

Public Hearings - Wicomico County - Wicomico County Council and
Chesapeake Bay Critical Areas Commission 1988 MSA - S1830-54

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PUBLIC HEARING
WICOMICO COUNTY COUNCIL
CHESAPEAKE BAY CRITICAL AREAS PROGRAM

March 2, 1988
Flanders Room
Wicomico Youth and
and Civic Center

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ATTENDEES:

- MATTHEW E. CREAMER
- JACK MORRIS
- JULIA FOXWELL
- HENRY PARKER
- BETTY GARDNER
- PHIL TILGHMAN
- ED PHILLIPS
- DR. LEWIS WATERS
- VICTOR BUTANIS
- BILL BOSTIAN
- RUSSELL BLAKE
- STEELE PHILLIPS
- SHEPHARD KRECH
- PETE JOHNSTON
- BOB PIERSON
- WILLIAM C. LIVINGSTON
- SCOTT DAVIS
- JOHN ANDREWS
- BOB TAYLOR
- CORRINE LES COLLETTE
- JIM MCDONALD
- SAM DYKE

P R O C E E D I N G S

1
2 MR. PARKER: Let me thank you for coming here
3 tonight. Public hearing on the Wicomico County
4 Critical--Chesapeake Bay Critical Area Program. We've
5 got the -- a bit, but these are experts up here. So
6 they are here tonight to hear your thoughts on this, on
7 the Wicomico County Report, this will be presented to
8 the State, is that right, Mr. Livingston?

9 MR. LIVINGSTON: Yes, sir.

10 MR. PARKER: And any comments that you make
11 will be recorded. It's a pleasure to have you all here.
12 I'm hoping Wiley Miller will be here tonight, but when I
13 see him, I'm going to tell him we don't allow him down
14 here in Wicomico County anyway. Wiley is from Kent
15 County, and he's working with us in Annapolis on the
16 Legislative Committee, and Wiley is a member of this
17 panel also.

18 So I'm going to turn it over to Bill
19 Livingston, the Council is going to listen, and it's
20 Bill's show. Thank you.

21 MR. LIVINGSTON: Ladies and gentlemen, in

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1 order for everyone to be heard, what we'd like very much
2 to do is to advise you that this is a public hearing as
3 required by law. It is a joint public hearing between
4 the Wicomico County Council and the Chesapeake Bay
5 Critical Area Commission. A panel of five members have
6 been appointed by the Commission to hold this public
7 hearing in conjunction with the county council tonight.
8 This is your opportunity to ask additional questions of
9 us at Chesapeake Bay Critical Area Commission. We
10 listen to the comments made about the county Program,
11 and I will introduce the Chairman, who is Mr. Victor
12 Butanis from Harford County, who will introduce the
13 panel who is here.

14 MR. BUTANIS: Thank you, Mr. Livingston. As
15 Mr. Livingston said, my name is Victor Butanis, I'm
16 Harford County's representative on this Chesapeake Bay
17 Critical Areas Commission. With me tonight are other
18 representatives on the Commission. To my immediate left
19 is someone probably who most of you know, Bill Bostian,
20 who is Wicomico County's representative. Next to Bill
21 is Russell Blake, is representing Pocomoke City. To

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1 Russ's left is Steele Phillips, Dorchester County's
2 representative, and to Steele's left is Shephard Krech
3 who represents the upper Eastern Shore at Large.

4 The purpose for the Commission Hearing tonight
5 is to hear and receive public comment on Wicomico
6 County's Critical Areas Program, as required under
7 Section 8-1809 of Critical Area Law.

8 And as Mr. Livingston said, this is a joint
9 public hearing, so we will be basically referring
10 procedurally to the County Council, and any specific
11 questions which may arise should be directed, I think,
12 primarily to the Office of Planning and Zoning, or to
13 the consultants. We are here basically to just hear
14 what you have to say, and we would respond at a later
15 time.

16 Anyone wishing to make any statement, we would
17 appreciate it if you would identify yourself for the
18 record, a court reporter is present, the testimony will
19 be taken down and transcribed, and it will be held at
20 the office of the Critical Area Commission in Annapolis
21 for Review, anyone who wishes to make a written

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1 statement is encouraged to do so, and to send such a
2 statement directly to Judge Solomon Lis, who is the
3 Chairman of the Critical Area Commission in the Tawes
4 State Office Building, I believe, in Annapolis.

5 So with that in mind, I would turn the program
6 back to Mr. Livingston.

7 MR. LIVINGSTON: Thank you. Ladies and
8 gentlemen, those of you who have not been involved in
9 any of our public information meetings that we're had
10 over the past several weeks, I'd like you to know that
11 members of the training staff are here tonight, they
12 would be available after the meeting, if you have a
13 specific question about your property, your road, your
14 neighborhood, or what does the program mean just for
15 you.

16 If you need additional information, if you'd
17 like to talk to them in detail, I'd like for them to
18 stand so you know who they are, they will be here.
19 First let me start with Frank McKenzie, Frank is our
20 technical specialist, I say that only because he's
21 probably one who knows every map that we have in the

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1 office, and what it says.

2 Pat Dize from our staff. -- who is here to
3 help you, direct you to one of the people who can help
4 you the best. Lori Pusey from our staff is here to help
5 you with map questions, or to get you someone who can
6 help you. And Gloria Smith our Secretary who is
7 recording the meeting on behalf of the County Council
8 and making the record.

9 And Jack Powell, your staff, sorry Jack, I
10 didn't see you. Jack Powell from our staff who will be
11 here. So if you don't want to ask a detailed question
12 about your property, but you want an opportunity to
13 discuss it, then someone from our staff will be glad to
14 meet with you after the hearing. Otherwise any comments
15 you want to make will be fine with us and we urge you to
16 ask comments and questions.

17 First of all, we think it's important that we
18 start in accordance with our agenda, with a quick
19 summary of the Chesapeake Bay Critical Area Criteria,
20 and a summary of our program. In order to understand
21 the kind of activity we are involved in, we'd like to

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1 emphasize this document is not a plan it is a program.
2 It is not a policy statement, it is an actual document.
3 The program says we shall do something. There is a
4 distinct nature between what is a plan and what is a
5 program, and there are times those of us who have worked
6 for the plans became a little confused ourself, and had
7 to hassle out with our consultants.

8 First and foremost, the State law identifies
9 the Chesapeake Bay Critical Area. You do not need a
10 1,000 foot set back, 1,000 foot line that you heard so
11 much about is the area of legal jurisdiction of the
12 Critical Area Program. The set back is 100 foot buffer,
13 but the critical area law identifies the Chesapeake Bay
14 Critical Area as being 1,000 feet back from any high
15 tide, or the up lane portion of any tidal marsh.

16 In some parts of the county, you have a--the
17 line curves very dramatically as it goes up some of the
18 creeks. So if you have a question about your area, if
19 you want to check the map to find out if you are or are
20 not in the critical area.

21 Wicomico County was authorized by the

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1 Commission by grant to prepare four programs. Our
2 office prepared a program for Wicomico County, the City
3 of Salisbury, Sharptown, and Mardela. These programs
4 are very simple, except they will take a different
5 legal approach and legal aid within each jurisdiction.

6 The County has different authority than
7 Salisbury, Sharptown has different authority than
8 Mardela has different authority.

9 Each of those jurisdictions must address their
10 own jurisdictional problems, but we by contract have
11 done the plans and programs, I keep using that word as
12 well, the programs for the four jurisdictions. It is
13 necessary to understand the program goals.

14 First, this is environmental legislation, the
15 purpose of the legislation as established by the State
16 was to minimize the adverse impact on water quality, to
17 protect habitats until established land use policies
18 for growth and development within the critical area.
19 And these regulations are directed in three ways, and
20 it's very important to realize what these three ways
21 are.

