

Public Hearings - Worcester County - 1998 MSHA - S1830-55

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BEFORE THE CRITICAL AREA COMMISSION PANEL

WORCESTER COUNTY CRITICAL AREA PROGRAM

PUBLIC HEARING

SNOW HILL, MARYLAND  
February 2, 1988

CRITICAL AREA COMMISSION PANEL MEMBERS:

- William J. Bostian, Chairman
- Robert Price, Vice Chairman
- Ron Atkins
- Russ Blake
- Ed Phillips
- Dr. Lou Waters

WORCESTER COUNTY COMMISSIONERS:

- |                   |                                   |
|-------------------|-----------------------------------|
| Carlton E. Massey | W. Kenneth Tyler                  |
| Reginald Hancock  | John Yankus, County Administrator |
| Bennett Bozman    |                                   |
| James Barrett     |                                   |

Mapping + Growth Allocated  
 Co. → Snow Hill  
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1 help us with the many things that we have to do with the  
2 Commission nowadays. As you know, this is a joint hearing  
3 between -- with us and the County Council -- County Commis-  
4 sion, excuse me, and the purpose from our standpoint is  
5 to hear public comment on Worcester County's Critical  
6 Area's Program as required under Section 8-1809 of the Criti-  
7 cal Areas Law.

8 I would also like to say the Commission is not  
9 here -- we are only here to represent the Commission and  
10 hear public comments. We are not here to answer any ques-  
11 tions, although if you have questions, you certainly can  
12 put them on the record and Mr. Phillips and Dr. Waters will  
13 be happy to take it back to the full commission staff,  
14 the full commission and staff.

15 We also, as a whole commission, will have to make  
16 a decision on Worcester County's Program within ninety days  
17 from the time -- within ninety days of the date of complete  
18 submission, which will be determined by the Commission staff  
19 over the next few days, I suspect.

20 I would also like to recognize Mrs. Breta Bernstein  
21 who is with Free State Reporting and is a court reporter and  
22 a record of this meeting will be taken and sent to the  
23 Commission. I would like to also note that the Commission  
24 will keep the record open for at least one week, so if you  
25 have any written comments you would like to send to us, please

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1 feel free to send them and I have an address which I will  
2 give you here and anyone who wants it can get it during the  
3 course of the meeting. It should be mailed to the Commis-  
4 sion Chairman, Solomon Liss, Chesapeake Bay Critical Area  
5 Commission, 580 Taylor Avenue, D-4, Annapolis, Maryland  
6 21401. Of course, the complete record will be kept at the  
7 Commission Office if anyone wants to look at it. I believe  
8 that's all I have.

9 MR. BOZMAN: Thank you, Bill. All right, at  
10 this time we'll turn the meeting over to Mrs. Saari to  
11 conduct the meeting of who we -- the consultant we hired  
12 to study the problem and present a plan. We've had some  
13 requests for some handouts. Do you have anything that  
14 the people could have?

15 MRS. SAARI: Kelly has summaries. I would like  
16 to introduce John Wicke, who helped us prepare this plan

17 MR. BOZMAN: I would like to say for the audience  
18 We just got this plan today, so we're learning as much as  
19 you are. We got it this morning and we had a briefing, but  
20 that's all we've had.

21 MRS. SAARI: Some of you are intimately fami-  
22 liar with this program and some of you, I'm sure, this is

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1 the first time you've heard of it. The State Legislature  
2 passed the Critical Area Legislation, the State Legislation  
3 that we are responding to and they appointed the Critical  
4 Area Commission. There are several members here tonight.  
5 The Critical Area Commission developed a set of criteria,  
6 that are quite strict criteria, that outlines what each  
7 county and each town on the Chesapeake Bay should be doing.  
8 So, in preparing this plan for Worcester County we followed  
9 this very careful outline, the criteria that were more or  
10 less mandated by the State Commission and approved by the  
11 State Legislature.

12 The definition of the Critical Area in Worcester  
13 County, as well as in other places, is the water and land  
14 of the Chesapeake Bay and in Worcester County that includes  
15 the Pocomoke River and its tributaries to the head of tide.  
16 It also includes the tidal wetlands, both the private and  
17 State wetlands. It also includes that area of 1,000 feet  
18 beyond the landward boundaries of the water edge, or the  
19 wetlands.

20 The purpose of the Critical Area Program is  
21 to protect the fisheries and the water quality of the  
22 Chesapeake Bay, including the Pocomoke River. Another

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1 purpose is to preserve the plants and the wildlife habitats  
2 along the Chesapeake and to assist in planning and controll-  
3 ing growth within the Critical Area along the Chesapeake  
4 Bay and those areas in the Critical Area are subdivided  
5 further into areas called intensely developed areas, limited  
6 development areas, resource conservation areas, and habitat  
7 prtotection areas.

8           The definitions of those areas are spelled out  
9 very specifically in the criteria. The intensely developed  
10 areas are areas where development is already occurring and  
11 has occurred in Worcester County and those areas that have  
12 heavy residential developments, that is, four houses per  
13 acre or more, industrial or commercial areas, sewer and  
14 water, and at least twenty acres. In our planning for  
15 the County, we really only found one area that would  
16 qualify as an intensely developed area and that's in the  
17 Hallock Heights area and then there's a lumber industry  
18 that's there and, of course, you would think the town of  
19 Snow Hill and Pocomoke City would also be intensely  
20 developed areas, but those towns are preparing their own  
21 separate plans and we won't address those tonight.

22           Limited development areas are areas that have

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1 begun to develop, but have only moderate development, about  
2 one house per five acres ranging up to four houses per  
3 acre, and these are small areas. They are less than twenty  
4 acres and they may have sewer or water.

5 The rest of the river is zoned as a resource  
6 conservation area. This is an overlay zone that would apply  
7 over your existing zoning and in the resource conservation  
8 area there is low density of houses, one per twenty acres,  
9 agriculture, forestry, wetlands, open space and water  
10 dominate those areas and in your comprehensive plan, those  
11 areas are zoned -- they are called to be conservation or  
12 parkland areas.

