

Public Hearings - General Membership Meeting

1990

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DEPARTMENT OF NATURAL RESOURCES  
CRITICAL AREAS COMMISSION

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Wednesday, March 7, 1990

GENERAL MEMBERSHIP MEETING

Pursuant to Notice, the above-entitled meeting  
of the Department of Natural Resources Critical Areas  
Commission was held at the White Oaks Marina, in  
Chestertown, Maryland, commencing at 1:35 p.m.

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

1  
2 MR. BUTANIS: I'd like to call the meeting to  
3 order. As you can all see, Judge North is not here  
4 today, nor is our vice chair, Mr. Price, so I've been  
5 asked to fill in, so you're stuck with me.

6 Preliminarily, Sarah had some introductions to  
7 make, I believe.

8 MS. TAYLOR: Yes. Before half of the new  
9 staff leave I wanted to introduce them to you.

10 I'd first of all like to start with Judge  
11 North's secretary, and my secretary, Peggy Mickler, to  
12 my right. And she'll be doing most of the phone calls  
13 from here on out, as far as Commission meetings are  
14 concerned, attendance, et cetera.

15 And if you could all kind of turn your name  
16 tags in this direction it would be helpful to her, since  
17 she doesn't know all of you as of yet, but has promised  
18 to have your names memorized by the next meeting.

19 I would also like to introduce Claudia Jones.  
20 She is our new Natural Resource Planner III, that is  
21 filling the shoes of Abbie Rome, and we're mighty



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1 pleased to have her on board. She is now our wetlands  
2 expert, and hails from Fish and Wildlife Service. Am I  
3 correct on that one?

4 MS. JONES: Yes.

5 MS. TAYLOR: Good, I kept that.

6 I'd like to introduce finally two interns,  
7 from the University of Maryland, College Park, who have  
8 agreed to tackle a few issues that we have around  
9 grandfathering. I'm really amazed that they want to do  
10 this, and every week they come in they're excited and  
11 thrilled that they're still working on it. I can't  
12 guarantee that by the end of June, but I would like to  
13 introduce Carmen Jelotti and Theresa Corliss. And they  
14 both come from a Natural Resource management program at  
15 the University of Maryland, so we're really pleased to  
16 have them, as well.

17 I have another announcement to make, if I may  
18 do so. Our assistant attorney general is going to the  
19 private sector, and the firm of Linowes and Blocher is  
20 very lucky to get him, I must say. And we will be  
21 losing as of April 1st, an auspicious date, Lee Epstein.



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1                   And there are several people that will be  
2 coming back, for whom we have certificates. We want to  
3 have Lee's done as well, for our April meeting, so we  
4 can acknowledge everyone.

5                   But Lee, on behalf of Judge North and I, at  
6 least today, but we'll be saying some more about it,  
7 congratulations to you, and now we're going to be  
8 illegal, I guess, as all get out, because we'll have  
9 nobody keeping up straight.

10                   Do you want to say anything?

11                   MR. EPSTEIN: Well, I guess this is probably  
12 the last time I'm going to be with you all, at least  
13 from this side of the table. I've got to say this has  
14 been a hell of an experience.

15                   Not many people have the opportunity to work  
16 with a group as dedicated as this group has been. To  
17 work on a new state program as far reaching as this  
18 state program is, and to work with a staff as good as  
19 this staff has been, but I have been privileged to do  
20 that.

21                   I have other clients in DNR. This has



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1 certainly been the most interesting of clients. Again,  
2 not many lawyers get the opportunity to have a client  
3 that's 26 people big, or 26 different minds, all  
4 operating at the same speed. But I've had that chance,  
5 and I appreciate it, and I appreciate all your help, and  
6 certainly your patience, over the last five and a half  
7 years, and I wish you the best. I think your work is  
8 valuable, and I think it's probably one of the few  
9 programs in the country like it. And I hope for nothing  
10 but the best for this Commission.

11 Thank you.

12 MS. TAYLOR: Well, Lee, we really appreciate  
13 everything you've done for us, and I personally, quite  
14 frankly, could not have done anything at all without  
15 your help and assistance, and I know the rest of the  
16 staff feels the same.

17 And when you come back in April for "the  
18 roast" or whatever it may be, we know you'll be  
19 then wearing the private hat, but at least for now we'd  
20 really like to thank you so much for what you've done.

21 (Applause.)



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1 MR. BUTANIS: Okay, let's move on with the  
2 agenda.

3 First we have the approval of the minutes of  
4 the last meeting of February 7th. I guess they've been  
5 disseminated and everybody has had a chance to read  
6 them. Is there a motion to approve them?

7 VOICE: So moved.

8 MR. BUTANIS: Second?

9 VOICE: Second.

10 MR. BUTANIS: Any discussion, amendments,  
11 changes?

12 All in favor say "aye".

13 AUDIENCE: Aye.

14 MR. BUTANIS: Any opposed?

15 AUDIENCE: (No response.)

16 MR. BUTANIS: So ordered.

17 Let's move on to the vote on Chesapeake Beach.

18 Sam, you were the chair of that.

19 MR. BOWLING: We are prepared to recommend  
20 approval of two of these amendments, approval of a third  
21 with conditions, and acceptance of a mapping correction



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1 is really what -- I can do these separately, or  
2 individually, or we can have Susan come forward and  
3 explain --

4 MR. BUTANIS: Okay, why don't we have Susan  
5 give a brief synopsis of what this is all about.

6 MS. LAWRENCE: Okay, Chesapeake Beach has  
7 proposed map amendments for four different parcels  
8 within the town of Chesapeake Beach. Actually I should  
9 say four different locations. North Chesapeake  
10 subdivision, location number three, is several lots.

11 The first location, the Harbor Road and Howlin  
12 property, has a development named Captain's Quarters  
13 proposed. We're not voting on that proposal today, just  
14 on the buffer exemption designation.

15 We do have information about what is proposed  
16 on the sites, however, we're not specifically voting on  
17 that today.

18 The areas are currently qualified, locations  
19 one, two and four are currently qualified, for  
20 designation as buffer exemption, according to 14.15.09 C  
21 (8) that states that buffer exemptions may be requested



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1 for portions of the critical area, from buffer  
2 requirements -- that's the 100 foot buffer requirements  
3 -- where it can be sufficiently demonstrated that the  
4 existing pattern of residential, industrial, commercial  
5 or recreational development in the critical area  
6 prevents the buffer from fulfilling the functions stated  
7 in 14.15.09 B.

8 The functions include providing for the  
9 removal or reduction of sediments, nutrients and  
10 potentially harmful toxic substances in run off entering  
11 the Bay and it's tributaries; minimizing the adverse  
12 effects of human activities on wetlands, shoreline,  
13 stream banks, tidal waters and aquatic resources;  
14 maintaining an area of transitional habitat between  
15 aquatic and upland communities; maintaining the natural  
16 environment of streams, and protecting riparian wildlife  
17 habitat.

18 Areas one -- locations one, two and four are  
19 all areas where those functions are not being fulfilled  
20 due to the fact that there's been unnatural fill placed  
21 in the area in the case of the Harbor Road and Howlin



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1 property. Location number two, the area that's being  
2 requested is along a bulkheaded tidal basin, the rest of  
3 the property has a little gas station, and has been  
4 determined by Coastal Resources, Inc. to be 84 percent  
5 impervious. A very compacted area that has been used as  
6 a garage, parking lot area for years.

7 And then location number four, Fishing Creek  
8 is bulkheaded and used as a marina. It's in marina use,  
9 and that's actually a mapping correction, they're  
10 proposing that as a mapping correction for buffer  
11 exemption because it should have been mapped as such in  
12 the original map.

13 The third area in North Chesapeake Beach  
14 subdivision is currently developed in single family  
15 lots, and we are recommending to the Commission that  
16 this area not be approved due to the precedent that  
17 might be set throughout the critical area with similar  
18 lots, with lawns and trees, that's throughout the Bay  
19 area, and we thought no, in the critical area there are  
20 many, many lots like that. That might set a precedent  
21 that we don't want to set.



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1 Does anyone have any questions about any of  
2 the sites or --

3 MR. BUTANIS: Sam, do you have anything?

4 MR. KREITNER: What's the purpose of the third  
5 exemption they're seeking? Why do they want it?

6 MS. LAWRENCE: They want it because there's no  
7 functioning buffer, and they don't want people to have  
8 to go through various procedures to build a porch or  
9 deck on their home.

10 MR. BOWLING: Actually all of these are in an  
11 intensely -- in intensely developed areas. None of them  
12 are in an LDA, or RDA.

13 MS. LAWRENCE: I think the North Chesapeake  
14 Beach subdivision is.

15 MR. BOWLING: Is LDA?

16 MS. LAWRENCE: Yes. But the remaining areas are  
17 IDA.

18 MR. BUTANIS: Okay, is the panel prepared to  
19 make a recommendation and motion?

20 MR. BOWLING: I have motions on them  
21 separately.



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1           On the Harbor Road, Howlin property, Captain's  
2           Quarters, the panel moves that we approve the buffer  
3           exemption area designation on this site, provided that  
4           development standards in the buffer exemption area as  
5           per the town of Chesapeake Beach's Critical Area  
6           Protection Program, and amendments to the Chesapeake  
7           Beach zoning ordinance are followed.

8           Provided they follow those amendments, we  
9           approve it.

10           And that the storm water pond which they have  
11           indicated they will construct on the site be included.

12           MR. BUTANIS: Okay, and that's one motion?

13           VOICE: Second.

14           MR. BOWLING: One site.

15           MR. BUTANIS: Any further discussion?

16           MR. ZAHNISER: Being included in what?

17           MR. BOWLING: Being included in their final  
18           development?

19           MR. ZAHNISER: In their plan?

20           MR. BOWLING: Yes, their site development  
21           plan, I guess I should say.



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1 MR. BUTANIS: All in favor say "aye".

2 AUDIENCE: Aye.

3 MR. BUTANIS: Any opposed?

4 AUDIENCE: (No response.)

5 MR. BUTANIS: Motion carried.

6 MR. BOWLING: On Baycrest subdivision,  
7 approve the buffer exemption area designation of the  
8 site along the bulkheaded inland tidal basin, provided  
9 that development standards in the buffer exemption area,  
10 as per the town of Chesapeake Beach Critical Area  
11 Protection Program, and amendments to the Chesapeake  
12 Beach zoning ordinances, are followed.

13 And that the storm water management pond on  
14 the proposed site plan is constructed. And as shown,  
15 vegetation is planted per the standards of the local  
16 program.

