

Public Hearings - Dorchester County - Development 1990 MJA - S1830 - 76

PUBLIC HEARING FOR THE
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

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: IN THE MATTER OF: :
: :
: DORCHESTER COUNTY DEVELOPMENT :
: :

Monday, April 23, 1990

Pursuant to Notice, the above-entitled hearing was held before THOMAS H. VENTRE, CHAIRMAN for the Chesapeake Bay Critical Areas Commission, at 501 Court Lane, Cambridge, Maryland 21613, commencing at 7:30 p.m., there being present:

PANEL MEMBERS:

ROBERT SCHOEPLEIN
SAMUEL BOWLING
SHEPPARD KRECH, JR.

ALSO PRESENT:

GREG MOORE
GERALD TESTERMAN

REPORTED BY: MARVIN W. GATZ, NOTARY PUBLIC

- - -

CRITICAL AREA COMMISSION
DNR

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1 Those of you who wish to speak may sign in here and this
2 will be made part of the hearing record. As for the
3 hearing, the gentleman seated at this table in front is
4 a Court Reporter. He will take a recording of this and
5 transcribe it into a written format for the public
6 record.

7 And if I may speak in the Chairman's place for
8 just this moment; typically, the hearing record is kept
9 open for a period of days after the hearing. So anyone
10 wishing to add comments through correspondence may do
11 so. The panel will have to make its recommendation to
12 the full Commission by Wednesday, May the 2nd. So I
13 would suggest to the Chairman and the panel that we keep
14 the record open until noon of May 2, 1990.

15 That is all my remarks. I will turn the
16 session over to Chairman Schoepflein.

17 CHAIRMAN SCHOEPLEIN: Thank you, Tom. That
18 was very thorough. I will say in opening again that
19 this three-member panel is here this evening in public
20 hearing to receive testimony regarding the three
21 proposed local program amendments. The three-member



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1 panel will then report to the appropriate review
2 committee within the Commission, then in turn will make
3 recommendations to the Chesapeake Bay Critical Areas
4 Commission to make a decision as a body as a whole. We
5 are here, therefore, to hear and to receive as much
6 testimony as offered.

7 We have three proposed local program
8 amendments. The first is an amendment to local
9 implementing ordinances or subdivision ordinance and it
10 is identified for trial purposes as file DCA 12. Tom?

11 MR. VENTRE: I beg your pardon?

12 DR. KRECH: --

13 CHAIRMAN SCHOEPLEIN: Please introduce
14 yourself for the record.

15 MR. DODD: Yes. My name is Steve Dodd. I'm
16 the Planning Director for Dorchester County. Just for
17 the record, gentlemen, the subject of tonight's public
18 hearing, which is the amendments to Dorchester County
19 subdivision regulations, section 140-51, was heard by
20 the Dorchester County Commissioners on December 19,
21 1989. I have for the record a Certificate of



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1 Publication from the "Daily Banner" indicating that
2 hearing notice was published in the December 1 and
3 December 8 issues of the "Daily Banner." I read that
4 into the record.

5 Also, I have a copy of a letter which is dated
6 February 20, 1990, addressed to Tom Ventre of the
7 Critical Area Commission, transmitting to him the formal
8 request on behalf of the Dorchester County Commissioners
9 of the public hearing, on behalf of the county -- held
10 in the county in conformance with the hearing
11 requirements of the county's program.

12 Tom, do you have the records of the hearing
13 notices for tonight's hearing?

14 MR. VENTRE: No, I do not. I did consult with
15 the newspaper that did receive them. I presume they
16 were published on or by April 9th.

17 MR. DODD: Now I'll get down into the heart of
18 the matter tonight, which is to consider some technical
19 amendments to the subdivision regulations. And as I
20 understand it, Mr. Ventre has provided this panel with
21 copies of the proposed changes. I have underlined those



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1 sections of the code which we are amending or adding.
2 And if you would like, Mr. Chairman, I will go through
3 them one by one. Hopefully, it won't take too long.

4 Under 140-51A2, we are changing the language
5 of A to include a section which would allow subdivisions
6 or developments occurring on parcels originally
7 containing over 20 acres to be classified as large
8 subdivisions and developments occurring on parcels
9 containing under 20 acres shall be considered small
10 subdivisions. The reason that the distinction is
11 important is that the way the program works in
12 Dorchester County, all growth allocation requests are
13 categorized as either large or small.

14 DR. KRECH: Excuse me for interrupting you.
15 Classified as large subdivisions, what do you mean by
16 that classification? 20 acres shall be -- over 20 acres
17 will be classified as a large subdivision. Does that
18 mean you could put two houses on small lots or one house
19 on 20 -- what does that mean -- classified as large
20 subdivisions?

21 MR. DODD: It means, the only distinction



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1 there, Dr. Krech, is that the way the county's program
2 works is that we have -- the way we award growth
3 allocation is by categorizing the project as either
4 large or small. In this case, large means any
5 subdivision or -- growth allocation request doesn't have
6 to be a subdivision, but any growth allocation request
7 occurring on a parcel of record of over 20 acres.

8 It doesn't mean the entire parcel has to be
9 subdivided up into building lots or used for a specific
10 project. It only means that in order to categorize that
11 growth allocation request, if it's occurring on a parcel
12 of record of over 20 acres in size, it's considered to
13 be a large --

14 DR. KRECH: You don't think that that requires
15 more definition -- a defining of what large -- I don't
16 quite yet understand what large subdivisions mean.

17 MR. DODD: It does not refer to the number of
18 lots that we're --

19 DR. KRECH: That's what puzzles me. You could
20 have 24 acres being divided into two lots and that would
21 be a large subdivision?



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1 MR. DODD: Yes. In terms of growth --

2 DR. KRECH: This minimizes the number of --
3 that can be placed on lots of 20 acres or more.

4 MR. DODD: We're talking about how much land
5 is being consumed under the growth allocation section.
6 In other words, if --

7 MR. BOWLING: Have you all subdivided your
8 growth allocation so a certain amount goes to large
9 subdivisions and --

10 MR. DODD: Yes, we have.

11 MR. BOWLING: Okay. Then that's the reason
12 you're doing this.

13 MR. DODD: Yes, it is.

14 MR. BOWLING: Okay.

15 MR. DODD: But we can only award so much per
16 category.

17 MR. BOWLING: To each one. Fine.

18 DR. KRECH: Excuse me, Steve.

19 MR. DODD: That's all right. And we're down
20 now in section A3. This language and it's underlined is
21 to be added to this section. And it reads, "Should the



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1 availability of growth allocation for a particular size
2 category" -- size category again referring to large and
3 small -- "exceed the demand. The Planning Commission
4 may make that excess allocation available to all
5 allocation requests regardless of size. However, we
6 should not exceed the maximum self-imposed limit of 200
7 acres a year."

8 And this simply means if we don't have a
9 certain number of requests in one category, then we can
10 use the excess allocation available in that category for
11 the other category.

12 Going down now to section B2. This language
13 was drafted with the help of Mr. Ventre. There was some
14 concern originally about the way that section was
15 worded. I believe Mr. Ventre has provided you with a
16 list of the language as it was originally, and that's
17 what's being proposed to be changed. We believe the old
18 language says what the new says. But I think this is
19 just so that we all understand what we're trying to
20 accomplish here, we've clarified it.

21 Going down now to section 4 which I believe is



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1 new, yes. This is number 1, to make a statement, that
2 everyone understands that commercial uses and industrial
3 uses are eligible for growth allocation. I think the
4 critical area criteria very clearly outline what types
5 of residential uses or what density, I should say, are
6 permitted in certain development zones. I think the
7 criteria are not clear at all relative to how they
8 address commercial and industrial uses. So we're making
9 a statement at the onset that these types of uses are
10 permitted.

11 And then we go on to say that the zoning
12 ordinance shall determine what zone designation, what
13 critical area zone designation is required if the
14 criteria do not explicitly state what requirements are
15 or what zone is necessary.

16 I'll give you an example of that. The
17 criteria state very clearly that heavy industrial uses
18 are required to have an IDA designation. And if we had
19 a request in the county for an IDA or for heavy
20 industrial designation in the critical area, we would
21 know that that would require an IDA designation.



