

Public Hearings - Mardela Springs - Joint Public Hearing, Chesapeake Bay Critical Area  
Commission & Sharptown - Mardela Springs Town Commission 1988 MJA-51830-43

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CHESAPEAKE BAY CRITICAL AREAS COMMISSION  
Joint Public Hearing

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
SHARPTOWN - MARDELA SPRINGS TOWN COMMISSIONS

March 21, 1988, 7:30 p.m.  
Mardela High School  
Mardela Springs, Maryland

TRANSCRIBER'S CODE

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1 CHESAPEAKE BAY CRITICAL AREA COMMISSION PANEL:

2 William Bostian, Chairman  
3 Wallace Miller, Member  
4 Steele Phillips, Member  
5 Shep Krech, Member  
6 Dr. Lewis Waters, Staff Member

7 SALISBURY-WICOMICO COUNTY PLANNING OFFICE:

8 William C. Livingston, Planning Director  
9 Gloria Smith, Staff Member  
10 Frank McKenzie, Staff Member

11 TOWN COMMISSIONERS OF MARDELA SPRINGS:

12 Milton Catlin, President  
13 Stewart Dailey  
14 Russ Morgan  
15  
16 Bob Benson, Esquire, Attorney for Mardela Springs

17 TOWN COMMISSIONERS OF SHARPTOWN:

18 Avery W. Owens, President  
19 Carrie Adshead  
20 Ralph Cordery  
21 Eddie Silvio  
22  
23 John Jacobs, Esquire, Attorney for Sharptown  
24 R. V. Matlack, Planning & Zoning  
25 Alex Booth, Planning & Zoning

26 REPORTED BY: Debbie Becker

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22

I N D E X

PAGE

OPENING REMARKS

WILLIAM C. LIVINGSTON, Planning Director,  
Salisbury-Wicomico Planning  
Office 3

PROGRAM PRESENTATION

BILL BOSTIAN, Commission Panel Chairman 5  
PETER JOHNSTON, Consultant 16, 21, 31  
WILLIAM C. LIVINGSTON, Planning Director 10, 18, 28

QUESTIONS AND COMMENTS

AVERY W. OWENS, President of Commissioners of  
Sharptown 35  
RALPH CORDERY, Commissioner of Sharptown 37  
RUSS MORGAN, Commissioner of Mardela Springs 44  
JOHN JACOBS, ESQUIRE, Attorney for Sharptown 47  
DR. LEWIS WATERS, Commission Staff Member 53

CLOSING REMARKS

BILL BOSTIAN, Commission Panel Chairman 55  
WALLACE MILLER, Commission Panel Member 56



1 First, let me start with Mr. Milt Catlin,  
2 President of the Commissioners of the Town of Mardela.

3 MR. CATLIN: Hi. I'm Milt Catlin. This is  
4 Stewart Dailey, and this is our attorney, Bob Benson.

5 MR. LIVINGSTON: Thank you, sir.

6 MR. CATLIN: We have several other members, but  
7 they're not here tonight.

8 MR. LIVINGSTON: Mr. Avery W. Owens, President  
9 of the Commissioners of Sharptown.

10 MR. OWENS: Thank you. This is Carrie Adshead.  
11 We have Ralph Cordery, Eddie Silvio and myself. We have  
12 one member not here. And we also have two members of our  
13 Planning and Zoning, R. V. Matlack and Alex Booth.

14 MR. LIVINGSTON: And Bill Bostian, who tonight  
15 is serving as Chairman of the Panel, designated by the  
16 Critical Area Commission.

17 MR. BOSTIAN: Hello. I'm Bill Bostian. I'm  
18 the Wicomico County representative on the Wicom-, on the  
19 Critical Areas Commission. I'd like to introduce some of  
20 my co-panel members and colleagues on the Commission,  
21 starting with Steele Phillips, of Dorchester County; Shep  
22 Krech, who is an at-large member of the Commission, who

1 lives in Talbot County; and Wally Miller, from Kent  
2 County. We also have Russ Blake on our panel of five.  
3 Russ is, has been held up for one reason or another tonight  
4 and hasn't been able to make it.

5 I have a few things that I have to, to state  
6 for the record, so if you'll bear with me for a moment,  
7 I'll go over some of those. I'd also like to introduce Dr.  
8 Lew Waters, who's with the Commission staff, who helps us  
9 with some of the decisions that we have to make.

10 As Bill Livingston said, part of the purpose of  
11 tonight's meeting is for us, as emissaries of the Commis-  
12 sion, to hear public comment on the programs of the Commis-  
13 sioners of Sharptown and Commissioners of Mardela Springs,  
14 required by the Critical Area Law, Section 18; or 8-1809,  
15 and the Commission will have to make a decision on these  
16 two programs within ninety days of the submission, and it's  
17 actually a determination that the submission is complete by  
18 the staff of the Commission, within ninety days of that,  
19 after it's been submitted.

20 We do have a Court Reporter, Miss Debbie Becker  
21 of Free State Reporting, who will be making a record of  
22 tonight's meeting. If you have a statement that you'd

1 like to, a written statement that you'd like to send in,  
2 you can send it to the Honorable Solomon Liss, Chesapeake  
3 Bay Critical Area Commission, 580 Taylor Avenue, D-4,  
4 Annapolis, Maryland 21401. And for anyone that's inter-  
5 ested in that, they can get that address from me later, or,  
6 and possibly as well, you may wish to write or send those  
7 statements to the respective towns, and with a copy to Mr.  
8 Livingston.

9           Generally speaking, the Critical Areas Commis-  
10 sion holds its record open for just a week. I don't know  
11 what your plans are, Mr. Livingston.

12           MR. LIVINGSTON: That would be the same for us.

13           MR. BOSTIAN: Okay. So if you have a statement  
14 that you would like to put on the record after the meeting,  
15 you're welcome to do that, but please, if you have some-  
16 thing that you'd like to say tonight, feel free to; I mean,  
17 that's the purpose of the meeting tonight. I think with  
18 that, I should sit down, possibly.

19           I don't imagine we're going to have a time  
20 problem tonight, but please try and keep your comments to  
21 something on the order of five minutes. If you're running  
22 too long, you're going to be taking the time away from

1 other people, so please try and be relatively brief, but I  
2 don't mean to tell anybody not to, not to, that we don't  
3 provide an opportunity to be heard tonight. So, with that,  
4 that's all that I have, Mr. Livingston.

5 MR. LIVINGSTON: Thank you.

6 MR. OWENS: Mr. Livingston, I forgot to intro-  
7 duce our attorney, John Jacobs, who, he has to be here with  
8 us tonight.

9 MR. LIVINGSTON: And I notice --

10 AUDIENCE MEMBER: Can I ask a question?

11 MR. LIVINGSTON: Yes.

12 AUDIENCE MEMBER: Are you going to divide, in  
13 the comments and; about Mardela and Sharptown, so that the,  
14 any comments would be --

15 MR. LIVINGSTON: Yes.

16 AUDIENCE MEMBER: -- not mixed up?

17 MR. LIVINGSTON: Yes, we will. In fact, we  
18 will go through; the basic program that we will go through  
19 will be our standard program that some of you have seen at  
20 least two or three times by now, up to the point where we  
21 talk about the particular things for Sharptown and then the  
22 particular things for Mardela.

1 MR. BOSTIAN: Bill --

2 MR. LIVINGSTON: There are some similarities,  
3 but there are also some differences in the two programs.

4 MR. BOSTIAN: One thing I forgot to say--we're  
5 here as representatives of the Commission, but we're really  
6 not here to express points of view of the Commission. If  
7 you have questions, you're welcome to put them on the  
8 record and they will be considered by the Commission, but  
9 we're not here to answer questions tonight.

