

Public Hearings - Prince George's County - Proposed Amendment to Critical Areas Plan 1989 MSA - SJ830-68

BEFORE THE CHESAPEAKE BAY CRITICAL AREAS COMMISSION BOARD

: IN THE MATTER OF: :
: :
: PROPOSED AMENDMENTS TO THE :
: PRINCE GEORGE'S COUNTY :
: CRITICAL AREAS PLAN :
: :
: :

Wednesday, September 13, 1989

The proceedings in the above-captioned hearing came on to be heard, pursuant to notice, in the central hearing room, County Administration Building of Prince George's County, 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland, commencing at 7:00 p.m., Mr. Samuel Bowling [Chairman of the Commission Board] presiding.

BOARD MEMBERS PRESENT: Messrs. Samuel Bowling, Parris Glendening, Robert Schoeplein and Albert Zahniser.

STAFF PRESENT:
Anne B. Hairston, Chesapeake Bay Critical Areas Commission
Carolyn Watson, Prince George's County

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APPENDIX 1: Letter submitted by Pamela Hairston.

APPENDIX 2: Map of Potomac River Critical Areas and
Overlay Zones, submitted by George Garner.

REPORTED BY: STEVEN C. HOBBS, NOTARY PUBLIC.

1 P R O C E E D I N G S

2 MR. BOWLING: Ladies and gentlemen, I would like to
3 bring this hearing to order.

4 Let me begin by introducing the panel members. To
5 my left is Parris Glendening from Prince George's County. To
6 my far right is Skip Zahniser from Calvert County. On my
7 immediate right is Bob Schoeplein who is from Employment and
8 Economic Development. And I am Sam Bowling from Charles
9 County. We have a court reporter present tonight, Steve
10 Hobbs, who will take down all of the testimony.

11 We will begin with a presentation from a member of
12 our staff and follow that with public comment. That is our
13 purpose here tonight, to take public comment on these proposed
14 amendments to the Prince George's County Critical Area Plan as
15 we are required to do under Section 81809 of the Critical
16 Areas Law.

17 With that, Anne, would you begin?

18 STATEMENT OF ANNE B. HAIRSTON, CHESAPEAKE BAY

19 CRITICAL AREAS COMMISSION

20 MS. HAIRSTON: I just wanted to say a few words to
21 describe the amendments in case anyone is unfamiliar with

1 them. They are changing portions of the zoning ordinance, the
2 critical areas section of the County Code, the Building Code,
3 the Subdivision Ordinance, and the Conservation Manual. These
4 documents are the means for implementing the County's critical
5 areas program.

6 There is a two-page handout which everybody has
7 access to which summarizes some of the changes. Many of the
8 changes were editorial, mostly making the documents easier to
9 read and understand. However, some procedural changes are
10 being made.

11 In particular, these amendments allow a waiver for
12 some small projects from the conservation plan process and a
13 minor revision category for small changes to approved
14 conservation plans. These provisions bypass some of the time-
15 consuming procedures for the County for the standard approval
16 process, but all the critical area requirements are still
17 required to be met.

18 There is some language there that affects sludge
19 disposal in the County. Sludge disposal, except for
20 fertilization, is identified as not being an agricultural
21 activity. It is instead put into the definition for landfill,

1 which is prohibited in the critical areas. Sludge is not to
2 be placed in the buffer according to the new amendments.

3 There is also a mention of private piers, which the
4 Critical Area Plan does not regulate, but this definition
5 clarifies the category and adds some language that limits
6 private piers only for the use of the owners and their bona
7 fide guests. There are some other fairly small changes which
8 the summary sheet explains.

9 Apart from your oral testimony tonight, you can
10 submit written comment later if you so choose, and we will
11 leave the record open for seven days after the hearing. Our
12 address is available at the back of the room tonight. It is
13 275 West Street, Suite 320, Annapolis, Maryland, 21401.

