

Public Hearings - Baltimore County - Critical Area Protection Program Sec 8-1809 1987 MSA - S1830 - 3

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CHESAPEAKE BAY CRITICAL AREAS COMMISSION

HEARING ON BALTIMORE COUNTY :
LOCAL CRITICAL AREA :
PROTECTION PROGRAM :
SECTION 8-1809 :

Tuesday, October 6, 1987

Pursuant to Notice, the above-entitled public hearing was held at the Deep Creek Middle School, Marlyn Avenue, Baltimore Maryland, before ROBERT R. PRICE, JR., Chairman, Critical Areas Commission, commencing at 7:00 p.m., there being present:

PANEL MEMBERS PRESENT:

- RONALD HICKERNELL, Commissioner for Baltimore County
- RONALD A. KARASIC, Commissioner for Baltimore City
- MARTY WALSH, Secretary of Environment
- THOMAS L. JARVIS, Commissioner for Caroline County

ALSO PRESENT:

- ROBERT MARCUS POLLOCK, Staff Planner

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INTERESTED PARTIES:

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TIM DOOGAN
SUSAN MAGRI
GEORGE W. MURPHY
JULIA A. METCALF
HOWARD J. ALDERMAN
AL CLASSING, JR.
BOB CHRISTOPHER
MELVIN WASKEY
LEROY SENNETT
SHERRY POOLE
SANDY HILLYER
ELOISE SOMOGYI

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P R O C E E D I N G S

1
2 CHAIRMAN PRICE: Let's get started. On
3 behalf of the Critical Areas Commission, I want to
4 welcome you here tonight. My name is Robert Price.
5 I'm a member of the Critical Areas Commission from
6 Queen Anne's County. I've been appointed chairman of
7 this panel. The other panelists, who are members of
8 the Commission, are Mr. Thomas Jarvis, of Caroline
9 County; Colonel Martin Walsh, Secretary of the
10 Environment; Ronald Karasic of Baltimore City; and
11 Ronald Hickernell, a Baltimore County Councilman
12 representing Baltimore County. We are the five
13 panelists on behalf of the Commission that were
14 appointed to hold this hearing.

15 The purpose of the hearing tonight is to
16 hear the public comment on the Baltimore County Local
17 Protection Program, as required by Section 8-1809 of
18 the Critical Areas Law. We have a court reporter who
19 will take the testimony. The testimony will be kept
20 at the Commission office, at the Department of Natural
21 Resources Building, Rowe Avenue -- or Taylor Avenue,

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1 in Annapolis. At the end of this evening, the record
2 will stay open until October the 14th, seven days from
3 tonight, for any written testimony that you wish to
4 submit. That written testimony would be sent to the
5 Commission Chairman, Solomon Liss, Chesapeake Bay
6 Critical Area Commission, 580 Taylor Avenue, D-4,
7 Annapolis, Maryland 21401. The complete record will
8 be kept at the Commission and be available for the
9 public at any time the office is open.

10 We have a list of people who have signed up
11 to speak tonight, and in briefly going over it, we
12 have six parties. After they have given their
13 comments, we will ask anybody else who did not sign,
14 or indicates at that time that they wish to comment,
15 they may do so. We will restrict the comments to five
16 minutes per speaker. I want to emphasize the comments
17 should be on the county critical area program as
18 submitted.

19 Prior to hearing comments from the public,
20 the Baltimore County Planning Commission is going to
21 give a short presentation or overview of the program.

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1 If we don't have any questions, we'll then start with
2 the Baltimore County Planning Staff, which is going to
3 give the overview.

4 THE AUDIENCE: (No response.)

5 MR. DOOGAN: I'm Tim Doogan. I'm Acting
6 Chief of the Comprehensive Internal Planning Division,
7 Baltimore County Office of Planning and Zoning, and
8 formerly was the head of the task force that
9 prepared the Chesapeake Bay Critical Areas Local
10 Protection Program for Baltimore County.

11 The Commission has asked us to give the
12 overview presentation this evening. I think it is
13 fair to say that most of you people in the audience
14 have heard this information on at least one of our
15 prior presentations, but particularly on our public
16 hearing, sponsored jointly by the Baltimore County
17 Planning Board and the County Executive on July 17th.
18 I won't go very deeply into the details of the
19 program. I will try to give a quick summary and
20 perhaps this will be beneficial to the members of the
21 panel who did not hear this information before.

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1 I think everyone knows that we are working,
2 under the mandate of a law passed in 1984, which
3 established the Critical Area Program, created the
4 Critical Areas Commission, and in turn led to the
5 promulgation of the Critical Area regulations,
6 generally known as the criteria. And, out of that,
7 our local program is in compliance with those
8 requirements in the criteria.

9 As it pertains to Baltimore County, the
10 Critical Area law affects about 173 miles of
11 shoreline, chiefly on the Chesapeake Bay, but also a
12 bit of it in the tidal region of the Patapsco River.
13 And, the initial planning area delineated by that law
14 as the first 1,000 feet back from the tidewater,
15 covers about 21,600 acres of territory, land area in
16 Baltimore County, and a local protection program we
17 propose to add an additional approximately 1,400
18 acres, bringing the total to about 24,000 acres of
19 land, which is about six percent of the Baltimore
20 County land area.

21 The major feature of the Critical Area

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1 Program is the requirement that each local
2 jurisdiction map the land in its critical area and
3 classify it in one of three classes of areas; a
4 resource conservation area, limited development area,
5 or intensely developed area, based on certain
6 standards and definitions of the sort, as contained in
7 the criteria.

8 We have done that mapping. The mapping is
9 indicated in summary form on this colored map behind
10 me, with the green area indicating resource
11 conservation, the yellow, limited development area,
12 and the orange, intensively developed area.

13 The resource conservation totals about 90
14 to 100 acres. The limited development area and the
15 intensively developed area is the remaining 14,200
16 acres approximately.

17 The state regulations specify that the
18 mapping of the three types of areas is to be done on
19 the basis of conditions existing on December 1, 1985.
20 Now, it obviously is not possible to do an
21 instantaneous land use survey. The approach in

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1 Baltimore County was to do a complete field survey by
2 a team driving every road in the critical area
3 territory and recording the existing land use. This
4 was done in the summer and fall of 1985. It was
5 verified against brand new aerial photography that
6 Baltimore County had flown in January of 1986. So,
7 this complies, essentially, with the regulations for
8 December 1985, mapping of existing conditions.

