Legal Advice and Policy – Vol 1: Pleadings Index No. 20-C-04-005095 6/11/04 - 10/22/04 MSA_S_1831-1

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND 142 North Harrison Street Easton, Maryland 21601 Plaintiff v. DEPARTMENT OF NATURAL RESOURCES, CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS 1804 West Street Annapolis, Maryland 21401 SERVE: Marianne D. Mason Deputy Counsel Office of the Attorney Gen 580 Taylor Avenue C4 Annapolis, Maryland 21401 Defendant	*	Civil Action No.: 20-C-04-005095

* *

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J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

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October 22, 2004

Clerk of the Court
Circuit Court for Talbot County
11 N. Washington Street
P.O. Box 723
Easton, Maryland 21601

Re: Talbot County, Maryland v. Department of Natural Resources
Case No.: 2-C-04-005095 DJ

Dear Clerk:

Enclosed please find for filing in the above-referenced case the defendant's Notice Of Service Of Discovery Materials. Thank you very much for your assistance.

Very truly yours,

Paul J. Cucuzzella
Assistant Attorney General

Enclosure

cc: Daniel Karp, Esq. (with documents)
Michael L. Pullen, Esq.
H. Michael Hickson

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

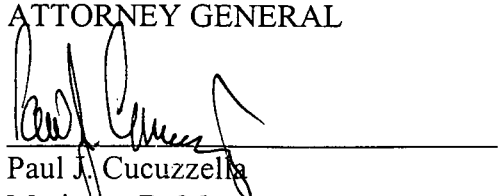
* * * * * * * * * * * * * *

NOTICE OF SERVICE OF DISCOVERY MATERIALS

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that, on this 22nd day of October, 2004, a copy of defendants' Response To First Request For Production Of Documents, together with documents bate stamped 000001 to 001622, and seven (7) audio cassettes, were sent via U.S. Mail to Daniel Karp, Esq., Suite 1540, 100 E. Pratt Street, Baltimore, Maryland 21202. The undersigned has retained the originals of this discovery materials and will make them available for inspection upon request.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



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(410) 260-8352
Fax: (410) 260-8364
Attorneys for defendant

Dated: October 22, 2004

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * * *

RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rule 2-422, hereby respond to plaintiffs' First Request For Production Of Documents.

GENERAL RESPONSES

1. Copies of responsive and non-objectionable documents presently within the possession, custody or control of the defendant are provided along with this Response. The defendant maintains the originals of these documents within their custody or control, and the same will be made available for inspection and photocopying upon request made to the undersigned counsel.

2. The defendant's investigation into the incidents described in the Complaint is ongoing. The responses below contain, subject to specified objections, only that amount of

responsive documentation in the possession, custody or control of the defendant as of the date of this Response. The defendant will supplement their responses as they obtain additional responsive, non-objectionable documentation.

3. With respect to each Response below, the defendant has withheld those documents, though responsive, that are protected by the attorney-client privilege.

RESPONSES

Request No. 1. All statements which were previously made by the Defendant or any of its present or former Commissioners, officers, agents or employees concerning or in any way relating to the facts, circumstances, and subject matter of the instant law suit.

Response: Copies of documents responsive to this request are provided.

Request No. 2. All documents, including but not limited to correspondence, notes, reports, synopses, memoranda, journal entries and electronic mail, which relate, describe, refer to, summarize or memorialize in any way any communication, investigation, decision, or activity concerning the subject matter of the instant lawsuit. Your response should include, but not be limited to, documents sent to, received from, reviewed by, or involving:

(a) Critical Area Commission, including any of its Commissioners, employees, or representatives;

(b) Talbot County, including the Talbot County Attorney or any agent, representative or employee of the County Attorney, any member of the Talbot County Council, and any Talbot County employee, agents, or representatives;

(c) Town of St. Michaels, including Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(d) Town of Oxford, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(e) Town of Denton, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(f) Town of Trappe, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(g) Any other City or Town, including the Mayor and/or City Council Members and any other City or Town employees, agents, or representatives.

Response: Copies of documents responsive to this request are provided.

Request No. 3. All handbooks, manuals, rules, regulations, and memoranda relating to policies and practices of the Department of Natural Resources or any other governmental unit in conducting, monitoring and/or regulating the activities of the Chesapeake Bay Critical Area Commission.

Response: With the exception of those responsive materials that are independently published in the Code of Maryland, Code of Maryland Regulation or the Maryland Register, the defendant has no documents responsive to this request.

Request No. 4. All handbooks, manuals, rules, regulations, and memoranda relating to policies and practices of the Chesapeake Bay Critical Area Commission concerning review, analysis, voting, approval or disapproval of proposed local program amendments to Critical Area Programs.

Response: With the exception of those responsive materials that are independently published in the Code of Maryland, Code of Maryland Regulation or the Maryland Register, copies of documents responsive to this request are provided.

Request No. 5. Copies of all documents (including but not limited to statutes, regulations, or legislative materials) used by or on behalf of the Chesapeake Bay Critical Area Commission or any of its members, employees, or representatives, to review, analyze, vote on, approve or deny the proposed local program amendment(s) at issue in this case.

Response: With the exception of those responsive materials that are independently published in the Code of Maryland, Code of Maryland Regulation or the Maryland Register, copies of documents responsive to this request are provided.

Request No. 6. All minutes, including video or audio tapes, of any private or public meetings or hearings concerning the subject matter of the instant law suit.

Response: Copies of documents and audio tapes responsive to this request are provided.

Request No. 7. All documents (including but not limited to correspondence, notes, memoranda, synopses, reports, journal entries, minutes, video or audio tape, and electronic mail) which the Chesapeake Bay Critical Area Commission or any of its members, employees, or representatives reviewed, considered, or relied upon in the process of considering, or to make the decision to disapprove Bill 933 as a local program amendment to Talbot County's Critical Area Program.

Response: Copies of documents responsive to this request are provided.

Request No. 8. All minutes of all meetings of the Critical Area Commission including but not limited to all committees and subcommittees thereof, whether in open session or executive session, held at any time after February 4, 2004, to the present for the purposes of considering Bill 933 as a proposed local program amendment.

Response: Copies of documents responsive to this request are provided.

Request No. 9. Copies of all documents submitted to the Critical Area Commission from February 4, 2004, to date by the Plaintiff, any agent or employee of the Town of Oxford, any agent or employee of the Town of St. Michaels, and anyone else, with respect to the subject matter of the instant law suit.

Response: Copies of documents responsive to this request are provided.

Request No. 10. Please produce copies of any and all program amendment proposals submitted by any County, municipality, or other governmental entity or organization, that the Critical Area Commission, or any member thereof, reviewed, considered, approved or denied, in connection with the subject matter of the instant law suit.

Response: Copies of documents responsive to this request are provided.

Request No. 11. Please produce copies of agendas of any and all meetings of the Critical Area Commission and any of its subcommittees from February 2004 to date, concerning the subject matter of the instant law suit.

Response: Copies of documents responsive to this request are provided.

Request No. 12. Any and all documents listing all persons present at the meeting of the Critical Area Commission, held on May 5, 2004, including but not limited to, all members of the Critical Area Commission, the recorder of the minutes, any/all staff, and members of the public.

Response: Copies of socuments responsive to this request are provided.

Request No. 13. All documents upon which you rely for any contention that Defendant's investigation, consideration, and denial of Plaintiff's application for approval of Local Bill 933 as a local program amendment was timely.

Response: Copies of documents responsive to this request are provided.

Request No. 14. To the extent not produced in response to any of the preceding Request for Production of Documents, the entirety of each and every file maintained by or on behalf of The Department of Natural Resources, the Critical Area Commission, or any other governmental unit as to which you have custody or control, pertaining or relating in any way to Plaintiff's application for Local Bill 933 as a local program amendment to Talbot County's Critical Area Program, and the consideration thereof.

Response: Copies of documents responsive to this request are provided.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

Paul J. Cucuzzella
Marianne D. Mason
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Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
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Fax: (410) 260-8364
Attorneys for defendant

Dated: October 22, 2004

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Circuit Court for Talbot County
Assignment Clerk
P.O. Box 723
Easton, Maryland 21601

RECEIVED
OCT 18 2004
DNR LEGAL DIVISION

NOTICE OF ASSIGNMENT

Date Issued: 10/14/04

Case Number: 20-C-04-005095 DJ

Case Title: Talbot County Maryland vs Dept Natural Resources Critical Area Comm Chesapeake/At

To: Paul J Cucuzzella Esq
Assistant Attorney General Dept. Of Natural Resources
580 Taylor Ave
Suite C4
Annapolis MD 21401

You are hereby NOTIFIED TO APPEAR before Honorable William S. Horne in the:
CIRCUIT COURT FOR TALBOT COUNTY 11 N. Washington Street Easton, MD 21601

DATE	TIME	PROCEEDING
11/17/04	**01:30PM**	**Motion Hearing (Civil)**

All inquiries concerning scheduling, cancellations and rescheduling are to be directed to the Assignment Clerk.

Pursuant to Rule 16-201(d), all motions hearings will be limited to 30 minutes unless the Court is otherwise advised in advance.

MS

Assignment Clerk
(410) 822-4444

Date Issued: 10/14/04

CC: Daniel Karp Esq
Michael L Pullen Esq
H Michael Hickson Esq
Marianne Mason

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RECEIVED

OCT 14 2004

DNR - LEGAL DIVISION

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

OPPOSITION TO ST. MICHAELS' MOTION TO INTERVENE

Talbot County, Maryland, Plaintiff, by and through ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and Michael L. Pullen, Talbot County Attorney, its attorneys, files this memorandum in opposition to the Commissioners of St. Michaels' Motion to Intervene.

Talbot County, Maryland filed a Complaint for declaratory judgment, writ of mandamus, and appeal from an administrative agency, from the May 14, 2004 determination of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("The Commission") denying approval of Talbot County Bill No. 933 as a local amendment to Talbot County's Local Critical Area program. Plaintiff alleges two legal bases for challenging the Commission's failure to approve Bill No. 933: (1) Bill 933 meets the relevant State statutory standards and criteria for approval in Maryland Code, Natural Resources Article, §8-1809(j), but the Commission arbitrarily, capriciously, and illegally refused to approve the Bill; and (2) the Commission did not

act on the proposed local program amendment (Bill 933) within the 90-day time period required by Maryland Code, Natural Resources Article, §8-1809 (d)(2), and that as a matter of law the program amendment reflected by Bill 933 is therefore deemed approved. See Complaint at ¶¶ 18-19. These are the only issues in the case, and they are purely legal (and quite technical) issues.

On or about September 23, 2004, the Commissioners of St. Michaels ("St. Michaels) filed a motion to intervene. St. Michaels does not have a legally protectable right to intervene and, moreover, it attempts to interfere in the discrete dispute between the Commission and Talbot County and to interject multiple extraneous issues that are both irrelevant and will unnecessarily complicate this litigation. Therefore, St. Michaels' motion to intervene should be denied.

I. ST. MICHAELS IS NOT ENTITLED TO INTERVENE AS A MATTER OF RIGHT UNDER MARYLAND RULE 2-214(a).

Maryland Rule 2-214 provides as follows:

> **Rule 2-214. Intervention.**
> (a) Of right. Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.(b) Permissive. (1) Generally. Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.(2) Governmental interest. Upon timely motion the federal government, the State, a political subdivision of the State, or any officer or agency of any of them may be permitted to intervene in

> an action when the validity of a constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement affecting the moving party is drawn in question in the action, or when a party to an action relies for ground of claim or defense on such constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.(3) Considerations. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.(c) Procedure. A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading and serve it upon all parties.

St. Michaels first asserts that it has an "unconditional right to intervene as a matter of law" under Rule 2-214(a)(1) based upon Maryland Code, Courts and Judicial Proceedings Article, §3-405(a)(1), which provides as follows:

> §§ 3-405. Parties; role of Attorney General
> (a) Person who has or claims interest as party. –
> (1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.

St. Michaels also asserts that it is entitled to intervene as of right based upon subsection (2) because "disposition of this action may as a practical matter impair or impede the ability of St. Michaels to protect its interests, and the existing parties to this action do not have identical interests to those of St. Michaels and would not adequately represent the interests of St. Michaels." St. Michaels' Motion, p. 9, ¶31.

St. Michaels is not entitled to intervene as of right based upon the declaratory

judgment statute or based upon its alleged "interests" because St. Michaels does not possess a legally protectable interest in a declaration regarding the purely legal, technical questions at issue in the Complaint and, in fact, St. Michaels is attempting to interject additional and completely irrelevant issues having to do with the possible ultimate affect of Bill 933 rather than whether the Commission timely issued a ruling upon the approval of Bill 933 and whether the Commission utilized the correct statutory criteria in doing so.

A person who seeks to intervene as of right as a party defendant under Rule 2-214(a) must establish a legally protectable interest relating to the property or transaction that is the subject of the action, and further establish that it is "so situated that the disposition of the action may, as a practical matter, impair or impede the ability to protect that interest." Montgomery v. Bradford, 345 Md. 175, 198, 691 A.2d 1281,1292 (1997). "[I]n order to be a ground for intervention, the interest asserted must be one which it is essential to protect and which is not otherwise protected." Hartford Ins. Co. v. Birdsong, 69 Md. App. 615, 626-28, 519 A.2d 219 (1987); Bradford, 345 Md. at 186, 691 A.2d at 1286. Thus, the interest asserted cannot be merely speculative, rather it "'must be a direct, significant legally protectable interest to support the claim of intervention as of right.'" Bradford, 345 Md. at 186, 691 A.2d at 1286 (quoting Birdsong, 69 Md. App. at 626-28). See also, U.S. v. Metro. Dist. Comm'n, 147 F.R.D. 1, 4 (D. Mass. 1993)(to have interest that justifies intervention, interest must be directly, not tangentially, related to the subject matter of the lawsuit,

and must be measured in relation to the real focus of the litigation); Lane v. Bethlehem Steel Corp., 93 F.R.D. 611, 614 (D. Md. 1982)(type of interest contemplated by rule governing intervention as matter of right is a significantly protectable interest).

In this case, St. Michaels does not have a legally protectable interest in whether the Commission acted in a timely manner or appropriately utilized the criteria required under State law in disapproving Bill 933. St. Michaels asserts as its alleged "interests" that a declaration in the County's favor in this case would (1) cause St. Michaels to lose land reserved to it by the County for growth allocation under its Critical Areas program; (2) affect two contracts pending by developers in St. Michaels which utilize acres of growth allocation reserved for St. Michaels by the County under the County's Critical Areas program.[1] Neither of these alleged interests, however, are legally protectable interests and, thus, sufficient to permit St. Michaels to intervene as of right.

Talbot County is entitled to propose Critical Area program amendments to its adopted program. See, Md. Code, Nat. Res. Art., §8-1809(h). A proposed program amendment must be submitted to the Commission for approval. Md. Code, Nat. Res.

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[1] St. Michaels also attempts to interject completely extraneous and irrelevant arguments, such as that Bill 933 is unconstitutional or ultra vires, which the County will address herein, supra.

Art., §8-1809(i). The standards for approval by the Commission are set forth in subsection (i). The Commission must act on a proposed amendment to a local program within 90 days, or the proposed amendment "shall be deemed approved." Md. Code, Nat. Res. Art., §8-1809(d)(2). This lawsuit for declaratory judgment asserts that the Commission either failed to timely act or failed to properly apply the statutory criteria for approval of the County's proposed amendment. Inasmuch as the approval of a local amendment by the Commission is entirely a statutory exercise by the Commission, municipalities such as St. Michaels do not have a legally protectable interest in the outcome of that process merely because it ultimately may affect them or their own local zoning ordinances or authority. In other words, it is plain and obvious that amendments to local programs are permissible, if approved by the Commission, and that they can and will affect residents, property owners, developers, municipalities or other entities within the jurisdiction which proposes the local amendment, as Talbot County did in this case. To accept St. Michaels' assertion of alleged "interests" would be to prevent the adoption of local program amendments though they are specifically authorized by statute and even though they meet the criteria specified by statute. Cf., Office of People's Counsel v. Md. Public Serv. Comm'n, 355 Md. 1, 34, 733 A.2d 996, 1014 (1999) (the state regulatory commission's adoption of alternative means of regulation "may well have frustrated OPC's expectations, but it denied no legally protected interest in doing so."). Moreover, to accept St. Michaels' alleged interests would be to imbue every one of

those individuals and entities (residents, property owners, developers, and municipalities) with a legally protectable right to intervene in a suit involving the legal and technical issue of whether the Commission (a State agency) complied with statutory criteria.

With respect to the growth allocations reserved for St. Michaels under the County's program which would be revoked under the proposed amendment (i.e., Bill 933), the County was not required, by statute or otherwise, to allocate that land to St. Michaels (or any other town) in the first place, and the County is entitled by statute to amend the program through Bill 933 and, thus, revoke those allocations. Therefore, St. Michaels does not have a legally protectable interest in retaining them. If St. Michaels had such a legal interest, the statute permitting such local program amendments would be rendered nugatory. James v. Butler, 378 Md. 683, 696, 838 A.2d 1180, 1188 (2003) ("we have made clear that, whenever possible, a statute should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory.") (citing Dyer v. Otis Warren Real Estate Co., 371 Md. 576, 581, 810 A.2d 938, 941 (2002); Montgomery County v. Buckman, 333 Md. 516, 524, 636 A.2d 448, 452 (1994); Condon v. State, 332 Md. 481, 491, 632 A.2d 753, 755 (1993)).

Perhaps in recognition of this fact, St. Michaels alleges that it has a contractual right or interest based upon the fact that it has awarded some of its growth allocation acres to developers. However, this fact is irrelevant because Bill 933, consistent with Maryland law, provides that it applies to growth allocation acreage already allocated

by a town only if "actual physical commencement of some significant and visible construction has occurred." See, Bill 933, as Amended, Exhibit B to Complaint, Section 2 (1) (a). In other words, Bill 933 revokes growth allocation acreage that has been granted by a town only if the developer has failed to vest its property rights under Maryland law at the time the Bill takes effect. Therefore, St. Michaels' alleged interests are merely speculative and generalized, and not the significant and protectable legal interests required to intervene in this action as a matter of right. The case of Montgomery County v. Bradford, 345 Md. 175, 691 A.2d 1281 (1997) is illustrative. In Bradford, the Court noted that the County did not have a legally protectable interest in intervening, stating as follows:

> Nor is there any merit in Montgomery County's further contention that it has a protectable legal interest in avoiding the potential impact that a ruling in plaintiffs' favor would have on its own population of 'at-risk' schoolchildren. In this connection, the County maintains that should the plaintiffs be successful in persuading the court that 'at-risk' children in Baltimore City public schools require enhanced educational resources and services pursuant to Article VIII, §§ 1 of the Maryland Constitution, then at some later time the County, at considerable additional expense, may be required to supplement the resources which it currently provides to its own 'at-risk' schoolchildren.
>
> As to this, the County's concerns are indirect, remote, and speculative; they do not focus directly on the 'transaction' involved in these cases, *viz*, whether the plaintiffs' actions, directed, as they are, solely to the constitutional adequacy of the education provided to children in the Baltimore City public schools, implicates Montgomery County's legal interest in any way which would give it a right to intervene in these cases under Rule 2-214(a). **Were it otherwise, according to the plaintiffs, and that was all that was needed to establish a right to intervene, then any applicants' generalized interest in participating in the formulation of a constitutional standard, to which the person may be subjected, could intervene as a party from which an interpretation of a constitutional provision might emerge.** We share the plaintiffs' position on this issue.

Id., 345 Md. at 199, A.2d at 1292-93 (emphasis added).

St. Michaels relies upon and has attached to its motion to intervene (and its proposed Counterclaim) a copy of a Development Rights and Responsibilities Agreement ("DRRA") which was entered into by a developer and the Planning Commission of the Town of St. Michaels in February 2004. The DRRA does not provide St. Michaels with the requisite protectable interest in this case sufficient to permit it to intervene as of right. The DRRA was entered into after Bill 933 was enacted and sent to the Commission for review. The DRRA specifically recognizes as much in Section 5.2.7 (page 16). Moreover, the DRRA specifically provides that the "Qualified Vested Rights" granted to the developer (and, thus, any consideration in exchange to St. Michaels) "do not apply to existing and future applicable county, state and federal laws or regulations " and that "in the event that applicable county, state and federal regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations . . . " DRRA, Section 9.2.4 (page 28). Therefore, the DRRA is completely irrelevant to, and certainly does not support, St. Michaels' claim that it has a right to intervene in this action. Rather, St. Michaels clearly has no such right and, moreover, is plainly attempting to intervene in order to interject extraneous and irrelevant issues into this extremely straightforward case.

