

Public Hearings - St Mary's - Growth Allocation Projects 1991 MSA_51830-100

BEFORE THE CHESAPEAKE BAY CRITICAL AREA COMMISSION

IN THE MATTER OF :
ST. MARY'S COUNTY :
GROWTH ALLOCATION PROJECTS :

Thursday, September 5, 1991

Pursuant to Notice, the above-entitled hearing was held before ROBERT SCHOEPLEIN, CHAIRMAN, at St. Mary's County Governmental Center, Leonardtown, Maryland 20650, commencing at 7:15 p.m., there being present on behalf of the respective parties:

STAFF MEMBERS:

JON GRIMM, Department of Planning and Zoning
SCOTT KUDLAS, Department of Planning and Zoning
REN SEREY, Critical Area Commission
CLAUDIA JONES, Critical Area Commission

PANEL MEMBERS:

JAMES E. GUTMAN, representing Western Shore
MICHAEL J. WHITSON, representing St. Mary's County
SAMUEL BOWLING, representing Charles County
LOUISE LAWRENCE, Department of Agriculture

ALSO PRESENT:

JIM KENNEY, representing Avenmar
DON FRANYO, general partner of Potomac Investments
JIM EPPARD, Eppard Properties

REPORTED BY: SUSAN DILLEY, NOTARY PUBLIC



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

2 CHAIRMAN SCHOEPLEIN: Ladies and gentlemen,
3 the St. Mary's panel of the Chesapeake Bay Critical
4 Areas Commission is called to order.

5 We're here this evening to hear the
6 application of St. Mary's County to the St. Mary's
7 County panel for Growth Allocation regarding specific
8 parcels of property.

9 I'm going to ask each member of the panel to
10 introduce himself and herself to you, and identify
11 themselves as they will, before we begin the hearing.
12 We'll start with my right.

13 MR. GUTMAN: My name is James E. Gutman. I'm
14 from Anne Arundel County but I represent the Western
15 Shore for the Critical Areas Commission.

16 MR. WHITSON: I'm Michael Whitson from St.
17 Mary's County.

18 MR. BOWLING: I'm Sam Bowling from Charles
19 County.

20 MS. LAWRENCE: Louise Lawrence. I represent
21 the Department of Agriculture.



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1 CHAIRMAN SCHOEPLIN: I'm chairing the
2 evening. I'm Bob Schoeplein and I represent the
3 Maryland Department of Economic and Employment
4 Development on the Critical Areas Commission.

5 What I do want to do, in summary fashion, is
6 to indicate to you what the process is with regard to
7 growth allocation and growth allocation requests. It
8 may sound somewhat tedious, but what it is is a system
9 of checks and balances that allows the commission, as a
10 body, to receive as much information as possible prior
11 to rendering their decision.

12 The Critical Areas Commission as a body, the
13 26-member commission, has received a briefing from the
14 staff with regard to the growth allocation request from
15 St. Mary's County. Yesterday, at the commission, as a
16 body, in the briefing, we were presented with large
17 diagrams which we'll be using here, which was explained
18 to the Commission as a body.

19 The Commission understands, from the briefing
20 yesterday and from two staff reports, what we would
21 call the "elements," or the basics of the issues that



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1 are involved in the growth allocation requests for this
2 evening.

3 At the back of the room, on a small table
4 there, there is a sign-up sheet for you to testify or to
5 present your comments to us. A sign-up sheet helps us
6 because it more clearly identifies, in addition to our
7 court reporter, your name and your address, either your
8 residence or your business address, as you are
9 presenting your information.

10 Also on the back table are the two staff
11 reports, for your inspection, regarding our initial
12 briefings for the growth allocation requests for St.
13 Mary's County. There's a third document back there for
14 your inspection and that is the Critical Areas policy
15 with regard to growth allocation procedures.

16 This evening, this is a St. Mary's panel, and
17 we are a subpanel of the 26-member body of the
18 commission. And we're here to receive information.
19 This evening we will not render any decisions. We will
20 input the information that you present to us. In
21 addition to what we hear this evening, the record will



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1 remain open until the close of business on Thursday,
2 September 19th. September 19th, that's two Thursdays
3 from now. You may submit any information that you
4 desire in writing to the Commission, and the address of
5 the Commission on West Street in Annapolis, Maryland,
6 appears on the literature in the back.

7 Also, if you have any inquiries regarding the
8 process itself, the phone number for the Critical Areas
9 Commission is Area Code 301/974-2426.

10 Now, again, I want to reiterate that this
11 evening the panel is receiving information from you.
12 The applicant is not the principals or the property
13 holder, the applicant is St. Mary's County applying to
14 the Critical Areas Commission for growth allocation. We
15 will listen to all comments regarding consideration of
16 the property to be, if you will, used or allocated in
17 the proposed methods, and that, plus the written
18 testimony that we received prior to September 19th, will
19 be the basis for this panel to make a recommendation to
20 the 26-member body as a whole. Then the Critical Area
21 Commission as a body, as a whole, will once again review



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1 the entire information available to it, starting with
2 the initial staff reports, starting with the
3 supplemental information provided by the staff,
4 including everything that is presented this evening,
5 prior to making its recommendations. So, that's the
6 process that we're working with this evening.

7 I'm going to ask for the representatives of
8 St. Mary's County -- Ren, do you have any comments to
9 make in addition to that.

10 MR. SEREY: Sure. The agenda is also
11 available. It's on the table right here.

12 CHAIRMAN SCHOEPLEIN: Yes. The agenda is on
13 the table here and on the table in back. And we're
14 going to take -- we have six parcels and we're going to
15 take them in the order of presentation as agreed between
16 the staff and the representatives of St. Mary's County.
17 So, we're going to do them one parcel at a time.

18 I was waiting for Ren to return here because I
19 want to introduce them to you as well. We have two
20 members of the professional staff of the Critical Areas
21 Commission assisting us this evening. Claudia Jones is



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1 to my immediate right and Ren Serey is the gentleman who
2 has just come in.

3 Are there any comments regarding the
4 procedure? If not, then I'm going to request that the
5 representatives of St. Mary's County make an initial
6 presentation to the panel.

7 MR. GRIMM: Thank you, Mr. Chairman. My name
8 is Jon Grimm. I'm the Director of Planning and Zoning
9 for St. Mary's County. I'll make some introductory
10 comments and then turn the floor over to Scott Kudlas,
11 who is our environmental planner, and who is presently
12 in charge of implementing the county's Critical Area
13 programs and run through the specific applications on a
14 parcel by parcel basis.

15 I'd like to recognize three members of our
16 Board of County Commissioners who are in our audience.
17 Commissioner President, Buddy Loffler, Commissioner
18 Barbara Thompson, and Commissioner John Lancaster are
19 each here this evening, as well as a number of the
20 landowners for whom the County has made the request of
21 growth allocation. We have someone, either a landowner



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1 or an agent here representing each of the cases this
2 evening.

3 This is our first annual growth allocation
4 which contains two components this year. One a
5 competition, and a design component. The three cases
6 are the Avenmar Community Center, Bashford Creek
7 Estates, and the Charles -- Calvert and Chesapeake
8 Industrial Park.

9 These also are being brought forward with
10 three minor subdivision applications, the Eppard
11 property, Lore's Landing, and Maydel Manor.

12 We found that this annual competition has
13 been, this first annual competition has been a learning
14 experience, not only for the county staff but as well,
15 I think, for the state staff in working through a
16 program, which, to my knowledge, is the first of its
17 kind, actually, in the state, particularly because of
18 the design competition component of the process.

19 We developed, I think, a good working
20 relationship with the staff, and the presentation you
21 will see this evening are the result of a long process



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1 which started about a year ago and which have gone
2 through a series of iterations to reach their final
3 stage tonight so that we can best implement the needs of
4 the county's program and state criteria.

