

Public Hearings - Centreville - Critical Area

1987

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CRITICAL AREA PUBLIC HEARING

November 23, 1987

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D.C. AREA 261-1902

BALT. & ANNAP. 974-0947

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P R O C E E D I N G S

1
2 CHAIRMAN BLAKE: Good evening and welcome to our
3 hearing tonight. My name is Russell Blake, I am the
4 chairman of this panel that is going to be receiving
5 testimony tonight for the Critical Areas Commission, and
6 I've called the meeting to order. I'd like to introduce
7 the other panel members that here with me tonight, all
8 members of the Critical Areas Commission: Mr. Bob
9 Schoeplein of the Department of Economic and Employment
10 Development, on my immediate right, Dr. Shepard Kreck, on
11 my far left over here from Talbot County, Mr. Tom Osborne,
12 adjacent to me on this side from Anne Arundel County, the
13 Staff person with us today from the Critical Areas
14 Commission is Charlie Davis, on the far end here, our court
15 recorder is Mr. Kevin Reppenhagen and a record is being
16 taken of this entire hearing.

17 The purpose of the hearing is as follows: to
18 hear public comment on Centerville's Program as required
19 under Section 8-1809 of Critical Areas Law. The Commission
20 the full Commission and there are 25 members of the
21 Commission all together will be making a decision on the
22 Program within the next 60 days. The record will be open

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1 for an additional week, if anyone would like to make
2 written comments rather than speak tonight you're welcome
3 to do so and written statements must be mailed to the
4 Commission Chairman, Mr. Solomon, Judge Solomon --
5 Chesapeake Bay Critical Area Commission, 580 Taylor Avenue
6 D-4, Annapolis, Maryland, 21401. The complete public
7 record of testimony as well as letters received will be
8 kept at the Commission office for public review.

9 At this time I want to recognize some local
10 officials that I understand are here with us tonight, Mr.
11 Charles Nesbeth (phonetic), Chairman of the Planning and
12 Zoning Commission, just wave your hand or stand up -- thank
13 you, Mr. John Collatta (phonetic) of the Planning and
14 Zoning Commission, Mr. Howard Price of the Commission, and
15 Mr. Sterril Mop (phonetic), also of the Planning
16 Commission. I understand some of the members of the Town
17 Council are expected and if so I'll introduce them at that
18 time.

19 I want to mention a couple of ground rules that
20 will apply during the hearing: we'll be asking speakers
21 to limit their remarks to three to five minutes, and we'll
22 be asking, if there are several people from the same group

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1 we'd like to recommend and ask them to appoint or designate
2 one person to speak so we don't hear the same kinds of
3 comments over and over from the same group, and to
4 reiterate, public comment tonight is to focus on the local
5 Program.

6 And I think some of you are familiar with it, it
7 has been prepared by the consulting firm, Redman and
8 Johnson and it looks like this, if there are some boundary
9 dispute issues where you may be concerned your property
10 may be affected in some way or if you don't like the way
11 your property has been classified on a personal level,
12 those problems should be referred to the local Planning
13 Commission or local Planning Officials here and the panel
14 that you see here before you tonight is not in a position
15 or will not answer individual questions of that nature
16 tonight.

17 At this time I would like to ask the consultant
18 for the town of Centerville to make a brief presentation on
19 the Program and I'd like to discourage questions at this
20 time so that we can get through the initial introduction.
21 I suspect that many of you have heard of some of these
22 things before since there have, I understand been two

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1 previous public hearings on this subject. So at this time
2 I would introduce Mr. Zack Krebeck, from Redman - Johnson
3 Planning Group and they are representing the town of
4 Centerville.

5 MR. KREBECK: I do recognize most of you and as
6 I said this is the third public hearing on this issue and
7 most of you, I think also were attending some of the
8 Planning Commission meetings where the Critical Area
9 Program was discussed. Generally the Critical Area
10 Program, and I guess for the one or two of you who may not
11 have been regularly attending the hearings we should go
12 back a little bit and I'll give an O-review on the Program.

13 The Critical Area Program is generally intended
14 to -- for local governments to regulate thousand foot bands
15 around the tidal waters on the Chesapeake Bay. Again this
16 Program is intended to -- or is mandated, frankly upon the
17 local government but I think Centerville has seized upon an
18 opportunity here and is also -- is doing this in
19 conjunction -- some of it they're updated a comprehensive
20 plan and really initiating old planning process. And this
21 is kind of the first step, the resource protection aspect
22 of their comprehensive planning effort.

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1 Generally to get through the process for
2 planning background the town we identified the resources --
3 mapped the resources, mapped the land use, mapped the
4 existing resources to establish really a planning base. I
5 want you to know a little bit about the background. Within
6 the thousand foot band, I think this -- as a sufficient
7 scale as you can tell but tracing a thousand foot band,
8 right here through 213, through town, and 304 here, just to
9 give you some locational reference points.

10 -- background the tidal weapons are mapped along
11 Gravel Run, Corsica Creek and Middle Stream and adjacent to
12 that in many cases there's non-tidal weapons, they've all
13 been identified. And other land covering, the agricultural
14 land -- happened to be a few residual farms left in our
15 town and so on, they've all been identified.

16 In addition, on the eclipse side, I have posted
17 the soils map -- the wet soils associated with wetlands and
18 hydric soils have also been identified and they have a
19 significance with respect to modifying the buffer which
20 I'll explain in a few minutes. We've identified also on
21 the mapping the water dependent facilities of the town,
22 water dependent facilities really the only facility we're

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1 speaking of is the County Landing and that has significance
2 because under this program water dependent facilities are
3 allowed to be located within the hundred foot buffer. And
4 I've mentioned the hundred foot buffer twice and let me
5 explain.

6 In the Critical Area Program devised in the
7 Criteria divided by the state, it's been fairly well
8 documented throughout the discipline that a hundred foot
9 buffer and that's somewhat arbitrary but a vegetative
10 buffer of about that lining the tidal areas can provide
11 significant water -- advantages, filtering the flukes that
12 might run off other land uses, taking up the nutrients on
13 let's say the AG land or whatever. Also providing
14 continuous habitat area along the tidal areas. So the
15 vegetative buffer has those functions.

16 In the town in many points this buffer is
17 currently constructed upon, so it is actually not
18 fulfilling its function as it would if it were otherwise
19 vegetative. The best method that the town has for
20 regulating land use within the town is the Zoning Ordinance
21 and this Program, the implementation side of this program
22 has identified our approach for really applying this whole

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1 area within the Critical Area, this thousand foot --
2 roughly thousand foot band from Mill Stream, Corsica Creek,
3 Gravel Run which roughly approximates this within an
4 overlay zone that the town would adopt an overlay over the
5 existing Zoning District classification. In that overlay
6 zone a variety of regulations would apply and and with
7 different -- depending on the nature of the land used
8 there.

9 As on the resources that mapped it was the
10 existing land use I mentioned and we've identified some of
11 the intensely developed areas of town, that's the darker
12 shade if you can pick it up in there. There's several --
13 there's roughly four -- of intensely developed area and in
14 between we have more limited development, developed areas,
15 the lighter shades... And finally an area that's very
16 dominated by weapons and that happens to be -- exclusively
17 under the control of the town is along Mill Stream and
18 planned to be a future park and its really functioning as a
19 park area right now.

20 Under the overlay zone, the intensely developed
21 areas basically the densities, they go with the underlying
22 zones. With one unit per four acres or one unit per ten

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1 acres -- I mean -- ten units per acre whatever, that would
2 apply, five units per acre, whatever, those densities would
3 apply, the intensity development would be permitted, the
4 land uses that are currently permitted would be allowed in
5 the Critical Area overlay zone.

6 In -- developed areas the densities provided in
7 the town are more moderate, that is less than roughly four
8 units per acre, in those areas. And finally the resource
9 conservation area which is basically follows Mill Stream,
10 the densities would be more like one unit to twenty acres.
11 But again as I said for the most part that's under public
12 planned -- planned park system of town.

13 One other component that's regulated under the
14 overlay zone is the buffer, and generally all building is
15 restricted within the hundred foot buffer that I mentioned.
16 That's requiring strict interpretation of the Criteria,
17 there are, however, provisions within the State Criteria
18 I'm referring to, to modify -- I mean excuse me to exempt
19 certain portions of the shoreline where development has
20 already occurred or where its not grafting some other way
21 or it can be demonstrated that because of the existing
22 development that the buffer could not function as hoped.

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1 -- we've pointed out in the past there are a
2 couple of cases in the -- primarily along -- I'll call it a
3 redevelopment area for the lack of anything else, along
4 Corsica Creek where there has been some pretty intensive
5 uses in the past and there's still some structures in
6 existence that would in this case not be able to meet the
7 buffer set backs. There's a couple areas where the
8 structure's already, again, within the hundred foot buffer.
9 And in those cases there are some provisions allowing some
10 flexibility for building within those areas under certain
11 restrictions.

12 A component about the Program that I do want to
13 mention is that in occasions where the buffer might be
14 built upon or in the case where there might be loss of
15 buffer or lost of forest land, any forested lands within
16 the Critical Area in general, there are provisions for off
17 setting those impacts. And again -- the forested lands are
18 much more capable of -- of land uses have less pollution
19 run off, less nutrients loading into the streams and
20 sediments and so on. So to the degree that the town can
21 initiate and can provide areas and provide ways of off
22 setting impacts that might occur through development in the

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1 town, I think it is a plus and can balance that
2 development.

