

ORDINANCE

WHEREAS, Article 25, Section 3(c) of the Maryland Annotated Code provides authority to the Board of County Commissioners for St. Mary's County, Maryland, to grant a franchise for the provision of cable television service in St. Mary's County; and

WHEREAS, on January 7, 2003, staff presented for discussion to the Board of County Commissioners a copy of the draft Cable Systems and Open Video Systems Ordinance as well as a draft Cable Franchise Agreement Between St. Mary's County, Maryland, Gans Multimedia Partnership, and Gans Communications, L.P.; and

WHEREAS, on February 4, 2003, the Board of County Commissioners conducted a public hearing to receive comments on the draft Cable Systems and Open Video Systems Ordinance and the draft Cable Franchise Agreement Between St. Mary's County, Maryland, Gans Multimedia Partnership, and Gans Communications, L.P. a notice of the public hearing being published in accordance with applicable laws; and

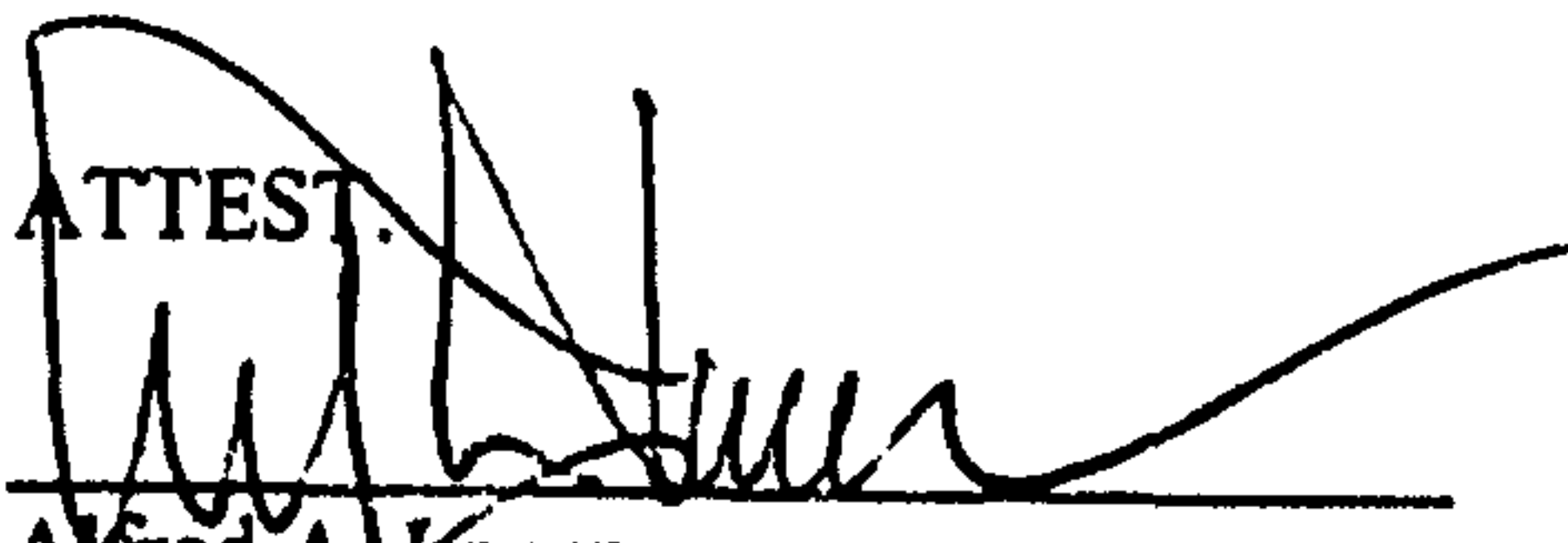
WHEREAS, after considering staff input and public comment, the Board of County Commissioners has determined the need to revise and update the existing Cable Television System Franchise Ordinance of October 2, 1990; and have determined that adopting a new ordinance prescribing procedures and requirements relating to cable television franchises to reflect changes in applicable law and to better ensure the use of public rights-of-way by cable systems will better serve the public interest.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners for St. Mary's County, Maryland, as follows:

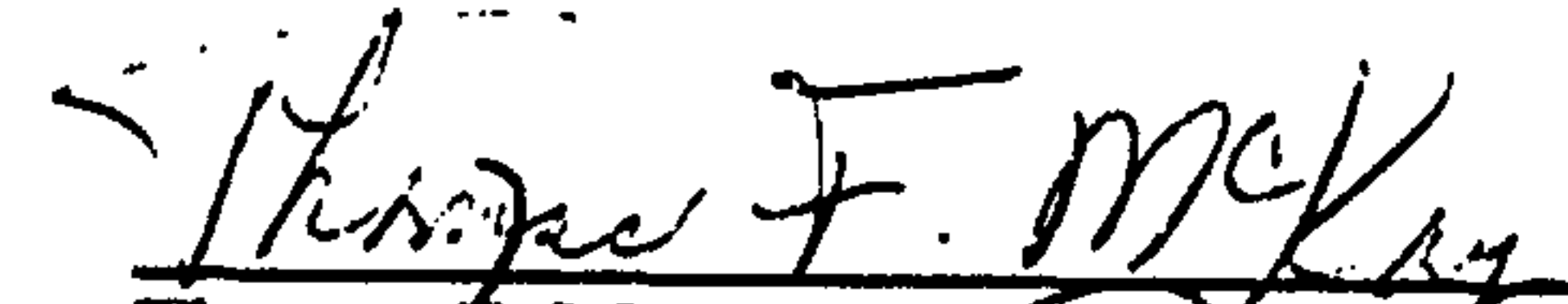
1. That the the Cable Television System Franchise Ordinance of October 2, 1990 is hereby repealed; and
2. That the Cable Systems and Open Video Systems Ordinance attached hereto as Exhibit A and made a part hereof is hereby adopted.
3. The Cable Systems and Open Video Systems Ordinance shall be effective on February 18, 2003.

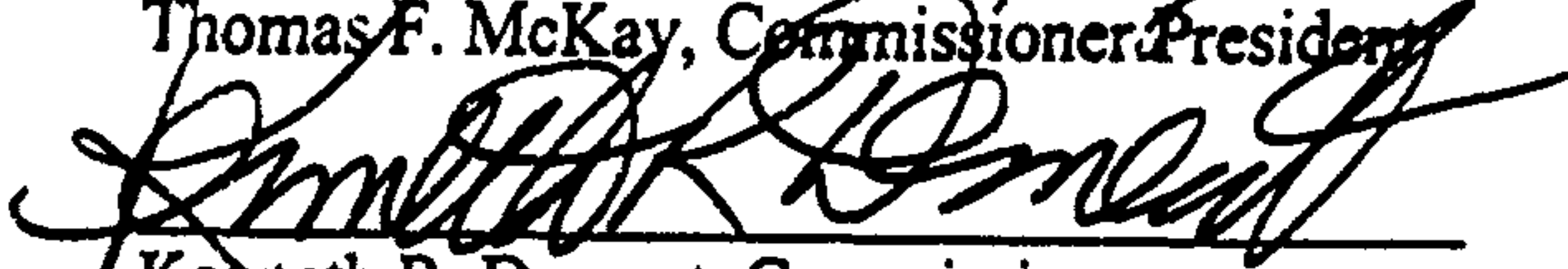
Those voting aye: McKay, Dement, Jarboe, Raley  
 Those voting nay: \_\_\_\_\_  
 Those abstaining or absent: Mattingly  
 Approval Date: February 18, 2003

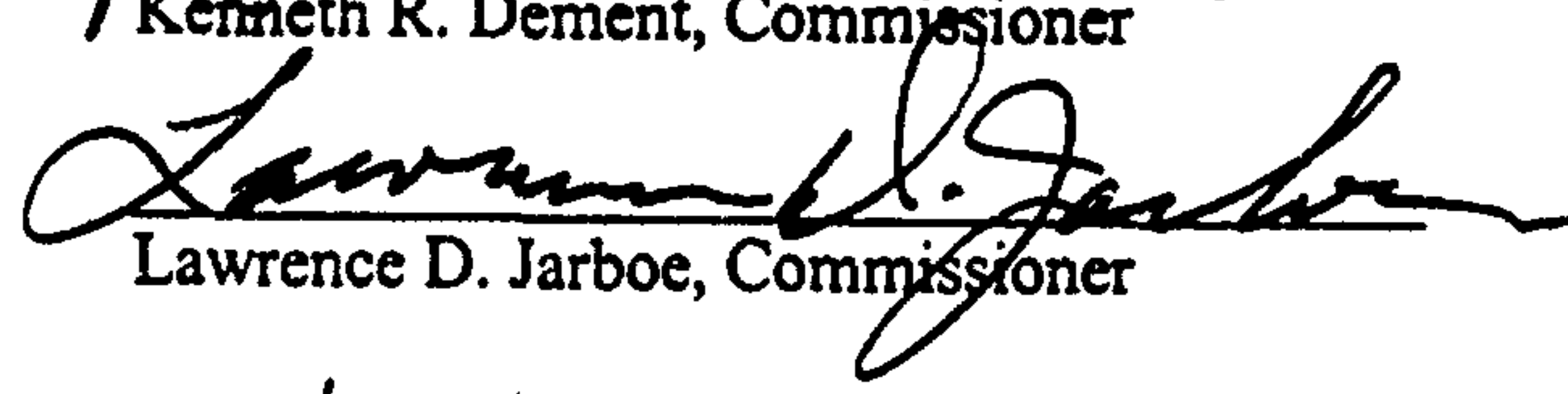
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ATTEST.  
  
 Alfred A. Lacer  
 County Administrator

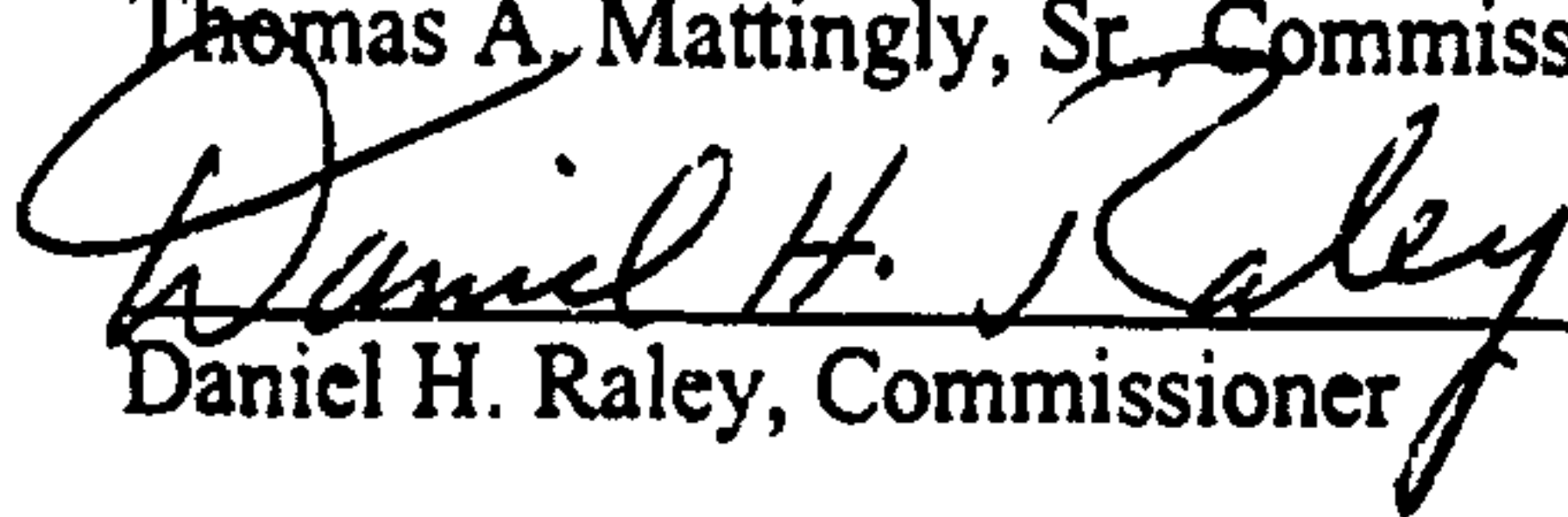
BOARD OF COUNTY COMMISSIONERS  
 FOR ST. MARY'S COUNTY, MARYLAND

  
 Thomas F. McKay, Commissioner, President


  
 Kenneth R. Dement, Commissioner

  
 Lawrence D. Jarboe, Commissioner

absent  
 Thomas A. Mattingly, Sr. Commissioner

  
 Daniel H. Raley, Commissioner

Approved as to form and legal sufficiency:

  
 John B. Norris, III  
 County Attorney

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**CABLE SYSTEMS AND OPEN VIDEO SYSTEMS**

**ST. MARY'S COUNTY, MARYLAND**



February 18, 2003

ORDINANCE NO. 03- 02



**CABLE SYSTEMS AND OPEN VIDEO SYSTEMS**  
**ST. MARY'S COUNTY, MARYLAND**

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**1. GENERAL PROVISIONS**

(a) *Title.* This Ordinance shall be known and may be cited as the "St. Mary's County Cable Television Franchise Act."

(b) *Effective Date and Repealer.* This Ordinance shall take effect and be in force from and after passage. All prior ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

(c) *Findings and Purpose*

(1) St. Mary's County, Maryland ("County") finds that the further development of cable communications may result in great benefits for the people of the County. Cable technology is rapidly changing, and cable plays an essential role as part of the County's basic infrastructure. Cable television systems permanently occupy and extensively make use of scarce and valuable Public Rights-of-Way, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide essential services to the public subject to special public interest obligations, such as utility companies. The grant of a Franchise has the effect of giving the holder extensive economic benefits and placing the holder in a position of public trust. The County finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the County or such Persons as the County so designates to protect the public and to ensure that any Franchise granted is operated in the public interest.

(2) Further, it is recognized that Cable Systems have the capacity to provide not only entertainment and information services to the County's residents, but can provide a

variety of broadband, interactive communications services to institutions and individuals. Many of these services involve County agencies and other public institutions.

(3) In light of the foregoing, the following goals, among others, underlie the provisions set forth in this Ordinance:

- (A) Cable should be available to as many County residents as possible
- (B) A Cable System should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the County.
- (C) A Cable System should be constructed and maintained during a Franchise term so that changes in technology may be integrated to the maximum extent possible into existing System facilities.
- (D) A Cable System should be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and service to the public.
- (E) A Cable Operator should pay fair compensation to the County for the occupation and use of local Public Rights-of-Way.

(4) The County intends that all provisions set forth in this Ordinance be construed to serve the public interest and the foregoing public purposes, and that any Franchise issued pursuant to this Ordinance be construed to include the foregoing findings and public purposes as integral parts thereof.

(d) *Delegation of Powers.* The County may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this Ordinance or any Franchise:



Agreement to any employee, officer, department or agency of the County, except where prohibited by applicable law.

## 2. DEFINITIONS AND RULES OF CONSTRUCTION

### *(a) Rules of Construction*

(1) For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(2) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender.

(3) The words "shall" and "will" are mandatory, and "may" is permissive.

(4) Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

### *(b) Defined Terms*

(1) Access Channel. Any channel on a Cable System set aside by a Franchisee for Public, Educational, or Governmental Access.

(2) Affiliate. Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.



(3) Cable Act. The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 *et seq.*, as amended from time to time.

(4) Cable Operator. Any Person or group of Persons (A) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in a substantial portion of such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

(5) Cable Service. (a) The one-way transmission to Subscribers of video programming or other programming service; and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(6) Cable System or System. A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way and without connecting to a facility that uses any Public Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

(7) County. The County Commissioners for St. Mary's County and any agency, department, or agent thereof.

(8) Construction, operation or repair. This and similar formulations mean the named actions interpreted broadly, encompassing, among other things, Installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and the management of a Cable System or open video system and its operations.

(9) Converter. An electronic device which may serve as an interface between a System and a Subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

(10) Educational Access. Access where educational institutions are the designated Programmers or Users having editorial control over their communications.

(11) FCC. The Federal Communications Commission, its designee, or any successor governmental entity thereto.

(12) Franchise. A non-exclusive authorization granted pursuant to this Ordinance to construct, operate, and maintain a Cable System along the Public Rights-of-Way to provide Cable Service within all or a specified area of the County. Any such authorization, in whatever form granted, shall not mean or include any general license or permit required for the privilege of transacting and carrying on a business within the County as required by the ordinances and laws of the County, or for attaching devices to poles or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along Public Rights-of-Way.



(13) Franchise Agreement. A contract entered into pursuant to this Ordinance between the County and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be granted and exercised.

(14) Franchise Area. The area of the County that a Franchisee is authorized to serve by its Franchise Agreement.

(15) Franchisee. A natural Person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a Franchise by the County.

(16) Governmental Access. Access where government institutions or their designees are the designated Programmers or Users having editorial control over their communications.

(17) Gross Revenues. Any and all cash, credits, property or other consideration of any kind or nature derived from the operation of a Franchisee's Cable System to provide Cable Services. This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal law, except to the extent specifically excluded in Section 2(b)(17)(B), and encompasses revenues that may develop in the future, whether or not anticipated.

(A) Gross Revenues include, by way of illustration and not limitation, fees for any Cable Service; Installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from Programmers for carriage of programming on the System, except launch fees received from Programmers to compensate a Franchisee for marketing and promotional costs and

shown by the Franchisee to be used for that purpose; revenues from rentals or sales of Converters or other equipment; advertising revenues; barter; revenues from program guides; and revenues from home shopping and bank-at-home channels.

- (B) "Gross Revenues" shall be construed broadly to include revenues of Affiliates (other than those revenues which are already treated as the revenues of the Franchisee), to prevent avoidance of fees owed on Gross Revenues derived from the operation of the Cable System to provide Cable Service.
- (C) Gross Revenues shall not include (i) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber or User by the state, County, or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. A Franchise fee is not such a tax, and Franchise fee expenses may not be deducted in determining the amount of the fee due to the County. In addition, Gross Revenues shall not include (ii) any revenues attributable to or derived from any area within the County for which the County is not authorized to grant a Franchise (e.g., the Patuxent Naval Air Station and the incorporated municipality of Leonardtown); or (iii) any uncollected receipts (i.e., "bad debt"), provided, however, that all or any part of any such actual bad debt that is written off by:



subsequently collected shall be included in Gross Revenues in the period collected.

(18) Inflation. Inflation shall be measured based on the Federal Bureau of Labor Statistics Consumer Price Index (CPI-U) for the Washington-Baltimore, District of Columbia, Maryland, Virginia, West Virginia area. In the event that the Bureau of Labor Statistics should cease to publish the CPI-U in its present form and calculated on its present basis, an index reflecting similar changes in the cost of living shall be selected by the Franchisee and the County to ascertain any Inflation adjustments.

(19) Installation. The connection of System services to Subscribers' television receivers or other Subscriber-owned or -provided terminal equipment.

(20) Leased Access Channel or Commercial Access Channel. Any channel on a Cable System designated or dedicated for use by a Person unaffiliated with the Franchisee.

(21) Normal Business Hours. Those hours during which most similar businesses in the community are open to serve customers, including some evening hours at least one night per week and/or some weekend hours.

(22) Normal Operating Conditions. Those service conditions that are within the control of a Franchisee. Conditions that are not within the control of a Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, and telephone network outages. Conditions that are within the control of a Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a Cable System.

(23) PEG. Public, Educational, and/or Governmental.

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

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(24) Person. An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(25) Programmer. Any Person or entity that produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to Users or Subscribers by means of a Cable System.

(26) Public Access. Access where organizations, groups, or individual members of the general public are the designated Programmers or Users having editorial control over their communications.

(27) Public Rights-of-Way. The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, road, or right-of-way within the County, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

(28) School. Any publicly funded primary or secondary school accredited by the State of Maryland.

(29) Security Fund. A performance bond, letter of credit, or cash deposit, or any or all of these, to the extent required by a Franchise Agreement.

(30) Service Interruption. Loss of picture or sound on one or more channels, or degradation of picture or sound beyond permissible levels as defined by applicable law.

(31) Subscriber. The County or any Person who is lawfully receiving, for any purpose or reason, any Cable Service via a Cable System, whether or not a fee is paid for such service.



(32) Transfer.

- (A) "Transfer" shall mean any transaction in which: (i) any ownership or other right, title, or interest of more than ten percent (10%) in a Franchisee or its Cable System is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part; or (ii) there is any change in control of a Franchisee; or (iii) the rights and/or obligations held by a Franchisee under the Franchise are transferred, directly or indirectly, to another party; or (iv) any change or substitution occurs of the managing general partners of a Franchisee, where applicable.
- (B) "Control" for purposes of this Section means the legal or practical ability to exert actual working control over the affairs of an entity, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.
- (C) A rebuttable presumption that a change of control has occurred shall arise upon the acquisition or accumulation of ten percent (10%) or more of the ownership of an entity by any Person or group of Persons acting in concert, none of whom already own or control fifty percent (50%) or more of such right or control, singularly or collectively.
- (D) An assignment, mortgage, pledge or other encumbrance of the Franchise, the System or assets relating thereto, as collateral to

3(a): GRANT OF FRANCHISE

secure any financing provided to a Franchisee or its performance of obligations related thereto, shall not by itself constitute a Transfer.

(E) A transfer or grant of an option or other right to acquire equity in a Franchisee shall not constitute a Transfer until such option or right is exercised.

(F) A Franchisee is responsible for ensuring that the intent of Section 12 herein is carried out. If for any reason an event occurs that would require the County's approval under Section 12, whether or not such event is directly or indirectly within the Franchisee's control, such event shall constitute a "Transfer" for purposes of the Franchise Agreement, this Ordinance, and any applicable law.

(33) User. A Person or organization using a channel or equipment or facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

**3. GRANT OF FRANCHISE**

*(a) Grant.*

(1) The County may grant one or more cable Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Ordinance.

(2) This Ordinance may be amended from time to time, and in no event shall this Ordinance be considered a contract between the County and a Franchisee such that the County would be prohibited from amending any provision hereof. However, subject to the



3(b): GRANT OF FRANCHISE

County's lawful police powers and other lawful authority, the County may not alter any of a Franchisee's material rights, benefits, obligations, or duties specified in its Franchise Agreement.

(3) No Person may construct or operate a Cable System in the County without a Franchise granted by the County. No Person may be granted a Franchise without having entered into a Franchise Agreement with the County pursuant to this Ordinance.

*(b) Term of Franchise.*

No Franchise shall be granted for a period of more than fifteen (15) years, except that a Franchisee may apply for renewal or extension pursuant to applicable law.

*(c) Franchise Characteristics.*

(1) A Franchise authorizes use of Public Rights-of-Way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System to provide Cable Service within a Franchise Area, but does not expressly or implicitly authorize a Franchisee to provide service to, or install a Cable System on, private property or other public property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(2) A Franchise shall constitute both a right and an obligation to provide the Cable Service regulated by the provisions of this Ordinance and the Franchise Agreement.

(3) A Franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the County; affect the County's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or for other purposes as it determines appropriate; or affect the County's right to itself construct, operate, or maintain a Cable System, with or without a Franchise.

(4) This franchise shall not be construed as any limitation upon the right of the County to grant to other persons or entities rights, privileges and authority similar to or different from the rights, privileges and authority granted to a given Franchisee. If after the Effective Date the County grants a second Franchise on different terms and conditions for an area of the County overlapping the area served by an existing Franchisee, the existing Franchisee and the County shall enter into good-faith negotiations to ensure that its existing Franchise and such new Franchise, on the whole, do not impose more than a minor competitive disadvantage on either Franchisee, taking into consideration without limitation each Franchisee's aggregate undertakings set forth in its Franchise Agreement, including by way of illustration and not limitation each Franchisee's cable plant specifications, operating standards, and institutional network and PEG construction requirements and expenditures.

(5) All privileges prescribed by a Franchise shall be subordinate to (without limitation) the County's use and any prior lawful occupancy of the Public Rights-of-Way.

(6) The County reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the Public Rights-of-Way and to resolve any disputes among users of the Public Rights-of-Way.

(7) No reference herein, or in any Franchise Agreement, to "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the County and as the County may have the undisputed right and power to give.



(d) *Franchisee Subject to Other Laws, Police Power.*

(1) A Franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A Franchisee shall at all times be subject to all lawful exercise of the police power and any other lawful authority of the County, including without limitation all rights the County may have under 47 U.S.C. § 552. Nothing in a Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, zoning, fees to be paid, or manner of construction, Installation, operation, maintenance, or repair of System equipment.

(2) No course of dealing between a Franchisee and the County, or any delay on the part of the County in exercising any rights hereunder, or any acquiescence by the County in the actions of a Franchisee that are in contravention of such rights (except to the extent such rights are expressly waived by the County) shall operate as a waiver of any such rights of the County.

(3) Except where rights are expressly waived by a Franchise Agreement, they are reserved, whether expressly enumerated or not.

(e) *Interpretation of Franchise Terms.*

(1) The provisions of this Ordinance and any Franchise Agreement will be liberally construed in order to effectuate their purposes and objectives consistent with the public interest.

(2) A Franchise Agreement will be governed by and construed in accordance with the laws of the State of Maryland.

(f) *Acts at Franchisee's Expense.* Any act that a Franchisee is or may be required to perform under this Ordinance, a Franchise Agreement, or applicable law shall be performed at

the Franchisee's expense, unless expressly provided to the contrary in this Ordinance, the Franchise Agreement, or applicable law.

(g) *Eminent Domain.* Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain to the extent to which they may apply to any public utility or Cable System.

#### 4. APPLICATIONS FOR GRANT OF FRANCHISE

(a) *Application Required.*

(1) A written application shall be filed with the County for grant of an initial cable Franchise.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of all applicants with respect to the application.

(3) All applications accepted for filing shall be made available by the County for public inspection.

(b) *Application Process*

(1) A Person may apply for an initial cable Franchise by submitting an application containing the information required in Section 4(c). Upon receipt of such an application, the County may either (a) evaluate the application pursuant to Section 4(b)(3), conducting such investigations as it deems necessary; or (b) issue a Request for Proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future cable-related needs:



and interests of the community. Any such RFP shall be mailed to the Person requesting its issuance and made available to any other interested party. The RFP may contain a proposed Franchise Agreement.

(2) An applicant shall respond to a RFP by filing an application within the time directed by the County, providing the information and material set forth in Section 4(c). The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to subsection 4(b)(1)(a) hereon need not refile the same materials with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

(3) In evaluating an application for a cable Franchise, the County shall consider, without limitation, the following factors:

- (A) Whether the applicant has the financial, technical, and legal qualifications to provide Cable Service;
- (B) Whether the application satisfies any minimum requirements established by the County and is otherwise reasonable to meet the future cable-related needs and interests of the County, taking into account the cost of meeting such needs and interests;
- (C) Whether, to the extent not considered under subsection 4(b)(3)(B), the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support;

- (D) Whether issuance of a Franchise is warranted in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the Cable System, including the extent to which Installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a Franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.
- (E) What effects a grant of the application may have on competition in the delivery of Cable Service in the County.
- (F) Whether, at any time during the ten (10) years preceding the submission of the application, the applicant or any Person with a controlling interest in the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the County and the Subscribers of the Cable System, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

(4) If the County finds that it is in the public interest to issue a Franchise considering the factors set forth above, and subject to the applicant's entry into an appropriate



Franchise Agreement, it shall issue a Franchise. If the County denies a Franchise, it will issue a written decision explaining why the Franchise was denied. Prior to deciding whether or not to issue a Franchise, the County may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The County also may grant or deny a request for a Franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Ordinance is not intended and shall not be interpreted to grant any applicant or existing Franchisee standing to challenge the denial of its application or the issuance of a Franchise to another to the extent such entity would not otherwise have such standing under applicable law, nor to deprive such an entity of any such standing it may have pursuant to applicable law.

(c) *Contents of Application.* An RFP for the grant of an initial Franchise shall require, and any such application shall contain, at a minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with five (5) percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

(A) The applicant must have the necessary authority under Maryland law to operate a Cable System.

(B) The applicant must have the necessary authority under federal law to hold the Franchise and operate a Cable System. An applicant must have, or show that it is qualified to obtain, any necessary federal Franchises or waivers required to operate the System proposed.

(4) A demonstration of the applicant's financial ability to complete the construction and operation of the Cable System proposed.

(5) A description of the applicant's prior experience in Cable System ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable Franchise or any interest therein.

(6) Identification of the area of the County to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.

(7) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed System, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing



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facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

(9) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests.

(10) Pro forma financial projections for the proposed Franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(11) If the applicant proposes to provide Cable Service to an area already served by an existing cable Franchisee, the identification of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System.

(12) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

(13) Any additional information that the County may request of the applicant that is relevant to the County's consideration of the application.

(14) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal and state law requirements.

(15) A certificate of good standing, if applicable, from the Maryland State Department of Assessments and Taxation.

(16) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section 4(c).

(d) *Public Hearing.* Prior to the issuance of a cable Franchise, the County shall provide for the holding of a public hearing within the proposed Franchise Area, following reasonable notice to the public, at which the applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

(e) *Acceptance of Franchise.* Following approval by the County, any Franchise granted pursuant to this Ordinance, and the rights, privileges and authority granted by a Franchise Agreement, shall take effect and be in force from and after the first date on which both the Franchisee and the County have accepted and signed the Franchise Agreement.