9 The classification -- once we had completed
10 the land use inventory, the detailed land use
11 inventory, the classification into three kinds of
12 areas, was to be based on the definitions in the
13 criteria. Unfortunately, or maybe fortunately, there
14 is a significant ambiguity in one of the definitions --
15 in the definition of one of those three kinds of
16 areas. What I'm referring to in particular is the
17 standard that says an area is to be classified as a
18 limited development area if it is "an area having
19 public water or public sewer or both." We ran into
20 considerable difficulty in trying to convert that
21 vague phrasing into a clear set of rules for drawing

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1 the lines to separate -- particularly to separate LDA
2 from RCA territories. That led us into a process
3 that generated essentially four alternative maps of
4 the critical area territory, classification maps of
5 the critical area territory.

6 Out of those four, and out of a
7 considerable public participation and review process,
8 we eventually -- the County Executive selected one of
9 those four, which is the map that now appears on the
10 wall behind me and is the map that has been submitted
11 to the Commission. I'll talk in a minute about the
12 details of how we got to that selected alternative.

13 I should emphasize first, though, that we
14 did seek guidance from the Commission in trying to
15 resolve the ambiguity in that definition, the areas
16 having claws; I believe other jurisdictions also
17 approached the Commission on that subject.
18 Essentially the answer we got was that the Commission
19 intended it to be broad so that we could exercise
20 informed local judgment in reaching what we thought
21 was an appropriate decision. We believe that we have

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1 done so. We believe we have done a reasonable and
2 responsible compromise interpretation of that clause in
3 that the final mapping that resulted from our
4 interpretation does, in fact, comply with both the
5 letter and the spirit of the Critical Area Program.
6 We trust that the Commission will agree with our
7 judgment on that.

8 In working from the four alternatives to
9 decide on the one which we thought was most
10 appropriate for Baltimore County and also best in
11 spirit for the program, we made use of a feature which
12 is probably unique to Baltimore County, among the
13 jurisdictions bordering the Bay. It's something
14 called the urban-rural demarcation line. This has
15 been in existence for at least 20 years, as an
16 expression of Baltimore County policy, about the
17 outward extent of urbanization from areas around the
18 city. And, essentially our decision on the mapping,
19 which is recorded in more detail in the program
20 report, was that for the territory outside the urban
21 rural demarcation line, we classified all that area as

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1 a resource conservation area unless the area actually
2 was currently developed, meeting either the LDA or the
3 IDA standards. As it happens, none of the territory
4 outside the urban-rural demarcation line does meet the
5 IDA definition and standard. Some of it outside the
6 line, is already developed at a density that we felt
7 qualified for the LDA definition. Those are the areas
8 that appear in yellow in the Chase area and in
9 portions of Lower Back River Neck, and out here at
10 Miller's Island. These are the areas that are outside
11 the urban-rural demarcation line. Those areas where
12 actual development exists. All other areas outside
13 the urban-rural demarcation line were classified as
14 resource conservation areas, even if there happened to
15 be a public water line existing in those areas. We
16 read the definition of areas having as permissive but
17 not mandatory. We did not feel required to classify
18 them as LDA or IDA simply because of the presence of
19 the line.

20 Inside the urban-rural demarcation line we
21 classified all the territory either as LDA or IDA,

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1 depending upon the nature and density of the existing
2 development, unless the territory was undeveloped and
3 qualified as a habitat protection area. Those we
4 identified by a field survey by a trained and
5 qualified ecologist. So, all the land inside the
6 urban-rural demarcation line is either IDA or LDA
7 unless it qualifies as a habitat protection area. We
8 were very careful to try to identify all the
9 territory, both inside and outside. Our urban-rural
10 demarcation line did, in fact, meet the standards for
11 habitat protection, and classified it as such.

12 The other major feature that I would like
13 to comment on pertaining to our mapping is the
14 question of extending beyond the minimum 1,000-foot
15 line for the initial planning area. It has been a
16 great challenge on this and the interpretation was
17 given to us, but the provision of the law is a mere
18 technicality allowing us to go beyond the 1,000-foot
19 line. We read it very differently. We think the
20 General Assembly clearly intended that each local
21 jurisdiction should examine their territory further in

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1 than the 1,000-foot line, and where we felt it was
2 appropriate, we should recommend that that territory
3 also be covered by the critical area programs.

4 We have done that again using our trained
5 field ecologist and our resources information, and we
6 have proposed that in three of our necks, as they are
7 called, the Critical Area Program should cover the
8 entire neck. Those three areas are Black Marsh, the
9 interior of the area behind the Black Marsh shore-
10 front area up in the large end of the Patapsco neck;
11 the middle portion of Back River Neck; and two pieces
12 of land here in the Bolley's Quarter area that lie
13 beyond the minimum 1,000-foot line.

14 In doing so, we have consistently treated
15 all of these areas on the necks under the Critical
16 Area Program. The program report describes rather
17 briefly the reasons why we extended the coverage in
18 those areas. We are right now preparing some
19 supplementary information that will give more complete
20 documentation on the rationale for covering that
21 additional territory.

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1 In concluding, I think maybe I should
2 comment on the status of the program and where it is
3 now and where we see it going over the next several
4 months. As I said earlier, we have conducted a local
5 public hearing, which was sponsored jointly by the
6 planning board and by the County Executive, and on
7 that basis we made some revisions to the program and
8 submitted it officially to the County Executive and
9 submitted it officially to the Commission. This was
10 done with the understanding -- this is something we
11 have discussed broadly with the public from early this
12 calendar year -- this was done with the understanding
13 that the program would continue to be reviewed by the
14 Planning Board and by the County Council.