3 There's quite a few areas along in the RCA Area
4 or the planned Natural Park that there could be plannings,
5 and I say when I speak of plannings I don't mean an
6 additional tree here or there, I'm talking about -- there
7 is guidelines in the Program for the intensity and the
8 structuring of landscaping to get those kind of benefits.
9 And I think this could be a achieved either by -- I think
10 the intent is for the town to accept in most cases a fee in
11 lieu when its feasible. And use that money in a fund to do
12 the planning itself as opposed to say a builder or
13 developer actually planning on public land. To keep the
14 public control over the town land.

15 Those are the major components of the Program,
16 there are some landscaping guidelines, they're pretty
17 extensive -- contained in a litigation manual, which is not
18 part of this document, it is referenced and I just want to
19 mention to you that the town has that available to you, its
20 administrative document more than it is a -- any document
21 to -- and put into law --, its for the administrator of
22 this program to help them in guiding and reviewing plans

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1 and so on, and the Planning Commission of course, who's
2 responsibility will be I think in many cases to -- I think
3 we just count it up -- how many agencies was that that?

4 MR. DAVIS: 31.

5 MR. KREBECK: A total of 31 potential agencies
6 can be involved in this program but primarily its the towns
7 development process, its the same in many cases but in
8 specialized cases where weapons may occur on the property
9 the review process that's being apployed would bring into
10 play bring into play that Department of Natural Resources
11 and any other group that can provide technical assistance
12 to the town is frankly what's intended.

13 In the case if we're moving any forest areas,
14 the forestry service could be -- would be involved. I
15 think that pretty much sums it up. Should I take
16 questions?

17 MR. DAVIS: No I don't think so, I think we
18 ought to take testimony. Before we begin individual
19 testimony I would like to introduce the President of the
20 Town Council, Mr. Robert Williams who came in. Ok, I did
21 mention some ground rules and guidelines a few minutes ago
22 and with that as background at this time we will begin

1 taking testimony from individuals who have signed up to
2 testify and there are eleven people on this list. We'll be
3 asking you to keep it to under five minutes please, and
4 we'll be trying to keep a rough estimate of the time as we
5 go along but please understand that there a lot of people
6 who would like to testify tonight and we'd like to keep
7 this on a somewhat formal basis. So with that I'd like to
8 call Mr. Ben Berliner to testify. Please state your name
9 and address for the record and use the microphone so others
10 may hear you.

11 MR. BERLINER: Which is the microphone? My name
12 is Ben Berliner, I live at 111 Chesterfield Avenue in
13 Centerville. I would like to address specifically an
14 amendment that was placed into the local Program subsequent
15 to our second and final public hearing that we held before
16 the plan was submitted to you.

17 The Critical Area criteria in Section 14.15.09
18 Section (c), Paragraph (8) provides a means for a non-
19 compliance or a non-performance exemption to the buffer and
20 I'd like to read that paragraph to you, it states: As part
21 of the local Critical Area Program to be submitted to the
22 Commission local jurisdictions may request an exemption of

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1 certain portions of the Critical Area from the buffer
2 requirements where it can be sufficiently demonstrated that
3 the existing pattern of residential, industrial, commercial
4 or recreational development in the Critical Area prevent
5 the buffer from fulfilling the functions stated in (b)
6 above. The functions stated in (b) above are 1) to provide
7 for the removal and reduction of sediments, nutrients and
8 potentially harmful or toxic substances in run-off entering
9 the bay in -- excuse me -- 2) to minimize the adverse
10 affect of human activities on wet lands, shoreline, stream
11 banks, tidal waters and aquatic resources 3) to maintain an
12 area of transitional habitat between aquatic and off land
13 communities 4) to maintain the natural environment of
14 streams and 5) to protect -- wildlife habitat.

15 Now this town of Centerville has inserted into
16 their program a exemption provision that they call a
17 improved performance exemption provision. And this
18 provision was -- this was put into it at the request of Mr.
19 Keating (phonetic) who asked for it on behalf of him Mr. --
20 who proposes to build in the town of Centerville within the
21 hundred foot buffer zone.

22 We had a hearing and there was substantial

1 testimony given at that hearing and I urge you to review
2 the testimony of that hearing, I don't think we need to go
3 into that again. What I would like to do is to point out
4 the differences in the improved performance exemption
5 provision of the Critical-- of the local Program and the
6 paragraph that I read you from the criteria.

7 The main differences are that while the criteria
8 provides that in local jurisdictions we'll submit to
9 Commission parcels or areas that they feel that should be
10 exempted from the buffer zone, buffer restrictions. In the
11 local Program a developer is requesting an exemption from
12 the town, the one case its part of the program and subject
13 to the review of the Commission, and the other case its a
14 town procedure subject to review by the town. In the
15 criteria it states that existing patterns of development
16 must be -- must be demonstrated that existing pattern of
17 development will prevent the buffer from fulfilling its
18 functions.

19 In the towns version of an improved performance
20 exemption is that existing or prior patterns of
21 development, previous development activities prevent or
22 substantially impair the buffer from fulfilling its

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1 functions. In one case its a very definite thing, the
2 Critical Area Commission is charged with the responsibility
3 of reviewing an exemption as part of the Program and on
4 that basis -- in this case the town reviews it and it
5 doesn't have to be an existing pattern -- it can be any
6 pattern, present or past and while it doesn't have to
7 prevent the buffer, it has to quote: "Significantly
8 impair", which is a very subjective criteria.

9 I just want to quickly show you a sight plan of
10 this development, you can see the basis on which this
11 provision was inserted into the Program, it was inserted
12 into our Program for Mr. Kudner's behalf, there's
13 no doubt about that. This is a sight plan prepared by Mr.
14 Kudner for his parcel.

15 The buffer has been identified in red, there's
16 an area of orange with slopes that are -- range from 15% up
17 to 65% . As you can see the majority of the buildings and
18 improvements are within that buffer. The intent of this is
19 that on the one side of the -- on the left hand side of
20 Watson Road there is existing foundations in concrete and
21 impervious surfaces and on the basis of that the hundred --
22 foot buffer has been modified -- local Program which is

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1 proposed to you, instead of being about a hundred foot it
2 scales more like 50 feet.

3 The attention of this provision is that Mr.
4 Kudner -- get an exemption on this side of the -- of his
5 property. Mr. Kudner has some area photographs showing
6 that the previous -- vehicles over there and on that
7 previous development activity he will get an expert to
8 testify to the town that is previous development activity
9 will substantially impair the buffer. I assure you the
10 town will grant them the exemption on that basis and this
11 development will be permitted and all the exemptions -- the
12 buffers will be permitted under the Centerville Program.
13 Thank you.

14 CHAIRMAN BLAKE: Thank you Mr. Berliner. The
15 next speaker who signed up is Mr. Kenneth Rabin, is that
16 correct?

17 MR. RABIN: Yes. My name is -- is this on? My
18 name is Kenneth Rabin, I live Watson Road. And I'm sorry
19 to tell -- but I'm going to talk about the same amendment,
20 which you will find on page 61, that Mr. Berliner has just
21 spoken too. The reason I do is because I think it
22 represents not only a special interest into the plan but

1 also a danger to the Critical Area Criteria, its -- to
2 provide the kind of flexibility that we've heard about
3 before.

4 It would be very, very quickly picked up --
5 jurisdictions and used to minimize the purposes for which
6 the buffer was created. I will try in my statement to --
7 not to repeat what Ben has spoken about. I very well
8 understand that the Critical Area Commission neither wishes
9 to or should get involved in local development problems of
10 one kind or another.

11 I am going to speak about it because I think its
12 a excellent illustration of why this amendment does
13 represent that kind of danger. And I may very well
14 duplicate some of the things ben said, but let me step over
15 to the map for a moment and talk about the -- property and
16 I'll find out why I'm addressing it tonight.

17 This is the property on the east side, there is
18 a marsh that covers most of the land but there is a small
19 filled meadow with no development on it whatsoever on the
20 east side of Watson Road. On the west side of Watson Road
21 there used to be a fertilizer factory and there ar
22 fragments of and leftover blocks of concrete, that area on

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1 the west side has been designated Intense Development,
2 maybe questionable but I'm not going to take the time to
3 question that right now.

4 And we do know about the 10% improvement that is
5 allowed -- for a exemption on that side, but this one as
6 far as we are able to tell it has only one purpose, to
7 provide for an exemption on the east side where no
8 development now exist, it is a filed meadow and former
9 marsh land.

10 But this amendment says previous -- development
11 -- advantage pointed out there was a previous pattern of
12 development that is -- of the fertilizer factory -- the
13 company parked cars over there and had some crates there
14 and you and I may or may not describe that as a previous
15 pattern of development, but I think there is a real risk
16 that the officials of the committee might.

17 I'm going to try to cut this down very quickly.
18 I can not think of any way in which you can show a 10%
19 improvement on the run off from the grassy meadow when you
20 are going to undertake a very large construction project
21 with all the -- that comes through that and then you're
22 going to get get the painting and chimney smoke and all

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1 that civilization has to offer us.

2 These -- previous meetings have indicated and
3 I've talked to a lot of folks that they can offer a 10%
4 improvement through the miracles of modern technology and
5 planting and what have you. -- and I did this reluctantly
6 but the only way you could show a 10% improvement is by
7 hiring your own experts and by making such a judgment and
8 having the town officials accept it, and I'm not accusing
9 the town officials of anything, I mean that quite
10 sincerely. We simply do not have capacity to monitor and
11 control that kind of program.