The sole issues raised in Talbot County's Complaint are whether the Commission complied with State statutory requirements regarding the timeliness of

its decision and the criteria it used in disapproving Bill 933. On the other hand, St. Michaels seeks to assert many irrelevant, additional and extraneous claims and arguments. For instance, St. Michaels asserts in its Motion to Intervene that Bill No. 933 is unconstitutional and ultra vires; that it is "contrary to the grant of home rule powers to the Town by [the] Maryland Constitution;" that Bill 933 improperly causes "different effects on municipalities in the same class;"[2] that Bill 933 is contrary to a provision of the Maryland Code, State Finance Article, that Bill 933 is "contrary to State policy as expressed in Maryland Priority Places Strategy;" and that Bill 933 is "contrary to the independent exercise by St. Michaels of the planning and zoning powers granted to it by Maryland Code, Art. 66B." See, St. Michaels' Motion, p. 4, ¶¶12.1 - 12.5.

In its proposed Counterclaim, St. Michaels again asserts that Bill 933 is unconstitutional and/or ultra vires (Counterclaim, ¶¶31.11 - 31.13), and asserts further that "[a]pproval or validation of County Bill No. 933 would be illegal and invalid" because it would "illegally monopolize the limit placed on the area of expansion of intensely developed or limited development areas;" that it would violate COMAR regulations requiring counties to "establish a process to accommodate growth;" that it would "illegally revoke" the growth allocations to municipalities; that it

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[2] This appears to be an assertion by St. Michaels that Bill 933 violates its rights to Equal Protection.

would "retroactively revoke" allocations St. Michaels has allocated to developers; that it would grant the County Council "the power to hear, and the unfettered discretion to deny, applications" for growth allocations in St. Michaels "contrary to the will of St. Michaels;" that it would otherwise "affect" the authority of St. Michaels over its planning and zoning. See, Counterclaim, p. 10-12. St. Michaels' Counterclaim seeks a declaration that this Court find that Bill 933 is unconstitutional on its face and unconstitutional as applied to St. Michaels. Thus, St. Michaels' motion to intervene and proposed Counterclaim attempt or propose to interpolate issues that are completely extraneous to the simple, technical, purely legal issues in the case. To the extent that St. Michaels' "interests" overlap those of the Commission in disapproving Bill 933, the Commission is fully capable of defending itself with respect to these straightforward legal issues, and St. Michaels on the other hand does not have any legally protectable interest in how the Commission interprets state statutory criteria applicable to the Commission. Cf., Masoulf v. Babbit, 85 F.3d 1295, 1303 (8th Cir. 1996)(where applicant seeks to intervene as a defendant where the existing defendant is a governmental entity, there is a rebuttable presumption that the government will defend adequately its action); Public Serv. Comm'n of New Hampshire v. Patch, 136 F.3d 197, 207 (1st Cir. 1998)(same); Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003)(in the absence of a "very compelling showing to the contrary" it will be presumed that a state adequately represents its citizens that share the same interest).

It is well-established that in judicial review of agency action a court may not

uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. State Comm'n on Human Relations v. Kaydon Ring & Seal, Inc., 149 Md. App. 666, 702, 818 A.2d 259, 281 (2003); Johnson v. Crim. Injuries Compensation Bd., 145 Md. App. 96, 106=07, 801 A.2d 1092, 1098-99 (2002); Berkshire Life Ins. Co. v. Md. Ins. Admin., 142 Md. App. 628, 653, 791 A.2d 942, 956 (2002); Brodie v. Motor Vehicle Admin. of Md., 367 Md. 1, 3-4, 785 A.2d 747, 748-49 (2001)(court will review an adjudicatory agency decision solely on the grounds relied upon by the agency); Bucktail, LLC v. Talbot County, 352 Md. 530, 553, 723 A.2d 440, 450-51 (1999). Accordingly, a reviewing court may not inquire into the record or otherwise approve or reverse on a basis not relied upon by the agency. Id. In this case, St. Michaels impermissibly attempts to intervene in order to have this Court rule on issues not relied upon by the Commission in disapproving Bill 933.

The Tenth Circuit Court of Appeals addressed a very similar motion to intervene under Federal Rule 24(a) in Alameda Water & Sanitation Dist. v. Browner, 9 F.3d 88 (10th Cir. 1993).[3] In Alameda, water providers in the City applied to the United States Corps of Army Engineers for a discharge permit in connection with construction of the Two Forks Dam. The Corps issued the permit, concluding that the project was water dependent. The Environmental Protection Agency ("EPA") vetoed

[3] Decisions of the federal courts interpreting the federal intervention rule (Rule 24) are of considerable precedential value in construing the Maryland intervention rule, as Maryland's rule was derived from the federal rule. See, e.g., Stewart v. Tuli, 82 Md. App. 726, 573 A.2d 109 (1990).

the issuance of the permit. The EPA's final determination did not discuss water dependency but, rather, concluded that the permit should be vetoed because other large dams could be built that would have less adverse effects upon the environment. The water providers brought an action against the EPA asserting that its administrative decision was incorrect. Several environmental groups referred to as the "Caucus" filed a motion to intervene under Federal Rule 24(a). The Caucus, as St. Michaels in this case, contended that it must be allowed to intervene in the suit in order to give the court the benefit of arguments that it contended the EPA had "failed to consider adequately." Id., 9 F.3d at 90.

The Court denied the Caucus's motion to intervene, holding that it did not have a legally protectable interest sufficient to entitle it to intervene as of right. The Court stated that:

> [T]he Caucus wishes to participate in the lawsuit so that it can offer additional reasons for upholding the denial of the permit. **That evidence, however, would be irrelevant** in the district court where the only issue is whether, when confined solely to the reasons cited in the administrative record, the EPA lawfully vetoed the Two Forks permit. **The opportunity to offer extraneous evidence beyond the administrative record, and thus beyond the scope of the narrow issue before the district court, is not an interest protectable in the underlying action**. [footnote omitted].
>
> A court may not uphold an agency action on grounds not relied on by the agency. [citations omitted]. **Thus, even if there are good alternative reasons for affirming the EPA's action, such evidence would be irrelevant to the deliberations of the district court. 'The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.'** *Chenery*, 318 U.S. at 87, 63 S. Ct. at 459. The action of the EPA must be judged by what it actually did, not by what it might have done. *See id.* at 93-94, 63 S.Ct. at 462. **Because the Caucus seeks to interject**

> **issues into this lawsuit that are not before the district court, its interest is not protectable in this action. The district court, therefore, was correct in denying intervention under Rule 24(a)(2).** Id., 9 F.3d at 91 (emphasis added).[4]

Similarly, in the case sub judice, St. Michaels seeks to intervene in order to assert arguments regarding the validity vel non of Bill 933. However, the Commission did not rest its decision upon that basis (even though St. Michaels asserted it should) and, thus, St. Michaels cannot now intervene in order to try to collaterally convince this Court that the Commission should have invalidated Bill 933 on the bases asserted by St. Michaels.[5] Rather, the only issues in this case are whether the Commission timely acted and whether it appropriately applied the criteria provided by statute for evaluating Talbot County's proposed amendment (Bill 933). St. Michaels' contentions regarding the alleged invalidity or unconstitutionality of Bill 933 are irrelevant and extraneous because they were not relied upon by the Commission in rendering its decision and, thus, they do not state or support a legally protectable interest entitling St. Michaels to intervene as of right. In any event, if the

---

[4] See also, Friends of the Wild Swan, Inc. v. U.S. Fish & Wildlife Serv., 896 F. Supp. 1025 (1995)(riparian landowners had no legally protectable interest entitling them to intervene in a suit brought by environmental groups against the Fish and Wildlife Service, as court could not uphold agency action on grounds not relied on by agency, and intervenors' attempt to interject their interests and concerns would merely confuse relevant issues).

[5] The proposed Order submitted by St. Michaels specifically seeks a ruling that "the joinder of St. Michaels will allow the Court to consider the issues raised by St. Michaels at the Commission but which were not 'addressed' by the Commission . . ." Thus, St. Michaels again impermissibly seeks to intervene in this case in order to convince this Court that the Commission erred on bases that were not relied upon by the Commission in rendering its decision.

Commission's decision is overturned by this Court or remanded to the Commission for further action and Bill 933 eventually takes effect, St. Michaels can challenge the constitutionality of Bill 933 at that time. See, e.g., Friends of the Wild Swan, 896 F. Supp. at 1028 ("assuming that this Court remanded the case to USFWS for further consideration and the USFWS decided to list the bull trout, the Intervenors have an adequate forum to challenge a decision which is adverse to their interests" by challenging it in a federal court suit).

Even assuming that this case were not in the procedural posture of an "agency review," St. Michaels' motion to intervene as of right nevertheless must be denied because it seeks to interject extraneous issues which are irrelevant to the issues between the original parties. In United States v. City of New York, 179 F.R.D. 373 (E.D. N.Y. 1998), aff'd, 198 F.3d 360 (2nd Cir. 1999), the court held that cities in New York could not intervene as of right in the United States' action against New York City under the Safe Drinking Water Act ("SDWA"), arising from New York City's failure to construct and operate a filtration plant for a watershed, because the cities' expressed interest in not being the site of the plant, and in not having their residents be unduly burdened by costs of the plant's construction, were not at issue in the litigation. Specifically, the court stated that:

> [W]hile Yorktown and Yonkers certainly may have interests with respect to the filtration of water from the Croton watershed, they have not met their burden of demonstrating that these interests entitled them to be parties in this action, as opposed to future proceedings in which their interests will be directly engaged.

Id., 179 F.R.D. at 379. The court also denied the cities' motion for permissive

intervention because the claimed interests of the cities, although broadly related to the subject matter of the action, were extraneous to the issues before the court. See also, California v. Tahoe Reg'l Planning Agency, 792 F.2d 779 (9th Cir. 1986)(landowners and public officials were not entitled to intervene in an action by the State of California challenging the Tahoe Regional Planning Agency's regional plan for achieving specified environmental goals, in that legal and factual issues raised by the proposed intervenors, claiming that the agency was no longer legally constituted, were foreign to those presented in the action, i.e., that the regional plan violated the interstate regional planning compact). For all of these reasons, St. Michaels does not have a legally protectable interest in this action which will be impeded or impaired if it its motion is denied and, therefore, its motion to intervene as of right must be denied.

II. ST. MICHAELS SHOULD NOT BE PERMITTED TO INTERVENE UNDER RULE 2-214(b).

St. Michaels has also moved to intervene permissively under Maryland Rule 2-214(b). Permissive intervention lies in the sound discretion of the trial court, and on appeal may be reviewed only for an abuse of that discretion. Md. Radiological Society, Inc. v. Health Servs. Cost Review Comm'n, 285 Md. 383, 388, 402 A.2d 907 (1979).

St. Michaels claims that it should be permitted to intervene under Rule 2-214(b)(1) and (2). Subsection (1) provides that "a person may be permitted to intervene in an action when the person's claim or defense has a question of law or

fact in common with the action." St. Michaels asserts that there are "common questions of law" between its claims and the County's claims against the Commission, "to wit, the validity of County Bill No. 933."

However, the "validity" vel non or constitutionality of Bill 933, as challenged by St. Michaels in its Motion to In Intervene and its Counterclaim, are plainly not at issue in this case, although St. Michaels is attempting to make them an issue. The sole issues in the County's Complaint for declaratory judgment are (1) whether the Commission acted on Talbot County's proposed local program amendment (Bill 933) within the 90-day period provided in Maryland Code, Natural Resources Article, §8-1809 (d)(2); and (2) whether the Commission correctly applied the factors listed in Maryland Code, Natural Resources Article, §8-1809 (j) for approving or disapproving the proposed amendment. In determining whether common questions of law or fact exist, a court examines whether the intervenors will contribute to a full development of the issues in the lawsuit. Friends of the Wild Swan, 896 F. Supp. at 1028 (citing Oregon Env. Council v. Dept. of Env. Quality, 775 F. Supp. 353, 359 (D. Or. 1991)). A motion to intervene on the basis of a common question of law must be denied where the proposed intervenors do not possess a legally protectable interest and, thus, will not contribute to the development of the relevant issues in the case, or where allowing the intervenors' to interject their concerns as full parties in the case would merely confuse the relevant issues. Id. Thus, in Simpson v. Consolidated Construction Services, 143 Md. App. 606, 795 A.2d 754 (2002), rev'd in part on other grounds, 372 Md. 434, 813 A.2d 260, the Court of Special Appeals upheld the trial

court's denial of a motion to intervene because there were no questions of law or fact in common where the original litigation between a developer and contractors involved questions of negligence, professional liability, breach of warranty and breach of contract, and the creditor intervenor's only interest was in enforcing writs of garnishment served on the contractors. Similarly, in this case, St. Michaels' attempts to interject the issue of the validity or constitutionality of Bill 933, though the original parties have not raised this issue and it was not a basis for the Commission's decision. Clearly, St. Michaels does not qualify for permissive intervention based upon a "common question of law" under Rule 2-214(b)(1) and, therefore, its motion on this basis should be denied.

St. Michaels also asserts that it should be allowed to permissively intervene under Rule 2-214(b)(2), which permits intervention by a political subdivision of a State "when the validity of an . . . ordinance . . . is drawn in question in the action." Again, the "validity" of Bill 933 is not drawn in question in this action, although St. Michaels clearly is attempting to make it an issue.

In addition to the foregoing, St. Michaels should not be permitted to intervene in this case under Rule 2-214(b)(1) or (2) because of the considerations required by Rule 2-214(b)(3). Subsection (b)(3) states as follows:

> (3) Considerations. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The Court should deny St. Michaels' motion to intervene permissively because St. Michaels' motion attempts to interject totally irrelevant and extraneous issues, and even a Counterclaim, which have nothing whatsoever to do with whether the Commission acted timely or appropriately as a matter of law in disapproving Bill 933 based upon the statutory criteria. If an intervenor attempts to introduce collateral issues in a proceeding, the court will be justified in denying a motion for permissive intervention based on undue delay or prejudice. Fed. Trade Comm'n v. First Capital Consumer Membership Servs., Inc., 206 F.R.D. 358 (D.C. N.Y. 2001). Delay will indefinitely result if St. Michaels is permitted to intervene because St. Michaels seeks to interject extraneous matters which are irrelevant to the simple legal issues raised in the County's Complaint. The County is seeking declaratory, mandamus and administrative appeal review of an agency decision by the Commission. The Commission refused to approve Talbot County's proposed local amendment on the two bases specified in its letter of May 14, 2004, attached to the Complaint as Exhibit C. Neither of the issues relied upon by the Commission involved the validity vel non or constitutionality of Bill 933, both of which St. Michaels seeks to impermissibly interject into this case through its motion to intervene and its proposed Counterclaim. As already evidenced by the voluminous pleadings and documents submitted by St. Michaels permitting it to intervene and raise extraneous issues having nothing to do with the technical legal issues raised in the County's Complaint will cause unwarranted delay, and thus prejudice to the original parties. See, Seminole Nation of Oklahoma v. Norton, 206 F.R.D. 1 (D.D.C. 2001)(intervention denied where it would

so broaden the scope of the litigation as to delay the adjudication of the discrete issues presented to the court by the original parties); Shea v. Angulo, 19 F.3d 343 (7th Cir. 1994)(court affirmed denial of motion for permissive intervention where allowing the intervention would insert into the action a complex issue unrelated to the quarrel between the original parties and thus delay the adjudication of the rights of the original parties); Arney v. Finney, 967 F.2d 418 (10th Cir. 1992)(affirming denial of motion for intervention where intervention would only clutter the action unnecessarily); California v. Tahoe Reg'l Planning Agency, 792 F.2d 775 (9th Cir. 1986)(intervention denied where it would impair the efficiency of the litigation); Tripp v. Executive Office of the President, 194 F.R.D. 344 (D.D.C. 2000)(collateral issues and undue complications that would ensue from the intervention would unduly and unreasonably frustrate and prolong the case); Friends of the Wild Swan, 896 F. Supp. 1025 (riparian landowners not allowed to permissively intervene because allowing them to interject their issues would merely confuse the relevant issues in the case); Dillard v. City of Foley, 926 F. Supp. 1053 (D.C. Ala. 1996)(permissive intervention denied because granting intervention would interfere with rapid disposition of the case). The effect of allowing St. Michaels to permissively intervene in this case would be to introduce extraneous arguments and claims which are irrelevant to the claims between the original parties. The addition of claims not raised between the original parties will unduly delay these proceedings. Moreover, because those claims are wholly irrelevant to the issues between the original parties, intervention would unnecessarily complicate the case, confuse the actual issues, and

thus cause prejudice to the original parties.

Furthermore, St. Michaels is not the only municipality or party which may wish to intervene on bases identical to or similar to St. Michaels. There are residents, property owners, developers, and other municipalities within Talbot County that may be "affected" if Bill 933 becomes effective. Thus, if St. Michaels is entitled or permitted to intervene on the bases asserted, then the Court will also need to permit all of these other entities to intervene as well. Again, this would inevitably cause delay and prejudice to the original parties who seek only a determination by this Court with respect to the discrete issues raised in the Complaint. See, e.g., U.S. v. Metropolitan Dist. Comm'n, 147 F.R.D. 1 (D. Mass. 1993)(association of sewage pumping contractors would not be permitted to intervene in litigation against sewage authority in relation to Boston Harbor clean-up project when, given the large number of interested groups, allowing intervention would unnecessarily change the course of the lawsuit and cause existing parties undue delay). Should the Court permit St. Michaels to intervene and thus interject issues which have absolutely no bearing upon whether the Commission acted in accordance with State statutory criteria in disapproving Bill 933, then the character, complexity, size and nature of this litigation would be gravely altered, and delay (and, thus, prejudice) to the original parties will inevitably result. Therefore, this Court should deny St. Michaels' motion to intervene permissively in this action.

CONCLUSION

For all of the aforegoing reasons, St. Michaels' motion to intervene should be denied.

Respectfully sumbmitted,

ALLEN, KARPINSKI, BRYANT & KARP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2004, a copy of the foregoing Opposition to St. Michaels' Motion to Intervene was mailed first-class, postage prepaid to:

H. Michael Hickson, Esquire
Banks, Nason & Hicks, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044

Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
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Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

Of Counsel for Plaintiff
Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

ORDER

Upon consideration of the Commissioners of St. Michaels' Motion to Intervene, and the opposition thereto, it is this _____ day of _____, 2004, by the Circuit Court for Talbot County,

ORDERED, that St. Michaels' Motion to Intervene is hereby **DENIED**.

Judge,
Circuit Court for Talbot County

8

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff	*	IN THE CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

* * * * * * * * * * * * *

RECEIVED
SEP 28 2004
DNR - LEGAL DIVISION

INSTRUCTIONS TO CLERK

MADAM CLERK:

Please enter the appearance of the undersigned as attorney for The Commissioners Of St. Michaels in the above case, and file the following in the above-captioned case:

1. Check for appearance fee
2. Civil Non-Domestic Case Information Report
3. Motion To Intervene and exhibits thereto, and Points And Authorities
4. Affidavit
5. Proposed Order Granting Leave to Intervene
6. Proposed Answer To Complaint
7. Proposed Counterclaim

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P. O. Box 44
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Telephone: 410-546-4644
Attorney for The Commissioners Of St. Michaels

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
13 S. Baptist Street
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21803-0044

Circuit Court for Talbot County
(City or County)

CIVIL - NON-DOMESTIC CASE INFORMATION SHEET

Directions:

Plaintiff: This Information Sheet must be completed and attached to the complaint filed with the Clerk of Court. **A copy must be included for each defendant to be served.** NOTE: If this information sheet is not completed, no action on the case will commence and the complaint may be subject to dismissal.

Defendant: **You must complete bottom portion on page 2 and file with your answer**. This Information Sheet cannot be accepted as an answer or response. Failure to file this form will be deemed to be an agreement with the Plaintiff's information.

