

Public Hearings - Dorchester County - Growth Allocation 1991 MSA_51830-93

BEFORE THE CRITICAL AREA COMMISSION

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IN THE MATTER OF: :
BARNETT GROWTH ALLOCATION :

5 Monday, August 19, 1991

6 Pursuant to Notice, the above-entitled hearing
7 was held before DR. ROBERT SCHOEPLEIN, PANEL CHAIRMAN
8 for the Critical Areas Commission, at the Dorchester
9 County Administration Building, Cambridge, Maryland
10 21613, commencing at 7:30 p.m., there being present on
11 behalf of the respective parties:

12 ON BEHALF OF THE CHESAPEAKE BAY CRITICAL AREA
COMMISSION:

13 TOM VENTRE
Chesapeake Bay Critical Area Commission
275 West Street
14 Suite 320
Annapolis, Maryland 21401

15 ON BEHALF OF DORCHESTER COUNTY PLANNING AND ZONING
16 OFFICE:

17 KAREN HALES
Dorchester County Planning and Zoning Office
Box 307
18 Cambridge, Maryland 21613

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DNR
CRITICAL AREA COMMISSION



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MEMBERS PRESENT:

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CHAIRMAN ROBERT SCHOEPLEIN
SAMUEL BOWLING
WILLIAM BOSTIAN
ROBERT PRICE, JR.

REPORTED BY: CHRIS HOFER, NOTARY PUBLIC

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P R O C E E D I N G S

1
2 MR. VENTRE: The Chairman of the Panel is Dr.
3 Robert Schoeplein, who is an ex-officio member of the
4 Chesapeake Bay Critical Area Commission. He is on the
5 Commission representing the State Department of Economic
6 and Employment Development of which he is the head of
7 the Office of Research for that state agency. Chairman
8 Schoeplein will introduce the other members of this
9 panel tonight.

10 This is an advertised public hearing to
11 consider a request submitted to the Commission by the
12 Dorchester County Commissioners to allow the allocation
13 of 14 acres to a site in an area of the county and to
14 reclassify that 14 acres from resource conservation
15 area, which it now is mapped, to limited development
16 area, in order to presumably allow a certain residential
17 development to proceed.

18 The question before this panel tonight is the
19 matter of growth allocation, not necessarily any issues
20 regarding the subdivision proposal itself. This panel
21 will consider the comments made here tonight. It will



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1 consider the comments that were submitted with the
2 records submitted by Dorchester County with the record
3 for this case. They received a rather complete briefing
4 packet one week ago, so they are well informed about the
5 information. I have been to the site myself on at least
6 two occasions that I can remember, and perhaps a third
7 time before that.

8 Usually what we do is keep this hearing record
9 open for a period of time after the hearing so that if
10 any of you wish to communicate other comments to the
11 Chesapeake Bay Critical Areas Commission, you may do so.
12 I have a mailing address for you, which is on these
13 little sheets of paper. Here's the mailing address and
14 the telephone number. We would prefer, however, if you
15 do want to communicate your thoughts and opinions, that
16 you do so in writing.

17 We will accept any additional comments until
18 September 3rd, which is the day before the very next
19 scheduled meeting of the full Chesapeake Bay Critical
20 Areas Commission. At that time -- this request is an
21 agenda item. This panel will make a recommendation to



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1 the full Commission, and at that time, the full
2 Commission will act on the Dorchester Commissioner's
3 request.

4 We are on live microphones tonight so everyone
5 can hear one another. We also have a court reporter.
6 This is required by our rules of procedure. So all of
7 this proceeding tonight is recorded, and there will be a
8 written transcript of this for the project file whenever
9 that's completed by the reporting department.

10 Dr. Schoeplein, whenever you're ready.

11 CHAIRMAN SCHOEPLIN: Thank you, Tom. I'm
12 going to ask Bob and Sam and Bill to each introduce
13 themselves, and then I have an introductory comment or
14 two before we begin the formal procedure.

15 MR. PRICE: I'm Robert Price from Queen Anne's
16 County, a member of the Critical Areas Commission.

17 MR. BOWLING: I'm Sam Bowling from Charles
18 County, a member of the Critical Areas Commission.

19 MR. BOSTIAN: And I'm a member of the Critical
20 Areas Commission, also. My name is Bill Bostian. I'm
21 from Wicomico County, and I'm with the -- in Salisbury.



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1 CHAIRMAN SCHOEPLEIN: And I would want to say
2 this: that the four of us here together with Dr. Shepard
3 Krech, who is not here in attendance tonight, are what
4 we call the Dorchester County Panel of the Critical
5 Areas Commission.

6 We are here to hear testimony this evening.
7 As Tom Ventre indicated, all the words are being
8 transcribed for the record, and the record will remain
9 open until the close of business on Tuesday, September
10 3rd, should you wish to submit additional material which
11 will be entered into the record. Tom?

12 MR. VENTRE: I have no further comments at
13 this point. If you would like to call the Dorchester
14 County representative to the table?

15 MS. HALES: My name is Karen Hales. I'm
16 Assistant Planner for Dorchester County. First, I have
17 some -- just in general, some stuff in our file to read
18 into record.

19 Maryland Department of Natural Resources,
20 September 13, 1990 this is dated, and it was a letter to
21 James Michael in reference to the Barnett subdivision.



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1 "This is in response to your request for information
2 regarding the above-referenced project. There are no
3 known Federal or State, threatened or endangered plant
4 or wildlife species present at this project sight.
5 Phase 2 is located within the critical area, and Phase 1
6 is located outside the critical area. According to
7 Dorchester County Code, 155-47A, Section G7, forest
8 trees must be planted on 15 percent of the acreage in
9 Phase 2. Furthermore, the subdivision plan for Phase 2
10 must address Section J of the code concerning cutting of
11 trees and building setbacks for the tidewater buffer.
12 For additional information, please contact John
13 Bidwell." And that was signed by James Burtis, Jr.

14 From the Dorchester County Sanitary District
15 dated December 18, 1990, on -- well, to Mr. Dodd, Steve
16 Dodd, Director. "On December 17, 1990, the Dorchester
17 County Sanitary Commissioners reviewed the plans for the
18 referenced subdivision located on Dalesville Road and
19 have no objections, pending approval by Mr. Stacey
20 Beauchamp and Attorney E. Thomas Merryweather. If the
21 shared facility contains nontidal wetlands, it may be



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1 necessary for the property owner to obtain a nontidal
2 wetland permit from the Corps of Engineers." That was
3 signed by James Herbert, Jr., the chairman in the
4 Sanitary District.

5 Dorchester County Highway Department, April
6 17, 1990 is the date, to Dorchester County Planning and
7 Zoning: "Gentlemen, we have received the above-
8 referenced subdivision and have the following comments.
9 A road and drainage plan will need to be submitted for
10 review. Second, an erosion and sediment control plan
11 for the road and BIPS will need to be approved by the
12 Soil Conservation District. Three, existing roads,
13 easements for Town Point Road 25 feet from center,
14 Dalesville Road 25 feet from center, and the outlet
15 ditch easement off Town Point Road on the west side of
16 the subdivision need to be shown on the subdivision
17 plat. Four, there is an existing outlet ditch for
18 Dalesville Road adjacent to the lane which is near the
19 southern boundary of this property. A drainage right-
20 of-way easement needs to be granted to the county and
21 the easement shown on the plat." And that was signed by



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1 Elvin Thomas, the administrator.

2 MR. BOSTIAN: Karen, may I interrupt you for a
3 second? May I take a look at those?

4 MS. HALES: Oh. I'll pass them around.

5 MR. BOSTIAN: Thank you.

6 MS. HALES: Another letter from the County
7 Health Department, Environmental Health Division. This
8 is from Stacey Beauchamp. The date is September -- I
9 think it's been updated to 2/26/91 concerning Barnett.
10 "Maryland Department of Environment has notified the
11 office that the hydrological report submitted for this
12 property, Phase 1 and 2, is adequate to allow the
13 processing of groundwater discharge permits for shared
14 facilities BIPS for Phase 1 and 2. Discharge permits
15 may not be finalized until the project is in compliance
16 with the Dorchester County water and sewer plan.

17 "Preliminary plat submittal. The Phase 2
18 cluster development is acceptable with the Department
19 provided that each respective lot owner in Phase 2 is
20 given a one-eleventh owner of the open space area. No
21 part of the open space area may be transferred to others



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1 besides a lot owner of record in Phase 2."

2 And then they go on about Phase 1. And that's
3 that's --

4 MR. PRICE: Who is that from?

5 MS. HALES: That's just from Stacey Beauchamp
6 just in general to our office. I'll pass it around,
7 too.

8 MR. VENTRE: Karen, for the record, who is
9 Stacey Beauchamp? I know who he is, but for the record.

10 MS. HALES: Well, I'm not sure what his title
11 is, but he's with the Health Department. I guess he
12 would be Director, probably. Does it say at the top
13 there?

14 VOICES: Director of the Division
15 Environmental -- Sanitary --

16 MS. HALES: I think he's Director. I wasn't
17 sure about his title.

18 Another letter dated March 27, 1991. This was
19 to the Barnetts. It was just a courtesy copy that was
20 given to James Michael, Planning and Zoning. "In an
21 office soils investigation that was conducted to



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1 determine the probability of your proposed land use
2 affecting nontidal wetlands, the plans and description
3 you provided were compared with soil maps, aerial
4 photography, and cropping history information from the
5 ASCS office. According to the Dorchester County soil
6 survey, the National Food Security Act manual, and
7 available information, it appears your proposed activity
8 is in an area of prior converted crop land, PC, and,
9 therefore, not regulated under Section 404 of the Clean
10 Water Act, as per the Corps of Engineers regulatory
11 guidance letter number 90-7, dated September 26, 1990.

12 "PC fields are also exempt from regulation
13 under Maryland's nontidal wetlands program. This
14 determination is based upon photo interpretation and our
15 limited knowledge of the area in question. The U.S.
16 Army Corps of Engineers is a regulatory authority for
17 Section 404 of the Clean Water Act. Neither the Corps
18 nor agencies of the State of Maryland are bound by our
19 determinations or assumptions. Therefore, if farm
20 dwellings, tidal or nontidal wetlands, or wetland
21 inclusions are present on the described property, you



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1 may still need to obtain Corps and/or State approval
2 if your proposed activity would alter these wet areas.
3 If the regulated wetlands are present, they may or may
4 not be identifiable from our aerial photos.

5 Please obtain your required -- other required
6 local and state approvals prior to any development.
7 These may include, but are not limited to, building
8 permit, grading permit, erosion sediment control plan
9 approval, et cetera."

10 And that was signed by Eugene L. Skinner, the
11 District Conservationist up in the SCS Department.

12 Also to be put into record are the ranking
13 criteria for which Steve and I -- after I did a growth
14 allocation, I usually sit down first and do a ranking;
15 then I'll hand it over to him and he'll do a ranking.
16 Then we get together and compare what scores we came up
17 with and the reasons behind those.

18 On both of these, we both gave him -- gave
19 Barnett a 98. They only needed 94 for a passing score,
20 for which the Planning Commission usually requires a
21 passing score of 94 out of the 144 to approve one. It



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1 would be -- they would more than likely give a
2 nonfavorable recommendation to go on to the county
3 commissioners if they did not do that.

4 MR. VENTRE: What are some of the items,
5 Karen, that are considered on the county's ranking
6 system for growth allocations?

7 MS. HALES: Adjacency is the first criteria,
8 and that's as far as -- if it's next to a limited
9 development area, undeveloped limited development area,
10 or nonadjacent to any of the -- either one of those.

11 Second is sewer service. If it's by an
12 existing system, new public or community system,
13 individual and lot system.

14 Water service, whether it's served by
15 extension of existing system or a new public or
16 community system or on lot wells.

17 Accessibility as far as frontage on arterial
18 or collector road or a public road or if it's accessed
19 by a private road.

20 The fifth is open space ratio, and that's if
21 there's over 75 percent of the track is an open space or



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1 30 to 75 or a minimum of 30 open space.

2 Average building lot size, if it's less than
3 two acres, between two to four or over four.

4 Seven, forest protection is ranked as far as
5 no forest clearance, minimal forest clearance, which
6 would be less than one-fifth acre per dwelling unit, or
7 "C," significant forest clearance.

8 Farm land protection: no farm land conversion
9 to urban uses, or minimal farm land conversion, which
10 would be less than one-third acre per dwelling unit, or
11 if it has significant farm land conversion, which is
12 over one-third acre per dwelling unit.

13 The ninth is habitat protection, as far as no
14 destruction of significant natural habitat, minimal or
15 significant destruction.

16 And the last is divided. Criteria is
17 preservation of other sensitive features, and that's
18 just based on minimal, moderate or significant impact.
19 I'll go ahead and pass these around so you can see.

20 On March 19th, Steve sent a letter to Mr.
21 William Ludlow. At their regular meeting of March 13,



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1 1991, the Dorchester County Planning Commission voted to
2 grant preliminary approval to Robert Barnett
3 subdivision, Phase 2, 710A. And I included -- the
4 minutes are attached to this, too, by the clip, from
5 that meeting.

6 MR. VENTRE: The panel members have copies of
7 those minutes from both the Dorchester Planning
8 Commission and the Dorchester County Commissioner's
9 respective hearings on this request.

10 MS. HALES: Okay. And we had an ad go in the
11 paper on April 5th and April 15, 1991, for the County
12 Commissioner hearing which was held on Tuesday, April
13 23, 1991.

14 On April 8th, the County -- I did a letter to
15 Mr. William Ludlow from myself, Karen Hales, saying that
16 the County Commissioners would be holding the public
17 hearing, just advised him of that, to show up.

18 And as of that night, the growth allocation
19 standings here in the county -- we began with 2,900
20 acres of growth allocation. For subdivisions that were
21 approved between 12/01/85 and the program adoption, we



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1 used 267.47 acres. Interim subdivisions which have been
2 granted growth allocation was 777.83 acres. Interim
3 subdivisions which have had allocation reserved but have
4 not received growth allocation was 103.55. And
5 subdivisions approved after program adoption, not
6 interim, we had 89.7 acres of growth allocation. Plus
7 we had some reserve from municipalities, which was 300,
8 and reserved for commercial industrial was 200.