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1 But fortunately, there are many, many types of
2 uses, many scale or intensity in which the criteria do
3 not speak to. And we believe someone has to make a
4 decision as to what development zone designation each
5 individual use may require. And we believe the proper
6 body to do that at the local level is the Planning
7 Commission. We're simply stating that the Planning
8 Commission shall make that determination in absence of
9 any specific restriction or limitation outlined in the
10 zoning ordinance.

11 Moving down to section C. We're adding the
12 term "resource conservation area." And under C2, again
13 we're adding the term "resource conservation area" in
14 lieu of the term "critical area" making it explicitly
15 limited to the resource conservation area. And then at
16 the end of C2, we're adding the sentence, "The county's
17 growth allocation -- after 50 percent of the allocation
18 has been used, all residential developments over five
19 acres in size shall be clustered." I think that's
20 consistent with the criteria and the amendments to the
21 criteria.



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1 DR. KRECH: Yes, it is.

2 MR. DODD: And then finally under section
3 140.51E, we're adding the underlined language to the end
4 of that section. And this addresses the time frame in
5 which an applicant would have to receive preliminary
6 project approval to be eligible at the local level for
7 growth allocation. The problem we had had at the
8 beginning was that we would have a cut-off for applying
9 for these requests, but there was no time frame or time
10 limit in which the applicant had to progress to
11 preliminary approval. And it was impossible for us to
12 review all the requests that had been submitted during
13 that time period because they weren't all in the same
14 level of approval.

15 CHAIRMAN SCHOEPLEIN: Now, is the review
16 period fixed? How long is it?

17 MR. DODD: The review period is six months and
18 it ends January 31st and July 31st of each year.

19 MR. BOWLING: This sort of prevents someone
20 from banking growth allocation and not pursuing the rest
21 of it too, doesn't it?



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1 MR. DODD: I think it also will force them to
2 get their ducks in a row prior to submitting the
3 request. Those were the amendments that are on the
4 table tonight, gentlemen. I'd be happy to answer any
5 questions you may have.

6 MR. BOWLING: No real questions. I think P.G.
7 County just did a similar thing with definition on
8 commercial and industrial very recently. Other than
9 that, I think I see the reason why you're doing them and
10 they all make sense to me.

11 DR. KRECH: Steve, the only question I have is
12 that on number 2, 50 percent of the county's growth
13 allocation is used, at which point all residential
14 development project over five acres in size shall be
15 clustered. Why do we wait that long for clustering when
16 actually the original criteria has emphasized
17 clustering? And to date, I haven't seen any evidence of
18 clustering in any of the programs that I've reviewed. I
19 can't think of a clustering project. Can you? Bob?

20 MR. DODD: Well --

21 DR. KRECH: We're postponing clustering.



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1 MR. DODD: The way our program works that
2 aside from the interim subdivisions, those subdivisions
3 which go through our lotto system, if you will, we give
4 special emphasis to those that do provide clustering.
5 And the higher percentage of clustering that's provided,
6 the higher number of points that are --

7 DR. KRECH: -- I know that.

8 MR. DODD: However, we do not mandate
9 clustering as a condition of approval at the local level
10 until the county exceeds 50 percent of its growth
11 allocation used. And I believe again that that is
12 consistent with the amendments to the criteria that were
13 passed by the General Assembly -- that that clustering
14 kicks in as a mandatory element at 50 percent.

15 MR. BOWLING: It's encouraged I think all the
16 way through it. But I think he's right. It only
17 becomes a mandatory in that second --

18 DR. KRECH: In the second phase.

19 MR. BOWLING: In the second phase. Well,
20 okay.

21 CHAIRMAN SCHOEPLEIN: Just a comment, Steve,



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1 on the very bottom of that page on item 2. There may be
2 a redundancy, though I'm comfortable with redundancies.
3 Your development projects have to be at least five
4 acres. Right? So it says, at which point, all
5 residential zoning projects over five acres in size
6 shall be clustered. So it truly is all --

7 MR. DODD: Yes.

8 MR. BOWLING: I take that to mean that you
9 probably wouldn't subdivide anything less than five
10 acres.

11 CHAIRMAN SCHOEPLEIN: Well, back here it says,
12 "shall be at least five acres."

13 MR. BOWLING: I took it to mean that he
14 probably wouldn't subdivide it --

15 CHAIRMAN SCHOEPLEIN: Steve, do you have any
16 other comments?

17 MR. DODD: No.

18 CHAIRMAN SCHOEPLEIN: Are there any remarks
19 from the audience regarding the amendments to the -- the
20 proposed amendments subdivision argument?

21 MR. WILSON: I'd like to ask a question. I'm



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1 James Wilson of the 9th district of Dorchester County.
2 I'd like to address this to Steve Dodd. These are all
3 consistent, are they not, Steve, with the changes
4 previously made to the zoning ordinance of the county?

5 MR. DODD: Yes, they are.

6 MR. WILSON: So this is a complete requirement
7 to -- departs in no substantial way from the changes
8 you've made previously. Is that correct?

9 MR. DODD: That is correct.

10 MR. WILSON: I have another question in the
11 changes. It's not directly relevant to this, but it is
12 to the growth allocation procedure here in this county
13 and it's something that has always puzzled me. It would
14 seem that the critical area regulations are unambiguous
15 with respect to the requirement that new intentionally
16 developed or limited development areas are subject to
17 certain guidelines.

18 And among these guidelines for the new limited
19 development areas which we see most frequently here in
20 this county is this guideline. That new limited
21 development areas should be located adjacent to existing



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1 limited development areas or in intentionally developed
2 areas. Now, we don't do that in this county at all.
3 And I wonder why -- how it is that I am interpreting
4 this guideline different from the way that the county is
5 moving to approve growth allocations here, including
6 some, I believe, that will be heard to night?

7 MR. DODD: I think I can explain that. The
8 county interprets that section of the criteria not as a
9 mandatory requirement but as a guideline, something
10 which the county must consider when it reviews and
11 processes growth allocation requests. And I believe the
12 county -- our county does that in its eligibility
13 criteria and more specifically in the ranking criteria
14 that it uses to decide which projects would be awarded
15 growth allocation at the local level.

16 The point system that we use is -- it's a
17 fairly simple 10-point system. It's entitled "Special
18 Evaluation Criteria and Rating Methodology." The first
19 criteria we use is adjacency, and there are three
20 factors, each of which have a different weight. The
21 first factor is: if the project is next to a developed



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1 LDA, the project is awarded 30 points. If it's next to
2 an undeveloped LDA, it's awarded 20 points. If it's not
3 adjacent to developed area or undeveloped LDA, it's
4 awarded only 10 points. And the weight of 10 points is
5 by far the highest weight we give to any specific -- any
6 of the 10 criteria that we used.

7 So we do consider the adjacency. We don't
8 consider that section of the criteria to be mandatory,
9 and therefore, we don't require that as a condition of
10 approving a new LDA.

11 MR. WILSON: Thank you, Steve. I would make
12 the point as a layman, however, if we look at 06A
13 regarding guidelines, it says, "The IDA and LDA has made
14 the increased subject to these guidelines. One, the
15 area of expansion of the IDA, et cetera, may not exceed
16 an area equal to five percent of the county's portion of
17 the RCA land that are not tidal wetlands or federally
18 owned."

19 Now, you don't regard that as a matter for the
20 county's judgment. That is mandatory and yet the same
21 use of the phraseology here that is using the term



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1 subject to these guidelines is identical to that which
2 we found in subparagraph B, where it is said there, when
3 locating these things, local jurisdictions shall use
4 these guidelines. And I agree that problem rests in the
5 word "guideline," and yet it's interpreted differently
6 in the two subparagraphs.

