

Commission Meeting ? Corresp. Feb 1985

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THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
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February 5, 1985

MEMORANDUM

To: Judge Solomon Liss

From: Lee Epstein *LE*

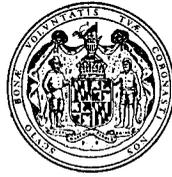
Subject: Critical Area Commission Minutes of Public Meeting held January 2, 1985.

A review of the January 2nd minutes by Tom Deming and I has revealed an error in the transcription. The error concerns paragraph 3 of the second page in which Tom Deming was replying to a question from Mr. Price. Mr. Price asked whether there were any procedures for amendment or change to the criteria once they have been approved by the Legislature, i.e., once the Legislature has affirmed them by Joint Resolution. Tom Deming's reply was slightly different than that shown in the current version of the minutes. [The actual reply was that wholesale amendment of the enacted criteria would not be appropriate after the Legislature has affirmed them by Joint Resolution. Nevertheless, technical amendments to the criteria, which would not substantially change their direction or approach, would probably be permitted.] These would have to go through the normal administrative procedure through which State regulations are changed.

While it would not generally be appropriate for staff to make changes to the minutes, the Chairman may certainly do so. Thus, if you agree with such an approach, I would recommend that you make the appropriate motion at the Commission meeting on Wednesday, February 6, 1985.

LRE/shl

*O.K.
To be submitted to
Commission for
approval on 2/6/85
L.E.*



TORREY C. BROWN, M.D.
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

JUDGE SOLOMON LISS
CHAIRMAN

AGENDA

February 6, 1985 Meeting
4:00 p.m.

Lobby Conference Room
Department of Natural Resources
Tawes State Office Bldg.
Annapolis, Maryland

Approval of the Minutes of January 4, 1985	Solomon Liss, Chairman
Presentation of the Interim Findings Procedures and Discussion	Constance Lieder, Secretary Dept. of State Planning
Presentation of the Patuxent Policy and Management Plans	Constance Lieder, Secretary Dept. of State Planning
Old Business	Solomon Liss, Chairman
New Business - Agricultural Field Trip	Solomon Liss, Chairman
Adjourn	

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Public Meeting Held January 2, 1985

The Chesapeake Bay Critical Area Commission held its fourth meeting on January 2, 1985 in the Department of Agriculture building in Annapolis, Maryland. The meeting was called to order by Chairman Solomon Liss at 4:00 p.m. The following Commissioners were in attendance: Ann Sturgis Coates, Dr. Shepard E. Krech, Jr., Florence Beck Kurdle, J. Frank Raley, Jr., Harry T. Stine, Samuel E. Turner, Sr., Mary Roe Walkup, Wayne A. Cawley, Jr., William Bostian, Clarence "Du" Burns, Parris Glendening, James E. Gutman, Donald Hutchinson, Robert R. Price, Jr., Robert S. Lynch, Constance Lieder, Ardath Cade, Barabara O'Neill, Lloyd S. Tyler; Albert Zahniser, Torrey C. Brown, J. Edward Welsh (substituting for Mr. Logan), and Joe Layton (substituting for John Luthy, Jr.).

The minutes of the last meeting were approved as written.

Chairman Liss read a letter which had been written by Becky Kurdle requesting clarification of the kinds of activities which the Commission could undertake with regard to criteria development. He read the letter so that the Commission members would be aware of why the memorandum from Lee Epstein, Assistant Attorney General, addressing those points was in the packet for the Commission. The Epstein memorandum clarified both the role and the legislative intent for the Commission. Chairman Liss pointed out that the Commission is not a legislative body or a zoning body or a zoning appeals board, and that it will be focussing on implementation and setting up guidelines for implementation.

Announcements: Connie Lieder, from the Department of State Planning, has been asked to prepare a presentation for the February meeting on her Department's activities with regard to Project Review in the interim period until criteria are developed. At the March meeting, panels of local government officials will share highlights of effective techniques and programs which they have been using. Also in March, the Commission will be furnished with a list of the various local ordinances and State laws for review by the Commission. For convenience, the laws will be summarized. The Chairman also announced that the first reduction in testimony from the public hearings was available for the Commissioners. From the Easton meeting, he reduced 80 pages of the testimony to four and a half pages. Self-serving statements and repetitions were eliminated. He will repeat the process for the other public hearings. He noted that where a witness' testimony is summarized, the reference page on the complete transcript is listed. Mr. Bostian asked where the complete transcripts were located and Chairman Liss said that he would bring them to the next Commission meeting.

Discussion of Work Plan - Chairman Liss said that in response to requests by some of the Commission members, new subcommittee appointments have been made to accomodate their requests. Sarah Taylor said that the time frame has changed slightly in that the actual work of the sub-groups will begin at the January 24th workshop. The summary of the laws and regulations is being prepared and, by March, members will have had a complete overview of State agency and local governments "Best Practices." At the workshop, the subcommittees will decide how they will proceed with developing their sections of the criteria. She stressed

that the subcommittees will be able to invite whomever they wish to join them at appropriate times. Also, Step 4 of the criteria development process had been changed in response to the comments by Commission members. Since there was no further comment on the Work Plan, Dr. Taylor said that she presumed that the revised Work Plan was acceptable to the Commission.

Mr. Raley expressed concern about whether policy would be reviewed or whether the Commission would just be undertaking criteria development. He thought that they needed to be integrated. Dr. Taylor said that where no State policy is currently in place, the Commission can adapt policy. Chairman Liss pointed out that the Critical Area law says that there are at least ten areas which must have policy as well as criteria. This point was reiterated by Jim Gutman.

Mr. Price asked whether there were any procedures for amendment or change to the criteria once they have been approved by the Legislature. Tom Deming, Attorney for the Department of Natural Resources, said that in review of the record, while amendment procedures had been considered, they were not part of the law and that the criteria will become permanent framework after approval. Donald Hutchinson pointed out that as local governments act to carry out their programs, if they have recommendations for change, they will likely submit them to the Legislature for consideration.

Chairman Liss clarified the legal aspects of non-compliance by local governments and said the local governments will need to document that they have considered the criteria in making any decisions or dispositions and that the courts would require proof of their consideration. He stressed that it would not be up to the Commission to say whether an individual property owner could do "x" or "y" on his land, but it would be up to the local government. Mary Walkup asked whether the Commission could consider criteria other than the sub-groups defined by the law and the response was, "Yes, they can expand or add, but they can not leave out anything which the law has stated."

Charlie Davis was introduced. He is in the process of having a contract approved for work as staff to the Commission. He is an ex-planner for Baltimore County.

Clarence "Du" Burns asked about the time frame for the development for criteria and was told that they must be complete by the end of May in order to comply with requirements of the Maryland Register. He stressed that if we don't focus on the criteria itself and do soon policy, the Commission will never make its deadline.

Discussion of the Workshop for January - Kevin Sullivan, Scientific Advisor to the Commission, reviewed the workshop Agenda which was shared with the Commission members. There were no comments by Commission members. Chairman Liss said that the press is invited to attend on the 24th to hear the presentations by the various speakers who have been invited. Commission members were also asked to indicate whether they would be staying overnight at the Tidewater Inn.

Chairman Liss asked that Tom Deming provide the legal perspective at the seminar and that George Liebman, who had initially drafted the Critical Area Bill, supplement his presentation.

Presentation by the Department of Agriculture on Best Management Practices -
Wayne Cawley said that the presentation would overview Maryland's soil and water programs and focus on Best Management Practices. He also said that the Department of Agriculture has formed a task force which will be recommending guidelines for consideration by the Commission by February 15th on agricultural criteria. He indicated that he had received many letters as a result of the regional public hearings. Mr. Jerry Tolbert presented a slide show on the Best Management Practices.

Old Business - None.

The next meeting of the Commission will be on February 6, 1985 in the Department of Natural Resources' building. There being no further business, the meeting was adjourned.

These minutes were prepared by Helene Tenner.