9 Requested that night was Barnett 14, and
10 Hackler was 6.92, which would give us a remaining
11 1,140.53. I'm going to pass that around for you to see.

12 On April 25th, which followed the public
13 hearing on April 23rd of the County Commissioners, Steve
14 Dodd of the Planning and Zoning Department received a
15 letter from Doris Goslin, Administrative Assistant,
16 stating that the County Commissioners held a public
17 hearing on Tuesday, April 23rd, to consider the request
18 of Robert Barnett of 14 acres from the county's critical
19 area allocation. After hearing testimony for and
20 against the allocation, the Commissioners denied Mr.
21 Barnett's request.



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1 May 3, 1991. I did a letter to Mr. William
2 Ludlow. Your letter of April 29, 1991, was forwarded to
3 the County Commissioners. "On April 30, 1991, the
4 Commissioners agreed to reconsider Mr. Barnett's
5 request. Therefore, I have scheduled a public hearing
6 for May 28, 1991, at 7:00 p.m. in room 110 of the county
7 office building. Please inform your client of the
8 hearing date and appear."

9 MR. VENTRE: Excuse me, Karen. When was the
10 approximate -- the first consideration of this project
11 and when was it denied?

12 MS. HALES: On April 23rd, it was denied. We
13 got the letter on the 25th.

14 MR. VENTRE: The current year?

15 MS. HALES: Yes. Of '91. Then on May 28,
16 1991, was the second hearing, the reconsideration
17 hearing by the Commissioners. Following that hearing, I
18 sent a copy of the minutes, which I think you all -- I
19 think Tom said you all have with you. So there's
20 probably no need for me to pass those out.

21 And I sent him a letter on May 30, 1991, to



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1 Mr. Tom Ventre, Critical Area Commission. "The Barnett
2 growth allocation request was reconsidered on May 28,
3 1991, and approved by the Dorchester County
4 Commissioners. Therefore, consider this letter a formal
5 request on behalf of Dorchester County Commissioners to
6 amend the critical area map to redesignate 14 acres from
7 RCA to LDA. The property is located on the corner of
8 Dalesville Road and Town Point Road, and shown on tax
9 map 40, lot 4, parcel 33.

10 "Please find enclosed copies of the
11 Commissioners' minutes, the recommendation of the County
12 Planning Commission, and a copy of the preliminary plat.
13 The County Commissioners request the Critical Area
14 Commission appoint a panel to conduct a local hearing on
15 this matter. Karen Hales."

16 MR. VENTRE: The preliminary plat that was
17 submitted at that time is on display here on the easel,
18 and you have copies of sections of that plat itself in
19 your briefing materials that were sent to you last week.

20 MS. HALES: And that basically brings you up
21 to the Critical Area Panel hearing here tonight.



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1 MR. PRICE: May I ask you a question?

2 MS. HALES: Uh-huh.

3 MR. PRICE: What is the basis for the
4 reconsideration?

5 MS. HALES: Because when this -- this gets us
6 into another long story. When this -- this was first
7 brought to us, I guess, back in '89, probably about two
8 growth allocations before this last one, about a year
9 before. And they had a lot layout of two acre lots. I
10 don't like to confuse matters. But they had a lot
11 layout that was not cluster development. They could not
12 score high enough in our ranking to get an approval by
13 the Planning Commission to go before the County
14 Commissioners.

15 This was the original a year and a half, two
16 years ago, that was -- like I said, it did not score
17 enough points. And because it was over 20 acres, they
18 needed to do cluster development, though, a lot of
19 people at the last hearing voiced the opinion they would
20 have rather seen two acre lots.

21 MR. PRICE: Maybe I have the dates wrong.



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1 What you're speaking about was turned down in April of
2 '89?

3 MS. HALES: I'm not sure of the exact --
4 basically, back in '89 or '90 this was first brought to
5 me. It was one of the first ones I received when I
6 first came here.

7 MR. PRICE: Bill, you've got that letter where
8 it was turned down?

9 MS. HALES: Well, no. You're thinking of
10 something -- that was the cluster development that was
11 turned down at first.

12 MR. BOWLING: That's April '91.

13 MS. HALES: This one never got to the County
14 Commissioners.

15 MR. PRICE: I was asking why the April '91 you
16 testified was turned down, and then it was reconsidered
17 a month later?

18 MS. HALES: Because the Commissioners hadn't
19 known about this situation, the difficulties that the
20 Barnetts had gone through getting the subdivision to the
21 Commissioners and before the Planning Commission, to get



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1 approval.

2 MR. PRICE: What do you mean? They had a
3 hearing on the same plat a month later?

4 MS. HALES: Yes. They agreed to reconsider
5 it.

6 MR. VENTRE: Excuse me, Karen. For the
7 benefit of the audience, could you recapitulate your
8 remarks to Commissioner Price as far as this chronology
9 here about this plat first? The plat that you're
10 showing the panel now was an original proposal --

11 MS. HALES: This was an original proposal
12 about '89 -- '89/'90. I'm not sure which cycle of the
13 growth allocation that was that it was submitted.

14 MR. VENTRE: Okay. And that shows how many
15 lots?

16 MS. HALES: It shows -- in the critical area,
17 it still shows, I think, 11 lots.

18 MR. VENTRE: And they are not clustered?

19 MS. HALES: Yes. 11 lots. They are not
20 clustered. They were two -- basically two acre lots for
21 the most part, most of those. But because of the



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1 ranking criteria and all, they could not score high
2 enough like I said. So they went back to the drawing
3 board, did the cluster development, which scored high
4 enough, when they came back before the Planning
5 Commission to get approval to send it on to the County
6 Commissioners.

7 MR. PRICE: Did the Planning Commissioners
8 score them, or just you and Mr. Dodd?

9 MS. HALES: Just me and Mr. Dodd, basically.
10 They do look over the score, though.

11 MR. PRICE: And the Planning Commissioner
12 adopts your score and --

13 MS. HALES: From the score, they basically do
14 whether they approve it or not, because that's based on
15 all those criteria guidelines as to where we would look,
16 or what we're looking for, basically.

17 MR. PRICE: But, when it was sent to the
18 County Commissioners, it went up with a score of 94 out
19 of a possible --

20 MS. HALES: Yes. Well, 98 out of 144. And
21 they only needed 94 for approval.



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1 MR. PRICE: And they turned it down.

2 MS. HALES: Because of the mass of people that
3 showed up against it from the area.

4 MR. PRICE: All right. Public opinion. And
5 they asked for a motion to reconsider --

6 MS. HALES: Yes.

7 MR. PRICE: Okay. I'm straight now.

8 VOICE: Zoning -- they got that going. That's
9 who done that.

10 CHAIRMAN SCHOEPLIN: We'd be pleased to take
11 comments from you in a moment, if we could.

12 VOICE: All right. That's what really
13 happened.

14 MR. VENTRE: Mr. Chairman -- Karen, does that
15 conclude your remarks?

16 MS. HALES: That's basically all I have.

17 MR. BOWLING: Karen, just one question. On
18 this breakdown of growth allocation and its use, how
19 much of that has been adjacent to existing LDA, because
20 roughly half of your growth allocation could be used one
21 way and half the other.



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1 MS. HALES: Well, that 777, that was before I
2 even came on. I'm not sure how much of that would have
3 been next to an already existing LDA. Probably of those
4 other 89 that have been done since interim, I'd say
5 probably only one or two of those were right next to an
6 existing LDA.

7 MR. BOWLING: Could you research it and let
8 Tom know and let us know?

9 MS. HALES: Yes. I know that Berry Farm I
10 think was right -- wasn't that right next to an LDA, if
11 I'm not mistaken?

12 MR. VENTRE: Yes, there were.

13 MS. HALES: I think there were at least two,
14 but I wouldn't swear to it.

15 MR. VENTRE: Karen's recollection is similar
16 of my own. Of course, it only is recollection at this
17 point. It can be researched relatively easily. But
18 there were but a few growth allocation requests that
19 were adjacent to existing LDAs.

20 MR. BOWLING: There were some, I know.

21 MS. HALES: And in our ranking, they are not



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1 scored. They don't get as high a score in that section
2 if they are not right next to an adjacent LDA.

3 MR. BOWLING: We must be getting close to that
4 boundary.

5 MR. PRICE: Could you tell me what the zoning
6 classification --

7 MS. HALES: For this -- this is R1. I believe
8 it's 80,000 square feet.

9 MR. PRICE: About two acres.

10 MS. HALES: But because of cluster
11 development, and the Planning Commission can reduce lot
12 size, which they did in this case for the cluster.

13 MR. VENTRE: Mr. Chairman, if I may?

14 CHAIRMAN SCHOEPLIN: Yes.

15 MR. VENTRE: Early on, perhaps I should have
16 addressed the map first. But you have a copy, or at
17 least a partial copy of this plat with the pertinent
18 sections that we need tonight. What this shows is the
19 plat as now proposed. The total project is
20 approximately 43 acres. The total project. On this
21 plat, the project is split, as it turns out, neatly by



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1 the critical area line, which is highlighted in yellow
2 here. Ladies and gentlemen, for the time being, excuse
3 my back. I should explain this to the panel. This is
4 the critical panel line here.

5 Phase 1 is entirely outside the critical area,
6 and of course, beyond our purview. Phase 2, which
7 includes nine lots -- the total project is 19 building
8 lots. On the Phase 1 lots, namely lots one through
9 eight, they are all two acre lots. Inside the critical
10 area in the Phase 2 -- 28 acres total in the critical
11 area. An allocation is being requested tonight -- or we
12 are hearing tonight a request on 14 acres, which is the
13 developed portions here of lots nine through 19, and
14 then the remaining 14 acres, as Karen referenced in her
15 remarks, is permanent, dedicated open space.

16 The open space is required by the county's
17 regulations. At this point, because of the size of the
18 overall project, the clustering is required by the
19 county's regulations. A subdivision in the critical
20 area that is over 20 acres in size, as this is -- this
21 28 acres here -- must cluster in the Dorchester



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1 Ordinance.

2 Okay. So this is the subject of our hearing
3 tonight: the request for allocation, the request by the
4 County Commissioners for our concurrence on growth
5 allocation on 14 acres of the 28 that are inside the
6 critical area. Bob?

7 MR. PRICE: Does Phase 1 and Phase 2 stand
8 alone? I mean, has Phase 1 been approved?

9 MR. VENTRE: I don't believe they have. Is
10 that correct, Karen?

11 MS. HALES: It's going --

12 VOICE: No. It's gone to the Sanitary
13 District.

14 MR. VENTRE: So it's under review currently as
15 we speak -- Phase 1?

16 VOICE: Right. Everything --

17 MR. PRICE: But it's not tied to Phase 2 in
18 any way?

19 MR. VENTRE: Apparently not. Am I correct on
20 that?

21 MS. HALES: As far as I know, it's just two



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1 phases. Yes. Phase 1 could still go on, even if Phase
2 2 doesn't.

3 MR. VENTRE: Right. That's correct.

4 CHAIRMAN SCHOEPLEIN: Or chronologically,
5 Phase 1 could follow Phase 2.

6 MR. VENTRE: Any other questions from the
7 panel? Anyone from the audience? Did I make myself
8 clear? I'll turn this more to you shortly. I wanted to
9 familiarize the panel again with the features of this
10 plat. Yes.

11 VOICE: I have a question, Mr. Ventre, about
12 your comment that the remainder of the subdivision is
13 "permanent, dedicated open space" in accordance with the
14 county rules?

15 MR. VENTRE: That is my understanding that in
16 Dorchester County for projects involving growth
17 allocation, when there is clustering, as in this case,
18 the unused -- that portion is not to be developed --
19 must be made permanent and designated as permanent open
20 space not to be developed.

21 VOICE: It's my understanding that the



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1 county's rule is that the space that is permanently not
2 to be developed is equal to the number of residents in
3 the developed area times two acres, which would be 22
4 acres rather than a total of 28.

5 MR. VENTRE: I'm not familiar with that in the
6 critical area context. That may be another county
7 regulation that applies outside the critical area. I am
8 not familiar with that in either the Dorchester
9 subdivision regulations as amended for the critical area
10 or in the Dorchester zoning regulations as amended for
11 the critical area.

12 VOICE: Well, perhaps I misunderstood Steve
13 Dodd, because on a number of occasions, we've talked
14 about that, and it's probably my misunderstanding.

15 MR. VENTRE: I will note your point and review
16 that.

17 VOICE: This only suggests that that entire
18 area may not be permanently reserved.

19 MR. VENTRE: According to the information
20 submitted to our office with this request, that is how
21 that acreage was described -- that 14 acres clearly



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1 labeled as open space and in the commentary of notes
2 clearly specified to be not only made permanent, but
3 also to be apportioned for local tax purposes among the
4 18 lot owners, or rather the 11 lot owners in Phase 2 of
5 this subdivision.

6 Chairman Schoeplein, I'll turn it back over to
7 you. Thank you.

8 CHAIRMAN SCHOEPLEIN: Thank you, Mr. Ventre.

9 I'm going to ask you -- we have a small room,
10 but it's far easier for the court reporter to transcribe
11 if you were to come to the microphone. And when you do,
12 would you kindly introduce yourself and give us either
13 your residence address, or if you are representing a
14 business, whichever is appropriate, so that we have as
15 a matter of record a complete information on you.

16 MR. VENTRE: Mr. Chairman, before we proceed,
17 the court reporter has asked me if I may have the names
18 of the two persons who did speak for his information, so
19 we can all have them. And there is, again, a sign-up
20 list if you do wish to speak.

21 At this point, Chairman Schoeplein, we have



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1 six and about to have a seventh person wishing to speak.
2 There are other sheets here. I'm going to bring this to
3 the Chairman, and we can begin with the next phase of
4 this hearing.

5 Are there any other questions of the panel of
6 me with regard to the materials submitted by the County,
7 almost all of which you have copies of in your briefing
8 packet?