7 MR. BOWLING: Tom, in the area in which growth
8 allocation would be given to these counties, there was a
9 phrase in there somewhere where if it were not practical
10 to locate adjacent to LDA's, IDA's, was in a
11 Congressional amendment to the criteria -- allow its
12 location in RCA if it could not be done --

13 MR. VENTRE: That applies --

14 MR. BOWLING: To 50 percent --

15 MR. VENTRE: -- to 12 counties.

16 MR. BOWLING: To 12 counties --

17 MR. VENTRE: To 12 rural counties.

18 MR. BOWLING: But this is one of those 12
19 counties.

20 MR. VENTRE: Yes, it is.

21 MR. BOWLING: Yes, I believe so.



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1 MR. VENTRE: And what we're speaking to is in
2 the 1986 amendments, the General Assembly was aware of
3 the difficulty in the rural jurisdictions which did not
4 have much IDA or LDA to which they could locate new
5 development -- to, pardon my language, but if you
6 understand what I mean. So the General Assembly in the
7 1986 amendments gave them as a matter of statute, not as
8 a matter of regulation, did specify that in those 12
9 counties, including Dorchester, and let me just read it
10 here directly from the amendment --

11 DR. KRECH: -- delete one.

12 MR. VENTRE: -- from the -- in a sense, that's
13 what it did.

14 DR. KRECH: Yes, it did.

15 MR. VENTRE: It said and it names the 12
16 counties including Dorchester, "If the county is unable
17 to utilize a portion of the growth allocated to the
18 county in paragraphs 1 and 2 of this subsection within
19 or adjacent to existing intensely developed or limited
20 development areas as demonstrated in the local plan
21 approved by the Commission, then that portion of the



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1 allocated expansion which cannot be so located may be
2 located in the resource conservation area in addition to
3 the expansion allocated the first 50 percent." In other
4 words, the criteria is saying, until you use 50 percent
5 of the growth reserve, you may not put new growth areas
6 in the RCA -- as islands in the RCA, if you will. The
7 law amended that in the case of these 12 counties.

8 MR. WILSON: Thank you very much.

9 MR. VENTRE: Now, on the point -- you are
10 correct in the confusion on the part of many readers of
11 the regulations by the way you're referring to -- the
12 green tablet you have in your hand, sir, are primarily
13 the procedural guidelines for public agency actions.
14 You do want to get yourself a copy of the blue. Now,
15 the language isn't the same, but I do want to point out
16 the difference to you. That one is more procedural for
17 public projects whereas this is governing all private
18 projects.

19 Back to the problem of the wording; the
20 criteria do say in both places, the local jurisdictions
21 shall use the guidelines. The guidelines themselves are



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1 expressed in terms of should, which the attorneys tell
2 us is directory and not mandatory. Now, Dorchester
3 County, although it doesn't have those guidelines in the
4 program or in its implementing ordinances, it does
5 consider the guidelines as they are expressed in its
6 evaluation system to which Steve just referred a moment
7 ago.

8 Perhaps a case can be made that for the public
9 benefit, the county should incorporate the guidelines in
10 the text of the program or in the text of the
11 implementation ordinances. That is a matter of that
12 perhaps I can discuss with Steve at some time. But I
13 understand your point. On the other hand, Steve, that
14 is Dorchester County is considering those locational
15 aspects when it evaluates the project application.

16 MR. BOWLING: -- the way those things are
17 printed is that they're not put together --

18 MR. VENTRE: Do I make myself clear to --

19 DR. KRECH: Yes.

20 MR. VENTRE: -- gentleman on the right.

21 MR. BOWLING: -- on two separate pages and



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1 you read back and forth to find them. That's the
2 problem with it in the blue, see? You have the original
3 state of about required mandatory location and then the
4 other statement is on another page. They're not
5 together. It makes it difficult to find.

6 MR. VENTRE: Plus the confusion right in the
7 same section -- you shall use -- shoulds which is --

8 CHAIRMAN SCHOEPLEIN: That's an excellent
9 question. We appreciate that. Are there any other
10 comments regarding the proposed local program amendments
11 to the subdivision ordinances? Again, at the ending of
12 this meeting we will announce the record will remain
13 open and give you information as to how you can
14 communicate with the Commission.

15 The next item on our agenda identified as file
16 DCA 13 is a request for growth allocation land
17 reclassification for residential subdivision identified
18 as the "McCauley Property."

19 MR. VENTRE: Now, the members of the panel
20 have copies of this -- a reduced version, but here's one
21 for -- to refer to. If anyone from the audience wants



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Mr. Cauley

1 to come up and look at the plat, feel free to do so.

2 Steve, you can -- refer to that --

3 MR. DODD: Sure. I'm going to allow the
4 engineer who is representing the developer to speak to
5 the specifics of this project. The only items I'd like
6 to enter into the record are the -- simply to say that
7 this is an interim subdivision and subject to the
8 provisions of the Dorchester County Critical Area
9 Protection Program, Volume 1, page 39, last paragraph.
10 This addresses the interim subdivisions that also known
11 as those subdivisions that were undergoing evaluation by
12 the Dorchester County Planning Commission prior to the
13 effective date of the Critical Area Protection Program.

14 It goes on to say again on page 39 of Volume 1
15 of the plan that these projects -- these plats will not
16 be subject to the density provisions of the zoning
17 ordinance or to the growth allocation provisions of the
18 subdivision regulations. These subdivisions must have
19 had growth allocation reserved for them and must have
20 been designed to conform to the Critical Area criteria.
21 Additionally, approval must have been granted for the



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1 preliminary plat in the case of a major subdivision and
2 for the findings of fact required by Natural Resources
3 article 81813 in the case of a minor subdivision.

4 This particular project is a minor
5 subdivision, four lots. It is an immediate family
6 subdivision. However, it does exceed the density
7 provisions of the Critical Area criteria. It is located
8 on Ragged Point Road, served by a private road and will
9 also be served by individual well and septic. This
10 project was approved for growth allocation by the County
11 Commissioners at a public hearing on January 23, 1990.
12 And the request for growth allocation is 10.3 acres.

13 I'm going to ask Mr. Greg Moore from Andrews,
14 Miller & Associates to come forward and address the
15 specific design standards of the subdivision.

16 MR. MOORE: Hello. My name is Greg Moore.
17 I'm with Andrews, Miller & Associates from Cambridge
18 Consulting Engineers here on behalf of Mr. McCauley who
19 owns the subdivision. Again, I would like to reiterate
20 what Steve said, that the subdivision was given
21 preliminary and subdivision approval prior to



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1 implementation of the Critical Area program, and thus
2 the owner believes that it was grandfathered in terms of
3 growth allocation from the RCA to the LDA.

4 The actual request for growth allocation is
5 for 10.3 acres which excludes tidal wetlands that were
6 located by the Court of Engineers in and around the
7 site. There is an existing home located on the project
8 site. You can see it on the copy of the plat. It's
9 located here. The roadways which are shown on this plat
10 were constructed prior to the implementation of the
11 program as well as all the tree clearing that's
12 necessary for the subdivision. So there are no
13 additional fills required nor are there any additional
14 tree clearing required for any of the homes proposed for
15 the site.

16 I would like to, for the record, enter some
17 permits and approvals that were granted to the project
18 by both the Corps of Engineers and the Department of the
19 Environment. The owner of the project is proposing a
20 combination of bulkheading, stone reventment, and
21 planning of wetland grasses along the shoreline to



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1 preserve the shoreline. It is heavily eroding, which is
2 the reason he would like to subdivide the property. And
3 he has obtained from the Department of the Environment a
4 water quality certification, which I have a copy of and
5 I'll put into the record, as well as a permit from the
6 Corps of Engineers to do any and all work in and around
7 the shoreline.

8 The owner also, as I said before, obtained a
9 grading permit and building permits from the county to
10 put in the roadways and clear the treed areas prior to
11 the implementation of the program. I do have copies of
12 those permits that I can leave with you. As I said,
13 that work was done prior to the implementation of the
14 program, and I just want to leave you with a list of
15 those permits. There are no rare and endangered species
16 on the project site based on the critical areas
17 mapping of Dorchester County.

18 There are tidal and non-tidal wetlands and
19 they're shown on the plat clearly and excluded from the
20 request for growth allocation, at least the tidal are
21 excluded from the grow allocation request. There is a



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1 small area of submerge aquatic vegetation located off-
2 shore of the peninsula, but it is very small, mapped in
3 1987. And there are no oyster bars in Brooks Creek
4 adjacent to the site. There are oyster bars located to
5 the south of the project site and the tip of the wetland
6 on the southern point of the property is that boundary.
7 Are there any questions?

8 DR. KRECH: You're familiar with the property,
9 Greg, are you not? Have you visited it personally?

10 MR. MOORE: Yes.

11 DR. KRECH: Have you seen how much of the
12 property is non-tidal wetlands, a lot more than the Army
13 Corps of Engineers has stated?

