

Public Hearings - Anne Arundel County

1991

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BEFORE THE ANNE ARUNDEL COUNTY
CRITICAL AREAS COMMISSION
PUBLIC HEARING

Monday, November 25, 1991

Pursuant to Notice, the above-entitled hearing was held before SHEPARD KRECH, CHAIRMAN, at 50 Harry Truman Parkway, Annapolis, Maryland 21401, commencing at 7:00 p.m., there being present:

BOARD MEMBERS:

SHEPARD KRECH, Upper Eastern Shore Commissioner

JOSEPH ALBRICH, Anne Arundel County

JAMES GUTMAN, Anne Arundel County

JAMES HEARN, Department of Environment, Baltimore

CAROLYN WATSON, Representing Paris Glendening,
Prince George's County



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ALSO PRESENT:

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RODNEY BANKS, Office of Planning and Zoning
EVELYN BERGAILA, Annapolis Development
ROBERT CLECKNER
TERESA DOWD, City of Annapolis
ANNE HAIRSTON, Chesapeake Bay Critical Area
Commission
MILT HORN
LARRY JONES
RAYMOND JONES
KATHLEEN LUNDY
STUART MORRIS
ELAINE PEIFFER, Office of Planning and Zoning
JOSEPH PERRY, Home Builders Association of Maryland
DAVID PLOTT, Linowes and Blocher
PAT PODELKOWICZ, Chesapeake Bay Critical Area
Commission
COLBY RUCKER
FRED SUSSMAN
GREGORY SWAIN

REPORTED BY: MARVIN W. GATZ, NOTARY PUBLIC

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P R O C E E D I N G S

1
2 CHAIRMAN KRECH: I call this hearing to order,
3 and welcome everybody. The purpose of this hearing is
4 to hear public comment on three proposed amendments to
5 the Anne Arundel County Critical Area Program as
6 required under Section 8-1809 of the Critical Area Law.

7 The three amendments are County Council Bills
8 63-91, 66-91, and 67-91, and will be presented by Rodney
9 Banks and Elaine Peiffer, Anne Arundel County staff.
10 These bills will be presented one at a time, and we will
11 reserve comments until we've heard all three bills.

12 I'd like to introduce some members of the
13 Critical Area Commission Panel. On my immediate left is
14 no stranger to you all in this room, Joseph Albrich,
15 Anne Arundel County Planning Administrator for
16 Environmental and Special Projects Division. On my
17 immediately right is Carolyn Watson, representing Paris
18 Glendening, who cannot be here this evening, for Prince
19 George's County. Next to Carolyn is James Hearn, from
20 the Department of the Environment in Baltimore. And on
21 my far right is James Gutman, from Anne Arundel County.



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1 My name is Shepard Krech. I represent the Eastern Shore
2 At-Large, Upper Eastern Shore At-Large, on the
3 Commission.

4 The Commission must render a decision on these
5 amendments by December 31st of this year, and the vote
6 is scheduled for the Commission meeting on December 4th.
7 That's next Wednesday.

8 All right. If we could hear from the Anne
9 Arundel County staff. Would you introduce yourself for
10 the record.

11 MR. BANKS: My name is Rodney Banks, and I'm a
12 legislative planner with the Office of Planning and
13 Zoning, and I work in the environmental division for the
14 gentleman on your left there, as well as our new boss,
15 Ardith Kay.

16 I'd like to start by saying a few words about
17 the legislation. Because I'm here to present this to
18 you, I'm going to talk mainly about County Council Bill
19 63-91. Elaine Peiffer, another environmental planner
20 for the Environmental Division of Planning and Zoning,
21 will present to you 66 and 67.



1 63-91 was introduced by council members Diane
2 Evans, Dave Boschart, and Maureen Lamb. The bill was
3 introduced and first read in July, actually the first
4 day of July; and, thereafter, we had three public
5 hearings on this ordinance. The first meeting on July
6 15th, the second one was held August 5th, and the third
7 hearing on the amended bill was held on September the
8 3rd.

9 The purpose of the ordinance was to permit
10 fees paid in lieu of replanting in the critical area to
11 be used for certain purposes other than what's currently
12 permitted in our ordinances, in our law, in Bill 49-88.
13 The Bill 63-91 repealed and re-enacted the development
14 codes in our county, in particular, Article 21, which
15 was the grading and the sediment control ordinance; and
16 it also will make changes to Article 26, which is our
17 subdivision regulations in Anne Arundel County.

18 Probably the best thing to do would be to
19 start right in with some of the language of the
20 ordinance and present that to you. We amended two
21 sections in the subdivision -- in the grading ordinance,



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1 excuse me, Section 2208, which describes fees that are
2 paid and so forth.

3 Currently, the critical area language in that
4 code talks about fees paid in lieu of replanting for
5 development sites are maintained in a separate
6 reforestation fund in our county to be used for specific
7 purposes.

8 Those specific purposes currently on the books
9 are the acquisition of land for easements for
10 reforestation, actual replanting in the critical area,
11 if you will, physical replanting, purchasing the trees,
12 putting together a plan, hiring a consultant, or
13 whatever you do to get the trees planted. And then,
14 finally, the law permits the use of those funds for
15 resource staff for project and plan review and
16 improvement.

17 To get to the gist of the actual legislation,
18 we amended the replanting section to include that money
19 can be used from our fee in lieu of for the planting of
20 natural vegetation, such as shore grasses which are
21 contiguous to resource conservation areas, buffers, or



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1 tidal wetlands.