14 With that, we will open the hearing to any public
15 comments.

16 MR. BOWLING: We will begin with Pam Schaffer.

17 STATEMENT OF PAMELA SCHAFFER, BIO GRO SYSTEMS

18 MS. SCHAFFER: I am with BioGro Systems and we
19 wanted to take a minute to express some concern we had about
20 prohibiting sludge in the extended buffer. It is currently
21 prohibited in the 100-foot buffer by the Maryland Department

1 of the Environment and by the Subtitle 15 regulations. These
2 amendments propose to extend that to some contiguous areas
3 such as highly erodible soils, flood plain, and certain
4 hydrologic soils.

5 Our basic concern was that these areas, if they are
6 in active agricultural use, are going to be fertilized anyway,
7 and sludge as a fertilizer substitute can actually help
8 prevent nutrient runoff and leaching into the water because of
9 its organic nature. We feel that if there is going to be
10 fertilizer in this area anyway, sludge would be more
11 beneficial than commercial fertilizer as far as its impact on
12 the bay.

13 I have a letter here to submit for the record. With
14 that, I will conclude.

15 (Letter -- Appendix 1)

16 MR. BOWLING: Next are Ken and Sara Williams.

17 STATEMENT OF KEN WILLIAMS

18 MR. WILLIAMS: I put my name on your list, but I am
19 not sure you really want to hear my testimony because I am for
20 this 100 percent.

21 I live on the Potomac River. My house is about 100

1 feet from the river. It just so happens that my contractor is
2 in the process of getting a permit, or trying to get a permit,
3 to do work on my house which amounts to maintenance and
4 modernization. We are not enlarging the house in any way,
5 shape, or form.

6 We are going to put on a new roof, new windows, and
7 new siding, modernize the kitchen and bathroom. We are going
8 to build a new chimney and a dormer. All of these things, I
9 see tonight, are mentioned in here, which I did not realize
10 were going to be included.

11 I just want to say that it works a hardship on
12 people who want to do work such as I am doing, relatively
13 minor work. It is maintenance work and modernization.

14 I am for the whole concept of protecting the
15 Chesapeake Bay. I think that the conservation you people are
16 trying to do is great. But I think that if a person wants to
17 put a new roof on his house or new windows or put up a dormer,
18 then it really works a hardship.

19 In my case, we expected to get started on September
20 6th. My contractor came up here before that and found out
21 that he would have to comply with the Chesapeake Bay Critical

1 Area laws, and he just called me today to tell me that this
2 meeting was tonight. If it had not been for this meeting, I
3 would have been facing a month-and-a-half to two months of
4 trying to get approval for this modernization that I want to
5 do.

6 I do want to go on record as saying that I am all
7 for the proposed changes in the law. I urge every one of us
8 to think hard about it. Thank you.

9 MR. BOWLING: Next is George M. Garner, Jr.

10 STATEMENT OF GEORGE M. GARNER, JR.

11 MR. GARNER: This is certainly better than the non-
12 tidal wetlands hearing they had in Annapolis a week or two
13 ago. I think it will be shorter anyway.

14 My name is George Garner and I am a citizen of the
15 5th Election District in Prince George's County. We have a
16 farm and have been in this county since 1948.

17 An elderly gentleman who has land within the
18 critical areas in the Potomac Watershed has asked me to farm
19 his land for him because he is no longer able to. I was
20 planning on using sludge from this land; it has been sludged
21 in the past. We raise hay, reed canary grass, that sort of

1 thing.

2 Since the soils in southern Prince George's County
3 are 95 percent either hydric or highly erodible, these
4 amendments will have the effect of preventing the application
5 of sludge anywhere within the critical areas. I am
6 particularly disturbed about the way in which this was done.

7 When I saw the notice in the newspaper about the
8 public hearing, I called staff personnel and said, "What is
9 this all about?" They repeatedly assured me that these were
10 purely technical amendments -- they just wanted to let people
11 put roofs on their houses and paint their shutters without
12 having to go through a conservation agreement. Then when I
13 had a chance, I got hold of the amendments and saw that there
14 were a lot of substantive changes taking place here which were
15 not reflected in the title of the amendment.

16 In addition, they have extended the area where farm
17 land can not be created to include these hydric soils and
18 highly erodible soils. Again, this will mean, because our
19 soils are just about all either hydric or highly erodible,
20 that no new farm land can be created within the critical
21 areas.