12 Its been my impression, I've talked to many
13 people working with the Critical Areas Commission,
14 Chesapeake Foundation -- the principle reasons -- the two
15 principle reasons for establishing a one hundred foot
16 buffer. One was because it represents an excellent way to
17 protect the wet lands of the Chesapeake area, and another
18 very important one, a town or a county can measure, impose,
19 and enforce a hundred foot buffer, that's not difficult.
20 But the millions of communities, ours included simply do
21 not have the capacity to undertake that very, very
22 difficult proposition.

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1 Now, I'm not -- I don't think that Mr. Kudner is
2 trying to pollute that area. Let me give you a little
3 example though why I am so cautious about accepting
4 proposed -- of any developer who thinks that he can offer
5 this kind of improvement. Over the last month Mr. Kudner
6 has had delivered to his property along the -- on the river
7 side, the west side, many loads of dirt, we had concern
8 that the facilitation is very heavy there and called the
9 Federal Conservation Service.

10 The Federal Conversation Service said he had not
11 applied for an erosion control permit and that they would
12 ask him to do so. I under-- there is a plastic barrier up
13 there now, so I have presumed, I have not checked on it,
14 but he did go to apply and he did get a permit. About two
15 weeks ago Mr. Kudner had mowed down all of the marsh --
16 well not all, most of the marsh grass, again, on the west
17 side without any other provisions for controlling --.

18 I called the Department of Natural Resources, I
19 found out that the original erosion control barrier put up
20 for the dirt had not been installed properly, and that they
21 would go back and take care of it and they'll look at the
22 marsh grass. I think this illustrates three very important

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1 points. One is, some developers will, but most will not
2 have the capacity, the knowledge and perhaps the interest
3 to protect the environment.

4 The second point it illustrates is that when I
5 called the town, I was referred very helpfully to people in
6 that Department Natural Resources or in the Federal
7 Conversation Service, the town does not have the capacity,
8 it doesn't have the legal structure. It doesn't -- it can
9 not do anything about - maybe nothing had to be done, maybe
10 that was all completely illegal but the citizen worried
11 silotation is not sure of that.

12 And then there is a very important third point
13 about the 10% improvement factor. When do you issue it and
14 under what circumstances? Again I'm not accusing anyone of
15 anything but it seems to me a developer could increase the
16 pollution and run off and silotation of a piece of property
17 considerably, by these kinds and other kinds of actions
18 because they don't stop and they just then show a 10%
19 improvement.

20 I don't know that this town has measured any of
21 that, of those areas for run off at any given moment. But
22 I think that these are three really good illustrations of

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1 why an imposed one hundred foot buffer was chosen by you
2 gentlemen and why you should not try to minimize it.

3 I want to -- very quickly, I'm not sure what my
4 time left is.

5 CHAIRMAN BLAKE: You're out of time, you're two
6 minutes over already so.

7 MR. RABIN: Ok, I will conclude by suggesting
8 you read that amendment very carefully and particularly the
9 passage at the end of the four points in which it says, and
10 I'm interpreting this loosely; the buffer is a good idea
11 and those who can afford to and have the loose land and
12 figures can meet the buffer, do so, but if you can't hear
13 all the exemptions. Another words, lets follow the
14 Critical Area Criteria so long as its absolutely
15 convenient.

16 CHAIRMAN BLAKE: Thank you Mr. Rabin.

17 MR. RABIN: You're welcome.

18 CHAIRMAN BLAKE: Our next speaker Mr. David
19 Almojust, is that correct?

20 MR. ALMOIUST: Yes. Ok, I'm Dave Almojust, I
21 live now in Newark, Delaware. The reason I've come here
22 this evening is that I owned a house at the wharf in

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1 Centerville from 1974 to 1986. And of course during that
2 time I watched the water quality in the Corsica River
3 deteriorate, I watched several fishes killed and at first
4 of course when we moved in we had a good Perch run, and now
5 I think you could go down in there in the spring and see
6 very few Perch caught. Its sort of a bad situation.

7 I've looked over the plan, I've been following
8 it because I'm still interested in bay quality and as far
9 as I can tell its fairly well thought out but I'm going to
10 talk about the same amendment that these other folks have
11 talked about. And I'm going to give you a little history
12 behind some of the activities of the town, been going on
13 since about 1980 when the developer purchased the land.

14 Beyond the public landing is -- Long Bridge, the
15 same developer and same land we've been talking about. It
16 was that time in 1980 he presented plans for the
17 construction of an -- and 28 town houses to be built right
18 at the water and marsh edge. This plan required about two
19 acres of swamp to be -- and zoned residential -- from the
20 county.

21 I opposed the plan and I think I was probably
22 the only one in town who did, and I opposed the annexation

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1 and of course I've had repercussions about that ever since.
2 But the town fathers took several steps towards -- and
3 rezoning of that land. Next in about 1983 the same
4 developer decided to build an office building on the sight,
5 his plan required a zoning change this time, from
6 residential and neighborhood business to light commercial.

7 Even though required conditions of either change
8 of character or mistake in the original zoning were not --
9 the town attorney fabricated an excuse for the town to
10 approve the rezoning. So we took this thing to appeal
11 through the appeals process and during that time the
12 developer essentially tore down an existing structure and
13 rebuilt that shell of an office structure on its
14 foundation.

15 Now neither Judge Wise, who overturned the
16 original zoning decision by the town for change or the
17 three judges on the Court of Special Appeals were ever told
18 in court that the structure was built, as far as I know
19 they might not even know that its built now, its just down
20 there, unoccupied as far as I and not completed.

21 By not rejecting the zoning change in the
22 beginning as they should have, my wife and I had to incur

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1 several thousand dollars in legal fees to protect our
2 property value and of course we became outcasts among a lot
3 of people in town for this. The developer must also have
4 had to pay several thousand dollars in legal fees and who
5 knows how much more to construct the building which can't
6 legally be completed or occupied.

7 The town itself paid about \$1600 in legal fees
8 to try to change the zoning of this area, but illegally.
9 Now we're faced with a situation where the same developers
10 attorney has presented an amendment to the Critical Areas
11 Plan for Centerville. The amendment would allow the town
12 to do away with the hundred foot buffer requirement.

13 I think, but of course I can't be sure, but
14 noting the history of the towns activities and dealings
15 with this particular developer, and if they follow suit
16 they -- and if any way they have the option of granting a
17 variance, whether or not to -- will be forwarded, I think
18 they will grant this variance.

19 Now there's one other thing, a little bit
20 different subject, now I don't know whether Critical Area
21 should cover it. But I'm concerned that any plan for
22 upgrading the quality of water in the Corsica River should

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1 include some way to reduce the flow of nutrients into the
2 river from the sewage treatment plant. And I think that's
3 one of the things that's really deteriorating the quality
4 of that river. So I appreciate your time and I thank you.

5 CHAIRMAN BLAKE: Thank you Mr. Almojust. I
6 think I might have a little trouble reading this next name,
7 it looks like the first name is Mouw, is that correct? M-

8 MR. FREEDSTATE: Mark.

9 CHAIRMAN BLAKE: Mark M. --

10 MR. FREEDSTATE: Freedstate.

11 CHAIRMAN BLAKE: Thank you.

12 MR. FREEDSTATE: -- my handwriting.

13 CHAIRMAN BLAKE: It doesn't look like a "K" to
14 me.

15 MR. FREEDSTATE: My name is Mark Freedstate, my
16 purpose for being here is to simply address you gentlemen.
17 I first want to mention that I did live here all my life, I
18 own property in Centerville -- business in Centerville and
19 the main office of my business is located in Centerville.
20 And another small credential is I intend stay in
21 Centerville for the rest of my life.

22 The future development of Centerville depends on

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1 a workable law, I feel capable of recognizing good and bad
2 situations. Any strict unflexible ordinance recognizing
3 only state law will stifle future growth. It would be my
4 desire to see regulations controlling the run off, etc.,
5 but yet still provide for considerations allowing for
6 environmentally safe development, otherwise our town, our
7 business which myself and several others depend a great
8 deal will continue to remain stagnant.

9 I'm afraid of killing future flexibility in our
10 growth. It seems ironic that an asset like the Corsica
11 River, which is there for healthy future growth for
12 business and for the people who live in this area alike,
13 may become the ultimate killer of the town of Centerville.
14 Since Mr. Kudner's plan has been brought up I only wish the
15 state one thing, that this is my opinion a prime example of
16 decent growth for the town. And can be -- that can be
17 constructed within the Critical Area Guidelines. Mr.
18 Kudner's plan deserves the flexibility and consideration
19 any Critical Area Plan should positively address. Thank
20 you gentlemen.

21 CHAIRMAN BLAKE: Thank you. I have no idea who
22 this is, sorry I can't read this handwriting either, maybe

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1 -- could you help me with this. Somebody who knows this
2 person I'm sure will recognize it, number 5. Sydney
3 Ashley, is that possible?