9 CHAIRMAN SCHOEPLEIN: We'd be pleased to hear
10 from Mr. -- is it David Thomas or Thompson?

11 MR. THOMAS: Thomas.

12 CHAIRMAN SCHOEPLEIN: Thomas. Mr. Thomas,
13 would you please come forward.

14 MR. THOMAS: Mr. Chairman, I'm the attorney
15 for a group here. Does the applicant go first normally
16 and describe the project, or does that take place?

17 MR. VENTRE: At the discretion of the
18 chairman, we could do it that way, or we could go right
19 to whatever --

20 MR. THOMAS: I'm the opposition. I didn't
21 know whether the proponent was going to go first or not.



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1 CHAIRMAN SCHOEPLEIN: Yes. Let's do the
2 applicant first. Absolutely.

3 MR. SIMMONS: Mr. Chairman, my name is Ray
4 Simmons. I do represent Mr. Barnett. It's my
5 understanding that the applicant is Dorchester
6 County, and they have already --

7 MR. VENTRE: Excuse me. Could you come to
8 the --

9 MR. SIMMONS: Sure. I represent Tom Barnett
10 and Helen Barnett. It's my understanding that the
11 applicant in this proceeding is Dorchester County. They
12 have made a presentation. And so we don't feel it's any
13 obligation at this point to further -- while we're not
14 an applicant per se, the applicant being Dorchester
15 County, certainly we have some comments to make, but we
16 don't feel that we are in the position of being the
17 applicant -- to require us to go first, in other words.

18 CHAIRMAN SCHOEPLEIN: We respect that,
19 certainly.

20 MR. THOMAS: That's fine.

21 CHAIRMAN SCHOEPLEIN: Mr. Thomas?



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1 MR. MURPHY: I'm the attorney representing Mr.
2 Thomas. May I present my witnesses?

3 MR. VENTRE: We do have a sign-up sheet, and I
4 did inform the audience that we would take them in order
5 of sign-up.

6 MR. MURPHY: I'm sure Mr. Thomas would let me
7 introduce --

8 MR. VENTRE: If that's all right with Mr.
9 Thomas.

10 MR. THOMAS: That's fine. Thank you.

11 CHAIRMAN SCHOEPLEIN: Would you introduce
12 yourself, please?

13 MR. MURPHY: Yes. Members of the panel, my
14 name is John C. Murphy. I'm an attorney, and my office
15 is at 516 North Charles Street in Baltimore, and I
16 represent the Town Point Community Association. And we
17 are here in opposition to this request.

18 And I just wanted to state my -- as an opening
19 matter, my three reasons, and then we'll go in to that
20 in detail. The first reason is that the plat you see
21 here does not meet the Commission's policy. I believe



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1 that Mr. Ventre told me that he distributed to the panel
2 the Commission's policy adopted in 1988 dealing with the
3 counting or the accumulative counting of the development
4 of how many acres are counted when a project is
5 approved. And this project has 28 acres. It's clearly
6 necessary to subdivide the entire project to get these
7 11 lots.

8 In other words, the lots are -- there's a
9 zoning -- as the planner testified, the zoning is two
10 acres. So the 28 acres would be mainly consumed by the
11 11 lots plus the land for the sewage area, the road, and
12 that sort of thing. What's happened here is is that the
13 lots have been decreased to 40,000 square feet instead
14 of the 80,000 square feet, and then this 14 acres of
15 open space is set forth on the plat. And the
16 Commission's policy, which I believe was distributed
17 with the materials, allows the counting for growth
18 allocation purposes of just the area around the
19 individual lots, provided the remaining open space
20 equals 20 acres. That's set forth on page 5 of the
21 policy.



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1 It says the remainder of the parcel, including
2 any tidal wetlands, would not count against the county's
3 growth allocation if it was contiguous and at least 20
4 acres in size. So this subdivision does not meet this
5 policy. And I would refer you to the policy itself for
6 the significance of this.

7 It had been the Commission's standards from
8 the beginning that in counting the growth allocation,
9 the entire parcel was to be counted. That had been done
10 for the interim time before the programs were approved.
11 And this policy, as I understand it, was in exception to
12 that general policy: to allow clustering, but to ensure
13 that the remaining open space was of significant size of
14 the 20 acres in conformance with the idea of the 20
15 acres from the RCA.

16 This standard here that Dorchester County is
17 following of not requiring this to be 20 acres and of
18 just counting this portion -- this 14 acres as the
19 growth allocation -- the effect of that is to allow a
20 great increase in the amount of development in the
21 critical area. And I think that even though this policy



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1 was not adopted as a formal regulation, it was adopted
2 in the minutes of the Commission. It's an official
3 Commission policy, and I think the Commission basically
4 has to follow it. I don't think the Commission can
5 simply say we're not going to follow a policy, at least,
6 without any good reason. There's been no testimony of
7 any reason to depart from that standard, and I don't see
8 what reason there exists to depart from it.

9 Now, I'm going to present two -- basically,
10 two factual issues. And I haven't appeared before the
11 Commission that often, but I'm somewhat familiar with
12 these regulations, and I'll try to -- I've tried to
13 prepare this case based upon what's set forth in the
14 regulations.

15 As I understand what the regulations say on
16 the location of future limited development areas, they
17 say that they may be located -- and they're basically
18 two criteria that have to be met. One is water quality,
19 and the other is habitat protection. Those are the two
20 issues that have to be met in meeting a growth -- making
21 a growth allocation. And my witnesses are going to



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1 address these two issues of water quality and habitat
2 protection.

3 Now, Mr. Thomas, after all that, you can
4 finally come up here.

5 MR. THOMAS: Good evening.

6 MR. MURPHY: Could you state your full name
7 and address, please?

8 MR. THOMAS: David Thomas, 5439 Town Point
9 Road, Cambridge.

10 MR. MURPHY: And you're a resident and live in
11 Dorchester County?

12 MR. THOMAS: Yes.

13 MR. MURPHY: And are you familiar with this
14 plan and the bermed infiltration ponds that it has for
15 the sewage retention?

16 MR. THOMAS: I live within approximately a
17 half a mile of this, and I personally have a berm
18 infiltration pond.

19 MR. MURPHY: And what you're going to explain
20 to the Commission is your own experience with a bermed
21 infiltration pond. Is that correct?



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1 MR. THOMAS: Yes.

2 MR. MURPHY: What would you be able to say to
3 the Commission about that?

4 MR. THOMAS: I would be able to say,
5 approximately seven years ago, the Dorchester County
6 Health Department approved a berm infiltration pond for
7 me. And we took core samples, and I was not able to put
8 a conventional septic system in. So I was approved a
9 quarter acre berm pond, which we put in. And I think
10 it's approximately 20 feet deep. It could be 18 or 21.
11 I'm not really certain at this time. However, the pond
12 -- and in addition to mine, I can attest to one other
13 pond. It is a nonfunctional system. The system works
14 as far as me as a homeowner, when I flush a toilet or
15 empty the sink, the water seeks its own level, and it
16 goes down, so I don't have any backup.

17 However, in wet times of the year, my pond
18 probably only receives maybe six to eight inches. It
19 never goes down. In November, December, January,
20 February, March, and April, during the wet season, the
21 pond continually overflows. And there are three tanks



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1 that I have there. Two chamber tanks with a pump in the
2 last chamber. So it goes through numerous sediment
3 retention chambers.

4 After a heavy rain, if there's no wind to blow
5 anything off of the surface, the soap that comes from
6 baths, dishwashing, washing machines or whatever, will
7 literally turn the surface of the pond white. And this
8 runs -- during the winter, this all runs off, and it
9 would -- mine goes into the woods. And I guess at some
10 point, it possibly would get in the ditches and get in
11 the system. But it would concern me that -- I don't
12 think that anyone can guarantee that that system is
13 going to work. There are two in the area now that were
14 supposed to work that do not. And --

15 MR. MURPHY: What is the other one?

16 MR. THOMAS: The other one is on the property
17 that is adjacent to mine, which is --

18 MR. MURPHY: Have you observed that system not
19 working?

20 MR. THOMAS: Yes, I have. They both overflow.

21 MR. MURPHY: You're not saying that they



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1 necessarily have to overflow, but you're saying that
2 your own experience with your own and the one next to
3 you, that they do overflow?

4 MR. THOMAS: They do overflow. Yes. Those
5 two.

6 MR. MURPHY: That's all I have of Mr. Thomas.

7 MR. PRICE: Are you saying you have a quarter
8 acre for your individual pond?

9 MR. THOMAS: Yes, sir. Both ponds are a
10 quarter acre. The one that's next door to me also is a
11 quarter acre. I think that's a shared facility. There
12 are two houses on that. One has just been built. My
13 house has been there for about seven years.

14 MR. VENTRE: Mr. Thomas, yours is the only
15 house on your pond?

16 MR. THOMAS: Yes, sir.

17 MR. BOWLING: Have you ever asked anyone else
18 about it -- the Health Department or anything, what to
19 do about it?

20 MR. THOMAS: They came out. They have been
21 out to look at it several times when I first put it in.



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1 And I don't think that there is anything that can be
2 done about it. They went down and they found sand;
3 however, there was a minimal, I guess -- I don't know
4 how much sand was there. But over a period of time, I
5 would assume with leaves, debris going in ponds, soap
6 going in ponds, and things like that, if it clogs the
7 sand filtering system, at that point, it has nowhere to
8 go other than over the edge.

9 MR. BOSTIAN: Mr. Thomas, you're a landowner.
10 You're not testifying as an expert?

11 MR. THOMAS: No, sir. I am not.

12 MR. MURPHY: What do you do as a matter of
13 fact, Mr. Thomas?

14 MR. THOMAS: I work for the Department of
15 Natural Resources.

16 MR. BOSTIAN: In what capacity?

17 MR. THOMAS: I'm a police officer.

18 CHAIRMAN SCHOEPLIN: Any other questions of
19 Mr. Thomas? Mr. Murphy? Mr. Pomeroy? Thank you, Mr.
20 Thomas.

21 MR. POMEROY: Gentlemen, I'm Fred Pomeroy.



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1 I'm a member of the Dorchester Oyster Advisory
2 Commission, and for the past several years, I've been
3 serving as Chairman of the Dorchester Oyster Advisory
4 Commission. And our charge is to advise the State
5 Department of Natural Resources -- we're composed of
6 five watermen from Dorchester County. We have more
7 oystermen in Dorchester County than any other county in
8 the state. And our charge is to advise the Department
9 of Natural Resources on issues concerning the oyster
10 fishing.

11 MR. MURPHY: Mr. Pomeroy, I want to break your
12 testimony down into really two areas. One is: are you
13 familiar with the ponds yourself, these infiltration
14 ponds? Have you observed them?

15 MR. POMEROY: I've observed the ones Mr.
16 Thomas referred to in the immediate vicinity of the
17 proposed development, and I have observed that they do
18 overflow.

19 MR. MURPHY: So, again, you're not an expert
20 sanitarian or an expert civil engineer; you don't design
21 these things. But your only testimony is that you have



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1 observed them overflowing. Is that correct?

2 MR. POMEROY: Yes, sir. That's correct.

3 MR. MURPHY: Now, are you familiar with
4 Fishing Creek, which is in the vicinity of the project?

5 MR. POMEROY: Intimately, I'm familiar with
6 Fishing Creek. And I'd like to say to the Commission
7 that Fishing Creek is a very important area to oystermen
8 in Dorchester County. It's an area in which oyster
9 diseases have not decimated the oyster population as
10 they have in other areas of Little Choptank River. So
11 it's one area which we have had in recent years where
12 we've been able to catch some oysters.

13 The unfortunate thing is that it's under a
14 heavy pollution load right now, and for years, I think
15 almost 20 years, it was totally closed to oystering
16 because of bacteria counts that were too high. A
17 portion of Fishing Creek is still permanently closed to
18 oystering, but a portion is open, including the portion
19 that borders on this proposed development. It's open
20 under a conditional system, which means that whenever we
21 have an inch of rain in 24 hours, it's shut down for



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1 three days.

2 In other words, in dry times, we can fish
3 there, but in wet times, we cannot. And, you know, our
4 concern is that we continue to be able to use that and
5 that the -- the whole Little Choptank system and the
6 Fishing Creek system is under stress as the oyster
7 fishery itself is under stress as you may well be aware.
8 So I feel quite strongly that the point behind the
9 critical areas law is to try to preserve the oyster
10 resource and other resources of the Bay.

11 But, unfortunately, what's happened -- and I'm
12 pretty familiar with this -- is that once critical areas
13 came in with all these good intentions, everybody who
14 thought they might ever want to develop something jumped
15 to plat it. So we've had really intense development on
16 Little Choptank River and Fishing Creek in the last few
17 years. We've had places that are very low that have
18 been platted for development, and the development along
19 the shores of Fishing Creek and the whole Little
20 Choptank is really rampant.

21 MR. MURPHY: Do you have any particular fear



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1 about the proximity to these ponds to the creek itself?

2 MR. POMEROY: Yes, I do, because I just think
3 the additional load that will come when these ponds
4 inevitably overflow could be the straw that breaks the
5 camel's back in regard to Fishing Creek, and we just
6 can't afford to lose that resource. It's just one of
7 the few areas we have left.

8 MR. MURPHY: Mr. Pomeroy, looking at this plat
9 here, do you see this line that's drawn at the edge of
10 the property here?

11 MR. POMEROY: Uh-huh.

12 MR. MURPHY: The legend says it's the nontidal
13 wetlands boundary line. Are you familiar personally
14 with this property yourself?

15 MR. POMEROY: Yes, I am. My uncle owned that
16 property, and my cousin is the proposed developer of the
17 property. And I've walked all over all it. I've hunted
18 all over all of it.

19 MR. MURPHY: And can you tell the members of
20 the panel whether you feel there are wetlands on this
21 property?



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1 MR. POMEROY: I'm quite certain there are
2 nontidal wetlands on the property. And there are tidal
3 wetlands, as delineated there on the edge where the
4 marsh is, too.