2 This would permit the planning of -- pardon me
3 if I don't get it right -- spartina alterna flora, which
4 is -- to me is known as poor grass, I suppose. So,
5 that's just an example, I guess, maybe, to give you
6 some of the uses, I think, that the money could be used
7 under this ordinance.

8 The purpose would be to protect and enhance
9 and stabilize the shoreline, which would certainly be in
10 keeping with the goals and objectives of the Anne
11 Arundel County's Critical Areas Program.

12 The planting of those shore grasses would be
13 limited to a maximum of five percent of the fees that
14 are collected from the prior fiscal year. And just for
15 your information, I did a little bit of calculating this
16 afternoon; and the moneys we've taken in, in our
17 program, became effective on August 22nd, 1988.

18 Since that time, in fiscal year '89, five
19 percent of the money that we took in, in fee in lieu of,
20 would amount to about \$8,000. Five percent of fiscal
21 year '90 would amount to about \$8,000, slightly more.



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1 Fiscal year '91, it jumps up just slightly, \$16,000.
2 And although we are not complete with fiscal year '92,
3 at this point it would be around \$15,000. A substantial
4 sum of money, but it's not a great deal in terms of what
5 money we have been taking in.

6 That pretty much sums up the first amendment.
7 The second or the most -- not the most -- but the second
8 amendment of Bill 63-91 actually deals with the
9 acquisition of forested developable land or easements on
10 that land which could only be purchased, or the
11 acquisition or the purchase could only be done, if that
12 property lays within the limited development area or
13 resource conservation area.

14 And prior to any acquisition or easement
15 purchase, those lands must first be reviewed and
16 approved by the Office of Planning and Zoning, as well
17 as the county executive. We would also be required,
18 under this bill, to seek the advice of the executive
19 director of the Chesapeake Bay Critical Area Commission.
20 We would also be required to seek the advice of a
21 designee of the Anne Arundel County Forestry Board, in



1 this case, some like, possibly, Chris Lynch, who is the
2 current chairman of the board, or whoever they so
3 designate. And finally, we would also consult with and
4 seek the advice of a member of the Maryland Department
5 of Natural Resources, Natural Heritage Program, for the
6 Department of Natural Resources.

7 One thing I would like to say about this
8 ordinance, as well as Bills 66-91 and 67-91 -- let me
9 read to you Section 2 from 63-91. It talks about "Be it
10 further enacted that should any part of this ordinance
11 be disapproved by duly established approval authority,
12 the disapproval shall not effect the remaining parts of
13 the ordinance." It's also -- that you would "dissect
14 and approve each section, and if necessary, subsections,
15 and should you require any revision or minor change,
16 please approve the ordinance subject to the revision for
17 that minor change."

18 We would ask that the Commission approve the
19 bill, and, again, I'm going to repeat that with the
20 condition that the county would alter that particular
21 section instead of denying the bill in its entirety.



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1 Thank you.

2 CHAIRMAN KRECH: Elaine Peiffer. I omitted to
3 introduce, before we started, two members of the
4 Critical Area staff: Miss Pat Podelkowicz, in the back,
5 who is listening in, and Miss Anne Hairston, of the
6 staff, and also, the court reporter, Marv Gatz. I thank
7 you.

8 Yes, Jim.

9 MR. GUTMAN: I wonder if I could ask a
10 question or two on this first part of the presentation.
11 I guess, number one, this is being, perhaps, picky, but
12 in your Section 3 should actually be over on the next
13 page, where you list, and I will read, "With the review,
14 approval of the Office of Planning and Zoning, and the
15 county executive, and the advice of the executive
16 director for the Chesapeake Bay Critical Area
17 Commission and designated Anne Arundel County" -- the
18 identification here of the executive director of the
19 Chesapeake Bay Critical Area Commission, I would suggest
20 is erroneous in that the correspondence ought best go
21 to the chairman of the Commission, a member of the



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1 Commission, Judge North.

2 The executive director serves very much as a
3 head of the staff and administrator, and I think,
4 really, you've selected an individual who does not have
5 the kind of the responsibility that you're referring to
6 here. And I might say that I did check what I'm saying,
7 suggesting at this time, with our assistant A.G., Mr.
8 George Gay, who is in agreement.

9 Next, I'd like to acquire, if I may, about the
10 amount of money in full. We've heard the five percent
11 figure, but what I'd like to have is how much money is
12 available right today for whatever expenditure. What is
13 the total in the bank?

14 MR. BANKS: Well, if I could, Mr. Gutman, we
15 took a look today, and did a run of our computer; and
16 there is two ways that we break up the money. And I
17 should explain this to you first. The first is what we
18 call a nonrefundable fee. That is the fee in lieu of
19 that the developer pays when he cannot replant on-site
20 or off-site. In that fund, there is roughly \$949,000.

21 MR. GUTMAN: How much again?



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1 MR. BANKS: 949,000.

2 MR. GUTMAN: How much has been spent,
3 incidentally, to date?

4 MR. BANKS: To date, there has been roughly
5 21,000 on one site to replant. There was also some
6 money taken out for a contract for a forester to look,
7 who's currently looking and working on finding
8 reforestation sites. I'm not sure of the total of what
9 that contract is.

