

Public Hearings - Quaker Run County - Approval of Golf Course 1990 MJA - 51830 - 85

CHESAPEAKE BAY CRITICAL AREA COMMISSION

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: IN THE MATTER OF: :  
: :  
: THE APPLICATION OF WASHINGTON :  
: BRICK AND TERRA COTTA COMPANY :  
: FOR APPROVAL OF A GOLF COURSE. :  
: :  
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Monday, April 23, 1990

Pursuant to Notice, the above-entitled hearing was held at the Queen Anne's County Administration Office in Centreville, Maryland, commencing at 7:07 p.m., there being present on behalf of the respective parties:

COMMITTEE MEMBERS:

WILLIAM CORKRAN, CHAIRMAN  
JOSEPH ELBRICH, JR.  
KATHRYN LANGNER  
JOHN GRIFFIN

ON BEHALF OF THE CRITICAL AREA COMMISSION:

THOMAS A DEMING, ESQUIRE  
Assistant Attorney General  
Tawes State Office Building  
Annapolis, Maryland 21401

ON BEHALF OF CITIZENS FOR PRESERVATION:

JOHN C. MURPHY, ESQUIRE  
Suite 206  
516 North Charles Street  
Baltimore, Maryland 21201

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CRITICAL AREA COMMISSION



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1 ON BEHALF OF QUEEN ANNE DEPARTMENT OF  
PLANNING AND ZONING:

2 CHRISTOPHER DRUMMOND, ESQUIRE  
Blumenthal, Wayson, Downs and Offutt  
3 120 West Water Street  
Centreville, Maryland 21617

4 ON BEHALF OF WASHINGTON BRICK:

5 JOHN H. MURRAY, ESQUIRE  
101 Bay Street  
6 Easton, Maryland 21601

7 REPORTED BY: DEBORAH TURNER, NOTARY PUBLIC  
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P R O C E E D I N G S

1  
2 CHAIRMAN CORKRAN: Our esteemed attorney has  
3 presented me this evening with an opening statement, and  
4 I shall read this.

5 My name is William Corkran, Jr., and I'm a  
6 member of the Chesapeake Bay Critical Areas Commission  
7 from Talbot County.

8 Judge John North, Chairman of the Commission  
9 has appointed a five-member panel of Commission members  
10 to conduct tonight's hearing, and designated me to chair  
11 the panel.

12 The other members are, and sitting here to my  
13 right, if I may, with deference to Kay, is Joe Albrecht  
14 from Anne Arundel County, and Kay Langner from Cecil  
15 County, and John Griffin, who is the Deputy Secretary of  
16 the Department of Natural Resources.

17 The purpose of this hearing is for the panel  
18 to review a proposal by Washington Brick and Terra Cotta  
19 Company to develop a golf course that would be located  
20 in the Resource Conservation Area on a tract that lies  
21 adjacent to the Chester River and Queenstown Creek, west



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1 of U. S. Route 50 and 301, and Maryland Route 18. The  
2 panel is charged to make a recommendation to the full  
3 Commission at it's meeting on May 2, 1990.

4 This matter comes before the Commission  
5 because Section 6007B.1 of the Queen Anne County's  
6 Critical Area Ordinance prohibits certain uses in the  
7 Resources Conservation Area due to their adverse impact  
8 on habitats and water quality.

9 Among the uses listed under this prohibition  
10 is the following, and under Section "G":

11 "Institutional uses as defined by Queen Anne's  
12 County zoning ordinance shall be subject to  
13 interpretation by the Critical Area Commission, and a  
14 determination of whether or not the use constitutes an  
15 industrial or commercial use under the provisions of the  
16 Critical Area. Section 4007 of the Queen Anne County  
17 zoning ordinance classifies golf courses as an  
18 institutional use under the sub heading of 'outdoor  
19 recreation'".

20 The Commission understands these provisions to  
21 mean that if a particular institutional use is not



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1 deemed to constitute an industrial or commercial use, it  
2 is not, underlined, prohibited in the Resource  
3 Conservation Area under Sections 6007B.1 of the Queen  
4 Anne County Critical Area Ordinance.

5 If, on the other hand, the Commission  
6 determines that the proposed golf course does constitute  
7 an industrial or commercial use, then it is not  
8 permitted in the Resource Conservation Area under the  
9 Queen Anne County Critical Area Ordinance.

10 The relevant portion of the Commission's  
11 criteria is 14.15.02.05C(5), which provides in pertinent  
12 part:

13 "C. In developing their Critical Area  
14 programs, local jurisdictions shall use all of the  
15 following criteria for Resource Conservations Areas:

16 (5) Existing industrial and commercial  
17 facilities including those that directly support  
18 agriculture, forestry, aquaculture, or residential  
19 development not exceeding the density specified in  
20 Section C(4), above, shall be allowed in Resource  
21 Conservation Areas. Additional land may not be zoned



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1 for industrial or commercial development, except as  
2 provided in regulations .06, below."

3 Regulation .06 refers to the use of a County's  
4 growth allocation.

5 As the Commission's criteria contain no  
6 definition of industrial or commercial the issue on  
7 which this panel must make a recommendation to the full  
8 Commission, is a matter of first impression for the  
9 Commission. The panel wishes to hear any information  
10 that is relevant to the issue of whether a golf course  
11 such as that proposed should be deemed a commercial use  
12 or not.

13 The hearing will be adjudicatory in nature,  
14 with participation limited to persons according to party  
15 status. Each party will have the right to put on  
16 witnesses, present evidence, cross-examine witnesses of  
17 other parties, and make closing arguments. The panel's  
18 recommendation to the Commission will be based solely on  
19 the testimony and evidence received at this hearing.

20 The hearing will be completed this evening.  
21 In order to accomplish this, parties are requested to



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1 make their presentations concise, and keep their cross-  
2 examination as brief as possible.

3 If two or more parties share a common position  
4 on this matter they are urged to make presentations and  
5 cross-examination through a common spokesperson or  
6 counsel.

7 Rebuttal testimony will be permitted if  
8 necessary, but again each party is requested to keep it  
9 to the minimum necessary.

10 The order of the proceeding will be as  
11 follows: The introduction by the Chairman; two,  
12 Determination of objections to standing, if any;  
13 preliminary matters, that is procedural or  
14 jurisdictional issues; presentation by County officials;  
15 presentation by Washington Brick and Terra Cotta  
16 Company; and six, presentation of relevant information  
17 by staff of the Critical Areas Commission; and then  
18 presentation by other parties.

19 Eight, rebuttal testimony if necessary, in  
20 same order presentation as above; nine, closing  
21 arguments.



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1           The following persons have requested party  
2 status by letters received at the offices of the  
3 Critical Areas Commission by noon last Friday, April 20,  
4 1990:

5           Washington Brick and Terra Cotta Company,  
6 Counsel, John H. Murray, Esquire;

7           Department of Planning and Zoning, Queen  
8 Anne's County, Counsel, Christopher F. Drummond,  
9 Esquire;

10           Charles F. Benson;

11           Citizens for the Preservation of Queenstown  
12 Creek, Incorporated;

13           McAvoy Cromwell and Byam Stevens, executors of  
14 the estate of Clare Stevens, deceased;

15           Lawrence Hoyle, Jr.;

16           Mrs. Thorpe Nesbit;

17           Chauncey and Kathleen Brooks;

18           Mr. and Mrs. Irving Tuttle;

19           Margaret C. Taliaferro;

20           John Lee Carroll;

21           Counsel, John C. Murphy, Esquire.



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1           If there are any objections to the standing of  
2 any person requesting to be a party, we will hear  
3 testimony from that person as to how his or her  
4 interests may be adversely affected by the Commission's  
5 action.

6           Will counsel now please note, in turn, what  
7 objections to standing, if any, they wish to raise?

8           MR. MURRAY: Mr. Chairman, John Murray, for  
9 Washington Brick and Terra Cotta Company.

10           I wish to object to the standing of the  
11 following:

12           Citizens for the Preservation of Queenstown  
13 Creek.

14           McAvoy Cromwell and Byam Stevens, Executors of  
15 the estate of Clare Stevens, deceased;

16           Lawrence Hoyle, Jr.;

17           Mrs. Thorpe Nesbit;

18           Chauncey and Kathleen Brooks;

19           Mr. and Mrs. Irving Tuttle;

20           Margaret C. Taliaferro;

21           John Lee Carroll,



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1 on the grounds that those persons and entities do not  
2 have any injury in fact, and they're not protected by  
3 the zone of interest covered by the issues before the  
4 Commission tonight.

5 Thank you.

6 CHAIRMAN CORKRAN: Thank you.

7 MR. MURRAY: Mr. Chairman, it would be  
8 appropriate at this time for Mr. Murphy to offer  
9 testimony as to each person against whom standing is  
10 objected so that we can hear what their interest is and  
11 make a determination whether they should be afforded  
12 standing or not.

13 MR. MURPHY: Good evening, Mr. Chairman.

14 CHAIRMAN CORKRAN: Good evening.

15 MR. MURPHY: Members of the Commission, my  
16 name is John C. Murphy. I'm the attorney for these  
17 individuals whose standing has been questioned.

18 Just as a preliminary matter I would like to  
19 make the observation that in regard to standing it seems  
20 to me we are seeking to determine whether a golf course  
21 is a permitted RCA use in Queen Anne's County. I



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1 understand that's what this introduction stated, and I  
2 have some objections that I'd like to reserve at this  
3 time, as to this proceeding, which I'll get into at the  
4 time of making procedural objections.

5 But I would just like to make the preliminary  
6 observation that if you're talking about whether golf  
7 courses are a permitted use in the RCA in Queen Anne's  
8 County, it seems to me that anybody who is a citizen of  
9 Queen Anne's County would have an interest in this.

10 However, I will not rest on that statement,  
11 instead I will call Mr. John Lee Carroll to the witness  
12 stand.

13 Where do you want Mr. Carroll to sit? Is it  
14 all right for him to sit here?

15 Can you hear him?

16 THE REPORTER: I would prefer that he sit over  
17 here near the mike.

18 Thank you.

19 MR. MURPHY: Do you wish Mr. Carroll to be  
20 sworn? Does Counsel waive swearing of the witnesses or  
21 do you want them sworn?



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1 MR. MURRAY: I prefer them to be sworn.

2 Whereupon,

3 JOHN LEE CARROLL,

4 a witness, called for examination by counsel for the  
5 Citizens for Preservation, was duly sworn, and was  
6 examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE CITIZENS FOR  
8 PRESERVATION

9 BY MR. MURPHY:

10 Q Mr. Carroll, would you, for the record, state  
11 your full name and address?

12 A John Lee Carroll, Blakeford Farm, P.O. Box  
13 199, Queenstown, Maryland 21658.

14 Q And how long have you lived in Queenstown?

15 A Since 1970.

16 Q What is your education, Mr. Carroll?

17 A I have a MS degree in geology.

18 Q What is your occupation?

19 A I'm a geologist.

20 Q How long have you practiced that occupation?

21 A Since 1960.



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1 Q Where do you practice that occupation?

2 A In New York, primarily.

3 Q Now do you believe that the proposed golf  
4 course proposed by the Washington Brick and Terra Cotta  
5 Company will have an adverse effect upon you?

6 A Yes, I do.

7 Q Would you explain to the Commission why?

8 A Okay, I live at Blakeford, which is a farm  
9 just across the mouth of Queen Anne's Queenstown Creek,  
10 from Mr. Birney's property, which is known as My Lord's  
11 Gift.

12 And it's called Blakeford because there was  
13 once a ford there called Blake's Ford, which was an  
14 important trade route in colonial times. And it would  
15 still be a ford, or even a land bridge, if the Corps of  
16 Engineers didn't periodically dredge a narrow channel  
17 through the ford for the benefit of the watermen and the  
18 recreational boats.

19 I have a nautical chart here, which shows the  
20 relationship --

21 CHAIRMAN CORKRAN: Counsel, do you want to



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1 have that marked as an exhibit?

2 MR. MURPHY: Let's put this up here on --

3 CHAIRMAN CORKRAN: I don't think they can see  
4 it from there.

5 MR. MURPHY: Let's pull it around.

6 MR. MURRAY: Mr. Murphy, can we get that  
7 marked before we put it up on the board?

8 (Whereupon, the document was marked for  
9 identification Exhibit Number 1.)

10 BY MR. MURPHY:

11 Q Would you mind if the witness approaches and  
12 points out?

13 A See, this is not a small feature. We're  
14 talking about this area right in here, okay. And it is  
15 this feature -- this dredging length, by the way, is  
16 just under a mile.

17 Q Wait a minute now, this peninsula is your  
18 property here?

19 A This is Blakeford Point, yes.

20 Q So you own this property here?

21 A Yeah.



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1 Q And right across the entrance to Queenstown  
2 Creek is the My Lord's Gift property, which is the  
3 Washington Brick and Terra Cotta --

4 MR. DEMMING: Excuse me, Counsel, so that the  
5 record will be clear, when you refer to this peninsula,  
6 et cetera, could you make a mark on the chart at a label  
7 of "A" or "B" or something, so that the transcript will  
8 reflect what the exhibit shows?

9 MR. MURPHY: Sure.

10 BY MR. MURPHY:

11 Q You want to mark your property "A", Mr.  
12 Carroll, Blakeford.

13 A All right, sir.

14 Q And then would you mark the Birney property  
15 "B"?

16 A All right.

17 Q What would be the approximate distance there,  
18 do you know?

19 A Just under 500 yards.

20 MR. MURPHY: I would offer this in evidence,  
21 Exhibit 1.



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1 MR. MURRAY: Has it been accepted?

2 CHAIRMAN CORKRAN: Yes, we accept that.

3 MR. MURPHY: Thank you.

4 (Whereupon, Exhibit 1 was received into  
5 evidence.)

6 THE WITNESS: It's this configuration plus the  
7 configuration of the two globes of Queenstown Creek that  
8 make Queenstown Creek very different from a lot of other  
9 creeks on the Bay. It is not the "V" shaped canyon  
10 running down into another "V" shaped canyon, it's more  
11 like a tidal lagoon, which empties out over a bar. And  
12 this creates a problem because Queenstown Creek has  
13 really no flushing capability, and pollutants that go in  
14 there are likely to remain until the next storm,  
15 combined with the spring tide takes them out.

16 This lack of flushing capability has been the  
17 source of serious concern, and there have been a great  
18 many studies on it, including one going on right now in  
19 the Department of Health.

20 The other feature of this area is that it is  
21 underlain by a semi-consolidated sand layer, which



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1 contains the water table. This sand layer is in contact  
2 with the creek so that anything that is put on land  
3 adjacent to the creek finds its way eventually into the  
4 creek, unless it's rapidly degradable material.

5 Now you're going to hear some expert testimony  
6 about what the golf course will do to the creek, but  
7 just let me say a couple of things.

8 Construction of the golf course could  
9 produce -- that construction and grading alone could  
10 produce a sedimentation problem in this creek, which it  
11 might never recover from for ten years or more.

12 Studies of the Patuxent River have shown this.

13 The pesticides and herbicides, which will be  
14 some six times greater than what is currently going on  
15 on that property, these materials plus nutrients will  
16 enter into the ground water, and go from there into the  
17 creek, which is already suffering from too many  
18 nutrients.

19 For the five families living on Blakeford, our  
20 whole lives are tied up with the wildlife habitat, both  
21 aquatic and terrestrial. Fish, soft crabs, water fowl,



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1 boating, wind surfing, these are all -- these are our  
2 lives, and they're what the land values on the Eastern  
3 shore are based on.

4 Golf courses are notoriously hard on geese,  
5 and geese are a big element in the economic values of  
6 waterfront farms. We operate off of a very shallow  
7 well, and a utrafine (phonetic) creek could cause  
8 problems for drinking water.

9 Do I have to say any more about that?

10 BY MR. MURPHY:

11 Q Well, --

12 A I have another reason, which is that this is  
13 at present an entirely residential community. I don't  
14 know how many of you -- how many of you have been to  
15 Queenstown? Anybody here?

16 Well, those of you who have been there know  
17 that it has almost no commercial activity, and it has no  
18 commercial activity on the waterfront. It's only 160  
19 acres in size, less than a quarter the size of the My  
20 Lord's Gift farm. And there's nothing going on there on  
21 the waterfront, except the watermen coming and going.



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1           You cannot buy gas at the dock, and the town  
2 wants it that way, and the town keeps it that way. And  
3 the rest of the creek is surrounded by farms and  
4 residences and there's no commercial activity there  
5 either.

6           Now a golf course is a major commercial  
7 activity, practically doubling the daily population of  
8 this rural area, and it's not just introducing  
9 commercial uses, it's overwhelming it with  
10 commerciality.

11           The residential values, which have been built  
12 up in the community, are going to fall, and the question  
13 will be, will commercial values take their place. What  
14 will those commercial values amount to. Will they be  
15 realizable. That's -- you know, when the character of  
16 the community is being changed in such a drastic way, I,  
17 and the other people that are represented here, have to  
18 do some very hard thinking.

19           I think we have standing.

20           Q     Mr. Carroll, could you tell me what is the  
21 organization called, Citizens for the Preservation of



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1 Queenstown Creek?

2 A Well, the -- as I explained about this  
3 water quality problem has been bothering people for a  
4 long time, and the Citizens for the Preservation of  
5 Queenstown Creek was started to see if we couldn't solve  
6 those problems.

7 Q So it's interested in water quality of the  
8 creek?

9 A Mainly in the water quality of the creek, and  
10 the commerciality of the creek. We don't think that the  
11 creek can stand any really -- really any commerciality  
12 at all.

13 Q What effect would the golf course have on the  
14 organization of Citizens for the Preservation of  
15 Queenstown Creek?

16 A Frustrate the purpose of the whole  
17 organization. It would allow commerciality on the  
18 creek, and also reduce the water quality and it would  
19 certainly not be in line with what we're trying to  
20 achieve.

21 Q Let me ask you about these individual



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1 citizens, and if you could locate their property for us.

2 A Sure.

3 Q Margaret Taliaferro happens to be in the  
4 audience. If there's no objection I would just as soon  
5 have Mr. Carroll say where she is.

6 Where is Margaret Taliaferro?

7 A She lives in Queenstown.

8 Q In Queenstown on the water?

9 A Yes.

10 Q And Chauncey and Kathleen Brooks, do they live  
11 in Queenstown also?

12 A Yes, they do.

13 Q And they live on the water?

14 A Yes.

15 Q And you have talked to them about this case?

16 A Yes.

17 Q Have they told you how they would be affected  
18 by the golf course?

19 A Yes.

20 Q Which would be essentially the same thing --  
21 your effect --



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1 A Just what we've gone through, yes.

2 Q I see. And let me ask you to locate on the  
3 map the properties -- the Stevens property.

4 Again, I think it would be easier if we could  
5 just spread this out here, if you don't mind.

6 CHAIRMAN CORKRAN: You want to present this as  
7 an exhibit? You want to mark it?

8 MR. MURPHY: Yes, we do.

9 (Whereupon, the document was marked for  
10 identification Exhibit Number 2.)

11 BY MR. MURPHY:

12 Q All right, Mr. Carroll, this is a plat, and  
13 would you locate, again, your property?

14 A It's this property here.

15 Q And the Washington Brick and Terra Cotta  
16 Company property?

17 MR. DEMMING: Rather than pointing, could you  
18 use the pen, and --

19 MR. MURPHY: Well, there are names on it.

20 THE WITNESS: They're marked.

21 MR. MURPHY: They're marked with the names.



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1 BY MR. MURPHY:

2 Q Now would you locate the Stevens' property for  
3 us?

4 A Yes, that's on the east side of the creek,  
5 there.

6 Q That is on the creek also?

7 A Yes.

8 Q And would you locate the Hoyle property?

9 A The Hoyle property is just north of Mrs.  
10 Miles. It's this property here.

11 Q It's on the Chester?

12 A It's on the Chester River.

13 Q And would you locate the Nesbit property?

14 A The Nesbit property is just southeast of the  
15 My Lord's Gift farm, between the Nesbit property and the  
16 Caputo property -- and the My Lord's Gift is the  
17 Caputo property.

18 Q I see. I think that's everybody.

19 MR. GRIFFIN: Where's Taliaferro?

20 THE WITNESS: She's in the town, just here.

21 BY MR. MURPHY:



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1 Q Where is Brooks, also?

2 A Brooks -- I would say there.

3 MR. ELBRICH: Since those are not marked on  
4 the map, you might want to do a label designation for  
5 who is who, please.

6 THE WITNESS: These are the two property  
7 owners who are --

8 MR. ELBRICH: In the town.

9 BY MR. MURPHY:

10 Q And would it be your testimony that Mrs.  
11 Nesbit and the Stevens estate and the Hoyle interests  
12 are affected the same as you are by the proposed golf  
13 course?

14 A Yes, indeed. Hoyle a little less directly,  
15 because he's one step removed from the creek, but the  
16 commerciality of the area affects Hoyle very severely.  
17 In other words, if Carroll or Stevens were to throw in  
18 the towel and turn their property over to Marriott  
19 Corporation, Hoyle would be --

20 Q And Hoyle --

21 A -- in a very bad situation.



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1 Q Is Hoyle's property an active farm and --

2 A An active farm, yes.

3 Q -- farming?

4 A Yes.

5 Q And pretty much all the properties around the  
6 town are in farm use?

7 A All actively farmed.

8 CHAIRMAN CORKRAN: May I ask a question? What  
9 is the difference in designation in green and plain?

10 THE WITNESS: The green, I think, indicates  
11 forested areas.

12 CHAIRMAN CORKRAN: I see. So that isn't farm?

13 THE WITNESS: Well, it's farmed here. There's  
14 a field -- there is a -- see -- this isn't quite  
15 correct. She owns a field in here. But it's all part  
16 of the same farm.

17 BY MR. MURPHY:

18 Q Originally this was the Miles estate, wasn't  
19 it, that you own now?

20 A Yes.

21 MR. MURPHY: May I offer this in evidence?



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1 THE WITNESS: Mrs. Miles, by the way, is one  
2 of our group.

3 MR. MURPHY: She belongs to the Citizens for  
4 Preservation of Queenstown Creek?

5 THE WITNESS: Yes, she does.

6 MR. MURPHY: As well as the Caputos who live  
7 here?

8 THE WITNESS: Yes, and she asked to be a  
9 member of the individuals who were a part of the --

10 MR. MURPHY: I think that request came in  
11 after I'd sent the names in.

12 I've offered that in evidence.

13 CHAIRMAN CORKRAN: Any objection?

14 MR. DEMMING: None.

15 (Whereupon, Exhibit Number 2 was received  
16 into evidence.)

17 MR. MURPHY: Your witness.

18 EXAMINATION BY COUNSEL FOR WASHINGTON BRICK

19 BY MR. MURRAY:

20 Q Mr. Carroll, would you please locate the  
21 location of your house on Exhibit Number 1?



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1 A Right here.

2 Q How is that being designated?

3 A However you want. I can make it darker if you  
4 like.

5 Q Okay, you testified earlier that you were a  
6 resident of Queenstown; that's not correct is it?

7 A I'm not a legal resident, no. For tax  
8 purposes do you mean?

9 Q For any purpose?

10 A Well, I don't vote there.

11 Q Does your house lie within the municipal  
12 boundaries of Queenstown?

13 A No.

14 Q You also testified that there was no  
15 commercial activity in Queenstown Creek. Is it not the  
16 case that there are some commercial watermen?

17 A Didn't I say other than watermen?

18 Q I did not hear you say that.

19 A Yeah, I did -- I meant to say that. Other  
20 than watermen coming and going there was no commercial  
21 activity. There are about 40 to 50 watermen who keep



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1 their boats in the harbor, not all of who live in  
2 Queenstown.

3 Q Are there no other commercial activities at  
4 all that are visible within Queenstown Creek?

5 A Not that I know of.

6 Q No dredging rigs?

7 A Well, the dredging rig is not -- does not  
8 dredge in Queenstown, except I think the last dredging  
9 was a few years ago, and the only dredging before  
10 that was in 1955. So mainly those rigs are away from  
11 there.

12 Q But they are tied up there from time to time,  
13 or anchored in the creek?

14 A Yes, they are. It's a problem we're  
15 addressing.

16 Q Now is it not also the case that Queenstown  
17 municipal sewer facility discharges into the creek at  
18 the head of the creek?