10 However, Mr. Livingston and his folks will be  
11 here to answer questions. It is part of the Wicomico  
12 County; well, I'm not sure that I'm stating this correctly,  
13 but it's part of Bill's job and his office's job to present  
14 these programs, and they're on the line to answer the  
15 questions, so if you have a question, you can ask them. He  
16 may choose to tell you to come back to his office some time  
17 and talk about it, if it's specifically towards a piece of  
18 property.

19 What we're here to hear about tonight--at least  
20 this is from the Commission standpoint--is what you have to  
21 say about these two programs, as they relate to generally  
22 what's going to generally happen in the critical area in

1 those two towns.

2 MR. LIVINGSTON: Okay. Thank you, Bill.

3 First, let me point out that there are reprinted copies of  
4 both the Sharptown and Mardela plan for those of you who  
5 are here tonight. Some of you had the original version  
6 that we had prepared that night for the meeting in Salis-  
7 bury, so the reprinted document is here. You may trade in  
8 your old copy for a new copy, at no extra charge.

9 Let me briefly point out to you that attached  
10 to your Agenda you will see one copy of the Notice of Legal  
11 Advertisement for tonight's hearing. Attached to that is a  
12 copy of an advertisement that we ran in the Daily Times  
13 inviting people to come in for two informational meetings  
14 held in Salisbury to explain the Critical Area Program and  
15 to answer some questions about various jurisdic-, the  
16 jurisdiction.

17 The reason why I say "various jurisdictions" is  
18 that we are a county planning office, and the grant that  
19 was awarded by the Critical Area Commission came to the  
20 county to include Sharptown and Mardela. The City of  
21 Salisbury received a separate grant, outside of the  
22 county's grant funds, to do its program. However, the City

1 of Salisbury agreed that we would do all programs for all  
2 jurisdictions under our contract with the state. That's  
3 why we show up at Hebron; I'm sorry, Mardela, Sharptown,  
4 Salisbury and the county hearings, because we, as the  
5 county planning staff, and the consultants, did the program  
6 for all jurisdictions. Because of that, there are going to  
7 be similarities between the documents for both the county  
8 and the town, and even the City of Salisbury documents, in  
9 some areas, will be similar.

10           The final sheet shows you the Program approval  
11 process. For those of you who are curious as to what  
12 happens next, the last sheet on the Agenda is an excerpt  
13 directly from the Criteria, which explains the final steps  
14 of the process.

15           Let me emphasize, before we begin, that the  
16 Town Commissioners of either Mardela or Sharptown do not  
17 need to adopt this Program tonight. The purpose of  
18 tonight's hearing is really for us to go through a briefing  
19 session to explain the major item, to ask for your input,  
20 your reaction and your comments, and after that the  
21 Commissioners will have the opportunity to go through the  
22 document and to sit down with us and the attorneys to work

1 out the specific Program, so there may be some modification  
2 of the document you have in front of you tonight, depending  
3 on what can be reviewed and changed at the local level.

4 I would point out, for the record, that  
5 detailed information has been submitted to our consultant  
6 by the town of Sharptown on the location of all of its  
7 shore and water lines within the town limits. When we talk  
8 about the Program in just a minute, we will point out why  
9 that's of such importance to Sharptown.

10 What we'd like to do; we have with us tonight  
11 Peter Johnston, who represents the firm of Redman and  
12 Johnston from Easton, Maryland, our consultants in working  
13 with the Mardela and Sharptown Program.

14 We will give you a brief summary of the Program  
15 for the Panel's information. This is the first public  
16 hearing for both towns, so it's a, it's the first stop for  
17 everyone, and some of the information we are going to give  
18 will be a little repetitive for what you are normally  
19 accustomed to, but nevertheless it's necessary with a part  
20 of this combined hearing.

21 First, the Chesapeake Bay Critical Area Pro-  
22 gram, as you know, is a program and not a plan. It is a

1 program that was adopted and required by the state, adopted  
2 under the Criteria; adopted--I'm sorry--under the Natural  
3 Resource Article, and then a set of Criteria were developed  
4 by the Commission. In turn, once those Criteria were  
5 adopted by the Legislature, we in turn had to prepare our  
6 programs in accordance with those Criteria.

7           The law says that the Critical Area includes  
8 all lands and waters and all land a thousand feet upland  
9 from the edge of either high water or wetlands. So that is  
10 not a thousand foot setback. The thousand foot line refers  
11 to the legal coverage as defined by the law, and we will  
12 get into the individual setbacks later.

13           As I mentioned before, our office was responsi-  
14 ble for preparing the Program for Wicomico County, Salis-  
15 bury, Sharptown and Mardela.

16           The Program goals were designed to minimize  
17 impacts--adverse impacts--on water quality, to preserve  
18 habitats, and to establish land use policies that would  
19 accommodate growth within the Critical Area.

20           The regulations; I want to emphasize this  
21 point, because it will help, I think, kind of come to grips  
22 with what we see to be a very difficult Program to

1 understand and a very complex Program to work with, but  
2 basically, the Critical Area Program comes at us at three  
3 levels.

4           The first level is a Land Use Management Area.  
5 These are very broad areas defined by the Criteria, and in  
6 analyzing either a town or the county or the City of Salis-  
7 bury, all lands within that area were put into a category  
8 of Land Use Management Area.

9           The second level is a parcel-by-parcel basis.  
10 If a person wanted to subdivide a 50 acre tract of land,  
11 then the person filing the subdivision would be impacted by  
12 the Critical Area Criteria and our Program.

13           And the final step is lot-by-lot development,  
14 that those, that those lots coming in for development would  
15 be reviewed in accordance with the Program and the Cri-  
16 teria, to assure compliance with the Chesapeake Bay  
17 Critical Area Criteria. It's important to recognize those  
18 distinctions.

19           The three Land Use Management categories, that  
20 we must evaluate all lands within that thousand foot area  
21 and divide into groups, consist of an IDA area, which is  
22 the most intensely developed areas; Limited--now, there is

1 no density limitation when you have an IDA area. The IDA  
2 area would cover an area like downtown Baltimore. It  
3 covers a project that was approved a couple of years ago  
4 called "Scarlet Place," which has roughly 80 units per acre  
5 and 20 acres of land. So it would cover that as well as  
6 some lands within the corporate limits of Sharptown, which  
7 are also classified as IDA.

8           The Limited Development Area does have a dens-  
9 ity classification, a limitation, as well as some other  
10 characteristics, and these are described in the Criteria.

11           The LDA--limited density--level means if you  
12 have water and sewer in place, no more than 4 units per  
13 acre. If you do not have water and sewer in place, 1 unit  
14 per acre or what percs. That's basically, is how it would  
15 operate without sewer and water.

16           The Resource Conservation Area, however, is the  
17 most broad, is the broadest and most restrictive Land Use  
18 Management Area. It is that area which has been designated  
19 in the county as containing about 17,000 acres of land,  
20 throughout all of Wicomico County.

21           Our consultants have gone through and identi-  
22 fied these Land Use Management Areas and, as a result of

1 their study, they have determined that in Sharptown 57  
2 acres is classified as IDA, and 39.3 acres is classified as  
3 LDA. Our consultants advise us that there are no Resource  
4 Conservation Areas within the town limits of Sharptown.