5 You'll see a number of things played off here
6 in the presentation this evening. Not only the critical
7 area criteria in the local program, but also local
8 application of zoning, St. Mary's County zoning
9 requirements and St. Mary's subdivision practices. So
10 all those things will be explained and, hopefully,
11 they'll adequately address any of the questions or
12 concerns you might have about the proposals that are
13 being brought forward.

14 The County's review was conducted in such a
15 way that we focused our analysis of the projects on
16 how well we thought the projects met the critical area
17 program's requirements for growth allocation as well as
18 the state criteria and the general principals which
19 have been established to guide the growth allocation
20 process. And not every case, I think you'll see, met
21 every one of the general principals or guiding



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1 policies, but we have considered them and we have
2 reviewed each of those in fashioning the proposals and
3 think that we've reached a legitimate middle ground or
4 final decision which adequately and properly implements
5 the local desire for additional growth along the
6 shoreline as an economic development project, as well
7 as balancing the environmental considerations that are
8 contained in the program and criteria.

9 Each of the projects will be explained by
10 Scott, in detail, addressing how those criteria have
11 been applied, how the guiding principals have been
12 examined, and how we believe the project meets all of
13 the requirements. Scott's going to give you a little
14 bit more detail about the competition process right now
15 because it is unique. Thank you. Scott?

16 MR. KUDLAS: Mr. Chairman and members of the
17 panel, the general public, my name is Scott Kudlas. I'm
18 the environmental planner with St. Mary's County, as Jon
19 mentioned. I will be presenting the items for review
20 here tonight.

21 I guess I would like to start off initially by



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1 making a couple of detail comments about the nature of
2 our program. I know as members of the Critical Area
3 Commission, it's very difficult for you to get a
4 detailed understanding of all the local programs, and I
5 hope to help you on your way towards understanding ours
6 here tonight.

7 First of all, I think I'd like to talk a
8 little bit about the structure of the St. Mary's County
9 Critical Area Program. It's primarily a two-part
10 document. It's a 10-section book that, for the most
11 part, stands alone but is incorporated by reference into
12 our zoning ordinance. The first five parts of that
13 document are primarily program policies and comprise the
14 policy document of the critical area for the purposes of
15 St. Mary's County.

16 The second part, parts six through nine, for
17 the most part of this document are the actual critical
18 area requirements for criteria regulations.

19 Just to give you a little bit more background
20 about the growth allocation process that we went through
21 in the last year, we, as I think Ren mentioned to you a



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1 little bit at your regular commission meeting yesterday,
2 hear growth allocation requests one time per year in a
3 competition format in three different categories.

4 We have chosen to amortize our entire five
5 percent growth allocation implement over a 15-year
6 cycle. So each year there is approximately 100 or 120
7 acres available for individual requests.

8 We, as I said, review these applications in
9 three categories. The first category is the design
10 competition which we feel is a system which, for the
11 most part, internalizes the guidelines for growth
12 allocation from the critical area criteria. We give
13 points for levels or degrees of compliance with those
14 guidelines through that process.

15 We also have what we call "minor subdivision
16 lottery" category. In that particular category, if we
17 have requests of subdivisions of five lots or less
18 which request more than the allotted acreage per year,
19 we are required to have a lottery. However, this year
20 we did not exceed that allotted amount, so we did not
21 have to conduct a lottery.



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1 We did not have any submissions this year in
2 our final category, and that category is the single-lot
3 category. It functions very much like a interfamily
4 transfer, however, it creates lots that are conveyable
5 outside of the family.

6 The review and scoring for the design
7 competition are primarily in six category areas. Of
8 course there's the general locational points which, as
9 I said, gives points for compliance with the critical
10 area growth allocation locational principles for
11 adjacents.

12 We have what we call "design points." And
13 those points are given for proposal use types and for
14 the degrees to which projects cluster. We also have
15 what are "quality points" and "resource protection
16 points," in which points are given for compliance with
17 what we feel are the growth allocation guidelines for
18 water quality protection and habitat protection. We
19 also give points for water dependent facilities and we
20 give certain bonus points for sewer and water and that
21 type of thing.



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1 That would conclude my introductory comments
2 about the growth allocation process. If I could, I
3 would start to review each project within a category.
4 So I would like to start with "design competition"
5 category and just go through them alphabetically. And
6 I'll start with the Avenmar project. We have a couple
7 of graphic aids here tonight. Hopefully, they'll assist
8 you on some of these items.

9 The Avenmar project is a community center
10 project which both state and local critical area staff
11 advised the applicant that within the RCA, this use was
12 too intense for that designation and required growth
13 allocation in order to accommodate it. This is the
14 location of that facility.

15 The county is requesting a use of growth
16 allocation for this project for 16 acres of growth
17 allocation to change that designation in the outlined
18 area from RCA to LDA. The property owner and the
19 applicant is the Potomac Land Investment Corporation.
20 This project is located off of Plank Road in St. Mary's
21 County, which would be this area here on our St. Mary's



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1 County Critical Area maps.

2 If I could, I would go through each of the six
3 guidelines individually and say how we believe that this
4 project meets those requirements.

5 CHAIRMAN SCHOEPLEIN: If we have questions for
6 clarification may we interrupt you?

7 MR. KUDLAS: You sure may. This overall
8 project is about 492 acres. 222 acres of it is in the
9 critical area. The first guideline for growth
10 allocation is that "new IDA should be located in LDA
11 areas or adjacent to existing IDAs." That doesn't
12 apply in this case because it's a request for LDA.

13 Number two: "The new limited development area
14 should be located adjacent to existing LDAs or IDAs."
15 This project is located here. It is not adjacent to
16 existing LDAs, however, this project here, the Society
17 Hill development project is of LDA character.

18 The third one: "No more than half of the
19 allocated expansion within the RCA shall be located in
20 nonadjacent situations."

21 CHAIRMAN SCHOEPLEIN: Is this LDA now?



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1 MR. KUDLAS: No, sir. It's outside the
2 critical area.

3 CHAIRMAN SCHOEPLEIN: Oh, I see what you mean.

4 MR. KUDLAS: The projects presented this year
5 amount to only about 70 acres so we aren't even close
6 to meeting our 843 acre allotment.

7 Number four: "The impacts of new IDAs and LDAs
8 on habitat protection areas and wildlife or on water
9 quality must be avoided or minimized." We believe that
10 this project, in maintaining its development area at
11 least 300 feet from the water with substantial buffer
12 area, maintaining the rest of this open space area in
13 its natural condition, as well as doing other habitat
14 promoting activities like installing nesting boxes, et
15 cetera, is an item which meets this standard.

16 We also have correspondence from the Forest
17 Park and Wildlife Service which relates to a species in
18 need of conservation. There's a plant species on this
19 project, but not actually within this area, and the
20 applicant has proffered to create a habitat protection
21 area easement for the habitat area for that species.



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1 MR. GUTMAN: I wonder if I might just
2 interrupt and inquire about the linkage between those
3 two properties. What exactly -- is there a reason for
4 that? What does it achieve?

5 MR. KUDLAS: I'm not sure what is to be
6 achieved. I think there are a couple of reasons for why
7 they do this. One is in our local program it says that
8 "the mapped area shall include all existing impervious
9 surfaces or existing roads." That may have been one
10 reason that we used this kind of connection. There is
11 also a concern that you could not have two "envelopes,"
12 development envelopes, without having two separate and
13 distinct 20-acre set-asides. We debated and discussed
14 this through the public hearing process. The Planning
15 Commission and, subsequently, the County Commissioners
16 endorse a concept that you could have multiple
17 envelopes, provided that you did have one 20-acre set-
18 aside.

19 We have another project here, and the next
20 project, the Bashford Creek project, which does it in a
21 different way. So, in a sense, we presented you with



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1 alternatives for reviewing and, perhaps, endorsing that
2 concept.