4 MR. ASHLEY: I am Sydney Ashley and I -- born
5 and raised and live in Centerville and intend to stay in
6 Centerville. My property, in question is down at the head
7 of Mill Stream, it was an old cannery factory, it still had
8 one shed left. But your Critical Areas line throws the
9 property partially in two parcels. My question is, can a
10 town alleviate the situation of the hundred foot setback
11 and still allow construction of the middle to low income
12 housing? It was the sight of a jail -- proposed sight of a
13 jail and due to opposition for the local people, they
14 thought it was much better better suited for low income -
15 middle income housing.

16 -- about here, but now I see here it would --
17 with the property seven acres lying outside or in the
18 Critical Area would a hundred foot setback and all this I'm
19 somewhat in -- situation. The town needs to have a
20 flexibility to allow this development in -- or what I call
21 already developed area that has been served its purpose
22 such as -- plant and this cannery has since been removed.

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1 But the town needs flexibility, -- if you tie
2 their hands of this thing, its balloons and its going to be
3 quite hard to talk anyone into buying property which I
4 bought this three or four years ago. These touches or --
5 anywhere close to Critical Areas, -- let me out of this
6 one, I've got another piece of property over here -- the
7 rest of my family has other property, I don't think we're
8 going to be to much hampered by it but we're somewhat --
9 part of this is in the same land that I have, but not part
10 of this commercial or residential area.

11 But I'm telling you we're all scared to death
12 and the town, I rely on their ability -- people that live
13 here and recognize that their not going to mess up nest,
14 they need some flexibility to help us out. And I hope that
15 you all don't tighten this thing up so that we can't have
16 some flexibility in construction -- low income housing -
17 middle income housing, we do need and we're going to
18 continue to need. Thank you.

19 CHAIRMAN BLAKE: Thank you Mr. Ashley. I
20 received a translation on the rest of the names and the
21 sixth person is Mr. Robert Thomson.

22 MR. THOMSON: Gentlemen my name is Robert

1 Thomson, I live on Liberty Street in Centerville and I'll
2 be -- very short here. I'm speaking out in favor of the
3 amendment that has been discussed at length this evening,
4 I think the amendment, as written limits the town very
5 strictly to how they can judge whether a property applies
6 to this amendment or not and also because its laid out for
7 only intensely developed, limited development areas only in
8 previous development activities and I think Mr. Ashley
9 addressed an item here in a town with the age of this town
10 there are many properties who have previously been
11 developed and the residuals of the development are
12 impervious soils such as Mr. Kudner's property and Mr.
13 Ashley's property.

14 Where the run off right now is very heavy and if
15 you've looked at the Mill Stream after a severe rain, it --
16 very much, a lot of that comes from Mr. Ashley's property
17 and the lowlands there. And the buffer zones in these
18 properties will not -- I repeat will not come back the way
19 the Critical Areas would like them to because of that
20 compacted soil or the impervious soil.

21 So therefore if they are developed and I think
22 its very easy to prove that there can be -- at least a 10%

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1 improvement in that water quality from those properties
2 then the town and the Critical Area is gaining in their
3 ability to protect the waters of the Chesapeake Bay.

4 I speak very strongly on this and stand behind
5 this matter very much, thank you.

6 CHAIRMAN BLAKE: Thank you Mr. Thomson. Our
7 next speaker will be Mr. Howard Wood.

8 MR. WOOD: I'm not sure whether I'm using this
9 correctly, I'll try. My name's Howard Wood and I live
10 outside of Centerville but I'm the President of the Queen
11 Annes Conservation Association which is chartered for the
12 purpose of encouraging development and is advantageous to
13 all the citizens of the county and this includes citizens
14 and properties within the town limits.

15 Our Association was formed -- or organized
16 almost 20 years ago and we have around 150 members, more or
17 less at different times depending on how difficult some of
18 the environmental questions that come up turn out to be.
19 Another words we have had more and we have had less, but it
20 runs around that.

21 We have a board of approximately 21 people and
22 two years ago the board resolved it, they did approve the

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1 Critical Areas Criteria or rather the Critical Areas Law
2 and repeated that after the Criteria were --. And agreed
3 to the extent that we could, we would try to help the
4 Chesapeake Bay Foundation to monitor the compliance of
5 local programs in the county and within the municipalities
6 in the county.

7 It is for that reason that I address this same
8 amendment that other speakers have talked about. I feel
9 that Mr. Berliner has stated better than I can most of the
10 points that I was going to make, so I'm only going to
11 reiterate the fact that here we have a complete departure
12 from the exemption provision that is already in the
13 Critical Area Criteria that allows the town to point out
14 certain portions of the Critical Area where they think
15 there should be an exemption from the buffer requirement,
16 where it can be sufficiently demonstrated that the existing
17 pattern of development prevents the buffer from fulfilling
18 its function.

19 Whereas the local program introduces this rather
20 complex additional option for an exemption by the town
21 without specifying any particular area or portion but just
22 saying anywhere in the intensely developed or limited

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1 developed areas. They then introduced as one of the
2 provisions, this 10% reduction in levels of pollutant which
3 applies only to intensely developed areas and the Criteria
4 itself.

5 And another provision not under the habitat but
6 under the intensely developed heading. So what I'm saying
7 there is that the 10% provision applies in the state law to
8 intensely developed areas, but with this amendment would
9 apply also to any limited development area.

10 Now the town does have considerable land that is
11 designated as limited development area along the
12 waterfront, therefore I think its important to recognize
13 that this amendment opens up a new method for -- to qualify
14 itself to be exempt from the buffer. I don't need to say
15 exactly what all that is you can see it yourself on the
16 map.

17 Also as Mr. Berliner pointed out there are a
18 couple of places where the language is loosened up here so
19 that you can say that not only the existing pattern of
20 development but existing or prior pattern of development.
21 This introduces all kinds of questions about what was the
22 previous development activity, what was the prior pattern

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1 of development, when was it and the light, then also you
2 have not only the previous pattern would prevent the buffer
3 from fulfilling its function but would prevent or
4 substantially impair the buffer from fulfilling its
5 function.

6 So again you have a subjective standard
7 substitute for something which is rather clear and I think
8 that it would be a great mistake to set a precedence where
9 by you have a -- way of getting an exemption from the
10 buffer, I think the buffer is really one of the main stays
11 of the whole program, the hundred foot buffer and should
12 not be weakened or I don't think that Centerville should
13 set a new standard that other places may attempt to follow.
14 Thank you very much.

15 CHAIRMAN BLAKE: Thank you Mr. Wood. Our next
16 speaker will be Mr. Thomas Keating. Pardon me?

17 MR. KEATING: I'll pass.

18 CHAIRMAN BLAKE: Thank you. Next would be
19 Judith G-E-G-G-I-S.

20 MS. GEGGIS: Geggis.

21 CHAIRMAN BLAKE: Geggis.

22 MS. GEGGIS: I'm not an ecologist and I'm not a

1 geologist, I happen to be born in a county that -- the bay
2 and I'm a native Marylander and I'm opposed to this
3 amendment because I've been very interested for a long time
4 in saving the bay. And I'm definitely not opposed to any
5 growth in Centerville, I think many of the merchants in
6 this town know that since we bought our property it -- from
7 Mr. Ashley that we have been supporting a local merchant
8 and I agree with Mr. Rabin and Mr. Berliner that I feel
9 that the amendment should be opposed and I thank you very
10 much.

11 CHAIRMAN BLAKE: Thank you Ms. Geggis. Next is
12 Christopher Kehoe.

13 MR. KEHOE: Thank you members of the Commission.
14 My name is Christopher Kehoe and I am here as an attorney
15 for Arther Kudner, who is an individual who you have heard
16 much about tonight. And I think I want to make one comment
17 before getting into the specifics of my remarks and that is
18 that most of the people have spoken token, have focused in
19 on one or two paragraphs of the plan and I think its
20 important to bear in mind that I believe everyone in this
21 room believes that the Centerville local Area Plan
22 generally with the exception of -- is a good plan.

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1 It has been carefully and thoughtfully worked
2 out by consultants and members of the town staff and
3 elected and appointed officials of the town and I think
4 that's something to bear in mind. You have heard much
5 tonight about the so called Arther Kudner amendment and I
6 think you've heard some things tonight which just simply
7 are not true.

8 For instance you heard that in position of the
9 improvement exemption for improved performance would impose
10 an impossible administrative burden on the town and result
11 in something that would be so complex and so complicated
12 that it would be unworkable. And frankly gentlemen I think
13 that argument is simply unvarnished nonsense.

14 I don't think you have to look any further than
15 Easton, which lies just a few miles south of here, to
16 realize that that is simply not the case. Easton is a town
17 which is not a whole lot larger or a whole lot more
18 sophisticated in terms of its -- structure and personnel
19 than Centerville's is, and the Critical Area -- Staff
20 recommended to Easton that the council -- that publication
21 -- frame work for evaluating compliance with the 10% rule
22 in the Critical Area which has been prepared by the council

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1 of governments from the Washington - Metropolitan Area, be
2 adopted by reference into the towns -- of Easton's local
3 area plan.

4 If the town of Easton can administer those
5 standards in Easton there's no reason I submit to you why
6 the town of Centerville could not administer the same
7 standards in this town.

8 Another argument that has been suggested as a
9 reason why you should not adopt this plan is that somehow
10 by permitting Centerville to structure its own approach to
11 the Critical Areas would open a door for other communities
12 to do and perform an -- around the Critical Areas --
13 guidelines and Criteria. I think that argument ignores the
14 fact that all Critical Area Plans must be submitted to you
15 for your approval.