5           Second, in Mardela there is no IDA and there is  
6 no RCA, according to his evaluation, but there is 126 acres  
7 of LDA or Limited Development lands within the town limits  
8 of Mardela. That would be, under this Program, the medium  
9 density type of development.

10           At this time, what I'd like to do is to call  
11 upon Pete Johnston. Do you have any other additional com-  
12 ments that you'd like to make about the Land Use Management  
13 Area?

14           MR. JOHNSTON: Just; I wanted to make sure that  
15 everybody understood that the Criteria established the  
16 basis for mapping the areas that are Resource Conservation,  
17 the Limited Development Areas and the Intensely Developed  
18 Areas, and those Criteria require that we, we map these  
19 areas based on existing land use, and that's existing land  
20 use as of December 1, 1985. When I say "existing land  
21 use," that's what's on the ground as of December 1, 1985.

22           If there are plats that are in the process of

1 being filed and reviewed, if there are plats on file in the  
2 courthouse that subdivide the property into lots but those  
3 lots are not built on, then it doesn't have status as an  
4 existing land use. We have to go in and we take a look at  
5 the area, based on the characteristics as of December 1,  
6 1985, and we had aerial photography to do that by, and if  
7 the area is served by sewer and water and has a density in  
8 excess of 4 dwelling units per acre, then it was classified  
9 as an Intensely Developed Area.

10           If it was served by sewer and water but did not  
11 have a density of 4 dwelling units per acre, on the ground,  
12 then it had to be classified as a Limited Development Area.  
13 These are the two types of high density or Intense Develop-  
14 ment Areas and Limited Development that Bill alluded to.

15           The Resource Conservation Area is defined as an  
16 area where the density is 1 dwelling unit per 5 acres or  
17 less, and it's dominated by fields, by forest, by wetlands,  
18 by barren lands; that is, generally low density areas, that  
19 are dominated by natural resources, and those are the areas  
20 that are mapped as Resource Conservation.

21           Those Land Management classifications are first  
22 identified based on the land use, but they're also

1 important because the Criteria establish standards and  
2 requirements for future development within those areas, so;  
3 and they vary depending on what area you're in. If you're  
4 in a Resource Conservation Area, for example, one of the  
5 Criteria requires that the density of development--new  
6 development--be no greater than 1 dwelling unit per 20  
7 acres. Very restrictive.

8           The Limited Development Area requires that the  
9 density be no greater than 3.99 or 4 dwelling units per  
10 acre, and that runs with that Limited Development classifi-  
11 cation.

12           And the Intensely Developed Area, as Bill  
13 mentioned, there is no density limitation in those areas.  
14 But within each of those there are also a number of other  
15 criteria that we're gonna be, we're gonna be alluding to  
16 later on that, that impact the form of development and the  
17 types of, types of the controls and standards that must be  
18 applied to development.

19           MR. LIVINGSTON: Thank you, Pete. One of the  
20 unique aspects of this Program is that the law gives the  
21 growth allocation process to the county. The county, in  
22 terms of growth within the Critical Area; all Critical

1 Areas in the state within each jurisdiction have a  
2 limitation as to the amount of growth which is allowed  
3 within the Critical Area. That is 5% of the Resource Con-;  
4 total amount of the Resource Conservation Area that we have  
5 in the county, so you compute the total Resource Conserva-  
6 tion Area for Wicomico County and you receive 17,570 acres.

7           On the map on the wall, all of the land colored  
8 green on the county map is classified as Resource Conserva-  
9 tion, and all of that land, combined, equals 17,570 acres.  
10 The 5% growth allocation is important for both Sharptown  
11 and for Mardela, and for the City of Salisbury, for a num-  
12 ber of reasons.

13           First, the county, under the law, must devise a  
14 system to give that growth allocation to municipalities  
15 within its jurisdiction. That is a policy decision by the  
16 County Council. The law does not say how much they should  
17 give each jurisdiction; only that they should work out and  
18 to take care of the needs of the municipalities within its  
19 boundaries.

20           Wicomico County has, as a result of this, 878  
21 acres of future growth within the Critical Area--new growth  
22 within the Critical Area. One-half of this is allowed to

1 float anywhere within that green area. One-half of this,  
2 however, must be used under certain conditions. For  
3 instance, it must be tied to an existing LDA or it must be  
4 part of an IDA.

5 What happened as a result of analyzing the  
6 Criteria is that it became apparent that the municipalities  
7 had the most opportunity to use one-half of the county's  
8 growth allocation; that when you looked at the Salisbury-  
9 Mardela-Sharptown, you could see that those were the jurisd-  
10 dictions that had the most potential for using whatever  
11 growth allocation came in that one category. Now, that's  
12 one-half of that growth.

13 So we asked the consultants, in preparing this  
14 Program, to share their wisdom on how this should be allo-  
15 cated, and this chart gives you a proposed distribution of  
16 the growth allocation for Wicomico County, and we will call  
17 this, just to make it simple--not only make it simple, but  
18 that's essentially what the Criteria mean--is that one-half  
19 of that may float within the Critical Area, so that you  
20 could go out somewhere in the county and create a new sub-  
21 division in the green area, and that would have to be  
22 classified; you'd have to do it in accordance with LDA

1 standards, but after awhile you're gonna run out of land.  
2 You cannot do; you cannot create too many subdivisions if  
3 you only have 439 acres to work with.

4           The other 439 is fixed. The consultants recom-  
5 mended, as a part of the county Program, and it shows up in  
6 the City of Salisbury Program, Mardela and Sharptown, that  
7 the county divide this allocation and take the part that  
8 can float, that can go anywhere, and use that in the county  
9 area, because that's the only place it can be used, with  
10 any efficiency, to take care of future county growth.

11           The next part, the only place that can be used,  
12 is to tie it to the municipalities. Our consultant devised  
13 a formula for allocating that among all the jurisdictions  
14 in the Critical Area. And Pete, you may want to go over  
15 this chart and explain that growth allocation procedure.

16           MR. JOHNSTON: Okay. I just want to make  
17 something very clear. The growth allocation that we're  
18 talking about here, for new growth, isn't required if  
19 you're in a Limited Development Area and you're going to  
20 subdivide your land into 4 dwelling units per acre and  
21 you're designated an LDA; you don't need growth allocation.  
22 Or if you're in an Intensely Developed Area, and you're

1 gonna develop at whatever density, or if it's a commercial,  
2 whatever intensity level that the zoning permits, you don't  
3 need growth allocation to do those things, and I want every-  
4 body to clearly understand that.

5           The growth allocation is analogous to a rezon-  
6 ing--the ability to rezone property and move it to a higher  
7 intensity classification--so that if in the community you  
8 have an area that is a Limited Development Area--a LDA--and  
9 someone is proposing to develop at a density greater than 4  
10 dwelling units per acre, then you can take some of this  
11 growth allocation and place it on the property and change  
12 its classification from a LDA to an IDA to permit more  
13 intensity of development, but this is something in the proc-  
14 ess that we've left up to the elected officials to make  
15 that decision, and we recommended that you wait until you  
16 see a specific development proposal and then you decide  
17 whether or not you want to assign growth allocation to the  
18 project.

19           As Bill mentioned, we only have 878 acres. We  
20 have 30,000 some acres that, of people that are in this RCA  
21 classification that cannot develop any greater than 1 dwell-  
22 ing unit per 20 acres, so this growth allocation for those

1 folks represents an opportunity. If they have the right  
2 project, under the right conditions, they may be able to  
3 get a higher intensity. So that half that could be allo-  
4 cated to the county was allocated to the county.