14 MR. MOORE: For the record, I would like to
15 give you a letter. I'll read --

16 DR. KRECH: I would really question -- I would
17 question every bit of information given to us.

18 MR. MOORE: Please let me read the letter from
19 the Department of the Army dated March 14, 1990.

20 DR. KRECH: I'd love to hear it.

21 MR. MOORE: The wetlands were delineated by



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1 the Corps of Engineers and by the Soil Conservation
2 Service. Says, "I'm replying to your letter dated
3 November 13, 1989, requesting confirmation of
4 jurisdictional determination pursuant to section 404,
5 the Clean Water Act, from the polysubdivision located on
6 Brooks Road near Thomas, Dorchester County, Maryland.
7 Representatives of the Corps of Engineers verified the
8 wetlands line shown on the plans. Copy enclosed for
9 purposes of corps jurisdiction. Any work proposed land
10 -- wetland lines shown in this subject shown is not
11 subject to the Department of the Army jurisdiction
12 pursuant to section 404, the Clean Water Act. However,
13 this determination is only valid for two years from the
14 date of this letter. Therefore, any areas not filled
15 which may subsequently satisfy the technical
16 requirements as set forth in the Federal manual for
17 identifying and delineating jurisdictional wetlands
18 dated January, '89, may be subject to corps jurisdiction
19 pursuant to section 404, the Clean Water Act."

20 What this is in reference to is a letter that
21 I sent the corps verifying that they in fact were on the



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1 site, that the wetlands delineation shown on this plat
2 were consistent with what they saw in the field. This
3 letter further indicates that the wetland delineations
4 are valid for a two-year period after the 1989 change in
5 non-tidal program. So, as far as the --

6 DR. KRECH: Would you question the current
7 location of the present domain here which is a
8 relatively new house -- two or three years at the most
9 old. From the side of that house, would you question
10 the fact that tidal wetlands probably were filled in
11 order to place the house where it is?

12 MR. MOORE: Unfortunately, because of the
13 change in jurisdictional wetland delineations by the
14 corps in 1989, I feel that there are no experts in
15 wetland filling other than the corps themselves. We, as
16 professional consultants, our certification of any
17 property for the filling of wetlands is meaningless to a
18 bank, a lender, or a purchaser. The only thing that is
19 of meaning is the letter from the Corps of Engineers and
20 the owner does have that letter and I think that's very
21 important as it relates to any filling of tidal and non-



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1 tidals.

2 DR. KRECH: -- Corps of Engineers?

3 MR. MOORE: I wish we had the right to comment
4 on what you're saying as far as filling, but it's
5 meaningless. The Corps of Engineers' letter means a lot
6 more.

7 CHAIRMAN SCHOEPLEIN: I have some questions
8 and information in interpreting. The map that I -- have
9 a reproduction of a small section of it, and it says
10 "see note 5" there in the dotted line. In measuring
11 back, I can see another dotted line that appears to be
12 100 feet back from the "see note 5" line. Can you see
13 that "see note 5"?

14 DR. KRECH: Okay. Yes.

15 CHAIRMAN SCHOEPLEIN: -- by Corps of
16 Engineers. That's what I wanted to know. You indicate

17 --

18 DR. KRECH: -- up here, Greg.

19 CHAIRMAN SCHOEPLEIN: Who established that
20 dotted line? Was that the Corps of Engineers?

21 MR. MOORE: The Corps of Engineers.



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1 MR. BOWLING: The dotted line as I see it here
2 refers to tidal wetland. What about non-tidal?

3 CHAIRMAN SCHOEPLEIN: That's is -- I'm trying
4 to figure out how far you wade out before you get to the
5 high water mark is where I'm trying to get --

6 MR. MOORE: The dotted line is the edge of
7 jurisdictional wetlands as determined by the Corps of
8 Engineers.

9 CHAIRMAN SCHOEPLEIN: The Corps of Engineers.
10 So they determine that everything to the inside of that
11 is --

12 MR. MOORE: Is upland.

13 CHAIRMAN SCHOEPLEIN: -- very good.

14 MR. BOWLING: Even though it apparently all is
15 within the 100-year flood plane?

16 MR. MOORE: Yes. All of southern part of
17 Dorchester County is in the flood plane. We are in the
18 flood plane here.

19 MR. DODD: 60 percent of the county is in the
20 100-year flood plane.

21 MR. MOORE: Our office, when we did this



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1 plan, was in the flood plane. So much of the county is
2 in the flood plane that it's so meaningless as far as
3 tidal and non-tidal wetland. From what this does show
4 is when the corps was out there in 1988, they delineated
5 jurisdictional wetlands. They did not consider any line
6 inside of the boundary that's noted by note 5 as
7 jurisdictional wetlands.

8 We knew that the county would want to see non-
9 tidal wetlands for their critical areas program and thus
10 had soil conservation service involved in delineating
11 those non-tidal wetlands. Those non-tidal wetlands were
12 delineated based on the definition of non-tidals in the
13 current program.

14 CHAIRMAN SCHOEPLEIN: Now, the numbers around
15 here are what your firm surveyed as the boundary of the
16 property?

17 MR. MOORE: Yes. You'll see numbers at each
18 course, because there is so much movement in the
19 property line, it's putting shoreline down here the
20 actual leaps and bounds.

21 CHAIRMAN SCHOEPLEIN: That's good. I'm just



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1 trying to figure out, in order to -- who did what on the
2 line is important to me.

3 MR. BOWLING: What's -- elevation on this
4 piece of land?

5 MR. MOORE: It ranges from --

6 DR. KRECH: Two feet below sea level.

7 MR. MOORE: -- elevation one in and around the
8 wetlands 1.2 up to three and a half in the middle.
9 Anywhere between there all over the property. Sewage
10 disposals to be by underground trench systems that have
11 been approved by the Dorchester County Health
12 Department and they're basically shown on this plan.

13 MR. BOWLING: There's no consideration of an
14 environment filtration -- here?

15 MR. MOORE: There was a consideration, but
16 there's not adequate space there due to setbacks from
17 wetlands for bermed infiltration ponds. In fact, some
18 of the original concepts did intend to use a bermed
19 infiltration pond but there's 100-foot setback from the
20 water's edge. Other setbacks didn't allow us to go with
21 a design like that.



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1 CHAIRMAN SCHOEPLEIN: Another curiosity.
2 Because of the existence of the pier and another
3 fillroad that goes out to the general area here; when
4 was this drawn?

5 MR. MOORE: I don't -- I see what you're
6 referring to.

7 CHAIRMAN SCHOEPLEIN: Well, you show fillroads
8 here --

9 MR. MOORE: Right.

10 CHAIRMAN SCHOEPLEIN: -- which we walked. And
11 there's a fillroad that goes along the edge of the
12 wetwoods here to the pier which is here. This is almost
13 a house sight-line looking east.

14 DR. KRECH: Now, there's a pier here that's
15 not on the map.

16 CHAIRMAN SCHOEPLEIN: It's a pier -- map at
17 all. There's a drainage ditch -- I'll call it a
18 drainage ditch, that goes along here, there's a pipe
19 under there that goes out there. And then this is a
20 fillroad conversationally like these fillroads here that
21 parallels here and goes over left and stops somewhere



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1 over like that. So I was curious when this was drawn;
2 does this accurately represent the land or how old is
3 this? It probably is -- here. What the explanation is
4 for, you know -- I'm curious about the date because the
5 existence of the pier and drainage system and the other
6 fillroad --

7 DR. KRECH: Within two years of this map.

8 MR. VENTRE: Mr. Chairman, on this map, it
9 indicates in the data box here that this version was
10 drawn in August of 1988.

11 DR. KRECH: --

12 MR. VENTRE: And you're correct, it does not
13 indicate the pier that --

14 MR. MOORE: Why it does not, I don't have the
15 answer to.

16 MR. DODD: I'd like to address Dr. Krech's
17 question about the dwelling.

18 DR. KRECH: The current dwelling which --

19 MR. DODD: The dwelling appears to be new.

20 But in fact, there was a dwelling or actually a cottage
21 on that parcel --



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1 DR. KRECH: Before the --

2 MR. DODD: -- before. And that cottage was
3 renovated and the deck -- there was a deck on the front
4 as I understand it was added on. There was some other
5 major renovation. But there had been a dwelling on that
6 same site for some time.