13 Then there is a fourth area called habitat  
14 protection area. This includes a hundred foot buffer zone  
15 all along the edge of the wetlands and along the Pocomoke  
16 River and we have added to the habitat protection area  
17 the natural heritage areas.

18 The natural heritage areas include such areas  
19 as the big swamp, the big Cypress Swamp and the Nasawango  
20 Creek areas.

21 In preparing this plan, when the lights go  
22 back on, I'll show you the maps that we have prepared, but

1 each one of these natural resources were maps on the scale  
2 of a topographic map, one inch equals two thousand feet and  
3 we did them on overlays so that each one of these fits  
4 on top of the other. We mapped anadromus fisheries. Those  
5 are fish that come up into the river to spawn, like striped  
6 bass, we mapped wildlife and endangered species habitat,  
7 hydrid soils, which are wet soils, sand and gravel deposits,  
8 erodable soils, which are defined by your soil survey for  
9 your County, steep slopes which there aren't very many in  
10 this County, agriculture areas. This was agriculture land  
11 use as of December 1985. Floodplans, wetlands, natural  
12 parks and forested areas. All those are mapped on these  
13 overlay maps for the County.

14 Now, let me take you -- I understand that some  
15 of the Commission members have not been down Pocomoke River,  
16 so let's take a quick trip from head of tide, which is at  
17 ~~White~~ <sup>Whiton</sup> and Crossing. The first area you enter coming south  
18 on the river is an area that was previously channelized and  
19 as you can see it was channelized so many years ago that  
20 it's now gone back to its wild state.

21 Just below are the channelized portion and the  
22 wild stretch that has very little access to it and very

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1 difficult to get through, even with a canoe and it's truly  
2 a bottomland swamp and you can see where the River Pocomoke  
3 means in Indian, Black Water and we have canoed this whole  
4 length of the River and it's extremely beautiful up in  
5 the wild norther end.

6 And you come about half way down the River and  
7 you reach Snow Hill, which is a developed area, but you  
8 can see the islands off of Snow Hill in the Pocomoke River  
9 are not developed.

10 The Pocomoke River, as you will see through  
11 these slides, has many uses and many demands on it and one  
12 of the heavy demands, especially between Pocomoke City and  
13 Snow Hill, is recreational use of the River. It's widely  
14 used for all types of recreation, fishing and boating.

15 A little bit further downstream you come to  
16 the Nasawango Creek area, which is one of the areas we  
17 recommend as a habitat protection area and about twelve  
18 or thirteen miles of the Nasawango Creek have already been  
19 preserved by private conservation groups.

20 I would like to thank Joe Fehrer for these  
21 wonderful slides.

22 Then, we come a little bit further down the

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1 River and we come to Pocomoke City, which again, as you  
2 can see, is developed and they're doing their own plan  
3 for preserving their part of the water.

4 Below Pocomoke City the River widens into broad  
5 emergent wetlands where crabbing and fishing are still  
6 important.

7 Below that you have historic sites, such as,  
8 the beautiful home Beverly and it has the oldest cypress  
9 trees in the State of Maryland.

10 In local program development it requires some  
11 coordination with the various towns in the neighboring  
12 jurisdictions, as well as the State Critical Area Commis-  
13 sion. We looked at your new comprehensive plan and sug-  
14 gested language changes to the comprehensive plan. We  
15 reviewed the Worcester County Zoning maps and suggested  
16 changes. We looked at the subdivision regulations and  
17 suggested changes for that.

18 The most important thing, if somebody comes in  
19 with a future subdivision plat we are going to require  
20 more information of them. Especially if they are in the  
21 Critical Area they'll have to provide more information  
22 and those future growth areas will have to be consistent

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1 with the density requirements for limited development areas.  
2 We are recommending that future growth be located close  
3 to existing development. And there is also a requirement  
4 in there for a reduction in storm water pollution and a  
5 requirement to maintain forests and replant forests where  
6 they are cut down.

7 Part of the local program development refers  
8 to inter-family transfers of land so that a father may leave  
9 some land to his son and there is also grandfather clauses  
10 that protect subdivisions that have already been approved  
11 prior to new homeowners project and subdivision approved  
12 prior to June 1984.

13 Part of the program includes an agriculture  
14 protection plan. The main ingredient of this is that all  
15 of the farms within the Critical Area should have a soil  
16 conservation and water quality plan within the next five  
17 years. Pocomoke -- all the wetlands along the Pocomoke  
18 should not be drained or filled to create agricultural  
19 land.

20 Even before farmers get the soil conservation  
21 plan done, they should start at this point to maintain  
22 a twenty-five foot vegetated buffer strip between the farm

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1 land and the edge of the wetlands and farmers should use  
2 the best management practices as they can to reduce erosion.  
3 These are practices such as no till and using cover crops.

4 Here you see an agricultural use that we are  
5 going to try to discourage in the new agriculture plan,  
6 which is part of the Critical Area Plan. Animal feeding  
7 and watering within fifty feet of the buffer zone. There  
8 will be a fifty foot buffer zone along the River and wetlands  
9 that cattle should be fenced out of.

10 Also, manure storage and retention ponds and  
11 feedlocks should not be allowed within this fifty foot  
12 zone along the River. All of these should be located  
13 away from the Critical Area to maintain the water quality  
14 and to preserve the Pocomoke River.

15 We also have a mineral resources plan that is  
16 part of this and this requires coordination of several  
17 different agencies. The State Water Resources Administra-  
18 tion is involved in controlling sand and gravel. U.S.  
19 Fish and Wildlife Services might be involved, for example,  
20 when some operations that would involve, say, bald eagle  
21 nests which are located to the south of this particular  
22 operation, and also locally the Soil and Water Conservation

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HRA  
2 St  
Wildland

1 District is involved in erosion control.

2 Resource conservation areas should remain unde-  
3 veloped until the land can be used to provide a continuous  
4 supply of minerals. This is what's required in the criteria  
5 and we have also suggested that a hundred foot buffer zone  
6 should be maintained between the mining operation and the  
7 River. As you can see in this existing operation would  
8 certainly require some changes.