5           That portion which the Criteria says should be  
6 located adjacent to an existing LDA or an IDA, and of  
7 course some municipalities are that, we recommend it be  
8 allocated down to the municipalities as a set aside for  
9 each of those based on the current population--the relative  
10 population--of the three communities. So that the result  
11 of it was, obviously, that Salisbury, with the highest  
12 population, got the greatest growth allocation; that for  
13 Sharptown, based on population, there are 14 acres that  
14 have been set aside for Sharptown; and for Mardela, there's  
15 been 7 acres set aside.

16           And what this acreage is available to do is  
17 either to use within your corporate limits, to upgrade an  
18 area from LDA to an IDA, or if you have RCA, to an LDA  
19 classification, or its available if you were to annex an  
20 area into the municipality and say with an RCA, then you  
21 could upgrade it, using this acreage, to an LDA classifica-  
22 tion.

1 MR. LIVINGSTON: Thank you, Pete. Again, a  
2 point to emphasize, obviously, is that an LDA, with sewer  
3 and water, is worth a lot more than an LDA without, because  
4 your density can go up to 4 units per acre. This is import-  
5 ant to recognize. As a matter of fact, John Jacobs from,  
6 the town attorney for Sharptown, was at a legal conference  
7 last weekend, or over the weekend, where they discussed the  
8 problems in Anne Arundel County, where they had an argument  
9 over classification of an area with sewer and water, or  
10 without sewer and water. Just a change of classification,  
11 in that situation where sewer and water is available, is a  
12 major impact on a community.

13 The chart here shows the distribution and the  
14 recommended acreage, by jurisdiction, within each of the  
15 towns and the City of Salisbury.

16 The next step we'd like to do is to have Pete  
17 Johnston identify some special features of either the  
18 Mardela or Sharptown Program.

19 MR. JOHNSTON: I think one of the biggest areas  
20 of confusion about the Critical Area Program and the Cri-  
21 teria is the buffer. The Criteria require; establish, as  
22 Bill said, the thousand foot area, which is the Critical

1 Area, and everything that falls within that thousand foot  
2 area is subject to the Criteria and ultimately would be  
3 subject to your Program.

4           Within that thousand foot area, there is yet  
5 another area of demarcation, and this is called the  
6 Critical Area Buffer. The Critical Area Buffer is measured  
7 a hundred feet back from tidal waters or the tidal, extent  
8 of tidal wetlands, where the tidal influence of wetlands  
9 are, so you run along the shore, you measure back a hundred  
10 feet, that is the Critical Area Buffer.

11           The requirements of the Criteria for the  
12 Critical Area Buffer is that it's essentially a setback.  
13 Nothing can occur in the hundred foot buffer. No removal  
14 of existing vegetation, no construction of new structures,  
15 buildings, those kinds of things. That is the basic  
16 requirement of the Program.

17           However, there are obviously areas in each of  
18 your municipalities where there is development already  
19 within the hundred foot buffer area, and it's obvious that  
20 you can't take it out and require it to set back. Those  
21 areas have been identified as Buffer Exemption Areas, and  
22 the Criteria provide that your Program can have a Buffer

1 Exemption Area, and we have recommended that Buffer  
2 Exemption Areas be requested for both municipalities.

3           The Criteria say that if you request a buffer  
4 exemption, you must provide for offsetting of any new  
5 development within what would have been the hundred foot  
6 buffer area. For example, if you request an area as a  
7 Buffer Exemption Area, and in that Buffer Exemption Area  
8 you have a home or it's a lot of less than 200 feet deep  
9 that has never been built on, and you go in and you have to  
10 build your home or your structure within the first hundred  
11 feet, then the municipality must provide for an offset, a  
12 way of offsetting the impact of that additional development  
13 in the buffer.

14           The purpose of the buffer, by the way, is to,  
15 is to provide a transitional environment between the devel-  
16 oped part of the Critical Area and the water. The purpose  
17 of the buffer is to filter out pollutants and runoff, to  
18 create an area where habitat can be established, riparian  
19 habitat, which is some of the most valuable types of  
20 habitat.

21           In your Program, we've established some--or  
22 recommended--rules for the Planning Commission to determine

1 how close to the water or to a tidal wetland a structure  
2 can be located. We've made recommendations about offsets,  
3 and those recommendations are essentially that if you build  
4 something, you offset by planting an area equal to twice  
5 the amount of the area that you're building, so if you put  
6 an addition on your structure, and it's a hundred or two  
7 hundred square feet, then we recommended that twice that  
8 amount be planted in some sort of protective vegetative  
9 cover in the Critical Area Buffer to offset that.

10           However, if, because of the size of your lot,  
11 the configuration, and the fact that it's already built on,  
12 you're not able to meet that offset, then we recommended  
13 that the Planning Commission be able to waive off some of  
14 that offset requirement and will offset it by establishing  
15 a program whereby anybody who comes in and gets an applica-  
16 tion to build in the buffer would also get information that  
17 would educate them about the function of the buffer and how  
18 they can do certain things to make the buffer function  
19 better. So we provided some of the offset by way of a pro-  
20 gram approach.

21           Also, we recommended that in each community you  
22 consider providing buffer offset areas that are off site,

1 so that if I wanted to build on my lot and it was already  
2 built up in a way that I could not plant an area on the  
3 site twice as, twice the size of it, that there is some  
4 public land someplace where I could put those plantings on  
5 public land that would improve the buffer function on those  
6 public lands and thereby discharge my obligation to offset.  
7 So that's, that's one of the rea-, one of the Program  
8 features that we've provided in your Program.

9 Bill, I think that's covered.

10 MR. LIVINGSTON: What I'll do is just reverse  
11 the next item on the agenda to give Pete a little break.

12 The implementation of the Program--we've been  
13 advised by the Critical Area Commission staff that the  
14 Governor's budget will include an amount to administer the  
15 Program by grants, to the county.

16 What we are proposing to do, with the coopera-  
17 tion of all jurisdictions, and it will be dependent upon  
18 each jurisdiction agreeing, we will set up within our  
19 department an advisory staff and an overseer staff to work  
20 with each jurisdiction and to administer the county Pro-  
21 gram.

22 We know that we can do that for the county

1 because we are direct employees of the county. To do it  
2 for Sharptown and Mardela will require an agreement between  
3 the Town Commissioners and the County Council, and if each  
4 jurisdiction wishes, then we will do the very same thing  
5 for each jurisdiction, and we will be delighted to set up  
6 that kind of program.

7 We are working with the City of Salisbury to do  
8 the very same thing with them, by agreement. So we wanted  
9 to make it clear to everyone tonight that the county would  
10 not quote, "take over the Program" without an agreement  
11 between the elected officials from Mardela and from Sharp-  
12 town. It is not an automatic thing.

13 The second part about that is that the Overlay  
14 District, which is proposed as a mechanism to implement the  
15 Critical Area Program, will not be adopted by the county  
16 for any jurisdiction other than the county. So whatever  
17 implementation program must be done under the law, it would  
18 become the responsibility of the Town of Sharptown or the  
19 Town of Mardela, and not the county. The county cannot go  
20 within their jurisdiction, and will not regulate within  
21 those two jurisdictions. I wanted to make that clear for  
22 the record, and wanted to make it clear for those of you

1 who are here tonight, because we are doing it as a county  
2 function, with the cooperation of Salisbury, Sharptown and  
3 Mardela. We will continue that, if requested to do so. If  
4 we're not requested, then we'll have to sit down and figure  
5 out how to transfer different items over to the towns to  
6 take care of at the local level.