(f) *Filing Fees.* To be acceptable for filing, an application submitted after the effective date of this Ordinance shall be accompanied by a nonrefundable filing fee, payable to the County, in the following amount to cover costs incidental to the awarding or enforcement of the Franchise, as appropriate:

(1) For an initial Franchise:	\$5,000
(2) For renewal of a Franchise:	\$2,500
(3) For modification of a Franchise Agreement:	\$2,500
(4) For approval of a Transfer:	\$1,500

In addition, the County may require the Franchisee, or, where applicable, a transferor or transferee, to reimburse the County for its reasonable out-of-pocket expenses in considering the



application, including consultants' fees. Payments made by a Franchisee hereunder are not a Franchise fee and fall within one or more of the exceptions in 47 U.S.C. § 542(g)(2), and no such payments may be passed through to Subscribers in any form.

#### 5. DESIGN AND CONSTRUCTION

(a) *System Construction Schedule.* Every Franchise Agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System.

(b) *Construction Procedures.* A Franchisee shall construct, operate and maintain its Cable System subject to the supervision of the County or its designees in strict compliance with all applicable laws, ordinances, rules and regulations.

(1) The System and all its parts shall be subject to inspection by the County at the times and in the manner specified in the Franchise Agreement.

(2) No construction, reconstruction or relocation of the System or any part thereof within the Public Rights-of-Way shall be commenced until all applicable written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such reasonable, non-discriminatory conditions and regulations as a condition<sup>1</sup> of the granting of the permit as are necessary for the purpose of protecting any structures in the Public Rights-of-Way and for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(3) A Franchisee shall participate in any "Miss Utility" program active in its Franchise Area with regard to giving and receiving notice of the location of facilities and excavations, and shall mark all its facilities upon request.

(4) A Franchisee shall cooperate with the County in coordinating street cuts with ongoing road construction projects.

(c) *Construction Standards*

(1) The construction, operation, maintenance, and repair of a Cable System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; Applicant's Construction Procedures Manual; and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a System that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards). The County may adopt additional reasonable, non-discriminatory standards as required to ensure that work continues to be performed in an orderly and workmanlike manner.

(2) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of the County and its residents and to minimize hindrance or obstruction to pedestrian or vehicular traffic



(3) All Installation of electronic equipment shall be of a permanent nature, using durable components.

(4) Without limiting the foregoing, all work on a Franchisee's System shall be performed in accordance with good engineering practices, by experienced and properly trained maintenance and construction personnel.

(5) A Franchisee shall at all times employ at least ordinary care and shall install and maintain in use commonly accepted methods and devices intended to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(6) In the event of a failure by a Franchisee to complete any work required for the protection or restoration of the Public Rights-of-Way, or any other work required by municipal law or ordinance, within the time specified by and to the reasonable satisfaction of the County, the County, following notice and an opportunity to cure, may cause such work to be done, and the Franchisee shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the County may recover such costs through the Security Fund provided by the Franchisee.

(7) A Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the County of their use of any Public Rights-of-Way.

(8) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of a System shall be promptly repaired by the Franchisee.

(9) A Franchisee shall, by a time specified by the County with reasonable advance notice, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County by reason of traffic conditions; public safety; public right-of-way construction; public right-of way maintenance or repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public-right-of-way vacation; or for any other purpose where the convenience of the County would be served thereby; provided, however, that the County may by written consent permit the Franchisee to abandon any property in place.

(10) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, the County shall give a Franchisee at least thirty (30) days' advance written notice, and the Franchisee shall take action to effect the necessary changes requested by the responsible entity by the time specified in the County's notice. The County may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(11) In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the County may remove, relay, or relocate any or all parts of that Cable System without prior notice.



(12) A Franchisee shall, on the request of the County or any Person holding a permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the request is made by the County, in which case no such payment shall be required. The Franchisee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(13) A Franchisee shall have the authority to trim trees, underbrush and growth that overhang a public right-of-way of the County so as to prevent the branches of such trees from coming in contact with the facilities, wires and cables of the Franchisee.

(14) A Franchisee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A Franchisee may not erect poles, conduits, or other facilities in Public Rights-of-Way without the express permission of the County.

(15) All buried cable shall be at least six inches underground, except, however, where natural and man-made obstacles such as existing plant, customer landscaping or preference, or buried utilities would render that six-inch depth impracticable or unsafe. In such cases a Franchisee shall bury cable at a depth which is practical under the circumstances.

(16) System cable and facilities may be constructed overhead where poles already exist and electric or telephone lines or both are already overhead, but where no overhead poles exist all cables and facilities, excluding System passive or active electronics that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved at no cost to the County.

(17) The County shall have the right to install and maintain free of charge upon any poles owned by a Franchisee any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Franchisee.

(18) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable System, a Franchisee shall first submit to the County for approval a concise description of the Cable System facilities proposed to be erected or installed, together with a map and plans indicating the proposed location of all such facilities. No such erection or construction shall be commenced by any Person until approval therefor has been received from the County.

(19) Any contractor or subcontractor used for work or construction, Installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Franchisee would have if the work were performed by the Franchisee. The Franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(20) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Public Rights-of-Way, where necessary, the location shall be verified by excavation.



(21) To the extent practicable, above-ground equipment placed on private property shall be placed at the location and in the manner requested by the property owner. A Franchisee shall provide affected homeowners with at least ten days' advance written notice of its plans to install new equipment, and shall make reasonable efforts to confer with such homeowners before any work is done.

*(d) Use of Public Property*

(1) Should the grades or lines of the Public Rights-of-Way that a Franchisee is authorized by a Franchise to use and occupy be changed at any time during the term of a Franchise, the Franchisee shall, if necessary, relocate or change its System so as to conform with the new grades or lines.

(2) Any alteration to the water mains, sewerage or drainage system or to any County, state or other public structures in the Public Rights-of-Way required on account of the presence of a Franchisee's System in the Public Rights-of-Way shall be made at the sole cost and expense of the Franchisee. During any work of constructing, operating or maintaining of a System, the Franchisee shall also protect any and all existing structures belonging to the County and any other Person. All work performed by the Franchisee shall be done in the manner prescribed by the County or other officials having jurisdiction therein.

*(e) Interference with Public Projects.* Nothing in this Ordinance or any Franchise Agreement shall be in preference or hindrance to the right of the County and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should a Franchisee's System in any way interfere with the construction, maintenance or repair of such public works or public improvements, the

Franchisee shall protect or relocate its System, or part thereof, as reasonably directed by any County official, board, authority, commission or public service corporation.

**6. CONSUMER PROTECTION**

(a) *General Provisions.* This Section 6 sets forth minimum customer service standards that a Franchisee must satisfy. In addition, the Franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be adopted or amended from time to time.

- (1) Nothing in this Ordinance may be construed to prevent or prohibit:
  - (A) the County and a Franchisee from agreeing to customer service requirements that exceed the standards set forth in this ordinance;
  - (B) the County from enforcing, through the end of a Franchise term, pre-existing customer service requirements that exceed the standards set forth in this Ordinance and are contained in current Franchise Agreements;
  - (C) the County from enacting or enforcing any customer service or consumer protection laws or regulations; or
  - (D) the establishment or enforcement of any County law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this Ordinance, a Franchise Agreement or federal or state law;



(E) the County from waiving, for good cause, requirements established in this Section 6.

(2) Nothing in this Ordinance in any way relieves a Franchisee of its obligation to comply with other applicable consumer protection laws and its Franchise Agreement.

(3) The Franchisee shall keep such records as are required to enable the County to determine whether the Franchisee is complying with all telephone answering standards required by applicable customer service regulations.

*(b) Installations, Connections, and Other Franchisee Services*

(1) Standard Installations. Except as federal rate regulations may otherwise require, the Franchisee shall not assess a Subscriber any cost other than a standard Installation charge for service drops of three hundred (300) feet or less, for a single outlet, unless the Franchisee demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge.

(2) Non-Standard Installations. Except as applicable law may otherwise require, where a drop exceeds three hundred (300) feet in length, a Franchisee may charge a Subscriber for Franchisee's actual costs associated with installing the drop beyond three hundred (300) feet, provided that drop length shall be the shorter of (1) the actual length of the installed drop or (2) the shortest distance to the point where the Franchisee would be required to extend its distribution system. The Subscriber's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The Franchisee shall use due care in the process of Installation and shall repair any damage to the Subscriber's property caused by said Installation. Such restoration shall be undertaken as

soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred and after all insurance clearances and releases are obtained, and provided that weather conditions permit such repairs.

(3) Location of Drops. In locations where the Franchisee's System must be underground, drops must be placed underground as well and shall be under at least six inches of cover. Except as federal law may otherwise require, in any area where a Franchisee would be entitled to install a drop above-ground, the Franchisee will provide the homeowner the option to have the drop installed underground if requested, but may charge the homeowner the difference between the actual cost of the above-ground Installation and the actual cost of the underground Installation.

(4) Time for Extension. Where a Franchisee is required under this Section 6(a)(3) to provide service to a Person, it must provide such service (i) within 30 days if such Person resides no further than three hundred (300) feet from the Franchisee's distribution system; (ii) within sixty days if the Person resides more than hundred (300) feet from the Franchisee's distribution system, but the distribution system need not be extended for one-half mile or more to provide service; and (iii) within six months if an extension of the distribution system for one-half mile or more is required. These time periods shall be counted from the date that all necessary permits have been obtained and all necessary make-ready completed, provided that the Franchisee has timely applied for such permits and diligently pursued the completion of these requirements.



(c) *Telephone and Office Availability*

(1) Each Franchisee serving 3,000 or more customers in St. Mary's County shall maintain an office at a convenient location in the County that shall be open during Normal Business Hours to allow Subscribers to request service, pay bills, and conduct other business.

(2) Each Franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to Subscribers 24 hours a day, seven days a week. Trained representatives of a Franchisee shall be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(3) Under Normal Operating Conditions, the following standards shall be met by a Franchisee at least ninety (90) percent of the time, measured quarterly, except that during the period specified in a franchise agreement for a system upgrade or rebuild, the following standards need only be met at least eighty (80) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(B) A customer will receive a busy signal less than three percent (3%) of the time.

(C) When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of a Franchisee on the next business day. A Franchisee shall take steps to ensure that

telephones are answered in a timely manner after hours, and shall immediately address any complaint regarding after-hours answering.

*(d) Scheduling and Completing Service*

(1) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards shall be met by all Franchisees at least 95% of the time, as measured on a quarterly basis:

- (A) Installations located up to three hundred (300) feet from a Franchisee's existing distribution system shall be completed within seven (7) business days after the order is placed. Installations not located within three hundred (300) feet from a Franchisee's existing distribution system shall be completed within ten (10) business days after the order is placed.
- (B) A Franchisee shall begin working on service interruptions promptly and in no event less than twenty-four (24) hours after the Subscriber reports the problem to the Franchisee or its representative or the interruption otherwise becomes known to the Franchisee. Such work shall be completed within twenty-four hours after the interruption is reported or otherwise becomes known, except where the work could not be completed in that time period even with the exercise of all due diligence, in which case it shall be completed as soon as reasonably possible. A Franchisee shall begin working on all other service problems by the next



business day after the problem is reported or otherwise becomes known, and shall complete such work within three (3) days from the date of the initial request. In any case where, for reasons beyond a Franchisee's control, the work could not be completed in the specified time periods even with the exercise of all due diligence, the Franchisee shall complete the work in the shortest time possible; the failure of a Franchisee to hire sufficient staff or to properly train its staff shall not justify a Franchisee's failure to comply with this provision. Except as federal law requires, no charge shall be made to the Subscriber for this service, except for the cost of repairs to the Franchisee's equipment or facilities where it can be documented that the equipment or facility was damaged by a Subscriber.

- (C) The appointment window for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours.
- (D) A Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day preceding the appointment. If a Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted, and the appointment rescheduled, as necessary, at a time which is convenient for the Subscriber.

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(2) Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving Service Interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. A Franchisee shall respond to all other inquiries within five (5) business days of the inquiry or complaint.

(3) Except as federal law requires, no charge shall be made to the Subscriber for repairs or maintenance of Franchisee-owned equipment or facilities, except for the cost of repairs to the Franchisee's equipment or facilities where it can be shown that the equipment or facility was damaged by a Subscriber.

(4) A Franchisee shall have a policy to compensate a Subscriber who experiences a missed appointment due to the fault of the Franchisee.

(5) Upon Subscriber request, each Franchisee shall arrange for pickup and/or replacement of Converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer). A Subscriber may be asked, but not required, to disconnect a Franchisee's equipment and return it to the business office.

*(e) Notice to Subscribers*

(1) When a Subscriber is connected or reconnected to a Cable System and at least once annually afterwards, and at any time upon request, the Franchisee shall provide each Subscriber with written information concerning the following. Copies of all such materials provided to Subscribers shall also be provided to the County and shall be made available on a generally accessible Internet site.



- (A) a written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;
- (B) a written description of the Franchisee's Installation and service maintenance policies, delinquent Subscriber disconnect and reconnect procedures, and any other of its policies applicable to its Subscribers;
- (C) a written description of the Franchisee's billing and complaint procedures, including the address and telephone number of the County office responsible for receiving Subscriber complaints;
- (D) a copy of the service contract, if any;
- (E) notice regarding Subscribers' privacy rights pursuant to 47 U.S.C. § 551;
- (F) notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any Subscriber upon request).

(2) The Franchisee shall provide to all Subscribers at least thirty days' written notice before the implementation of any change in rates, programming services, business hours, legal holidays, or procedures for responding to inquiries after Normal Business Hours. At least five working days before the Subscriber notice, the Franchisee shall provide to the County (at the address specified for notices in its Franchise Agreement) the specific points to be contained in a Subscriber notice and the text of the Subscriber notice, if available, unless this requirement is

waived by the County or the Franchisee is in good faith unable to comply. If the text is not available, it shall be provided to the County as soon as it is available.

(3) All Franchisee promotional materials, announcements, and advertising of residential Cable Service to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a Franchisee shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

(4) A Franchisee shall provide the County with copies of all notices of general applicability provided to significant groups of Subscribers at the same time the notices are first sent to such Subscribers.

*(f) Billing*

(1) Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits. If a Franchisee chooses to itemize, as a separate line item on bills, Franchise fees or other government-imposed fees, the description used in the bill to indicate such elements shall be correct, truthful, and not misleading.

(2) Refund checks to Subscribers shall be issued promptly, but no later than the later of the Subscriber's next billing cycle, or sixty (60) days following resolution of the refund request, whichever is earlier.



(3) Credits for service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(4) A Franchisee's first billing statement after a new Installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(5) A Franchisee's billing statement must show a specific payment due date. Once that due date has passed, and once at least twenty (20) days have elapsed since the date the bill was sent to the Subscriber by the Franchisee, the Franchisee may assess a late fee consistent with applicable law if it has not received payment. Any late fee shall appear on the following month's billing statement.

(6) A Franchisee must notify the Subscriber that he or she can remit payment in person at the Franchisee's business office and inform the Subscriber of the address of that office.

(7) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

(8) The account of any Subscriber shall be credited a prorated share of the monthly charge for service, upon the Subscriber's reasonably prompt request or without a Subscriber's request if the Franchisee can reasonably identify the affected Subscribers, whenever:

(A) the Subscriber is without service for a period that exceeds six hours during any twenty-four-hour period; or

(B) service is effectively unviewable on at least some channels for any reason for a period that exceeds twelve hours during any twenty-four-hour period.

- (9) The credits required under subsection 6(f)(8) shall not apply if:
- (A) it can be documented that a Subscriber seeks a refund for an outage or impairment that the Subscriber caused; or
  - (B) a planned outage occurred between the hours of 12:00 midnight and 6:00 a.m. and the Subscriber had prior notice; or
  - (C) a planned outage for a limited period occurred during the rebuild as a result of the rebuild; or
  - (D) an outage is a result of *force majeure*.

(10) A Franchisee shall respond to all written billing complaints from Subscribers within thirty (30) days.

(g) *Disconnection/Downgrades*

(1) A Subscriber may terminate service at any time.

(2) A Franchisee shall promptly disconnect or downgrade any Subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of Subscribers by any Franchisee. So long as the Subscriber returns, or permits the Franchisee to retrieve, any equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any Franchisee for any Cable Service delivered after the date of the disconnect request.

(3) Any funds due the Subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the Franchisee has been recovered by the Franchisee. The refund must be made within sixty (60) days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the Franchisee is returned).



(4) If a Subscriber fails to pay a monthly Subscriber fee or other fee or charge, a Franchisee may disconnect the Subscriber's service; however, such disconnection shall not be effected until after forty-five (45) days from the beginning of the period for which the service being billed is rendered, plus advance written notice to the Subscriber in question of intent to disconnect, mailed to the Subscriber at least seven days in advance or otherwise delivered to the Subscriber at least five days in advance after the 45 days have elapsed. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Franchisee shall not disconnect service. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service.

(5) A Franchisee may immediately disconnect a Subscriber if the Subscriber is damaging or destroying the Franchisee's Cable System or equipment. After disconnection, the Franchisee shall restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the Franchisee for damage to its Cable System or equipment.

(6) A Franchisee may also disconnect a Subscriber that causes signal leakage. Disconnection may be effected after five (5) days' written notice to the Subscriber, if the Subscriber fails to take steps to correct the problem. In addition, a Franchisee may disconnect a Subscriber without notice where signal leakage is detected originating from the Subscriber's premises in excess of federal limits, provided that the Franchisee shall immediately notify the Subscriber of the problem and, once the problem is corrected, reconnect the Subscriber.

(7) If a Franchisee fails to remove its property from a Subscriber's premises within thirty (30) days of the termination of service, the property shall be deemed abandoned, unless such Subscriber is responsible for the Franchisee's failure to remove such property.

(8) A Franchisee shall reconnect service to customers wishing restoration of service, provided such a customer shall first satisfy any previous obligations owed and the Franchisee's reasonable security deposit requirements.

*(h) Changes in Service*

(1) At the time a Franchisee alters the service it provides to a class of Subscribers, it must provide each Subscriber thirty (30) days' notice, explain the substance and full effect of the alteration, and provide the Subscriber the right to opt to receive any combination of services thereafter offered by Franchisee.

(2) To the extent not inconsistent with applicable federal law, no charge may be made for any service or product that the Subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

(3) A Franchisee not subject to effective competition shall not require a Subscriber to purchase any service other than basic service as a condition of purchasing premium or pay-per-view programming.



(i) *Parental Control Option.* A Franchisee shall make available to any Subscribers upon request the option of blocking the video or audio portion of any channel or channels of programming entering the Subscriber's home. The control option described herein shall be made available to all Subscribers requesting it when any Cable Service is provided, or reasonably soon thereafter.

(j) *Subscriber Contracts.* No Franchisee shall require a Subscriber, as a condition of service, to waive any rights the Subscriber may have against the Franchisee at law or equity. Notwithstanding the foregoing, a subscriber contract may provide for arbitration as a necessary first-step in addressing complaints.

(k) *Enforcement.*

(1) A Franchisee shall keep such records as are necessary to show compliance with these customer service standards and FCC customer service standards.

(2) A Franchisee shall file annually with the County a statement signed by an officer or employee certifying compliance with these customer service standards and FCC customer service standards for each calendar quarter. Each such certification shall be filed with the Franchisee's annual report. If a Franchisee is unable to certify full compliance for each calendar quarter, it must indicate in its filing those standards with which it is in non-compliance.

(3) If a Franchisee in non-compliance with any standard during any calendar quarter, it shall include in its annual filing a statement specifying areas of non-compliance, the reason for the non-compliance and a remedial plan.

(4) An officer or employee of a Franchisee who knowingly and intentionally signs a false compliance certificate or noncompliance statement shall be guilty of a misdemeanor punishable by up to 90 days in jail or a fine of \$500 or both.

(5) A Franchisee that fails to file a compliance certificate or noncompliance statement as required herein shall be liable for the penalty specified for violation of customer service standards herein.

(6) In addition, except as prohibited by federal law, a Franchisee shall be subject to penalties, forfeitures and any other remedies or sanctions available under federal, state or local law, including without limitation this Ordinance and a Franchisee's Franchise with the County, if it fails to comply with the standards herein.

*(1) Exclusive Contracts and Anticompetitive Acts Prohibited*

(1) No Franchisee shall enter into an exclusive contract for the provision of Cable Service with any Person (including, but not limited to, a building owner), or demand the exclusive right to serve a Person or location as a condition of extending service.

(2) No Franchisee shall engage in acts that have the purpose or effect of limiting competition for the provision of Cable Service or services similar to Cable Service in the County, except for such actions as are expressly authorized by federal or state law.



**7. RATE REGULATION**

(a) *Reservation of Rights.* The County reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

(b) *Notice to Subscribers.* Regardless of whether the County regulates rates for Cable Service, a Franchisee may not change its rates and charges unless it has first given a minimum thirty (30) calendar days' prior written notice of such change to the County and to all Subscribers.

**8. FRANCHISE FEE**

(a) *Finding*

The County finds that Public Rights-of-Way of the County to be used by a Franchisee for the operation of a Cable System are valuable public property acquired and maintained by the County at great expense to the taxpayers. The County further finds that the grant of a Franchise to use Public Rights-of-Way is a valuable property right without which a Franchisee would be required to invest substantial capital.

(b) *Payment of Franchise Fee*

(1) Each Franchisee shall pay a Franchise fee in an amount determined in the Franchise Agreement.

(2) In the event that any Franchise fee payment or any recomputation amount is not paid by the due date, then interest shall accrue to the County from such due date at a rate equal to the interest rate then chargeable for unpaid federal income taxes (26 U.S.C. § 6621). In addition to the foregoing, the failure of a Franchisee to make timely payment shall subject the Franchisee to an additional late charge of five percent of the amount of such payment. Such late charge shall not apply if the payment results from a good-faith recomputation by the Franchisee.

The County shall also have the authority to waive such late charge if payment is delayed through no fault of the Franchisee.

(3) In the event that a Franchise is revoked prior to its expiration date, the Franchisee shall file with the County, within thirty days after the date of revocation, a financial statement certified by the Franchisee's chief financial officer or an independent certified public accountant clearly showing the Gross Revenues received by the Franchisee since the previous Franchise fee payment period and shall pay at that time any Franchise fees accrued as of the date of revocation.

*(c) Not a Tax or in Lieu of Any Other Tax or Fee*

(1) Payment of the Franchise fee shall not be considered in the nature of a tax, nor shall it be considered in lieu of other taxes or fees imposed by the County except to the extent that federal law requires such other taxes or fees to be considered part of the Franchise fee.

(2) No Franchisee may designate the Franchise fee as a tax in any communication to a Subscriber.

*(d) No Accord or Satisfaction.* No acceptance of any payment by the County shall be construed as a release or an accord and satisfaction of any claim the County may have for further or additional sums due or for the performance of any other obligation of a Franchisee, or as an acknowledgement that the amount paid is the correct amount due.

*(e) Allocation of Discounts.* For purposes of calculating Franchise fee payments under applicable Franchise provisions, any discount reflected in an aggregated bill for services which include Cable Service will be allocated proportionately to Cable Service provided by the



Franchisee. Such proportional allocations shall be in accordance with generally accepted accounting principles (GAAP).

**9. REPORTS AND RECORDS**

*(a) Open Books and Records*

(1) Except to the extent prohibited by federal law, the County shall have the right to inspect and copy at any time during Normal Business Hours at the County Cable System office or at such location as the County may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks or other storage media and other like material relating to the System which the County deems useful in order to monitor compliance with the terms of the Cable Ordinance, this Agreement, or applicable law. This includes not only the books and records of the Franchisee, but any books and records held by an Affiliate, a Cable Operator of the Cable System, or any contractor, subcontractor or any Person holding any form of management contract for the Cable System. The Franchisee is responsible for collecting the information and producing it at the location specified above, and by accepting its Franchise it affirms that it can and will do so.

(2) The Franchisee shall maintain financial records that allow analysis and review of its operations in the County.

(3) Access to the Franchisee's records shall not be denied by the Franchisee on the basis that said records contain proprietary or confidential information. Refusal to provide information required herein to the County shall be grounds for revocation. All confidential

information received by the County shall remain confidential insofar as permitted by *Md. Ann. Code*, State Gov't Article, § 10-611, *et seq.*, and other applicable state and federal law.

(b) *Communication with Regulatory Agencies*

(1) The Franchisee shall file with the County all reports and materials submitted to or received from the following agencies by the Franchisee or its Affiliates that relate specifically to the Cable System or could materially affect the Franchisee's operations in the County: the FCC, the Security and Exchange Commission, and any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Franchisee's System. Such reports and materials shall include, but are not limited to, annual reports to the FCC and any petitions or applications regarding the Cable System or a group of Cable Systems of which the Franchisee's Cable System is a part.

(2) Materials filed with the County pursuant to Section 9(b)(1) shall be filed as follows: Materials submitted by the Franchisee, an Affiliate, or any other Person on the behalf of the Franchisee shall be filed with the County at the time they are submitted to the receiving agency. Materials received by the Franchisee shall be filed with the County within thirty (30) days of the date they are received by the Franchisee, except that if applicable law permits a response to such materials by the County and sets a deadline of sixty (60) or fewer days for the County's response, they shall be filed with the County within five (5) days of the date they are received by the Franchisee.

(3) Public access to such reports received by the County shall not be denied, except to the extent expressly required by law.

(c) *Annual Report:* Unless this requirement is waived in whole or in part by the County, no later than 90 days after the end of its fiscal year, the Franchisee shall submit a written



report to the County, at the address specified for notices in its Franchise Agreement, in a form directed by the County, which shall include:

(1) a summary of the previous year's activities in development of the Cable System, including but not limited to descriptions of services begun or dropped, the number of Subscribers gained or lost for each category of service, the number of pay units sold, the amount collected annually from Users of the System and the character and extent of the services rendered to such Users, including Leased Access Channel Users;

(2) a summary of complaints, identifying the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Franchisee. Where complaints involve recurrent System problems, the nature of each problem and the corrective measures taken shall be identified;

(3) a report showing the number of service calls received by type during each quarter;

(4) a report showing the number of outages and service degradations for each quarter and the total hours of outages and service degradations as a percentage of total hours of Cable System operation;

(5) a report showing the Franchisee's percentage figures for each of those measurements specified in Sections 6(c)(3) and 6(d)(1) for the preceding year, broken down by month and quarter, explaining how these figures were determined, together with the certification required by Section 6(k)(2);

(6) a copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System;

(7) an annual statement of Gross Revenues derived from the operation of the Cable System, certified by the Franchisee's chief financial officer or an independent certified public accountant;

(8) an annual financial report for the previous calendar year, certified by the Franchisee's chief financial officer or an independent certified public accountant, including year-end balance sheet; income statement showing Subscriber revenue from each category of service and every source of non-Subscriber revenue, line item operating expenses, depreciation expense, interest expense, and taxes paid; statement of sources and applications of funds; capital expenditures; and depreciation schedule;

(9) an annual list of officers and members of the Board of Directors or similar controlling body of the Franchisee and any Affiliates;

(10) an organizational chart showing all corporations or partnerships with more than a five (5) percent ownership interest in the Franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and so on until the ultimate corporate and partnership interests are identified;

(11) an annual report and SEC 10(k) filing for each entity identified in subsection 9(c)(10) of this Section that generates such documents;

(12) a summary of the results of, and/or, at the Franchisee's option, copies of the System's technical tests and measurements performed during the past year;

(13) a full schedule of all Subscriber and other User rates, fees and charges;

(14) the Franchisee's policies regarding Subscriber privacy.



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(d) *Updated Maps:* Upon request, the Franchisee shall submit to the County updated system maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the County. These maps shall be submitted in electronic form in a format acceptable to the County, provided that the Franchisee continues to use computer assisted drawings; otherwise, the Franchisee shall provide a hard copy of such materials.

(e) *Special Reports:* Unless this requirement is waived in whole or in part by the County, the Franchisee shall deliver the following reports under specified conditions to the County, at the address specified for notices in its Franchise Agreement:

(1) The Franchisee shall submit monthly construction reports to the County for any System upgrade or similar major construction undertaken during the term of the Franchise until such construction is complete. The Franchisee must submit updated as-built System design maps to the County, or make them available for inspection with notice of their availability, within 30 days of the completion of such construction in any geographic area. The maps shall be developed on the basis of post-construction inspection by the Franchisee and construction personnel to assess compliance with System design. Any departures from design must be indicated on the as-built maps.

(2) The Franchisee must submit a copy of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the Cable System, the Franchisee, or any Affiliate of the Franchisee, and a copy of any response to such notice, to the extent the same may affect or bear on operations in the County. By way of illustration and not limitation, a notice that an Affiliate that has a management contract for the Cable System was not in compliance with FCC EEO

9(f): REPORTS AND RECORDS

requirements would be deemed to affect or bear on operations in the County. This material shall be submitted in accordance with the deadlines specified in Section 9(b)(2) herein.

(3) The Franchisee must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly. This material shall be submitted in accordance with the deadlines specified in Section 9(b)(2) herein.

*(f) Records Required*

(1) The Franchisee shall maintain:

- (A) Records of all complaints received. The term "complaints" as used herein and throughout this Agreement refers to complaints about any aspect of the Cable System or the Franchisee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.
- (B) A full and complete set of plans, records, and "as built" maps showing the exact location of all System equipment installed or in use in the County, exclusive of Subscriber service drops.
- (C) Records of outages, indicating date, duration, area, and the estimated number of Subscribers affected, type of outage, and cause.
- (D) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgement



and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

- (E) Records of Installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.
- (F) A public file showing its plan and timetable for construction of the Cable System.

(g) *Voluminous Materials:* If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location, provided that (1) the Franchisee must make necessary arrangements for copying documents selected by the County after review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by the County in inspecting those documents or having those documents inspected by its designee.