9 There are a hundred and sixty-nine thousand  
10 acres of forest in Worcester County. In fact, most of  
11 the County is forest and 70% of those are privately owned.  
12 Two areas are noted as State Wild Lands and these are  
13 included in our habitat protection areas.

14 The goal of the plan is to preserve forest  
15 wherever we can and, in fact, in some cases to increase  
16 the forest.

17 Forestry operations can, of course, continue  
18 within the Critical Area, but harvesting can only go up  
19 to like -- this is for commercial Loblolly -- harvesting of  
20 commercial timber can only go up to within fifty feet of  
21 the edge of the wetlands and in the future, if somebody  
22 wants to harvest timber, even a one acre tract, one acre

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15

1 or more, they will have to provide a forestry management  
2 plan, and the forest management plan will have to be prepared  
3 by a registered professional forester. Also, if they are  
4 going to disturb five thousand acres, five thousand square  
5 feet of soil they will have to get a specially prepared  
6 sand erosion and sediment control plan. So, there will be  
7 some restrictions placed on the timber industry and what  
8 they can and cannot do in the Critical Area.

9 We also have drafted a habitat protection plan  
10 which addresses this hundred foot buffer zone all along  
11 the River and wetlands. We have also recommended protection  
12 of non-tidal wetlands. We've recommended protection of  
13 anadromus fishery and have outlined the specific natural  
14 heritage area, which include the Hickory Point Cypress  
15 Swamp, Nasawango Creek, and the Mattaponi, which is  
16 across from Milford Landing.

17 We've also addressed endangered and threatened  
18 species and future natural park areas. Endangered and  
19 threatened species are a particular problem or asset in  
20 county in that you have a lot of them. This particular  
21 one is a dwarf trilleum, but in Worcester County, we also  
22 have habitats potentially for four species of endangered

1 animals, one threatened and four in need of conservation.  
2 There are twenty-two known species of endangered plants  
3 in this County, including the dwarf trilleum, which may  
4 seem just common as flies to you all in Worcester County,  
5 but this is the only population in the whole State, what's  
6 in this County. So, we've tried to locate those areas  
7 where endangered species are and make sure those are covered  
8 by the habitat protection area.

9 We also have addressed shoreline erosion. There  
10 is not significant -- the definition of significant erosion  
11 is two feet per year -- there is not any significant erosion  
12 along the Pocomoke. Now, there may be in Ocean City, but  
13 certainly not along the Pocomoke. We did identify some  
14 areas where there was some erosion occurring where non-  
15 structural measures would be practical and we also indi-  
16 cated an area where perhaps some structural control might  
17 be needed. But, in the future, in Worcester County,  
18 shoreline structures to control erosion, such as, bulkheads  
19 and rip raff will be discouraged because even though it  
20 saves your piece of property and stops your erosion problems  
21 it creates problems for your neighbors. So, structural  
22 erosion control will be discouraged in the future.

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1                   Flooding is also a problem and we have addressed  
2 several issues of this in Critical Area Plan. There is  
3 a requirement for storm water pollution runoff, that is,  
4 the amount of pollution in the runoff from storm water  
5 that that be reduced by 10% with no development and the  
6 objective is it's a little by little reduce of pollution  
7 of the Bay the way it's little by little over the years  
8 increased.

9                   The County may develop offsets to control  
10 the pollution from storm water runoff and those offsets  
11 need not necessarily be in the Critical Area. You might  
12 develop some engineering plan that controls the water  
13 runoff further up stream somewhere.

14                   Variances will be granted, but not any that  
15 would adversely affect water quality or harm the wildlife.

16                   We also have addressed something called water  
17 dependent facilities. Now, water dependent facilities are  
18 defined and explained in the Critical Area Plan. For  
19 example, condominiums and restaurants might not be con-  
20 sidered water dependent, nor banks, unless they're launder-  
21 ing money.

22                   This recreational facility would, of course, be

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1 water dependent and private piers that are maintained by  
2 landowners are affected by this, but we have developed  
3 a series of checklists that if somebody had -- if they  
4 think they need water, that they would then come to the  
5 County and say we need to be in this hundred foot buffer  
6 area, we need to be right on the water. Well, they have  
7 to prove to the County that their facility is truly water  
8 dependent.

9 Public recreation areas, such as this, of course,  
10 would be allowed in the hundred foot buffer zone.

11 We have also addressed a number of ways to  
12 protect the Critical Area, in addition to just the Critical  
13 Area Legislation. We have discussed agriculture preserva-  
14 tion districts, conservation, even as given to the -- to  
15 the Maryland Environmental Trust, zoning and local restric-  
16 tions can be made tighter through ordinances, local and  
17 state tax incentives are possible to get people more  
18 involved in conservation. Sound land development practices,  
19 such as, when a developer comes in and he uses things like  
20 clustering and building setbacks. Private conservation  
21 groups have been very effective in Worcester County and  
22 we hope to continue to encourage them to do so.

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1           And, of course, we also need a conservation  
2 education program. We should remember that the conservation  
3 doesn't just apply to people over sixty-five, but we really  
4 need to get involved with the school children and the  
5 other people in the County to see that -- be benefited  
6 from this program.

7           This is unreadable, granted, but this is the  
8 process that we are going to go through in reviewing and  
9 submitting this plan. Where we are is up in the upper  
10 right hand corner, you see local public hearing, this  
11 program will then be submitted to the Commission and the  
12 Critical Area Commission will read it and they will send  
13 it back to the County and then we'll make changes and we'll  
14 give it back to the Critical Area Commission. But, that  
15 is the only reason I showed you this graphic, not that  
16 it is readable, but to show you that it's a very complicated  
17 process and that it's not over yet, and that we should all  
18 have input during these various stages. There will be other  
19 public hearings. There will be another public hearing at  
20 the end, before the program is adopted. So, it's all

21  
22           And I would just like to say that it's very

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1 important for you all to remember that Pocomoke River is  
2 not just an asset in your back yard, but that it's part  
3 of the Chesapeake Bay and that it's important for you to  
4 think about preserving it and conserving the resources that  
5 you have today, so that they will be usable and enjoyable  
6 for the generations in the future.