5 MR. MURPHY: This line indicates apparently
6 that the nontidal wetlands are in a northerly direction
7 here and that this area here is not nontidal wetlands.
8 Would that be correct with your recollection?

9 MR. POMEROY: With my recollection, that area
10 towards the tidal wetlands is a high ridge and that the
11 northern area of that boundary line would be lower and
12 would be nontidal wetlands. That's the way I would
13 interpret it, yes.

14 MR. MURPHY: So the area to the north, then,
15 where these lots are and the sewage ponds, they would be
16 wetlands in your judgment?

17 MR. POMEROY: Yes, they would.

18 MR. MURPHY: And why do you say that? I mean,
19 did you observe them? Did you observe water on the
20 property?

21 MR. POMEROY: Well, there's not much land in



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1 that area that isn't wetlands, and you know, this
2 particular parcel is not a whole lot different than the
3 lot that's around there. And I've seen, you know, salt
4 marsh grass growing there in the middle of the field.
5 And I know there are low places in the fields. It's not
6 all low. There are high places there, too. But a lot
7 of the topography is low.

8 MR. MURPHY: How about this road along here?
9 Are you familiar with this road?

10 MR. POMEROY: Yes, I am.

11 MR. MURPHY: And there's a ditch along here,
12 also?

13 MR. POMEROY: Yes.

14 MR. MURPHY: Have you observed water in those
15 ditches?

16 MR. POMEROY: I've observed tide water in both
17 of those ditches. I've observed tide water in that
18 ditch that borders Town Point Road that flowed over the
19 road until the point where cars were almost -- could not
20 pass.

21 MR. MURPHY: How do you know it was tide



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1 water?

2 MR. POMEROY: Because it was a high tide. I
3 mean, there was a lot of area there that was under
4 water. But I remember one time our school bus could
5 barely run through it when I was a kid on a particularly
6 high tide.

7 MR. MURPHY: Well, what significance do you
8 think these wetlands have in terms of the Fishing Creek
9 and your activities?

10 MR. POMEROY: Well, the wetlands, as we know,
11 are like a sponge, and they soak up a lot of the
12 nutrients and the pollutants before they enter the
13 system -- the system itself. And, you know, from an
14 oysterman's point of view, they're vital. We need them,
15 because the oysters are under such stress that they just
16 can't take any more. That's the point where we are.
17 The oyster fishery is critical -- I mean, critical. And
18 you know, we're struggling to survive. That's where we
19 are.

20 CHAIRMAN SCHOEPLEIN: Are there any questions
21 of Mr. Pomeroy? Bill?



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1 MR. BOSTIAN: I imagine an oysterman is an
2 expert on the high tide, but you're not testifying as an
3 expert on nontidal wetlands, are you?

4 MR. POMEROY: No. I'm not an expert on
5 nontidal wetlands, no. But I think I know probably as
6 much about them as the next person.

7 MR. BOSTIAN: But you're not an expert?

8 MR. POMEROY: No. I'm not an expert, no.

9 MR. BOSTIAN: No scientific training in that
10 respect?

11 MR. POMEROY: No.

12 MR. BOWLING: You spoke of familiarity with
13 this property. How many years ago --

14 MR. POMEROY: I've lived there -- I live about
15 two miles away. My parents live about a mile away.
16 I've lived for 43 years in there -- that area.

17 MR. BOWLING: How close are the oyster beds to
18 these?

19 MR. POMEROY: There is oyster beds that I
20 personally have harvested within a quarter of a mile of
21 that parcel, maybe closer. Maybe 200 yards. There's



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1 one little bed in a cove. There's a cove that comes
2 right in here by Mrs. Martinetti's, right in by her
3 house, one of the neighbors, that has nice quality
4 oyster in it. It's not a big place, but it's a place
5 where a number of people have, you know, made some days'
6 work.

7 MR. BOWLING: It's a bad weather place?

8 MR. POMEROY: Right. Exactly.

9 MR. MURPHY: Mr. Pomeroy, is there a -- we see
10 that this indication of the wetlands, this nontidal
11 wetland boundary line here, and you indicate that ties
12 in with your recollection that this area down here is
13 often wet where this is drier here. Is there also a
14 swale going across the property that's a wetland?

15 MR. POMEROY: Yes. There's a ditch. I mean,
16 I would just call it a drain or a ditch that divides the
17 property in half that as I recall is proposed to be
18 filled under the development plan.

19 MR. MURPHY: That's proposed to be filled?

20 MR. POMEROY: Right. I think so.

21 CHAIRMAN SCHOEPLIN: Tom, I'm going to ask



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1 you if you could indicate to me the buffer, given the
2 tidal wetland at that lower point there, and how the
3 buffer would encroach into the proposed development lots
4 there.

5 MR. VENTRE: According to the information
6 provided to us with the plat and other documentation
7 submitted by the County, the critical area line and its
8 related buffer lines have been demarcated from this
9 marsh land -- from this tidal marsh in the southwest
10 corner of the property. It is from that point here --
11 in other words, the upland edge of a tidal wetland as
12 the law requires is from that point that the thousand
13 footline is demarcated and the first 100 feet, of
14 course, as the demarcated buffer, though that buffer
15 is indicated on this plat as the rear, if you will,
16 building restriction line of four of the lots that are
17 contiguous to that buffer.

18 Now, the gentlemen's comments here have raised
19 some questions with regard to tidal ditches and so on,
20 and perhaps a more -- a greater extent of tidal
21 influence. Presumably -- well, the mapping is -- for



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1 critical area purposes is, of course, based on the Title
2 Nine maps and the official State wetlands maps.
3 Presumably, the consultants to the owners and developers
4 did that research and found what they found and so noted
5 on this. The gentlemen's comments raise some other
6 interesting --

7 MR. POMEROY: Well, I'd like to just ask you:
8 if there's a ditch that bears tide water, why isn't that
9 the same thing as the river, because it's flowing right
10 into the river?

11 MR. VENTRE: Well, my point is, frankly, that
12 it may be.

13 MR. POMEROY: Okay. That's my point, also.

14 MR. BOWLING: Is it a regular raise of tide or
15 is it intermittent?

16 MR. POMEROY: No. This would be a storm tide.
17 This would not be on a daily basis, no.

18 MR. MURPHY: May I ask Mr. Ventre something
19 I'm confused about? The regulations call for a buffer
20 around the nontidal wetlands as well, do they not?

21 MR. VENTRE: That's correct. 25 feet.



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1 MR. MURPHY: Is that buffer indicated anywhere
2 in here?

3 MR. VENTRE: It appears to be not indicated
4 there.

5 MR. MURPHY: Because this is the nontidal
6 wetlands line. Is that not correct?

7 MR. VENTRE: According to the engineer.

8 MR. MURPHY: It's a submission of the county?

9 MR. VENTRE: That correct.

10 MR. MURPHY: Do these arrows indicate here
11 that this area to the north here, the northeast, where
12 all these lots are, is where the nontidal wetlands are.
13 Is that right?

14 MR. VENTRE: That's what I assume those areas
15 mean, yes.

16 MR. MURPHY: But there's no buffer indicated.

17 MR. VENTRE: It's not indicated on that.

18 MR. MURPHY: That's all I have of Mr. Pomeroy.
19 Thank you.

20 CHAIRMAN SCHOEPLIN: Mr. Pomeroy, thank you.

21 MR. MURPHY: Mr. Richard Long. State your



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1 name and address, please, Mr. Long?

2 MR. LONG: Richard Long, Dalesville Road,
3 Cambridge.

4 MR. MURPHY: All right. Dalesville Road, you
5 farm in the vicinity, do you not?

6 MR. LONG: Yes, sir.

7 MR. MURPHY: And you lived there all your
8 life, basically?

9 MR. LONG: All but for a few years in --

10 MR. MURPHY: I want to ask you some questions
11 about the property. Are you familiar with the property?

12 MR. LONG: Very much so. My family has lived
13 there when my grandmother was 103, and my whole family
14 has lived there their entire life.

15 MR. MURPHY: So you're familiar with this
16 specific piece of property?

17 MR. LONG: Yes, sir.

18 MR. MURPHY: Do you recall observing it and
19 making any conclusions as to whether it does have
20 wetlands on it or not?

21 MR. LONG: Yes, sir. First of all, let me



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1 clarify. No, I am not a professional. But, at this
2 point in time, the greatest profession of the world can
3 go testify that there is wetlands. All you have to do
4 is go down there right now and look at the beans. When
5 you have dry, level land, or well-drained land, you have
6 an even crop. Right now, the beans are anywhere from
7 this tall to this tall. You have a high ridge back over
8 on the top, which they have indicated that is, you know,
9 not wetlands, which would be there. All the way down
10 through the center, running east to west and then makes
11 up in a large bubble, where it goes over to Phase 2 and
12 around there by lot 19, 18, and coming around in that
13 direction, out to where you see lot 3 -- between lot 3
14 and 4, I would assume from here -- that's low. That's
15 wet. There's needle grass. There's needle grass.

16 And to the best of my recollection, I know
17 that that piece of property was not tilled last year.
18 And I think the year prior that it did have beans in it
19 and they were too wet to even get out. The property is
20 too wet.

21 VOICE: Are you sure?



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1 MR. LONG: Pardon?

2 VOICE: Are you sure?

3 MR. LONG: Am I sure?

4 VOICE: Yes.

5 MR. LONG: Well, I know last year it wasn't,
6 because I was asked if I wanted to -- I had permission
7 to cut the grass off of it. And I think it wasn't until
8 this spring that it was this down when it dried up
9 enough. I mean, let's face it. We are Dorchester
10 County. It's not Talbot. It does stay wet.

11 MR. MURPHY: Mr. Long, are you familiar -- is
12 there a ditch here on the -- I guess this is for the
13 western boundary of the property?

14 MR. LONG: Yes. It runs from almost basically
15 north to south.

16 MR. MURPHY: North to south. Have you
17 observed any water in that ditch?

18 MR. LONG: Yes, sir. As a matter of fact,
19 since it was cleaned out many years ago, because the
20 county cleaned it out, the tide does flow regularly in
21 that ditch.



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1 MR. MURPHY: It does?

2 MR. LONG: It does flow regularly in that
3 ditch. In fact, you could see kids back there catching
4 minnows to go fishing.

5 MR. VENTRE: Are these daily tides or flood
6 tides -- or storm tides?

7 MR. LONG: No, sir. On a storm tide or a
8 flood tide, it will come over Dalesville Road. It's not
9 as bad over the road in recent years, because they built
10 the road up. The ditch didn't change. They built the
11 road up and put in new culverts and so forth.

12 But it flows in the ditch coming up here by
13 Martinetti's on flood tides now. And you talking
14 about storm tides. It comes up the opposite ditch
15 beside Mrs. Martinetti's lane, which that ditch flows
16 east to west.

17 MR. BOWLING: I believe they've drawn a
18 wetlands boundary where a normal high tide --

19 MR. LONG: Absolutely.

20 MR. BOWLING: Now, where would you say a
21 normal high tide is on that plat?



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1 MR. LONG: Approximately three-quarters of the
2 way up there. About where it would say on the "O" on
3 "open," maybe a little bit below that.

4 MR. VENTRE: Mr. Long, would you mind for our
5 benefit to stand at the map and so indicate so that we
6 can --

7 MR. LONG: Oh, and like I said, approximately.
8 Well, see, this is marsh here, and this used to --
9 there's a real nice -- cove in here when you get home.
10 But anyway, then, there's a culvert that comes across
11 from Martinetti's, and then there's big culverts up here
12 on Town Point Road that goes over to Mr. Bailey Orms's
13 property. And that -- you know, you see a normal tide
14 in this area right here, in this area. Now, I mean, you
15 take a storm tide and --

16 VOICE: It's back across the road.

17 MR. LONG: Yes. I think the part that
18 concerns us with such a situation as this is that in the
19 last few years I think the Commission has done very
20 well. I know one thing. I do nothing but hay and
21 livestock. And we have occasions to have people come



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1 down both from your organization and also a combination
2 of two. Both Dorchester County, the State and Federal
3 level. And we have had inspections done on our manure
4 handling system. Let's face it. Manure is manure. I
5 don't care where it comes from. In the last few years,
6 we spent 13 -- no, almost \$15,000 on approved manure-
7 handling systems. We are not allowed to have any runoff
8 from the cattle. We're not allowed to have any runoff
9 from the chicken manure, which is stored.

10 I personally am allocated over seven ton a
11 year that I can spread on my property. I only spread
12 three. I think manure-handling systems and so forth
13 to protect the ecosystem is very well.

14 But what bothers us is we spend this money.
15 We spend this time to do things right, and they turn it
16 right around, and that combats everything that the rest
17 of us are trying to do. And nobody is perfect. But you
18 hear a lot of people come into our area, for instance,
19 say, "Well, I do not see anything wrong with it."
20 Granted. But they're looking at it for the day.

21 I'm 45 years old. And when I was 12 and 13



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1 years old, I could stand on the bank of my
2 grandmother's, which is right next door -- we only live
3 -- well, if there was just another few inches on that
4 map, you could see our house. But I could catch rock, I
5 could catch hardhead, I could catch perch, anytime.
6 When my kids -- my children are 25. When my children
7 were growing up, when they were five or six years old --
8 okay, I live a little bit further down the river --
9 farther, excuse me. When they could stand on the bank
10 and they could catch perch - that's all that was there
11 now. Now, they can't even stand on the bank and catch
12 perch.

13 So, I'm looking at the perspective of what it
14 was when I grew up and what it is now and see the big
15 change. And if we don't stop it or correct it -- okay.
16 I have two, almost three, two and a half grandchildren.
17 They're not even going to have that. I mean, they're
18 just not going to have it. And the county is trying to
19 do a good job and please everybody.

20 While I'm right on this subject, let me
21 correct something that was stated earlier for the



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1 record. That is the map that we were all shown on the
2 first hearing that the Dorchester County -- they
3 couldn't even get a second on a vote. They couldn't
4 even get a proposal -- or, excuse me, wrong word. They
5 couldn't even get a motion made, and it was turned down
6 in the following month. It was not a separate piece.
7 That is the one that I saw that we were here that night.
8 The following month, they turned it down, and the
9 statement was made: "They felt sorry they put Mr.
10 Barnett through such a situation."