(h) *Retention of Records; Relation to Privacy Rights:* The Franchisee shall take all steps that may be required to ensure that it is able to provide the County all information which must be provided or may be requested under the Cable Ordinance or this Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require the Franchisee to violate 47 U.S.C. § 551. Each Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the County. The County retains

the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least five (5) years.

(i) *Waiver of Reporting Requirements:* The County may, at its discretion, waive in writing the requirement of any particular report specified in this Section 9.

**10. INSURANCE, SURETY, AND INDEMNIFICATION**

(a) *Insurance Required*

(1) A Franchisee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the County and the Franchisee: (A) worker's compensation insurance to meet all requirements of Maryland law and (B) general comprehensive general liability insurance with respect to the construction, operation, and maintenance of a Cable System, including the operation of motor vehicles, in the following minimum amounts:

- (A) For bodily injury, including death, \$500,000 for any one Person, and \$1,000,000 for any one accident;
- (B) For property damage \$1,000,000; and
- (C) For damages resulting from any liability of any nature that may arise from or be occasioned by a Franchisee's negligent operation of a Cable System, including any communication over the Cable System (excepting programming on Access Channels required under its Franchise Agreement), \$2,000,000.



(2) The County may review these amounts and may require reasonable adjustments to them consistent with the public interest.

(b) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in Maryland and in a form approved by the County Attorney. The Commissioners may require in a Franchise Agreement coverage and amounts in excess of the above minimums. The County shall be named as an additional insured party in all such insurance policies. No such policies shall be cancelled without a minimum of 30 days' prior written notice to the County.

(c) *Policies Available for Review:* All insurance policies shall be available for review by the County, and the Franchisee shall keep on file with the County certificates of insurance.

(d) *Indemnification*

(1) A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Franchisee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; the conduct of the Franchisee's business in the County; or in any way arising out of the Franchisee's enjoyment or exercise of the Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Ordinance or this Agreement. The Franchisee shall be promptly provided with notice of any such claim and full opportunity to defend.

(2) Specifically, a Franchisee shall fully indemnify, defend, and hold harmless the County, and in its capacity as such, the officers, agents, contractors, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or

otherwise subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the Installation, construction, operation, or maintenance of the System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any channel set aside for PEG use, or channels leased pursuant to 47 U.S.C. § 532, unless the Franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of prescreening programming for the purported purpose of banning or regulating indecent or obscene programming.

(3) The indemnity provision includes, but is not limited to, the County's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding.

(4) The fact that a Franchisee carries out activities under the Franchise through independent contractors does not constitute an avoidance of or defense to its duty of indemnification under this section.

(e) *No Limit of Liability:* Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of a Franchisee for damages under the Franchise.

## 11. PERFORMANCE GUARANTEES AND PENALTIES

### (a) *Liquidated Damages*

(1) A Franchisee's violation of any provision of this Ordinance or of its franchise agreement, as they may from time to time be amended, shall be a breach of its



franchise agreement that will cause injury to the County. Unless otherwise specified in section 11(b) below, each day and each violation is a separate breach.

(2) Because it would be difficult for the County to calculate the extent of such injury, the County and each Franchisee shall agree to the amount of liquidated damages for each such violation, taking into account the County's best estimate of its damages, which is listed in each case in section 11(b). Such liquidated damages shall be applied in each violation, unless the County can show actual damages in a particular case. Such liquidated damages shall not be a substitute for actual performance by the Franchisee, but shall be in addition to any monetary payment due or other obligation or cost to be incurred in satisfying the requirement in question, and in addition to any interest due for late payments.

(3) Any amounts for liquidated damages specified in section 11(b) are in 2002 dollars and shall be increased each year by the increase in Inflation.

(4) The County Administrator, or a duly appointed designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause, based on the totality of the circumstances in a particular case. Where a violation can be cured, the cure periods listed in section 11(b) shall begin to run at the time the Franchisee is notified in writing of a violation by the County, or otherwise becomes aware of the violation, unless otherwise specified in section 11(b). A violation cannot be cured where it represents a harm that cannot be reversed by later action (for example, failure to meet telephone answering standards *for a specified period* in the past), as opposed to a harm that can be fully reversed by later action (for example, a missed payment can be made up with interest).

(5) A pattern of repeated particular violations of this Ordinance, other applicable law, or a franchise agreement may constitute a material violation or breach thereof,

depending on the circumstances and the gravity of the violations. A Franchisee shall be on notice of such a pattern of violations if notice is given as to the individual violations. In such a case the eventual cure of each individual violation shall not constitute a cure of the pattern as a whole.

(b) *Amount of Liquidated Damages*

(1) The County's best estimate of its damages for the violations specified below are as follows:

<u>Violation</u>	<u>Liquidated damages</u>
Failure to construct the I-Net pursuant to the construction schedule set forth in a franchise agreement	\$1,000 per week, without a cure period.
Failure to obtain permits required for construction	\$50 per occurrence, in addition to any normal cost of permits. If a standard for the failure generally applicable to users of the rights-of-way is specified elsewhere in the code, the general standard applies in place of the amount set forth here.
Obtaining permits or constructing facilities on behalf of another entity	\$1,000 per occurrence, without a cure period, in addition to any normal cost of permits. If a standard for the failure generally applicable to users of the rights-of-way is specified elsewhere in the code, the general standard shall apply in place of the amount set forth here.
Violation of construction standards, other than safety standards	\$200 per week, after a thirty-day cure period.



<u>Violation</u>	<u>Liquidated damages</u>
Violation of safety standards	\$200 per day, after a forty-eight-hour cure period.
Violation of standards regarding general notices to subscribers	\$0.025 times total subscribership, per week, after a one-week cure period.
Violation of customer service standards measured on a quarterly basis	See section 11(b)(2).
Violation of other customer service standards	\$100 per day or per occurrence, as applicable, after a ten-day cure period.
Failure to comply with PFG access requirements	\$125 per day, in addition to any monetary payment due, after a fourteen-day cure period.
Failure to Meet I-Net Technical Performance Standards	\$500 per day, after the response period specified in a franchise agreement.
Failure to Meet Requirements for Response to I-Net Outages	\$250 per occurrence, without a cure period.
Failure to supply information, reports, or filings lawfully required	\$200 per day after a thirty-day cure period, which shall begin to run on the due date of any regularly scheduled report and on the date of a deadline reasonably set by the County for any report or information request not regularly scheduled, unless the Franchisee shows that it was not in fact aware of the requirement in question, in which case the thirty-day cure period shall begin to run upon written notice of such requirement by the County to the Franchisee.

<u>Violation</u>	<u>Liquidated damages</u>
Failure to render payments due to the county, such as Franchise fees or liquidated damages	\$100 per day, in addition to any monetary payment due and any audit costs that may be required in a franchise agreement, after a seven-day cure period.
Failure to file, obtain, or maintain a bond or letter of credit in a timely fashion	\$50 per day, without a cure period.
Violation of technical standards of the FCC	\$100 per day, after a thirty-day cure period.
Any other violations of this Ordinance, a Franchise Agreement, or other applicable state or federal laws that apply to cable as such rather than being of general applicability	up to \$200 per day for each violation for each day the violation continues, after any cure period specified in such law or agreement.

(2) Unless otherwise specified in section 11(b)(1), cure periods stated in that section shall begin to run at the time a Franchisee is notified in writing of a violation by the County, or otherwise becomes aware (or reasonably should have become aware) of such violation, whichever is earliest.

(3) The following procedure shall apply, in place of the amount specified in Section 11(b)(1) above for violation of customer service standards, in assessing penalties for customer service standards that are measured on a quarterly basis:

- (A) If the Franchisee does not meet the prescribed standard in a given calendar quarter (a "noncompliant quarter"), it will thereby be on notice and subject to liquidated damages if it fails to meet the prescribed standard (for example, the 90% standard for telephone



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answering) for subsequent quarters until it once again meets the standard for a quarter.

- (B) If the Franchisee fails to meet the standard for the quarter following the noncompliant quarter, the Franchisee shall pay liquidated damages in the amount of \$1,500 for the first noncompliant quarter; \$2,500 for the second consecutive noncompliant quarter; and \$5,000 for any subsequent consecutive noncompliant quarters, not counting the noncompliant quarter that triggers such monthly reporting, for which no such payment shall be made. The same test shall be applied for subsequent quarters until a quarter occurs in which the Franchisee meets the standard.

(4) The Franchisee shall pay any liquidated damages assessed in accordance with this Ordinance within thirty days after receipt of notice from the County.

(5) Pending litigation or any appeal to any regulatory body or court having jurisdiction over a Franchisee shall not excuse the Franchisee from the performance of its obligations under this Ordinance or its Franchise Agreement unless a stay is obtained. Failure of the Franchisee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this Ordinance and/or its Franchise Agreement.

*(c) Termination On Account of Certain Assignments or Appointments*

(1) Any Franchise shall be deemed revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a Franchisee, whether in a receivership, reorganization,

bankruptcy assignment for the benefit of creditors, or other action or proceeding. Provided, however, that a Franchise may be reinstated *at the County's sole and absolute discretion* if, within that one hundred twenty-day period:

- (A) Such assignment, receivership or trusteeship has been vacated; or
- (B) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and the applicable Franchise Agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Ordinance and the applicable Franchise Agreement, and such other conditions as may be established or as are required by applicable law.

(2) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Franchisee, the County may revoke the Franchise, following a public hearing before the Board of County Commissioners, by serving notice on the Franchisee and the successful bidder, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

- (A) The County has approved the Transfer of the Franchise to the successful bidder; and
- (B) The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Franchise Agreement and this Ordinance, and such other



conditions as may be established or as are required pursuant to this Ordinance or a Franchise Agreement.

(d) *Remedies Cumulative.* All remedies under this Ordinance and the Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties shall not relieve a Franchisee of its obligations to comply with its Franchise or applicable law.

(e) *Procedure For Remediating Franchise Violations.* If the County determines that a Franchisee has failed to perform any obligation under the Franchise or has failed to perform in a timely manner, the County may make a written demand on the Franchisee that it remedy the violation. If the violation is not remedied or in the process of being remedied to the reasonable satisfaction of the County within a reasonable time period (given the nature of the violation) following the demand, the County may:

(1) assess against the Franchisee monetary damages as provided in Section 11(a) of this Ordinance;

(2) request revocation of the Franchise as provided in the Franchise Agreement; or

(3) pursue any legal or equitable remedy available under the Franchise or any applicable law.

If no cure is applicable for a particular violation pursuant to Section 11(a)(4), the County need not wait for the violation to be remedied before taking the above steps.

(f) *Relation to Insurance and Indemnity Requirements*

Recovery by the County of any amounts under insurance, the Security Fund, the performance bond, or letter of credit, or otherwise does not limit a Franchisee's duty to indemnify the County

LIBER 0025 PAGE 68

in any way; nor shall such recovery relieve a Franchisee of its obligations under a Franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have.

## 12. TRANSFERS

### *(a) County Approval Required*

(1) A Franchise shall be a privilege that is in the public trust and personal to the Franchisee. A Franchisee's obligations under its Franchise involve personal services whose performance involves personal credit, trust, and confidence in the Franchisee.

(2) Except as provided in the Franchise Agreement, no Transfer of a Franchise, Franchisee, or Cable System (including, but not limited to, Transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to the County and the County's prior written consent is obtained, pursuant to this Ordinance and the Franchise Agreement, and only then upon such terms and conditions as the County deems necessary and proper. Any such Transfer without the prior written consent of the County shall be considered to impair the County's assurance of due performance. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

### *(b) Application*

(1) A Franchisee shall promptly notify the County of any proposed Transfer.

(2) At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, a Franchisee shall submit to the County a written application for approval of a Transfer. Such an application shall provide complete information on the proposed



transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information must be included in the application, unless these requirements are waived, reduced, or modified by the County:

- (A) a complete and unredacted copy of the agreement(s) to carry out the proposed transaction(s) and of all schedules, exhibits, and other documents attached thereto or referred to therein that are not otherwise publicly available, with any sections that the Franchisee alleges are confidential or proprietary clearly marked as such;
- (B) information sufficient to demonstrate the legal, financial, technical, and other qualifications of the proposed transferee;
- (C) information sufficient to demonstrate whether the proposed transaction will have any adverse financial impact on the Franchisee or the System, including but not limited to projected income statements and cash flow statements, including capital investments, covering at least the remainder of the Franchise term and clearly explaining all assumptions made therein;
- (D) complete information regarding any potential impact of the proposed transaction on Subscriber rates and service.

(3) To the extent consistent with applicable law, the County may waive in writing any such requirement that information be submitted as part of the initial application, which waiver shall not be unreasonably withheld or delayed, without thereby waiving any rights the County may have to request such information after the initial application is filed.

(4) For the purposes of determining whether it shall consent to a Transfer, the County or its agents may inquire into all qualifications of the prospective transferee and such other matters as the County may deem necessary in considering the matters described in Section 12(c)(1). The Franchisee and any prospective transferees shall assist the County in any such inquiry.

(5) Any Transfer review period established by federal law will not begin until all documents and information required by Section 12(b)(2), without exception, have been provided to the County, unless the County and the Franchisee have expressly agreed in writing, before the Transfer application is filed with the County, that specified documents or parts of documents may be redacted, excluded, or reviewed through special arrangements. It shall be the responsibility of the Franchisee in any Transfer to make any arrangements with the County with regard to redaction, exclusion, or confidentiality, including without limitation the execution of any confidentiality agreements that may be appropriate, prior to the filing of any FCC Form 394 or Transfer application. By accepting its Franchise, a Franchisee agrees that any Transfer application inconsistent with this requirement is void.

(c) *Determination by County*

(1) In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer, the County may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate its System; any potential impact of the Transfer on Subscriber rates or services; whether the incumbent Cable Operator is in compliance with its Franchise Agreement, this Ordinance, and applicable law, and, if not, whether the proposed transferee will cure any noncompliance; whether operation by the



transferee would eliminate or reduce competition in the delivery of Cable Service in the County; and any other matters that it is required or permitted to consider under applicable law.

(2) Any Transfer without the County's prior written approval shall be ineffective, and shall make this Franchise subject to cancellation at the County's sole discretion, and to any other remedies available under the Franchise Agreement, this Ordinance, or other applicable law. Any such Transfer shall be deemed to cause irreparable harm to the City.

(3) Any mortgage, pledge or lease shall be subject and subordinate to the rights of the County under the Franchise Agreement, this Ordinance, and other applicable law.

(d) *Transferee's Agreement:* No application for a Transfer shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the Franchise Agreement and this Ordinance, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

(e) *Closing:* The Franchisee shall notify the County of the closing and make available, upon the County's request, an executed copy of the complete closing documents, within thirty (30) days after any Transfer.

(f) *Approval Does Not Constitute Waiver:* Approval by the County of a Transfer does not constitute a waiver or release of any of the rights of the County under this Ordinance or a Franchise Agreement, whether arising before or after the date of the Transfer.

### **13. OPEN VIDEO SYSTEMS**

(a) *Applicability of Ordinance*

(1) This Ordinance shall apply to open video systems that comply with 47 U.S.C. § 573, to the extent permitted by applicable law, except that the following sections shall not apply: § 4 (Franchise applications), § 5(a) (construction schedule), § 7 (rate regulation).

(2) In applying this Ordinance to an open video system, "Franchisee" shall be taken to refer to the open video system operator, "Cable System" to the open video system, "Franchise" to any authorization granted by the County to the open video system operator, and similar terms shall apply similarly.



(b) *Application for Open Video System Authorization*

(1) A Person proposing to use Public Rights-of-Way to install devices for the operation of an open video system shall first obtain authorization from the County for such use.

Such a Person may apply for such authorization by submitting an application containing:

- (A) The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with three percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.
- (B) A detailed description of the physical facilities the applicant proposes to place in public ways.
- (C) Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law and with this Section 13.
- (D) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal and state law requirements.

(2) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section 13(b).

(3) Upon the County's grant of open video system authorization, the applicant shall pay to the County \$5,000. This payment shall be non-refundable and shall be used to offset in whole or in part any costs incurred by the County in granting the authorization.

(c) *Fee In Lieu of Franchise Fee.* An open video system operator shall pay to the County a fee in lieu of the Franchise fee required in Section 8 of this Ordinance, pursuant to the procedures and conditions specified in Section 8 and generally herein.

(d) *Public, Educational, and Governmental Access Obligations.* An open video system operator shall be subject to obligations pertaining to Public, Educational, and Governmental Access pursuant to applicable law and to the requirements herein.

(e) *Right-of-Way Usage.* An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the Public Rights-of-Way, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the Public Rights-of-Way that such operator would not otherwise possess.

#### **14. RIGHTS OF INDIVIDUALS PROTECTED**

(a) *Discriminatory Practices Prohibited*

(1) A Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, Programmers, or residents of the County on the basis of race, color, religion, national origin, sex, or age.



14(a): RIGHTS OF INDIVIDUALS PROTECTED

(2) A Franchisee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a Person to waive such rights as a condition of taking service.

(3) A Franchisee shall not deny access or levy different rates and charges on any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

(4) Subject to applicable law and except to the extent the County may waive such a requirement, a Franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the County; and a Franchisee may offer discounts for the elderly, the handicapped, non-for-profit Persons or organizations, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Franchisee shall comply at all times with all applicable federal, state, and County laws, and all executive and administrative orders relating to non-discrimination.

(5) Information Accessibility: Each document required to be maintained, filed or submitted under the provisions of this Ordinance or a Franchise Agreement, except those specifically designated as confidential by a Franchisee, subject to the County's review, pursuant to applicable law, is a public document, available for public inspection and copying at the requestor's expense, at the office of the Franchisee or the County during Normal Business Hours.

(b) *Subscriber Privacy*

(1) A Franchisee shall at all times protect the privacy rights of all Subscribers, including but not limited to those rights secured by the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551.

(2) A Subscriber may at any time revoke any authorization to release information by delivering to the Franchisee in writing, by mail or otherwise, the Subscriber's decision to revoke the authorization. Any such revocation shall be effective upon receipt by the Franchisee.

(3) A Franchisee shall not condition Subscriber service on the Subscriber's grant or denial of permission to collect, maintain or disclose personally identifiable information except to the extent that such information is necessary for credit check or billing purposes. A Subscriber may at any time revoke any permission previously given by delivering to the Franchisee a written statement of that intent.

**15. ADMINISTRATION**

(a) *Duties of the County Administrator.* The County Administrator, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and Franchise Agreements. The County Administrator shall be empowered to take all administrative actions on behalf of the County, except for those actions specified in this Ordinance that are reserved to the Board. Such actions that the County Administrator shall be empowered to take, either directly or through a duly appointed designee, shall include but are not limited to providing a Cable Operator with notice of and opportunity to cure any Franchise violation, failure to substantially comply with the material terms of a



Franchise, or failure to provide a quality of service that is reasonable in light of community needs, pursuant to 47 U.S.C. § 546(c)-(d), The County Administrator may recommend that the Board take certain actions with respect to a Franchise. The County Administrator shall keep the Board apprised of developments in cable and provide the Board with assistance, advice and recommendations as appropriate.

(b) *Duties of the Board.* The Board shall have the sole authority to regulate rates for Cable Service; grant Franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew Franchises, revoke Franchises, and authorize the Transfer of a Franchise; and impose penalties pursuant to this Ordinance.

## 16. MISCELLANEOUS PROVISIONS

(a) *Compliance With Laws.* Each Franchisee shall comply with all federal, state, and local laws and regulations heretofore and hereafter adopted or established during the entire term of its Franchise.

(b) *No Recourse Against the County.* Without limiting such immunities as the County or other Persons may have under applicable law, a Franchisee shall have no recourse whatsoever against the County or its officials, boards, commissions, agents or employees<sup>1</sup> for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the County's exercise of its authority pursuant to this Ordinance, a Franchise Agreement, or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(c) *Rights and Remedies*

(1) The rights and remedies reserved to the County by this Ordinance are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the County may have with respect to the subject matter of this Ordinance.

(2) The County hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Ordinance or a Franchise Agreement.

(3) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(4) No Franchisee shall be relieved of its obligation to comply with any of the provisions of this Ordinance or a Franchise Agreement by reason of any failure of the County to enforce prompt compliance. Nor shall any inaction by the County be deemed to waive or void any provision of this Ordinance or a Franchise Agreement.



(d) *Amendments to this Ordinance.* In order to fulfill the public interest goals of this Ordinance, to provide additional communications service to the County through the use of Cable Systems and thereby to ensure the benefits which will result from such service, the County specifically reserves the right to amend this Ordinance to effectuate the public interest in the operation of a Cable System.

(e) *Calculation of Time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Ordinance or any Franchise Agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

(f) *Severability.* If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County and shall thereafter be binding on the Franchisee and the County.

NO.: 5003-03

SUBJECT: FY 2003 Supplemental Appropriation  
Emergency Management Agency

ORDINANCE

WHEREAS, the Board of County Commissioners believes it is in the best interest of the County to amend the Fiscal Year 2003 General Fund Operating Budget to increase the appropriation for the Emergency Management Agency for St. Mary's County; and

WHEREAS, in accordance with the Code of Public Local Laws of Maryland, Article 19, (St. Mary's County) §27-9(A), the St. Mary's County Director of Finance has certified in writing that such funds in the amount of \$22,192.00 are available in State funds from the Maryland Institute for Emergency Medical Services System; and

WHEREAS, in accordance with the Annotated Code of Maryland, Article 25, §3(r), a public hearing was held on Tuesday, January 28, 2003 pursuant to Notice published on or about January 15, 2003 and January 22, 2003 in the Enterprise, a newspaper of general circulation in St. Mary's County.

NOW, THEREFORE, BE IT ORDAINED that the Board of County Commissioners after due notice conducted a public hearing on Tuesday, January 28, 2003 to present and explain the requirements to increase the Fiscal Year 2003 Budget in the amount of Twenty Two Thousand One Hundred Ninety Two Dollars (\$22,192.00), and such increase is hereby approved this 18<sup>th</sup> day of February, 2003 by the Board of County Commissioners of St. Mary's County, Maryland.

Those voting Aye: four

Those voting Nay: \_\_\_\_\_

Those Absent: one

Date of Adoption: 2/18/03

Effective Date: 2/18/03

RECORDING FEE 0.00  
TOTAL 0.00  
RESTORE Num: 99999  
EMA KAE 81K:3734  
Feb 28, 2003 02:03 PM

BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY, MARYLAND

Thomas F. McKay  
Thomas F. McKay, President

Kenneth R. Dement  
Kenneth R. Dement, Commissioner

Lawrence D. Jarboe  
Lawrence D. Jarboe, Commissioner

absent  
Thomas A. Mattingly, Sr., Commissioner

Daniel H. Raley  
Daniel H. Raley, Commissioner

ATTEST

Alfred A. Lacer  
Alfred A. Lacer  
County Administrator

Elaine M. Kramer  
Elaine M. Kramer  
Director of Finance

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Jeth B. Norris  
Jeth B. Norris  
County Attorney



CERTIFICATION OF FUNDS AVAILABILITY  
DIRECTOR OF FINANCE  
SUPPLEMENTAL OR EMERGENCY APPROPRIATION

Section 27-9 of the St. Mary's County Code states that the County Commissioners may make additional, supplementary or emergency appropriations during any fiscal year only if the Chief Financial Officer certifies in writing that funds are available for appropriation.

DATE: January 21, 2003

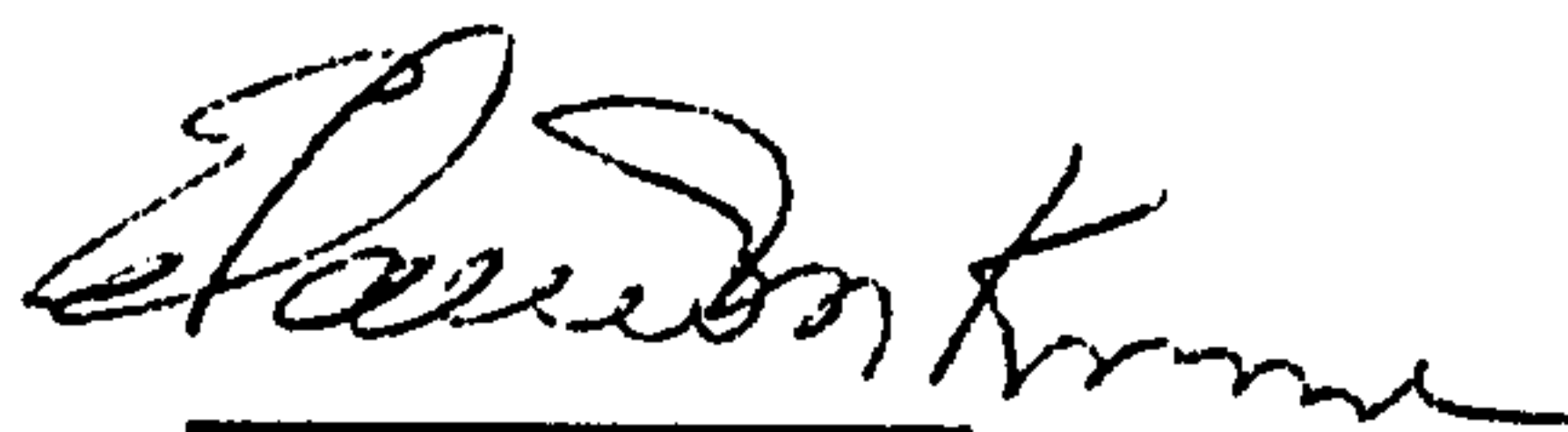
TO: Board of County Commissioners

ORDINANCE  
NUMBER: 2003-03

PURPOSE: Emergency Management Agency  
For the purchase of Automated External Defibrillators under the Rural Access to  
Emergency devices Grant Program.

FUNDS CERTIFICATION:

<u>Amount</u>	<u>Source</u>
\$22,192.00	Per letter from Maryland Institute for Emergency Medical Services System dated 1/3/2003.



Elaine M. Kramer  
Director of Finance

## RESOLUTION

WHEREAS, the St. Mary's County Economic Development Commission (EDC) established a Planning Committee to evaluate the purpose and responsibilities of the EDC and make recommendations that would more effectively develop the economy of St. Mary's County, Maryland; and

WHEREAS, based on the work of the Planning Committee, the Economic Development Commission has found that:

- The growth of other organizations dedicated to economic development has changed the role of the EDC. Groups such as the Chamber of Commerce, Southern Maryland Navy Alliance and The Patuxent Partnership fulfill roles once filled by the EDC. In several instances, the initial support of the EDC either established or strengthened these other organizations.
- These groups work effectively to communicate with County government on issues of importance to the county economy.
- The EDC does not control any programs or budget.
- The EDC's most critical responsibility is to advise the St. Mary's County Department of Economic and Community Development.
- The rapid pace of economic change calls for an advisory body that is flexible, creates little administrative overhead and can easily assemble subject-matter expertise for specific needs.
- The EDC, as currently structured, is too large to function as a lean and flexible advisory body, and

WHEREAS, the Economic Development Commission in a Resolution adopted on September 13, 2002, has recommended that the Board of County Commissioners for St. Mary's County replace the current Economic Development Commission as follows:

1. The Board of County Commissioners authorize the Director of the Department of Economic and Community Development to create such advisory committees as are needed to help carry out the responsibilities of DECD.
2. The DECD Director establish an Economic Development Council to advise DECD, consisting of senior representatives of the County's key business and economic development organizations.
3. The DECD Director establish task forces on particular issues, as necessary, comprised of individuals and organizations with expertise related to the matter at hand.
4. DECD develop new methods of community outreach to ensure that information and the opportunity to be involved are extended broadly to interested citizens. These methods could include:
  - Annual economic summit
  - Quarterly meetings on specific topics
  - Newsletter, including electronic distribution
5. The Board of County Commissioners schedule periodic briefings with major business organizations.
6. The DECD Director, Economic Development Council and the Board of County Commissioners reassess the effectiveness of this approach annually.

RECORDING FEE 0.00  
TOTAL 0.00  
Res#SM02 Rec#1999999  
EMA KAE 81K:1344  
Mar 11, 2003 10:24 am



NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners for St. Mary's County that the current Economic Development Commission shall be replaced with the Economic Development Council to be appointed by the Director of St. Mary's County Department of Economic and Community Development; and directs the Director of the Department of Economic and Community Development to establish as necessary, in his or her discretion, advisory committees and community outreach activities in accordance with the recommendations of the Economic Development Commission.