15 Since it was submitted to the Commission,
16 the Planning Board has completed its review and has
17 formally made its recommendations to the County
18 Council. The County Council will be conducting a
19 hearing on the Planning Board's recommendations on
20 November 10th. That will be another opportunity at
21 which persons can ask about our program. After the

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1 County Council conducts its public hearing, the
2 Council may wish to make changes. We expect that
3 those will be submitted to the Commission, formally
4 submitted as program amendments. In particular, the
5 addition of the report submitted to the Commission, in
6 particular in Appendix 2H and 2J, which contain
7 proposed exact regulatory language, changes in our
8 zoning regulations and development regulations, those
9 are now being scrutinized by the County Attorney and
10 undoubtedly will be scrutinized as well by the County
11 Council and there probably will be some, at least,
12 structural changes in those proposed regulations, and
13 we expect that those will be submitted by the Council
14 as proposed program amendments for consideration by
15 the Commission.

16 That concludes -- I thought it might be
17 appropriate if I state at this stage, do you want me
18 to answer any questions?

19 CHAIRMAN PRICE: No. Thank you. I also
20 wanted to introduce Mr. Marcus Pollock, who's the
21 Administrative Assistant with the Chesapeake Bay

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1 Critical Areas Commission.

2 With that part of the program, I'd like to
3 call the names of the persons who have indicated they
4 wish to testify, and request that you come and use
5 this microphone and state your name prior to your
6 testimony, and the first person is Susan Magri.

7 MS. MAGRI: My name is Susan Magri, and I
8 represent the Chesapeake Audobon Society. Our
9 concern, of course, is always resource conservation,
10 but in particular, our concern is not just the loss of
11 our natural areas and forestry areas, but the pattern
12 of forest loss, and the fragmentation of forests that
13 is occurring as the general pattern in development in
14 many parts of Maryland. Forest fragments suffer the
15 same fate as oceanic islands and that is, without
16 immigration, species are lost at a faster rate than on
17 continents, than in a whole entire forest. The
18 smaller the fragment, the faster the rate of loss.
19 There are two major reasons for this phenomenon. The
20 first is, genetic drift in small populations causes
21 changes in gene frequencies due to chance, rather than

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1 natural selection, which is what is supposed to
2 happen. With increased inbreeding, there is a loss of
3 hybrid individuals and an increase in the number of
4 harmful genes expressed. This can lead to extinction.
5 For continued survival and evolution of species, large
6 populations are needed to allow for random mating.

7 The second reason is that many species have
8 very highly specific niche or habitat requirements
9 which become even more critical during the breeding
10 season. What we consider to be minor changes in the
11 environment can disrupt reproductive cycles, which
12 result in decline in population. Chandler Robbins has
13 been studying the decline in the number of bird
14 species in Maryland and the relation of this decline
15 to forest fragmentation. The birds affected usually
16 are the migratory species which inhabit forest
17 interiors. Some examples would be the yellow billed
18 wood thrush, the red eyed verio and the black and
19 white warbler and there are a number of others.

20 The smaller and more isolated the forest
21 fragment, the greater the loss of these species. As

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1 the forest interior size decreases in forest
2 fragments, the amount of forest edge increases and
3 this increases the number of edge adapted species,
4 such as blue jays, robins, and starlings, and these
5 put additional competitive pressures on the area's
6 sensitive species.

7 A number of researchers working in this
8 area of forest fragmentation have made a number of
9 recommendations centering on total ecosystem planning
10 and development, and the retention of large areas of
11 old stand forests to serve as a source and a shelter
12 for these interior bird species. And, also recommend
13 the maintenance of forested corridors between old
14 standing forest fragments and then existing forests in
15 other areas, to maintain them so the birds and other
16 species have a corridor to go back and forth between
17 them, without having to come out in the open.

18 Proper management of a habitat can preserve
19 rich diversity of plants and animals and we strongly
20 hope that the county is taking into consideration the
21 pattern of development in the critical areas as well

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1 as other areas in the county. Thank you.

2 CHAIRMAN PRICE: Thank you. George W.
3 Murphy?

4 MR. MURPHY: My name is George Murphy, and
5 I'm glad to have this opportunity to talk. I would
6 compliment Mr. Flowers, and Mr. Doogan, and other
7 members of the planning staff for working so hard to
8 bring this plan before us, and I want to compliment
9 them on the aggressive move they made to preserve Back
10 River Neck.

11 I have some reservations about this plan as
12 to its extent. As someone with a background in
13 forestry, I know a forest is one of the best
14 protectors of the water table. I would certainly feel
15 it important that every area of forest that remains
16 within the critical areas would have automatically
17 been put under the green label. I feel that Baltimore
18 County has failed in areas of preserving water quality
19 in the upper Bay, in sediment control, forest
20 conservation, farm preservation, and so many other
21 broad land use issues. I feel that the Commission

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1 should set a base line for sedimentation, some
2 yardstick against which to measure the County's
3 performance in controlling runoff and sediment.

4 I was part of a team of people who surveyed
5 in the middle of this year the Gwynns Falls watershed
6 and found a mere 15 percent rate of compliance with
7 the state law on 21 separate construction sites. I
8 have a long background in fresh water quality and I
9 feel that Mr. Doogan is absolutely right when he says
10 that the provision for the 1,000-foot limitation is
11 indeed a -- it is not a technicality. My feeling is
12 that the critical area should have been extended to
13 the flood plains throughout the county, thus preserving
14 the water table. It will do Baltimore County no good
15 to have 1,000 foot of well maintained buffer around
16 dead estuaries. The principal reason for the death of
17 the estuaries in Anne Arundel County, in my
18 experience, and in Baltimore County also, is
19 sedimentation and destruction of the water table.

20 I move that we, within the limited
21 development area, forbid all cut and borrow

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1 excavation. Cut and borrow excavation is a routine
2 practice of the development industry wherein they make
3 a property line clear cut, come back in later and
4 plant smaller trees, churn the soil over completely,
5 usually to a depth of four foot. Right in back of my
6 house in Woodlawn, we have a development, and this
7 year the 17-year locust came out and not one came out
8 of the development because everything, every tree,
9 every insect in the ground had been killed in the
10 routine development process. And I think that cut and
11 borrow excavation, because of its tremendous potential
12 for runoff and sedimentation, must be forbidden
13 throughout the critical areas and the critical area
14 must be extended even further. And that, furthermore,
15 a new category of land use be established, that of
16 forest. In all the categories of resource
17 conservation described in Baltimore County's laws, not
18 one says the word "forest" and it should say that
19 right up front. That is the key to preserving the
20 water table. Without the water table, you don't have
21 the water to go in the estuaries, and without that

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1 quantity of water, fresh water coming in, you have no
2 tidal flow. Thank you very much.