CASE NAME : Talbot County, Maryland (Plaintiff) V. Department Of Natural Resources (Defendant) CASE NUMBER: 20-C-04-005095DI (Clerk to insert)

PLAINTIFF'S NAME _____ PHONE: _____

ADDRESS: _____

PLAINTIFF'S ATTORNEY'S NAME: _____ PHONE: _____

ATTORNEY'S ADDRESS _____

__ I am not represented by an attorney.

RELATED CASE PENDING? __ Yes __ No If yes, Court and Case #(s), if known: _____

Has any form of Alternative Dispute Resolution (ADR) been tried? __ Yes __ No

If yes, describe: N/A

Is there any reason ADR is not advisable? __ Yes __ No If so, state reason.

SPECIAL ADA REQUIREMENTS? __ Hearing impaired interpreter __ Other ADA accommodation

NATURE OF ACTION

TORTS		REAL PROPERTY
PERSONAL INJURY/ with or without property damage __ Motor Tort __ Personal Injury __ Assault & Battery __ Product Liability __ Professional Malpractice __ Other	PROPERTY DAMAGES ONLY __ Motor tort __ Product Liability __ Other OTHER TORTS __ Business torts __ Libel & Slander __ Other Intentional Tort	__ Ejectment/Title Dispute __ Breach of Lease __ Mechanic's Liens __ Mortgage Foreclosure __ Specific Performance __ Condemnation __ Other Real Property

CONTRACT	MISCELLANEOUS	DISTRICT COURT/ ADMINISTRATIVE AGENCY
__ Insurance __ Other Contract __ Confessed Judgment Note	__ Adoption/Guardianship __ Other	__ District Court Appeal __ Record __ DeNovo __ Jury Trial Prayer __ Appeal from Admin Agency __ Workers Comp __ Other

RELIEF REQUESTED

__ Damages __ Declaratory Relief	__ Injunction/Other Equitable Relief __ Other: (Please specify)

CASE NO.: 20-C-04-005095DI

CASE NAME: Talbot County, Maryland V. Department Of Natural Resources
(Plaintiff) (Defendant)

* * * * * * * * * * * * * * * *

PLAINTIFF:

Estimate of Time Needed to Complete Discovery: _____ months

Estimate of Time Needed for Trial: _____ days

_____ _____, 20__
(Signature of Plaintiff's Counsel/Party) (Date)

* * * * * * * * * * * * * * * *

DEFENDANT:

I concur with Plaintiff's Information Sheet (check one): ___ Yes; _X_ No

I concur except as follows:

I plan to file (check if applicable): _X_ Counter-Complaint; _____ Cross-Complaint; _____ Third-Party Complaint.

Other: No civil information sheet filed by parties already in the case. St. Michaels estimates that is the case in chief proceeds as a mandamus action that there will likely be some discovery. St. Michaels estimates 8 months for discovery and 2 days for trial.

_____ 9/23, 2004
(Signature of Defendant's Counsel/Party) (Date)

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 Baptist Street
P. O. Box 44, Salisbury
Maryland 21803-0044
410-546-4644

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff	*	IN THE CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

* * * * * * * * * * * * * *

MOTION TO INTERVENE

The Movant, The Commissioners Of St. Michaels ("St. Michaels"), by its attorney, H. Michael Hickson, moves, pursuant to Maryland Rule 2-214, for leave to intervene as an additional party defendant in the above captioned case. The grounds for this Motion, as addressed in the Memorandum Of Law filed herewith, are as follows:

I.
Facts Common To All Grounds For Intervention

1. The Plaintiff, Talbot County, Maryland (the "County"), is a political subdivision of the State of Maryland.

2. St. Michaels is a Maryland municipal corporation, with its corporate boundaries located entirely within the geographic boundaries of the County.

3. Beginning on or about May 11, 1954, and continuously thereafter, St. Michaels has exercised the planning and zoning powers granted to it by the State of Maryland by: (1) enacting, adopting, administering, applying and enforcing, relative to all land within St. Michaels, a comprehensive plan, a zoning ordinance, a zoning map (dividing all land within St. Michaels into zoning districts, defining the historic district, and defining the critical area management overlay zones), and a subdivision ordinance; and (2) establishing, appointing and maintaining a planning commission, a zoning inspector, a board of appeals and a historic district commission pursuant to such ordinances.

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4. The State of Maryland has enacted Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and has adopted provisions of the Code Of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission) pursuant thereto. (Said code sections and regulations are collectively referred to hereinafter as the "State Critical Area Program")

5. The County has adopted its local critical area protection program (the "County Critical Area Program"), which was thereafter received and approved by the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Commission").

6. The County Critical Area Program reserved growth allocation acreage to each municipality located in the County that is also located within the Chesapeake Bay Critical Area (the "Critical Area"), including 245 acres reserved to St. Michaels.

7. Pursuant to the State Critical Area Program, and in reliance on the growth allocation acreage reserved to St. Michaels by the approved County Critical Area Program, St. Michaels has enacted, received approval from the Commission, administered and enforced the St. Michaels Chesapeake Bay Critical Area Local Program (the "St. Michaels Critical Area Program").

8. Pursuant to the exercise of its planning and zoning powers (as described in paragraph 3 hereof) and the St. Michaels Critical Area Program, in reliance on the 245 acres of growth allocation reserved to St. Michaels in the County Critical Area Program, and prior to the completion of the review by the Commission of Talbot County Bill No. 933, St. Michaels took the following actions and established the following interests:

8.1. Accepted the application for, processed, and awarded 20.1 acres of growth allocation, which award was approved by the Commission, for the land of Vance C. Strausburg and Nancy C. Strausburg (the "Strausburg Property"; deed refs. liber 497, folio 373 *et seq.* and Liber No. 511, folio 95 *et seq.*), including a 75-acre perpetual conservation easement granted to St. Michaels as a condition for such award of growth allocation, being a part of the 158.061 acres annexed to St. Michaels, in 2003 prior to the

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enactment of Bill 933 by the County. As evidenced by a letter from the Commission, a copy of which is attached hereto and incorporated herein by reference as Exhibit No. 1, the Commission approved the award of 20.1 acres of growth allocation to the Strausburg Property.

8.2. Accepted multiple applications for, processed, and awarded 70.863 acres of growth allocation, which award was approved by the Commission, for a 72.167-acre portion of the land now or formerly of Perry Cabin Associates (the "Perry Cabin Farm", deed ref. Liber No. 533, folio 486, *et seq.*), including an 8-acre public waterfront park granted to St. Michaels as a condition for such award of growth allocation, all being a part of the 183.35 acres annexed to St. Michaels in 1981 prior to the enactment of Bill 933 by the County. As evidenced by a letter from the Commission, a copy of which is attached hereto and incorporated herein by reference as Exhibit No. 2, the Commission approved the award of 70.863 acres of growth allocation to the Perry Cabin Farm.

8.3. Entered into the development rights and responsibilities agreement (the "DRRA") between The Midland Companies, Inc., *et al.*, and the St. Michaels Planning Commission for the benefit of St. Michaels, including the consideration to St. Michaels as described in Section 10 thereof and which could exceed $14 million, relating to a 72.167-acre portion of the Perry Cabin Farm, which DRRA is recorded among the Talbot County Land Records on February 26, 2004 at Liber No. 1225, folio 405, as evidenced by the Development Rights And Responsibilities Agreement a copy of which is attached hereto and incorporated herein by reference as Exhibit No. 3.

9. On or about December 23, 2003, the County enacted County Bill 933 as an amendment to the County Critical Area Program, which, subject to review and approval by the Commission pursuant to Maryland Code, Nat. Res. Art., § 8-1809, would withdraw all unused growth allocation acreage previously reserved to the municipalities located in Talbot County, including awarded growth allocation previously reserved to those municipalities for which there has been no substantial on-site construction pursuant to such awards.

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10. During the review of County Bill 933 by the Commission, St. Michaels participated in each hearing and meeting conducted by the Commission that was open to the

public, and submitted written communications to the Commission, in which St. Michaels raised and/or addressed various issues.

11. On May 5, 2004 the Commission completed its review of County Bill 933, pursuant to Maryland Code, Nat. Res. Art., § 8-1809, and disapproved County Bill 933.

12. In disapproving County Bill 933, the Commission relied on some of the issues raised and/or addressed by St. Michaels to the Commission that were directly related to interests shared by St. Michaels, the Commission and others (the "Common Interests"); but the Commission did not address or rely on the following other issues raised by St. Michaels to the Commission (the "St. Michaels Issues"):

12.1. County Bill No. 933 is contrary to the grant of home rule powers to the Town by Maryland Constitution, Art. 11-E; the express powers granted to the Town by Maryland Code, Art. 23A, § 2; and the planning and zoning powers granted to the Town by Maryland Code, Art. 66B;

12.2. Talbot County Bill No. 933 is a law involving a matter of general public concern (the Chesapeake Bay Critical Area), causing different effects on municipalities in the same class;

12.3. County Bill No. 933 is contrary to Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area), which encourages development within municipalities at a density of at least 3.5 units per acre;

12.4. County Bill No. 933 is contrary to State policy as expressed in Maryland Priority Places Strategy, established by Executive Order 2003.33, signed by Maryland Governor Ehrlich on October 8, 2003;

12.5. County Bill No. 933 is contrary to the independent exercise by St. Michaels of the planning and zoning powers granted to it by Maryland Code, Art. 66B.

13. Each of the St. Michaels Issues is legally sufficient, and an independent basis, to invalidate County Bill No. 933, or to make it inapplicable to the interests of St. Michaels described in paragraphs 3 8, and 9 hereof (the "St. Michaels Interests").

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14. The County has initiated the above-captioned case by filing the Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency, as amended by an Amended Complaint, (collectively the "Complaint").

15. The Complaint consists of: (I) a count seeking a declaratory judgment; (II) a count seeking a writ of mandamus; and (III) a count seeking judicial review of an action by the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Commission").

16. Each of the three counts of the Complaint seek to overturn the action of the Commission, which disapproved County Bill No. 933 based solely on the Commission Issues.

17. The approval by the Commission of County Bill No. 933 as enacted by the County, or an order by this Court that validates County Bill No. 933, would make St. Michaels subject to County Bill No. 933.

18. If validated by an order by this Court, County Bill No. 933 would adversely affect the St. Michaels Interests as follows (the "Adverse Affects"):

18.1. Invalidating the award by St. Michaels, and approved by the Commission, of 20.1 acres of growth allocation for the Strausburg Property, including a 75-acre perpetual conservation easement granted to St. Michaels as a condition for such award of growth allocation;

18.2. Invalidating the award by St. Michaels, and approved by the Commission, of 70.863 acres of growth allocation for a 72.167-acre portion of the Perry Cabin Farm, including an 8-acre public waterfront park granted to St. Michaels as a condition for such award of growth allocation;

18.3. Interfering with and invalidating the DRRA relating to a 72.167-acre portion of the Perry Cabin Farm, including the consideration to St. Michaels as described in Section 10 thereof and which could exceed $14 million;

18.4. Interfering with the administration and application of the St. Michaels Critical Area Program (a copy of which St. Michaels Critical Area Program is attached

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hereto and incorporated herein by reference as Exhibit No. 4) that was approved by the Commission prior to the enactment of Bill 933 by the County;

18.5. Interfering, and effectively invalidating St. Michaels Local Critical Area Program which, subject only to the review by the Commission, placed in St. Michaels the exclusive right, free of County interference, to award growth allocation within its corporate boundaries;

18.6. Interfering with the exclusive authority of St. Michaels, pursuant to Maryland Code, Art. 66B, to effectively exercise planning and zoning authority over the entire area within its corporate boundaries;

18.7. Subordinating the St. Michaels Comprehensive Plan (a copy of which is attached hereto and incorporated herein by reference as Exhibit No. 5) to the County Critical Area Program and effectively rendering the St. Michaels Comprehensive Plan null and void within the Critical Area in St. Michaels;

18.8. Subordinating the St. Michaels Zoning Ordinance (a copy of which is attached hereto and incorporated herein by reference as Exhibit No. 6) to the County Critical Area Program and effectively rendering the St. Michaels Zoning Ordinance null and void within the Critical Area in St. Michaels; and

18.9. Subordinating the St. Michaels Subdivision Ordinance (a copy of which is attached hereto and incorporated herein by reference as Exhibit No. 7) to the County Critical Area Program and effectively rendering the St. Michaels Subdivision Ordinance null and void within the Critical Area in St. Michaels.

19. The interests of the Maryland Department of Natural Resources are not similar to the St. Michaels Interests, as evidenced by the fact that the Commission did not include the St. Michaels Issues the reasons for rendering its disapproval of County Bill No. 933, and by the fact that the Commission encouraged resubmission by the County of legislation that would have substantially the same effect on the St. Michaels Interests as County Bill No. 933 would have if approved by the Commission. (See Critical Area Commission Panel Report dated May 5, 2004, and Supplemental Critical Area Commission Panel Report dated May 5, 2004, attached hereto and incorporated herein by reference respectively as Exhibits No. 8 and 9.)

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20. The Maryland Department of Natural Resources will not adequately present the St. Michaels Issues and will not adequately protect the St. Michaels Interests, as evidenced by the fact that the Commission did not include the St. Michaels Issues in the reasons for rendering its disapproval of County Bill No. 933, and by the fact that the Commission encouraged resubmission by the County of legislation that would have substantially the same effect on the St. Michaels Interests as County Bill No. 933 would have if approved by the Commission. (See Critical Area Commission Panel Report dated May 5, 2004, and Supplemental Critical Area Commission Panel Report dated May 5, 2004, attached hereto and incorporated herein by reference respectively as Exhibits No. 8 and 9.)

21. St. Michaels has waited until this time to intervene because with regard to the issues raised in the Motion To Dismiss filed by the Maryland Department of Natural Resources and currently pending in this Court, the interests of St. Michaels and the Maryland Department of Natural Resources are identical, and the St. Michaels Interests have been adequately represented. St. Michaels hereby adopts the positions of the Maryland Department of Natural Resources as stated in the said Motion To Dismiss and reserves the right to file a pleading to that effect if intervention is granted before the said Motion To Dismiss is resolved.

22. The issues on the merits raised by the County will not be reached in this case, if ever, until after the said Motion To Dismiss is resolved and such Motion To Dismiss is resolved in part in favor of the County.

23. The intervention by St. Michaels in the above-captioned case will not unduly delay or prejudice the adjudication of the rights of the original parties to this action because on July 20, 2004 the County filed an Amended Complaint and a response to the Motion to Dismiss of the Department of Natural Resources (the "Motion To Dismiss"), the Motion to Dismiss has not been heard or ruled upon by this Court, no scheduling order has been issued by this Court, and no discovery has been conducted by the parties.

24. Intervention was delayed until this time to avoid multiple defendant parties being involved with the currently pending Motion To Dismiss, since the Department of Natural

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Resources would adequately represent the interests of St. Michaels in regard to the issues raised by that Motion.

25. Intervention is sought at this time so that if the Motion To Dismiss is not granted as to all counts of the Complaint, then this case will proceed to trial on all issues before the Commission, including St. Michaels Issues, and the validity of County Bill No. 933 will be decided in a single action, thereby avoiding a multiplicity of litigation and the possibility inconsistent results, while conserving judicial resources.

26. The Affidavit of Cheril S. Thomas is attached hereto in support hereof.

27. The initial pleadings proposed to be filed by St. Michaels if this Motion is granted are filed herewith, as required by Maryland Rule 2-214(c).

II.
St. Michaels Has An Unconditional Right To Intervene, Pursuant To Maryland Rule 2-214 (a) (1), As A Necessary Party To A Declaratory Judgment Action

28. St. Michaels is a necessary party to this action, pursuant to Maryland Code, Courts Article, § 3-405 (a) (1), because declaratory relief is sought which would, if granted, cause the Adverse Affects (described in paragraph 18 hereof) upon the St. Michaels Interests (described in paragraphs 3, 8 and 9 hereof) by validating Talbot County Bill No. 933.

29. St. Michaels is a necessary party to this action, pursuant to Maryland Code, Courts Article, § 3-405 (b), because declaring County Bill No. 933 valid would have the effect of invalidating some or all of the St. Michaels Critical Area Program, the St. Michaels Comprehensive Plan, the St. Michaels Zoning Ordinance, and/or the St. Michaels Subdivision Ordinance.

III.
St. Michaels Has The Right To Intervene, Pursuant To Maryland Rule 2-214 (a) (2), Because Its Interests Would Be Adversely Affected By Talbot County Bill No. 933

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30. Talbot County Bill No. 933, if validated as the result of this action, would cause the Adverse Affects (described in paragraph 18 hereof) upon the St. Michaels Interests (described in paragraphs 3, 8 and 9 hereof).

31. St. Michaels is so situated that the disposition of this action may as a practical matter impair or impede the ability of St. Michaels to protect its interests, and the existing parties to this action do not have identical interests to those of St. Michaels and would not adequately represent the interests of St. Michaels.

IV.
St. Michaels Should Be Permitted To Intervene, Pursuant To Maryland Rule 2-214 (b) (1), Because The Claims And The Issues The Complaint Involve Common Questions Of Law

32. Even if the disapproval by the Commission of County Bill No. 933 is defective for the reasons alleged by the County, which defects are not conceded by St. Michaels, the County Bill No. 933 is nevertheless invalid based on the St. Michaels Issues.

33. The claims, and the issues raised in the Complaint involve common questions of law, to wit, the validity of County Bill No. 933, which if declared valid would adversely affect the St. Michaels Interests as described in paragraph 17 hereof.

V.
St. Michaels Should Be Permitted To Intervene, Pursuant To Maryland Rule 2-214 (b) (2), Because It Is A Political Subdivision Affected By County Bill No. 933

34. The validity of said County Bill No. 933 is drawn in question in this action.

35. St. Michaels is a political subdivision of the State.

36. If County Bill No. 933 were declared valid, the St. Michaels Interests would be adversely affected as described in paragraph 17 hereof.

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WHEREFORE, The Commissioners Of St. Michaels respectfully requests that this Court enter an Order joining The Commissioners Of St. Michaels as an additional defendant party to this action.

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P. O. Box 44
Salisbury, Maryland 21803-0044
Telephone: 410-546-4644
Attorney For Movant

Attachments:

Exhibit No. 1	Approval by the Commission of the award of 20.1 acres of growth allocation to the Strausburg Property
Exhibit No. 2	Approval by the Commission of the award of 70.863 acres of growth allocation to the Perry Cabin Farm
Exhibit No. 3	Development rights and responsibilities agreement
Exhibit No. 4	Critical Area Commission Panel Report dated May 5, 2004
Exhibit No. 5	Supplemental Critical Area Commission Panel Report dated May 5, 2004

Affidavit of Cheril S. Thomas
Proposed Answer To Complaint by St. Michaels
Proposed Counterclaim by St. Michaels
Proposed Order

GROUNDS AND AUTHORITIES

MARYLAND RULE 2-214. INTERVENTION

(a) Of Right. Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

(b) Permissive.

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(b) Permissive.

(1) Generally. Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

(2) Governmental Interest. Upon timely motion the federal government, the State, a political subdivision of the State, or any officer or agency of any of them may be permitted to intervene in an action when the validity of a constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement affecting the moving party is drawn in question in the action, or when a party to an action relies for ground of claim or defense on such constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.

(3) Considerations. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading and serve it upon all parties.

MARYLAND CODE, COURTS ARTICLE, TITLE 3 (COURTS OF GENERAL JURISDICTION - JURISDICTION/SPECIAL CAUSES OF ACTION), SUBTITLE 4 (DECLARATORY JUDGMENT):

§ 3-405. Necessary parties; Attorney General

(a) (1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.

(2) Except in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding.

(b) In any proceeding which involves the validity of a municipal or county ordinance or franchise, the municipality or county shall be made a party and is entitled to be heard.

(c) If the statute, municipal or county ordinance, or franchise is alleged to be unconstitutional, the Attorney General need not be made a party but, immediately after suit has been filed, shall be served with a copy of the proceedings by certified mail. He is

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entitled to be heard, submit his views in writing within a time deemed reasonable by the court, or seek intervention pursuant to the Maryland Rules.

City of College Park v. Jenkins, 150 Md.App. 254, 264-65, 819 A.2d 1129 (2003): In Chapman v. Kamara, 118 Md.App. 418, 702 A.2d 977 (1997), we outlined the four requirements for intervention ***as of right***: (1) the application for intervention must be timely; (2) the applicant must have an interest in the subject matter of the action; (3) the disposition of the action would at least potentially impair the applicant's ability to protect its interest; and (4) the applicant's interest must be inadequately represented by existing parties.