Those voting aye: ALL

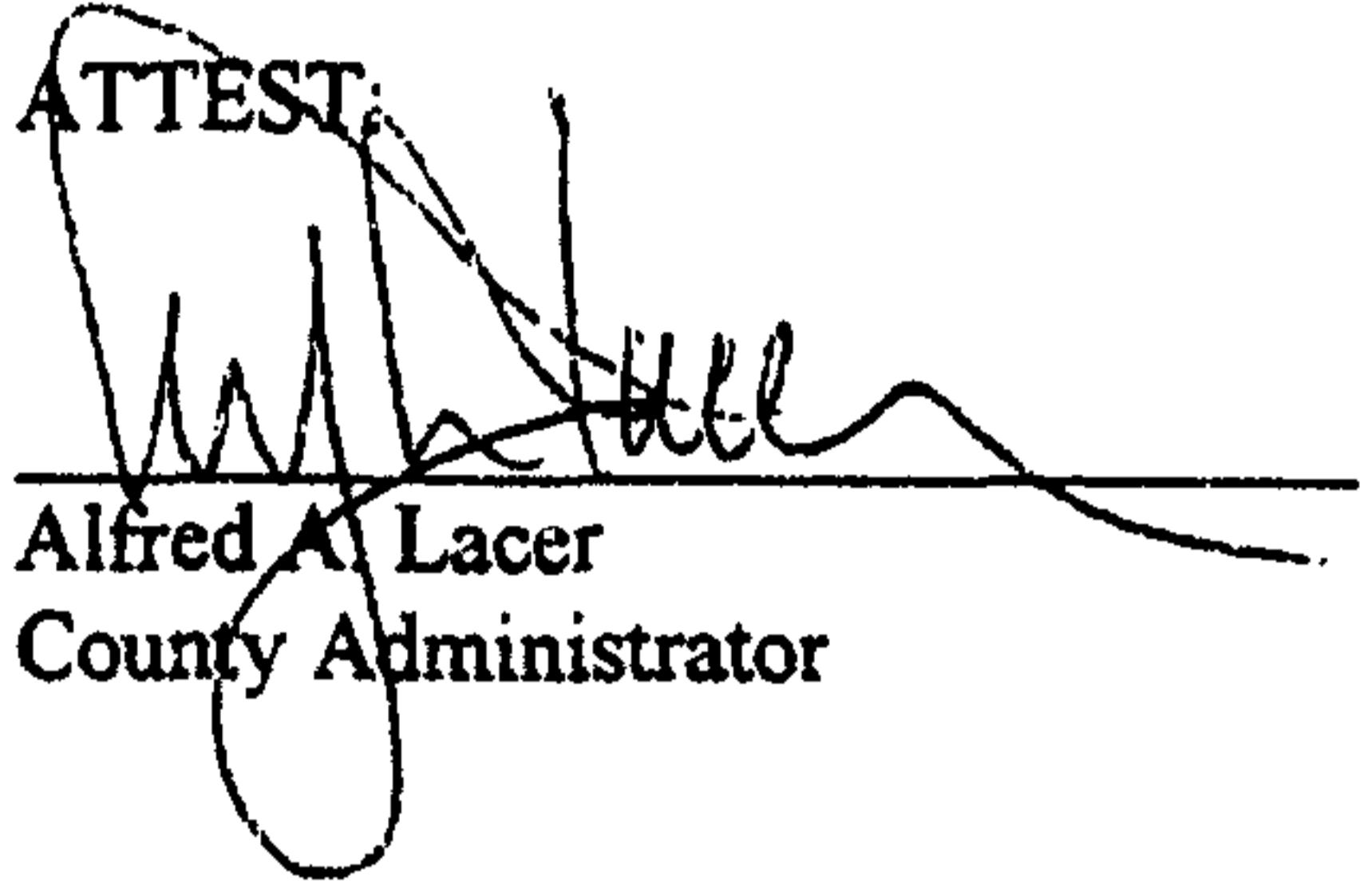
Those voting nay: \_\_\_\_\_

Those abstaining or absent: \_\_\_\_\_


Approval Date: 3/4/03

Effective Date: 3/4/03


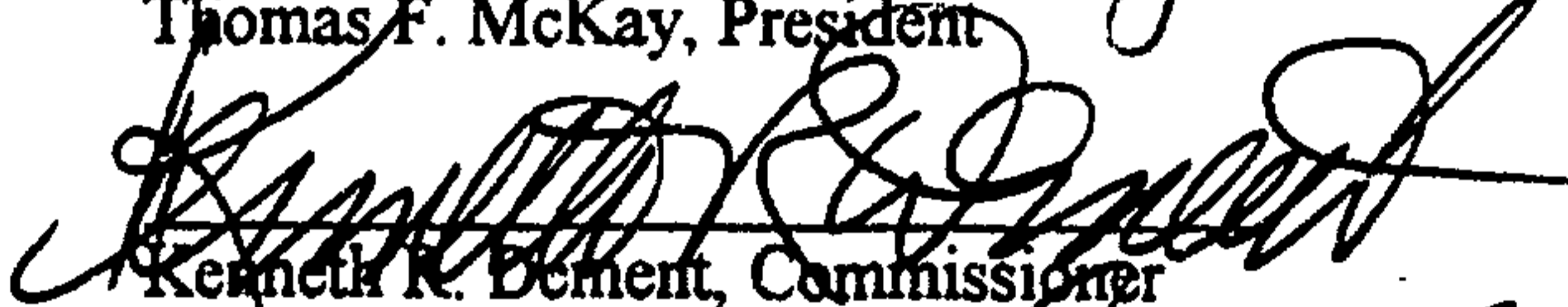

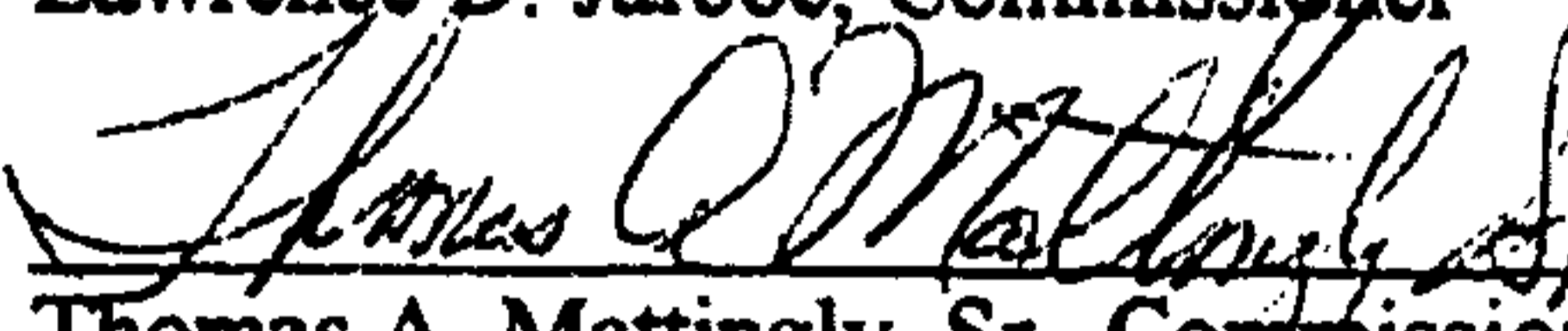
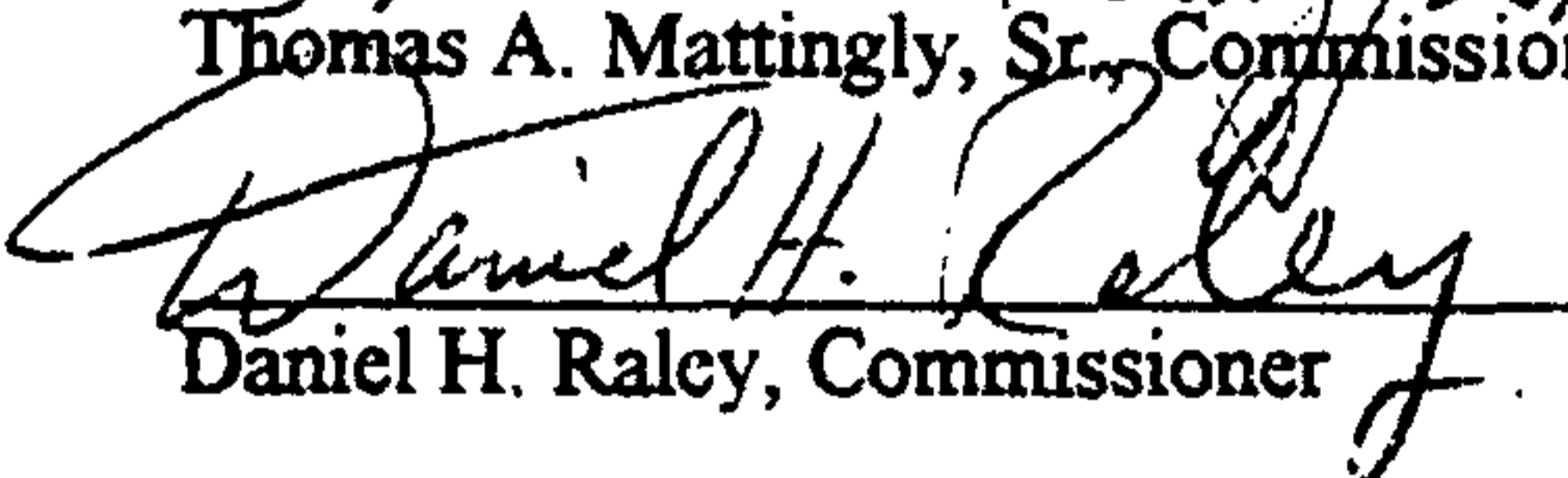
ATTEST:

  
Alfred A. Lacer  
County Administrator

Approved as to form and legal sufficiency:

  
John B. Norris, III  
County Attorney

BOARD OF COUNTY COMMISSIONERS  
ST. MARY'S COUNTY, MARYLAND

  
Thomas F. McKay, President  
  
Kenneth R. Dement, Commissioner  
  
Lawrence D. Jarboe, Commissioner  
  
Thomas A. Mattingly, Sr., Commissioner  
  
Daniel H. Raley, Commissioner

NO.: 03 - 12  
SUBJECT: Adoption of Porto Bello Drive, Porto Bello Court, and Hyatt Court  
Porto Bello Estates Subdivision, Phase 1A

RESOLUTION

WHEREAS, pursuant to Sections 109-1 and 109-2 of Article 19 of the Code of Public Local Laws of Maryland, the Board of County Commissioners for St. Mary's County is authorized to accept new subdivision streets in accordance with the applicable provisions of the County Subdivision Regulations; and

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has advised the Board of County Commissioners for St. Mary's County that all work has been satisfactorily completed in accordance with the County Subdivision Regulations, Public Works Agreement dated April 21, 1998, and Record Plat recorded at Liber EWA 46, Folio 14, for Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353; and

WHEREAS, Porto Bello Estates Subdivision, Phase 1A, is subject to the requirements of the St. Mary's County Subdivision Ordinance (1978) and pursuant to Section 24 of the St. Mary's County Subdivision Ordinance (2002).

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for St. Mary's County, finding that Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353, located in the Porto Bello Estates Subdivision, Phase 1A, Second (2<sup>nd</sup>) Election District, St. Mary's County, Maryland (Plat Reference: Liber EWA 46, Folio 14) meet the applicable requirements of the St. Mary's County Subdivision Ordinance (1978), as amended, and hereby accepts Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353, into the County's Highway Maintenance System.

Those voting aye: all

Those voting nay: \_\_\_\_\_

Those abstaining or absent: \_\_\_\_\_

Date of Adoption: 3/11/03

Effective Date: 3/11/03

ATTEST:

  
Alfred A. Lacer  
County Administrator

BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY

  
Thomas F. McKay, President

  
Kenneth R. Dement, Commissioner

  
Lawrence D. Jarboe, Commissioner

  
Thomas A. Mattingly, Sr., Commissioner

  
Daniel H. Raley, Commissioner

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
John B. Norris, III  
County Attorney

RECORDING FEE 0.00  
TOTAL 0.00  
RESUBMIT NO#1999999  
EWA KAC 01K115  
Mar 17, 2003 02:55 PM



RESOLUTION

WHEREAS, pursuant to the authority granted under Section 10-I of Article 25 of the Maryland Annotated Code and Section 25-102 (a) (10) and Section 21-803 of the Maryland Annotated Code, Transportation Article, the Board of County Commissioners for St. Mary's County may alter the speed upon a public road within the County; and

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has advised that the maximum speed limit set forth in Title 21, Chapter 8, of the Transportation Article of the Maryland Annotated Code for Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353, located in Phase 1A of the Porto Bello Estates Subdivision, Second (2<sup>nd</sup>) Election District, St. Mary's County, Maryland, as per Record Plat recorded at EWA 46, Page 14, is greater than reasonable or safe under existing conditions of road design, motor vehicle traffic and pedestrian safety; and

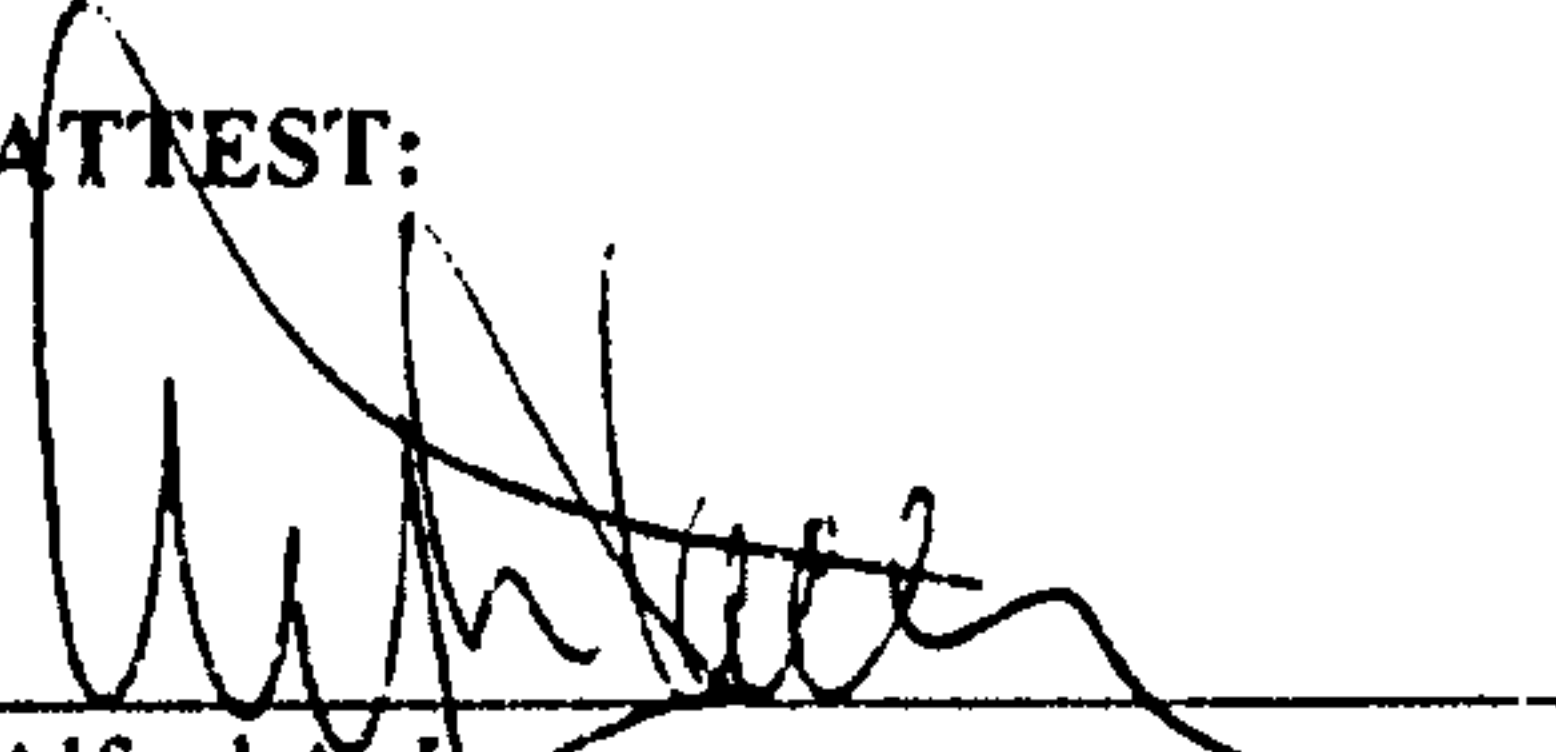
WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has advised that 25 miles per hour is a reasonable and safe maximum speed for Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353.

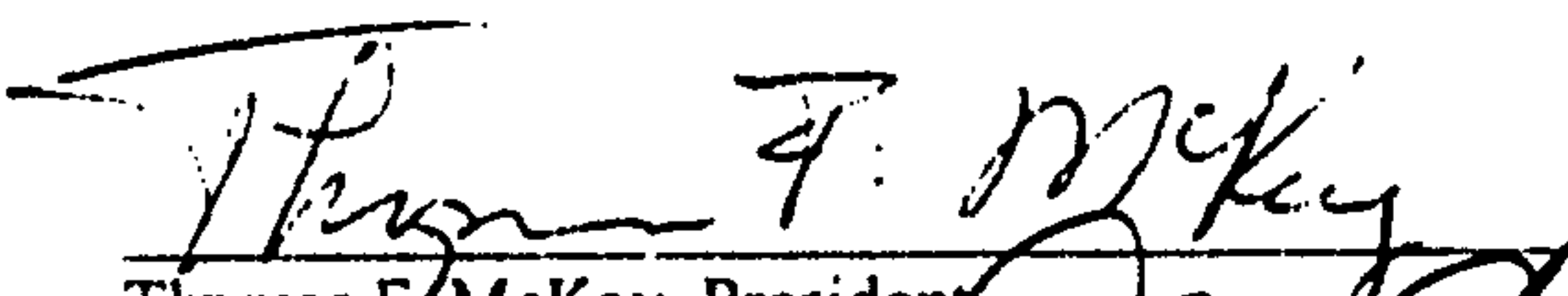
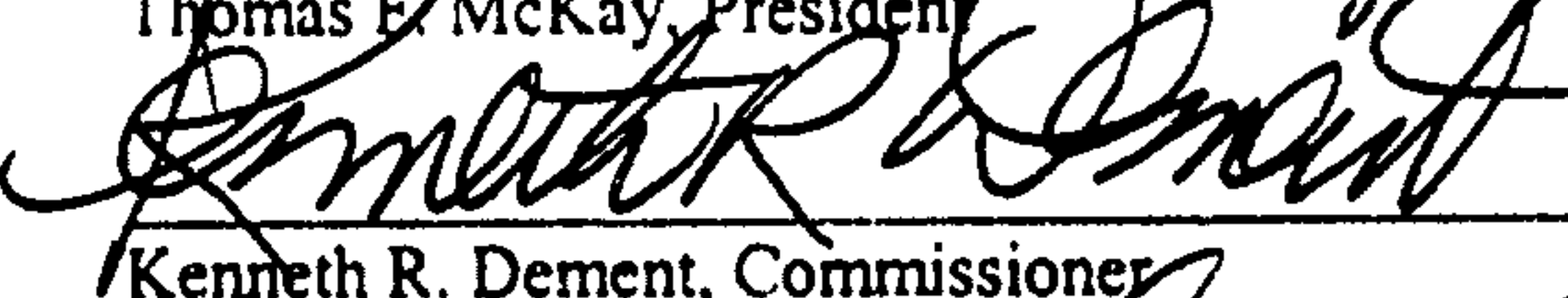
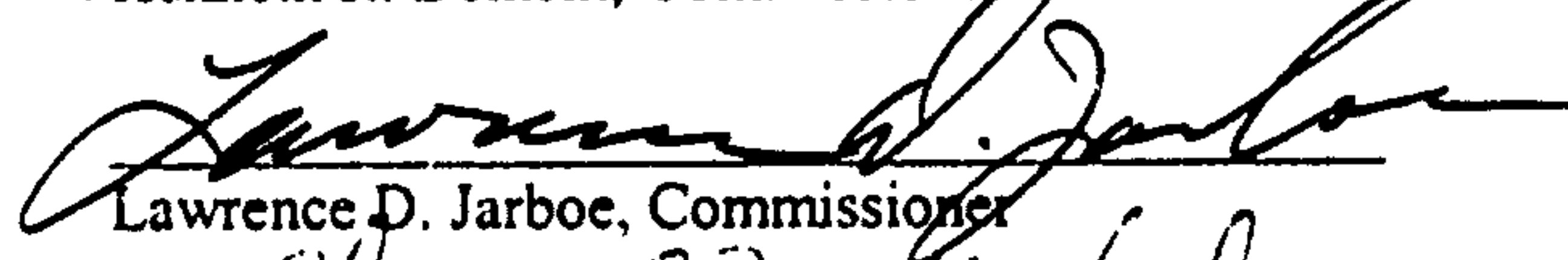
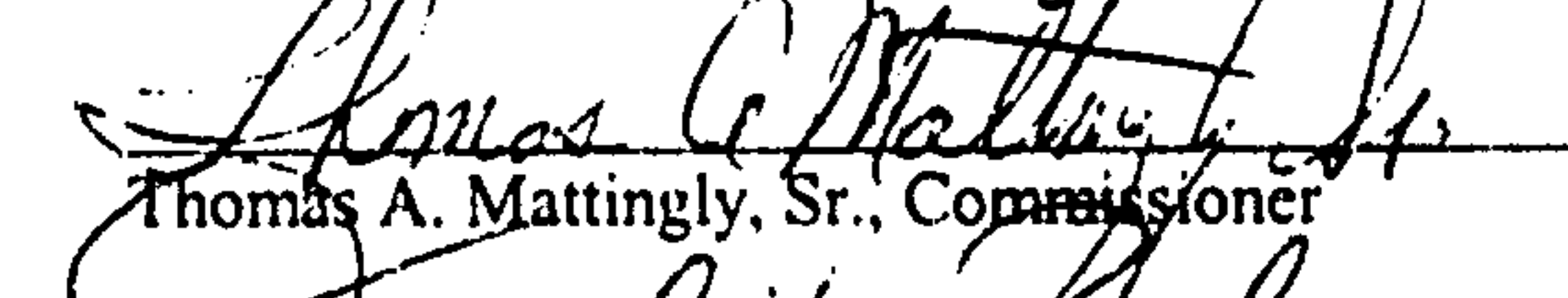
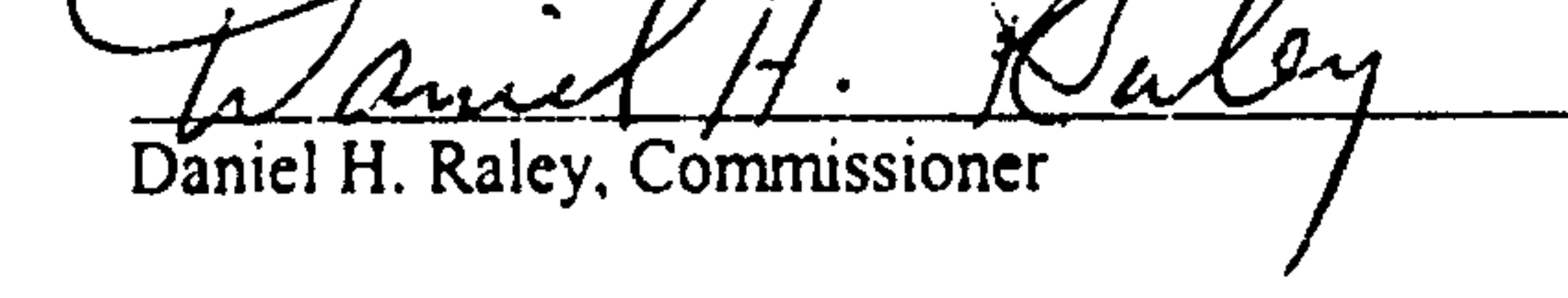
NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for St. Mary's County finds the maximum speed limit set forth for roads of the type of Porto Bello Drive, Porto Bello Court and Hyatt Court is greater than reasonable or safe, and that Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353, located in Phase 1A of the Porto Bello Estates Subdivision, Second (2<sup>nd</sup>) Election District, St. Mary's County, Maryland (Plat Reference: EWA 46, Page 14) be posted at 25 miles per hour as per the recommendation of the St. Mary's County Department of Public Works and Transportation.


BE IT FURTHER RESOLVED, that the Director of the Department of Public Works and Transportation is directed to install the signage necessary to implement this Resolution in accordance with Section 21-801.1(f) and 21-803 (c) of the Maryland Annotated Code, Transportation Article.

Those voting aye: all  
Those voting nay: \_\_\_\_\_  
Those abstaining or absent: \_\_\_\_\_  
  
Date of Adoption: 3/11/03  
Effective Date: 3/11/03

RECORDING FEE 0.00  
TOTAL 0.00  
Res#5802 Acpt#399999  
EWA KAE 01472115  
Mar 17, 2003 09:55 PM

ATTEST:  
  
\_\_\_\_\_  
Alfred A. Lacer  
County Administrator

BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY  
  
\_\_\_\_\_  
Thomas E. McKay, President  
  
\_\_\_\_\_  
Kenneth R. Dement, Commissioner  
  
\_\_\_\_\_  
Lawrence D. Jarboe, Commissioner  
  
\_\_\_\_\_  
Thomas A. Mattingly, Sr., Commissioner  
  
\_\_\_\_\_  
Daniel H. Raley, Commissioner

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:  
  
\_\_\_\_\_  
John B. Norris, III  
County Attorney



RESOLUTION

WHEREAS, pursuant to Section 1 of Article 25 of the Maryland Annotated Code, Section 109-1 of Article 19 of the Code of Public Local Laws of Maryland, and Section 25-102 of the Transportation Article of the Maryland Annotated Code, the Board of County Commissioners for St. Mary's County is authorized and empowered to regulate traffic by means of a traffic control device, and to designate any intersection as a stop intersection, or yield intersection.

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has identified the intersection of Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353, located in Phase 1A of the Porto Bello Estates Subdivision, Second (2nd) Election District, St. Mary's County, Maryland, as per Record Plat recorded at EWA 46, Page 14, as a threat to public safety and a hazardous condition due to the absence of traffic control devices at these intersections; and

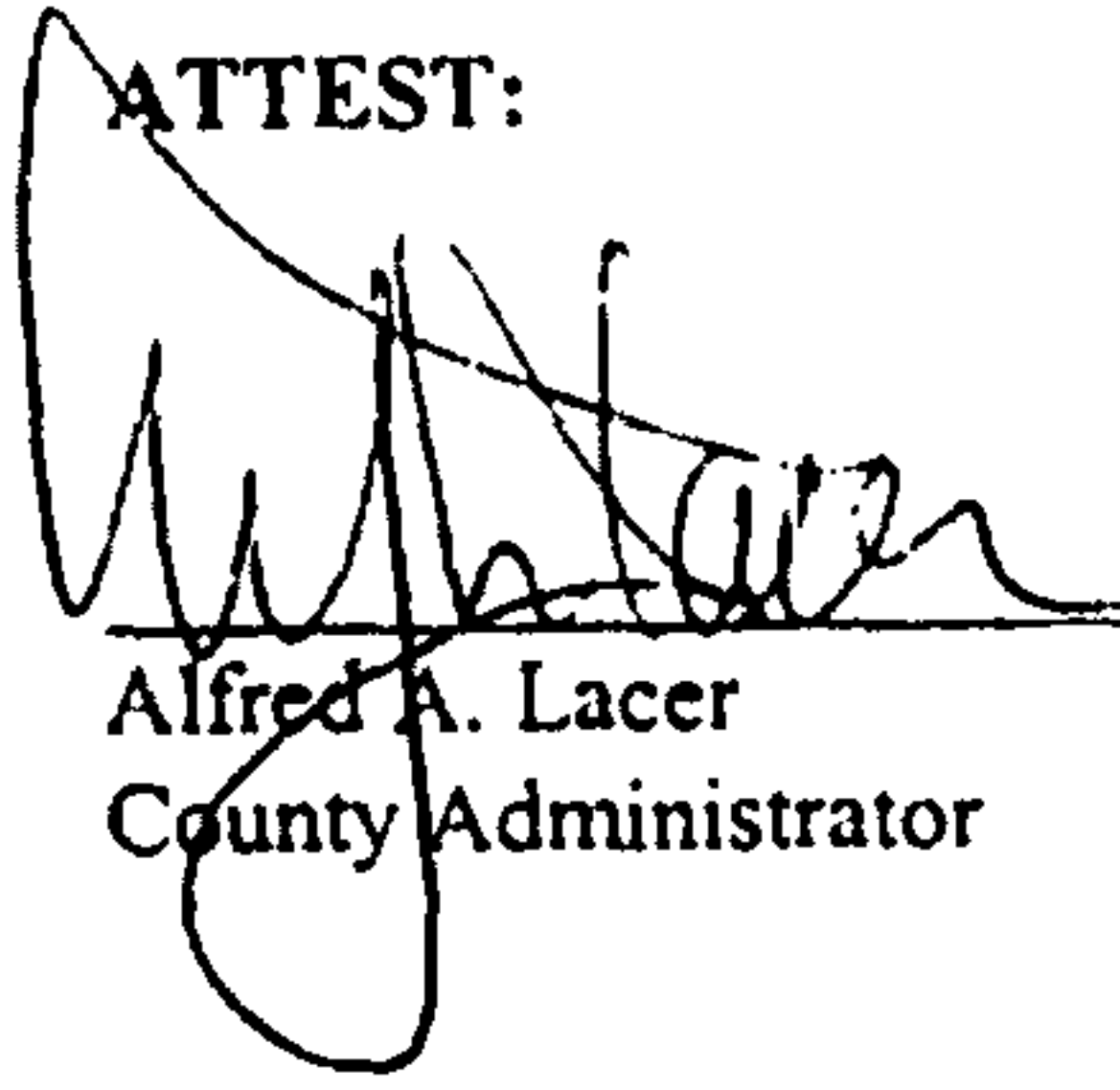
WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has, therefore, recommended that the Board of County Commissioners for St. Mary's County exercise its authority to regulate traffic at these intersections by means of traffic control devices, specifically; stop signs on Porto Bello Drive, County Route 31351, at the intersection with Frogs Marsh Road, County Route 30302; Porto Bello Court, County Route 31352, at the intersection with Porto Bello Drive, County Route 31351; and Hyatt Court, County Route 31353, at the intersection with Porto Bello Court, County Route 31352.