HARRY HUGHES
GOVERNOR

MARYLAND
DEPARTMENT OF STATE PLANNING
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

CONSTANCE LIEDER
SECRETARY

February 4, 1985

Critical Areas Commission Meeting

Presentation

Patuxent River Policy Plan

- Patuxent River Watershed Act was enacted in 1980. Charged DSP with preparing plan by July, 1983. A Commission oversees development and implementation.
- Emphasis is land management recommendations for control of non-point pollution. Followed charrette in December, 1981, where basic strategy on water quality arrived at.
- Cooperative effort by State agencies and seven local governments.
- Process of plan development was important. Numerous meetings with local planners and planning officials. Formal meetings were held with Commissioners, Councils and County Executives in each County on goals and plan. Three public hearings held, as well as public official briefing.
- Plan consists of 10 basic policy recommendations.
- Adopted by resolution in each House during 1984 General Assembly.
- Annual work program adopted with cooperative work continuing.
- Commission is active and involved. Major educational and informational purposes served at meetings.

Critical Areas Interim Findings

- Section 8-1813 was included in the law to afford protection to water quality and habitats, prior to adoption of criteria by the Commission and plans by local governments.
- Beginning June 1, 1984, local governments, in approving subdivision plats, zoning amendments, variances, special exceptions, conditional use permits and applications for floating zones, must make specific findings for projects affecting the initial critical planning area.
- Applicant is required to provide needed information to the local government.
- Findings required (Sec. 8-1813):
 - proposed developed will minimize adverse impacts on water quality that result from pollutants discharged from structures or conveyances or that have run off from surrounding lands.
 - applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.
- Any party to a land-use decision, or Department of State Planning, using its intervention authority (Article 88C, Section 2(r)) may challenge the local government action and findings.
- An interdepartmental network has been established to review land use applications in the initial planning area and evaluate findings, under DSP intervention authority.

- A handbook is being prepared for use by local governments in making these findings.

Chesapeake Bay Critical Areas Commission Hearing

Elkton Hearing 11/26/84 - 7:30 P.M.

The following Commission members were present: Dr. Sarah Taylor, Executive Director, Donald T. Hutchinson, Harry T. Stine, Robert R. Price, Jr., Barbara O'Neill, Florence Beck Kurdle, William Eichbaum, Chairman Solomon Liss.

A preliminary statement of the purpose of the hearing was made by Chairman Liss.

Martin Ogle a resident of Aberdeen, Maryland who is working on a bald eagle study in the northern Bay. He called the attention of the Commission that its goals of habitat preservation was already required by the provisions of the Endangered Species Act. The Commission is required to consider the health of the total system of the Bay. Criteria controlling growth should be very strict. The Commission must also be concerned with what happens outside the critical area zone as defined in the Act. What happens in the areas beyond the critical areas materially affect the critical areas. (R.p. 18-19).

F. W. Spellman representing the Bi-County Council, the Sassafras River Community Council and a number of other organizations elected to file a written statement which is to be made part of the record. (See appendix E, H, I).

Dr. Lowe asked whether the Commission had identified the principal or secondary cause of the trouble with the Bay.

Clint Rosenberger, President of the Cecil County Board of Realtors, expressed the willingness of that group to assist in solving the problems of the Bay. He suggested that a balance be maintained between property owner's rights and any damage which the exercise of these rights might make to the Chesapeake Bay and its tributaries. The speaker suggested that Cecil County was fortunate in having an excellent well-rounded Planning and Zoning Department as well as a first-class Department of Public Works. He felt that a minimal rewriting and addition to the zoning codes would meet most of the criteria would be influenced or restructured by the recent announcement of Senator Mathias that six Federal agencies had joined together in an effort to clean up the Bay. He also expressed concern that under a state-issued permit there is a Baltimore area group dumping industrial and sewer sludge along the banks of the C&D Canal. This is being done by a private vendor under contract to the Corps of Engineers, under a permit issued by the State of Maryland. What is required is co-operation between the State, Federal, and local authorities to see that no damage is done. (R.p. 25-28).

Robert Porter as an interested citizen appealed for a rule of reason to be applied by the criteria, and that they be sufficiently clear to be obvious as to the intent and requirements of the criteria adopted.

Mildred Ludwig appeared as a resident of Cecil County living in the Sassafras River area. She was particularly concerned about the condition of the Grove Neck Wildlife Sanctuary located about a mile from her home. She stated the sanctuary is regularly vandalized and abused. She urged the Commission to develop plans to ensure the protection of Maryland's biological resources; particularly the plant and animal habitat and the preservation of the unique and sensitive areas. She urged the restriction of development in areas which have slopes and highly erodable soils. She suggested that the Commission look to the

following sources for the development of natural resource assessment standards and protection standards in the Nationwide River Inventory prepared by the National Park Service in 1982, and the Maryland Scenic River Study of 1983. The criteria for the protection of these rivers she contended, are spelled out in these studies. (R.p. 29-31).

William Jeans, Vice President of the Upper Chesapeake Watershed Association, spoke concerning the fresh-water areas of the Chesapeake Bay. He praised the efforts being made by the State of Pennsylvania to clean up the Susquehanna River and the efforts to re-vitalize the propagation of shad in that river. It is the contention of his association that the problems in the Upper Chesapeake are traceable to other factors than the State of Pennsylvania, these include the dredging at the C&D Canal, the activities at the Aberdeen Proving Grounds, and the dams on the Susquehanna River. A substantive portion of the marshland where rockfish spawn has been destroyed because of the dumping of dredge spoil into the marshes without regard for its effect on the survival of the marsh (R.p. 31-33).

Ted Haas, County Agent for Cecil County associated with the University of Maryland Cooperative Extension Service praised the farmers of Cecil County where production is almost entirely on the basis of no-till production. The extension has also pioneered in an innovative program on nutrient retention. Mr. Haas complained of the proposed sludge dumping on the C&D canal banks which is clearly within the 1,000 ft. critical area. (R.p. 33-36).

Sharon Vaudry, resident of Kent County, expressed her concerns about storm water management. She urged that paving be required to be impermeable material to assist the earth in absorbing run-off. She also urged a management program to maintain vegetative cover. (R.p. 36-38).

Steve Bunker, Senior Staff Scientist for the Chesapeake Bay Foundation addressed the Commission concerning three broad areas in which his organization felt the criteria should be concentrated. They are: (1) strict standards for development in the critical areas, (2) the identification and protection of unique areas from development and (3) the use of incentives to encourage the maintenance of land in the critical areas in its existing use. In the first category Mr. Bunker urged the criteria provide for strict sediment/erosion control by minimizing the amount of area disturbed during construction, maintaining maximum vegetative cover, and restriction of development on steep slopes or highly erodible soils. In the second category of criteria, provision should be made for strict stormwater management minimizing impervious surfaces, maintaining vegetative cover, maximizing infiltration capability, maintaining pre-development run-off rates and volumes and recharging rainfall to ground water. Number three should require set-backs along streams and open water for impervious surfaces, septic tanks, and all structures except those necessary for access to the water. Number four, should require buffer strips along streams and open water of natural vegetation or grass for agricultural and development activities. Number five, the criteria should minimize impervious surfaces along the critical area by placing limits on percent coverage and encouraging the use of porous pavements and surfaces. Number six, plant and animal habitat should be protected by providing for continuity and diversity of habitats and the disturbance of tidal or non-tidal wetlands should be prohibited. Local jurisdictions should be required to identify sensitive natural areas and prohibit development of these areas to protect unique plant and animal habitats. Incentives should be proposed to landowners who prefer not to subdivide or develop their land.

The criteria should include tax incentives, easements, and transferrable development rights to encourage landowners to maintain their land in its natural state. Cluster development and the maintenance of open space in the critical areas should be encouraged rather than waterfront development. (R.p. 38-41).

A. Ford Hall, Sr., owner of Georgetown Yacht Basin, Inc. located on the Sassafras River since 1949 generally supported the aims of the Commission. He expressed concern however, that marinas under the criteria adopted would continue to provide Bay access to recreational boaters, and that the owners of existing marinas be assured of their right to develop their existing facilities when age or other circumstances require their replacement.

Fred McKee, President of Maryland Association of Realtors, who endorsed generally the aim of environmental preservation which he perceived the principal tasks of the Commission. He cautioned however, that equally important are the regulatory limits on how they may use the land they own.

Vernon Terry, President of the Harford County Board of Realtors and Reginald Cooper, Past President of the Kent County Board of Realtors supported Mr. McKee's Statement. (R.p. 45-48).