19 A That is correct.

20 MR. MURRAY: No other questions of this  
21 witness.



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1 EXAMINATION BY COUNSEL FOR THE CITIZENS FOR  
2 PRESERVATION

3 BY MR. MURPHY:

4 Q Mr. Carroll, I may have misled you. I asked  
5 you how long you had lived in Queenstown, and you never  
6 meant to mislead the Commission by saying that you lived  
7 within the corporate boundaries, did you?

8 A No, no. Oh, I think that is clear from --

9 Q Your post office address is Queenstown?

10 A Right, yeah.

11 Q And you have a residence in New York City  
12 where you carry on your business, geology?

13 A That's right, you did ask me that. Isn't that  
14 what I said.

15 Q You have a residence there, and you've also  
16 had this residence in Queenstown since 1960, is it?

17 A 1968 we first moved here, renting a house, and  
18 in '70 we bought.

19 Q And you were actually born and raised in  
20 Howard County, were you not?

21 A Howard County, yes.



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1 MR. MURPHY: That's all I have.

2 Mr. Chairman, that would be our case on  
3 standing. I could argue if you wish.

4 CHAIRMAN CORKRAN: Thank you.

5 MR. DEMMING: I think we should hear a brief  
6 argument from Mr. Murphy, and then a brief response from  
7 Mr. Murray.

8 CHAIRMAN CORKRAN: All right.

9 MR. MURPHY: Well, I really don't want to  
10 belabor this point, because I think that this is a legal  
11 principle, whether a person has a plausible or  
12 legitimate concern that they will be affected by the  
13 action which is under discussion.

14 And the question is potential injury in fact,  
15 and I think Mr. Carroll, for himself, has amply  
16 demonstrated that he fears the effects of a polluted  
17 Queenstown Creek for the reasons he stated with respect  
18 to the soil types and the use of pesticides and the run  
19 off from the grading, et cetera.

20 He also testified about the commercialization  
21 of the area, and his fears that that will interfere with



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1 his residential character of his property, and the  
2 enjoyment and property value associated with it.

3 I think this is abundance of testimony with  
4 regard to standing.

5 A case with respect to Citizens for the  
6 Preservation of Queenstown Creek, is a little different.  
7 That is an organization, and there are some cases in  
8 Maryland law that talk about a typical homeowner's  
9 association, if you have a organization of homeowners  
10 they might not have standing, because they don't  
11 have any interest that's different from their interest  
12 as homeowners. There are some cases that stand for  
13 that.

14 However, again, the question is injury in  
15 fact, and we have in our United States, we have  
16 organizations that are interested in making money,  
17 making a profit, and that's part of the American system.  
18 Nobody would dispute the standing of the applicants  
19 here, because they have an interest in a profit making  
20 business, associated with this property.

21 This organization does not have an interest in



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1 making a profit. It's interest is somewhat different.  
2 It's interest is in the preservation of Queenstown  
3 Creek, and the commercialization, resisting the  
4 commercialization of the creek.

5 I would just proffer -- I should have asked  
6 Mr. Carroll this, it's a non-profit corporation. It's  
7 identified that way in the pleadings, it's incorporated.  
8 And organizations under the law have standing, whether  
9 they are profit making or non profit, or whatever. It's  
10 again an injury in fact, and there is a multitude of  
11 Supreme Court cases that have recognized this. The  
12 principle has been recognized in Maryland cases,  
13 although I'm not aware as a matter of fact of any  
14 case authorizing standing to a environmental  
15 organization.

16 However, there's no case that says they don't.  
17 It hasn't arisen under Maryland law. It's arisen  
18 thousands of times under federal law, and the test is  
19 basically the same. The Sierra Club versus Morton case  
20 in the Supreme Court is the leading case.

21 With respect to the other individuals, Mrs.



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1 Taliaferro, the Brooks, who live in the town, Mr.  
2 Carroll testified that the effect on them would be the  
3 same as it would be on him. The pollution of the water  
4 interfering with their enjoyment of the waterfront  
5 property.

6 I mean, it's hard to seriously argue that your  
7 property enjoyment and values would not be affected by  
8 the pollution of the body of water on which you own  
9 property. They seem to have a legitimate standing  
10 interest. They also have an interest in preventing the  
11 commercialization of the creek, and of the area.

12 It's certainly a fundamental principle that  
13 commercial activities can harm residential amenities and  
14 uses.

15 I think 99 percent of the cases in Maryland  
16 law on zoning are residential owners seeking to prevent  
17 some type of commercial use. This is bread and butter  
18 standing.

19 The interests of the farm owners who are also  
20 waterfront people, who own land on Queenstown Creek, Mr.  
21 Carroll again testified that their interest was



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1 basically the same as his. Their interest is in having  
2 property on a non-polluted body of water, versus having  
3 property on a body of water that is polluted. It seems  
4 to me there's a clear effect on a person's enjoyment and  
5 value of his property.

6 Mr. Carroll very candidly testified that the  
7 Hoyle property was not fronting on Queenstown Creek, it  
8 obviously isn't, but it would be affected by the  
9 commercialization of the area. He said that Hoyle is a  
10 farmer, and has a residence on the property, and that it  
11 would be affected again by the commercialization.

12 So, in summary I would submit that with  
13 respect to every individual identified as a party that  
14 they have ample standing in this case.

15 Thank you.

16 CHAIRMAN CORKRAN: Thank you.

17 Mr. Murray?

18 MR. MURRAY: Mr. Murphy and I agree on what  
19 principles are, we disagree on how they should be  
20 applied.

21 The law of standing in Maryland simply is that



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1 the individuals seeking standing must evidence some  
2 special, individual harm, something that sets them apart  
3 from the public at large.

4 That, however, has to be more than simply a  
5 fear, or some speculative concern about what some event  
6 may mean to them.

7 It has to be something reasonable objective.  
8 And moreover, even if that assertion is made, it has to  
9 be within the zoning interests intended to be protected  
10 by the law being applied, or sought to be applied.

11 Mr. Murphy says that all of the landowners in  
12 the area are similarly affected, which proves the point  
13 that there is no unique, special, interest to these  
14 people. They are situated just like all the rest of us,  
15 who are citizens of Maryland, or citizens of Queen  
16 Anne's County. We have an interest in our general  
17 environment. That does not give us, as individuals, the  
18 right to get involved in these kinds of decision making  
19 processes.

20 Thank you.

21 CHAIRMAN CORKRAN: Thank you.



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1 MR. DEMMING: Mr. Chairman, I would suggest  
2 that it might be appropriate to take no more than a five  
3 or ten minute break so that I could confer with members  
4 of the panel on the legal arguments that have been made,  
5 and then we can rule on the standing question and get on  
6 with this.

7 CHAIRMAN CORKRAN: All right, well how about  
8 just five minutes.

9 MR. DEMMING: Okay, there's a conference room  
10 right back where that door is back there. We can go  
11 back there.

12 (Whereupon, there was a brief recess.)

13 CHAIRMAN CORKRAN: Before I announce our  
14 decision, I trust that everyone has put his name to the  
15 sign-up sheet. If not, I will leave it up here, if you  
16 would please do that.

17 The panel has decided that the following have  
18 standing:

19 The estate of Clare Stevens;

20 Mrs. Nesbit;

21 Chauncey and Kathleen Brooks;



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1 Margaret Taliaferro;

2 John Carroll.

3 We have a question because we could not find  
4 it on the map there, where Mr. and Mrs. Irving Tuttle  
5 may live.

6 MR. CARROLL: Queenstown.

7 CHAIRMAN CORKRAN: Is their property on the  
8 creek?

9 MR. CARROLL: Well, within 200 yards.

10 CHAIRMAN CORKRAN: But it's not on the creek?

11 MR. CARROLL: No.

12 CHAIRMAN CORKRAN: Thank you.

13 We deny standing to the Citizens for the  
14 Preservation of Queenstown Creek, Incorporated;

15 Lawrence Hoyle, Jr.;

16 Mr. and Mrs. Irving Tuttle.

17 CHAIRMAN CORKRAN: Okay, now Mr. Counselor?

18 MR. DEMMING: First of all, we have to go to  
19 the second item on the agenda, which was any preliminary  
20 matters that the parties wanted to raise.

21 MR. MURPHY: I have no objection to Mr.



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1 Wheeler going on if he wants to.

2 MR. DEMMING: Take him out of order, Mr.  
3 Chairman?

4 CHAIRMAN CORKRAN: Yes, yes, fine.

5 MR. DRUMMOND: Mr. Chairman, my name is  
6 Christopher Drummond. I represent Queen Anne's County  
7 Department of Planning and Zoning, and we would like to  
8 offer some testimony from Commissioner Wheeler Baker.  
9 Mr. Baker, or Commissioner Baker, needs to be at a  
10 meeting in Wye Mills at 8:30, and with the kind consent  
11 of Mr. Murphy and Murray, they have consented to  
12 changing the schedule to let Commissioner Baker make  
13 some remarks so he can get on his way.

14 CHAIRMAN CORKRAN: Fine, thank you.

15 MR. DRUMMOND: Thank you.

16 MR. MURPHY: Could I just reserve my  
17 objections until the time I make them at the procedural  
18 time on the agenda, rather than waive any objections by  
19 letting Mr. Baker go? I reserve my objections.

20 CHAIRMAN CORKRAN: Commissioner?

21 MR. DRUMMOND: I guess we want you sworn.



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1 MR. MURPHY: I waive it.

2 MR. MURRAY: I don't care, waive it.

3 EXAMINATION BY COUNSEL FOR QUEEN ANNE'S COUNTY PLANNING  
4 AND ZONING

5 BY MR. DRUMMOND:

6 Q Would you state your full name?

7 A Wheeler R. Baker.

8 Q And Mr. Baker, you are one of the three county  
9 commissioners for Queen Anne's County; is that correct?

10 A That's correct.

11 Q You're currently on the Commission, and your  
12 tenure expires --

13 A It expires November of this year, 1990.

14 Q If not re-elected.

15 A Right.

16 Q Now Commissioner Baker, I understand that you  
17 have reviewed the preliminary plans, or at least the  
18 concept of the Queenstown Harbor golf course; is that  
19 correct?

20 A That's correct.

21 Q Now I understand that you wanted to address



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1 the members of the panel with respect to the golf course  
2 generally.

3 MR. MURPHY: I would object, but I don't mean  
4 to be difficult, but the hearing notice says that this  
5 hearing is limited to a determination of whether this  
6 golf course constitutes a commercial use or not. It  
7 seems to me any questions have to be directed as to  
8 whether this use constitutes a commercial use or not.

9 MR. DEMMING: Well, does anybody else want to  
10 speak on the objection before --

11 MR. DRUMMOND: Well, I think as an opening  
12 question it's certainly preforatory in nature. I'll get  
13 to the specifics.

14 MR. MURRAY: I have no objection to the  
15 question. I think it's proper.

16 CHAIRMAN CORKRAN: The objection is overruled.

17 BY MR. DRUMMOND:

18 Q Go ahead, Commissioner Baker.

19 A Well, I just wanted to state that -- was it  
20 two or three weeks ago, the County Commissioners sent  
21 the Critical Areas Board a letter stating our position,



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1 that we were in favor of Mr. Birney's project to put a  
2 golf course in RCA. We felt it would be in the best  
3 interests of the County for many reasons.

4 I can't sit before you and tell you that there  
5 might not be a few bad side effects, but I think  
6 generally it's going to be very positive for the County.

7 I heard Mr. Carroll speaking of run off to the  
8 creek, well, the way I figure it, and I'm not an  
9 engineer, so don't get me wrong, but that water means a  
10 lot to the operation of a golf course. They need it for  
11 irrigation. I would think that they would want to hold  
12 that, and -- I can't say for sure, but I'm sure that  
13 Queenstown sewage system, which is dumping into the  
14 Queenstown Creek now, if they could get their heads  
15 together, would probably, hopefully, take the effluent  
16 from that system, disperse it on the golf course. It's  
17 a wonderful way of getting rid of sewage effluent. We  
18 do it at our golf course down in Prospect, and it's very  
19 successful.

20 I don't see anything but pluses on that side.  
21 And when you look at the character of the land around



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1 there now it's farms, and it's been that way forever,  
2 and that has run off. We have a lot of nutrients  
3 running in from that, and I would see a lot less running  
4 off this golf course than off a farm. And I think that  
5 would be a plus.

6 The open space is a big issue for Queen Anne's  
7 County also. Now, I've looked at this ever since I was  
8 a boy, a developer could have come in and chopped that  
9 up into lots years ago, or even now, a lot of it is out  
10 of the RCA, a lot of it's out of the critical area.  
11 They could go ahead if they could get perc tests or work  
12 out a deal with Queenstown for sewage, and develop that.  
13 I would much rather see that in open space and golf  
14 course greens. To me that's something that the whole  
15 county could use. It would be a benefit for the whole  
16 county.

17 And I see many more pluses on the ledger than  
18 I do minuses.

19 MR. DRUMMOND: Have you seen this?

20 MR. MURPHY: No.

21 MR. DRUMMOND: I would offer this, Mr.



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1 Chairman, which is a copy of the letter which I think  
2 the Critical Areas Commission received from the County  
3 Commissioners.

4 I suppose that would be --

5 CHAIRMAN CORKRAN: Exhibit 3.

6 MR. DRUMMOND: How are we numbering this?

7 Have we got a different numbering system for the various  
8 parties, or --

9 CHAIRMAN CORKRAN: Let's call it County

10 Exhibit --

11 THE REPORTER: Consecutively. If it's okay,  
12 we'll do it consecutively.

13 (Whereupon, the document was marked for  
14 identification Exhibit Number 3.)

15 MR. MURRAY: May I state an objection?

16 CHAIRMAN CORKRAN: Yes.

17 MR. MURPHY: Perhaps I could just have a  
18 continuing objection.

19 The letter does not deal with whether this use  
20 is a commercial use or not.

21 CHAIRMAN CORKRAN: We understand that.



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1 MR. MURPHY: May I have a continuing  
2 objection?

3 THE WITNESS: Well, it does in a way, sir,  
4 because we understand the nature of what's going to be  
5 going on there. We know it's going to be partially  
6 commercial, these people are here to make money. We  
7 understand that, and we've weighed all that out, that's  
8 the reason we're sitting here tonight.

9 BY MR. DRUMMOND:

10 Q Commissioner Baker, were you involved in the  
11 comprehensive re-zoning and re-draft -- adoption of a  
12 new zoning ordinance in Queen Anne's County?

13 A Yes, I was.

14 Q And do you recall discussions or  
15 consideration --

16 CHAIRMAN CORKRAN: Could we just note for the  
17 record that the exhibit was admitted?

18 (Whereupon, Exhibit Number 3 was received  
19 into evidence.)

20 BY MR. DRUMMOND:

21 Q Do you recall discussions and the



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1 consideration of uses defined as commercial versus uses  
2 defined as institutional?

3 A Yes, I do.

4 Q Could you describe for the panel what you, as  
5 a member of the County Commissioners, considered as  
6 indicative of an institutional use, as compared to a use  
7 indicative of commercial, or commercial in nature?

8 A Well, I'll take commercial first. I would  
9 think like a seafood packing house, or lumber mill, full  
10 blown hotel, versus an institution. An institution  
11 would be like a school, golf course.

12 Q And you recognize that there are some  
13 institutional uses that have a commercial aspect to  
14 them?

15 A Yes.

16 Q As I assume that the Commissioners recognized  
17 that agricultural uses have a commercial aspect to them?

18 A That's true.

19 Q And do I understand that there was a conscious  
20 decision among the Commissioners to include among  
21 institutional uses a golf course, which may also have a



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1 commercial aspect to it?

2 A That's correct.

3 MR. DRUMMOND: Nothing further.

4 CHAIRMAN CORKRAN: Thank you.

5 MR. DRUMMOND: Unless there's any other  
6 questions?

7 CHAIRMAN CORKRAN: Any cross-examination?

8 MR. MURPHY: Mr. Murray can go ahead.

9 EXAMINATION BY COUNSEL FOR WASHINGTON BRICK

10 BY MR. MURRAY:

11 Q Commissioner, I know you're in a hurry, so I  
12 only have a couple of quick questions.

13 Generally speaking, is it safe to say that by  
14 virtue of your position, if for no other reason, you're  
15 interested in the welfare of Queen Anne's County?

16 A That's safe to say.

17 Q Have you considered this golf course project  
18 in that context?

19 A Yes, I have.

20 Q Have you reached a conclusion?

21 A Well, I stated earlier we thought it was in



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1 the best interests of the County.

2 Q You think it is as well in the best interests  
3 of the area around Queenstown?

4 A Yes, I do.

5 MR. MURRAY: Thank you.

6 CHAIRMAN CORKRAN: Mr. Murphy?

7 EXAMINATION BY COUNSEL FOR THE CITIZENS FOR

8 PRESERVATION

9 BY MR. MURPHY:

10 Q Mr. Baker, are the Commissioners charged with  
11 approving this golf course?

12 A Well, I don't know -- I kind of get lost on  
13 the procedure here, because Critical Areas has to  
14 approve it, then it comes back -- no, the Planning  
15 Commission would approve it first, then it would go to  
16 Critical Areas, then come back to the Planning  
17 Commission.

18 Q So it's not the Commissioners responsibility  
19 to approve or disapprove this golf course, is it?

20 A That's correct.

21 Q So you haven't had any public hearing, you



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1 haven't heard any citizen input on this golf course?

2 A No, that's true.

3 Q Have you been a County Commissioner for some  
4 time?

5 A I'm working on my fourth year.

6 Q Were you a Commissioner when the Critical  
7 Areas program was adopted?

8 A Yes, sir.

9 Q And as I remember the position of Queen Anne's  
10 County, you wanted a much higher density, didn't you,  
11 than the one per 20?

12 A Yes, we did.

13 MR. DRUMMOND: I'll object. This was asked  
14 without getting into it -- Mr. Murphy has had his chance  
15 to object. My questions were well beyond the intended  
16 scope of this proceeding. I don't know what Queen  
17 Anne's County's well documented negotiation process with  
18 the Critical Area Commission has to do with this  
19 hearing.

20 MR. MURPHY: Well, can we just stipulate that  
21 Queen Anne's County wanted a much higher density than



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1 the one for 20?

2 MR. DRUMMOND: No, I don't think it's  
3 relevant.

4 CHAIRMAN CORKRAN: We will not allow the  
5 objection.

6 MR. MURPHY: Can he answer the --

7 CHAIRMAN CORKRAN: Yes.

8 THE WITNESS: You want me to answer the  
9 question?

10 BY MR. MURPHY:

11 Q Yes.

12 A Initially our concept was, we know that in the  
13 critical area, and I'm sure the planner and the people  
14 that were more attuned to it can probably do a better  
15 job than me on this, but the people that are in the  
16 critical area have a lot of problems with erosion, and I  
17 felt very strongly that we needed more -- to allow more  
18 density in the critical area because erosion control was  
19 so expensive. You're talking upwards, in some places,  
20 of \$350 to \$400 a running foot, and the average  
21 homeowner, landowner, can't afford to do that. So we



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1 felt that if we allowed a greater density in those areas  
2 then they could take and it would be part of their  
3 performance package to put shoreline protection on their  
4 properties. That was one of the main reasons for that.

5 And the way it turned out, we're allowed to do  
6 that, but we have to tap into our growth allocation to  
7 do that. And if a project came up that we thought fell  
8 into that, we still feel strongly on it.

9 Q Do I remember correctly that you wanted like  
10 one in five?

11 A Yes, sir.

12 Q I don't mean to ask you questions that you  
13 might not have personal knowledge about, but do you have  
14 personal knowledge about how the Critical Area ordinance  
15 happen to come about with saying that institutional uses  
16 would be subject to interpretation by the Critical Area  
17 Commission? Were you involved in that?

18 A Yes. We were on the outside. We knew what  
19 was going on. We didn't work on a daily basis, sir.

20 Q Well, if you don't know, that would be  
21 perfectly fine, but I just wondered, the ordinance says



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1 that institutional uses as defined by the Queen Anne's  
2 County zoning ordinance shall be subject to  
3 interpretation to determine whether they constitute  
4 industrial or commercial use. And I assume from that  
5 provision that some of the institutional uses must be  
6 commercial in nature; is that a correct assumption?

7 A Well, what we're talking about is a big  
8 commercial.

9 Q The golf course?

10 A Yes, sir. That's the reason these people want  
11 to hear what we want to do.

12 Q So you do recognize that it is a commercial  
13 use?

14 A I said that earlier.

15 MR. MURPHY: That's all I have.

16 Thank you.

17 CHAIRMAN CORKRAN: Any other questions?

18 MR. DRUMMOND: No, sir.

19 CHAIRMAN CORKRAN: Mr. Commissioner, thank  
20 you, very much.

21 THE WITNESS: Thank you.



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1 MR. DEMMING: Does either counsel have any  
2 preliminary matter of a procedural or jurisdictional  
3 nature that they want to state at this time, before we  
4 proceed?

5 MR. MURPHY: I do.

6 MR. DEMMING: Proceed.

7 MR. MURPHY: Thank you. I have a memorandum,  
8 which I would like to give the members of the  
9 Commission, that sets out my arguments.

10 Now I had the privilege of being an assistant  
11 attorney general back in the 19th century, and I know we  
12 have a very distinguished assistant attorney general  
13 here, and you rely upon his advice, and I'm not in any  
14 way seeking to question his very, very competent legal  
15 abilities.

16 But I just want to make a few points that in a  
17 sense are legal, and in a sense go to the functioning of  
18 the Critical Area Commission.

19 And I really think there's some fundamental  
20 points, and some of you people on the Commission, some  
21 of you come from different parts of the State, and have



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1 been involved, I know some of you from the Critical Area  
2 from the beginning. Others are State representatives  
3 and similarly were involved in the Critical Area  
4 program, and so you're very, very knowledgeable about  
5 this program, and I won't condescend to you or speak  
6 down to you.

7 But I just want to make some points. And as I  
8 understood the program, and I had the -- I participated  
9 to an extent in providing legal advice to Cecil County  
10 in its attempt to satisfy the requirements of the  
11 program. As I understand the Critical Area program the  
12 General Assembly said the Critical Area Commission  
13 establishes the criteria. You do that through  
14 regulations. Then the local governments had the option  
15 that they could develop their own Critical Area  
16 programs, and ordinances, and submit them for approval  
17 to the State Commission. And I think all the local  
18 governments actually did that. If they didn't do it,  
19 then the State would do it for them, but I think, if  
20 I'm not incorrect, I think everybody actually did it  
21 themselves.



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1           And so the big responsibility of the Critical  
2 Areas Commission was to establish the criteria, and  
3 that's these detailed regulations, and the second  
4 responsibility of the Commission was to approve, or  
5 disapprove, a local program. This was a very important  
6 responsibility of the Commission.

7           But like a lot of things in Maryland the  
8 Critical Area program was a system of shared  
9 responsibilities, and the law, it seems to me, clearly  
10 provides that implementation of the program is the  
11 responsibility of the local governments.

12           Now I don't mean to insult you, but I would  
13 just say that you don't have the power to say whether  
14 you approve a particular project or not. You don't have  
15 it. And we're here tonight to try to decide this, as I  
16 read this Notice, whether we're going to approve this  
17 golf course project.

18           I just make the simple point that you don't  
19 have the power. That that responsibility is given to  
20 the local governments.

21           I would point out page two of my memorandum,



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1 and I quote the law there. It says, "The local  
2 government has the responsibility to implement the  
3 program, subject to State criteria and oversight."

4 Page three, again I quote the law, "Local  
5 jurisdictions to implement. It is the intent of this  
6 sub-title that each local jurisdiction shall have  
7 primary responsibility for developing and implementing a  
8 program." And you people published these regulations in  
9 which you defined project approval. It's on page three,  
10 "Project approval means the approval of development by  
11 the appropriate local approval authority."

12 Now there's an exception to that. There's no  
13 statement in the law that doesn't have an exception, and  
14 there is an exception that when it's a State project,  
15 then this Commission, as I understand it, has the  
16 approval authority, but when it's not a State project,  
17 purely private project, such as we have here, you don't  
18 have the authority, with all respect to you.

19 I think really the thing that proves this  
20 beyond a shadow of a doubt is the extensive provisions  
21 on page four, dealing with project approval and the role



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1 of the Commission. And I've copied -- I've just  
2 photocopied the provisions of the law here. The local  
3 governments have to approve or disapprove projects  
4 consistent with the critical area of law, and criteria  
5 in their own local program, and the Commission, you,  
6 have the authority to intervene in the proceeding, to  
7 appear before the local government as an interested  
8 party, and you can appeal that decision, and you have  
9 all the standing of an interested party, but you're a  
10 party that's basically the same legal capacity as the  
11 people have standing here tonight. You have the  
12 standing to participate; you don't have the approval or  
13 disapproval authority.