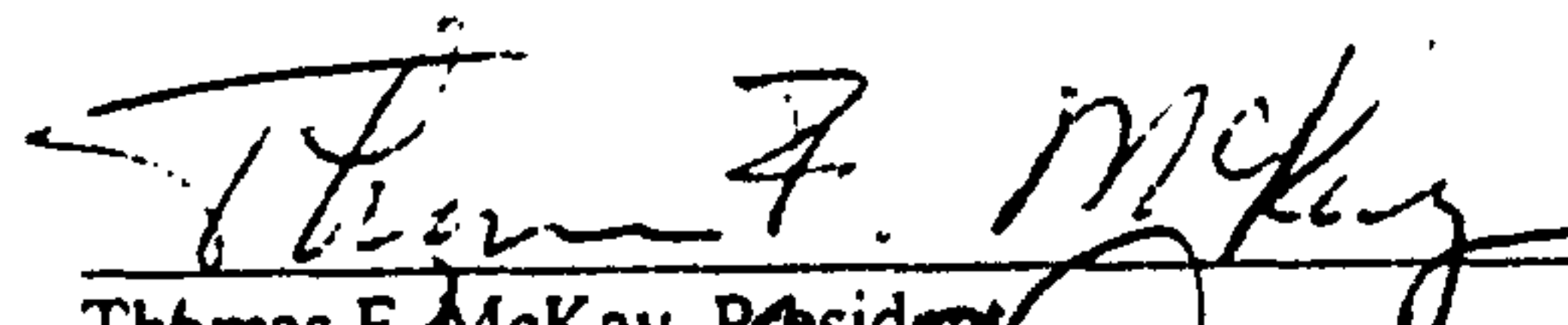
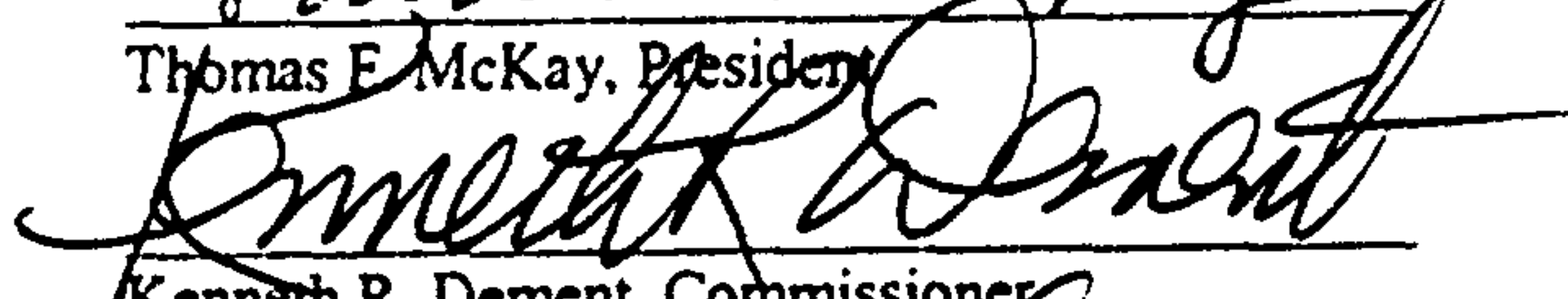

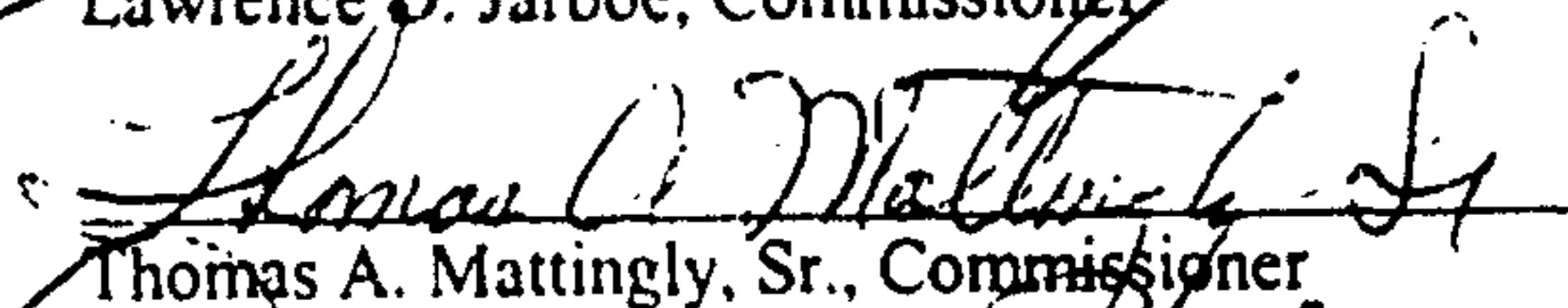
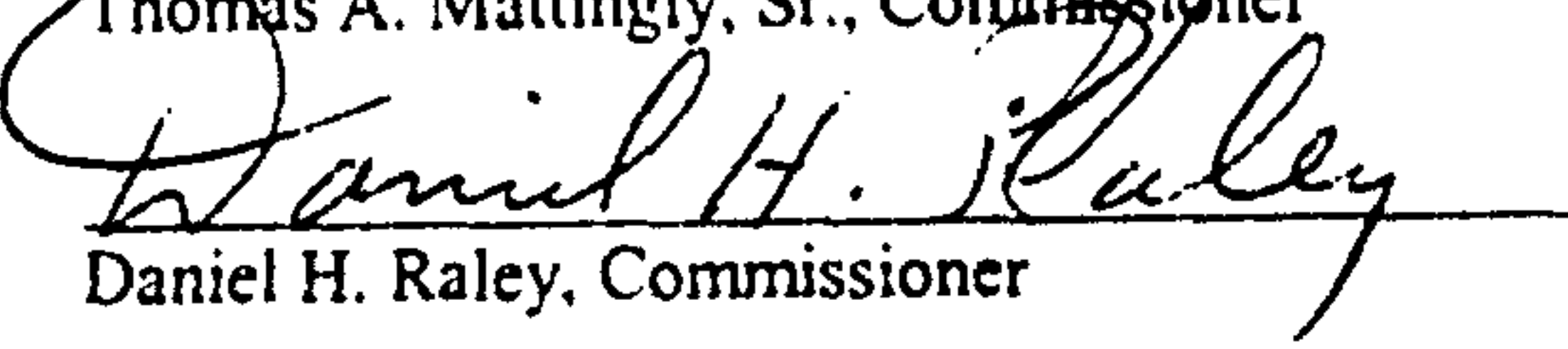
NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for St. Mary's County finds that, upon the advice of the Director of the Department of Public Works and Transportation, a hazardous condition currently exists at the intersection of Porto Bello Drive, County Route 31351, and Frogs Marsh Road, County Route 30302; Porto Bello Court, County Route 31352, and Porto Bello Drive, County Route 31351; and Hyatt Court, County Route 31353, and Porto Bello Court, County Route 31352; and in the interest of public safety and to eliminate a hazardous condition, Porto Bello Drive, County Route 31351, Porto Bello Court, County Route 31352, and Hyatt Court, County Route 31353, further identified as being located in Phase 1A of the Porto Bello Estates Subdivision, Second (2nd) Election District, St. Mary's County, Maryland (Plat Reference: EWA 46, Page 14) shall be designated as Stop Streets, which is a reasonable exercise of this Board's police powers; and


BE IT FURTHER RESOLVED, that the Board of County Commissioners for St. Mary's County directs and instructs the Director of the Department of Public Works and Transportation to erect traffic control devices, specifically stop signs on Porto Bello Drive, County Route 31351, at the intersection with Frogs Marsh Road, County Route 30302; Porto Bello Court, County Route 31352, at the intersection with Porto Bello Drive, County Route 31351; and Hyatt Court, County Route 31353, at the intersection with Porto Bello Court, County Route 31352.

Those voting aye: all  
Those voting nay: \_\_\_\_\_  
Those abstaining or absent: \_\_\_\_\_  
Date of Adoption: 3/11/03  
Effective Date: 3/11/03

RECORDING FEE 0.00  
TOTAL 0.00  
RESUBMIT REC# 4999999  
EWA 46E 3135115  
Mar 17 2003 02:50 PM

ATTEST:  
  
Alfred A. Lacer  
County Administrator

BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY  
  
Thomas F. McKay, President  
  
Kenneth R. Dement, Commissioner  
  
Lawrence D. Jarboe, Commissioner  
  
Thomas A. Mattingly, Sr., Commissioner  
  
Daniel H. Raley, Commissioner

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:  
  
John B. Norris, III  
County Attorney



NO.: 03 - 15  
SUBJECT: Adoption of Porto Bello Court and Vernon Court  
Porto Bello Estates Subdivision, Phase 1B

RESOLUTION

WHEREAS, pursuant to Sections 109-1 and 109-2 of Article 19 of the Code of Public Local Laws of Maryland, the Board of County Commissioners for St. Mary's County is authorized to accept new subdivision streets in accordance with the applicable provisions of the County Subdivision Regulations; and

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has advised the Board of County Commissioners for St. Mary's County that all work has been satisfactorily completed in accordance with the County Subdivision Regulations, Public Works Agreement dated August 5, 2002, and Record Plat recorded at Liber EWA 52, Folio 26, for Porto Bello Court, County Route 31352, and Vernon Court, County Route 31354; and

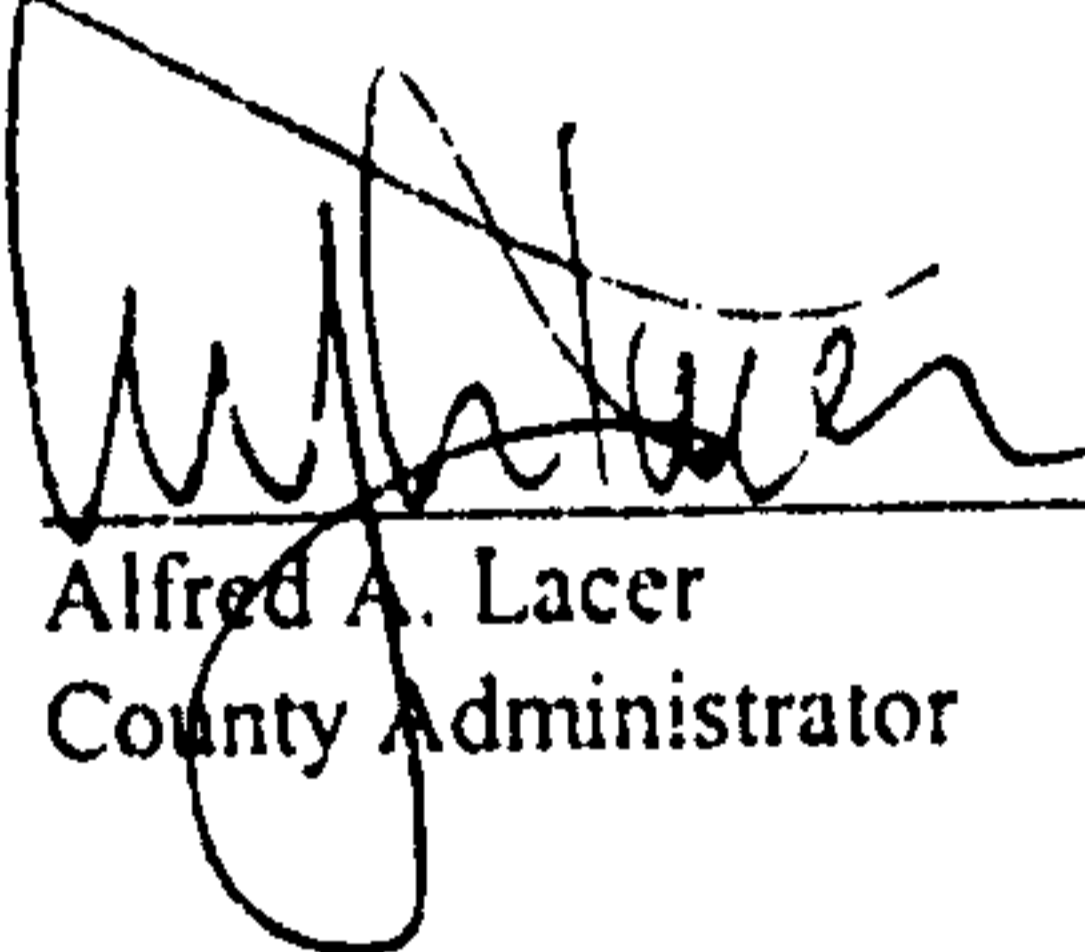
WHEREAS, Porto Bello Estates Subdivision, Phase 1B, is subject to the requirements of the St. Mary's County Subdivision Ordinance (1978) and pursuant to Section 24 of the St. Mary's County Subdivision Ordinance (2002).

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for St. Mary's County, finding that Porto Bello Court, County Route 31352, and Vernon Court, County Route 31354, located in the Porto Bello Estates Subdivision, Phase 1B, Second (2nd) Election District, St. Mary's County, Maryland (Plat Reference: Liber EWA 52, Folio 26) meet the applicable requirements of the St. Mary's County Subdivision Ordinance (1978), as amended, and hereby accepts Porto Bello Court, County Route 31352, and Vernon Court, County Route 31354, into the County's Highway Maintenance System.

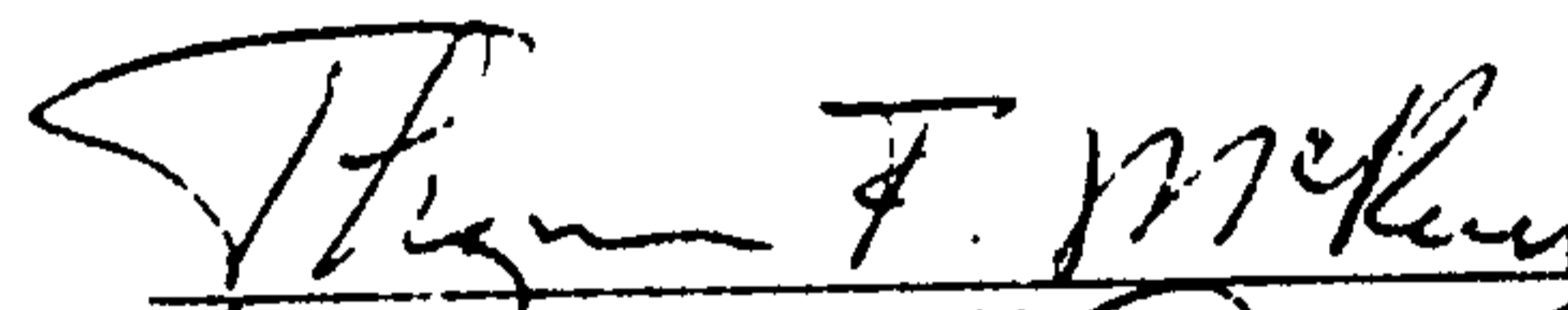
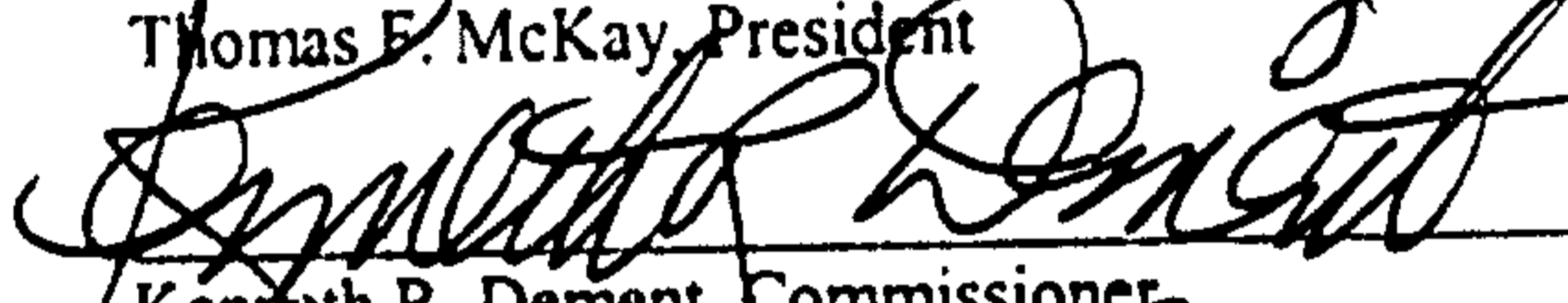
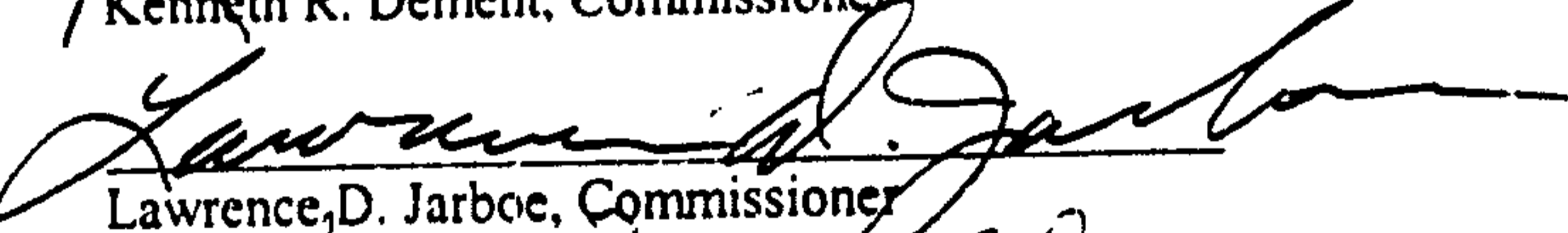
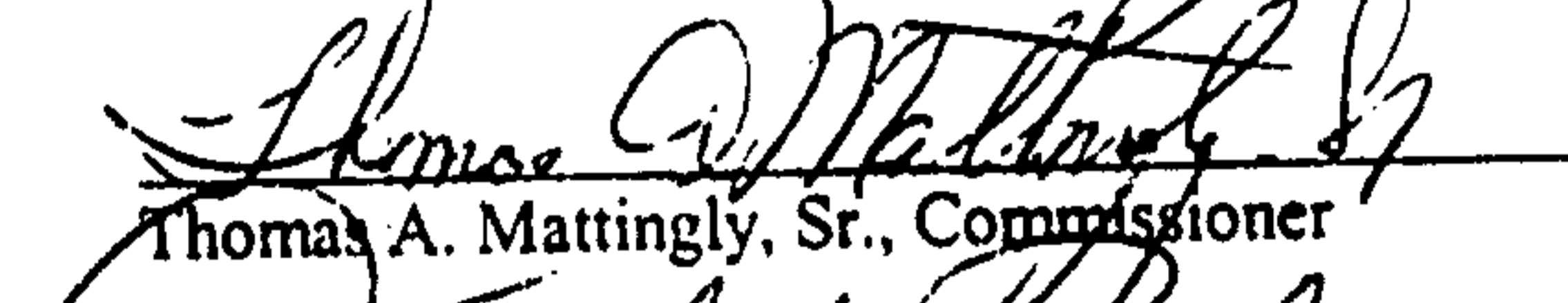
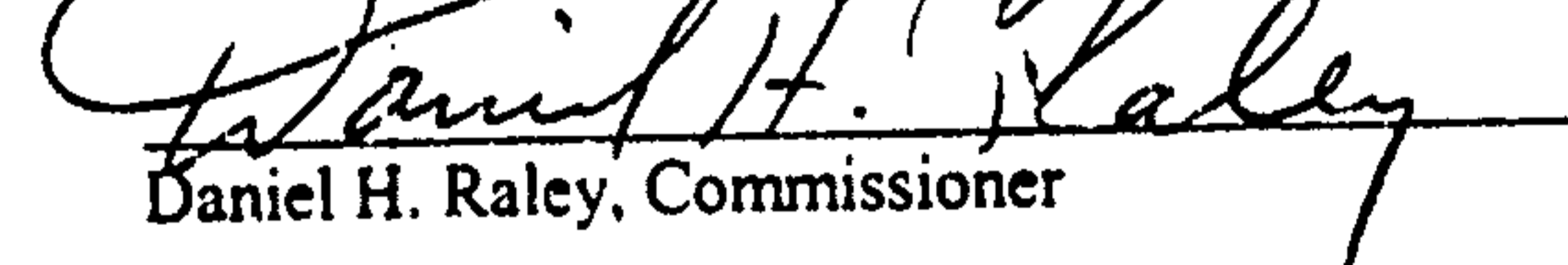
Those voting aye: all  
Those voting nay: \_\_\_\_\_  
Those abstaining or absent: \_\_\_\_\_  
Date of Adoption: 3/11/03  
Effective Date: 3/11/03

RECORDING FEE 0.00  
TOTAL 0.00  
RESUBMIT RECORDS  
EWA 52 2115  
Mar 17, 2003 02:56 PM


ATTEST:

  
Alfred A. Lacer  
County Administrator

BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY

  
Thomas F. McKay, President  
  
Kenneth R. Dement, Commissioner  
  
Lawrence D. Jarboe, Commissioner  
  
Thomas A. Mattingly, Sr., Commissioner  
  
Daniel H. Raley, Commissioner

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
John B. Norris, III  
County Attorney



RESOLUTION

WHEREAS, pursuant to the authority granted under Section 10-1 of Article 25 of the Maryland Annotated Code and Section 25-102 (a) (10) and Section 21-803 of the Maryland Annotated Code, Transportation Article, the Board of County Commissioners for St. Mary's County may alter the speed upon a public road within the County; and

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has advised that the maximum speed limit set forth in Title 21, Chapter 8, of the Transportation Article of the Maryland Annotated Code for Porto Bello Court, County Route 31352, and Vernon Court, County Route 31354, located in Phase 1B of the Porto Bello Estates Subdivision, Second (2<sup>nd</sup>) Election District, St. Mary's County, Maryland, as per Record Plat recorded at EWA 52, Page 26, is greater than reasonable or safe under existing conditions of road design, motor vehicle traffic and pedestrian safety; and

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has advised that 25 miles per hour is a reasonable and safe maximum speed for Porto Bello Court, County Route 31352, and Vernon Court, County Route 31354.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for St. Mary's County finds the maximum speed limit set forth for roads of the type of Porto Bello Court and Vernon Court is greater than reasonable or safe, and that Porto Bello Court, County Route 31352, and Vernon Court, County Route 31354, located in Phase 1B of the Porto Bello Estates Subdivision, Second (2<sup>nd</sup>) Election District, St. Mary's County, Maryland (Plat Reference: EWA 52, Page 26) be posted at 25 miles per hour as per the recommendation of the St. Mary's County Department of Public Works and Transportation.

BE IT FURTHER RESOLVED, that the Director of the Department of Public Works and Transportation is directed to install the signage necessary to implement this Resolution in accordance with Section 21-801.1(f) and 21-803 (c) of the Maryland Annotated Code, Transportation Article.

Those voting aye: all

Those voting nay: \_\_\_\_\_

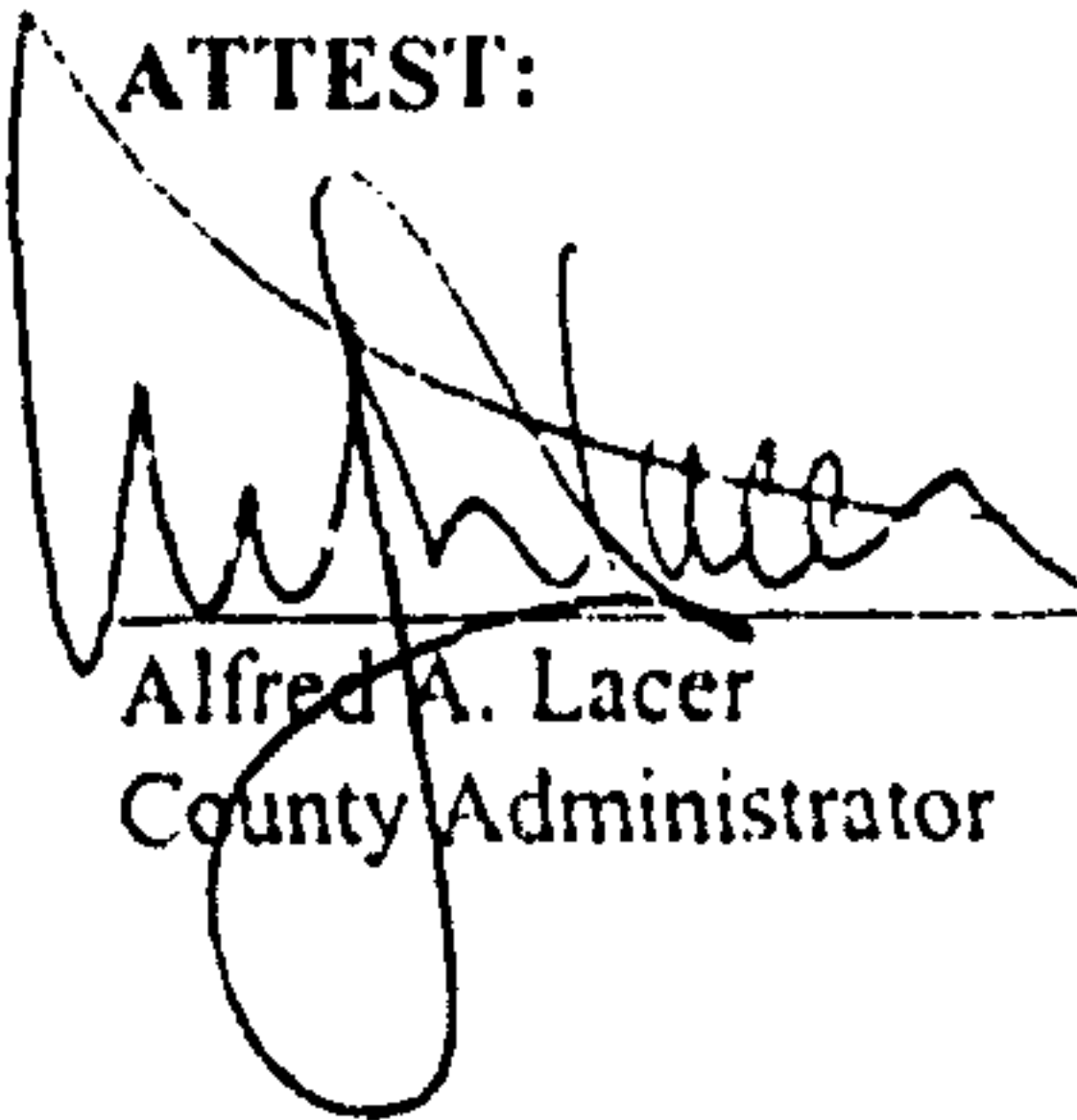
Those abstaining or absent: \_\_\_\_\_

Date of Adoption: 3/11/03

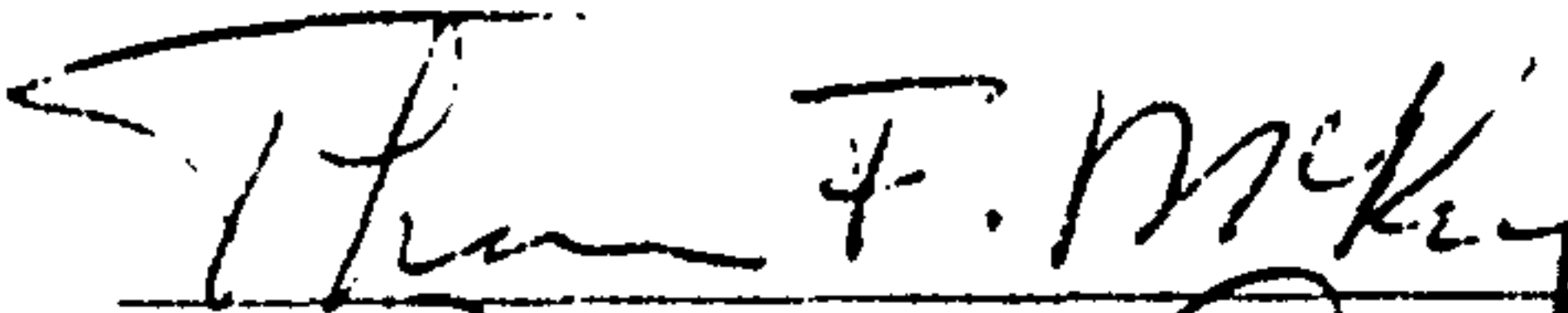
Effective Date: 3/11/03


RECORDING FEE 0.00  
TOTAL 0.00  
RESERVED FOR EWA 52  
EWA PAGE 26  
Mar 17, 2003 02:57 PM

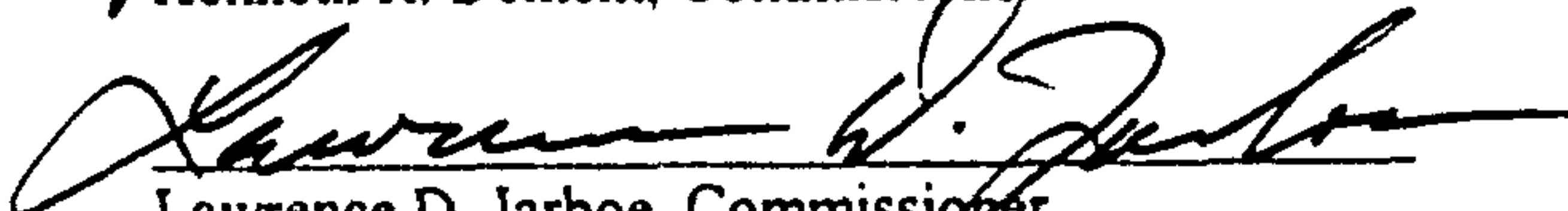
ATTEST:

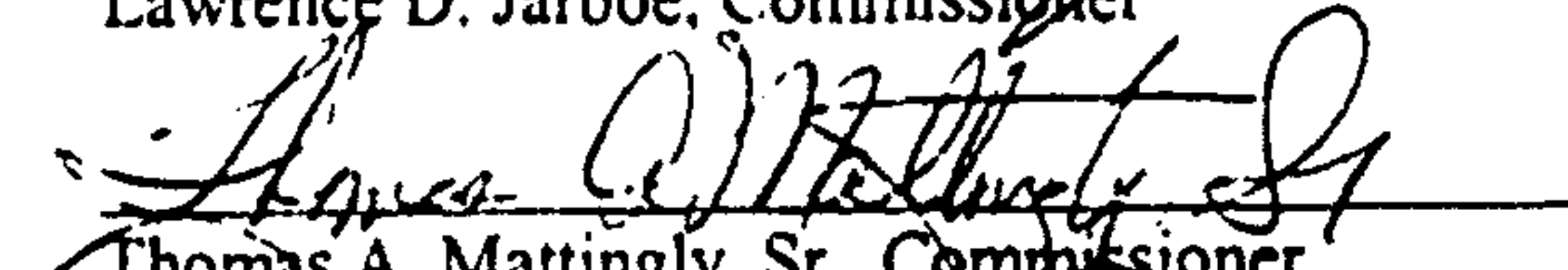
  
Alfred A. Lacer  
County Administrator

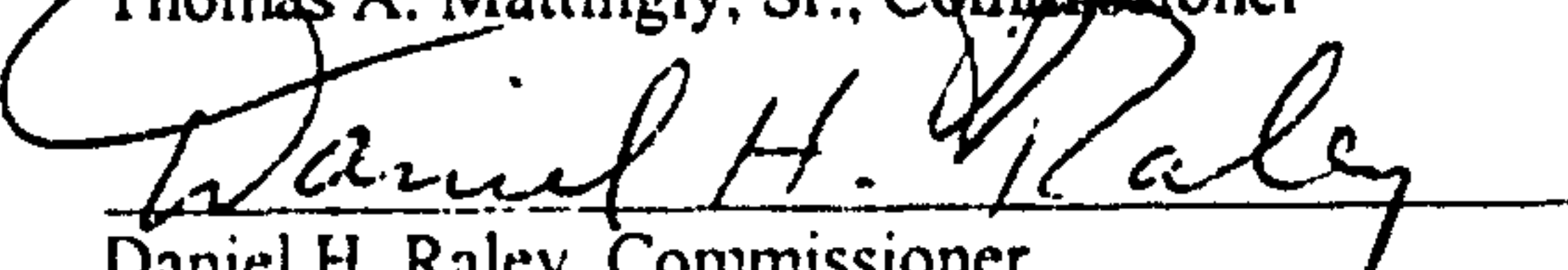
BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY

  
Thomas P. McKay, President


  
Kenneth R. Dement, Commissioner

  
Lawrence D. Jarboe, Commissioner

  
Thomas A. Mattingly, Sr., Commissioner

  
Daniel H. Raley, Commissioner

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

  
John B. Norris, III  
County Attorney



RESOLUTION

WHEREAS, pursuant to Section 10-1 of Article 25 of the Maryland Annotated Code, Section 109-1 of Article 19 of the Code of Public Local Laws of Maryland, and Section 25-102 of the Transportation Article of the Maryland Annotated Code, the Board of County Commissioners for St. Mary's County is authorized and empowered to regulate traffic by means of a traffic control device, and to designate any intersection as a stop intersection, or yield intersection.

WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has identified the intersection of Vernon Court, County Route 31354, located in Phase 1B of the Porto Bello Estates Subdivision, Second (2nd) Election District, St. Mary's County, Maryland, as per Record Plat recorded at EWA 52, Page 26, as a threat to public safety and a hazardous condition due to the absence of a traffic control device at this intersection; and

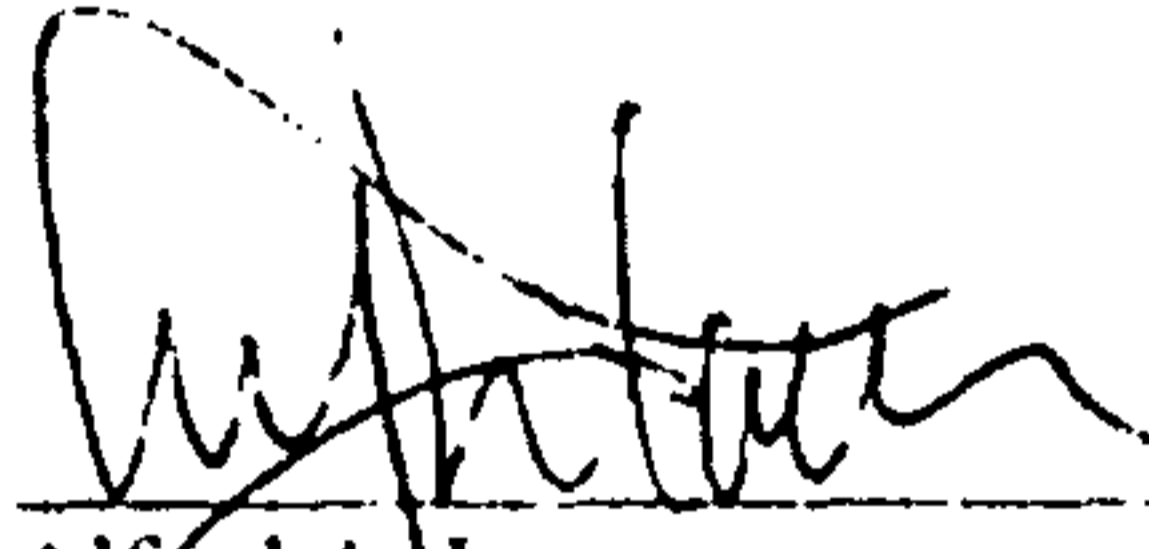
WHEREAS, the Director of the St. Mary's County Department of Public Works and Transportation has, therefore, recommended that the Board of County Commissioners for St. Mary's County exercise its authority to regulate traffic at this intersection by means of a traffic control device; specifically, a stop sign on Vernon Court, County Route 31354, at the intersection with Porto Bello Court, County Route 31352.

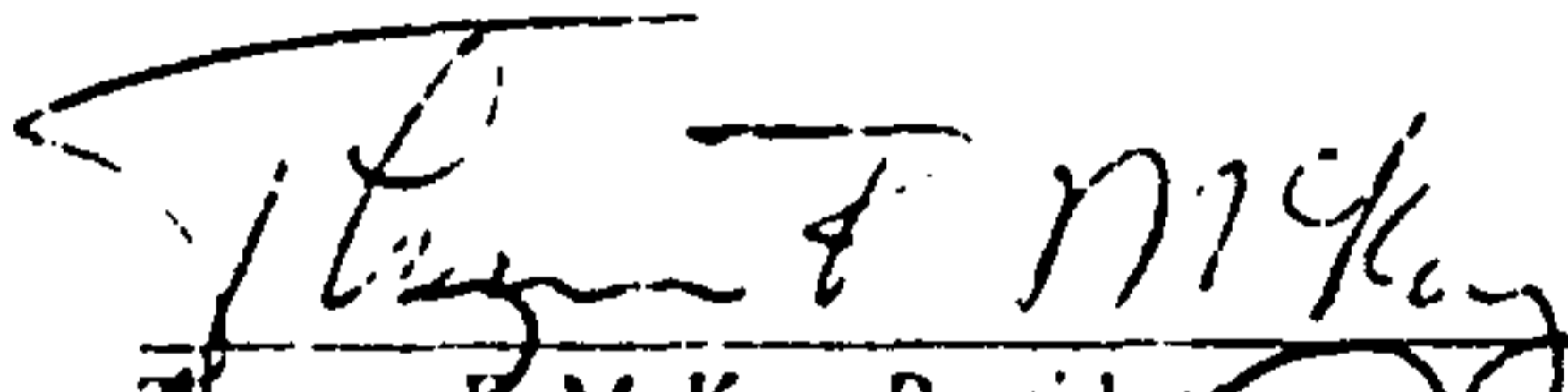
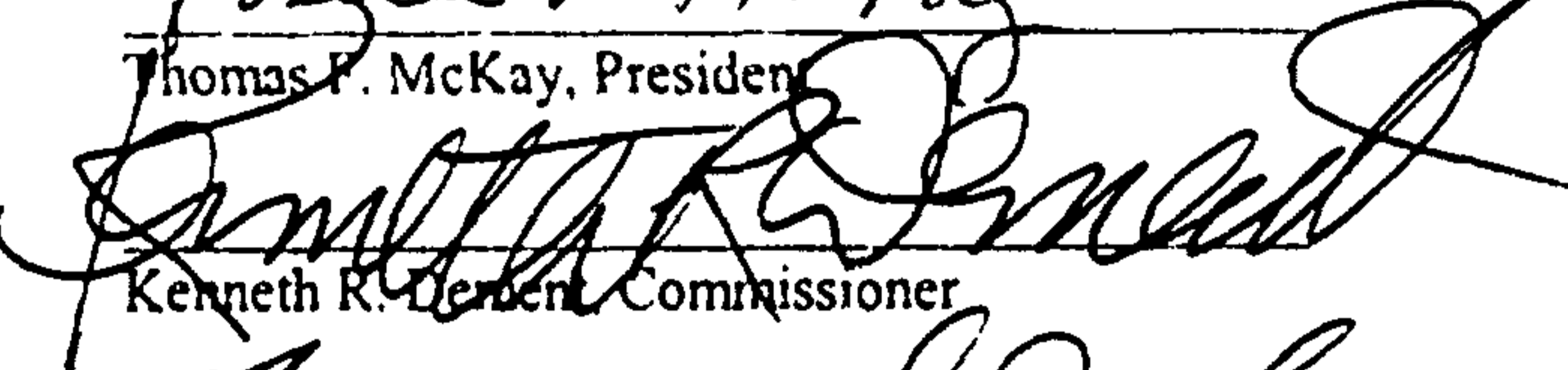
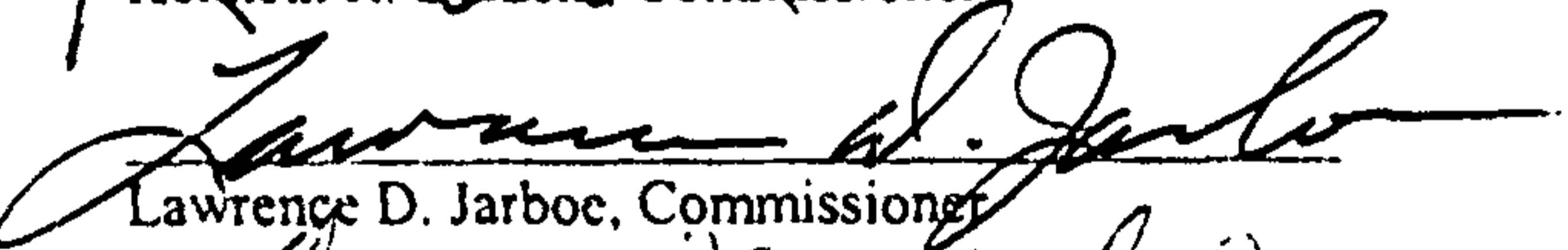
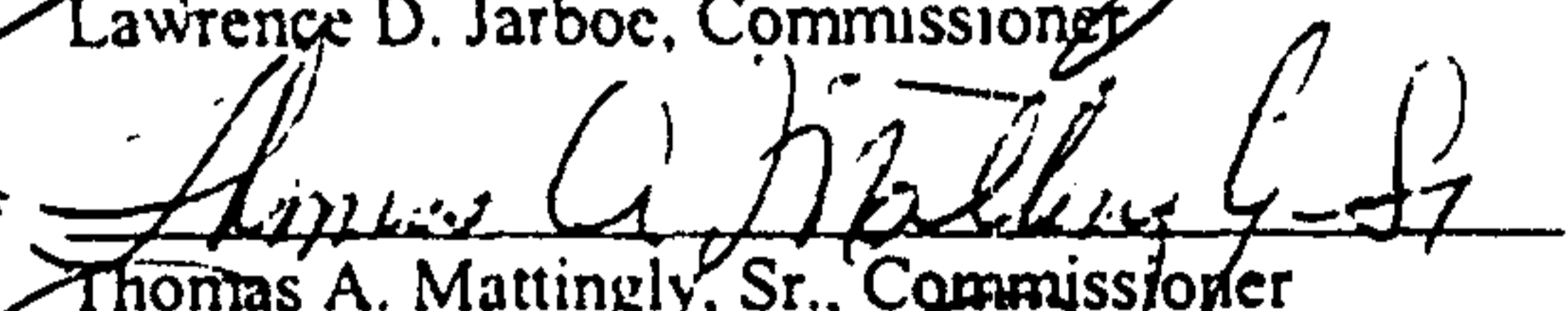
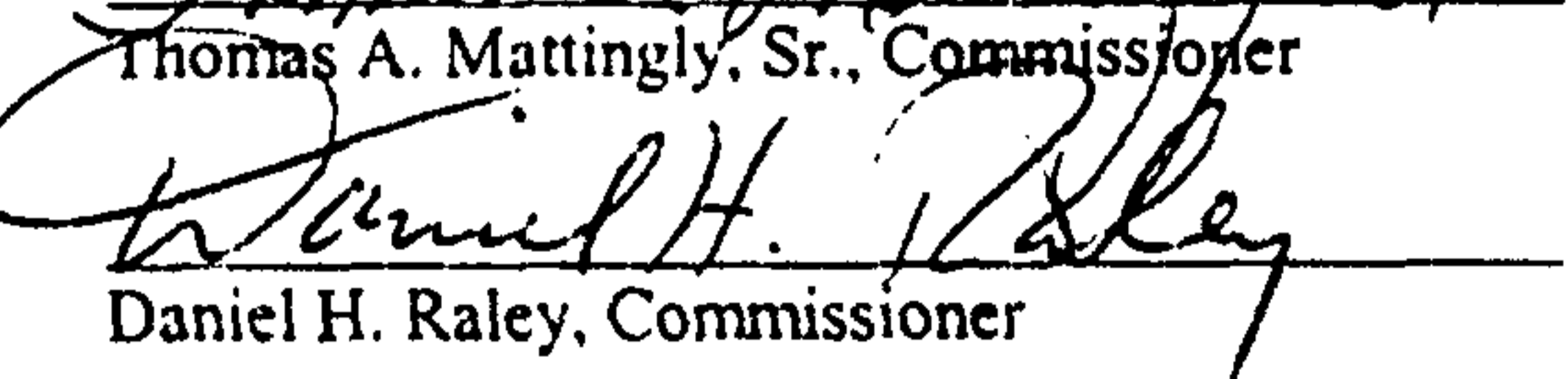
NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for St. Mary's County finds that, upon the advice of the Director of the Department of Public Works and Transportation, a hazardous condition currently exists at the intersection of Vernon Court, County Route 31354, and Porto Bello Court, County Route 31352; and in the interest of public safety and to eliminate a hazardous condition, Vernon Court, County Route 31354, further identified as being located in Phase 1B of the Porto Bello Estates Subdivision, Second (2nd) Election District, St. Mary's County, Maryland (Plat Reference: EWA 52, Page 26) shall be designated as a Stop Street, which is a reasonable exercise of this Board's police powers; and


BE IT FURTHER RESOLVED, that the Board of County Commissioners for St. Mary's County directs and instructs the Director of the Department of Public Works and Transportation to erect a traffic control device; specifically, a stop sign on Vernon Court, County Route 31354, at the intersection with Porto Bello Court, County Route 31352.

Those voting aye: all  
Those voting nay: \_\_\_\_\_  
Those abstaining or absent: \_\_\_\_\_  
Date of Adoption: 3/11/03  
Effective Date: 3/11/03

RECORDING FEE 0.00  
TOTAL 0.00  
REGISTERED COPY #000000  
EWA FEE 01/17/03  
Mar 17, 2003 02:58 PM

ATTEST:  
  
Alfred A. Lacer  
County Administrator

BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY  
  
Thomas F. McKay, President  
  
Kenneth R. Denton, Commissioner  
  
Lawrence D. Jarboe, Commissioner  
  
Thomas A. Mattingly, Sr., Commissioner  
  
Daniel H. Raley, Commissioner

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:  
  
John B. Norris, III  
County Attorney



Subject: Amendments to the  
St. Mary's County Comprehensive  
Zoning Ordinance and St. Mary's  
County Subdivision Ordinance

**ORDINANCE**

**AN ORDINANCE FOR THE PURPOSE OF AMENDING  
THE ST. MARY'S COUNTY COMPREHENSIVE ZONING  
ORDINANCE AT CHAPTERS 27, 32, 44, 50, 51, 63, and 70  
AND THE ST. MARY'S COUNTY SUBDIVISION  
ORDINANCE AT CHAPTER 24.**

NONCONFORMING FEE 0.00  
TOTAL 0.00  
Res: 002 Ref: 999999  
EMA KAL BIK: 2115  
Mar 17, 2003 02:59 PM

**Recitals**

**WHEREAS, Article 66B of the Maryland Annotated Code, as amended, empowers the Board of County Commissioners for St. Mary's County, Maryland to enact a zoning ordinance to promote the health, safety and welfare of St. Mary's County, and to provide for its administration, enforcement and amendment; and**

**WHEREAS, on November 25, 2002, in open session and pursuant to Article 66B, Section 3.05 of the Maryland Annotated Code, the St. Mary's County Planning Commission adopted Resolution 02-03, forwarding a recommendation to the Board of County Commissioners to adopt the proposed amendments to the St. Mary's County Comprehensive Zoning Ordinance and St. Mary's County Subdivision Ordinance; and**

**WHEREAS, the Board of County Commissioners for St. Mary's County, following due notice published in the January 10, 2003 and January 17, 2003 editions of *The Enterprise*, a newspaper of general circulation in St. Mary's County, held a public hearing on January 28, 2003 regarding the proposed amendment of Chapter 27, Vested Rights and Authority to Continue Nonconforming Projects; Chapter 32, Property Development Regulations; Chapter 44, Overlay Districts and Floating Zones; Chapter 50, Use Classifications; Chapter 51, Use Regulations and Standards; Chapter 63, Landscaping and Buffer Yards; and Chapter 70, Adequate Public Facilities, of the St. Mary's County Comprehensive Zoning Ordinance; and the proposed amendment of Chapter 24, Vested Rights and Authority to Continue Nonconforming Projects, of the St. Mary's County Subdivision Ordinance; and**

**WHEREAS, all procedural requirements of Article 66B of the Maryland Annotated Code, as amended, with regard to preparation of the recommendation of the Planning Commission and subsequent action of the Board of County Commissioners for St. Mary's County have been met; and**

**WHEREAS, upon due consideration of the comments of the public and staff, the recommendation of the St. Mary's Planning Commission and in furtherance of the public health, safety and welfare, it is in the best interest of the public health, safety and welfare of the citizens of St. Mary's County, Maryland, to adopt amendments to the St. Mary's County Comprehensive Zoning Ordinance and St. Mary's County Subdivision Ordinance set forth below, which shall otherwise remain in full force and effect.**

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners for St. Mary's County that the amendments to the St. Mary's County Comprehensive Zoning Ordinance and the St. Mary's County Subdivision Ordinance set forth at Exhibit "A," hereby incorporated by reference, be and the same are hereby adopted.

**BE IT FURTHER ORDAINED**, by the Board of County Commissioners for St. Mary's County that the foregoing amendments to the St. Mary's County Comprehensive Zoning Ordinance and the St. Mary's County Subdivision Ordinance shall be effective upon the date written below.

**BE IT FURTHER ORDAINED**, by the Board of County Commissioners for St. Mary's County that in the event any portion of the St. Mary's County Comprehensive Zoning Ordinance



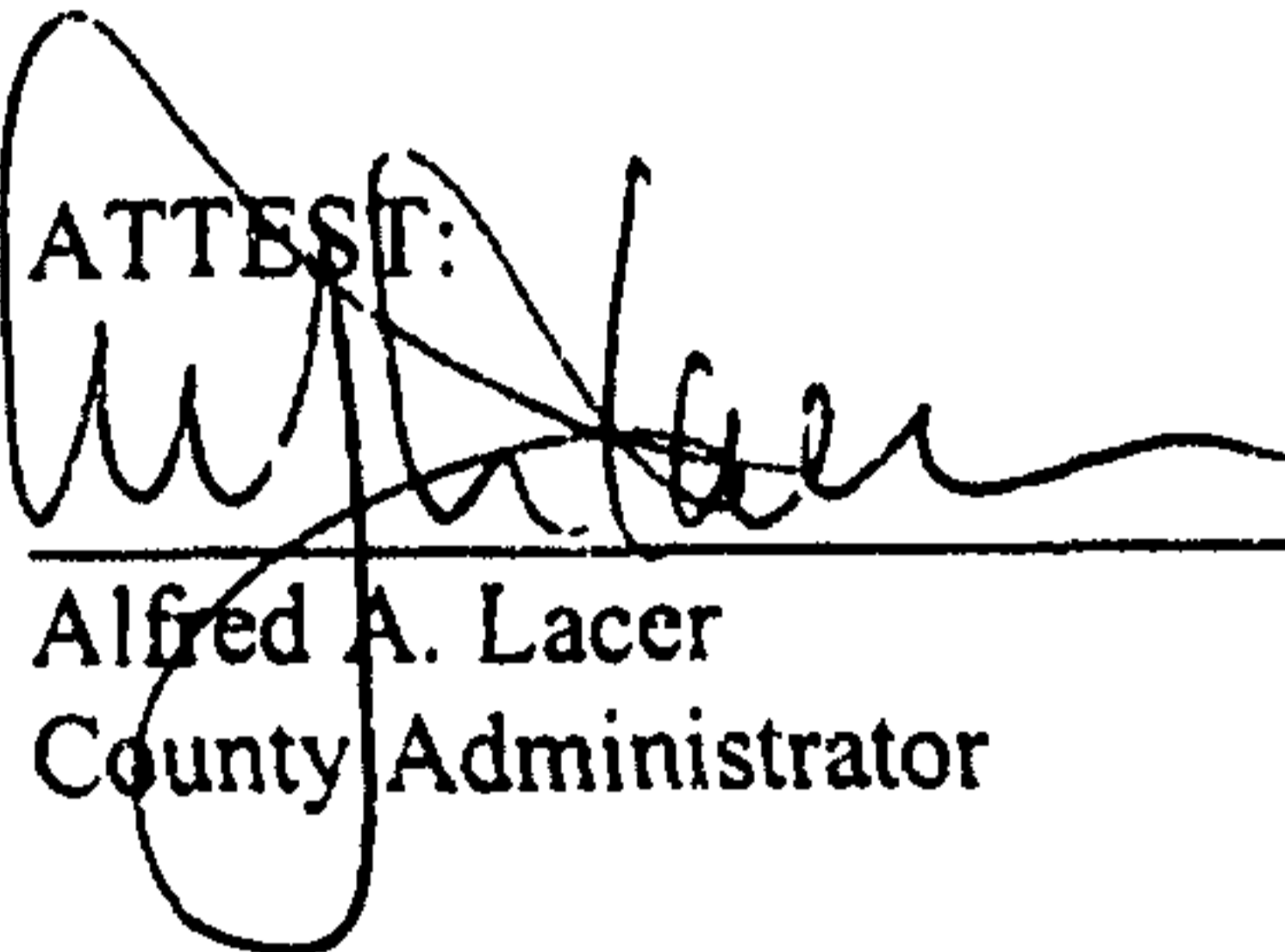
Subject: Amendments to the St. Mary's County Comprehensive Zoning Ordinance and St. Mary's County Subdivision Ordinance

or the St. Mary's County Subdivision Ordinance is found to be unconstitutional, illegal, null or void it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinances shall be enforceable and valid.

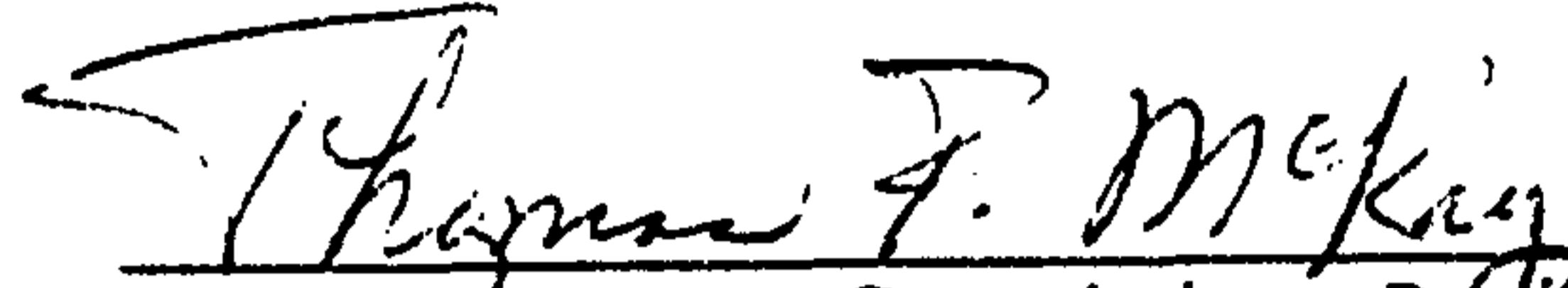
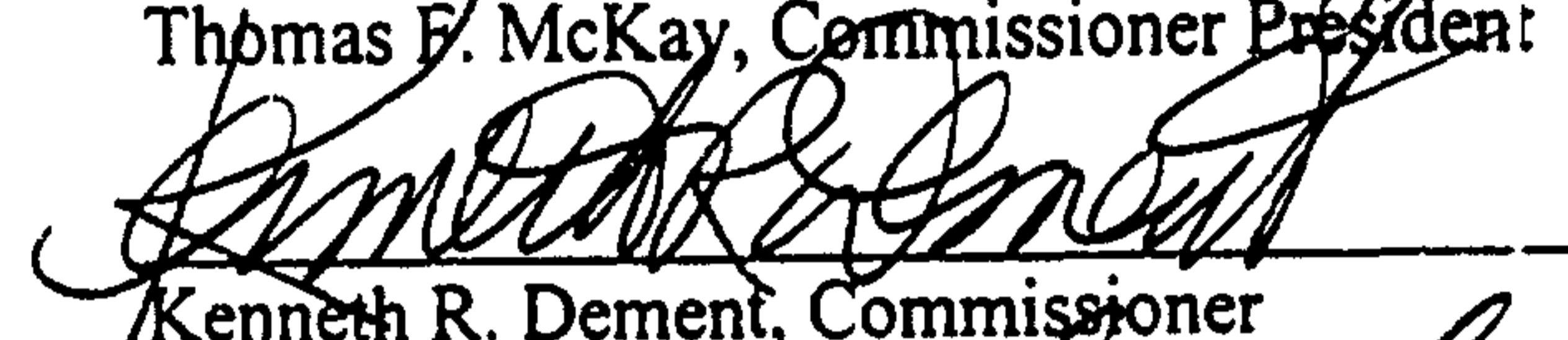
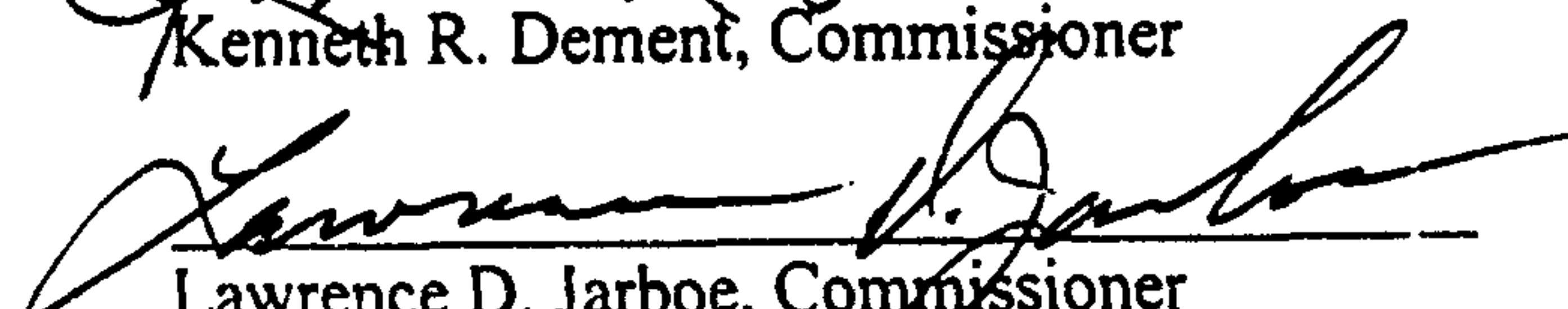
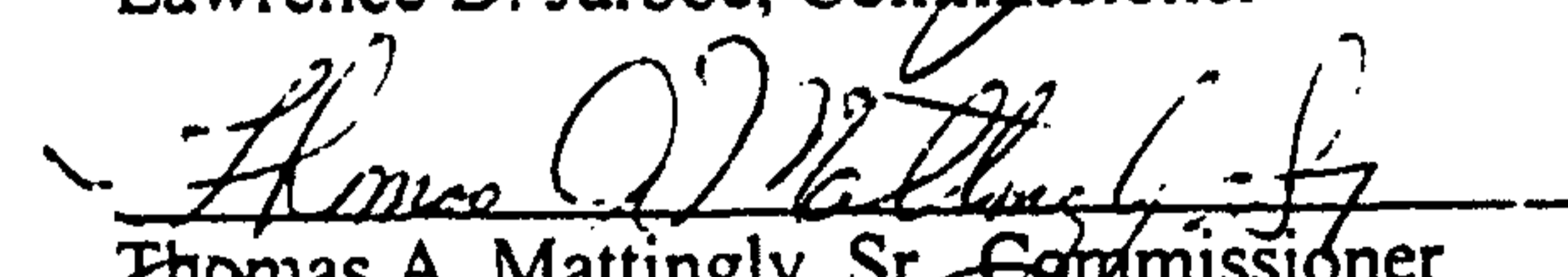
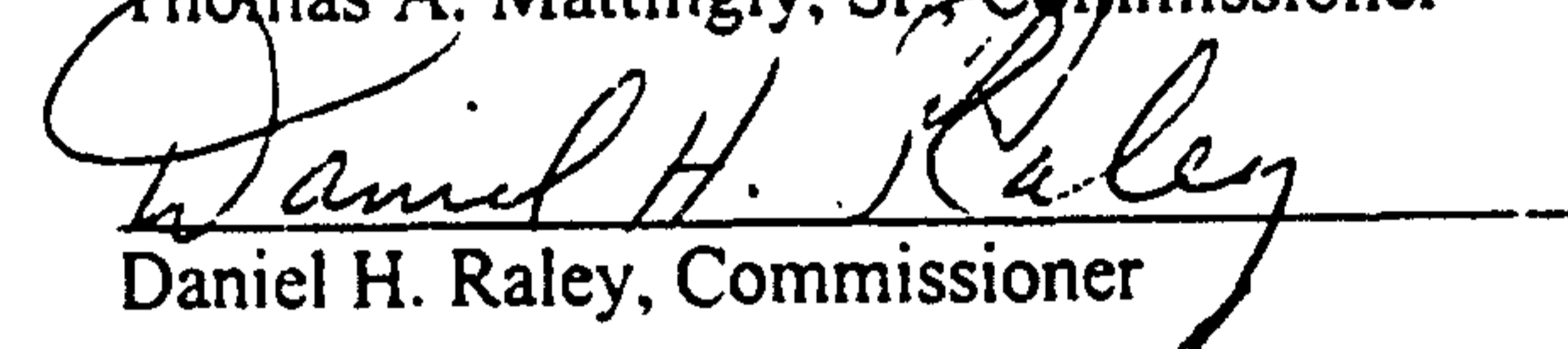
**BE IT FURTHER ORDAINED**, by the Board of County Commissioners for St. Mary's County that the foregoing recitals are adopted as if fully rewritten herein.