Mike Pugh spoke on behalf of the Cecil County Board of Commissioners. He noted that in 1976, Cecil County enacted the first shoreline protection ordinance in Maryland which created a 150' buffer in its subdivision regulations. In 1979, Cecil County is now engaged in a study of shore erosion, identifying structural and non-structural methods of management. He urged that the State not usurp land use decisions from the local subdivisions. State agencies should provide technical expertise and a resource source for data collection. He predicted that the criteria adopted would require additional man-power and staff requirements in the local jurisdictions. He noted that the weakness in the present state of the laws is that they are not enforced because of a shortage of staff to require compliance with the many good laws already on the books. It is important, he felt, that the Commission not be perceived as being created to severely slow or stop waterfront development. (R. 48-45).

Cy Liberman state that roofing also be considered as impervious material and that "business as usual" must take second place.

Harland Williams urged that the Commission mitigate its action with those of adjoining states in the Chesapeake area. He proposed the establishment of an inter-state inter-jurisdictional authority for total management of the Bay's resources (R. 56-50).

Bill Jeans, Jr., farmer and waterman a brief statement.

Bob Hugger, farmer agreed that the Amish farmers who do not subscribe to no-till and conservation may be at last contributing to the pollution of the river leading into the Patspsco.

Robin Tyler urged that the criteria adopted be rigidly enforced.

George Schehan, represented the Bata Shoe Company and urged that reasonable time limitations be imposed upon State agencies who are required to review and approve development plans.

The following written statements were seasonably filed by the persons or organizations indicated and are included at the end of the record.

1. Mayor and City Council of Havre de Grace - Department of Public Works.
2. Log Pond Group
3. Martin Ogle
4. Mildred D. Ludwig
5. Sassafras River Community
6. Green Valley Group (Maggie Duncan)
7. Cecil County Board of Realtors
8. Floyd E. Spellman
9. Floyd E. Spellman
10. Walter Brunner
11. Margaret H. Jones

Chesapeake Bay Critical Area Commission Hearing
Prince Frederick Hearing 12/6/84 - 7:30 P.M.

Louis Eberle (Rp. 16) spoke concerning a proposed new development in St. Mary's County on the Patuxent, Patuxent River Farms. He emphasized the importance of the county's efficient monitoring of site development by a qualified engineer.

Joanne Roberts (Rp. 18) was concerned that sedimentation controls be considered when regulations or criteria are developed, and more generally that open areas and wildlife be protected for future generations.

Karen Goodman (Rp. 20) - testimony unrecorded due to machine malfunction.

Janet McBain (Rp. 20) - testimony unrecorded due to machine malfunction.

Frank Gerred (Rp. 20), director of planning and zoning for St. Mary's County, expressed two concerns: that the ultimately adopted criteria be able to be easily administered; and that the Commission should consider whether their criteria should be applied to entire watersheds, rather than to just the 1,000 foot initial planning area.

Mark Milbury (Rp. 21) noted that his concerns had just been adequately addressed by Mr. Gerred.

J. Bowling (Rp. 21), a private landowner, expressed: difficulty with the concept of upland owners not having to take some clean-up measures; the extent of existing bureaucracies; her belief that controls over 1,000 feet from the water will include most of some counties' land. Ms. Bowling also stated that although the water and habitat in her area continue to deteriorate, she did not wish to give up to the State her rights to develop her property.

Gene Piotrowski (Rp. 25), appearing on behalf of the Maryland Forest, Park and Wildlife Service, noted that forest land could significantly benefit Bay cleanup efforts -- especially through the use of forest buffers as natural filters. He recommended criteria that would: 1) require local zoning and subdivision regulations aimed at retaining forest lands, especially those adjacent to shorelines and tributaries; 2) require forest management plan approval for any cultural operation on forest land in the critical area; 3) encourage the establishment of forest buffers in currently open, non-forested areas adjacent to shorelines and tributaries; 4) adopt the current standard in use for determining adequate width of forest buffers; and 5) use the entire critical area as a wildlife habitat maintenance and enhancement area.

Frank Jaklitsch (Rp. 29), director of planning and zoning for Calvert County, noted the protective effects of current Calvert County regulations including, for example, large lot requirements, a town center concept, both wetland and conservation districts and, under those concepts, such matters as setbacks, clustering, minimum lot sizes, and marine facility regulations. He noted that pollution comes from a much greater area than the 1,000 feet, and from threats in addition to new development, such as industry, sewage treatment plants, road construction, and agriculture.

Sam Bowling (Rp. 32), a waterfront property owner from Charles County, asked that the reasonable use of private property by the small landowner not be prevented, and that waterfront land not be made a preserve for the rich or big developer. He also noted the need for strict enforcement at the State level, and for interstate cooperation.

Alan Swann (Rp. 34), a farmer from Lower Marlboro, stated his concerns about a blanket 1,000 foot buffer policy that doesn't take slope, soil type, and current use into consideration. Mr. Swann felt that upland areas must also "pay the price", and he objected to the possibility of being told how to farm within the 1,000 foot area.

Robert Yolanowicz (Rp. 37), of the Chesapeake Biological Laboratories, associated with the University of Maryland, noted that his colleagues have identified excessive nutrients from nonpoint sources as the chief problem in the Bay, and further, offered his support for the thrust of the legislation.

Henry Jenkins (Rp. 38) from Baltimore County, talked about sedimentation in the Bay and the fact that in fairly recent history sedimentation has increased dramatically over older historical rates. He asked for strong shoreline management plans to protect the Bay, within which management areas farmers can get technical assistance regarding soil conservation practices. Mr. Jenkins also mentioned the use of cluster development and transfer of development rights as important.

Karen Miles (Rp. 41), representing the Maryland Chapter of the Nature Conservancy, noted that organization's successful private preservation efforts. Ms. Miles urged two general "rules" and a number of criteria. The rules: a presumption against indiscriminate destruction of natural areas along the Bay; and, whenever possible, keep the density of development near existing natural areas of critical importance low. Recommended criteria: 1) habitat areas for rare and endangered species should be delineated, dedicated primarily to preservation, and protected from possibly interfering uses; 2) lands, tidal and nontidal wetlands (and particularly areas in the freshwater intertidal zone) in which unique natural communities occur should be treated similarly. Identification of special natural areas can be made through the use of DNR's Natural Heritage Program.

Finally, examples of such natural areas include bald eagle and colonial water bird nest sites, the best occurrences of old growth forests, and freshwater wetlands.

James Dutton (Rp. 45) waived any statement.

James Hancock (Rp. 46) generally commented on private property rights and the need to switch to non-gasoline fuels.

Robert Jarboe (Rp. 48), president of the St. Mary's County Farm Bureau expressed concern that if a 1,000 foot buffer is approved, some farms would virtually be eliminated. Mr. Jarboe suggested that criteria permit farm-by-farm approaches and not impose some unworkable, blanket-type plan.

Mr. VanLandingham (Rp. 50) waived his statement in favor of his group's spokesman.

Mr. Catlett (Rp. 50) waived any statement.

Mr. Allen (Rp. 51) noted that his points had already been addressed.

Jack Witten (Rp. 51), president of the Potomac River Association and public member of the Chesapeake Bay Commission, noted that wise husbandry of the land was required to save the Bay. Mr. Witten recommended changes in State Code Article 66B [zoning and planning enabling legislation for non-charter counties] as well as criteria ideas: more public participation and adequate advertising of proposed changes, for example, on radio; all zoning negotiations a part of the public record; requirements for completion bonds dealing with stormwater management, erosion and runoff control, etc.; fee structure related to size of project so as to recoup costs of enforcement, etc.; criteria governing new development in upland urban areas; threshold where the state can intervene; dealing, as Calvert County has done, with floating homes.

Mr. Havens (Rp. 59), St. Mary's Chamber of Commerce, read a statement of its president supporting the work of the Commission but expressing concern for the possibly adverse impact on continuing waterfront development.

John Prouty (Rp. 61), a Patuxent River farmer, asked that farmers already in good practice be considered carefully, and that each farm be treated on its own merit for any application of further nonpoint source controls.

Steven Bunker (Rp. 63), Senior Staff Scientist, Chesapeake Bay Foundation and Calvert County resident, noted that the criteria should require strict standards for new development, including such matters as stormwater management, sediment/erosion control, setbacks, vegetative buffers, and limitations on impervious surfaces. They should also provide for the identifica-

tion and protection of sensitive or unique areas, such as lands not suitable for development due to steep slopes or poor soils. And, land preservation through such incentives as exist in the Agricultural Preservation Program should be encouraged. Second, Mr. Bunker noted that the Commission might learn from the experiences of other states which have successfully instituted similar programs, for example, Oregon, Florida, North Carolina, California, and regions of New York and New Jersey. Finally, input from local planning officials should be solicited as the criteria are being developed.