Bender v. Secretary, Maryland Dept. of Personnel, 290 Md. 345, 350, 430 A.2d 66 (1981): Ordinarily, in an action for declaratory judgment, all persons who have an interest in the declaration are necessary parties. Any person who, as a result of a declaration, may gain or be deprived of a legal right or other benefit has an interest that might be affected by the outcome of the action and is, therefore, a necessary party.

Bender v. Secretary, Maryland Dept. of Personnel, 290 Md. 345, 351, 430 A.2d 66 (1981): One purpose of this rule is to assure that a person's rights are not adjudicated unless that person has had his "day in court." This rule also prevents multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.

Maryland Radiological Soc., Inc. v. Health Services Cost Review Commission, 285 Md. 383, 390, 402 A.2d 907 (1979): If the potential newcomer's interest is not represented or advocated to any degree by an existing party, or if the existing parties all have interests that are adverse to those of the proposed intervenor, he is unrepresented and, assuming compliance with the other provisions of Rule 208 a, intervention should be permitted. Second, if the applicant's interest is similar but not identical to that of an existing party, a discriminating judgment is required on the circumstances of the particular case, but he ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.

Stewart v. Tuli, 82 Md.App. 726, 732, 573 A.2d 109 (1990): If the movant's interest is similar but not identical to that of the existing party, the movant ordinarily should be allowed to intervene unless it is clear that the party having a similar interest will provide adequate representation.

Citizens Coordinating Committee on Friendship Heights, Inc. v. TKU Associates, 276 Md. 705, 712, 351 A.2d 133 (1976). Whether the applicant for intervention has an interest which it is essential to protect may be equated with the requirement that he is or may be bound by a judgment in the action.

Simpson v. Consolidated Const. Services, Inc., 143 Md.App. 606, 636, 795 A.2d 754 (2002); and Professional Staff Nurses Ass'n v. Dimensions Health Corp., 110 Md.App. 270, 281-82, 677 A.2d 87 (1996). Permissive intervention lies within the sound discretion of the circuit court when upon a timely motion the movant's claim or defense has a question of law or fact in common with the action, and the movant has an interest in the cause in that

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an adverse ruling against the named defendants would directly affect the movant. Md. Rule 2-214(b)(1).

City of College Park v. Jenkins, 150 Md.App. 254, 819 A.2d 1129 (2003). The timeliness of a motion to intervene depends on the individual circumstances of each case, which usually involve consideration of four factors: (1) the purpose for which intervention is sought; (2) the probability of prejudice to the parties already in the case; (3) the extent to which the proceedings have progressed when the movant applies to intervene; and (4) the reason or reasons for the delay in seeking intervention.

Stewart v. Tuli, 82 Md.App. 726, 732, 573 A.2d 109 (1990): The burden of showing that existing representation may be inadequate is a minimal one.

H. Michael Hickson
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113 S. Baptist Street
P. O. Box 44
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Telephone: 410-546-4644
Attorney For Movant

REQUEST FOR HEARING

Movant requests a hearing on the above Motion To Intervene.

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P. O. Box 44
Salisbury, Maryland 21803-0044
Telephone: 410-546-4644
Attorney For Movant

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2004, a copy of the foregoing Motion To Intervene with exhibits and attachments thereto, the foregoing Grounds And Authorities, the

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Request for Hearing, the Proposed Order and the Proposed Answer To Complaint and Proposed Counterclaim were mailed by first class mail, postage prepaid to:

Daniel Karp, Esquire
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore, Maryland 21202-1089
Attorney for Talbot County, MD

Paul J. Cueuzzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of Natural Resources

Michael L. Pullen, Esquire
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County

H. Michael Hickson

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Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 2, 2003

Mr. Roby Hurley
Maryland Department of Planning
Lower Eastern Shore Regional Office
Salisbury Multi-Service Center
201 Baptist Street, Suite 24
Salisbury, Maryland 21801-4974

Re: Strausburg Farm Annexation and Growth Allocation

Dear Mr. Hurley:

At its meeting on October 1, 2003, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays concurred with the Chairman's determination that the Strausburg Farm annexation and growth allocation request is a refinement to the St. Michael's Critical Area program and it was approved. The refinement included the following three conditions:

1. Prior to recordation of the subdivision plat for the Strausburg property, the Town Planning Commission shall approve a Buffer Management Plan for the property. Implementation of the plan shall take place prior to issuance of any building permits.

2. Prior to recordation of the subdivision plat for the Strausburg property, the Town shall submit to the Commission staff, a conservation easement that will ensure that 76 aces adjacent to the subject growth allocation shall be maintained in uses appropriate to the Resource Conservation Area as those uses set forth in the Town Ordinance. The easement shall remain in perpetuity and recorded.

3. The amount of growth allocation shall be 20.1 acres.

This refinement should be incorporated into your Critical Area Program within 120 days from the date of this letter. Please send a copy of the Town's amended Critical Area map to the Commission when it is available.

EXHIBIT
tabbies
/

Thank you for your cooperation. If you have any questions, please telephone me at (410) 260-3478.

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger
Natural Resources Planner

cc: Ms. Jean Weisman
Ms. Deborah Renshaw

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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www.dnr.state.md.us/criticalarea/

RECEIVED
MAY 20 2004

May 14, 2004

Ms. Cheryl Thomas, Town Manager
Town of St. Michaels
P. O. Box 206
300 Mill Street
St. Michaels, Maryland 21663-0206

Re: Town of St. Michaels Proposed Program Amendment
Miles Point III Growth Allocation Request

This letter notifies you of action by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays on the referenced growth allocation request. On May 5, 2004, at its regular meeting, the Critical Area Commission approved the Town's request to amend its Program to use 70.863 acres of growth allocation for the Miles Point III project to change the Critical Area designation of the property from RCA to IDA. The approval is subject to the following conditions:

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer.

2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.

3. In measuring the 300-foot setback and the100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.

4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be

EXHIBIT
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developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

The Town is required to amend the Town's Critical Area Map to show this change within 120 days of receipt of this letter. Please provide a copy of the Town's amended map to the Commission when it becomes available. If you have any questions, please telephone me at (410) 260-3480. In closing, I would like to thank you and your staff for your cooperation and assistance over the last several months as the Commission reviewed this proposal.

Sincerely,

Mary R. Owens

Mary R. Owens, Chief
Program Implementation Division

cc: Honorable Robert Snyder, Town of St. Michaels
Mr. Mike Hickson, Town of St. Michaels
Ms. Debbie Renshaw, Town of St. Michaels
Ms. Marianne Mason, DNR-AG

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPER'S RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement") is made and entered into this 16th day of February, 2004, by and between THE MIDLAND COMPANIES, INC. ("Midland"); ST. MICHAELS POINT, L.L.C. ("Point"); MILES POINT PROPERTY, LLC ("Miles"); TND DEVELOPMENT, INC. ("TND Inc."); and THE COMMISSIONERS OF ST. MICHAELS ("Town").

IMP FD SURE $ 20.00
RECORD FEE 75.00
TOTAL 95.00
Rcpt # 75790
MAS 6400 Blk # 568
Feb 20, 2004 03:44 PM

Section 1: RECITALS

This Agreement is entered into based upon the following facts and/or understandings:

1.1 When used in these Recitals, each of the terms defined in Section 2 of this Agreement shall have the meaning given to it therein.

1.2 The General Assembly of the State of Maryland adopted Section 13.01 of Article 66B ("Development Agreement Statute"), which authorizes each municipality possessing zoning powers pursuant to Article 66B to enact an ordinance designating and empowering a public principal to enter into a development rights and responsibilities agreements with persons having legal or equitable interests in real property, to provide that the laws, rules, regulations, and policies governing the use, density, or intensity of such real property shall be the laws, rules, regulations, and policies in force at the time the parties execute such agreements, subject to certain limitations.

1.3 In accordance with the Development Agreement Statute, and partially in response to a request from the Developer to the Town, the Town adopted Ordinance No. 290 ("Enabling Ordinance"), establishing rules, procedures and requirements for consideration of development rights and responsibilities agreements ("DRRAs").

1.4 The parties to this Agreement named herein as a Developer, being Midland, Miles, Point and TND, jointly and severally warrant and represent to the Town that the following matters and facts are true and correct:

1.4.1 The representations contained in this Agreement relevant to a determination of who has a legal and/or equitable interest in the Perry Cabin Land and/or the Hunteman Property, as hereinafter described.

1.4.2 The matters and facts, contained in this Agreement relevant to a determination of who has a legal and/or equitable interest in the Perry Cabin Land and/or the Hunteman Property, as hereinafter described.

1.4.3 Point has not retained for itself, or assigned or otherwise conveyed to anyone other than Miles, any interest in (a) the Contract of Sale for the Perry Cabin Land, between Point as purchaser and Perry Cabin Associates Limited Partnership as seller, (referred to in Section 2 of this Agreement) or (b) any interest in the Perry Cabin Land.

Mr. Commissioners of St. Michaels
P.O. Box 206
St. Michaels, MD 21663

EXHIBIT 3

1.4.4 Miles has not conveyed to anyone, and continues to hold, the sole and entire interest of the purchaser in the Contract of Sale for the Perry Cabin Land, between Point as purchaser and Perry Cabin Associates Limited Partnership as seller.

1.4.5 Miles has not conveyed to anyone, and continues to hold, the sole and entire legal and equitable title to the Hunteman Property.

1.5 The Developer has voluntarily, and on its own volition, petitioned the Town to enter into this Agreement and offered the herein described consideration to the Town, which is the sole consideration for the Qualified Vested Rights granted by this Agreement to the Developer and its successors in interest (both in its capacity as Developer and in its capacity as Owner of the Subject Property), and which consideration is solely consideration for the Qualified Vested Rights granted by this Agreement.

1.6 Developer desires to, and upon granting of the Development Approvals shall, develop the Subject Property, if it is to be developed by the Developer at all, as a traditional neighborhood development, substantially in the form shown on the concept plan entitled the "Miles Point Concept Plan" (attached hereto as **Exhibit** 1) and the Design Code relating thereto (attached hereto as **Exhibit** 2), respectively planned and prepared by the design firm of Duany Plater-Zyberk & Company.

1.7. The Miles Point Concept Plan depicts an overall concept plan for development of the entire Miles Point Property, including the Perry Cabin Land (as hereinafter described) and the Hunteman Property (as hereinafter described). As a result of the Talbot County Council's decision not to relinquish zoning control to the Town over the Hunteman Property at this time, pursuant to the authority of Maryland Code, Article 23A, § 9 (c), this Agreement is not conditioned upon the Town's issuance of, nor shall this Agreement terminate for the failure of the Town to grant, all or any of the local "Development Approvals" that are required for development of the Hunteman Property. Rather, this Agreement is immediately effective as to the Perry Cabin Land, and may become effective as to the Hunteman Property according to the terms of this Agreement, subject to the provisions for termination contained in Section 5 of this Agreement.

1.8 The Miles Point Annexation Agreement (attached hereto as **Exhibit** 3), has been amended by the Amendment To Miles Point Annexation Agreement, between the Town and Miles, , as it may be amended from time-to-time. In the event that the Development Approvals for the Hunteman Property are timely granted to the Developer by the Town in accordance with the Miles Point Concept Plan, the Developer hereby voluntarily offers and agrees to provide to the Town, in exchange for Qualified Vested Rights for such development of the Hunteman Property, the additional consideration described in this Agreement relating to the Hunteman Property.

1.9 The Town began around the Episcopal Parish, established in approximately 1677 on the banks of the Miles River and named after Saint Michael the Archangel; developed as a village primarily composed of persons who worked as watermen and ship-builders; was laid out and surveyed in 1778 by James Brannock; the Town was incorporated in 1804 as "The

Commissioners Of St. Michaels"; due to its relatively isolated location and transportation modes during the nineteenth and twentieth centuries, grew slowly and preserved its small-town character and its historically and architecturally significant structures; was transformed in the last quarter of the twentieth century into a tourist and recreational boating haven that attracts persons as tourists and residents who appreciate the environmental, architectural, historical and cultural beauty of the Town. Most of the development in the St. Michaels area during the last quarter of the twentieth century has been located on the outskirts of the Town, and has not attempted to incorporate, or employ land-use planning or structural design that is intended to replicate or suggest elements of the historic Town core, thus leaving the Town core substantially preserved and in stark contrast to development in the surrounding area in recent decades. The Town, the Developer (including in its capacity as Owner of the Subject Property), and their respective successors in interest, have an interest in perpetuating the character of the Town, and recognize the potential direct and indirect impacts on the Town as it presently exists of a development of the relative size and proximity to the Town core of that proposed by the Developer, both on the current Town residents and visitors, and on the advantages offered by the Town, as it presently exists, to the Owners and residents of dwellings located on the Subject Property.

1.10 By entering into this Agreement, the Developer achieves as its consideration all of the purposes, considerations and benefits which developers are intended to achieve by development rights and responsibilities agreements (DRRAs) pursuant to the Development Agreement Statute, including the following:

1.10.1 Providing the Developer with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, which assurance the Developer has sought in order to incur substantial commitments to develop the Subject Property, such that the development of every part of the Subject Property may be maintained and completed in the future during the term of this Agreement as a Traditional Neighborhood Development in accordance with the Development Plan as it relates to the Subject Property; and

1.10.2 Providing the prospective purchasers and future owners of the Subject Property with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement to assure them, to the fullest extent permitted by the Development Agreement Statute, that every part of the Subject Property will be developed and maintained during the term of this Agreement as a Traditional Neighborhood Development substantially in accordance with the Development Plan as it relates to the Subject Property; and

1.10.3 Providing the Developer with the right to petition the Town, and providing the Town with the right but not the duty, to amend the Agreement (the "Amendment") in accordance with the terms hereof, to add the Hunteman Property to the definition herein of the "Subject Property" in exchange for the additional consideration provided herein relating to the Hunteman Property as described in the Schedule Of Consideration To The Town (Exhibit 10), and thereby:

1.10.3.1 To obtain for the Developer, in its capacity as Developer and Owner of the Perry Cabin Land, and its successors in interest, all of the above-described benefits of the Qualified Vested Rights relating to the Hunteman Property during the term of this Agreement; and

1.10.3.2 To obtain for the Developer, in its capacity as Developer and Owner of the Hunteman Property, and its successors in interest, all of the above-described benefits of the Qualified Vested Rights relating to the Hunteman Property and the Perry Cabin Land during the term of this Agreement; and

1.10.4 Assisting in the preservation and perpetuation of the character of the Town core that make it a unique and attractive place to visit, live and own real estate by voluntarily offering and hereby committing to making the financial and other contributions described in Section 10 of this Agreement.

1.11 In consideration for granting the Qualified Vested Rights as described in this Agreement, the Developer, in its capacity as Developer and Owner of the Subject Property, and its successors in interest, shall grant, convey and pay to the Town the consideration, of the type, in the amounts, at the times, and upon the conditions, as described in Section 10 of this Agreement.

1.12 The Parties acknowledge that many of the benefits identified as consideration to the Town for entering into this Agreement constitute benefits or contractual obligations obtained by the Town which could not be acquired through utilization of existing regulations, ordinances, standards or policies. As further consideration and inducement to the Town to grant the Qualified Vested Rights described in Section 9 of this Agreement, Developer, in its current capacity as the developer and the Owner of the Subject Property, for itself and its successors and assigns, hereby acknowledges and agrees as follows with regard to the consideration for the Qualified Vested Rights granted by this Agreement to the Town, as described in Section 10 of this Agreement:

1.12.1 The consideration granted to the Town is not a limitation and/or exaction imposed upon development of the Subject Property;

1.12.2 The consideration granted to the Town is fair and reasonable in nature, amount and duration as compared to the value of the Qualified Vested Rights granted by this Agreement to the Developer, the Owners, and their respective successors in interest; and

1.12.3 The rights of the Developer, the Owners, and their respective successors in interest, to challenge the legality, amount, or nature of such consideration to the Town are hereby waived.

1.13 After conducting a duly noticed public hearing on the subject, the Planning Commission:

1.13.1 On February 16, 2004, after a public hearing that was conducted on January 8, 12, 15 and 20, 2004 in connection with an application for growth allocation relating to the Development Plan on the Subject Property, considered and determined that the proposed development of the Subject Property is consistent with the Comprehensive Plan and development regulations of the Town; and

1.13.2 On February 16, 2004, considered and determined that the terms, provisions, conditions and obligations in this Agreement are consistent with the Comprehensive Plan of the Town.

1.14 On February 16,2004, after a public hearing that was conducted on January 22, and February 5, 9, 12, and 16, 2004, considering this Agreement and the public comments thereon, the Planning Commission, pursuant to and with the authority of the Development Agreement Statute and the Enabling Ordinance, after a duly noticed public hearing for those purposes, determined by a motion, duly made, seconded, and approved by majority vote, that this Agreement is in the best interest of the Town and to enter into this Agreement on behalf of, for and in the name, of The Commissioners of St. Michaels, a Maryland municipal corporation. The approval of this Agreement by the Planning Commission in the name of the Town constitutes an administrative exercise of the planning, zoning and other police powers of the Town.

1.15 During the Planning Commission's consideration of this Agreement, the Planning Commission made the following Findings of Fact:

1.15.1 This Agreement is consistent with Town's Comprehensive Plan.

1.15.2 This Agreement provides for development of the Subject Property consistent with the uses, density, and intensity of development set forth in the Development Plan.

1.15.3 The execution of this Agreement and construction of the Development Plan will achieve the purposes of a Traditional Neighborhood Development, as stated in the Town Zoning Ordinance, as they relate to the Subject Property.

1.15.4 Additional public benefits of this Agreement and the construction of the Development consist of increased taxes and other financial contributions from the operation of the Development.

1.15.5 The Town hereby declares and acknowledges that the entering into of this Agreement was done with a systematic evaluation of factors relating to the public benefit and welfare, and the public purposes, herein described, all in accordance with the Development Agreement Statute and Enabling Ordinance.

1.16 This Agreement is intended to be, and should be construed as, a Development Rights and Responsibilities Agreement within the meaning of the Development Agreement Statute and the Enabling Ordinance. The Town and the Developer have taken all actions mandated by, and have fulfilled all requirements set forth in, the Development Agreement

Statute and the Enabling Ordinance, including requirements for notice, public hearings, findings, votes, and other procedural matters.

1.17 All parties entered into this Agreement voluntarily and solely in consideration of the benefits, rights and obligations set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Town and the Developer hereby agree as follows:

Section 2: Definitions

For all purposes of this Agreement, except as otherwise expressly provided or the context otherwise requires, the following terms shall have the following meanings:

2.1 "Annual Unit Payments" means the annual payments due and owing to the Town pursuant to this Agreement from the Owner of a residential unit or a live/work unit located on the Subject Property according to the within Development Plan (excluding the hotel/inn units), the first of which Annual Unit Payments for a dwelling unit or live/work unit shall be due on July 1st next following the date on which the Town first issues an occupancy permit for such dwelling or live/work unit, and an Annual Unit Payment for the same unit shall be due and payable to the Town on the same day of each consecutive year thereafter for a total of thirty (30) years, as more particularly set forth in Section 10 of this Agreement.

2.2 "Building Standards" means the generally applicable regulations and standards of Town for the construction and installation of buildings, structures, facilities and associated improvements including, without limitation, the applicable building code, plumbing code, electrical code, mechanical code and fire code.

2.4 "County" means Talbot County, a political subdivision of the State of Maryland.

2.5 "County Land Records" means the Land Records for Talbot County, Maryland, as maintained by the Clerk of the Circuit Court for Talbot County, Maryland.

2.6 "C.P.I." means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, without seasonal adjustment, with the index base period being 1982-84=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics (B.L.S.); or if the C.P.I. is no longer calculated and published by the B.L.S. and/or if the base period has been changed, then the equivalent substitute of that calculation and/or base period as determined and published by the B.L.S., or if no longer determined or published by the B.L.S., then by the equivalent substitute agency of the United States Government.

2.7 "Design Code" means the Design Code that specifies the design rules, regulations, covenants and restrictions applicable to the Development Plan, prepared by Duany Plater-Zyberk & Company, attached hereto as **Exhibit 2**.