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1 First, the establishment of management areas,
2 these are broad areas, broad classifications that are
3 identified in the criteria, these management areas are
4 established first. Second, there is a parcel by parcel
5 development approach. If a person sub-divides a piece
6 of property, he must meet the standards of the criteria.
7 And those of you who buy a lot as you develop also must
8 meet the standards of the criteria. So that the State
9 Program, as established, requires regulations that are
10 directed to all management areas, parcel by parcel, and
11 lot by lot development. This is quite different from
12 what most of you have encountered before.

13 These three broad management areas are called
14 IDA for being intensely developed, and in Wicomico
15 County, and the County area only, we only had 314 acres
16 of land that could be classified as intensely developed.

17 The next category is Limited developed, now
18 when I say intensely developed, keep in mind that that
19 also applies to downtown Baltimore. Harbor Place is
20 intensely developed, as well as some areas of the city
21 of Salisbury, as well as some minor areas of the county.

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1 A limited developed area is an area which
2 allows up to four units per acres in terms of density.
3 Wicomico County has in existence 3,438 acres of LDA
4 land, according to our consultants.

5 The final category, is the Resource
6 Conservation area. 17,570 of land in the county has
7 been determined by our consultant to be classified as a
8 resource conservation.

9 In order to conduct the program, we employed
10 the consulting firm of Rogers, Golden and Halpern. A
11 representative is here tonight, Bob Pierson, who will be
12 a participant, and also the firm of Redman and Johnston,
13 from Easton, Maryland, and Peter Johnston will be with
14 us to discuss various aspects of the program.

15 What they have to do was survey the county,
16 compile 12 pieces of information, analyze 38,000 acres
17 of land, and deliver us a draft document within six
18 months, and they did it.

19 What we have since December has been
20 evaluating the draft document, double checking the maps,
21 double checking on some of the areas of the county where

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1 we felt we had some problems, we had to work out. We
2 had to review certain sections of the draft.

3 The program that we are discussing is still a
4 draft program. We will still make changes to it. And
5 after tonight's hearing, we'll discuss with the County
6 Council your comments, our comments and the consultant's
7 comments before the council decides what document we
8 submit to the state.

9 I should emphasize that the council does not
10 have to vote on the document tonight. In fact, the
11 council does not have to vote on the document. All the
12 council has to do is submit the document. The voting on
13 the document comes after the Critical Area Commission
14 has completed his review and evaluation, and submitted
15 it back to us. So we really do anticipate, ladies and
16 gentlemen, two more drafts of this document before we
17 know exactly what we're going to end up with, having to
18 implement.

19 We had discussed the classification of these
20 areas and the Criteria. Before we go to the first item
21 of the agenda, what I want to emphasize to you, and I

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1 will let Bob Pierson emphasize points that he would like
2 to make about the land use management areas.

3 These broad areas are established by the
4 criteria, and then the key point, as established by the
5 criteria, and it's achieved for you because on the map
6 on this wall, you see the huge expanse of green, which
7 is our resource conservation area. The yellow being the
8 limited development area, and the orange being the
9 intensely developed area.

10 On the map on the back wall, these are tax
11 maps of scale one inch equals 600, you can see these
12 areas designated in your property much clearer. But
13 that gives you a general idea of a pattern in the county
14 as a result of our consultant's analysis.

15 The key we want to make is to classify these
16 areas, they shall have at least one of the following,
17 and I think with that, I would like Bob Pierson to give
18 you a summary of the Land Use Management Area. Bob?

19 MR. PIERSON: Thanks Bill, our task as
20 consultants, among many tasks, was to classify the land
21 that Bill has pointed out to you in the Eastern

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1 categories. And the Critical Area Criteria say that the
2 land patterns as of December 1st, 1985, the land use
3 that was there then, has to be the basis for this
4 classification, it's very important to realize that.

5 Things that happened after that we couldn't
6 take into account. We base this on the aerial
7 photography coverage of the Spring of '86, early Spring
8 of '86 which is as close as we could get to that
9 December 1st, 1985 date.

10 And we were constrained very closely in how to
11 classify each parcel in the county by rules which were
12 set out by the Critical Area Commission in their
13 criteria, which were issued in 1985. Or '84. And what
14 these Criteria say is that in the intensely developed
15 areas, the housing density has to be at a certain level.
16 That the certain residential uses and commercial uses
17 and industrial uses have to be a certain size. And
18 likewise in the limited development areas.

19 I have fairly close definitions in the
20 Criteria, as well as the Resource Conservation Areas.
21 There was some areas for the County to make decisions on

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1 how--the Criteria didn't on how the land should be
2 classified. And we helped the county staff to fill in
3 these gaps in the rules, so that the whole thing was
4 tight, so that all the parcels that we looked at, we can
5 follow the--for those of you to help the plan, it's
6 figure 1-4 of Chapter 1. It's looks like an electronics
7 diagram, because of the complexity of the criteria.

8 At the end of this, we were able to classify
9 all the parcels in the county, and they fall into one of
10 these three areas. And I'll be very willing to, after
11 the hearing, to go over with anyone the rules that
12 applied to their parcel, and we will say that we've
13 created this procedure so that it's explicit and anyone
14 can go through it and get the same result that we did.
15 And that's a matter of fairness.

16 And if you come up with a different answer
17 than we did, by applying our rules, then either you've
18 misinterpreted the rules, or we have made a mistake.
19 And in either case, we'll talk about it, and if we made
20 a mistake, we'll have to change the map. Because we
21 want to be as fair as we can in this process, and get

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1 everyone's land classified as it should be according to
2 the rules. And you will all have, a line has to go
3 somewhere to divide the green from the orange from the
4 yellow, and usually these are the property owners where
5 that line falls. Why was that on that side of the line
6 and not on the other. What it comes down to is the line
7 has to go somewhere, we have the rules, and that's the
8 way it is.

9 So I will hand it back to Bill now.

10 MR. LIVINGSTON: Thank you, Bob. For those of
11 you who have been to our public information hearings
12 before, what we'd like to do next is to concentrate a
13 little bit on the resource conservation area. The
14 resource conservation is the single largest land use
15 management zoned in the critical area of Wicomico
16 County. 17,500 acres of land.

17 This resource conservation area is essentially
18 the relatively undeveloped areas of the county, which
19 are dominated by natural environments or wet lands, or
20 forest or agriculture. These are huge areas which can
21 be identified, that's the general definition. But they

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1 shall have at least one of the following, and I make
2 that distinction here, because in reading the criteria,
3 one part of the criteria describes the other, describes
4 the area, one below that, there is a very strong
5 statement that says it shall have one of the following.

6 In this case, in the RCA is a density of less
7 than unit for five acres in the dominant land uses
8 agriculture wet land or farms.

9 The RCA development alternatives gives you as
10 a property owner, an understanding of what is available
11 in the RCA for you. First if you own land in the
12 resource conservation area, you have a base allocation
13 of one unit per 20 acres. If you own a 100 acre farm,
14 you're allowed five houses on that 100 acres.

15 Second, parcels of records, regardless of
16 size, are allowed to have one residential unit. If you
17 have a ten acre parcel, if you have anything below 20,
18 you have the right to build a single residential unit on
19 it. Regardless of what the zone. You have the right
20 under the criteria and the law to establish an
21 interfamily transfer, that if you have a lot ranging

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1 from 7 to 12 acres in size, you may create two
2 additional lots for members of family, but they must be
3 members of the family, and the law defines who those
4 members are, and there must be documentation that they
5 are members of the family.

6 The other aspect of the inter family transfer,
7 if you have a parcel of land from 12 to 60 acres in
8 size, you are allowed to create three additional lots,
9 you get the home place plus three.

10 Now, if the home place isn't there, then you
11 get the three lots. For a family use. The growth
12 allocation we will return to in a minute. The other
13 option that has been under discussion, but it is not in
14 the program, is that we would have the right in the
15 county to establish a transfer of development --
16 program. That means that those people who did not want
17 to develop, would have a commodity to sell to someone
18 who does. But again, it would make a legally
19 established process by the County Council, it will take
20 very complex administrative system to watch over it to
21 watch who sells, who buys and where they go. And all of

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1 this must be oriented to the critical area.