7 Thank you very much.

8 MR. BOZMAN: Okay. At this time we will enter-  
9 tain questions from the audience. Just identify yourselves  
10 for the record. Is that proper?

11 COURT REPORTER: Yes, please.

12 MR. BOZMAN: Does anyone have any questions on  
13 the plan that has been submitted?

14 MRS. SAARI: Oh, I forgot to show you the map.  
15 Maybe I should do that.

16 MR. BOZMAN: Okay. Take comments, too.

17 MRS. SAARI: This is the way we did the mapping.

18 MR. BOZMAN: It goes a thousand feet above  
19 Wheaton Crossing, is that right?

20 MRS. SAARI: Yes, just a thousand feet above it  
21 We've mapped each of these resources on an overlay -- on  
22 a gray overlay which shows the most important areas, the

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1 most critical environmental areas, one at a time. Natural  
2 parks, wildlife habitat, erodible soil. For example, the  
3 erodible soil that's highly erodible is in the darker  
4 gray area and if it's in the lighter gray area then it's  
5 just a medium erodibility. And when you lay all of these  
6 down one at a time on top of each other, you get this  
7 pattern that shows you the dark areas that's more important,  
8 environmentally important -- the criteria in the State  
9 criteria to develop the limited development areas, there's  
10 a couple of them here, and intensely developed area here,  
11 and you can see them on each of these maps. You'll probably  
12 have to come up and see the details. But, these are on  
13 the scale of the topo map. But, you can see the majority  
14 of the River as resource conservation area, and there are  
15 a couple limited development areas here. Most of these  
16 are the conservation areas. Habitat protection areas are  
17 here and here along Nasawango. This is the three habitat  
18 protection areas. So, these fit over the topo maps so  
19 you can see layers.

20 So, that's the methodology we use in deciding  
21 which of these areas fit into the resource conservation  
22 versus the limited development areas. This is just an

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1 overall map that shows the Critical Area. We have a lot  
2 of acres in this County.

3 MR. BOZMAN: It's the seventh largest County,  
4 I think.

5 MRS. SAARI: A lot of it's wet, too, it seems.  
6 That gives you the full picture of how the study was done.

7 MR. BOZMAN: Does anyone have any questions  
8 or comments at this time on this plan?

9 MR. MCCOY: Yeah, I do.

10 MR. BOZMAN: Just identify yourself for the  
11 lady.

12 MR. MCCOY: My name is Brian McCoy. I am the  
13 Environmental Control Manager for the Arundel Corporation  
14 which owns Blades Materials, the operational pit road that  
15 was shown in the photograph.

16 The main thing that I got out of this, in the  
17 plan that I looked at over in the office, there is a  
18 grandfather clause for mineral extraction operations, yet  
19 I heard comments today -- she showed a picture of the  
20 plant, and made a comment that they would be in big trouble  
21 and I would get from that she meant move the plant back a  
22 hundred feet from the water. That would seem rather incon-

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1   gruous and the fact that development that is already in  
2   existence, within that thousand feet, the houses would be  
3   allowed to stay there, but that plant would supposedly  
4   have to be moved.

5                   Now, that loading basin that that plant was  
6   setting on, that photograph was taken from inside off of  
7   the River in that loading basin, that's actually private  
8   wetlands that was excavated in from the River. So, I  
9   would assume from that that would negate a lot of the  
10  Critical Areas requirements regarding that plant.

11                   MR. BOZMAN: Would you like for her to comment  
12  on that?

13                   MR. MCCOY: Well, no. I just want everybody --  
14  I want you folks to be aware that we would have problems  
15  with that. A second thing is the plant -- presence of  
16  endangered species here. I'd like to know what endangered  
17  species and where.

18                   MR. BOZMAN: On your plant site?

19                   MR. MCCOY: Yeah. Because we ran into this  
20  before maybe four or five months ago. They had the  
21  Heritage Area  
22  Natural Resources / something they called it, and they  
were trying to preserve the marsh land in there and yet

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1 they had our whole operation incorporated within the area  
2 wherein you could not move any plants from it or endangered  
3 species which would in effect preclude our mining the area.

4 We did file a protest over that and it was  
5 amended. Let's see. There was also a comment in the plan  
6 that they would not -- let's see -- it's not recommended  
7 that any expansion in the southerly direction be made.  
8 I'd like to know -- and I assume that this is because of  
9 encroaching on bald eagle nesting sites on the lower part  
10 of the Hickory Point Marsh.

11 Our southern expansion, which is the direction  
12 we're going, won't get within a mile of those nesting  
13 sites, to my understanding. So, to preclude that operation  
14 from progressing in a southerly direction would be not  
15 essential, really. Let's see.

16 All right. There's another comment in here.  
17 Lands which will be much more -- wait a minute. Lands which  
18 would be more valuable to produce renewable resources,  
19 as an example, forestry and agriculture, are also unsuit-  
20 able for future surface mining. Who's going to set the  
21 criteria what's more valuable? For us to mine sand and  
22 gravel or for somebody to have trees?

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1           In that same light, how do you judge the value  
2 to society for sand and gravel roads and what not if you  
3 need it as opposed to having trees grow?

4           For the time being, that's all that I saw in  
5 here that I questioned, but I would like perhaps to direct  
6 some written comments later on, once I get a chance to  
7 examine this thing.

8           MR. BOZMAN:   Okay. We have four things, right,  
9 that you've raised questions?

10          MR. MCCOY:   At least.

11          MR. BOZMAN:   Okay.

12          MR. MCCOY:   Thank you.

13          MR. BOZMAN:   Thank you. Next?

14          MR. DYKE:   My name is Sam Dyke. I'm a forester  
15 for -- Paper Company. We have approximately ninety acres  
16 I think, although I haven't looked closely at the map, in  
17 the Critical Area on the Pocomoke River. I believe I  
18 heard it said that hydric soils had been mapped as an over-  
19 lay. Is there a particular reason for this?