3 CHAIRMAN PRICE: Thank you. Ms. Julia
4 Metcalf?

5 MS. METCALF: I'm Julia Metcalf, speaking
6 for the League of Women Voters of Baltimore County,
7 specifically for the Land Use and Environmental
8 Matters Committees. I served on the County
9 Executive's ad hoc Advisory Committee for the
10 development of this local protection plan.

11 After considerable study of the Local
12 Protection Plan, the League finds itself in overall
13 agreement with it, and hopes that there will be no
14 substantive changes in the document. From comments
15 and reports given at various meetings, we believe that
16 there are some decisions that are being considered by
17 members of the administrative branch of the county
18 government that will weaken the Critical Area
19 regulations. We hope that before such rulings are
20 made, the planners who have been responsible for
21 writing the local program are consulted as to the

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1 reasoning behind their decisions. Since the state's
2 Critical Area Program is for environmental protection,
3 we urge that a more stringent interpretation of the
4 regulations, rather than a less restrictive one, be
5 adopted when there may be some flexibility of
6 interpretation possible. We understand that there are
7 valid reasons for some revision, as the ongoing work
8 on zoning questions and Development Regulations
9 changes is incorporated in the final version.

10 Although there has been considerable
11 opposition from some sources to extending the Critical
12 Area beyond the minimum 1000-foot boundary in several
13 places, it is the League's contention that 1000 feet is
14 a minimum distance and the Critical Area can and
15 should be extended beyond this in areas where it can
16 be justified. The League believes the planning staff
17 members have made this justification for their
18 extensions, especially in placing the Back River Neck
19 Peninsula, the entire peninsula, in the Resource
20 Conservation Area. In addition, this peninsula is
21 outside the urban-rural demarcation line. This line,

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1 which has been in effect for many years, also limits
2 development beyond its boundary.

3 The League endorses the Critical Area
4 mapping as outlined in this program. We support the
5 use of the urban-rural demarcation line and sewer
6 classification as a fair and reasonable method of
7 designating the three development areas. We are
8 addressing this point as a result of the Commission's
9 concerns about another county's use of water and sewer
10 classifications with time frames that are much more
11 extended than the Baltimore County sewer time frame.

12 This local program was approved by County
13 Executive Rasmussen. It is, in fact, his program.
14 The League wishes to compliment him on his
15 environmental sensitivity, and his decisions where the
16 Resource Conservation Areas are concerned, especially
17 his including the Back River Neck Penninsula in the
18 Resource Conservation Area.

19 For larger developments, we consider this
20 program's proposal to be a sound one for a vegetative,
21 multipurpose buffer of 300 feet from the specified

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1 landward boundaries in the Limited Development and
2 Resource Conservation Areas. Also, we agree with a
3 minimum 100-foot buffer for all perennial and
4 intermittent streams, and for a variety of widths for
5 other environmentally sensitive areas.

6 The League wishes to express its
7 recognition of and appreciation of the professionalism
8 shown by the county environmental planners who
9 produced this Local Protection Program, and to commend
10 their dedication and hard work over many months. We
11 believe that they understand both the letter and the
12 spirit of the Critical Area Law and that they have
13 correctly interpreted it. Thank you.

14 CHAIRMAN PRICE: Thank you. Mr. Howard L.
15 Alderman, Jr.

16 MR. ALDERMAN: Good evening, Commission
17 members. My name is Howard Alderman, an attorney with
18 the law firm of Levine -- in their Towson office. We
19 represent the Riverside Realty Partnership, the long-
20 time owners of the tract known as the Shapiro family
21 tract, which is located approximately here on the

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1 Lower Back River Neck Penninsula.

2 In 1984, as everyone here is aware, the
3 Maryland Legislature, only after considerable debate
4 and compromise, adopted the 1,000-foot boundary for
5 the Chesapeake Bay Critical Area. That entire
6 initiative package that the Governor submitted to the
7 Legislature, especially the Critical Area legislation,
8 was based on a massive, seven-year study, conducted by
9 the Environmental Protection Agency at a cost of some
10 \$25 million.

11 The General Assembly, again after much
12 debate, decided the 1,000-foot boundary contained in
13 the law was more than adequate to address adverse
14 impacts that may be associated with development and
15 those adverse impacts that would have an effect on
16 water quality, fish, and wildlife.

17 Another purpose of that 1,000-foot boundary
18 was to achieve uniformity among the local
19 jurisdictions in their planning for the Critical Area,
20 and to strike a balance between environmental
21 protection and environmentally sensitive development.

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1 As you've heard here this evening,
2 Baltimore County has proposed to extend this Critical
3 Area over the entire portion of the Lower Back River
4 Penninsula as well as several others. Unlike the
5 Critical Area Legislation that got this whole process
6 started, the county's decision is not based on
7 quantifiable, credible, scientific evidence. The EPA
8 study, which took seven years to complete, the county
9 staff decided, willy-nilly, to extend this 1,000-foot
10 boundary only after objections were made. As Mr.
11 Doogan correctly noted, the program the Commission has
12 before it contains, I believe, a mere four sentences
13 in terms of justification for the extension of this
14 1,000-foot boundary. Only after a member of our firm
15 raised vehement objections before the Baltimore County
16 Planning Board did the planning staff, and we'll
17 certainly give them credit for it, work vehemently,
18 for over 72 furious hours, prior to the County
19 Planning Board voting on this, in their attempt to
20 justify their reasons for extending this boundary.
21 Again, justifications that prior to that had been

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1 contained in four sentences.

2 Added to this extension is a related issue
3 that cannot be considered without -- this Critical
4 Area Legislation cannot be considered without at least
5 a minor discussion, and that is that for years our
6 client and other persons have been unable to develop
7 in any environmentally sensitive manner, their
8 property because of the County Health Department
9 prohibition on the use of on-site septic systems,
10 conventional systems, in the subdivision of land.
11 Moreover, state law prohibits the use of innovative
12 and alternative systems in the subdivision of land.
13 So, the county has been promising sewer to this area
14 to solve existing health problems for years. Almost
15 -- well, very shortly before the county submitted its
16 proposal for the Critical Area to the Commission, two
17 additional proposals were received by the county for
18 providing sewer to this area; one based on a
19 consultant's study that took several years to produce,
20 and one based on the Department of Public Works. Both
21 provide sewer service to this penninsula. Alternative

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1 2A, that's selected by the consultant, shows a force
2 main coming up to and maybe even crossing over onto
3 our client's property. The only difference between
4 the consultant's report and the DPW's are where the
5 waste water from the lower end of the penninsula will
6 be treated and the timing. The consultant is
7 recommending a five-year phase in. DPW is
8 recommending a ten-year phase in.