James Raley (Rp. 65) waived any statement.

Eleanor Cofer (Rp. 65), president St. Mary's County branch of American Association of University Women and property owner near Point Lookout, expressed a general concern with overdevelopment in her area due to potential sewerage, and asked that the Commission encourage local governments to listen to their citizens rather than just real estate developers.

William Johnston (Rp. 68), a southern Calvert County resident along the Patuxent, expressed fears concerning runaway population growth and its increasing environmental costs. Mr. Johnston also questioned the right of sewage treatment plants to expand, thereby providing for more urban growth. Finally, he submitted a paper comparing forested with grassed buffer strips and concluding that the former is much more effective.

Voice 1 (Rp. 73), an unidentified Calvert County farmer, noted that some statistics on runoff pollution from farms may not be reliable, and asked for the development of adequate information.

Closing statement by Chairman Liss.

Other submissions:

1.) Peterjohn and Correll, "Nutrient Dynamics in an Agricultural Watershed: Observations on the Role of A Riparian Forest," Ecology 65(5), 1984, pp. 1466-1475.

2.) Editorial, "On Marine Eutrophication", Marine Pollution Bulletin, 1984.

3.) Horton, "Nitrogen issue spurs debate on bay plans", Baltimore Sun, November 25, 1984.

4.) Ripley & Witten, "Notes on Sewage Permit Hearings and Impacts on the Patuxent", Calvert County Recorder, November 9, 1984.

5.) Patuxent River Association, "The Shad and Herring Which Spawn in the Patuxent River must also Be Saved", N.D.; "Nitrogen Primarily Controls Total Algae and Low Dissolved Oxygen", N.D.

6.) Testimony given by Karen Miles before the Chesapeake Bay Critical Areas Commission.

7.) Letter from Robert T. Jarboe, St. Mary's County Farm Bureau, December 8, 1984 (noting that agriculture is not the major contributor of pollutants; that blanket restrictions on 1,000 foot buffers could "wipe out" some farms from production; that land so removed should be considered for reduced tax rate or tax credit; and that a farm-by-farm approach be adopted that uses farm plans developed in cooperation with the local Soil Conservation Service office).

8.) Letter from Thomas L. Courtney, Ridge, Maryland, December 14, 1984 (asking for better identification of the true sources of pollution -- such as upland areas; and noting that in order to keep our present standard of living, we will have to live with some pollution, the appropriate amount of which requires further study.)

CAR

Chesapeake Bay Critical Areas Commission Hearing
Essex Public Hearing 1/3/85 - 7:30 P.M.

Norman Lauenstein (Rp. 14), Baltimore County Councilman, commented that farming and fishing are endangered in the Bay area, and that all Bay area jurisdictions are responsible for making this law work. Updating pollution controls on treatment plants and industry will help, though State funding is a necessity. Baltimore County has already adopted practices that should help comply with the eventual critical area criteria, for example: prohibiting development on wetlands, flood plain protection, encouragement of good stormwater management (capturing the first inch of rain), sediment control programs prior to development, the use of certain resource conservation zones, water and sewer plans, an agricultural preservation plan, septic regulations, open space program, marina development demonstration that water quality will not be degraded. 15% less development within the 1000 foot area should result in a contribution of 85% less pollution to the Bay.

Councilman O'Rourke (Rp. 20), of Baltimore County, offered encouragement to the Commission's work, and noted that any penalties for violation of criteria that are set out should be civil penalties so that tough enforcement is not hindered.

George Francos (Rp. 23), president of the Essex Middle River Civic Council, noted three important factors in the Bay's deterioration: local government development policies, sewage treatment facilities, and industrial and hazardous waste disposal. State, county and Federal Governments might consider creating a land bank to ease development pressures around the Bay. The Commission should also seek to have sewage treatment plants improved. Finally, the Commission should seek to establish criminal action against industrial and toxic polluters.

Nancy K. Matthews (Rp. 27), government relations liaison for the Greater Baltimore board of Realtors, expressed concern that no representative of their industry sat on the Commission. Mrs. Matthews also noted their support for reasonable growth procedure, but opposition to unreasonable government restrictions affecting private development rights.

Mark Wasserman (Rp. 28), speaking for Mayor Schaefer, noted that the City of Baltimore did not intend to exempt itself from the Critical Area Program. One thing the city, in cooperation with County and Federal officials, is doing, is seeking to significantly upgrade the Back River Wastewater Treatment Plant, at a cost of \$400 Million. Funding, of course, is critical, Through improved erosion and sediment control laws and stormwater management, the city will be cooperating in the Bay's cleanup. Concerning the habitat goal, wetlands and parkland creation, revegetation, and similar efforts are on-going. Gaining public access and waterfront open-space might be an important

component for the Commissioner's criteria, especially as this affects urban areas. Finally, the State must recognize that local governments will need assistance--personnel and financial--to make this Program work, also regarding the Commissioner's review process down the road, a streamlined one not producing undue delay, would be helpful.

Nancy Brewster (Rp. 36), representing the Maryland Chapter of the Nature Conservancy summarized Conservancy testimony given at previous hearing.

Joseph Gunner (Rp. 39), a resident of Sue Creek, commented that the drains from developments along the rivers are a major source of pollution and need to be dealt with in some way.

Al Clasing, Jr. (Rp. 40), president of the Back River Neck Peninsula Community Association, noted his community's concern for the polluted Back River and Middle River. The central point is that some rural areas, such as that in the Back River Area, must remain that way. Purchase is one way to assure that. The Commission must look carefully at existing local regulatory practices as well, to see how they're actually working or not working--for example, concerning a proposed 600 home development on Sue Creek.

John Gontrum (Rp. 45), an attorney in Baltimore, has represented clients in the past whose properties are effected by the Critical Area law. Mr. Gontrum requested that the criteria be flexible enough to reflect the localized nature of land, environment, and pollution. Solutions aren't the same for all properties. For example, some wetland development can enhance pollution control capability. Second, the Commission should consider the opportunities that off-site mitigation can have for improving the Bay. Third, controlled public access to these areas (wetlands) is an important goal toward which to work, rather than total prohibition of the public. Finally, the State should become a full partner in the development review process, rather than merely acting as a veto mechanism.

Delegate Weir (Rp. 51), expressed thanks to the County for adopting the basic concepts of what the Commission is trying to accomplish. Delegate Weir called for dedicated effort to save the Bay.

Norman Gerber (Rp. 52), Director of Planning and Zoning for Baltimore County addressed three concerns: local authority, criteria, and funding. First, the State must provide the framework within which local governments are to take regulatory action and give technical assistance toward that end. Second, flexible yet

firm criteria in five areas are necessary (see detail at pp. 54-55): preservation of coastal habitats and vegetation; sediments and erosion control using setbacks, sensitive land prohibitions, and buffers around water bodies; stormwater management techniques including infiltration, maximum coverage, and post-equal-to-pre-development runoff rates; retrofitting existing industry; marina regulation; and significant enforcement improvements. Finally, local governments need the state's financial help to undertake this ambitious program.

Bruce Stoyer (Rp. 57), representing the students of Parkville Senior High School, Baltimore County, presented several of their concerns: unnecessary pollution going into the Bay, dredging, military testing, shoreline erosion, and Calvert Cliffs Nuclear Facility. Stricter enforcement of litter laws and of industrial pollution, as well as more monitoring, are required.

Ann Gaius (Rp. 59), General Counsel for the Chesapeake Bay Foundation, presented three major ideas; that standards for development should be strict in the critical areas, including such matters as buffer zones, stormwater management, erosion control, minimization of unpevious surfaces, and open space conservation; total protection of sensitive or unique areas; and the use of incentives to help landowners such as tax incentives, easements, or transferable development rights, as well as speeding outright acquisition of lands in these areas by State or private entities.

Robert Pollard (Rp. 63), Chairman, Baltimore Environmental Center Club first invited audience and Commission to the Club's annual meeting where a discussion of "Toxics in the Bay" would take place. Mr. Pollard suggested adequate funding assistance and the creation of a resource bank of technical expertise from the State, to provide on-going assistance to local governments in the biological sciences and other fields. Second, he noted that while growth needs to be accomodated, it should generally be diverted from the critical area.