20          MRS. SAARI:   Hydric soils are one of the legal  
21 definitions of wetlands.

22          MR. DYKE:   Well, then the point I'd like to make

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1 is which definition are you using? In the plan it calls  
2 for two, the basic Maryland Wetlands definition and/or the  
3 Corps of Engineers.

4 MRS. SAARI: We're using the State Wetlands  
5 map.

6 MR. DYKE: These would be called non-tidal  
7 wetlands?

8 MRS. SAARI: Those are the tidal wetlands.

9 MR. BOZMAN: This plan doesn't address non-tidal  
10 wetlands to my knowledge. It does?

11 MR. BOSTIAN: It's suppose to.

12 MR. DYKE: The point I'd like to make very  
13 simply is that the most productive porous soils in Worcester  
14 County are the hydric soils and they are not necessarily  
15 by definition of the Critical Area Commission solely hydric  
16 soils. There has to be evidence of standing water during  
17 the growing season and truly hydrophytic plants, that is,  
18 cat tails or anything else that indicates wetlands. So,  
19 I would be very concerned if we're taking simply the  
20 definition of a hydric soil and presuming that some activity  
21 cannot go on there.

22 You weren't addressing non-tidal wetlands?

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1           MRS. SAARI: It's one of ten things that were  
2 mapped, but I think that the purpose of this meeting is not  
3 for me to answer everyone of your questions.

4           MR. DYKE: Well, that's my concern. We should  
5 be very careful about identifying the most productive soils  
6 as a possible area where limited use would be considered.  
7 Especially for forestry. Thank you.

8           MR. BOZMAN: Bill, what are these non-tidal  
9 wetlands?

10          MR. BOSTIAN: The ones that are in the thousand  
11 feet. Okay, the program is suppose to map them and I  
12 believe it's suppose to be mapped pursuant to the U.S.  
13 Fish and Wildlife Map and I would have to look in the  
14 criteria to see.

15          MR. BOZMAN: Okay. Next?

16          MRS. FEHRER: I suppose I was unlucky, but I  
17 just got hold of Guidelines for Protecting Non-Tidal  
18 Wetlands in the Critical Areas. I would suggest that Mr.  
19 Dyke get a copy of that and it does not preclude forestry.  
20 You know, that is a permitted use, although harvesting of  
21 forest products is to have a buffer. But, this book --  
22 it uses the wetland definition based on the U.S. Fish and

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1 Wildlife Service definition of wetlands, so it goes beyond  
2 the State Tidal Wetland Survey. Since I happened to have  
3 it I brought it here. This is published in addition to  
4 the other materials that are coming out with the Critical  
5 Area.

6 I'm Ilia Fehrer and I'm representing the Worcester  
7 Environmental Trust. We have some questions in addition  
8 to comments, which we'll give later. Given the 5% growth  
9 allocation, how is the County planning to allocate growth  
10 in the Critical Area? We would like to suggest that periodic  
11 competitive review be conducted with approval on that basis,  
12 rather than a first come, first serve award of housing  
13 permits.

14 Another question, will the County's growth  
15 allotment be systematically phased over many years with  
16 perhaps ½% per year or will it be allowed to progress  
17 haphazardly and be taken up perhaps in two or three years?

18 I didn't see that addressed in the Critical  
19 Area Plan or program. Has the County discussed the acreages  
20 involved in resource conservation areas so it knows how  
21 much growth allocation it has, or will be allocated?

22 Then, I wanted to ask how will followup inspec-

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1 tions be handled to assess the amount of impervious surfaces  
2 in a subdivision or the planting of trees because the  
3 program relies heavily upon retaining the trees in the  
4 Critical Area. If they're harvested they have to be  
5 replanted, which I think is just good forestry practice  
6 and which most foresters do. So, I don't know if you have  
7 any answers to these, but those were a couple of questions  
8 that I saw as I reviewed the program.

9 MR. BOZMAN: Thank you. Next? Does anyone else  
10 want to make a comment or ask a question?

11 MRS. FEHRER: I have some comments.

12 MR. BOZMAN: Would you like to make them?

13 SPEAKER: Could somebody fix that speaker?

14 MR. BOZMAN: You can't hear or --

15 SPEAKER: I haven't heard a word she said yet.

16 MRS. FEHRER: Can you hear now?

17 SPEAKER: Yes.

18 MRS. FEHRER: Again, I'm Ilia Fehrer representing  
19 the Worcester Environmental Trust. We commend the County  
20 and the Idea Center for the work on the Worcester County  
21 Chesapeake Bay Critical Area Program. The Program was  
22 discussed at length at the Trust's January 28th meeting.

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1 We also saw the slide show that Mrs. Saari  
2 presented tonight. By unanimous vote we support the strong  
3 Critical Area Program and believe it is necessary in order  
4 to reverse the decline in water quality and restore diversity  
5 in fish and wildlife in the Chesapeake Bay region.

6 A motion was passed to support the Critical Area  
7 Program with the following changes and additions.

8 On page 4.5 paragraph 3, the industries listed  
9 would be better served away from the Critical Area. We  
10 suggest that you add oil storage thinking of the catastrophe  
11 on the Monongahela River just a couple of weeks ago. To  
12 that list we agree that heavy industry should be located  
13 adjacent to or in town areas, but out of the Critical Area,  
14 that is, heavy industry that is not water dependent.

15 Page 4.15. After "If a parcel of land to be  
16 modified includes wetlands" we would like you to delete  
17 "of ten acres or more". The guidelines for protecting  
18 non-tidal wetlands in the Critical Areas states that wet-  
19 lands of one acre or more are afforded protection by the  
20 law.

21 On page 5.2 Section 5.4. Snow Hill and Pocomoke  
22 municipalities have water and sewer and may expand water

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1 and sewer to adjacent county areas as they have to Hallock  
2 Heights, in the case of a few homes up there.