2 This resource conservation area establishes
3 the most restrictive category in the critical area
4 program. Pete, you may want to mention some other
5 comments about the RCA. I'm sorry, Pete Johnston of
6 our consulting firm of Redmond and Johnston.

7 MR. JOHNSTON: Well, the resource conservation
8 areas, as Bill has said, is that area that is dominated
9 by agriculture, wetlands, forest, barren lands, it is
10 predominantly those portions of the county that are not
11 already developed. And the attention of the Criteria in
12 these areas is to preserve the habitat, preserve the
13 natural cover, to preserve agricultural land.

14 So the thrust of the criteria here is to keep
15 that resource base, whether it's the ag lands, whether
16 it's the forest lands, and I'm not going to say a lot
17 more about it, but just kind of switching over to
18 agriculture just for a second, there is a program
19 element in the critical area program that deals with
20 agriculture, and that's certainly going to be the
21 predominant use in the resource conservation area.

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1 There are features in the Wicomico County Program that
2 deal with management of agriculture in the resource
3 conservation area, and there are also features in here
4 that address this goal of preserving agricultural land,
5 even as the limited development that is permitted under
6 the criterias occurring. So I would direct your
7 attention to the ag section of the critical area program
8 for a little more discussion on the RCA.

9 MR. LIVINGSTON: Thank you, Pete. Not only
10 does the RCA have a direct impact on you, it also has
11 potential meaning under the scope of the program. The
12 County's future growth is calculated depending upon the
13 amount of land available in the resource conservation
14 area.

15 If you--once you get outside the area
16 classified as IDA or LDA, then what we have to do is to
17 determine the total amount of resource conservation area
18 in the county, which is 17,570 acres. Under the
19 criteria, and particularly under provisions of House
20 Bill 1334, which amended the original set of criteria,
21 then a system was set up to give counties additional

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1 grown, so that you as individual land owners would have
2 some opportunity to participate in a program to get
3 additional growth in the resource conservation area.

4 Now, you have to develop in accordance with
5 the criteria, but basically what we have to do in this
6 area is we take the total amount of resource
7 conservation land in the county, we multiply by 5%, and
8 we have a growth allocation in the critical area, in the
9 future of 878 acres. Under the law, and I'm referring
10 now to House Bill 1334, not the first set of the
11 criteria. I say that because there's some confusion in
12 reading the blue documents that you all have.

13 In order to get the information out at the
14 time, the legislature amended the law and the criteria
15 that's submitted to the legislature. And when the
16 document was printed, they put all the amendments in the
17 front. Pete Johnston had to keep reminding me that the
18 panel was now five, and not three, because I kept
19 remembering the criteria that went to the legislature
20 when he said three.

21 By the same token, that part of the law has

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1 been overruled at times, when people talk about growth
2 allocation. But 1334 did away with the blue--in the
3 blue critical area criteria, with the section and
4 established the system. First it allowed one half of
5 that growth to float in the critical area. Not all of
6 it, one half. Second, one half of that growth of 878
7 acres, in this case 439 acres, must be fixed, in other
8 words it must be tied to one of the little yellow dots,
9 an LDA or an IDA. Or it must be used as a part of the
10 municipalities growth.

11 One of the interesting aspects about the
12 critical area law, is that all municipalities in
13 Wicomico County, in the critical area have their future
14 growth totally dependent upon the growth allocation of
15 the critical area program. So all the county Council
16 has to do, as a part of this program, is to decide a
17 very reasonable formula as a part that the jurisdictions
18 can use for their future growth allocation under the
19 Critical Area Program. And we are being a little
20 cautious of this area, we asked our consultants to
21 provide us with the wisdom to end all wisdom on how this

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1 growth allocation should be allocated, which they will
2 discuss with you in a minute.

3 We want to emphasize two points. If there's
4 an area on this map which is green, one half of our
5 growth allocation may float in that area, in other
6 words, if you had a green area in -- area, and very
7 undeveloped, it's classified as resource conservation,
8 you could apply to the growth allocation pool to get
9 enough units to build a standard sub-division. All
10 right.

11 Once we run out of that acreage, however,
12 everything else that we do, must be tied to something.
13 That's the most interesting aspect of the program. One
14 half of it can float, one half of it is fixed. And we
15 must, out of that growth allocation, make provisions for
16 the municipality.

17 Now, to tell us and explain how we're going to
18 handle all these wonderful things, would be our
19 consultant, Pete Johnston.

20 MR. JOHNSTON: Well, let me say right up
21 front, that 878 acres is--that's set forever

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1 theoretically under the criteria, that's all we've got.
2 So we're dealing with a very limited quantity of future
3 growth, so you can see that it's going to be very
4 valuable. However it's translated into units, that are
5 very valuable units.

6 Secondly, the criteria require that among
7 other things that the county's program address the
8 future growth needs of the municipalities. And the
9 County, in however they devise the program to deal with
10 growth allocation, they must address the growth needs of
11 the municipalities.

12 And third, I'd say that Bob Pierson and myself
13 have been involved in Critical Area Programs up and down
14 the Eastern Shore, so we've kind of been through this
15 growth allocation process, and there are a number of re-
16 occurring kinds of things that come out of those
17 discussions. Things like what does growth allocation,
18 how do you translate it. It's measured as an area. It's
19 878 acres of the total RCA, 5%, okay, that's the area we
20 start with, what happens when we develop it, how do we
21 subtract it. And we subtract it acre for acre, and we

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1 subtract it, you know, what is the formula. How do we
2 subtract it. How many units does it translate into.

3 To kind of get at all of these things, with
4 the Wicomico County Program, we ended up developing
5 actually three alternative approaches, and this is going
6 to be one of the things that the County Council is going
7 to have to take a look at, and decide which one seems to
8 have the features that they like the best, and then it's
9 going to ultimately be up to the Critical Area
10 Commission to decide which one of them, if the one
11 that's chosen in fact meets their criteria.

12 Generally all of the three alternatives that
13 we've proposed divide the critical area growth
14 allocation in two pools, as Bill has talked about. The
15 float and the fixed. And out of this first one half, or
16 approximately 439--440 acres, the first alternative
17 says that will be allocated to the municipalities,
18 primarily.

19 Now, I think out of that, we took 75 acres,
20 and we said we're going to set this aside for those
21 yellow area up there on the county map, and those areas,

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1 in case there is one of them that will be upgraded to an
2 intensely developed area.

3 Let's assume that in one of those yellow areas
4 we got sewer and we got water, and we had a project that
5 was an intense type of project. Or it might be an
6 industrial project, or something that wouldn't qualify
7 in a limited development area, and we set aside 75 acres
8 for that. And the balance of it, we've allocated into
9 three sub-pools, for the municipalities, and that--and
10 they're based on population. So that the City of
11 Salisbury will get about 94%, Sharptown would get about
12 4%, and Mardela would get about 2%. And this is
13 basically how the numbers would work out. 344, 14 and
14 7.

15 As a result of some of the discussions that we
16 had at the information meetings, a lot of folks said
17 well, that's great, but the growth allocation will
18 probably go to the big developer, the guy that could
19 come in and throw a lot of bucks at a project, and could
20 get the land tied up and go the project very rapidly.
21 And recognize, as I said, we don't have many acres to

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1 start with, we're very likely to see a land rush right
2 up front. Let's get in, let's get a project, let's get
3 this growth allocation, there isn't going to be much of
4 it around for later on.

5 So another alternative that we dealt with in
6 other areas is to take a certain percent of that float
7 that Bill talked about, and set it aside, and what we
8 would call a small acreage, or a small project pool.
9 And that would be for those situations where a property
10 owner, let's say had 60 acres, but they wanted to have a
11 minor subdivision of five or less lots, under 60 acres,
12 they would only be able to get three lots at one per 20,
13 that pool would be set aside so that they could get two
14 more lots to get up to what we've defined as a minor
15 subdivision, and that would be reserved for that type of
16 development. And that's what's included in the second
17 alternative, and that second alternative also has a 75
18 acres for the upgrading of the LDA and also includes the
19 municipal aspect.