11 MR. BOWLING: That's the one the county
12 commissioners turned down?

13 MR. LONG: That's the one was showed to us the
14 night that we were all here, and they turned it down.
15 In fact, like I said, they couldn't even get a second on
16 a motion.

17 MR. VENTRE: And "they" to whom you refer is
18 the Dorchester County County Commissions?

19 MR. LONG: Dorchester County.

20 MR. BOSTIAN: And the date is the April 1991
21 meeting?



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1 MR. LONG: You'll have to verify that.

2 MR. BOSTIAN: But it wasn't an -- 1989?

3 MR. LONG: 1991. That is the map.

4 But now is the time. Now is the time to stop
5 it or correct it. And we're not against Tom building a
6 house or selling a lot. Nobody is against him at all.
7 But something like this -- he's taking such a chance.
8 It's a poker game. It's the biggest risk in the world.
9 I mean, if we would have had the rains and the storm
10 that they were just predicted here for today, now, you
11 would have seen a mess, because there's nothing fail-
12 safe, and why take the chance? I'd like to see my
13 grandchildren enjoy it.

14 MR. MURPHY: Thanks very much.

15 CHAIRMAN SCHOEPLIN: Mr. Murphy, excuse me
16 just a moment. Ms. Hales has --

17 MS. HALES: Let me specify something again.
18 This was the only one that's ever been shown at a
19 hearing, this plat that's right up here tonight. The
20 other one never got to hearing, the one with the --
21 let me specify that, because there seems to be some



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1 confusion that a different one was shown at the first
2 hearing. This one was shown at both hearings.

3 CHAIRMAN SCHOEPLEIN: Thank you.

4 MR. VENTRE: Did she point to that one?

5 CHAIRMAN SCHOEPLEIN: Yes. Anyone have any
6 other questions for Mr. Long?

7 MR. MURPHY: All right. Thanks, Mr. Long.
8 Mr. John Hopkins?

9 MR. HOPKINS: My name is John Hopkins, and I
10 live at 1706 Dock Road, which is less than a mile from
11 this area. And as a neighbor and as specifically
12 requested by Mrs. Martinetti, whose road this is here, I
13 went down this road just the other day, and I looked
14 down in this ditch and got down in there and saw all
15 sorts of water bushes and things growing in there. And
16 then I paced it and got in my car and drove it down to
17 where I saw the water bushes and the other evidence.
18 And I have photographs here, which I would be glad to
19 give to you, along with a letter I sent to the Corps of
20 Engineers, and a plat, which is essentially this plat,
21 and these photographs. And I will pass them out to you,



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1 and you can -- as you look at them, you're looking up
2 from down in here up toward Dalesville Road, where
3 you'll see my car. And the flag there is where the
4 water bushes begin. And as you see these photographs,
5 you'll see the bushes and so forth. And I'll be glad to
6 give this to you.

7 CHAIRMAN SCHOEPLIN: Mr. Hopkins, thank you.
8 I want to place them in as a matter of record.

9 MR. HOPKINS: The only thing is right here
10 where it says red dot, I didn't have a red pen for this
11 copy.

12 (Laughter.)

13 MR. HOPKINS: If you've got one, I'll fix that
14 up -- right up.

15 MR. MURPHY: Would you just mark it on this
16 plat here approximately where that is?

17 MR. HOPKINS: Well, it's right between 16 and
18 14. Oops. On this plat here -- no, 15 and 14. So it
19 would be right here -- on this road here. And that's
20 where that ditch is, that heavy ditch, which when I get
21 down into it, I can't see out of it. And these grasses,



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1 of course, grow right on up through here up to this
2 point right here, and that's where I put this flag. And
3 I sent copies of that to the Corps, and you may have
4 copies. I have extra copies. And if you want any more,
5 I'll be glad to furnish them.

6 CHAIRMAN SCHOEPLIN: Mr. Hopkins, we may have
7 some questions, if you wait a moment.

8 MR. HOPKINS: Oh, yes. Right.

9 MR. PRICE: I'd like my pen back.

10 MR. HOPKINS: Oh, I'm sorry.

11 MR. VENTRE: He has his own red dots.

12 (Laughter.)

13 CHAIRMAN SCHOEPLIN: Tom, I have indicated
14 that we will have -- to Mr. Hopkins, we'll have remarks
15 this evening. When we pass these to you, will you
16 identify this as part of Mr. John Hopkins's remarks?

17 MR. HOPKINS: The photograph there of the
18 automobile shows the reading on the odometer when I got
19 to the point. In other words, I set it to zero, drove
20 down, photographed the thing. It's on one-tenth of a
21 mile just about to turn.



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1 MR. BOSTIAN: What kind of a car is that?

2 MR. HOPKINS: That's a Honda I'm embarrassed
3 to say. It belongs to my daughter, and she can't make
4 the payments.

5 (Laughter.)

6 MR. VENTRE: Well, which is embarrassing, the
7 make of the car or that your daughter can't make the
8 payments?

9 MR. BOWLING: Does that mean you've taken over
10 the payments?

11 MR. HOPKINS: I've taken over the payments.

12 MR. BOWLING: He seems to be an expert --

13 MR. HOPKINS: I'm no expert on any of that. I
14 can't even tell you the name of those bushes, but I know
15 that on my place, wherever there's saltwater, those
16 bushes are. Where there's no saltwater, they aren't.
17 And there are other bushes in there, too. If you go
18 down there, you can see the things, including those
19 pointed ones -- I call them water bushes.

20 MR. BOSTIAN: Pragmitees Comutous (phonetic).

21 MR. HOPKINS: That's what that is. But



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1 there's some others. As you go down there, you'll
2 see --

3 MR. BOSTIAN: The little pointed -- grass?

4 MR. HOPKINS: Yes. It's the same thing that
5 Horn Point is trying to put in the water to stop the
6 erosion rather than stones. Not that.

7 MR. BOWLING: You said try.

8 MR. MURPHY: So you got down in that ditch
9 there at the spot you indicated.

10 MR. HOPKINS: Right.

11 MR. MURPHY: And what did you find when you
12 were down there?

13 MR. HOPKINS: A lot of water and signs of
14 flow. Wet and water. And went on up above there, but
15 that could have been -- some of it could have been from
16 moisture from rain or something of that sort, because
17 this drains across the road all down through here off of
18 those fields.

19 MR. BOWLING: So, if there were a water mark,
20 you couldn't really tell whether they were a tide mark
21 or just a high water mark from rain?



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1 MR. HOPKINS: I couldn't tell, no. The only
2 thing I say is where the bushes grow is where there's
3 got to be salt.

4 MR. MURPHY: What judgment did you reach about
5 it? Did you reach a judgment in your own mind about
6 whether that was tidal or not?

7 MR. HOPKINS: I did. I felt it was tidal. I
8 could be wrong, but I felt it was tidal.

9 MR. MURPHY: You've been observing tidal areas
10 for some time?

11 MR. HOPKINS: Yes, sir.

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

13 CHAIRMAN SCHOEPLIN: Does anyone have any
14 other questions of Mr. John Hopkins?

15 MR. BOSTIAN: You did say that you were not an
16 expert. Did you have any training?

17 MR. HOPKINS: No, sir.

18 MR. BOSTIAN: No special training?

19 MR. HOPKINS: None.

20 CHAIRMAN SCHOEPLIN: Thank you.

21 MR. MURPHY: Would Mr. Martinetti come up



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1 here, please. Would you just sign your name and
2 address.

3 Mr. Martinetti, do you live immediately
4 adjacent to the property?

5 MR. MARTINETTI: Yes.

6 MR. MURPHY: To the south, then, I guess it
7 is, of the subject property?

8 MR. MARTINETTI: Let me try and get my
9 bearings here. Where is Dalesville Road?

10 MR. MURPHY: Here's Dalesville.

11 MR. MARTINETTI: Here's Dalesville. I'm
12 looking for my land.

13 MR. MURPHY: I believe it's right down here.

14 MR. MARTINETTI: This is my land?

15 MR. MURPHY: Yes.

16 MR. MARTINETTI: Okay.

17 MR. MURPHY: It goes down to this marsh down
18 here at the end?

19 MR. MARTINETTI: That's correct. Yes. I live
20 in this -- in this direction.

21 MR. MURPHY: So you live west, I guess, of the



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1 property?

2 MR. MARTINETTI: If that's what's indicated,
3 then that's where I live.

4 MR. MURPHY: You haven't changed. But your
5 lane passes the borders on the property.

6 MR. MARTINETTI: Yes. Right alongside that.
7 Correct.

8 MR. MURPHY: All right. Now, do you have
9 pictures that are taken that show this -- do you have
10 any pictures that show this ditch along the side and --

11 MR. MARTINETTI: This is the ditch going up
12 the lane alongside of my lane between -- my lane is
13 here, and this is his field here where the proposed
14 housing site is.

15 MR. MURPHY: Could I just mark this 1 so
16 that it will tie in with his testimony?

17 (Whereupon, the document was marked for
18 identification Exhibit No. 1.)

19 MR. MURPHY: All right. What is this?

20 MR. MARTINETTI: This is the ditch when I'm
21 standing on Dalesville Road; my lane is going this way.



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1 MR. MURPHY: So this is --

2 MR. MARTINETTI: This picture there is this
3 ditch right here. It's on Dalesville Road.

4 MR. MURPHY: And this seems to be -- this has
5 water in it now. Right?

6 MR. PRICE: Where is his lane again? I'm a
7 little bit lost.

8 MR. MURPHY: Here is your lane -- here is
9 Dalesville Road. Here is Dalesville Road.

10 MR. MARTINETTI: Yes.

11 MR. MURPHY: You come in your lane here,
12 right?

13 MR. MARTINETTI: Yes. Right straight up this
14 lane.

15 MR. BOWLING: Is this the same road that Mr.
16 Hopkins was talking about?

17 VOICE: Yes.

18 MR. MARTINETTI: This ditch that comes in
19 here. There's a ditch here that goes this way.

20 MR. MURPHY: And this ditch you told us about
21 here, where is that?



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1 VOICE: Okay. That's another ditch.

2 MR. MARTINETTI: That ditch is the one going
3 up alongside of my lane.

4 MR. BOWLING: We have a little problem here,
5 Mr. Murphy. We have two pictures. One is a road, and
6 one is a ditch.

7 MR. MURPHY: Yes. Let me ask him again. Now
8 just for the -- what is this road? Is that --

9 MR. MARTINETTI: That's my lane.

10 MR. MURPHY: Next to the property?

11 MR. MARTINETTI: That's next to the property.

12 MR. BOWLING: That's his road. Okay.

13 MR. MURPHY: All right. And where was this
14 ditch?

15 MR. MARTINETTI: That ditch is next to that
16 lane -- that road.

17 MR. MURPHY: Next to that lane?

18 MR. MARTINETTI: Uh-huh.

19 MR. MURPHY: All right. Do you have any --

20 MR. MARTINETTI: Well, this here is a picture
21 of my lane. About five years ago, we had a big storm



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1 similar to the one that almost took place yesterday.
2 And my car got stuck. I didn't know it was as deep as
3 it was, and my car got stuck in that lane. And this
4 also is a picture of -- see, even almost my whole lane
5 was almost inundated with water plus a proportion of the
6 fields.

7 MR. MURPHY: All right. I've marked these 2
8 and 3, and they're according to what his testimony was.

9 (Whereupon, the documents were marked for
10 identification Martinetti Exhibit Nos. 2 and 3.)

11 MR. MURPHY: That was a storm and the lane --

12 MR. MARTINETTI: In 1985. Yes. A hurricane.

13 MR. MURPHY: -- was inundated?

14 MR. MARTINETTI: Yes.

15 MR. MURPHY: But did you recall the testimony
16 of Mr. Hopkins that there is water in this ditch next to
17 the property?

18 MR. MARTINETTI: This ditch here?

19 MR. MURPHY: Yes.

20 MR. MARTINETTI: Oh, yes.

21 MR. MURPHY: Well, this ditch going up here.



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1 MR. MARTINETTI: Oh, this ditch here?

2 MR. MURPHY: Yes.

3 MR. MARTINETTI: Yes. Definitely.

4 MR. MURPHY: On a regular basis?

5 MR. MARTINETTI: I have never observed it on a
6 regular basis going out on my lane. But, when the tide
7 comes in and out, it fills in and up and out of this
8 ditch here and most also likewise along this direction,
9 also, I would assume, because when the tide goes out,
10 there's no water in this ditch. When the tide comes in,
11 this ditch fills up according to the amount of the tide
12 that comes in.

13 MR. MURPHY: Did you hear the testimony, also,
14 of Mr. Long about there being water in this ditch up
15 here?

16 MR. MARTINETTI: Yes, I did.

17 MR. MURPHY: Does that fit with your
18 recollection?

19 MR. MARTINETTI: I have seen water in that
20 ditch, yes.

21 MR. MURPHY: And you assume that's associated



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1 with this tidal area down here below?

2 MR. MARTINETTI: I would assume that
3 depending, upon how high the tide comes in. Yes.

4 MR. MURPHY: All right. That's all I have.
5 Thank you very much.

6 If I may just make a few concluding remarks,
7 and then I think there's some other witnesses who just
8 wish to testify as citizens.

9 What I've attempted to suggest here is that
10 this does not meet the criteria for the location of a
11 new growth area. The reason is: being a lawyer, I sit
12 here and I follow the regulations, and I read them, and
13 I'm just making these remarks for your guidance. But it
14 does say that a new limited development area shall be in
15 an area located in a manner that optimizes benefits to
16 water quality. Optimizes benefits to water quality.

17 MR. PRICE: Where do you see the citation on
18 that?

19 MR. MURPHY: That's -- I was -- it's on page
20 10 of the blue book here in the middle of the third
21 column. I always get lost in trying to give a citation.



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1 Do you see it?