3 Page 5.2 regarding landfills at the end of the  
4 page, we would like you to change one to two, because there  
5 are two in the Pocomoke River Critical Area and then add  
6 on page 5, after located, the words "northeast of Snow  
7 Hill and northeast of Pocomoke City are..." and then it  
8 continues with the rest of the sentence.

9 Page 6.1, Section 1.12 line 5. Add bald  
10 cypress to the trees on the lower wetter sites. Under  
11 common hardwood species, delete trembling aspen and add  
12 bald cypress. If we have any trembling cypress -- I mean,  
13 trembling aspen in Worcester County, I think they would  
14 be a fairly rare species.

15 Page 6.2. The paragraph at the top of the page  
16 needs revision to correctly place the location of State  
17 wild lands. There are two areas in the Cypress Swamp,  
18 one east and one west of the Hickory Point Road. Also,  
19 there are two areas in the Pocomoke Forest, one north of  
20 Milburn Landing, the other south of Shad Landing.

21 Page 6.2, paragraph 4. To our knowledge, a  
22 dwarf trilleum has not been found at Mattaponi, but has

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1 been located north of the camp ground of Milburn Landing  
2 and that's where we got those pictures.

3 Page 6.4, Section 6.4. Below Lightning Road  
4 the wetlands are tidal or seasonally tidal. Tidal influence  
5 goes between Porters and Lightning. Below Porters Crossing,  
6 the Pocomoke River is permanently tidal. It was reversed  
7 in the wording in the written program.

8 At Snow Hill, cypress on wooded wetlands are  
9 prevalent rather than shrub wetlands and that Nasawango  
10 Creek is permanently tidal from a point between Furnace  
11 Road and Red House Road. There is about twelve to eighteen  
12 inch tidal fluctuation at Red House Road and this is  
13 observation from 162 or 163 canoe trips since August 1974.  
14 This can be confirmed by a number of other people. State  
15 Wetlands Maps, we / <sup>feel,</sup> should be adjusted to reflect this.  
16 We saw the State Wetland Map that we had in here in the  
17 County which does not show tidal action going all the  
18 way to Red House Road, but I think that's erroneous.

19 Page 9.2, Section 9.2. We are delighted that  
20 the County is adopting a policy to protect non-tidal as  
21 well as tidal wetlands. To our knowledge an ordinance  
22 has not yet been promulgated or adopted. We suggest that

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Reach of tidal

1 the County refer to the Tidewater Administration Handbook  
2 entitled Non-Tidal Wetland Protection Handbook for Maryland  
3 Local Governments, in which it contains a model ordinance.

4 Section 9.4b. The list of threatened and  
5 endangered plants is incomplete. Some obvious omissions  
6 are seaside alter which is in eminent danger of extinction  
7 and which is looked at as a Federal species for inclusion  
8 in their list. And then others which are on the State  
9 endangered list which range from resurrection fern, a  
10 number of different orchids including lady's tresses,  
11 yellow fringe orchids and the white fringe orchid are not  
12 in that list, and we feel that the list should be as inclu-  
13 sive as possible.

14 These lists are available in threatened and  
15 endangered plants in Maryland and the Maryland Chapter  
16 Newsletter of the Nature Conservancy, Spring '82 and Fall  
17 of '82.

18 Page 9-10b, Figure 9.1. It does not have a  
19 complete key for the species located on the Pocomoke River.  
20 This was a Fish and Wildlife inventory of endangered  
21 species and some of the -- show the whole lower shore and  
22 some of the little numbers there don't have -- aren't

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1 referred to in the key at the bottom of the page.

2 Page 12.2. Less than one half of the lower  
3 Nasawango Creek unfortunately -- that's downstream from  
4 Red House Road has been acquired by the Nature Conservancy.  
5 Most of the upper Creek has, but the Conservancy does not  
6 have that lower portion. It does not have over half of it.

7 Appendix A1 to A2. We disagree that certain  
8 uses, such as, non-maritime heavy industry, transportation  
9 facilities, utility transmission lines, and permanent  
10 sludge handling, storage or disposal facilities have to  
11 occur only in the intensely developed areas. They can be  
12 near population centers, but as I mentioned before should  
13 be out of the Critical Area, and then oil storage should  
14 be added to that list.

15 And as I read the Critical Area Plan, what's  
16 already there is grandfathered. The gentlemen who spoke  
17 about Blades Sand and Gravel, that use is a legitimate  
18 use and it -- he won't have to move it back or revegetate,  
19 but I think any new or expanded -- expansion in the Critical  
20 Area will have to abide by the Critical Area Regulations,  
21 but what's there and what was there prior to 1985 is  
22 very legitimate.

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1 Proposed subdivision regulation changes on  
2 Page 3, we propose that under the rules the one unit per  
3 twenty acre density requirement wetlands, tidal and non-tidal  
4 be allowed as open spaced credit. Tidal -- while the Critical  
5 Area addresses the thousand feet buffer above the tidal  
6 portion of the River, so I don't think you can address the  
7 area of wetlands which is totally under water at times  
8 and not useable as an open space credit for any kind of  
9 development. We feel this provision is not consistent  
10 with the State Critical Area Regulations that were promul-  
11 gated in 1986 and we would like to see a non-tidal wetland  
12 protection program included in the Critical Area Program.  
13 Then there are just a couple minor changes. A word was  
14 left out in Appendix B, Page 2, Line 2. I think they  
15 meant to have from the high water mark... the word high  
16 was left out.

17 In Appendix B, Page 4 at the end of the sentence  
18 at the bottom of the page, we would like to suggest that  
19 in addition to the County reviewing or recommending inclu-  
20 sions, we would like to add and the State Natural Heritage  
21 Program.

22 Appendix B, Page 5b, Line 2, after developers

-34-

1 add to give easements and then Appendix B, Page 7, copies  
2 of waivers and variances must also be sent to Critical Area  
3 Commission.