1 Since aquaculture is defined under State law as an
2 agricultural activity, this will mean that no aquaculture
3 facilities will be able to be created within the critical
4 areas. There is no distinction made in these amendments
5 between water-dependant agricultural activities and non-water-
6 dependant agricultural activities.

7 All these things would have come out if they had
8 properly advertised these amendments. People would have had a
9 chance to come forward and say how these amendments might
10 affect them.

11 I certainly did not have a chance. I saw minor
12 changes and the staff told me that they just wanted to let
13 people put roofs on their houses. I said, "Well, it's no
14 interest to me." As it happens, it will have a considerable
15 effect on me.

16 I would also note that they have amended the way in
17 which their growth allotment has been calculated so that, in
18 effect, they will be able to rezone more land to limited
19 development from resource conservation than was before. I am
20 sure that this probably is a technical amendment, however, I
21 brought along a little prop here.

1 (Holding up map.)

2 MR. GARNER: This is the Potomac Watershed Critical
3 Areas Map, which I got from Parks and Planning. They have
4 marked all of the farms in green within the critical areas of
5 the Potomac Watershed. The orange areas are undeveloped
6 woodlands.

7 If you look at this, you will notice that there may
8 be, I believe, 3,000 acres within the Potomac Watershed in the
9 critical areas. Of this, all this is within federal park.
10 These are soils with severe development constraints. They are
11 highly erodible. No one would have ever built on them anyway.
12 There is another whole area belonging to the Federal
13 Government. So really, this is your developable land within
14 the Potomac Watershed's critical areas and this is the area
15 that they intend to use that growth allotment to rezone to
16 limited development.

17 You can see why these legislators from the urban
18 jurisdictions were not too worried about the critical areas
19 legislation and why they supported them. It's no big deal.
20 It did not cause that much pain.

21 I refer you to another criteria, Criteria

1 14150205(c)(2). "Agricultural and conservation easements
2 shall be promoted in the resource conservation areas." Prince
3 George's County is the only jurisdiction in Maryland that has
4 not entered one single acre of agricultural land into and
5 agricultural preservation program. I would think that those
6 farms in the critical areas would be a good place to start.

7 If we are going to be legal positivists about some
8 other areas of the criteria, then we can be legal positivists
9 about this here. I hope that you will attend to this and
10 consider it very carefully. I do believe that some aspects of
11 this legislation need further consideration and a proper
12 public hearing where interested parties can come forward to
13 state the ways in which it will affect them.

14 Thank you very much for your time.

15 (Map of Critical Areas and Overlay Zones for Potomac
16 River Watershed -- Appendix 2)

17 MR. BOWLING: That was our last listed speaker. Is
18 there anyone else who would like to testify?

19 (No response.)

20 MR. BOWLING: I would remind you that the record
21 will remain open for seven days and that the address can be

1 obtained at the back of the room.

2 If there is no further testimony we will bring this
3 hearing to a close.

4 (Whereupon, at 7:17 p.m., the hearing was
5 adjourned.)

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Sludge Disposal • Specializing in Land Application

September 13, 1989

Judge John C. North, Jr.
Chairman, Critical Areas Commission
275 West Garrett Place
Annapolis, MD 21401

Dear Judge North:

Bio Gro Systems, Inc. wishes to express concern regarding certain amendments to the Prince George's County Code provisions for the Chesapeake Bay Critical Area (these provisions are contained in Rule No. CB-62-1989). We believe the provision of these amendments which prohibits the use of sludge as a fertilizer in an ongoing farming operation contradicts the intent of the Subtitle 15 Regulations for local critical area program development.

This amendment would prohibit agricultural utilization of sludge in an extended secondary buffer which is contiguous to the 100 foot buffer, and includes such areas as highly erodible soils, hydrologic soils and the 100 year flood plain. Many of these areas are in active agricultural production. The addition of fertilizer for crop production in these areas would be expected. Sludge is a viable alternative to commercial fertilizer. We believe that its use as a fertilizer substitute is consistent with the Subtitle 15 Regulations Chapter .06 (paragraph .02B) which states that agricultural land should be "managed so that it minimizes its contributions to the pollutant loadings of the Bay and its tributaries."

