

Public Hearings - Dorchester County - Program Amendments - Sec B-8.1809 1988 MSA-J1830-37

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BEFORE THE CHESAPEAKE BAY CRITICAL  
AREAS COMMISSION

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Program Amendments filed :  
 :  
by Dorchester County under :  
 :  
Section 8-8.1809 :  
-----X

Cambridge, Maryland

Thursday, October 27, 1988

The above entitled matter came on for hearing  
pursuant to notice.

BEFORE:

Robert Price, Acting Chairman  
Sam Bowling, Commission Member, Charles County  
William Bostian, Commission Member, Wicomico Co.  
Dr. Shepherd Krech, Commission Member, Calvert Co.  
Edward Phillips, Commission Staff

APPEARANCES:

Steve Dodd, Planning Director for Dorchester Co.  
Norman Day  
John West  
Gregg Moore  
Scott Wallace  
Richard White  
Doug Brossman  
Ray Stevens  
Russ Hill  
Elder Ghigiarelli  
Skip Miller  
Mr. McCarthy  
Mr. Rich

P R O C E E D I N G S

1  
2 CHAIRMAN PRICE: Get started. Sorry to be a little  
3 bit, uh, little bit late. We were over getting a, some  
4 fresh fish at the local restaurant, which they caught for  
5 us. I'm Bob Price, Commission member from Queen Anne's  
6 County, and the Acting Chairman of this panel.

7 And to my left is Sam Bowling, who is the Commis-  
8 sion member from Charles County. On his right is Bill  
9 Bostian, who's the Commission member from Wicomico County.  
10 To the far right is Dr. Shepherd Krech, who's the Commission  
11 member from Calvert County. And the gentleman seated at the  
12 table is with the Commission staff, Mr. Ed Phillips.

13 The hearing tonight is on program amendments filed  
14 by Dorchester County under the Section 8-8.1809. I think  
15 the format we'll follow will be a presentation by the  
16 applicant for the party amending, which would be Dorchester  
17 County. And I believe the way this thing, looks like it's  
18 going to shape up, that some of the individuals who are  
19 personally involved in the proposed amendment would, we would  
20 then hear from them.

21 Following those presentations, I think it would be  
22 appropriate that we would hear from anybody else that wishes

1 to speak, whether they were in opposition or whether they  
2 just wish to give the panel some of their views as to the  
3 proposed amendment.

4 We have a stenographer who's taping the testimony.  
5 And in the past we've kept a record open for two weeks?  
6 Two weeks after every hearing, and so we will do that and  
7 leave it open until say the 15th of November. Anybody  
8 wishes to submit anything in writing could do so to the  
9 panel.

10 Yeah, that would be mailed to the Critical Areas  
11 Commission, Tawes Building in Annapolis on, right off of  
12 Rowe Boulevard.

13 UNKNOWN: And give the exact address for that;  
14 someone will get that. Maybe I have it here.

15 CHAIRMAN PRICE: Do you need the people to speak  
16 in any particular place?

17 REPORTER: No.

18 CHAIRMAN PRICE: They, you mean from where they  
19 are? All right. The address of the Critical Areas  
20 Commission is Tawes State Office Building, D-4, "D" as in  
21 "dog", Annapolis, Maryland 21401. Okay, with that,  
22 unless there's any questions about the procedure, we'll

1 turn it over to Mr. Dodd.

2 MR. DODD: Thank you, Mr. Price. For the record  
3 my name is Steve Dodd. I'm the Planning Director for  
4 Dorchester County. Let me begin by saying that for the  
5 record, the county position is that this hearing is unneces-  
6 sary. It is not required under the critical area criteria.

7 We feel that the subdivisions that are under  
8 review tonight are part of a special breed of subdivisions  
9 which have already been approved, but not yet recorded by  
10 the Dorchester County Planning Commission. All three  
11 subdivisions tonight have several things in common.

12 Two of the most important factors that I think  
13 everyone needs to be aware of is that the subdivisions all  
14 received preliminary plat approval by the Dorchester County  
15 Planning Commission prior to June 11, 1988. And all three  
16 subdivisions had critical area assessments approved under  
17 Section 8-18.13 of the critical area criteria.

18 And I think in order to satisfy the interim find-  
19 ings requirements of that section, we believe that the  
20 county's critical area program, which was adopted unani-  
21 mously by the Commission at the end of June, that this  
22 program provides for the growth allocation. And that a

1 special hearing such as this is not required to amend the  
2 program.

3 Our program, specifically page 39 of Volume 1 of  
4 the program, says that programs, or excuse me, subdivisions  
5 that were undergoing evaluation; this is page 39. This  
6 is the final version. The draft version that you have may  
7 not contain this language. But the final version adopted  
8 by the Commission does.

9 Subdivision plats that were undergoing evaluation  
10 by the Dorchester County Planning Commission prior to the  
11 effective date of the Critical Area Protection Program will  
12 not be subject to the density provisions of the zoning  
13 ordinance or to the growth allocation provisions of the  
14 subdivision regulations.

15 These subdivisions must have had growth allocation  
16 reserved for them, and must have been designed to conform to  
17 the critical area criteria. Additionally, approval must  
18 have been granted for the preliminary plat in the case of  
19 a major subdivision and for the findings of fact required  
20 by Natural Resources Article 8-18.13 in the case of minor  
21 subdivisions.

22 Again, gentlemen, all three subdivisions that we

1 are reviewing tonight meet these two criteria that are set  
2 forth in the county's plan. Now we're not denying the fact  
3 that these subdivisions must use growth allocations. We  
4 believe that they do.

5 But we believe that the county's plan provides  
6 for a means to have that growth allocation set aside for  
7 these subdivisions, and that this procedure is not necessary.  
8 In other words, the plan already provides for this. If  
9 a subdivision were to be coming in now, we would, we then  
10 have a procedure set up in our program by which we would  
11 come to the Commission for hearing twice a year to have  
12 allocation granted.

13 But again, gentlemen, we believe that these sub-  
14 divisions are different, and they should not be treated  
15 the same as a subdivision that has been submitted after the  
16 effective date of the local program. What really needs to  
17 be decided, and we feel that it has been decided, is how  
18 much allocation must be deducted for each subdivision.

19 We will demonstrate tonight that a considerable  
20 amount of each subdivision will come off the county's growth  
21 allocation. We have developed a concept called a  
22

1 development envelope, which we believe to be consistent  
2 with the criteria adopted by the Critical Area Commission.

3 And the development envelope calls for certain  
4 amounts of land to be deducted. It also calls for the  
5 tide water buffer to be deducted from the growth allocation;  
6 the sewage reserve areas for all the subdivisions; the  
7 storm water management, or the storm water drainage, the  
8 ponds and swales, those areas; the roads; all the imper-  
9 vious surfaces. All of these things must be deducted, and  
10 we've accounted for them all.

11 I'd also like to briefly touch on a point con-  
12 cerning the authority of this body to review the subdivision  
13 itself. We don't question the authority of the Commission  
14 to review request for allocations. We do question the  
15 authority of this Board to review the lay out of the sub-  
16 division itself.

17 We feel that it's very clear in both the criteria  
18 and the local program, that that authority lies with the  
19 local county planning commission. The planning commission  
20 has reviewed these subdivisions, and will continue to do  
21 so until they are recorded.

22 So we have serious problems with this Board

1 sitting tonight to review the layout, the design, the  
2 configuration of the subdivisions. We'd also like to  
3 mention and stress that these, we believe these subdivi-  
4 sions to have vested rights, which a new subdivision coming  
5 under the program, the complete guidelines of the program  
6 would not have.

7 These are special subdivisions, again. And I  
8 will be glad to go over in any detail how the county come  
9 to develop the criteria that we have, had adopted, which  
10 spells out how land is to be deducted from the growth  
11 allocation. I would like to stress that we worked very  
12 closely with the original panel that was appointed to  
13 review the county program.

14 We met with them on numerous occasions, and this  
15 development envelope concept was one of the items which  
16 was brought before the original panel. The panel approved  
17 the concept. It went to the full Commission, not necessar-  
18 ily this concept, but it was in the final program that  
19 was submitted to the full Commission for your approval.

20 And again, the full Commission did vote on June 29  
21 unanimously, if I remember correctly, to accept the county's  
22 program. The building envelope or development envelope

1 concept was a part of that final draft document. And I  
2 believe the language contained in this program is very  
3 clear as to how these envelopes will be developed.

4 We believe that as long as the envelopes are  
5 developed consistent with or in accordance with the program  
6 that the Commission adopted, that this panel and the full  
7 Commission is bound by that program, as we are.

8 I'm not really prepared to talk specifically  
9 about the subdivisions themselves; how they came to be, as  
10 they are. We did prepare for your edification a chrono-  
11 logical list of events leading up to the approval of the  
12 subdivision by the various agencies involved; just to  
13 demonstrate that these subdivisions did go through a sub-  
14 stantial amount of agency review, not only at the local  
15 level, but at the State level; and that we, we do not feel  
16 that we have tried in vain to circumvent the procedures set  
17 forth in the criteria.

18 I don't really have anything else to say at this  
19 point. Again, we have the developers for all three sub-  
20 divisions are here tonight. And I believe they are all  
21 represented by either legal counsel or by, and/or by  
22 their engineer surveying firm. So, certainly they are more

1 qualified to answer questions about the site than I am.

2 And I will, I will let them do so. But, do  
3 you have a question?

4 MR. BOSTIAN: Yes, a couple questions, Steve.  
5 I think you said that all these plats had been approved.  
6 Did you say that?

7 MR. DODD: Yes.

8 MR. BOSTIAN: Have they been signed?

9 MR. DODD: They have not been recorded. They've  
10 been preliminarily approved.

11 MR. BOSTIAN: Preliminarily approved.

12 MR. DODD: Right.

13 MR. BOSTIAN: They do not have a final approval  
14 at this point, from...

15 MR. DODD: They have not been recorded; that's  
16 correct.

17 MR. BOSTIAN: Are you say recording, I feel like  
18 I'm splitting hairs with you. Are you saying recording is  
19 what makes it approved or are you saying that they have not  
20 been finally approved?

21 MR. DODD: I'm saying the language used in the  
22 criteria concerning 88 through 13 is, the word, I believe,

1 is approved. In other words, the plat did receive the  
2 environmental review, and that was, that part of the review  
3 was approved by the Planning Commission. Do you want to  
4 help?

5 MR. DAY: (Inaudible question.)

6 MR. DODD: Sure.

7 MR. DAY: Every project goes through a series of  
8 approvals.

9 CHAIRMAN PRICE: Please identify yourself.

10 MR. DAY: I'm Norman Day, the lead consultant  
11 for the county in the development of the Critical Area  
12 Program. Any project goes through several approval stages.  
13 Often there is an approval of a sketch plan at an early  
14 stage. And then there's the approval of the preliminary  
15 plan, which usually includes all the engineering of the  
16 site improvements. And then ultimately the final approval.

17 Now the critical approval in that process is  
18 the preliminary approval. That's the one which has some --  
19 to that development project. Final approval of it is  
20 usually more of an administrative approval.

21 Presumably once someone has achieved preliminary  
22 plan approval, as long as they come back in with a final

1 plan which is consistent with the preliminary one, they  
2 cannot be denied. So the vesting of rights in the project  
3 is at the preliminary plan approval stage. And it's normal  
4 that there is a safety period of, well let's say --  
5 There's normally a period of delay between the preliminary  
6 plan approval and final because of the legal, administrative  
7 and financial arrangements must be made before the final  
8 plan is submitted.

9           Only then is that plan recorded. But again, to  
10 emphasize, the critical approval is the preliminary plan  
11 approval.

12           MR. BOSTIAN: All I was asking Mr. Dodd was  
13 where exactly do we stand in the process? You're saying  
14 that they have got...

15           MR. DODD: They're preliminary ready to go to  
16 final approval.

17           MR. BOSTIAN: Thank you.

18           CHAIRMAN PRICE: Is that what this motion to go  
19 to final that keeps, uh...

20           MR. DODD: That's another way of saying that  
21 it's preliminary approve, preliminarily approved and ready  
22 to go to final.

1 CHAIRMAN PRICE: I, I wonder where we can get an  
2 up-to-date copy of the program?

3 MR. DODD: We have just received about 100 of  
4 them today, so...

5 CHAIRMAN PRICE: Okay, good. Not much sense us  
6 reading the old one, is there?

7 (Off the record discussion.)

8 MR. DODD: Some of the page numbers have changed.

9 MR. DAY: Steve that is a new paragraph that  
10 does not appear in the old version.

11 CHAIRMAN PRICE: And I was, I was not paying  
12 that much attention, but that new paragraph, reference to  
13 subdivisions having preliminary approval, that was your  
14 point.

15 MR. DODD: Yes.

16 CHAIRMAN PRICE: And these three subdivisions  
17 have that approval.

18 MR. DODD: Yes.

19 MR. BOWLING: Following preliminary submittal,  
20 preliminary approval, it would appear to me that you have  
21 an awful lot of areas in here where changes could be  
22 dictated to that. Is that correct?

1 MR. DODD: Greg, do you want to comment?

2 MR. MOORE: My name is Greg Moore. I'm an  
3 engineer with Andrews, Moore and Associates, and we repre-  
4 sent each of the subdividers. And each of the three  
5 projects are final in terms of engineering that we have to  
6 complete. Each of the projects have received local Health  
7 Department approvals and State Health Department approvals  
8 for discharge of sewer.

9 In each case it's through a -- pond. We've  
10 received the discharge permits, and we've also received the  
11 State Health Department sewer and water construction per-  
12 mits. So in terms of going back and changing the subdivi-  
13 sion layouts now, it would be very difficult, as permits  
14 have already been granted. Same's true of the...