Anneke Davis (Rp. 67), of the Maryland Ornithological Society, made a special plea for preservation of wooded wetlands, which are much rarer than grassed wetlands, and are extremely valuable habitat for a variety of birds and plants. Second, Ms. Davis expressed a concern over the cumulative impacts of development which are often ignored, and thus asked the Commission to very carefully consider any applications for exclusions. The less development along the shoreline, the better. Finally, Ms. Davis suggested that the Commission contact the City of San Francisco Bay Association for their insight.

Lee Miller (Rp. 73), a local resident, suggested that ways be explored for testing pollutant emissions of watercraft engines. Secondly, the Corps of Engineers needs to be more mindful of the Bay impacts of its decisions, such as permitting marinas, than it has in the past.

Judith Kremen (Rp. 76), of the Baltimore County League of Women Voters, asked that efforts continue to improve wastewater treatment facilities; noted that research into habitat protection from the potential impacts of increased salinity and decreases in SAV remain important; and that land use planning and control tools be used to best effect--such as low density zoning. Adequate local and State funding of these efforts is required. Finally, the League encourages agricultural organizations in their education efforts concerning best management practices.

Guido Guarnaccia (Rp. 78), related several personal incidents exemplifying the pollution problems of the Bay in general and the Back River in particular. There, public outfalls, illegal pollution by Eastern Steel and disruption of beach areas, has all caused significant deterioration. Unlawful dumping practices must stop, and enforcement must increase.

Brian-Hartman (Rp. 83), a senior at Parkville High School, recommended setting aside more wetlands for waterfowl and other wildlife, as well as improving existing habitat, increasing clean-up crews, monitoring hazardous pollution, and restricting real estate development.

Janet Wood (Rp. 84), representing the Maryland Waste Coalition, suggested that intense development that creates urban runoff pollution needs to be curbed or at least the development must be more sensitive to those impacts. Point source discharges by industrial polluters must receive the State's attention and increased enforcement of laws is vital.

Evan August (Rp. 86), a senior at Milford Mill High School, stressed the importance of dealing with sedimentation, retention of forest-vegetated areas in development projects, and the avoidance of wetlands if at all possible or regulations specifying the amount of wetlands that can be used, and better control of industrial waste discharges.

Kathy Quinlan (Rp. 89), president of the student government of Towson High School, used Cape Cod's fairly recent spate of poorly planned development as an example of what not to allow in this region. Certain specific standards, such as erosion control and vegetative buffers, are important, as is the protection of certain delicate areas, endangered plants and animals. Finally, the control of density within the thousand foot "buffer", by purchasing easements and tightening restrictions, is necessary.

Glen Novotny (Rp. 91), student president of Chesapeake High School, recommended restrictions on chemical factories which discharge into the Bay, and keeping good counts of each year's fishery. The young people should be involved.

John Jones (Rp. 92), a senior at Kenwood High School, noted his personal experience as a waterman which allowed him to see declines of shell-fish quantity and quality over the past two years. He

blamed overharvesting of females, destruction of marshes, reduction of submerged grass beds and decreased salinity due to large freshwater flows. Mr. Jones suggested some remedies, such as: a minimal size mesh in crab pots that permits smaller crabs to escape; two escape rings for the same purpose; a limit on females that can be harvested; a moratorium on the taking of mature female crabs; an agreement with Virginia concerning lower bay harvest limitations; and reductions in freshwater runoff by reducing the amount of cultivation right to the water's edge, destruction of woods and meadows in the critical area for development, and destruction of marshes which can absorb runoff and sediments.

Doris Kuhar (Rp. 96), representing Baltimore County Citizen's Improvement Association, recounted the problems of landfills adjacent to the Bay's tributaries, and how their leachate and runoff often finds its way into the rivers and the Bay. Similarly, junkyards, auto shops, and other non-water-dependent uses should not be located along rivers and creeks. Ms. Kuhar also asked for a moratorium on waterline development, with strict standards for other development.

Pearl Gintling (Rp. 99), withdrew her request to speak in favor of a later written statement.

William Wilson (Rp. 99), a Baltimore resident, spoke on behalf of the Maryland Conservation Council, and asked for strict standards for new development in critical areas; identification and protection of sensitive and unique areas; strict soil conservation practices for land under cultivation in critical areas; identification of incentives which will encourage private preservation in critical areas.

Robert Christopher (Rp. 101), warned against "watering down" the 1000 feet to anything less, as well as making sure the State doesn't work at cross purposes with itself, where one agency is trying to preserve and another to develop. Mr. Christopher suggested an education criterion be included.

Michael Davis (Rp. 103), for Congresswoman Bentley, expressed support for the protection that a 1000 foot area in which development would be severely restricted, would offer the Bay - especially in the Back River Neck Peninsula area. This area should be targeted as a major preservation project. Secondly, an improved sewage treatment plant situation, or alternative systems, should be investigated and implemented, and the Back River Plant, to be upgraded soon, should be sure to be of sufficient capacity into the next century.

Mr. Wrightson (Rp. 107), withdrew his request for oral remarks and offered to submit comments in writing.

Jolen Markovich appeared as a representative of the Maryland Forest, Park and Wildlife Service, a unit of the Department of Natural Resources, which provides expertise and technical assistance in the management of those resources. Forest land covers 42 percent of Maryland's land area. Forest buffers along all the tributary streams

leading to the Bay are nature's most efficient filtering system. They intercept runoff and trap up to 100 percent of sediment loads and decrease nutrient loads. The following recommendations were made: (1) require local jurisdictions to include in their programs, zoning ordinances and subdivision regulations, a requirement for the retention of forest land; (2) forest land adjacent to the Bay shoreline and to tributaries of the Bay should receive the highest priority for retention and protection; (3) a criterion should be adopted that would require a forest management plan be approved for any cultural operation on forest land in the critical areas and; (4) forest buffers should be required in non-forested areas adjacent to the Bay shoreline and tributaries draining to the Bay, (5) the steeper the slope of the land used, the wider the buffer that should be required and (6) that the existing wildlife habitats encompassed in the critical area in its entirety be considered for maintaining existing wildlife habitats and for creating additional ones (Rp. 108-110).

Daryl Braithwaite, program coordinator of the Maryland Office of the Clean Water Action Project stated that population growth and subsequent development together with the decline of protective land uses have caused a great reduction in the quality and productivity of the Bay watershed, she recommended that in developing areas, the use of land should be permitted only in limited areas and in the most environmentally sound manner, including ample setbacks for septic tanks along streams and shorelines; maximum use of porous pavement; maintenance of vegetative and timber cover; enforcement of sediment control during construction, development should be prohibited in areas of unique and sensitive habitats, steep slopes and easily erodable soils or where disturbance of tidal or non-tidal wetlands could occur.

For the rural and undeveloped areas, open space should be preserved by providing incentives for easements and land acquisition. Where areas are now enjoying high density zoning beyond what is now being used, the areas should be down-zoned. In agricultural areas, buffer strips should be required to protect the waterway from run-off of nutrients from farmland. Local pollution control has failed because of a lack of money, staff and low priority from the local subdivisions (R110-113). The witness also filed with the Commission a copy of the statement of Henry Koellein, President of the Metropolitan Council of the AFL-CIO.

Daniel Beck, President of Baltimore County Waterman's Association recommended an immediate moratorium on any future development in the area designated as critical areas "until the criteria are developed". All existing sewer plants and systems should be immediately upgraded. Annapolis, Havre De Grace, and Chestertown as well as Calvert, Prince George's, Anne Arundel, Baltimore, Harford, Cecil, Kent and Queen Anne's Counties sewer systems are inadequate to serve the areas they are supposed to serve.

Daniel O'Toole, President of the Maryland White Lung Association complained of a diversity of enforcement responsibility parceled out to a number of State agencies with no one central authority being responsible for the strict enforcement of the rules and regulations. He also suggested stiffer penalties for violations of the law.

Fred Haleicht objected to the proposals for central sewage on the Back River Peninsula because it urbanizes what is still a rural area. He suggested the use of alternative systems experimenting with new technologies which are funded by EPA and the State of Maryland.

Kathy Martin appeared as a property owner on the Gunpowder River which is one of the tributaries of the Chesapeake Bay who was upset by the run-off of sediment from businesses, farms and developments which make the river a reddish, mucky color. The development where she presently lives has been allowed to build within 100' of the stream bank with very steep slopes up to 60 to 70 degrees. Existing vegetation has not been preserved and severe erosion has occurred.