14 I just think that's clear under the law and  
15 regulation.

16 I guess you could look at it a different way,  
17 and you could say, well, we're not really approving or  
18 disapproving a particular project, we're deciding  
19 whether golf courses are RCA uses. And I would say that  
20 that's a policy matter. If golf courses are to be RCA  
21 uses, and you want to make a policy about that, I've



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1 heard that this body has had a study group that were  
2 looking at golf courses, and trying to decide whether  
3 they should be classified as RCA or whatever, that's  
4 fine. I have no problem with that. Except that an  
5 adversary hearing is not the place to decide that.  
6 That's a policy matter. I quoted for you on page five,  
7 the Maryland law dealing with regulations, and your  
8 enabling law says you have to follow this. A regulation  
9 means a statement that has general application and  
10 future effect. And if you want to make golf courses  
11 permissible in the critical area, that's something that  
12 could be done. I just suggest you have to do it by  
13 amending your criteria.

14 I think this is the only Critical Area  
15 ordinance that I know that contains this provision that  
16 says the Commission has to decide whether a particular  
17 use is a commercial use or not. And in a sense you can  
18 say, well, why not. You know, the County adopted this  
19 ordinance, and they give us this authority, why not  
20 exercise it.

21 Clearly they adopted it, gave you this



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1 authority to decide it, why not exercise this  
2 authority?

3 Well, I think the answer to that is, is that  
4 with all respect to Queen Anne's County, the Critical  
5 Area Commission does not derive its authority from Queen  
6 Anne's County. Derive it from the General Assembly. So  
7 you can't be governed by what a local government says  
8 you can do. You have to be governed solely by what the  
9 State law says you can do, and what you yourselves said  
10 you could do in your own regulations.

11 It's a fundamental principle that a unit of  
12 government has to follow its own regulations. There is  
13 no provision in your own regulations for project  
14 approval by this Commission.

15 And I've been around the State long enough,  
16 too long, to know that this balance of power between the  
17 units of local government and the State government is  
18 what makes the world go around in the State of  
19 Maryland. It's a very, very fundamental thing. And  
20 when the General Assembly passes a law saying the  
21 State has this authority, the local governments have



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1 this authority, that's it. They could have done it  
2 any number of different ways, but they didn't. This is  
3 the way they did it. And I remember that this was a  
4 matter of great discussion when it came up, when it  
5 was argued, this was a fiercely debated thing. And it  
6 was said not to be a State takeover, because the local  
7 governments retained the authority to approve or  
8 disapprove.

9 And even though here you have a particular  
10 case, the same situation could arise in any number of  
11 cases. You could get a proposal for a golf course --  
12 suppose you got a proposal for a golf course in Anne  
13 Arundel County, or in Baltimore County, and you could  
14 say, no, we disapprove it. It does not meet our  
15 criteria, it's not an RCA use, or it's an LDA use, we  
16 say no. Or it's a commercial use, or it's not a  
17 commercial use, we say no; or we say yes, I don't care.  
18 It's the same issue.

19 And you don't have the authority. You don't  
20 have the power.

21 I just think we ought to stop this here, and



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1 face this situation.

2 And again, my respect for Mr. Demming, I'm not  
3 being insincere, I've known him for a long time, he's  
4 provided years of service to the Natural Resources  
5 Department, but it's not strictly a legal issue. You  
6 have a great deal of discretion, you as a Commission, in  
7 carrying out your responsibilities. And the question  
8 is, do you want to exercise an approval or disapproval  
9 authority in the face of clear statements from intent,  
10 direct statements by the General Assembly, that this is  
11 to be a local responsibility.

12 And regardless of how you feel about the  
13 technical legal issue, I think that you as a Commission  
14 ought to face this, and say no, we don't.

15 That's all I have.

16 Thank you.

17 CHAIRMAN CORKRAN: All right, thank you.

18 MR. DRUMMOND: Mr. Chairman, I suppose in that  
19 Queen Anne's County Critical Area ordinance is the  
20 subject, I suppose, the central legal debate in this  
21 matter, that we should have a few remarks. And in that



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1 I, of course, represent the Department of Planning and  
2 Zoning, and I should let the members of the panel know  
3 that had a significant hand in drafting the provision,  
4 that is now called into question by Mr. Murphy.

5 I agree with Mr. Murphy that the critical area  
6 legislation and the regulations that were promulgated as  
7 a result of the legislation, envisioned a system of  
8 shared responsibility, and indeed Queen Anne's County,  
9 apparently uniquely, has involved the Commission in that  
10 system of shared responsibility in a interesting way.

11 And that has to do with helping us to  
12 determine whether uses which we call institutional, and  
13 not industrial or commercial, fit or do not fit within  
14 what the Commission envisions as industrial or  
15 commercial uses. So we think that that is entirely  
16 appropriate and consistent with this system of shared  
17 responsibility.

18 I think the County would be the first to say  
19 that there is some uncertainty, and perhaps ambiguity,  
20 in the language of the Critical Area regulations, with  
21 respect to commercial or industrial uses, slash, zoning,



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1 in the RCA. We were very cognizant of that uncertainty,  
2 and to resolve that uncertainty attempting to create a  
3 program that was as faithful to the intent and purposes  
4 of the legislation and regulations, we asked the  
5 Commission to become involved.

6 As I read the regulations the local  
7 jurisdictions are asked to create a program that is  
8 consistent with the guidelines and the intentions and  
9 the purposes of the legislation, and the regulations.  
10 It does not say therein that that program must be  
11 wholly self contained.

12 What it says is the local jurisdiction shall  
13 adopt a program that is consistent with these  
14 guidelines. We don't care so much, says the General  
15 Assembly, how you do it so long as it's consistent, and  
16 so long as the Critical Area Commission approves it.

17 Well, certainly the Queen Anne's County  
18 Critical Area ordinance generally, and specifically in  
19 the section that's being challenged by Mr. Murphy, is  
20 consistent with the legislation and the guidelines of  
21 the regulations, and has been approved by the Critical



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1 Area Commission.

2 So Queen Anne's County hasn't foisted any  
3 obligation, or hasn't directed the Critical Area  
4 Commission to take upon itself powers that it might no  
5 otherwise have had.

6 I would agree, if that were the case, Queen  
7 Anne's County can hardly tell the Critical Area  
8 Commission what to do.

9 However, Queen Anne's County, faced with what  
10 we perceive to be something of an uncertainty in the  
11 regulations, proposed in the program a cooperative  
12 effort with respect to this issue. And when the program  
13 was approved, the Critical Area Commission essentially  
14 said, yeah, we agree. We will do what you have asked us  
15 to do, we will become involved in this decision making  
16 process, that is, whether institutional uses, as defined  
17 by us, are industrial, commercial uses as defined by  
18 you.

19 There's nothing in the legislation or the  
20 regulations that prohibits that sort of, as Mr. Murphy  
21 called it, system of shared responsibility.



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1           Now, it's unfortunate that we have to have an  
2 adversarial proceeding to wrestle with this issue. But  
3 as the regulations are presently drafted, and as we  
4 understand the intent and purpose of the Critical Area  
5 legislation and regulations, we don't perceive that  
6 there was any choice. And, Mr. Murphy can waive  
7 provisions of project approval in his trial memorandum,  
8 but there is nothing in either, though I've only briefly  
9 looked through his trial memorandum, that points  
10 directly to something that prohibits this. Yes, it's  
11 unique. Yes, it may be creative. Yes, it may,  
12 unfortunately, bring you all here to Queen Anne's County  
13 in the middle of the week, or the beginning of the week,  
14 late at night. But it's not prohibited and it certainly  
15 makes sense, given the uncertainty that we perceived in  
16 the regulations. Thank you.

17           CHAIRMAN CORKRAN: Thank you. Mr. Murray?

18           MR. MURRAY: Mr. Chairman, members of the  
19 Panel. I'm going to address the points made by Mr.  
20 Murphy in his memorandum in the same order, beginning on  
21 page one through page two. There are seven.



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1           Item one is, "Does the Critical Area  
2 Commission have the authority under its enabling law and  
3 regulations to determine whether an individual project  
4 meets the standards of its criteria?"

5           Let me cite for you some excerpts from your  
6 enabling law. The Declaration of Public Policy for the  
7 Critical Area Program is "(a) To foster more sensitive  
8 development activity so as to minimize damage to water  
9 quality and natural habitats. Its purpose is to  
10 establish resource -- a resource protection program by  
11 fostering," et cetera.

12           Section 8-18.06 says that the Commission has  
13 all the powers necessary for carrying out the purpose of  
14 the subtitle, including adopting a variety of  
15 regulations.

16           Section 8-18.08(a) says, "Local jurisdictions  
17 have primary responsibility for developing," but not  
18 sole responsibility. Presumably the Legislature wasn't  
19 ignorant of the distinction between those two  
20 adjectives.

21           The goals, again, of the Commission are to



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1 minimize adverse impacts on water quality, conserve  
2 fish, wildlife, and plant habitat, and establish  
3 policies for development which accommodate growth. It's  
4 true that those provisions of the legislation don't say  
5 "Commission, go out and establish regulations" like the  
6 one at issue here tonight. But there is certainly  
7 nothing in that broad language that says you can't do it  
8 that way.

9 Mr. Murphy's argument essentially amount to  
10 arguments that go to whether or not the regulation that  
11 we are here about should have been adopted. They go to  
12 the wisdom of the legislation. They go to the local  
13 Queen Anne's program and your approval of it, all of  
14 which happened a long time ago. And we're not here  
15 today to debate whether that program should have been  
16 designed the way it was, or whether it should have been  
17 approved the way it was designed. That's history.

18 We're here tonight to implement and act on  
19 that program the way it's written.

20 And these regulations are perfectly consistent  
21 with the broad mandate that the General Assembly gave to



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1 the Commission.

2 Does the Commission have the authority to  
3 establish a policy that golf courses are a permissible  
4 resource conservation use? For the very same reasons, I  
5 answer "Yes."

6 Number three. "Should the Commission exercise  
7 the approval and disapproval power which the General  
8 Assembly intended to be performed by local governments?"

9 That question, the way it is phrased, is like  
10 a lot of the polls you see. It answers itself the way  
11 it is intended to be answered. But if the question were  
12 properly and neutrally phrased, once again, the answer  
13 would be "Yes." The Critical Area Commission has the  
14 authority, if this is the way it wants to do it, and  
15 this is the way Queen Anne's County wants to do it, and  
16 you approved their program. Yes, you do have the  
17 authority.

18 Number four. "Is a golf course conducted for  
19 profit necessarily a commercial use?" That is an issue  
20 before you tonight. I think that it is an issue which  
21 goes to a variety of arguments, facts. What does



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1 commercial zoning mean? What is the distinction, if  
2 any, between commercial zoning and a commercial use? A  
3 commercial zone, for example, is intensively commercial.  
4 The whole gamut of uses are predominantly commercial in  
5 nature. You'll hear more testimony about that.

6 Whereas a commercial use is any of a number of  
7 uses, which may not be essentially what we would  
8 characterize as commercial.

9 What is the distinction for purposes of the  
10 Critical Area Program between a golf course that may be  
11 public and a golf course that may be private? Is it the  
12 profit motive? Is it whose bank account the proceeds  
13 from running the golf course goes to?

14 I, for one, could not imagine how it would  
15 make any difference in your determination of whether or  
16 not a golf course is appropriate or not in a critical  
17 area, whether or not it is for profit or not for profit.

18 But those are the kinds of issues that we are  
19 going to be arguing about tonight. Because the way this  
20 legislation is drafted, we have to address the issue of  
21 whether the golf course is, or is not essentially a



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1 commercial use.

2 "Is a golf course a nature dominated use or a  
3 resource utilization use?" Those are issues before the  
4 panel tonight. And the evidence I think will indicate  
5 that it's essentially a nature dominated use when you  
6 have a course designed the way this one is.

7 "Does a golf course meet the standards for a  
8 resource conservation use?" That has a lot to do with  
9 these very, very general regulations that the Commission  
10 adopted. They don't say, no where in them that I can  
11 find, "A golf course is not allowable in the RCA," or "A  
12 golf course is allowable." It talks in much more  
13 general terms.

14 It talks about interests in the environment,  
15 about water quality, about habitat protection, about  
16 vegetation, and buffering, and so on. We're going to  
17 talk about all of those kinds of criteria in connection  
18 with this golf course.

19 Finally, number seven. "Is there the  
20 possibility of environmental damage from the proposed  
21 golf course in Queenstown?" Is there the possibility?



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1 I think you all know the answer to that  
2 question. There is the possibility of environmental  
3 damage when you go home tonight, if you have an accident  
4 and your oil pan drips oil into the road and that gets  
5 into the water. But, is that a reason for you not to  
6 drive your car?

7 We're not here about speculation and remote  
8 possibilities. We're talking about a carefully designed  
9 golf course which we think the evidence will show  
10 complies and over complies with all the applicable laws  
11 that are intended to protect the water quality, the  
12 habitat, and the environment generally. Not just the  
13 Critical Area Program requirements, but local zoning,  
14 federal law, wetlands law. You name it. This program  
15 didn't just spring up here out of somebody's head. It  
16 has undergone rigorous and lengthy refinement to comply  
17 with those things.

18 We think you will conclude, after you hear the  
19 evidence, that the net effect of this project on this  
20 land is a very positive result for the things that you  
21 are interested in, water quality and habitat protection.



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1           So, the answer to item seven is maybe  
2 technically, in a theoretical sense, yes. Is there a  
3 probability of environmental damage? No. The  
4 probability in the evidence is just to the contrary.  
5 The golf course is good for the land and good for the  
6 water.

7           In sum, we think the issues before you are  
8 very clear. Mr. Deming and Mr. Corkran have stated them  
9 in their opening remarks, and this certainly is within  
10 the Commission's authority. Thank you.

11           CHAIRMAN CORKRAN: Thank you. For the record,  
12 we would like to note that Mr. Murphy's objections have  
13 been noted, but we will proceed with the question before  
14 us.

15           Our illustrious attorney wants to know if  
16 anybody wants to take a break? Tom, let's proceed. The  
17 hour is getting later and later. I think Tom hasn't had  
18 anything to eat, have you?

19           MR. DEMING: Yes, I have.

20           CHAIRMAN CORKRAN: If I hear no one is raving  
21 mad about to take a break, let's proceed if you will,



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1 with a presentation by Washington Brick and Terra Cotta  
2 Company.

3 MR. MURRAY: Let's begin with Joe Stevens,  
4 please.

5 Whereupon,

6 JOE STEVENS,

7 a witness, called for examination by counsel the  
8 Applicant, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MURRAY:

11 Q Mr. Stevens, please identify yourself?

12 A My name is Joe Stevens. I'm the Planning  
13 Director of the Queen Anne's County Department of  
14 Planning and Zoning.

15 Q Mr. Stevens, how long have you been in the  
16 planning and zoning field?

17 A Approximately six years. Five and a half.  
18 Six years.

19 Q Is that the extent of your employment  
20 experience, or were you employed before that?

21 A That's the extent of my employment experience.



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1 Q Have you had any education or training outside  
2 of your employment experience in the field?

3 A Yes. I received a Master's in Geography  
4 Concentration and Land Use Planning in 1985. Prior to  
5 that I had a Bachelor's Degree in English and a minor in  
6 geography.

7 Q Have you had occasion to be involved in land  
8 use planning and zoning issues, outside of Queen Anne's  
9 County?

10 A Yes, I have had occasion to be involved in  
11 many State programs. I'm also a member of the Maryland  
12 Association of County Planning Officials. I'm president  
13 of that -- I am also on the Board of Directors for the  
14 Maryland Chapter of the American Planning Association,  
15 and other different ancillary activities that have spun  
16 off from those.

17 Q Have you had occasion in the past to qualify  
18 as an expert in a court of law on the subject of zoning?

19 A Yes, I have.

20 Q Mr. Stevens, are you familiar with the golf  
21 course project which is the subject of this hearing?



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1 A Yes, I am familiar with it.

2 Q In what connection have you gained that  
3 familiarity?

4 A From meetings with the Birneys, who are the  
5 applicants for the golf course. I have -- my staff has  
6 reviewed the golf course in the preliminary stages.  
7 Also looked at it in terms of sketch, concept designs,  
8 have helped the Birneys work the project through the  
9 systems of the Corps of Engineers, and have indicated to  
10 them what we believe they have to comply with in terms  
11 of both zoning and Critical Area requirements in order  
12 to gain approval from the County authorities.

13 Q Is it your department's responsibility to  
14 approve this project?

15 A It is our responsibility to grant -- to give  
16 review to this project and see that it complies with the  
17 applicable zoning requirements, critical area  
18 requirements, and we also act in Planning and Zoning as  
19 the lead agency for things such as storm water  
20 management, although we don't review that; wetlands,  
21 with Corps of Engineers; and a number of different state



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1 and federal guidelines to make sure that those approvals  
2 are obtained before we take it to the Planning  
3 Commission for the actual approval.

4 Our authority is really more of a review and  
5 coordination, not an approval authority in this case.

6 Q But you look for those approvals to come in  
7 before you give your final approval?

8 A Yes. Yes, we do.

9 Q What is the status of the project today?

10 A The status of the project, as far as I'm  
11 aware, and I have not been the lead person who has done  
12 the review, but I did check with my staff today, is that  
13 it has -- it has submitted and resubmitted many times on  
14 many different issues.

15 They have worked through their numbers, their  
16 calculations, in terms of woodland protection, both  
17 required by the County and the Zoning.

18 They have met with the Corps of Engineers on  
19 many, many occasions to indicate where the wetlands were  
20 and what wetlands issues there were.

21 And they are approaching nearness for going to



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1 the Planning Commission. I can't tell you exactly what  
2 minor details are left, but it was indicated to me by my  
3 staff, was that the primary issue left is the critical  
4 areas determination in regards to commercial  
5 institutional use.

6 Q And as to that issue, you will rely on the  
7 Commission?

8 A Yes.

9 Q What is the zone in which this particular  
10 property lies?

11 A Countryside.

12 MR. MURPHY: Objection. May I just have a  
13 continuing objection to this?

14 Clearly, we are going to get into this  
15 project, the merits of this project, and I object to  
16 that because this Commission does not have any authority  
17 to do that, first of all. And secondly, because the  
18 notice clearly says that the purpose of the hearing is  
19 to determine whether its a commercial use or not.

20 May I have a continuing objection, so I won't  
21 have to make objections every time to these questions?



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1 CHAIRMAN CORKRAN: Yes.

2 MR. MURPHY: Thank you, Mr. Chairman.

3 CHAIRMAN CORKRAN: I override the objection.

4 BY MR. MURRAY:

5 Q Mr. Stevens, I'm not sure that anyone heard  
6 the answer to my last question, which was, "What zone is  
7 this property in?"

8 A Countryside.

9 Q Would you briefly describe the types of uses  
10 permitted in the countryside zone?

11 A In the countryside zone, permitted uses are  
12 generally low density residential housing. In the  
13 critical area, it's one house per 20 acres. And you can  
14 also build with cluster provisions and setbacks, and re-  
15 vegetation standards along the water.

16 Outside the critical area, the density is one  
17 house per five acres, with a mandatory clustering  
18 provision, requiring 85 percent open space.

19 In addition to that, there are different --  
20 outside the critical area, different institutional uses,  
21 such as schools, libraries, hospitals, golf courses. A



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1 number of different uses which are considered  
2 institutional under the ordinance.

3 There is also some uses such as gravel  
4 extraction, minor dredge disposal operations, and things  
5 of that nature.

6 Q You said, or I thought I heard you say, that  
7 certain uses, such as a golf course, while permitted in  
8 the countryside zone, are not permitted in the critical  
9 area. The zoning ordinance doesn't make that  
10 distinction?

11 A No. No. Only in regards to the question  
12 here.

13 Q So, speaking solely to the zoning ordinance, a  
14 golf course then is a permitted use?

15 A Yes.

16 Q Is it part of a general category of permitted  
17 uses called recreation?

18 A Yes.

19 Q And in your ordinance are there distinctions  
20 made with regard to golf courses as to whether they are  
21 "commercial" or non-commercial?



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1           A     It's considered institutional recreation --  
2 outdoor recreation subtitle.

3           Q     So, whether it is a profit or non-profit golf  
4 course, it's permitted in the countryside setting?

5           A     Yes.

6           Q     Do you have commercial zones in your zoning  
7 ordinance?

8           A     Yes, we do.

9           Q     What are they called?

10          A     Urban commercial. Suburban commercial.  
11 Village center zoning district. We also have suburban  
12 industrial zoning district, where a number of commercial  
13 uses are allowed.

14          Q     Would it be within the contemplation of the  
15 ordinance to treat a golf course as that kind of  
16 commercial use?

17          A     No, it wouldn't.

18          Q     Do you make a distinction, or does your  
19 profession make a distinction between a commercial use  
20 and a commercial zone?

21          A     Well, in general, speaking from a Planning and



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1 Zoning standpoint, if the County were to only allow golf  
2 courses in those areas zoned commercial, zoned  
3 commercial, urban commercial, suburban commercial, they  
4 would have to allow an extensive amount of large acreage  
5 for commercial zoning in areas that are relatively rural  
6 throughout the county.

7 Traditionally, and I've seen a number of  
8 zoning ordinances that allow golf courses as a  
9 sub-category of agricultural use. You see that very  
10 often in some of the older zoning ordinances.

11 In addition to that, there are a number of  
12 uses which are commercial in nature that are allowed in  
13 our agricultural districts, and in our countryside  
14 districts, such as shooting preserves, hunting  
15 operations, goose hunting operations, agriculture. We  
16 allow agricultural support industry, which is considered  
17 a sub-category unto its own in our agricultural district  
18 and in our countryside district.

19 So, in general, the distinction is made for  
20 those uses which are -- which do tend to use up much  
21 more land, are less intensive in nature, and the



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1 distinction isn't made solely from a profit or non-  
2 profit aspect.

3 Q You're familiar with the Critical Area local  
4 -- your local Critical Area Program, are you not?

5 A Yes.

6 Q And with respect to the Commission's role --  
7 the Critical Areas Commission's role in evaluating  
8 whether a particular institutional use is commercial or  
9 industrial, is -- do you have an opinion as to whether  
10 this particular golf course is or is not commercial or  
11 industrial in connection with that ordinance?

12 A If I could just address that in regards to  
13 when the issue came up before the Commission, the  
14 Critical Area Commission, about a year ago, when we were  
15 going through our final adoption of our ordinance. The  
16 issue was that the Critical Areas Law calls for a  
17 criteria, it calls for no new commercial industrial  
18 zoning in the RCA. And the issue was whether or not a  
19 number of different uses, which were allowed under other  
20 zoning districts in our county, would be considered  
21 commercial in nature, in terms of the critical areas.



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1           What was hashed out between the Commission and  
2 the County staff, and what was worked on and came up  
3 with a working relationship on, was that the Commission  
4 would look at these uses, because clearly sometimes a  
5 church, depending on the intensity of it, the amount of  
6 impervious area, how much clearing had to be done, the  
7 impact to the environment, or a golf course, or a number  
8 of other uses, which were allowed in the resource  
9 conservation area, or allowed under our zoning in the  
10 resource conservation area, would not have a negative  
11 impact, would not be -- would not work against the  
12 intent of the criteria.

13           And then there are those other instances when  
14 clearly a church that seats several thousand people, and  
15 has a couple of -- three, or four, or five acres of  
16 parking, and so on and so forth, does not meet the  
17 intent of what the criteria were. And that was a  
18 dilemma for both the County and the Critical Area  
19 Commission. We didn't want to leave out the opportunity  
20 for those uses in those rural areas and we, at the same  
21 time, we did not -- and the Critical Area Commission --



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1 did not want to open the door for all those uses at  
2 varying intensities.

3 And so, the issue really became, what would be  
4 allowed in terms of those institutional uses. And what  
5 it was worked out to be was that the Critical Area  
6 Commission would review it, not to determine, per se,  
7 whether it's defined as commercial, or defined as non-  
8 commercial, but really whether its intensity had  
9 negative impacts and were against the intent of the RCA.  
10 And that was my understanding of the program as we went  
11 through that.