10 MR. ALBRICH: That total contract was, I
11 think, around \$15,000.

12 MR. GUTMAN: 15,000. So, there's no
13 replanting involved in that at all?

14 MR. ALBRICH: No.

15 MR. BANKS: No, it's actually a search for
16 sites, looking at our tax maps and aerial photography,
17 and so forth.

18 MR. GUTMAN: This 900, is there another fund,
19 or another --

20 MR. BANKS: Yes. The other fund is the --
21 what we call, the refundable securities, and that's



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1 where the developer who does -- developer or individual,
2 whoever, does do the replanting, he is required to post
3 a bond, some type of security, letter of credit. That
4 is in the amount of \$572,000. This all equates to trees
5 that are currently being planted in that fund, and then,
6 of course, the nonrefundable are trees that have yet to
7 be planted.

8 MR. GUTMAN: Well, just for the record, I'd
9 like to say that I'm a bit alarmed about how much money
10 has been taken in and unspent. And I don't know whether
11 it's a legitimate worry or not, but we know what's
12 happened to special funds at the state level.

13 MR. BANKS: These moneys -- if I could?

14 MR. GUTMAN: Go ahead.

15 MR. BANKS: These moneys are earmarked
16 strictly for these uses, and they're part of our capital
17 budget. We annually go back to county council and
18 request money to use for expenditure for replanting. We
19 currently have, at least, 20 sites under possibility for
20 replanting.

21 MR. GUTMAN: I understand when you say the



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1 funds are "earmarked." The funds were earmarked at the
2 state level for all these things, acquisitions, and they
3 went. So, I would just for the record to -- the uses
4 that you're speaking of, alternatives uses, for shore
5 erosion, this is not going to do very much, I assume,
6 for the habitat in the area, other than, perhaps, some
7 fish or whatever. Is that a consideration?

8 MR. BANKS: I think, certainly, that it should
9 be a consideration. I think also that any planting we
10 would do, while it may not necessarily, in this
11 particular instance, create a lot of habitat, it's
12 certainly going to do some things to filter and improve
13 water quality, filter out phosphorous nitrogens and
14 such -- which is the intent of the critical area program
15 as well.

16 MR. GUTMAN: All right. Thank you.

17 CHAIRMAN KRECH: All right, Jim. Can we
18 proceed?

19 MR. GUTMAN: Surely.

20 CHAIRMAN KRECH: I'd like to reserve comments
21 until the next two bills have been presented in full.



1 MS. PEIFFER: My name is Elaine Peiffer, and I
2 work with the County Environmental Commission, and I'd
3 like to briefly give you a summary on Bill 66-91 and
4 Bills 67-91.

5 Bill 66-91 basically involves the -- presents
6 the county's growth allocation procedures, as well as
7 the reclassification for changing the -- procedures.
8 Both of these procedures are required by state law, and
9 this was the emphasis or the thrust behind this
10 legislation.

11 Under the reclassification process, this will
12 be handled or go through the same process as a rezoning
13 in the county. The applicant will come in, complete an
14 application, submit a fee, and a request will be heard
15 before the administrative hearing officer. These
16 applications will be taken on the same time frame, on a
17 quarterly basis, such as applications that are submitted
18 in January, February, and March will be accepted for
19 filing in April, and so on, throughout the year.

20 A critical area classification will be granted
21 if there is an affirmative finding that, number one,



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1 there is a mistake in the county's critical areas maps,
2 based on land uses in existence on December 1st, 1985.

3 Number two, the proposed critical area classification
4 conforms to the state and county critical area map and
5 criteria. Number three, the proposed critical area
6 classification conforms to the environmental goals and
7 standards of the county's general development plan.

8 Number four, there is compatibility between the uses of
9 the property as reclassified and the surrounding land
10 uses. And, number five, the applicant has to notify the
11 Critical Area Commission, in writing, of the proposed
12 reclassification, at least 30 days before the hearing
13 before the administrative hearing officer.

14 Currently, in the county, the county sends, on
15 a weekly basis, a list of variances and rezonings to the
16 Critical Area Commission. This includes dates of
17 hearings, case numbers, the property owner's names, and
18 so forth. Once we do get approval on Bill 66-91, we
19 will then include the reclassification applications on
20 the same list that is already going out to the
21 Commission.



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1 The second process that's discussed under 66-
2 91 is that of growth allocation process. The applicant
3 for growth allocation must apply to the Office of
4 Planning and Zoning with a completed application as well
5 as a complete critical area report. This critical area
6 report must provide a detailed description of the
7 property, all plans, maps, documents to support the
8 report, and a map showing that the property is in
9 accordance with 8-18.08.1 of the National Resources
10 Article of the State Code.

11 The applicant must also demonstrate compliance
12 with the critical area criteria for the requested
13 critical area classifications. In addition to the
14 application form and the critical area report, the
15 applicant must also include a detailed explanation and a
16 description of the project proposed for growth
17 allocations that addresses these various items: public
18 need, the maximization of environmental benefits, the
19 minimization of negative environmental impacts,
20 compliance with all requirements of the development of
21 the proposed project without offsets or offside



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1 mitigation, reforestation mitigation, and a provision of
2 easements that state the requirements in development for
3 the proposed project, energy efficient use of design,
4 siding, and development methods, preservation of
5 archaeological sites and historic structures, and
6 affordable housing where that is applicable.