3 CHAIRMAN SCHOEPLEIN: What is the set-aside
4 here?

5 MR. KUDLAS: The set-aside here is, well, it's
6 actually about 27 acres. It's up here in this part of
7 the project.

8 MR. BOWLING: Does that link represent an
9 existing road?

10 MR. KUDLAS: There is an existing farm road
11 there. At one time, through the review process, the
12 applicant had thought perhaps using part of that road as
13 an access to these lots here on the site. However,
14 through the review process, that idea was discarded and
15 the applicant has chosen another alternative for
16 accessing those lots. That was done, primarily, for
17 habitat protection concerns.

18 MR. BOWLING: What are the proposed uses of
19 the two pieces?

20 MR. KUDLAS: This area here, primarily
21 encompasses what could best be described as a community



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1 center complex. It includes a conference type center,
2 it includes a stable, it includes a farm manager's
3 residence, it also includes a structure for the storing
4 of sailboats and canoes, which are contemplated for the
5 community pier.

6 MR. BOWLING: And the other area?

7 MR. KUDLAS: The other area is for residential
8 development. There was a density issue at one time,
9 considered because of the 20-acre set-aside, that that
10 20 acres should not be counted for RCA density if you're
11 required to set it aside. So, in order to, I think,
12 "cover you butt," so to speak, the applicant has
13 included that in their request.

14 MR. WHITSON: Scott, are all of the proposed
15 uses in the community center deal or consistent in
16 the permitted uses in the LDA, are they now
17 according to plan?

18 MR. KUDLAS: The residential would be and the
19 community center is a conditional use in the RPD.
20 However, the applicant was advised by our staff to seek
21 a conditional use approval from the local Board of



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1 Appeals and that approval was granted.

2 MR. BOWLING: How many residential units in
3 the residential?

4 MR. KUDLAS: This area would encompass an area
5 of three lots as I understand it.

6 CHAIRMAN SCHOEPLIN: Is there an access road
7 contemplated from outside to tend those two LDARs?

8 MR. KUDLAS: On the outside?

9 CHAIRMAN SCHOEPLIN: Yes.

10 MR. KUDLAS: Yes, sir. There's a road coming
11 from Bretmar Drive here that comes down and accesses, as
12 well as another one from this side.

13 CHAIRMAN SCHOEPLIN: So your rationale -- I'm
14 affirming what you said -- your rationale for connecting
15 the two does not include the entirety of the impervious
16 surface within the critical area, but rather just to
17 link the two units.

18 MR. KUDLAS: Correct. It was to present an
19 option and try and get an endorsement from the
20 commission about the permissibility of two development
21 envelopes and whether or not they needed to be



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1 contiguous to each other.

2 MR. BOWLING: Is the balance of that space
3 going undeveloped?

4 MR. KUDLAS: This area here will be
5 undeveloped. This entire area here as well as this 27-
6 acre part. So there's about a total of 180 acres that
7 won't be developed.

8 MR. GUTMAN: Who will own that?

9 MR. KUDLAS: The Homeowner's Association will
10 own that property.

11 CHAIRMAN SCHOEPLIN: The entirety of the
12 property?

13 MR. KUDLAS: Yes, that's right.

14 MR. WHITSON: We broke your rhythm. Sorry,
15 Scott.

16 MR. KUDLAS: That's okay.

17 CHAIRMAN SCHOEPLIN: I have a question about
18 the nature of erosion in that bay there and what's
19 contemplated in terms of erosion control on this
20 property.

21 MR. KUDLAS: This particular site, the



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1 critical area line, for the most part, demarcates the
2 coastal plain area from a steep slope area which tends
3 to come up right here. So, it's a very flat area.
4 There's a very heavily wooded naturally occurring buffer
5 as well as some wetlands there.

6 MR. GUTMAN: I think I'd like to go back a
7 minute to this homeowner's association. You say they
8 will have title to that property?

9 MR. KUDLAS: That is what we heard through the
10 development review process. Yes, sir.

11 MR. GUTMAN: That's what you've heard. I'm
12 not quite sure. Is this a rumor?

13 MR. KUDLAS: That was what was proposed by the
14 applicant during the review process and that is what was
15 approved by the local approval boards through that
16 process.

17 MR. GUTMAN: Is there any limitation of any
18 kind that is going to be attached to the deed as to how
19 that open space is to be utilized?

20 MR. KUDLAS: Yes, sir. I think the program
21 clearly points out what that land can be utilized for.



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1 If you'd like, I would read that back to you. That was,
2 in my opinion, a condition of the approval. "This area
3 could be used for resource utilization activities. It
4 shall retain its natural features and shall be
5 restricted from future subdivision or development."

6 MR. GUTMAN: Upon what?

7 MR. KUDLAS: By restrictive covenants or
8 conservation easements or plat notes, or all of the
9 above.

10 MR. GUTMAN: Will that be in anyway enforced
11 by county government?

12 MR. KUDLAS: I believe so, sir. That will be
13 -- these projects, once they are approved by you, will
14 have to go through the final subdivision approval
15 process. That can be made a condition that the party is
16 -- that the county is a party to that, if that's
17 something that the local approval board would consider.

18 MR. GRIMM: It is our intent to require
19 restrictive covenants in the form of deed covenants and
20 subdivision plat restrictions that would be enforced by
21 the county's planning and zoning office. We have four



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1 zoning inspectors, one of whom principally concentrates
2 on the critical area and other environmental concerns.
3 So that would be one mechanism that we would follow-up
4 on this kind of a restrictive covenant.

5 MR. GUTMAN: Has the county, in fact, done
6 this on other properties, played in a role such as you
7 are describing, and has this been utilized in other
8 developments?

9 MR. GRIMM: Yes, it has.

10 MR. GUTMAN: Where there's a covenant that the
11 county government has an enforcement responsibility?

12 MR. GRIMM: Yes, sir.

13 MR. GUTMAN: So there's nothing new about it
14 for the county to do this sort of thing?

15 MR. GRIMM: No, sir.

16 MR. KUDLAS: And I would just add to that that
17 the county has gained some experience in this type of
18 application for a reforce station or litigation
19 projects. We have done that. We have enforced those
20 agreements.

21 MR. GUTMAN: Thank you.



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1 MR. KUDLAS: You're welcome.

2 MR. BOWLING: One further question. Any of
3 this area farm land?

4 MR. KUDLAS: Not at this time, per se. I
5 mean, they have cut some of the hay and stuff for the
6 horse areas, but it's not actually in a crop.

7 MR. BOWLING: It's not grain or tobacco or
8 anything like that.

9 MR. KUDLAS: No.

10 MR. BOWLING: When he spoke of resource
11 utilization I was attempting to define what sort of
12 resources are we talking about. Are we talking about
13 timber, gravel?

14 CHAIRMAN SCHOEPLIN: May I ask? Can you hear
15 us up here because we're close. We can speak louder.

16 VOICE: Not very well in the back.

17 CHAIRMAN SCHOEPLIN: Okay, then we'll speak
18 louder. I have a question --

19 MR. KUDLAS: I was starting to answer Sam's
20 question. I would answer you, Sam, by saying that
21 unless otherwise restricted they would have the



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1 opportunity to do the things that are permitted under
2 the critical area program. So if they had a timber
3 harvesting permit that was approved by the district
4 forestry board, unless that was eliminated as an
5 opportunity through this review process, that would be
6 available.

7 MR. BOWLING: But that would be at the control
8 of the homeowner's association?

9 MR. KUDLAS: I think it would be at the --
10 right, at the request of the homeowners's association.

11 MR. BOWLING: It would be unlikely to do
12 anything on site --

13 MR. KUDLAS: With the upscale nature of this
14 development, I would hope so.

15 MR. BOWLING: Yeah, I think so. Thank you.

16 MR. KUDLAS: Any other questions?

17 CHAIRMAN SCHOEPLIN: This umbilical cord
18 concept is new to me. That could be a road but need not
19 be a road because of the nature of topography or the
20 developers consideration. The developer could have a
21 pervious surface that would not exactly match what you



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1 have there.