12 MR. MURRAY: Thank you. That's all I have.

13 EXAMINATION BY THE CHAIRMAN

14 BY CHAIRMAN CORKRAN:

15 Q Mr. Stevens, I gather that there is a  
16 definition for commercial that planners use in drafting  
17 zoning ordinances that may be different from the  
18 definition of commercial that we might read in the Wall  
19 Street Journal or that we might generally understand in  
20 the general business context. Is that correct?

21 A To a certain extent, yes.



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1 Q Can you explain the distinction and why -- I  
2 gather that the word "commercial" in the zoning context  
3 may be a somewhat more narrow or restrictive than sort  
4 of the general definition of commercial?

5 A In short, the commercial in the zoning aspect  
6 really looks at the intensity of the use. Traffic  
7 generation, amount of building, amount of disturbance.  
8 And you generally try and put those uses into the  
9 commercial category from a zoning standpoint that have  
10 those impacts and have them in a significant manner.

11 Whether or not something is for profit or not  
12 is not looked at. I mean, we allow farm stands all over  
13 the county and they are clearly commercial uses.  
14 Regardless of what zoning district they are in, a farmer  
15 can put up a stand and keep it open six months and in  
16 some instances, even year round.

17 So, it has very little to do with the profit  
18 motive.

19 CHAIRMAN CORKRAN: I have nothing else. Thank  
20 you.

21 CROSS-EXAMINATION



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1 BY MR. MURPHY:

2 Q Mr. Stevens, what you're saying is is that as  
3 you understand it the provision was intended to say that  
4 the Critical Area Commission would look at the use and  
5 see whether it was too intense or not?

6 A What I'm saying is is that my understanding  
7 was that the Critical Area Commission would be looking  
8 at the use to see if it was more in nature of a  
9 commercial use of a commercial zoning, high-intensity  
10 use, or more in the nature of a use that was intended  
11 for the RCA -- Resource Conservation Area.

12 Q But that really depends on the intensity of  
13 the use. Is that what you're saying? Whether it is  
14 commercial or not depends on how intense it is?

15 A I'm saying that that was my understanding of a  
16 major factor in determining whether or not something  
17 would fall into one category or another, as per the  
18 Critical Area Commission's distinctions.

19 Q But that was the criteria, how intense the use  
20 was?

21 A In regards to the Commission's determination



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1 or --

2 Q Yes.

3 A -- the Zoning determination?

4 Q The Commission's determination.

5 A Yes. That was my understanding.

6 Q How intense it was going to be?

7 A The intensity, the amount of disturbance, the  
8 design.

9 Q It really didn't make any difference whether  
10 it was commercial or not?

11 A To a certain extent -- as long as it was under  
12 the institutional classification, yes. That was my  
13 understanding.

14 Q I mean, you have a whole listing of uses here.  
15 Libraries --

16 A (Nods head affirmatively.)

17 Q -- museums --

18 A Yes.

19 Q -- public schools, private schools, indoor  
20 swimming pools, racquetball courts. And you're saying  
21 that the purpose of this ordinance is to decide whether



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1 they are intensive uses or not?

2 A I'm saying the purpose of that is to determine  
3 whether or not they would be considered resource  
4 conservation uses or not.

5 Q Not really whether they are commercial or not?

6 A That's correct.

7 Q Nobody expects a library to be commercial? Is  
8 that what you're saying?

9 A Racquetball courts could be commercial.

10 Q But that's irrelevant, is what you're saying,  
11 is whether it's commercial or not?

12 MR. MURRAY: He didn't say that. Objection.  
13 He's mis-characterizing what the witness said.

14 THE WITNESS: (No response.)

15 BY MR. MURPHY:

16 Q Well, I mean, does it make any difference  
17 whether a library is commercial or not?

18 A Not in my -- no. I don't think so.

19 Q So, it's irrelevant, isn't it?

20 A To a certain extent, yes.

21 Q The Planning Commission approves site plans.



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1 Is that correct?

2 A Yes.

3 Q And have they met on this project yet?

4 A No, they haven't.

5 Q So, they haven't approved it or disapproved  
6 it?

7 A No, they haven't.

8 Q Now, it's your position that this golf course  
9 is an RCA use. Is that what you're saying?

10 A From the reviews we've done at this point, I  
11 think that it does fall more in the nature of an RCA  
12 use, yes. But that's not my determination to make. I  
13 can only read the criteria as you do.

14 Q But your position is that it is an RCA use?

15 A If I was in the position to make that  
16 determination, that would be my vote, among 25, if I was  
17 on the Commission. Yes.

18 Q Assuming the golf course use is approved, then  
19 it's classified as RCA land. Is that correct?

20 A That golf course -- the land itself?

21 Q Yes.



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1 A The land is classified as RCA right now.

2 Q Right. But assuming the Commission says that  
3 the golf course is approved, then the use would be  
4 classified, in your view, as RCA. Is that correct?

5 A My understanding would be that even if we had  
6 another golf course come in, that it would still go  
7 through the Commission's review process.

8 Q I'm not talking about another golf course.  
9 I'm talking about this golf course.

10 A It would be permitted the way it was submitted  
11 to the Commission, yes.

12 Q And it would be permitted as an RCA use?

13 A Yes.

14 Q So that, it would have the same really status  
15 as say farmland, forest land, and the other RCA uses?

16 A (Nods head affirmatively.)

17 Q And they could come in and develop houses at  
18 the one per 20 standard, if they wished?

19 A I think that based on the uses that they are  
20 deriving under the zoning right now, and the amount of  
21 -- the amount of area they need in order to develop



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1 under the zoning, that it has cut off any alternative  
2 for subdividing that into one house per 20 acre density.

3 Q Why is that?

4 A Because of the way the golf course is laid  
5 out. There is no area to cut those wads off, that I'm  
6 aware of. You know, I don't know that for a fact that  
7 he --

8 Q But I mean, as a matter of regulations, it  
9 would be an RCA use, and he would be entitled to the one  
10 per 20. Is that not correct?

11 A I don't think so. No.

12 Q Why not?

13 A Because, as I said, I think the land area  
14 required for the golf course would not allow him to get  
15 those units. And he's using that land area for the golf  
16 course.

17 Q You mean that the land area would be  
18 subtracted from the -- would be subtracted from the land  
19 that's eligible for the one per 20?

20 A For the density under the critical areas.  
21 intensity?



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1 Q Yes.

2 A In the critical area or outside --

3 Q In the critical area.

4 A In the critical area? To be honest with you,  
5 I'd have to go back and check that to see if we would  
6 deduct that or whether or not he would be able to get  
7 some lots, assuming that the design of the golf course  
8 would allow some lots.

9 We have a clustering provision under our  
10 zoning ordinance. Some of that land for the golf course  
11 can be utilized as open space for the development.

12 Q But, I mean if it is classified as an RCA --

13 A You couldn't get the 20 acre lots. I think  
14 that would be physically impossible.

15 Q But, we could -- he'd have approximately 400  
16 acres in the -- it's approximately 400 acres in the  
17 critical area to be classified as RCA, to be able to get  
18 basically houses, assuming he could fit them there. He  
19 would be able to get houses at one per 20, wouldn't he?

20 A Assuming he could fit them, yes. I think  
21 that's a physical impossibility, though.



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1 Q But, from your standpoint in the regulations,  
2 that's what he could do?

3 A Yes, I think so, without going back and  
4 looking at them.

5 MR. MURPHY: That's all I have.

6 CHAIRMAN CORKRAN: All right. Thank you. Any  
7 questions? Do you have any questions?

8 PANEL MEMBERS: (No response.)

9 MR. MURRAY: Mr. Chairman, and Mr. Deming, I  
10 think Mr. Stevens' role here is finished tonight, and I  
11 hope that he can be excused.

12 MR. DRUMMOND: And I would follow that up  
13 by asking -- I think my role is finished as well, that I  
14 could be excused because my wife is home with our one  
15 month old child and I'm sure she's had enough at this  
16 point, so it is time for me to take over. So, if I may  
17 be excused as well.

18 CHAIRMAN CORKRAN: You may be excused. Yes.

19 MR. DRUMMOND: And I have no closing argument.  
20 I wouldn't have a closing argument, anyway. Thank you.

21 CHAIRMAN CORKRAN: Thank you.



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1 MR. MURRAY: Incidentally, a point of  
2 clarification. On the outline of the procedure, it  
3 provides that there will come a time when there will be  
4 some testimony by somebody on behalf of the Commission's  
5 staff. Is that going to happen?

6 MR. DEMING: Yes.

7 MR. MURRAY: And can you identify the  
8 individual who will testify?

9 MR. DEMING: Mr. Rensarry. He's sitting right  
10 over here.

11 MR. MURRAY: Our next witness is Mr. Lex  
12 Birney.

13 Mr. Deming, I think I spoke with you at an  
14 earlier time about the idea of pre-marking a bunch of  
15 exhibits. Do you want to do that -- do you want me to  
16 do that at this time? This and the set of plans --

17 MR. DEMING: I think I can say for the  
18 Chairman that we'd like you to do whatever will speed  
19 this thing along.

20 CHAIRMAN CORKRAN: You may say that, yes.

21 (Whereupon, there was a brief recess.)



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1 CHAIRMAN CORKRAN: May I have your attention,  
2 please? We are back in session.

3 MR. MURRAY: Thank you, Mr. Chairman. I hope  
4 it does turn out that that in fact speeds things along.  
5 I guess we're not ready.

6 CHAIRMAN CORKRAN: Please proceed.  
7 Whereupon,

8 ARTHUR ALEXIS BIRNEY, JR.  
9 a witness, called for examination by counsel for  
10 the Applicant, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MURRAY:

13 Q Please state your full name?

14 A Arthur Alexis Birney, Jr.

15 Q And where do you live?

16 A I live in Annapolis, Maryland.

17 Q What is your connection with this golf course  
18 project?

19 A I am one of the managing partners of  
20 Washington Brick and Terra Cotta Company.

21 Q Which is a Virginia limited partnership?



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1 A That's correct.

2 Q What is your role in connection with this  
3 particular project?

4 A Well, there are three managing partners of our  
5 company. There's my father, and my brother, and myself.  
6 And as the ones responsible to a board, we are -- with  
7 the responsibility of ownership of My Lord's Gift Farm.  
8 And had decided -- well, should I go into a brief  
9 history, I guess?

10 Q Yes. Why don't you tell them a little bit  
11 about the history of the project?

12 MR. MURPHY: May I object, and I don't want to  
13 make an issue out of this, but again, it's -- we are  
14 supposed to be here on whether this is a commercial use.  
15 I'd like to state my objection to any questions that do  
16 not deal with whether this project is a commercial use  
17 and would the Chairman simply acknowledge that I have  
18 that continuing objection with respect to this witness?

19 CHAIRMAN CORKRAN: We recognize that, Mr.  
20 Murphy.

21 MR. MURPHY: Thank you.



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1 THE WITNESS: Approximately 20 years ago we  
2 purchased My Lord's Gift Farm, our company did, and have  
3 actively farmed it in agricultural for the last 20  
4 years.

5 About six years ago, my Dad came up with the  
6 idea of developing a 60 room hotel and a golf course,  
7 and I guess at that time, a marina facility, based on  
8 the farm. And I'd like to bring up a picture I have, if  
9 I could, an aerial photograph, so we all know what we  
10 are talking about here. This is the farm as it exists  
11 today and, in fact, as it has existed for quite awhile.

12 CHAIRMAN CORKRAN: Will this be an exhibit?

13 MR. MURRAY: No.

14 THE WITNESS: I'll just hold it up.

15 CHAIRMAN CORKRAN: Okay.

16 THE WITNESS: Originally -- about six years  
17 ago and I'll run through this very quickly, we had  
18 decided that we would like to develop the site right  
19 around here to have a small hotel and golf course.

20 We entered into negotiations with the town of  
21 Queenstown and we had hoped to go through an annexation



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1 process to have approximately 400 acres of the farm,  
2 which totals about roughly 735 acres annexed into the  
3 town, and at that time the Commission set -- then the  
4 County set aside 40 acres of LDA land to be used for  
5 growth allocation in order that we could use it for the  
6 hotel site.

7 At that time, the golf course was a fairly  
8 nominal interest. As we negotiated with the town over a  
9 long term, 39 hearings in six years, at their request we  
10 moved the site of the hotel a number of times, initially  
11 beginning here and over to here, and ultimately up to  
12 here. The town is located right around here.

13 As late as January of 1989, we still expected  
14 that -- we had worked very hard to comply with the  
15 town's wishes in relocating the facility and had been  
16 led to believe that with a few exceptions, or with a few  
17 changes, they would enthusiastically support our  
18 project. And there is a letter, dated January 16th,  
19 1989, and signed by the three commissioners of  
20 Queenstown that says they enthusiastically support the  
21 proposed restaurant/hotel and golf complex for My Lord's



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1 Gift Farm site.

2 We feel that it would have a beneficial  
3 influence on the redevelopment of the town, as  
4 envisioned by the Planning and Zoning Commission, and  
5 additionally, a hotel/golf facility would allow the town  
6 significant growth, while avoiding the problems of  
7 residential development.

8 MR. MURPHY: Can that be introduced, that  
9 letter?

10 THE WITNESS: It has been.

11 MR. MURRAY: It can. No. It's been marked,  
12 but it hasn't been introduced. We would like to  
13 introduce it.

14 CHAIRMAN CORKRAN: We note that -- thank you.

15 THE WITNESS: As a result, one of the caveats,  
16 the main thing that they wanted to have changed was they  
17 would like to have us not build a marina or any  
18 commercial water dependent facility in conjunction with  
19 the hotel and we said that we would, in fact, abide by  
20 their wish. And we dropped any proposal of doing that  
21 and were left with the hotel and a golf course.



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1 We had, over the years, negotiated with the  
2 town and felt that the -- as Mr. Carroll stated, it's a  
3 very poor flushing creek. And I've been actively --  
4 I've lived on the farm and I've played there as a boy,  
5 and watched it be farmed, and it has, in fact,  
6 deteriorated. I would suggest that most of the  
7 deterioration was due to the fact that Queenstown dumps  
8 approximately 80,000 gallons of sewage a day -- treated  
9 sewage a day into the headwaters of the creek.

10 We had suggested to the town and felt, in  
11 talking to Wren over the past year as well, that it  
12 would be beneficial if we could take their effluent and  
13 irrigate the golf course with it, along the lines of  
14 Prospect Bay, and Hog Neck, and Easton. And many state  
15 of the art golf courses are in fact doing that.

16 Unfortunately, it seems that -- well,  
17 negotiations -- suffice it to say, they broke down. It  
18 became evident to us that we would not be able to  
19 develop the hotel along the lines that we had hoped, or  
20 any lines at all, because of some sort of opposition  
21 that we had never been able -- had never -- really had



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1 never evidenced itself. It was always a moving target.

2 So, we decided that in fact it was time to  
3 - move on. We had spent a lot of our time and a lot of  
4 money attempting to satisfy their needs and this was  
5 going to be impossible. So, as a result, a mile and a  
6 half down the road, we purchased a property, five and a  
7 half acres, on Winchester Creek and have currently  
8 received and paid for sewage allocation from the County  
9 to build a hotel down there.

10 As a result, we dropped our plans for any  
11 requirement for LDA for the hotel site and decided that  
12 we would like to proceed with plans for a golf course,  
13 because it seemed to us that this would be a really good  
14 use for the site, especially in light of the fact that  
15 there were going to be no more aspirations, as far as  
16 any commercial development of the waterfront at that  
17 time, nor would there be any hotel facilities.

18 My job became one of determining what criteria  
19 existed from the County level, from the Corps level,  
20 from the Critical Areas level, in order that we design  
21 and develop a course that would be consistent with all



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1 the criteria, and there are a heck of a lot of them.

2 And I undertook it personally to insure the  
3 fact that we would meet or exceed any requirements that  
4 we could find. And in fact, in the development of the  
5 golf course -- I lost my train of thought. In the  
6 development of the golf course, our difficulty really  
7 has been finding out exactly what we're supposed to do.  
8 And many of the agencies that we have had to deal with  
9 were hard pressed to determine exactly how things were  
10 supposed to be interpreted.

11 In any case, in any situation, where we were  
12 confronted with an indeterminant indication of what we  
13 were supposed to do, our policy was to take the least --  
14 the most stringent and adhere to that, so there would be  
15 no question as to what we should do.

16 We have never, to my knowledge, pushed any  
17 environmental issue, whatsoever, and have endeavored in  
18 all circumstances, as I said, to meet or exceed any  
19 criteria that we could find. And the hardest part about  
20 a 405 acre site, with all the different things on it, is  
21 determining what things there are to find and then



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1 getting somebody to tell what you are supposed to do.

2 The threshold question, really, in terms of  
3 the Critical Areas Commission became one of, was a golf  
4 course going to be a permitted use in our situation for  
5 this golf course in the RCA. And we felt that in Queen  
6 Anne's County, with the ordinance the way that it is,  
7 that this should be answered in order for us to move  
8 forward.

9 As a result, we requested, in conjunction at  
10 this time with the town of Queenstown, that the  
11 Commission -- and I talked to Wren and Dr. Taylor a  
12 number of times about this -- give us some preliminary  
13 indication as to whether a golf course could be a  
14 permitted use in the RCA.

15 At the request of the town and ourselves, we  
16 proceeded to move forward and had some preliminary  
17 consultations with the staff on the staff level of the  
18 Commission.

19 At the same time we approached the Chesapeake  
20 Bay Foundation, knowing that they had a very strong and  
21 vested interest in the future of the Bay, as we do, as



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1 people that are expecting to maintain our land and  
2 certainly not as somebody that would like to see it  
3 slide into the Bay or be abused in any way. We talked  
4 to the Chesapeake Bay Foundation --

5 MR. MURPHY: Objection. This is clearly  
6 hearsay. He's gone into talking with the Commission's  
7 staff, Dr. Taylor. Now apparently he's going to relate  
8 conversations with the Chesapeake Bay Commission. I  
9 mean, I know administrative bodies are liberal, but this  
10 is blatant hearsay. The Chesapeake Bay Commission, as  
11 far as I know, is not here. Are they here to testify on  
12 this? If they are, let them come forward. I really  
13 object to this strenuously.

14 CHAIRMAN CORKRAN: Well, I'll sustain that  
15 objection.

16 MR. MURRAY: May I be heard?

17 CHAIRMAN CORKRAN: Yes.

18 MR. MURRAY: Not only do I disagree with Mr.  
19 Murphy again, it's for the exact same reasons as before.  
20 I agree with him in principle, but not in the  
21 application.



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1           You will find in the regulations pertaining to  
2 the nature of this hearing that hearsay is not a basis  
3 for keeping out testimony. The question is whether or  
4 not the evidence is probative. Probative means, does it  
5 go to the issue? Does it help the decision maker decide  
6 the issues before him?

7           What Mr. Birney is trying to do is establish  
8 the context in which this particular golf course was  
9 designed. And why are we doing that? Because it goes  
10 to the heart of the question that Mr. Murphy himself  
11 insists is the only question you should consider. Is  
12 this essentially a commercial use that doesn't belong in  
13 the RCA?

14           Mr. Birney wants you to know that the  
15 Chesapeake Bay Foundation has something to say about  
16 that. And I think it's probative. And we would ask  
17 you to permit that evidence to come in.

18           (Whereupon, there was a discussion off  
19 the record.)

20           CHAIRMAN CORKRAN: I'm advised by counsel that  
21 we'll proceed. We note the objection. And so, please



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1 proceed.

2 BY MR. MURRAY:

3 Q Mr. Birney, would you identify that exhibit?

4 A This is a letter written to Mr. Bob Price,  
5 then Acting Chairman of the Maryland Critical Area  
6 Commission, outlining what the Chesapeake Bay Foundation  
7 thought were important things in order that a golf  
8 course be developed consistently with the RCA.

9 MR. MURRAY: That is Exhibit Number Five, I  
10 believe.

11 CHAIRMAN CORKRAN: Mr. Murphy, do you object  
12 to this letter coming in?

13 MR. MURPHY: Pure hearsay. Blatant.

14 CHAIRMAN CORKRAN: We note your objection, but  
15 I'm going to overrule it.

16 MR. MURPHY: Thank you.

17 MR. DEMING: However, I might caution, just to  
18 avoid further objections, that if you're going to talk  
19 about what that letter says, let's refer to the letter,  
20 rather than characterizing it.

21 CHAIRMAN CORKRAN: Proceed.



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1 MR. MURRAY: Mr. Birney may need the letter  
2 back.

3 (Whereupon, Applicant's Exhibit No. 5 was  
4 received in evidence.)

5 BY MR. MURRAY:

6 Q I believe that we offered the letter before  
7 you indicated the point of it for purposes of this  
8 hearing. What was it that the Chesapeake Bay Foundation  
9 wrote? What's the essential point of what --

10 MR. MURPHY: Objection. The letter speaks for  
11 itself. Anybody can read the letter.

12 CHAIRMAN CORKRAN: I sustain that. We can  
13 read the letter.

14 MR. MURRAY: Don't answer the question. Just  
15 give the exhibit.

16 CHAIRMAN CORKRAN: Thank you.

17 BY MR. MURRAY:

18 Q So, would you continue with the description of  
19 the history of the project and your efforts to evaluate  
20 the propriety of a golf course and the design of a  
21 particular golf course at this location?



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1           A     Okay. Based on certain criteria, we decided  
2 to move ahead with the plan to, at least in concept,  
3 come up with our golf course design.

4                     Additionally, a letter was sent to -- okay.  
5 Subsequent to that, the Commission did meet and did  
6 offer an opinion from a concept point of view.

7                     MR. MURPHY: Objection. This is the  
8 Commission's opinion?

9                     THE WITNESS: This is the --

10                    MR. MURRAY: Critical Areas Commission.

11                    THE WITNESS: -- Critical Areas staff opinion.

12                    MR. MURPHY: Objection, Mr. Chairman. The law  
13 is quite clear that this is an adversary quasi-judicial  
14 proceeding. There is to be no evidence received, except  
15 as part of the record. People are to have no contact  
16 with the Commission staff, except through the process  
17 that we have here.

18                    Now, they are attempting to introduce,  
19 apparently, some approval that was given to this project  
20 before by a staff member of the Commission.

21                    THE WITNESS: I didn't --



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1 MR. MURPHY: Or a communication by the staff  
2 member of the Commission. This is the body that's  
3 supposed to be deciding that. I object.

4 (Whereupon, there was a discussion off  
5 the record.)

6 CHAIRMAN CORKRAN: We're going to note the  
7 objection.

8 MR. MURPHY: Thank you.

9 CHAIRMAN CORKRAN: Please proceed.

10 BY MR. MURRAY:

11 Q Mr. Birney, what does Exhibit Number Four --  
12 what is it?

13 A It's a letter from the Project Evaluation  
14 Division commenting on the appropriateness of a golf  
15 course in the RCA.

16 Q Would you please hand it -- okay. All right.  
17 And if you would, rapidly move us on up into --

18 MR. MURPHY: Do I have -- has that been  
19 offered for -- in evidence?

20 MR. MURRAY: Yes. You objected to it and your  
21 objection was overruled. I think by now that's done.



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1 CHAIRMAN CORKRAN: We noted the objection,  
2 however.

3 MR. MURPHY: Thank you.

4 CHAIRMAN CORKRAN: And the basis for noting  
5 the objection here is that that letter was done prior to  
6 this hearing and we find nothing wrong with that letter  
7 coming in as a part of the record.

8 (Whereupon, Applicant's Exhibit No. 4 was  
9 received in evidence.)

10 BY MR. MURRAY:

11 Q Mr. Birney, would you continue on, but rapidly  
12 get up to the current date in the history of the  
13 project?

14 A Okay. That brings us up to the current date.  
15 We have designed a golf course that we feel is -- meets  
16 or exceeds any of the criteria that we could find  
17 anywhere, and I'd like to bring that up if I could.  
18 There are some criteria that we felt were exceptionally  
19 important in the design and in the development of the  
20 course.

21 MR. MURPHY: Excuse me. Again, is this an



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1 exhibit or are you going to use it as a --

2 MR. MURRAY: The latter.

3 THE WITNESS: We felt that it was important  
4 that the site be served by -- have an existing  
5 infrastructure that would support it, and we found that  
6 to be true of Route 50 and 301, which is adjacent to the  
7 property and allows instant access and egress from the  
8 property.

9 Additionally, we felt that it was important  
10 that there not be an over abundance of clearing involved  
11 when it came to wooded areas. And as you can see, there  
12 is a pretty striking similarity between the golf course  
13 design and the actual farm itself. We have concentrated  
14 on maintaining the golf course itself to the already  
15 cleared portions of the farm.