Sludge minimizes pollutant loadings to the Bay through the following mechanisms. Unregulated application of commercial fertilizer or pesticides which are commonly used for crop production are more likely to have a negative effect on water quality than regulated application of stabilized sewage sludge. The slow release of nitrogen from an organic source such as sludge has a much lower potential for migration of nutrients to water than does the application of soluble commercial fertilizers. The managed use of sludge in an agricultural program actually helps to protect surface water quality by improving the soil ability to resist erosion. Natural organic

matter in sewage sludge binds soil particles and improves soil structure. The better its structure, the more resistant the soil will be to erosion.

Based on the above we believe that sludge as a fertilizer substitute in the critical areas would minimize the impacts on water quality resulting from nutrient enrichment.

Sincerely,



Pamela K. Schaffer
Director of Technical Services

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15405 Old Marshall Hall Rd.
Accokeek, MD 20607
September 19, 1989

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CRITICAL AREA COMMISSION

Judge John C. North, Jr.
Chairman, Critical Areas Commission
275 West Garrett Place
Annapolis, MD 21401

Dear Judge North:

On September 13, 1989, I offered oral testimony at the public hearing of the Critical Areas Commission held in Upper Marlboro concerning CB-57-1989 and CB-62-1989. With this letter I wish to submit some written comments to precise or expand upon my previous oral comments.

As I noted on September 13th, I am a citizen of the 5th election district in Prince Georges County. I have been asked by an elderly gentleman to operate a farm lying in part within the Critical Areas. At present I am in the process of seeking a permit to apply sewage sludge at agronomic rates to this farm. Reed canary grass will be grown.

As I stated orally, upon seeing notice of the upcoming hearing regarding CB-57-1989 and CB-62-1989 in the Enquirer Gazette, I called Prince George's County staff personnel to enquire as to the nature of these amendments. I was informed that amendments merely intended to allow persons within the Critical Areas to repair their roofs and paint their shutters without having to sign a conservation agreement. Having no reason to doubt the word of staff personnel, I continued about my business until such time as this business took me to Upper Marlboro where I obtained a copy of these amendments. Much to my surprise, I found considerable substance to be contained within these two bills.

According to the titles of these two bills, they were enacted to make "certain clarifying amendments and minor changes" to previous Critical Areas legislation. They were advertized in exactly this same manner. According to the accompanying legislative history, however, "Committee Members requested that CB-57 be amended to prohibit sludge disposal in all Chesapeake Bay Critical Area Overlay Zones." It should be obvious from CB-62-1989 5B-103(5), that CB-62-1989, was also amended to accomplish these same ends. In neither case were the titles of the respective bills amended to reflect their new substance. In both cases, terms were redefined in such a manner so as to have substantive effects. Since our soils in Prince Georges County are about 95% either potentially hydric or highly erodible, it is likely that this amendment will effect almost the entire Critical Area in this jurisdiction.

These new restrictions seem to rely upon a particular interpretation of COMAR 14.15.09.01C(7):

Local jurisdictions shall expand the Buffer beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.

It is claimed that this criteria constrains the District Council to introduce certain new restrictions upon the practice of agriculture and choice of fertilizer sources.

The above cited criteria is by no means so unambiguous, however. It could equally well be interpreted to apply when the development or disturbance is of such a nature so as to likely result in the degradation of streams, wetlands, or other aquatic environments. Further, COMAR 14.15.09.01C(4) expressly permits agriculture within the buffer provided a 25 foot filter strip is maintained or a Soil Conservation and Water Quality Plan is implemented which achieves the same habitat protection objectives. (In other words, the Soil Conservation Service is free to use the best available scientific evidence and the latest developments in conservation practice to achieve these goals.) It would not seem that standard agricultural practices on an existing farming operation are the sort of "development or disturbance" envisioned by the Commission in COMAR 14.15.09.01C(7). CB-57-1989 27-107.1 defines "the disposal of sludge... for fertilization of crops, horticultural products, or floricultural products in connection with an active agricultural operation or home gardening [sic]" as such a standard agricultural practice. CB 62-1989 5B-103(5) would thus seem to conflict with both COMAR 14.15.09.01C(4) and CB-57-1989. Further, the Critical Areas Commission has shown the proper interpretation by practice, by approving the existing Prince Georges County legislation, and by repeatedly approving similar legislation in other local jurisdictions.