2.8 "Developer" means successively during the term of this Agreement the one or more party(s) collectively having all of the rights and duties of the Developer pursuant to this Agreement, being: (1) Midland, Miles, Point or TND Inc with the legal and/or equitable interest in the Subject Property on the Effective Date of this Agreement as required by the Development Agreement Statute (the "Original Developer(s)"); and (2) the successors in interest to the Original Developer(s) regarding the rights and duties of the Developer pursuant to this Agreement (the "Developer Assignee(s)"), as such rights and duties are permitted to be assigned according to the terms and restrictions of this Agreement, including Section 6 of this Agreement. Developer shall not refer to or include persons or entities that acquire individual lots from the Developer for construction of Units thereon. The term "Developer" is used herein as a uniform term to refer to the succession of equitable and/or legal interest holders in the Subject Property who, during the term of this Agreement, act as the Developer of the Subject Property pursuant to this Agreement and are thereby obligated to the Town pursuant to this Agreement. Until the approved final subdivision plat and declaration for the Subject Property is recorded among the County Land Records, the rights and duties of the Developer pursuant to this Agreement are in the party(s) hereto who named as a Developer in this Agreement and are from time-to-time the legal and/or equitable owner(s) of the Subject Property. Thereafter, the rights and duties of the Developer pursuant to this Agreement follow the succession persons and/or entities to whom the role of Developer is properly assigned and accepted pursuant to the terms of this Agreement. Notwithstanding the fact that a party hereto is not the owner of a legal or equitable interest in some or all of the Subject Property, without absolving a Developer party hereto of its duties and responsibilities, one or more other parties hereto named as a Developer may as the result of its acts or deeds nevertheless be held responsible for the duties of the Developer. A party to this Agreement who is identified as "Developer" in this Agreement does not necessarily mean that entity will functionally serve as a developer of the Subject Property.

2.9 "Developer Assignee" means the assignee of the Developer's rights and responsibilities as to the Subject Property under this Agreement after the final subdivision plat for the Subject Property has been approved and recorded among the County Land Records, in accordance with the requisites for such assignment according to Section 6 of this Agreement.

2.10 "Developer Obligations" shall refer to the obligations of the Developer to comply with all of the Development Approvals, including, but not limited to, those set forth in a decision of the Town Commissioners to award growth allocation if growth allocation is awarded), the Miles Point Annexation Agreement, as, as it may be amended from time-to-time, (**Exhibit 3**) the Public Facilities Agreement, (**Exhibit 4**) the conditions imposed by the Planning Commission during the TND floating zone and subdivision review processes and the Design Code (**Exhibit 2**). The term "Developer Obligations" is not intended to refer to the duties of the Developer imposed by Section 10 (Consideration To The Town) of this Agreement.

2.11 Development Agreement Statute" means the state enabling legislation authorizing the Town to enter into this Agreement that is codified at Article 66B, Section 13.01 of the Maryland Code.

2.12 "Development Approvals" means all permits, approvals, actions, and other entitlements applied for by the Developer, within the power of the Town, and necessary to be approved or issued by the Town to authorize the Developer to develop the Subject Property in accordance with the Development Plan and Design Code, including the construction and installation of infrastructure up to but not including the issuance of building permits for individual lots.

2.12.1 The Development Approvals shall include, but not be limited to:

2.12.1.1 Final, non-appealable award of critical area growth allocation for the Subject Property, converting the critical area land management classification therefore from RCA to IDA; and

2.12.1.2 Designation of the Subject Property as a TND floating zone and approval of the Traditional Neighborhood Development Plan for the Subject Property substantially in accordance with that section of the Miles Point Plan (**Exhibit 1**).

2.13 "Development Plan" means the plans, specifications and other documents describing to the intended development of the Subject Property in a manner substantially similar to the Miles Point Concept Plan, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003, attached hereto and incorporated herein by reference (**Exhibit 1** hereto), as it may be amended by the Town in the process of granting the Development Approvals.

2.14 "DRRA" means this Development Rights and Responsibilities Agreement, as it may be amended from time to time, including all addenda, schedules and exhibits incorporated by reference.

2.15 "Effective Date" means the Execution Date of the last of all the parties to execute this Agreement, provided that this Agreement is: (a) fully executed; and (b) is recorded in the County Land Records within twenty (20) days after being fully executed.

2.17 "Enabling Ordinance" means Ordinance No 2-2003, adopted by the Town on November 11, 2003, 2003 pursuant to the Development Agreement Statute, to establish procedures and requirements for the consideration of development rights and responsibility agreements.

2.18 "Execution Date" means, with respect to each party, the date on which the party executes this Agreement.

2.19 "Existing Land Use Regulations" means those certain Town land use laws, rules, regulations and policies, to the fullest extent permitted by the Development Agreement Statute, in effect on the Effective Date, applicable to and governing the use, density and/or intensity of

development of the Subject Property substantially in conformity with that portion of the Development Plan applicable to the Subject Property, except that Developer and Town may mutually agree that the Project will be subject to a later enacted or amended rule, regulation, ordinance, policy, condition, or environmental regulation that becomes effective after the Effective Date.

2.19 "Future Land Use Regulations" means those certain land use regulations which take effect after the Effective Date.

2.20 "Governmental Authority" means any applicable federal, state, county or Town governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over this Project.

2.21 "HOA" means the association of Owners which shall be formed pursuant to the Declaration of Covenants, Restrictions and Conditions for the Project (sometimes hereinafter the "Declaration"). The HOA shall be responsible for the annual collection of the Annual Unit Payments from the Owners of the residential units and the live/work units located within the Project, as specified in the Duty to Pay, Section 10.4 of this Agreement, and in the Schedule Of Consideration To The Town, incorporated herein as Exhibit 10, and payment of these funds to the Town.

2.22 "Hunteman Property" shall refer to those certain tracts or parcels of land east of Maryland Route 33 and binding on Yacht Club Road and being more particularly described as follows:

2.22.1 All that land described in the deed dated August 31, 2001, from Elsie W. Hunteman to Miles, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 96, et seq.;

2.22.2 Consisting of 17.156 acres, more or less and more particularly shown on a plat prepared by McCrone, Inc., titled "ANNEXATION PLAT OF THE LANDS OF ELSIE W. HUNTEMAN TO THE TOWN OF ST. MICHAELS SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND," dated March 1998, a copy of which plat is attached hereto as **Exhibit 7**; and

2.22.3 Consisting of two (2) tracts of land which are the subject of a petition for annexation to the Town and Town Commissioners Resolution No. 2003-06, adopted on October 28, 2003.

2.23 "Midland" means The Midland Companies, Inc., a District of Columbia Corporation, together with its successors and assigns to the extent permitted by this Agreement. Midland is at certain stages of the development process referred to as a "Developer" in this Agreement as that term is defined in Section 2. Midland acquired its rights in the contract of sale for the Perry Cabin Land from Point, and thereafter Midland assigned all of its rights in said contract and the Perry Cabin Land to Miles. Midland is the entity that has submitted all of the applications to the Town for growth allocation for development on the Subject Property. Midland, Miles, Point and TND Inc. are related entities in that George A. Valanos is the President of Midland and TND Inc. and the Managing Member of Miles and Point.

2.24 "Miles Point II" refers to the application for the award of growth allocation relating to a proposed project on the Perry Cabin Land and the Hunteman Property, submitted to the Town by letter dated September 9, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application, which application was withdrawn by Midland on or about December 19, 2003.

2.25 "Miles Point III" refers to the application for the award of growth allocation relating to a proposed project only on the Perry Cabin Land, submitted to the Town by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application. Miles Point III is the subject of this Agreement, and unless otherwise specified herein, where there is a factual distinction the term "Miles Point" refers to the application, concept plan and/or proposed project that is the subject of the application submitted by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland.

2.26 "Miles Point Annexation Agreement" shall refer to the Annexation Agreement dated October 28, 2003, and amended February, 2004 between the Town and Miles through which the Hunteman Property was annexed into the Town which is now or about to be recorded among the County Land Records.

2.27 "Miles" means Miles Point Properties, LLC, a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Miles is the current owner of the Hunteman Property. Miles is the contract purchaser of the Perry Cabin Land, by virtue of the assignment to Miles from Midland of all of its interest as purchaser in a contract for the purchase of the Perry Cabin Land. It is intended that Miles will be the owner of all of the Miles Point Property (consisting of the Perry Cabin Land and the Hunteman Property). Miles is a real estate holding company formed for purposes of taking ownership of the Miles Point Property. TND Inc. is responsible for obtaining the Development Approvals. When such Approvals are obtained and financing for the public facilities is in place, and construction of the development is scheduled to commence, it is intended that Miles will convey the Miles Point Property to TND Inc., at which time TND Inc. shall become the successor and assigns to Miles as the "Developer" to all or any part of the Miles Point Property. Although Miles is referred to as the Developer, obligated to the Town in that capacity herein until conveyance to TND Inc. of all of Miles' interest in the Miles Point Property, Miles will not functionally act as a developer of the Miles Point Property. George A. Valanos is the Managing Member of Miles.

2.28 "Miles Point Annexation" means the annexation accomplished by Town Resolution No. 2003-06, which extended the Town boundaries to include approximately 42.066 acres of land, of which approximately 17 acres is fast land, which represents the Hunteman Property.

2.29 "Mile Point Property" means collectively the land that is designated in this Agreement as the Perry Cabin Land and the land that is designated in this Agreement as the Hunteman Property.

2.30 "Mortgage" means any mortgage or deed of trust granted by an owner encumbering real property, encumbering any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the locality of the Subject Property (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale and leaseback documents, lease and leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute); provided that such mortgage, deed of trust or other form of security instrument, and any instrument evidencing any such other form of security arrangement, has been recorded among the County Land Records.

2.31 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other lender, and their successors and assigns, that is secured by the Subject Property.

2.32 "Owner" means all the persons and/or entities that are the current record title fee simple owner(s) of the Subject Property, and their successors in title to each lot or parcel of land that is a part of the Subject Property on which an individual residential unit or a live/work unit is located or intended to be located on the Subject Property pursuant to the subdivision and development of the Subject Property in accordance with the Development Plan. Each Developer hereby agrees to bind the Subject Property to the terms of this Agreement immediately upon becoming an Owner of the subject Property during the term of this Agreement. A duty of an Owner under this Agreement with respect to a particular subdivision lot or parcel of the Subject Property on which a Unit is intended to be located according to the Development Plan shall be the joint and several duty of each person and/or entity that is a record title fee simple owner of such lot or parcel of the Subject Property at the time such duty accrues or is due to be performed according to this Agreement.

2.33 "Parties" or "Party" mean the parties or a party to this Agreement, being Town and/or Developer and including their successors or assigns

2.34 "Performance Bond" means a bond of a corporate surety licensed in the State of Maryland issued for the benefit of Town in the sum equal to one hundred percent (100%) of the estimated cost of the work for the applicable public improvements undertaken by Developer pursuant to the Public Facilities Agreement.

2.35 "Perry Cabin Land" shall refer to approximately 72.167 acres of land more particularly described as "Parcel 2" and "Parcel 2A" in a plat prepared by McCrone, Inc. titled "Growth Allocation Plat, The Lands of Miles Point Property, LLC and Part of the Lands of Perry Cabin Associates, Second Election District, Talbot County, Maryland" prepared for The Midland Companies", dated September 2003, a copy of which plat is attached hereto as **Exhibit 6.** The Perry Cabin Land is part of the same land described in a deed dated May 14, 1979 from Charles F. Benson and Harry C. Meyerhoff to Perry Cabin Associates, a Maryland partnership, recorded among the County Land Records in Liber No. 533, folio 486, *et seq.* The Perry Cabin Land was annexed to the Town pursuant to an Annexation Agreement dated May 6, 1980 between the

Town, Perry Cabin Associates Limited Partnership, and Talbot County, Maryland, recorded among the Land Records of Talbot County in Liber No. 548, folio 167 *et seq.* (the "Perry Cabin Farm Annexation Agreement") Midland is the equitable owner and contract purchaser of the Perry Cabin Land.

2.36 "Planning Commission" means the Planning Commission of the Town, created and constituted pursuant to Article 66B of the Maryland Code.

2.37 "Point" means St. Michaels Point, L.L.C., a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Point was the original contract purchaser of the Perry Cabin Land from Perry Cabin Associates. Point has assigned all of its right, title and interest in said contract of sale, and in the Perry Cabin Land, to Midland. It is intended that Point will have no further role in the ownership, development or sale of the Perry Cabin Land or the Hunteman Property. George A. Valanos is the Managing Member of Point.

2.38 "Project" means the development of the Subject Property as a Traditional Neighborhood Development in accordance with the Development Plan.

2.39 "Public Facilities Agreement" means the public facilities agreement between the Town and the Developer relating to construction and installation of the public facilities on the Subject Property in accordance with the Development Plan.

2.40 "Qualified Vested Rights" is the right granted to the Developer in Section 9 to the Existing Land Use Regulations as they apply to the development of the Subject Property in accordance with the Development Plan, in order for the Developer to obtain a certain use, density and intensity of development of the Subject Property without the Developer having to make substantial improvements to all portions of the Subject Property.

2.41 "Qualifications" means the qualifications, reservations and exemptions to the vested rights in the Existing Land Use Regulations otherwise provided to Developer in Section 9.1, which authority is reserved to the Town in Section 9.2 of this Agreement.

2.42 "Sewer Approval" means any action by the Developer which uses in whole or in part a sewer allocation or approval on the Subject Property for the development in accordance with the Development Plan, including: (1) installation of infrastructure; (2) entering into a binding contract to sell a lot in the Subject Property; or (3) conveying any lot in the Subject Property.

2.43 "Subject Property" means the real property that is subject to this Agreement, which as of the Effective Date shall be the Perry Cabin Land. This Agreement may be amended in the future such that the Subject Property also includes the Hunteman Property.

2.44 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Subject

Property as a Traditional Neighborhood Development that are consistent with the Development Plan.

2.45 "State" means the State of Maryland.

2.46 "Third Party" means any person or legal entity not a party to this Agreement.

2.47 "TND Inc." shall refer to "TND Development, Inc." a Maryland corporation, together with its successors and assigns to the extent permitted by this Agreement. When financing for the public facilities is in place and construction of the development is scheduled to commence it is intended that Miles will convey the Miles Point Property (consisting of the Perry Cabin Land and the Hunteman Property) to TND Inc., at which time TND Inc. shall become the successor and assign to Miles and TND Inc. will be the "Developer" as that term is defined in this Section 2. TND Inc. will develop and construct the infrastructure and community structures pursuant to the Public Facilities Agreement. George A. Valanos is the President of TND.

2.48 "Traditional Neighborhood Development" means a style of subdivision and development design that is described and governed by Town Zoning Ordinance (No. 109, as amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone).

2.49 "Town" means the "The Commissioners of St. Michaels", a municipal corporation, organized and existing under the laws of the State of Maryland, together with its successors and assigns.

2.50 "Town's Collateral Improvement Fund" means the fund described in Section 10 of this Agreement.

2.51 "Town Commissioners" means the elected officials that constitute the executive and legislative body of the Town, known as the Commissioners of St. Michaels.

2.52 "Unit" means a dwelling unit or a live/work unit as shown, authorized and limited by the Development Plan and the Development Approvals.

2.53 "Zoning Ordinance" means the zoning regulations contained in Town Ordinance No. 109, as amended, applicable to development of the Subject Property.

Section 3: Exhibits (list). The following documents are exhibits to this Agreement, are incorporated herein by reference, even though some or all of them may not be attached hereto.

Exhibit 1 – Drawing titled "Miles Point Concept Plan", showing the proposed development of the Perry Cabin Land and the Hunteman Property, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003.

Exhibit 2 – Design Code for Miles Point, for the development of the Miles Point Property, prepared by Duany Plater-Zyberk & Company.

Exhibit 3 – Miles Point Annexation Agreement, between the Town and Miles, dated October 28, 2003.
Exhibit 4 – Public Facilities Agreement, between the Town and TND Inc., dated October 28, 2003.
Exhibit 5 – Perry Cabin Farm Annexation Agreement.
Exhibit 6 – Plat of Perry Cabin Land.
Exhibit 7 – Plat of Hunteman Property Annexation.
Exhibit 9 – Public Facilities Agreement
Exhibit 10 – Schedule Of Consideration To The Town, consisting of 19 pages, and which is an integral part of Section 10 of this Agreement.
Exhibit 11 – Schedule Of Town Administrative And Utility Fees, Charges And Rates
Exhibit 12 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone)
Exhibit 13 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part f (TND Lot and Building Standards)
Exhibit 14 - Certification Of Interest In The Subject Property

Section 4: **Subject Property**. The real property that is subject to this Agreement is the Perry Cabin Land. It is contemplated by the parties that this Agreement may be amended in the future such that the Subject Property shall also include the Hunteman Property.

Section 5: **Effective Date, Recordation, Term, and Termination of Agreement**

5.1 This Agreement shall be effective, and confer all rights and obligations according to the terms of this Agreement, on the Effective Date of this Agreement.

5.2 Unless waived in writing by the Developer, and subject to the conditions precedent to termination described in Section 5.3 of this Agreement, this Agreement shall terminate upon the first to occur of the following described circumstances (hereinafter "Terminating Circumstances"), which Terminating Circumstances the Developer shall in good faith, timely and diligently attempt to avoid:

5.2.1 On the twenty-first (21st) day following the Effective Date, this Agreement has not been recorded among the County Land Records.

5.2.2 The failure of at least of one Developer, as defined herein, to have an interest, of the type required by the Development Agreement Statute, in the Perry Cabin Land at any time before the Developer obtains fee simple title to the Perry Cabin Land.

5.2.3 One hundred and eighty (180) days after the Developer has obtained all final Development Approvals and Sewer Approval for the Subject Property, and the Developer has failed within that time to obtain fee simple title to the Perry Cabin Land or fails to immediately thereupon subject the Perry Cabin Land to all of the terms and conditions of this Agreement. When a Developer is now or hereafter becomes the fee simple title owner of all of the Subject Property before the final subdivision plat and Declaration are recorded, that Developer hereby binds all of its successors in title to the Subject Property to the rights and duties of the Owner(s) of the Subject Property as described herein, as distinct from the rights and duties of the Developer. Notwithstanding anything to the contrary stated or implied in this Agreement, the Developer has no obligation to the Town to obtain or retain fee simple title to the Perry Cabin Land and shall make that decision solely at Developer's discretion.

5.2.4 Sixty (60) days after any one of the Development Approvals, after having been timely applied for by the Developer, has been denied by a binding decision which has been rendered final, subject to the following:

5.2.4.1 This Agreement is not intended to expressly or impliedly obligate the Town, or any officer, employee or administrative or executive body of the Town, to grant or award any discretionary or non-discretionary Development Approvals; on the contrary, each request for a Development Approval shall be impartially reviewed by the applicable reviewing governmental authority for the Town, based solely on the facts of record and the applicable laws and regulations.

5.2.4.2 In the event a Development Approval contains conditions, not expressly contemplated in this Agreement, the Developer may reject the Development Approval by providing within thirty (30) days of the Developer's receipt of the written Development Approval written notice to the Town of the Developer's objection to one or more conditions in which case the approval shall not constitute a Development Approval as that term is used in this Agreement, but shall be considered the denial of a Development Approval.

5.2.4.3 The conditions contained in the Planning Commission's Recommendation to the Town Commissioners concerning the Miles Point II application for growth allocation are expressly contemplated by the parties hereto to be the same or similar to the conditions for the Miles Point III application for growth allocation as may be recommended by the Planning Commission and imposed by the Town Commissioners.

5.2.5 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and granted, is not final by reason of an administrative or judicial remedy that has been pursued by a person legally entitled so to do, and that still is pending.

5.2.6 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and denied, is not final by reason of an administrative or judicial remedy that has been pursued by the Developer, and that still is pending.

5.2.7 Ten (10) years after any applicable law (including Talbot County Bill No. 933, enacted by the Talbot County Council on December 23, 2003) which purports to remove the power of the Town, as the sole and exclusive authority, to the exclusion of the Talbot County Council, to award the IDA growth allocation, contemplated by this Agreement, to permit development on the Perry Cabin Land in a form substantially similar to that shown on the Development Plan, has not been invalidated or otherwise rendered ineffective by: (a) a final and legally exhausted decision by any governmental agency authorized so to do; (b) a final and legally exhausted decision by a court of competent jurisdiction; or (c) applicable legislation.

5.2.8 When the Subject Property has been fully developed by the construction on the Subject Property of a Unit on all of the lots approved for a Unit according to the Development Plan and occupancy permits have been issued by the Town therefor, and all of the Developer Obligations and the payment of all consideration to the Town in connection with the Project, as specified by Section 10 of this Agreement, have been satisfied.