2 MR. PRICE: Yes.

3 MR. MURPHY: And what I'm suggesting to you is
4 this: that this is a special area here. It is very
5 close to this Fishing Creek, which is already stressed
6 and partially closed, as Mr. Pomeroy testified. These
7 retention ponds, we didn't have any scientific
8 testimony. I know that you could have scientific
9 testimony that will say that a properly designed pond,
10 you know, in the normal course of events will not
11 overflow. But I think I've had enough testimony here
12 from people who have had experience with these ponds and
13 that they do overflow on occasion. And that's a fact of
14 life. And I suggest to you for that reason that this
15 development is not being located in an area that
16 optimizes benefits to water quality.

17 Now, the second criterion, as I understand it,
18 of these regulations is -- it's the same citation --
19 should be located in order to minimize impacts to
20 habitat protection areas. All right. So then you turn
21 in these regulations to habitat protection. And you get



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1 over to page 14, nontidal wetlands. And I don't have
2 any problem with any of these other standards of habitat
3 protection, the buffer, the threatened and endangered
4 species. I'm not going to talk about that at all. All
5 I'm going to talk about is nontidal wetlands. The
6 nontidal wetlands are delineated exactly on this plan
7 that the applicant has submitted. They're here.
8 They're set forth here. The nontidal wetlands.

9 And I also want to introduce for the record,
10 so I apologize for not doing it before, but I thought it
11 would come up with the applicant's testimony. I have
12 the public notice here from the Corps of Engineers. And
13 the only reason I'm introducing this is because it has
14 another drawing of the project, and it has the nontidal
15 -- it has nontidal wetlands delineated on the --
16 delineated in a slot across here, sort of paralleling
17 Town Point Road. You have that in your file, I take it.
18 It's already been in your file, so I don't have to
19 introduce it.

20 But the significance of the nontidal wetlands
21 is that the regulations say that you maintain at least a



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1 25-foot buffer around identified nontidal wetlands where
2 development activities or other activities which may
3 disturb the wetlands shall be prohibited unless it can
4 be shown that these activities will not adversely affect
5 the wetland.

6 Well, I think there's been no showing that
7 they won't adversely affect the wetland. We have houses
8 being built right in this area. According to the Corps
9 notice, the wetland that stretches across here that
10 bisects the property is going to be filled. So it's
11 going to basically disappear.

12 I don't think any contention can be made that
13 these wetlands here are not being adversely affected.
14 They're being built on. How could you -- you know, what
15 else could be done? The wetlands are being built on,
16 and they're being filled in. And as far as I know,
17 there's been no waiver granted of this requirement.

18 So it seems to me that -- and I frankly will
19 say that this seems to me to be the strongest case. Not
20 only are the wetlands delineated on the map, but the
21 witnesses testified -- and again, they're not experts,



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1 but you have to give them some credence, I think -- that
2 these areas are wet.

3 Now, I don't want to get into a whole
4 technical discussion of whether this is under the Corps
5 of Engineers' jurisdiction or not under the
6 jurisdiction. Parts of it apparently aren't under the
7 jurisdiction, because this has been cropped. Therefore,
8 it's this prior converted crop-land exemption and,
9 therefore, not under the Corps' jurisdiction. And as
10 the Corps defines wetlands, they have three tests:
11 hydraulic, hydrophilic plants and hydric soils. And
12 since it's been cropped, it doesn't meet the hydrophilic
13 plants test. But we don't have those three standards
14 that must be met in the critical area standards. They
15 only say that you have to meet two of them.

16 I point you to the top of page 14 of this blue
17 book, the second column. It says where the water table
18 is usually at or near the surface, or land is covered by
19 shallow water, and which is characterized by one of the
20 following. Hydrophidic vegetation or hydric soils. It
21 doesn't have to meet both tests, although Mr. Long



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1 testified that it did meet the hydrophilic vegetation
2 with the swamp grasses that were growing up. But the
3 notes of the plat here indicate that this is hydric
4 soils, so it meets that test.

5 And I know that there's a lot of talk about
6 the Corps of Engineers being -- you know, taking over
7 the country and wetlands -- the whole thing has run
8 wild, and all that, and I appreciate that people can
9 have differences over how far the wetlands jurisdiction
10 ought to extend.

11 But I submit to you that the witnesses I had
12 today were not talking about marginal wetlands areas.
13 They were talking about areas that are truly wetlands,
14 that are the classic definition of wetlands, and I think
15 that's the same thing your regulations are getting at.

16 Mr. Ventre, is this a part of the record, this
17 Corps notice?

18 MR. VENTRE: The panel is aware of it. They
19 do have their own copies. It came into --

20 MR. MURPHY: Can I just submit it for the
21 record?



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1 MR. VENTRE: Sure.

2 MR. MURPHY: Just so it's part of the record.
3 It does have that map in it.

4 So, basically, that's my presentation. Again,
5 I would just, again, allude to the Commission's policy
6 here, that it seems to me in the context of this project
7 that has these particular difficulties, being the
8 relationship to Fishing Creek and being the extensive
9 wetlands, that this is not a development to make a
10 departure from your policy on.

11 If your policy says 20 acres, this is not a
12 development to make that -- this has no outstanding
13 benefits to justify departure from your policy. And so
14 I would again allude to the policy plus the wetlands and
15 the Fishing Creek and the pond situation. I'm sure that
16 I've talked too long, and there's some other people in
17 the audience who also want to speak.

18 MR. PRICE: Can I ask you a question?

19 MR. MURPHY: Certainly.

20 MR. PRICE: Addressing the ditch which was
21 testimony in regard to tidal flow in the ditch. There



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1 was testimony that you have a tidal flow over there.

2 MR. MURPHY: I think -- that sort of caught me
3 unawares, because I, frankly, had not prepared for that
4 point. But it seems to me that the witnesses have said
5 there's a tidal flow in both ditches that come up
6 further than the tidal area indicated here. And if
7 that's the case, it seems to me that the critical area
8 boundary line here is improperly drawn, and it should be
9 a thousand feet from some other further off, which would
10 take it to include more of the development.

11 CHAIRMAN SCHOEPLEIN: Are there any other
12 questions of Mr. Murphy?

13 (No response.)

14 MR. MURPHY: Thank you very much.

15 MR. MARTINETTI: I just wanted to tell you
16 that my property, which adjoins that, is a total of 55
17 acres right there. And in that particular area, in my
18 deed, the description of the land states I have 12 acres
19 of marsh land here. That has to be tide land property.

20 CHAIRMAN SCHOEPLEIN: That was Mr. Martinetti
21 that was speaking. Mr. Long?



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1 MR. LONG: There's one statement on paper that
2 was read to you from the record, and I would invite
3 anyone for a trip to see -- and I don't know who it was
4 given by. I think the Department of Natural Resources
5 on the wildlife habitat. I'm just -- my memory. Either
6 there was none or it would be very minimal damage.

7 You have for a small area there, which we all
8 do in that area -- you have muskrat in the ditches, you
9 have your oysters right there at the end of Mr.
10 Martinetti's property, where the Barnett property
11 touched. You have rabbit. You also have quail. And
12 after these beans are cut, it would be very easy to see,
13 sometime about 4:30, quarter to 5:00 in the afternoon,
14 and watch to see where that pair of bald eagles that
15 live on Mr. Martinetti's woods -- see where they feed.
16 They're either in the ditch, or at the end of the creek
17 by Martinetti's, or over there in front of our house, or
18 over there in that field on roads. But I would like
19 to challenge that piece of paper that was read into the
20 testimony.

21 MR. BOWLING: There was a reference to



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1 endangered species, I believe.

2 MR. LONG: Pardon?

3 MR. BOWLING: I believe that was a reference
4 to endangered species. And when you got to bald eagles,
5 you named one.

6 MR. LONG: That's no problem. In fact, you
7 know, they're on our property, also, because there's
8 three pair -- or excuse me, there was. There's two
9 pair. There's one that lives on the northwest corner of
10 Martinetti's woods, and then back over on the very back
11 corner of Mr. Bailey Orms's woods, there's another pair
12 that live there. But, you know, I'm just saying
13 wildlife as a whole, not just "eagle." There's wildlife
14 as a whole.

15 VOICE: Mr. Murphy, you have some pictures
16 there of the field that has geese in it. That was taken
17 a -- before this all came up. The whole field was
18 filled them.

19 MR. VENTRE: Mr. Chairman, if I may follow on
20 Commissioner Bowling's point and for Mr. Long and for
21 members of the audience, generally? The critical area



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1 program regulations are very specific as to the kinds of
2 wildlife. Your point is well taken, of course, that
3 there is wildlife. That is not in dispute. But for
4 your information, you should be aware that the critical
5 area regulations are more specific as to species --
6 types.

7 MR. LONG: I appreciate that fact. But, since
8 it was read into the record, some of the things that
9 have been approved, I think I was going to challenge
10 that point that I have been agreeing with -- next to the
11 property or very close to the property.

12 CHAIRMAN SCHOEPLEIN: Sir, would you --

13 MR. HOPKINS: I don't know if you've got a
14 list there that you want followed or not --

15 CHAIRMAN SCHOEPLEIN: We'd be happy to hear
16 from you.

17 MR. HOPKINS: I'm another Hopkins. I'm no
18 relation of the previous Mr. Hopkins, but I live between
19 him and Mr. Pomeroy. And the first thing I would say to
20 you, gentlemen, is that while they may not be classified
21 as "experts" in quotations, they both are experts. Mr.



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1 Pomeroy is a distinguished graduate of the University of
2 Virginia in English and not just a wandering oysterman.
3 And when I've heard him testify, as I have for the last
4 10 or 15 years, I've always found him not only
5 intelligent, but extremely well expressed. Mr. Hopkins,
6 my neighbor, is a VMI graduate, decorated forward
7 observer in Korea. And although I meet him at seven
8 o'clock in the morning picking up beer cans on Dock Road
9 and Stoney Ridge where I live, his veracity is not to be
10 questioned. And if he says that he was down in that
11 ditch over his head, I know he knows what a ditch over
12 his head is, because he lived in one for almost a year
13 in Korea.

14 Habitat, you mentioned. I don't have much
15 knowledge of the planning processes, having only spent
16 20 or 25 years dabbling in politics in the great state
17 of Maryland. But I can tell you that back in about '63
18 or '4, I was the editor of the Maryland Conservation
19 Estate, a contract publication for the then Board of
20 Natural Resources. And I wrote an editorial about
21 wetlands, which promptly and specifically directed at



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1 the Kent Narrows. And, man, that drew down a dumpster
2 full of criticism on my innocent head, right up to the
3 boss, who was a friend of mine, Roy Walsh, now dead. He
4 said, "Boy, you shouldn't get into anything like that.
5 You ought to know better than that."

6 And all I can think of is that some 30 years
7 later, if anybody paid any attention to wetlands in the
8 sixties, we probably wouldn't have had to have a
9 Critical Areas Commission, and Kent Island and the
10 Narrows itself would not be the dump that it is today.

11 What about this piece of land? I'm no expert.
12 I live within a mile or two of it. And I wanted to
13 point out to you that while some areas of the state are
14 looking for the preservation of scenic and agricultural
15 lands just because they are open and they are there, we
16 in Dorchester County seem to be taking a reverse step
17 and by even contemplating this kind of a development in
18 the middle of one of the -- really one of the richer
19 agricultural sections of the county, as it sits there at
20 the head of the neck. And, yes, it's flooded a good
21 deal of the time, but you've got a couple of the most



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1 productive farmers and farms in the area there.

2 It doesn't take much to bust up an
3 agricultural community. You've seen it happen all up
4 and down the shore. You've seen it happen all up and
5 down the Eastern Seaboard. And I'm very much afraid
6 that that's exactly what's happening here with a step in
7 the door. That was said at a previous hearing.

8 I was not privy to Mr. Murphy's consultations
9 earlier. But, if you have, indeed, gone against a
10 criteria that your Commission has set up, I sure hope
11 you will correct it now, when you're really in your
12 infancy, rather than waiting two or three years or five
13 years down the road when, you know, each little grab
14 just makes the whole job worse for whoever succeeds you.

15 And I know the pay is excellent, and I know
16 there are a lot of other perks that go along with this
17 kind of political service. But I thank you for being on
18 it. I think if I had been on the legislature, I would
19 have supported it wholeheartedly, and I'm glad we have a
20 Critical Areas Commission, as I think most of these
21 people in this room do out here.



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1 Thank you for letting me speak.

2 CHAIRMAN SCHOEPLEIN: Thank you. Mr.

3 Porter --

4 MR. HOPKINS: I'm Porter Hopkins. Yes. Or at
5 least I was about 10 years ago when I moved down into
6 this wonderful county.

7 (Laughter.)

8 CHAIRMAN SCHOEPLEIN: Thank you, sir. Do we
9 have anyone else who would prefer to speak?

10 MR. SIMMONS: Yes. My name is Ray Simmons. I
11 represent -- the attorney who represents the Barnett
12 family, Helen Barnett, Tom Barnett. I'm basically here
13 to briefly speak about the project. Before I begin, I
14 would like to offer into evidence a permit that was just
15 received today from the Board of Resources, Water
16 Management Administration, for the construction of the
17 berm pond.

18 MR. PRICE: Are you from Cambridge, Mr.
19 Simmons?

20 MR. SIMMONS: Yes.

21 Gentlemen, as I understand the purpose of this



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1 hearing tonight, it's primarily to determine whether or
2 not the Dorchester County government process has done
3 its job in an orderly fashion, in a legal fashion, in a
4 step-by-step examination of all of the items that you
5 have heard about tonight, to arrive at a recommendation
6 to this panel so that you can in turn make
7 recommendation to the full to utilize an additional
8 block of acreage for controlled growth. I think that
9 the planning department of Dorchester County has done an
10 excellent job.

11 While I certainly listen with interest to all
12 of the individuals who have testified here tonight about
13 water in the ditches, about the certain crops that grow
14 and the wildlife that inhabits the areas, I must remind
15 this panel that since 1989, when this project was first
16 conceived, on to today, two years later, it has been a
17 legal, step-by-step process of attempting to give
18 permits, to get plans approved, to get the project into
19 the form that it's in right now so that Dorchester
20 County Planning and Zoning folks could recommend that it
21 be approved.