Agriculture is permitted within the buffer as defined in COMAR 14.15.09. As your own staff admits, the chemical fertilizers which are likely to be the alternative where sewage sludge is now being used are more likely to leach into the waters of the State than are organic fertilizers. Ongoing research occurring at the Wye with a traditional corn and soybean operation within a controlled watershed suggests a similar conclusion. To date research has indicated that only 3 percent of the applied nitrogen is lost during the year by way of surface runoff. A full 23 percent is lost during the months of December, January and February through percolation into the water table. The suggestion of researchers at the Wye is that a cover crop should be planted to convert as much nitrogen into an organic form before Winter. Obviously, where fertilizer is applied in an organic form in the first place its translocation into the water table would seem even less likely. The amendments concerning sludge to be found in CB-62-1989 would seem to be contrary to the purpose of the Critical Areas legislation.

I call your attention to Section 3-129(a) of the Natural Resources Code:

"A rule or regulation concerning the use or operation of a project may not conflict with any rule, regulation, permit or hauler certificate of the State Department of the Environment. The Service may limit or regulate water supply or liquid waste service, refuse collection, disposal service, and storm and surface water drainage service, in any area or to any premises served by service projects, as the exigencies of the occasion and the protection of its systems require. The Service may adopt lawful regulations it deems necessary for the public's health and safety, comfort, and convenience in the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of its water supply, wastewater purification and solid waste disposal projects."

The General Assembly could not have defined the competence of the Maryland Department of the Environment in a more expansive fashion, in no ways excepting the Critical Areas. Since CB-57-1989 and CB-62-1989 conflict with MDE regulations in numerous ways, they must be considered unenforceable irregardless of whether or not they have been lawfully enacted or not.

On September 13th, I noted that CB-62-1989 5B-105a(3) extends the area where new farmland cannot be created well beyond 100 feet and probably including 95 percent of the Critical Areas within Prince Georges County. Once again I do not believe that the substance of this amendment was properly advertised nor that it is properly reflected in the title. Numerous ramifications of the amendment have not been considered. Since aquaculture is defined as an agricultural activity by State law, and since the proposed amendment does not distinguish between water dependent and non-water dependent agricultural activities, it will now likely be practically impossible to develop any aquaculture within the Critical Area. To be frank, I can think of a number of existing agricultural practices or agricultural activities which have considerable potential to degrade the waters of the State and affect wildlife habitat. These will not be affected by the present amendments. On the other hand, I can think of other future agricultural practices or activities which have the potential to maintain or even improve water quality and which themselves are possessed of significant habitat value. By this I refer to the cultivation of native or adaptive species which require tillage no more than once every five years. Reed canary grass and wild rice are examples which come to mind. Probably there are other native species waiting to be discovered.

This amendment also is justified based upon a particularly jaundiced interpretation of COMAR 14.15.09.01C(7). Once again the Criteria are by no means so clear upon the point. CB-62-1989 5B-102a(4) includes palustrine nontidal wetlands within the definition of 'the Buffer'. Yet COMAR 14.15.06.02C(1) makes specific provision for the conversion of this class of wetlands where mitigation is performed as specified in COMAR 14.15.09.02. COMAR 14.15.09.02C(3)b(i) states that programs for protecting nontidal wetlands are "not intended to restrict the grazing of

livestock in these wetlands." Once again I believe that the Commission has established the proper interpretation by its practice, having approved the original Prince Georges County program, and the programs of other jurisdictions without these new strictures. Even if these new strictures were required by the Criteria, the existing Agricultural Ordinance in Prince Georges County was lawfully enacted after a public hearing and lawfully approved by the Commission after a public hearing. The only way to significantly increase the area in which new agricultural land cannot be created is to lawfully advertise the substance of the amendment, include a reference to this substance in the title of the bill and allow affected parties an opportunity to come forward at a public hearing.

On September 13th, I also noted that CB-57-1989 27-213.13b(1)A amends the way in which the growth allotment is calculated. CB-72-1987 reads as follows:

"Acreage. The maximum area of future additional Intense Development or Limited Development Overlay Zones in the Chesapeake Bay Critical Area shall be five percent (5%) of the total area designated as Resource Conservation Overlay Zones, and shall not exceed fifty percent (50%) of the permissible growth increment in the designated resource conservation area."