17 MR. BUTANIS: Is there a second?

18 VOICE: Second.

19 MR. BUTANIS: Any further discussion?

20 AUDIENCE: (No response.)

21 MR. BUTANIS: All in favor say "aye".



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1 AUDIENCE: Aye.

2 MR. BUTANIS: Any opposed?

3 AUDIENCE: (No response.)

4 MR. BUTANIS: Motion carried.

5 MR. BOWLING: Disapprove the map amendment  
6 proposed to change the designation of the shore line of  
7 the five lots in old Chesapeake Beach subdivision to a  
8 buffer exemption area.

9 We feel that we would be setting a bad  
10 precedent, and we don't want to do that.

11 MR. BUTANIS: Is there a second?

12 MR. ZAHNISER: Second.

13 MR. BUTANIS: Any discussion?

14 MR. EPSTEIN: I'd like to ask a question just  
15 for the record.

16 MR. BUTANIS: Sure.

17 MR. EPSTEIN: Is it your view that that  
18 development as is currently configured, is not  
19 preventing the buffer from performing as it's supposed  
20 to perform?

21 MR. ZAHNISER: No, because it is a normal



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1 grass lawn from the houses to the property line, or to  
2 the wetlands that exist, and if you say that that's not  
3 causing a normal function of the buffer, then no lawn  
4 would be in that.

5 MR. EPSTEIN: So you're saying that the  
6 buffer is -- that there is a function that's being  
7 performed and therefore --

8 MR. BOWLING: Converting it should require a  
9 variance rather than a --

10 MR. ZAHNISER: The buffer is treed and  
11 grassed.

12 MR. BOSTIAN: And the point is that you're  
13 making a distinction between LDA and IDA situations.

14 MR. BUTANIS Any further discussion?

15 AUDIENCE: (No response.)

16 MR. BUTANIS: All in favor say "aye."

17 AUDIENCE: AYE.

18 MR. BUTANIS: Any opposed?

19 AUDIENCE: (No response.)

20 MR. BUTANIS: Motion carried.

21 MR. BOWLING: And we also move that we accept



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1 the mapping correction designation of bulkheaded portion  
2 of Fishing Creek, with the buffer exemption. That they  
3 just indicated they made a mistake in their mapping, and  
4 we agreed with them that it probably should have been  
5 that way.

6 MR. BUTANIS: Is there a second?

7 MR. ZAHNISER: Second.

8 MR. BUTANIS: Any discussion?

9 AUDIENCE: (No response.)

10 MR. BUTANIS: All in favor say "aye."

11 AUDIENCE: Aye.

12 MR. BUTANIS: Opposed?

13 AUDIENCE: (No response.)

14 MR. BUTANIS: Motion carried.

15 Thank you, Sam.

16 Is Bob Sallit here?

17 MS. TAYLOR: Margaret?

18 VOICE: (Inaudible.)

19 MS. TAYLOR: Oh, we can then go ahead with the  
20 Kent Island project?

21 Okay, thank you.



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1 MR. BUTANIS: Let's go on with the Kent Island  
2 Environmental Center Project.

3 Kay, you and Sam were co-chairs on that, and  
4 you've got a statement to make?

5 MR. BUTANIS: You want to run through this,  
6 Ren?

7 MR. SERCY: The State Highway Administration  
8 is proposing the Chesapeake Bay Environmental Education  
9 and Visitor Center on Kent Island.

10 In January, SHA attended our meeting and  
11 described the project, and David Carroll was here also,  
12 and described a little bit about it. Abbie Rome had  
13 been the staff planner for the project, and she watched  
14 it pretty carefully.

15 There were a couple changes that needed to be  
16 made regarding staying out of the buffer and some  
17 planting that needed to be done.

18 What we have now is a 300 foot buffer as  
19 required by Queen Anne's County; we have the building,  
20 the Environmental Education and Visitor Center; a  
21 parking lot; an access road, all on county owned land,



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1 park land, that will be leased to the state. The state  
2 will operate the facility, and will bring, for the most  
3 part, school children, and other groups in for  
4 environmental education activities.

5 No development is proposed within the buffer.  
6 Stormwater management is to be conducted for water  
7 quality. There will be a waterfowl enhancement  
8 project on the site, and that will be coordinated with  
9 DNR.

10 Margaret Ki, from the County Planning Office,  
11 is here and Charlie Adams, the director of the  
12 landscape architecture division at State Highways, is  
13 here.

14 The county is in favor of the project, feels  
15 that it does meet their requirements, and the county  
16 planning staff had been involved at every stage.

17 If you have any questions for either of those  
18 people, they'd be willing to answer them.

19 MR. BOSTIAN: Ren, I have a question for you.  
20 Who's requiring the mitigation of the wetlands be  
21 performed?



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1 MR. SERCY: Who's requiring that it -- there  
2 was no requirement, it's voluntary action by State  
3 Highways, I think through coordination with DNR. But  
4 they will be doing it on site.

5 MR. BOSTIAN: It's not being required by the  
6 EPA or the Army Corps of Engineers?

7 MR. SERCY: That I don't know.

8 VOICE: This is out on applications of public  
9 notice, due to come off public notice on the 26th of the  
10 month. It's 22/100ths of an acre impact and shrub  
11 scrub, and I don't know -- typically that's a nationwide  
12 permit, and for that small an impact normally does not  
13 require mitigation, but we are going to provide  
14 mitigation whether it's required by permit or not.

15 MR. BOSTIAN: -- whether we're being required  
16 to do it or not?

17 MR. BUTANIS: We don't know at this point  
18 whether we will be or not, but whether we are or not  
19 we're going to provide the mitigation.

20 Sir, would you be so kind as to identify  
21 yourself?



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1 MR. ADAMS: I'm sorry, I'm Charlie Adams. I'm  
2 chief of the Landscape Architecture Division, State  
3 Highway Administration.

4 MR. SERCY: The staff recommendation is for  
5 approval on the sub committee -- or the sub committee  
6 met this morning, and Kay has a motion.

7 MS. LANGNER: The Project Evaluation Committee  
8 is in favor, and I would like to move that we vote  
9 approval as proposed on the Kent Island Environmental  
10 Study.

11 MR. PHILLIPS: Second.

12 MR. BUTANIS: Any further discussion?

13 AUDIENCE: (No response.)

14 MR. BUTANIS: All in favor say "aye."

15 AUDIENCE: Aye.

16 MR. BUTANIS: Any opposed?

17 AUDIENCE: (No response.)

18 MR. BUTANIS: Motion carried unanimously.

19 Thank you, Ren.

20 Okay, let's move back to the vote on St.

21 Mary's County map amendments.



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1           Go ahead, please.

2           MR. SERCY: As you'll notice at the top of the  
3 page, this staff report is dated January -- February  
4 7th. February 7th. It's the same staff report that I  
5 passed out last month.

6           At that time St. Mary's County had proposed  
7 changes to its program. During the period between  
8 Commission approval and local adoption the county is  
9 allowed to propose changes to the Commission during that  
10 period.

11           There are a number of changes outlined on  
12 this. I explained them briefly last time. I'll just  
13 mention them again.

14           They involve administrative changes to local  
15 procedures, and technical corrections, both of the text  
16 and the mapping.

17           The map revisions are explained on the back.  
18 These map revisions described in this staff report are  
19 of a minor nature. They are corrective changes. They  
20 do not involve the issue that has been of some  
21 controversy.



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1           These changes are all recommended for  
2 approval, by the staff. The subcommittee met both a  
3 month ago and this morning on these changes.

4           As you remember, and I'll just emphasize it  
5 once again, as you remember there has been considerable  
6 discussion about the Maryland Rock property in St.  
7 Mary's County. That is not contained in this staff  
8 report. The panel has decided to consider that as a  
9 separate issue, and what you have before you is  
10 merely a recommendation for approval of those minor  
11 changes.

12           MR. GUTMAN: Mr. Chairman, if I may at this  
13 time make a motion to accept the staff report, and  
14 affirm these changes.

15           MR. BUTANIS: Okay, that would be the  
16 administrative additions, the technical corrections and  
17 the map revisions?

18           MR. GUTMAN: That is correct.

19           MR. BOWLING: I'll second that.

20           MR. BUTANIS: And with the understanding that  
21 the map revisions do not pertain to the Maryland Rock



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1 property?

2 MR. BOWLING: Correct.

3 MR. BUTANIS: There is a second.

4 Any further discussion?

5 AUDIENCE: (No response.)

6 MR. BUTANIS: All in favor say "aye."

7 AUDIENCE: Aye.

8 MR. BUTANIS: Any opposed?

9 AUDIENCE: (No response.)

10 MR. BUTANIS: Motion is carried.

11 MR. SERCY: The other issue regarding St.  
12 Mary's County is not described in a staff report.

13 That issue is about the Maryland Rock  
14 property. And as you probably remember that is a parcel  
15 of land that has an ongoing sand and gravel processing  
16 facility on it.

17 In December when you approved the County's  
18 Critical Area Program that parcel was included, and was  
19 designated as RCA, and you approved that.

20 Last month, at our last month meeting, the St.  
21 Mary's County Commissioners informed the Commission that



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1 they wanted to propose a change for that parcel to  
2 designate a portion of it, 22 acres, as IDA.

3 The Commission decided not to vote on that  
4 parcel, on that change, at that time because a 30 day  
5 period is permitted for the Commission to consider  
6 these changes, and because February was a short month we  
7 could also consider it today and still be within the 30  
8 days. So in a sense that proposal was tabled last time.  
9 Now you have before you the County Commissioner's  
10 request and notification to the Commission to change,  
11 once again, the designation and the proposal to RCA, to  
12 coincide with what you approved in December for this  
13 parcel.

14 The letter that I'm passing around is from the  
15 County Commissioners, dated today. They met last night  
16 and decided to leave as RCA the designation.

17 The letter contains two paragraphs. Only the  
18 top paragraph pertains to the Maryland Rock property.  
19 The bottom paragraph concerns one of the technical  
20 changes that we discussed a few moments ago.

21 The subcommittee met this morning, discussed



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1 the County's latest designation of this parcel. I  
2 reported to them that the staff recommendation is for  
3 approval of the RCA, as the County has proposed.

4 The reason for that is that not only is sand  
5 and gravel mining permitted within the critical area,  
6 within the RCA, but the accessory uses, which would  
7 include processing, is also permitted in an RCA  
8 designation. The County has proposed RCA for the site.  
9 The staff recommendation is that that is consistent with  
10 the criteria, and with the County's program.