7 Applications for growth allocation will be
8 taken twice a year. An application that is submitted
9 January through June, it will be accepted for filing in
10 July. The applications submitted in July through
11 December will be accepted for filing in January.

12 The basic process which is explained in bill
13 66-91, and that an application will go through, would
14 first start out where the applications are sent to the
15 Office of Planning and Zoning. We will review these
16 and develop our recommendations on the application and
17 forward these to the planning advisory board.

18 The board will then review the applications,
19 along with our recommendations, will make their own
20 recommendations on the applications, and will forward
21 these recommendations to the county executive. The



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1 county executive will then send the approved growth
2 allocation applications to the county council in the
3 form of legislation. At this time, also, notification
4 or copies of the legislation, such as we've already done
5 with these bills, will be sent to the Critical Area
6 Commission.

7 Approved growth allocation will be rescinded
8 if action to the method of use is not begun within a
9 year of approval, and the approved use is not at least
10 50 percent complete in three years, or if the use or
11 construction of the property deviates from the approved
12 site plans.

13 And the last item under Bill 66-91, which is
14 the only amendment our county council had to make, the
15 growth allocation that's grounded to the IEA
16 classification shall be required to comply with the LDA
17 requirements for reforestation and forest preservation.

18 Next, briefly, I'd like to discuss Bill 67-91.
19 This bill basically reserves 11 acres of growth
20 allocation per LDA, IEA, for the City of Annapolis. The
21 11 acres were determined by the city using the state's



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1 five percent formula. The mayor and the city council
2 must request the growth allocation acres by resolution
3 to the -- present this in the form of resolution to the
4 county council. The city must also develop its own
5 procedures for distributing these 11 acres, and these
6 procedures must be approved by the Critical Area
7 Commission. Thank you.

8 CHAIRMAN KRECH: Mr. David Plott. You wish to
9 say a few words?

10 MR. PLOTT: Yes. Is there a certain place
11 that I should --

12 CHAIRMAN KRECH: I think up there will be --

13 MR. PLOTT: Mr. Chairman, members of the
14 panel, my name is David Plott. I'm an attorney with the
15 law firm of Linowes and Blocher, and I'm also chairman
16 of the legislative committee for the Anne Arundel County
17 chapter of the Home Builders Association of Maryland.
18 I'm testifying tonight on behalf of -- I'm testifying on
19 Anne Arundel County Council Bill Number 63-91, which is
20 the bill regarding the use of fees in lieu of replanting
21 in the critical area, and, specifically, the provision



1 in that bill that home builders have objection to is
2 the provision that allows a use of fees in lieu of
3 reforestation to be used to buy existing, developable
4 forest and land in LDA, RCA.

5 We oppose that provision for several reasons.
6 First of all, we think it's directly contrary to the
7 critical area law. It's directly contrary to the
8 critical area regulations. We believe it constitutes an
9 illegal exaction. We also believe it's premature,
10 because we've heard from the Anne Arundel County Office
11 of Planning and Zoning that they've really just begun to
12 identify sites within the critical area where
13 reforestation can be obtained and achieved. And we
14 think that it's too early to try to use the findings for
15 buying already forested land when they haven't even
16 identified sites to this point where they can really
17 accomplish the reforestation that is the purpose of the
18 fee in lieu.

19 Finally, we just think it's really bad --
20 policy. The whole purpose of this is to try to reforest
21 the critical area. By buying existing parcels of land,



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1 you're doing nothing to -- have no net loss to encourage
2 reforestation of the critical area.

3 Let me quickly go through that list of items
4 that I just gave you. Regarding violation of the
5 critical area law, if you look at Section 8-1809(i) of
6 the Natural Resources Article, the Annotated Code of
7 Maryland, it sets forth the standards by which the
8 Critical Area Commission shall review local jurisdiction
9 program amendments. They must meet, basically, two
10 criteria, the first being it must be consistent with the
11 critical area program goals set forth in Section 8-
12 1808(b)(1) through (3). And, secondly, any approved
13 program amendment must be consistent with the critical
14 area criteria adopted by the Commission.

15 Now, we believe that this provision is
16 contrary to both of those. Regarding the critical area
17 program goals, of those goals it violates at least two
18 of them. If you look at Section 1808(b), (a), the goal
19 is to minimize adverse impacts on waterfall to result in
20 pollutants or runoff from surrounding land.

21 Now, we know that forest cover is the least



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1 polluting of the different types of land use in terms of
2 waterfall and impacts. By using these moneys to buy
3 existing forested land, you're doing nothing to increase
4 the amount of forest -- in the critical area. These
5 findings were taken from developers and from land owners
6 who have cleared forest land in the critical area for
7 the express purpose of trying to recreate, to mitigate
8 -- to create forest lands and reforest in the critical
9 area, to mitigate the impact of the clearing.

10 If you take those funds, and instead of
11 reforesting, you use them to buy developable land in LDA
12 and RCA that is already forested, you're not furthering
13 that goal. For one thing, under the critical area law,
14 by law, only 20 percent of the forest cover on those
15 lands could be cleared anyhow, and of that 20 percent
16 that would be cleared, it would have to be either
17 replanted or fees in lieu would have to be paid to
18 mitigate them.

19 So, you're really not doing anything to
20 further the recreation of forest land, which would
21 mitigate waterfalling impacts, but run-off of the land



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1 that is cleared pursuant to the law.