Judy Johnson read a statement prepared by the Natural Resources Defense Council and by the Committee to Preserve Assateague, both of which can be found at pp. 125-131 of the record.

Chesapeake Bay Critical Area Commission
Crofton Public Hearing
12/11/84 - 7:30 P.M.

Thomas Cardaci (Rp. 17), president of the Prince George's County Board of Realtors, expressed the hope and belief that the Commission should follow a course that both protects the environment as well as private property rights.

John Leak (Rp. 19), waived an oral statement in favor of a future written one. .

Debi Lee (Rp. 19), a resident of Annapolis and both a planner and developer, noted that strong criteria would be good for all, including developers, because of their positive effects on good planning and design. Her suggestions included: eliminating the right to develop on the shoreline, and implementing a setback and buffer requirement; reducing or minimizing runoff and erosion via buffer strips, porous paving, not building on steep slopes or highly erodible soils; and using such innovative planning techniques as planned unit development and clustering. Finally, Ms. Lee asked that any review process that is instituted be reasonable in terms of time.

Kathy Ellett (Rp. 23), president of the League of Women Voters of Maryland, supported strong criteria, especially as regards sedimentation control, water quality management, and agricultural practices. Ms. Ellett suggested that preservation of natural vegetation, buffer strips, and forest land be given special consideration, and that enforcement of the criteria and zoning would be especially important in the future.

John Cochran (Rp. 25), a resident of Hillsmere Shores and local Sierra Club chair, urged the development of strong criteria, and noted that their group would be submitting a written statement.

Robert McWethy (Rp. 25), speaking for the Weems Creek Conservancy, echoed the need for strong criteria. Also mentioned were concerns about construction on unsuitable land, inappropriate timing of construction projects, and large parking areas.

Ronald Holland (Rp. 27), a resident of Davidsonville, supported Commission efforts and cited the need for strong enforcement measures being included in the criteria, as well as disallowing grandfathering and providing for [retro] fitting measures on polluting activities.

Buz Winchester (Rp. 28), Executive Vice President of the Anne Arundel Trade Council, noted the importance of developing a concensus among all interested groups, while strong regulations are still intended. Mr. Winchester urged the Commission to work with the development community.

Donald Patterson (Rp. 30), a resident on the South River, favored strong but creative approaches being taken (such as are used in North Carolina, Oregon, California), that include buffer strips, shore-water management, open space, and erosion control, to help stem the sedimentation problems currently evident in the South and other rivers.

Mitch Nathanson (Rp. 32), representing the Marine Trades Association (Anne Arundel and Maryland), noted concerns with setbacks, buffer strips, stormwater management, and sediment and erosion control, and that as a water-dependent use his membership will be affected by these matters. Mr. Nathanson offered his group's assistance.

Robert Milligan (Rp. 33), representing a golf course, asked not to be too severely restricted concerning application of fertilizers, etc., and also asked the Commission to get expert assistance in this area from the University of Maryland.

Karl Reiblich (Rp. 34), of Baltimore County and affiliated with the National Association of Realtors, encouraged the use of soils maps in the Commissioner's work, and asked when controls would extend to non-tidal wetlands.

Bill Perry, Jr. (Rp. 35), urged the adoption of strong criteria.

Marshall Leland (Rp. 36), an Eastport, Annapolis resident, on Back Creek, noted the destructive activities of a marina developer and that the "the thousand foot rule" would have prevented such.

Thomas Gire (Rp. 36), appeared for the Audobon Naturalist Society, and appealed for the preservation of natural habitats in and around the Bay. The Chesapeake Bay Foundation's recommendations were supported, in particular preservation of native vegetation, providing for a continuity among habitats, and prohibiting the disturbance of both tidal and non-tidal wetlands. Mr. Gire asked for strict development standards and for open land preservation through incentives.

Joseph Elbrich (Rp. 39), of Anne Arundel's Office of Planning and Zoning, noted that County's general administrative environmental progress, but also noted the difficulty in implementing the S8-1813 interim reviews with respect to habitat protection (because of limited resource data and the necessity of field investigations). Mr. Elbrich stated that his office might well utilize the criteria beyond the 1,000 foot limit.

Chandler Robbins (Rp. 41), a wildlife biologist representing the Maryland Chapter of the Nature Conservancy, made three observations and four recommendations. First, that migratory birds are good indicators of environmental quality; that many species of nesting birds have disappeared from portions of P.G. County; and that a list of important sites in the County should be made and efforts made to protect them. The four recommendations are: 1.) seek expert help, especially the Maryland Natural Heritage Program, to identify critical areas; 2.) give special consideration to endangered or threatened species; 3.) assure that those critical areas are recognized and treated accordingly; and 4.) designate appropriate buffer zones. Mr. Robbins offered his technical assistance in these matters.

Billy Goodall (Rp. 45), president of the Anne Arundel County Board of Realtors, expressed his pleasure at hearing that there would not be a state zoning and planning board; and noted that some county officials may not be qualified to do environmental assessments. Mr. Goodall expressed his organization's support.

Mr. Rhonemus, a Back Creek, Annapolis resident, was concerned with the actions of a marina operator who caused destruction of a bank as well as much erosion and sedimentation, and hoped the Commission's guidelines will address this

problem. Mr. Rhonemus noted other construction near the top of the creek, within the 1,000 foot line, that was causing severe siltation problems.

Senator Winegrad (Rp. 50), noted both commercial and pleasure use interests in the Bay, and the severe or critical problem that the Bay's living resources -- its fisheries -- are dying off: rockfish, oyster, shad and herring. The Senator also noted the critical nature of treating land use and burgeoning growth properly beyond the 1,000 foot area, and not continuing to lose vast acreages of forest, farm, and non-tidal wetlands that has occurred in the recent past. The clearing of trees for any purpose needs to be addressed in the criteria, perhaps by mandating a forest management plan. The Senator further noted that even with good development practices, urban runoff would contain many times more pollutants than non-urban; that many urban areas should not qualify, on a wholesale basis, for exclusion because of large undeveloped areas within them -- for example, Annapolis Neck Peninsula.

Mary Anne Todd (Rp. 65), expressed concern over oyster and crab declines, and asked for strong criteria to reduce both point and non-point source pollution so that submerged aquatic vegetation (SAV) can recover. Ms. Todd also suggested strict and reasonable criteria to protect habitats, tidal and non-tidal wetlands, and native vegetation.

Leonard Wrabel (Rp. 67), representing the Maryland Forest, Park, and Wildlife Service, reiterated testimony given by the Service at several of the other hearings.

Blossom Holland (Rp. 70), inserted a paper into the record.

Martin Zehner (Rp. 70), for R. Graydon Ripley, president of the Davidsonville Area Civic Association, expressed continuing concern over discharges from sewage treatment plants, and asked for a "no discharge in critical areas" criterion, along with encouragement of land treatment.

Clifford Falkenau (Rp. 73), representing Anne Arundel's Environmental Advisory Commission and the Severn River Association, supported the idea of carefully managed and controlled growth, cluster development, and increased enforcement efforts. Continuous bulkheadings, Mr. Falkenau continued, is not the sensitive way to protect the shoreline.

Liz Vanden Heuvel (Rp. 75), of Hillsmere Shores, expressed concern over the projected growth for Annapolis Neck Peninsula, and urged criteria that would deal strictly with setbacks, buffer strips, sediment and erosion control.

Anne Swanson (Rp. 77), for the Chesapeake Bay Foundation, offered that the criteria must be clear, strong, and include an adequate implementation mechanism to assure compliance. Two aims are required: the regulation of poorly-planned development, and the protection of wetlands and critical areas. Concerning the former: 1.) standards for shoreline area development must be clear so that developers know in advance what they must do; 2.) they should include sediment and erosion controls, stormwater management, limits on impervious surfaces, prohibitions for steep slopes and erodible soils, maintenance of vegetative cover, maximization of infiltration capacity, maintenance of pre-development runoff rates and volumes, and specified building and septic tank setbacks. Currently discrete permitting programs can be drawn into a comprehensive effort, to avoid overlap and duplication. Secondly, some areas

simply should not be developed at all: wetlands, unique/sensitive habitats, prominent open spaces. Finally, the impacts of upland development, adjacent to wetlands, should be considered.