2 MR. KUDLAS: Well, I would just say that under
3 the plan approved by the local approval entities that
4 they did not approve a road there. However, a horse
5 trail was contemplated and shown on the plans in that
6 location and that would be permitted.

7 CHAIRMAN SCHOEPLEIN: What determined the
8 width of that connecting strip?

9 MR. KUDLAS: I think it would just be existing
10 farm road. Just the 10 or 12 foot widths.

11 CHAIRMAN SCHOEPLEIN: Are there any other
12 questions?

13 MR. BOWLING: One more. The residential area,
14 where is your road access to that?

15 MR. KUDLAS: Okay. The road access to that
16 comes down about here and comes in here...

17 MR. BOWLING: It doesn't show on the plat.

18 MR. KUDLAS: Yes, it's not on the plat. It is
19 on the preliminary plan. If nothing further, I'll go on
20 to the next project, Bashford Creek Estates.

21 CHAIRMAN SCHOEPLEIN: We're on Bashford Creek



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1 Estates.

2 MR. KUDLAS: The county is requesting use of
3 growth allocation to accommodate a 10-lot subdivision
4 for a change in overlay classification from RCA to LDA
5 for approximately 13.83 acres. This particular project
6 is owned by Allen R. Schmidt. It's located off Mill
7 Point Road in Maddox, Maryland. It's tax map 22, block
8 18, parcel 5. The entire tract has approximately 65.43
9 acres, 64.07 of that within the critical area. The
10 applicant's parcel of land is here, and, as you can see,
11 it is contiguous to an existing LDA.

12 To go through those items again, the first
13 one related to IDA does not apply. The second one, the
14 adjacency to the existing LDA. It is adjacent both
15 across the street and across this little tidal inlet on
16 two Mill Point shores, which is an existing LDA. So the
17 project is contiguous.

18 This project does have two separate
19 unconnected development envelopes. As I said, it
20 serves, for our purposes, as an alternative to the other
21 project. It also, I think, tries to incorporate, as the



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1 other project does, a design concept, a community-based
2 design concept, where you have several different pods
3 surrounding a 20-acre set-aside.

4 The half of the Growth Allocation thing, I
5 don't think that that applies. The Resource and Habitat
6 Protection, the letters from Forest Park and Wildlife
7 indicate that there are no threat to endangered species
8 on this site. The tidal wetlands have been delineated
9 and the 100 foot buffer has been drawn from them. We
10 feel that that particular habitat protection area is
11 protected. We feel delineated wetlands do not exist on
12 the site with the exception of the existing farm pond.
13 So, as such, we don't feel that there is any impact to
14 any habitat protection.

15 As far as water quality is concerned, we have
16 the 100 foot buffer here and I'm not clear as to the
17 stormwater management. Is that an average of the lot
18 sizes? I don't recall.

19 The 300 foot buffer is not met by this
20 project. However, in situations like this, we feel that
21 the guideline is a little too restrictive. In this



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1 particular project we have a fairly narrow piece of
2 land. If we were to have a 300 foot buffer, it would
3 push the developable area in this lot into areas of
4 unpercable soils, and as such, this project, for the
5 most part, would be unavailable for the use of growth
6 allocation.

7 It would seem to me that, with that in mind,
8 that that particular requirement would penalize the
9 little guy from being able to use growth allocation and
10 I think that goes contrary to the format we set up in
11 our critical area program where we have the opportunity
12 for smaller lots to use growth allocation in two
13 different categories in our program. To maintain that
14 300 buffer on such projects, as I said, we feel is too
15 restrictive.

16 I will take questions at this time.

17 CHAIRMAN SCHOEPLEIN: In the previous parcel,
18 you had the two linked, and by linking them, you had a
19 20-acre set-aside. Now, in this instance, they're not
20 linked.

21 MR. KUDLAS: That's correct. As I said, both



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1 the Planning Commission and the County Commissioner's
2 reviewed that issue. We had a long debate about it and
3 a long discussion about it, and what we finally decided
4 was that it was appropriate to have separate development
5 envelopes provided that one growth allocation of 20-
6 acre set-aside was provided and that a master plan for
7 the entire property, a one-time kind of idea, was
8 presented. A total build out, if you will.

9 MR. WHITSON: Is that the case in this? Will
10 that be all the permitted development on the site?

11 MR. KUDLAS: I would say that this proposal
12 hasn't used it all up. However, the applicant is on
13 record, and I think the Planning Commission and,
14 perhaps the county commissioner's have endorsed that
15 this project has used it up.

16 CHAIRMAN SCHOEPLEIN: Who else has set-aside
17 in this situation?

18 MR. KUDLAS: In this situation, the existing
19 landowner would own it, I believe. He has an existing
20 Christmas tree farming operation and would maintain that
21 in that agricultural use.



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1 MR. GUTMAN: Is it conceivable that might be
2 sold?

3 MR. KUDLAS: It could be sold but not for the
4 purposes of development.

5 MR. GUTMAN: Again, there would be a deed
6 restriction?

7 MR. KUDLAS: Yes.

8 CHAIRMAN SCHOEPLIN: On the individual lot
9 restrictions, you have what I would call "footprint" of
10 the acreage that will be developed. What protects the
11 acreage that will not be for unit use?

12 MR. KUDLAS: Well, the area that is not within
13 the lot is, in this case, the 100 foot buffer and that
14 is already protected in our opinion. These areas here,
15 as Mr. Gutman points out, could have a restriction or
16 plat note or deed covenant placed on it to maintain that
17 protection. In this case, it's --

18 CHAIRMAN SCHOEPLIN: Could or would? Could
19 or will? It will have --

20 MR. KUDLAS: Excuse me?

21 CHAIRMAN SCHOEPLIN: It will have a



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1 restrictional covenant.

2 MR. KUDLAS: Oh, yes, sir. On this project
3 the total restricted area does include this parcel here,
4 this little strip on the side of the --

5 CHAIRMAN SCHOEPLIN: Can you help me with one
6 thing. I've read the staff reports and I attended the
7 briefing yesterday, but I still need some clarification
8 regarding the lot size of 1.5 acres.

9 MR. KUDLAS: The lot size of 1.5 acres applies
10 only in the minor subdivision and the single-lot
11 subdivision. That is a maximum lot size specified by
12 the ordinance. However, that does not apply in a design
13 competition.

14 CHAIRMAN SCHOEPLIN: Thank you. Any other
15 questions.

16 MS. LAWRENCE: The 300 foot buffer -- I'm not
17 really familiar with that. Is that a guideline that
18 your program has or is it a requirement for the program?

19 MR. KUDLAS: We feel it is a guideline of the
20 program. We, as I said, in the design competition give
21 the highest number of points in the resource protection



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1 section, I believe, for establishing a 300 foot buffer.

2 I'd like to take the third parcel.

3 The next project is the Calvert Estates and
4 Chesapeake Industrial Park.

5 CHAIRMAN SCHOEPLEIN: Calvert Estates and
6 Chesapeake Industrial Park.

7 VOICE: Mr. Chairman, if we could have you
8 speak up a little bit with your questioning.

9 CHAIRMAN SCHOEPLEIN: I shall do that. Thank
10 you. I taught at the university and they called me
11 "Mumbles." I'll work at it.

12 MR. KUDLAS: In this particular project the
13 county is requesting the use of growth allocation in the
14 amount of 9.25 acres or a change in overlay
15 classification from LDA to IDA to accommodate a mixed
16 use development.

17 This mixed use development has two components.
18 It has a cluster townhouse component which would be
19 located in this area here, and a light industrial
20 component which would be here, and would be slightly
21 expanded to include this area here.



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1 This particular project is owned -- well, it's
2 a joint venture between the Maryland Capital Corporation
3 and Phillip Dorsey, III. It's located on Route 5, on
4 the southside of Route 5 between Cedar Lane and Gregory
5 Road, just past Leonardtown, which would be right here.
6 This would be the area.