7 DR. KRECH: The location of the current
8 dwelling is -- the site is so much higher above the site
9 of the rest of the property that I question whether
10 that wetlands probably have to be filled in order to put
11 the house where it is.

12 MR. MOORE: I don't know the year the house
13 was put in. I was under the assumption it had been
14 there prior to the owner purchasing the property.

15 VOICE: I believe it had.

16 DR. KRECH: Where is most of your erosion?

17 MR. MOORE: Mostly along Brooks Creek.

18 DR. KRECH: It would have to be Brooks Creek
19 because there's no erosion here to speak of --
20 bulkheading. Big vegetation going right down to the
21 water's edge on the northwest side of the property.



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1 MR. MOORE: As I said before, the --

2 MR. BOWLING: Is more filling contemplated on
3 this site to raise the height where the home might be?

4 MR. MOORE: I understand -- I don't know the
5 architect and I really haven't looked at the plans. My
6 understanding is the houses are going to be on piles and
7 the filling is supposed to already be finished. Houses
8 will be elevated by the piles. The roads were the main
9 concern for the filling and were included in the grading
10 permit.

11 MR. VENTRE: So in other words, the site as it
12 is now as we saw when the panel made its view that it is
13 as it's going to be as far as you know?

14 MR. MOORE: Well, I don't know when the field
15 visit was made and I really can't say. But I do know
16 that houses are going to be on piles and the roadway
17 fill, as I understand it, is complete. That's --

18 MR. VENTRE: And there were -- I guess they
19 were for perk test. Is that what the --

20 MR. MOORE: Well, there have been days of perk
21 tests on the site to come up with approved sewage



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1 disposal site. And we tested first for a bermed
2 infiltration pond, had problems with the testing because
3 it's underlined -- stratus, and it has taken up a year
4 and a half really to resolve the problem of the sewage
5 disposal. And that's why he keeps so many test kits out
6 there.

7 MR. VENTRE: One question about the
8 delineation of the wetlands. How do these delineations
9 which apparently were made by the corps, how do they
10 compare with the official state wetlands map -- would
11 you know?

12 MR. MOORE: They are in -- they encompass more
13 property than they do the state wetlands map.

14 MR. VENTRE: They do?

15 MR. MOORE: Yes.

16 MR. VENTRE: That is to say they show more
17 wetland or more --

18 MR. MOORE: They show more wetland as I know
19 it. I don't know any -- I don't know the numbers --
20 exactly how much. Generally, from my look at the map,
21 the wetlands have moved inward since the '72 wetlands.



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1 map. But the '72 wetlands map -- go further and show
2 the non-tidals that are shown on the plans though.

3 MR. DODD: Well again, Gentlemen, and I think
4 you've heard me say it, each panel here -- I believe the
5 role of the Commission is not to act as a Planning
6 Commission. We do have a Planning Commission to look at
7 the site plan and to make the determination that the
8 plan is consistent the the county's critical area
9 criteria. This is a growth allocation request. This is
10 not a request for the Commission to approve a site plan.
11 I would like to say that for the record. I say it every
12 time and I'll continue to say it.

13 DR. KRECH: Recognize that, Steve, and --

14 MR. BOWLING: But I think the Commission also
15 has, as one of its duties, the protection of water
16 quality in the bay. And if we're going to approve
17 something that is obviously going to be detrimental to
18 that, I think we have a right there to say no, too, if
19 the time comes.

20 DR. KRECH: That's a highly sensitive area.

21 MR. DODD: That's why I brought the water



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1 quality certification.

2 DR. KRECH: -- proposed subdivision, Steve. I
3 personally -- I don't talk to the Commission, I talk to
4 myself. To me, this appalls me. It does. It just
5 appalls me that a location like this has been picked for
6 a subdivision. And I think it's abusive. It's abusive
7 to the bay. It's abusive to everything that we've been
8 through in the last week. And it's abusive to what
9 you're going to go through long after I'm dead. If you
10 continue to pick sites like this in Dorchester County,
11 granted you're under water -- most of the county is
12 under water. But still, you can't be abusive. And this
13 to me is an abusive use of the land.

14 MR. BOWLING: Steve, could we have copies of
15 the certifications for our records which the --

16 MR. VENTRE: --

17 MR. BOWLING: --

18 MR. VENTRE: --

19 MR. DODD: --

20 MR. BOWLING: -- ask the corps how the hell
21 they did that.



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1 MR. MOORE: Well, I've got a letter to the
2 corps that I -- wasn't signed by me, of November 13,
3 '89, a letter to Woody Francis, clearly stating the
4 times at which the corps was there for their
5 designations and --

6 MR. BOWLING: They approved it.

7 MR. MOORE: The point is the owner knew when
8 the non-tidal wetlands laws changed in '89 that the
9 remainder of the property most likely would be
10 considered non-tidal wetlands. The corps had a
11 grandfathering clause for two years which he petitioned
12 to be included in. And as a result, the corps came back
13 to the site and verified what they've done, verified it
14 based on the maps that we showed which are here -- the
15 delineations that we show here, and agreed that their
16 delineations they're going to uphold for the two-year
17 period and that's why they wrote the letter. So you're
18 welcome to contact the corps and Woody Francis would be
19 the person you need to talk to. But that's the sole
20 reason for writing the letter.

21 MR. BOWLING: Okay. I'm not arguing with your



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1 procedure or with your findings or any of that. And my
2 question is like Dr. Krech, when I know that something
3 like this probably is going to be submerged twice a
4 year, I wonder how in the heck you're going to keep it
5 in in the ground or on the site. That's my problem. At
6 least twice a year if it's only three feet above --

7 MR. DODD: Well, I don't think we -- we don't
8 need to get into --

9 MR. BOWLING: --

10 CHAIRMAN SCHOEPLEIN: -- have some questions
11 and information that I'm wholly familiar with going back
12 to Dorchester County procedures. When -- on the
13 property now, there's identified 20,000 square foot what
14 I call a septic field. It would appear that the wooded
15 area that is on this track of land, the tree line is
16 very sharp and parallel to the edge of the septic field.
17 The tree line -- septic field. It would appear only by
18 -- that the wooded area was cleared for the septic field
19 looking from the house conversationally east.

20 MR. BOWLING: 20,000 square feet --

21 CHAIRMAN SCHOEPLEIN: In Dorchester County



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1 procedures, what is the procedure when you're going to
2 clear out 20,000 square feet of wooded area that's
3 within the critical areas?

4 MR. DODD: Well, we can adhere to the criteria
5 -- we replaced. Now we allow a one per one replacement
6 for up to 20 percent clearing of any lot of record. And
7 then once one exceeds to 20 percent limitation, we then
8 invoke 150 percent replacement requirement between 20
9 and 30 percent. And then over 30 percent, we have a 300
10 percent replacement requirement. We require it to be
11 placed on-site, if possible.

12 But if that's not feasible, we allow it to be
13 placed on anywhere in the critical area in Dorchester
14 County. If that's not possible, then we have a forestry
15 replacement fund as a last resort, which is administered
16 through our county forestry board. And that money is
17 made available to typically to farmers who want to --
18 property in the critical area.

19 CHAIRMAN SCHOEPLEIN: Okay. And does the
20 clearing have to be for cause? In other words, for
21 purposes of building a septic field?



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1 MR. DODD: Yes. Clearing for development
2 purposes, whether it be for home site, or for septic
3 area, for yard purposes. All of those things are
4 considered eligible for the -- or proper cases in which
5 clearing is allowed.

6 CHAIRMAN SCHOEPLEIN: And again, I'm using
7 this to understand Dorchester County procedures more
8 completely. Again, it's just a casual appearance, but
9 it would appear that twice the acreage of trees were
10 removed as necessary for the 20,000 square foot septic
11 field. In other words, what it did provide in the
12 clearing is what I'd call an S-I-G-H-T -- a sight line from
13 the home to the pier, all the way across.