16 Certainly in the critical area, that's almost  
17 100 percent true. And I don't profess to be an  
18 engineer. We have numbers for you. But I can give you  
19 some general indications of what we've tried to do.

20 Additionally, as I'm sure you're aware, in  
21 Queen Anne's County there is a 300 foot buffer and



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1 rather than try and work around that, or have relief  
2 from that, we submitted to that and we are enthusiastic  
3 in maintaining and creating a wildlife habitat in that  
4 buffer through extensive 'aforestation.'

5 What the buffer means is that we've given up  
6 over 134 acres of the whole 735 acre site to the buffer,  
7 which nobody can go in or use for any purpose  
8 whatsoever, except for the wildlife habitat.

9 We have done -- we will be doing about 29 and  
10 a half acres of 'aforestation' within that buffer. And  
11 what you see here in the buffer is exactly the same as  
12 what we have here, except in the case of the golf  
13 course, we'll be adding 30 acres of woodlands to that  
14 buffer.

15 BY MR. MURRAY:

16 Q Mr. Birney, would you point out the extent of  
17 the buffer? That is, the distance away from the water  
18 or the shore?

19 A Okay. It's 300 feet back from the tidal  
20 waters and that -- there is a dotted line here that runs  
21 around --



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1 Q Okay.

2 A Well, this is non-tidal, so that dotted line  
3 continues on this area and then again -- well, actually  
4 it comes out to here and then comes around like that.

5 So, as you can see from this sketch, there is  
6 nothing in there. There's nothing to change from here.

7 Additionally, I'd like to point out to the  
8 Commission that in terms of 'aforestation,' this plat  
9 shows -- this design shows what's on here, but that's  
10 not what we are going to put there. As I said, we're  
11 going to add substantial 'aforestation' and -- the areas  
12 that you see marked with these diagonal lines, we will  
13 be adding forested areas to.

14 In essence, the entire 300 foot buffer will be  
15 in woodlands, all the way around to here, all the way  
16 across here. We'll be adding these areas here. This is  
17 already in woodlands. This will be 300 feet deep in  
18 woodlands again, and all the way around to here.

19 Q Mr. Birney, let me give you a moment to catch  
20 your breath.

21 A Okay.



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1 Q For the record, this is one of the documents  
2 attached to or made a part of Exhibit Number Eight and  
3 specifically it is sheet number two.

4 Now, Mr. Birney, if you would. Using the  
5 legend, so these people who have never seen this before  
6 will have a chance to digest what you're saying, tell  
7 them what it is that this plat depicts in the way of  
8 existing woodland?

9 A Okay. Existing woodland would be indicated by  
10 these sort of light blue areas with the fuzzy lines  
11 around that, and that's on the entire site.

12 Q Okay. And what's the cross hatched area?

13 A This? This cross hatched area?

14 Q No. The --

15 A This is -- are non-tidal wetlands. And in the  
16 coastal and in the critical area we will be maintaining  
17 and not disturbing in any way, shape, or form, the 25  
18 foot buffer surrounding all non-tidal wetlands area.

19 Q Okay. Now, what is the angle with dot areas?

20 A The angles with dots are the 'aforested' areas  
21 where we will be planting trees.



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1 Q So, that's the approximate 30 acres of  
2 aforestation?

3 A That's correct.

4 Q Some of that -- or all of that -- you correct  
5 me now -- is within the 300 foot buffer?

6 A That's correct.

7 Q Now, as long as we're using this drawing,  
8 which discloses a number of facts, would you outline for  
9 the members of the Panel, the critical area line itself?

10 A The critical area line is this heavy blue line  
11 that goes around the perimeter of the farm here.

12 Q So the area in here is not critical area?

13 A That's correct.

14 Q Now, what plans, if any, are there to deal  
15 with the existing structures any differently than they  
16 are today?

17 A Well, there are some existing farm structures,  
18 houses, where we have some tenants. Those will be taken  
19 down and will go away.

20 There are two houses on the site; this one and  
21 this one. They are nice houses and they will stay just



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1 the same as they always have been.

2 There is an existing barn here where we store  
3 farm equipment and the like. That will stay. That's a  
4 beautiful 150 foot barn. And then we will be building  
5 one 3,000 foot structure --

6 Q Three thousand square foot?

7 A Three thousand square foot structure in the  
8 parking lot, out of the critical area, where we will do  
9 -- we will establish taking of greens fees and that sort  
10 of thing. But, that's out of the critical area.

11 Q Any new roadways involved in the golf course?

12 A We anticipate nothing beyond cart paths.  
13 There will be no roadways or no infrastructure of that  
14 nature whatsoever on the site.

15 Q You talked a little while ago about the former  
16 interest in developing an inn or hotel on the site. Is  
17 that part of this project?

18 A Absolutely not. And that's why we got the  
19 site a mile and a half down the road, which is IDA.

20 Q And is there any residential development as  
21 part of this project?



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1           A     Absolutely not. I think it's clear from  
2 looking at the design that we certainly don't anticipate  
3 any residential development. I certainly wouldn't plan  
4 a golf course like that if I did.

5           MR. GRIFFIN: It's not unusual, though, for  
6 golf courses to have residential development?

7           THE WITNESS: No, it's not. But we don't feel  
8 that in this situation, certainly in the critical area  
9 or anywhere else on the site, that it's appropriate and  
10 it's not our interest. We have never developed  
11 residential homes and we don't have any interest in it.

12           MR. GRIFFIN: Is this -- right here, is this  
13 where 50 and 301 split?

14           THE WITNESS: Yes. This is 50 and this is  
15 301.

16           CHAIRMAN CORKRAN: This is an existing road?

17           THE WITNESS: That's the existing farm road.

18           CHAIRMAN CORKRAN: That would go up to --

19           THE WITNESS: Right. It's, as it's shown.

20           CHAIRMAN CORKRAN: -- pro shop, or whatever?

21           THE WITNESS: Yes.



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1 MR. GRIFFIN: Where are your parking lots?

2 Where do you plan to --

3 THE WITNESS: This is it right here. In the  
4 upland area, out of the critical area.

5 BY MR. MURRAY:

6 Q You indicated, I think, briefly that there  
7 would be extensive plantings in rough. Where generally  
8 would that be?

9 A Well, I could go back over to this one. As  
10 you can see, the land is presently used for agriculture.  
11 There is essentially no best management practices that  
12 are used, although we would be developing them for the  
13 future, as mandated by the Commission.

14 We have extensive areas of open earth. We  
15 have currently a 25 foot buffer that is maintained, as  
16 it is in agriculture, around the perimeter of the farm.  
17 All of this will go back to some sort of turfed area.  
18 And on a golf course of this nature, we anticipate 36  
19 percent of the course will be tees, fairways, and  
20 greens, and 64 percent of the farm will go back to  
21 turfed in rough.



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1           Q     What are the areas in light blue on the plat  
2 that you're looking at?

3           A     These are -- okay. In keeping with the storm  
4 water management and the storm water run-off water  
5 quality issues that we feel are fundamentally important  
6 to doing it successfully, we've contoured the whole  
7 site, with the exception of the 300 foot buffer, because  
8 we can't go in there, to drain all storm water into  
9 irrigation ponds that we will irrigate -- so that we can  
10 irrigate the golf course from them, significantly  
11 reducing any storm water run-off from the farm, which  
12 currently has no storm water management plan at all, as  
13 is the case in most farming areas presently.

14                 So, we would go from a zero storm water  
15 management policy to a totally controlled and state of  
16 the art storm water management policy or design, I  
17 should say.

18                 We feel that that is a significant  
19 contribution to the water quality. And in addition to  
20 that, as I said, we have offered to take the effluent  
21 from Queenstown Creek and put it into our ponds and it



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1 is still part of the design to enable us to do that, if  
2 the town should see that they would like to do that in  
3 the future.

4 So, I think from a water quality standpoint,  
5 it's a superior design and our engineers know better  
6 than I how all of that works.

7 Q Describe briefly, if you would, how the  
8 clubhouse operation would work and what kind of  
9 functions would occur there?

10 A We feel that with a golf course of this  
11 nature, a very nominal clubhouse is necessary. We don't  
12 anticipate -- we're not going to have anything but cold  
13 sandwiches and maybe a hot dog stand, men's and ladies'  
14 bathrooms, and an area -- maybe a small retail area,  
15 where you can buy golf balls when you hit them into all  
16 the ponds that we're going to put out there. That's the  
17 extent of it. And, we don't anticipate doing anything  
18 other than that.

19 We have worked very hard to adhere to, and as  
20 I said, exceed all the standards that we could find.

21 The alternative to this is a residential



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1 development, and if necessary I suppose that could  
2 happen. We're told by our engineers that we could get  
3 about 81 lots on there; 19 in the critical area and 62  
4 in the upland area; and the possibility of a community  
5 marina associated with those, a not for profit marina,  
6 located down here along Little Queenstown Creek.

7 We'd prefer not to do that. It is currently  
8 an acceptable and obtainable use under existing critical  
9 area law and existing zoning.

10 The human activity generated by something like  
11 that would be substantial and we feel that a site of  
12 this size that's returned to wildlife every evening, is  
13 seasonal in nature, and designed around the existing  
14 environmental features, is a far superior use to that.

15 This golf course is also unique in the fact  
16 that it is so spread out. Golf courses are sometimes  
17 packed into very tight areas, and this is a -- it's a  
18 loose golf course and allows approximately 15 acres per  
19 eight people. Generally you'd have about eight people  
20 on a hole at maximum play. And that would -- following  
21 that, you would have about two acres per person, or



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1 eight people on 15 acres at maximum play. And to me  
2 that's a pretty low intensity human use, especially when  
3 the fact that everybody goes away when the sun goes  
4 down. So --

5 Q Mr. Birney, is there any activity related to  
6 the golf course that you intend to promote related to  
7 the creek itself?

8 A Absolutely not. Nor do we anticipate any.

9 CHAIRMAN CORKRAN: How many acres are devoted  
10 to the golf course per se?

11 THE WITNESS: Well, the whole site, which  
12 essentially runs in this portion here, is approximately  
13 405 acres.

14 CHAIRMAN CORKRAN: Four hundred and five.

15 BY MR. MURRAY:

16 Q A correction. I think earlier you indicated  
17 that there were some golf courses that did use effluent  
18 for irrigation purposes. I think that you mistakenly  
19 indicated that Hog Neck was one of those courses.

20 A I may have mistakenly indicated that.

21 MR. MURPHY: Are you objecting? I mean, are



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1 you correcting the record?

2 MR. MURRAY: I'm asking the question and he  
3 answered. Is that an objection?

4 MR. MURPHY: It was a leading question. I'm  
5 sorry.

6 MR. MURRAY: It was a clarification.

7 MR. MURPHY: It was a clarification by the  
8 attorney, rather than by the witness.

9 MR. MURRAY: No other questions from here, Mr.  
10 Chairman.

11 CHAIRMAN CORKRAN: Okay. Mr. Murphy?

12 CROSS-EXAMINATION

13 BY MR. MURPHY:

14 Q Mr. Birney, you don't dispute that this is a  
15 commercial operation?

16 A Well, my understanding of the zoning in Queen  
17 Anne's County is that it's institutional.

18 Q Well, but it's a profit making venture,  
19 correct?

20 A Do you mean the exchange of moneys?

21 Q You're in it to make a profit, aren't you?



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1           A     To exchange money. Yes. Not in the critical  
2 area. We don't exchange --

3           Q     Well, I mean, the Hog Neck course, as I  
4 understand it, is owned by Talbot County. I wouldn't  
5 call that a profit making venture, but yours is a profit  
6 making venture. Am I right on that?

7           A     We are there to exchange moneys, yes.

8           Q     You're there to make money?

9           A     That's correct.

10          Q     Do you know what a protective use is under the  
11 critical area regulations?

12          A     I suppose not.

13          Q     You don't? Do you know whether critical area  
14 regulations classify agricultural land as a protected  
15 use?

16          A     I don't profess to be a critical areas expert,  
17 nor am I a lawyer.

18          Q     How much agricultural land are you removing  
19 from the property?

20          A     Do you mean how much -- well, in terms of  
21 acreage?



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1 Q Yes.

2 A You'd have to ask our engineers. I'm not  
3 familiar with that number.

4 Q You do recognize that Queenstown Creek is  
5 presently suffering pollution problems?

6 A It would seem to me that it has some problems.

7 Q Are you going to be followed by experts  
8 describing the plans of the project?

9 A I certainly don't profess to be an engineer.

10 Q I'm just asking you. Are you going to be  
11 followed? There are going to be experts coming after  
12 you, who are going to --

13 MR. MURRAY: Yes. I'll answer that "yes."

14 MR. MURPHY: Can I have that letter of the  
15 Chesapeake Bay Foundation?

16 BY MR. MURPHY:

17 Q Now, when the Chesapeake Bay Foundation wrote  
18 its letter, it put some qualifications on its  
19 recommendation, did it not?

20 A Yes.

21 Q Didn't it say that, "In our view, the



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1 designation of new golf courses should hinge on  
2 consideration of the following factors, while developing  
3 the course would require a significant change in land  
4 features"?

5 MR. MURRAY: I guess I will object and make  
6 the same objection that Mr. Murphy did; that is, either  
7 the letter speaks for itself or it doesn't.

8 MR. MURPHY: I don't care about that.

9 BY MR. MURPHY:

10 Q Are you making any significant changes in land  
11 features on this property?

12 A In terms of moving piles of earth, no.

13 Q How much of the property is being graded?

14 A I'm not familiar with those numbers.

15 Q It's over 50 percent of the critical area,  
16 isn't it?

17 A In terms of grading, again, I'm not an expert  
18 on grading.

19 Q Well, you're somewhat of an expert on golf  
20 courses, I guess, and every golf course I've been to,  
21 the tee is set up, and there are bunkers that are set on



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1 the sides, and the green is set up, and there is an  
2 awful lot of earth-moving that goes on in connection  
3 with a golf course, isn't there?

4 A Yes.

5 Q This is not going to take place here?

6 A We are fortunate in having a very flat site  
7 with about a 20-foot fall, which we can utilize to build  
8 the golf course on so we are not interfering or moving a  
9 significant -- in terms of golf course construction, a  
10 significant amount of earth because the site, as it  
11 exists, is conducive to a golf course.

12 Q The second stipulation of the Chesapeake Bay  
13 Foundation was whether the proposed golf course would be  
14 located --

15 MR. MURRAY: Objection. The same objection.

16 MR. MURPHY: I'm just reading it. I want to  
17 ask him about it. I've got to refresh his memory on it.

18 BY MR. MURPHY:

19 Q -- would be located adjacent to areas that are  
20 already developed and have infrastructure to accommodate  
21 its use.



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1                   Now, you're going to go in next to Queenstown,  
2 and they have infrastructure to accommodate the use,  
3 don't they?

4                   A     We are adjacent to Queenstown, yes, but I'm  
5 not sure what -- yes.

6                   Q     But, yet, you're not going to make use of that  
7 infrastructure, are you?

8                   A     I'm not following you.

9                   Q     Wasn't, before, you were going to utilize --  
10 you were going to operate this golf course in  
11 conjunction with the Queenstown sewage treatment system?

12                   A     We would have liked to have done that, yes.

13                   Q     Well, are you adjacent to an area that is  
14 already developed and has infrastructure to accommodate  
15 your use?

16                   A     Yes.

17                   Q     Are you making use of that infrastructure?

18                   A     In terms of services that it could provide us,  
19 I suppose so, yes.

20                   Q     What are they?

21                   A     A golf shop in Chesapeake Pottery, a drugstore



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1 in Queenstown for aspirin --

2 Q You call that "infrastructure," a drugstore?

3 A In terms of what would be required to support  
4 a golf course, yes.

5 Q That's "infrastructure," a drugstore? That's  
6 the first time I've ever heard that expression of a  
7 drugstore.

8 A Well, I can't think of what infrastructure a  
9 golf course would require beyond those things.

10 Q What about municipal sewage treatment?

11 A We don't have any sewage of a large amount to  
12 treat.

13 Q You do have the sewage from 40,000 golfers a  
14 year, don't you?

15 A We have men's and ladies' heads that have been  
16 in a septic field that's underneath the practice fairway  
17 that has been approved by the county.

18 Q I understand it's been approved, but, still,  
19 you have a big sewage treatment problem --

20 A Not a big one, no, we don't.

21 Q Now, you know the concern of the community has



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1 been over water access to this property, do you not?

2 A Yes.

3 Q You have an existing pier on the property, do  
4 you not?

5 A Yes, we do.

6 Q Would it be possible for people to come by  
7 boat and use this property through that existing pier?

8 A Sure, it would be possible.

9 CHAIRMAN CORKRAN: We have a question here.

10 MR. GRIFFIN: Where is the pier located on  
11 this map?

12 THE WITNESS: It's right down here, or on  
13 this one, over here.

14 MR. GRIFFIN: Thank you.

15 MR. MURPHY: That's all I have.

16 MR. MURRAY: Nothing else.

17 CHAIRMAN CORKRAN: Call your next witness.

18 MR. MURRAY: Robert Rauch.

19 CHAIRMAN CORKRAN: Do you want him sworn?

20 MR. MURRAY: No, I'll waive that.

21 Whereupon,



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1 ROBERT RAUCH,

2 a witness, called for examination by counsel for the  
3 Applicant, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MURRAY:

6 Q Mr. Rauch, please tell the Commission who you  
7 are.

8 A My name is Robert Rauch.

9 Q What do you do?

10 A I'm the president of a civil engineering and  
11 surveying firm located in Easton, Maryland, Rauch,  
12 Wallace & Lane, Inc., and I am the senior project  
13 manager for our firm on this project.

14 VOICE: How do you spell your last name?

15 VOICE: R-A-U-C-H.

16 THE WITNESS: Thank you.

17 BY MR. MURRAY:

18 Q Mr. Rauch, how long have you been an engineer?

19 A Seventeen years.

20 Q Briefly describe your work history.

21 A I worked approximately five years for the



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1 Maryland Department of Natural Resources as a  
2 hydrologist working in flood plain management as a  
3 project manager and design engineer.

4 Following that, I worked for approximately six  
5 years as the director of public works for Talbot County,  
6 located in Easton, Maryland.

7 Following that, I've had approximately six  
8 years of private practice working as a civil engineer,  
9 primarily working on private and public projects.

10 Q Have you ever been or are you presently  
11 involved in any other golf course projects?

12 A Yes, I am.

13 Q Please describe them.

14 A We have three projects that are currently in  
15 the design stage. Our participation in all of those  
16 projects are to provide design support -- engineering  
17 design support to the golf course architect to the  
18 project.

19 We have completed -- well, about 90 percent  
20 complete on the design of a golf course project located  
21 in Easton, Maryland, which is also located in Maryland's



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1 critical areas. It's a full 18-hole golf course and  
2 does have a residential component to it.

3 We are currently working with the state of  
4 Maryland and a private developer out of Houston on a  
5 state of Maryland golf course located in Rocky Gap State  
6 Park in Cumberland.

7 We have three projects that are in the very  
8 early stages of planning. They are at early planning  
9 stages, to the point that I'm really not at liberty to  
10 discuss them in great detail, other than they are -- one  
11 is in the state of Delaware, and two of them are located  
12 on Maryland's Eastern Shore.

13 Q When did you become involved in this  
14 particular project?

15 A I've been involved in it for approximately two  
16 years.

17 Q What has been your responsibility during that  
18 time?

19 A We've provided engineering support to the  
20 owners/developers on the project relating, initially, to  
21 some of the work that was described by Mr. Birney with



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1 the town of Queenstown for wastewater treatment and  
2 disposal, discussion of extension of utilities to the  
3 project, site planning, septic system analysis, and  
4 preliminary site designs.

5 Q Does that work involve utilizing or working  
6 with people from other areas of responsibility?

7 A Yes, it does.

8 Q For example?

9 A The entire process of working and managing the  
10 design and engineering responsibilities of a golf course  
11 involve a variety of disciplines that have developed  
12 specific expertises; some dealing with wetlands issues,  
13 tidal and nontidal, and septic system design and  
14 approval.

15 With the septic system, those individuals who  
16 have some specific expertise are sanitarians. We have  
17 stormwater management experts. We have planning  
18 experts. We have water quality experts.

19 So it's a variety of expertises that have to  
20 be brought together to develop a project of this sort.

21 Q There is an architect involved in this



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1 project?

2 A There is a golf course architect, yes.

3 Q Who is?

4 A Lindsey Irving, Lindsey Irving & Associates.

5 Q Utilizing the exhibits on the table in front  
6 of the panel, would you describe for the panel the  
7 essential characteristics of this project from your  
8 prospective?

9 A Our "marching orders," as they might be, from  
10 the developer was to establish a development "envelope,"  
11 if you like, of the areas that we could work with on the  
12 property, which created the least possible controversy;  
13 avoid, if at all possible, conflicts with local  
14 ordinances, state regulations, federal regulations.

15 In doing so, we've identified various  
16 buffering restrictions, nontidal wetlands restrictions,  
17 steep slopes, wooded areas, other sensitive areas --  
18 habitat, for example.

19 We have identified, sequentially, those areas  
20 that we can, in fact, work within -- the county actually  
21 mandates many of the restrictions that are, in fact,



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1 directed specifically for the protection and enhancement  
2 of the environment.

3 The 300-foot buffer became our first  
4 limitation of where we could and couldn't work. As was  
5 previously discussed, our only involvement with the  
6 buffer was to identify it, stay out of it, and, in fact,  
7 enhance it with the required wooded-type afforestation.

8 We had to identify nesting bird habitat, which  
9 was done. Somebody else will testify specifically on  
10 what that was and to what extent it was done, but those  
11 areas were identified and specific buffers created  
12 around them.

13 We identified nontidal wetlands. This was  
14 done through a variety -- a fairly extensive series of  
15 site investigations, confirmations by representatives  
16 of the Corps of Engineers. In fact, the exhibit that is  
17 presented includes a signed copy of the nontidal  
18 wetlands designation, as verified by a Corps of  
19 Engineers representative.

20 The nontidal wetlands areas are further dealt  
21 with through the use of buffers -- 25-foot buffers --



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1 which are mandated through the county's ordinance, not a  
2 specific requirement of the Corps of Engineers.

3 The critical areas limits were established  
4 because there are things we can do in there -- or can't  
5 do in there that we can do in the upland or noncritical  
6 area.

7 We had to assess tidal and nontidal areas. We  
8 did, in fact, have one pond at this end of the property,  
9 which was identified on the state wetlands map entitled  
10 "Wetlands."

11 We, through our experts, had verified that  
12 they, in fact, were not tidal wetlands. Some initial  
13 drafts of the plan included -- we did not attempt to  
14 change the critical areas boundary at any time, which  
15 if, in fact, was nontidal, we could have gone through  
16 that step.

17 We left the critical areas boundary as it was.  
18 We did initially have a 25-foot buffer around it. The  
19 county had asked for some further verification from the  
20 state which, when the long and short of it was it would  
21 have required a map amendment, it was determined that we



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1 would simply leave it as a tidal basin when, in fact, we  
2 believe it's not, and have maintained the 300-foot  
3 boundary.

4 That became our development envelope. We  
5 worked directly with the golf course architect in  
6 assisting him in identifying areas that he could work  
7 within, and made specific requests relative to the  
8 construction of the ponds that are shown on this  
9 exhibit, which are noted in blue.

10 These ponds, while they're typically thought  
11 of in a golf course as an aesthetic amenity, they serve  
12 a variety of very real benefits to the project.

13 From our perspective, the primary benefit was  
14 to collect stormwater. Grading of the project is such  
15 that all stormwater -- I should say, the majority of the  
16 stormwater from the graded areas will drain to the  
17 proposed ponds.

18 The areas within the 300-foot buffer will  
19 remain undisturbed and, in fact, further covered with  
20 turf -- the rough grass plantings.

21 There will be no grading involved in those.



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1 So what areas are draining to the tidewater and those  
2 buffers will continue to, but those areas will be  
3 enhanced with further stabilization, which were  
4 previously filled agricultural areas.

5 The balance of the areas are brought to these  
6 ponds. We designed these ponds in such a way that there  
7 would be no direct discharge to tidewater -- and I  
8 emphasize "no direct discharge" with regards to the  
9 storage capacity that has been put into those ponds.  
10 That storage capacity is based on the static pool levels  
11 and how much area within the pond we can accumulate  
12 stormwater.