15 MR. BOWLING: All these steps in here are where,  
16 where adjustments were made, if they were necessary?

17 MR. MOORE: I don't have that that you're looking  
18 at, but...

19 MR. BOWLING: Well this is the list of what, of  
20 each of these subdivisions and the steps that they were  
21 through. If you're not going to change anything, it would  
22 appear to be pointless to go through all these steps, if

1 they're not for some modification or approval or correction  
2 or something. Why would they do it?

3 MR. MOORE: I guess my point is that from the  
4 preliminary approval, the engineering is already completed.  
5 And applications to the appropriate bodies for permits has  
6 already been made. When those permits are issued, the  
7 engineer is not allowed to make the changes unless he goes  
8 back to those bodies and there's a permit issued. It's very  
9 difficult.

10 CHAIRMAN PRICE: And if it comes in changing the  
11 requirements, then you would have to go back for it.

12 MR. MOORE: We would have to go back, or if they  
13 come back with requests. But these three cases all have  
14 received their permits to discharge into the -- ponds.  
15 All three have been submitted to the Roads Department for  
16 review. It's been approved by Soil Conservation Service,  
17 so they are more than substantially along in terms of engi-  
18 neering and final work.

19 MR. BOWLILNG: What I was attempting to determine,  
20 was this a constructive process that they were going through  
21 or is this a rubber stamp process that they're going through,  
22 that's all?

1 MR. MOORE: I wish it was rubber stamp.

2 MR. DODD: I think they, uh, I would hope that  
3 that list clearly demonstrates that the amount of work that  
4 is necessary to achieve preliminary plat approval is sub-  
5 stantial; that preliminary plat approval in this county  
6 means a great deal.

7 CHAIRMAN PRICE: Mr. Dodd, could I ask you --  
8 these subdivisions, none of them went to the special evalua-  
9 tion criteria and rating that you had?

10 MR. DODD: That's correct.

11 CHAIRMAN PRICE: Okay.

12 MR. DODD: That was...

13 CHAIRMAN PRICE: Has, has this amendment to your  
14 subdivision regulations actually been passed?

15 MR. DODD: Yes it has. It went into effect  
16 September 2nd.

17 CHAIRMAN PRICE: September 2nd?

18 MR. DODD: That's correct.

19 CHAIRMAN PRICE: And none of these subdivisions  
20 have had that evaluation.

21 MR. DODD: That's correct. That's why the  
22 language is included in the program, which specifically

1 exempts them from going through this.

2 CHAIRMAN PRICE: Right.

3 MR. DODD: This applies to applications received  
4 after the program was adopted.

5 CHAIRMAN PRICE: Do you classify any subdivisions  
6 as, as being clustered subdivisions?

7 MR. DODD: No. They do not met the clustering  
8 requirement of the, uh, of the new subdivision regulations.

9 CHAIRMAN PRICE: Okay.

10 MR. BOWLING: In essence what you're saying is  
11 that for the most part, they don't meet the requirements  
12 of this --

13 MR. DODD: They, they met the requirements that  
14 were in effect at the time that they were designed.

15 MR. BOWLING: But you have applied your new  
16 growth allocation policy to them as -- plan?

17 MR. DODD: We will, yes, we realize that these  
18 parcels...

19 MR. BOWLING: So they're half in and half out.

20 MR. DODD: They're special, and they, and that's  
21 why, yes. They don't really fit either way.

22 MR. MOORE: Each of the subdivisions meet the

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1 requirements of the Dorchester County plan. Their envelope  
2 concept is directly from the plan. We developed that with  
3 the county through the plan. It was approved by the Plan-  
4 ning Commission; it was approved by the County Commissioner.

5 As far as density, the density of each of the  
6 subdivisions don't even come close to the one or the four  
7 units per acre that LBA allows. Each of them are more like  
8 five acre lots, six acre lots. In one case, in the --  
9 subdivision it's a ten acre lot subdivision.

10 So they're very, very consistent with the program  
11 and the State criteria. There's no density changes, storm  
12 water management. The actual pervious areas on each of  
13 these projects is less than 5%, which the criteria require  
14 15%. Clear, clearing of forest lands are in accordance  
15 with the Critical Area Program of Dorchester County. I  
16 can't, you're trying to ask Steve if, you know, they  
17 don't comply with the program, but in fact, they do.

18 They just started before the program was adopted,  
19 and you know, as a result, they're a little bit different.  
20 They were preliminarily approved, most of these projects  
21 before April of '88. So Dorchester program was not adopted  
22 until July 11th. So at that point they didn't comply with

1 the plan, but they do now, and in fact, because the density  
2 didn't impact when they were preliminarily approved.

3 MR. DODD: The subdivisions that you see tonight  
4 and the ones that, the other ones that fall into the same  
5 category, are not the prototype of a typical subdivision  
6 that you will be seeing, that represents applications  
7 received after our program was adopted.

8 In other words, subdivisions now have a minimum  
9 for example, have a minimum 30% open space required.

10 CHAIRMAN PRICE: I may be reading from an old  
11 book, but doesn't it require anything over 20 acres to be  
12 clustered?

13 MR. DODD: Subdivisions that were received after  
14 the program was adopted.

15 CHAIRMAN PRICE: I agree with you.

16 MR. DODD: All, yes all subdivisions over 20  
17 acres will be required to be clustered.

18 CHAIRMAN PRICE: And I asked you if these were  
19 clustered, and your answer was no, they're not. I'm just  
20 trying to get straight what happens under your program as  
21 I read it.

22 MR. BOWLING: When you say others, how many others?

1 MR. DODD: Twenty-one all together, so 18 others.

2 MR. BOWLING: Eighteen others.

3 MR. BOSTIAN: Eighteen other what?

4 MR. DODD: Eighteen other subdivisions that were  
5 approved under the...

6 MR. BOSTIAN: But in the same...

7 MR. DODD: In the same...

8 MR. BOSTIAN: Situation.

9 MR. DODD: Yes.

10 CHAIRMAN PRICE: Do you have any idea of the --

11 MR. DODD: I believe all 21 together represent  
12 approximately 1,000 acres.

13 (Off the record discussion.)

14 MR. PHILLIPS: How many units?

15 MR. DODD: I couldn't tell you.

16 MR. DAY: The number's around 264 or less than  
17 300 units.

18 MR. PHILLIPS: I just wanted a rough idea.

19 CHAIRMAN PRICE: And you're, you're saying that  
20 none of those 18 are clustered either or that...

21 MR. DODD: They, they're similar to these. Most  
22 of them are smaller in terms of the gross acreage and the

1 number of units. These are three of the very largest  
2 subdivisions we've had. They just happened to come first.

3 DR. KRECH: Are you using all those 1,000 acres  
4 of these 21 subdivisions as your growth allocation?

5 MR. DODD: Well what we're, what our plan calls  
6 for is for each subdivision to be fitted with these develop-  
7 ment envelopes. And the land within the envelope and the  
8 buffers and all -- surfaces would be deducted from the  
9 allocation. So not, well, our plan calls for, that not all  
10 1,000 would be deducted, only that portion which falls  
11 into this development envelope.

12 MR. BOSTIAN: Is anything that is part of a lot  
13 which is disturbed or expected to be disturbed not in the  
14 portion that is taken away from growth allocation?

15 MR. DODD: All the land that is to be disturbed  
16 is taken away from the allocation.

17 MR. BOWLING: What is to prevent the future  
18 disturbances of the balance --

19 MR. DODD: A combination of deed and plat restric-  
20 tions, which will prohibit the owner of those parcels from  
21 not only disturbing the area, but from future subdivision  
22 of the area. Okay?

1           CHAIRMAN PRICE: Thank you.

2           MR. BOSTIAN: Thank you, Steve.

3           MR. DODD: I think the, if, if it's okay with  
4 you, Mr. Price, in terms of the order of the subdivisions  
5 that we review, if you have no preference...

6           CHAIRMAN PRICE: We have none to my knowledge.

7           MR. DODD: I believe we'd like to start with  
8 Gromwell's Adventure or Richard White.

9           CHAIRMAN PRICE: All right. Mr. White.

10          MR. WHITE: I'm the owner of Gromwell's Adventure.  
11 I'm not supposed to be talking about him, because I'm also  
12 a lawyer; but I'm not here as a lawyer. I'm here as an  
13 owner. My engineer will do most of the talking. You do  
14 have the plats and the diagrams of the envelopes. As far  
15 as, I don't think you want a detailed analysis how we've  
16 gotten to where we are.

17          Maybe the best thing to do is to answer any ques-  
18 tions that you may have. I will say preliminarily that  
19 at least in Gromwell's Adventure's case, what we've tried to  
20 to do is preserve the property as much as we can. Part of  
21 it is an open field area, which is currently being farmed  
22 or was being farmed up until this year.

1           And the second section is an area that is wooded  
2 with a marsh basin in between of Madison Bay. I have deed  
3 restrictions or actually, it's a Declaration of Covenants  
4 and Restrictions, which Steve has a copy of, which places  
5 very severe restrictions on disturbing any of mother nature,  
6 as far as cutting trees or anything of that type; because  
7 I want to try to preserve that. I live in Talbot County,  
8 and the property I live on is a converted corn field, and  
9 I must admit I miss the trees.

10           And it's cost me a lot of money moving trees in  
11 there. I'm fortunate that in this area here, at least the  
12 one section, that it is well treed with primarily loblollies.  
13 There may be a few hard woods, but mostly loblollies.

14           The other area, there's just an open field area.  
15 And I've been working with I think it's John Bidwell, who  
16 is the head of the Forestry Program here, in trying to work  
17 out a reforestry program to put in the loblolly trees on  
18 a good portion of those lots, obviously, in the non-build-  
19 ing envelope areas.

20           There will be a need to meet some of the legal  
21 requirements under the Critical Areas Act to reforest some  
22 areas, but it is my plan to go further than that to try to

1 plant most of the back areas of these lots with loblollies;  
2 so that over a period of time, and it's probably going to  
3 take 10 or 15 years, there's going to be a nice grove of  
4 loblollies on these lots.

5 And again, those would be restricted to the cove-  
6 nants in the Declaration. They are very specific that those  
7 cannot be disturbed. There will be no docks. There's no  
8 hunting. The restrictions are onerous from a standpoint  
9 of people who are interested in hurting the land.

10 The residue area there, the marsh, which is basi-  
11 cally a salt marsh area, I really don't know what I'm going  
12 to do with it yet; but I, I have, my plans are probably  
13 are to place that in the Maryland Environmental Trust.  
14 Because it seems, or some comparable association, so that  
15 that area itself, while I know it's regulated currently by  
16 DNR and a lot of the governmental bodies, still I feel when  
17 you put these in a trust or where it's restricted by deed,  
18 then it goes on in perpetuity.

19 And I would just as soon, that land be, remain  
20 the way it is, intact. It's a beautiful piece of property.  
21 It's, uh, I'd just as soon keep it that way. It's basically  
22 177 acres. Right now the plan calls for 17 lots. And maybe,

1 and the residue, there may be at some point permission  
2 asked to build some kind of a place there.

3 As far as utilization, I've tried to keep it as  
4 low a density as possible, and yet provide for, you know,  
5 the inhabitants I nice place to live. So that's kind of  
6 in my game plan. And, you know, I'm going to stick with  
7 it. But if you have any questions of a technical nature,  
8 I'm sure that Greg here can address those or any questions  
9 of a general nature.

10 CHAIRMAN PRICE: I have a question Greg. Could  
11 you tell us what the classification is abutting this pro-  
12 perty? Is it next to an LDA?

13 MR. MOORE: It is not. It's surrounded by RCA,  
14 Resource Conservation Areas. It's adjacent to Maryland  
15 Route 16, so -- conservation of the road.

16 MR. BOSTIAN: Across the road?

17 MR. MOORE: Excuse me?

18 MR. BOSTIAN: What about across the road?

19 MR. MOORE: It is cut off by a roadway, Route 16,  
20 which is a major artery through that part of the county.

21 MR. BOSTIAN: What classification across Route 16?

22 MR. MOORE: It's RCA on the other side of Route 16.

1 UNKNOWN: RCA, yeah, it's RCA.

2 MR. MOORE: I guess, yeah, I could just add, I  
3 kind of generalized in the beginning. The project is  
4 served by a -- pond for sewage disposal, a concept used  
5 quite often here in Dorchester County. It requires a  
6 shared facility agreement to do that. One of your questions  
7 was what areas were subtracted for the growth allocation.  
8 That facility along with all of its amenities were sub-  
9 tracted. All the shoreline buffer was subtracted. All the  
10 roadways were subtracted, and any drainage features of --  
11 management, measures were subtracted along with the indivi-  
12 dual areas on the lots.

13 That total acreage is 75.9 acres in question.

14 CHAIRMAN PRICE: And only 75.9...

15 MR. MOORE: Yes.

16 CHAIRMAN PRICE: Yeah.

17 MR. BOWLING: 75.9 is the gross acreage?

18 MR. MOORE: That's the acreage that was approved  
19 by Dorchester County Planning Commission, and subsequently  
20 approved by the Dorchester County Commissioners for growth  
21 allocation.

22 MR. BOWLING: 75.9 growth.

1 MR. MOORE: Yes.

2 MR. BOWLING: Out of a gross of 177?

3 MR. MOORE: Out of a gross of 179 plus or minus.

4 MR. BOSTIAN: On a small point, you, in your  
5 building envelopes and driveways, for instance in the  
6 first section of this one, you have 20 acres plus or minus.  
7 You don't show your driveway on any of the, on any of the  
8 lots.