7 I think it would take you just a few moments to  
8 go over the proposed Overlay District. The Criteria and  
9 the law require any program adopted; I do want to emphasize  
10 that we must have a program. We're required by law, either  
11 in the county or Mard-; any jurisdiction in the Critical  
12 Area must have a program, or they must apply for an exemp-  
13 tion if they meet certain standards, but we've got to have  
14 it, legally, and that's why we're going through the proc-  
15 ess.

16 The next step is that we must be able to demon-  
17 strate, as a part of our Program, that it can be imple-  
18 mented, and it can be done at the local level, and Pete,  
19 one of the items picked out will be, is an Overlay District  
20 has to be considered by both the Town Commissioners of  
21 Sharptown and the Town Commissioners of Mardela.

22 By the way, we've also made the same

1 recommendation to the County Council and to the City of  
2 Salisbury, that the easiest way to handle it is to design  
3 an Overlay District and drop it over the top of those areas  
4 you see on the maps on the wall. Pete?

5 MR. JOHNSTON: As Bill has said, the Criteria  
6 require; and as Bill Bostian said earlier, that the staff  
7 will be checking our Program for completeness. A complete  
8 program is a program that it can be demonstrated is an  
9 implementable program and that it can be enforced.

10 What we have to done to implement the Program  
11 is to provide an Overlay Zone in what we call a "Natural  
12 Resources;" "Critical Area Natural Resources Protection  
13 Ordinance."

14 The way an Overlay Zone works, first of all, is  
15 it applies; it floats in over top of that thousand foot  
16 Critical Area in your community, and that is the only area  
17 it applies to. It does not apply outside of that thousand  
18 foot boundary.

19 Secondly, it does not change the underlying  
20 zoning on your property, so if you are currently zoned R-1  
21 or R-2 or C-1 or whatever zoning classification you now  
22 have, you will have the same zoning classification when the

1 Program is adopted. The Overlay Zone acts to impose cer-  
2 tain overlaying restrictions on your current land develop-  
3 ment ordinances. That's your Zoning and Subdivision Regula-  
4 tions. So that, for example, if your ordinance says in  
5 this particular zone you can have 5 dwelling units per  
6 acre, and it's an LDA, the Overlay Zone would cap it at 4  
7 dwelling units per acre, and you would only be able to take  
8 advantage of the 4 dwelling units per acre.

9 The Overlay Zone, as I said earlier, has the  
10 development standards that are keyed to each of the Land  
11 Management Areas: the LDA, the IDA, the RCA. So when you  
12 get into your Programs and you start looking for 'em, all  
13 of the Overlay Zone stuff is back in Section 10. That's  
14 where all the implementing provisions will be. You'll see  
15 there; and you get into the design standards for each of  
16 the classifications, you'll see "General Design Standards,"  
17 "General Buffer Regulations" that apply across the board,  
18 and then you'll see "Design Standards for the IDA," and  
19 they apply only to the IDA. And then you'll see "Design  
20 standards for the LDA and the RCA," and they apply only in  
21 the LDA and the RCA. And those two zones are very similar.

22 The Overlay Zone also includes a requirement

1 for submission of certain types of information when apply-  
2 ing for a development. Generally, these restrictions won't  
3 place a great deal of burden in terms of information for  
4 just a building permit, for that kind of process, for minor  
5 or insignificant types of actions; but in the subdivision  
6 process or the site plan development process, if you're  
7 doing a site planning type of project, the Overlay Zone  
8 requires that additional information be submitted in those  
9 applications. And, basically, that information is that the  
10 developer must provide information about habitat con-  
11 ditions. They must provide information that demonstrates  
12 that they are complying with the requirements of your  
13 ordinance, your Critical Area ordinance, in terms of the  
14 restrictions and the limitations and the performance  
15 standards that are set for each of the Land Management  
16 classifications.

17 MR. LIVINGSTON: Ladies and gentlemen, I would  
18 like to take a moment just to point out that also here  
19 tonight are two members of the County Planning staff.  
20 First, Gloria Smith, who is somewhat familiar with this  
21 area, from what I understand; and Frank McKenzie from our  
22 office, and Frank will be here later and will be able to

1 work with you after the meeting if you have particular  
2 questions about the maps on the wall showing the desig-  
3 nation of the particular area in either Sharptown or  
4 Mardela. And I think with that we will close our brief  
5 summary of the Program--you've been very patient--and give  
6 you an opportunity to raise questions and answers about the  
7 Program or public comments for the record.

8           It is our intent to follow up this meeting with  
9 a meeting with the Town Commissioners, to review the docu-  
10 ment and make the changes that they deem essential to make,  
11 before submitting it to the Critical Areas Commission, so  
12 it is not, by any means, etched in stone nor the final docu-  
13 ment. We also have two others we're doing for both Salis-  
14 bury and the county to go through the same process. So it  
15 is a, it is a opportunity for you to make comments for the  
16 record, for the Commission to consider, and also to us dur-  
17 ing this review follow-up with the Town Commissioners.

18           The floor is open for any comments or sugges-  
19 tions. Our Court Reporter has asked that you please  
20 identify yourself loudly and clearly, just in hopes that  
21 these mikes will pick up your remarks.

22           MR. BOSTIAN: Would it be best to have somebody

1 come up? Don't you think?

2 MR. LIVINGSTON: Well, fine. They can cer-  
3 tainly do that.

4 MR. BOSTIAN: Is that alright?

5 MR. LIVINGSTON: Mr. Bostian has suggested  
6 that, for the record, you may wish to come up, have a seat  
7 here, and the microphone will automatically pick it up  
8 there.

9 MR. OWENS: One of the questions I'd like to  
10 ask--suppose we want to build a marina? What will be --

11 MR. JOHNSTON: The Criteria permit what are  
12 known as "water-dependent facilities." The Criteria recog-  
13 nize that there are certain types of uses that have to be  
14 located in the hundred foot buffer, and water-dependent  
15 facilities are one of the uses that can be located in the  
16 hundred foot buffer.

17 There are limitations. There are some restric-  
18 tions on the type of information and the types of mitiga-  
19 tion that has to be accomplished when water-dependent facil-  
20 ities are built, but it does not restrict; however, the  
21 Criteria do not permit new commercial marinas or new indus-  
22 trial maritime facilities in the Resource Conservation

1 Area. Only; in the Resource Conservation Area, you can  
2 only expand an existing commercial marina--no new commer-  
3 cial marinas. And there is a section in here on water-  
4 dependent facilities. I also want to point out that the  
5 Criteria; and nor does your Program restrict individual  
6 piers, and anybody can still have an individual pier in  
7 front of their property. They are not restricted by the  
8 Criteria.

9           There are some limitations for community  
10 piers. If you subdivide land and decide you're gonna put  
11 in one community pier, there are some limitations on the  
12 ratio of slips to lots, but community piers are also per-  
13 mitted.

14           MR. OWENS: Another thing. Do I understand  
15 that in the Critical Areas that we can--Area--that we can  
16 still issue building permits as far as addition to property  
17 or...

18           MR. JOHNSTON: We have made provisions for the  
19 Buffer Exemption Areas so that additions can be; you can  
20 continue to issue permits if they're located in the  
21 buffer. In addition, there are provisions in here for  
22 what's known as "Grandfathered Lots." If there, if there

1 is a lot of record that was recorded before the Program was  
2 adopted, that lot is accorded status under the law so that  
3 you cannot restrict someone from building a single family  
4 dwelling on that lot if one is not already there. So there  
5 are grandfather provisions that protect the right to  
6 develop a single family dwelling on, on lots that are  
7 platted prior to the adoption of the Program. Yes, sir.