5.3 As conditions precedent to the termination of this Agreement by reason of the occurrence of any Terminating Circumstance described in Section 5.2 of this Agreement:

5.3.1 The Developer shall, by writing signed by an authorized officer of the Developer and delivered to the Town:

5.3.1.1 Relinquish all Development Approvals obtained by the Developer or its predecessors in interest in pursuit of the terms and requirements of this Agreement; and

5.3.1.2 Withdraw all applications for Development Approvals then pending that were sought pursuit of the terms and requirements of this Agreement; and

5.3.2 The Developer, for itself, its successor Developer Assigns, and its successors in interest as Owner of the Subject Property, hereby waives all

claims of impermissible change of mind in any subsequent administrative decision, as compared to any decision rendered in pursuit of a Development Approval pursuant to this Agreement, relating to all or any part of the Subject Property.

5.4 Notwithstanding anything to the contrary contained in this Agreement, if no Terminating Circumstance set forth in Section 5.2 has sooner occurred, or if all of the Terminating Circumstances set forth in Section 5.2 that have sooner occurred have been waived, then this Agreement shall nevertheless automatically terminate seventy-five (75) years after the date of this Agreement, subject, however, to Section 18.23 of this Agreement.

5.5 Developer and Town may mutually waive, in whole or in part, any or all of the Conditions set forth in Section 5.2 at any time prior to the deadline set forth in Section 5.3 for the satisfaction of such condition(s), provided that such waiver is in writing.

5.6 Developer or any Owner may require the Town to sign and provide, for recording in the County Land Records by the requesting Developer or Owner, written confirmation of the date and fact of the termination of this Agreement upon the occurrence of both of the following:

5.6.1 The occurrence of any Terminating Circumstance described in Section 5.2 hereof, which is not timely waived; and

5.6.2 The occurrence of the conditions precedent described in Section 5.3.1 of this Agreement.

5.7 Anything to the contrary in this Agreement notwithstanding, including but not limited to Sections 14 and 16 of this Agreement, if the approved final subdivision plat for the entire Subject Property and the approved Declaration in accordance with the Development Plan are recorded among the County Land Records and fee simple title to at least one lot or parcel of the Subject Property is thereafter conveyed to an Owner who is not the Developer, then development of the entire Subject Property shall not substantially deviate from the recorded subdivision plat, Declaration, the Development Plan, and the Developer Obligations in place at the time of such conveyance, and this Agreement unless the Developer obtains a final order from a court of competent jurisdiction.

Section 6: Binding Effect, Assignment, Notice and Release

6.1 Binding Effect of Agreement. The Subject Property is hereby made subject to this Agreement. Development of the Subject Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to the benefit of, the respective parties to this Agreement, and their successors in interest, and constitute covenants that shall run with the Subject Property.

6.1.1 Town. Whenever the term "Town" is used in this Agreement, such term shall include the successor governmental entity to the Town.

6.1.2 Developer. Whenever the term "Developer" is used in this Agreement, such term shall include the successor in interest to the Developer of the Subject Property (the "Developer Assignee"). Except where specifically stated to the contrary in this Agreement, the rights and duties of the Developer pursuant to this Agreement follow the person who is properly assigned such rights and duties in accordance with the requirements of this Agreement. A duty of the Developer pursuant to this Agreement shall be the liability of the person that is the Developer at the time the duty of the Developer accrues pursuant to this Agreement, and his successor Developer Assignees. When an Owner of some or all of the Subject Property is also the Developer of the Subject Property, the conveyance of title by said Owner to some or all of the Subject Property passes the rights and duties of the Owner to his successor in title to that same portion of the Subject Property; but does not assign the rights and duties of the Developer of the Subject Property pursuant to this Agreement unless both of the following conditions are satisfied: (1) the assignment of the rights and duties of the Developer is expressly stated in the conveyancing document, and (2) all of the requirements of this Agreement for the assignment are satisfied.

6.1.3 Owner. Except where specifically stated to the contrary in this Agreement, the rights and duties of the Owner of a particular parcel of the Subject Property pursuant to this Agreement follow the person who is the successor in title to that same parcel of the Subject Property. A duty of an Owner relating to a specific Unit or parcel of the Subject Property shall be the liability of the person or entity that is the Owner of said property at the time that duty accrues, and the successors in title of that Owner to that portion of the Subject Property. When the Developer of the Subject Property is also an Owner of some or all of the Subject Property, the Developer, in his solely capacity as an Owner, shall have the rights and duties of the Owner pursuant to this Agreement with respect to all of the Subject Property owned by the Developer.

6.2 Enforcement By Town. The Planning Commission has entered into and executed this Agreement on behalf of the Town pursuant the authority of the Development Agreement Statute and the Enabling Ordinance. Therefore, the Town, by and under the direction and authority of the Town Commissioners, shall have the right to enforce the terms of this Agreement.

6.3 Transfer and Assignment of Rights and Interests.

6.3.1 Assignment. There shall be only one Developer of the Subject Property at a given time for the purposes of this Agreement. The Developer for the purposes of this Agreement shall at all times be the same person or entity as the "Developer" for the purposes of (and as defined in) the Public Facilities Agreement until all obligations to the Town under the Public Facilities Agreement with respect to the Subject Property have been fully satisfied.

6.3.1.1 At all times before the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the

Development Plan and the approved Declaration in accordance herewith, the Developer shall be either Midland, Miles or TND Inc.

6.3.1.1.1 It is the intention of the parties that Miles will assign its ownership interest acquired and to be acquired in the Miles Point Property to TND Inc. and the Town hereby expressly consents to this assignment provided that George A. Valanos is the President of, and the owner of, or has control of the voting rights to, at least a 34 % equity interest in, TND Inc. at all times while TND Inc. is acting in the capacity of the Developer of the Subject Property (except in the event of the death of George A. Valanos; or in the event of a default by the Developer in the terms of a mortgage, deed of trust or other document securing the repayment of a loan by a lien on the Subject Property, which default results in the foreclosure and sale of the Subject Property).

6.3.1.2 After the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the Development Plan and the approved Declaration in accordance herewith:

6.3.1.2.1 The transfer of title to one or more lots and/or sections of the Subject Property shall not transfer the rights and duties of the Developer except in accordance with the conditions specified herein.

6.3.1.2.2 Developer shall not sell, assign or transfer its rights and obligations as Developer of the Subject Property under this Agreement to any person other than those described in Section 6.3.1.1, natural or legal, at any time during the Term of this Agreement, (as distinguished from the conveyance of title to land constituting some or all of the Subject Property without rights and/or duties of the Developer created by this Agreement) except in compliance with all of the following conditions:

6.3.1.2.2.1 All such rights and duties relating to all of the Subject Property are assigned by the assignor in writing;

6.3.1.2.2.2 All such rights and duties relating to all of the Subject Property are accepted by the assignee in writing;

6.3.1.2.2.3 The assignor is not in default on any obligation or duty of the assignor to the Town imposed by the Developer Obligations or by this Agreement;

6.3.1.2.2.4 The assignee is, or shall be upon execution of the assignment, the "Developer" for the purposes of the Public Facilities;

6.3.1.2.2.5 The assignee has demonstrated to the Town his or its ability to perform and satisfy the duties of the Developer under this Agreement; and

6.3.1.2.2.6 The assignment is consented to by the Town in writing, provided that such consent will not be unreasonably withheld.

6.3.1.3 Before the approved final subdivision plat and the approved Declaration are recorded among the County Land Records the Developer and its successors shall not sell or otherwise convey legal or equitable title to one or more individual lots or parcels of the Subject Property, on which a Unit is located or is contemplated to be located by the Development Plan, to an Owner.

6.3.1.4 Constructive Notice and Acceptance. Every person who, now or hereafter, owns or acquires any right, title or interest in or to the Subject Property, or any part thereof, is, and shall be, conclusively deemed to have consented and agreed to be bound by every provision contained in this Agreement applicable to all or the portion of the Subject Property acquired, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

6.3.1.5 Release of Developer. Upon the assignment of the all of the duties and obligations of the Developer (as distinguished from the duties under this Agreement of the Owners and HOA) under this Agreement and the Public Facilities Agreement, Developer will be released from its obligations under this Agreement with respect to the Subject Property, or portion thereof, so assigned arising subsequent to the effective date of such assignment, if Developer obtains the Town's written consent to such assignment.

6.4 Owner's Responsibilities. A transferee of the title to a lot or parcel of the Subject Property shall be responsible for satisfying the good faith compliance requirements of the Developer under this Agreement relating to the portion of the Subject Property owned by such transferee that have not been satisfied at the time the transferee takes title to the lot or parcel of the Subject Property. Nothing contained herein shall be deemed to grant to Town discretion to approve or deny any sale or transfer, except as otherwise expressly provided in this Agreement. A default by any transferee shall only affect that portion of the Subject Property owned by such transferee and shall not cancel or diminish in any way Developer's or any other transferee's rights hereunder with respect to any portion of the Subject Property not owned by such transferee.

6.5 Amendment and Waiver. This Agreement may be waived, amended or cancelled, in whole or in part, only by written consent of all of the necessary parties to such amendment or waiver. In every instance of a waiver, amendment or termination of a term of this Agreement, the Town, by and through the Planning Commission, shall be a necessary party thereto. In any waiver, amendment or termination of any of the Qualified Vested Rights, described in Section 9

of this Agreement, relating to any lot or parcel of the Subject Property, the record title owners of all lots or parcels of the Subject Property shall be necessary parties thereto. In any waiver, amendment or termination of any provision of a Development Approval, including a plat or condition that constitutes part of such approval, the record title owners of all lots or parcels of the Subject Property directly affected by such Development Approval shall be necessary parties thereto; but this provision shall not preclude a property owner from seeking and obtaining relief available pursuant to an applicable land-use law. In an amendment or termination of any other provision of this Agreement, only the Town and persons whose land is directly involved in such amendment or termination shall be necessary parties thereto. All such writings shall be signed by the appropriate officers of the Town and Developer and in a form suitable for recordation in the County Land Records, and shall be recorded in the County Land Records. This provision shall not limit any remedy of the Town or Developer as provided by this Agreement.

6.6 Notices. All notices and other communications in connection with this Agreement shall be in writing and delivered either by personal (hand) delivery or by United States certified or registered mail. Each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until actually received.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

TND Development, Inc.
1228 Thirty-First Street, N.W.
Washington, D.C. 20007
Telephone (703) 556-4000
Attn: George A. Valanos,
President

with a copy to:
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601
Attn: Richard A. DeTar
Telephone (410) 822-5280

Notices and communications to the Town shall be addressed to, and delivered at, the following address:

The Commissioners of St. Michaels
P. O. Box 206
300 Mill Street
St. Michaels, Maryland 21663
Attn: Town Manager
Telephone (410) 745-9535

with a copy to:
H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Telephone (410) 546-4644

Section 7: Representations, Warranties and Covenants

7.1 Both Parties. *Procedural Sufficiency*. Town and Developer, for itself, its successor Developer Assignees, and its successors in title to the Subject Property, hereby acknowledge and agree that all required notices, meetings, and hearings have been properly

given and held by the Town with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations or rights created by it on the grounds of any procedural infirmity or any denial of any procedural right.

7.2 Developer. Developer hereby makes the following representations, warranties and covenants to and with Town as of the Execution Date:

7.2.1 *Existence*. Developer is a corporation and/or limited liability company duly incorporated/organized and legally existing under the laws of the State of Maryland and is qualified to transact business in the State of Maryland.

7.2.2 Authori*zation*. Developer is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned is authorized to act on behalf of and bind Developer to the terms of this Agreement. Developer has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by Developer does not require any consent or approval that has not been obtained.

7.2.3 *Ownership of* Subject *Property*. On the Effective Date of this Agreement the Developer has the interest in the Perry Cabin Land that is required by the Development Agreement Statute. Unless and until this Agreement is terminated pursuant to Section 5, either Miles or TND Inc., has and shall retain legal and equitable title to the Hunteman Property for sufficient time: (a) for the control by the County over the land-use classification of the Hunteman Property to expire; and (b) for the provisions of the Miles Point Annexation Agreement, as it may be amended from time-to-time, relative to the Development Approvals by the Town relating to the Hunteman Property, to be considered and granted, along with the Amendment of this Agreement to include the Hunteman Property as part of the Subject Property. As indicated in the Certification Of Interest In The Subject Property, attached hereto as Exhibit 14, the legal, equitable, and lien holder interests currently held in the Perry Cabin Land, and the legal, equitable, and lien holder interests currently held in the Hunteman Property, are as follows:

7.2.3.1 Ownership of the Hunteman Property. Miles is the legal and equitable fee simple owner of the Hunteman Property.

7.2.3.2 Ownership of the Perry Cabin Land. Perry Cabin Associates Limited Partnership is the legal fee simple owner of the Perry Cabin Land. Perry Cabin Associates Limited Partnership has entered into a contract to sell the Perry Cabin Land. The assignee/purchaser of this contract is Miles. Miles is the equitable owner of the Perry Cabin Land.

Section 8: Development Rules and Restrictions.

8.1 Permitted Uses. The permitted uses of the Subject Property, in accordance with the Existing Land Use Regulations and the Development Approvals are as set forth in the Development Plan.

8.2 Number and Type of Units, Uses and Density. The total number and density of single-family residential Units, townhouse dwelling Units, live/work Units, (collectively the "Units") and an inn containing sleeping rooms, contemplated by this Agreement and the Development Plan to be located on the Subject Property in accordance with the Existing Land Use Ordinances, are as follows:

Type of Units	**To Be Located On The Perry Cabin Land** (± 72.167 acres)	**To Be Located On The Hunteman Property** (± 17.156 acres)	**Total** (89.323 acres)
Single-Family Dwelling Units (other than townhouses)	251	41	292
Townhouse Dwelling Units	20	0	20
Live/Work Units, consisting of commercial use on the 1st floor, commercial and/or residential use on the 2nd floor, and residential use on the 3rd floor, not to exceed a total of 15,000 sq. ft. of commercial interior space for all live/work Units	8	0	8
Inn Sleeping Rooms	24	0	30[1]

8.2.1 The use of the commercial areas of the live/work units and the inn on the Subject Property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.2.2 The maximum height and size of structures on the subject property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part

[1] Six (6) additional inn units are proposed on the Perry Cabin Land in the event the Development Approvals are obtained in the future on the Hunteman Property, in which case this Agreement shall become effective as to the Hunteman Property.

f (TND Lot and Building Standards), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.3 Developer Agreements. The Developer shall comply with: (i) this Agreement, (ii) the Developer Obligations, and (iii) all subsequent Development Approvals for which it is the applicant or a successor in interest to the applicant relating to the Subject Property.

8.4 Other Fees. In addition to the fees specifically mentioned in this Agreement, Developer agrees to pay all customary and usual Town fees, including but not limited to use fees for building inspections, permit and water connection and use fees, and water connection and use fees generally applicable on a Town-wide basis for similar projects, at the rate and amount in effect at the time the fee is required to be paid.

8.5 Timing of Development. The parties acknowledge that the most efficient and economic Development of the Subject Property depends upon numerous factors, some of which are not within the control of Developer, such as market orientation and demand, interest rates, competition, and similar factors, and that except as provided in Section 10.9.1 of this Agreement, the rate of development will be determined by the Developer, in its sole subjective business judgment and discretion. However, the Development Approvals shall remain effective for only the time periods specified therein and the rate of conveyance of lots or parcels within the Subject Property shall not exceed the rate set forth in Section 10.9.1of this Agreement. Subject to the Qualifications provided in Section 9.2 and the other terms and conditions of this Agreement; in the event any Subsequent Land Use Regulation is enacted which relates to the rate, timing or sequencing of development of property within Town, Town agrees that such Subsequent Land Use Regulation shall not apply to the Development Plan.

8.6 Phasing of Development. The construction of the development on the Subject Property shall be in a defined series of development phases in which:(1) there shall be no more than thirty (30) acres of the Subject Property under active construction at the same time; (2) all construction ongoing at the same time shall be confined land within a single phase; (3) a phase shall consist of contiguous parcels of land; and (4) the Developer shall at all times have on record at the Town office a drawing to scale that identifies the location and boundaries of the active phase. For the purpose of this Section 8.6, the term construction shall mean: (1) actual construction of infrastructure within a street or utilities right-of-way; or (2) actual grading or construction within a public or privately owned park or open space. In determining the area under construction, the area shall include: (1) the construction of streets and alleys, pipes, or the installation of wires and other conduits for collection of sewage or stormwater, or for the distribution water, electricity, gas, telephone, CATV or other utility services (exclusive of street and alley top-coat paving, installation of sidewalks and the installation of streetlight poles and fixtures) within a street or utility right-of-way area shall include all land between the boundary lines of the right-of-way for the length (lineal feet within the right-of-way) of the actual construction; and (2) the lesser of the entire platted area of the open space within which construction is occurring or the defined and identifiable area as shown on a building permit as the area of grading or construction; and (3) the entire area of a subdivision lot on which the construction of improvements is occurring. The area of a phase may be redefined from time-to-time by omitting a completely developed area within the phase and adding an undeveloped area

to the same phase, provided that the Developer shall first furnish the Town with a drawing to scale showing the area omitted and the area added to the phase, either by identifying the lots involved or with courses, distances and points of reference. For purposes of this Section 8.6, the term construction shall not include activity relating to the construction of improvements on a privately-owned subdivision lot. The Developer may cease construction in one defined phase before construction within that phase is completed, and commence construction in another defined phase, provided that no more than one phase, not exceeding 30 acres, is under construction on the Subject Property at any one time. Before commencing development of a new phase, or redefining the area of an existing phase to omit a completely developed area and adding an undeveloped area, the Developer shall provide the Town with a drawing to scale defining the land area that constitutes the development phase, by identified lots and/or with courses, distances and points of reference.

8.7 Time Limitation for Improvements on Privately-Owned Subdivided Lots. With regard to each lot created by and shown on the recorded final subdivision plat of the Project, on which lot it anticipated by the Development Plan that a Unit will be located thereon, it is the desire and intention of the parties hereto that a Unit be constructed on such lot within a reasonable time after it is sold and conveyed by the last Developer to the first Owner who is not a Developer. The benefits to all concerned of requiring that lots be promptly improved, include: (1) promoting construction within confined areas of the Project; and (2) to hastening the completion of all construction within confined areas of the Project. Therefore, the Declaration of Covenants, Restrictions and Conditions for the Project shall provide as follows:

8.7.1 The Owner of a lot in the Project who is not the Developer shall:

8.7.1.1 Within 24 months after acquiring legal title to the lot, cause the issuance of the requisite approvals by the Developer or the HOA of plans for construction of a Unit and any appurtenances thereto (collectively "Improvements") on the lot, obtain the building and any other required permits for construction of the Improvements on such lot, and the beginning of substantial construction of said Improvements on the lot by the digging and pouring the footers therefore; and

8.7.1.2 Thereafter, cause diligent and in good faith efforts resulting in substantial completion of the said Improvements and issuance of an occupancy permit therefor within a reasonable time, but in any event, within shorter of two (2) years after the issuance of the first building permit for such Improvements or four (4) years after the recorded conveyance in the land records of Talbot County of such lot to said Owner.

8.7.2 If the Owner fails to timely comply with the requirements of Sections 8.7.1 or 8.7.2, the Developer shall have the right, at its sole option, to take the following remedial action:

8.7.2.1 Re-acquire title to the lot from the Owner at the same contract price that the Owner paid for the lot, and the Owner shall be required to re-convey said lot to

the Developer for the consideration tendered by the Owner to the Developer at the time of the Owner's acquisition of the lot; or

8.7.2.2 Assume control of the construction of the Improvements on the lot from the Owner, and complete the construction of the Improvements on the lot for the Owner at the Owners' sole cost plus a 15 % management fee based on the other costs expended by the Developer for such completion, all of which shall be promptly paid by the Owner to the Developer. If not paid in full within thirty (30) days after billing the Owner shall pay interest at the legal rate on the unpaid balance, beginning on the billing date until paid in full. In the event that the Owner fails to pay in full within sixty (60) days after being billed by the Developer for the costs incurred and/or management fee earned by the Developer, then the Developer shall be entitled to a lien against the Owner's lot and the Improvements thereon pursuant to the terms and procedures of the Maryland contract Lien Act, as amended from time-to-time, and to collect the unpaid balance, interest thereon, and collection costs including attorneys fees by means by suit for breach of contract and/or by means of the Maryland contract Lien Act.