2 Secondly, we don't believe that it conserves
3 the fish, wildlife, and plant habitat. Since the LDA
4 and RCA forested lands are already protected by the
5 laws, I was just saying, if you're not recreating forest
6 land, how are you increasing the amount of habitat?

7 Secondly, the second -- we believe it violates
8 the critical area regulations that the Commission had
9 promulgated. The regulations are very specific in terms
10 of protection of forest cover and forest lands. If you
11 look at the regulations for LDA and RCA -- I'll give you
12 the citations, COMAR 14 and 15.02.04(c)(3) and
13 14.15.02.05(c)(7). It states that, and I'll quote, "For
14 the alteration of forested and developed woodland, the
15 LDA" -- it also applies to the RCA -- "the jurisdiction
16 shall apply all the following criteria: A) the total
17 acreage and forest coverage, within a jurisdiction and
18 the critical area, shall be maintained or preferably
19 increased. B) All forests that are allowed to be
20 cleared or developed shall be replaced in the critical
21 area on not less than an equal area basis."



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1 You can also look at the regulations regarding
2 forest and woodland protection, Section 14.15.05, that
3 also requires a policy to maintain and increase forest
4 and vegetation in the critical area. So, essentially,
5 what your regulations are requiring is a no net loss of
6 forest cover in a critical area. This bill does nothing
7 to further that. It does nothing, really, to mitigate a
8 loss of forest land in the critical area.

9 You reflected, Mr. Banks said, \$949,000 in
10 fees in lieu. The Trade Council of Anne Arundel County
11 had estimated previously that -- when the fund was only
12 \$800,000 -- that approximately 26 acres of trees, of
13 eight-foot oak trees, costing approximately \$150 each,
14 could be planted with the \$800,000.

15 How much land in LDA or RCA can you purchase
16 with that same amount of money? I think it's very
17 small. And you're really not reforesting in the
18 critical area, if you spend your money. You're buying
19 already forested land.

20 I also believe that Anne Arundel County is the
21 only county that's requesting an amendment of this type.



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1 I don't think any other county in the critical area is
2 allowed to use their funds for this purpose.

3 My follow-up point on this is that it's
4 premature. I mean, they want to change the law now to
5 allow the use of the funds to buy existing parcels of
6 land; however, the county really hasn't made the full
7 effort that is necessary to identify areas that can be
8 replanted. It's too early to allow the county to use
9 funds for buying forested land when they really haven't
10 made the effort, at this point, to try to identify sites
11 that could be reforested, which is really the purpose of
12 the program.

13 My next point is just that I believe that the
14 use of the funds for this purpose would be an illegal
15 exaction. Basically, the land owner or developer has
16 been told that if they clear forest land, they're doing
17 environmental damage, but they're allowed to go forward
18 with that environmental damage if they can mitigate.
19 And the way they mitigate is either by replanting on
20 site, or if they can't do that, they pay a fee in lieu,
21 and that, basically, that's an exaction in exchange for



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1 them being able to go forward and clear land. They're
2 being required to replant or pay the funds to the
3 county, and then, the county is supposed to go out and
4 use those funds to replant trees.

5 What's happening now, if this legislation is
6 passed, is that the money is being paid to the county,
7 but the county is not going to use the funds to go out
8 and reforest. They're going to use the funds to go out
9 and buy land that's already in tree cover, and only 20
10 percent of it can be cleared anyhow under law. So, it's
11 really not furthering the purpose of the law. There's
12 really no relationship between how the money -- what the
13 purpose of the money is being taken for, and how the
14 money is being used, supposedly to further that purpose.
15 It's not furthering the purpose in which the money is
16 being taken.

17 So, that summarizes my points. I just believe
18 that we're in opposition to that specific provision. I
19 don't think we have a problem with the shore grasses,
20 but we are adamantly opposed to the use of the funds for
21 buying already forested land, developable land, in the



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1 LDA and RCA. Thank you.

2 CHAIRMAN KRECH: Thank you, Mr. Plott. Colby
3 B. Rucker.

4 MR. RUCKER: Thank you. My name is Colby
5 Rucker, and I'm president of Severn River Association.
6 And I speak for the association this evening. We're
7 just the community umbrella association in Anne Arundel
8 County. And though I may not speak for two other
9 organizations, I've been a member of the State Forestry
10 Board for Anne Arundel County for 12 years. I'm also a
11 director of the Maryland Heritage Treatment Servicing.

12 I've been a certified tree expert for more
13 than 30 years. I own forested land in the critical
14 area, and I've worked with the Department of Natural
15 Resources in 1980 to write a scenic river plan for the
16 Severn River. So, I've had some experience in
17 evaluating what forest are, and what they're not.

18 In this case, I think a lot does depend on
19 what we call a forest and what is the goal of critical
20 areas. Certainly, when we look at the critical area
21 initiative from the start, it was to protect a belt



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1 around the Chesapeake Bay, and, thereby, protect the
2 quality and the functioning of the Bay itself, and
3 certainly, the preservation of forest -- forest, and the
4 many things that forests do, such as an attention to
5 forest interior birds. In any case, certainly, the
6 priorities directed towards the preservation of existing
7 forests.

8 I think if we look in here at the original
9 critical areas bills, it said "forest and woodland
10 protection." It said some of the goals are to -- excuse
11 me. The main thing, it increased the forest and
12 vegetation of the critical area.