8 MR. OWENS: Thank you.

9 MR. LIVINGSTON: I will follow up Mr. Owens'  
10 question by saying that we will discuss with all of our  
11 jurisdictions again this issue of grandfathering, and we  
12 will make it very, very clear in your Program the position  
13 you take and the position other, either Mardela or Sharp-  
14 town take in the, on the issue of grandfathering existing  
15 structures and lots of record.

16 Any other comments, questions?

17 MR. CORDERY: Yes. I have one, Bill.

18 MR. LIVINGSTON: Yes, sir.

19 MR. CORDERY: In going over this thing; my  
20 name's Ralph Cordery, by the way, Commissioner of Sharp-  
21 town. In going over this thing, I see that Sharptown has  
22 no RCA.

1 MR. LIVINGSTON: That's correct.

2 MR. CORDERY: That's a fact. So the only thing  
3 that we have to worry about far as future is the 14 acres  
4 of allotment developed outside the, outside the corporate  
5 limits of the town. Is that true?

6 MR. LIVINGSTON: No. Okay. The 14 acres of  
7 allotment is, is being reserved for Sharptown's use.

8 MR. CORDERY: Right.

9 MR. LIVINGSTON: The two areas on either side  
10 of you in the county, under the consultant's recommenda-  
11 tion, are already LDA, under the county designation. Let  
12 me give you an example. If you wanted to use all of that  
13 14 acres as an IDA for unlimited development; if you  
14 annexed an area of the county, let's say, that is currently  
15 LDA, and you wanted to bring it into the Town of Sharptown  
16 and designate it as IDA, you could do that, --

17 MR. CORDERY: Okay.

18 MR. LIVINGSTON: -- take it out of your growth  
19 allocation. That is your growth allocation.

20 MR. CORDERY: Okay.

21 MR. LIVINGSTON: The county Program and your  
22 Program, I think there's a two-year clause that's gonna be

1 done away with. The City of Salisbury and the county have  
2 agreed that--I think the county has agreed--to do away with  
3 the two-year clause and keep it on an annual update. We've  
4 got to re-do the document every four years anyhow, so if we  
5 do that, we've got to re-evaluate all of the growth alloca-  
6 tion figures.

7 MR. CORDERY: Okay.

8 MR. LIVINGSTON: Isn't that what you understand?

9 MR. CORDERY: Well, that was part of my; or  
10 that was; part of my next question was do we lose this  
11 after two years? Apparently, we do not.

12 MR. JOHNSTON: Well, right now that's one of  
13 the questions that's being determined by the County  
14 Council; you know, what is going to be the bottom line on  
15 the allocation, the growth allocation among the municipal-  
16 ities in the county?

17 As Bill said, we had originally set up a two-  
18 year limitation. If it wasn't used in two years, then it  
19 would be reconsidered. The City of Salisbury would like to  
20 see that extended, I believe, to four years? They want to  
21 see that extended to a four-year period before it's  
22 re-evaluated.

1                   Even after the four-year period, it doesn't  
2 necessarily mean that you would lose it. It means--and  
3 I'll be quite frank about it--this growth allocation thing  
4 is brand new to everybody. It's, it's something that  
5 nobody really knows how it works or how it's gonna work or  
6 just what it means, so we anticipate that within a four-  
7 year period, a number of scenarios may happen.

8                   One, the best scenario, is the Critical Area  
9 Commission gives us more growth allocation; or two, that it  
10 really becomes more important to provide more growth alloca-  
11 tion to the municipalities because their growth has  
12 exceeded the acreage that we've set aside; or three, that  
13 there has been no use of the growth allocation by the  
14 municipalities, and a lot of demand on it by the county,  
15 and the county may want to reconsider the growth allocation  
16 that's set aside. So it could be any one of a number of  
17 scenarios, and that's, that's why nobody's committing it to  
18 anything forever, for the growth allocation.

19                   MR. CORDERY: Well, as a, as an elected  
20 official; I mean, we're looking at 14 acres here, you  
21 know. My father plants more than that in cantaloupes. But  
22 I'm not real happy with the 14 acres, but what I'm not

1 happy about is losing it. I don't want to lose it to the  
2 county or the City of Salisbury. If you're gonna give me  
3 14 acres, what's mine is mine. I don't want anybody coming  
4 in and taking the darn mess, because I think that with the  
5 possibilities, with the way things are going now, that  
6 there is development somewhere in the future. Now, it may  
7 not be within the next ten years in Sharptown in this area,  
8 but I'd still like to see that development, or that ability  
9 to develop, there.

10 MR. LIVINGSTON: Well, I think your point is  
11 valid, and it has shown up with, with the City of Salis-  
12 bury's philosophy, too. They said "wait a minute."  
13 They're saying this growth allocation is forever.

14 MR. CORDERY: Right.

15 MR. LIVINGSTON: I mean, Pete says maybe  
16 they'll give us more growth allocation. Well, maybe  
17 they'll develop some rules to take away some growth  
18 allocation, too.

19 MR. CORDERY: Well, if it can be done, it'll be  
20 done. I'm sure of that.

21 MR. LIVINGSTON: I mean, you know, there's a  
22 double-edge sword. They may give us more, but they may

1 take it away. You never know. So what we're saying, and  
2 what you're saying is that the system we're trying to  
3 devise is as fair as we can make it, which is impossible,  
4 but it's as fair as we can make it. Hold it for a four-  
5 year period, when we go through this process again.

6 MR. CORDERY: Okay. One more. I want to  
7 impose on 'ya one more thing. I'm sittin' here in front of  
8 the Land Use Management Area, and I see that approximately  
9 half of the area of Sharptown is Intensely Developed, and  
10 approximately half of it is Limited Developed, as you can  
11 see by the map, the third map over there on the wall. How  
12 did we come up with this? And is it possible to change it?

13 MR. LIVINGSTON: There is; in all probability,  
14 the recommendation will go in to the Commission that the  
15 City of Sharptown, Town of Sharptown be changed to all IDA.  
16 The reason is, is that the consultant; see, there was  
17 another group--Rogers, Golden and Halpern did the Land Use  
18 Management designations. They went through the entire  
19 38,000 acre section--city, county, everything. The data  
20 that they used to determine the location of water and sewer  
21 lines they had pulled from an existing document, not realiz-  
22 ing that Sharptown had expanded and updated its system, and

1 had some other improvements under way. We have; John  
2 Jacobs brought that to our attention.

3 The Rogers, Golden and Halpern people have said  
4 well, if they have an expanded water and sewer system in  
5 those areas now, based upon the level of development  
6 already in Sharptown, that based upon their calculations,  
7 they think the entire town will be designated IDA.

8 MR. CORDERY: Okay.

9 MR. LIVINGSTON: Now, they are recalculating  
10 that to make sure that when we submit the document that  
11 their calculations match up, because it's a density factor  
12 and the sewer and water--as Pete said very early on--sewer  
13 and water being in place.

14 MR. CORDERY: Okay. Well, I was surprised to  
15 see that, because I was told a couple of years ago that the  
16 Town of Sharptown would more than likely be totally IDA  
17 because of the ability to serve that whole area with the  
18 utilities.

19 MR. LIVINGSTON: Well, the City of Salisbury  
20 made it very, very clear a couple of years ago, the City  
21 Council did, and you know from the Mayor's comments at some  
22 of the Lower Shore Meetings, that the City consider

1 everything within the city limits as IDA.