9 And now that, after waiting for all these
10 many years and listening to all these empty promises,
11 now that our client will have access to sewer
12 capacity, the county proposes to extend the Critical
13 Area boundary completely over his property without
14 sufficient justification and thereby wiping out any
15 potential for development that he might have.

16 Let me just summarize, so I can stay within
17 my five minutes, and that is that this proposed
18 extension -- pardon me, the 1,000-foot boundary is
19 without technical in-field testing and without
20 technical justification and, as such, we believe that it
21 is repugnant at best. There are a myriad of other

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1 environmental controls that apply outside of this
2 1,000-foot boundary that would further protect the
3 water quality of the Bay, that is, provide further
4 protection beyond that 1,000-foot boundary that the
5 General Assembly developed.

6 There is no justification to suggest that
7 an extension of the 1,000-foot boundary is necessary
8 to advance the legitimate state interest known as
9 protection of the Bay. There has been no
10 justification to say that the 1,000-foot boundary is
11 inadequate to protect the Bay. Rather, they are
12 saying, we are going to extend it because we have
13 these four sentences and we have some minor testing
14 that we feel justifies it.

15 The empty promises of sewer facilities in
16 the past are now being realized for low intensity
17 development. The consultant report even goes so far
18 as to plan for the future population in the Back River
19 Neck area, a future population which I suggest would
20 be precluded if this boundary is extended.

21 The extension of this boundary is that --

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1 will withdraw from out client that final stick of his
2 property rights that he has left. It will take from
3 him that final and only potential he has left on that
4 property. I know that members of the county planning
5 staff have suggested that this property is not
6 unuseable, it could be used as a tree farm. That type
7 of logic is so ridiculous, it doesn't require further
8 comment. The potential is there. The county is going
9 to extend the capital facilities. The county is going
10 to expend the capital dollars to put those facilities
11 in the ground. I suggest to you that the extension of
12 this 1,000-foot boundary, combined with the existing
13 controls prohibiting on-site septic systems, will deny
14 my client all reasonable present and future use of his
15 property, thereby taking from him all development, all
16 rights that he has left in that property. Thank you.

17 CHAIRMAN PRICE: Mr. Al Classing, Jr.

18 MR. CLASSING: Mr. Chairman, members of the
19 Commission. The first thing I'd like to do is to
20 welcome you into the Back River Neck Penninsula.

21 I was unaware of the fact that you were

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1 having a meeting here until two days ago and I wonder
2 how many people in the community are also unaware of
3 it. I don't know what method you have used to get
4 people interested in your presence in the community,
5 but perhaps if you ever visit our community again, by
6 contacting the president of our organization would
7 probably give you a better idea of how many people in
8 this area are concerned with the Critical Areas
9 Commission.

10 Going back very quickly. First, my name is
11 Al Classing, Jr. I reside at 2095 Holly Neck Road, in
12 the Back River Neck area. And, the first thing I
13 would like to share with you is that going back many
14 years ago, we, on the Back River Neck Peninsula, were
15 greatly involved in the environment in the Back River
16 Neck area in the Hart-Millers Island, and of course, we
17 feel very secure and satisfied that with what has
18 happened there with Hart-Millers Island, we've
19 developed into one of the finest recreation islands in
20 the entire United States of America. We feel secure
21 that has been accomplished, and surely those of us

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1 that have -- who have watched your Commission very
2 carefully over the years pay homage to Governor Hughes
3 and his selection of the Commission Chairman and the
4 membership and your paramount assignment. But we,
5 those in the Back River Neck area, along with you, are
6 concerned with the involvement of the Critical Areas
7 Commission.

8 Personally we don't feel as secure with the
9 Back River Neck Penninsula as presented, and I think
10 it's only fair to share with you at this point in time
11 that those of us that have been watching this evolve
12 very carefully want to say, again, publicly to the
13 Baltimore County planning staff, to the Baltimore
14 County Planning Board, and to those that are
15 responsible for the presentation of this map, that
16 generally speaking, we agree with everything that has
17 been opted for there and it's a beautiful
18 presentation.

19 There is one thing contrary to what was
20 said by the previous speaker. I wonder how this area
21 in here got in here. That, very quickly, is the area

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1 of the airport. Using the criteria water and/or
2 sewerage as a criteria for light density, that area --
3 in the middle of the airport -- I see it's down there
4 a bit further. I hit the wrong spot. That is
5 without the benefit of any water or sewerage, but you
6 said, Mr. Chairman, that we have to direct our comments
7 to the map itself. Now, those of us in the Back River
8 Neck area are going to find that very difficult. As I
9 preempted to you, we are very satisfied with that map.
10 The job that you are going to have, the job that
11 we're going to have, the job that the Chesapeake Bay
12 requires, is that we be able to maintain the green
13 that we see there and the limited development that we
14 see there. We have to be able to maintain that
15 because you are aware, as we are aware, because we
16 travel with you all through the state, that there are
17 forces that want to change, even when this is
18 legislated, properly legislated, and documented, the
19 changes will be made.

20 We'd like to show you very quickly, in the
21 remaining time I have left, and I suspect that one of

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1 you have a gong in there, or a bell or something,
2 because I'm going to use all my five minutes on some
3 of the things that we are concerned with.

4 Number one, in the Back River Neck area we
5 have -- and I'm going to quick run to the map, and the
6 people here know pretty much how I feel. And I think
7 that you'll be able to hear me. Down here in the Back
8 River Neck area, the entire area, we have several
9 things that are happening that I think you should be
10 aware of. Number one, we have 702's coming into the
11 Back River Neck area, a state highway that will dead
12 end, that will dead end into the Back River Neck
13 Penninsula, dead end mind you, and yet it had -- and
14 we tried to encourage that that road go all the way
15 down the Back River Neck, tie into 695, serving the
16 people of the state of Maryland, as opposed to a
17 limited development area. \$17 million for this road,
18 state financed. That's the first thing we want you to
19 be aware of. And incidentally they are in the process
20 of right now, the Army Corps of Engineers, of issuing
21 -- perhaps they've even done it -- given a permit to

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1 fill in wetland for a sewerage, or for a run-off
2 system that's going to add pollution to our waterways.
3 You should be aware of that.