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1 As Ms. Hales has indicated, there are 1,140
2 acres still left in the allocation for Dorchester
3 County. We are requesting -- Mr. Barnett is requesting
4 14 acres, as the plan indicates. If an individual by
5 following all the rules and all the regulations and all
6 of the laws cannot proceed to fruition and to completion
7 of a project, then this Commission needs to stop, and we
8 need to go back and redevelop the wheel. And I think we
9 have gone much too far to redevelop that wheel. It's a
10 difficult process, as I know that you all have heard as
11 you go around the state, and listening to all these
12 hearings.

13 Unfortunately, although I don't know that it
14 is totally unfortunate, many times these issues become
15 wrapped around emotional overtone. People are very
16 emotional about what is next to them, what can be built
17 next to them, how someone else's land is going to be
18 developed -- utilized. Quite frankly, that's what this
19 is probably all about. And I suspect in all candor,
20 should I have lived down there, perhaps I might have
21 been sitting and coming up and say I oppose. But I'm an



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1 attorney retained to represent an individual who has
2 done the things that the State of Maryland and
3 Dorchester County requires to get a development like
4 this on the boards.

5 I would like to make a couple of comments,
6 again, specifically about overflowing ponds. While the
7 berm ponds may not be the best solution in the world,
8 that is the solution today that the State Health
9 Department and the Water Management Resources folks look
10 at as the type of water system that a project such as
11 this would utilize. We have a permit for that.

12 The Corps of Engineers has basically indicated
13 noninterest in the project except for around the ditch.
14 And we have no intentions of building anything near the
15 ditch. I would remind the panel that regardless of how
16 you talk about wetlands, the soil where all of these
17 houses is to be built is not a peak soil. It certainly
18 is not of the type that you would indicate as being
19 wetland type of soil.

20 As far as the buffer line that Mr. Murphy
21 would indicate is not present on the plat and overlay,



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1 it's my understanding -- I'll call Mr. Ludlow, who is the
2 engineer that drafted that plan for the Commission. The
3 Commission may have some questions about that. But it's
4 my understanding that that line is not a required line
5 that has to be on that in any way. It's a regulation,
6 and that's basically the end. It does not require to be
7 on that.

8 Insofar as John Murphy's -- my friend John's
9 review of the regulations, any project should optimize
10 water quality. I think any -- the best project to
11 optimize water quality would be never to develop and
12 never to build any project. That's the way you optimize
13 the water quality. Anytime after that, once you go
14 forward with any development, you are going to have some
15 impact, and that's what the regulations and the rules
16 are all about.

17 Again, I would remind you that Mr. Tom Barnett
18 and Helen Barnett have followed all of those rules
19 regulations and have done as requested from Planning and
20 Zoning in order to get the approval of Dorchester
21 County.



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1 Insofar as minimizing habitat preservation, I
2 think the evidence is quite clear from the folks that
3 this Commission must listen to and the evidence that it
4 must look at, that the habitat is being preserved. I
5 would suggest that perhaps many in this room opposed the
6 concept and theory of cluster development, because
7 that's what that is. It's just something that we in
8 Dorchester County on the Eastern Shore are just not used
9 to looking at. And I guess we sort of look at it, and
10 we say, "Well, we don't want that in our area, because
11 we like houses on 25- and 30-acre and 300-acre lots, and
12 we're just not used to row houses in Baltimore City and
13 all the other things that cluster housing implies to
14 people."

15 I must suggest and remind this Commission that
16 Mr. Barnett's first plan was to divide it up and put the
17 same number of lots in the entire project. And it is
18 Dorchester County's own regulation that suggests cluster
19 development. That's why we're in the cluster. I would
20 suggest that these people's fight is with Dorchester
21 County in terms of if they wish to change that



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1 regulation. That's where that fight is fought, but it's
2 not fought before the Commission here.

3 Basically, again, I just wanted to reiterate
4 all of those things. I'd like to call the engineer who
5 drew that plan. Mr. Ludlow, would you step up here,
6 sir?

7 MR. PRICE: Before -- I noticed this is for
8 lots one through eight.

9 MR. LUDLOW: Right. That's for the first
10 phase, right. We have our discharge permit for both
11 phases, but the construction permit for Phase 1. I'm
12 William Ludlow.

13 MR. SIMMONS: Mr. Ludlow, you are the project
14 engineer who drew that blueprint. Is that correct?

15 MR. LUDLOW: Yes, sir.

16 MR. SIMMONS: Would you speak to the lack of a
17 buffer line 25 foot designated on there?

18 MR. LUDLOW: If you all notice on the plan,
19 the buffer line we have allowed -- in fact, the buffer -
20 - the 25 foot buffer from nontidal wetlands as defined
21 by the State's definition, the nontidal wetland line or



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1 the wetland line would be along the marsh here and
2 possibly, if you want to argue the point about tidal
3 waters in the ditch, which we have a difference of
4 opinion on, we have provided a 100-foot buffer to the
5 building envelope along 11 -- nine, 10, and 11, and we
6 have a 50-foot buffer, which is just along the adjacent
7 property. We didn't even abut the property -- the
8 proposed lots to the internal property line.

9 We plan to have like an island. We plan to
10 have a buffer completely around the cluster development,
11 naturally, with the largest part of the buffer, or the
12 largest part of the open area, being on the Town Point
13 side. But we have an open area to the Phase 1 side,
14 open area to the Martinetti side, and we have a buffer
15 area even from the lots to the actual wetlands -- to the
16 wetlands.

17 CHAIRMAN SCHOEPLEIN: Though in the 14 acres
18 of open space, you did not come up with a 50-foot buffer
19 strip.

20 MR. LUDLOW: Excuse me?

21 CHAIRMAN SCHOEPLEIN: There are indicated 14



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1 acres of open space between --

2 MR. LUDLOW: Right. Which includes that
3 buffer.

4 CHAIRMAN SCHOEPLIN: It does include that
5 buffer?

6 MR. LUDLOW: Right. All around the proposed
7 lots, the majority of it naturally being, like I said,
8 up on the Town Point side.

9 CHAIRMAN SCHOEPLIN: Thank you.

10 MR. PRICE: What is the significance of
11 nontidal wetlands --

12 MR. LUDLOW: This definition was prepared when
13 we originally applied to the Corps of Engineers. If I
14 may point? This definition line, as previously said,
15 this was nontidal wetlands by the federal -- I mean,
16 this was uplands by the federal definition. This was
17 nontidal wetlands by the federal definition, not the
18 state definition. So the 25-foot buffer that was being
19 talked about before did not apply here. I think Ms.
20 Hales can probably even elaborate about her own
21 ordinance better than I. The 25-foot buffer did not



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1 come into play, because this was federally defined
2 wetlands, not the state-defined wetlands that is used
3 within the critical areas.

4 Now, the line is no longer -- by the Corps
5 set. It's all prior converted, except for a ditch which
6 we are planning to put one house and one pond through
7 the ditch, which we are mitigating with the State of
8 Maryland. In fact, I think the State will be happier
9 than ever, because we're giving them 14 acres of prior
10 converted farmland going into woods and everything else.

11 MR. PRICE: Then your position would be that
12 there are no nontidal wetlands except for that ditch and
13 the --

14 MR. LUDLOW: By the federal definition, yes.
15 That's the only nontidal wetlands, other than the
16 wetlands which is this area. That is wetlands. Tidal
17 wetlands.

18 MR. PRICE: But under anybody's definition,
19 are any of the lots in nontidal wetlands?

20 MR. LUDLOW: Excuse me?

21 MR. PRICE: By anybody's definition, the



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1 state, the critical area or federal, are any of these
2 lots in nontidal wetlands?

3 MR. LUDLOW: One lot and a pond -- which
4 catches the very -- it's the berm of the pond.

5 MR. BOWLING: The Corps, apparently, has two
6 berms, part of a house site in a community --

7 MR. LUDLOW: Well, right. But one of them is
8 a Phase 1. But we are --

9 MR. BOWLING: When you fill that ditch, how is
10 that property going to drain?

11 MR. LUDLOW: That's a farm ditch. It doesn't
12 even drain a road. It's a totally internal ditch.

13 VOICE: Is that the ditch you're talking
14 between the two properties?

15 MR. LUDLOW: No. The one right through the
16 middle. We are not doing anything with the one that
17 she --

18 MR. BOWLING: You mean, it doesn't do
19 anything now?

20 MR. LUDLOW: No. It's just a farm ditch which
21 the farmers put in.



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1 MR. BOWLING: Drains the farmer's field?

2 MR. LUDLOW: Right. They just divided the two
3 fields in half and put a ditch in. In fact, even the
4 Corps was very specific that the ditch did not even go
5 to Dalesville Road.

6 CHAIRMAN SCHOEPLIN: Could you indicate where
7 that ditch is?

8 MR. LUDLOW: Sure. Right through here.

9 CHAIRMAN SCHOEPLIN: That line right there.

10 MR. LUDLOW: Right there. In fact, the only
11 lot --

12 VOICE: It does go to Dalesville Road. In
13 fact, it's eroded out right now.

14 VOICE: Telephone pole --

15 VOICE: It's eroded out down the telephone
16 pole to the ditch right now where they did put a power
17 cable in, right this minute. I just went by it.

18 MR. LUDLOW: The only lot that as you can see
19 is in the Phase 1 portion, which is not part of this
20 application.

21 CHAIRMAN SCHOEPLIN: As indicated by your



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1 drawings.

2 MR. LUDLOW: Right.

3 MR. VENTRE: What about the county's
4 definitions in the critical area program context of
5 nontidal wetlands?

6 MR. LUDLOW: According to the county's
7 definition, the only reason that was shown on there is
8 because of our dealings to show that we -- you know, the
9 federal definition decides. But, as far as the county's
10 definition, that was not nontidal wetlands. And I would
11 prefer you to get it firsthand from Ms. Hales, otherwise
12 -- you know, I don't want to speak for the county.
13 Otherwise, I'd have 25-foot buffers floating around.

14 MR. PRICE: Where does this VIP approval on
15 Phase 2 stand?

16 MR. LUDLOW: We have our groundwater
17 discharge. In fact, there's two things which you don't
18 have which I'd like to get. Just a minute. Okay. For
19 your information, here is a letter from Department of
20 Natural Resources for a permit for the wells for all the
21 properties.



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1 CHAIRMAN SCHOEPLIN: Are these copies for us?

2 MR. LUDLOW: Yes. You can have them.

3 VOICE: When you indicate "for your
4 information," I presume it's for the record.

5 MR. LUDLOW: Right. For the record.

6 MR. PRICE: Individual wells?

7 MR. LUDLOW: Yes. That's for water supply.

8 VOICE: For all -- for both phases?

9 MR. LUDLOW: Both phases.

10 VOICE: Which --

11 MR. LUDLOW: Excuse me, don't start trouble.
12 I don't have them here.

13 (Laughter.)

14 MR. LUDLOW: And here are two State discharge
15 permits -- discharge to groundwater for both phases,
16 which went through the proverbial public hearings, et
17 cetera, et cetera. I do not think that you had those.
18 That's why.

19 So we have the State's blessing as far as --
20 and also, I think -- I don't mean to be redundant, but I
21 believe you might have had a letter entered from the



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1 Health Department saying that the hydro studies for both
2 phases which were performed, which are something
3 basically new in the last year and a half, for both
4 phases were performed, submitted to the State, and
5 approved.

6 MR. PRICE: On your road coming into Phase 2,
7 you've got a proposed 25-foot wide drainage easement
8 that cuts across the top of the road, what would be the
9 existing ditch, right about where your arrow is.

10 MR. LUDLOW: Okay. That will be from where
11 the low point -- to drain the roadside ditch on that one
12 side.

13 MR. PRICE: And that would be the -- you'd be
14 carrying water from Town Point Road?

15 MR. LUDLOW: No. No. We will be picking up
16 the water -- there's going to be a high point in the
17 proposed road here. Part of it will drain towards
18 Dalesville Road -- Town Point Road, excuse me -- and
19 then the other part will drain to that low point in the
20 road, which will be the outfall ditch, which will then
21 drain into the -- we have to provide roadside drainage.



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1 That's a county requirement.

2 MR. PRICE: I'm going to ask one more
3 question.

4 MR. LUDLOW: Sure. Certainly.

5 MR. PRICE: How about the tidal flow of the
6 other ditch that's right alongside of Mr. Martinetti's
7 road?

8 MR. LUDLOW: Without -- as far as the tidal
9 ditch, those are not -- to differ with everyone else,
10 those are not a daily routine tidal ditch. You know,
11 you will get exceptionally high water in a storm tide,
12 which as we do even -- unfortunately, even on some of
13 our local roadside ditches all over the county. But
14 that is not a even-flow tide, everyday ditch, in my
15 opinion.

16 MRS. MARTINETTI: Do you live in --

17 VOICE: Would you call it tidal wetlands?

18 MRS. MARTINETTI: I'm Mrs. Martinetti, and I'm
19 very, very annoyed at him saying all this stuff. That
20 water comes up that ditch. Now, I have no reason to
21 stand here and lie and tell you that it does not. You



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1 have pictures. I have videos here. You have my
2 husband's car underneath water. And he's going to sit
3 there and say that that ditch does not take water in it.
4 This man went in there. Him and I went in there, and it
5 was dry weather. We walked up the land, and there was
6 water.

7 CHAIRMAN SCHOEPLEIN: Mrs. Martinetti, we
8 appreciate your comments. We'd ask you, though, if you
9 could wait for the completion of this testimony, and
10 then we'd be most pleased to hear from you.

11 MR. MARTINETTI: Sorry. I just get carried
12 away.

13 MR. LUDLOW: I have also been in the ditch,
14 but not as many times as Mrs. Martinetti. I am sure
15 that she has gotten her feet wet with tidal water at
16 times. But, in my opinion, I do not believe that is an
17 even-flow, everyday tidal ditch, at least not in any
18 area that would really affect anything that we do.