20 I guess the third alternative is pretty much
21 like the second, only the way each of these is driven is

1 where it starts to vary. In the first two alternatives
2 we've taken what we call an area of disturbance approach
3 for how to count that growth allocation. So that if you
4 have 100 acre farm and you develop 25 acres of it, the
5 25 acres is what gets subtracted from the growth
6 allocation, the 75 that you must maintain in open space
7 would not be subtracted, so there you see that we're not
8 subtracting it acre for acre, we're just subtracting
9 what is called the area of disturbance.

10 And that has the effect of limiting how much
11 development can be done on any 100 acre tract, or 200 or
12 75 acre, but it also has the effect of making the growth
13 allocation go further, more people can access it,
14 they'll get less density, we've tried to play with a
15 density of around one unit per six acres to seven acres,
16 with a density -- . So you'll get less, even though you
17 own 100 acres, have to put it all on 25 acres, but it
18 will go further. More people, more property owners will
19 get it.

20 Both the first and the second scenario are
21 driven by that area of disturbance approach to debiting,

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1 if you will.

2 The third alternative, we went with a
3 different approach and we said, Okay, we're going to
4 look at growth allocation as a unit production. We're
5 going to take our 438 acres of growth allocation, and
6 we're going to count it as four dwelling units per acre,
7 or about what the LDA would produce. And we're going to
8 create a unit pool, and then people can draw off of that
9 for density bonus when you develop and you follow--you
10 jump--you do certain types of development that is
11 consistent or even exceeds what the criteria would
12 require, then you can get a bonus density. And you will
13 be drawing from a pool of units that totals around 1,400
14 units, there in a pool would be driven to drive that
15 kind of a scenario.

16 There's some fairly stringent cluster
17 requirements in that scenario, some requirements about
18 what you do with the open space, buffer requirements,
19 those kind of things. But that's kind of out of the
20 third alternative works.

21 All of these growth allocation processes are

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1 dealt with for the numbers of the commission as a bonus
2 density approach, not a floating zone, it's not a
3 rezoning kind of a process, it's all done with a bonus
4 density approach. So if you meet certain conditions for
5 growth allocation, you can pick up bonus density.

6 MR. LIVINGSTON: Thank you, Pete. We would
7 like to just briefly summarize that these pools are
8 established as part of the program. Now, the law
9 requires the program to be re-evaluated and re-done
10 every four years. There is a clause in the county
11 program that could tie up this municipal growth
12 allocation for a two year period.

13 It had been suggested the other night at the
14 City Council Meeting, that that two year period be
15 deleted and that the County Council can consider
16 reserving that for the municipalities, until the next
17 program review. And then at that time, you would be
18 able to evaluate how much of your area you had used in
19 growth allocation, how much would be available.

20 The next part of our agenda that we would like
21 to cover, would be the special features that are a part

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1 of the program. One of the things that we would want to
2 emphasize it, is the establishment of a 100 foot buffer
3 as required by the criteria. Individual property owners
4 and large--the lot level and the parcel level will be
5 impacted by the buffer. And Bob, if you would give us a
6 summary of the buffer program in the criteria.

7 MR. PIERSON: I'm going to back up a little
8 bit. What we've been talking about up to now has been
9 chapter 2 in the program dealing with development. And
10 now I'd like to open it up a little bit more to discuss
11 some of the other chapters in the program.

12 There are chapters on the regulation of water
13 dependent uses, and this relates to the buffer. Water
14 dependent uses are the only land uses that can occur in
15 that 100 foot buffer, and there are listed in the
16 program what is defined as a water dependent use. We've
17 gone to some detail to spell those out.

18 The next section is on shore erosion
19 protection measures, and vis a vis there are
20 requirements on taking areas of the shore line which are
21 eroding, and development is proposed near them, and were

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1 on them, that something must be done about them to
2 prevent further erosion.

3 The next element is the forestry element, and
4 this--in this element there are a number of requirements
5 for forest management plans, the County has to maintain
6 a forest preservation plan which really tracks how much
7 forest there is in the county, and just to make sure
8 that it doesn't decrease in the amount of acreage
9 enforced, because the criteria say it has to be
10 maintained or increased.

11 The main parts of this program are handled by
12 the Forest Park and Wildlife Service, and by the local
13 Forestry Board, so that the Commission of Forestry
14 Operation, or anyone really cutting more than an acre
15 your period of trees, that was in trees, has to get a
16 forest management plan and it has to go through the
17 local forestry board for that, and there's very specific
18 requirements in the criteria that have to be adhered to.

19 The next program element is the agriculture
20 program which Peter worked, and this is done primarily
21 with the Soil Conservation District, and working in

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1 conjunction with the County. And there again some--in
2 addition to what they do, routinely do with their farm
3 management plans, there are some additional criteria
4 that have to be--requirements that have to be applied
5 through this program.

6 And then there's a section on mineral
7 resources program element, and this controls the sand
8 and gravel extraction in the county, as it occurs in the
9 critical area, and there's buffer requirements, and
10 rehabilitation plans, that are required to be submitted
11 as part of the site plan process.

12 And then we get into the whole five
13 subchapters on how does that protection. The first of
14 these is the buffer that Bill mentioned. And this is a
15 100 foot set back for all uses that are not water
16 dependent. And there are exceptions, which I think I'm
17 going to hand that particular part over to Peter, to
18 talk about what the exceptions are. And these apply to
19 lots which they may be too small to have 100 foot set
20 back, what you do in that case.

21 Then there is a section on non-title wetlands,

1 and these have to be protected, they have to be
2 identified from National Wetland Inventory maps, and
3 field surveys, a 25 foot buffer has to be put around
4 these, and nothing can go closer than that.

5 There is a--in the next section, is two
6 sections have to do with planned wildlife habitat, and
7 endangered species, and these are specifically mapped
8 based on information provided by the State, any
9 development that comes in for review has to--they have
10 to look for these areas that are mapped, and if they are
11 found specific guidance has to be sought for State
12 Agencies on how to manage the land so that these areas
13 are protected.

14 The last section is the -- fish spawning
15 streams, and there are some requirements in this section
16 that, first, there's an assumption made that all the
17 streams in the county, because it's coastal plain, do or
18 have had use of foreign -- fish spawning. And these are
19 the fish that come from the ocean and spawn in fresh
20 water, and then return to the ocean for their adult
21 life.

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1 And this has to do with protecting the stream
2 channels so that the stream is not block--does not block
3 the passage of the fish and for special land use
4 controls in the water shed of these streams so that
5 during that sensitive spawning period between February
6 and June, I guess it's March and June, that the sediment
7 is going to--they silk the spawning areas.

8 The buffer, the 100 foot buffer must be
9 expanded to include adjacent sensitive areas such as wet
10 soils, deep slopes, and high erodable soils. And so this
11 is another requirement that development is going to have
12 to respect when it comes up under the conditions of this
13 program.

14 Now, I'd like to let Peter talk a little bit
15 more on some of the details of the exceptions to the
16 buffer provisions for special cases.

17 MR. JOHNSTON: For those of you who haven't
18 seen it, this is the Critical Area Program for Wicomico
19 County, there are copies here tonight, if you want to
20 take a look at them.

21 Generally as you go through, you're going to

1 find each of these nine sections, the program elements
2 in the document. And generally what you will find
3 there, a reiteration of what the criteria requires. So
4 you know why we're saying we're going to do what we're
5 going to do. Then you're going to see a listing of
6 goals, objectives, policies, the kind of broad direction
7 that we're taking in each one of these categories, and
8 then you're going to see implementation recommendations,
9 and those implementation recommendations sometimes are
10 programmatic, for example when agriculture and, I want
11 to say right now, you're going to see a lot of SCS in
12 the ag section which should be Soil Conservation
13 District as Opposed to service. But there's a lot of
14 kind of programmatic kinds of recommendations in here.

15 One of the things that the Criteria require
16 though is that all of the development standards of the
17 criteria, all of the kind of performance standards that
18 the criteria is set, must be enforceable, they must be
19 implementable, we have to accomplish what the criteria
20 requires to accomplish, and we must demonstrate that
21 that can be done.