8.8 Moratoria. The parties hereby acknowledge and agree that this Agreement contemplates and provides for the development of the Project and that no moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation on the conditioning, rate, timing or sequencing of the development of property within the Town and affecting the Subject Property or any portion thereof shall apply to or govern the development of the Subject Property, whether affecting parcel or subdivision maps, building permits, occupancy permits or other approvals to develop or use land issued or granted by the Town, except as may be necessary to: (i) comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such state or federal law or regulation; (ii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Subject Property in which event any ordinance, rule, or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; (iii) maintain the Town's compliance with state sewerage, water systems and utility regulations; or (iv) fulfill the Town's essential governmental responsibilities pursuant to its reservations of authority. In the event of any such moratorium, future ordinance, resolution, rule or regulation, unless taken by the Town as provided under the four (4) exceptions contained above, Developer shall continue to be entitled to apply for and receive approvals as contemplated by this Agreement and in accordance with the Applicable Development Rules.

8.9 Changes and Amendments to the Development Plan. The parties acknowledge that refinement and further development of the Project may require changes to the Development Plan. In the event Developer finds that any such change is necessary or appropriate, Developer shall apply for an amendment to the Development Plan to effectuate such change and Town shall promptly process and act on such application for an amendment. Amendments to Development Approvals to allow changes to the Development Plan that do not also require an amendment to

the Existing Land Use Regulations shall be reviewed for consistency with the Existing Land Use Regulations and the Subsequent Land Use Regulations.

Section 9: Consideration to the Developer and Owners - Qualified Vested Rights

9.1 Grant of Qualified Vested Rights. Notwithstanding any future action of the Town to the contrary, whether by ordinance, resolution, initiative, or otherwise, for consideration provided in this Agreement to the Town, the Town hereby grants to the Developer during the Term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, Qualified Vested Rights in the Existing Land Use Regulations as they relate to the Development of the Subject Property in accordance with the Development Plan; subject, however, to the following:

9.1.1 The Developer and the Town may mutually agree that the Project will be subject to a Future Land Use Regulation.

9.1.2 The Developer and the Town may make amendments, additions and waivers to this Agreement adopted pursuant to Section 6 of this Agreement.

9.1.3 The Qualifications set forth in Section 9.2 of this Agreement.

9.2 Qualifications To Vested Rights. Notwithstanding anything to the contrary set forth in Section 9.1 above, the rights therein granted with respect to the Existing Land Use Regulations are hereby defined by the following Qualifications, which may limit, but anything to the contrary notwithstanding shall not expand, the Qualified Vested Rights granted by this Agreement beyond that authorized by the Development Agreement Statute:

9.2.1 Non-Conflicting Future Land Use Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are not in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property;

9.2.2 Conflicting Future Land Use Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property if the Developer has given the Town specific written consent to the application of such rules to development of the Subject Property;

9.2.3 Cost And Time Effects of Future Land Use Regulations. To the fullest extent permitted by the Development Agreement Statute and the Enabling Ordinance, any Future Land Use Regulation which increases the cost of development of the Subject Property, and any Future Land Use Regulation limiting the rate, timing or sequencing of development of the Subject Property, shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Subject Property.

9.2.4 County, State and Federal Laws and Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to existing and future applicable county, state and federal laws and regulations, together with any land use regulations, programs and actions, or inaction, that are reasonably (taking into consideration, among other things, the assurances provided to Developer hereunder) adopted or undertaken by the Town in order to satisfy a duty or obligation of the Town to comply with such applicable county, state and federal laws and regulations. In the event that applicable county, state or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations, in which event this Agreement shall remain in full force and effect provided that performance of the Agreement pursuant to the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.

9.2.5 Public Health, Safety or Welfare. The Qualified Vested Rights granted by Section 9.1 hereof in the Existing Land Use Regulations as they relate to the development of the Subject Property in accordance with the Development Plan, shall be subject to the power of the Town Commissioners to determine that compliance with laws, rules, regulations, and policies enacted or adopted after the Effective Date of this Agreement, to the extent such police powers are preserved for the Town by the Development Agreement Statute or the Enabling Ordinance, are essential to ensure the health, safety, or welfare of residents of all or part of the Town.

9.2.6 Building Standards. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit the application of present or future Building Standards, except that (taking into consideration the assurances to Developer in this Agreement) any future amendment thereto that reduces the amount of land within the Subject Property that can be utilized for structures and improvements, or increases the amount of open space within the Project, materially different from that depicted on the Development Plan, shall not be considered a provision of any of the Building Standards included within the exception provided by this Paragraph (6), but shall, to the extent permitted by the Development Agreement Statute and the Enabling Ordinance, not apply to and govern the Development of the Project unless it complies with another exception under this Section 9.

9.2.7 Customary Town Fees and Charges. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit customary Town fees and charges generally applicable and imposed by the Town pursuant to law upon all similarly situated applicants and property owners, including, but not limited to, the fees and charges for processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, annexation, growth allocation, proposed legislation, building permit fees, water system connection charges, occupancy permit fees, and other fees, charges and

processing costs imposed by law. This Agreement shall not limit the power of the Town to impose such fees, charges and requirements, and to amend the rates and charges generally applicable within the Town for such services after the date of this Agreement, which shall not be limited by the Qualified Vested Rights in the applicability thereof to the Subject Property, the Developer or the successors in interest thereof. Such fees and charges imposed by Town law are not intended to be consideration for this Agreement.

9.2.8 Other Agreements. This Agreement is not intended to alter or restrict the rights and duties of the parties to the Perry Cabin Farm Annexation Agreement, the Public Facilities Agreement or the Miles Point Annexation Agreement, as amended, relating to the Subject Property, as it or they may be modified according to their own terms. The terms of those agreements are not intended to be consideration for this Agreement.

9.2.9 Procedural Provisions. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit generally applicable procedural provisions, including those governing the processing of Development Approvals and Land Use Regulations such as requirements for notice, hearings, and hearing bodies.

9.2.10 This Agreement shall not relate to, bind or limit the Town, or its actions, operations, tariffs, rates, or policies in its capacity (if and when the Town ever becomes a supplier of utility services to the Subject Property, except that with regard to a particular utility service, the Town agrees to treat the Developer and the Subject Property as the Town treats other similarly situated developers and land within its applicable utility service territory at the time that the time of such treatment.

9.2.11 Police Powers; Full Extent of Law. The parties acknowledge that Town is restricted in its authority to limit its police powers by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to Town all of its police powers that cannot be so limited. It is expressly agreed that Town reserves its police power to adopt and enforce ordinances, regulations, policies and other enactments, and to take such other actions pursuant to said police power, affecting the Project necessary to ensure the public health, safety or welfare. In the exercise of its police powers, the Town shall recognize and consider the circumstances existing at the time this Agreement was authorized. In addition, such exercise of the police power shall be in a manner consistent with the purpose and intent of the Development Agreement Statute. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to Town all such powers and authority that cannot be restricted by contract.

9.3 Adoption of Comprehensive Plan and Development Plan; Further Approvals. In preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town considered the health, safety, and welfare of the existing and future residents and

populations of the Town and prepared and/or reviewed in this regard extensive environmental studies ("Environmental Studies") as well as traffic impact reports and other studies economic and non-economic relating to impacts of this Development Plan or similar development plans on the Town and its public facilities and services. Without limiting the generality of the foregoing, in preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town carefully considered and determined the projected needs (taking into consideration the planned development of the Project and the Town and adjacent areas) for police, fire, paramedic, and similar facilities and services within the Project, the Town and adjacent areas and the projected needs within the Project and such areas for stormwater management measures, public water and county sewer with the Region II District serving the Town, the needs of the residents for open space and parks, and the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project.

9.4 Acknowledgment of Future Land Use Regulations. The parties acknowledge that the allocation of development within the Subject Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations, such as the location of particular sensitive areas or other site-specific considerations. The parties acknowledge that in certain instances, the development of the Subject Property may be restricted and adversely affected and impacted by Future Land Use Regulations adopted by Town as provided in Section 9.2.

9.5 All Governmental Approvals Required Before Development Of Subject Property Required. It is acknowledged that this Agreement only provides assurances to Developer with respect to the Existing Land Use Regulations that will apply to the Development of the Subject Property and that prior to and as a condition precedent to the final decision to construct or develop any of the Public Facilities or any portions of the Project on the Subject Property, all government permits and approvals shall be obtained as required by the applicable regulations, in accordance with and as provided in Sections 9 (including but not limited to state and federal regulations).

9.6 Consideration for Assurances to Developer. The parties further acknowledge that the public benefits to be provided by Developer to Town pursuant to this Agreement, including without limitation the consideration to the Town set forth in Section 10 are in consideration for and reliance upon assurances that the Subject Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the development of the Subject Property may be affected by exercise of the reservations of authority, Developer is concerned that normally the courts extend to local agencies significant deference in the adoption of land use regulations, which might permit Town to attempt to apply inconsistent land use regulations in the future under the guise of the reservations of authority. Accordingly, Developer desires assurances that Town will not inequitably further restrict or limit the development of the Subject Property in conflict with the intent of this Agreement, except in strict accordance with the Qualifications of the Vested Rights set forth in Section 9.

9.7 Use of Annual Unit Payments. As further consideration to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, for the

preservation and improvement of the Town in general, and therefore for the benefit of the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, by the preservation and improvement of the Town of which the Subject Property is a part, the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part, and used by the Town in accordance with the purpose, of the Town Collateral Improvement Fund, as described in Section 10 of this Agreement.

9.8 Amendment To Include The Hunteman Property. After the County relinquishes or otherwise loses control over the land-use classification of the Hunteman Property, as provided by Maryland Code, Art. 23A, § (c), in the event that the Town issues all of the Development Approvals relating to and for the development of the Hunteman Property as an addition to the Traditional Neighborhood Development on the Perry Cabin Land in accordance with the Development Plan, and within a time and as otherwise specified by the Miles Point Annexation Agreement, as it may be amended from time-to-time by the Town Commissioners, the Developer shall have the right and duty to offer to the Town, and the Town shall have the duty to consider, but shall not have the obligation to approve, the amendment of this Agreement to add the Hunteman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment"), provided further that the Town agrees to the Amendment within one (1) year after the date on which such Amendment is offered by the Developer, thereby granting Qualified Vested Rights to the Hunteman Property as of the date of the Amendment.

Section 10: Consideration To The Town. As the sole and exclusive consideration for the Qualified Vested Rights granted by this Agreement to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, the said Developer, for itself its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby promises to make the payments to the Town, to convey the property rights to the Town, to undertake the duties as described in the Schedule Of Consideration To The Town (Exhibit 10), as further explained, modified and expanded by this Section 10, relative to the Subject Property as defined in this Agreement:

10.1 Infrastructure Costs, Fees, Charges, And Duties.

10.1.1 Privately-Owned Subdivision Infrastructure. It is the responsibility of the Developer to cause the installation at its expense of all infrastructure on the Subject Property. At the request of the Developer the Town ordinance creating the traditional neighborhood zone anticipates narrow public ways, that are of the open section design, and that some of the public ways will be privately owned. The Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby request and consent to the amendment of the Town Zoning Ordinance and the Town Subdivision Ordinance to provide for such narrow streets without curbs or gutters ("open section roads"), with gentle pervious swales as part of the stormwater management system, and other public ways that are more narrow and made of more porous paving material that may be privately owned and maintained by a responsible homeowners association, contrary to what is presently required by Town laws and regulations. Although the parties hereto

acknowledge the environmental benefits of narrow open section roads within the Critical Area, and that the proposal of the Developer to use such narrow open section roads within the Project is a significant positive factor in making the Project worthy of the growth allocation necessary to develop within the Critical Area, the Town anticipates that the cost to repair and maintain such open section roads and swales will be greater than for conventional roads with curbs and gutters to the current Town standards and specifications. Therefore, parties agree as follows with regard to repair, maintenance and re-construction of infrastructure on the Subject Property:

10.1.1.1 Publicly-Owned Subdivision Infrastructure. Upon construction to Town standards, inspection and acceptance by the Town, the Town shall in perpetuity repair, maintain and re-construct, at its own cost: the stormwater catch-basins and lines (up to, but not including, the stormwater management ponds); and roads, drives and streets within the Project (as identified in the Design Code and shown on the Concept Plan for the Project). The Town reserves the right, but not the duty, at its sole discretion, to acquire title to, own, maintain and control the passages, lanes, and alleys, (collectively "Privately Owned Public Ways") as identified in the Design Code and as shown on the Concept Plan for the Project.

10.1.1.2 Public Ways. All roads, drives, streets, alleys, lanes passages, and public ways of every type (collectively the "Public Ways") shall be open to the public at all times. The Town shall have the sole right to establish speed limits, and enforce all traffic laws on all Public Ways. The Town and all public utilities shall have the right to enter over, under and upon all Privately Owned Public Ways for the purpose of installing, repairing, maintaining and rebuilding wires, conduits, and other transmission, distribution and collection facilities related to furnishing public utility services.

10.1.2 Privately-Owned Subdivision Infrastructure. The Developer, and thereafter the Owners through the HOA, shall in perpetuity repair, maintain and re-construct, at its own cost, in such a manner to keep the Project worthy of growth allocation, the Privately Owned Public Ways, brick sidewalks, street lights, grass strips and trees along streets, stormwater management facilities with the exception of stormwater catch-basins and or lines (up to but not including the stormwater management ponds), and all open spaces not owned by the Town, located within or upon the Subject Property (all of which shall be included within the term "Privately-Owned Subdivision Infrastructure").

10.1.2.1 The provisions of this Section 10.1.2 ("Privately-Owned Subdivision Infrastructure"), including the following subsections of

Section 10.1.2, shall be incorporated in the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property.

10.1.2.2 The Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property shall be recorded in the County Land Records simultaneously with the recording of the approved final subdivision plat for the entire Subject Property.

10.1.2.3 No conveyance of a subdivision lot or construction of infrastructure shall commence on the Subject Property before the recording of such the approved final subdivision plat and such Declaration of Covenants, Restrictions and Conditions.

10.1.2.4 Before the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property is recorded in the County Land Records, the Developer shall submit to the Town, for the review and approval of the Town Attorney for consistency thereof with the terms of this Agreement, such Declaration of Covenants, Restrictions and Conditions.

10.1.2.5 The Developer, as Developer and Owner, shall, at its own expense, at all times until such time as all components of the Privately-Owned Subdivision Infrastructure are conveyed to the HOA, reasonably and diligently keep, maintain, repair and re-construct all such components of the Privately-Owned Subdivision Infrastructure in good order and state of repair.

10.1.2.6 When the Privately-Owned Subdivision Infrastructure is conveyed by the Developer to the HOA, the HOA shall accept, assume, undertake to reasonably and diligently perform all of the title and duties of, the ownership, repair, maintenance, re-construction, and replacement of the Privately-Owned Subdivision Infrastructure, keeping each component thereof at all times in good condition, and to assess and collect from the Owners revenues reasonably sufficient in amount to create and adequately fund operating and reserve fund, and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing, maintaining, re-constructing and replacing, from time-to-time as reasonably necessary, all of the Privately-Owned Subdivision Infrastructure.

10.1.2.7 The Declaration of Covenants, Restrictions and Conditions for the Project shall provide that the HOA shall have, accept and perform all of the rights and duties set forth in this Section 10. The Declaration of Covenants, Restrictions and Conditions shall also empower and require the HOA to: (a) make assessments against each lot on which a Unit is

located or is anticipated by the Development Plan in the Subject Property for the purpose of generating the funds for the HOA in an amount necessary to pay for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure; (b) to collect those assessments, and (c) to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a proper assessment has been made and for which timely payment has not been made to the HOA for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland contract Lien Act), or its successors, as amended from time-to-time.

10.1.2.8 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right to enforce upon the HOA and its Owners by judicial action and otherwise, the reasonable and timely performance of all HOA duties described in this Section 10.1.2, and with the right of the Town to collect from the HOA, and its Owners the attorneys fees and all other costs incurred by the Town relating to such enforcement actions in the event that the Town prevails in any such action.

10.1.2.9 For purposes of monitoring performance of the HOA with the provisions of this Section 10.1.2, the Town shall be entitled to without making a request therefor, and HOA shall furnish to the Town, as frequently as the HOA furnishes to its board of directors and/or its membership, the following documents relating to the HOA: disclosure statements, news letters to the membership, minutes of board of directors meetings, minutes of membership meetings, budgets, financial reports and statements, accounts receivable from Owners relating to the assessments to and collections from Owners, proposed rules or amendments to the HOA documents and any other information relating to the HOA as may be deemed necessary or desirable by the Town.

10.2 Consent To Regulatory Fees And User Charges. The Developer, for itself, its successor developer Assignees, and its successors in interest to the Subject Property, hereby acknowledge that all of the current Town fees, charges, costs and rates, shown on the Schedule Of Town Administrative And Utility Fees, Charges And Rates, attached hereto as Exhibit 11, are fair and reasonable in amount, and that they each have a reasonable relationship to the cost of providing the services to which they relate. Moreover, the Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, hereby consent to the increase of such Town fees, charges, costs and rates in subsequent years based on changes in the C.P.I., provided that all such increases of such Town fees, charges, costs and rates are also equally applicable to all other regular and customary users of such Town services.

10.3 Parks and Open Spaces.

10.3.1 In General. Parks and open spaces shall be located, developed and improved by the Developer in the locations and to the extent shown on the Miles Point Concept Plan (Exhibit 1), and in accordance with additional representations made by the Developer to the Town during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, relating to the Subject Property. Structures and improvements as so represented shall be constructed within the parks and open spaces at Developer's expense as shown on the Miles Point Concept Plan, and in accordance with additional representations by the Developer to the Town during the above referenced growth allocation and DRRA hearings. Rights in such parks and open spaces, with improvements, shall be granted as set forth in the Town Consideration Chart (Exhibit 10), constructed, maintained, and continuously opened for public use and enjoyment, as represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings. All of the above-referenced representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, shall constitute a material term of this Agreement. Simultaneously with the recording of the final subdivision plat for the Subject Property, the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records: (1) establish a Declaration of Covenants, Restrictions and Conditions for the Subject Property which provide for the ownership, maintenance and upkeep by the HOA of all parks and open spaces on the Subject Property that are not to be owned and maintained by the Town; and (2) within the time periods specified in the Schedule Of Consideration To The Town (Exhibit 10) the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records grant such rights and duties to the Town and the public in said parks and open spaces as has been represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings.

10..3.2 Hunteman Property Non-Structural Shoreline Stabilization. The Developer shall install the Non-Structural Shoreline Stabilization on the Hunteman Property at the same time that the Non-Structural Shoreline Stabilization is installed on the Perry Cabin Land.

10.3.3 Non-Structural Shoreline Stabilization. The subject of this Section 10.3.3 is the construction, repair, maintenance, and if necessary re-construction and replacement, of non-structural shoreline stabilization on the Perry Cabin Land and the Hunteman Property, as hereinafter described.

10.3.3.1 Definitions. The following definitions shall apply solely to Section 10.3.3:

10.3.3.1.1 The "Non-Structural Stabilization" means the shoreline stabilization described in the Power Point Presentation by Gene Slear, Vice President, Environmental Concern, Inc., presented September 25,

2003 (see Exhibit 45 to the Miles Point III public hearing of the Town Planning Commission), to be installed Environmental Concerns, Inc.), which, together with proper repair and maintenance, is intended to provide to the shoreline, where such stabilization is placed, repaired and maintained, perpetual protection from wind and/or wave action at the shoreline, including such action caused by hurricanes and other storms, that result in erosion of such shoreline.

10.3.3.1.2 The "Shoreline" means, and is more particularly described, as follows: (1) beginning at a point at the southern boundary line between the Perry Cabin Land the land of the Foggs Cove Townhouses at its intersection with the Miles River at mean high tide; then (2) running from said beginning point in a generally northerly direction along the shoreline formed by the intersection of the Perry Cabin Land and the Miles River at mean high tide to the common boundary line between the Perry Cabin Land to the Hunteman Property; and then (3) continuing therefrom in a generally northerly direction along the shoreline formed by the intersection of the Hunteman Property and the Miles River at mean high tide to the ending point at a shoreline stone revetment existing on the Hunteman Property; constituting a total distance, from the beginning point to the ending point, of approximately 2,100 lineal feet.