14 MR. MOORE: It's my understanding that all the
15 tree clearing was done prior to the program adoption.
16 Now, I haven't personally been involved in the
17 construction so I can't verify that. But there were
18 proper permits to do clearing and grading before the
19 program just for that reason because he knew -- the
20 owner knew it would be a problem after the program was
21 adopted as far as clearing for sight lines, if in fact



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1 that's what he -- to do.

2 CHAIRMAN SCHOEPLEIN: Okay. That's -- the
3 actual dates are something else again.

4 DR. KRECH: As far as you know, Steve, no
5 litigation took place to replace the trees or clear
6 them?

7 MR. DODD: If it was done prior to program
8 adoption, we wouldn't have required it.

9 DR. KRECH: Right.

10 MR. BOWLING: I just looked at this on the
11 vicinity map and note that it's exposed to the east and
12 the southeast probably for several miles. That's where
13 your storm tides and your storm water comes from. It's
14 a site. Got to get pretty tough in bad tide. It's
15 going to be a tough place to live.

16 MR. MOORE: Well, unfortunately, I don't know.

17 MR. BOWLING: It's strictly a comment and
18 that's all.

19 MR. MOORE: I guess what my response to the
20 comment would be that all the more reason to allow for
21 protection of the shoreline on Brooks Creek so that the



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1 shoreline can be protected. It doesn't completely erode
2 away which would be more detrimental probably to the
3 oyster bars to its south then --

4 MR. BOWLING: Choptank.

5 MR. MOORE: Right. -- than the actual three
6 additional homes would be.

7 MR. BOWLING: It looks like there's a reach of
8 perhaps two miles across there to the southeast --

9 MR. MOORE: But as far as the flood plane is
10 concerned --

11 MR. BOWLING: -- have strong winds or
12 something, it would be --

13 MR. MOORE: The homes would have to be built
14 to withstand the 100-year flood and in accordance to the
15 flood -- the Dorchester County flood plane regulations.
16 So --

17 MR. BOWLING: Just what would you do there,
18 Steve? You said they got to be on piling. How much
19 would they be elevated for --

20 MR. DODD: In this area of the county, we
21 would require an elevation of six feet above sea level.



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1 MR. BOWLING: Minimum of six feet.

2 MR. DODD: Minimum of six feet.

3 MR. BOWLING: --

4 MR. DODD: We don't have a free-board
5 requirement in the county. Typically, it would be on
6 pilings or possibly crawl space.

7 CHAIRMAN SCHOEPLEIN: When you engineered this
8 land -- and I mean this as a real question. It may
9 sound facetious when we're talking about one foot to
10 three foot. But is there any topographical map on this
11 that shows the one, two, three feet?

12 MR. DODD: I'm not sure that there is on that
13 plane.

14 MR. MOORE: We have done the topographic
15 survey on the property as it relates to the sewage
16 reserve areas. I don't believe that it's shown other
17 than locations of water's edges and so on.

18 MR. BOWLING: There's no topo here. There is
19 on 14 but not on 13.

20 CHAIRMAN SCHOEPLEIN: But that is available?
21 You do have that?



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1 MR. MOORE: We can supply you with elevations.
2 Every test kit that we did for sewage surveys we had to
3 have an elevation for. So I know I have them. I don't
4 know what form they're in.

5 CHAIRMAN SCHOEPLEIN: If you could provide
6 what you do have to the Commission, I think the panel
7 would appreciate it.

8 Are there any other questions of Mr. Moore?

9 THE PANEL: (No response.)

10 CHAIRMAN SCHOEPLEIN: We thank you for your
11 cooperation.

12 MR. MOORE: Thank you.

13 CHAIRMAN SCHOEPLEIN: Are there any other
14 questions from the audience regarding the proposed
15 growth allocation for the McCauley property?

16 AUDIENCE: (No response.)

17 CHAIRMAN SCHOEPLEIN: Again, the record will
18 remain open for the specified period of time.

19 The third and final item for this evening's
20 public hearing is identified as file number DCA 14 for
21 Dorchester County. The request for growth allocation

END

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1 land reclassification. The subdivision is identified as
2 Riverview. The request for growth allocation is 12.1
3 acres more or less.

4 MR. VENTRE: That is a typographical. It's
5 probably less than 12 acres.

6 CHAIRMAN SCHOEPLEIN: Why don't we leave it as
7 more or less?

8 MR. VENTRE: Close enough.

9 CHAIRMAN SCHOEPLEIN: Close enough.

10 DR. KRECH: We'll underline less.

11 MR. BOWLING: --

12 MR. VENTRE: Again, if anyone from the
13 audience would like to peruse the plat, you're welcome
14 to do so.

15 CHAIRMAN SCHOEPLEIN: Steve, would you
16 introduce this request for -- amendment?

17 MR. DODD: Sure. This is a proposed four-lot
18 subdivision located on Maryland Route 335 just north of
19 Upper Hoopers Island or commonly referred to as Fishing
20 Creek in this county. It's located on the Honga River.
21 It is a four-lot subdivision with three lots to be



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1 served by a proposed share facility. The fourth to be
2 supported by or served by on-site well and septic. This
3 is not an interim subdivision. This is a subdivision
4 that has gone through the review process, the lotto
5 system again, if you will, at the local level section
6 140-51 of the Dorchester County Subdivision Regulations.
7 Spells out the eligibility criteria and the process by
8 which a subdivision goes through in order to receive
9 growth allocation.

10 This subdivision was approved or granted
11 preliminary approval, I should say, by the Planning
12 Commission on January 3, 1990. It was approved by the
13 County Commissioners at a public hearing on February 6,
14 1990. It was evaluated by the Planning staff of
15 Dorchester County on December 28, 1989, using the
16 special evaluation criteria ranking methodology, and it
17 was given a point score of 83 points out of a possible
18 144; 144 being a perfect score.

19 As far as the design of the subdivision and
20 the layout of it, I'll again ask Mr. Moore to address
21 that issue. If you have any other questions about the



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1 county's handling of the subdivision relative to its
2 criteria, I'd be happy to answer those questions.

3 DR. KRECH: Was this originally a --
4 processing and -- processing area -- buildings that are
5 there look like they must have been -- galore -- picking
6 oysters, ducking --

7 MR. MOORE: Actually it was called a
8 Chrisfield Dehydration Plant.

9 DR. KRECH: Dehydration Plant, yes.

10 MR. MOORE: And what they did they took in
11 shells of crabs and dehydrated and used them for
12 fertilizers. It was operating as I understand into the
13 60's. Again, I'm Greg Moore from Andrews, Miller
14 representing Gerald Testerman, the owner of the
15 property. He owns the property with Mr. White and Mr.
16 Millam, who are not here tonight.

17 On behalf of Mr. Testerman, I do want to make
18 the point that because the factory, Chrisfield
19 Dehydration Facility, whatever you want to call it,
20 industrial, commercial, whatever, we believe that the
21 site should not have been designated a resource



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1 conservation area. I've got pictures of the site if you
2 haven't visited it. There are many buildings on the
3 site. The trees were cleared by the previous owners
4 under the operation of that facility so the habitats are
5 minimal. And the site is basically dominated by the
6 existence of those buildings and structures there. Why
7 don't you have those pictures?

8 Whether there's some parking and concrete
9 slabs in and around the buildings, there's an existing
10 sewage septic tank that the owner is currently working
11 with the Health Department to have revitalized, there is
12 an existing well. The point is that it was an operating
13 commercial facility and resource conservation area
14 designation in that case I believe was incorrect. It
15 should not have been given that designation.

16 Originally, the county classified the property
17 as LDA. And after the first review of the program by
18 the State Critical Area Commission, I do not know how
19 but the county decided to reclassify the property as
20 resource conservation area. The owner is presently
21 planning to subdivide three lots away from the



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1 commercial use. He is unsure as to what he will do with
2 the commercial use. He has a few options, most of which
3 are dependent upon final sewage acceptance by the local
4 Health Department. And the actual use of the property,
5 we actually do not know right now for lot -- for the 2.6
6 acres. The remaining three lots are to be served by a
7 bermed infiltration pond that I've talked about with you
8 before. The Health Department has given preliminary
9 approval for such a pond. And as Steve mentioned, the
10 subdivision is in its preliminary approval stage.