7 MR. GUTMAN: Where's Cedar Lane, please.

8 MR. KUDLAS: Cedar Lane is this lane here.
9 Gregory Road is this road here.

10 MR. GUTMAN: Is it 245?

11 MR. KUDLAS: This is Highway 5.

12 MR. WHITSON: The treatment plant we just
13 passed --

14 MR. KUDLAS: Yes.

15 MR. WHITSON: -- it's immediately south of
16 that. It's adjacent to that.

17 MR. KUDLAS: Remember the treatment plant down
18 by the Willows Restaurant?

19 MR. GUTMAN: Yes.

20 MR. KUDLAS: Okay, that's right where number
21 11 is. Okay?



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1 MR. GUTMAN: Oh, okay.

2 MR. WHITSON: Immediately adjacent to it.

3 MR. GUTMAN: All right.

4 MR. KUDLAS: This particular project has
5 28.443 acres, 24.628 acres of it within the critical
6 area. It's located on tax map 40 in the third district
7 of St. Mary's County. This one here is contiguous or is
8 adjacent to existing IDA. The sewer treatment plant
9 here in the town of Leonardtown is classified as IDA.
10 The LDA requirement on number two guidelines does not
11 apply. Number three does not apply related to RCA
12 conversions. Number four, the habitat protection and
13 water quality issue is related to this project.

14 This entire blue area will be set aside and
15 shall remain in its natural state. There is a small
16 portion of tidal wetlands here and nontidal wetlands
17 along here. The 100 foot buffer on this project is not
18 shown on this particular plan, but is shown on other
19 plans, and it does expand to include the contiguous
20 hydric soils. So what it does is it comes in like this
21 and comes along the edge of the road. So, for the most



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1 part, this blue area is buffer.

2 We did not receive, in our opinion, any
3 negative correspondence on habitat impacts from Forest
4 Park Wildlife in our correspondence. Water quality, I
5 think, will be addressed in several ways. I think this
6 project here, I know, will be required to have
7 stormwater management. It also will be allowed to tap
8 into the existing sewer.

9 I think the plan that I've seen shows
10 clustering on the top of the slope here, which it does
11 seek to minimize any impact to that slope.

12 Number five is "IDAs that are newly created
13 will minimize their impact on contiguous RCA." There are
14 no contiguous RCAs on this site.

15 And the final one, the 300 foot buffer is
16 provided in this development proposal.

17 MR. GUTMAN: Again, my question is who will
18 ultimately own the blue portion of that tract?

19 MR. KUDLAS: I believe that this parcel here
20 --

21 MR. GUTMAN: Yes.



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1 MR. KUDLAS: -- is owned by, is currently
2 owned by the Maryland National or the Maryland Capital
3 Corporation, excuse me. They will continue to hold
4 title.

5 MR. GUTMAN: The Maryland Capital Corporation?

6 MR. KUDLAS: Yes. They are one of the members
7 of this joint venture.

8 MR. GUTMAN: Will there be any restrictions on
9 the use of that?

10 MR. KUDLAS: It is a set-aside parcel. It
11 shall remain an open space through restrictive covenants
12 or deed covenant.

13 MR. GUTMAN: Have they been recorded as yet?

14 MR. KUDLAS: As I mentioned before, these
15 projects have not been finally approved through the
16 development review process so these restrictive
17 instruments have not been recorded as of yet.

18 MR. GUTMAN: And that's true for all of these?

19 MR. KUDLAS: That is true for all of these
20 projects. Yes, sir.

21 CHAIRMAN SCHOEPLEIN: There will be some



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1 residential on this on the upper plat?

2 MR. KUDLAS: This here is an existing
3 apartment complex. Up at the top here and here, just
4 inside the critical area and just outside of the
5 critical area shall be single-family attached
6 townhouses.

7 CHAIRMAN SCHOEPLIN: So it is a mixed use?

8 MR. KUDLAS: Yes, sir. The parcel is zoned
9 for industrial purposes that will have the expansion of
10 the existing light industrial.

11 CHAIRMAN SCHOEPLIN: What is this strip that
12 goes up -- we have existing apartments in the white.

13 MR. KUDLAS: Uh-huh.

14 CHAIRMAN SCHOEPLIN: Then we have a very
15 narrow strip that goes up there. Is that all zoned
16 residential? The bottom is residential.

17 MR. KUDLAS: Yes.

18 CHAIRMAN SCHOEPLIN: Okay.

19 MR. KUDLAS: This tract here --

20 CHAIRMAN SCHOEPLIN: Yes, the way your pen
21 just went up the hill.



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1 MR. KUDLAS: -- is all zoned RH, which is
2 high-density residential development. Excuse me. It's
3 RL. And this part here is RH. There's a line that
4 comes across.

5 CHAIRMAN SCHOEPLIN: The next parcel.

6 MR. KUDLAS: Now we're getting into the minor
7 subdivision category. The first project is the Eppard
8 Property Subdivision.

9 CHAIRMAN SCHOEPLIN: The Eppard Property
10 Subdivision.

11 MR. KUDLAS: For this particular project the
12 county is requesting use of growth allocation for a
13 four-lot minor subdivision for a change in overlay
14 classification from RCA to LDA for six acres. And
15 that's four 1.5 acre lots.

16 The property is owned by William Eppard, et
17 al, between he and his brother. It's located in
18 Compton, Maryland along Route 243, which, for your
19 information is right here. It's located on tax map 39
20 and it's parcel 273 in the third election district of
21 St. Mary's County. It's approximately 14.424 acres



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1 total. All that property is in the critical area.

2 MR. BOWLING: Where was it again? I'm sorry.

3 VOICE: It is not water property?

4 MR. KUDLAS: It is not water property. You're
5 correct. It's right here. Number one does not apply
6 again and it's not an application for IDA. Number two
7 is met. It is contiguous to existing LDA, as you can
8 see, it's on the side here. It's across the road from
9 existing LDA and it is existing LDA between the water
10 and this parcel.

11 CHAIRMAN SCHOEPLIN: So there's LDA -- on the
12 other diagram there's LDA to the lower level.

13 MR. KUDLAS: Yes, sir. This here would be LDA
14 here as well as here, and then this is the highway. The
15 "half of growth allocation" does not apply, I don't
16 think. "The impact of new LDAs or IDAs on habitat
17 protection areas and water quality." We have a letter
18 from the Forest Park Wildlife Service which indicates
19 there are no habitat protection areas on this site. The
20 site is entirely forested, as I understand it, and
21 litigation plans, of course, would have to be dealt with



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1 on that plat.

2 Water quality with the 1.5 acre lot size,
3 stormwater management would likely have to be done. The
4 300 foot buffer is, of course, as you can see, met on
5 this project.

6 CHAIRMAN SCHOEPLEIN: Now, you have LDA down
7 beneath there on the other diagram that you have.

8 MR. KUDLAS: On this one?

9 CHAIRMAN SCHOEPLEIN: On that one there.
10 That's LDA?

11 MR. KUDLAS: This is all LDA, right.

12 CHAIRMAN SCHOEPLEIN: As we commented --

13 MR. KUDLAS: This here is not. However, this
14 is.

15 CHAIRMAN SCHOEPLEIN: That is. Right.

16 MR. KUDLAS: And this is not.

17 CHAIRMAN SCHOEPLEIN: Now, in reviewing the
18 preliminary staff reports, we noted that here you do
19 have a roadway that is identified.

20 MR. KUDLAS: Uh-huh.

21 CHAIRMAN SCHOEPLEIN: Not that consistency has



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1 to be maintained, but why is the roadway identified
2 here?

3 MR. KUDLAS: Well, in the Minor Subdivision
4 category, in the St. Mary's County Critical Area Program
5 it says that "all the disturbance has to be included in
6 the mapped area." And that's how these items resulted
7 with these pen-handled kind of mapping areas.

8 CHAIRMAN SCHOEPLEIN: Got any questions?

9 (Whereupon, there was a discussion off
10 the record.)