11 The panel, St. Mary's County panel, voted to  
12 agree with the County, regarding the designation as RCA.

13 Jim?

14 MR. GUTMAN: And I would at this time so move.

15 MR. ZAHNISER: Second.

16 MR. BUTANIS: Any further discussion?

17 Ron?

18 MR. HICKERNELL: Our motion is to do what?

19 MR. GUTMAN: The motion is to approve the St.  
20 Mary's County Commissioners' decision of March 7th, the  
21 paper that was distributed, identifying the parcel in



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1 question as RCA.

2 MR. HICKERNELL: Well, I heard the Commission  
3 has already so acted.

4 MR. BUTANIS: An argument could certainly be  
5 made that the Commission's letter of March 7th removes  
6 from our consideration anything to do with the change in  
7 this property. However, after consulting with counsel,  
8 we believe it prudent that we must act in some form or  
9 fashion on this amendment to their proposed amendment,  
10 so to speak.

11 So we could, if we so chose, consider this  
12 March 7th action by the County Commissioners a new  
13 amendment, and which would trigger another 30 day  
14 period. We don't have to utilize that entire time if  
15 we're prepared to move forward today.

16 The panel has considered this in light of the  
17 amendment to the proposal, and I understand they're  
18 endorsing the County Commissioners' actions with respect  
19 to keeping this property as RCA.

20 I see at least a couple people out in the  
21 audience that would probably like to make a statement.



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1 Now might be an appropriate time.

2 Is there anybody in the audience that would  
3 like to address the Commission at this time?

4 VOICE: Yes.

5 MR. BUTANIS: Before you begin, is there  
6 anybody else that wanted to address the Commission on  
7 the issue of the Maryland Rock property?

8 If we could keep our statements to maybe five  
9 minutes, that would help things proceed.

10 MR. BROSSMAN: My name is Doug Brossman. I'm  
11 an attorney for Maryland Rock. I want to go through  
12 slowly and clearly the history of this property. I'll  
13 try and keep it below five minutes, but if I'm still  
14 holding your interest after that time, I request your  
15 indulgence.

16 MR. BUTANIS: You can say a lot in five  
17 minutes. The clock is running.

18 MR. BROSSMAN: There's two issues here. One  
19 substantive, one is procedural.

20 I want to do the substantive issue first, as  
21 to what is the proper designation of this property.



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1           The initial draft Critical Areas Program,  
2 initial mapping of this property by the county,  
3 showed this area in question as an intensely  
4 developed area.

5           You heard testimony last month that there's  
6 no question it was used, the entire parcel, was used as  
7 industrial use on December 1, '85.

8           The Court of Special Appeals has held that  
9 it's been used as an industrial use since before 1975,  
10 which pre-dates zoning in Queen Anne's County.

11           So factually there's no question.

12           MR. BUTANIS: St. Mary's.

13           MR. BROSSMAN: St. Mary's, I'm sorry.

14           So factually there's no question the property  
15 has been used as an industrial use.

16           Now the draft program that came up to you in  
17 December, however, for approval, submitted by St. Mary's  
18 County had changed the designation of that property from  
19 IDA to RCA, and they provided a specific rationale for  
20 that in the program that you approved. So that the sub  
21 area encompassing the surface mining operation, while in



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1 existence prior to December 1, '85, was nevertheless  
2 classified as RCA. The rationale for this  
3 classification lay in the fact that said mine operation  
4 is permitted under a conditional use permit, which  
5 mandates, among other provisions, that the area be  
6 restored to its former state upon the completion of the  
7 gravel mining.

8 Upon such restoration the subject property  
9 shall not meet the required test for either LDA or IDA  
10 classification.

11 This says they classified it based on a  
12 presumption that the property was operating subject to a  
13 conditional use under zoning.

14 That issue was in the courts at the time. The  
15 Court of Special Appeals held that this property was  
16 subject to a non-conforming use, not a conditional use.

17 The non-conforming use allowed the uses on  
18 this property to proceed ad infinitum. They're not  
19 subject to the restoration and termination procedures of  
20 the conditional use. That is an adjacent property,  
21 which had the use started on it sometime later.



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1           So, the rationale for the initial RCA  
2 designation was wrong, and that's what you approved, the  
3 rationale was wrong.

4           At their County's January 23, 1990 public  
5 hearing on the issue, which, by the way, was an  
6 advertised public hearing with the agenda published in  
7 the newspaper, they addressed that issue, and they asked  
8 for their county attorney's opinion on it -- to research  
9 the issue, and they found that the use on the Maryland  
10 Rock property was not subject to a restoration  
11 agreement, did not have to terminate; therefore their  
12 rationale for the RCA determination was wrong.

13           They then submitted a request to you, among  
14 other requests, to change the parcel to an IDA. That  
15 was based on their definition and their plan for how  
16 property should be designated.

17           Now we're hearing that another reason why it  
18 should be RCA is because it's an allowable use in an RCA  
19 district.

20           That's really irrelevant. The issue is, it's  
21 not a use issue here, the issue is how should it be



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1 designated, it's a designation issue, under the  
2 designation criteria in the plan.

3 It clearly says IDA, or those areas developed  
4 predominately with commercial, industrial or  
5 institutional uses over 20 acres. That clearly applies  
6 here. That clearly fits the definition of an IDA area,  
7 therefore there's really no factual question, the area  
8 should be designated IDA.

9 The county held a public hearing on that  
10 January 23rd. They reached that conclusion, and they  
11 submitted that request for a change to you.

12 That gets us back to the procedural issue.  
13 Last night, apparently St. Mary's County has an open  
14 forum the first Tuesday of every month, which apparently  
15 is an open, public hearing. There was no published  
16 agenda saying the critical areas issue would be looked  
17 at. No public notice the critical areas issue would be  
18 looked at. This was their open forum.

19 We had representatives at that meeting.  
20 Relatively early in that meeting -- I'm paraphrasing, I  
21 don't know what the exact quote was as I'm getting this



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1 secondhand. A question was asked to the audience, "Is  
2 there any business to come before this board now, which  
3 was subject old business or a reconsideration of old  
4 decisions?"

5 There was nothing brought up from the  
6 audience.

7 As a result our representative left.

8 We find out this morning that at 12:00 last  
9 night, after no notice to anybody, no public notice of  
10 an agenda, the county had reversed its decision from  
11 what it held on the public hearing, which had a  
12 published agenda.

13 The county attorney wasn't even present at the  
14 time they made this reversal.

15 We submit that the county cannot withdraw a  
16 duly authorized holding of a public hearing by  
17 what ever you want to call it -- I don't even have a  
18 name for it, but they were not authorized to withdraw  
19 it. It was an illegal request for a withdrawal of their  
20 formal proposal.

21 As a result the holding of their public



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1 hearing must stand, and that's the request to re-  
2 classify this area to its proper designation, the IDA,  
3 which, as I pointed out to you earlier, the initial RCA  
4 designation was wrong. And in fact, the rationale here  
5 was held wrong by the Court of Special Appeals.

6 And those are the facts I don't think have  
7 been brought out to this Commission.

8 You have a property that was unquestionably  
9 industrial. There's no requirement for it to be  
10 restored under the clear definition of your criteria,  
11 your own criteria, it has to be IDA. How it can be  
12 anything else is beyond me.

13 You have a valid request from the county  
14 asking it to be changed at a valid public hearing, and  
15 that's what should be considered.

16 MR. BUTANIS: Thank you, sir.

17 MR. BROSSMAN: Thank you.

18 MR. GUTMAN: Can I just ask the speaker a  
19 question?

20 MR. BUTANIS: Sure.

21 MR. GUTMAN: Mr. Brossman, is it within the



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1 authority of the County Commissioners to provide a  
2 designation for what they feel belongs in the three  
3 classifications, IDA, LDA and RCA. Is that within their  
4 province?

5 MR. BROSSMAN: Are you asking me to give you  
6 my opinion, or advise you on that?

7 I feel they've set rules --

8 MR. GUTMAN: Can you answer the question?

9 MR. BROSSMAN: They set rules in their program  
10 to be used in delineating the three use categories in  
11 their county, and they are bound to follow those rules.  
12 Those rules say property of 20 acres or more, dominated  
13 by industrial use is already designated IDA. Therefore,  
14 an application of those rules -- you have to apply those  
15 rules within their discretion, and that mandates  
16 the property being designated IDA.

17 MR. GUTMAN: I'm afraid you didn't get the  
18 thrust of my question.

19 Under county law do the County Commissioners  
20 have authority to designate how parcels shall be  
21 classified? I think a straight yes or a no would help.



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1 MR. BROSSMAN: They have the authority to  
2 designate it pursuant to their rules. They must apply  
3 their laws, that's the simple answer, and you can ask  
4 your counsel if he feels any differently on it.

5 MR. GUTMAN: I'm asking you, sir.

6 MR. BROSSMAN: And I'm telling you.

7 MR. GUTMAN: Do they have the authority, or  
8 don't they?

9 MR. BROSSMAN: They cannot arbitrarily  
10 designate property, no.

11 MR. GUTMAN: They don't have the authority?

12 MR. BROSSMAN: To arbitrarily designate  
13 property?

14 MR. GUTMAN: No, I said do they have the  
15 authority to designate --

16 MR. BOSTIAN: Jim, I think he's answered your  
17 question.

18 MR. BROSSMAN: Pursuant to their program, yes,  
19 they have the duty to.

20 MR. GUTMAN: They have the authority?

21 MR. BROSSMAN: Pursuant to their program.



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1 MR. BUTANIS: Okay, let me cut this off.

2 MR. GUTMAN: It would seem to me that the  
3 thrust of your argument is not with this Commission, but  
4 rather whether there's a problem with what your County  
5 Commissioners did.

6 MR. BROSSMAN: The County Commissioners took  
7 some action last night. I am pointing out what I feel  
8 are the facts in the law to this Commission. Because  
9 they have asked you, through what I feel, an improper  
10 means to take action, and I'm pointing out why I feel  
11 that is improper.

12 You, as a Board, can either take action today  
13 or can defer that another 30 days, and that is your  
14 decision.

15 MR. BUTANIS: Mr. Hickernell?

16 MR. HICKERNELL: I would speak to the argument  
17 of delaying action by the Commission at this time.

18 Very simply, we have before us a letter dated  
19 earlier today, that refers to action taken last evening,  
20 that reverses prior action taken by this County  
21 Commission. I think the statement made by counsel bears



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1 investigation, at least for my vote.