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1 So Section 10 deals with the enforcement and
2 that's where all of the provisions that will regulate
3 activities in the critical area are listed in Section 10
4 of this document. And that's the overlay zone, and that
5 has all of the provisions, the development standards,
6 that one must comply with when one does any kind of
7 construction, any kind of development activities, any
8 type of activities that are conducted in the critical
9 area must comply with Section 10, which is what we call
10 an overlay zone.

11 An overlay zone basically does not change your
12 zoning classification, it doesn't change your density,
13 it doesn't change your status under the comprehensive
14 plan, and whatever category your plan did, or whatever
15 category your zone did, what it does is it imposes
16 certain restrictions over and above those that are
17 currently in the zoning in the subdivision regulations,
18 and any other land development regulations.

19 And the overlay zone, where it is in conflict
20 with another land use regulation, and it is more
21 restrictive than it shall apply. Where it is less

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1 restrictive, then whatever the other regulation is
2 that's more restrictive, that would apply. So that's
3 basically how the overlay zone works.

4 Bob mentioned this 100 foot buffer, when you
5 get in here, and you begin to look you'll see
6 development regulations for the IDA, so when you look at
7 the map, you see what category you're in, you go in
8 here, you find development regulations in the intensely
9 developed area, and those apply to you specifically.

10 If you're in an LDA or an RCA where the
11 development regulations are the same, regardless of
12 which category, you look in here and you see development
13 regulations in the RCA or the LDA, and those that apply
14 to you if you are in one of the yellow areas or the
15 green areas.

16 The 100 foot buffer that Bob mentioned, cuts
17 across all land management classifications. IDA, RCA,
18 LDA that 100 foot buffer is a requirement. Except for,
19 if you're a farmer, and you are currently tilling land
20 within that 100 foot buffer, you may continue to till
21 land within that 100 foot buffer, you are just required

1 to provide a 25 foot vegetated sod strip between the
2 tilled land and the edge of tributary streams, and tidal
3 waters.

4 If you're farming land there, you can continue
5 to farm it. If you have timber there that you are going
6 to harvest, you can do some selective harvesting of
7 timber in the buffer, but not in the last 50 feet. And
8 you can see that when you get into the regulations.

9 But if you already own a lot in that 100 foot,
10 and the lot is less than 200 feet deep, or less than 100
11 feet deep, it's obviously you can't have 100 foot set
12 back and still build your house there, and have a septic
13 tank and those kinds of things.

14 If you've got a lot that's already located in
15 the buffer, and you've already built a house in the 100
16 foot, you're already closer than 100 feet to the water,
17 then there we're going to have a problem. For these
18 areas we have developed what we call buffer exemption
19 provisions. Some of these areas will be mapped, some of
20 these areas will be by definition, a lot of record, 200
21 feet or less, will be eligible to be in a buffer

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1 exemption area.

2 Here you do not have to comply with the 100
3 foot set back area, here you must, however, if you
4 develop or if you put an addition, or if you add
5 additional -- surface, there are some rules for
6 mitigating the impacts to the additional -- surface, and
7 these are the rules that are in the ordinates that the
8 Planning Commission will apply in determining how far
9 can you set back, what is a reasonable set back in this
10 situation?

11 So the buffer exemption provisions are here.

12 In addition, for those of you who are in the
13 development business, site plan requirements,
14 subdivision plat requirements, the information that must
15 be shown that addresses the things that Bob talked
16 about, non-tidal wetlands, habitat protection, those
17 kind of things, what information do you have to provide,
18 what kind of performance standards do you have to meet
19 in terms of storm water management, sediment erosion
20 control, all of those kind of things, are contained in
21 Section 10 here, in the overlay zone. Bill?

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1 MR. LIVINGSTON: The next obvious question is
2 who is going to do it and how. The consultants are
3 recommending that we continue under our current
4 operating program. That the Planning and Zoning Office
5 be authorized by the County Council to continue
6 overseeing critical area programs, the administration
7 and enforcement officials.

8 The consultants have recommended that those
9 activities be related to the level of funding from the
10 State and next year grant, or budget by the Governor,
11 and the fund's availability are coming from the states
12 for critical area purposes. We have been advised by the
13 Critical Area staff that we can use as an estimate the
14 total amount of money available to the County of
15 approximately \$130,000. This has been the funding level
16 that we've operated under these past two years.

17 I'd like to emphasize that the Commission gave
18 a grant of \$23,000 to the City of Salisbury. The County
19 Share was \$110, the City agreed that we would do the
20 program for them, and authorize the \$23,000 to go into
21 the pot.

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1 If all jurisdictions in the County Agree, we
2 would continue to do that procedure. I would emphasize
3 for those of you who are here tonight, that the Council
4 will not implement and cannot implement within the
5 jurisdiction, within the Corporate limits of another
6 jurisdiction. And cannot implement within acceptance, I
7 guess in some circumstances, but as far as this program
8 is concerned, we cannot go into the corporate limits of
9 Mardela, Sharptown or Salisbury unless by agreement, and
10 unless they establish their program by their local law.

11 If that is done, the consultant is
12 recommending that we continue in the critical area of
13 business. The Council is absolutely welcome, however,
14 to designate an alternative office if we choose. But if
15 they continue under the current approach, then our
16 consultant is recommending that this approach be taken
17 and we continue with the program.

18 Ladies and Gentlemen, our consultants in our
19 office have tried to give you the highlights of the
20 program. But I think the most important thing is your
21 questions and your comments of what you would like to

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1 address to us, and we will try to answer them as
2 straight forward and directly as we can.

3 For the record, we have receive written
4 comments from the Soil Conservation District, those
5 comments will be made a part of the record, we have no
6 disagreement with them. We want to make absolutely
7 clear that it's our purpose that the Soil Conservation
8 District will continue to do the best management
9 practice plans. The Planning Office is not going to do
10 best management practice plans, you will go to the Soil
11 Conservation District the way you do now.

12 The floor is now open for questions and
13 answers. Comment, please identify yourself for the
14 record. Scott Davis?

15 MR. DAVIS: Bill, if I may with several
16 examples, let's assume I have a lot of three acres that
17 I've had for 20 years, it's not necessarily part of the
18 subdivision, but it's a lot of record prior to 6/1/84.
19 And you give me a building permit. Do you intend to
20 subject my three acres or any part of my three acres
21 for your growth allocation in the RCA?

1 MR. LIVINGSTON: Absolutely not.

2 MR. DAVIS: Okay, then let me modify, let's
3 say I have a lot of record that's been created after
4 12/1/85, but before you've implemented your program, and
5 let's say my lot happens to be one acre, are you
6 intending to subtract this one acre from the growth
7 allocation?

8 MR. LIVINGSTON: We are not, no. The reason
9 is the law as established, the Critical Area Law itself
10 adopted by the legislature, adopted a provision carrying
11 through from June 1st, 1984, until our local program is
12 approved, and that's the policy that we have been
13 operating under. That's called the interim finding
14 section. The law is very clear, the law is very clear
15 that it says that interim findings provisions stands, in
16 effect until our local program is approved, and that's
17 what we're following.

18 MR. DAVIS: So then as far as your program
19 that you're submitting, in no instances will you have
20 any lots of record, be they created prior to 6/1/84, or
21 after, as long as they are created before--approved

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1 before the program has been approved and put into
2 effect, will you intend to subtract any of that acreage
3 from the growth allocation?

4 MR. LIVINGSTON: Absolutely not. Now, there
5 is a section of criteria that was adopted as a penalty
6 clause, and essentially that penalty clause says that it
7 would approve a subdivision which subsequently became--
8 was classified as RCA. Then all of that subdivision had
9 to come off of our growth allocation. That's a penalty
10 clause, for instance, if you had a subdivision--I don't
11 want to pick on -- but the outlying area, the Island
12 Area, if we approved the subdivision on the Island area,
13 and that subdivision had five houses on 89 acres, and it
14 ended up being a resource conservation area, under that
15 clause of the criteria, that's a penalty. It ended up
16 in RCA, it doesn't meet the five units, or one unit per
17 20, so therefore we'd have to subtract it.