11 MS. LAWRENCE: Why doesn't a 20-acre easement
12 apply to these parcels?

13 MR. KUDLAS: I think the obvious answer is
14 that St. Mary's County considered it a policy, your
15 policy. Our program was approved without that
16 requirement except within the design competition. I
17 also think that the concept behind the minor subdivision
18 category and the single-lot subdivision category, as I
19 said, was for the little guy. That people with small
20 tracts of land, less than 20 acres, who wanted to create
21 a conveyable lot could do so using growth allocation and



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1 not have to have 20 acres.

2 MR. BOWLING: The total size of this tract is
3 only about 14?

4 MR. KUDLAS: Correct. 14.424.

5 MR. BOWLING: Who owns the common area?

6 MR. KUDLAS: It does have a set-aside area of
7 almost eight acres that will be reserved.

8 MR. BOWLING: But who will hold title to
9 those, the eight acres?

10 MR. KUDLAS: This particular section will be
11 bought by a contiguous landowner, which was testimony
12 given through the public hearing.

13 MR. WHITSON: But it will be restricted by
14 deed, by covenant deed and by plat notes.

15 MR. KUDLAS: Correct. Okay, the next project
16 is a project called Lore's Landing. It's also within
17 the minor subdivision category.

18 CHAIRMAN SCHOEPLIN: Lore's Landing.

19 MR. KUDLAS: The county, on this project, is
20 requesting the use of growth allocation for, again, a
21 four-lot subdivision for a change in overlay



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1 classification from RCA to LDA for six acres.

2 This particular project is owned by Mr. Joseph
3 Lore. It's located off Bonnie Lane in the first
4 district in St. Mary's County and it's on tax map 70.
5 Let's see if I can locate it for you. It's right here.

6 This particular, the entire tract on this
7 particular project is 15.9 acres, 11.9 of it in the
8 critical area.

9 The first guideline for growth allocation does
10 not apply as it is not a request for IDA. Yes, as you
11 can see, it meets the second guideline. It's
12 contiguous. It's across the street to an existing LDA
13 and it abuts an existing LDA on this corner of the
14 project. The third item also relates -- let's see --
15 half of the growth allocation. Again, I really don't
16 think we've met that yet.

17 The fourth item is, again, related to the
18 habitat protection areas and water quality issues. This
19 particular project is primarily an open field. It has a
20 fringe here of forest vegetation in the buffer area of
21 the project. There are substantial areas of hydric



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1 soils on the site, however, it's our belief that this
2 will qualify as a prior converted problem. Therefore,
3 we don't feel that there are any habitat protection
4 problems on this site.

5 Item number five is also related to IDAs and
6 their impact on RCAs which does not apply in this case.
7 And the 300 foot buffer, in this case, is not complied
8 with on this project. In part, if I could try to
9 explain why I think the county did not apply that
10 standard literally, if you have a 300 foot buffer from
11 the Jutland Creek area here, this is a 100 foot buffer,
12 200 foot, 300 foot, you, for the most part exhausted all
13 of your critical area acreage. And it's our
14 understanding that that 300 foot buffer cannot be
15 included as a part of those lots or in that mapped area.

16 We feel that that's kind of a contradiction
17 within the Critical Area Commission's policy with the
18 mapping, it requires that if you use a development
19 envelope, that you have to include the 100 foot buffer
20 within that mapped area. However, with the 300 foot
21 buffer that we have as a guideline for growth



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1 allocation, it does not, or is not permitted to be a
2 part of that lot.

3 CHAIRMAN SCHOEPLEIN: On lot five, is there
4 adequate space there to locate a residence on lot five?

5 MR. KUDLAS: Well, as you can see, it is 1.5
6 acres in size and does show --

7 CHAIRMAN SCHOEPLEIN: Lot five would be --
8 it's the last big lot to my side.

9 MR. KUDLAS: This side? This one?

10 CHAIRMAN SCHOEPLEIN: Go over to your right.
11 The last one. Three, four, five.

12 MR. KUDLAS: Lot five.

13 CHAIRMAN SCHOEPLEIN: Right.

14 MR. KUDLAS: Well, I believe, one, that it
15 should be noted that this is an unapproved perk area.
16 It is a future or proposed perk test area, which may, in
17 fact, be reconfigured. This project was approved with
18 the condition that stated that "sewer and water
19 approvals had to be in hand within three years or that
20 growth allocation would be revoked. So the possibility
21 does exist that that could reconfigure. Also I believe



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1 if it was accessed in this manner here, there would be
2 sufficient buildable area for a reasonable residence in
3 front and between the buffer on the property.

4 MR. BOWLING: Any protection for water or
5 sewer here?

6 MR. KUDLAS: In this area there is a
7 possibility. Let' see. Actually, perhaps not in this
8 particular area. I thought this was closer to -- I'm
9 really am not the expert in sewer and water. Do you
10 know?

11 MR. GRIMM: I believe it would not be
12 accessible to sewer.

13 MR. KUDLAS: Any other questions on this
14 project?

15 MR. GUTMAN: I wonder if you could just
16 clarify. The total acreage that's within the critical
17 area for this project is almost 12 acres?

18 MR. KUDLAS: Yes, sir.

19 MR. GUTMAN: And the amount of growth
20 allocation that you're requesting is only six?

21 MR. KUDLAS: Correct. As I mentioned it



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1 earlier, we have a mandatory requirement for a maximum
2 lot size of 1.5 acres, so they had to adhere to that 1.5
3 acre size and the creation of four lots would give you
4 six acres then that would be remapped. The entirety of
5 that individually owned created lot would be 1.5 acres.

6 MR. BOWLING: The balance of the site would be
7 restricted?

8 MR. KUDLAS: Yes, sir. This part here is
9 designated "open space" as well as some area outside the
10 critical area. Well, actually, this isn't outside.

11 CHAIRMAN SCHOEPLEIN: Any other questions?

12 MR. GUTMAN: I wonder, do you have a sample
13 available of what these covenants must say. Do you have
14 a specimen? I'm not quite sure of the right term.

15 MR. GRIMM: Well, we can provide such to you.
16 We don't have one here this evening, but we have been
17 approving a number of lots within both the critical area
18 and outside the critical area that have open space
19 restrictions as part of the deed covenants and the plat.
20 I'd be happy to provide that to you.

21 CHAIRMAN SCHOEPLEIN: Would you kindly do



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1 that.

2 MR. GRIMM: Sure.

3 CHAIRMAN SCHOEPLEIN: Telephone our staff, we
4 may have it, but if we do not, we would appreciate it
5 before we close our records.

6 MR. WHITSON: I've seen some of those projects
7 and they're very explicit. There's nothing ambiguous
8 about them.

9 MR. GRIMM: Sometimes it's hard to get the
10 developers to sign them.

11 MR. KUDLAS: If there aren't any further
12 questions I would conclude my portion and allow you to
13 open it up to the public.

14 MR. WHITSON: Scott, don't we have one
15 more to do?

16 MR. KUDLAS: Did I forget one? Okay, we do
17 have one more. Maydel Manor. I'm sorry. This
18 particular project is called Maydel Manor. It's also
19 called Section Two, which will give you an indication of
20 something I'll mention later. The County, on this
21 project, is requesting the use of growth allocation to



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1 accommodate a four-lot subdivision for a change in
2 overlay classification from RCA to LDA for six acres,
3 again.

4 This particular project is owned by the Cryer
5 Company, Incorporated. It's located off Breton Beach
6 Road in the third district of St. Mary's County. It's
7 located right here. This particular project has a total
8 land area of 88.46 acres, 33.9 of which is in the
9 critical area.

10 In addressing the guidelines for growth
11 allocation, again, on the first one, it's not IDA, I
12 wouldn't address that. The second one, is it contiguous
13 to existing LDA? On this project the answer is "No, it
14 is not contiguous to existing LDA." However, the
15 county, in reviewing this project, felt that there were
16 some extenuating circumstances for literal application
17 of that guideline.