2 MR. CORDERY: Yes, sir.

3 MR. LIVINGSTON: There was one section that,  
4 from mulling over, that showed up as LDA, but their clear  
5 policy was, "We've got sewer and water; we've got the  
6 system; we've got the plans;"--same as yours--"it should be  
7 IDA." And if you don't want growth where there's sewer and  
8 water, then where do you want it? You know, that's  
9 basically what they were saying.

10 Yes, sir?

11 MR. MORGAN: This growth allocation--is what;  
12 what you're saying for Mardela is that the next 5,000  
13 years, all we can have is 7 more acres?

14 MR. LIVINGSTON: Yes. Now, there's, there's an  
15 option to that, of course. If the town installs a sewer  
16 and water system, or sewer system, that would alter the  
17 ability of Mardela to accommodate more growth, then we  
18 would have to re-evaluate the Plan --

19 MR. MORGAN: What do you think --

20 MR. LIVINGSTON: -- and your Program.

21 MR. MORGAN: What do you think the chances are  
22 that we'd lose our acreage if we don't have any significant

1 growth in the next 4 years?

2 MR. LIVINGSTON: Of using it?

3 MR. MORGAN: Will we lose it if we don't use  
4 it?

5 MR. LIVINGSTON: No, no. That's what we want  
6 to do. We want to hold that for you and re-evaluate that  
7 every 4 years when we have to re-do the whole Program, so  
8 we don't want it, we don't want to lose it. And then what  
9 we want to do is come back together. We will know more  
10 about how much, who needs what. I mean, it could be that  
11 the City of Salisbury says, "Well, we don't need all this,  
12 because of our areas and our development already in  
13 place." So if that's the case, then there may be room that  
14 all the jurisdictions get together and we reallocate that.  
15 But you are correct. As we go into this, we don't see  
16 anything on the horizon that's going to change that figure.

17 MR. MORGAN: Is it set that half of the acreage  
18 will be set aside for the municipalities and the other half  
19 for the county growth?

20 MR. JOHNSTON: No. No, it's not. The way  
21 it's, the way it's set is, first of all, by policy  
22 recommendations, and those policy recommendations are given

1 as guidance. The Criteria make it fairly clear that they  
2 would prefer that, to the extent possible, the growth be  
3 used adjacent to areas that have already developed--the LD,  
4 the existing LDA's and the IDA's. But in that category is  
5 not only the municipalities, but any LDA or IDA that is  
6 already in effect in the county, as well. So that your,  
7 you can satisfy the requirement of being adjacent to an LDA  
8 in the county, if there is an LDA, as well as you can next  
9 to a municipality. So it isn't an absolute requirement  
10 that it be set aside for the municipalities; only that, to  
11 the extent possible, it be located next to existing growth  
12 centers.

13           However, as Bill mentioned earlier, there is a  
14 requirement in the Criteria that the Program address the  
15 future growth needs of the municipalities, and develop some  
16 sort of a cooperative program on growth allocation.

17           It's been the policy of the county to deal with  
18 that two and a half percent as primarily a municipal-based  
19 growth allocation. That's been a policy decision on the  
20 part of the County Council so far. But they didn't have  
21 to.

22           MR. LIVINGSTON: They, they; the Criteria are

1 very, very clear. In fact, the legislature amended it by  
2 House Bill 1434 when they divided the Criteria into two  
3 separate categories--the fixed and the float. That's what  
4 we do to keep it straight in our own mind. And then as a  
5 part of this policy, each of those were divided. Some  
6 reserve; we've had a lot of reaction from people wanting us  
7 to reserve what they call the "small guy pool." They said  
8 "If I wanted to come in for a couple of extra units, I  
9 don't want to compete with the big subdivider, because he's  
10 gonna eat up all the land and..." So the county policy  
11 recommends what we call the "small guy pool."

12 And then the other part of the other half,  
13 which is fixed, it can only be used under certain legisla-  
14 tive conditions. Seventy-five acres goes to an upgrade,  
15 and then the remainder of that, according to the consult-  
16 ant, goes to the municipalities. And I think Hugh Johnson  
17 was the one who kept saying, "You boys are gonna have fun  
18 spreading, trying to divide the loaves and the fishes among  
19 all the people who want that growth allocation." And it  
20 has been a challenge.

21 MR. JACOBS: I'm John Jacobs, an attorney for  
22 Sharptown. As a matter of clarification; for the Board's;

1 a board which may grant variances and so forth. I don't  
2 see anything in there (inaudible) the Board of Zoning  
3 Appeals (inaudible) respective Board that handles Critical  
4 Area situations, that's the regular town Board of Appeals,  
5 or whether or not, by the legislation and the ordinance,  
6 the City Council or Town Commissioners would act as the  
7 Board of Appeals for this purpose.

8 MR. JOHNSTON: The way we've established your  
9 Programs, we recommended that the Board of Appeals perform  
10 that function, your normal Board of Appeals.

11 I think under Article 66(B) there is a, there  
12 is a prohibition against the legislative body also sitting  
13 as the Board of Appeals. Under --

14 MR. JACOBS: For general; for purposes of --

15 MR. JOHNSTON: Right. But under Critical  
16 Areas, --

17 MR. JACOBS: There is a Critical Area of people  
18 who are familiar with it or whether; I mean, we've got to  
19 take the other; and if that is the case, that's why I'm  
20 asking Bill Livingston --

21 MR. LIVINGSTON: That's correct.

22 MR. JACOBS: -- are you going to have a special

1 course for people on the Boards of Appeal so that they can  
2 become familiar with this kind of thing?

3 MR. LIVINGSTON: Okay. We're gonna have to,  
4 yes. We're gonna have to do that. One of the issues we  
5 have to discuss with the County Council; the County Board  
6 of Zoning Appeals processes 160 cases a year. They cannot  
7 handle additional appeals going to 'em. So we may, at the  
8 county, have to end up setting up a Special Board of;  
9 Special Critical Area Field Group.

10 The two towns may consider, as a part of their  
11 ordinance, maybe having that back in as a waiver by the  
12 Town Council or the Town Commissioners, or maybe there is  
13 some way we can work out legally with all parties that we  
14 would use the same Critical Areas Appeals Board on behalf  
15 of Sharptown or behalf of Mardela, if the towns agree. But  
16 yes, we will have training sessions.

17 A part of our budget for next year to the state  
18 will be a special sum for consultant's services and train-  
19 ing sessions, to try to get everyone on track as to the  
20 Critical Area Program and the appeals and variance process.

21 Good point. Pete Johnston suggested that we  
22 emphasize to you that it is obvious, with all the pieces of

1 land and the shapes and configurations of lots, that not,  
2 you will not be able, in all cases, to comply with all of  
3 the standards of the Critical Area Criteria. If that is  
4 true, you may file for a variance request, and it will be  
5 processed through either Mardela or Sharptown in whatever  
6 procedure they establish. And a variance can be granted by  
7 that Board, subject to the test or certain proof.

8 MR. JACOBS: Let me ask you, where you have a  
9 lot that is partly in and partly out of the Critical Area,  
10 does the town have the freedom to grant a building permit  
11 as long as the structure is going to be out of the Critical  
12 Areas?

13 MR. JOHNSTON: Absolutely.

14 MR. JACOBS: Alright. What if it's partly in  
15 and partly out?

16 MR. JOHNSTON: The building?

17 MR. JACOBS: Yes.

18 MR. JOHNSTON: Well, it depends on, on the  
19 situation. If it's; you know, if it's, the part that's in  
20 complies with the Criteria, fine. If the part that you're  
21 putting in doesn't comply with your local Program,  
22 then--and there's no variance--then no.