4 Number two, we want you to be aware of is
5 that no longer than yesterday the County Executive has
6 announced that he's going to -- when you read the
7 paper, and you try to understand what's happening
8 here. The -- something is about -- something good is
9 about to happen in Back River Neck. We're going to
10 take care of that problem with sewers that Agnew had
11 long talked about in 1963. The intent of 702, as this
12 sewer problem, is to serve this area here, land
13 barriers, and down here, too, a long attendance -- a
14 person by the name of Shapiro in that area. He's been
15 there a long time. The other person, Leonard Berger,
16 bought that property at rock bottom prices and then
17 tried to -- with political influence, to sewer that
18 area. And, those of us in our community fought very
19 hard and feverishly to combat that. Now, we feel that
20 we have been able to win a large portion of that.
21 But, here's what we see happening. We see now, with

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1 this announcement in the paper, that -- I'm not going
2 to get into the inaccuracies of this report, but they
3 -- what they are suggesting is that they put in a
4 sewer system for 19.9 million dollars -- 19.9 million
5 dollars -- under a mandated direction by Baltimore
6 County Council, that they address only the problems of
7 the failing septic systems. So, pure mathematics, or
8 simple mathematics, will tell you 19.9 million
9 dollars, 17 million dollars for a state highway that
10 is going to dead end in the Back River Neck
11 Peninsula, makes us desperately afraid and to doubt.
12 To doubt our local government is perhaps one of the
13 greatest sins that I could even get together in my
14 mind, because I want to respect this government. I
15 want to respect those that put together a program, as
16 I'm attempting to respect this, and I do respect it,
17 because I think the people that put it together are
18 most sincere. I think you have to be aware of what's
19 happening as we are aware of what's happening.

20 Now, what we see happening is this giant
21 octopus working within the guidelines that you folks,

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1 in all honesty and graciousness, are putting
2 together, one of the greatest opportunities that we in
3 the State of Maryland can look forward to, and that's
4 the saving of the largest estuary in the entire United
5 States, perhaps the world. That's what we are about
6 to do. And, when I hear people say that there is
7 green here that shouldn't be here, and I say that
8 their reward is a mirror type thing that they want to
9 happen, they want that immediate reward now. Well,
10 we're concerned, too. We want some reward, too. We
11 have been environmentalists, and we've worked for the
12 preservation of the Back River Neck Peninsula when it
13 was absolutely an unfavorable part of Baltimore
14 County. We cleaned the roads up. We formed an
15 organization within our peninsula to clean it up. We
16 even violated the law by cleaning our roads up at one
17 time in Baltimore County. And, I'm going to come to a
18 conclusion, Mr. President.

19 We just want you to be aware of all of
20 these things that we are dealing with and we will be
21 attempting to combat.

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1 Now, one other point and I am going to
2 conclude, Mr. President, and I hope that you bear with
3 me. At our last meeting on June the 25th concerning
4 the 19.9 million dollars that they are going to put
5 this sewerage into our community, that the Baltimore
6 County paper, the Sun paper has said that the County
7 Executive is about ready to make his selection. At
8 the very last meeting, although he was not County
9 Executive at that time, the agencies at that meeting
10 indicated to the people of the Back River Neck that
11 before any decision was made, we would have a public
12 hearing. We've been trying for the past year to get
13 information concerning this sewerage in our
14 peninsula. We can't get it. And, publicly, I would
15 hope that you can convince, or help to convince, the
16 County Executive to fulfill a responsibility from a
17 previous government.

18 There are many other things that we will
19 communicate with you that you should be made aware of
20 concerning the Back River Neck. We don't want to see
21 all this yellow hooked up with that sewage system that

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1 they are talking about, the 19.9 million dollars. We
2 don't see that the county and the government is ready
3 to spend 40 million dollars for a few of us that live
4 on the Back River Neck Penninsula.

5 Mr. President, thank you for your patience.

6 CHAIRMAN PRICE: Thank you. Mr. Bob
7 Christopher.

8 MR. CHRISTOPHER: My name is Bob
9 Christopher. I'm president of the Back River Neck
10 Penninsula Community Association. I'd like to say
11 first how much I appreciate all the hard work that the
12 Critical Areas Commission has done. I would like to
13 also add my thanks to the Baltimore County Planning
14 Board, to the planning staff, to the Office of
15 Planning and Zoning, and the County Executive, who has
16 so wisely chosen this map.

17 We hear it said that 1,000 feet is
18 enough. It is not enough. The Bay is an ecosystem.
19 It is not just a strip of water. The habitat, the
20 wetlands, the hydro-soils, the forests, must be
21 protected, or there will be no Bay. Anything that we

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1 do to abuse these things has a direct detriment upon
2 the Bay. I don't think you can separate them. I
3 don't think that you can separate the Back River Neck
4 Penninsula and the Bay. Anyone with any reasoning
5 that looks at the map, the soil conservation map, the
6 terrain map, the geographical and topographical maps,
7 can tell you, it's a very, very fragile, delicate
8 area. You have primarily hydro-soils, flood plains,
9 and we also are blessed with a large circular
10 contiguous forest. I would like to invite you all to
11 come down and see the habitat, see the rare things,
12 the unusual. These are things that our children need.
13 Our children's heritage depends on our saving these
14 things, and we can at once save these things, save the
15 Bay, give guidance to our people.

16 We hear talk about sewerage. What are we to
17 do? We are going to sewer the area. We are going to
18 send it up to Back River Neck, up to the Back River
19 Waste Water Treatment Plant. It's ten years behind
20 time. It's failing. I'm very grateful, as we all
21 are, that efforts are being made to improve on that.