18 If that happens, then we have to have that
19 subtracted. In the occasions you explained to us, no,
20 they are not conforming or they are legal. And we are
21 not subtracting those from any growth allocation.

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1 Nor, as we read the law, and as the attorneys
2 read the law, do we feel that we can subtract them, or
3 should subtract them.

4 MR. JOHNSTON: Well, Bill, it is important to
5 point out that all the development that's been approved
6 has been consistent with criteria.

7 MR. LIVINGSTON: That's correct.

8 MR. JOHNSTON: And that's an important point,
9 everything has been approved in this interim period, has
10 been consistent with the criteria, and that's the
11 important point. If we'd gone out there and done a lot
12 of development, that was obviously inconsistent, then
13 that might have been an issue, but we haven't done that.

14 MR. LIVINGSTON: I would say that since
15 February, 1986, the Planning Commission for the City of
16 Salisbury and the County has followed that policy and I
17 think if push comes to shove, we'll call John Andrews as
18 a witness, because I think John has had three
19 subdivisions that have been evaluated that are in the
20 resource conservation area that have never been
21 approved. There is an issue of whether they will or

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1 won't be resource conservation.

2 You see, we don't know that until the maps
3 come out from the Commission. That's the interesting
4 part of the program.

5 MR. ANDREWS: What if an area was not mapped
6 out?

7 MR. LIVINGSTON: I beg your pardon?

8 MR. ANDREWS: What if an area was not mapped
9 out, what criteria would become--

10 MR. LIVINGSTON: Was not mapped?

11 MR. ANDREWS: Yes.

12 MR. LIVINGSTON: All of the areas that we have
13 on our property maps, will be mapped from the county,
14 everything that you see on the wall will carry a
15 designation. If it's a dashed line, if you see a dashed
16 line on the property map, that means there's some
17 question about it. Because when you overlay the
18 wetlands maps, and you try to match it up, one line runs
19 this way, and the other line runs this way. And you
20 can't always match the lines.

21 On our maps we asked the consultant to dash

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1 those. That's a warning sign to us that something is
2 wrong. We are going to designate everything on those
3 tax maps in a classification, including the dashed
4 areas. Including those dashed areas, because there is
5 some problem.

6 Under our program, they're going to -- . If
7 it proves out later by survey, or some subsequent
8 program, that it has to be changed, then it has to be
9 changed. But we will designate.

10 MR. TAYLOR: I'm Bob Taylor. One of the
11 gentlemen was explaining to how there were three
12 different concepts, or perhaps competing concepts, I
13 think I understand that, and has one of those been
14 accepted, I'm asking sort of generally, what is going on
15 here?

16 MR. LIVINGSTON: No.

17 MR. TAYLOR: All right. They are competing
18 concepts, right? I mean you would have picked one, two
19 or three?

20 MR. LIVINGSTON: We have proposed to the
21 County Council three alternatives for our growth

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1 allocation. The first alternative is that we divide
2 into two parts, but that you allow people to compete for
3 that in a pool. You put it in a pool, you come in, you
4 get it. And when it's gone, if somebody's in line
5 behind you, it's gone, he doesn't get anything.

6 The second alternative is that it be allocated
7 a certain portion of that, we've always called it in-
8 house, the small pool. Let me give you a good example,
9 I'd like to use. There's an inter-family transfer, you
10 get two more lots if you have a parcel of 11 acres. All
11 right. Between six and 12 acres you get two additional
12 lots. We will always say we are not going to solve that
13 problem if you have four kids. How do you choose the
14 two kids who are going to get the two lots under that.
15 So what we're saying is that under growth allocation,
16 that small -- would be made available for people to come
17 in and ask for two additional lots, or three additional
18 lots.

19 So that's why in the second alternative that
20 the small pool was created so that we don't have all the
21 growth allocation going out to one large development.

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1 In fact that issue was raised by our technical
2 committee, and on two occasions, by two different
3 people, and the second alternative is the growth
4 allocation but reserving the pool.

5 The third alternative is taking the growth
6 allocation and pre-distributing that growth allocation,
7 and instead of sitting here worrying about who's rushing
8 in, who's coming in to get that plat approved, how much
9 do we have left, do we argue with the Commission over
10 it, does it need a guideline, or doesn't meet a
11 guideline, let's solve the problem. Let's get together,
12 solve the problem, and pre-allocate the growth
13 allocation. And under that system, that would indicate
14 that you would have as a part of the bonus, a density in
15 the Resource Conservation Area, theoretically of 1 --
16 for 6.7%. But you would still have to meet the
17 standards.

18 You might be able to use it all, you might
19 not. I mean that's, you know, that's--it's just like
20 going to the Health Department to have your lot perked,
21 if you get so many lots out of your parcel named, you've

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1 got them, if you can't you can't get them. The same
2 thing with growth allocation. In that pre-determined
3 allocation, that bonus, it means that everybody who
4 owned a piece of land would have the right to compete to
5 use that if they met all of the development standards.
6 Pete, do you have anything to add to that?

7 MR. JOHNSTON: Yeah. It's basically the third
8 alternative takes away the need to create a small pool
9 or large pool, or in some cases, we've taken growth
10 allocations that only so much of it could be used on an
11 annual basis. It's basically taken the RCA or the LDA
12 or half of it and multiplied it times four dwelling
13 units, and come up with our 1,400 units, and we've said
14 we have so much RCA out there, we distributed it all out
15 to on the RCA on the acre per acre basis, and we ended
16 up with a net density of one dwelling unit for 6.7
17 acres. So your access to the growth allocation is
18 dependent on how many acres you own. So for ever 6.7
19 acres you own, you've got one dwelling unit,
20 theoretically the way it would work. And that would be
21 the density cap. So if you've got 100 acres, you divide

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1 it by 6.7 and that's how many you would get that would
2 include your one per 20 by right, and your growth
3 allocation. And that's what we end up with as our cap
4 on density in the RCA, and that's how that works.
5 That's just based on how much land you own.

6 MR. TAYLOR: In one of those plans, there was
7 something about bonuses, I think it was the third one.

8 MR. JOHNSTON: Well they all deal with a
9 bonus. Now, understand in these situations, we are
10 trying to accomplish objectives in the criteria as well,
11 so these things are not--these are not dwelling units by
12 right, these are bonuses that the Planning Commission
13 can award, and can give you access to if you made
14 certain standards. Okay.

15 If you're going to go out and develop a
16 property the old way, chop it up, take all the trees
17 out, and pop in a road and go, then you're going to do
18 one per 20 under the way we've got the program set up.
19 If you're going to go in there and you're going to do a
20 little more sensitive development, if you're going to
21 cluster, you're going to have large open space areas,

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1 you're going to do sensitive type of development on the
2 site that takes into consideration those sensitive areas
3 on the site, then you're going to get your bonus. But
4 that's the way it works, it's secured in a stick kind of
5 effect.

6 If you want to get that extra density, then
7 you do good development. If you're not willing to do
8 good development, then the bonus is not available to
9 you. That's how we're using the extra density as an
10 incentive to reach the goals of our program for water
11 quality and habitat protection. And that's where when
12 you get in there, you'll see special conditions in the
13 RCA, well, those are the special conditions that you
14 have to meet, in order to get your bonus density. And
15 that growth allocation that Bill talked about was
16 reserved back there at the county level, but the
17 Planning Commission to award on a site by site basis, on
18 a plan by plan basis, it's not a matter of right.

19 MR. LIVINGSTON: One final word. It would not
20 alter the municipal pool, that stays the same. It would
21 pre-allocate this one half, before -- would be pre-

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1 allocated. It would not change the municipal pool.
2 That would only change each time we did a plan or a
3 planned --

4 MS. LES COLLETTE: Corrine Les Collette, in
5 view of the potential for appeals from developers, is
6 there any consideration given for the establishment of a
7 number of appeals board, knowing full well that our
8 current County Appeals Board is very much over worked,
9 and consideration given to -- from Agriculture to
10 Forestry and so forth on the Appeals Board to give broad
11 coverage?