4 We feel that it is unrealistic to expect the  
5 County to have the expertise or commitment to review the  
6 reduction in stream pollution loading to assess the degree  
7 to which the goals and objectives of the Critical Area  
8 Program have been met.

9 Even with the best of expertise we do not  
10 see how this is possible, given whether runoff from upstream  
11 pollutants and other variables, we feel that land use  
12 changes can be monitored more easily, but to assess the  
13 improvement in water quality I think it would be hard  
14 even for the most sophisticated chemist.

15 We want to commend the County for its cooperation  
16 with the State Critical Area Program and thank you for  
17 the opportunity to review and comment on the Program.  
18 Thank you.

19 MR. BOZMAN: Mrs. Fehrer, you don't happen  
20 to have another copy of that, do you?

21 MRS. FEHRER: I'll be glad to give it to you  
22 tomorrow. This was just a draft. I'll give you a copy.

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1 MR. BOZMAN: You gave us a lot of comments and  
2 I couldn't write them all down.

3 MRS. FEHRER: I'll make sure you get a copy.

4 MR. BOZMAN: Next? Would anyone else like to  
5 make a comment or have some questions?

6 MR. PARKER: I'm W.H. Parker. I'm a consultant  
7 forester at Salisbury, Maryland. I would like to know  
8 about, let's see, I guess it's Section 9, Page 5 in con-  
9 cerning the eagles nests. It states that no timber harvest-  
10 ing, land query or construction should occur within 660  
11 feet of the nest tree. That's a pretty sizeable area,  
12 660 feet and that could wipe some landowners out completely  
13 as far as harvesting their timber if they happen to have  
14 an eagle's nest that's pretty close to the center of their  
15 tract of timber. I wonder if we shouldn't consider some  
16 of the guidelines, or the guideline, that is recommended  
17 by the Federal Agency, which is to leave the nest tree  
18 and maybe not do any activity during the nesting period,  
19 rather than exclude the area that they recommend in the  
20 guidelines in here.

21 MR. BOZMAN: Okay, thank you.

22 SPEAKER: I have a question. How many eagles

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1 are nesting in the area?

2 MR. PARKER: It says two in here.

3 SPEAKER: The latest figure is three or four.

4 MR. BOZMAN: Okay, anyone else have any comments  
5 or questions?

6 MR. LAWS: I'm Milton Laws from Snow Hill. I  
7 was wondering, since they brought up the non-tidal wetlands,  
8 I think the County Commissioners should have it mapped  
9 before they decide anything and find out how many thousand  
10 acres they're going to lose for productive use. The under-  
11 standing I got if they use a criteria they're talking of  
12 using, Dorchester County will lose 47% of their wooded  
13 land that can be used. Of course, I don't think Worcester  
14 will be that high percentage, but it will be a lot.

15 MR. BOZMAN: Mr. Laws, I think they're only  
16 addressing non-tidal wetlands in this thousand foot buffer.

17 MR. BOSTIAN: That's correct, certainly. And  
18 I think she has it mapped, Mr. Laws. I think they already  
19 do have it mapped here.

20 MR. LAWS: Of the whole County and the non-  
21 tidal wetlands?

22 MR. BOSTIAN: No, just in the Critical Area.

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1 MR. BOZMAN: The Critical Area is all we're  
2 talking about.

3 MR. BOSTIAN: The Critical Area is all we're  
4 talking about here.

5 MR. LAWS: But, this book that we're going by  
6 today has got non-tidal wetlands in it.

7 MR. BOSTIAN: BUT, it's only non-tidal wetlands  
8 that are within the thousand foot Critical Areas zone, I  
9 mean, the fact that the State may be wanting to put all  
10 non-tidal wetlands into that category is a different story.  
11 This program only deals with the Critical Areas zone.

12 MR. LAWS: So, in other words you're -- you  
13 wouldn't be taking anymore than what it shows on that map?

14 MR. BOSTIAN: That's how it's suppose to work,  
15 yes.

16 MR. LAWS: What's that?

17 MR. BOSTIAN: That's how it's suppose to work.

18 MR. LAWS: Plus a thousand feet?

19 MR. BOSTIAN: Just within the thousand feet.  
20 The lady from the Idea Center, I believe, has a map there  
21 of the Critical Area and the non-tidal wetlands that are  
22 mapped on an overlay on that map, so these men ought to

1 be able to find out how many acres are classified as  
2 non-tidal wetlands right now, I mean, not this second, but  
3 based on the information that they have.

4 MR. LAWS: So, you're not talking about a piece  
5 of low land that's two miles from the River or some such  
6 thing, that maybe drains to the River?

7 MR. BOSTIAN: Correct.

8 MR. BOZMAN: Not in this plan, but there is some  
9 talk that, you know, that would be affected eventually,  
10 because I think the Corps of Army Engineers is now recog-  
11 nizing they have some control over this, and -- but this  
12 plan is not addressing that. This plan is strictly within  
13 a thousand feet of the wetlands, right, the buffer zone.

14 MR. LAWS: And where the lines are on there  
15 is what it would be?

16 MR. BOSTIAN: Well, if you've got the right  
17 overlay.

18 MR. LAWS: Huh?

19 MR. BOSTIAN: If you have got the right overlay  
20 and I haven't seen it.

21 MR. BOZMAN: Mrs. Saari, is he looking at the  
22 right map?

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1           SPEAKER: See, you can look right in front here  
2 at the red. The red boundary on this map in front of us.

3           MRS. SAARI: But, the non-tidal wetlands are  
4 mapped. The tidal wetlands -- (inaudible discussion  
5 going on behind easel with maps)

6           MR. BOZMAN: Does that answer your question,  
7 Mr. Laws, she's showing you what --

8           MRS. SAARI: They are mapped, but you don't have  
9 to study them in detail --

10          MR. LAWS: So, what you are saying is if you  
11 go up -- well, up the River, we'll say, go on up to close  
12 up there called Jack's Ditch and it's this side of --  
13 it wouldn't be anything -- it's not on that map, any  
14 farther than the River -- you wouldn't go up that ditch  
15 any farther than that? The geodetic survey map wouldn't  
16 have anything --

17          MRS. SAARI: If you could show me on a geodetic  
18 survey, you mean a U.S. GS 7½ Quad sheet?

19          MR. LAWS: Well, I don't know, the way we have  
20 to cut timber now we have to use a blue line ditch on  
21 a geodetic map.