16 You are of course final judge as to whether or
17 not a local area plan is acceptable under the states
18 standards or not. Finally one argument that I think also
19 you have to simply or should reject that off hand is the
20 argument that the town officials in Centerville are somehow
21 compliant or subject to pro-developmental pressures and
22 will not do their job in enforcing the Critical Areas Plan.

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1 I think that the state has made that decision
2 for you when it, in the Critical Areas Legislation left
3 administration and enforcement of local Critical Area Plans
4 to local officials. If the state did not trust local area
5 officials to do their job then presumably the state
6 legislature would have made a different arrangement.

7 And after, I think discussing some of these
8 false arguments or red herrings, lets look at for a minute
9 why I think the town of Centerville adopted this language
10 into the Critical Area Plan. And the great advantage of
11 this language lies not in that it -- deals with --
12 substantially impairment of -- the buffer is substantially
13 impaired as opposed to the prior pattern of the --,
14 prevents the buffer from performing its function.

15 The advantage of this lies in that it provides
16 the developer with a definite standard to measure his plans
17 against what he knows the local community and the state
18 will provide of him. It provides the 10% figure was not
19 something drawn out of the air obviously and is something
20 which I submit is easily -- not easily but certainly
21 administered by the town and will be administered by the
22 town in other aspects of Critical Area enforcement.

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1 That is the great advantage to the developer,
2 what is the great advantage to the town and to the state as
3 a whole? And I think that is a simple one, it give a
4 property owner an economic incentive to redevelop land
5 which has already been designated for growth by the local
6 area plan. This is not a provision which would apply to
7 resource conservation areas, it applies only to intensely
8 developed areas or limited developed areas, in a way that
9 the development will improve storm water run off quality
10 and I think the bottom line of the paragraph or series of
11 paragraphs which has caused most of the controversy here
12 tonight is the very first word "improved".

13 What the town of Centerville is proposing here
14 is a standard which calls for improvement. And I think
15 that when that is -- when you bear that in mind you will
16 realize that the town was well within its rights in
17 adopting this approach to solve the particular problems
18 which it is confronted by within its community. Thank you.

19 CHAIRMAN BLAKE: Thank you Mr. Kehoe. Next is
20 Mr. Harry Duffey, Centerville.

21 MR. DUFFEY: My name is Harry Duffey, I live
22 just outside of Centerville and have property just across

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1 the river from Centerville. I think one of the mistakes
2 that we're all making in talking about this amendment is
3 that its very difficult to divorce ourselves from specific
4 properties.

5 I think the amendment is very good in the fact
6 that it will not stifle Centerville's development, I think
7 we have to look at it that way and not look at it in regard
8 to specific properties one way or the other. I think we
9 unfortunately have the critical areas come in at a time
10 when we have some controversial developments coming and
11 everybody's ideas are perhaps being -- one way or the
12 other.

13 This town lies with much of it developal area in
14 the Critical Areas and I think that because of this we need
15 some type of amendment that will allow us to grow. I'm
16 sort of a newcomer to town, I've only been here for 41
17 years but I've seen a lot of businesses not come to
18 Centerville because of zoning rules that have not allowed
19 growth.

20 I happened to start on a few years ago, I wanted
21 to start it in Centerville, when I started looking into the
22 zoning laws I started in --, and I think the comprehensive

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1 plan, the Critical Areas and everything else needs to have
2 a little flexibility so that they can look at the whole
3 picture and not specific properties. Thank you.

4 CHAIRMAN BLAKE: Thank you Mr. Duffey. Mr.
5 Ronald Gatton, would you like to see sir. I have Mr.
6 Ronald Gatton as someone who may wish to testify.

7 MR. GATTON: I'm Ronald Gatton, I happen to be a
8 environmental consultant for Kudner here on this project
9 and I won't talk a long time but I happen to work for the
10 government, 12 years, in reviewing projects and I've worked
11 with the state in developing this Coastal Zone Program as
12 well for several years.

13 And I think the objective of what we're trying
14 to do is improve water quality of Chesapeake Bay, one of
15 the ways of doing that -- Commission -- was the buffer
16 zone. And that is a good concept, but one of the things we
17 learn as a review -- a biologist reviewing development
18 project was you almost had to look at sight-- conditions
19 before you could make an opinion on what the impact would
20 be.

21 And if you look at previously developed areas
22 that are almost dominated -- almost 100% -- by impervious

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1 soils and concrete you wonder what the effectiveness of a
2 hundred foot buffer would be. I think it would be very
3 hard to justify the setback in these conditions so I think
4 you have to allow flexibility in the plan when this is
5 happening, especially if -- developer can use the Criteria
6 which the Developing Commission has paid a consultant to
7 develop and put in storm water management techniques to
8 improve water quality which is the basic -- the whole basis
9 of the law.

10 I don't think its -- I think its what should be
11 done, is to provide that flexibility. If we strictly
12 enforce a hundred foot buffer without having flexibility in
13 looking at sight conditions I think its -- its another
14 mistake the other way, when you can not justify the use of
15 that buffer in those conditions. And I think that's all I
16 have to say.

17 CHAIRMAN BLAKE: Thank you Mr. Gatton. Ok, next
18 Mr. William Rodgers.

19 MR. RODGERS: I trust you gentlemen are all
20 relieved to know that -- to be advised that the Critical
21 Areas Commission wouldn't trust these comments if the
22 Commission didn't think they'd do everything just exactly

1 right, and that you won't be misled by a statement that --
2 amendments and the congestion of our local -- more and more
3 houses this makes it better and better, won't stifle
4 Centerville. It certainly seems to me they stifle the
5 quality of english language, I don't know whether at stake
6 or not.

7 My name is William Rodgers. I an an activist
8 and a critic and I've been writing articles and working on
9 this whole question of environmental law and theory and
10 practice since the silent spring of Racheal Carson a long
11 time ago.

12 If the seven year \$27 million EPA studies and
13 the Critical Areas legislation had not come to pass the
14 reality of public support for saving and restoring these
15 natural resources would already have been lost to us all.
16 There is no doubt that the Centerville -- that the
17 federally funded Chesapeake Bay research would mercifully
18 pre-dated the present Reagan administration and the laws
19 scoffed at now by our county and Centerville governments
20 came to us at the midnight hours of time of irreversible
21 catastrophe.

22 I have to butcher what I have to say because I

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1 have it set up for about nine minutes so I'll try to -- by
2 dealing what's left here, and meet your time and
3 limitations.

4 The last hearing I sat through on this matter
5 with all three county commissioners on hand might as well
6 have been held with all three of them at the movies for all
7 the good it seemed to do. The pretension in this room now
8 and all along the waves since the very first hearings that
9 I recall, I think better than two years ago, the pretension
10 that there's no collusion between the local government and
11 the county and anybody who wants to make these amendments -
12 - eliminate buffers and put thirty houses instead of 20 and
13 thinking that's the way to improve the situation, I can't
14 believe that anybody sitting on this Commission could
15 accept that as valid dialogue.

16 Its also been verified that when the -- plan --
17 that it was about 20 minutes after a long hearing pushing
18 up toward the midnight hour, it was all settled in a hurry
19 and then you got the plan I think the next morning. The
20 local developer who plans to -- who did plan to put
21 condominiums in at one time and now has it has it up for --
22 and -- buffer -- and has all -- flexibility and that

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1 flexibility is defined in his terms, I'm not speaking the
2 english language again.

3 As appalling and as senseless as it seems now
4 the town of Centerville let go all of the land on the wharf
5 that came into their hands -- that were offered into their
6 hand in 1978 and if you find those papers, I didn't bother
7 bringing them, you can see that all of this land in
8 dispute now on the wharf was available to this town for
9 virtually a very, very tiny amount of money maybe even a
10 tax collection, it was declined, it was refused. The
11 developer -- has got it, he's got it now, he's got the town
12 in his pocket, he's got the county working him, they are
13 delivering this information to you as though it is the
14 correct thing to do and its wide open for re-examination
15 and its largely not true.

16 For 20 years I have pled, financed research,
17 written articles, run for public office twice and engaged
18 in persuasion barely short of terrorism in order to salvage
19 what's left of these resources. Only now, tonight do I
20 fail at last but we might just do it. Do not, I implore
21 you, yield or falter, we are nearly home, now the future
22 can begin. I thank you.

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1 CHAIRMAN BLAKE: Thank you Mr. Rodgers. Susan
2 Lins.

3 MS. LINS: We're talking about water quality and
4 my understanding of the Critical Areas Law and in my
5 opinion the -- of the law lie within the one hundred foot
6 buffer. And for that reason I feel that we have to give
7 the Law a chance to work using the one hundred foot buffer
8 as it stands written in the law before we make any
9 amendments or changes in the law.

10 Centerville's at the head waters of the Corsica
11 River which runs down into the Chester, which eventually
12 runs into the bay. And I think what is done in the town of
13 Centerville in the way of water quality is going to affect
14 a lot of people and if we don't keep the one hundred foot
15 buffer I think we're in a great deal of trouble.

16 We have to remember, not talking about specific
17 sight plans, not talking about developers, not talking
18 about individuals pieces of properties, we are merely
19 caretakers for future generations and in order for this
20 planet to survive we've got to do something now. Thank
21 you.

22 CHAIRMAN BLAKE: Thank you Ms. Lins. Mr. Gerald

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1 Lins.