13 Now, when we talk about the forest and
14 vegetation, I think we are talking about forest in the
15 sense of a three-dimensional forest providing the many
16 different advantages that forests can provide, including
17 wood fiber, recreation, habitat, or quality, as it says
18 here. And forests are three-dimensional when you speak
19 of walking in a forest or walking on a lawn.

20 Now, as to the way you saw what was happening
21 throughout Anne Arundel County, it was that in taking



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1 down a forest of diverse species, having diverse habitat
2 for many different types of wildlife, and certainly,
3 very strong recreational and aesthetic appeal from
4 hundreds of bird watchers as well as, certainly, the
5 logger and timber industry, it certainly is presumptuous
6 to say that we can do any sort of balance, or maintain
7 any balance or increase, on only the matter of sheer
8 acreage because forests are three-dimensional. Acreage
9 is two-dimensional.

10 Certainly, when we see the attempts to
11 reforest, we must, indeed, evaluate whether it is at all
12 possible or could be possible to reforest. But, first,
13 as a member of the forestry board, we visited one of the
14 first sites which is off Renic Road in southern Anne
15 Arundel County.

16 What was interesting there was not only the
17 inappropriateness of species, but also the large brush
18 piles where trees 20- to 30-feet tall had been bulldozed
19 down to make room for the small trees. Anne Arundel
20 County has there own county tree build, which certainly
21 would cover the areas not in the critical area, and when



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1 that was being put together, inserted a small phrase so
2 that, indeed, Anne Arundel County could have the option
3 of reforestation or preservation of existing forests.

4 Now, anyone that would say that, well,
5 preserving an existing forest doesn't do anything,
6 because, perhaps, only 20 percent would get leveled any
7 how, I think we have to go back to the familiar phrase
8 of fragmentation. Certainly, if you take a forest, and
9 you cut roads through it, or scatter houses through it,
10 or anything like that, the acreage may be not readily
11 altered; but, certainly, if you're a forest interior
12 bird, or you're a logger, or anything, the forest may
13 become completely unsuitable. And if you scatter houses
14 and road through a forest, for many categories, it
15 ceases to be a forest.

16 Now, at the present time, much attention has
17 been given to the phrase, or should I say slogan, of no
18 net loss. It's a political slogan, hoping that somehow
19 we can find an avenue by which we could have all the
20 growth that anyone might want, certainly the development
21 industry, and also preserve all our forests. And how



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1 can you do that? Certainly, you can not superimpose one
2 on the other; they're totally different systems. It's
3 hard enough for them to co-exist side by side. But
4 somehow through this avenue of reforestation we thought
5 that we could, perhaps, have both.

6 Certainly, as we see the Amazon rain forest
7 disappearing -- and we worry about the worldwide effects
8 of loss of forests. I certainly applaud all those
9 environmentalist planting trees along the roadsides, in
10 school yards, and every place else. We're not talking
11 about that tonight. We're talking about in the critical
12 areas what's the best way.

13 Now recently, very recently, in Anne Arundel
14 County, on November the 5th, was an invitation to attend
15 a planting. "Please join the county executive in the
16 Cape St. Claire community. Critical area -- planting
17 celebration at the lot adjacent to the community club
18 house."

19 Now, I visited the site. I parked legally
20 and walked on the county road -- did not walk onto the
21 property. It's an area that's grassed. It's being,



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1 - apparently, used for parking and events, and so forth.

2 Level compacted soil. And it's a -- they planted,
3 should I say, not -- a band of trees, from 20 to 100
4 feet wide and approximately 400 feet long. It does not
5 amount to an acre. So, therefore, under critical area
6 law it's not even a forest. It does not meet the
7 definition of "forest."

8 However, it is a -- on three sides, it forms a
9 buffer for the community area. It backs up to houses on
10 one side, and certainly -- it does not adjoin other
11 woodlands. So, even at best, it could not produce much
12 habitat, certainly no wood fiber. It is, indeed, a
13 beautification effort, and, therefore, I -- species that
14 are planted there. And the species, as I could identify
15 from the road, included spruce, white ash, honey locust,
16 several species of iberum -- junipers, white pine, red
17 osher, dogwoods, red cedar, probably winter berry,
18 Russian olive, red maple, and I believe wild life pine.

19 This is like driving by a nursery of things
20 that can be planted around the foundation and front lawn
21 of someone's house. Very, very nice mature, excuse



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1 me, not mature, but very nice symmetrical material. But
2 it does not go together. A forest is a community of
3 plants. It was \$21,000, I'm sure, earnestly spent. I
4 think the county has a \$2,000 limit on beautification
5 grants; it exceeds that a little bit. But this money
6 should not have been taken from the reforestation fund,
7 since it's kind of like trying to put together /a team
8 with baseball players and football players and
9 basketball players. They're not going to work well
10 together.

11 So, I'm sorry that Anne Arundel County, by its
12 first example, has not shown that it's able to meet the
13 goal of creating forests. Now, another provision in
14 here, I think, already provides for some of the moneys
15 to be used to hire foresters who could, as in an article
16 in the paper pointed out, by the chairman of the
17 forestry board, Chris Lynch, lend the expertise towards
18 that goal. But, so far, the recreation of any sort of
19 forest, a functioning forest, outside of planting a lot
20 of -- pines and other crop trees -- the Eastern Shore,
21 certainly seems to have alluded us in Anne Arundel



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1 County.