Those voting Aye: all  
Those voting Nay: \_\_\_\_\_


Date of Adoption: 3/11/03  
Effective Date: March 24, 2003

ATTEST:  
  
Alfred A. Lacer  
County Administrator

**BOARD OF COUNTY COMMISSIONERS  
FOR ST. MARY'S COUNTY, MARYLAND**

  
Thomas F. McKay, Commissioner President  
  
Kenneth R. Dement, Commissioner  
  
Lawrence D. Jarboe, Commissioner  
  
Thomas A. Mattingly, Sr., Commissioner  
  
Daniel H. Raley, Commissioner

Approved as to form and legal sufficiency:

  
John B. Norris, III  
County Attorney

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1 **CHAPTER 27 VESTED RIGHTS AND AUTHORITY TO CONTINUE NONCONFORMING**  
2 **PROJECTS**

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3 Sections:

- 4 27.1 Purpose.  
5 27.2 Vested Rights.  
6 27.3 Grandfathering Provisions.  
7 27.4 Grandfathering of Phasing or Staging Plans and Schedules.  
8 27.5 Effect of Previous Regulations.  
9 27.6 Annual Update.

10 **27.1. Purpose.**

11 The purpose of this chapter is to permit the continuation of projects for which plan approval has been given  
12 prior to the effective date of applicable ordinance changes or revisions.

13 **27.2. Vested Rights.**

14 St. Mary's County recognizes and accepts the standard of vested rights as established by Maryland  
15 common law.

16 **27.3. Grandfathering Provisions.**

17 Transitional provisions to be known as grandfathering provisions are hereby adopted to provide for the  
18 continuance of certain development activities. No extensions of the stated time periods below shall be  
19 granted, except as noted in Section 27.4.2, below.

20 1. **Subdivisions:** Subdivisions shall be vested pursuant to the provisions listed below.

21 a. Major Subdivisions: Projects that have been granted preliminary subdivision plan  
22 approval prior to May 13, 2002 will have a maximum of two years from the date of such  
23 approval to be granted final subdivision approval. From the date of final subdivision  
24 approval a project will have two years in which to record the final record plat, else be  
25 subject to the requirements of this ordinance. Those projects with approved "phasing"  
26 plans under the previous zoning ordinance (#90-11, as amended) shall have three years  
27 from May 13, 2002, until it shall be required that all future phases shall meet the current  
28 ordinance requirement except density.

29 b. Minor Subdivisions: Projects that have been processed through the Technical Evaluation  
30 Committee (TEC) prior to May 13, 2002 shall have twelve months (from adoption of this  
31 amendment) to achieve final subdivision or site plan approval.

32 2. **Site Plans:** Projects requiring major site plans that have been processed through the Technical  
33 Evaluation Committee (TEC) shall have 30 months from receipt of TEC comments to receive final  
34 site plan approval, receive building permits, and commence construction.

35 3. **Minor (Simplified) Site Plans:** Projects requiring minor (simplified) site plans that have been  
36 processed through the Technical Evaluation Committee (TEC) shall have six months from receipt  
37 of TEC comments to achieve final site plan approval.

38 4. **Planned Unit Developments:** Grandfathering of a Planned Unit Development as approved by the  
39 Board of County Commissioners shall be governed by Chapter 44, Section 44.4.3.b.

40 5. **Conditional Uses:** Those projects having conditional use approval by written order of the Board  
41 of Appeals shall have 30 months from the date of the written order to receive all required  
42 approvals to implement the approved conditional use and commence construction.

43 6. **Growth Allocation:** Those calendar year 2001-2002 projects having begun the public hearing  
44 process with the Planning Commission, may proceed to decision by the Board of County  
45 Commissioners and the Chesapeake Bay Critical Area Commission under Ordinance 90-11 as  
46 amended.

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1 7. *Building Permits:* Applications for building permits filed with the Department of Permits and  
2 Inspections before May 13, 2002 may have twelve months from March 24, 2003 to receive all  
3 final approvals without meeting the requirements of this Ordinance.

4 **27.4. Grandfathering of Phasing or Staging Plans and Schedules.**

5 1. All commercial or residential phasing or staging plans and schedules approved prior to the  
6 enactment of this Ordinance shall remain in effect. Construction and development relating to such  
7 plans may be completed in accordance with the terms of the previously approved phasing or  
8 staging plan. Any revisions proposed under this chapter shall conform with all Maryland state  
9 rules, regulations, and statutory provisions, and any construction standards as set forth in the rules,  
10 regulations, and ordinances of St. Mary's County, in effect when the applicant applied for a  
11 revision to the phasing or staging plan and schedule, unless said plans, schedules, and/or revisions  
12 are exempted under said rules, regulations statutory provisions, and/or ordinances.

13 2. Any applicant shall be allowed to apply for a revision to any phasing or staging plan and schedule  
14 grandfathered under the provisions of this chapter, and such revisions may be approved by the  
15 Planning Commission provided the applicant can show that there are compelling circumstances to  
16 warrant a revision. In no case shall the duration of any phasing or staging plan and schedule be  
17 extended more than five years beyond the effective date of this Ordinance. The Planning  
18 Commission shall consider the following factors in determining whether to approve applications  
19 for revisions:

- 20 a. The extent to which any delay was caused by the action or inaction of the applicant as  
21 opposed to other factors beyond the control of the applicant;
- 22 b. The amount of investment not including architectural and engineering costs made in the  
23 project as of the date of the application for revision;
- 24 c. Any impact to the health and welfare of the County caused by the revision or any delay  
25 associated therewith; and
- 26 d. Market conditions.

27 3. ***Continuation of Project:*** Project development may proceed in accordance with the plan approved  
28 unless the approval expires by failure to act within the defined time periods as stated above. In the  
29 case of expiration, re-approval shall be in conformity with all provisions of this Ordinance.

30 **27.5. Effect of Previous Regulations.**

31 To the extent that projects are grandfathered under this section, the provisions of Ordinance 90-11, as  
32 amended and regulations in effect at the time of plan approval shall remain in full force and effect.

33 **27.6. Annual Update.**

34 An annual update of development commenced during the past year and plans for development in the  
35 upcoming year shall be presented to the Planning Commission by the developer of the project.



Schedule 32.1 Development Standards

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	RPD	RSC	RCL	RL	RH	RNC <sup>9</sup>	RMX	VMX	TMX	DMX	CMX	CC	OBP	I	CM
<b>Residential Density</b>															
Base Density (units per acre)	1 dwelling per 5 acres <sup>8</sup>	none	none	1	10	1	1	1	1	5	1	none	none	none	none
Maximum Density (units/acre) See Table 32.2 for methods to achieve Residential Density Increase	1 dwelling per 3 acres	none	none	5	15	2	5	5	5	10	5	none	none	none	none
<b>Non-Residential Density (per acre)</b>															
Base Floor Area Ratio	0.05	0.10	0.25	0.10	0.30	0.10	0.20	0.20	0.20	0.60	0.40	0.35	0.40	0.40	0.20
Maximum Floor Area Ratio (see Table 32.2 for methods to achieve FAR Increase) (per acre)	0.15	0.30	0.30	0.20	0.30	0.15	0.35	0.45	0.60	none	0.50	0.50	0.50	0.60	0.30
<b>Minimum Lot Dimensions</b>															
Minimum Lot Area	none	none	none	none	none	none	none	none	none	none	none	none	none	none	1ac
Width	150	none	none	75	none	75	none	80	80	none	80	175	100	100	none
Depth	160	none	none	100	60	100	none	100	100	none	100	300	200	200	none
Frontage	75	none	none	50	none	50	none	50	50	none	50	100	none	none	none
<b>Principal Structure Minimum Setbacks</b> <sup>1,2,3</sup>															
Minor Collector or lesser	25	25	25	25	25	25	25	25	25	5	20	20	25	25	25
Major Collector	35	35	35	35	35	35	35	35	35	10	35	30	35	35	35
Arterial	50	50	50	50	50	50	50	50	50	50/10 <sup>2</sup>	50	50	50	50	50
Side <sup>4</sup>	15	15	15	10	10	10	15	15	15	10	10	20	20	25	25
Rear	20	20	20	20	20	20	25	25	25	20	20	30	25	25	25
Minimum Separation between detached principal structures on a site	2 times the side yard setback														
<b>Other Requirements</b>															
Maximum footprint of a Commercial structure on a site by right	5,000	10,000	<del>10,000</del> 15,000	20,000	none	5,000	20,000	15,000	30,000	50,000	50,000	50,000	50,000	none	none
Maximum footprint of a Commercial structure with TDRs <sup>6,8</sup>	6,250	12,500	<del>12,500</del> 25,000	25,000	none	6,250	25,000	<del>20,000</del> 25,000	<del>45,000</del> 50,000	See Footnote 5, 6	See Footnote 5, 6	See Footnote 5, 6	See Footnote 5, 6	none	none
Maximum Height <sup>7</sup>	40	40	40	40	75	40	40	40	40	100	100	100	100	100	60
Minimum Landscaping	none	15%	15%	none	15%	20%	20%	20%	20%	20%	20%	none	20%	20%	20%
<b>Open Space</b>															
Minimum Useable Open space (sq. ft. per residential unit)	none	none	none	1,300	1,300	none	1,300	200	200	200 <sup>10</sup>	200	none	none	none	none
Minimum Open space for development envelope	50%	none	none	50%	50%	50%	50%	20%	20%	15% <sup>10</sup>	20%	20%	none	none	none

Footnotes

1. Lots fronting on roads identified as existing or future Arterial Roads in the 2020 Transportation Plan in the Comprehensive Plan shall meet the 50 foot setback.
2. On Great Mills Road (Route 248), from Route 235 to Saratoga Street the minimum front yard setback is 10 feet and the maximum shall be 25 feet.
3. Permitted obstructions in required yards are defined in Section 61.7.
4. Modification of Side or Rear Setback requirements defined in Section 61.7.4. Minimum Accessory structure setback shall be 5 feet from a side or rear lot line.
5. By right footprint may be increased with TDRs by 2,000 sq. ft. per TDR up to 60,000 sq. ft.
6. Additional sq. ft. of footprint above 60,000 sq. ft. in the Development Districts may be achieved @ 1,000 sq. ft. per additional TDR.
7. Principal structures may be erected to a height not exceeding 100 feet when side and rear yards are increased 1 foot for each foot of height in excess of the height restriction for the zone. Height of all structures subject to site-by-site analysis for compliance with Chapter 43, AICUZ and AE height restrictions. Structures with a building height greater than 45 feet shall install an approved sprinkler system. Height of communication towers are exempt from height restrictions of Schedule 32.1 and regulated by the provisions contained in Sections 51.3.87 and 51.3.88 of this ordinance.
8. Parcels of at least 2 acres in size but less than 10 acres in size may be subdivided into 1 additional lot for transfer to a family member.
9. In the RNC District, setback averaging, as defined in Chapter 91 Rules for Measurement, may be used to determine front yard requirements.
10. An open space credit may be granted if a project is connected to, and located within 1/4 mile of, an improved public park by a continuous sidewalk.

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- 1 c. Development schedule and projected market absorption, approximate dates for beginning  
2 and completion of each phase, and estimated cost of each phase of development.
- 3 d. A schedule for at least bi-annual reports to the Planning Commission, including the  
4 number of residential units or square feet of non-residential space constructed, and an  
5 updated market absorption report and revised schedule and completion time table.
- 6 7. An applicant shall include the following development design information with an application.
- 7 a. A land use plan or plans showing a typical location and arrangement of all types of  
8 proposed land uses, height of buildings, setbacks and side yards, proposed internal and  
9 external traffic circulation (including widths, driveways, and access), pedestrian  
10 circulation, proposed open space and recreation areas, and dedications and easements.
- 11 b. A general landscaping and screening plan showing typical types, location, and design of  
12 landscaping and screening.
- 13 c. Covenants, restrictions, and conditions pertaining to the use, maintenance and operation  
14 of common open space.
- 15 d. A tabular summary of anticipated densities; total number of dwelling units; percentage of  
16 site devoted to buildings, open space, recreation area, streets and parking areas; and total  
17 floor area of all non-residential structures shown as FAR to residential units.
- 18 e. A plan showing proposed typical parking arrangements.
- 19 f. Architectural diagrams of typical proposed structures, typical recreation areas, typical  
20 landscaping and screening areas, and typical development clusters.
- 21 g. A plan or report indicating the extent, schedule, and estimated cost of all off-site  
22 improvements such as roads and public water and sewer mains and drainage facilities  
23 necessary to the construction, occupancy, and use of the planned development.
- 24 h. A report or plan showing the adequacy of public facilities and services such as water, fire  
25 suppression, sewer, drainage, schools, streets and roads to serve the proposed  
26 development.
- 27 i. A report showing the fiscal impact of the proposed development on the County. Said  
28 report shall be prepared by an economic consultant selected by the County and reviewed  
29 by the County Staff, with the costs of such study assessed to the applicant as set forth in  
30 the County's Fee Schedule.
- 31 j. A statement delineating how the proposed development is consistent with the  
32 Comprehensive Plan.
- 33 k. A preliminary plan for sedimentation and erosion control.
- 34 l. A plan for protection of natural stormwater management resources areas.

35 **44.6. Types of Planned Unit Developments.**

36 Residential PUDs may be located in the RL, RH, RMX, VMX, TMX, DMX, CMX, and QBP districts  
37 subject to the provisions of this Article and development plan approval. Non-residential PUDs may be  
38 located in any district except RSC and RCL districts.

39 **44.7. General Regulations for Planned Unit Developments.**

- 40 1. **Required Area.** The following minimum land areas shall be required for each Planned Unit  
41 Development district. There shall be a minimum size for each new PUD floating zone. The  
42 minimum required areas may be in a parcel in single ownership or in combination with contiguous  
43 parcels. If an application is to be made for rezoning to Planned Unit Development districts in  
44 contiguous parcels, the applicant must provide legal agreements showing marketable title to the  
45 subject properties by such owner or owners and the source of the applicant's title and interest in  
46 the subject properties.



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Legend	P	Use is permitted in accordance with Chapter 51 General standards
	L	Use is permitted in accordance with Chapter 51 General and Limited standards
	C	Use is permitted in accordance with Chapter 51 General and Conditional standards
	A	Use is permitted as accessory to an allowable use (See Section 11.2.4.b).
	PD	Use is permitted only within a Planned Unit Development subject to the review, conditions, and approval of the Board of County Commissioners.
	-	Use is prohibited within the zone
	RCA	Use may be allowed in the Resource Conservation Area Overlay in accordance with the provisions of this Ordinance only if use is allowed in the base zoning district.
	LDA	Use may be allowed in the Limited Development Area Overlay in accordance with the provisions of this Ordinance only if use is allowed in the base zoning district.
	IDA	Use may be allowed in the Intensely developed Area Overlay in accordance with the provisions of this Ordinance only if use is allowed in the base zoning district.
	X	In the Critical Area, new non-maritime industries may be permitted only in the IDA and then only if the facility or activity demonstrates that there will be a net improvement in water quality to the adjacent body of water.

Use Type	Description	Use Intensity	RPD	RSC	RCL	RL	RH	RNC	RMX	VMX	TMX	DMX	CMX	CC	I	OBP	CM	Critical Area Overlay
6. Farmer's market.	Retail sales of locally produced agricultural, fishery products and locally made handcrafted products by two or more sellers, on a property usually separate from that where the items for sale were grown or made.	Low	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	RCA LDA IDA
7. Roadside stand.	Display and sale of locally produced agricultural, fishery products and handcrafted products. This classification includes transient carts, vehicles, and stands used for the transport, storage and display of products operated more than 14 days per year as well as permanent roadside structures.	Low	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	RCA LDA IDA
8. Silviculture.	Agricultural Activity primarily engaged in care and cultivation of forest trees and timber harvesting.	Low	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	RCA LDA IDA
<b>Residential Use Classifications</b>																		
9. Dwelling unit attached.	An attached structure containing a single dwelling unit on a single lot. Dwelling units are usually side by side sharing one roof, but each unit has a separate front and rear access. Includes townhouses, tri-quad- and other multi-plex dwelling configurations.	High	L	-	-	P	P	-	P	P	P	P	P	-	-	-	-	RCA LDA IDA
10. Dwelling unit, detached.	A detached structure containing a single dwelling unit on a single lot. Dwelling may be either a site built structure meeting the St. Mary's County Building Code or a manufactured structure for residential occupancy, conforming to the requirements of the Maryland Industrialized Building and Mobile Homes Act and constructed under the National Manufactured Home Construction and Safety Act of 1974. Note: Mobile homes are regulated separately under this Ordinance.	Low	P	P	AP	P	P	P	P	P	P	P	P	-	-	-	AP	RCA LDA IDA
11. Dwelling unit, multi-family residence.	A single structure that contains three or more dwelling units, or three or more attached structures with common walls on a single lot. Classification includes structures commonly called garden apartments, triplexes, quadplexes, and low-mid and high-rise apartment buildings.	High	-	-	-	P	P	-	P	P	P	P	P	-	-	-	-	LDA IDA

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	X	In the Critical Area, new non-maritime industries may be permitted only in the IDA and then only if the facility or activity demonstrates that there will be a net improvement in water quality to the adjacent body of water.

Use Type	Description	Use Intensity	RPD	FSC	RCL	RL	RH	RNC	RMX	VMX	TMX	DMX	CMX	CC	I	OBP	CM	Critical Area Overlay
30. Outpatient care center.	Licensed facility with medical staff primarily engaged in providing primary care and general or specialized outpatient care, including family planning, mental health, physical therapy, substance abuse, and kidney dialysis centers or clinics. No overnight patient or dormitory facilities shall be allowed. This classification includes HMO medical centers, freestanding ambulatory surgical and emergency centers (except hospitals), where surgical services are provided on an outpatient basis, and medical and diagnostic laboratories providing analytic or diagnostic services to the medical profession or to the patient on referral from a health practitioner.	High	-	L	L	-	-	-	P	P	P	P	P	P	P	P	-	LDA IDA
31. Public recreation facility.	Non-commercial park, playground, recreation facility, and publicly accessible open space. This classification includes fields for amateur and youth sports including, but not limited to, baseball, softball, football, and soccer fields. Golf courses are regulated separately under this Ordinance.	Low	P	-	P	P	P	L	P	P	P	P	P	-	P	P	P	LDA IDA
32. Public maintenance facility.	Facilities providing maintenance and repair services for public and utility vehicles and equipment, and materials storage areas. This classification includes utility and road maintenance depots, equipment service centers, and similar facilities.	High	P	-	C	-	-	-	C	C	C	C	-	P	P	-	-	LDA IDA
33. Public safety facility.	Facility for public safety and emergency services, including fire protection, rescue squad, police, and detention service. Includes private non-profit ambulance services	High	C	C	P	L	C	L	P	P	P	P	P	P	P	C	L	LDA IDA
34. Religious assembly.	Religious worship and incidental religious education, not including private schools.	Low	P	L	L	L	L	L	P	P	P	P	L	P	-	-	-	LDA IDA
35. Rural medical practice.	Facility with licensed professional staff engaged in general or specialized medical care and licensed by the Department of Health and Mental Hygiene.	High	L	P	P	-	-	-	-	-	-	-	-	-	-	-	-	LDA IDA



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		-	Use is prohibited within the zone
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	X	In the Critical Area, new non-maritime industries may be permitted only in the IDA and then only if the facility or activity demonstrates that there will be a net improvement in water quality to the adjacent body of water.	

Use Type	Description	Use Intensity	Commercial Use Classifications (cont'd) NOTE:*																
			RPD	RSC	RCL	RL	RH	RNC	RMX	VMX	TMX	DMX	CMX	CC	I	OBP	CA	Critical Area Overlay	
<b>Commercial Use Classifications (cont'd) NOTE:*</b>			Any Low intensity commercial use that exceeds 20,000 square feet shall be considered a High intensity Use																
43.	Conference facility.	Low	PD	P	-	C	-	-	P	P	P	P	P	P	P	A	A	A	LDA IDA
44.	Construction materials and equipment storage.	High	L	-	-	-	-	-	-	-	-	-	-	-	-	L	-	C	LDA IDA
45.	Convenience store.	Low	-	L	L	-	-	-	-	P	P	P	P	P	-	P	A	-	LDA IDA
46.	Corporate campus.	High	PD	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	LDA IDA
47.	Fairgrounds and flea markets.	Low	P	P	-	-	-	-	P	P	P	P	P	A	A	A	-	-	LDA IDA
48.	Financial institution.	Low	-	P	P	-	-	-	P	P	P	P	P	P	P	P	-	-	LDA IDA
49.	Funeral and interment service.	Low	-	-	-	-	-	-	P	P	P	P	P	-	-	-	-	-	LDA IDA
50.	Golf course.	Low	C	-	-	C	-	L	-	-	C	-	-	-	-	-	C	-	LDA IDA



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Use Type	Description	Use Intensity	RPD	RSC	RCL	RL	RH	RNC	RMX	VMX	TMX	DMX	CMX	CC	I	OBP	CM	Critical Area Overlay
<b>Commercial Use Classifications (cont'd) NOTE:</b> Any Low intensity commercial use that exceeds 20,000 square feet shall be considered a High intensity Use																		
51. Laboratory.	Facility engaged in routine processing, analysis and testing to provide medical, dental, photographic and technical laboratory services. Use class excludes laboratories primarily engaged in developing new methods for processing, analysis and testing (see Research and Development) and laboratories for other types of service (See Industry, limited.)	Low	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	LDA IDA
52. Lodging, bed and breakfast inn.	Visitor accommodations providing guest rooms for lodging on a less than weekly basis typically in a converted single-family or multi-family dwelling, with incidental eating and drinking service provided from a single kitchen for lodgers only.	Low	P	P	P	C	-	-	P	P	P	P	-	-	-	-	P	RCA LDA IDA
53. Lodging, hotel and motel.	Visitor accommodations providing guest rooms for lodging, typically on a less than weekly basis, with no or minimal kitchen facilities in the guest units and daily housekeeping service. Guest units may be reached either from a common entrance or directly from the outside of the building. This classification may include accessory recreational facilities, or eating, drinking and banquet service, and conference facilities.	Low	-	-	-	-	-	-	P	P	P	P	P	P	P	P	A	LDA IDA
54. Maintenance and repair service, major.	Establishments engaged in maintenance and repair of industrial equipment and machinery and any other repair maintenance service that provides outdoor storage and work areas in addition to interior shop space for working on agricultural equipment and implements. Use may include the sale, installation, and service of related equipment and parts. Use excludes maintenance and repair of vehicles, boats or ships.	High	L	C	C	-	-	-	L	L	L	L	L	L	P	L	A	LDA IDA
55. Maintenance and repair service, minor.	Repair and incidental sales of supplies for appliances, office machines, home electronic equipment, bicycles, tools, small engines or garden equipment. This classification includes furniture refinishing and repair, but excludes maintenance and repair of vehicles, boats or ships, or industrial equipment.	Low	L	P	P	-	-	-	P	P	P	P	P	A	P	-	A	LDA IDA
56. Manufactured home sales.	Establishments engaged in the retail sale or leasing, delivery and installation of manufactured homes where models are located or purchasable products are stored on site.	High	-	-	-	-	-	-	-	P	P	C	P	-	A	-	-	LDA IDA



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Use Type	Description	Use Intensity	RPD	RSC	RCL	RL	RH	RNC	RMX	VMX	TMX	DMX	CMX	CC	I	OBP	CM	Critical Area Overlay	
<b>Commercial Use Classifications (cont'd) NOTE:</b>			Any Low Intensity commercial use that exceeds 20,000 square feet shall be considered a High Intensity Use																
62. <i>Personal or business service.</i>	Establishment providing a range of support activities for services and incidental sales to persons and businesses. This classification includes, but is not limited to, barber and beauty shops, watch and jewelry repair shops, engraving studios; picture framing shops; shops for tailors, shoe repair, dry cleaners, locksmiths, film developing, telegraph and fax services, mail receiving and boxes, delivery services and self-service laundries. Also includes janitorial or building maintenance services, construction services, document delivery, mail receiving and distribution, drafting, blueprinting, typesetting, copying, photographic or other similar services.	Low -	-	P	P	-	-	-	P	P	P	P	P	P	-	P	-	LDA IDA	
63. <i>Personal storage.</i>	Storage of goods and materials within an enclosed building with direct access to individual storage spaces and available to the general public for a fee. This classification does not include warehousing or wholesaling and distribution centers.	Low -	-	-	P	-	-	-	-	L	L	-	L	-	P	-	-	LDA IDA	
64. <i>Recreational facility, major.</i>	This classification includes commercially operated indoor and outdoor recreation and entertainment facilities not specifically classified elsewhere that provide accommodations for any number of spectators or that occupy 15 acres or more of land. This use type includes, but is not limited to, live performing arts theaters, drive-ins, amphitheaters, sports arenas, amusement parks and water parks.	High	PD	-	-	-	-	-	-	-	-	-	PD	PD	PD	-	-	LDA IDA	
65. <i>Recreational facility, motor sports facilities</i>	This classification includes any commercially operated motor sports facility including, but not limited to, a speedway, drag strip, raceway, and any grandstand or stadium associated with either an oval track or road course. Also includes associated vehicle or equipment maintenance, repair or testing facilities, and accommodations and concessions to serve patrons of the facility.	High	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	LDA IDA	

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12/2/02	Legend	P	Use is permitted in accordance with Chapter 51 General standards
		L	Use is permitted in accordance with Chapter 51 General and Limited standards
		C	Use is permitted in accordance with Chapter 51 General and Conditional standards
		A	Use is permitted as accessory to an allowable use (See Section 11.2.4.b).
		PD	Use is permitted only within a Planned Unit Development subject to the review, conditions, and approval of the Board of County Commissioners.
		-	Use is prohibited within the zone
		RCA	Use may be allowed in the Resource Conservation Area Overlay in accordance with the provisions of this Ordinance only if use is allowed in the base zoning district.
		LDA	Use may be allowed in the Limited Development Area Overlay in accordance with the provisions of this Ordinance only if use is allowed in the base zoning district.
		IDA	Use may be allowed in the Intensely developed Area Overlay in accordance with the provisions of this Ordinance only if use is allowed in the base zoning district.
		X	In the Critical Area, new non-maritime industries may be permitted only in the IDA and then only if the facility or activity demonstrates that there will be a net improvement in water quality to the adjacent body of water.