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1 However, that's many years down the road. What
2 purpose to send it from there to a failing treatment
3 plant, to dump it back into Back River, to come down
4 to the Bay and spell further demise to Middle River,
5 which is much easier salvagable than Back River. So I
6 say, the 1,000 feet was not -- there is not a line
7 drawn on the ground. There is no one there to cross.
8 It was given as a starting point. Every meeting.
9 Every group that gets together needs some point to
10 open up conversation, and to draw a guideline. That,
11 indeed, is all it was.

12 I would say further that we could provide,
13 as we always have on many other occasions, many, many
14 speakers from the penninsula, 100 if we had cared to,
15 but I'm sure everyone knows the wishes of the people
16 on the penninsula and we would not belabor this panel,
17 or extend you for hours of unnecessary sitting. We
18 are very grateful for what you have done. Please
19 continue your work. We'll be glad to help in every
20 which way. Thank you very much.

21 THE AUDIENCE: (Applause.)

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1 CHAIRMAN PRICE: That concludes the list of
2 speakers who have signed they wish to testify, but I
3 notice there are a number of people that came in
4 later. And, anybody else that wishes to testify at
5 this time, if they'd come forward.

6 MR. WASKEY: My name is Melvin Waskey. I'd
7 like to address the lawyer here representing Shapiro,
8 and I guess there is nobody here representing Berger.
9 But, if these two people had their way, this
10 penninsula would be all yellow. There is a lot of
11 acreage in here, and over here like 600 acres in here,
12 which is probably some of the prettiest forest land
13 you want to see. And, Berger attempted at one time to
14 develop that area. He wanted to build a -- and
15 Shapiro, I don't know how many acres he has in there,
16 but it's an airfield, beautiful forest and the roads
17 down there cannot handle the traffic to start with.
18 When I see 702 coming down, I think the main reason
19 why 702 is there is because of these two gentlemen who
20 would like to develop the whole area. Thank you.

21 THE AUDIENCE: (Applause.)

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1 CHAIRMAN PRICE: Yes?

2 MR. SENNETT: My name is Leroy Sennett. I
3 live at 1716 Beechwood Avenue. I have, for the last
4 19 years, been a neighbor of Mr. Shapiro. I live in
5 the community of Evergreen. I have heard it taunted
6 and flaunted that we have a septic problem. I ask for
7 the responsibility of my government. We have no
8 endemic problems within our communities. The saving
9 of the green will be necessary for our heritage and
10 tomorrow, or shall we give it to the green, to be
11 spent and flaunted on decadence? In the community of
12 Evergreen Forest, we have growth. We have none less
13 than four new homes being built under Baltimore
14 County's criteria. If we were to listen to people who
15 wish to develop, devastate and pillage this land,
16 opposed to having one house per acre, or one house per
17 two acres, they would go for their maximum density,
18 stack them and rack them. Do we want to create
19 another Manhattan, another Long Island, or another
20 Jersey wilderness? Do we want to see our rivers go in
21 fire, as the Passaic did in 1978? If we don't hold

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1 it, maintain it, give it the strength that's
2 necessary, it will be devastated by only the takers.
3 Four lines -- I didn't even get the quotes on the
4 lines -- but I have just one line. It's "We, the
5 people," and it does belong to the people. We are not
6 negating the developer. He was an investor. He
7 purchased. He bought. These two gentlemen own,
8 between the two of them, 1,257 acres. They are in a
9 "no lose" position. There are tax write-offs. They
10 have gained. They are investors. They knew what they
11 were getting into. I'm a property owner. I have
12 taken the abuse. My tax base, when I bought, was
13 ninety-seven dollars taxes. I have been brought up to
14 six hundred and eighty-some dollars. No water, no
15 sewage. I challenge Mr. Shapiro. I challenge Dr.
16 Berger. Show me my endemic problem. Show me. I have
17 two children. I have a responsibility to myself, my
18 family, and my community. This problem of the sewage
19 is nothing more than a ploy. We are not a chessboard.
20 None of us should take the loss for somebody else's
21 gain. The Bay is in this dilemma that it is in

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1 because of the indifference of the human attitude. If
2 we are not predestined to preserve it, we have taken
3 on the burden. The only war left to be fought on the
4 face of this earth, and that war will be the cleaning
5 up of our environment. I thank you.

6 THE AUDIENCE: (Applause.)

7 CHAIRMAN PRICE: Could you give us your
8 name, please?

9 MS. POOLE: Sherry Poole. Nobody has
10 mentioned the area of Ft. Howard. We had a contract
11 on a house about a year and a half ago and we were
12 supposed to have a house built there, and there's only
13 like four or five houses being built in that
14 particular area. And, we've been waiting for a year
15 and a half now, and have been put off and put off, and
16 put off. We sold our house, to move into this house,
17 and we have no place to live now because we are
18 waiting for this house. I'm living with my mother-in-
19 law. We have two years to find a house, or else we
20 have to pay the capital gain. And, they are telling
21 us we can't build within 1,000 feet of this Bay, but

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1 right down the street they dredged five acres of land
2 and they are dumping sludge from all the different
3 areas of Back River, different creeks. Five acres of
4 land, they took down trees, and they are going to dump
5 all that sludge back there and it's right down the
6 street from where the houses are supposed to be built.
7 And, I don't understand that. There was a house built
8 right across the street. These houses will be like
9 four streets away from the water, and there are plenty
10 of houses down there. It's not like they are
11 developing brand new land. This is just a little bit
12 of land that is overdeveloped already. There are
13 plenty of houses there. That's what I don't
14 understand. And, there's another couple back there,
15 too, that they are interested in the same area and
16 they've had a contract, too. They are now living in
17 an apartment because they sold their home also. I
18 mean, I need a place to live. I grew up in that area.
19 I happen to like that area.

20 CHAIRMAN PRICE: Ms. Poole, I'm going to
21 suggest to you that the gentleman sitting right there

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1 in the front row over there is the man for you to see.

2 MS. POOLE: Well, they told me I could come
3 here and speak and I --

4 CHAIRMAN PRICE: That's fine. I didn't
5 mean to cut you off. Yes.

6 MS. POOLE: I just want you to know that a
7 lot of people are being hurt with this area and I
8 think it's wrong -- I mean, you can protect the
9 Chesapeake Bay, as far as I care, I don't care, but if
10 you are going to dredge down the street and dump all
11 kinds of crap over there, I think it's wrong. And,
12 these are four houses, or five houses. It is not a
13 50-house development.