11 I've got a letter here from James Burdess, the
12 Director of Planning for the Maryland Department of
13 Natural Resources, stating that there are no rare and
14 endangered species on the site. And again, I think
15 that's probably because of the fact that the area was
16 all cleared. At one point, it was heavily treed, and
17 it's basically cleared and meadow now and there's not
18 much habitat. The wetlands were delineated again by the
19 Corps of Engineers in 1988.

20 And if I may, I have a letter here from the
21 Soil Conservation Service written by Jean Skinner which



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1 identifies or states that the delineation was done by
2 the corps, however, additional wetlands in the form of
3 non-tidal wetlands to meet the critical area program
4 were present in-board of the tidal wetlands that the
5 corps identified. And we did in fact delineate those
6 non-tidal wetlands. That work was done by Jim Brewer of
7 the Soil Conservation Service. And we, Andrews, Miller,
8 field surveyed both boundaries. So there are no
9 questions in my mind that the tidal and non-tidal
10 wetland boundaries are as shown on the plans. In fact,
11 the tidal wetland boundary is substantially different
12 from that tidal boundary shown on state maps and that
13 was subject of a Board of Appeals hearing at the county
14 level, a court case that Mr. Testerman had relative to
15 the intended use of this property. And it's been -- I'd
16 say there's a tremendous history around how this wetland
17 boundary was decided as it related to county zoning, and
18 how much upland was available for development.

19 MR. BOWLING: I think in the future, for
20 clarity though, when you're referring to something like
21 this, if you could project the state wetland boundary on



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1 the map as well, it would be useful.

2 MR. MOORE: Unfortunately, I would like to do
3 that. But if we keep doing changes in the corps'
4 position on what non-tidals are,, we have a problem in
5 this county all ready where our critical areas program
6 has a definition of non-tidal wetlands that is different
7 from the current definition of the Corps of Engineers.

8 DR. KRECH: It's an area where tree planting
9 could really improve that place. Make it a different
10 place entirely.

11 MR. BOWLING: State wetland boundaries though
12 were affixed in laws some years ago and now they're
13 pretty plain. They don't move. They're right there.
14 They haven't moved and they won't move unless you go
15 back and work out something out with the wetlands
16 people. But they're projection here would show us what
17 they thing they have as well. And if it's considerably
18 outside of -- as you say, then that would only lend more
19 creditability to what you've done. That's all.

20 MR. MOORE: In this case, the wetlands on the
21 state map are closer to the road than they're shown



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1 here.

2 MR. BOWLING: Closer to the road.

3 MR. MOORE: Yes. Considerably closer,
4 limiting the amount of area that was upland. Most
5 probably the reason for that was -- previous owners in
6 association with that plant.

7 DR. KRECH: -- down near the Honga River --

8 MR. MOORE: Which is considered in the tidal
9 wetlands.

10 DR. KRECH: Yes. And that which is a tidal --

11 MR. MOORE: Our buffers are 100 foot from the
12 tidals, 25 from the non-tidals shown on the program.

13 CHAIRMAN SCHOEPLEIN: There are 25 from the
14 non-tidals, too.

15 MR. BOWLING: The state wetlands then you're
16 telling me are inside of the tidal wetlands shown here.

17 MR. MOORE: Yes.

18 MR. BOWLING: Leaving less upland?

19 MR. MOORE: Yes.

20 MR. BOWLING: Mr. Ventre, do we have some
21 requirement that we have to observe in that instance as



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1 far as wetlands go? Are we tied in the law there that
2 we can't --

3 MR. VENTRE: Our law specifically refers to
4 the state wetlands maps as the maps from which all other
5 lines are demarcated.

6 MR. BOWLING: It puts us in somewhat of a bind
7 not having it here.

8 MR. VENTRE: Even though such maps, let me
9 point out, may be in error, the reference in the law is
10 to those maps, whether they are incorrect or not.

11 MR. BOWLING: And I don't think we per se can
12 change them. I think the only people that can change
13 them are the wetlands people and they only have to --
14 certain review process that they go through.

15 MR. MOORE: And it's been done on the
16 property. As I said, the --

17 MR. BOWLING: They have gone --

18 MR. MOORE: The Corps of Engineers, the State
19 have all been involved in the delineation of the
20 wetlands. And the reason -- this was all started back
21 in 1986 when Mr. Testerman, the owner, wanted to develop



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1 a more commercially intense development area. He wanted
2 to put in an RV-type park back in and around that pond
3 in the back. And based on state maps, there was not
4 sufficient area. So there was a problem with county
5 zoning.

6 MR. BOWLING: If the State has agreed to this
7 delineation of wetlands -- I think that should be a part
8 of the record of this case.

9 MR. VENTRE: Mr. Moore, you said that -- in
10 your opening comments, that you -- the operation there --
11 -- the shell fish operation continued into the 1960's?

12 MR. MOORE: As I understand it. I don't know
13 the exact dates. That's from --

14 MR. VENTRE: The buildings have been there
15 since then and have become derelict and fallen into
16 disrepair. There was no activity in intervening years?

17 MR. MOORE: Maybe the owner, Mr. Testerman,
18 can testify as to the use of the buildings. But I have
19 pictures of them and I would say that they're better
20 than dilapidated and have been maintained over the
21 years.



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1 MR. VENTRE: But was there a commercial
2 operation of some sort? What I'm getting at is, as you
3 may know from the criteria on the matter of how the
4 lands were classified by Dorchester County for critical
5 area planning purposes, the criteria specifies that as
6 of a certain date, namely December 1, 1985, land uses at
7 that time were the principle determinant into how lands
8 were to be classified. If the buildings were in
9 existence, however the land was how shall I say not
10 used, that is what would have guided Dorchester County
11 in determining whether it was RCA or LDA.

12 MR. DODD: Let me address that. The county
13 established -- I think each county had some flexibility
14 in how it went about mapping the development zone
15 designations. In our county, we set up a minimum 100-
16 acre criteria for an LDA. We set up -- and I think the
17 criteria specifically required a minimum of 20 acres for
18 an IDA. This site would not have satisfied either
19 criteria. And I would also question the fact whether
20 the parcel was in use for that purpose back in 1985.

21 I don't believe the county made a mistake when



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1 we mapped it as RCA. The reason the designation changed
2 from -- we had originally designated it as LDA and then
3 the original panel that reviewed our program disagreed
4 with our mapping methodology, and therefore, we had to
5 go back and revise it. And as a result, this area no
6 longer qualified as an LDA. The reason it qualified
7 originally was not because of the use on the parcel, but
8 because of the density of adjacent parcels. In other
9 words, we averaged out.

10 MR. BOWLING: A bigger area.

11 MR. DODD: We took a corps area that was
12 highly developed and we averaged out densities, the
13 density beyond that corps area until we reached a one
14 per five which was the mapping criteria for an LDA. And
15 this area was close enough to the upper island --
16 Hoopers Island, which is one of the highest density
17 areas in county, believe it or not. This area was close
18 enough that again, it fell in that area that we averaged
19 out to. The Commission panel felt that that was a
20 liberal interpretation and therefore, we had to shrink
21 the areas. But that's how it became an RCA.



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1 MR. TESTERMAN: Could I answer that other
2 question?

3 CHAIRMAN SCHOEPLEIN: Could you identify
4 yourself?

5 MR. TESTERMAN: Yes. I'm Gerald Testerman and
6 I own the property. When I bought it, it was --
7 dehydrating plant. It turned into like a commercial
8 trucking. Irvin Rippin was the owner of it. He -- in
9 one of the buildings -- soft crab operation. He had
10 about 50 soft crab floats inside the building and
11 drainage outside and like a large concrete tank and then
12 the water went on overboard. It was piped. And then in
13 the other building, he had a walk-in cool box where he
14 stored live crabs. And he would buy them and bring them
15 in there and store them and then take them like that
16 evening up to Baltimore. So up until '85, it was like a
17 commercial operation going on.

18 MR. BOWLING: --

19 MR. TESTERMAN: -- try to keep the building.
20 I put new roof on the buildings and, you know, kept them
21 up. And the cool box is still in there. He had a



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1 pretty good size operation going there.

2 MR. BOWLING: How is the zoning in the county,
3 non-conforming?

4 MR. DODD: Zone MAR which is Maritime
5 Agriculture Residential, which allows the seafood
6 processing as a special exception.