2 MR. LINS: I think Mr. Kehoe was right when he
3 said that this, that the planning committee did an
4 excellent job on forming this plan that you have before you
5 this evening. But one of the things he's left out is that
6 only because of a previous hearing where a great many of
7 the citizens came and expressed their opinions that this
8 critical area of legislation is written out, with the
9 exception of this amendment came about.

10 There was a lot of input from this town from a
11 great number of people who ask that what you have before
12 you come about. I think that's one of the reasons why you
13 don't hear a lot of discussion about the other part of this
14 legislation. The one part that wasn't discussed at the
15 hearing was this amendment. I think its wrong that this
16 amendment be approved and that's really all I have to say.
17 Thank you.

18 CHAIRMAN BLAKE: Thank you Mr. Lins. I have
19 come to the end of the list of people who have signed up or
20 let us know that they would like to speak tonight, is there
21 anyone who's here who didn't sign up who would now like to
22 make a statement, you may do so. Yes sir, come right up.

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D.C. AREA 261-1902

BALT. & ANNAP. 974-0947

1 MR. THOMPSON: My name is -- Thompson Jr., I
2 live on Belvedere Avenue in Centerville, I'm a native, I'm
3 very familiar with the Centerville wharf area, my wife and
4 I own a farm right across the creek from where this
5 development is proposed. I would like to say that I have
6 been around the Mill Stream, the Yellow Bank Stream
7 practically all my life and the people say that there's no
8 fish here, you can go down to the bridge practically any
9 day, 365 days a year and there are four or five people down
10 there fishing. Now if they're just throwing their lines
11 overboard they're just sitting kidding themselves.

12 I want you people on this Commission to
13 understand that the river is not polluted and I don't see
14 why if Mr. Kudner goes on with this development, how in the
15 world its going to have any effect on doing damage to the
16 Corsica River. I said it in a previous hearing and I will
17 say now, what Centerville needs is more Mr. Kudner's.
18 Thank you.

19 AUDIENCE: (Claps)

20 CHAIRMAN BLAKE: Thank you Mr. Thompson. Are
21 there any other people who would like to come forward and
22 make a statement? Sir?

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D.C. AREA 261-1902

BALT. & ANNAP. 974-0947

1 MR. LIEBY: My name's George Lieby, native of
2 the county, live on the heights. Afraid my speaking voice
3 is gone tonight but I feel I'd be remiss if I didn't take
4 this for just a minute for my home town. All during the
5 Critical Area Bill hearings I went up in several counties
6 around the shore adamantly opposed to buffer strip.

7 Having spent 30 years n conservation, I don't
8 see where its going to do but very little bit of good
9 anywhere. And to go back, if you want to go back to
10 Baltimore City look how many miles-of marsh you had to out
11 to get into the Baltimore Harbor in 1946 when I was going
12 there once a month to the VA for treatment up there. You
13 rode the ferry across.

14 Centerville as far as I'm concerned could build
15 a forty story condo down there, I'd love to see it. I
16 remember very well when there's was 265 farmers owned all
17 the waterfront in Queen Annes County, now probably we have
18 4000 people that -- of water, a piece of it. I'd like to
19 see 4 - maybe 10,000 more have a piece of it. Thank you.

20 CHAIRMAN BLAKE: Ok, anyone else? If not I'll
21 remind you that the record is open for one week, I have the
22 address here, I won't read it again but if you missed it

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1 I'll be happy to give it to you when I close the hearing.
2 And if there are no other hands to testify, I pronounce the
3 hearing closed, thank you for coming.

4 (Whereupon, on Monday, November 23, 1987 the
5 hearing adjourned.)
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D.C. AREA 261-1902

BALT. & ANNAP. 974-0947

C E R T I F I C A T E

1
2 This is to certify that the foregoing transcript
3 In the matter of: Critical Area Public Hearing
4 BEFORE: Russell Blake, Chairman
5 DATE: November 23, 1987
6 Place: Centerville, Middle School, Centerville, Maryland
7 represents the full and complete proceedings of the
8 aforementioned matter, as reported and reduced to
9 typewriting.
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Kevin Reppenhagen
Kevin Reppenhagen
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BALT. & ANNAP. 974-0947

Testimony of William Rodgers, of Centreville, before the Maryland Critical Areas Commission: November 23, 1987.

===

My name is William Rodgers. I am an activist, critic, an adjunct teacher of advanced writing; lecturer, author of four works of biography, politics and public affairs, with a career as editor and writer in book publishing and journalism in New York and Philadelphia. I had a subsequent career as a trade association executive in the U.S. and Europe,

I was intensely involved in New York political and environmental affairs for 20 years before migrating 19 years ago to a Centreville slum row of four derelict historic houses on two tideland acres at the headwaters of the Corsica River. My wife and I rescued this derelict 19th century treasure from a fire company plan to burn it all down for job training. The marshfront area for years before our restoration and reclamation was a public dump. In 1977 we had these Captain's Houses, as they were known, accepted for preservation by the Maryland Historic Trust. Sold by mutual consent in our divorce agreement in 1978, the property--upstream from the Centreville Wharf--is now beautifully and authentically restored by present owners as an adornment to the town and to the nearby mess of a harbor.

If the seven-year, \$27 million EPA studies and the Critical Areas legislation had not come to pass, the reality of public support for saving and restoring these natural resources would already have been lost to us all. There is no doubt that federally-funded Chesapeake Bay research, which mercifully pre-dated the crude and corrupt administration of the lamentable

Ronald Reagan, and the laws scoffed at now by our county and the Centreville governments, came to us at the midnight hour before irreversable catastrophe.

Forty nights ago at this hour, at the invitation and direction of the Commissioners and planning office of this county, representatives from 13 of the 16 counties of Maryland met in our community to organize a sabotaging drive against this Commission's work. They agreed on plans to emasculate provisions of the Critical Areas legislation that offers the only criteria legally and painfully developed to coax and nurse this incomparable, terminally sick estaurine area back to a viable life.

If this sounds or reads like an indictment, it is intentional. It is reinforced by local history and local government and by many, but fortunately not all, local people who proclaimed their love for the bay while continuing to elect officials who perpetuated the problems and the ruinous policy. It was the federal government before Ronald Reagan and the Maryland government before Governor Schaefer that brought to life the law and policy that may save the resources and save us if we do not falter at this crucial stage. Reagan is, of course, beyond both hope and contempt but there is for now an official commitment from Governor Schaefer that he will stand with us, with you and the creative work of this great Commission. Let us thank heaven and applaud William Donald for this blessing.

I attended three of the public hearings held by the Critical Areas Commission held in the past several years and felt the premonitions of fear as the differences arose between the

goals necessary to reverse the terminal condition of the bay and upland waterways and wetlands, and the resentment building up against the discipline and enforceable law we would need to arrest the pace of disappearing wetlands.

Since this past summer, many of us have sat through five or six hearings, groggy into the approaching midnight, only to observe that the zoning board members, the town council members, the board of appeals, the county commissioners never once--to my satisfaction, at least--conveyed a word of sympathy or agreement for the specifics of this Commission's accomplishments.

The last hearing I sat through, with all three county commissioners on hand, could have been held with similarly disinterest in the testimony if they had all gone to the movies instead. The obvious collusion between our government and developers bent upon bulldozing waterfront lands was disheartening. It was also verified when they approved the county's own hostile plan and sent off the next morning to your offices. Their concept of saving the bay and wetlands was to get more houses per waterfront acre, and then argue that their plans to save the bay were much better than what the Critical Area criteria sought. The validity and quality of all that testimony to the contrary was almost insultingly denied.

A local developer with plans to put 20 condominiums on the Centreville wharf, inspired by all the encouragement he was getting, moved to revise his plan from 20 to 30 condominiums and little or no protective barrier for a development scheme that would, we were told, be far superior and less harmful than all

those needless plantings, buffers and open wildlife spaces.

Ten years ago, about the time the EPA began its monumental studies that revealed the impending death of the bay and waterfront resources, the town and the county were offered all the commercial land owned by the corporate conglomerate that occupied the toown wharf area. The cost would have been negligable because the departing corporation preferred public ownership of the harbor as a shield against a competitor.

As appalling and senseless as it seems now, they let it go into the hands of a developer. We could have owned it all, leased it, collected rentals on it, complied with preservation and anti-pollution laws, and had an unparalleled treasure while protecting the river and bay. Instead, the town council ordered the destruction of a precious 19th century granary, the county installed an atrocious cinderblock toilet as its contribution to cultural progress, put asphalt all over the place, and the dump concept continued. The county got \$90,000 to come up with a plan. The town got \$70,000 in grants. None of it, as far as we know now, was devoted to the concept of preservation and Save-the-Bay goals in Critical Areas criteria.

For 20 years I have pled, financed research, written articles, run public office and engaged in persuasion barely short of terrorism to salvage what's left of these resources.

Only now, tonight, do I feel at last that we just might do it. Do not, I implore you, yield or falter. We are nearly home.

Now the future can begin.

Statement before the Critical Area Commission
on the Centreville Local Plan November 23, 1987

by Kenneth Rabin

This is the third meeting I have attended on the Centreville Critical Area Plan. At the first, there were many objections, particularly on two matters: the absence of any designation of Resource Conservation Areas, where such seemed to be appropriate, and a map proposing future growth areas in places within the Critical Area that appeared unsuitable. The Town reacted to these criticisms by removing the prospective growth map and by designating a Resource Conservation Area, covering primarily town-owned park land.