13 It's our intention on this project from both a  
14 stormwater quantity and quality standpoint to retain up  
15 to a 100-year storm run-off event for the entire site,  
16 which we are able to do, and that's supported in the  
17 documents that have been enclosed as an exhibit.

18 I investigated the ponds from a water quality  
19 standpoint and are able to retain the first full inch of  
20 run-off on the total project, which is a standard  
21 addressed in water quality efforts to enhance the site.



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1 Additional advantages of the ponds and  
2 requirements of the ponds are for irrigation, as well.  
3 As was previously stated, it's definitely to our  
4 advantage to retain as much water as possible for the  
5 purposes of irrigation.

6 The ponds serve a final role in our  
7 management, and that's from the sediment and erosion  
8 control standpoint. With the entire site outside of the  
9 buffers being graded towards the ponds, those ponds will  
10 serve as our sediment basins during construction. All  
11 stormwater and potential run-off -- sediment-bearing  
12 run-off will be directed and retained within those  
13 ponds.

14 It's a fairly common practice when you can  
15 incorporate ponds into your site planning where you  
16 actually will overcut those ponds by a slight amount to  
17 allow it to fill with sediment so you don't have any  
18 further maintenance of it after the work is complete.

19 There will be no sediment discharged to tidal  
20 waters during construction. That's not just our desire;  
21 that's very clearly a local, state, and federal



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1 requirement that we have to provide an adequate sediment  
2 and erosion control plan to prevent any sediment from  
3 discharging from the site. Ponds do this exceptionally  
4 well.

5 Like I say, there is no grading within the  
6 buffers themselves, and that's far in excess of what  
7 type of protection is available on the site now.

8 Q Mr. Rauch, let's talk a bit, if we could,  
9 about the habitat implications from this design.

10 A The 300-foot buffer -- and I would like to  
11 boast that that was something that we really wanted to  
12 have. It works fine in our site plan; the county has  
13 included that in their requirements for the very purpose  
14 of enhancing habitat around the perimeters of the  
15 project.

16 These 300-foot buffers are, in fact, included  
17 in our site plan and further enhanced with the  
18 afforestation. It's just not necessarily required to  
19 all be in that area.

20 Q What is the amount of afforestation, and what  
21 does "afforestation" mean?



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1           A     We have a responsibility to provide 50 percent  
2 -- and I may defer, if I stumble a little on this, to  
3 somebody who is a little better versed on the  
4 afforestation aspects -- but we have a responsibility to  
5 provide 50 percent of the buffered area, which is about  
6 134 acres, I believe, in wooded area.

7                     We currently have 30-some acres that's already  
8 wooded within the buffer. We have to provide a total of  
9 67. So we're adding the additional 29. My addition, by  
10 rounding, may not be exact, and that is also included in  
11 the exhibits that we have, but, approximately, that's  
12 what we're providing.

13           Q     Is that the areas with the dividing lines and  
14 the dots that Mr. Birney explained earlier?

15           A     Yes, it is. In addition to the buffers, the  
16 ponds themselves provide a very real enhancement to  
17 habitat. The duck, goose populations aren't shy about  
18 using those types of ponds. They seem to be very  
19 popular. There will be fish provided in the ponds.

20                     Grading of the ponds will actually be designed  
21 in such a way to enhance the use of those ponds by



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1 certain wildlife.

2 Q What will be the general impact on water  
3 quality as a result of the design of the project?

4 A The water quality issue has been probably the  
5 leading factor in the design of this project. It's not  
6 our intention to propose a project that would have  
7 anything but a positive benefit on the site.

8 In addition to it being the developer's  
9 priority, it's ours from the design perspective, as  
10 well. It's not simply the intention to jam whatever you  
11 can on a piece of ground. There are too many rules,  
12 regulations that establish enough guidelines, that it's  
13 virtually impossible to create a negative effect if you  
14 follow all of the rules and regulations.

15 It's our belief on this project that there  
16 will actually be an enhancement of water quality on  
17 Little Queenstown Creek and the Chester River. I don't  
18 pretend to be the expert in this regards.

19 However, in my capacity to collect expert  
20 information -- we do it either through staff members, or  
21 we do it through outside experts, or we do it through



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1 source material -- we have included as part of our  
2 package a report prepared by a graduate student of Penn  
3 State under the direct supervision of a Dr. Wasky.

4 This is in the experts and people concerned  
5 with golf course development at this time. This has  
6 been a document that has been looked for for quite some  
7 time. It has been in the making for approximately five  
8 years.

9 Again, not pretending to be the expert that  
10 prepared this, I feel comfortable in evaluating the  
11 conclusions that they have drawn in the report. Much  
12 has been said before, and I'll let the document speak  
13 for itself in some regards.

14 Basically, what the study involved was the  
15 establishment of turf grass plots, studying them over a  
16 five-year period under actual rainfall events and  
17 simulated rainfall events through irrigation trying to  
18 identify the impacts or movement of nutrients,  
19 herbicides, and pesticides.

20 The conclusions of the report are very  
21 positive with regards to properly constructed and



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1 properly -- golf courses.

2 MR. MURPHY: Objection. Have these been  
3 marked for identification?

4 MR. MURRAY: Yes.

5 CHAIRMAN CORKRAN: Yes, they have.

6 MR. MURPHY: Are you furnishing copies to  
7 anyone?

8 MR. MURRAY: To the Commission.

9 MR. MURPHY: Not to counsel?

10 MR. MURRAY: No.

11 MR. MURPHY: Have they been offered into  
12 evidence yet?

13 MR. MURRAY: The blue has. I don't think the  
14 books have.

15 MR. MURPHY: The blue map?

16 CHAIRMAN CORKRAN: Yes, it has.

17 MR. MURRAY: All of these documents, I  
18 believe, are part of the approval process and were  
19 previously submitted to the Critical Areas Commission.  
20 Mr. Deming asked me to provide a separate set tonight,  
21 which I have done.



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1 MR. MURPHY: Well, I went down to the  
2 Commission last Thursday, and I didn't see that  
3 University of Pennsylvania study.

4 THE WITNESS: It's part of the appendix to our  
5 "Best Management Plan," which this is the document.

6 MR. MURPHY: May I see that? I'll just say: I  
7 didn't see this. I looked through all of the material  
8 that the Critical Areas Commission has. I was not given  
9 this.

10 It's almost impossible to cross-examine.  
11 That's a big, thick document.

12 MR. MURRAY: If I may respond. It's my  
13 understanding -- and I suspect that we cannot verify  
14 this because Mr. Stephens has left -- that Mr. Murphy  
15 has been invited to come down to Queen Anne's County and  
16 view these documents and those plans for long, many  
17 weeks now.

18 I don't know what happened at the Critical  
19 Areas Commission. I don't know what the Critical Areas  
20 Commission has or doesn't have, but I do know they have  
21 been public record for a long time.



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1 MR. MURPHY: Well, this isn't a Queen Anne's  
2 County hearing: it's a Critical Areas Commission  
3 hearing. I went down and asked to see the whole record.  
4 The only appendix I saw was the stormwater calculations,  
5 which I did not copy. I copied everything else.

6 CHAIRMAN CORKRAN: Well, let's get them into  
7 evidence. Let's offer them.

8 MR. MURRAY: Well, let's do that as a group,  
9 then. We then offer Exhibit No. 9, 16, 10, 11, 12, 13,  
10 14, 15, 17, 18, 19, 20, 21, 22, and 23, all of which  
11 are, as I believe Mr. Rauch has testified, part of the  
12 submittals for this project.

13 They constitute the supporting documentation  
14 and appendices, and I want him to be able to refer to  
15 them and explain them in terms of his overall  
16 explanation of the engineering on this site.

17 CHAIRMAN CORKRAN: You've seen none of this,  
18 Mr. Murphy?

19 MR. MURPHY: Have I, what?

20 CHAIRMAN CORKRAN: Have you seen none of  
21 those?



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1 MR. MURPHY: I don't know. Can I look at  
2 them?

3 Is Lindsey Irving going to be here?

4 MR. MURRAY: He is here.

5 MR. MURPHY: They're going to testify.

6 MR. MURRAY: He is.

7 MR. MURPHY: Mr. Lindsey Irving?

8 MR. MURRAY: Mr. Lindsey Irving, yes. Well,  
9 the materials that Mr. Rauch --

10 MR. MURRAY: "Rauch."

11 MR. MURPHY: -- "Rauch," I'm sorry -- has  
12 prepared, I certainly have no objection to, and that's  
13 Exhibits 17, 18, 19, 23, 22, 21, and 20.

14 Assuming Mr. Irving is going to be here, I  
15 don't object to Exhibit 15.

16 Exhibit 14 is a newspaper article. I object  
17 to that.

18 Exhibit 13 appears to be an article. Exhibits  
19 13, 12, 11, and 10 are articles. There has been no  
20 testimony with respect to these at all. They could be  
21 articles on, you know, anything. They happen to be



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1 seemingly relevant to the subject, but I think if we had  
2 some testimony as to how they related to this project or  
3 that, I would withdraw my objection, but I object to  
4 these articles in the absence of any, or just offering  
5 them without -- certainly, the authors of these articles  
6 aren't here, and there is no indication of how they  
7 relate to this project.

8 Exhibit 9 is this appendix to the stormwater  
9 study. I do not object to that.

10 Exhibit 16, I have the same objection to it,  
11 that there is no testimony on how it relates to this  
12 project, at least that I've heard.

13 MR. MURRAY: I proffer that's not testimony.  
14 Mr. Rauch will testify how these documents relate to his  
15 engineering work.

16 He talked in generic terms a few minutes ago  
17 about the fact that he didn't do all of this himself.  
18 He relied on employees and outsiders, and he brought it  
19 all together, and it's all represented in those drawings  
20 and these documents. Some of it is his work; some of  
21 it, he reviewed; some of it, some employees did; and



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1 some of it is work of outsiders, which he relies on to  
2 do his job everyday.

3 He'll be prepared and is prepared to explain  
4 how it fits into part of the puzzle. It's not unrelated  
5 or irrelevant. If it were, we wouldn't have brought it.

6 CHAIRMAN CORKRAN: Do I understand, Mr.  
7 Murphy, you're objecting to some of these; the articles,  
8 in particular?

9 MR. MURPHY: There has been no testimony about  
10 how they relate to this project.

11 CHAIRMAN CORKRAN: Well, let's give him an  
12 opportunity to testify.

13 MR. MURPHY: Fine. Fine.

14 MR. MURRAY: Let me see if we can expedite  
15 this process.

16 BY MR. MURRAY:

17 Q In connection with your water quality analyses  
18 regarding the golf course, did you take into account any  
19 or all of the information contained in that package of  
20 documents? If you did, with respect to any of it,  
21 identify the exhibit and tell us what you learned from



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1 or relied on in it.

2 A Yes, I used all of this information in the  
3 preparation of our documents.

4 Q And they are exhibits, what?

5 A Exhibits 10, 11, 12, 13, 14, and 16.

6 Q What, generally, do those documents deal with?

7 A To assess the water quality impacts of the  
8 golf course on this environment, we had to collect data  
9 and reference information and resource information,  
10 which addressed the circumstances. Alternatively, we  
11 could go to extremely elaborate exercises -- site  
12 evaluations -- that is not within any scope that we  
13 could possibly deal with.

14 This information is the result of a literature  
15 search, discussions with what we determined to be  
16 experts, and was a collection of information that we  
17 thought fairly represented what could be expected in the  
18 development of this project.

19 Specifically, the Penn State study was really  
20 the backbone of our assumptions and contentions that we  
21 would, in fact, have a water quality benefit from our



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1 proposed project.

2 The additional information provided was for  
3 review and information purposes for the reviewing  
4 agencies because there is very little information that's  
5 actually available on this subject.

6 The newspaper article: this is an article from  
7 a technical journal, Golf Course Management Journal,  
8 which discusses specifically nitrates in ground water  
9 and golf course management.

10 This letter to Mr. Ken Alkier (phonetic) of  
11 Golf Turf from Rutgers University, again, addresses the  
12 effects and positive benefits of the use of turf grass  
13 and the environment in connection with golf courses.  
14 This was provided to me by Mr. Alkier, who I'm working  
15 with on another project.

16 The Golf Course Superintendent Association of  
17 America has published these series of papers, which are  
18 specifically "Golf Course Impact on Water Quality,"  
19 "Golf Course Erosion Control," "Wildlife Management on  
20 Golf Courses," "Golf Course Pesticide Use," "Golf  
21 Courses as Community Assets," "Golf Course Resource



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1 Reclamation and Recycling," "Golf Course Water  
2 Utilization," and "Integrated Pest Management in the  
3 Golf Course."

4 Finally, we attached excerpts from EPA's  
5 "Integrated Pest Management for Turf Grass and  
6 Ornamentals."

7 All of this information was provided to  
8 support the conclusions that we drew that there would be  
9 a positive impact from the golf course, and we believe  
10 that these documents support that information, and they  
11 should, in fact, support speak for themselves.

12 MR. DEMING: May I ask a question?

13 CHAIRMAN CORKRAN: Yes.

14 VOIR DIRE

15 BY MR. DEMING:

16 Q Mr. Rauch, were these documents referenced in  
17 a text or in a bibliography of the other reports that  
18 are under your name?

19 A Yes, they were.

20 MR. DEMING: All right. Thank you.

21 DIRECT EXAMINATION (CONT.)



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BY MR. MURRAY:

1  
2 Q Mr. Rauch, are these the kind of documents  
3 that you rely on in the normal course of your business?

4 A Yes, they are, especially in circumstances  
5 where there is relatively new areas of investigation.  
6 As you can see, some of the information is provided by  
7 people in the industry of golf courses. This is not a  
8 new question. It's not a new issue. In fact, these are  
9 the people that are doing the studies and doing the  
10 research to help support other design professionals in  
11 addressing these questions.

12 Q All right. Let's go back to the water quality  
13 issue on this site. Based upon your own investigations  
14 and research, what do you consider to be the water  
15 quality impacts of this design?

16 A Again, we believe that the water quality  
17 impacts will be positive, as compared to what its  
18 current use is and as compared to what its potential use  
19 is as residential development.

20 All of these reports support our conclusion  
21 that there will not be any transport of nutrients



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1 through proper management and proper establishment of  
2 the turf grass.

3 In our position, we emphasize the term  
4 "proper." It's presented and proposed to the county as  
5 part of our site plan approval. We don't intend to have  
6 this golf course constructed and then left up to some  
7 random type of management.

8 The integrated pest management system is a  
9 program that was developed by EPA and documented in one  
10 of their publications. Basically, the contention is, is  
11 that it's a replacement type program.

12 You're dealing with people that are licensed:  
13 superintendents licensed to handle approved chemicals.  
14 Our irrigation system, for example, is a sensing type  
15 system, which will only replace water as is determined  
16 as being necessary.

17 The systems of fertilization will be based on  
18 replacement purposes only. There is emphasis in the  
19 integrated pest management system to have experts  
20 working -- licensed experts that are capable of making  
21 the determination of when best to apply this. You don't



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1 apply them before expected heavy rains; you don't apply  
2 them immediately after. There is, procedurally, an  
3 environmentally sensitive way of applying these  
4 products.

5 The pesticide, there are suspicions of  
6 pesticide movement. Pesticides, based on the  
7 information that we've collected and reports and our  
8 understanding, are basically attached to the sediment.  
9 You would expect to see them in surface run-off. You  
10 would typically expect to see that more in the use of  
11 pesticides in an agricultural environment because we  
12 don't have the extensive uses of ponds. We don't have  
13 the extensive buffering. In fact, under the Penn State  
14 report, they were unable to record significant levels of  
15 run-off even by simulating extreme events.

16 So the potential of surface water run-off in a  
17 properly designed and established and maintained turf  
18 grass environment is not to be expected.

19 So, based on that information, the fact that  
20 we have, in fact, designed the site to direct all run-  
21 off to our ponds, we feel very comfortable in



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1 professionally concluding that we will have a positive  
2 impact on the proposed design.

3 Q You had mentioned, I think, the "Best  
4 Management Plan." What does that mean, and does it have  
5 any relationship to the water quality issue?

6 A The "Best Management Plan" is an all-  
7 encompassing program to design, construct, and maintain  
8 the proposed project in a fashion that is the best for  
9 the environment.

10 It's actually a three-step process starting  
11 with the siting of the project. I discussed the  
12 creation of the envelopes that we allowed the golf  
13 course architect to work within.

14 In this siting envelope, we eliminated  
15 potential impacts that were considered to be  
16 environmentally insensitive.

17 So that was our first step in our "Best  
18 Management Plan." Our second step in our "Best  
19 Management Plan" was incorporating design components  
20 into our project. The specific one that has been  
21 discussed extensively are the use of the ponds.



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1           The use of the more extensive buffering in the  
2 area where we found evidence that it was, in fact,  
3 nontidal but we conceded that we didn't want to create  
4 that as a controversial issue, that was a design  
5 decision that was considered to be to the benefit of the  
6 environment and the benefit of the project.

7           Finally, the last component is the management  
8 of the course itself. Once we have established a  
9 properly-developed turf for this golf course, our  
10 proposal site plan and the site plan presentation to the  
11 county includes the obligation to incorporate an  
12 integrated pest management system, provide them with  
13 licensed superintendents, and give them regular  
14 reporting and monitoring throughout the life of the  
15 project to confirm and to verify that we are, in fact,  
16 adhering to the integrated pest management.

17           You can't have a project of this sort without  
18 all of those components, and we don't intend to stick  
19 this up there and then forget it. It's got to be  
20 ongoing. So you're not just talking about the physical  
21 construction of the project. It's a total concept, and



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1 the concept is geared toward and has been protection of  
2 the environment.

3 MR. MURRAY: Let's do a little bit of  
4 housekeeping. I believe that we had an objection.

5 CHAIRMAN CORKRAN: Yes, we did.

6 MR. MURRAY: Mr. Murphy, does that objection  
7 still stand as to these documents?

8 MR. MURPHY: That's the studies?

9 MR. MURRAY: The collection of the golf course  
10 materials.

11 MR. MURPHY: The studies?

12 MR. MURRAY: Yes.

13 MR. MURPHY: No.

14 CHAIRMAN CORKRAN: Are you still objecting?

15 MR. MURPHY: No.

16 CHAIRMAN CORKRAN: Then we accept them.

17 MR. DEMING: These are items 10, 11, 12, 13,  
18 as the ones you had objected to, and 16. That's what I  
19 have here, but you've withdrawn that objection.

20 MR. MURPHY: Well, based on the testimony.

21 BY MR. MURRAY:



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1 Q You've talked about the "Best Management  
2 Plan." Is it incorporated into Exhibit 18?

3 A Yes, it is.

4 MR. MURRAY: We would like to offer this in.

5 MR. MURPHY: The "Best Management Plan"?

6 MR. MURRAY: Yes.

7 MR. MURPHY: I thought had identified that  
8 previously as no objection.

9 MR. MURRAY: You did.

10 CHAIRMAN CORKRAN: Yes, you did.

11 MR. MURRAY: I don't think we ever got them  
12 in, and I'm going through --

13 MR. MURPHY: No objections.

14 MR. MURRAY: Do you have objections to any of  
15 these other documents?

16 MR. MURPHY: No.

17 BY MR. MURRAY:

18 Q Mr. Rauch, would you fairly expeditiously  
19 identify each of these documents, how they relate to  
20 each other, and what they have to do with this project?

21 CHAIRMAN CORKRAN: Do you want to do this one,



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1 too?

2 MR. DEMING: That's what you just did.

3 MR. MURRAY: I think we just did the "Best  
4 Management Plan."

5 THE WITNESS: The "Best Management Plan" is  
6 the summary of the information that is supplied in the  
7 attachments.

8 This letter from Lindsey Irving & Associates  
9 was one of the attachments, which similarly supports our  
10 conclusion of a positive --

11 BY MR. MURRAY:

12 Q Would you, when you do that each time, tell  
13 them what exhibit number you're referring to?

14 A Exhibit 15, that is a discussion of the  
15 various applications that will be used in the management  
16 of the course. Mr. Irving will discuss that in more  
17 detail.

18 Exhibit 9 is the appendix to our stormwater  
19 management report, and this includes all of the  
20 computations that were developed to support the  
21 contention and conclusion that we, in fact, are



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1 decreasing the run-off to the tidal waters and enhancing  
2 the water quality.

3 Exhibit 17 is the environmental assessment,  
4 which was prepared by a member of our staff, and it  
5 addresses pretty much the -- it follows the specific  
6 critical areas criteria and country criteria for  
7 developing the environmental assessment, and  
8 identification of existing and proposed conditions.

9 Finally, the summary stormwater management  
10 report and attachments. That's exhibit -- well, Exhibit  
11 19 is the summary report.

12 Exhibits 20, 21, 22, and 23 are all plat  
13 exhibits to the stormwater management report. They  
14 specifically describe predevelopment and postdevelopment  
15 conditions, identification of drainage areas, and flow  
16 information that's used in the preparation of the  
17 report.

18 MR. MURRAY: Again, a minor housekeeping  
19 matter. I'm not absolutely certain that the seven-page  
20 exhibit with all of the drawings was actually admitted.  
21 As I understand it, there is no objection.



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1 CHAIRMAN CORKRAN: That's correct.

2 MR. MURRAY: I would like to have that  
3 admitted.

4 CHAIRMAN CORKRAN: No. 8.

5 (Whereupon, Applicant's Exhibits Nos. 8  
6 through 23 were received in evidence.)

7 BY MR. MURRAY:

8 Q Mr. Rauch, you were talking a little bit ago  
9 about fertilizer and pesticides in turf grass.

10 What happens to those kinds of chemicals in  
11 this kind of golf course environment?

12 A Based on the information that we've been able  
13 to collect and our assessment of that information, the  
14 materials are either consumed and retained within the  
15 grasses themselves and within the root structures, and  
16 there is, in fact, no migration or leaching of these  
17 materials when properly applied and properly managed.

18 Q Do you contemplate such procedures being in  
19 place and effective on this particular site?

20 A Yes, we do.

21 Q With respect, then, to water quality, what is



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1 your opinion as to the net result of the design of this  
2 project on water quality?

3 A The net result, as, in fact, comparing it to  
4 relatively unmanaged agricultural use or to a potential  
5 of residential use, will be positive. We think there is  
6 actually no question about the positive impacts relative  
7 to its current agricultural use.

8 CHAIRMAN CORKRAN: Mr. Murray, I call your  
9 attention to the clock. You had asked that precise  
10 question once before.

11 MR. MURRAY: I did not so knowingly, but if I  
12 did, I apologize.

13 CHAIRMAN CORKRAN: Well, I know it, yes, and I  
14 would suggest that we move on as quickly as we possibly  
15 can, please.

16 MR. MURRAY: I only have one new subject, and  
17 I think I can complete it in one or two questions.

18 BY MR. MURRAY:

19 Q Mr. Rauch, the conclusion you just drew with  
20 respect to water quality, does that take into account  
21 wastewater treatment on site; and if so, how?



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1           A     With regards to wastewater treatment, all of  
2 the wastewater will be generated from the pro shop site  
3 where there will be rest rooms.

4                     The estimated flows that are generated from  
5 the project have been developed and reviewed with the  
6 local health department. The exact number, I don't have  
7 it at my disposal, but it's less than 5,000 gallons per  
8 day.

9                     They are being managed on a sewage reserve  
10 area of approximately 100,000 square feet. We have done  
11 extensive analysis of the site to determine that there  
12 are no adverse ground water conditions, that the soils  
13 are suitable for this.

14                    This is not a new program, like some of the  
15 things we're dealing with. It's a very old, established  
16 program. The health department has very close and very  
17 specific requirements that we have to meet.

18                    So our belief is that we have, in fact,  
19 proposed and designed a wastewater system that is  
20 environmentally beneficial or acceptable.

21                    MR. MURRAY: Thank you. No more questions.



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1 CHAIRMAN CORKRAN: Thank you. Cross?  
2  
3

4 CROSS-EXAMINATION

5 BY MR. MURPHY:

6 Q Are you familiar with the present condition of  
7 Queenstown Creek?

8 A I am, generally.

9 Q Would you agree with a description of it as  
10 being "overenriched with nitrogen and exhibits lethally  
11 low dissolved oxygen levels"?

12 A I don't have any information that I've  
13 personally generated or reviewed. I've heard that  
14 discussion, however.