Obviously, each time a new area is rezoned to a more intense land use the base Resource Conservation Overlay Zone shrinks. The five percent growth allotment must be recalculated, providing a considerable disincentive built in to rezoning property in a piecemeal fashion.

CB-57-1989 adds the phrase: "at the time of adoption of the initial Chesapeake Bay Critical Area Overlay Zoning Map Amendment." The base does not shrink as land is rezoned to more intense land uses, nor does it expand should new areas ever be added to the RCO. Obviously no one in the present administration foresees any circumstance whereby new habitat protection areas might be added to the Resource Conservation areas. The intent is to make sure that as much land as possible can be rezoned to more intense land uses.

The point here is not primarily legal. Doubtless this is in fact a technical amendment and it should be approved by the Commission. The point is rather political. It is a curious symbol of the values of the present administration that it shows such concern to rezone land to more intense land uses at the same time as it makes the practice of protective land uses more difficult. This is especially true at a time when it is becoming increasingly clear how little land there actually is in the Resource Conservation zone with any real development potential. Two maps are to be found in the Natural Resources section of the MNCFFC. The first is of the physical characteristics of the Potomac watershed; the second is of agricultural lands in the Potomac watershed. Maps of the Patuxent watershed were not immediately available. The map of physical characteristics includes such development constraints as steep and severe slopes

and tidal and nontidal wetland. When this map is superimposed on the map of agricultural land in the Potomac watershed, it becomes immediately evident that much of the land zoned RCO had no real development potential anyhow. The impression is further enhanced when land belonging to federal, state or local government is excluded.

In practice, land within the scenic easement area of the Piscataway National Park should also be excluded as having little real development potential. This area was included in the calculation of the growth allotment because the federal government did not purchase it in fee simple. Instead, a lesser interest was obtained severely limiting the right to develop the properties, or even to cut trees. Future development was limited to residential development on five acre lots. The large lot size makes it economically unfeasible to service the area with water and sewer lines. The soils are not of the sort which are likely to perk. In practice, the owners are condemned to farm in perpetuity. When these are excluded, it should become immediately evident that the prime developable land in the RCO consists in a few farms in the Fort Washington-Tantallon area, perhaps no more than 450-500 acres in all.

When I pointed out how little land there was in RCO with any real development potential the answer was, "That's the way the State wrote the law;" and "That's all the State required us to do." Yet that is not the way the State wrote the law and that is not all the State require us to do. At the same time as a relatively ambiguous criteria is being interpreted so as to make the practice of agriculture and other protective land uses more difficult, and at the same time as the calculation of the growth allotment is amended so as to permit the development of as much land as possible, other criteria are being neglected which seem far more clear in their interpretation. COMAR 14.15.01.05C(2), for example, states that:

"Agricultural and conservation easements shall be promoted in Resource Conservation Areas."

COMAR 14.15.06 recognizes agriculture's potential for contributing to the pollution of the waters of the State. Nonetheless, when properly managed, COMAR considers agriculture as a "protective land use." Thus the criteria in COMAR 14.15.06.03A2(c) require not only programs for "protecting water quality, and plant and wildlife habitat," but also "programs for maintaining the agricultural land in agricultural use." Prince Georges County remains the only jurisdiction in Maryland which has not entered one single acre in an agriculture protection program in the entire county, more or less in the Critical areas. Those few farms in the Fort Washington-Tantallon area are primarily perennial grass livestock pasture operations. They would seem to be precisely the sort of protective land use we are looking for. Since they can be seen to comprise the bulk of the prime developable land in the RCO, there would seem to be a substantial State interest in applying COMAR 14.15.01.05C(2) and COMAR 14.15.06 .02A-B and .03A2(c) there.

Perhaps the most frustrating aspect of conversations with staff personnel is the distinct impression that it is all a matter of words to them. It matters little to them whether the practical consequence of these amendments will be to increase the flow of pollutants into the waters of the State. They find certain words which compel them to do so. There is never any confrontation with empirical fact.