2 It seems to me that, very simply, if the  
3 Commission has designated a program in this -- if the  
4 County Commissioners designated a program, and this  
5 Commission has reviewed their program and accepted it,  
6 that an amendment to that program which may not in fact  
7 conform with the tenants of the program, at least ought  
8 to bear out our investigation, and we should act based  
9 on that understanding, and not act before we understand  
10 that.

11 I would suggest we not act today.

12 MR. BUTANIS: Lee, is it incumbent on us to  
13 look behind any proposed procedural defects in an  
14 amendment that comes before us? Do we have that  
15 obligation?

16 As I understand it, when a county submits a  
17 program or an amendment to us, we would presume that it  
18 had been lawfully enacted, lawfully endorsed by that  
19 governing body.

20 When a challenge is made to that, to the  
21 enactment of that proposal, and the challenge is made,



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1 really for the first time before us, what is our  
2 obligation with respect to investigating that before we  
3 consider the proposal?

4 MR. EPSTEIN: I think you're correct that it's  
5 probably not the legal charge of this Commission to look  
6 behind what purports to be an appropriate local action.

7 You can though, you may, if you feel you wish  
8 to, you may feel it's your moral, if you will,  
9 obligation to do so. But that's your decision. You  
10 don't have to do so, I don't believe.

11 I would suggest also that today, depending on  
12 whether the full Commission agrees with Mr. Hickernell  
13 or not, or regardless of whether the full Commission  
14 agrees with Mr. Hickernell or not, I think since the  
15 county attorney is here I think it would be helpful to  
16 have the county attorney give his view of the procedural  
17 regularity or irregularity on this action, just so the  
18 Commission has that on the record. And if it wishes to  
19 take an additional 30 days it can study that, as well as  
20 anything else that may or may not come up.

21 MR. BOSTIAN: There isn't any doubt that we



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1 would have another -- we have the option of delaying  
2 this another 30 days, given the procedural status of it?

3 MR. EPSTEIN: I believe you do. There was  
4 some question from one of the county representatives at  
5 the subcommittee, that since their 90 days are ticking,  
6 that for the Commission to delay this further would  
7 interrupt, or exceed that 90 day clock. I don't  
8 believe, after looking at sub section "E" of section  
9 .08.18.09 that that's a problem. I think that the  
10 regulations essentially leave room for those kinds of  
11 changes, and provide that when those changes come  
12 forward the Commission has 30 days to decide upon them.  
13 So I think if they came forward at day 30 or day 60 or  
14 virtually day 90, the Commission would still have 30  
15 days to consider them, thereby moving the county's date  
16 up by at least that amount of time.

17 So I don't think you have to act today.

18 MR. BUTANIS: I think Lee's recommendation  
19 that we hear from the county attorney is an appropriate  
20 one.

21 Mr. Densforth, would you care to come forth?



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1 MR. DENSFORTH: When I went to bed last night  
2 I went to bed and slept very well. When I got up this  
3 morning the whole world had turned around, after I found  
4 out about last nights meeting.

5 I was not, as it's been indicated before, I  
6 was not at last nights meeting. There are people here  
7 in the audience who I know were at last nights meeting,  
8 who may be able to fill in some of the gaps in my  
9 knowledge about what transpired yesterday.

10 The Maryland Rock issue was discussed very  
11 briefly yesterday at a public meeting of the County  
12 Commissioners, as an agenda item. No decision was made  
13 at that time.

14 I think an important issue, from my  
15 perspective as an attorney to the Commissioners, is  
16 whether or not there was any indication given at that  
17 3:00 public meeting that a discussion of the Maryland  
18 Rock issue, and perhaps a decision, would be deferred  
19 until later that evening.

20 I was present at the 3:00 meeting. I do not  
21 recall hearing anything that would have led the public,



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1 and those present, to believe that further official  
2 action may be taken that evening. If it was there are  
3 people here who would have knowledge of that, and I  
4 would hope that you would listen to them, and let them  
5 give you their recollections of the meeting, which are  
6 probably better than mine. But that is certainly an  
7 issue that I have, that's raised in my mind as to the  
8 vote that was taken late last night, which was taken  
9 around 11:30 or so.

10 I would, and I must, because of the position  
11 that I'm in, urge you to adopt the decision made last  
12 night of the Board of County Commissioners. Obviously,  
13 if there are procedural problems with the vote taken  
14 last night we will defend those at the local level, to  
15 the best of our ability. Obviously, we will call in, if  
16 they're willing to be called in, the attorney general's  
17 office to help us defend the Critical Area Ordinance  
18 that we're asking you to approve today.

19 But by a vote of three to one last night the  
20 Commissioners made it very clear they would like this  
21 Commission to designate -- accept their designation of



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1 the property as RCA. It's a very highly charged issue  
2 down in St. Mary's. It has been lingering now, through  
3 no fault of this Commission, of course, for many,  
4 many months. It's one we would all like to put behind  
5 us.

6 I have no doubt this matter is going to the  
7 courts to be resolved, and I would urge you not to delay  
8 it further. Go ahead -- I would urge you to make your  
9 decision today, let it wind its way through the courts  
10 because it's headed there anyway, and let us sort it out  
11 there on the procedural issues.

12 Mr. Hickernell?

13 MR. HICKERNELL: Sir, are you willing to speak  
14 to the question of the conformance of the designation of  
15 RCA to this site, to the program adopted by St. Mary's  
16 County Commissioners?

17 MR. DENSFORTH: I have an opinion on that, but  
18 frankly I come before you not really authorized by the  
19 Board of County Commissioners to express that opinion.

20 MR. HICKERNELL: Is anyone on your staff  
21 willing to state as to the conformance of the



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1 designation of RCA to the St. Mary's County  
2 Commissioners?

3 MR. DENSFORTH: Maybe I didn't understand.

4 MR. SERCY: Do you mean the local staff,  
5 county staff?

6 MR. HICKERNELL: The Commission staff, or  
7 county staff if the county staff is present.

8 MR. SERCY: It might be more appropriate if we  
9 hear from them.

10 MR. DENSFORTH: Jeff Jackman, from the Office  
11 of Planning and Zoning.

12 MR. JACKMAN: Your question, please?

13 MR. HICKERNELL: Yes, the conformance of an  
14 RCA designation of this site to the program adopted by  
15 St. Mary's County Commissioners for the -- how does this  
16 conform to that program?

17 MR. JACKMAN: I likewise was not at last  
18 night's meeting, but this tract was designated RCA when  
19 the Commission's plan came to us. We have already have  
20 acted once, and confirmed that designation. So the  
21 present designation is RCA.



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1 MR. HICKERNELL: That is correct, and I just  
2 need to have re-explained to me why that designation was  
3 appropriate when it was made in front of this Commission  
4 some months ago, and why it's so appropriate at the  
5 present time. That's the other question.

6 MR. JACKMAN: Okay, the classification was  
7 considered to be acceptable for a surface mining  
8 operation, which is permitted in an RCA classified area.

9 We did not want to require LDA classifications  
10 for any new sand and gravel, or surface mining,  
11 operations that would require growth allocation for any  
12 new operations opening up anywhere in the county.  
13 Therefore we felt that for a surface mining operation  
14 RCA was proper.

15 What triggered a discussion as to whether or  
16 not some other classification might be warranted at this  
17 particular site, was a barge loading operation, which  
18 was located in the buffer, which under our program might  
19 be considered a water dependent facility, which is under  
20 a different mapping rule, that would trigger an LDA or  
21 an IDA classification.



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1                   And the County Commissioners had advising them  
2 a locally appointed commission, a Critical Area Review  
3 Task Force, that made some findings that the barge  
4 loading operation, the water dependent facility, was of  
5 such a nature, and extent, in area location that it  
6 involved some 22 acres, and therefore according to the  
7 mapping rules warranted an IDA classification. But it  
8 was that water dependent facility, more so than the  
9 surface mining operation, that triggered that  
10 recommendation that led to the February 7th request from  
11 the County Commissioners.

12                   But again, last night I was not there to hear  
13 why they felt the consideration of the overall use of  
14 the property as a surface mining operation outweighed  
15 the consideration of its use as a water dependent  
16 facility.

17                   But just in conversation with the County  
18 Administrator and the president of the Board of County  
19 Commissioners this morning, I got the sense, and again  
20 I'm not -- I also am not authorized to represent them  
21 any more than what's being communicated officially, but



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1 I got the sense that their focus was towards the  
2 predominant use of the property as surface mining, which  
3 is appropriate in RCA.

4 MR. HICKERELL: Do you know that land, 22  
5 acres that's utilized for the dock and the barge  
6 operation is what? Do you know approximately?

7 MR. JACKMAN: There were some -- about 35  
8 acres in the critical area that is a part of the overall  
9 Maryland Rock operation. They then said, well, what of  
10 that overall operation is a water dependent facility?  
11 Obviously the barge loading operation, which penetrates  
12 the buffer. Now what is supporting that? They kind  
13 of just worked their way back from there, and drew a  
14 line tightly around what they felt supported --

15 MR. HICKERELL: "They" being the special task  
16 force?

17 MR. JACKMAN: "They" being the Critical Area  
18 Task Force, who made the recommendation before the  
19 County Commissioners.

20 MR. HICKERELL: Was that recommendation which  
21 came to this Commission in February?



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1 MR. JACKMAN: Right. That was the 22 acres.  
2 That was according to an exhibit that was attached to  
3 the February 7th letter.

4 MR. HICKERELL: Again, I'd speak to the  
5 Commission and ask us not to act at this time. I think  
6 what is of fundamental importance to us is not to  
7 produce conflicts between our applicants and the rules  
8 of this Commission, and also the program adopted by St.  
9 Mary's County. I think that's an awfully important  
10 issue. I don't think we can be --

11 MR. BUTANIS: Okay, we currently have a motion  
12 pending before the full Commission. I would ask Mr.  
13 Gutman, who made that motion, and the seconder, if they  
14 would consider temporarily withdrawing it while, maybe  
15 you formulated your motion, Ron, and --

16 MR. GUTMAN: I wonder whether, before you take  
17 that action, whether the rest of the people who have  
18 come here to speak, are given an opportunity to say  
19 what's on their minds.

20 MR. WITTEN: Mr. Chairman, Ladies and  
21 Gentlemen of the Commission, it's a delight to be here.



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1           My name is Jack Witten. I'm the public member  
2 of the Chesapeake Bay Commission for the State of  
3 Maryland, and I am spokesperson today for an assembly of  
4 groups in St. Mary's County, such as Potomac River  
5 Association, which has been wrestling with this problem  
6 for seventeen years, and the Save St. Mary's Waterway  
7 Group, and others.