At the second meeting, called to consider these revisions, most of the criticism centered on a new amendment submitted by *the attorneys for* Mr. Arthur Kudner, a local businessman and prospective developer. His proposal would exempt development from the 100 ft. buffer requirement in Limited Development Areas as well as Intense Development Areas, if the developer could demonstrate an improvement in water run-off quality. Despite criticism of this proposal from many citizens, the Town officials adopted it, adding a requirement that such improvement be at least 10 % (as required in Intense Development Areas). You will find that proposal on P. 61 of the Final Draft, under the heading "Improved Performance Exempted."

The Critical Area Watch Group, of which I am a member, has been accused of being a "single issue" group interested only in the Kudner project. This is not true. We have been and remain very active in support of the Critical Area Program; we have spent many hours in research and study; and we have testified on many aspects of the County Plan as well as the Centreville Plan. The proposed amendment to the Criteria and the local Plan is, in my view, a great threat to the Plan and the Bay. I therefore speak tonight in opposition to that proposal not only because I consider it a "special interest" provision for the Kudner project but also because it represents a serious attack on the Critical Area Criteria, an effort to provide for so-called "flexibility" that would be picked up very quickly by other jurisdictions to defeat the purposes of the Criteria for their own special interests.

I fully understand that the Commission cannot involve itself in local development conflicts and I am not suggesting it do so. But I am going to discuss our local development controversy as a clear illustration of the danger of the proposal on p.61. I will make it as brief as I can and directed as closely as possible to the Kudner amendment.

Mr. Kudner proposes to build a Planned Unit Developmet of 30 town houses on three parcels of land; one on the West side of Watson Rd. and two on the East side. The parcel on the West side extends into the head of the Corsica River. In the Centreville Plan, that parcel has been designated as an Intense Development Area, though his property has on it only an abandoned barn and remnants of concrete slabs which were once part of the foundation for a fertilizer plant.

The two plots on the East side consist primarily of marsh land and the adjoining Yellow Bank Stream, which flows into the Corsica. But there is an area of filled marshland- an empty grass filled meadow- on which Mr. Kudner proposes to build six double and two single condominium town houses, with 28 parking spaces, roads, sidewalks, etc. The two East side parcels have been designated Limited Development Areas. There is nothing on them nor was there in December 1985. At meetings on the project, citizens have presented maps of the East side, demonstrating that if the 100 ft. buffer from the designated edge of the wetlands is imposed, Mr. Kudner could not build his project as presently presented in his site drawings. Then if the buffer is extended to include steep contiguous slopes, as required in Section 14.15.09 C (7) of the Criteria, the project would be out of compliance and illegal. (There are contiguous slopes of up to 60% on that site).

Now back to the West side: I hope the Commission will not agree to the designation there of Intense Development- because nothing is there or was there in 1985 except for the abandoned barn and pieces of concrete foundation. But if the designation is allowed, an exemption from the buffer might be granted in an IDA, if a 10% improvement in run-off can be demonstrated. Given the fact that there are impermeable surfaces in some parts of the site, an argument might be made for calling in an impartial expert to measure run-off and determine if Mr. Kudner's plans would provide for the necessary improvement.

But the East side is Limited Development Area, where the

Critical Area Criteria mandates the extended Buffer and makes no provision for exemptions except for development already in existence. What's a developer to do ? This is the genesis of the proposal on p.61. Mr. Kudner and his attorneys, who had taken no part in previous public discussions of the Critical Area Program, submitted a proposed amendment to the Centreville Plan- on the Friday before the Monday of the last Public Meeting, providing for an exemption from the Buffer in Limited Development Areas if an improvement in run-off could be demonstrated. How can you improve the run-off from a grassy meadow by building six double town-houses, parking places, etc. etc. ? They would assert it can be done through plantings, siltation ponds, and other water control mechanisms. I would assert that the only way you can show a run-off improvement of 10% from major construction with the resultant chimneys, garages, driveways, paint and the other detritus of civilization is by doing your own measurement by experts in your employ and having the results accepted by local officials who have no way of performing sophisticated measurement. And what if the project is constructed, and the run-off is accurately measured, and it is discovered that there is not the requisite improvement- maybe even a degradation ? Will the town then order the town houses dismantled ? I think Mr. Kudner and I would agree that would be unlikely.

It should be pointed out that this entire project is situated in a designated flood plain. Who will measure the run-off after the next flood of the magnitude of those where this property was completely flooded, such as 1955.

The Critical Area Commission, I have been assured, imposed the 100 ft. buffer because it was convinced that it offered the best protection for the wetlands, rivers and tributaries of the Bay; and also because it knew that the local jurisdictions could establish and enforce a 100 ft. buffer, but lacked the expertize and manpower to measure, monitor and control complex and difficult to maintain water-control systems. The proposed amendment would reverse that decision and would introduce complexities which many towns and counties cannot monitor and control.

And can we put our faith in the protestations of developers who claim they will acheive the goals of the Criteria but by their own "improved" methods. I think the answer is no- even for those of good faith and intentions. That is why there is a set of fixed Criteria

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in the Critical Area Law. Let me give you a clear example- again from our local project. On the West side- jutting into the river: Over the last month, Mr. Kudner has had many loads of loose dirt dumped on that site, plus a little on the East side. I and others were concerned about run-off and called the Soil Conservation Service. We learned that Mr. Kudner had not submitted an erosion control plan and that he had not received the required permit. At the request of the Soil Conservation Service, he later did so and then erected a plastic erosion control barrier. Later I talked with an official of the state Dept. of Natural Resources who told me the barrier had not been properly installed, and that his Department would ask for proper installation. About two weeks ago, Mr. Kudner had almost all the marsh grass mowed down next to the river on the West side, thus removing a natural barrier to siltation without any bulkheading or other barrier to increased run-off.

I have no reason to believe that Mr. Kudner wished to pollute that river, but I do know we have had heavy rains before the barrier was constructed and heavy rain and snow since the marsh grass was removed and the siltation and run-off into the Corsica has been increased. These sorts of actions raise serious questions: first about the knowledge of and/or interest in environmental matters of any individual developer; and second, it raises a serious question about the 10% improvement requirement for buffer exemption: When do you measure it and under what conditions? If any developer raises the polluted run-off level through actions he undertakes, he can then lower that pollution level by stopping or repairing his polluting actions. I cite this as another reason why a fixed buffer is far better protection than a presumed future improvement measured at an unfixed future date.

And when I called a town official about the soil dumping and marsh-grass cutting, I was told the town had no jurisdiction and was referred to State and Federal Officials. This town, and ^{many} others, I assume, lack the legal structure, the manpower and the expertise to measure pollution or to control and enforce environmental law.

I can understand the rationale for the 10% improvement factor in a truly intensely developed area of heavy current pollution- where new development could be designed to decrease current pollution. But it is a risky concept for the reasons I have cited above. Certainly it should not be extended to Limited Development Areas- where indeed the buffer is the very backbone of the law.

I would like to turn now to the proposal itself, on p.61.

1) This would extend buffer exemption to LDAs if the following tests are met:

2) "The parcel has been subject to previous development activities."

I do not see how that achieves the goals of the Critical Area program. It seems to say that if there was ever development on that site- even if there is none now- we should consider that area permanently open to development and pollution, and to give it special consideration for an exemption.

3) This says that if we can demonstrate that the buffer won't enhance the protection of habitat or water quality or that prior patterns of development "impairs the buffer from fulfilling its functions" we should allow an exemption. I don't know how you demonstrate that a buffer, which so far has never existed, won't help protect water quality in the future. As to prior patterns of development, and I presume this refers to old blocks of concrete, which prevent the buffer from functioning correctly, I would suggest that if you are trying to improve run-off, you should remove those prior patterns rather than use them as an excuse for an exemption of the buffer requirements.

4) This calls for a 10% improvement in run-off through plantings and other means.

The next paragraph reads in part: "The above requirements... are applicable only to lots where current development or lot configuration fails to permit conformance with the 100 ft. buffer requirement. Other sites would be subject to the standards outlined for the buffer" etc. That's not difficult to understand: It says the buffer requirements are good and developers must conform to them wherever it's convenient. But where the lot configuration won't work ~~or the site does not conform to the developer's plans,~~ *and the criteria conflict with* let's give him an exemption!

I hope the Commission will look carefully at the entire Centreville Plan. I hope you will examine the designations of Intense Development Areas and Resource Conservation Areas. And especially I hope and urge you to take action to remove the proposed provision on p. 61, which represents a danger to Centreville, ~~and~~ *and to the Bay.* to the integrity of the Critical Area Criteria,

There is another and broader reason why I hope you will reject this amendment and others with similar purposes: The Critical Area Law, as you know far better than others, was very difficult to achieve. Now, it is being watched all over Maryland and, indeed, all over the country, as a legal and social precedent for environmental protection laws. I hope it will be given a fair trial.

Critical Area Sub Committee
November 23, 1987 Monday
No Case #

On Record 706 pm

Encl / Henry 831 pm

Report
KRR 22 lines

Exhibits
1 #A 1 B - mob

2 of 3

3 of 3

11/23/87

Critical Area Commission
Tawes Office Bldg. D-4
Taylor Ave.
Annapolis, Md. 21401

Dear Commissioners;

COMAR 14.15.09,C., (8) of the Critical Area Criteria provides for a nonperformance exemption to the 100 ft. buffer zone. This paragraph states, "As part of the local Critical Area Program to be submitted to the Commission, local jurisdictions may request an exemption of certain portions of the Critical Area from the Buffer requirement where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area prevents the Buffer from fulfilling the functions stated & B, above. If an exemption is requested, local jurisdictions shall propose other measures for achieving the water quality and habitat protection objectives of the policies. These measures may include, but are not limited to, public education and urban forestry programs."

