan that buffer  
10 offsets are certainly appropriate for an urban  
11 environment where the ability of the soil to absorb  
12 water is limited, and many of these areas already have  
13 storm water management systems. In addition, the  
14 habitat potential is very minimal for a buffer in an  
15 urban environment. However, we are concerned about the  
16 precedent that buffer offsets may have for the  
17 development and approval of later plans. We are  
18 concerned that other jurisdictions outside of urban  
19 environments may consider the buffer offset provisions  
20 as an accepted policy of the Commission and apply them  
21 to more rural areas, particularly limited development

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1 areas or resource conservation areas.

2 We are not suggesting that Baltimore City  
3 change their plan, and we're not suggesting that the  
4 Commission not approve the plan. We are suggesting  
5 that the Commission adopt a policy on approval of the  
6 Baltimore City plan as to under what circumstances they  
7 are going to accept buffer offsets. We would encourage  
8 you to only accept them in an urban area, particularly  
9 in an intensely developed area, and not to consider  
10 buffer offsets in limited development areas or resource  
11 conservation areas. Once again, we are not objecting  
12 to Baltimore City's use of buffer offsets, but we are  
13 concerned with the precedent that offsets may provide  
14 for future development and approval of plans. As I  
15 said, we'll submit comments at a later date. Thank  
16 you.

17 CHAIRMAN LISS: All right, fine. Obviously,  
18 the Foundation will have the same two-week period in  
19 which to file its written comments, and I might suggest  
20 that if you have specific ways in which to achieve the  
21 result that you suggest, the Commission and its

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1 Committee tonight will be more than happy to look them  
2 over and to consider them in deciding whether or not to  
3 approve the plan as prepared.

4 Is there anyone else who is here this evening  
5 who wants to be heard? We've got a number of people  
6 who indicated by signing in they are here, but so far  
7 the only two who have indicated they wanted to be heard  
8 are the two that I've already called on. Is there  
9 anyone else who wants to make any comment?

10 What is it the preacher says? Speak now or  
11 forever hold your peace.

12 MISS DOLAN: Not forever, just until the next  
13 public hearing.

14 (Laughter.)

15 MISS DOLAN: Hopefully, before the City  
16 Council.

17 CHAIRMAN LISS: All right. I think what we'll  
18 do in order to make certain that we're not foreclosing  
19 anyone from an opportunity to be heard is to keep the  
20 meeting open until eight o'clock to see if anybody else  
21 straggles in, and if anyone else wants to be heard in

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1 the meantime, I will ask the reporter to remain, will  
2 ask you to remain, and it might not be a bad idea maybe  
3 if we could enter into an informal discussion with Mary  
4 and with the other people who are interested and see if  
5 we can come up with a solution to some of the problems  
6 that undoubtedly exist when you are trying to draw a  
7 program that's going to cover everybody in every  
8 situation. We'll take a ten-minute recess and then see  
9 if anyone else has come in. All right.

10 (Whereupon, a short recess was taken.)

11 CHAIRMAN LISS: There being no further  
12 business before this hearing at the moment, I hereby  
13 exercise my prerogative and declare the hearing closed.  
14 Thank you very much for coming. We appreciate it, and  
15 I'm sure we'll be hearing more about this as time goes  
16 on.

17 (Whereupon, at 8:00 p.m. the above-  
18 entitled hearing was adjourned.)  
19  
20  
21

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*Wagner*

Maryland  
Port  
Administration

David A. Wagner  
Port Administrator

March 12, 1987

Mr. Larry Reich  
Director  
Baltimore Department of Planning  
222 East Saratoga Street  
Baltimore, Maryland 21201

Dear Mr. Reich:

Enclosed you will find a copy of my testimony on Baltimore City's Critical Area Management Program, to be entered into the record of the Chesapeake Bay Critical Area Public Hearing scheduled for tonight at the War Memorial Building.

It would be appreciated if you would forward our position to the Critical Area Commission Hearing Officer. Thank you.

Sincerely,

David A. Wagner  
Port Administrator

DAW/kyj

MAR 12 1987

MPA TESTIMONY ON BALTIMORE CITY  
CRITICAL AREAS REGULATIONS  
CHESAPEAKE BAY CRITICAL AREA COMMISSION PUBLIC HEARING  
March 12, 1987

My name is David Wagner and I am the Administrator of the Maryland Port Administration. I am submitting testimony tonight on behalf of the Private Port Industry of Baltimore.

I have reviewed the proposed critical area program for Baltimore City and I fully support its objectives. I recognize that there is indeed a need to improve the water quality of the Bay and to protect the wildlife habitat along the shorelines. MPA is now in the process of working very closely with the State Critical Area Commission to insure that future development of our facilities is consistent with that program.

However, as with the implementation of any program of this nature, there must be a balancing of both public and private needs. A very large part of the responsibility we bear as the Maryland Port Administration is to represent the interests of the Private Port Industry. As such, our function is to work with the private facility owners in helping them to remain competitive which in turn insures the long-term development of the port. It is only through further facility improvements and new development that the Port of Baltimore can continue to improve its competitive position in the international transportation marketplace. An improved competitive position means more cargo,

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more jobs and increased revenue to the State of Maryland, Baltimore City and its citizens.

•For this reason I must express our serious concerns with the \$2.50 per square foot charge that is proposed for port development within the buffer when new vegetation cannot be established. Port development cannot take place anywhere but in the buffer; therefore, by its very nature, port development does not have the choice but to locate in the buffer area.