19 MR. BOWLING: What did you use for the basis
20 of your -- to determine both the buffer and the critical
21 area line?



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1 MR. LUDLOW: We did naturally a field
2 topography survey locating all the physical features on
3 -- and with reference to national geodetic vertical
4 datum. And from our delineations of the limits of the
5 wetlands and of the property lines, we then measured,
6 scaled, and defined our proposed lines that way.

7 MR. BOSTIAN: Did you use the Natural
8 Resources tidal wetland map?

9 MR. LUDLOW: We did look at that. No, we
10 actually made our definition from the field lines. And
11 naturally, in the tidal areas, where we broke away from
12 the tide and got to the top of the bank, that's where we
13 measured our 100-foot buffer there.

14 MR. BOSTIAN: And did you use an expert
15 authorized by the Army Corps of Engineers to do your
16 nontidal wetland delineation?

17 MR. LUDLOW: We did the delineation with
18 respect with the Corps of Engineers. We have done
19 nontidal wetlands delineations. There are two of us
20 that have done them.

21 MR. BOSTIAN: Your firm?



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1 MR. LUDLOW: Yes.

2 MR. BOSTIAN: And you've done them for the
3 Army Corps of Engineers?

4 MR. LUDLOW: Not for, but in conjunction.

5 MR. BOSTIAN: You've been accepted by the Army
6 Corps of Engineers?

7 MR. LUDLOW: Yes.

8 MR. BOWLING: What's the average elevation of
9 this piece of property?

10 MR. LUDLOW: Ground elevation is six, which is
11 the flood elevation -- 100-year flood elevation. If
12 you'd like, I can give you --

13 MR. BOWLING: I'm familiar with the
14 100-year flood --

15 MR. LUDLOW: It actually gets higher than that
16 in areas. There's knolls at around seven.

17 MR. BOWLING: What's the elevation of your BIP
18 berms? Looking at your drawings, that scale --

19 MR. LUDLOW: They're required by the Health
20 Department to be a minimum of a half a foot above the
21 flood elevation. In our Phase 1 -- we haven't gotten to



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1 the design phase of Phase 2. But in Phase 1, our berm
2 elevation is somewhere right around elevation seven. So
3 we are far in excess even above the -- we need a minimum
4 of 18 inches. Excuse me. We're around 7-1/2 -- top of
5 the berm, because our ground elevation was elevation
6 six.

7 MR. BOWLING: But depending upon ground
8 height, your berm height --

9 MR. LUDLOW: We have to be a minimum of 18
10 inches by criteria. So we are far in excess of over the
11 100-year flood. In fact, we're over the 500-year flood
12 elevation, which is by 7-1/2.

13 MR. PRICE: Would your area designate as marsh
14 -- would you classify that as tidal wetlands?

15 MR. LUDLOW: That is tidal wetlands.

16 MR. PRICE: Up to the area you have designated
17 as --

18 MR. LUDLOW: Right. Right. That was a
19 physical location.

20 MR. PRICE: You did that on site?

21 MR. LUDLOW: Yes.



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1 CHAIRMAN SCHOEPLIN: Trivial question. Why
2 is the tidal wetland line so straight?

3 MR. LUDLOW: That's just the way it is.

4 MR. BOWLING: The open space that you've
5 designated, what nature of land is that? Is that
6 highland as well? Wetlands?

7 MR. LUDLOW: No. Well, elevation seven,
8 elevation six. We have a knoll here, so we are -- the
9 open area in this open ranges from a hair over seven to
10 -- there's a 7.1 over there -- say to maybe a 5.9 NGVD
11 to a say 7.1.

12 MR. BOWLING: Compared to the lower corner
13 down near the marsh, what is that elevation?

14 MR. LUDLOW: We've got an elevation -- there's
15 an elevation three that runs right along here, and then
16 four comes up and runs along the top of the bank, and
17 then five, and then six is right in this area. Then we
18 have a seven, basically where the cul de sac is. It's a
19 knoll as previously mentioned.

20 MR. VENTRE: The contrast show up somewhat on
21 your --



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1 CHAIRMAN SCHOEPLIN: Would you kindly sign
2 in --

3 MR. LUDLOW: Sure.

4 MR. SIMMONS: Gentlemen, I don't have any
5 further questions. If any of you don't have any more
6 questions, for Mr. Ludlow, I'd just like to close my
7 presentation by basically stating that a lot of the
8 witnesses that Mr. Murphy brought forward, as you have
9 indicated, were not expert witnesses, were giving
10 opinions, and I have deferred cross-examination, letting
11 this Board take its -- make its decision based on the
12 evidence that has been presented and let you be the
13 determiners of how much credibility that you wish to
14 give this. But I don't --

15 VOICE: Could I ask Mr. Ludlow a question?

16 MR. SIMMONS: Yes, sir. Feel free.

17 MR. BOSTIAN: We haven't had cross-
18 examination.

19 CHAIRMAN SCHOEPLIN: This is not a trial in
20 that sense. It's a fact-gathering situation. And I'd
21 be pleased, Mr. Murphy, if you would want any comments



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1 after Mr. Ludlow finishes.

2 MR. MURPHY: Fine.

3 MR. SIMMONS: That's basically all that we
4 have. Thank you.

5 CHAIRMAN SCHOEPLEIN: Thank you.

6 MR. SIMMONS: Excuse me. One other question.
7 Mr. Ludlow, your qualifications. What do you do for a
8 living?

9 MR. LUDLOW: I have been -- I run a survey and
10 engineering -- yes, sure anyway -- firm. I've been in
11 the Cambridge area for 18 years, and I have done this
12 work since 1967.

13 MR. SIMMONS: You're a registered land
14 surveyor?

15 MR. LUDLOW: Yes --

16 MR. SIMMONS: That's all we have. Thank you.

17 CHAIRMAN SCHOEPLEIN: Mr. Murphy?

18 MR. MURPHY: Thank you very much. As I
19 understood Mr. Ludlow's testimony, and I really wanted
20 to ask him about this to clarify it. But I thought he
21 said that this drainage wetland that goes across here



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1 ended short of Dalesville Road. I was out there myself
2 this afternoon, and it seems to me it's clear that it
3 comes all the way over to Dalesville Road. It's an
4 optical illusion if it doesn't. I think there's no
5 doubt about it that it does.

6 CHAIRMAN SCHOEPLIN: Thank you.

7 MR. MURPHY: And I'd like to make one more
8 point if I could about the wetlands. I don't want to
9 get too bollixed up here in all the Corps regulations
10 and jurisdictions and all these deadening phrases. But
11 I think there's a reality here. And the reality is is
12 that the man went out and did a wetlands delineation,
13 and he drew this line on the map. And there was a
14 reason for that. And that is is that it displays some
15 of the characteristics of a wetland. And those two
16 characteristics are the hydro situation where the land
17 is close to the water, and, secondly, the hydric soils.
18 Those are the two tests that this property meets.

19 He's got it listed here on his notes, the
20 hydric soils. What is doesn't meet, according to the
21 Corps is, the hydrophilic vegetation, which is the swamp



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1 grass and that sort of thing that it doesn't have
2 because it's been farmed. So that's the exemption the
3 Corps has that they take away -- they say, "We don't
4 consider this wetlands because it's been farmed." But I
5 would respectfully again point out to you gentlemen that
6 that exemption is not in the critical area regulations.
7 If it meets one of the two tests, then it's a wetlands
8 under the critical area test. And it doesn't make any
9 difference that the Corps doesn't consider it to be
10 wetlands.

11 And I'll just point that out. It's at the
12 second column on page 14 of the blue book here. It's
13 usually characterized by one or both of the following.
14 Under the Corps test, it has to be both. Under this
15 test, it's one or both. So I think in answer to Mr.
16 Bostian's question about what are the wetlands there --
17 I think the answer is clear that for the critical area
18 regulations, the wetlands are this area here to the
19 northeast of this line.

20 CHAIRMAN SCHOEPLEIN: Thank you, Mr. Murphy.

21 MR. MURPHY: Thank you.



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1 CHAIRMAN SCHOEPLIN: Does anyone else wish to
2 speak? I know some of you have something to add.

3 MR. LONG: Yes.

4 CHAIRMAN SCHOEPLIN: Mr. Long, would you come
5 forward and just pick up on --

6 MR. LONG: Just very short -- maybe I
7 misunderstood what Mr. Ludlow, the architect -- did I
8 hear you say this land was matapeak (phonetic)?

9 MR. LUDLOW: No. I didn't specify --

10 MR. LONG: What did you testify --

11 MR. LUDLOW: I didn't testify the soil --

12 MR. LONG: They asked you and -- I'm sorry.
13 What did you --

14 MR. SIMMONS: Not where your hand is. Down
15 where the houses are.

16 MR. LONG: Down here?

17 MR. LUDLOW: That's --

18 MR. LONG: Okay. There's not much matapeak
19 there, is there? I would assume farming ground, that
20 most of this is --

21 MR. LUDLOW: It's matapex, according to the



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1 soil map.

2 MR. LONG: Pardon?

3 MR. LUDLOW: It's matapex according to the
4 soil map.

5 MR. LONG: But the matapeak which is actually
6 -- should be because there is a high spot back over here
7 by Martinetti's. It should be a very, very small
8 portion of this.

9 CHAIRMAN SCHOEPLIN: Do we have a soil map?

10 MR. VENTRE: Yes. We have a soil map from the
11 Dorchester County --

12 MR. LONG: That was very deceiving. That's
13 pretty hot ground, if that was, you know, just
14 matapeak. And this little ditch seems to be the big
15 controversy. Half hour before I came to this meeting,
16 this ditch is now -- maybe at one time it was not --
17 draining into Dalesville Road. At this point in time,
18 it is draining into Dalesville Road, because there are
19 power line cables there that make the connection, and it
20 is eroded out approximately that deep. But they are --
21 it is into Dalesville Road at this very moment.



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1 CHAIRMAN SCHOEPLEIN: Thank you, Mr. Long.

2 MR. POMEROY: Can I speak briefly to a
3 question Mr. Price raised which I felt Mr. Ludlow
4 evaded? He asked, according to anybody's definition of
5 wetlands, if these housing sites are on wetlands, and
6 they are. It says in criteria -- or in list 20, there
7 are nontidal or tidal wetlands in this boundary. So I
8 think that answers your question. And, in fact, if I
9 interpret that line properly, the majority of the 40
10 acres is nontidal wetlands. Everything to the north of
11 the line of those arrows are pointing the right way.

12 MR. LUDLOW: Can I respond to his question?

13 CHAIRMAN SCHOEPLEIN: We're here to gather
14 some information.

15 MR. LUDLOW: To answer or to respond to his --
16 when that plan was made, it was before the federal
17 definition change for prior conversion.

18 MR. POMEROY: But he said according to
19 anybody's definition, and I'm saying there is a
20 definition that says they're wetlands. That's all I'm
21 saying. You know, so the experts get -- give their



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1 testimony.

2 CHAIRMAN SCHOEPLEIN: Does anyone else have
3 comments they wish to address?

4 MR. MARTINETTI: Yes. In response before to
5 his comment that my wife -- I don't know the gentleman's
6 name -- got her feet or may have gotten her feet wet in
7 the ditch was quite a statement. It seems to be that
8 there are two differing opinions here as to how much
9 water flows up and down this ditch. There seems to me
10 the only solution to that situation would be if you
11 would personally come out there and view this situation
12 yourself in all fairness.

13 MRS. MARTINETTI: I have a VCR. If you ever
14 have time you'd like to --

15 MR. MARTINETTI: Well, incidentally, you'll
16 see whether or not you get your feet wet if it goes up a
17 little bit higher.

18 (Laughter.)

19 CHAIRMAN SCHOEPLEIN: Mrs. Martinetti, if you
20 would want to forward a copy of that to the Critical
21 Areas Commission with your name, it will be entered into



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1 the record.

2 MRS. MARTINETTI: Okay.

3 VOICE: Or leave it here.

4 CHAIRMAN SCHOEPLIN: Or leave it here, I
5 guess, if it's an extra copy. Are there any other
6 comments this evening?

7 MR. SIMMONS: Sir, I just have a question for
8 procedure. I know that the record closes -- I believe
9 that you gave the date, and I have it in my notes, but
10 will all that record be available for comment up until
11 the time that the record closes? In other words, it
12 closes on the --

13 CHAIRMAN SCHOEPLIN: Close of business, 4:30
14 p.m., Tuesday, September 3rd.

15 MR. SIMMONS: So it would be available to look
16 at up until that time to make any late additions or
17 rebuttals?

18 CHAIRMAN SCHOEPLIN: That is correct.

19 MR. SIMMONS: Thank you.

20 CHAIRMAN SCHOEPLIN: This is an open process.

21 I want you to note the number of the Critical Areas



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1 Commission, the phone number in Annapolis. The area
2 code is 301. The main number is 974-2426. Area code
3 301-974-2426. And also any information.

4 MR. BOSTIAN: And the staff member, Mr. Tom
5 Ventre, is here with us tonight.

6 CHAIRMAN SCHOEPLEIN: Mr. Tom Ventre.

7 MR. VENTRE: Thank you, Mr. Bostian. I
8 appreciate it.

9 MR. BOSTIAN: You're welcome.

10 MR. VENTRE: Let me call your attention again
11 to the small pieces of paper on the podium that have the
12 mail address and the telephone number for the Commission
13 office in Annapolis.

14 CHAIRMAN SCHOEPLEIN: Excellent. Excellent.
15 This panel is hereby closed. Thank you for coming.

16 (Whereupon, at 10:15 p.m., the above-
17 entitled hearing was adjourned.)

18 (Exhibits not attached.)
19
20
21



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E X H I B I T S

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CERTIFICATE OF NOTARY

I, CHRIS HOFER, the officer before whom the foregoing testimonies were taken, do hereby certify that the testimonies which appear in the foregoing transcript were taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said testimonies are true records of the testimonies given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these testimonies are taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.


CHRIS HOFER
Notary Public in and for
the State of Maryland

My Commission Expires:

8-30-94



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