12 MR. LIVINGSTON: That's a good question. I
13 say that because Pete Johnston raised that issue.
14 During the discussion, the program right now calls for
15 the appeals to be funneled to the existing county
16 appeals board. In the city of Salisbury program, it
17 would go to their appeals board. Your suggestion has
18 merit, it has a lot of merit. That the Council could
19 consider as an alternative, that County Board of Zoning
20 Appeals, we process 160 cases a year for that Board, and
21 I'm sure they would like to hear something other than

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1 an appeal on the Critical Area Program. That is
2 something the council might consider, I think it's a
3 very positive and good suggestion. And Pete, Pete's
4 first question was can they handle it. And we said
5 well, let's structure the program and if we get a good
6 alternative we can discuss it with the Council. But I
7 believe it's something the council should seriously
8 consider.

9 MR. JOHNSTON: Bill, you might want to
10 mention to everybody which are hidden, that there are
11 variance proceedings.

12 MR. LIVINGSTON: There are questions that come
13 up, there is a requirement that you cannot cut more than
14 20% of your lot, if you do cut 20% you've got to replace
15 that somewhere in the critical area. Or you've got to
16 have 100 foot bumper. If for some reason the lot that
17 you have, that you cannot comply and you wish to buy a
18 variance, there will be a variance procedure established
19 as part of the program so that you do have a right to
20 build your case and to come in and argue.

21 I would caution everyone here now that we are

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1 entering the world of studies, writing it down, if it's
2 not written down, it didn't happen. If it's there's
3 you've got to write it down, if it's not there, you've
4 got to write it down. Those of you who have dealt with
5 the Government for a long time, know that that's the
6 rule of thumb, and that's the way it is from here on in,
7 and we can't change that because the criteria -- you've
8 got to prove it. And I'm sorry, but that's the world
9 we're about to enter.

10 MR. TAYLOR: I've heard that in Queen Anne's
11 County that they have a plan, I've heard it called an
12 imaginative plan, I've heard it called whacko. Is there
13 anybody here that knows anything about it that could
14 briefly contract with what we're proposing?

15 MR. LIVINGSTON: It's an imaginative program.
16 Pete Johnston worked on that program. Let me say that
17 Queen Anne's county program is a sophisticated, highly
18 technical program, it started before the criteria. It
19 had goals other than the Chesapeake Bay Critical Area.
20 I mean they did things that were unbelievable for the
21 farming community here to see that Queen Anne's county

1 land, you know, would be revolutionary for our farming
2 community to sit. Because they did things far beyond
3 what the criteria called for. It's sophisticated, it's
4 a highly technical program. I would not want to see us
5 duplicate it, but I like some of the ideas that they do.
6 And Pete Johnston participated in developing it, that's
7 why I say it wasn't Whacko, it was imaginative and well
8 thought out.

9 MR. JOHNSTON: Right. Yeah, as Bill said,
10 what happened in Queen Anne's County is, first of all,
11 they went 20 some years with an old plan, an old zoning
12 ordinance and they had a lot of problems, and I think
13 anybody that's been through Kent Island can understand
14 what I'm talking about, in the Narrows. There was
15 very, very poor type of development, they were starting
16 to have very serious water quality problems, it was just
17 downright ugly. And looked like Glen Burnie coming
18 through Queen Anne's County.

19 And they got very serious about doing a
20 comprehensive plan, and they got very serious about
21 implementing that plan, and as part of that

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1 comprehensive planning process, they developed what's
2 known as performance zoning approach. And performance
3 zoning where it says "We're not going to tell you how
4 to do it, but we're going to tell you what we want to
5 see in the way of results, you decide how you're going
6 to reach those results." And then they set performance
7 standards.

8 Critical Areas came along and Queen Anne's
9 said we feel like our performance zoning goes well
10 beyond the criteria and we want--we don't want to do
11 what the criteria says, we want to use our performance
12 zoning. And in the critical area in what's known as a
13 resource conservation area, which they call under their
14 zoning board, as country side, they were getting about a
15 one dwelling unit per five. So that was their density
16 production. Not much different than yours.

17 The difference was, they are requiring that it
18 all be put on 15% of the site. So when you sit down and
19 you look at your site, and you decide where you're going
20 to put your dwelling units, you've got to put them on
21 15% of the site. 85% of the site has to be retained and

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1 open space. When I say open space, it has the same
2 meaning as yours. Open space means commonly owned,
3 undisturbed either agriculture or forestry, or some
4 other type of resource use, and that's all you can do
5 out there.

6 Now, Queen Anne's does let you do some
7 recreation type things out there. It's common, open
8 space, preserved --. Queen Anne's requires a 300 foot
9 set back as opposed to 100 foot set back, and
10 understanding the Queen Anne's County, there is very
11 little forest cover in the buffer to begin with, or in
12 the critical area. It just doesn't have much.

13 They require that after you develop 50% of
14 that buffer has to be reforested. That you've got to go
15 in there and forest it.

16 Their performance standards apply throughout
17 the county, they're not just in the criteria. When
18 you sit down with your site and you say I've got 20
19 acres of trees to begin with, when you get done
20 developing wherever you are in the county, depending on
21 what zone you're in, 40, 50, 80, 100% of those trees

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1 have to still be there when it's done. And then you've
2 got to add some trees.

3 And basically it's a whacko plan, but what
4 it's trying to do is do things that we all know make
5 better development. More trees, more landscaping, more
6 sensitive approach, lower density, set back a little
7 further, don't clear right up to the water, control
8 sediment, that's what the program does. And yours does
9 too, by the way. Yours has many of those features in
10 it, that's just not quite as restrictive as the Queen
11 Anne's program.

12 MR. LIVINGSTON: The other -- Queen Anne's, it
13 goes well beyond the critical area too.

14 MR. JOHNSTON: That's right.

15 MR. LIVINGSTON: The other thing from
16 experience and there are members here tonight from
17 Dorchester and Talbert County, they're local
18 representatives. When you cross the Choptank River,
19 when you come south and you cross the Choptank, the
20 development philosophy between the lower four counties
21 and the upper four or five, is absolutely like night and

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1 day.

2 There is a much different philosophy and if we
3 lived in Talbert County with those waterfront estates,
4 or Queen Anne's County with Waterfront farms, maybe our
5 view of things would be different. But we don't have
6 that. Jim McDonald.

7 MR. MCDONALD: I'm Jim McDonald. Bill
8 mentioned earlier or made reference earlier to the fact
9 that the state guidelines make reference to transfer of
10 development rights, and know it's a very difficult and
11 complicated issue, but I want to urge you to tackle
12 that, and include some provision for transfer of
13 development rights in our County Plan. Imagine a case
14 where someone buys two lots -- at a very high price, and
15 then intends to build one house and wants a larger yard,
16 they are basically losing the value of a legally
17 subdivided lot if no provision is made. And I would
18 urge you strongly to -- that issue.

19 MR. LIVINGSTON: Thank you, Jim. We'd like to
20 -- our program. We like to think that we're going to
21 have to have. Ed Baker is here from -- and one of the

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1 great challenges which will be referred to our legal
2 advisors will be the health set up, and because we think
3 it's neat. But that's something we will--I think we
4 should, and I agree with your motion.

5 MR. MCDONALD: There are a lot of gray areas,
6 it's very complicated. Potentially very complicated.
7 But it needs to be dealt with.

8 MR. LIVINGSTON: Yes.

9 MR. JOHNSTON: Well, for the alternative
10 three, we're not going to need a TDR program.

11 MR. LIVINGSTON: That's true.

12 MR. JOHNSTON: Alternative three, there won't
13 be a need for a TDR program.

14 MR. MCDONALD: Well, except for existing lots
15 of record.

16 MR. JOHNSTON: You set a cap on your density
17 and say we're going to let everybody go up to 6.7
18 dwelling units, one dwelling unit per 6.7 acres, and we
19 say that's our cap, if there's going to be no place to
20 transfer that develop right too. Once you've capped the
21 density in the RCA at that, and everybody has that by

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1 right, and there's no place to transfer that development
2 right from that lot of record.