9 MR. MOORE: Yeah, there's a, this kind of plan  
10 requires that each lot have a minimum of one acre debit  
11 from the growth allocation. We provided more than that in  
12 this case. In fact, most of them are more than 1.5 acres.  
13 The county, in working with Steve Dodd on this, decided that  
14 they did not want to designate an exact zone where the  
15 entrance drive could be to the property.

16 So we have a restriction on the final plat that  
17 states the buildable zone is within the confines of the  
18 envelope shown on the plan, with the exception of a drive.  
19 It's got to have a building permit, so the county will know  
20 where that drive's going to be. I think from an administra-  
21 tive standpoint, they didn't want to predetermine where  
22 the drive would go; so that the person, when they went to

1 build their home, didn't want to put their drive there.  
2 They come back to the planning and zoning and they're kind  
3 ofswamped with...

4 MR. BOSTIAN: That's fine. I just wanted to make  
5 sure somebody was covering it.

6 CHAIRMAN PRICE: I wonder if I could go back to  
7 Steve Dodd for a second and try and get straight. Did  
8 Dorchester County have a moratorium for subdivisions?

9 MR. DODD: No.

10 CHAIRMAN PRICE: Did not.

11 MR. DODD: No.

12 CHAIRMAN PRICE: Was there any reason these  
13 subdivisions didn't go to final approval just in the course  
14 of events, I mean, with no moratorium? I mean, why we  
15 had, I guess, why you've got 25 subdivisions all jammed up  
16 here, which apparently have been proceeding along? I mean..

17 MR. MOORE: If I, maybe I can answer that.

18 CHAIRMAN PRICE: All right.

19 MR. MOORE: There, with the concept of sewage  
20 disposal that we chose the -- pond, it is a very long  
21 process in getting permits to discharge into the pond.  
22 There are two permits that are required, one from the

1 Department of the Environment, which is called a ground  
2 water discharge permit, that requires a hydrogeologic  
3 study to be prepared. It takes time. It has to be reviewed  
4 by the State. We then do our design on the system.

5 After we're done with the design, we submit to  
6 the Department of the Environment for a State water and  
7 sewer construction permit. All these processes started in  
8 '87. The permits and the actual approvals that need to be  
9 obtained before the final plat can be recorded were not  
10 available or they would have been platted prior to your  
11 adoption of the plan in July.

12 So in this, in each of these three cases, that's  
13 the reason they're not platted. If those permits would  
14 have been in hand, they would have been platted much  
15 prior to this.

16 CHAIRMAN PRICE: And that's substantially the  
17 same reasoning behind the other 18? They're waiting for  
18 Health Department, environment, approval?

19 MR. DODD: It would apply principally to the  
20 major subdivisions, the ones that contained more than,  
21 five lots or more. Other reasons are principally that  
22 people, some people waited until the spring of this year to

1 begin the subdivision process. In other words, they did  
2 not allow themselves enough time, given the length of the  
3 approval process, to get from beginning to end.

4 CHAIRMAN PRICE: But the County Commissioners had  
5 no moratorium or objection to these subdivisions...

6 MR. DODD: Well, no...

7 CHAIRMAN PRICE: ...proceeding along if they'd  
8 wanted to be recorded last March or April; they could have  
9 been, I mean, if they had their approvals.

10 MR. DODD: They did not, they did not stand in  
11 the way of the recordation.

12 MR. BOWLING: Out of curiosity, how many such  
13 subdivisions did you have, say, in the year '86 or the  
14 year '87? I mean, is this an abnormal amount or is this  
15 a normal flood?

16 MR. DODD: Yes, I don't have the figures, but  
17 I can tell you it's an abnormal amount. And I think we can  
18 all agree that it was generated principally because of the  
19 law.

20 DR. KRECH: Steve, how many of these 18 subdivi-  
21 sions remaining are abutting IDAs or LDAs, or are these all  
22 isolated units?

1 MR. DODD: Dr. Krech, I can't, I can't estimate.  
2 I would say the vast majority of them, if not all of them,  
3 were isolated.

4 DR. KRECH: I see.

5 MR. DODD: We don't have that many LDAs. We have  
6 about 80, excuse me, about 9500 acres of LDA as opposed to  
7 close to 200,000 acres of RCA. And a point I'd like to  
8 make is that even though the criteria suggests that new  
9 LDAs should go next to existing LDAs or IDAs, in our  
10 county, many of our LDAs are very poor places for develop-  
11 ment.

12 We don't want to encourage more development in  
13 areas like Toddville and Wingate, in the southern part of  
14 Dorchester County where the road system is poor; the soils  
15 are poor. There are extensive amounts of tidal wetlands.  
16 I think the Commission would agree, those are very poor  
17 places for new subdivisions to occur.

18 UNKNOWN: Mr. Price.

19 MR. STEVENS: Excuse me, my name is Ray Stevens.  
20 I'm a real estate broker and I'm involved in all of these  
21 subdivisions. In regard to your question about time, all  
22 of these subdivisions took, to get at this point, about

1 16 to 18 months just to go through the permitting process  
2 before critical areas were really a factor, if that  
3 helped to answer the time frame.

4 CHAIRMAN PRICE: Anybody have any questions of  
5 Mr. Moore?

6 DR. KRECH: No, I just want to make a comment  
7 in answer to Steve. And I just was noticing that when we  
8 were reviewing before, our meeting this evening, these  
9 three subdivisions do all have athelo soil and -- hydrant  
10 in some areas, just for the record.

11 MR. MOORE: The majority of the soils in Dorchester  
12 County are -- hydrogen soils.

13 DR. KRECH: That I know.

14 MR. MOORE: We prepare, Andrews Miller prepared  
15 the mapping system that you're looking at for the critical  
16 areas maps for the county. And I would say probably 80%  
17 of the soils are hydrant.

18 MR. BOSTIAN: Are you saying in Dorchester County?

19 MR. MOORE: Yes.

20 MR. BOSTIAN: Or Dorchester County's critical  
21 areas?

22 MR. MOORE: In Dorchester County, period.

1           CHAIRMAN PRICE: I'd like to ask you one more  
2 question. I'm not belaboring this; I'm trying to get my...

3           MR. DODD: Sure.

4           CHAIRMAN PRICE: At the time these subdivisions  
5 were filed, I was asking about the location next to the  
6 LDA or IDA, which are directory, things in the criteria.  
7 At that time you had no program.

8           MR. DODD: Well, yes that's correct.

9           CHAIRMAN PRICE: And you would have had no inter-  
10 nal requirement to even look at these, these, if you want  
11 to call them suggestions as to where they should be located.

12           MR. DODD: That's correct. When these subdivi-  
13 sions were filed we had not yet even mapped the three  
14 development zones. So there was no way of telling that  
15 a, whether they were or weren't next to an LDA, because  
16 they didn't exist at the time that they were filed.

17           CHAIRMAN PRICE: Well, not having any program,  
18 not having a moratorium, you couldn't have really objected  
19 much even if you wanted to, could you?

20           MR. DODD: That's true; we could not. We would  
21 have had the information to know whether or not they were  
22 next to an LDA.

1 MR. BOSTIAN: But you knew that if they ended up  
2 in the RCA, and they were less than the RCA density, you  
3 knew you were going to have to lose some growth allocation,  
4 certainly.

5 MR. DODD: If they didn't get recorded in time.

6 MR. BOSTIAN: Right.

7 MR. DODD: Well, even if they did get recorded in  
8 time, they would have come off...

9 MR. BOSTIAN: Right.

10 MR. DODD: ...the allocation.

11 MR. BOWLING: Anything since '85.

12 MR. DODD: Yes.

13 CHAIRMAN PRICE: Well, if he'd got recorded in  
14 time, we wouldn't be talking about envelopes..

15 MR. DODD: That's right. We have in addition  
16 to the pending subdivisions, we'd like to mention that  
17 there were, there was approximately 300 acres, and that's a  
18 rough figure, of land that was subdivided and recorded  
19 in the critical area that had a final designation of RCA,  
20 that will come off the county's allocation.

21 In other words...

22 MR. BOSTIAN: I'm sorry, how much?

1 MR. DODD: In other words, we had, we did have  
2 some subdivisions that were started and recorded prior to  
3 the county's adoption of it's program. Those, some of  
4 those subdivisions were RCA, and they will come off, if  
5 they haven't already, come off the county's allocation.

6 MR. BOWLING: Utilizing the development envelope  
7 incentive or just gross?

8 MR. DODD: No, just gross.

9 CHAIRMAN PRICE: Okay, did we want to move on  
10 to the...

11 AUDIENCE: Could I ask a question?

12 CHAIRMAN PRICE: Sure.

13 AUDIENCE: Is it my understanding that all of  
14 these subdivisions went through the interim guidelines  
15 and were approved under the interim criteria?

16 MR. DODD: Yes.

17 AUDIENCE: Is that correct?

18 MR. DODD: Yes. They're not finally approved,  
19 though.

20 AUDIENCE: Under the State interim criteria,  
21 you have to go through certain...

22 CHAIRMAN PRICE: Right.

1           AUDIENCE: Instead of on the local level that  
2 was done in this case.

3           MR. MOORE: Yes, there was a critical area assess-  
4 ment report prepared for each of the subdivisions that  
5 were submitted to the County Planning Commission. They  
6 were reviewed and approved on each of the cases.

7           MR. BOSTIAN: The findings were approved.

8           AUDIENCE: That was a final approval.

9           MR. DODD: I believe Heron Harbor would be next.  
10 Someone has a question?

11           MR. GHIGIARELLI: I have one question in regard  
12 to the -- process.

13           CHAIRMAN PRICE: Speak up.

14           MR. GHIGIARELLI: I'm curious when the findings  
15 were established by the county, particularly for the three  
16 major ones, were they submitted to the State or the  
17 department, State and county as they were, you know,  
18 established for the record? I'm just curious as to whether  
19 the State was notified as to the findings that the county  
20 established.

21           MR. DODD: I believe that the State made that  
22 request, that they were provided. In other words, if the

1 State...

2 MR. GHIGIARELLI: But you're not aware of whether  
3 or not the Department of State Planning made that request?

4 MR. DODD: No, I'm not. We were not, as a matter  
5 of practice, provide, that we would not provide the State  
6 with a, with the interim findings, as they were to be a  
7 local --

8 MR. GHIGIARELLI: But you did provide when re-  
9 quested?

10 MR. DODD: Yes.

11 CHAIRMAN PRICE: Did you, uh, did you provide the  
12 State when the application came in?

13 MR. DODD: Oh yes.

14 CHAIRMAN PRICE: Any notice, notice that there  
15 was a request for a subdivision...

16 MR. DODD: Yes, we did.

17 CHAIRMAN PRICE: ...such as this? You sent them  
18 a copy of it or what?

19 MR. DODD: Yes we did, copy of the plat and the  
20 application.

21 CHAIRMAN PRICE: Well you distinction that  
22 between, uh, between, the findings were not sent, but the...

1 MR. DODD: The application...

2 MR. PRICE: The notice was.

3 MR. DODD: A letter, uh, the Maryland Heritage  
4 Program or later, the Forest Parks and Wildlife Service  
5 was contacted at the inception of each application, to  
6 answer the question about the habitat. So they were, they  
7 were specifically asked to comment. And the Department  
8 of State Planning and the Coastal Zone, uh, Coastal  
9 Resources Division of Natural Resources Department were  
10 contacted and provided copies of the plat and the applica-  
11 tion.

12 And as we understood it, they were to distribute  
13 those subdivisions to the proper State agencies for review.

14 CHAIRMAN PRICE: Yes sir?

15 AUDIENCE: I'd like to make a statement with  
16 regard to Keogh Point. I'd, uh...

17 CHAIRMAN PRICE: Could we, yeah, I wonder if  
18 we could proceed this way. Let's go through the other  
19 two from the positive side, and then have comments from  
20 anybody who'd like to make comments on these. Mr. Moore  
21 seems to represent everybody, so we can...

22 MR. WEST: I'm the managing partner. My name is

1 John West of Heron Harbor. And it's 120 acres, approxi-  
2 mately, with 27 lots. And I think I'll let Greg go over  
3 the details and any questions from you.

4 MR. MOORE: I've got a -- showing the subdivi-  
5 sion. I just want to point out one thing; this subdivision  
6 is very similar to the one we just discussed. The dif-  
7 ference is the 27 lots are not all in the critical area.  
8 The critical area bisects the property here. So there  
9 are only, the lots in this area are being requested for  
10 growth allocation.

11 The total acreage is 41.8 acres. Again, this  
12 project is served by -- ponds for sewage, individual on-  
13 site wells, and...

14 MR. DODD: Outside the critical area as well,  
15 it appears.

16 MR. MOORE: Yes. Actually, there's one of the  
17 ponds there with a test pin. The areas in the red are the  
18 actual growth allocation envelopes on the individual lots.  
19 The summary includes the -- envelope, the tidal buffer,  
20 the right-of-ways, and...