15 Q I read through your environmental assessment,  
16 and I didn't see any discussion in there of the existing  
17 condition of Queenstown Creek. Did I miss it somewhere?

18 A I didn't personally prepare the environmental  
19 assessment, but in following through the entire  
20 documentation -- best management practice, it's our  
21 contention that the proposed enhancements of the project



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1 are what is relevant and that the existing condition of  
2 the creek is not our immediate responsibility, other  
3 than --

4 Q Do you consider that to be irrelevant?

5 A To the extent that our proposed project is  
6 viewed as being an enhancement, I would consider it to  
7 be an interesting fact that would support our project.

8 Q Are you familiar with the fact that it's  
9 designated as an anadromous fish spawning area in the  
10 Queen Anne's County critical area program?

11 A I'm not an expert in that field, but I believe  
12 I'm aware of that -- have been told that.

13 Q Again, I didn't see any discussion of that in  
14 your environmental assessment.

15 A I would honestly have to defer to individuals  
16 that have prepared that report.

17 MR. MURPHY: Are they going to testify, the  
18 individuals who prepared this?

19 MR. MURRAY: One.

20 THE WITNESS: One of the individuals that  
21 prepared it.



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1 BY MR. MURPHY:

2 Q Is it a member of your organization?

3 A No, he is not.

4 Q This environmental assessment was prepared by  
5 your organization.

6 MR. MURRAY: If, as you say, you've read it,  
7 you will see that it incorporates findings of other  
8 people, including the person who will testify as to the  
9 specifics.

10 BY MR. MURPHY:

11 Q The ponds, there are three ponds on the site  
12 now, and you're constructing six new ponds; is that  
13 correct?

14 A I think it's nine, but I would count to verify  
15 it. It's nine new ponds.

16 Q You're going to have 12 ponds all together,  
17 then?

18 A There are nine newly-constructed ponds. Well,  
19 I could point them out for you.

20 This is a nontidal basin in here.

21 MR. MURRAY: Mr. Rauch, make sure that the



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1 members of the panel can see what you're doing.

2 THE WITNESS: I'm sorry. This is an existing  
3 nontidal basin on the site. There is an existing  
4 nontidal basin up in this area, which isn't clear on  
5 this, but I can show you in this area.

6 Then this area is the one that I was  
7 discussing that is actually shown on the state wetlands  
8 map as a tidal basin, but we believe it is, in fact,  
9 nontidal.

10 BY MR. MURPHY:

11 Q These ponds, you say, are going to be used for  
12 sediment control, as well as stormwater control?

13 A That's right.

14 Q Sediment control during construction?

15 A That's right.

16 Q Are the ponds going to be lined?

17 A No.

18 Q The soils on the property, they're generally  
19 sandy soils, are they not?

20 A No, there is actually a wide variety. We have  
21 a soils report that is included in our exhibits that I



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could refer to.

1  
2 Q I understand that, but do you contend they're  
3 not generally sandy?

4 A No, I wouldn't generally call them "sandy  
5 soils" at all.

6 Q How close is the water table to the surface,  
7 do you know?

8 A It varies. In the area of our sewage reserve  
9 area, it's approximately four feet. In the area of some  
10 of the nontidal wetland areas that we're not developing  
11 in, it's within six inches. It varies throughout the  
12 project.

13 Q The maximum between four feet and inches?

14 A The areas that are not included in our  
15 development because of nontidal restrictions, it's as  
16 high as six inches.

17 Typically -- well, we know in the areas that  
18 we're developing, which are not nontidal, it's at least  
19 18 inches under the extreme conditions, and those are  
20 typically winter seasonally-high water tables when we  
21 don't have the golfing activities and the various



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1 nutrient applications and things like that.

2           During the summer, our water tables are quite  
3 a bit lower.

4           Q     The maximum, though, I mean, it would vary  
5 between a range of four feet and inches?

6           A     Given the explanation that I gave, yes.

7           Q     Do you know what a "protective use" is under  
8 the critical area regulations?

9           A     Only that I was listening earlier. I wasn't  
10 personally aware of it before tonight's proceedings.

11          Q     Do you know that agricultural land is  
12 classified as a "protective use"?

13          A     Only that you said it was tonight. I'm not  
14 aware of it.

15          Q     Have you studied how much agricultural land is  
16 being lost in this project?

17          A     I haven't personally. We have somebody here  
18 that could give you specific numbers on that, who is  
19 scheduled to testify.

20                I know that we are removing some areas from  
21 agricultural and putting it into turf grass, and I say



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1 the agricultural use is a variety of plantings, but  
2 we are changing it from a commercial crop to a turf  
3 grass. I don't know what you grow: corn, soybeans,  
4 whatever.

5 Q You're removing a vast majority of it, aren't  
6 you?

7 A Again, I would defer to somebody giving you  
8 specific numbers, but there is approximately 200 acres,  
9 plus or minus, that are coming out of agricultural  
10 production.

11 Q It's your contention that the fertilizers will  
12 not leach down to the ground water?

13 A That's correct.

14 Q Why is that, that it will not happen?

15 A Through the use of integrated pest management,  
16 which is a totally-encompassing program of a replacement  
17 process of nutrients, pesticides, irrigation water, the  
18 results of the information from the Penn State study and  
19 the results of other articles that we have reviewed.

20 Q Well, I mean, integrated pest management  
21 doesn't have anything to do with fertilizer, does it?



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1 A Yes, it does.

2 Q Isn't it pesticides?

3 A No, it's a total program of pesticides,  
4 herbicides, and fertilizers, and irrigation water.

5 Q Pest management doesn't address the control of  
6 pests?

7 A It does, and all of those issues are directly  
8 related to pest management. If you overwater, you  
9 create an environment for pests that are very  
10 detrimental. So all of those functions are part of pest  
11 management and all part of our "Best Management Plan."

12 Q Fertilizer is part of pest management?

13 A Part of what is "an integrated pest management  
14 plan." That's very well described in EPA's documents.

15 Q In the environmental report on page eight, you  
16 say, "The proposed private septic system is a potential  
17 point source of water pollution. However, the use of  
18 the sewage reserve area, as shown on the plat, which has  
19 been approved by the Queen Anne's County Health  
20 Department, should minimize this potential impact."

21 Have you made any analysis as to what this



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1 impact is?

2 A We work within the constraints and confines of  
3 what the health department has determined over years of  
4 study. They have determined that this is a suitable  
5 site for wastewater disposal.

6 Q But, yet, on two separate times, you said that  
7 there was going to be a positive --

8 A That's right.

9 Q -- water quality effect and here you said --

10 A The overall effect to the site will be  
11 positive.

12 Q I want to ask you about this point source of  
13 water pollution from the private septic system. Has  
14 that been analyzed as to what that is going to be?

15 A Yes, by the health department, and they have  
16 determined that we have an acceptable site for  
17 wastewater disposal.

18 Q But it has been determining that for the last  
19 50 years and the Bay is polluted.

20 A They've gotten very good at it now. The  
21 restrictions are very different than they were 50 years



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1 ago exactly as a result of what you're talking about.

2 Q You don't have any personal knowledge as to  
3 whether there is going to be pollution from this septic  
4 system?

5 A Based on our knowledge of the design of septic  
6 systems, percolation rates, types of soils, extensive  
7 investigations we've had, there is no indication from  
8 the information we have and our knowledge that there  
9 will be any pollution from that septic system.

10 Septic systems, in general, as it says in the  
11 report, are potential sites, but properly designed and  
12 properly constructed, they're not.

13 That's what we propose here. We don't intend  
14 to do something that is not properly designed or  
15 properly constructed.

16 Q Then you say that "Some nonpoint sources of  
17 water pollution may occur from the proposed development  
18 in the form of phosphorous from fertilizer and  
19 detergents, nitrogen from fertilizer in the atmosphere,  
20 suspended solids and sediments from the soil," et  
21 cetera.



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1           A     It's not a world of absolutes. We have the  
2 potential of those points being directed now toward our  
3 ponds, and that's how we propose to address that problem  
4 by directing that run-off to the ponds.

5                     We also have provided substantial  
6 documentation to indicate that those potential impacts  
7 are negligible.

8                     So, relative to what is happening today on the  
9 agricultural site, I'll reiterate our position is that  
10 there will be an enhancement. There is clearly a  
11 greater chance of nutrient run-off and deposition to the  
12 tidewaters under the agricultural use than what we  
13 provide. There is a 300-foot undisturbed buffer around  
14 the entire area.

15           Q     How about the pesticides? Does the  
16 agricultural use put down the same amount of pesticide?

17           A     The pesticides, in a turf grass environment,  
18 do not leak, as supported by the documents. They have  
19 to move under surface run-off. Turf grass is  
20 recommended and identified as perhaps the best way of  
21 stabilizing a site.



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1 Q If the soils are sandy, can they move?

2 A No, no, they're retained in the soil particles  
3 and will have to move --

4 Q They can't leach down to the ground water?

5 A According to the reports that we have, no,  
6 they don't.

7 Q You don't have any personal knowledge of that?

8 A I utilized the experts that I have presented.

9 Q Which are these reports?

10 A Absolutely.

11 Q You're an experienced development engineer,  
12 are you not?

13 A I believe so.

14 Q You could design a housing development that  
15 would have positive impact, couldn't you?

16 A Potentially.

17 Q It could have a more positive impact than  
18 agricultural use, could it not?

19 A If I designed the site, for the purposes of an  
20 example, with a house sitting in the middle. I mean,  
21 that's a housing development. If we develop a site to



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1 what its potential allows, our position is that it would  
2 be a greater -- a more of a negative impact than what  
3 we've proposed.

4 Q One per 20 would be?

5 A The proposed site will allow up to 81, I  
6 believe, units.

7 Q In the critical area?

8 A To the extent that we were directed to develop  
9 this site, I don't make the decisions on what to  
10 develop. If I'm advised and directed to design a site  
11 plan for 81 units on that proposed project, then I'll do  
12 it in the most environmentally-sensitive way I can and  
13 totally consistent with the rules and regulations of the  
14 county and the state's critical area program.

15 Q Are you saying that this is a better  
16 development in the critical area, as far as water  
17 quality goes, than it would be under the "one per 20"  
18 standard?

19 A No, I'm saying to you that if we are directed  
20 to design a residential subdivision for the maximum  
21 potential of that site -- I don't make the decision on



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1 what it is, so I have to talk from that perspective --  
2 is that if we met all of the criteria of the county's  
3 critical areas program, this is an improvement to that.

4 Q I'm asking you: if you design a "one per 20"  
5 development solely in the critical area, would it be  
6 better water quality or inferior water quality to that  
7 that you've got there?

8 A I would actually have to asses that because I  
9 don't know. I have looked at it from the maximum  
10 development of the site, and our belief is that it very  
11 much is -- this is an improvement.

12 Q In your environmental study, did you do any  
13 studies with respect to the effect on Canadian geese?

14 A No specific study, no.

15 MR. MURPHY: That's all I have.

16 MR. GRIFFIN: I just have two questions for  
17 you.

18 EXAMINATION BY THE COMMISSION

19 BY MR. GRIFFIN:

20 Q You spoke quite a lot on this notion of  
21 management -- best management practices and quality



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1 construction, emphasizing the need for proper  
2 utilization rates, et cetera, et cetera, for pest  
3 management, herbicides, et cetera. You referred, I  
4 think, to licensed operators and managers.

5 Does that mean, to your knowledge, that some  
6 level of government licenses people in this trade, now,  
7 who manage golf courses?

8 A It's my understanding that it is, and I  
9 actually could even defer that question to -- Lindsey, I  
10 suspect, has some information on that. If you don't,  
11 I'm sorry for deferring it to you.

12 Q You think he might be able to answer that?

13 A Yes, I think he is going to testify.

14 Q You seem to put a fair amount of emphasis on  
15 that notion.

16 A That's my understanding that there is a level  
17 of qualification and a licensing level for using  
18 specific types of products.

19 Q The other question I had was on the sewage  
20 disposal. Did I understand that it was a question of  
21 capacity with Queenstown's plant? I assume it's the



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1 municipal plant and not the county plant.

2 A To my understanding -- and as I say, I've been  
3 involved in it for several years, and it's going through  
4 a multitude of ups and downs, changes and  
5 interpretations. I think, really, the problem at this  
6 point is strictly political.

7 The quantity of wastewater that will be  
8 generated from the town is extremely small relative to  
9 the irrigation requirements. So there would be no  
10 trouble at all in handling the wastewater from a town  
11 the size of Queenstown on the project.

12 MR. GRIFFIN: Thank you.

13 CHAIRMAN CORKRAN: I have a question.

14 BY CHAIRMAN CORKRAN:

15 Q Is the sewage disposal area within the  
16 critical area, or outside of it?

17 A It is outside of the buffer, but within the  
18 critical area.

19 Q Within the critical area.

20 A Let me show you specifically where. It's  
21 right here, and it was located after some fairly



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1 extensive site investigations for the best soils.

2 CHAIRMAN CORKRAN: Let's go off the record for  
3 a moment, and we would like to call counsel up here,  
4 please, just for a minute.

5 (Whereupon, there was a brief recess.)

6 CHAIRMAN CORKRAN: Your next witness, please.

7 MR. MURRAY: Lindsey Irving.

8 Whereupon,

9 LINDSEY IRVING,

10 a witness, called for examination by counsel for the  
11 Applicant, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MURRAY:

14 Q Your name, please?

15 A Lindsey Irving.

16 Q What do you do, Mr. Irving?

17 A I'm a golf course architect and registered  
18 landscape architect in Maryland.

19 Q Have you designed any golf courses that this  
20 panel may be familiar with?

21 A Possibly. I designed Hog Neck Golf Course in



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1 Easton, Maryland, Cove Creek Country Club in Romancoke.  
2 You might have heard of those courses. Birdwood Golf  
3 Course for the University of Virginia in  
4 Charlottesville, to name a few in this area.

5 Q How long have you been in the business of  
6 designing golf courses?

7 A I've been in the business for 22 years.

8 Q In connection with designing a golf course,  
9 what factors do you take into account environmentally?

10 A Environmentally, I try to preserve as much of  
11 the natural environment that I can and not create  
12 situations that would be detrimental to the environment,  
13 to the best of my knowledge and capabilities.

14 But, generally, when I design a golf course, I  
15 try to utilize the entire tract, to take advantage of  
16 the best and most natural portion of that tract for the  
17 golf course, to provide a pleasant golfing experience  
18 for the golfer and a challenging one and one that's  
19 aesthetically attractive.

20 Q Do you rely on persons, such as Mr. Rauch, for  
21 the engineering aspects of the golf course development?



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1           A     Yes, a lot of that, especially in the  
2 environmental end of it, on people with his capabilities  
3 and resources.

4           Q     Do you have any direct experience or knowledge  
5 about the impacts of golf courses, generally, on water  
6 quality or habitat?

7           A     My information stems from magazine articles  
8 and reports that I've read, which have been published  
9 and submitted here in evidence by Mr. Rauch; the Penn  
10 State study, in particular.

11          Q     In designing this particular -- strike that.  
12 Did you design the Queenstown Harbor Golf Links Course,  
13 which is in front of you?

14          A     Yes, I did.

15          Q     Is it depicted, generally, in the blue  
16 drawings sitting in front of the panel?

17          A     Yes, it is.

18          Q     Did you attempt to treat the site in an  
19 environmentally sensitive way, as you designed it?

20          A     Yes. We attempted to avoid all of the  
21 environmental areas that would be considered classified



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1 "sensitive," and we stayed out of these areas as much as  
2 possible to avoid any confrontation with  
3 environmentally-sensitive areas.

4 Q Did you rely on Mr. Rauch and other persons  
5 working through and under him to identify those areas  
6 and recommend solutions?

7 A Yes, I did.

8 Q Are there any golf courses that you have  
9 designed, which are as environmentally sensitive as this  
10 particular course?

11 A I would say Cove Creek was. Cove Creek is  
12 down near Romancoke in southern Kent Island, and it  
13 fronts on one of the bays down there. I forget the name  
14 of it. Round Bay, or I'm not sure of the name of it --  
15 as well as it borders wetlands, and we avoided wetlands  
16 in that situation, also, and even created some of our  
17 wetlands to help work with the golf course features,  
18 water quality, and what have you, as well as the  
19 aesthetics of the environment, but I would say that's  
20 probably the closest one.

21 Q How involved are you in the management of golf



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1 courses after the construction of them?

2 A Well, I don't get involved with the  
3 management. Once we design the golf course, it's up to  
4 the owner to provide the managing aspect of the golf  
5 course.

6 Q Well, this is your opportunity to tell that  
7 little bit that you know about management.

8 MR. MURPHY: Objection.

9 BY MR. MURRAY:

10 Q Mr. Rauch indicated that you were going to  
11 comment on something that has to do with the management  
12 of golf courses.

13 MR. MURPHY: Objection. The witness said he  
14 didn't get involved in management.

15 MR. MURRAY: He didn't say, however, he didn't  
16 know anything about it.

17 MR. MURPHY: It's a leading question.

18 CHAIRMAN CORKRAN: We'll note the objection,  
19 but go ahead and answer the question.

20 THE WITNESS: Regarding management, I think he  
21 was referring to licensing. I think there is a state



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1 licensing procedure for various chemical applications.  
2 I don't know exactly which chemicals come under that  
3 classification.

4 I know most golf course operators hire trained  
5 superintendents that come out of universities and who  
6 are trained in turf management and the application rates  
7 of the various fertilizers, insecticides, and herbicides  
8 so that their knowledge of this application will be to  
9 the best interest of the golf course and the  
10 environment.

11 I know they don't want to just come out and  
12 blatantly dump chemicals on the ground and ruin our  
13 environment, just like I don't want to see that either.  
14 Nobody wants to see that.

15 MR. MURRAY: That's all of the questions I  
16 have.

17 CHAIRMAN CORKRAN: Thank you. Mr. Murphy.

18 CROSS-EXAMINATION

19 BY MR. MURPHY:

20 Q Do you have any opinion as to whether this  
21 golf course is a commercial use or not?



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1 A No, I don't.

2 Q It's going to be for profit, isn't it?

3 A If that's what the owner said it's going to  
4 be, then that's what it's going to be.

5 MR. MURRAY: For the record -- and maybe to  
6 save some effort on behalf of my client -- we will  
7 stipulate that this is an intended profit-making  
8 enterprise.

9 BY MR. MURPHY:

10 Q Do you have any knowledge in the critical area  
11 regulations, Mr. Irving?

12 A A limited amount.

13 Q Did anybody indicate to you that any attempt  
14 should be made to preserve agricultural land?

15 A No, I don't recall that being mentioned.

16 Q You don't get involved with management, so you  
17 don't know whether the pesticides and the fertilizers  
18 will leach down into the ground water or not, do you?

19 A To the best of my knowledge, if properly  
20 applied and worked through an integrated pest management  
21 program, you won't have that effect. It's only maybe



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1 heavy, heavy applications of things where you might get  
2 some movement.

3 Q Does the soil type make any difference?

4 A I don't know.

5 Q Does the depth of the water table make any  
6 difference?

7 A As to the leaching of anything?

8 Q Yes.

9 A Not as far as I know, as far as the movement  
10 from point "A" on the surface down a foot. If the water  
11 table is at a foot, I don't --

12 Q It would be easier to get to if the water  
13 table is closer than if it's ten feet away?

14 A Well, the water table -- say, a foot or two  
15 feet or three feet down doesn't affect anything going  
16 down. Is that your question?

17 Q Isn't it easier to get to it if it's close  
18 than if it's far away?

19 A Sure.

20 Q There would be less filtering of the  
21 chemicals, isn't that correct?



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1 A If it's right at the surface, sure.

2 Q You don't know anything about the water  
3 quality of Queen's Town Creek?

4 A No, I don't.

5 MR. MURRAY: That's all I have.

6 THE WITNESS: Thank you, Mr. Corkran.

7 CHAIRMAN CORKRAN: Thank you, Lindsey.

8 MR. DEMING: Is this the last one? He's not  
9 the last one?

10 MR. MURRAY: Mr. Deming, I believe -- I'm  
11 going to check my list, but I think I've got one more.  
12 Whereupon,

13 MILTON MCCARTHY,

14 a witness, called for examination by counsel for the  
15 Applicant, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MURRAY:

18 Q Your name, please?

19 A Milton McCarthy.

20 Q And what do you do?

21 A I'm an environmental consultant.



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1 Q How long have you been an environmental  
2 consultant?

3 A I've been self-employed since April 24, 1984.

4 Q And prior to that?

5 A Prior to that, I was a staff biologist with  
6 Ecological Services Office of U.S. Fish and Wildlife  
7 Service in Annapolis, Maryland.

8 Q And for what period of time did you hold that  
9 position?

10 A Approximately six years.

11 Q Prior to that, what did you do?

12 A I was a student at University of Maryland with  
13 a degree -- with a bachelor of science degree in fish  
14 and wildlife management.

15 Q In connection with being an environmental  
16 consultant, did you have occasion to review development  
17 plans?

18 A Yes, I did, on a regular basis.

19 Q And have you had occasion to review the  
20 Queen's Town Harbor Golf Links development plan?

21 A Yes, I have.



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1 Q When did you do that?

2 A We were originally brought into the project  
3 back in, I believe it was, April of 1988 to give a  
4 natural resource evaluation of the project and how this  
5 project would be impacted by primarily the critical area  
6 legislation. So what we did was, is we went out in the  
7 field as well as do historical literature review and  
8 searches for the various groups of species of critters  
9 and plant communities that would be subject to critical  
10 area protection and would be found on the property.

11 Q Is that something that you had done before?

12 A It was something that we did as a normal  
13 course of business, you know, in evaluating a project  
14 located within the Chesapeake Bay critical area.

15 Q Tell us, if you would, what you did in terms  
16 of evaluating the environmentally sensitive aspects of  
17 the site.

18 A Okay. The first thing we did was we checked  
19 for endangered species as listed by both U.S. Fish and  
20 Wildlife Service and the Maryland National Heritage  
21 Program. We found that there were eagle nests that were



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1 south of Route 50 that would not really be impacted by  
2 the project. We did some historical literature and  
3 aerial photo review of submerged vegetable plant or  
4 submerged aquatic vegetation distribution, both in the  
5 Chester River and Queen Town's Creek. With all the  
6 information that we had developed through literature  
7 review, or a lot of it anyway, we went out in the field  
8 and ground-truthed the area and identified the various  
9 plant communities, and we did some bird survey work to  
10 identify various species of birds that were using the  
11 site at the point in time which we had done our field  
12 work.

13 Q Perhaps, it would be easiest if you went to  
14 the appropriate drawing in the blue papers and indicated  
15 to the panel what you found and how it's shown on those  
16 drawings.

17 A Okay.

18 Q I'm not sure which one is yours. Is this the  
19 one you want to --

20 A This is the one we want to use.

21 Q Okay.



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1           A     What we did is within the critical area we  
2 identified all the natural plant communities, which  
3 included tidal wetlands, non-tidal wetlands, and upland  
4 forest that forms some of the perimeter and is scattered  
5 throughout various areas within the Chesapeake Bay  
6 critical area.

7                     With that, we did some additional work in  
8 terms of identifying groups of species in the field that  
9 we could observe that were sensitive in nature and  
10 subject to protection in the critical area criteria.  
11 That basically included two groups of species: number  
12 one, forest interior dwelling birds that you would find  
13 in the riparian forests along the shoreline and adjacent  
14 to tidal and non-tidal wetlands, and we found several --  
15 or two heron rookeries, one here and one over here by  
16 Little Queen's Town Creek.

17                     With that, we basically documented the field  
18 notes, everything that we had found. We continued our  
19 investigation. What we did is we went ahead and  
20 delineated all of the non-tidal and tidal wetland areas  
21 that were in the Chesapeake Bay critical area, which is



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1 reflected on the plan shown on the inside of this little  
2 checkered line. It reflects the wetlands that were  
3 delineated in the field.

4 Q What, if anything, does the plan contemplate  
5 with respect to the two nesting sites?

6 A There's required by Maryland Department of  
7 Natural Resources -- Glen Therus's office over in Wye  
8 Mills is requiring us to have established buffers around  
9 those areas with time-of-year restrictions when no  
10 construction or grading operations can occur, and that  
11 time-of-year restriction is from March 15 to, I believe,  
12 June 15 of a year.