3 MR. LIVINGSTON: Right. Two of the three
4 alternatives, you have to have TDR to make the program
5 work. The third growth allocation alternative I think
6 we could do away with it. Sam?

7 MR. DYKE: Sam Dyke. Bill, I noticed that in
8 your non titled wetlands you have addressed the matter
9 in the traditional form -- to the extent you have
10 included an exemption for commercial forestry carried
11 out according to approved forest management plan. I
12 commend you for this, and I hope the Commission will
13 look upon this favorably and maintain this exemption.
14 It's extremely important to the --

15 MR. LIVINGSTON: We don't get many of those.

16 MR. ANDREWS: Bill, I would like to comment to
17 the County Council -- that in a family transfer, I would
18 like to see us come up with some kind of a policy or
19 regulation where we could create a right of way instead
20 of getting our long strip lots -- 2,000 feet. It's bad
21 planning, we do not have a regulation where we can use

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1 our right of ways, and we do need it, especially with
2 the inter-family transfer, you've got three lots, it's
3 in the family, it would be nice to have a strip running
4 back and serving these three lots. In a sub division,
5 in the Bay Critical Area, it would be nice to do away
6 with our black top and go with our surface treatment,
7 cut down on our --

8 MR. DAVIS: Bill, you talked about the 5%
9 allocation in the division of the two, 2.5% forest.
10 Now, I read chapter 602, and there comes a point in time
11 at which I think it's subsection B5, it talks about if
12 your fixed 2.5% doesn't work, what you can do would be
13 2.5%. I'm not speaking of the floating 2.5%, I'm
14 talking about the fixed 2.5%. Now, right now I
15 understand that you're going to make some sort of
16 allocation to the municipality and to the Counties to be
17 tied to IDAs, LDAs or the municipality. Okay. As more
18 and more property is eaten up in your floating area, so
19 you're down to practically nothing, and what point in
20 time will you consider or have you already considered a
21 time limitation on the municipalities for any time to an

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1 IDA or an LDA, to say hey, this hasn't been practical,
2 this is what Chapter 602 envisioned, and we're going to
3 take some of these acres, and put them into the floating
4 area.

5 MR. LIVINGSTON: That's very good question,
6 because the wisdom of this whole growth allocation
7 process is as the amount of float goes down, for the
8 people who live out in the County area, the more people
9 will feast their eyes on the growth allocation reserved
10 for the municipalities, and then as that goes down, they
11 will then look upon that and say why don't we reallocate
12 that. That's a possibility, depending on how the
13 council treats it in the program that's set up.

14 The other night that the recommendation was
15 made, the consultant said reserve it for two years. The
16 suggestion was made the other night was no, just treat
17 it every four years when you have to redo your program.
18 But your observation is correct. At some point in time,
19 if we fool around with growth allocation, then we're
20 going to have everyone in the critical area at -- with
21 each other, and a commission that you have destroyed the

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1 structure of the program, because the more you limit me
2 from using my fixed, or you float, the more you throw us
3 all into each other's throats to get a little piece of
4 pie, and that's from our system is, we hope, designed to
5 take care of that. Pete Johnston called in giving the -
6 - among the masses, and he said how are you going to do
7 that, and our consultant came back and said this is what
8 we propose.

9 MS. LES COLLETTE: Bill, knowing your
10 variations in the RCA areas, is there any consideration
11 given to making the one for 20 acres fair.

12 MR. LIVINGSTON: All right. I think that the
13 approach was made by the consultant that not all lands
14 in our resource conservation area are prime farm land.
15 Not all lands are in that green area of prime timber
16 land, or natural habitat, that are areas that really
17 aren't. We asked him, and he came up with the
18 allocation that third alternative. Using the bonus,
19 using the cluster, using all of these things, you can
20 use that pre-allocation of your growth allocation. And
21 that was his alternative to how to make that RCA a

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1 little bit fairer.

2 The other problem that we see is that we have
3 to look at the smaller pieces of land, that may be
4 weren't being developed, while the larger pieces of
5 land, where they have a large-- we have an application
6 coming in for 2,200 acres of land for development in the
7 critical area. It is at one per 20, I will hasten to
8 make that a part of the record for the Commission, and
9 it will be designed in accordance with the criteria, it
10 will knock them off our growth allocation. That's for
11 the record.

12 The Commission will assure you that it will--
13 our Planning Commission will assure you. But in that
14 case, that individual said he could live with that.
15 There are other smaller pieces of land, the smaller
16 property owners where there is a problem.

17 If the council feels that that won't fly, the
18 equal distribution. The second alternative of reserving
19 the smaller pool is the second fairest method that we've
20 been able to come up with, that we reserve this 75--the
21 39 acres of development just for the small individual

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1 user to apply. The consultant feels that second in
2 terms of relativity, that's the second fairest one that
3 we have.

4 The first alternative, as you all come and you
5 all -- and you all compete, and when we're out of
6 allocation, that's it. And we had a lot of negative
7 reaction to that.

8 I would first, I'd like to thank the
9 Commission Panel, I would like the people in the
10 audience to know that we had a very interesting
11 briefing, and very good discussion, the members of our
12 discussions have indicated a keen awareness of some of
13 the problems. We identified what we felt to be the
14 sensitive issue, and they've readily agreed that they
15 would be the sensitive issues, and we are delighted to
16 have them with us, we hope they come back, not
17 necessarily in your official capacity, but come back at
18 any time, and be with us, and we thank the Bill Bostian,
19 and Mr. Chairman, we appreciate you being here,
20 particularly having to come this long distance.

21 President Parker, it appears that that closes

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1 the Public Hearing from our point of view. If you would
2 like to make any remarks.

3 MR. PARKER: We just thank everybody for me.

4 MR. LIVINGSTON: On behalf of the Council, we'd
5 like to thank everybody, we would make one comment that
6 the comments, and suggestions have been recorded, we
7 will sit down with the Council, and make some additional
8 recommendations, and hear from them and then they will
9 decide what document to submit to the Chesapeake Bay
10 Critical Area Commission.

11 Unless we hear any objections, thank you very
12 much. Our meeting is adjourned.

13 (Whereupon, the meeting adjourned.)
14
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16
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21

C E R T I F I C A T E

This is to certify that the foregoing transcript
in the Matter of: Chesapeake Bay Critical Area Commission

Date: March 2, 1988

Place: Wicomico Youth and Civic Center

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.



Lyn Horne

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Tom Ventre



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PLANNING & ZONING OFFICE**

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301-548-4861

December 28, 1988

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**DNR
CRITICAL AREA COMMISSION**

Dr. Sarah J. Taylor, Executive Director
Chesapeake Bay Critical Areas Commission
Department of Natural Resources
Tawes State Office Building, D-4
Annapolis, Maryland 21401

SUBJECT: Wicomico County Critical Area Program Committee Review

Dear Sarah:

On July 18, 1988, I received a letter from the late Solomon Liss returning the County's Program for review and revision. As you know, Kevin Sullivan was eventually assigned to meet with us to discuss approximately 300 review comments raised by your Staff or other State agencies. This task was completed and our consultant redid the Program based upon Kevin's recommendations.

On several occasions, I mentioned to Kevin, and occasionally to Ed Phillips, that the Judge's letter made specific reference to meetings with our Panel to discuss these concerns. I also requested Bill Bostian to advise me as to when the Panel desired to meet to discuss the Program because we had a number of concerns that we felt should be addressed before the public hearing. Thus far, we have received no notice of any pending meeting with our Panel and, in fact, we understand that the County Panel has never formally met after our first public hearing to discuss local issues.

Panel since the 1st hearing

Please advise me as to the proper course to follow since I would like very much to avoid a public hearing where the County Council adopts a document which the Panel feels is inappropriate. If you have any questions in this matter, please don't hesitate to contact me.

Panel not met since June. Panel needs to review. need the set of maps.

WCL:pe

Sincerely yours,

Bill

William C. Livingston
Planning Director