21 DR. KRECH: There's no growth envelope, allocation  
22 envelope between those red lots?

1 MR. MOORE: The growth allocation...

2 DR. KRECH: Is just those red lots.

3 MR. MOORE: That is on the individual lot.

4 DR. KRECH: Yeah, what happens to the others  
5 between the individual lots? How are you referring to that?

6 MR. MOORE: It's non-buildable. We're restricted  
7 on the subdivision plat that it's non-buildable.

8 DR. KRECH: You mean the whole thing is not  
9 deducted from your growth allocation in other words?

10 MR. MOORE: 41.8 acres is what's requested.

11 DR. KRECH: Now is this all 41.8 acres here?

12 MR. MOORE: No, that's not. This acreage is  
13 only the acreage on the individual lot.

14 DR. KRECH: The 41 acres is just the total of  
15 the individual lots.

16 MR. MOORE: No, no, no. The 41.8 acres is the  
17 request for growth allocation.

18 DR. KRECH: Yeah.

19 MR. MOORE: That again was approved by the  
20 Planning Commission and the County Commissioners.

21 DR. KRECH: Uh, huh.

22 MR. MOORE: That figure complying with Dorchester's

1 program, includes the buffer area around the wetlands,  
2 which is 100 foot. It includes all the servants in the  
3 area, including the roadways, the -- ponds, the storm  
4 drain system, and the area on the lot itself.

5 DR. KRECH: Right, but not this.

6 MR. DODD: No, that's not deductible.

7 MR. MOORE: No, that's not deductible.

8 MR. DODD: Except for the part where the driveway  
9 is.

10 DR. KRECH: Except where the driveway goes, yeah.

11 MR. BOSTIAN: What does the green show?

12 MR. MOORE: The green shows the locations of  
13 existing tree timber. And I want to point out in this case,  
14 the property is farmed out in the critical area; and behind  
15 the critical area is tree covered. So that's kind of  
16 strange, and that's why you see it all white out on the  
17 point.

18 CHAIRMAN PRICE: What is the house on the point?  
19 That's the existing there?

20 MR. MOORE: Yeah, it's an existing home, yes.

21 CHAIRMAN PRICE: I notice on here you've got a  
22 50 foot easement for the horse trail. Where do the horses

1 live?

2 MR. MOORE: I don't ride, so I don't...

3 CHAIRMAN PRICE: You've got a 50 foot easement  
4 along here for the horse trail. I just wondered where  
5 the horses lived on these one acre lots?

6 MR. WEST: In the building area, there's places  
7 for stables. I have a certain amount of covenants, and  
8 there will be room for stables.

9 MR. BOWLING: In the undeveloped portions of  
10 these lots, are there restrictions that would prevent any  
11 clearing and so forth?

12 MR. MOORE: There is a restriction on the plat  
13 preventing clearing in excess of 20% on the entire parcel,  
14 which is consistent with the program in Dorchester County.  
15 Any, any clearing past 20% of the total parcel has to  
16 be planted on a one to one -- , excuse me, any clearing  
17 has to be planted on a one to one. But in this case,  
18 because it's a field where the lots are being built, it's  
19 not a problem.

20 MR. BOWLING: Well this is not a -- very often.

21 MR. MOORE: No.

22 MR. DODD: The area is forested behind the

1 critical area boundary, outside the -- parcel.

2 MR. BOWLING: It's not in the critical area.

3 MR. DODD: Part of the parcel is forested, but  
4 the part...

5 MR. BOWLING: Outside the critical area is not,  
6 as I understand it...

7 MR. DODD: The portion outside is.

8 MR. MOORE: Again, the subdivisions received  
9 preliminary plan approval on 9/2/87. So it's been around  
10 for awhile. Like the other subdivision we just looked at,  
11 it has its Health Department discharge permits for sewage.  
12 It has its Health Department sewer and water construction  
13 permit. It has road agreements between the county and the  
14 developer. It has Soil Conservation Service approval.  
15 It essentially is complete in terms of design, engineering  
16 and platting. The plats are all complete, and we need not  
17 do anything else with it.

18 MR. WEST: Work was started on it in January of  
19 '87, initial work of trying to get this preliminary. So  
20 it's still -- months -- the preliminary.

21 MR. BOSTIAN: But you said you do not have any-  
22 thing in the covenants and restrictions about not disturbing

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1 anything other than the building envelope.

2 MR. MOORE: There's a statement on the plat  
3 itself that requires that no disturbance can be occurring  
4 outside the building envelope, with exception of the  
5 entrance drives.

6 MR. WEST: It's not in my covenants. I do have  
7 covenants, and they're fairly restrictive; but the county  
8 will take care of the other side.

9 MR. MOORE: There's also a restriction on the  
10 plat about clearing of trees. In this case, there aren't  
11 any; but it's still on the plat because it's a critical  
12 area.

13 MR. BOWLING: Tell me, are you going to leave  
14 open field to grow up around all these houses?

15 MR. MOORE: Excuse me?

16 MR. BOWLING: Are you going to leave open field  
17 to grow up around these houses?

18 MR. WEST: It's a lot of grass or it's a field  
19 or trees.

20 MR. BOWLING: Well, there's -- there now, so...

21 MR. WEST: Well, what I would -- to do, first of  
22 all, you'll have areas for, uh, horses, but basically

1 usually we find people plant trees, because they don't  
2 want that grass. That's, people like trees.

3 MR. BOWLING: You're going to leave habitat and  
4 then graze it? Is that what I hear you saying?

5 MR. WEST: I'm sorry?

6 MR. BOWLING: You're going to leave a section of  
7 habitat outside the growth allocation area, and then  
8 you're going to graze it with horses that belong to the  
9 people; so that they'll be running in and out of this area  
10 all the time. Is that what I heard?

11 MR. MOORE: Well, the area, because it was being  
12 farmed has, by, under Soil Conservation Service requirements  
13 has to be stabilized. So it will have to be stabilized.  
14 And under their approval, it will be. The actual building  
15 envelope area is the only area that you can build your  
16 home or build an out building around your home. I don't  
17 know if that's what you're concerned about.

18 MR. WEST: Are you speaking about restrictions  
19 that animals should not be grazed on the land?

20 MR. BOWLING: If you're going to use it every  
21 day, then how are you leaving it outside your growth  
22 allocation, that's all? Just curious.

1 MR. WEST: I'm not sure I can...

2 MR. BOSTIAN: I suppose that's a rhetorical  
3 question to the Planning Director.

4 MR. DODD: I don't know how we can, unless  
5 Mr. West is willing to put up fences around all these  
6 building outlets. There's certainly nothing we can do  
7 to restrict the human activity outside of the envelopes.  
8 We can restrict where physical disturbance, i.e., any  
9 kind of construction would take place. We do regulate  
10 that. We don't regulate where people can walk or take a  
11 horse.

12 DR. KRECH: And yet the criteria stipulates  
13 that you want to minimize human impact in, within the  
14 resource conservation area, so we're, we have sort of a  
15 double edged sword here.

16 MR. DODD: There's limitations to what we can do.  
17 And I believe the envelopes meet that. I realize there are  
18 a lot of goals in there that I think it would be very  
19 difficult for any jurisdiction to prevent people from  
20 using their private property by walking on it or allowing  
21 their animals to run on it.

22 It would be very difficult to regulate from an

1 administrative perspective.

2 MR. BOWLING: Minimal use of it, you would expect  
3 that. I don't think he's trying to say a person can't use  
4 the land at all. At the same time, though, if there's  
5 nothing to prevent it from being used for, say a badminton  
6 court or a tennis court, or something like, it really is  
7 a part of the development, if you're going to allow free  
8 and unrestricted use of it.

9 MR. WHITE: Well a tennis court is quite different  
10 than a...

11 MR. WEST: Yeah, you...

12 MR. WHITE: You need a building permit for a  
13 tennis court.

14 MR. BOWLING: Uh, clay court.

15 (Off the record discussion.)

16 MR. WHITE: The focus was, as I understand the  
17 purpose, the purpose was to preclude development outside  
18 of the envelopes. That's the purpose. And the term mini-  
19 mize is dealt with in respect to minimize water quality im-  
20 pact, not minimizing the usage of a resource conservation.

21 The point is that you can only control what is  
22 controllable. No one, I don't think the intent of the

1 critical areas was to preclude people from walking on their  
2 property or utilizing their property. The intent is to do  
3 something which impacts the habitat and water quality.

4 And I think you have to look at the purpose of  
5 the law.

6 DR. KRECH: I believe that the whole thing ought  
7 to be, uh, part of the growth allocation, and not just  
8 the segmental part.

9 MR. WHITE: Why is that, sir?

10 CHAIRMAN PRICE: Well...

11 MR. WHITE: Why is that?

12 DR. KRECH: It's just an opinion. It's just an  
13 opinion.

14 MR. WHITE: If you're not going to disturb any-  
15 thing; if you're not going to have a biological impact;  
16 if you're not going to increase run off; if you're not going  
17 to build anything, why would you want to include it? That's  
18 contrary to the policies enunciated by the Commission.

19 DR. KRECH: All right.

20 MR. BOWLING: If you're going to protect it as,  
21 and leave a natural habitat, then I agree with you.

22 MR. WHITE: That's correct.

1           CHAIRMAN PRICE: Well that's really kind of  
2 academic now, because you, it was a cluster anyhow. So  
3 I mean, you've already, legislatively already decided that  
4 question. Anybody have anything on Heron Harbor?

5           MR. BOWLING: Is that the one that adjoined the  
6 LDA?

7           CHAIRMAN PRICE: No, I thought, we thought  
8 Gromwell's Adventure adjoined an LDA on the line. I'm  
9 misreading the maps I guess.

10          MR. DODD: I think it does, doesn't it Gregg?

11          CHAIRMAN PRICE: We thought it came right down  
12 to Madison.

13          MR. MOORE: I may have said that it does not.

14          CHAIRMAN PRICE: You did say it.

15          MR. MOORE: I'll be honest with you, it may  
16 have joined an LDA. I'm not sure. It's on the maps.

17          UNKNOWN: It is adjacent to Madison.

18          (Off the record discussion.)

19          MR. MOORE: Well what Steve said with intent  
20 of the critical areas legislation, the maps weren't ready  
21 for which division to look at before he decided to sub-  
22 divide it.

1 UNKNOWN: I think we've solved that.

2 MR. MOORE: It is adjacent then?

3 UNKNOWN: Yes, it's adjacent.

4 AUDIENCE: It was initially structured as part  
5 LDA. It was divided, in fact, with the southern portion  
6 being LDA, northern portion RCA.

7 CHAIRMAN PRICE: Do we all agree then it is adja-  
8 cent to an LDA?

9 (Various panel members agree.)

10 MR. DODD: The inventory maps that you have,  
11 Mr. Price, do indicate where the particular designations  
12 are, and they are the official maps.

13 (Off the record discussion.)

14 CHAIRMAN PRICE: Okay, we'll speak about  
15 McKeal Point, Merritt, Kuphill.

16 UNKNOWN: Merritt Point?

17 CHAIRMAN PRICE: Kuphill slash McKeal Point.

18 MR. WALLACE: I'm Scott Wallace. I'm the contract  
19 purchaser of McKeal Point. We are going to settlement next  
20 week on it. Greg Moore is here to represent any questions  
21 that you gentlemen may have. And I appreciate your coming  
22 down here and taking the time to go over it with us.

1 MR. MOORE: Again, I'm Greg Moore. I hate to  
2 sound like a broken record, but this project is exactly  
3 like the two projects before. Same kind of sewage disposal,  
4 same, similar density. It's a 200 acre parcel. We're  
5 proposing 32 lots. They're all within critical area in  
6 this case. The total requested growth allocation is 130.3  
7 acres. The subdivision is broken up into three sections  
8 which relate to how they're sewerred.

9 Just to give you an idea of impervious area,  
10 this property only has 3.8% impervious area proposed,  
11 which you can relate to the 15% within the State criteria.

12 MR. BOSTIAN: Gregg, do you have a plat you can  
13 show us on this as well?

14 MR. MOORE: We have some.

15 MR. BOSTIAN: I know, I just...

16 MR. MOORE: I don't have...

17 MR. PHILLIPS: I've got these up here.

18 MR. BOSTIAN: Let's see what we have. I see  
19 one.

20 (Off the record discussion.)

21 MR. MOORE: Again, the project received prelimi-  
22 nary approval on the 2nd of March, 1988. And again, it has

1 State Department of Environment discharge permits for the  
2 sewer disposal. The roadways have been designed, with the  
3 exception of one phase, and submitted to the Roads Depart-  
4 ment. Road agreements have been executed. I'm not sure  
5 they've been executed; they've been drafted and reviewed by  
6 the Roads Department.

7 So again, it's essentially along in its design.  
8 The engineering is essentially finished, and whatever I  
9 said previously, it is very similar to the other subdivi-  
10 sions.

11 MR. BOSTIAN: What about in this case with respect  
12 to restrictions on the land other than the building envelope?

13 MR. MOORE: Well again, the building envelope  
14 concept is exactly the same. There is...

15 MR. BOSTIAN: Same concept?

16 MR. MOORE: Same concept. There is a note on  
17 the plat that requires only building, the only buildable  
18 zone is within the envelope shown on the plan. Again,  
19 the lane to the lot is excluded from that, not show; but  
20 noted in the, on the plat that entrance will become part of  
21 the buiding envelope.

22 MR. WALLACE: If I may add also that these, most,

1 I would say 31 of these lots are all wooded, and there's  
2 very heavy restrictions for any trees being cut.

3 MR. BOSTIAN: It doesn't show the wooded areas  
4 on the plat, does it?

5 MR. MOORE: Well it shows the outlines of it.

6 MR. BOSTIAN: Does it?

7 MR. MOORE: The wetlands are shown by the...

8 MR. BOSTIAN: I see the wetlands, but...

9 (Off the record discussion.)

10 MR. MOORE: The majority of the site is covered  
11 with exception of the wetlands and some of the middle zone.

12 (Off the record discussion.)

13 MR. MOORE: This is the same plat that you're  
14 looking at there except we've colored in the location of  
15 the trees. In the green the white is wetland or the open  
16 land. Again, the building envelopes are in red; the road  
17 way, -- pond, -- pond.