A similar attitude is evidenced in the amended definition of the term "Chesapeake Bay Critical Area" to be found in CB-57-1989 27-107.1(a)46.1. Here the intent is to give the map priority over the definition. Certain other jurisdictions, notably Baltimore County, have taken a leadership role in identifying critical habitat protection areas beyond the 1000ft. mark specified in Subtitle 18 of the Natural Resources Code. As has been noted in Appendix IV-C of Baltimore County's Critical Areas legislation, the original language of Section 8-1807 of Senate Bill No. 664 specified a rigid 440 yards from the Chesapeake Bay and its major tributaries as the Critical Area, together with 220 yards from other tributaries and perennial streams. During the course of the legislative process, this rigid definition was replaced with a more flexible one. In Section 8-1807 as it currently stands, the 1000ft. mark represents only a guideline, the "initial planning area," subject to the exclusion provisions of Section 8-1808(b) and the inclusion provisions of Section 8-1807(c)(2). The actual critical area in Prince Georges County may be more or less than 1000 feet depending upon empirical fact.

As I am sure you know, the State does not have the constitutional authority to draw an arbitrary line, depriving citizens who happen to fall on the one side of the free exercise of their constitutional rights, while permitting the same free exercise to citizens who happen to fall on the other side. To the extent that the definition of the "Chesapeake Bay Critical Area" is rendered arbitrary, it would seem to unduly subject the entire ordinance to the risk of successful legal challenge and to unnecessarily risk depriving certain of the citizens of Prince Georges County of the lawful exercise of their constitutional rights. Fortunately, State law requires that the designation of overlay zones be based upon objective findings of empirical fact by the District Council. As such it cannot be excluded that, at some future date, significant new information may come to light which will require revised findings and which may require the invocation of the exclusion provisions of Section 8-1808(b) or the inclusion provisions of Section 8-1807(c)(2). The District Council might even be so constrained by way of litigation to add significant new habitat protection areas to the Critical Area, or to exclude other areas. I urge the Commission therefore to require that the definition of the "Chesapeake Bay Critical Area" be revised to encompass the inclusion and exclusion provisions to be found in Section 8-1807 and Section 8-1808 of the Natural Resources article, as well as in COMAR 14.15.01.01B(18).

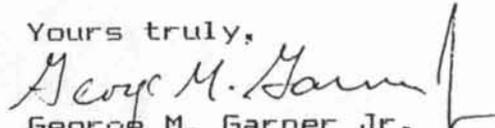
With regard to who is primarily responsible for the degradation of the Bay, there would appear to be plenty of blame

to spread around. You may rightly point to incidents in which nutrients were washed from tilled highly erodible soils by this Spring's abnormally high rainfall. I, on the other hand, may point to the 65 percent of the sewage treatment plants in Maryland which are not in compliance with EPA guidelines, or to a paper mill in Western Maryland which spews dioxin and other toxics into the Potomac River. I might note that existing environmental legislation is not being enforced against this paper mill for political reasons. I might also point to the fact that elevated nitrate levels have been found in groundwater samples in areas where septic systems are present. The National Academy of Sciences recently released a study which concluded that the average residential dweller uses ten times the pesticides on a per acre basis as does the average American farmer. None of this gives us an overall view of why the Bay is declining, however. The fact is we simply don't know why. There are far too many plausible hypotheses for comfort; and no one has taken the time to verify them on an empirical basis.

Current studies being conducted at the Wye illustrate the way in which a controlled observation of the empirical data can point to where the real problems lie while at the same time correcting our assumptions and prejudices. Look at all the time and money which has been devoted to buffer strips. The assumption is that nutrient losses from agricultural land primarily occur as the result of runoff. If percolation losses prove to be the primary mechanism for the translocation of nutrients then all these buffer strips will prove to have little impact upon the water quality of the Bay. Only when we properly identify the problem can we solve it. For this reason I encourage the Commission to use its good offices to support and encourage the sort of critical scientific research which will ultimately show us how to restore the water quality of the Bay.

I remain,

Yours truly,


George M. Garner Jr.

SIGN IN SHEET

Do You Wish
To Testify?
YES | NO

NAME & ADDRESS

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✓

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CHESAPEAKE BAY CRITICAL AREA OVERLAY ZONES