14 MR. HICKERNELL: Mr. Chairman, I just might
15 state, Mrs. Poole, for your benefit, or anyone else in
16 the audience who has a similar question, that the
17 Commission very early in its deliberations decided
18 that any existing lot could be built upon, and I think
19 what you may be running into at the present is the
20 temporary moratorium that Baltimore County imposed
21 just to get this plan underway. That's a temporary

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1 effect and the timing of that should be short-lived.
2 I'll be glad to deal with your questions individually.

3 MS. POOLE: Is that the area that I'm
4 talking about?

5 MR. HICKERNELL: Any mapped area on that
6 map, any area in the critical areas, if a single lot
7 exists and you possess that lot, or have access to --

8 MS. POOLE: It's not a single lot now.
9 This man owns, I think, four or five lots.

10 MR. HICKERNELL: Only a single lot can be
11 developed. If it's an existing single lot in the
12 records of Baltimore County. We can deal with this
13 after the hearing.

14 MS. POOLE: Okay.

15 MR. HILLYER: I am Sandy Hillyer with the
16 Chesapeake Bay Foundation. I don't have any comments
17 prepared at this time. I wanted to submit comments
18 to the record, if we are going to keep the record open
19 for a few days.

20 CHAIRMAN PRICE: Until October the 14th.

21 MR. HILLYER: Okay. And, one area we are

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1 particularly concerned with is the use of the
2 urban-rural demarcation line, with the criteria
3 concerning sewer and water, and the consistency with
4 what Baltimore County has done with what other
5 counties are proposing. We would like to submit those
6 comments to the record. Thank you.

7 CHAIRMAN PRICE: Do you wish to speak?

8 MS. SOMOGYI: My name is Eloise Somogyi. I
9 live at 1008 Back River Neck Road. My parents own the
10 Somogyi Farm. They have farmed that property for 64
11 years, plus my grandparents. With this critical area,
12 we reserve the right of wildlife, but what about the
13 sewerage systems that are dumping the pollution in the
14 area into the Bay? We are concerned with that. We
15 need sewerage down in that area. If the homes have
16 sewerage, then it won't pollute the Bay. How about
17 the factories around the Bay? What about them, their
18 pollution? We are concerned about that. My parents
19 are trying to farm an 85-acre land tract on Back River
20 Neck Road. What's going to happen there? We can't
21 develop any part of that land for the children's

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1 homes? It's a shame what the government is doing to
2 the people that's been in the area for 64 years and
3 trying to make a living. Thank you.

4 CHAIRMAN PRICE: Do we have any other
5 speakers?

6 THE AUDIENCE: (No response.)

7 CHAIRMAN PRICE: If that's the end of the
8 speakers, that will be the end of the hearing, and as
9 I indicated, the record would stay open until October
10 the 14th for any written testimony anybody wishes to
11 submit. If anybody wants the address I gave them,
12 maybe they could stop up here after the hearing and I
13 could write it out for them.

14 Thank you all for coming.

15 (Whereupon, at 8:15 p.m., the
16 proceedings in the above-entitled matter were
17 adjourned.)

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LEAGUE of WOMEN VOTERS of BALTIMORE COUNTY

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TESTIMONY PRESENTED AT THE PUBLIC HEARING HELD BY THE CHESAPEAKE BAY CRITICAL AREA COMMISSION ON OCTOBER 6, 1987 CONCERNING THE BALTIMORE COUNTY CRITICAL AREA LOCAL PROTECTION

by Julia A. Metcalf for the League of Women Voters of Baltimore County

I am Julia Metcalf, speaking for the League of Women Voters of Baltimore County, specifically for the Land Use and Environmental Matters Committees. I served on the County Executive's Ad Hoc Committee for the development of this Baltimore County Local Protection Program.

After considerable study of the Local Protection Plan, the League finds itself in overall agreement with it, and hopes that there will be no substantive changes in the document. From comments and reports given at various meetings, we believe that there are some decisions being considered by members of the administrative branch of the County government that will weaken the Critical Area regulations. We hope that before such rulings are made, the planners who have been responsible for writing the Local Program are consulted as to the reasoning behind their decisions. Since the State's Critical Area Program is for environmental protection, we urge that a more stringent interpretation of the regulations rather than a less restrictive one be adopted when there may be some flexibility of interpretation possible. We understand that there are valid reasons for some revision, as the ongoing work on zoning questions and Development Regulations changes is incorporated in the final version.

Although there has been considerable opposition from some sources to extending the Critical Area beyond the minimum 1000-foot boundary in several places, it is the League's contention that 1000 feet is a minimum distance and the Critical Area can and should be extended beyond this in areas where it can be justified. The League believes the planning staff members have made this justification for their extensions, especially in placing the entire Back River Neck Peninsula in the Resource Conservation Area. In addition, this peninsula is outside the Urban-Rural Demarcation Line. This URDL, which has been in effect for a number of years, also limits development beyond its boundary.

The League endorses the Critical Area mapping as outlined in this Program. We support the use of the Urban-Rural Demarcation Line and sewer classification as a fair and reasonable method of designating the three development areas. We are addressing this point as a result of the Commission's concerns about another County's use of water and sewer classifications with time-frames that are much more extended than the Baltimore County sewer time-frame.

This Local Program was approved by County Executive Rasmussen; it is, in fact, his Program. The League wishes to compliment him on his environmental sensitivity, and for his decisions where the Resource Conservation Areas are concerned, especially his including the entire Back River Neck Peninsula in the Resource Conservation Area.

For larger developments, we consider the Program's proposal to be a sound one for a vegetative, multipurpose buffer of 300 feet from the specified landward boundaries in the Limited Development and Resource Conservation Areas. Also, we agree with a minimum 100-foot buffer for all perennial and intermittent streams, and for a variety of widths for other environmentally-sensitive areas.

The League wishes to express its recognition of and appreciation of the professionalism shown by the County environmental planners who produced this Local Protection Program, and to commend their dedication and hard work over many months. We believe that they understand both the letter and the spirit of the Critical Area Law and have correctly interpreted it.

Chesapeake Bay Critical Area Commission
Hearing on Balto. Co's Local
Critical Area Protection Program