18 CHAIRMAN PRICE: Do you have any erosion problems  
19 with that?

20 MR. WALLACE: The extent of the erosion is mini-  
21 mal on the south side where you have some. But with the  
22 elevation of the bank, each lot owner would probably have

1 to spend maybe about eight to ten grand to fix it; well,  
2 just to slope it back or he could plant it.

3 MR. MOORE: This part of the property would be  
4 bulkheaded, and there's an existing marina there; and  
5 it's been bulkheaded all away around here. I believe there  
6 are nine slips there now. There's an existing home here.  
7 This, this area of the shore is not eroding at all. The  
8 areas adjacent to the wetlands, again, are not eroding.

9 There's erosion mostly in this zone, but the  
10 entire parcel isn't subject to a critical erosion rate  
11 as other parcels in the area would be.

12 MR. BOWLING: As large as those lots are, how  
13 would you prevent the erosion at the place that you just  
14 described?

15 MR. WALLACE: Well, basically...

16 (Off the record discussion.)

17 MR. WALLACE: No, I'll be glad to tell you. A  
18 good portion of these lots, the way they sit, they all  
19 have sand beach in front of them. So that, in effect, has  
20 been built up over the years.

21 MR. BOWLING: So they're really not eroding?

22 MR. WALLACE: No, they're, as far as I'm concerned

1 the real erosion part is more or less here on this south-  
2 west side.

3 MR. BOWLING: Where you'd have wetlands.

4 MR. MOORE: Wetlands and a buffer, so...

5 DR. KRECH: You can have vegetative erosion  
6 control on the sandy side.

7 MR. WALLACE: That's right.

8 DR. KRECH: Right.

9 AUDIENCE: Mr. Price, I represent Mr. Kofield  
10 in the sale of this to Mr. Wallace, and he's owned it  
11 27 years. When the survey was done, I think it was within  
12 two acres of what the survey called for when he bought it  
13 27 years ago, the shape and change.

14 MR. BOWLING: He doesn't really have much of  
15 a problem.

16 MR. WEST: It would be more of a gabion type  
17 stoning instead of rib -- . That's why I was going to the  
18 \$8,000 to \$10,000 more.

19 MR. BOWLING: It apparently wouldn't have to be  
20 very high.

21 MR. WALLACE: No sir.

22 MR. MOORE: This water, this water here is very

1 shallow, all along this side. The only deep water that  
2 we have is in this area. And again, there's an existing  
3 marina there and a channel that runs into it. So, and  
4 it's bulkheaded; so the erosion there isn't as critical.

5 MR. BOWLING: Are you proposing any dredging  
6 out of that for access, or access for those lots?

7 MR. WALLACE: Not at this present time. We  
8 have not planned any, any dredging.

9 MR. BOWLING: Have you put any shoreline restric-  
10 tions like -- or anything like that?

11 MR. WALLACE: No sir, we have not done the shore-  
12 line restriction.

13 MR. MOORE: We do have a, we have a permit appli-  
14 cation on file, the Corp of Engineers, to upgrade the  
15 piers and bulkheading along the side of the property.

16 MR. WALLACE: And that application has been  
17 approved. I, I tend to feel, and maybe I'm wrong here,  
18 but if a person's going to buy a lot like this, he can  
19 either set up a community association, have a pier for,  
20 in this bulkheaded area for their boats, to keep them in  
21 the deeper water, or if the depth is deep enough, why,  
22 you know, why like anybody else shouldn't they have a chance

1 to have a pier.

2 MR. MOORE: Again, we've done soundings on this  
3 side and on the exterior, and it was not cost prohibitive,  
4 I don't think, to extend piers because of the distance to  
5 deep water. The majority of the deep water all is right  
6 here, and I think that's why Mr. Kofield initiated the pro-  
7 cess of permitting that portion only for the marina.

8 MR. BOWLING: You're saying it would be cost  
9 prohibitive at the shallow end?

10 MR. MOORE: It's quite a distance. There's  
11 deep water here.

12 MR. WALLACE: 300 feet on an average, wasn't it  
13 Gregg?

14 MR. MOORE: Yeah.

15 DR. KRECH: -- want a community pier.

16 MR. BOWLING: That's where you'd want...

17 MR. WALLACE: Yeah, right.

18 MR. MOORE: And there's an existing use. It's  
19 not, it needs to be refurbished, but it's usable as it is.  
20 In fact, boats do go in there now.

21 MR. BOWLING: Are you putting that all in front  
22 of the private lot there?

1 MR. MOORE: Pardon me, sir?

2 MR. BOWLING: In front of what would be a private  
3 home?

4 MR. WALLACE: Well, see, what this has here is  
5 an existing house.

6 MR. MOORE: Lot, lot 4 is an existing home adja-  
7 cent to the bulkheading.

8 DR. KRECH: Uh, huh, I was there today.

9 MR. MOORE: Oh, you were?

10 DR. KRECH: I drove my truck down as far as I  
11 could.

12 MR. MOORE: Is that right.

13 MR. WALLACE: What'd you think of the property?

14 DR. KRECH: (Answer inaudible.)

15 MR. BOSTIAN: Gregg, can you show me on the  
16 plat where you've got something that says you can't dis-  
17 turb or, uh, outside the building envelope, or is that  
18 yet, yet to be on there?

19 MR. MOORE: Well, this plan does not have it.  
20 This is the clearing plan that was prepared for the clear-  
21 ing. That plan is the actual building envelope plan that  
22 went before the Planning Commission. The final plat does

1 not look like that.

2 The problem that we've had as surveyors and  
3 engineers, as we've been moving along this process, while  
4 the county was adopting their program, they're coming  
5 up with these new procedures of building envelopes. They're  
6 coming up with these new procedures on how to restrict  
7 the clearing.

8 When we started the process, we didn't know those  
9 procedures. The plan that you're looking at does not have  
10 it, but the final plat that's going to be recorded will.

11 MR. WALLACE: Steve, won't there be a deed  
12 restriction that you can't go outside that envelope?

13 MR. DODD: It will be on the plat and in the  
14 deed.

15 MR. MOORE: This plan, you see the crosshatching  
16 on your plan along the shoreline buffer. That plan was  
17 done graphically to show the critical, excuse me, the  
18 Planning Commission and the County Commissioners that that  
19 area was being reduced, reduced from the growth allocation.  
20 On the final plat it won't show the crosshatching there.  
21 So that is really not the final plan.

22 DR. KRECH: Are there any future plans for

1 commercial harvesting of timber?

2 MR. WALLACE: No sir, not at all.

3 DR. KRECH: And what plans do we have in mind  
4 for the Delmarva fox squirrel?

5 MR. WALLACE: Bascially, uh, basically, since  
6 this is all wooded, we have someone here that can help  
7 us out and explain how the Delmarva fox squirrel, if in  
8 fact he does lives here, can continue to.

9 MR. BROSSMAN: My name is Doug Brossman. I'm  
10 an attorney, and I've helped Scott out with some of the  
11 critical areas, and also the Corp permitting processes for  
12 them, for the project. And I guess through this process  
13 we have been somewhat confused, if nothing else, by the  
14 fox squirrel issue.

15 Through the initial subdivision plans, as Steve  
16 explained to you earlier, they submitted applications and  
17 applications notice to the Heritage Progam asking what's  
18 the habitat issues with respect to this property and  
19 anagimous fish, -- mestine, fox squirrel, beetles nest.

20 And in December 16th, is it Steve? He receives  
21 a memorandum from the Department of Natural Resources in-  
22 dicating negative on all factors. Based upon that

1 information, the county went ahead and made their own  
2 findings that there was no impact on endangered species  
3 on the property.

4 The letter which you're referring to is a, I  
5 believe a March 1st letter from Gary Taylor, which com-  
6 pletely conflicts the earlier findings of the...

7 DR. KRECH: Other referrals to it, yes.

8 MR. BROSSMAN: Exactly, and we were, as I said,  
9 we were confused by this conflicting finding. I personally  
10 went to Wye Mills and said what has changed from December 16  
11 to March 1? And what I had found is, first of all, nobody  
12 has ever sited a fox squirrel on the property.

13 Secondly, the only indication about fox squirrel  
14 anywhere in the area are two road kills occurring as long  
15 as 3-1/2 years ago, located about 1/2 mile away from the  
16 property. As a matter of fact, there's an intervening  
17 parcel of property between the two.

18 And if you go back and look at Dorchester County  
19 plan, it specifically says we are not mapping fox squirrel  
20 habitat because of, you just can't map fox squirrel habitat  
21 or fox squirrel locations. Even official wildlife service  
22 maintains fox squirrel maps in Annapolis office, albeit.

1 they're only updated through 1985; they do not show fox  
2 squirrels located on this property.

3           So my question is, you know, we don't even, no-  
4 body's ever seen a fox squirrel out there. Why is, why  
5 is this project being targeted as having fox squirrel  
6 out there? Also I've done some research on the fox  
7 squirrel; read some publications put out by Gary Taylor  
8 for the official wildlife service. And I also talked  
9 with Glenn Farris at the Wye Mills Institute, Wye Mills  
10 area NDR with respect to the wildlife corridor.

11           And he indicated to me that you do want to main-  
12 tain some forest habitat. You maintain forest habitat,  
13 it's good for the fox squirrel. If you maintain wildlife  
14 corridors, it's good for the fox squirrel.

15           The 100 foot corridor required by the buffer  
16 area in the critical areas, he indicates to me would be  
17 sufficient to provide a corridor for them. As Gregg said,  
18 we are maintaining over 80%, close to 90% of the forested  
19 area undisturbed.

20           What he also indicated to me is nobody's really  
21 sure how you can develop or not develop in around where  
22 fox squirrels are existing, but it is very similar to the

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1 western fox squirrel, which does live in and around low  
2 density residential housing like this; that is even been  
3 referred to, found living in towns, cities, parks and  
4 cemeteries in the midwest.

5 So there is a good possibility that the fox  
6 squirrel, if it in fact it is there or any of the other  
7 developments of Dorchester, Talbot, Queen Anne's County,  
8 would maintain and be able to maintain itself in that  
9 area.

10 DR. KRECH: Well I was surprised that the fox  
11 squirrel was mentioned. I was down there today, and to  
12 me it is not typical fox squirrel habitat. Fox squirrel  
13 habitat is usually, you find fox squirrels in very mature  
14 forests, where there's very clear understory. And this  
15 is a fairly young forest with a lot of ground growth.

16 MR. BROSSMAN: As I said, none have ever been  
17 sited. At least there's no record of any sitings from the  
18 property that I've been able to uncover. I believe we  
19 have Russ Hill here today, and he can confirm that.

20 MR. HILL: I'm Russ Hill. I'm a wildlife --  
21 wildlife biologist for Dorchester County. Wicomico --  
22 I have a letter here from Gary Taylor to Mr. Robert Price,

1 and I can read it to you.

2 REPORTER: Could you speak up, please?

3 CHAIRMAN PRICE: Speak up a little bit.

4 DR. KRECH: Step up further.

5 MR. HILL: As far as the habitat on the property,  
6 there's one site on the property that's best suited, and  
7 I don't know if you made it out there in your truck; but  
8 it's out on the point.

9 DR. KRECH: I did not make it out that far.

10 MR. HILL: Yeah, this area here is some old  
11 growth, loblolly pine.

12 DR. KRECH: Okay, I didn't see that.

13 MR. HILL: And of Delmarva habitat, which is what  
14 we are concerned with, and also, you know, the connecting  
15 corridor back...

16 DR. KRECH: I didn't want to drop out of sight  
17 in the hydrant soil that I saw.

18 MR. HILL: Yeah. But this is a letter to Mr.  
19 Price from Gary Taylor. The Maryland Forest, Park and  
20 Wildlife Service would like to take this opportunity to  
21 express its concern about the proposed change in density  
22 from RCA to LDA on McKeal Point. The point contains

1 Delmarva fox squirrels, which are listed as an endangered  
2 species in Maryland.

3 The proposed change in density should not be  
4 allowed to disrupt or destroy the squirrel's habitat.  
5 The Service submitted the attached comments to the  
6 Dorchester County Planning Commission before it made its  
7 interim findings and granted preliminary subdivision appro-  
8 val.

9 The Service will, of course, submit-- when the  
10 subdivision comes before the Planning Commission for final  
11 approval; and assumes that the final approval will comply  
12 with the habitat protection requirements of the Critical  
13 Areas Act and criteria.

14 Since the issue before the panel is a change in  
15 the density only, and not the configuration of the final  
16 subdivision plat, the Service can only comment that if  
17 the proposed increase in density is done in such a way as  
18 to protect the squirrel's habitat, the Service has no  
19 objection to the LDA designation.

20 If approval of the LDA designation is somehow  
21 an approval of the subdivision plat as it was proposed on  
22 March 1, 1988, then the Service objects for the reasons

1 stated in its earlier letter to the Planning Commission.  
2 Thank you for this opportunity to comment. Sincerely,  
3 Gary Taylor, Director of Wildlife.

4 MR. WHITE: Can I ask, have fox squirrel been  
5 sighted on this property?

6 MR. HILL: I myself have not seen them.

7 MR. WHITE: Has anyone sighted a fox squirrel  
8 on this property?

9 MR. HILL: We have had numerous people down  
10 there looking, and...

11 UNKNOWN: (Inaudible comment.)

12 MR. HILL: We had Don -- , who's on contract with  
13 us, out on the property and clear out to the point. He  
14 looked around out there, and says that he has had reports  
15 from various individuals that there are -- population out  
16 there on the point.