Paul Foer (Rp. 82), a professional yacht captain and marine educator from Annapolis, expressed his desire for strong and sensible regulations to sustain the Bay as a viable recreational resource, with special attention to land use control of shoreline and waterfront. Minimizing runoff, erosion, and general degradation of shorelines is essential. There are right and wrong ways to develop marinas, boatyards, and other waterside uses, and in some places there should be no development at all. This should all be reflected in the criteria.

Karl Neidhardt (Rp. 86), stressed several areas: that the criteria require new development to meet strict standards; that land preservation be encouraged through economic incentives — especially at the field level of development; that stormwater management should be an essential element; that the wetlands exclusion be examined carefully; and that on-going monitoring be included in the criteria.

Richard DeSeve (Rp. 90), president of the Maryland Conservation Council, expressed a real concern with growth in this area, and noted a desire that all interests — environmental, real estate, etc. — need to work together on the problem. Enforcement of current sediment control and stormwater management regulations should be addressed, as well as anything to be added.

Elinor Gawel (Rp. 94), waived an oral statement, to submit a written one.

Charles Rechner, Jr. (Rp. 94), asked whether the criteria would be limited to presently undeveloped land or would also apply to existing development or the building of homes on existing lots. Further, since people cause pollution, the ultimate solution is to control immigration and population growth here.

Written submissions

- 1.) Land Use Data for the State of Maryland, N.D.
- 2.) "Choices for the Chesapeake, An Action Agenda", Workshop Recommendations, N.D.
- 3.) Statement of Thomas A. Cardaci to the Chesapeake Bay Critical Area Commission, December 11, 1984.
- 4.) Statement of Mitch Nathanson, Anne Arundel and Maryland Marine Trades Association, N.D.
- 5.) Statement of the Audobon Naturalist Society of the Central Atlantic States, December 18, 1984 (delivered by Thomas Gire).
- 6.) Where lawn chemicals fall within a list of toxics, submitted by Robert Milligan, N.D.
- 7.) Testimony Given By Chandler Robbins Before the Chesapeake Bay Critical Area[s] Commission, N.D.

- 8.) Statement of Leonard Wrabel for the Maryland Forest, Park, and Wildlife Service, December 11, 1984.
- 9.) Statement of R. Graydon Ripley, Davidsonville Area Civic Association, December 11, 1984, with press release attachment re sewage treatment discharges into the Patuxent River; attachment of letter from Civic Association to Department of Health official with responsibility for sewage discharge permit; attachment of petition for declaratory ruling on discharge permits of Patuxent Mobile Estates and Wayson's Mobile Court, Inc., by the Association; attachment of public hearing comments of the Association on such permits.
- 10.) Statement of Liz Vanden Heuvel to the Commission, December 11, 1984.
- 11.) Letter from Blossom Holland, President, League of Women Voters of Anne Arundel County, supporting strong criteria, December 18, 1984.
- 12.) Letter from William Hatchl, Chairman, Black Walnut Creek Commission, December 17, 1984, with detailed coverage of the following matters: pre and post-development runoff must be equivalent in terms of quantity, rate, and quality and this requires pre-development testing for a determination; storm-water management and sediment control devices are essential, even for single lot development; enhance the citizen participation process to involve citizenry at earliest time in development process and throughout, and make sure developer knows requirements even before platting lots; make local jurisdictions require rectification of environmental problems in existing subdivisions within five (5) years; centralize control over water in one state agency; implement minimum 100 foot buffer zones, and have them deeded to the community association for adequate care and control, and have local governments become parties to the deeds to enforce them; wider buffer zones for sensitive areas; the wetlands exclusion should be rarely permitted by the Commission, and assurances of no detrimental impacts thereto need to be gained first; expand the current endangered and threatened species list to include species that are valuable Bay area assets, and expand protection for all habitats; authority to waive any requirements should be vested solely in the Governor; a density of two dwellings per acre should be the maximum permitted in the critical area, and development should be prohibited where inappropriate due to soils, slopes, etc.
- 13.) Letter from James Titus to the Commission, December 20, 1984, expressed concern that the criteria should account for expected sea level rises and possible effects on the water/shoreline therefrom, perhaps by basing a buffer line location on some future year's prediction of sea level elevation.
- 14.) Letter from Christian Rhonemus to the Commission, December 27, 1984, refining his statement at the hearing to read that the upper part of Back Creek is ruined, in part due to the City's non-control of development there, and asking therefore that the City not be exempted/excluded from the regulations under the potential exclusion provision of the Act.
- 15.) Letter from Hermann Gucinski, Director, Environmental Center, Anne Arundel Community College, December 18, 1984, recommending elements for, or an awareness of certain factors in, the Commission's criteria: recognition that the ideal unit for dealing with water quality problems is the entire watershed;

- 8.) Statement of Leonard Wrabel for the Maryland Forest, Park, and Wildlife Service, December 11, 1984.
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the problems are the decline of biological resources, changes in diversity, and the increasing extent of anoxic conditions — runoff, sedimentation merely contribute to them; thus, the criteria's focus should be on the problems; the criteria by which activities are examined should allow for the ranking of problems, alternatives and solutions; and some direct mechanism for population/growth control should be reflected as well.

Chesapeake Bay Critical Area Commission
Salisbury Public Hearing 12/20/84 - 7:30 P.M.

Appendices of statements and correspondence filed after hearing consisting of 29 exhibits at beginning of transcript, identified by letters of alphabet from A through Z and AA, BB, and CC.

The meeting was opened by a statement from the Chairman of the Critical Area Commission and the introduction of the fourteen members of the Commission present at the hearing.

Senator Fred Malkus made an opening statement similar in nature to his remarks in Easton. He was especially critical of the portion of the bill which he claimed named the areas which are exempted from the bill; particularly Baltimore City. (See Mayor Schaefer's statement read at hearing in Essex, Baltimore County.)

Louis Davis, Jr., President of the Willards' Town Council spoke of the expense of implementing the program and its impact on small towns. He also expressed concern over the adoption of more stringent agricultural regulations and storm water management.

Mrs. Ernest Gluser urged that the criteria adopted be strong enough to save the Bay.

Mrs. Illia J. Fehrer represented the Worcester Environmental Trust which supports strong guidelines which will result in upgrading water quality by both point and non-point pollution control. The criteria should protect the viability of fish, wildlife and plant habitat. Provision should be made to require adequate set-backs along streams and open water for man-made structures. Serious Bay-wide tidal flooding threatens Cambridge, Crisfield, Pocomoke, Rock Hall, Snow Hill, St. Michael's and Tilghman's Island. The Baltimore District Army Corps of Engineers has recently conducted a study of this problem. Buffer strips and open water requirements would allow natural vegetation to hold the soil and prevent runoff and erosion. The requirement of trees and shrubs would absorb the impact of heavy rain. Buffer strips would also strain out sediments which carry excess nutrients and farm chemicals into the Bay. Impervious surfaces which increase runoff should be set back from streams and open water. Maximum infiltration of storm water into the soil should be encouraged.

Innovative zoning such as cluster housing, the use of easements, the transfer of development rights should be included in area zoning codes. Unique and sensitive areas where unstable soils or endangered species are found should be protected. Tidal and non-tidal wetlands are important as flood buffers and nutrient filters. The criteria developed should minimize damage to water quality, fish, wildlife and plant habitat from land based activities (Rp. 20-25).

Marie Leonard endorsed the previous witness' statement.

Russell Cooper expressed his concern for the land use policies which were threatening his use of his land and asked whether the State would compensate him for the restrictions on his land.

Robert Davis of the Wicomico Soil Conservation District called attention to the fact that the land on the Eastern Shore was different from that on the Western Shore and that that fact should be considered when criteria were being considered.

Robert Hawkins, Chairman of the Planning and Zoning Commission in Pocomoke recommended that the small towns close to the Pocomoke River should be exempted because the 1000' area includes all of downtown Pocomoke, and part of its residential and recreational areas.

George Phillips of Hebron, Maryland asked whether any samples had been taken at Quantico Creek or at the Wicomico River to determine whether there has been pollution in this area because of runoff of agricultural pesticides, fertilizers or sewage.