2 Therefore, to say this is premature, I think
3 three or so years are adequate for the county to try and
4 come up with a recipe for doing this, and there's no
5 promise that in another three years we'll be any better
6 off. Therefore, I thought -- and we see that many
7 outstanding forests are disappearing, forests that
8 provide habitat for forest and interior birds, and so
9 forth. And certainly, there's a lack of funding -- that
10 it seems better to preserve some of the good things we
11 have that do some good things for the Bay, rather than
12 gradually convert everything into two-dimensional
13 forests of horticultural varieties.

14 This measure is -- certainly, I think, it
15 meets the goal of critical areas, to maintain a
16 worthwhile buffer around the Bay, do good things for the
17 wildlife and special features of our Chesapeake Bay.
18 Certainly, without a shoreline, the Bay will lose many
19 of things that are special to it. And it works well
20 with the county's ordinance that's outside -- with the
21 -- comfortable with the rest of their ordinance.



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1 Allowing for it does not dictate how much moneys would
2 be spent, but it certainly allows the opportunity for
3 moneys to be there when an opportunity comes up.

4 It's interesting, in this same community,
5 perhaps a quarter mile away, that I saw, on October the
6 28th, that it says, "Wildlife group hopes to buy
7 sensitive track." This was a 32-acre track called Woods
8 Landing, in the Cape St. Claire community, which,
9 incidentally, is like the others, like the reforestation
10 site on the Magothy River, not on the Severn River. And
11 the community has been concerned that it be protected
12 and not be turned into townhouses. There is a question
13 of funding.

14 I have not visited the site, and I'm not
15 offering it as the first site, perhaps, to receive some
16 sort of financial support, but I think it illustrates
17 that in a community there are many ways in which we can
18 protect the Chesapeake Bay, while the county is saying
19 they're trying so hard to find sites to carry out
20 reforestation.

21 Here is, indeed, an opportunity right here



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1 that would seem to be, probably, welcomed by people in
2 the community, and, apparently, it's a fine site and
3 should be protected, from what I see in the newspaper.

4 I think that speaks at most of what I think is
5 important, and I think that I would repeat that forests
6 are three-dimensional, not two-dimensional, and there's
7 nowhere in the critical area law where it speaks that
8 we have this goal of no net loss. I think we have to
9 protect what's best for the Bay.

10 If this was the desert, and we were trying to
11 somehow plant little trees somewhere, that would be
12 laudable and would take great effort. We should be out
13 there. Certainly, here, it's hard to keep trees from
14 growing up on the roadsides. If you just stop mowing,
15 the trees come up on there own. Certainly, I've talked
16 to the wildlife experts, and I think there's a concern
17 about turning all of our old fields, and so on, into
18 forest land. We need habitat for rabbits, quail, and
19 all the other things.

20 If we're to protect wildlife in the critical
21 area, we need a variety of habitat. So, a goal of



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1 turning everything into forest would not be good for
2 the Bay, for the county; therefore, I think we need to
3 protect both, and I think this would meet that goal.

4 Thank you.

5 CHAIRMAN KRECH: Thanks, Mr. Rucker. Robert
6 Cleckner.

7 MR. CLECKNER: Good evening, ladies and
8 gentlemen. My name is Robert Cleckner. I'm a builder
9 in Anne Arundel County. I'm also a member of Maryland
10 Home Builders, Anne Arundel County Chapter.

11 As a builder in Anne Arundel County, I've had
12 to post bonds for the replanting to assure that the work
13 was actually done. I've also, in lieu of replanting,
14 paid the fees, and with the affordable housing, trying
15 to build a house for the homeowners, they all want to
16 know why does a house cost so much, and we got to go in
17 to hiring engineers to do the plans, the grading plans.
18 It's my personal opinion that with working with grading,
19 planning, and zoning, that the laws have really done
20 well helping the Bay.

21 There's not a lot of stripping of the



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1 property. We try to minimize the area that we do
2 disturb when we're actually building the houses. We do
3 a lot of great effort in the amount that we do disturb.
4 And when we sell the house to the homeowner, we tell
5 them this money goes in a fund to replant trees, besides
6 just into a fund. And I'm really -- in my opinion, I'm
7 really worried about the money going to somewhere else,
8 just -- the county needs this money to pave a road or --
9 I'm afraid that it's just going to get lost in the red
10 tape. And I really think that it should be used for
11 replanting trees, and I appreciate you giving me a few
12 moments to testify before you this evening. Thank you.

13 CHAIRMAN KRECH: Milt Horn.

14 MR. HORN: Good evening, members of the panel.
15 My name is Milt Horn. I'm the president of the Anne
16 Arundel County Chapter of the Home Builders Association
17 of Maryland. And I'm not going to repeat what Mr. Plott
18 said earlier, but I have to say that our association
19 agrees 100 percent with what he said, and are in
20 opposition completely with the part of the legislation
21 that asks for the fees that have been collected to be



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1 used to purchase forested land.

2 When the bill was first proposed, I think we
3 were talking about \$800,000 had been collected; now it's
4 up to \$949,000. Our association, or members of our
5 association, or members of our development community,
6 paid that with the understanding that those funds would
7 be used to plant trees.

8 In addition to that, our association -- I
9 think, Ron, that you've said it -- \$572,000 has been
10 bonded for, which means our association has paid the
11 county to ensure that we are going to plant \$572,000
12 worth of replanting in accordance with the requirements
13 of Anne Arundel County.