17 MR. WHITE: Is there a record of a fox squirrel  
18 sighting at the Wye Mill office?

19 MR. HILL: I can't answer. I don't know.

20 MR. WHITE: Aren't you stationed at Wye Mill?

21 MR. HILL: Yes.

22 MR. WHITE: Well is there a record of fox squirrel

1 being seen on this property?

2 MR. HILL: We have records, our records are  
3 Grove Hill sightings by hunters and such.

4 MR. WHITE: I understand what your records are;  
5 they've been reviewed. I know what your records say.  
6 The question is does your records reflect that there's a  
7 fox squirrel sighted on this property?

8 MR. HILL: In the area.

9 MR. WHITE: I asked you on this property.

10 MR. HILL: I said in the area.

11 MR. WHITE: How far, how far away?

12 MR. HILL: Route 16, there's been -- right there.

13 MR. WHITE: And are there intervening properties  
14 between this property and Route 16?

15 MR. HILL: Yes.

16 (Off the record discussion.)

17 CHAIRMAN PRICE: Thank you. Did you wish to  
18 speak, Steve?

19 MR. DODD: I just wanted to make a couple points  
20 regarding that letter by Dr. Taylor. Number one, I'm not  
21 an attorney, but maybe I'm not using the verbiage properly,  
22 but it seems to me that there is a issue of double jeopardy

1 in that the Planning Commission had answered these very  
2 questions; sat in this very room, March the 2nd, and  
3 addressed these very questions.

4 And I believe the criteria very specifically  
5 say that the local jurisdiction under 88-8.13 must render  
6 these findings. And I believe it is improper for this  
7 body to be reviewing the subdivisions.

8 The second point I wanted to make was that the  
9 specific recommendations by DNR concerning the lots that  
10 shouldn't be developed or buffers or whatever they recom-  
11 mended are only recommendations. We wish that the State  
12 had the authority to regulate these habitats themselves.

13 But as far as I know, they don't have the  
14 authority to mandate that their recommendations be followed  
15 by the local jurisdiction. And I don't believe that the  
16 State has the authority to force the county to adopt them.

17 You must, you must assume that the Planning  
18 Commission in this county is competent enough to reach a  
19 conclusion based on the evidence presented to them.

20 MR. WHITE: Is this, is this your memorandum?

21 MR. HILL: (Answer inaudible.)

22 MR. WHITE: Is your name on it?

1 MR. HILL: Yes it is, but it was not written by  
2 me.

3 MR. WHITE: Who wrote it?

4 MR. HILL: John Bidwell.

5 MR. WHITE: And who's John Bidwell?

6 MR. HILL: The Bay Watershed --

7 MR. WHITE: And who does he work for?

8 MR. HILL: Maryland Forest, Park and Wildlife  
9 Service.

10 MR. WHITE: Was this submitted to Dorchester  
11 County Planning Commission?

12 MR. BOSTIAN: Speak up, please.

13 CHAIRMAN PRICE: Please, I can't hear.

14 MR. WHITE: Submitted by Natural Resources, there  
15 is a memorandum that you ought to see, submitted December  
16 of '87, if you want to look at it. Mr. Hill's name is  
17 on it. You might want to read it into the record, Bill.

18 MR. BOSTIAN: For Karen Phillips, Dorchester  
19 County Planning and Zoning from Russ Hill, re: Kofield  
20 property. This has Smokey the Bear on it, dated 12/16/1987.  
21 No anadromous fish spawning areas, no Delmarva fox squirrels  
22 no eagle nests, no colonial water bath bird nesting sites.

1 (Off the record discussion.)

2 MR. BOWLING: You disavowed that memorandum?

3 MR. HILL: I did not write that memo. John  
4 wrote it.

5 MR. BOSTIAN: With your knowledge?

6 MR. HILL: It was, I did not realize it. I told  
7 him to relay to Karen Phillips. There was habitat up  
8 there -- Delmarva fox squirrel that we had not determined  
9 whether they were there or not. From that there was a  
10 mix up, and he said that there wasn't any.

11 MR. BOSTIAN: At the time was John a Baywater  
12 Shed forester? Excuse me. (sneeze) He had been the  
13 forest, uh, project forester for, excuse me, for Dorchester  
14 County sometime before that, hadn't he?

15 MR. HILL: Right, exactly.

16 CHAIRMAN PRICE: Where are we? Still at McKeal?

17 MR. BOSTIAN: I guess Mr. Wallace, do you have  
18 anything else you'd like to present before we move on?

19 MR. WALLACE: Yes, if I may.

20 MR. BOSTIAN: Well, I asked Mr. Wallace. He's,  
21 it's his property.

22 UNKNOWN: I understand.

1 MR. WALLACE: I just feel that since there  
2 hasn't really been any sightings on the property, I feel  
3 it's difficult to believe that there is actually any  
4 squirrels out there.

5 DR. KRECH: Grey squirrels.

6 MR. WALLACE: Everyone's been looking and looking  
7 and they haven't found any yet. Soon or later they'll  
8 probably find one.

9 CHAIRMAN PRICE: Let me, let me ask you about  
10 this property. Did I read somewhere where the road has  
11 been constructed?

12 MR. WALLACE: No sir. The road has not been  
13 in there.

14 MR. MOORE: I can answer that.

15 DR. KRECH: It's been cleared.

16 MR. MOORE: The road has been cleared. We,  
17 Andrews Miller, applied in behalf of Mr. Wallace for a  
18 clearing permit, and a Soil Conservation Service approval,  
19 and did receive that permit. I think Mr. Wallace has a  
20 copy of it here.

21 CHAIRMAN PRICE: I'm sorry, I just...

22 MR. MOORE: That was obtained in April of this

1 year prior to the June 11, or July 11 passage of the  
2 Critical Areas Program.

3 CHAIRMAN PRICE: Does that have anything to do  
4 with subdivision approval or that's just a separate item?

5 MR. MOORE: That is just a separate item. The  
6 Roads Department issued the clearing permits, and -- that  
7 permit. And it had to be approved by the Soil Conserva-  
8 tion Service before it can be issued.

9 MR. BOSTIAN: I guess just one other. Did the  
10 Health Department sign off on those plats? I mean, have they  
11 given you final approval on this?

12 MR. MOORE: The Health Department, the State  
13 Health Department had issued discharge permits for use of  
14 the BIPs, yes. And again, the next step is the, the local  
15 Health Department has approved it, and the State Health  
16 Department and Water -- construction permit, which is  
17 also complete with the exception of --

18 MR. BOWLING: Are these BIPs unique to this  
19 area?

20 MR. MOORE: No, the BIPs actually were developed  
21 in this area. That's another reason these, each of these  
22 three subdivisions are lagging a little bit behind. The

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1 BIP technology was started in Dorchester many, many years  
2 ago. There are many BIPs here. In the last year the  
3 State had, the Department of the Environment, have taken  
4 that technology and are trying to implement it in other  
5 counties.

6 So they have not made it conventional. And as a  
7 result, what used to happen at the local Health Department  
8 concerning BIPs, now happens at the Department of the  
9 Environment in Baltimore. When these projects were started,  
10 had they proceeded through the local Health Department,  
11 they would have been platted many, many months ago.

12 But because the State got involved in the BIP  
13 regulations, it was a very slow process since they were  
14 learning the technology.

15 CHAIRMAN PRICE: Gregg was this, the BIP, is  
16 that what controls the lot size in these subdivisions?

17 MR. MOORE: The BIP, there are BIP regulations  
18 in Dorchester County that do also control lot size. I  
19 believe it's a four acre lot. I'm not positive. There's  
20 a regulation in Dorchester that we have to file -- for  
21 use of the BIP, yes.

22 MR. BOSTIAN: Do you know how many there are?

1 MR. MOORE: I'd say 100 different BIPs. We've  
2 done, the University of Maryland, Horn Point, facility  
3 on Horn Point, has a -- pond that serves 35,000 gallons a  
4 day sewage, and it's presently operating. And that's the  
5 largest one that I know about.

6 There are numerous other subdivisions operating  
7 with them. Some industrial buildings are operating with  
8 them. Maryland -- has one. So it's not new to this area.  
9 It's something that's been operating for 10 or 15 or more  
10 years.

11 CHAIRMAN PRICE: Was the method accounting  
12 growth allocation in Dorchester County, was that a factor  
13 in this layout of these lots, the design of the lots?

14 MR. MOORE: The growth allocation?

15 CHAIRMAN PRICE: Yeah.

16 MR. MOORE: You mean in terms of the building  
17 envelope concept that was passed in the plan? When these  
18 plans were adopted, and that's why I, one of my other  
19 responses is, why do you have that plan? I have a different  
20 plan. We knew nothing about the growth allocation,  
21 building envelope plan when we went before the Planning  
22 Commission with the preliminary plans.

1           That was something that came up in the passage  
2 of the Dorchester County plan, probably late summer, uh,  
3 mid-summer.     When these projects were started, that was  
4 not even, we didn't know anything about it, and none of  
5 these three developers knew anything about it.

6           And to be very frank, they're very surprised  
7 to be here tonight as a result of it.

8           CHAIRMAN PRICE: From that, I assume that if  
9 the land were classified as LDA, existing LDA...

10          MR. MOORE: Uh, huh.

11          CHAIRMAN PRICE: ...we'd still be looking at  
12 these same layout of lots?

13          MR. MOORE: Yeah, this is pretty typical of  
14 Dorchester County, three to seven, eight acre lots, using  
15 a -- pond which, in a lot of areas, is the only way you  
16 can dispose of sewage. As a result, you set aside large  
17 amounts of land for the pond. You have to set aside  
18 easement areas for the use of the pond, the course mains  
19 that extend to it; and the lots have to be somewhat large  
20 because of the, you do put sewage into the ground water.

21          MR. BOWLING: You lose the advantage of having  
22 a central sewer system.

1 MR. MOORE: Well it is a central sewage system.

2 MR. BOWLING: But you lose the advantage, or  
3 normally the advantage of being able to develop with  
4 increased density.

5 MR. MOORE: Yes.

6 MR. BOWLING: You lose that.

7 MR. MOORE: You can't, you can't, well you can,  
8 you can cluster with it; but because the regulations on  
9 -- ponds that exist in this county, the lot sizes have to  
10 be, again, I don't recall the exact lot size; but they  
11 have to be, I think it's either two or four acres. But in  
12 essence, they are central systems.

13 The developers have to enter into a shared  
14 facilities agreement with the County Sanitary Commission.  
15 And each individual property owner only maintains the  
16 septic tank that stays on his property. The homeowners  
17 association maintains the -- pond and the course mains that  
18 extend to it.

19 CHAIRMAN PRICE: What's the large lot for,  
20 backup?

21 MR. MOORE: Well, I mean, that's a result of  
22 State Health Department imposing pressure on the counties

1 to keep subdivisions in large, uh, large lot, I mean...

2 MR. BOWLING: Are they going to let you cluster  
3 them?

4 MR. MOORE: You can cluster them, but you have  
5 to...

6 MR. BOWLING: So much gross area has to be put  
7 in?

8 MR. MOORE: Yes. There's no reason why the  
9 lots have to be a certain size. The intent of the regula-  
10 tions were adopted before this cluster concept came around.  
11 So there only way of keeping a large parcel in low density  
12 was to make the lots large. Now the county would like to  
13 move towards clustering, and they're going to have to  
14 adopt the proper Health Department regulations and allow  
15 that change to take place.

16 So you could cluster around the -- pond if  
17 the regulations permit it.

18 MR. BOWLING: My question was based on -- and  
19 it would appear that the area that they're concerned about  
20 where the fox squirrel, could be protected merely by  
21 reducing the lot size of the other lots somewhat, so that  
22 you've got the same number of lots anyway, and you could

1 still protect that area.

2 MR. MOORE: In the future that could be done.

3 MR. BOWLING: In the future.

4 MR. MOORE: But because of the existing laws  
5 that...

6 MR. BOWLING: These were developed under.

7 MR. MOORE: ..these were developed under from  
8 the sewage disposal aspect, it could not be done now, or  
9 it couldn't be done back then.

10 MR. BOWLING: Unless he wanted to do it. I'm  
11 -- you could not require --

12 MR. MOORE: No, what I'm saying is when these  
13 subdivisions started, the processes for getting the  
14 approvals on the BIPs, it could not have been clustered...

15 MR. BOWLING: Oh, okay.

16 MR. MOORE: ...because of the regulations.

17 MR. BOWLING: The regulations in force at that  
18 time prevented it from clustering.

19 MR. MOORE: Yes.

20 MR. BOWLING: Okay.

21 (Off the record discussion.)

22 CHAIRMAN PRICE: Yes, there was a gentleman that

1 wanted to speak.

2 MR. GHIGIARELLI: Yes, state for the record --

3 CHAIRMAN PRICE: Come up on the side there.

4 We can...

5 MR. BOSTIAN: Then identify yourself again.

6 MR. GHIGIARELLI: Yes, my name is Elder

7 Ghigiarelli. I represent the Tidewater Administration of  
8 the Department of Natural Resources. I'd like to officially  
9 submit for the record tonight comments which we submitted  
10 to the Commission on this particular proposal.

11 They were submitted to Dr. Sarah Taylor,  
12 Executive Director of the Commission on September 28. It's  
13 my understanding these comments have been made available  
14 to the panel. I'd like to summarize some of the concerns  
15 we have to the proposal, that we feel should be considered.  
16 in any decision, any decision and in your recommendation  
17 on -- in this case.

18 First, according to the site plan, we feel that  
19 maybe -- wetlands on the site than are indicated on the  
20 proposed site plan. The plan shows only non-tidal wetlands  
21 which have been identified by the Corp of Engineers for the  
22 purpose of permitting the proposed road crossings.