Edward Ralph, Executive Secretary of Delmarva Poultry Industry, Inc., expressed concern that impractical and unnecessary regulations should not be imposed on general agriculture in order to "save the Bay." He contended that good conservation practices such as no-till crop production, the use of cover crops and the most efficient use of fertilizers were the most practical way to reduce runoff and pollution. What is required is increased coordinated effort between the Maryland Department of Agriculture, the research and extension personnel from the University of Maryland, the Soil Conservation Service and Districts, Maryland Farm Bureau, Maryland State Grange, Maryland Agricultural Commission, and the Delmarva Poultry Industry to arrive at sound resource management decisions in the agricultural portion of the effort to protect the Bay (Rp. 33-37).

Robert G. Miller appeared as spokesman for the Chamber of Commerce of the Greater Salisbury Area and expressed the concerns of the farmers in the area. He pointed out that in order to spread the unit cost of machinery over as large as possible an area of land the prudent farmer has been required to accumulate more and more land over the years. Cost of land has skyrocketed and purchases have been made with borrowed money. They are now faced with possible restrictions on the use of land within the critical area. He urged that any restrictions placed on the usage of land be realistic and sensitive to the needs of the present owners of the land whose obligations may be an important portion of his family's financial planning (Rp. 38-41).

Langford Anderson spoke on behalf of the Somerset County Farm Bureau and read a resolution adopted by the Somerset County Farm Bureau.

Max Chambers spoke on behalf of the oystermen.

Milton Malkus read a statement in the absence of the President of the Dorchester County Farm Bureau which suggested that part of the problems of the Bay were caused by a failure to enforce the regulations already on the books. He also urged that, in the event the criteria impose a severe burden on agriculture, some effort to establish cost-sharing for implementation of the criteria be instituted in which the land owner, the State and the locality would share the cost of cleaning up the Bay (Rp. 44-46). He also urged that those exempted from the law be brought back under the terms of the law.

Wilson Lorre, a farmer of approximately 312 acres, gave the Commission a run-down of his experience with the use of chemicals for fertilizer, soil treatment and control of grass and weed killers.

Michael Weisner appeared as President of the Coastal Board of Realtors and urged the Commission to consider the contribution of industry and the City of Baltimore to the decline of the Bay. Lower Bay should not be required to bear the brunt of unbalanced regulation and control. Support the goals of the Commission, but regulations must be fair and equitable.

Norman Brittingham represented Wicomico and Worcester County Farm Bureaus. He discussed the economic as well as the land use problems of agriculture in the proposal for criteria. Regulations cannot be uniform because "one shoe does not fit every foot."

Wayne Asplen represented the Division of Environmental Health for the Dorchester County Health Department. His statement is found in the record beginning at p. 56 and continuing through page 58. He also filed a written statement which is included as an exhibit. The record includes the four recommendations made for the adoption of criteria. They are worth considering.

Mr. Harcum objected to the proposed regulations (not yet proposed).

Edward Halloway a farmer, objected to regulation.

Paul Twining, farm owner adjoining the Manokin River, urged the Commission consider the economic impact land use restrictions will have on the regulated areas. Land owners should be compensated for any loss in land value caused by regulation. Where possible, the Commission should utilize existing regulations. Severe restrictive regulations should not be imposed on agriculture in the State of Maryland.

Mrs. Lester Coggeshall complained that more than half of the major industrial discharges are operating with expired permits. The same thing is true of municipal discharges. Lagoon systems in Maryland do not consistently maintain their water quality standards and the laws presently on the books are not enforced (Rp. 65-67).

John Jordan spoke on behalf of the Maryland Forest, Park and Wildlife Service, an agency within DNR. He urged adequate forest buffers to intercept runoff, trap sediment loads and decrease nutrient loads (See Rp. 68-70).

John Finegan of the Delmarva Agricultural Chemical Association stated that the critical areas legislation was an unfair burden on the farmers. Buffer strips are unnecessary. The same result for conservation is achieved by no-till and the use of cover crops.

Francis O'Donnell urged the Commission to talk to the farmers, especially the younger ones, who have invested heavily in land and capital improvements and to adopt criteria which will give sufficient time to the farmers to adjust to the recommended changes.

William Livingston, Director of Planning for the Salisbury - Wicomico Planning Commission, complained the statute's impact was primarily on the non-metropolitan areas of the State and in the metro area of their undeveloped areas. He urged that the Commission distance itself from the Department of Natural Resources. He suggested the criteria be directed to match the problems of the geographic areas of the State and that they recognize that the problems in Maryland and the Chesapeake Bay vary from area to area. The programs adopted should leave some room for flexibility and should recognize that the amount of land covered by

development and the problems of pollution are related. The rules and regulations governing development are dependent on the laws governing each jurisdiction. The governance of rezoning is different in Wicomico County which is a charter county than it is in Salisbury which operates under Article 66B. Financial assistance should be made available to the municipalities and the counties in order to secure the technical staff and expertise necessary to comply with the criteria (Rp. 73-82).

Tex Sultenfuss, Commissioner for Queen Anne's County spoke of the erosion of the Chesapeake Bay shoreline at the rate of about 30' a year.

SL/ses
1/30/85



TORREY C. BROWN, M.D.
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

JUDGE SOLOMON LISS
CHAIRMAN

February 27, 1985

The Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21410-1991

Dear Governor Hughes:

I received a copy of the letter dated February 13, 1985 addressed to you by Senator Fred Malkus. In the letter he urged that your office support passage of his Senate Bill 203 which will, we believe, weaken the Critical Area Statute as adopted by the Legislature and signed by you.

The statute does not as suggested by Senator Malkus, allow certain urban areas to exclude themselves from the effect of the law. It does permit local governments to propose to the Critical Areas Commission the exclusion of either of two types of areas from the critical area designation. The first would be that part of a developed area in which in view of available public facilities and applicable laws and restrictions, the imposition of a program would not substantially improve protection of tidal water quality, conservation of fish, wildlife or plant habitat. An example might be a fully developed industrial site or subdivision with little open space remaining for new development.

The second possible area which might be considered for exclusion would be that area located at least 1,000 feet from open water separated by an area of wetlands which the local government finds will adequately protect tidal water quality fish, wildlife and plant habitats from the adverse effects of development within such an area.

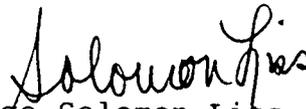
It is important to note that while cities and local subdivisions may propose that certain areas be excluded from the effect of the Critical Areas Act, the ultimate decision is made by the Commission.

Governor Hughes
Page Two

Contrary to statements which have been made at public hearings and at the legislative hearing on Senate Bill 203, neither Baltimore City, nor any other municipality or county government has, to date, requested any exclusion from the operation of the Act.

It would be premature to attempt to prejudge what action, if any, the Commission would take on any such request. In view of these circumstances, we would hope that the Governor's Office would decline to support Senate Bill 203.

Sincerely,



Judge Solomon Liss
Chairman, Critical Areas
Commission

SL/jjd

cc: Ellen Fraites
Ben Bialek



copy to room a

INFO. COPY WENT TO: Governor
Frites
Becker

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

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FREDERICK C. MALKUS, JR.
STATE SENATOR
17TH LEGISLATIVE DISTRICT
PRESIDENT PRO TEM
COMMITTEES
ECONOMIC AND ENVIRONMENTAL AFFAIRS
EXECUTIVE NOMINATIONS
LEGISLATIVE POLICY
SEN 1990

February 13, 1985

RECEIVED

FEB 14 1985

EXEC. DEPT.

The Honorable Harry Hughes,
Governor of Maryland,
State House,
Annapolis, Maryland. 21401-1991

Dear Harry:

Last year the General Assembly passed your administration bill now known as the Chesapeake Bay Critical Areas law. Amendment to this law, suggested by the Department of Natural Resources, allowed certain urban areas to exclude themselves from the law. These areas include Baltimore City and most of the towns situated on the Chesapeake Bay and its tributaries. The EPA study shows that pollution is greatest in the densely populated areas.

I have introduced Senate Bill 203, as amendment to the critical areas law, which requires all areas to be administered by the Critical Areas Commission. I personally believe the same law should apply to all areas.

John R. Griffin, deputy secretary of the Department of Natural Resources, appeared in opposition to my bill. He stated that the Chesapeake Bay Critical Areas law pertains primarily to future pollution. The critical condition of the Bay is because of the existing pollution and not future pollution.

If your administration is to be successful in this important venture all areas must be treated the same. For this reason, I respectfully request that your office help me pass Senate Bill 203.

RECEIVED
FEB 15 1985
DNR - Asst. & Info.

Respectfully,

Frederick C. Malkus

FCM/tw