14 Our association has been able to find not many
15 sites. Our association was not included in any way,
16 shape, or form with the development of this legislation.
17 \$949,000 was collected. The change in the use of that
18 money was presented to the council -- presented by the
19 council. We opposed it then; we oppose it now. We
20 don't think that's a good use for the money. We think
21 that the money that's been collected, if the money can't



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1 be used to replant trees, I think that which has been
2 collected should be refunded to those people who paid
3 into the fund under the specific reasons by which that
4 money was collected.

5 I have here a list of those people who have
6 paid in -- this is from the county -- and also those who
7 have bonded. I thought the panel might want to have
8 this.

9 There's 160 different developers who have put
10 money into the fund. We think the money should be used
11 to plant trees. We think that there are problems with
12 the legislation, the current legislation, not Bill 63-
13 91, that causes the public to be reluctant to plant
14 trees on the property.

15 And for one example, and I'm not an expert on
16 all the different areas, but there is a requirement that
17 a perpetual easement be placed on the property. Even
18 Anne Arundel County is reluctant to put a perpetual
19 easement on their property so that trees can be planted,
20 because it takes away further use of the property. And
21 I think that if that specific measure was taken away, as



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1 David said before, it still would mean that 80 percent
2 of the property would be untouched. The forest would
3 grow, but it would allow people to become more
4 participants in this program.

5 When you look at the history of Anne Arundel
6 County, and you go back to, before my time, the early
7 1900s, this was a large farming community. A lot of the
8 forested area that is currently being talked about as
9 forest that shouldn't be disturbed were farmland at one
10 time. It's true that a small sapling can't replace a
11 large, fully matured tree. But it's also true that the
12 forests that we're talking about, saying today, started
13 off as a field full of saplings and grew through time.

14 And I think this is what the intent is of
15 reforestation, and I hope that the money is used. And I
16 hope that the panel goes back to the Commission, and
17 takes this bill, and sends it back to the county and
18 tells them to try and look at the original legislation,
19 and do something in order to meet the original intent of
20 the legislation. Thank you.

21 CHAIRMAN KRECH: Thank you. The next



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1 individual, Fred Sussman.

2 MR. SUSSMAN: I waive my right to testify.

3 CHAIRMAN KRECH: Fine. Gregory Swain.

4 MR. SWAIN: My name is Greg Swain. I'm a
5 member of the Home Builders as well. I'm also here as a
6 citizen. I agree with the testimony being given
7 tonight. I also think that the revision of this bill at
8 this point is just not fair to the people who've put
9 their money into this plan. It's a lot of money. We're
10 talking close to a million dollars. And I think now the
11 county council is trying to change the rules of the
12 game. At this point, I think it's just a little too
13 late.

14 It's, more or less, that there's been a
15 bargain between the county and the developers. You pay
16 the money; we'll use the money for this purpose. Now
17 the county is saying, well, we've tried that purpose,
18 but not very hard, and we think we can use the money for
19 the purpose we really want to use it for instead. I
20 just don't think it's fair.

21 I think that the county hasn't made a very



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1 determined effort to locate land, reforestable land, in
2 the critical areas. And I also think that, at least,
3 they should make a longer effort at locating that type
4 of land. And they should also keep an eye on the
5 original bargaining when enacting this legislation, as
6 far as the allocation of these funds. Thank you.

7 CHAIRMAN KRECH: Thank you. Teresa Dowd.

8 MS. DOWD: My name is Teresa Dowd. I work for
9 the City of Annapolis, and I'm representing the city.
10 And I'm talking in regards to Bill Number 67-91 in
11 support of the city obtaining use of their 11-acre
12 growth allotment. And that's about it.

13 CHAIRMAN KRECH: Thank you. Is there anyone
14 on the floor who would like to make any further comments
15 that did not sign in the sign-in sheet?

16 (No response.)

17 CHAIRMAN KRECH: Are there any questions from
18 the panel?

19 (No response.)

20 MR. GUTMAN: Mr. Chairman --

21 CHAIRMAN KRECH: The court reporter -- yeah,



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1 Jim?

2 MR. GUTMAN: I was just wondering whether you
3 want to take note of the fact that we've had a number of
4 speakers, but I don't think we've had any in favor of
5 these proposals.

6 CHAIRMAN KRECH: Of 63-91?

7 MR. GUTMAN: No.

8 CHAIRMAN KRECH: No, we have not. The court
9 reporter will provide a written record of tonight's
10 hearing.

11 VOICE: I think Colby -- would indicate that
12 he is in favor of the bill.

13 CHAIRMAN KRECH: Yeah. Yeah. Colby Rucker.
14 Yeah. Right.

15 The record will be kept open for one week,
16 until December the 1st, to accept additional written
17 testimony; and comments should be submitted to Judge
18 John C. North, II, Critical Area Commission, 275 West
19 Street, Suite 320, Annapolis 21401. The complete public
20 record will be kept at the Commission office for public
21 review. That's it. Thank you, ladies and gentlemen.



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(Whereupon, at 8:00 p.m., the above-entitled hearing was adjourned.)

(Exhibits - none.)



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CERTIFICATE OF NOTARY

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

13 
14 MARV GATZ
15 Notary Public in and for
16 the State of Maryland

17 My Commission Expires:

18 November 1, 1992



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