1           MR. JACOBS: In other words, if it's partly in,  
2 we'd have to use the same procedure for approval as if it  
3 was entirely in?

4           MR. JOHNSTON: That is correct. Let me, let me  
5 add one thing. One of the other things I guess I should  
6 make clear is that over the next years, as you're going  
7 through this Program, you're going to continually be  
8 involved with the Critical Area Commission itself.

9           We mentioned earlier the fact that you could  
10 request a variance from the requirements of your Program.  
11 If someone could not comply, they could come in and request  
12 a variance. However, the Criteria require that two weeks  
13 prior to the hearing you must submit that variance request  
14 to the Critical Area Commission to notify them that there  
15 is a hearing, and they will review it, so that they're  
16 gonna be looking over your shoulder.

17           If you are going to amend your ordinance in a  
18 way that would affect the Critical Area, then the Critical  
19 Area Commission is going to have to review that change to  
20 the ordinance, and they're going to have to; you're gonna;  
21 you're gonna be involved in a much more lengthy process for  
22 zoning amendments or ordinance amendments and changes that

1 affect the Critical Area. So you should be aware, aware of  
2 that.

3 Also, in your ordinance there are provisions;  
4 we've tried to map the thousand foot as closely as we can,  
5 based on the aerial photography. It's possible, however,  
6 that it may be mismapped, and there are provisions in your  
7 ordinance that someone can get a registered surveyor and go  
8 out and show where the thousand foot boundary falls, and  
9 the maps can be amended to reflect that change in the  
10 Critical Area boundary. So there are some, there are some  
11 remedies built in here to, to make changes based on the  
12 facts.

13 MR. JACOBS: Can I ask you another question?  
14 What happens if we sent the, the; up to the Critical Areas  
15 Commission two weeks before, and we do not hear from the  
16 Critical Areas Commission within the two week period prior  
17 to the time we have the public hearing? I mean, do we  
18 readvertise and collect the money from them again?

19 MR. JOHNSTON: No. No. All that the Criteria  
20 require is notice.

21 MR. JACOBS: Oh.

22 MR. JOHNSTON: That's all.

1           MR. JACOBS: I mean if they don't get back to  
2 us, then we take it that they have agreed to whatever we  
3 decide as a result of the hearing, and that's --

4           MR. JOHNSTON: Even, even if they; in my  
5 opinion, even if they do get back to you and give their  
6 recommendation or their statement, I think you're free to  
7 ignore it, because you're; they don't have; the Criteria  
8 don't give 'em part of the decision. It just gives 'em  
9 notice and the ability to comment. But it doesn't make 'em  
10 part of the decision, except to comment.

11           DR. WATERS: Pete, there's one thing for point  
12 of clarification; that if the Commission is notified,  
13 whether it's notified or not, he's right. Your local proc-  
14 ess can go on. However, any decision that's made relative  
15 to a local program, there can be intervention on the part  
16 of the Commission. So, in effect, the Commission can, if  
17 it wants to, step in at any time and become part of the  
18 proceeding or become part of the appeal process.

19           MR. JACOBS: That's what I wanted to hear  
20 'cause; I mean, it's been my understanding that if we act,  
21 we act at our own peril, even if you haven't, we haven't  
22 heard from them.

1           MR. LIVINGSTON: That's right. But John, the  
2 other part of that, too, see, is that the law gives them  
3 automatic standing no matter what, even if they're not  
4 here.

5           MR. JACOBS: I just --

6           MR. LIVINGSTON: That's correct.

7           MR. JACOBS: I want the people who are here to  
8 hear what was said --

9           MR. LIVINGSTON: That's correct.

10          MR. JACOBS: -- so that they know what we're  
11 talking about.

12          MR. LIVINGSTON: And, and we intend to process  
13 within the two weeks that; they will have two weeks to  
14 respond to variance requests from 17 jurisdictions and 50  
15 municipalities in the Critical Area, with a staff of 7 or  
16 8, and I'm sure they'll have that answer whipped right out  
17 in the mail the next day. But at the end of that two week  
18 period, our schedule is going to proceed on that basis. If  
19 they desire to intervene at a later date, then Dr. Waters  
20 is correct. They can come and intervene. They can inter-  
21 vene that night or they can intervene with, in the courts.  
22 We can't block that.

1 MR. JACOBS: Including after the structure  
2 might be built.

3 MR. LIVINGSTON: Some day, maybe. You know,  
4 several months ago there was an article in the T.V. Guide.  
5 One of the, the movie star in Hollywood had the largest  
6 single party in his section of Hollywood to celebrate the  
7 conclusion of the tenth year of having approval from the  
8 California Coastal Commission to replace the bulkhead  
9 washed away in a storm twelve years prior to that date, and  
10 it took him ten years to get the final approval. I hope we  
11 don't have that situation occur here, but if we do, we'll  
12 have a big party on the twelfth year.

13 Any other comments or suggestions? If not,  
14 what I'd like to do is to call upon Bill Bostian for any  
15 kind of closing remarks or comments on behalf of the  
16 Commission.

17 MR. BOSTIAN: Just, just to reiterate, the; if  
18 there's something that you; if you go home tonight and  
19 decide that there's something you would have liked to have  
20 said, please feel free to write to the Planning Commission  
21 or either of the Town Commissioners' offices, and to the  
22 Critical Areas Commission up in Annapolis. Other than

1 that, we'll take what we heard back to the Commission,  
2 along with other recommendations, and thank you all very  
3 much. It's been lovely.

4 MR. MILLER: -- make one comment. I think this  
5 is the 14th or 15th one of these affairs that I've attended  
6 so far, and I must say you people are very fortunate to  
7 have people like Bill and Peter, who I believe make the  
8 best sensible presentation that I've ever seen done. Even  
9 I understood it, and I don't know what's going on much more  
10 than you do. But these guys are really to be congratu-  
11 lated. I think you've got some good people, and I'm not  
12 relation to any of 'em.

13 MR. JOHNSTON: Thank you.

14 MR. LIVINGSTON: Thank you. Ladies and gentle-  
15 men, there being no additional comments or suggestions, or  
16 questions--we'll be here informally to talk to you if you  
17 wish--our public hearing, unless there's a comment from  
18 either of our town Commission Presidents who are here; you  
19 may want to make for the record, to make sure the record  
20 has the additional Town Commissioner for Mardela.

21 MR. MORGAN: Okay. Again, Mr. Russ Morgan,  
22 Town Commissioner for Mardela.

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MR. LIVINGSTON: He has been with us throughout  
virtually all of the hearing, and I wanted to make sure  
that was in the record. Mr. Owens, would you like any  
other comments?

MR. OWENS: I don't believe I have anything  
right now, Bill. Thank you.

MR. LIVINGSTON: Thank you all very much. That  
concludes our public hearing. Thank you very much.

(Whereupon, the hearing was adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript:

IN THE MATTER OF:

JOINT PUBLIC HEARING - CHESAPEAKE BAY CRITICAL AREA  
COMMISSION, SHARPTOWN - MARDELA SPRINGS TOWN COMMISSIONS

MEETING DATE: March 21, 1988, 7:30 p.m.

PLACE: Mardela High School, Mardela Springs, Wicomico Co.

represents the full and complete proceedings of the afore-  
mentioned matter on said date, as reported and reduced to  
typewriting.

  
DEBBIE BECKER  
FREE STATE REPORTING, INC.