8           I think there was some questions raised, and  
9 -- first I commend the Commission in providing this last  
10 30 days to give us an opportunity, to give the community  
11 an opportunity, to really absorb the impact of the  
12 decision which was made very quickly a month ago.

13           And you have before, you petitions signed by  
14 3500 people who support the Resource Conservation  
15 designation.

16           The Resource Conservation designation, of  
17 course, was in our original submittal. It has been  
18 arrived at by an orderly and arduous process, and it  
19 was only after that happened that the dust started to  
20 rise.

21           There's no question, at least in our



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1 authority, that it's a proper designation. The question  
2 of the Court of Appeals decision -- I'm not an attorney,  
3 but our attorneys feel that the interpretation, which is  
4 being placed on that decision, is far broader than the  
5 decision really merits.

6 I think there is one other thing that  
7 dominated the discussion last night, which went almost  
8 to midnight. First, the County Commissioners'  
9 conference room was full. This was no secret. It had  
10 been full at 3:00 that afternoon. We had had a session  
11 in conference room 16 across the hall, concurrent with  
12 the County Commissioners' meeting, discussing the  
13 strategy that would be used at the open forum that  
14 night.

15 But the golden thread, I think, that was in  
16 the Commissioners' decision, was that the designation of  
17 Resource Conservation leaves all kinds of options open,  
18 that it doesn't lock anything in concrete, it gives  
19 plenty of opportunity for further discussion,  
20 further changes, amendments, as knowledge becomes  
21 available.



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1           And there's one other significant fact I'd  
2 like to point out to you. Sitting on our Board of  
3 Zoning Appeals is a member who was on that Board 17  
4 years ago when the original decision was made. At the  
5 last Board of Zoning Appeals meeting he made a very  
6 eloquent statement, which ended saying, "17 years ago it  
7 was agreed that at the end of December 31, 1989 that  
8 project would end, and they would go."

9           The out shot of that statement was, the Board  
10 of Appeals said, everything in the history of this is so  
11 cloudy we have to designate an independent authority to  
12 establish the definition of what is being alleged to be  
13 a non-conforming use, the boundaries, the meats and  
14 bones, and the remainder of the property. We have to  
15 have an independent authority go through all the permits  
16 and approvals on this property to make sure that  
17 everything is in order.

18           Last night the County Commissioners reaffirmed  
19 that and instructed the County Administrator to make  
20 sure that resources were made available to the Office of  
21 Planning and Zoning, to do this independent study, to



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1 really recreate the history of what happened in those 17  
2 years. And I think the lesson in the 17 years is a  
3 lesson that any citizen activist in this business ever  
4 learns, is that money can wait. And it has waited 17  
5 years, and the project grew from a little modest project  
6 to the monstrous one that exists today.

7 So I think in your decision today, and it  
8 should be made today, because as you know you can only  
9 -- the attention span of the private citizen is  
10 relatively short. And the longer you protect this  
11 discussion the more vulnerable we are to this same kind  
12 of transactional events that happened over the 17 years,  
13 which so obscured the history, and so confused the  
14 public, that we have to now go back and try to recreate  
15 that history with an independent analysis.

16 And I think the -- really the beauty of this  
17 body, and the thing that attracted me to it when the  
18 legislation was under discussion, is this is a classic  
19 example why local issues such as this, which are so --  
20 become so volatile, and so susceptible to all kinds of  
21 extraneous acts, that you have to have a body that



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1 raises this discussion above the flail, and applies the  
2 wisdom and experience of a body such as this,  
3 independent of the local jurisdiction, and says, having  
4 looked at the facts, and looked at the situation, we  
5 will act to protect the community in instances where  
6 sometimes it's vulnerable, it has difficulty protecting  
7 itself.

8 Thank you, very much.

9 I'll be glad to answer any questions.

10 VOICE: Jack, would you cover the procedural  
11 events of what happened when the IDA was sent up as  
12 against what happened yesterday, that they parallel each  
13 other, and how?

14 MR. WITTEN: Well, last night's meeting was a  
15 mirror image of the meeting of a month ago exactly. It  
16 was exactly a mirror image of it.

17 As a matter of fact we seized upon that,  
18 saying that if that was right on February 7th, it should  
19 be right on March 6th.

20 MR. GREASE: I am Leonard Grease, a resident  
21 of St. Mary's County.



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1           The same series of events that the legal  
2 counsel for Maryland Rock referred to, as it occurred  
3 yesterday, also occurred on February 6th. We were in  
4 attendance in the morning, heard a presentation from the  
5 task force chairman recommending 14 acres limited  
6 development.

7           The Commissioners didn't accept that  
8 recommendation. They came and voted, leave it in RCA.

9           That evening at the public forum, the same  
10 type of public forum that existed yesterday, that  
11 occurred yesterday, at that forum one of the  
12 Commissioners who had voted RCA in the morning,  
13 came back in the evening and said he had obtained  
14 additional information and wished to change his vote  
15 that night.

16           It was at that meeting that night,  
17 without any public notice -- none of us who were there  
18 in the afternoon heard a word that the subject would be  
19 brought up again that evening.

20           One Commissioner brought it up. One of  
21 the others who had voted for LDA in the afternoon



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1 seconded it, and it was passed. There was nobody, to  
2 our knowledge, who had any contrary interest in the  
3 subject in attendance that evening.

4 Last evening there was a roomful. Last  
5 evening was the first opportunity again, in a public  
6 forum, for us to put our recommendations forth, and our  
7 opinions.

8 In the interim there was no opportunity to do  
9 so, nor was there an opportunity in the afternoon when  
10 the Commissioners briefly -- I would say for a period of  
11 two minutes the chairman, or the president, entertained  
12 a motion, said is there a motion, to do -- even to come  
13 up here and suggest that you folks defer the decision  
14 again.

15 He got nobody to make that motion. That was  
16 the end of the discussion. And that's why we appeared  
17 in the evening to let them know what we thought was  
18 wrong with the action that had been taken the previous  
19 month, that we had no opportunity to object to.

20 We had no idea, also -- I might go back before  
21 that to the public hearing. The public hearing covered



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1 a presentation by the task force chairman, recommending  
2 14 acres in LDA. The following two weeks following  
3 that, at the Commissioners' meeting, the task force  
4 chairman presented a proposal for 22 acres, based  
5 supposedly upon a written instrument that they received  
6 from Maryland Rock's attorney, suggesting that 22 acres  
7 was a more appropriate designation than 14. No further  
8 explanation, no further support.

9 So that as we sat there in the Commissioners'  
10 room, that was the first anybody in the public heard  
11 about designating 22 acres. But that's what came up  
12 before you, without any adequate opportunity for the  
13 public to intervene.

14 Thank you.

15 MR. BUTANIS: Mr. Kreitner, you had a question  
16 or a statement?

17 MR. KREITNER: Yes, I wanted some  
18 clarification with regard to what the status of the  
19 current plan is, the designation of the property, and  
20 why we have to act on a request from the Commissioners  
21 to withdraw an amendment to their plan?



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1 MR. BUTANIS: As I understand it, the current  
2 state of the plan is that this property is designated  
3 RCA. Again, an argument could be raised that there is  
4 nothing before us to do in conjunction with this  
5 proposal, and that the County Commissioners have  
6 ostensibly withdrawn it.

7 We've discussed this with Mr. Epstein, our  
8 counsel, and his advise is that he believes that we need  
9 to take some type of action. That their withdrawal of  
10 the proposal is an amendment in and of itself, that  
11 needs to be addressed.

12 Is that it?

13 MR. EPSTEIN: That's my view.

14 MR. BUTANIS: Okay.

15 Ron?

16 MR. HICKERNELL: Does that action have to take  
17 the form of a vote, officializing the condition or the  
18 knowledge of the position of the County Commissioners?

19 MR. EPSTEIN: My suggestion is that you take a  
20 vote. The words in sub section E of 1809 are that  
21 unless the Commission approves the change, or



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1 disapproves the change, and states in writing the  
2 reasons for its disapproval within 30 days after it  
3 receives the change, the change shall be deemed  
4 approved. So, you know, under the statute if you don't  
5 take any action the change that they're recommending,  
6 and I feel it is a change today, would be, quote,  
7 "deemed approved."

8 In my view --

9 MR. HICKERNELL: Which is the March 7th  
10 letter?

11 MR. EPSTEIN: Right.

12 In my view, and in the past the Commission has  
13 had trouble with what's occurred under this statute by  
14 virtue of the Commission not taking an action. And my  
15 suggestion would be to make it clean and upright and so  
16 everyone knows what's happening, the Commission should  
17 take an affirmative vote.

18 MR. HICKERNELL: I understand.

19 MR. BUTANIS: Any further discussion?

20 MR. BOSTIAN: It seems to me that the County  
21 Commissioners of St. Mary's County ought to have a



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1 meeting and provide notice to both sides and have  
2 them duke it out, rather than having one side argue that  
3 the other side came, and without notice to them, argued  
4 their position successfully, which it appears to have  
5 happened both ways, at least in my opinion.

6 And I don't particularly wish to be part of  
7 Commission action that condones such action.

8 MR. BUTANIS: Are you done? I didn't mean to  
9 cut you off.

10 MR. BOSTIAN: I'm not quite done.

11 MR. BUTANIS: I'm sorry.

12 MR. BOSTIAN: So I feel as though I'd like to  
13 support Ron's suggestion and have the Commission not  
14 take any action, and table this matter.

15 MR. BUTANIS: Parris?

16 MR. GLENDENING: Let me just put on my other  
17 hat, in the sense that as I understand it, I was  
18 initially appointed and I believe re-appointed  
19 subsequently, as the representative of the Maryland  
20 Association of Counties to specifically kind of  
21 represent the local government interests, as was



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1 intended in the history of the legislation.

2 And during that time period, and a number of  
3 people here were in the Commission later on, and some of  
4 us are getting gray hair and aged through this process,  
5 but were here at the beginning.

6 And at the beginning one of the discussions  
7 that I felt personally to be important, as well as  
8 representing the Mako (phonetic) was specifically what  
9 happens to the local government decision making process.  
10 And through a whole series of discussions and  
11 interpretations and clear statements in the minutes, and  
12 so on, I believe that the intention was that unless  
13 there was a finding by this Commission that the use  
14 recommended was inappropriate, a substantive finding of  
15 some type, and the staff had recommended that, and so  
16 on, and that we went in and we looked, and we sent  
17 people to the site, and things of this type, and we  
18 said, no, we disagree, that this is not consistent with  
19 the intent or the law of the Critical Area Commission.