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1           The extent of the non-tidal wetlands on site  
2 certainly is dependent upon the definition of used. I'm  
3 not aware of the county's final definition in its approved  
4 plan. Our point here is this; we do feel it would be  
5 pertinent to identify all non-tidal wetlands.

6           Now as a part of this process, we'd like to see  
7 ultimately, before any development take place, naturally,  
8 these areas be identified for the entire subdivision.  
9 We're also concerned about potential effect of the proposed  
10 ditching on both sides of the roadway on the hydrology of  
11 adjacent wetlands.

12           MR. WHITE: Excuse me I don't mean to interrupt.

13           MR. GHIGIARELLI: You did.

14           MR. WHITE: I will. Why would those things to  
15 site specific, uh, issues being raised?

16           MR. GHIGIARELLI: Well...

17           MR. WHITE: Now as I understand the first issue  
18 that Mr. Ghigiarelli raised was, number one, he does not  
19 know the county definition of wetlands under the county  
20 plan. That's number one.

21           And number two, what he said is, based upon  
22 different definition, there would be different -- and

1 wetlands. I mean, he would like to see under some defini-  
2 tion wetlands plats. Now is that really pertinent?  
3 Given the ambiguities, is that really pertinent to this  
4 meeting tonight?

5 CHAIRMAN PRICE: Well, I think...

6 MR. GHIGIARELLI: If I could just make a  
7 statement...

8 CHAIRMAN PRICE: ...what he says is --

9 MR. BOSTIAN: Hold on a second.

10 CHAIRMAN PRICE: This is a public hearing, really,  
11 with unsworn testimony; and I think everybody has kind of  
12 had their say. I've actually read what I think he's saying,  
13 so...

14 MR. WHITE : Is it really pertinent? My question  
15 to you sir...

16 CHAIRMAN PRICE: Well, I guess that's...

17 MR. BOSTIAN: He could, might have been finished  
18 by then.

19 MR. WHITE Is it pertinent to the purpose of this  
20 meeting?

21 MR. BOSTIAN: That's not a question we have to  
22 answer.

1 CHAIRMAN PRICE: Well, the weight of it, he...

2 MR. WHITE: Not a question you have to answer?

3 MR. BOSTIAN: No.

4 CHAIRMAN PRICE: Let's let him continue.

5 MR. BOSTIAN: No, not tonight.

6 MR. GHIGIARELLI: These concerns, I will admit,  
7 aren't specific to the proposal, but we feel they are  
8 pertinent to any decision on the density of development,  
9 particularly on the northern end of the peninsula.

10 Back to the roadside issue...

11 CHAIRMAN PRICE: Excuse me, are these all  
12 addressed to one particular subdivision?

13 MR. GHIGIARELLI: Yes.

14 CHAIRMAN PRICE: To the McKeal?

15 MR. GHIGIARELLI: The McKeal.

16 CHAIRMAN PRICE: McKeal Point, oh.

17 MR. GHIGIARELLI: Only McKeal Point. Yes, these  
18 comments are only on McKeal.

19 CHAIRMAN PRICE: All right.

20

21 MR. GHIGIARELLI: It has been noted that the  
22 proposed road crossings in this subdivision require a permit

1 from the Corp of Engineers. And this permit is pending,  
2 at the present time, a determination from our office as to  
3 the consistency of the action with the State's Coastal  
4 Zone Management Program. We have not yet taken a position  
5 and submitted that determination to the Corp of Engineers.

6 As have been noted, the majority of the project  
7 site is made up of hydrant soils, and there are limitations  
8 and constraints, recognizing the fact as has been stated  
9 already that much of Dorchester County does consist of  
10 hydrant soils. We are not of a position that hydrant  
11 soils should not be, definitely not be developed.

12 However, they are a limitation. Permeability is  
13 a major factor in the soil's ability to infiltrate treated  
14 sewage -- , and low depth ground water do combine to make  
15 development on hydrant soils a problem. -- ponds, as has  
16 been noted, are proposed for treatment at that -- . As  
17 has been stated, a permit has been granted for the proposed  
18 ponds.

19 We had, we do have a question about the location  
20 of the ponds in this case, though. I think it should be  
21 noted that the ponds are within 50 feet of the roadside  
22 ditches, which will be directly linked to tidal waters.

1 And this appears to conflict with the county's health  
2 regulations, which require that all BIPs and BIP reserve  
3 areas be a minimum of 150 feet from tidal waters, deep  
4 drainage canals or ditches.

5 We've discussed the fox squirrel habitat, which  
6 exists to the north and west of the proposed road crossings.  
7 Any development on the peninsula as has been discussed,  
8 should be designed so as to protect this habitat. I think  
9 it's an important note that some clearing has already taken  
10 place for the -- ponds on the western side of the proposed  
11 road. This clearing already precludes a part of the corri-  
12 dor which was recommended by the Departments, Forest, Park  
13 and Wildlife Service to allow migration of the fox squirrel  
14 to the adjacent properties.

15 Potential aquatic resource impacts are a concern,  
16 due to the extensive shallow water area surrounding the  
17 peninsula, adjacent natural oyster bars and historic  
18 presence of submerged aquatic vegetation. Secondary impacts  
19 on the proposed development and result in increased usage  
20 of the shoreline will potentially impact these resources.

21 I'd also like to enter into the record at this  
22 time a memo from our Fisheries Division. This memorandum

1 was submitted as a part of the department's review of the  
2 subdivision and related to the internal findings process  
3 pursuant to Section 8-18.13 of the Critical Area Act.  
4 That was a statement I was going to make earlier, that this  
5 particular project, I am aware it did go through the  
6 interim review process at the State level.

7 We received information from the Department of  
8 State Planning on it; and comments were submitted from our  
9 division at that time, which was the Coastal Resources  
10 Division, also the Fisheries Administration. And I'm not  
11 positive or aware of whether or not these comments were  
12 directly submitted back to the county on the project; but  
13 they were submitted to the Department of State Planning.

14 In summary, based on the concerns which I've  
15 summarized and are detailed in our September 28 memorandum,  
16 we feel that an alternative -- consideration would be to  
17 maintain the RCA designation north of the proposed road  
18 crossing, and consider the use of growth allocation in the  
19 area of Cherry Point and to the southeast. That's all I  
20 have to say. Thank you.

21 CHAIRMAN PRICE: Anyone else who wishes to...

22 AUDIENCE: I'd like to address some of the concerns

1 Mr. Ghigiarelli brought up. As were pointed out, there  
2 are a number of different definitions of non-tidal wetlands.  
3 The county has interim review, applies its definition in  
4 its plan. They received a report that was prepared and  
5 shows how those wetlands were delineated.

6 I don't want to waste the panels time. I have the  
7 biologist here tonight who delineated those wetlands and  
8 will gladly tell you the definition he used, if you wish  
9 to hear it. It's already a part of the county's record,  
10 part of their approval process in making an interim finding.

11 CHAIRMAN PRICE: Is that McCarthy?

12 AUDIENCE: Mr. McCarthy, yes.

13 CHAIRMAN PRICE: I've read what he has to say.

14 MR. McCARTHY: Can you hear me okay?

15 REPORTER: No.

16 MR. McCARTHY: The list of -- excercises --  
17 wetlands definition used for the following reason. You're  
18 dealing with basically two types of wetlands systems. You  
19 You're dealing with forest wetlands, which are non-vital,  
20 or you're dealing with tidal or -- emergent wetlands areas.  
21 In the forested area, the areas are internal to the pro-  
22 perty. What happens is you have a very distinct shift in

1 vegetation.

2           Generally, right along the line where your soil  
3 shifts from hydrant to non-hydrant, what you do is you pick  
4 up a fairly uniform stand of American holly, which I think  
5 any one of those biologists would agree is a -- plant.  
6 That was pretty much the guidelines we used to make the  
7 entire physical delineation of the property.

8           The first cut delineation we used color and --  
9 photos. And what that did was, we were able to break out  
10 open water areas and emergent areas from shrub areas that  
11 were -- In the forst area we have basically -- soils with  
12 vegetation. Where that shift occurred, the --

13           That was physically mapped in the field, confirmed  
14 by the Corp of Engineers, and platted on the plan that's  
15 been submitted tonight.

16           MR. GHIGIARELLI: Was that done for the entire  
17 peninsula?

18           MR. McCARTHY: That was done for the whole damn  
19 site.

20           AUDIENCE: The whole site.

21           MR. BOSTIAN: Okay.

22           MR. WHITE: I think that's a good indication of

1 how this process gets slowed down. Mr. Ghigiarelli said  
2 the Corp of Engineers permit is pending, -- by his depart-  
3 ment. And a lot of local decisions, the BIPs, etc., have  
4 already been approved by other divisions; and we feel very  
5 strongly they shouldn't be rehashed before an agency like  
6 this, to bring you all the details of the BIPs.

7 They have their permits. They've been looked  
8 at by the specialists in those areas.

9 MR. GHIGIARELLI: It is not our intent to have  
10 these issues rehashed by the panel. We do happen to feel,  
11 though, they are considerations, as I already stated for  
12 the record, in any decision dealing with the question of  
13 density on this peninsula, the density of development.

14 Some of the issues we've raised may not be appro-  
15 priate for consideration. That is not my decision. We  
16 are just simply trying to put as much pertinent information  
17 on the record for your consideration.

18 CHAIRMAN PRICE: Okay, has anybody else who wishes  
19 to tell the panel?

20 MR. RICH: Well, I'd like to just summarize a  
21 couple things. As I offered the Coastal Zone Plan; I was  
22 at the Department of Natural Resources; and Mr. Ghigiarelli

1 then worked for Coastal Zone, and now works for Coastal  
2 Zone. The concept, the concept of Coastal Zone went through  
3 a lot of concern as it was being addressed.

4 It initially came to the State of Maryland  
5 because the Federal government promised to provide "X"  
6 dollars, created a coastal zone administration and put  
7 some planners together to create what they considered to  
8 be a Coast Zone Plan. At that time this was, I guess,  
9 back around 1975. I might have the year wrong; it's been  
10 so long. At that time there was a great concern about the  
11 fact that the Coastal Zone Administration or Coastal Zone  
12 Plan would not be a substitute for local land use planning.

13 In fact, I would say that that was the primary  
14 concern. And when the original, the original plan was  
15 drafted, there was language put in, put in the plan, which  
16 I'm sure is still there. (I haven't read it lately), which  
17 deferred basically to local jurisdictions with respect to  
18 their land use decisions.

19 And that was always a strong element of what the  
20 Coastal Zone Administration was. I thought it was a strong  
21 element of what it still is today; a deference as to land  
22 use planning to local jurisdiction. Now, now as I understand

1 it, the Coast Zone Administration has adopted as part of  
2 its, of its plan the critical area plan and the critical  
3 area criteria; and I think that's fine.

4 I think it's fine so long as we adhere to the  
5 thought process behind everything that we've said tonight;  
6 and that is that there is certain local prerogatives and  
7 local decisions which really are, should not be in the,  
8 in the, uh, should not be rehashed or second guessed by  
9 different tier of government.

10 And I'm not, I'm not going to give you the --  
11 There are reasons and times when in fact the State inter-  
12 vention should be there. In this case, however, in this  
13 case, however, you have a situation which begun before the  
14 local plan was initiated, before the growth allocation  
15 formulas were worked out.

16 You have an awful lot of work in the three cases  
17 tonight. There's an awful lot of work that has been accom-  
18 plished in the past year. And I will tell you, based upon  
19 my knowledge of what I heard tonight and what I've seen,  
20 there was a real attempt, there was a real attempt in each  
21 one of these by the county to push these developments  
22 to the point that they would be consistent to the extent

1 they could with critical area criteria and with the criti-  
2 cal area plan, even though the plan had not yet been  
3 adopted.

4           It was a real effort to do that. I know that;  
5 I know that as a matter of fact. I think you have to  
6 recognize that it went through the early guidelines. It  
7 went through the State criteria. It met all those. You've  
8 seen them from memorandum I gave you tonight. There was  
9 a review.

10           And it went through all those guidelines and  
11 all those check points, and did meet and receive --  
12 approval. And that's basically, you're dealing, you're  
13 dealing with a, a situation created by the advent of the  
14 later enacted plan; and spurred to some degree by the  
15 advent of critical areas.

16           Well, critical areas did in some cases, is in  
17 fact, it spurred development and pushed along to the point  
18 that it now is. So while there is a real attempt to satisfy  
19 all the elements in the critical area, and you heard what  
20 Gregg said; that these projects do satisfy the substance  
21 and the criteria of critical area.

22           These subdivisions did receive interim approval.

1 These subdivisions did, are going to be taken out of the  
2 growth allocation. These subdivisions to that degree have  
3 been approved and are consistent with the local plan.  
4 And they're really, there's really an overview here of,  
5 of that plan tonight. And that's how I look at this.

6 CHAIRMAN PRICE: Yes?

7 MR. DAY: I've been working very closely with  
8 Steve and the other members of his staff, and the local  
9 planning commission, and to some extent with the Critical  
10 Area Commission. This whole process, I feel compelled to  
11 take us back to where we were at the beginning of Steve's  
12 remarks. This, we have to make a distinction between these  
13 projects, which received tentative plan approval or preli-  
14 minary plan approval during this interim period, and what  
15 procedure will apply to any future development proposals  
16 that come into the county.

17 And the program as adopted, as approved by the  
18 Commission, really provides for the growth allocation for  
19 all of these projects that received preliminary plan  
20 approval. The only issue that's unresolved in the program  
21 as adopted was basically accounting of the aggregate  
22 acreage of the growth allocation that's going to be involved.