18 This project was a project that was in the
19 review process on or about the time the local critical
20 area program was approved. That initial section of the
21 project which has a -- this doesn't quite show -- but it



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1 has a public road that comes in with a cul-de-sac here,
2 and all of these lots were a part of section one of
3 that project, and this project got caught up in that
4 approval process.

5 So the county, in examining this project,
6 thought it was appropriate to use growth allocation for
7 this project to kind of maintain the continuity and
8 complete the development project.

9 Under the RCA designation, we'd only get one
10 additional lot in the critical area with the 33 acres
11 which would look kind of funny. One lot and then all
12 these smaller lots. I guess that's all I really want to
13 say about adjacency.

14 Number three it's that "half of the growth
15 allocation" thing. Number four, "habitat protection
16 areas." The applicant submitted an environmental report
17 which had a detailed field analysis which did not
18 indicate any nontidal wetlands on the site, even though
19 there are hydric soils on the site. The 100 foot buffer
20 is in section one in this project, although it would not
21 apply to these particular lots. There are no habitat



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1 protection area concerns on this project as we see it.

2 Water quality, stormwater management would be
3 a condition of approval for this project. So that would
4 have to take place. The existing condition of this lot
5 is primarily an old farm field.

6 Number five also relates to IDAs within the
7 RCA which would not specifically apply to this project.
8 And the 300 foot buffer guideline, which is the last
9 guideline, in our opinion is met from the Breton Bay.

10 CHAIRMAN SCHOEPLEIN: Any questions?

11 MR. BOWLING: I'm just curious as to why the
12 lots are grouped in that fashion against the --
13 boundary.

14 MR. KUDLAS: With the requirement
15 for the 1.5 acre lot size, through the review process
16 there was a lot of discussion about the marketability of
17 such lots within a rural county like St. Mary's. The
18 question was raised, "Well, could we add additional
19 acreage." We thought that might be a possibility. We
20 also have a problem locally in that St. Mary's County
21 uses an overlay concept for the critical area. The
underlying zoning in most of the RCA is what we call



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1 "RPD," which has a three acre density. So, in order to
2 accommodate that, we either had to add land to
3 individual lots in some fashion that didn't create
4 additional building area, or we had to have a common
5 area set aside.

6 In the approval process, both ways of doing it
7 were allowed. This one here took advantage of a
8 component in our subdivision regulation called an
9 "agricultural division." In that process you could deed
10 land over to an individual which would not have
11 development rights associated with it. So these areas,
12 they're in pink, are the entirety of that individually
13 created lot for the purpose of growth allocation.

14 MR. WHITSON: Scott, if I recall, the
15 agricultural parcels are also subject to those kind of
16 adjunctions by the ordinance in addition to the
17 critical area restrictions.

18 MR. KUDLAS: Yes, they are.

19 MR. WHITSON: And those are a matter of record
20 on the subdivision plats also.

21 MR. KUDLAS: Yes, and they do have to be



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1 approved through our office.

2 MR. WHITSON: Actually, what's the total set-
3 aside on these lots then?

4 MR. KUDLAS: The total set-aside on these lots
5 averages about three and a half acres.

6 MR. WHITSON: So the whole piece is probably --

7 MR. KUDLAS: Yes. We talking total lot
8 acreage of around five acres. This one here, of course,
9 is bigger. But these other two are about five.

10 MR. SEREY: I have a question. Are the
11 agricultural areas under a separate deed? Separately
12 recorded?

13 MR. GRIMM: Ren, I think they can be done
14 either way. For the most part, the ones that we approve
15 are done as a separate deed. They might be transferred
16 together with the building site in this example. That
17 would be up to the applicant. The subdivision plat
18 creating that agricultural division would have to
19 contain the restriction notes that we're talking about,
20 and what I can do is I can provide you a copy of those
21 standards straight out of our subdivision regulations as



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1 well.

2 MR. SEREY: So it may be possible that
3 although the set-aside acreage for each lot is
4 restricted, it could be sold possibly as an agricultural
5 lot.

6 MR. GRIMM: It could be transferred but not
7 for any purposes of development.

8 CHAIRMAN SCHOEPLIN: Let's go back to the 1.5
9 acres again. On a minor subdivision, your county
10 ordinance restricts it to 1.5 acres or larger acreage
11 with a 1.5 human habitat?

12 MR. KUDLAS: What it says, it says "the growth
13 allocation awarded in minor or single-lot subdivisions
14 will be subtracted from the county's growth allocation."
15 It says, "the maximum size of any lot created hereunder
16 shall not exceed 1.5 acres." In an effort to meet the
17 underlying density, we have allowed applicants the
18 alternative of creating a commonly owned one chunk open
19 space parcel as you saw in the Eppards, or this
20 agricultural division approach. However, the lots that
21 were platted and created for growth allocation are



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1 separate and are all 1.5 acres in all cases in the minor
2 subdivision.

3 CHAIRMAN SCHOEPLEIN: I'm still a little
4 confused. If I purchased a lot, I would be purchasing

5 --

6 MR. KUDLAS: The pink.

7 CHAIRMAN SCHOEPLEIN: The pink only?

8 MR. KUDLAS: Well, for the purposes of
9 building.

10 CHAIRMAN SCHOEPLEIN: But I'd have title to
11 the whole acreage, whatever need be.

12 MR. KUDLAS: You could have title to the whole
13 acreage, yes.

14 MR. GUTMAN: But its use is going to be
15 restricted.

16 MR. KUDLAS: But its use is restricted under
17 this subdivision regulation.

18 MR. BOWLING: It's an agricultural program.

19 MR. KUDLAS: Right.

20 MR. WHITSON: Seems to me that if there are
21 going to be single sites, the reality is how are you



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1 going to sell a building site then you're going to sell
2 a completely useless parcel next to it. I think the
3 reality is that's not going to work.

4 MR. BOWLING: Well, you can put your garden in
5 there.

6 MR. KUDLAS: I mean, there may be somebody
7 that doesn't want it.

8 MR. WHITSON: Yeah, it is possible.

9 MR. GRIMM: Well, in fact, we do it fairly
10 regularly outside the critical area or even in the
11 critical area. It's not an uncommon occurrence in the
12 county under the subdivision regulations.

13 MR. WHITSON: No, I can appreciate it. I was
14 just trying to figure the way of working it out legally
15 so that at one point --

16 MR. BOWLING: They could use it for a horse or
17 a garden or things of that sort.

18 MR. GRIMM: I think in this proposal, if you
19 see the bold dark lines on your staff report and then
20 Scott is showing them there, those are the parcels that
21 are intended to be transferred, sold off by the current



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1 landowner. However, the growth allocation area and the
2 actual building site available for development purposes
3 is the darkened area on your handout, the pink area.

4 MR. WHITSON: Anyway, the county will --

5 MR. GRIMM: Right. And again, the same kind
6 of restrictive covenants that come at the subdivision
7 plat stage with our planning commission's approval would
8 apply. I think you can see on your handout the
9 reproduction of the plat shows parcel "A" as open space.
10 You'll see in the material that I'll send to Ren and
11 Claudia that we have a standard process we use in the
12 county that designates these parcels as undevelopable.

13 MR. KUDLAS: And I would just point out that
14 if you look closely at the handout, the mapped area does
15 include all of the development disturbances. It
16 includes the septic area, it includes all the impervious
17 surfaces associated with the dwelling and the parking
18 area.

19 MR. BOWLING: Did the septic area sites
20 dictate the shape of these rather than have all the
21 "pinks" located adjacent to the road in front?



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1 MR. KUDLAS: I really don't know.

2 MR. BOWLING: You don't know.

3 MR. KUDLAS: I really don't.

4 CHAIRMAN SCHOEPLIN: Any other questions?

5 I'm going to invite comment from you in two ways. I'm
6 going to ask the property owners or representatives of
7 the property owners present, if you have any comments
8 that would assist us in clarifying the presentation or
9 any omissions that we have not seen yet, if you'd kindly
10 assist us by talking about your property.