20 Unless that occurred we were indeed expected  
21 to follow the recommendations of the local governing



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1 body, and in this particular case it would seem to me  
2 that what we have before us is obviously a controversial  
3 issue. I note with interest the 17 years, and I suppose  
4 at some point if we don't make a decision it will just  
5 go on to the courts, because that's definitely where it  
6 will end up, you know, it will be like the 17 year  
7 locusts going on forever about this. And it seems to me  
8 that what has occurred is within the dynamics of the  
9 local community, and the Commission has made a decision.  
10 Obviously a difficult decision, by noting the votes and  
11 by noting some of the publicity on it, but it has made a  
12 decision.

13 And unless someone tells us here, and I have  
14 not heard that, and my apologies for coming in a few  
15 minutes late, but unless someone tells us here that this  
16 is substantively inappropriate under either the law or  
17 under the -- by the law I mean the Critical Area  
18 Commission law, or under the local plan, St. Mary's  
19 plan, then it ought to be approved, and I didn't hear  
20 Lee say it was inconsistent at all. I heard him say it  
21 was a consistent part of the plan.



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1 MR. BOSTIAN: Well, it's been suggested by  
2 attorney for the Maryland Rock that it is inconsistent

3 --  
4 MR. GLENDENING: No, I understand that, but I  
5 think the interpretation of the law was that we were  
6 expected to follow the recommendations of the local  
7 governing body, not of the --

8 MR. BOSTIAN: No question about that.

9 MR. GLENDENING: In which case, my feeling  
10 would be -- and you know they've obviously had a series  
11 of major meetings over there. I know a number of people  
12 in St. Mary's, as I'm sure many Commissioners do. This  
13 is controversial, very visible, very important issue in  
14 St. Mary's, and I think that it is philosophically  
15 incumbent upon us to honor the decision of the St.  
16 Mary's Commissioners, which is, as I understand the  
17 motion that's on the floor, for RCA.

18 I don't know that deferral is going to do  
19 anything at all, except keep the thing boiling in St.  
20 Mary's, and I also think that without hesitation that  
21 this issue is going to go back to St. Mary's and is



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1 going to be resolved in terms of legal challenges,  
2 whether we do something now, whether we extend it three  
3 months, or whether we extend it another 17 years, that's  
4 where it's going to end up.

5 And I don't know kind of philosophically why  
6 would possibly move away from the interpretation that  
7 the local governing people have, indeed, done their  
8 thing according to their law and their procedures.

9 Now, I heard the issue raised, well, maybe  
10 this wasn't properly advertised and so on. That's a  
11 local issue. I mean, that's the responsibility  
12 there, and we surely don't want to get in the position  
13 of checking whether every single recommendation that's  
14 come through us has been advertised, and meets all the  
15 sunshine requirements, and things like that. And I  
16 would recommend, again, unless there's some substantive  
17 reason that this is not RCA, and that we can say to the  
18 Commissioners, you're not honored the state law or  
19 the local plan, that we ought to go ahead and approve  
20 the motion that is on the floor, which I understand to  
21 be approval of the Commissioners' recommendation that it



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1 go back to RCA, or stay RCA, depending on what happened  
2 at the February 6th.

3 MR. BUTANIS: John?

4 MR. GRIFFIN: I tend to agree with Parris,  
5 except I have one concern. The more I listen to this  
6 debate, the more I think on the one hand you're  
7 absolutely right, and others who have spoken are right,  
8 that we don't want to turn this Commission into a local  
9 zoning body. You're also right -- it's my understanding  
10 of this whole program where there's discretion to be  
11 exercised properly, legally, the local governments are  
12 the ones who ought to do it.

13 The only question in my mind is whether under  
14 our law and regulations, and the Commission's plan, the  
15 particular designation of this area as RCA as opposed to  
16 IDA, is within their discretion to make, or whether the  
17 law, the regs, and their plan compel them, if they're  
18 supposed to map based on existing uses, to designate  
19 this as IDA. That's the only question to me. And I  
20 don't know that we've had a clear legal opinion, and I  
21 think where I'm leading is to ask Lee to give us a swan



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1 song here, and to give us an opinion. Do they have the  
2 discretion or don't they? If they have the discretion  
3 under our law and regulations to designate it as RCA, my  
4 view is so be it.

5 The only other comment I would make, Parris,  
6 is I agree with you on the notion of not looking behind  
7 every procedural action locally to validate it. But  
8 there has been an issue raised here in this particular  
9 case, and I wonder in cases where information comes to  
10 us by way of allegations that there's been a procedural  
11 impropriety in terms of an action locally, whether or  
12 not we do have a duty in those limited cases to  
13 investigate it.

14 I don't know where I can come out on that, but  
15 I don't think we should categorically dismiss situations  
16 where allegations come to the Commission that something  
17 hasn't been done properly.

18 So, I guess I would speak in support if it's  
19 necessary, in postponing it a month, primarily to find  
20 out from our learned counsel whether or not St. Mary's  
21 County has the authority to do what they did, under our



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1 law and regulations. And their own. That's the only  
2 question to me. The rest of this is clearly a local  
3 debate, as you point out, and may take another 17 years.

4 MR. ZAHNISER: I'd like to quote the St.  
5 Mary's county attorney, and urge the Commission to act  
6 today. St. Mary's County is suffering because they  
7 don't have a critical areas law, and that's what we're  
8 here for is to save the environment, basically, and get  
9 that law into effect. The panel has looked at aerial  
10 photographs, it has studied this particular project for  
11 some time, and sand and gravel mining is a resource  
12 utilization use, and can be in the RCA.

13 The, quote, "port" that they have is a sunken  
14 barge which acts as a loading platform. The  
15 justification for 20 acres IDA is nothing more than a  
16 conveyer belt from one of their washing areas, which is  
17 part of the sand and gravel mining operation. It is  
18 just contiguous with the sand and gravel operation, and  
19 we feel, and have felt from the beginning that it is  
20 RCA. To stretch it to its limit, as far as IDA goes, it  
21 would be only the immediate area here, which is about



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1 three acres that could be considered IDA at all.

2 Twenty-two acres, gentlemen, of intensely  
3 developed land in a otherwise mostly RCA body of water,  
4 or creek, is a big chunk of land and can have a  
5 tremendous effect on the environment. And sand and  
6 gravel mining does not justify it. That is a resource  
7 utilization, and we've been through this thing for quite  
8 some time now. If we wait 30 days what will be  
9 resolved. It will probably be in the courts for another  
10 -- years.

11 All we have to do is accept a letter from the  
12 County Commissioners, with their signatures on it, and  
13 that's it, because we have already approved a critical  
14 areas plan from the county, which has it mapped RCA.  
15 And all they're doing is asking us to disregard their  
16 previous letter requesting a modification.

17 I don't see the big issue here. I think that  
18 it certainly can be RCA because of its use, and the  
19 panel feels that way also.

20 MR. BROSSMAN: Can I say one more thing?

21 Just back to the substantive issues, I mean,



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1 obviously I take the position the entire thing is  
2 industrial and should be IDA, and you all take that with  
3 a grain of salt obviously.

4 Last month your own staff said there's a water  
5 dependent facility there so some of it should be LDA.  
6 Now all of a sudden the water dependency issue has gone  
7 out the window and now it should all be RCA. That  
8 brings up what John brought up, there are significant  
9 issues here, what does the law mandate this area being  
10 designated. And the staff itself -- Mr. Jackman stood  
11 here and said five acres, 14 acres, 22 acres were part  
12 of a water dependency argument.

13 Then there's a big substantive issue here.  
14 What should it be designated under the law?

15 What I'm hearing is, just because it's clearly  
16 an unpopular site, it should go back to RCA, and that's  
17 not a criteria that's in the law, and that's what I have  
18 a problem with.

19 MR. BUTANIS: I just want to recognize this  
20 gentlemen. He's been wanting to speak for a few minutes  
21 now.



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1 MR. BOWLING: Almost identical sand and gravel  
2 operation in Charles County, it is totally RCA.

3 MR. FLEURY: My name is George Fleury. I'm a  
4 home owner in St. Mary's County. I'd like to challenge  
5 some of the statements that this young man has made  
6 regarding this operation.

7 MR. BUTANIS: Could you identify yourself  
8 again, sir.

9 MR. FLEURY: Fleury, F-L-E-U-R-Y, George.  
10 This is no longer a gravel mining operation. There was  
11 a grading permit issued for removal of gravel, removal  
12 of 400,000 cubic yards of gravel, from this site in  
13 1974. That gravel has all been exhausted. There was a  
14 conditional use permit permitting the removal of gravel  
15 from the rest of the -- from most of the rest of the  
16 parcels, 213 acres. That conditional use permit has now  
17 expired.

18 So both the barging and the processing were  
19 lawful as accessory uses to the mining. The mining has  
20 ceased. The operation is now purely one of processing  
21 and shipping gravel that is being brought from other



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1 gravel mines throughout the county.

2 The statement that this gentleman made that  
3 the Court of Special Appeals in 1984 declared that this  
4 area was a non-conforming use -- I don't have that  
5 document with me, but I know it pretty well by heart.  
6 They concluded, "We find the shipping to be lawful as an  
7 accessory to the mining, which was allowed by  
8 Conditional Use Permit 74-2. Therefore, it comes under  
9 the provision of the 1978 ordinance which allows non-  
10 conforming uses to continue." That statement did not  
11 say that it's a non-conforming use. It implied that  
12 they considered it a non-conforming use, but there was  
13 no reason for them to designate it a non-conforming use.  
14 They had already declared it as a legal use by stating  
15 that it was an accessory to the conditional use.

16 It is our position that both the processing  
17 and the shipping of this gravel has now lost its  
18 legality, first because the conditional use permit that  
19 supported the shipping has expired and, secondly,  
20 because the money of the gravel under the terms of the  
21 initial grading permit, that gravel has been exhausted,



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1 so there's no longer a justification for the processing.  
2 So that is the reason the county takes the position that  
3 this should not be considered an industrial site. It  
4 does not meet the state's criteria for intensely  
5 developed areas. It is not a concentration of  
6 industrial uses. It has never been a concentration of  
7 uses. And it is now simply a processing and shipping  
8 operation for gravel brought off-site. Thank you.