1           And that gets back to the methodology of deter-  
2 mining the development envelopes. Again, that is all  
3 spelled out in the program which was adopted. And at a  
4 glance, I've studied these in detail, but at a glance, it  
5 appears that the determinations of the development envelope  
6 in each of these cases was strictly in accordance with the  
7 methodology spelled out in the program.

8           So this, in my mind, does not constitute an  
9 amendment to the plan that was adopted. This is simply,  
10 is all accounted for as part of putting the initial program  
11 in place. In the future when new proposals come in and  
12 the county goes through the process of evaluating those  
13 and rating and ranking, and so on, then it's a whole dif-  
14 ferent ballgame.

15           But I think that the point we need to end up on,  
16 I, is that there is no amendment required for these. The  
17 only thing that's required is to come up with a final  
18 determination, the aggregate acreage that is going to come  
19 off the county's total growth allocation.

20           CHAIRMAN PRICE: Could that comment be true about  
21 these other 18 or 20 that are sitting...

22           MR. DAY: I believe so.

1           CHAIRMAN PRICE: Any other comment? I think I  
2 stated we keep the record open until November 15. Right?  
3 Is there any possibility we could get some copies of the  
4 program that we're discussing?

5           MR. DAY: Probably cost \$12 a copy.

6           CHAIRMAN PRICE: I think it would be...

7           AUDIENCE: More than that.

8           CHAIRMAN PRICE: We all hinge on one exemption  
9 of paragraph, we don't have...

10           (Off the record discussion.)

11           MR. BOSTIAN: Steve do you have...

12           MR. DODD: It would be nice if we --

13           (Off the record discussion.)

14           MR. DODD: Is it necessary to read into the  
15 record the procedural matters concerning the events of  
16 the Planning Commission approval and the County Commissioners  
17 approval that lead up to this hearing? In other words,  
18 many of the hearings that I, that I attend, it is necessary  
19 to establish that certain notice requirements were met.

20           A hearing notice was published, and that the  
21 Planning Commission and the County Commissioners have  
22 reviewed these requests and have approved them. I guess

1 I've already, yeah, answered my question. I guess in  
2 summary, as far as the county's concerned, we have, we  
3 started out with 2900 acres of growth allocation, approxi-  
4 mately. We have, we estimate we've spent 300 on, by  
5 approving subdivisions during the interim period.

6 We have set aside 300 acres for the municipalities.  
7 We have set aside 200 acres for commercial and industrial  
8 growth allocation in the future.

9 That leaves us with 2100 acres. That's more than,  
10 much more than what is being requested tonight. The county  
11 does have the allocation to give out. It is available.

12 MR. MOORE: I have one question. Will, after the  
13 15th, will the panel take their findings to the Critical  
14 Area Commission at their next regular scheduled meeting:  
15 and will a decision be made that day? Will there be a  
16 delay? What is the schedule for finding out that determin-  
17 ation?

18 CHAIRMAN PRICE: The procedure that generally  
19 happens with the adoption of the original program, because  
20 this would be only the second go-round on amended programs.  
21 One I think is, was adopted in Cecil County a couple weeks  
22 ago. The panel, this panel, will meet whether, after you

1 all leave or some other time and try to come up with some,  
2 and if you give us copies of the law, so we can see what  
3 it is.

4 When we feel that we can -- the full commission,  
5 then I'm sure it will be placed on the agenda for a, for  
6 a vote.

7 MR. DAY: Not to belabor the point, Mr. Price...

8 CHAIRMAN PRICE: Yeah.

9 MR. DAY: I don't think an amendment is in order.  
10 I think it's...

11 CHAIRMAN PRICE: Well we may arrive at, we may  
12 arrive at that conclusion, yeah.

13 MR. RICH: If you do arrive at that conclusion,  
14 would it be necessary to go to the full body?

15 CHAIRMAN PRICE: Well yes, probably to advise  
16 them as to what the conclusion is.

17 MR. RICH: Are you familiar with the language  
18 in the plan?

19 CHAIRMAN PRICE: In the plan?

20 MR. RICH: Yes, the approved plan, the plan that  
21 you all approved.

22 CHAIRMAN PRICE: Well, I hope so, yes.

1 MR. BOWLING: If we don't, sir, we'll definitely  
2 have a copy of it.

3 CHAIRMAN PRICE: You're talking about the  
4 Dorchester County Plan?

5 MR. RICH: Dorchester County Plan.

6 CHAIRMAN PRICE: No, we don't have a copy of  
7 it.

8 MR. RICH: Well I think Mr. Dodd told you about  
9 it. I mean, that's the thing that's confusing.

10 CHAIRMAN PRICE: Well he read it when he first  
11 started, but as far as my, I mean exactly, I think he  
12 said something about -- preliminary plats, were on record  
13 as, up to date.

14 MR. BOSTIAN: You're not going to get a decision  
15 tonight..

16 CHAIRMAN PRICE: Yeah, we'll take that informa-  
17 tion and...

18 MR. RICH: I'm not asking for one tonight. I  
19 think that you've got to be fair. I think it says sub-  
20 division plats that were undergoing evaluation by the  
21 Dorchester County Planning Commission prior to the effective  
22 date the Dorchester County Critical Areas Protection Program

1 will not be subject to density provisions. It starts off  
2 that way.

3 CHAIRMAN PRICE: Well, I mean...

4 MR. BOWLING: In all fairness, Mr. Rich, the  
5 plan that we have, the plan that we thought we approved,  
6 does not have that paragraph in it.

7 CHAIRMAN PRICE: This is the first time tonight  
8 that we've heard about this change.

9 MR. RICH: This language was in the final plan  
10 that was approved by the Commission on June 29th.

11 MR. BOSTIAN: It's not in the June 1st draft,  
12 but it was submitted to the Commission as an amendment or...

13 MR. BOWLING: We're working when that paragraph--

14 UNKNOWN: We don't know. We don't.

15 CHAIRMAN PRICE: Well the answer would be that  
16 we'll try to get it done as soon as we can. But we've  
17 got, you recognize, we kind've got a hybrid proposition  
18 here, with a first time we've got a program amendment. So  
19 I mean it's, uh, we just have to sit down and go through  
20 some of these issues as to just what did happen.

21 MR. RICH: I would think that if we are correct,  
22 that it was not an amendment, a letter from counsel would

1 be probably sufficient. -- your counsel.

2 CHAIRMAN PRICE: It may be that that might be  
3 true as far as the subdivision going forward. And then  
4 we've got a lingering proposition resting with Dorchester  
5 County about growth allocation; because we're really talk-  
6 ing about two different things. As I understand it,  
7 Dorchester County is concerned about how we count the growth  
8 which may or may not concern the developer or the owner.  
9 Yeah, that's one of the issues here tonight. Okay.

10 MR. DAY: In an attempt to clarify the missing  
11 paragraph, I hope I can clarify...

12 CHAIRMAN PRICE: Well if you just give us a  
13 copy of the ordinance, it will clarify it. I'd like to  
14 look through it and see whether there's anything else  
15 that's been changed.

16 MR. DAY: Well, let me comment on the change  
17 that was made.

18 CHAIRMAN PRICE: All right.

19 MR. DAY: If you read it, two parts to it. One  
20 is the statement that projects that are undergoing evaluation  
21 during this period are exempted. The exemption there is  
22 meant to be a rating system that's going to apply to new

1 development projects, proposals that come in subsequent  
2 to the adopted program.

3 CHAIRMAN PRICE: I understand that.

4 MR. DAY: Okay. They're not exempted from any  
5 of the consideration of growth allocation, and so on.  
6 They're exempted from being subjected to that rating pro-  
7 cess. The second thought in here, paragraph, the second  
8 -- is that they, these projects approved during this  
9 interim period do require growth allocation.

10 And the acreage as ultimately calculated is going  
11 to come off the county growth allocation.

12 CHAIRMAN PRICE: Uh, huh, I understand that.

13 MR. DAY: That's what that, what that new  
14 paragraph is saying. It's only exempting them from the  
15 rating system. It's not exempting them from anything else.  
16 It restates that they...

17 CHAIRMAN PRICE: Well it's exempted them from  
18 the cluster provisions. There's quite a bit that they  
19 exempt them from, that are in there.

20 MR. DAY: But that is, they're not exempt in  
21 the sense that they don't require growth allocation.

22 CHAIRMAN PRICE: Okay.

1 MR. DODD: Mr. Price, cluster, clustering as I  
2 understand it is only mandated for the county's second  
3 50% of its growth allocation.

4 CHAIRMAN PRICE: I'm just reading your program...

5 MR. DODD: The first 50% is not mandated in the  
6 criteria.

7 CHAIRMAN PRICE: Well it's...

8 MR. BOWLING: The -- seems to apply it needs to  
9 be for everything under 20 acres.

10 MR. DODD: Post, post critical area adoption.

11 CHAIRMAN PRICE: Well that's what I'm speaking  
12 about, yeah. Okay.

13 MR. MILLER: (Inaudible comment.)

14 CHAIRMAN PRICE: Excuse me, yes sir?

15 MR. MILLER: I'd like to make one point.

16 CHAIRMAN PRICE: Please identify yourself.

17 MR. MILLER: Skip Miller with Andrews, Miller  
18 and Associates. One of the things that bothered me, and  
19 I don't think the question that Gregg asked has been  
20 answered, and that is the procedures that you're going to  
21 take and the time that you're going to take. One of the  
22 biggest problems that we've faced all the way through this

1 entire process is one of economics, or I should say the  
2 developers -- is one of economics. And I think, you  
3 know, the State in their infinite wisdom commissioned a  
4 study to study the economic impact in critical areas after  
5 the critical areas law was passed.

6 This, the type of thing that we're talking about  
7 is developing policies and procedures as we're going along,  
8 which is subjecting these developers to untold cost. You  
9 look around the room here; they've got professionals repre-  
10 senting them tonight at a hearing that probably, I think  
11 in everybody's mind, is not even necessary.

12 -- talking about not knowing whether on November 15  
13 is, it's going to be decided or whether there's another  
14 hearing; the time involved, the amount of extra work.  
15 It's been this way for the last year. And we as the pro-  
16 fessionals are caught in the middle.

17 I'd like to know if the Critical Areas Commission  
18 has a set of procedures or policies to follow to go through  
19 this; uh, this maze? From what I'm hearing you say, no  
20 there isn't. You don't know...

21 CHAIRMAN PRICE: Well I didn't say that. What  
22 were you asking me, an exact date when there's going to be

1 a decision?

2 MR. MILLER: No, whether it would go to the full  
3 Commission? What are the time guidelines for that? Is  
4 that set out?

5 (Off the record discussion.)

6 CHAIRMAN PRICE: I don't believe there are any  
7 time guidelines set.

8 (Off the record discussion.)

9 MR. MILLER: I presume we...

10 CHAIRMAN PRICE: Ninety days after the evented  
11 program was received from the local jurisdiction shall  
12 either, the Commission shall either approve the proposal  
13 or notify the local jurisdiction of specific changes that  
14 must be made for the proposal to be approved. So it's 90  
15 days after it was received, the proposed program. I don't  
16 know when it was received. About a month ago, wasn't it?

17 MR. DODD: The Commission -- early September...

18 CHAIRMAN PRICE: What?

19 MR. DODD: September 7th...

20 CHAIRMAN PRICE: Excuse me, I'm sorry.

21 MR. DODD: September 7th.

22 CHAIRMAN PRICE: September the 7th. It was 90

1 days started, running then. So that's the best I can  
2 answer you. What is it now, October 27th?

3 (Off the record discussion.)

4 AUDIENCE: I hope it won't take that long.

5 UNKNOWN: You couldn't be next week, right?

6 (Off the record discussion.)

7 CHAIRMAN PRICE: Okay.

8 MR. WALLACE: I have one other thing to say. I  
9 think basically what Mr. Miller's asking you guys to take  
10 into consideration is really the amount of time that it  
11 does take, and to try to help us; because in this, these  
12 circumstances, it has been 18 months. And 18 months adds  
13 up to a lot of time and effort, and I think that's what  
14 he's really asking about.

15 CHAIRMAN PRICE: Well, I don't know the workings  
16 of your relationship with the Critical Areas Commission.  
17 I have served on it since it started. And the Commission  
18 itself met every guideline that was set forth in legisla-  
19 tion. And this criteria we're speaking about tonight was  
20 made public in May of 1985.

21 I'm not, uh, and I notice all these initial  
22 submittals are in October and December of 1987. And I don't

1 have any problem with that. But I mean, we're, the only  
2 thing I can say is that we're unpaid people, doing our  
3 pro bono work. And we're going to do it as soon as we can.  
4 And hopefully, and we realize the problem of, you know,  
5 people wanting a decision.

6 But it hasn't been easy to kind of unravel what  
7 we were trying to decide tonight as to, and until you  
8 read this, for example, you read the statement out of  
9 your program. I couldn't understand why it had, why there  
10 wasn't an evaluation or why it wasn't clustered or why  
11 these things.

12 So, is that it? Okay, well, we appreciate it.

13 (Whereupon, on Thursday, October 27, 1988, the  
14 hearing adjourned.)

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C E R T I F I C A T E

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2  
3 This is to certify that the foregoing transcript  
4 in the matter of: Critical Areas Commission Public Hearing,  
5 Program Amendments filed by Dorchester County.  
6

7 BEFORE: ROBERT PRICE; Acting Chairman

8 DATE: October 27, 1988

9 PLACE: Cambridge, Maryland  
10

11 represents the full and complete proceedings of the afore-  
12 mentioned matter, as reported and reduced to typewriting.  
13  
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