11 MR. KENNEY: I represent the owners of the
12 Avenmar property. What I'd like to do in the interest
13 of time is introduce one of the principals of the
14 company to give you a little better, we think better
15 view because we can't see everything that you're seeing
16 or read your minds as to some questions as to the
17 community center complex and how it relates to this
18 property and what we truly wish to accomplish on the
19 site. With that, I would introduce Mr. Don Franyo.

20 CHAIRMAN SCHOEPLIN: Please do.

21 MR. KENNEY: One exhibit that we'd like to



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1 share with you.

2 MR. FRANYO: For the record, my name is Don
3 Franyo. F-R-A-N-Y-O. I'm a general partner of Potomac
4 Investment Associates, the owners and developers of the
5 project called Avenmar.

6 MR. SEREY: Would you like to use this? I can
7 set it up over here if you like.

8 MR. FRANYO: While Ren is doing that, let me
9 just quickly give you a verbal overview of what we're
10 trying to do with the property. It consists of 500
11 acres and will be subdivided into 91 lots. Each lot is
12 in excess of two acres. The property is such that only
13 the area that we are discussing tonight is truly
14 accessible to the water. And it's because of that that
15 we wanted to give all the homeowners an opportunity to
16 enjoy the water through this common area. And it's for
17 that reason we have developed this community center to
18 support the community itself. And I'll just take a
19 quick minute -- excuse me -- just quickly since many of
20 you haven't seen the site itself.

21 There is an existing residence just about



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1 where the community center sits today. Not in a very
2 habitable state, although it is habitable. There's an
3 existing barn there today. And the intent is to raise
4 the old residence and to build a community center. The
5 community center is approximately 3,000 square feet, all
6 on slab on grade. There will be a swimming pool for the
7 community only. A couple of tennis courts. The
8 existing barn is going to be renovated and upgraded.
9 And the farm manager's residence will be built as to
10 basically give the area a sense of security. For
11 security purposes, that's what it's there for primarily.

12 All the roads, even though they're called
13 "impervious" will be gravel roads. Not asphalt roads.
14 Let's see if there's anything else I can quickly tell
15 you. The pier is strictly for crabbing and observation.
16 There's no large boats that will be tied up. There's no
17 mooring facilities. The boat launch there is exactly
18 what it's intended to be for, for people launching small
19 boats into Breton Bay and so forth.

20 Let me think if there's anything else. The
21 irony of this whole thing is if we would have sold --



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1 there's an existing parcel here today, subdivided
2 parcel, and if the parcel was sold, one can visualize
3 that a homeowner could probably do all of things that
4 we're talking about doing here today. He could build a
5 pool, build a tennis court, put a barn in there, and
6 build himself a home. So we're really doing nothing
7 more than, if you will, expanding what an individual
8 homeowner could really do individually.

9 But I understand the process. I think it's a
10 good one that the state has implemented and we're trying
11 to work within it, and I hope that gives you a little
12 quicker clarification as to what we're trying to do.

13 CHAIRMAN SCHOEPLIN: On the boat launching,
14 what happens to the trailers?

15 MR. FRANYO: They would be -- if they were
16 going to just launch them for the day, which is
17 primarily what they would do, there's a little parking
18 area here that they would use and then ultimately put
19 them back. The covenants are very restrictive in our
20 development. They don't allow boats to be parked
21 outside on an individual lot, and in another section of



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1 the development, which is not represented here, we have
2 a common boat storage area for RVs and trailers and that
3 kind of thing. So that's the intent.

4 MR. GUTMAN: This boat launch is just for the
5 residents?

6 MR. FRANYO: Yes, sir. Absolutely.

7 MR. GUTMAN: And there will be some sort of
8 security for the entire project?

9 MR. FRANYO: Yes, sir. That's what the
10 purpose of the farm manager residence is. I mean, it's
11 something that we feel is needed for the community and
12 for the type of community that we want to develop. And
13 believe me, the HOA will be extremely -- we control the
14 HOA until every lot is sold and all this land will be
15 deeded to HOA and there will be covenants regarding its
16 use.

17 CHAIRMAN SCHOEPLIN: The turnaround for the
18 trailers and the the temporary daily parking, that will
19 be gravel too?

20 MR. FRANYO: Yes, sir.

21 CHAIRMAN SCHOEPLIN: Because that's within



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1 the buffer.

2 MR. FRANYO: Yes, sir.

3 MR. FRANYO: I just thought I'd give you a
4 quick verbal review. Sometimes it's a little --

5 MR. SEREY: Would you be able to send us a
6 copy of that site plan for our records?

7 MR. FRANYO: Oh, sure. Oh, absolutely.

8 MR. SCHOEPLEIN: Any other questions?

9 MR. KENNEY: Mr. Chairman, one thing I'd like
10 to point out is that general neighborhood, what you see
11 are a lot of small lot, you know, old traditional
12 subdivisions that are already created in space on very
13 small lots but represents waterfront communities. What
14 you have here is approximately 90 lots on 500 acres and
15 trying to create this amenity without doing small lots
16 and crowding the waterfront, such as the purpose of the
17 critical area program.

18 CHAIRMAN SCHOEPLEIN: Are there other property
19 owners or representatives who would like to address the
20 St. Mary's County panel? We would appreciate any
21 comments from any of you present here regarding the



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1 material that has been presented this evening or
2 regarding the proposed growth allocation. Sir, would
3 you introduce yourself.

4 MR. EPPARD: I might make a comment. I'm Jim
5 Eppard of the Eppard property. I think Scott did a very
6 good job of presenting our project. I'm not sure he
7 mentioned that there is a sewer line along the property
8 that we would have access to for these lots.

9 CHAIRMAN SCHOEPLIN: On the Eppard property
10 there is access to sewer?

11 MR. EPPARD: There is a sewer line that runs
12 along the edge of the property, yes.

13 CHAIRMAN SCHOEPLIN: Thank you for clarifying
14 that. That's definitely very relevant. Yes. Very
15 relevant. Are there any other comments? Again, the
16 record of this panel remains open until Thursday,
17 September 19th at the close of business. So, should you
18 have any questions regarding the process itself, what do
19 I do, things of that nature, you may telephone the
20 critical areas commission in Annapolis, their phone
21 number is Area Code 301/974-2426, and seek assistance



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1 with regard to mailing any material you'd like to mail
2 to us and after that close of business on September
3 19th, the panel then will consider all the material that
4 has been presented to us, additional material that may
5 be received, and additional material that may be
6 presented by the professional staff of the Critical
7 Areas Commission.

8 Hearing no further comment or testimony, I
9 thank you very much for coming this evening and we
10 certainly appreciate being here.

11 (Whereupon, at 8:30 p.m., the above-
12 entitled hearing was adjourned.)

13 (Exhibits - none.)
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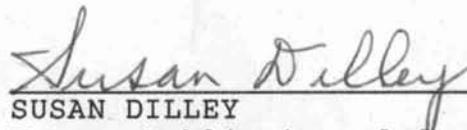
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CERTIFICATE OF NOTARY

1
2 I, SUSAN DILLEY, the officer before whom
3 the foregoing testimonies were taken, do hereby certify
4 that the witnesses whose testimonies appear in the
5 foregoing transcript appeared before me, that the
6 testimonies of said witnesses were taken by me by
7 magnetic tape and thereafter reduced to typewriting by
8 me or under my direction; that said testimonies are a
9 true record of the testimonies given by said witnesses;
10 that I am neither counsel for, related to, nor employed
11 by any of the parties to the action in which these
12 testimonies are taken; and, further, that I am not a
13 relative or employee of any attorney or counsel
14 employed by the parties hereto, nor financially or
15 otherwise interested in the outcome of the action.
16
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18
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SUSAN DILLEY
Notary Public in and for the
State of Maryland

My Commission Expires:

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