9 MR. BUTANIS: Thank you, sir.

10 MR. BROSSMAN: Which supports our dependency  
11 argument.

12 MR. BUTANIS: Ron, one last comment before we  
13 do something here.

14 MR. HICKERNELL: My last comment is I move  
15 that we table the motion that's on the floor.

16 MR. BUTANIS: Till when?

17 MR. HICKERNELL: Move to table the motion  
18 that's on the floor now.

19 MR. BUTANIS: Is there a second?

20 MR. BOSTIAN: Second.

21 MR. BUTANIS: All in favor?



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1 MR. ZAHNISER: When there is a motion on the  
2 floor, is there not a -- it precedes that motion --

3 MR. BUTANIS: No, motion to table. Motion to  
4 table takes precedent.

5 MR. BOWLING: I just want to point out that  
6 this motion to table will, in fact, leave this property  
7 RCA. Is that correct? So it resolves not one damn  
8 thing.

9 MR. EPSTEIN: Actually, it doesn't do that  
10 because there is no designation until the county adopts  
11 a local Critical Area Program.

12 MR. BOWLING: But the county has formally  
13 adopted their plan, have they not? Sent it forward to  
14 us and --

15 MR. EPSTEIN: No, not until this body approves  
16 everything, and then it goes back to the county, and the  
17 county adopts its ordinances and programs.

18 MR. BOWLING: And we escape the 60-day clause,  
19 too?

20 MR. EPSTEIN: I believe this body has 30 more  
21 days, if it wishes to use them.



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1 MR. BUTANIS: Any further discussion on that  
2 motion to table? Let's take a vote on that. This is  
3 Ron's motion to table. The motion to table takes  
4 precedence; right, Lee?

5 MR. EPSTEIN: Yes.

6 MR. BUTANIS: Okay. All in favor of tabling  
7 this issue --

8 THE AUDIENCE: Just a minute. We have a  
9 person here that wanted to --

10 MR. BUTANIS: Oh, sorry.

11 MR. PAWLUKIEWICZ: My understanding is that  
12 the St. Mary's Commission is ready to adopt this.  
13 They're planning on next Tuesday; and, if they don't  
14 adopt it, if this motion isn't adopted, then perhaps  
15 that would delay the adoption of the St. Mary's  
16 programs.

17 MR. EPSTEIN: That's correct.

18 MR. PAWLUKIEWICZ: So I just wanted to say  
19 that, so the commissioners are aware of that.

20 MR. BUTANIS: Appreciate that. Yes, very  
21 briefly, if you would.



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1 MR. JACKMAN: I just want to call attention to  
2 our Mapping Rule 6, which is in the program that this  
3 commission has approved, which I think we're also  
4 relying on here. "During the preparation of this  
5 Critical Area Ordinance and the accompanying maps, there  
6 may have existed some developed areas meeting the test  
7 for LDA or IDA classification which were not so  
8 classified due to an oversight. The following process  
9 is established whereby such properties may be considered  
10 for an LDA or IDA classification. Application for LDA  
11 or IDA classification under this provision shall be made  
12 with the Planning Commission, which shall forward the  
13 recommendation to the Board of County Commissioners.  
14 The board shall make a determination as to whether or  
15 not the property meets the test for an LDA or IDA  
16 classification. If the board finds that the property in  
17 question should be appropriately classified as LDA or  
18 IDA, then such findings shall be submitted to the  
19 Critical Area Commission for approval or disapproval of  
20 the LDA or IDA classification."

21 I would urge you to give us our program. If



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1 we're making an oversight here, let us rely on Rule 6 to  
2 resolve it locally.

3 MR. BUTANIS: Okay. All in favor -- Roger.

4 MR. WILLIAMS: Just let me ask one question of  
5 our attorney. Do you feel -- everything seems to be  
6 legal in nature -- do you feel that you can come up with  
7 something that you can tell us 30 days from now that you  
8 can't tell us today as an instruction?

9 MR. EPSTEIN: Well, I won't be telling you  
10 anything. I must say that I keep coming back in my own  
11 mind to this being a judgment that the commission has to  
12 make based on its own criteria, and usually the  
13 commission makes those judgments based on its staff  
14 recommendation and on its subcommittees or panel  
15 recommendations. I'm not sure that your counsel,  
16 whoever that may be, is going to be able to give you the  
17 magic answer on this. I'm frank to say that, John. I'm  
18 not sure there is a magic legal answer as to whether  
19 this is RCA or IDA. I know counsel for Maryland Rock  
20 thinks there is, and he thinks there's no doubt about  
21 it; but I don't agree with that.



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1 I think that if -- I tend to agree with Parris  
2 that, if there is a call to be made and if staff  
3 believes that there's a legitimate argument to be made  
4 for calling something one of the three designations and  
5 if your subcommittee believes there's a legitimate  
6 argument to be made and if the local jurisdiction  
7 believes there's a legitimate argument to be made, I  
8 tend to agree that the commission probably ought to  
9 defer to the local jurisdiction's expertise.

10 Beyond that, though, I'm not prepared to tell  
11 you that you're going to get a magic "yes" or "no,"  
12 "this is RCA, this is not" legal counsel. You may. I  
13 may be surprised, but I'm not going to be the one that's  
14 going to do it.

15 MR. BUTANIS: Mr. Gutman.

16 MR. GUTMAN: Regarding the motion to table, I  
17 think it should be understood clearly by all the  
18 commission here that we recognize this was an option, to  
19 put the matter off for another 30 days. None of the  
20 panel members saw any merit in this, and I can only  
21 reiterate that this is an issue that the panel has been



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1 keenly aware of since the day we had our hearing in St.  
2 Mary's County. We had a room full of people who wanted  
3 to speak and go on record at that meeting conducted by  
4 the commission, and every one of them was of one voice  
5 regarding Maryland Rock; and that is the way,  
6 ultimately, the county commissioners have come down on  
7 the matter.

8 I, for the life of me, can't conceive of  
9 anything occurring in 30 days that would be new, other  
10 than another reversal. And how many reversals can  
11 happen? Who knows. If it's going to the courts for a  
12 change, let this commission expedite that action.

13 MR. EPSTEIN: Mr. Chairman, let me also note  
14 that, if you're going to -- if it is your decision to  
15 approve the motion to table, part of that motion ought  
16 to reflect that this is merely an exercise of the 30  
17 days that this commission has to make this decision  
18 under the statute, because otherwise it could be  
19 perceived as this commission not making any decision  
20 under the statute, thus being an automatic approval of  
21 the commissioners' proposal to you.



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1 MR. HICKERNELL: Understood. I amend my  
2 motion accordingly.

3 MR. BOSTIAN: I'll second the amendment.

4 MR. BUTANIS: Okay. There being no further  
5 discussion, all in favor of the motion to table, please  
6 raise your right hand.

7 All opposed?

8 MS. TAYLOR: Three for tabling, and 13  
9 opposed.

10 MR. BUTANIS: Three in favor and 13 opposed.  
11 Any abstentions? No abstentions. Motion is defeated.  
12 Now we get back to your original motion.

13 MR. GUTMAN: And I would like to call the  
14 question.

15 MR. BUTANIS: Okay. Could you repeat your  
16 motion again just for the record.

17 MR. GUTMAN: Oh, no.

18 MR. BUTANIS: It's been so long.

19 MR. GUTMAN: Would it be better to have the  
20 motion read off the tape, or should I come up with new  
21 wording?



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1 MR. EPSTEIN: She can't find it.

2 MR. GUTMAN: She can't find it. All right.

3 The Critical Area Commission having received from St.  
4 Mary's County Commissioners on March 7 a recommendation  
5 to designate the parcel commonly referred to as Maryland  
6 Rock as RCA is hereby approved by the Critical Area  
7 Commission. Will that apply?

8 MR. EPSTEIN: I will just say that, as a  
9 result, you're approving and forwarding back to the  
10 county commissioners their full program and maps for  
11 adoption in accord with the Critical Areas statute.

12 MR. GUTMAN: Just what I said.

13 MR. EPSTEIN: Okay.

14 MR. ZAHNISER: Second.

15 MR. BUTANIS: Okay, there is a second. All in  
16 favor of the motion?

17 MR. HICKERNELL: Mr. Chairman.

18 MR. BUTANIS: Oh, further discussion.

19 MR. HICKERNELL: There is one qualifying  
20 point. In the earlier discussion on the prior motion,  
21 it was my understanding that the panel in this matter



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1 has consistently advised the commission that RCA is the  
2 proper designation of this site, and that's been a  
3 consistent opinion on the part of the subcommittee?

4 MR. BOWLING: Last month it was LDA.

5 MR. ZAHNISER: That is not true. The only  
6 difference that we ever had is that we thought we could  
7 entertain three to five acres that may be justified as  
8 IDA, but no more than that. But our initial  
9 recommendation was RCA, and our recommendation today,  
10 and only because we were confronted with the county  
11 commissioners' request for all 20 acres to be IDA, we  
12 disagreed with the county commissioners on that.

13 MR. HICKERNELL: But the recommendation of the  
14 commission at that time was to do what?

15 MR. GUTMAN: To send it back for further  
16 consideration.

17 MR. BOSTIAN: To propose a compromise is what  
18 it was.

19 MR. BOWLING: Yeah, in a way, it was a  
20 compromise. We asked them to consider a smaller area  
21 which would then become LDA.



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1 MR. BROSSMAN: That never went to the  
2 commission.

3 MR. HICKERELL: I think that makes my point.

4 MR. BUTANIS: All in favor of --

5 MR. BOSTIAN: Are you putting off discussion  
6 on that? I just wanted to make a point. It appears --  
7 I don't think that we should be making a decision -- I  
8 agree with Parris completely in that we should not be  
9 making a decision for the local jurisdiction. However,  
10 I wonder whether they really have made a decision in  
11 this instance, and are they just trying to put the  
12 burden off on us; but that's up for us to decide and  
13 take a vote on.

14 MR. BOWLING: Under Rule 6, it reads -- if we  
15 do another Murphy's Law, then we'll have it back again  
16 next month.

17 MR. BOSTIAN: Very possibly, but maybe they  
18 will have a meeting at which they would have both sides  
19 and have the argument.

20 MR. BUTANIS: Well, the question has been  
21 called. Let's take a vote. All in favor, raise your



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1 right hand.

2 MS. TAYLOR: Thirteen.

3 MR. BUTANIS: All opposed?

4 MS. TAYLOR: Three.

5 MR. BUTANIS: Any abstentions?

6 (Mr. Hickerell abstained.)

7 MR. BUTANIS: Okay. Motion carried. I think  
8 we can get through the rest of the agenda very, very  
9 quickly. Sarah's got an update on the oil and gas draft  
10 regulations.