The functions stated in section B are, "(1) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries; (2) Minimize the adverse effects of human activity on wetlands, shorelines, stream banks, tidal waters, and aquatic resources; (3) Maintain an area of transitional habitat between aquatic and upland communities; (4) Maintain the natural environment of streams; and (5) Protect riparian wildlife habitat."

The Town of Centreville, on page 61 of its Chesapeake Bay Critical Area Local Program has inserted a section entitled "Improved Performance Exempted". This section was inserted into the local program subsequent to the second and final hearing held in this community prior to the submission of the local program to the Critical Area Commission. At that second and final hearing, an amendment to the Centreville Local Program was proposed by Thomas J. Keating IV (copy attached) on behalf of Mr. Arthur Kudner, who has plans to develop within the 100 ft. buffer zone in the Town of Centreville. At that second hearing, the town heard testimony from many residents against the proposed amendment. I urge the commissioners to review the evidence and testimony of that second hearing.

In spite of strong public testimony against this amendment, the Town of Centreville voted to include the amendment proposed by Mr. Keating in the local program. Despite the added printing costs, this amendment was inserted into local program rather than attached as an amendment to the program, because the Town felt that in this way they had a better chance of having it accepted by the Critical Area Commission. The town amended Mr. Keating's amendment to require an improved performance rather than an equivalent performance. They also added the words, "that the existing or prior pattern of development prevents or substantially impairs the Buffer from fulfilling its functions as described in the regulations promulgated by the Critical Area Commission."

The improved performance exemption provided for in the Centreville Chesapeake Bay Critical Area Local Program varies from the non performance exemption provided for in COMAR 14.15.09 C (8) in a number of very important ways.

1. COMAR 14.15.09 C (8) requires that the existing pattern of development prevents the buffer from performing its functions. The Centreville program requires that the existing or prior pattern of development prevents or substantially impairs the Buffer from fulfilling its functions.

2. In COMAR 14.15.09 C (8) As part of the local Critical Area Program to be submitted to the Commission, local jurisdictions may request an exemption of certain portions of the Critical Area from the Buffer requirements where it can be sufficiently demonstrated (to the Commission) that the parcel meets the exemption criteria. In the Centreville Program a local developer may request that a parcel be exempted from the Buffer restrictions when a developer sufficiently demonstrates to the Town of Centreville that his parcel meets the exemption criteria.

Since the town's improved performance exemption provision was inserted into the local program by the town for Mr. Kudner, it is important to examine how this provision might be used by the town and Mr. Kudner to permit him to develop within the 100 ft. buffer zone. As is demonstrated on the attached site plan, Mr. Kudner has proposed a development in which most of the buildings are located in Buffer zone or on slopes of 15% or greater. A significant portion of the property west of Watson Road is covered by the concrete foundations of recently demolished warehouse buildings. These impervious surfaces extend to some extent into the 100 ft. buffer zone. In so far as they do, these surfaces prevent the buffer from fulfilling its functions. Based on this information, the Town of Centreville would grant the parcel to the west of Watson Road a complete exemption from the restrictions of the 100 ft. Buffer.

The parcel to the east of Watson Road slopes steeply from the road to a grass covered meadow which borders a tidal marsh. It is hard to imagine a more perfect example of a buffer zone. This parcel is clearly fulfilling the functions of a buffer, so one might question how Mr Kudner and the town might use the improved performance exemption provision to exempt this parcel from the buffer restrictions. However, the improved performance exemption provision was inserted for the sole purpose of providing a basis for granting a buffer exemption to this parcel. Mr. Kudner has aerial photographs which shown that a portion of this parcel was used by the previous owner in the 1960's for parking their vehicles. Mr. Kudner will hire an "expert witness" to testify that this prior development activity substantially impairs the buffer from fulfilling its functions. The Town of Centreville will grant a buffer exemption to this parcel based on this testimony.

I strongly urge the Commission to reject the improved performance exemption provision of the Centreville Chesapeake Bay Critical Area Local Program. The criteria clearly place the responsibility for granting buffer exemptions on the commission and the responsibility for requesting them on the local jurisdictions as part of their local programs. Since the Town of Centreville has not requested any buffer exemptions as part of its local program, any future exemptions to the buffer should be considered as amendments to the local program, subject to the same review and approval procedures as the program itself.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Berliner".

Ben Berliner

LAW OFFICES
THOMAS J. KEATING, IV
117 LAWYERS ROW
POST OFFICE BOX 416
CENTREVILLE, MARYLAND 21617-0416

301-758-2662

301-822-7272

September 17, 1987

BY HAND

Planning and Zoning Commission
of the Town of Centreville
Town Hall
Centreville, Maryland 21617

Gentlemen:

The Town is presently considering a proposed draft of a Chesapeake Bay Critical Area Local Program to be submitted to the State and, sometime thereafter, adopted by the Town for the purpose of implementing, within that portion of the Town of Centreville which is located within the Critical Area, certain standards and procedures designed to achieve the stated goals and objectives of the State Critical Area Legislation.

The purpose of this letter is to request your favorable consideration of a suggested additional provision to the Local Program, for the purpose of providing a performance related exemption to the Buffer requirements set out in the proposed draft. The additional provision, which I think would properly be inserted as a new sub-paragraph approximately ten lines down from the top of page 59 of the present "Final Draft", would read as follows:

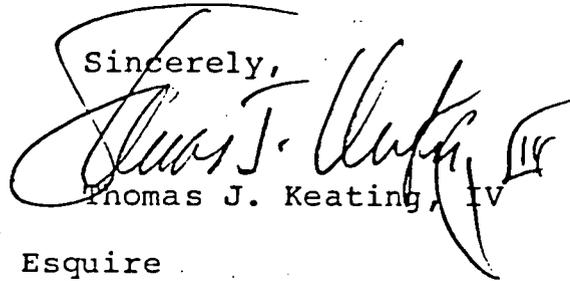
"Equivalent Performance Exempted -- A parcel shall be exempted from the 100 foot Buffer restrictions where:

1. The parcel is classified as Intensely Developed Area or Limited Development Area;
2. The parcel has been subject to previous Development Activities;
3. It is demonstrated that imposition of the Buffer restrictions will not result in significant habitat protection or improvements in water quality; and
4. It is demonstrated that Storm Water Management facilities serving the property, and other site improvements or on-site plantings and vegetation, will result in an improvement in water quality and habitat protection equal to or greater than the improvement which would exist as a result of imposition of the Buffer."

Planning and Zoning Commission
of the Town of Centreville
September 17, 1987
Page Two (2)

I plan to offer testimony in support of this proposal at the hearing presently scheduled to take place on September 21, 1987, but would be happy to furnish the Commission, prior thereto, with any additional information which it may wish and I can provide. With thanks for your courtesy and cooperation, I am,

Sincerely,



Thomas J. Keating, IV

TJK/jbl

cc: Christopher B. Kehoe, Esquire
Ewing, Dietz, Turner & Kehoe, P.A.
P. O. Box 1146
Easton, Maryland 21601

Mr. Milton McCarthy
McCarthy & Associates
410 Kings College Drive
Arnold, Maryland 21012

Buffer or clearing of existing vegetation may be offset by planting an area three (3) times the areal extent of the increased impervious surface area either on site outside the buffer (preferable) or elsewhere in the Critical area within the same watershed as specified in the Compensatory Pollution Mitigation Program. (See: Compensatory Pollution Mitigation Program in Chapter 3, Implementation).

Insignificant Actions Exempted--Any development activity that can be classified as insignificant under the guidelines of the Critical Area Program will be exempted from the restrictions of the Buffer portion of the Critical Area Zone.

Improved performance exempted - a parcel shall be exempted from the Buffer restrictions where:

(1) The parcel is classified as Intensely Developed Area or Limited Developed Area;

(2) The parcel has been subject to previous Development Activities;

(3) It is demonstrated that imposition of the Buffer restrictions will not result in significant habitat protection or improvements in water quality and that the existing or prior pattern of development prevents or substantially impairs the Buffer from fulfilling its functions as described in the regulations promulgated by the Critical Area Commission;

(4) It is demonstrated that storm water management facilities serving the property, and other site improvements, including but not limited to on-site plantings and vegetation, will result in a 10% reduction in levels of pollutants contained in storm water or other surface water leaving the site, therefore resulting in an improvement to water quality and habitat protection.

The above requirements which provide for development within the Intensely Developed Areas and Limited Development Areas are applicable only to lots where current development or lot configuration fails to permit conformance with the 100 foot buffer requirement. Other sites would be subject to the standards outlined for the buffer identified in the Habitat Protection element of this program. Implementation of these provisions would be achieved through their incorporation into the overlay zone standards.

3. Variance Provisions

Due to special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area Overlay Zone would result in unwarranted hardship to a property owner, the Town's Board of Appeals may grant a variance from the strict adherence to those provisions. In granting a variance, the Board of Appeals must use the following criteria.

The Board shall make findings which demonstrate:

That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the