Use Type	Description	Use Intensity	RPD	RSC	RCL	RL	RH	RNC	RMX	VMX	TMX	DMX	CMX	CC	I	OBP	CM	Critical Area Overlay	
<b>Commercial Use Classifications (cont'd) NOTE:</b>			Any Low Intensity commercial use that exceeds 20,000 square feet shall be considered a High Intensity Use																
66.	Recreational facility, minor indoor.	This classification includes but is not limited to commercially operated indoor recreation and entertainment facilities such as bowling alleys, billiard parlors, ice or roller skating rinks, swimming pools, miniature golf, tennis or racquetball courts, movie theaters, health or fitness clubs and gyms, dance halls, and game centers including pinball arcades or establishments having five or more coin-operated electronics or mechanical game machines.	Low	-	P	L	-	-	-	P	P	P	P	P	P	P	A	-	LDA IDA
67.	Recreational facility, minor outdoor.	This classification includes but is not limited to commercially operated outdoor recreation and entertainment facilities such as miniature golf or scale-model courses, skating rinks, swimming pools, tennis or racquetball courts, target shooting, golf driving or batting ranges.	High	PD	L	-	-	-	-	P	-	P	L	L	L	L	-	-	LDA IDA
68.	Rental and leasing.	Establishments that provide tangible goods, such as vehicles, computers, construction or agricultural machinery and equipment, office equipment, power and hand tools, party supplies, and similar equipment, in return for a periodic rental or lease payment. Establishments that rent real property are classified under "offices."	High	-	P	P	-	-	-	P	P	P	P	P	P	P	-	-	LDA IDA
69.	Research and development service.	Industrial or scientific research, including limited product testing. This classification includes electronic research firms, computer software development and pharmaceutical research laboratories, and laboratories primarily engaged in developing new methods for processing, analysis and testing for manufacturing or medical activities.	Low	C	-	-	-	-	C	L	L	L	L	-	P	P	-	-	LDA IDA
70.	Restaurant.	An establishment serving unpackaged food and beverages in a ready to consume state primarily to persons seated at counters or tables within the building. May include outside dining and sale of food prepared onsite and beverages for consumption off the premises. Where alcoholic beverages are sold in conjunction with sale of food for consumption on the premises and the sale of said beverages comprise less than 50% of the gross receipts. (See "Tavern" for establishments where sales of alcoholic beverages comprise more than 50% of gross receipts).	Low	-	P	P	-	-	-	P	P	P	P	P	P	A	A	A	LDA IDA

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1 9. *Dwelling Unit, Attached.*

2 a. *General Standards:*

- 3 (1) Site plan approval shall be required.
- 4 (2) The minimum area for any single parcel having a townhouse structure shall be  
5 three acres. Said parcel shall have a depth from the street of at least 200 feet and  
6 frontage on a street of at least 200 feet.
- 7 (3) A townhouse structure may not exceed 130 feet in length.
- 8 (4) Lot width shall be no less than 20 feet (measured at the building line). Lot  
9 width for end units shall be adequate to meet zone setback requirements from  
10 adjacent properties and rights-of-way.
- 11 (5) Rear yards shall be screened from rear yards of adjacent attached dwelling units  
12 rear yards by a six-foot privacy fence extending not less than 15 feet from the  
13 rear building wall.
- 14 (6) Minimum distance between two unattached attached dwelling structures shall be  
15 40 feet between exterior walls. This setback shall increase to 60 feet if the  
16 structures are face to face. In a cluster these separations may be reduced to 25  
17 and 40 feet respectively. Structures shall be setback at least 25 feet from any  
18 interior driveway and at least 15 feet from off-street parking areas (excluding  
19 garages provided in individual units).
- 20 (7) A minimum of 800 square feet of open space per attached dwelling unit  
21 (exclusive of front, side, or rear yards) shall be maintained in common open  
22 space in a location approved by the Planning Commission.
- 23 (8) No part of an attached dwelling unit may exceed 40 feet in height.

24 b. *Limited Standards:*

- 25 (1) In the RPD, only a single duplex may be allowed on a parcel, given sufficient  
26 parcel size to accommodate RPD density.

27 10. *Dwelling Unit, Detached.*

28 a. *General Standards:*

- 29 (1) The following standards shall apply to all manufactured or modular homes:
- 30 (a) Unit must have a permanent and enclosed foundation conforming to  
31 building code requirements.
- 32 (b) The unit must have a pitched roof (minimum 3-inch rise in 12" run).
- 33 (c) The unit shall only be placed in the County in accordance with the  
34 manufacturer's installation instructions for hurricane-sensitive areas. If  
35 the manufacturer's instructions are not available, installation shall  
36 comply with the National Conference of States on Building Codes and  
37 Standards NCS BCS A 225.1 - Manufactured Home Installations 1987  
38 shall apply.

39 ~~b. *Accessory Standards:*~~

- 40 ~~b. Existing residences may remain or be replaced in kind. Expansion of an existing~~  
41 ~~residential structure is limited to 50 percent of the floor area existing on the date of~~  
42 ~~adoption of this Ordinance. Construction of a new residence is prohibited.~~



- 1 (6) Only 50 percent of the square foot area of a multistory parking structure shall be  
2 included in the FAR calculation for a site.
- 3 b. *Limited Standards:*
- 4 (1) All impervious surfaces, including parking areas and travel aisles, shall allow or  
5 shall drain to an area that allows infiltration of stormwater and pollutants and  
6 shall utilize bioretention facilities within the parking lot to control quantity and  
7 quality of stormwater run-off from the parking lot.
- 8 (2) Commercial parking facilities exclusively for storage of recreational vehicles or  
9 watercraft on trailers are subject to the following:
- 10 (a) Minimum five acre tract is required, and no more than 30 percent of the  
11 site may be occupied by the vehicle storage area. Area of parking lot,  
12 access roads, and required stormwater detention shall be deducted from  
13 the land area for calculation of residential density or floor area ratio.
- 14 (b) Number of vehicles shall be 1 per 2,000 square feet of tract area with a  
15 maximum of 150 vehicles or trailered watercraft on a site.
- 16 (c) Site shall be used for parking and storage of recreational vehicles and  
17 watercraft only. No overnight occupancy of any vehicle while parked  
18 is allowed. No sale, rental, or maintenance of parked vehicles is  
19 allowed on site. No other commercial use of the property of any type  
20 shall occur on the site unless use is listed as a permitted use in Schedule  
21 50.4.
- 22 (d) Parking area shall be fully screened from view from adjacent properties  
23 by a fence, dense evergreen vegetation, or combination of these.
- 24 (e) Security lighting, if provided, shall be directed down.
- 25 c. *Conditional Standards.* Facility shall comply with both general and limited standards.
- 26 d. *Accessory Standards.* Any parking lot required for a permitted use may be used as a  
27 commercial parking facility provided it meets the General Standards criteria in paragraph  
28 1 above.
- 29 43. *Conference Facility.*
- 30 a. *General Standards. (reserved)*
- 31 44. *Construction Materials and Equipment Storage.*
- 32 a. *General Standards.*
- 33 (1) No debris shall be stockpiled or landfilled.
- 34 (2) No on-site sale of materials is allowed.
- 35 b. *Limited Standards:*
- 36 (1) In the I zone, a perimeter fence or berm is required in addition to the buffer yard  
37 in accordance with Chapter 63 to screen stockpile, equipment, or materials from  
38 a public road and from adjacent dissimilar uses.
- 39 (2) In the RPD zone, no stockpile, equipment or materials shall be visible from a  
40 public road or an adjacent property.
- 41 c. *Conditional Standards:*
- 42 (1) In the Critical Area, stockpiling of marine related construction equipment and  
43 materials is not allowed in the Critical Area buffer unless in a Buffer  
44 Management overlay. Temporary staging shall be allowed in the Critical Area  
45 buffer in the LDA and IDA for loading and offloading barges used for





- 1 property lines in an I district. Equipment may be stored not less than 100 feet  
2 from adjacent property lines and not less than 75 feet from adjacent rights-of-  
3 way.
- 4 (3) A "B" buffer yard, specified, shall be provided along adjacent public rights-of-  
5 way and at adjacent lot lines. This requirement may be reduced or eliminated  
6 along lot lines adjoining other extractive industry, limited or general industry, a  
7 major or minor utility, or general agricultural industry use classifications.
- 12/2/02 8 (4) ~~Primary access shall be from a paved road.~~ The Board of Appeals may require;  
9 the applicant to submit a professionally prepared traffic study analyzing the  
10 impact of the proposed extractive industry on the surrounding road network and  
11 may require specific access and road improvements on a case by case basis.
- 12 (5) Production tanks shall be located within a containment berm designed to  
13 impound 100 percent of the fluid capacity of the largest impoundment tank.
- 14 (6) Any building (including temporary processing plants and equipment used for  
15 extracting, processing, or stock piling of sand, gravel, stone, or similar products)  
16 shall be deemed temporary. Such building shall be dismantled and removed  
17 within a period of four months following cessation of operations.
- 18 (7) All equipment shall be constructed, maintained, and operated in a manner that  
19 minimizes noise, vibration, or dust. Dust reduction treatments shall be specified  
20 and maintained on all access ways or roads within premises.
- 12/2/02 21 (8) Surety for repair and maintenance of public roads affected by the operation may  
22 be required in an amount to be determined by the Director of Public Works and  
23 Transportation.
- 24 (9) The proposed extraction must be in accordance with the plan for the  
25 development of the property, or a use otherwise permitted for the specific zoning  
26 district and the reclamation plan as described below.
- 27 (10) An operation plan that include the method and schedule for extractive activity  
28 and completion, production, abandonment, and reclamation phases of the  
29 operation is required. The operation plan shall include:
- 30 (a) Proposed waste disposal methods and emergency response systems.
- 31 (b) A drainage, dust, and erosion control plan.
- 32 (c) An access plan that details the capacity of all access roads and their  
33 suitability for accommodating estimated loads.
- 34 (d) A reclamation plan that includes a schedule for proposed grading,  
35 revegetation, or other appropriate measures to restore the surface upon  
36 completion of operations. Proposed future use shall be included, as  
37 reflected in the Comprehensive Plan, in addition to a plan for cleanup  
38 necessary for the future use.
- 39 80. **Production Industry, Custom.**
- 40 a. *General Standards. (reserved).*
- 41 b. *Limited Standards:*
- 42 (1) Material storage areas shall be fully screened from dissimilar uses on adjoining  
43 properties.
- 44 (2) Sawmills shall be subject to the following additional standards:
- 45 (a) Stationary sawmills in RSC, RCL, VMX, TMX, and CMX zones shall  
46 be entirely enclosed within a building.



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**CHAPTER 63 LANDSCAPING AND BUFFER YARDS**

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## Sections:

- 63.1 Specific Purposes.
- 63.2 Applicability.
- 63.3 Landscaping.
- 63.4 Buffer Yards.

**63.1. Specific Purposes.**

The specific purposes of the landscape and buffer yard regulations in this chapter are to:

- 1. Promote attractive development and preserve the appearance and character of the surrounding area through the use of landscaping; and
- 2. Eliminate or minimize conflicts between potentially incompatible, but otherwise permitted uses, on adjoining lots through buffering, which may include a combination of setbacks and visual buffers or barriers.

**63.2. Applicability.**

1. **Landscape Standards.** The landscaping standards of this chapter shall apply to all uses except single family detached homes on individual lots of record, for which minimum landscaping is required by Schedule 32.1, or by an approved Planned Unit Development Plan.

2. **Buffer Yard Standards.** The buffer yard standards of this chapter shall apply to:

- a. All new development on vacant land.
- b. Except in the DMX, redevelopment or expansion of existing site development by more than 50 percent, not including single-family detached residences or the addition of accessory uses or structures.
- c. Addition or expansion of an existing building by more than 5,000 square feet except as otherwise exempted by paragraph b above.
- d. Except in the DMX, any change in use that increases development intensity and results: increased traffic, noise, water or air pollution, etc. For the purposes of this chapter, a change in use shall include from a residential use to a commercial use; commercial uses to an industrial use; and, in some cases from an industrial use to a commercial use.

**63.3. Landscaping.**

1. **General Requirements.** A landscaping plan shall be submitted in conjunction with other materials required for site plan applications, as provided in Chapter 60, or with an application for a conditional use permit or variance permit.

- a. Landscaping in buffer yards may be applied to overall landscaping requirements.
- b. Evidence of completion of required landscaping shall be supplied to the Planning Director prior to issuance of an occupancy permit.

2. **Required Components of Landscape Plans.** All landscape plans shall include the following:

- a. A site plan, drawn to scale, equal to standard architectural or engineering quality, indicating the following:
  - (1) All proposed plant materials clearly labeled and drawn to size at maturity.
  - (2) Location of lot and street lighting.
  - (3) Adjacent land uses.
  - (4) A north arrow and scale.



ability to provide shade; soil retention; fire resistance, etc. and must meet American Association of Nurserymen specifications for No. 1 grade.

- e. All plant materials used must be balled and burlapped or container grown unless specifically approved as part of the landscaping plan.
- f. Plant materials shall be sized and spaced to achieve immediate effect and shall meet the following size minimums.

**Schedule 63.3.4.f: Size of Plant Material**

Plant Type	Minimum Size
Canopy trees	1 1/2 to 2-inch caliper/10 feet
Understory trees	1 1/2 to 2-inch caliper/8 feet
Ornamental trees	1 1/2 to 2-inch caliper/8 feet
Coniferous trees	5 feet
Shrubs	5 gallon
Vines and ground cover	1 gallon or flats

\*If caliper and height do not correspond for the species selected, select trees meeting the height requirement.

- g. Shrub and planting beds, and other areas without pavement or turf, shall be top dressed with a bark chip mulch or approved alternative.
- h. Where shrubs or low-level vegetation are used, vegetative matter at maturity shall cover at least 75 percent of actual planted area.
- i. Areas of artificial trees, shrubs, turf, or flowers may not be counted toward the landscape area and are not allowed unless specifically approved as part of the landscaping plan.
- j. Bioretention facilities that are not fenced may contribute toward landscaping or buffer yard requirements.

5. **Maintenance.** The developer, his successor, or the owner shall be responsible for proper pest control, fertilization, pruning, and other maintenance of the landscape. Plant materials showing signs of insect or disease infestation or other damage shall be appropriately treated and dead plant material removed and replaced.

**63.4. Buffer Yards.**

1. **Buffer Yards Required.** Buffer yards are required to minimize conflicts between potentially incompatible but otherwise permitted uses on adjoining lots and to implement other purposes of this Ordinance.

2. **Location.** Required buffer yards shall be developed along the perimeter of the proposed development site extending inward from the property line of the development site. Buffer yards shall not be located within any dedicated public or private right-of-way.

- a. Bioretention facilities may contribute toward landscaping or buffer yard requirements if they are not fenced.

3. **Buffer Yard Standards.** Schedule 63.4.3 describes the minimum requirements for each buffer yard required. Notwithstanding the foregoing, all buffer yard requirements for any property in the "DMX" zone shall be an "A" buffer yard. No "B" or "C" buffer yard shall be required in the DMX. Where the buffer yard would include a utility easement in which not trees may be planted and where the buffer yard requires the planting of trees, required buffer yard widths shall be increased by the width of the utility easement. On any portion of the development site where this section would require two types of buffer yard, the greater buffer yard shall be required.



- 1
- 2 4. **Use Intensity and Determination of Required Buffer Yards.** Intensity of designated use  
3 classifications shall be used to determine the buffer yard requirements between adjoining uses.  
4 Type L uses are low-intensity uses. Type H uses are high-intensity uses. Schedule 50.4 identifies  
5 the required buffer yards based on these classifications and the adjoining use group. Uses not  
6 shown require no buffer yards.
- 7 5. **Adjoining Vacant Lots – Same Zoning District.** Where the proposed use adjoins vacant lots in  
12/2/02 8 the same zoning district, the following rules shall apply. In each case, the latter use to develop  
9 shall provide the balance of the required buffer yard. Should contiguous lots in common  
10 ownership be proposed for development, buffer yards shall be provided for adjoining uses as those  
11 uses are shown on the required concept site plan. If the proposed use(s) change from that shown  
12 on an approved concept plan, a buffer yard shall be as required for the new use(s) at the time they  
13 are proposed.
- 12/2/02 14 a. In all rural districts, the proposed use shall provide one-half of the buffer yard as if the  
15 adjoining vacant lot was occupied by an agricultural use.
- 12/2/02 16 b. In RL, VMX, and RMX districts, the proposed use shall provide one-half of the buffer  
17 yard as if the adjoining vacant lot was occupied by a low-intensity residential use.
- 12/2/02 18 c. In RH, and TMX districts, the proposed use shall provide one-half of the buffer yard as if  
19 the adjoining vacant lot was occupied by a high-intensity residential use.
- 12/2/02 20 d. In CC, CMX, and DMX, districts, the proposed use shall provide one-half of the buffer  
21 yard as if the adjoining vacant lot was occupied by a high-intensity commercial use.
- 12/2/02 22 e. In OBP and I districts, the proposed use shall provide one-half of the buffer yards as if  
23 the adjoining vacant lot was occupied by a high-intensity office or industrial use..
- 24 f. Required buffer yards in PUD districts shall be established as part of the approval of the  
25 required PUD plan.
- 26 6. **Adjoining Vacant Lots – Different Zoning District.** The following rules shall apply where a  
27 proposed use abuts vacant lots in a different zoning district. Should contiguous lots in common  
28 ownership be proposed for development, buffer yards shall be provided for adjoining uses as those  
29 uses are shown on the required concept site plan. If the proposed use(s) change from that shown  
30 on an approved concept plan, a buffer yard shall be as required for the new use(s) at the time they  
31 are proposed.
- 32 a. In a rural district, when a proposed use for which a buffer yard is required adjoins a  
33 vacant site, that use shall provide 100 percent of the buffer required by Schedule 63.4.4.
- 34 b. When a proposed use for which a buffer yard is required adjoins a vacant site in different  
35 zoning district that is not a rural district:
- 36 (1) That use shall provide 50 percent of the buffer required by Schedule 63.4.4 for a  
37 high or intensity future, adjacent use; and
- 38 (2) The adjoining use (the "second use") shall, at the time it develops, provide all  
39 additional plant material and/or land necessary to provide the total buffer yard  
40 required between those two uses. In cases where the adjoining use is initially  
41 developed without providing a buffer yard, the second use shall be responsible  
42 for installation of the total buffer yard required by Schedule 63.4.4.
- 43 c. Existing trees and other plant material and/or land may contribute to the total buffer yard  
44 required by Schedule 63.4.4. Where existing trees and forest are preserved, any berm  
45 requirement shall be waived.



- 1           b.       An assessment of the vehicle trips generated by the development, (see Schedule
- 2                       70.7.4);and
- 3           c.       The number of potential public school students generated by the development; and
- 4           d.       Market absorption of the project; and
- 5           e.       Analyses and identification of project impacts on public facilities covered by this chapter;
- 6                       and
- 7           f.       Proposed mitigation program for impacts to public facilities; and
- 8           g.       A completed form summarizing development impacts as set forth at Schedule 70.5 for
- 9                       each phase of construction; and

10   **Schedule 70.5: Summary information on Development impacts**

Subdivision Name/Site Plan Name Phase Planned start of construction date Planned end of construction date	Before development	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	At Buildout
Dwelling units												
Non-residential development square footage												
Total Trip generation from residences												
Total Trip generation from non-residential development												
School population												
Elementary												
Middle												
High												
Average daily water usage												
Average daily sewage flow												
Fire suppression water supply and Stormwater Management.												

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- 11           h.       A traffic impact study if required by Section 70.7.4 of this Ordinance, that complies with
- 12                       the requirements of this section and any supplemental guidelines approved by the
- 13                       Director of Department of Public Works and Transportation. At a minimum the study
- 14                       area shall include the point of first ingress to and egress from the proposed development:
- 15                       to and including the intersection with the first county collector or arterial road or state
- 16                       highway in all directions from the proposed development. The study shall include:
- 17                       (1)       Include traffic flow studies of the roads and intersections that will be affected by
- 18   vehicular traffic to and from the development.
- 19                       (2)       Consider, at a minimum, existing traffic and pavement conditions, traffic
- 20   projected to be generated from other proposed developments for which site plan
- 21   or preliminary plan approval have been granted, projected increases in through
- 22   traffic at the time of completion of the proposed development, and traffic
- 23   projected to be generated from the proposed development.
- 24                       (3)       Propose any road improvements necessary to achieve the required level of
- 25   service.
- 26           i.       A school impact study using the latest official September 30 enrollments published by the
- 27                       St. Mary's County Board of Education including:
- 28                       (1)       Schools to be attended by the projected student population of the project based
- 29   upon attendance zones or service areas, as established by the ~~County~~ Board of
- 30   County Commissioners Education, and existing enrollments at those schools; and
- 31                       (2)       The existing enrollments, enrollments projected to be generated from other
- 32   proposed developments for which site plan or subdivision approvals have been



- 1 c. For any proposed development that drains to or across highly erodible soils, the  
2 downstream extent of this review shall be to the point at which a channel is found that is  
3 adequate to receive the design flow or the level of the tidal floodplain.
- 4 d. For development that does not drain to or across highly erodible soils, the downstream  
5 extent of this review shall be:
- 6 (1) To the point at which a channel is found that is adequate to receive the design  
7 flow, or
- 8 (2) To the point at which the total drainage area is at least 100 times greater than the  
9 area of the proposed development, or
- 10 (3) To the limit of the nearest FEMA mapped 100-year floodplain.
- 11 2. **Off-site Downstream Drainage System Improvements.** A storm drainage system shall be  
12 considered adequate if there is compliance with subsection 70.10.1.a and the County has awarded  
13 a contract for the construction or improvement of off-site downstream drainage systems necessary,  
14 in combination with existing systems, to comply with the standard specified in subsection  
15 70.10.1.b and if the construction or improvement of the off-site downstream drainage system is  
16 expected to be completed before the issuance of the first building permit for the development or  
17 the developer agrees to under-take the construction or improvement of the off-site downstream  
18 drainage systems.
- 19 3. **Calculating Runoff.** In determining the adequacy of a storm drainage system, storm water runoff  
20 flows from land for which a plat has not been recorded shall be calculated as if the land was  
21 developed according to its existing zoning classification and as if storm water management  
22 techniques, as may be required by the Stormwater Management Ordinance, have been utilized.  
23 Storm water runoff flows from other lands shall be calculated on the basis of whether or not storm  
24 water management techniques have been utilized.
- 25 4. **Channel Adequacy.** Adequate channel shall be defined as a natural or man-made channel or pipe  
26 that is capable of conveying the runoff from a 10-year storm without overtopping its banks or  
27 eroding after development of the site in question, or without causing the flooding of structures  
28 from a 100-year storm event.
- 29 70.11. **Schools.**
- 30 1. **Applicability.** ~~This~~ The provisions of this Section 70.11 chapter regarding the adequacy of school  
31 facilities applies to all development except:
- 32 a. Proposed development to be developed exclusively for non-residential uses; or  
33 b. Proposed development to be developed according to federal regulations restricting  
34 occupancy in the dwelling units to persons 55 years or older; or;  
35 c. Proposed residential subdivisions that create fewer than six (6) lots.
- 36 2. **Determining Adequacy.**
- 37 a. ~~Elementary and secondary schools in the high school attendance zone of the proposed~~  
38 ~~development established from time to time by the County Board of Education shall be~~  
39 ~~adequate, as determined by Section 70.11.3, to accommodate the school population to be~~  
40 ~~generated from the proposed development.~~
- 41 b. The calculation of the school population to be generated by all development subject to  
42 such a determination shall use the guidelines for student yield as approved by the Board  
43 of County Commissioners.
- 44 3. **Standards.** Elementary and secondary schools in the ~~high school attendance zone~~ established  
45 pursuant to Section 70.5.2(i) of the proposed development shall be considered adequate if:
- 46 a. The school population projected to be generated from the proposed development may be  
47 enrolled at schools located in the ~~high school attendance zone~~ established pursuant to



- 1 Section 70.5.2(i) without the enrollment exceeding ~~100~~ one-hundred seven (107%)
- 2 percent of the state-rated capacity of the affected schools within the zone established
- 3 pursuant to Section 70.5.2(i) that the proposed development is located, local capacity will
- 4 be utilized for staffing and construction; or
- 5 b. The County has budgeted in the then-current fiscal year of the Capital Improvement
- 6 Program one-hundred (100) percent of design cost for funded the construction of
- 7 additional schools or school improvements that, necessary in combination with existing
- 8 schools, satisfies the requirements of ~~comply with paragraph~~ paragraph 3(a) above in
- 9 the then-current fiscal year of the Capital Improvement Program (CIP) or;
- 10 c. The development proposal is for phased construction, for which adequate capacity is
- 11 projected to be available, pursuant to school enrollment projections for the schools within
- 12 the zone serving the proposed development, before each phase is begun; or

13 **70.12. Fire Prevention and Suppression.**

- 14 1. These provisions shall be administered in conjunction with the St. Mary's County Metropolitan
- 15 Commission and County Fire Board.
- 16 2. **Determining Adequacy.** The proposed development shall be adequately served by fire
- 17 suppression facilities. The specific requirements depend on whether the proposed developmen:
- 18 will be served by a public water system or private wells. A proposed development shall be
- 19 considered to be adequately served by fire suppression facilities if according to the following
- 20 requirements:
- 21 a. **Public Water.** The proposed development shall be considered to be adequately served by
- 22 fire suppression facilities if:
  - 23 (1) It is served at the time of issuance of the first occupancy permit by an approved
  - 24 public (central) water supply system or multi-user water supply system capable
  - 25 of providing fire flow in accordance with the St. Mary's County Metropolitan
  - 26 Commission Standards and Specifications for Water and Sewage Construction
  - 27 and the St. Mary's County Building Code and consistent with the County
  - 28 Comprehensive Water and Sewerage Plan for that type of development; or
  - 29 (2) For subdivisions having 25 to 49 residential lots, where each residence is
  - 30 protected by a residential sprinkler system installed in accordance with NFPA
  - 31 13D, the requirements for storage capacity and pumping capacity in accordance
  - 32 with the St. Mary's County Metropolitan Commission standard specifications:
  - 33 for water and sewerage construction may be waived if an approved fire
  - 34 suppression storage tank is provided.
- 35 b. **Private Wells.** The proposed development shall be considered to be adequately served
- 36 by fire suppression facilities if:
  - 37 (1) Fire flow and storage capabilities are installed in accordance with NFPA 114.2
  - 38 Standard on Water Supplies for Suburban and Rural Fire-fighting, when
  - 39 buildings are "grouped" as defined by NFPA 1142.
  - 40 (2) Water for fire suppression shall be provided in accordance with NFPA 1142
  - 41 Standard on Water Supplies for Suburban and Rural Fire Fighting. The water
  - 42 source shall be provided, unless specific exemption is given for the installation
  - 43 of a sprinkler system by the fire department in whose area the premises lie or the
  - 44 amount of water carried on fire apparatus responding on the first alarm is greater
  - 45 than required by the standard. When a static water source is approved a dry
  - 46 hydrant with all weather access shall be provided to facilitate the fire department
  - 47 taking draft from the source. Water for fire suppression shall be available:
    - 48 (a) Within 1,000 feet of all single buildings under 12,000 sq. ft. area and
    - 49 (b) On site for all single buildings over 12,000 sq. ft. area.



**CHAPTER 24 VESTED RIGHTS AND AUTHORITY TO CONTINUE NONCONFORMING PROJECTS**

## Sections:

- 24.1 Purpose.
- 24.2 Vested Rights.
- 24.3 Grandfathering Provisions.
- 24.4 Grandfathering of Phasing Plans and Schedules.
- 24.5 Effect of Previous Regulations.
- 24.6 Annual Update.

**24.1. Purpose.**

The purpose of this Chapter is to permit the continuation of projects for which certain plan approval has been given prior to the effective date of applicable ordinance changes or revisions.

**24.2. Vested Rights.**

St. Mary's County recognizes and accepts the standard of vested rights as established by Maryland common law.

**24.3. Grandfathering Provisions.**

Transitional provisions to be known as grandfathering provisions are hereby adopted to provide for the continuance of certain development activities. No extensions of the stated time periods below shall be granted, except as noted in Section 24.4.2, below.

1. **Subdivisions:** Subdivisions shall be vested pursuant to the provisions listed below.

- a. Major Subdivisions: Projects that have been granted preliminary subdivision plan approval prior to May 13, 2002 will have a maximum of two years from the date of such approval to be granted final subdivision approval. From the date of final subdivision approval a project will have two years in which to record the final record plat, else be subject to the requirements of this Ordinance. Those projects with approved "phasing" plans under the previous zoning ordinance (#90-11, as amended) shall have three years from May 13, 2002, until it shall be required that all future phases shall meet the current Ordinance requirement except density.

- b. Minor Subdivisions: Projects that have been processed through the Technical Evaluation Committee (TEC) prior to May 13, 2002 shall have twelve months (from adoption of the amendment) to achieve final subdivision or site plan approval.

2. **Planned Unit Developments:** Grandfathering of a Planned Unit Development as approved by the Board of County Commissioners shall be governed by Chapter 44, Section 44.4.3.b of the Comprehensive Zoning Ordinance.

**24.4. Grandfathering of Phasing Plans and Schedules.**

1. All commercial or residential phasing plans and schedules approved prior to the enactment of this Ordinance shall remain in effect. Construction and development relating to such plans may be completed in accordance with the terms of the previously approved phasing or staging plan. Any revisions proposed under this chapter shall conform with all Maryland state rules, regulations, and statutory provisions, and any construction standards as set forth in the rules, regulations, and ordinances of St. Mary's County, in effect when the applicant applied for a revision to the phasing or staging plan and schedule, unless said plans, schedules, and/or revisions are exempted under said rules, regulations statutory provisions, and/or ordinances.
2. Any applicant shall be allowed to apply for a revision to any phasing or staging plan and schedule grandfathered under the provisions of this chapter, and such revisions may be approved by the Planning Commission provided the applicant can show that there are compelling circumstances to warrant a revision. In no case shall the duration of any phasing or staging plan and schedule be extended more than five years beyond the effective date of this Ordinance. The Planning