Futhermore, this fee is being implemented at the time when the maritime industry is facing a difficult financial situation. The local maritime industry has been facing a fiercely competitive environment and must be extremely cost conscious if it is to remain viable. As a result, MPA has lowered its charges at the state owned terminals. The proposed fee by the Critical Area Program would make it prohibitive for the maritime industry to fund the type of development projects that they need to implement to remain competitive. It would increase the land costs for maritime development by over \$100,000 an acre, thereby making such improvements cost prohibitive.

Page Three

Such a cost increase will represent significant additional cost to prospective developers and will have a significant impact on the competitive position of the industry which funds itself in direct competition with other ports where land is already less expensive and cost factors are more favorable. Given this situation the port as a whole will suffer and our position as an international port will be compromised.

It is with this thought in mind that I ask the Baltimore City and Critical Area Commission to consider the serious implications of the proposed fee to the port industry and to reconsider the proposed offset charge of \$2.50 per square foot.

Thank you for your consideration.



RUKERT  
TERMINALS  
CORPORATION

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Baltimore, Maryland 21224  
(301) 276-1013  
TWX 710-234-1681 "RUKERT BAL"

March 23, 1987

Dr. Sara Taylor  
Executive Director of the  
Chesapeake Bay Critical  
Area Commission  
Tawes State Office Building D-4  
Annapolis, Maryland 21401

Dear Dr. Taylor:

Enclosed please find a copy of our testimony which we presented at the public hearing sponsored by the State Critical Area Commission which was held on Thursday, March 12, 1987. Also enclosed is a copy of our letter to Mr. Larry Reich, Director, Planning Commission expressing our interest in the Critical Area Management Program.

Thank you.

Very truly yours,

Rukert Terminals Corporation



George F. Nixon, Jr.  
Executive Vice-President

GFN/1k

Enclosure



**RUKERT  
TERMINALS  
CORPORATION**

P.O. Box 5163  
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March 17, 1987

Mr. Larry Reich, Director  
Planning Commission  
Department of Planning  
8th Floor  
222 East Saratoga Street  
Baltimore, Maryland 21202

Dear Sir:

On March 12, 1987, a representative of our Company testified at your public hearing at the War Memorial Building as to our feelings about the Draft Critical Area Management Program. We attach to this letter a copy of our comments.

It is our fondest desire to see a healthy and prosperous Chesapeake Bay and any work to achieve this goal should be supported. We should also bear in mind that the lifeblood of Baltimore City and the state of Maryland is the active working waterfront. Many thousands of jobs and many billions of dollars are created by the waterfront industry in the Baltimore harbor. Our Company, which was started in 1921, is one of the largest privately owned operations still on the Baltimore waterfront. We have always been active and interested in not only the development of the port but also the city and the state. We now ask that the city and the state support us by making special exception to the Critical Area Management Program by grandfathering new port related maritime development which would remove the hardship placed on us by the proposed offset program.

We solicit your reaction to this idea and suggest that we meet person to person to further discuss this topic.

Very truly yours,

Rukert Terminals Corporation

George F. Nixon, Jr.  
Executive Vice-President

GFN/1k

cc: Mary Dolan - Chief, Coastal Resources Planning  
Bernard Berkowitz - Bedco  
Don Hammen - City Council  
Mimi DiPietro - City Council  
David Wagner - Maryland Port Administration

Page 2  
continued

cc: Ron Kreitner - Mayor's Office  
Mark Wasserman - Governor's Office  
Randy Evans - Secretary, Department of Economic & Community  
Development  
Bill Hellman - Secretary, Maryland Department of Transportation

I HAVE COME HERE TONIGHT REPRESENTING RUKERT TERMINALS CORPORATION AND WILL EXPRESS OUR CONCERN ABOUT THE NEGATIVE IMPACT OF THE BALTIMORE CITY CRITICAL AREA MANAGEMENT PROGRAM. PAGE #2 OF THE DRAFT REPORT STATES "THAT THE CITY IS ENCOURAGING THE REDEVELOPMENT OF THE WATERFRONT INDUSTRIAL AREA FOR PART OF ITS CITY WIDE EFFORT TO RETAIN LOCAL JOBS FOR INDUSTRY". THE REQUIREMENTS FORCED UPON THE WATERFRONT INDUSTRIES UNDER THIS NEW PROGRAM SEEMS TO BE IN CONFLICT WITH THIS STATEMENT.

NOT ONLY IS THE 10% STORM WATER QUALITY IMPROVEMENT IN THE THOUSAND FOOT BUFFER ZONE OF CONCERN TO US, BUT THE SUGGESTED 100 FOOT BUFFER ZONE IS ALMOST IMPOSSIBLE TO LIVE WITH.

BEING A LONG ESTABLISHED WATERFRONT FAMILY BUSINESS IN BALTIMORE WE FEEL THREATENED BY THE REQUIREMENTS TO PLANT VEGETATION WITHIN THE 100 FOOT ZONE AS IT IS VIRTUALLY IMPOSSIBLE TO RUN MARITIME PIERS AND WAREHOUSES THROUGH SUCH AN AREA. OUR PENALTY FOR NOT BEING ABLE TO ACCOMODATE VEGETATION MANIFESTS ITSELF IN THE FORM OF A FINE OF \* \$108,900.00 PER ACRE. WE FEEL THAT THE PROPOSED REGULATIONS ARE TOO CONSTRICTING ON PRIVATE SECTOR PORT RELATED BUSINESSES AND ASK THAT A NEW SET OF CRITERIA BE ESTABLISHED IN THIS AREA. WE ARE MORE THAN WILLING TO WORK WITH BALTIMORE CITY IN ESTABLISHING NEW REGULATIONS THAT WILL MUTUALLY BENEFIT ALL CONCERNED.

\* \$2.50 sq. ft. x 43,560 sq. ft. in an acre