7 MR. VENTRE: The plat notes indicate it as
8 well as in your notes which are copied from the plat
9 that there was a special exception granted to the use
10 and activity at the site. How does that run, Steve,
11 when an operation ceases? Does the special exception
12 cease as well or does that run with the land?

13 MR. DODD: The special exception runs with the
14 land. In this instance, the special exception granted
15 to Mr. Testerman is not the same special exception or
16 non-conforming that existed with the -- plant or the
17 hydration plant. Special exception granted to Mr.
18 Testerman was in December of 1988. And the
19 grandfathering language in our zoning ordinance permits
20 or states that special exceptions or variances granted
21 prior to program adoption shall be valid unless they



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1 were to expire.

2 MR. BOWLING: What if they were abandoned?
3 That would be the same as expired?

4 MR. DODD: I'm sorry?

5 MR. BOWLING: Supposed he abandoned his use,
6 would that -- would the special exception then go from
7 the property if it were not used at all? Is there a
8 time on that --

9 MR. DODD: Not for special exceptions. Now,
10 we have a time limit to initiate the special exception.
11 If this is not initiated within two years of when it's
12 granted, it does expire. Once it becomes active and if
13 it's subsequent to becoming active, it ceases to be
14 active, there's nothing in the code that would abolish
15 or revoke the special exception.

16 MR. BOWLING: So it could be reactivated at
17 any time?

18 MR. DODD: Yes, it could be. Now, a non-
19 conforming use on the other hand is 12 consecutive
20 months. If it's abandoned for 12 consecutive months, it
21 cannot be initiated unless it conforms with the



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1 ordinance.

2 CHAIRMAN SCHOEPLEIN: The land is so flat and
3 it's covered with what I call scrub grass. Was that
4 ever level or evened out? These aren't the natural
5 contours that we see.

6 MR. MOORE: No. Those are the contours that
7 exist today.

8 CHAIRMAN SCHOEPLEIN: They exist today?

9 MR. DODD: I don't know.

10 DR. KRECH: -- beating down, beating down,
11 beating down, beating down.

12 CHAIRMAN SCHOEPLEIN: Now, lots 1, 2 and 3
13 will share the shared facility disposal --

14 MR. BOWLING: Which is a bit --

15 CHAIRMAN SCHOEPLEIN: And lot 4 -- the use of
16 lot 4 has not been determined. It depends upon --

17 MR. MOORE: Well, the use of lot 4 will depend
18 heavily on the amount of sewage that we're able to get
19 rid of, let's say, in the existing trench system that's
20 on the site. That's being review by the Health
21 Department right now.



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1 CHAIRMAN SCHOEPLEIN: Okay. I've seen sewage
2 reserved --

3 MR. MOORE: There's an existing reserve area
4 on the record of the Health Department which Mr.
5 Testerman is working with them to upgrade for a use
6 which he hasn't gotten a permit for at this time.

7 MR. VENTRE: The possibility remains then that
8 the Health Department may deny that.

9 MR. MOORE: Gerald, maybe you can comment on
10 that.

11 MR. TESTERMAN: I just got my permit
12 yesterday.

13 MR. MOORE: You got your permit for that.

14 DR. KRECH: -- piping that was put in years
15 ago -- PVC.

16 MR. MOORE: For the record, Mr. Testerman has
17 said that he has gotten his permit as of yesterday from
18 the Health Department for that lot.

19 MR. VENTRE: That's for the area on lot number
20 -- on what would become lot number 4?

21 MR. TESTERMAN: Yes. The VIP was made large



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1 enough when we designed it if the Health Department
2 didn't want to give us a repair permit for that lot,
3 that the sewage from lot number 4 could go into the
4 pond. But they did give us a repair permit this week --
5 the existing septic at the dehydrating plant. They have
6 bathrooms out front. There's a separate building of
7 bathrooms and went into a septic 800-gallon tank but the
8 top rusted off of it.

9 CHAIRMAN SCHOEPLEIN: Is that the big tank
10 that sits next to the shed?

11 MR. TESTERMAN: No. That's was a dryer. When
12 they ground the oyster and crab shells up, they put them
13 inside of there and that thing turned. It was only --
14 it dried the shells and then they took that substance
15 and packed them in bags --

16 MR. BOWLING: What was left of the septic tank
17 is still on the ground.

18 MR. VENTRE: Well, we were close. We thought
19 that it looked like a cement kiln, you know, a rotary
20 kiln for cement.

21 MR. TESTERMAN: I tried to get somebody to



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1 haul it off, but the guy put it up on the back of his
2 flat bed and it smashed it down, so we had to cut it up.

3 CHAIRMAN SCHOEPLEIN: Are there any other
4 questions regarding this particular proposed program
5 amendment? Tom, would you announce again the deadline
6 by which the Commission will accept any additional
7 written remarks for the record?

8 MR. VENTRE: The record of this hearing will
9 remain open until noon on Wednesday, May 2, 1990.

10 CHAIRMAN SCHOEPLEIN: And for the record,
11 would you give the telephone number and the address?

12 MR. VENTRE: Yes. If anyone wishes to address
13 comments in writing to the Commission, they may address
14 them to the Chesapeake Bay Critical Area Commission at
15 275 West Street, Suite 320, Annapolis, 21401. And the
16 telephone number is area code 301-974-2426.

17 CHAIRMAN SCHOEPLEIN: Are there any additional
18 comments?

19 MR. TESTERMAN: You had a question about the
20 difference between the State and Federal. I was down
21 there when they were both there and there is a



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1 difference, but it's very close as to -- you know, just
2 a matter of feet. Only it might be like an acre
3 difference between what the State came up with and what
4 the Federal came up with -- total.

5 MR. BOWLING: We're required in our criteria
6 to recognize the wetlands as defined in the state
7 wetlands maps. That's a requirement in our criteria in
8 the law. We don't have an option. If there is a
9 difference, it would be very nice to have that on there.
10 We're probably have to go back and ask how wetland
11 people -- to show us exactly where that lays relative to
12 where your is.

13 MR. MOORE: Can I comment on that? The
14 problem with that is in most cases, the wetlands
15 boundaries are closer to uplands and have moved inward
16 in Dorchester County than outward. This is one of the
17 few and probably the only case that I've seen here in
18 the county that the wetland boundary moved outward. If
19 we don't show the actual designated wetland boundary
20 after proofing by the corps and the state, filling of
21 wetland could be approved by your body. So we as



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1 professionals think that it's not a good idea to show
2 the state boundary if it's been checked by the State and
3 the Corps, which is the case here.

4 MR. BOWLING: Have both of those have been on
5 the site?

6 MR. MOORE: Yes.

7 MR. BOWLING: And obviously, they have a
8 record of that.

9 MR. MOORE: And I can -- in fact, I intend to
10 send you the information concerning the dates, the times
11 and the people who were there and give you more
12 information as to that change, because as I said, it's a
13 long history and I don't want to confuse the issue
14 tonight.

15 MR. VENTRE: --

16 DR. KRECH: --

17 CHAIRMAN SCHOEPLEIN: No other questions or
18 comments, this public hearing is adjourned.

19 (Whereupon, at 9:00 p.m., the above-
20 entitled hearing was adjourned.)

21



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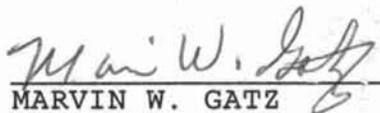


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CERTIFICATE OF NOTARY

1 I, MARVIN W. GATZ, the officer before whom the
 2 foregoing testimonies were taken, do hereby certify that
 3 the witnesses whose testimonies appear in the foregoing
 4 transcript were duly sworn before me; that the
 5 testimonies of said witnesses were taken by me by
 6 magnetic tape and thereafter reduced to typewriting by
 7 me or under my direction; that said testimonies are true
 8 records of the testimonies given by said witnesses, that
 9 I am neither counsel for, related to, nor employed by
 10 any of the parties to the action in which these
 11 testimonies are taken; and, further, that I am not a
 12 relative or employee of any attorney or counsel employed
 13 by the parties hereto, nor financially or otherwise
 14 interested in the outcome of the action.

15 
 16 MARVIN W. GATZ
 17 Notary Public in and for
 18 the State of Maryland

19 My Commission Expires:

20 July 1, 1990
 21



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