11 MS. TAYLOR: Liz Zucker, who was responsible  
12 for coordinating and doing mostly all of the penmanship,  
13 along with Lee Epstein, of our oil and gas regulations,  
14 is in the Caribbean; and so I know she's thinking of us  
15 right now. She had it arranged several months ahead of  
16 time and apologized profusely, so it was a little hard  
17 to say, "No, you can't go."

18 But I want to draw your attention to the oil  
19 and gas regulations. They should have been, and I hope  
20 you received a copy of them, with this meeting agenda.  
21 If you do not have a copy of the oil and gas "regs,"



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1 please let me know, and we will send you a copy. These  
2 require your review.

3 April is going to be "oil and gas meeting"  
4 month, and what it will be -- the purpose of that  
5 meeting will be, quite frankly, to take your suggestions  
6 as to changes and to have your decision on several  
7 policy issues, two of which were enumerated in the cover  
8 sheet: One dealing with "Should drilling be completely  
9 prohibited within the Critical Area?" We have chosen  
10 not to take that route, but have chosen that oil and gas  
11 exploration and drilling should be in the Critical Area  
12 but under very, very unique circumstances and under very  
13 strict regulation. The second issue, "Which land use  
14 designations are appropriate for drilling?" It was  
15 decided that drilling is resource utilization and it  
16 could occur in any land use designation.

17 There is a third policy issue that is going to  
18 be arising out of our Special Issue Subcommittee, but  
19 for which Liz wanted to make you aware; and that is  
20 this: "Should we entertain new water-dependent, port-  
21 related facilities for the transport of oil and gas, or



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1 should we restrict it to those facilities that are in  
2 existence and mandate that transport of oil and gas be a  
3 land-side issue as opposed to water-based?" So we would  
4 like you to think on that between now and April at our  
5 commission meeting.

6 I suggest the following. I suggest that, if  
7 you have any changes and specific comments, that you  
8 send them in ahead of time. We will try to incorporate  
9 them or at least have a summary of them before the April  
10 meeting. However, if you don't have the opportunity to  
11 do so, we can certainly take those specific changes  
12 written by you individually.

13 We would like to keep the April meeting one  
14 which is a policy-issue-oriented meeting; in other  
15 words, rather than decide whether something ought to  
16 have a period or a semicolon or use the word "will" or  
17 "would" or "shall" or "should," we would like to keep it  
18 a conceptual issue, policy discussion on the criteria.  
19 Please plan to spend a couple of hours or more as  
20 necessary for the review of these regulations. We would  
21 like to have them approved by the commission,



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1 promulgated by the commission at the May meeting, so  
2 that then we can publish them in the Maryland Register.

3 So keep in mind April is discussion of the oil  
4 and gas "regs." We will take your specific comments  
5 before the April meeting. If you can do that, we  
6 welcome them, so that we can produce a summary. If you  
7 can't, please hand us those specific comments at the  
8 meeting, and then we will proceed to go through them  
9 section by section, so that we can get them promulgated  
10 in May. There may be a couple straggler issues, but  
11 this will be the important topic.

12 MR. EPSTEIN: Let me just note for those of  
13 you who have been on the commission for a long time,  
14 this is going to be similar to other sessions that  
15 you've used to go through and adopt and approve  
16 regulations. It's going to be a "roll up your sleeves,  
17 sit around the table and go through these things concept  
18 by concept." Sarah says the idea is not to nitpick on  
19 wordsmithing, but your ideas and your dispute with the  
20 current way they're written, that's what it's all about.  
21 So be prepared to spend a good few hours, just like you



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1 did on the last sets of regulations that you wrote, in  
2 that same kind of forum, that same kind of round table,  
3 you know, sitting around and going through them  
4 paragraph by paragraph.

5 MS. TAYLOR: That's it.

6 MR. EPSTEIN: It's a work session.

7 MS. TAYLOR: Quickly --

8 MR. CORKRAN: Sarah.

9 MS. TAYLOR: Yes.

10 MR. CORKRAN: At that meeting that Lee is  
11 referring to, it would seem to me to be very helpful if  
12 someone were there familiar with drilling operations.

13 MS. TAYLOR: Yes.

14 MR. CORKRAN: I have a lot of questions about  
15 some of the --

16 MS. TAYLOR: We will have the "Ken and Ken"  
17 duo.

18 MR. CORKRAN: Okay.

19 MS. TAYLOR: Dr. Weaver and Dr. Schwartz from  
20 the Maryland Geological Survey.

21 MR. CORKRAN: Okay, good.



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1 MS. TAYLOR: Yes, we certainly will, should  
2 any technical questions arise, and they will, that we  
3 will certainly not be prepared to handle as the Critical  
4 Area Commission staff. We will have that covered.  
5 Thank you for reminding me of that.

6 MR. CORKRAN: Thank you.

7 MR. BUTANIS: Okay. We have a legislative  
8 update?

9 MS. TAYLOR: Legislative update briefly. Most  
10 of the bills that we have testified on and represented  
11 the commission on, meaning specifically Judge North,  
12 have all been heard on one side of the Legislature. We  
13 are awaiting for these bills to hop to the other side of  
14 the Legislature, and so far none of them have, except  
15 for the House joint resolution on the study being  
16 proposed for a property tax credit or for -- I forget  
17 the other term for tax credit -- so that we can look  
18 into the paying to the land owner or to the local  
19 jurisdiction for the inability to use certain lands in  
20 the Critical Area, particularly those for forest  
21 harvesting. So that's where we stand there.



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1           With respect to the one bill that was  
2 introduced by the Joint Legislative Oversight Committee  
3 requiring that our criteria changes be, in essence,  
4 subject to a "thumbs up/thumbs down" vote of the full  
5 General Assembly, the Environmental Matters Committee  
6 chairman has asked for amendments, in essence, changing  
7 that process and providing that we have the ability, as  
8 any other department, to go through the AELR Committee  
9 as the group to hear the changes in the criteria as  
10 opposed to the full vote by the General Assembly.

11           So that looks pretty hopeful. We'll see how  
12 it goes, but I think it may very well be entertained  
13 that way, in which case we will not then have to go  
14 through a long legislative process, but rather we'll be  
15 dealing with one committee. So we'll keep you informed  
16 as this takes place, and hopefully we'll be able to say  
17 the AELR Committee is our forum, as it is with every  
18 other department.

19           That is about it. Special Issue Subcommittee  
20 is beginning to entertain proposed changes to the  
21 criteria. We'll be working with them for the next few



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1 months in sharing those detailed changes, and then they  
2 will come to the entire commission probably for two  
3 sessions, one of which will be a work group session  
4 maybe at the Aspen Institute. We seem to be able to  
5 have all of our watershed decisions over at the Aspen  
6 Institute. And, why not, this will be another one.

7 So that's the legislative update and changes  
8 in the criteria update.

9 MR. BUTANIS: Is there any old business?

10 (No response.)

11 MR. BUTANIS: No old business. Any new  
12 business?

13 MR. BOWLING: I think, in some instances, we  
14 need to add definitions to our criteria, things like  
15 "What is a guest house?" You know, the things that we  
16 can do. There are a number of little issues like that  
17 that we should be looking at.

18 MS. TAYLOR: We are, indeed, looking at those  
19 issues. Yes, you betcha.

20 MR. BOWLING: Enough said.

21 MR. BUTANIS: Okay. Is there a motion to



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1 adjourn?

2 MR. BOSTIAN: No, hold on a second.

3 MR. BUTANIS: No?

4 MR. BOSTIAN: No. I see there's something  
5 else on the agenda: New members, executive director.

6 MS. TAYLOR: The new members were new members  
7 on the staff. I believe that I announced Claudia Jones  
8 as our Natural Resource Planner 3, who has filled the  
9 position of Abby Rohm. We have two graduate students  
10 from the University of Maryland: Carmen Jellotti and  
11 Theresa Corliss, both of whom had to leave. And, also,  
12 Mrs. Peggy Micker, who is Judge North's secretary and  
13 my secretary, and she'll be handling all the commission  
14 meetings from here on out and commission notifications.

15 I might add, though, that in addition to  
16 Mr. Williams, who is the, not so new anymore but I guess  
17 relatively so, appointment for Kent County, we have  
18 heard that Mr. Witson has been appointed and I believe  
19 has received Senate endorsement for the representative  
20 of St. Mary's County, which leaves us with one vacancy  
21 to be filled, and that is the position to represent



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1 Baltimore City. I have heard a name, which I forget, as  
2 having been tossed around, and I don't know if it's made  
3 it as far as Governor's Office with Senate endorsement  
4 yet.

5 MR. BOSTIAN: May I make a request that we  
6 have a current list of members?

7 MS. TAYLOR: You bet, you bet.

8 MR. GUTMAN: That's the fifth time that  
9 Dr. Taylor has been subjected to that request.

10 MR. BOSTIAN: That's the first time  
11 officially, I think.

12 MS. TAYLOR: There will (a) be a current list;  
13 (b) we are getting name tags to update, name plates to  
14 update; and we are ordering new stationery, but the  
15 stationery, I think, will wait until we get the  
16 Baltimore City member. The name plates we're putting in  
17 for now, and we can certainly do an update list for you,  
18 and we'll have it available at the next meeting. How's  
19 that?

20 MR. BOSTIAN: That's fine.

21 MR. BUTANIS: Anything further? You're sure?



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1 MR. BOSTIAN: Yes.

2 MR. BUTANIS: Absolutely sure?

3 MR. BOSTIAN: Absolutely.

4 MR. BUTANIS: Any motion to adjourn? Oh, wait  
5 a minute, wait a minute.

6 MS. TAYLOR: I'm the crumb bum this time, and  
7 that will probably get reported. I can see it now.  
8 Recommended panel members, we have two jurisdictions  
9 that have amendments, and I understand everyone has said  
10 yes, but let me announce them.

11 Panel members for Rock Hall, Roger Williams,  
12 Kay Langner, Bob Price -- he can't say anything because  
13 he isn't here -- Tom Jarvis, and Bill Corkran have all  
14 agreed to serve. Recommended panel members for Queen  
15 Anne's County, Bob Price, Bill Corkran, Roger Williams,  
16 Jim Gutman, and Shep Krech.

17 So that's the last one.

18 MR. BUTANIS: Okay. Motion to adjourn?

19 MR. COCKRAN: So move.

20 (Whereupon, at 3:20 p.m., the above-  
21 entitled meeting was adjourned.)



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CERTIFICATE OF NOTARY

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

16  
17 *Susan L. Dilley*  
18 \_\_\_\_\_  
19 SUSAN DILLEY  
20 Notary Public in and for the  
21 State of Maryland

My Commission expires:

September 14, 1993



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