13 Q Does that apply to both of these sites or just  
14 this one?

15 A Both, both sites.

16 Q Is this an active site or just an historical  
17 site which didn't show any active use?

18 A Well, this -- there was a site that was  
19 inactive that was picked up over here. When we ground-  
20 truthed this area, we found that area not to have any  
21 established colonial nesting birds. It was historically



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1 located, but field investigation revealed that there  
2 were no colonial nesting birds using this area. Last  
3 year, it was my understanding that this area was  
4 inactive. My feeling is that this year that that area  
5 is still active.

6 Q And does the project design take into account  
7 the sensitivity that it is supposed to have for those  
8 sites?

9 A Yes, it does.

10 Q Does the project impact on the wetlands in any  
11 harmful way?

12 A No, it does not.

13 Q What is the impact from an environmental point  
14 of view of these newly created ponds?

15 A Well, the newly created ponds basically are  
16 going to offer a lot of habitat diversity to the site.  
17 Right now, basically you've got four major types of  
18 plant communities on the property. You've got various  
19 degrees of upland forest. You've got some colestrum  
20 (sic) forest in wetland areas. You've got some tidal  
21 wetland areas, and you've got a lot of agricultural



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1 field.

2 The ponds are certainly going to create a  
3 certain amount of diversity, which should be used to  
4 some degree by waterfowl and pasturing birds. So I  
5 think just from having the ponds you're going to create  
6 a little bit of diversity to the property.

7 Q Would you speak for a moment about the  
8 afforestation and its impact on habitat.

9 A Well, the afforestation cannot only be a plus  
10 -- I mean, any time you pick up a net gain in terrestrial  
11 habitat or terrestrial forested habitat, I mean,  
12 obviously, those are going to be a net gain in forested  
13 area, almost 30 acres; and, granted, that will not be  
14 mature forest, it will be planted; but, over a period of  
15 time, you know, you'll establish that -- as that area  
16 matures and grows, I mean, you know, you're going to end  
17 up with basically contiguous forested areas all along  
18 the shoreline. It's going to increase in the carrying  
19 capacity of the site for wildlife. You're just adding  
20 that much more spatial diversity.

21 Q Have you looked at the specific types of



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1 plants that are to be planted to accomplish the  
2 afforestation?

3 A Yes, I have.

4 Q And what do you think of those?

5 A Well, the afforestation plan basically calls  
6 for mixed hardwood with a little bit of pine mix, and  
7 it's all stuff that's locally indigenous to the Maryland  
8 coastal plain, and it should work out fine.

9 Q Are you familiar with the concept of leaving  
10 a 300-foot buffer in what, I believe, Mr. Rauch would  
11 call or characterized as rough. What are the water  
12 quality and habitat characteristics of that?

13 A Well, from a water quality standpoint, I think  
14 even though there's been no testimony presented here,  
15 the Council of Governments in Washington has -- for  
16 stormwater purposes has done some studies that indicate  
17 that, by increasing the forested buffer or increasing a  
18 buffer area from an overwater area landward, the more  
19 that you increase that, the chances of pollutants being  
20 discharged through the buffer and getting into water  
21 decrease as that buffer increases. So there's,



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1       apparently, a direct correlation between the width of  
2       your buffer and a given pollutant entering the system  
3       via that buffer area.

4           Q     To tie that package up neatly, then a 300-foot  
5       buffer of grasses is better from a water quality point  
6       of view than a farm tilling closer?

7           A     Oh, no question, no question.

8           Q     The phrase or the term -- I think I've  
9       pronounced it -- "anadromous fish" --

10          A     Yes.

11          Q     -- was mentioned. Are there any concerns on  
12       this site about such fish?

13          A     There are anadromous fish spawning areas  
14       located in the headwaters of Little Queen's Town Creek.  
15       It's fairly well documented by the Maryland Tidewater  
16       Administration. Historically, I think you have white  
17       perch, probably some alewife usage up in there. Right  
18       now, I think the usage is pretty much restricted to  
19       yellow perch.

20          Q     Is there anything about this project design  
21       that troubles you with respect to the fish?



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1 A No.

2 Q Are you familiar with the conditions generally  
3 of Queen's Town Creek and the Chester River in the  
4 vicinity of the project?

5 A Generally.

6 Q Is there anything about the project that leads  
7 you to believe that either or both would be adversely  
8 affected as a result of this project?

9 A No, there is not.

10 Q As developments go, how would you characterize  
11 this from an environmental sensitivity point of view?

12 A From an environmental sensitivity point of  
13 view, I think the project is fairly well designed. I  
14 mean, they're going and putting in an additional 30  
15 acres of forest, which doesn't currently exist, although  
16 that's being placed within a 300-foot buffer around  
17 tidal waters. You're taking an existing farm, farmed  
18 area, which you have a high degree of soil disturbance  
19 on a regular basis; and, basically, that's going to be  
20 converted into a stabilized area. So you're not going  
21 to have wind-blown sediments being generated from the



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1 property that are going to blow into the creek during,  
2 you know, periods of high wind that are fairly common  
3 around here in the spring when the farmers till.

4 Q You heard Mr. Rauch's testimony about the use  
5 of the ponds as a means of storing most of the site's  
6 surface runoff; is that correct?

7 A Correct.

8 Q Do you have an opinion as to whether or not  
9 that design is workable?

10 A The design from what standpoint?

11 Q From the standpoint of collecting surface  
12 water runoff to the extent that there is any, as opposed  
13 to letting it go out whatever drainage ways may  
14 presently exist naturally?

15 A Oh, it certainly would be a benefit. I mean,  
16 any time you can treat stormwater and have the sediments  
17 or pollutants that are generated from whatever retained  
18 or detained prior to them being released in the tidal  
19 water, it has to be a benefit.

20 Q The site has both tidal wetlands and non-tidal  
21 wetlands?



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1 A That is correct.

2 Q As far as you know, are all the appropriate  
3 and necessary protective considerations included in the  
4 design?

5 A Yes, they are.

6 MR. MURRAY: No further questions.

7 CHAIRMAN CORKRAN: Mr. Murphy.

8 CROSS-EXAMINATION

9 BY MR. MURPHY:

10 Q Mr. McCarthy, you're familiar, of course, with  
11 the critical area regulations?

12 A Yes, sir.

13 Q And is it your contention that a golf course  
14 is a nature-dominated environment?

15 A Seasonally, I think that's an accurate  
16 statement.

17 Q I note the regulations define "nature-  
18 dominated environment." It says, "That is, wetlands,  
19 forest, or abandoned fields."

20 A Well, there's no abandoned fields on the  
21 property. There's wetlands and there's forest on the



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1 property. There's certainly no abandoned fields.

2 Q Do the fairways, greens and tees constitute a  
3 nature-dominated environment?

4 A No. I think they're too manicured for that.

5 Q It's not a resource utilization activity  
6 either, is it? That's agricultural, forestry, fisheries  
7 or aquaculture.

8 A No, it's not.

9 Q Is it your contention that this is a resource  
10 conservation use?

11 A I have no opinion on that.

12 Q Do you have an opinion as to whether it's an  
13 agricultural -- excuse me, a commercial use?

14 A I don't think there's any question about it.

15 Q Did you give any study to the question of  
16 whether the nitrates would leach from the fertilizers to  
17 the ground water?

18 A No, sir, I did not.

19 Q You did not?

20 A No, I did not.

21 Q Did you give any study to whether the



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1 pesticides would leach from the turf to the ground water?

2 A No, sir, I did not.

3 Q Did you give any study as to whether the  
4 nitrates from the sewage treatment plant would leach to  
5 the ground water?

6 A No, I did not.

7 Q And yet you offered this opinion that the  
8 Queen's Town Creek would not be adversely affected at  
9 all?

10 A I was saying the habitat of Queen's Town Creek  
11 would not be affected by the development of this  
12 property.

13 Q Well, if the nitrates from the sewage leached  
14 into the ground water, wouldn't the habitat be affected?

15 A Not necessarily.

16 Q It certainly couldn't be a positive thing for  
17 the habitat, could it?

18 A If it's in the ground water, where in the  
19 ground water? You have to be more specific. If it's in  
20 the ground water within the soil, it's tied up.

21 Q If it goes to the ground water, isn't there a



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1 good chance it could go into the creek?

2 A Not necessarily, no.

3 Q But possibly?

4 A Possibly, sure.

5 Q And the Queen's Town Creek, do you know  
6 whether it's already a stressed environment?

7 A It's my understanding from just listening to  
8 what I've heard tonight that it's fairly stressed.

9 Q That condition would not be good to receive  
10 further stress, would it?

11 A No question, I agree.

12 Q Are you familiar with the wildlife in the  
13 area?

14 A Yes, I am.

15 Q Is the Chester River -- do you find wildlife  
16 in the Chester River?

17 A Aquatic or terrestrial or avian?

18 Q Avian.

19 A Yes, all over the place.

20 Q It's actually one of the strongest grounds,  
21 isn't it, for Canadian geese?



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1           A     I wouldn't go that far, but I know there's a  
2 lot of Canadian geese that use the area.

3           Q     Do you know of any relationship between  
4 geese and golf courses?

5           A     Yes.

6           Q     What is that?

7           A     The geese tend to use the ponds that are  
8 associated with golf courses as resting areas.

9           Q     Do they also use the turf?

10          A     I'm really not sure. I don't know.

11          Q     Are you familiar with any of the literature  
12 pointing out a problem with geese ingesting pesticides?

13          A     No, I'm not.

14          Q     Have you ever studied that?

15          A     No, sir, I have not.

16          Q     Did you participate in the preparation of the  
17 environmental impact statement?

18          A     Some portions of it, that is correct.

19          Q     I asked before whether -- why the water  
20 quality of Queen's Town Creek wasn't addressed in the  
21 statement. I was told somebody else would address that.



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1 Do you have any reason why it wasn't addressed in the  
2 environmental impact statement?

3 A No, I don't. I don't know why.

4 Q Have you made a study of the soils on this  
5 site?

6 A Only in terms of where wetlands are located,  
7 in terms of looking at the kind of soil for the presence  
8 or absence of wetland plant communities.

9 Q Did you make any determination as to whether  
10 the soils were sandy or not?

11 A No, I did not.

12 MR. MURPHY: That's all I have.

13 CHAIRMAN CORKRAN: All right. Thank you,  
14 Mr. Murphy. Thank you.

15 Mr. Murray --

16 MR. MURRAY: Yes, sir.

17 CHAIRMAN CORKRAN: -- may I suggest that we  
18 treat new material. We're beginning to repeat a lot of  
19 information; and, in the interest of the hour, I would  
20 suggest that both you and Mr. McCarthy or -- that both  
21 of you, let's stick to new material and not keep



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1 repeating the same old thing over again. We've heard  
2 that enough, frankly.

3 MR. MURRAY: Yes, sir. I'll modify one of the  
4 two witnesses in light of that.

5 CHAIRMAN CORKRAN: Thank you.

6 MR. MURRAY: Mr. Morris.

7 MR. JONES: Morris Jones.

8 MR. MURRAY: Morris Jones. I'm sorry. It's  
9 so late, I couldn't even keep your name straight, sir.  
10 I apologize.

11 MR. JONES: It's all right.

12 Whereupon,

13 MORRIS JONES,

14 a witness, called for examination by counsel for the  
15 Applicant, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MURRAY:

18 Q Mr. Jones, please identify yourself.

19 A My name is Morris Jones. I'm executive  
20 director of the Queen Anne's County Chamber of Commerce.

21 Q Mr. Jones, I appreciate your staying late



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1 tonight. In what connection, if any, have you become  
2 familiar with this golf course project?

3 A In working with the Queen Anne's County  
4 Economic Development Commission, looking at economic  
5 development projects for the county, and working with  
6 the County Council on Tourism, planning to improve and  
7 enhance tourism in the county, and in my capacity as  
8 executive director of the Chamber of Commerce.

9 Q In all those capacities, are you interested in  
10 the economic welfare of Queen Anne's County?

11 A Yes. That's our primary interest in the  
12 Chamber of Commerce, and we look forward to this project  
13 as enhancing that, as we have severe problems with loss  
14 of employment in the watering industry, in particular,  
15 and loss of economic benefit. We have severe problems  
16 in loss of employment and loss of economic benefit in  
17 the agricultural industry, and we're looking to the  
18 future for tourism as being one means of replacing both  
19 those jobs and those funds from the county.

20 This project would bring a number of people to  
21 the county -- I've heard various estimates -- who would



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1 spend the day, play golf, stay at hotels, eat at  
2 restaurants, spend money in stores. That's economic  
3 development.

4 Q Do you have an opinion as to whether or not  
5 this particular project is appropriately placed at the  
6 site?

7 MR. MURPHY: Objection. It's not the concern  
8 of this commission as to whether the resource  
9 conservation zoning promotes economic development.  
10 Nothing could be more contrary to the very purpose of  
11 resource conservation zoning.

12 CHAIRMAN CORKRAN: We sustain your objection.

13 MR. MURRAY: No further questions.

14 CHAIRMAN CORKRAN: Mr. Murphy.

15 MR. MURPHY: I have nothing.

16 CHAIRMAN CORKRAN: All right. Thank you.

17 MR. MURRAY: Mr. Crowley, Bill Crowley.

18 Whereupon,

19 WILLIAM M. CROWLEY,

20 a witness, called for examination by counsel for the  
21 Applicant, was examined and testified as follows:



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## DIRECT EXAMINATION

1  
2 BY MR. MURRAY:

3 Q Mr. Crowley, you are our designated clean-up  
4 hitter.

5 CHAIRMAN CORKRAN: May I? Would he state his  
6 name, please.

7 MR. MURRAY: Yes, sir. I'm going to get him  
8 to do that.

9 CHAIRMAN CORKRAN: Oh, excuse me.

10 BY MR. MURRAY:

11 Q Your name, please?

12 A William M. Crowley.

13 Q And where do you work?

14 A Rauch, Walls and Lane, Centreville, Maryland.

15 Q What do you do there?

16 A I'm half branch manager. We operate in a dual  
17 capacity.

18 Q In addition to managing the branch, what do  
19 you do?

20 A I interpret Queen Anne's County zoning  
21 ordinance, discuss the projects with Queen Anne's County



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1 Planning and Zoning, Queen Anne's County Environmental  
2 Health Department, Queen Anne's County Department of  
3 Public Works and so forth, oversee projects, pull up  
4 inventory maps, find out what type of natural resources  
5 may exist on the site, then talk it over with Robert  
6 Rauch and have him get us the appropriate people to go  
7 out and locate those.

8 Q Essentially then, do you spend most of your  
9 time involved in the application and the use of the  
10 county zoning ordinance?

11 A Yes, I do.

12 Q And other related ordinances such as the local  
13 Critical Area Program?

14 A Yes, I do.

15 Q Are you an engineer?

16 A No, I'm not.

17 Q Are you a certified land planner?

18 A No, I'm not.

19 Q Are you an architect?

20 A No, I'm not.

21 Q But you have expertise in the county zoning



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1 ordinance?

2 A And I'm a registered property line surveyor in  
3 the State of Maryland.

4 Q Now, in connection with those responsibilities,  
5 do you have any familiarity with the Queen's Town Harbor  
6 Golf Links project?

7 A Yes, I do.

8 Q And were most of the drawings contained in the  
9 seven-page exhibit done under your supervision?

10 A Yes, they were.

11 Q In light of Mr. Corkran's request, I'm going  
12 to attempt to ask some leading questions, which I don't  
13 think will be objectionable.

14 MR. MURPHY: I never object.

15 BY MR. MURRAY:

16 Q Mr. Crowley, on the blue drawings, there are  
17 numerous schedules. Do those schedules depict -- strike  
18 that. What do those schedules depict?

19 A What we did on this plan was took and worked  
20 with the Queen Anne's County comprehensive zoning  
21 ordinance, determined the total amount of area on the



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1 farm, had all the natural resources located and the  
2 appropriate buffers provided, then ran our calculations  
3 based on the amount of developable land on the site,  
4 also figuring in the required 300-foot buffer that Queen  
5 Anne's County has, the amount of existing forested area  
6 within that 300-foot buffer, the fact that Queen Anne's  
7 County requires 50 percent of that to be forested. So  
8 we had approximately 29 acres to be forested on it.  
9 Also computing up the total number acreages of existing  
10 woodland, non-tidal woodland and so forth on the site.

11 Q So would it be safe to say, in summary, that  
12 you were hands-on involved in the performance-oriented  
13 calculations for the project?

14 A Yes.

15 Q Are all of those calculations depicted on the  
16 drawings in the attached schedules?

17 A Yes, they are.

18 Q Are there any adjustments going on today?

19 A No. I believe they're finalized.

20 Q Have there been some adjustments going on  
21 fairly recently?



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1           A     Yes, there have. We've been -- as everyone  
2 has stated before, we felt that the pond at the  
3 northwesternmost corner of the farm was non-tidal. We  
4 sent out a couple people to look at it and had that  
5 verified and only provided a 25-foot buffer around that.  
6 Couple weeks ago, it was decided we'll go with the 300-  
7 foot buffer on that and assume from a critical areas  
8 standpoint that it is tidal; and that, in turn, changed  
9 a great deal of calculations. It changed the 300-foot  
10 buffer total area which then, in turn, changed the  
11 amount of farm field in the buffer and out of the  
12 buffer, the total woods in the buffer, out of the  
13 buffer, and the amount that needed to be afforested.

14           Q     Okay. But the current plan, at least as far  
15 as you know, is depicted on these drawings?

16           A     Yes, it is.

17           Q     What does the term "commercial zoning" mean?

18           A     I would say that it means an area that is  
19 zoned for specific commercial uses, such as retail  
20 stores, gasoline stations, factory outlets and so forth.

21           Q     Does Queen Anne's County have such zones?



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1           A    Yes, they have a couple zones where uses are  
2 specifically noted in there, suburban commercial, urban  
3 commercial, little village center, so forth.

4           Q    Is the countryside zone a commercial zone?

5           A    No.

6           MR. MURRAY: Thank you. No further questions.

7           CHAIRMAN CORKRAN: Mr. Murphy.

8                           CROSS-EXAMINATION

9           BY MR. MURPHY:

10          Q    Did you hear the testimony of Mr. Stevens when  
11 he talked about what the intent was with the critical  
12 area ordinance?

13          A    Yes, sir.

14          Q    When he talked about institutional uses?

15          A    Yes, sir.

16          Q    And he said that, as I recall, whether or not  
17 it constituted a commercial use depended upon the  
18 intensity of the use?

19          A    That's what he said.

20          Q    Is that your understanding also?

21          A    What I use as constitutes an institutional use



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1 in Queen Anne's County is the comprehensive zoning  
2 ordinance; and, as soon as someone comes in to me and  
3 asks me, "Is this specific use allowed in Queen Anne's  
4 County?" I refer specifically to this book; and, under  
5 this book, the golf course is an institutional use. I  
6 don't fool with intensely developed or anything. I go  
7 specifically by that and use their opinion.

8 Q Well, do you have an opinion as to whether  
9 this golf course is a commercial use or not?

10 A My opinion of the golf course in that area is  
11 that it's an institutional use, according to the Queen  
12 Anne's County comprehensive zoning ordinance, which is  
13 what I have to work by and which is what I have to have  
14 plans approved by.

15 Q But, you know, the critical area ordinance  
16 says that some of these institutional uses may be  
17 commercial uses?

18 A They don't say that the golf course is.

19 Q Do you know if any are commercial uses?

20 A No, I don't.

21 Q In your view, would they all be institution?



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1           A     I would say any time, you know -- it depends  
2 upon what a person is classifying a commercial use as.  
3 As we look at a commercial use, according to this  
4 ordinance, it's specific things, like it says in there  
5 gas stations, retail food stores, retail businesses.  
6 Then it falls into an institutional use which is the  
7 golf courses. It's also got a -- I mean, agricultural  
8 uses could be considered a commercial use in this area.  
9 Commercial goose hunting could be a commercial use.  
10 That's why I leave it up to these people and Queen  
11 Anne's County Department of Planning and Zoning to  
12 determine that. It's not my job.

13           Q     You're going to take it from them as to what  
14 the answer is; is that what you're saying?

15           A     My answer I derive from what they tell me.

16           Q     I see. Now, you prepared these plans and the  
17 schedule of --

18           A     Yes, sir.

19           Q     And let me draw your attention to the amount  
20 of agricultural land on the site.

21           A     Yes, sir.



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1 Q Could you look at that for a minute.

2 A I believe it's about 256 acres. Is that  
3 right? 256.85 acres.

4 Q All right. That's total area of farm field  
5 on-site; right?

6 A On-site.

7 Q 256.85?

8 A Yes, sir.

9 Q And, in the critical area, it's --

10 A I'd have to look through here. 198.40 acres.

11 Q All right. Total area of farm field, 198.40.

12 A In the coastal area.

13 Q "Coastal" means critical area; right?

14 A Yes, sir.

15 Q Okay. And how much of that farm field, the  
16 190 acres, how much is being lost?

17 A On our figures, we're developing 232 acres of  
18 disturbed land; but, in the farm field, we have 30.1  
19 acres remaining, which would say that we're developing  
20 of the farm field in the coastal zone 167 acres.

21 Q So 167 acres is being converted from



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1 agricultural use to --

2 A Turf grass.

3 Q -- golf course use?

4 A Yes, sir, which is allowed under Queen Anne's  
5 County comprehensive zoning ordinance.

6 Q And how much of the site is being -- did you  
7 hear the discussion about the development envelope?

8 A Yes, sir.

9 Q And you're familiar with that, having prepared  
10 these plans. How many acres are in the development  
11 envelope; do you know?

12 A No, sir. What I did exactly was took the  
13 limits of disturbance. We didn't go around every piece  
14 of woodland and farm field that we weren't disturbing.  
15 We just took an overall out-bounds encompassing the golf  
16 course area and came up with a figure for that. Now,  
17 what we're saying in that is that that encompasses all  
18 the area within the golf course, and we came up with the  
19 total area which is shown on that plan.

20 Q I'm sorry, that's what I was asking you. I  
21 didn't -- is the development envelope the same as the



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1 amount of land that's being graded?

2 A No, sir. What we came up with for -- if I'm  
3 following you -- for a development envelope is that we  
4 located all the natural resources and those buffer  
5 areas. We showed them on the plan. Anything that  
6 wasn't a natural resource or a buffer area could be  
7 developed.

8 Q I'm just asking you. If you don't know,  
9 that's perfectly fine, but --

10 A Well, that's what you asked me, what the  
11 development area or envelope area was, and I just told  
12 you.

13 Q Okay. I'm just asking you. Do you know how  
14 many acres are in that development envelope?

15 A Yeah. I could take out all the natural  
16 resources and come up with the total amount of area.

17 Q But you haven't done that computation?

18 A It's probably somewhere on that sheet, but I  
19 can't lay my hand on it right now.

20 Q Okay. But, in the coastal area on this sheet,  
21 which again "coastal" means the critical area -- right?



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A Yes, sir.

Q The total area is 394.67 acres; correct?

A Yes, sir.

Q And you're disturbing -- I had it here, but I  
lost it -- 220-something? Where is it?

A Two thirty-two.

Q Two thirty-two?

A Yes, sir.

Q I'm sorry.

A That's area within the golf course confines.

Q Well, I see a total area of coastal zone  
disturbed here, 222 acres.

A Two thirty-two it should read.

Q It should be 232?

A I think that's what it says.

Q Mine says 222. I had this earlier. Yours may  
be later.

A Yes, 232.

Q Two thirty-two.

MR. DEMING: Are the papers that you two are  
referring to in evidence?



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1 MR. MURRAY: I just made a photocopy off of  
2 the original.

3 MR. DEMING: From this blueprint?

4 MR. MURPHY: Yeah, it is. It's -- I believe  
5 it's a legend on one of those blueprints, isn't it?

6 CHAIRMAN CORKRAN: It should be right here.

7 MS. LANGNER: It's 232. It's 232.

8 MR. MURPHY: Two thirty-two? Because on my  
9 sheet it's 222.

10 THE WITNESS: This has been changed since --  
11 what you were looking at, I believe, was prior to the  
12 300-foot buffer being established around that non-tidal  
13 pond.

14 MR. MURPHY: That's all I have.

15 CHAIRMAN CORKRAN: All right. Thank you.

16 MR. MURRAY: Nothing, sir.

17 CHAIRMAN CORKRAN: Can we go off the record.  
18 Off the record for just a second.

19 (Whereupon, there was a discussion off  
20 the record.)

21 (Whereupon, at 12:15 a.m., the above-



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1 entitled hearing was recessed.)

2 (Exhibits not attached.)  
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