22          MRS. SAARI: I think you're referring to Quad --

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1 MRS. SAARI: Really from the wetlands line on  
2 the State map.

3 MR. TYLER: The tidal wetlands line?

4 MRS. SAARI: Yes. The tidal wetlands on the  
5 State map. They have mapped tidal wetlands and you go  
6 a thousand feet --

7 MR. TYLER: A thousand feet from the top of  
8 the -- from the tidal wet--

9 MR. BOZMAN: Okay, any other questions or  
10 comments?

11 MR. BARRETT: I'd like to say that the plan  
12 put forth, of course, I've always considered a State  
13 zoning, but we have it now. I guess we have to live with  
14 it. I would say that I haven't had a chance to review  
15 the entire report, but I think there is some things in  
16 there we have to weigh, and we also have to look at the  
17 business end of it and get a balance. Not just have put  
18 all environmentally -- we want it environmentally the same  
19 but I think we also have to have some input from business.  
20 I think we all realize that we'll probably be on some  
21 trying times here in the next few years and to make many  
22 of these improvements for businesses it's going to be a

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1 but, those are on the same scale. If you put that under  
2 that map I can show you.

3 MR. LAWS: But, they go a lot farther than  
4 that from the River.

5 MRS. SAARI: Right, but we're only dealing  
6 with the Critical Area right along the River. We're not  
7 dealing with the whole County, just the Critical Area.

8 MR. BOSTIAN: Mr. Laws, it's my understanding  
9 that those -- that kind -- the blue line that you're talking  
10 about on those maps will be handled the same way that  
11 they're handled today. That's completely separate. That's  
12 a completely separate program. It has nothing to do with  
13 this Critical Area Program. It's my understanding that  
14 that will be handled the same way it is today.

15 MR. LAWS: Well, we don't want to get too many  
16 programs that we've got to keep straight.

17 MR. BOSTIAN: You don't have to tell me that.

18 MR. BOZMAN: Thank you.

19 MR. MCCOY: I have one question. Where does the  
20 thousand feet start? Is that at the high water mark?  
21 Tributaries or low water mark, or just where? Where do  
22 you go from? Or is it the wetlands line or what?

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1 real hardship and I think we have to work along with the  
2 Commission and the Commissioners here and see if we can't  
3 hit a balance so that we can get some type of agreement  
4 that is workable for the people of Worcester County that  
5 are in business and who own land here. That's the only  
6 comment I have.

7 MR. BOZMAN: Carlton?

8 MR. MASSEY: Nothing at this time.

9 MR. BOZMAN: Anybody else like to make a  
10 comment?

11 MR. HARRISON: Yes, I have a question and I  
12 was a few minutes late, so maybe it's been answered. I  
13 know that Sinepuxent / <sup>Bay</sup> and the Newport Bay is not a tribu-  
14 tary of the Chesapeake Bay, it's not included in this  
15 plan.

16 MR. BOZMAN: That's right.

17 MR. HARRISON: But, are there any other plans  
18 that would include this type of criteria for developments  
19 in that area?

20 MR. BOZMAN: Nothing at this time.

21 MR. BARRETT: You're talking about a Critical  
22 Area for the Assawoman Bay for instance?

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MR. HARRISON: Yes.

MR. BARRETT: Ocean Bays -- there isn't now,  
but they're working on it.

MR. HARRISON: For Sinepuxent and Newport?

MR. BARRETT: Yes.

MR. HARRISON: The same type of criteria?

MR. BOSTIAN: Not this Critical Area Commission.

MR. BARRETT: Not this Commission.

MR. HARRISON: Not this Commission.

MR. BARRETT: Don't get me wrong. The Environ-  
mental Commissions.

MR. HARRISON: Okay, thank you.

MR. BOZMAN: Any other comments or questions?

MR. BOSTIAN: I have something.

MR. BOZMAN: Okay, Bill?

MR. BOSTIAN: I would just like to reiterate  
that if you have any written comments for the Commission  
to send them within a week. I don't know how long Mr.  
Bozman would like to have if you want to direct them to  
him. You might just want to say a week or --

MR. BOZMAN: I think two weeks is reasonable.

MR. BOSTIAN: That's fine. Is that all right

1 with the rest of you?

2 MR. MASSEY: Yeah.

3 MR. BOSTIAN: But, I suggest copies to each  
4 if anybody has a written statement.

5 MR. MCCOY: The plan that's available in the  
6 libraries in various places, is that going to be available  
7 for public distribution, or do we have to go to a library  
8 and sit down and read the damn thing?

9 MR. BOZMAN: Hal, how many of these copies do  
10 we have?

11 HAL: We don't have any. We have twenty-five  
12 published. If you want them printed, you just tell me  
13 how many, and we'll have them printed.

14 MR. BOZMAN: Okay.

15 MR. MCCOY: That's a lot of paper work to try  
16 to wade through sitting in a library.

17 MR. BOZMAN: Anyone else like to make a comment  
18 or -- if not, we're going to close the hearing. We thank  
19 you for coming and we're going to weigh all of the things  
20 that everybody said and hopefully, we'll get a good plan.  
21 Thank you.

22 [End of Proceedings]

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C E R T I F I C A T I O N \_

1  
2 This is to certify that the foregoing transcript  
3 in the matter of:

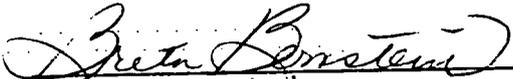
4 Worcester County Critical Area Program

5 BEFORE: Critical Area Commission Panel

6 DATE: February 2, 1988

7 PLACE: Courthouse, Snow Hill

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

11  
12   
13 Bréta Bernstein

14  
15  
16 Barbara J. Becker  
17 FREE STATE REPORTING, INC.