10.3.3.1.3 The "Non-Structural Shoreline Stabilization" means the Non-Structural Stabilization successfully applied to and established at the Shoreline.

10.3.3.2 The Developer shall, at its sole expense, cause the Non-Structural Stabilization to be constructed, installed, applied to and established at the Shoreline of both the Perry Cabin Land and at the Shoreline of the Hunteman Property by Environmental Concern, Inc. or by some other contractor equally experienced and knowledgeable about such matters that is acceptable to the Town (hereinafter the "Shoreline Contractor"), within the deadline established therefore in the award of growth allocation for the Perry Cabin Land. The Non-Structural Shoreline Stabilization shall be installed according to standards and specifications intended, together with reasonable and appropriate periodic repairs and maintenance as provided for in this Agreement, to establish a healthy and self-sustaining tidal wetland capable of providing perpetual prevention of erosion to the Shoreline, from wind and/or wave action of the Miles River, including such action caused by hurricanes and other storms.

10.3.3.3 For a period of ten (10) consecutive years, beginning immediately upon the completion of the installation of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Hunteman Property, and receipt by the Town of a written certificate of completion of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Hunteman Property by the Shoreline Contractor, the Developer shall, at its sole expense, shall cause the

following to be performed with regard to the Non-Structural Shoreline Stabilization:

10.3.3.3.1 Provide reasonable and appropriate periodic inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization as recommended and performed by the Shoreline Contractor, or its successor. The inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization shall be performed in accordance with the recommendations of the Shoreline Contractor at least annually, or more frequently as recommended by the Shoreline Contractor.

10.3.3.3.2 In the event of severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization, at the sole fair and reasonable discretion of the Town, severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization shall be promptly replaced at the Shoreline by either: (1) Non-Structural Stabilization; or (2) stone revetment.

10.3.3.3.3 At all relevant times after the initial installation of the Non-Structural Shoreline Stabilization, the Shoreline Contractor shall be selected with the consent of the Town. If the Developer or president of the HOA (as the case may be) fail to timely initiate the selection of a Shoreline Contractor when the arises, the Town shall have the sole right to select the Shoreline Contractor, which may include an expert and a general contractor, to assess the status of the Non-Structural Shoreline Stabilization, to recommend a method to improve the status of the Non-Structural Shoreline Stabilization, and to construct, install, repair or maintain the Non-Structural Shoreline Stabilization, as is reasonably necessary for the health of the artificial tidal wetland thereby created or the protection from erosion of the Shoreline.

10.3.3.4 Approvals and Information.

10.3.3.4.1 All inspections, repairs, maintenance, re-constructions and replacements of the Shoreline Areas shall be subject to the prior review and approval of the Town.

10.3.3.4.2 All such inspections, repairs, maintenance, re-constructions, and replacements to the Non-Structural Shoreline Stabilization shall be reported in writing to the Town. A copy of all reports, contracts, bills, invoices, statements, designs, specifications and all other documents relating to the Non-Structural Shoreline Stabilization shall be promptly furnished by the Developer or the HOA (as the case may be) to the Town.

10.3.3.5 The Developer may assign its obligations under this Section 10.3.3 to the HOA, provided the HOA shall, on behalf of the Owners, expressly undertake and assume such obligations in writing to the Town. The obligations of the Developer assumed by the HOA shall be performed by the HOA in a manner substantially similar to the manner in which the HOA is required to maintain the Privately-Owned Subdivision Infrastructure, as set forth in Section 10.1 of this Agreement. Without limiting the generality of the foregoing, the HOA shall, upon assignment by the Developer and acceptance by the HOA of the foregoing obligations of the Developer relating to the Non-Structural Shoreline Stabilization, for unexpired portion of the ten (10) year period for which the Developer was originally obligated:

10.3.3.5.1 Regularly repair and maintain the Shoreline Area, in accordance with sound property management standards;

10.3.3.5.2 Assess and collect from the Owners revenues reasonably sufficient to create and adequately fund an operating and reserve fund for the Shoreline Area and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing and maintaining from time to time as reasonably necessary, the Shoreline Areas; and

10.3.3.5.3 Diligently enforce the collection of Assessments against all Owners as necessary to provide funds necessary to properly maintain and repair the Shoreline Areas, in accordance with the Declaration of Covenants, Restrictions and Conditions for the Project and establish, enforce, foreclose and collect on a lien against the land and improvements of each lot for which an assessment has been made but for which payment has not been tendered to the HOA, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), on any successor statute, as amended from time to time.

10.3.3.6 If the Developer, or the HOA (if the obligations of the Developer have been assigned to and accepted by the HOA), fail to timely or adequately perform the obligations of the Developer as described in Section 10.3.3.3 of this Agreement, then the Town shall have the right to perform such duties at the expense of the Developer or the Owners (as the case may be), upon thirty (30) days prior written notice to the Developer or the HOA on behalf of the Owners (as the case may be) of the intention of the Town to perform such duties for and at the expense of the Developer or the Owners (as the case may be). Such notice shall state the nature of the work anticipated to be done and the reason for the necessity for such work. If the performance of the anticipated work leads to the discovery of other work that reasonably should have been discovered and performed by the Developer or the HOA, then Developer or the Owners (as the case may be) shall be liable for the cost of such additional work. The Owners

thus liable shall be the Owners of lots on the Subject Property that are assessable for expenses of the HOA pursuant to the Declaration, in the same proportion as the cost of the operation and maintenance of improvements in the subdivision owned and/or operated by the HOA are assessed to the lots of the Subject Property, as provided by the Declaration.

10.3.3.6.1 The Owners referred to in this Section 10.3.3 shall be the owners of each lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by HOA for, and on the same percentage basis as it is normally assessed by the HOA, as provided by the Declaration. Each Owner of a lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by the HOA shall be personally liable, jointly and severally with all co-owners of the same lot, for the share (based on the amount thereof that could be assessed to the Owner's lot) of the total cost incurred by the Town in performing the duties of the Owners pursuant to Section 10.3.3.3 of this Section. The Town shall also have the right to assess the lots of the subdivision of the Subject Property for such costs incurred by the Town in the proportion described herein. Such costs thus assessed shall be due and payable in full within 30 days after the assessment.

10.3.3.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall have the right, in its sole discretion, by notice to the HOA, to perform some or all of the obligations of the HOA pursuant to Section 10.3.3 of this Agreement.

10.3.3.7.1 To the extent the Town undertakes such obligations during the ten (10) year period after completion of the Non-Structural Shoreline Stabilization by the Developer, the HOA shall reimburse the Town for all direct and indirect costs incurred by the Town that are associated with such maintenance and repair.

10.3.3.7.2 A reasonable basis for the need for work required by this Agreement shall be the failure of the HOA, upon written demand therefore, to provide written evidence that such work have been timely or satisfactorily performed.

10.3.3.7.3 The failure of the HOA to promptly reimburse the Town for such costs shall entitle the Town to seek all available legal relief, including but not limited to the right, as third party beneficiary to this Agreement and the Declaration, to assess the Owners of each lot in the subdivision of the Subject Property with its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and

to enforce the assessment, lien and collection rights of the HOA against the Owners, to which rights the Owners hereby consent.

10.3.3.7.4 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each subdivision lot of the Subject Property for which an assessment has been rendered for its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

10.3.3.8 At the conclusion of the ten (10) year period described in Section 10.3.3.3 of this Agreement, the Developer or Owners through the HOA, shall, at their own expense, turn over the Non-Structural Shoreline Stabilization in good and healthy condition to the Town, after which the care and condition of the Non-Structural Shoreline Stabilization shall be at the sole expense of the Town.

10.3.3.9 The contents of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall be included in the Declaration to the satisfaction of the Town attorney, which Declaration the Town shall have the right to review and amend for such purpose before it is recorded in the County Land Records by the Developer.

10.3.3.10 The provisions of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall survive any transfer of title to the Subject Property, even if the Town should become the owner of some or all of the Shoreline.

10.4 <u>Duty To Pay Consideration To The Town</u>.

10.4.1 Each payment or duty indicated on the Schedule Of Consideration To The Town (**Exhibit** 10), intended to be paid or performed for the Town, shall be paid or performed in accordance with the terms stated on the Schedule Of Consideration To The Town,

to enforce the assessment, lien and collection rights of the HOA against the Owners, to which rights the Owners hereby consent.

10.3.3.7.4 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each subdivision lot of the Subject Property for which an assessment has been rendered for its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

10.3.3.8 At the conclusion of the ten (10) year period described in Section 10.3.3.3 of this Agreement, the Developer or Owners through the HOA, shall, at their own expense, turn over the Non-Structural Shoreline Stabilization in good and healthy condition to the Town, after which the care and condition of the Non-Structural Shoreline Stabilization shall be at the sole expense of the Town.

10.3.3.9 The contents of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall be included in the Declaration to the satisfaction of the Town attorney, which Declaration the Town shall have the right to review and amend for such purpose before it is recorded in the County Land Records by the Developer.

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10.4 <u>Duty To Pay Consideration To The Town</u>.

10.4.1 Each payment or duty indicated on the Schedule Of Consideration To The Town (**Exhibit** 10), intended to be paid or performed for the Town, shall be paid or performed in accordance with the terms stated on the Schedule Of Consideration To The Town,

including: (1) the amount of the payment to the Town or nature of performance for the Town; (2) when the payment or performance is due to the Town; and (3) who is responsible for such payment or performance to the Town.

10.4.2 As indicated on the Schedule Of Consideration To The Town, when a payment is the responsibility of an Owner or the agent of an Owner, as distinguished from the Developer, and the time when the payment is due is based on an occurrence or status relating to the particular lot or parcel of the Subject Property on which a dwelling unit or a live/work unit (a "Unit") is intended to be located according to the Development Plan, the person(s) who is the Owner(s) of the lot, parcel or Unit at the time the occurrence or status relating to that lot, parcel or Unit triggers the duty to pay shall be the person(s) who has the duty to make the payment to the Town.

10.4.3 If a one-time per-unit payment, or annual per unit payment, as described in the Schedule Of Consideration To The Town (Exhibit 10), relating to a particular Unit of the Development Plan for the Subject Property, is due and payable to the Town at the time an Owner takes title to a Unit or lot on which such Unit is intended to be located, or if such a payment relating to a particular Unit becomes due and payable to the Town while the Owner has title to that Unit or lot on which such Unit is intended to be located, that Owner, and its successors in title to that Unit shall be liable to the Town for such payment.

10.4.4 If a lump-sum payment or performance required by the Developer to the Town under this Agreement, that does not relate to a particular lot, parcel or Unit of the Development Plan for the Subject Property, has not been satisfied at the time a Developer Assignee acquires the rights and duties of the Developer of the Subject Property pursuant to this Agreement, such Developer Assignee, and its successors in interest shall be liable for such payment or performance.

10.5. Annual Unit Payments - Collection And Liens. The Developers shall form the HOA and shall adopt and record among the County Land Records a Declaration of Covenants, Restrictions and Conditions relating to all of the Subject Property, at the same time as the final subdivision plat for the Subject Property is recorded among the County Land Records, which Declaration of Covenants, Restrictions and Conditions shall be subject to the review and approval of the Town attorney for consistency with the terms of this Agreement prior to the recording thereof, and which Declaration shall provide as follows:

10.5.1 The Owners of each Unit shall be liable to the Town for the timely payment of thirty (30) consecutive Annual Unit Payments relating to that particular Unit, as are specified in this Agreement and Exhibit 10 (Schedule Of Consideration to The Town) to this Agreement, each of which payments shall be due and payable on July 1 of each year, beginning on July 1 next following the date on which the occupancy permit is issued by the Town for such Unit.

10.5.2 The dollar amount of the Annual Unit Payment due from the Owners of each Unit shall be adjusted in the even numbered years, in accordance with the terms of this

Agreement and Exhibit 10, based on the change in the C.P.I. from April 2004 to April of the last even-numbered year prior to the due date of the Annual Unit Payment.

10.5.3 The Annual Unit Payments may be billed to the Owners 75 days before they are due and payable, provided that the due date is indicated on the bill.

10.5.4 An Annual Unit Payment that has not been paid in full and received by the Town or its billing authority on or before the later of 30 days after the date of the bill, or July 31 of the year for which the Annual Unit Payment applies, shall bear late charges and interest to the extent permitted by law on the unpaid balance of an Annual Unit Payment, which shall be payable beginning on July 1 of the year for which the Annual Unit Payment applies. The late charges shall be at the same rate, and on all other terms, that were in effect at the St. Michaels Bank, or its successor, on the first banking day of April of the year in which the Annual Unit Payment is due, for its consumer loan customers. The interest payable on such unpaid balance of the Annual Unit Payment shall be at prime rate plus two (2.0) percent; prime rate being the interest rate in effect at the St. Michaels Bank, or its successor, on the first banking day of April of the year in which the Annual Unit Payment is due, for its commercial customers. If any of these late charges or interest rates exceed the amount permitted by applicable law relating to the annual Unit Payments, then such charges and amounts shall be reduced to the maximum amount permitted by law.

10.5.5 At the sole discretion of the Town, upon written instruction by resolution of a majority of the Town Commissioners, which instruction may be rescinded and renewed by the Town Commissioners from time-to-time, the HOA shall have the duty to bill to and collect from the Unit Owners the Annual Unit Payments that are due to be paid by the Unit Owners to the Town. Such instruction from the Town to the HOA shall continue in effect, from year to year, unless and until rescinded. If the Town does not authorize the HOA to bill and collect the Annual Unit Payments, then the Town may perform such billing and collection itself, or delegate such duties to a third person.

10.5.5.1 The HOA shall promptly furnish to the Town a copy of all bills for the Annual Unit Payments that were sent by the HOA to the Unit Owners, which bills shall include: (1) date of the bill; (2) name and address to whom the bill was sent; (3) the address or other information to identify the Unit to which the bill applies; (4) the sequential number of the years which the Owner of the Unit has been billed for Annual Unit Payments; (5) the section and paragraph reference in the authority in the Declaration of Covenants, Restrictions and Conditions for the Annual Unit Payments; (6) the base amount of the Annual Unit Payment, as if it had been billed for payment in July of 2004 ($1,000 per Unit); (7) the adjustment in the amount billed based on the change in the C.P.I. from April 2004 to the C.P.I. of the last April of an even-numbered year before the Annual Unit Payment is due; (8) the date the payment is due; (9) the name of the payee and the address to where the payment should be sent; and (10) the fact that late charges and interest to the extent permitted by law on the unpaid balance of an Annual Unit Payment shall be payable beginning on July 1 of the year for which the Annual

Unit Payment applies if the amount due is not received and paid in full on or before the later of 30 days after the date of the bill or July 31 of the year for which the Annual Unit Payment applies. In addition, the HOA shall promptly after each billing furnish to the Town an accounting of the total billing, to include the total amount billed, the base amount billed ($1,000 per Unit) and the additional amount billed based on the change in C.P.I. since April 2004. The HOA shall be liable for all errors that it commits in the billing and collection process, including the failure to keep accurate records that frustrates any effort by the Town to bill or collect Annual Unit Payments, or any interest or late charges due thereon.

10.5.5.2 If the HOA has been instructed to bill and collect the Annual Unit Payments, the Town shall have no duty to inform the HOA of the change in the C.P.I., the change in the amount of the Annual Unit Payments as the result of the change in the C.P.I., or that the change in the C.P.I. must be billed to the Owners as part of the Annual Unit Payments. Nevertheless, if the HOA has been instructed by the Town to bill the Annual Unit Payments and fails to bill the correct dollar amount of the Annual Unit Payments to include the change in dollar amount based on the change in the C.P.I. as provided in this Agreement and Exhibit 10 hereto, then the HOA shall be directly liable to the Town for any deficiency in the amount billed and collected by the HOA as the result of the failure of the HOA to bill the correct dollar amount to the Unit Owners.

10.5.5.3 If the HOA collects Annual Unit Payments for the Town, the HOA shall remit to the Town, not less frequently than monthly on or before the first day of each month, all payments of Annual Unit Payments received since the last time such receipts were remitted to the Town. All such remittances shall be accompanied by an accounting of the receipts remitted, including, for each payment received: (1) the amount of the payment; (2) the Unit to which it applies; (3) the date the payment was received by the HOA; (4) the name and address of the payor; (5) any accounting received by the payor to indicate how the amount of the payment was arrived at, such as late charges or interest included; and (6) any other communication received with the payment. In addition, with each remittance the HOA shall furnish a list of each receipt and the total of the receipts being remitted.

10.5.5.4 If the HOA participates in the billing and/or collection of the Annual Unit Payments for the Town, then the HOA shall assist and cooperate with the Town, and participate, including providing testimony and documentary evidence, in any judicial action by the Town to establish, enforce or collect upon any lien, in which the billing and/or collection of the Annual Unit Payments by the HOA for the Town is an issue or factual predicate to the successful prosecution of the action by the Town.

10.5.6 The Owner(s) of a parcel of land which has been properly billed for an Annual Unit Payment pursuant to this Agreement (or the Declaration) that remains unpaid after the due date shall be in breach of this Agreement (and the Declaration) and shall be liable

for the costs incurred by the Town in collecting such unpaid balance, late charges and interest, including the cost of Town employee time, court costs, attorney fees on an hourly basis for actual time involved billed at normal hourly rates, and other relevant costs. It is acknowledged that unless the Town is able to process and litigate a number of such claims at the same time, that the cost of collection for a few delinquent accounts is likely to be relatively expensive in comparison to the amount sought to be collected, and that unless the Town is contractually entitled to collect the full amount of its collection costs from the Owners in breach of this Agreement (the Declaration), the relative cost of collection may be an incentive for Owners to refuse or delay payment of the Annual Unit Payments.

10.5.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a bill has been rendered for an Annual Unit Payment pursuant to Section 10.5 of this Agreement, and which such payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless an Annual Unit Payment (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto have remained unpaid for a period of at least six (6) months after the due date for such Annual Unit Payment.

10.6 Town Collateral Improvement Fund. The Town shall establish a special fund, titled the "Collateral Improvement Fund" by ordinance or charter amendment, as legally necessary.

10.6.1 Purposes and Use. The purposes and use of the Town Collateral Improvement Fund shall include, and shall be limited to, the following:

10.6.1.1 To replenishment of the Town's financial reserves that have been depleted by the extraordinary legal and other expenses incurred by the Town in processing, defending, mediating and settling the issues related to the Miles Point Property since 1998 to the date hereof;

10.6.1.2 To fund the Town General Fund for the excess (if any) of the cost of additional Town personnel, equipment, building space, and other costs incurred by the Town, caused by the development and occupation of the Subject Property (the "Additional Town Costs"), over the taxes and other governmental revenues reasonably anticipated to be generated by the development and occupation of the Subject Property and deposited into the Town General Fund (the "Additional Town Revenues"), by making annual transfers between the General Fund and the Town Collateral Improvement Fund as follows:

10.6.1.2.1 Annually, before the opening of each Town fiscal year, transfer from the Town Collateral Improvement Fund to the Town General Fund the sum of money equal to the excess (if any) of the reasonably anticipated dollar amount of expenditures from the Town General Fund during the coming fiscal year as the result of reasonably anticipated Additional Town Costs over the reasonably anticipated Additional Town Revenues during the same coming Town fiscal year; and

10.6.1.2.2 Annually, after the close of each immediately past Town fiscal year, make an adjusting transfer of funds between the Town Collateral Improvement Fund and the Town General Fund, so that the net dollar amount of the transfers into the Town General Fund from the Town Collateral Improvement Fund for the immediately past Town fiscal year is equal to the excess (if any) of the actual Additional Town Costs over the actual Additional Town Revenues for the same immediately past Town fiscal year;

10.6.1.3 Making street and other capital repairs that otherwise would have been made from 1998 through the date hereof but for the expenditures of Town for administrative processing, litigation and other matter relating to the Miles Point Property, in an amount equal to the cost the expenditure of the Town on such matters from 1998 through the date hereof, together with an adjustment based on the difference in the C.P.I. applied to such amount at April 2004 and the C.P.I. at the date(s) such amount is repaid to the Town general fund; and

10.6.1.4 Expenses and capital expenditures to benefit and perpetuate the character of the Town, including, but not limited to the following:

10.6.1.4.1 Perpetuation, promotion and improvement of the historical, architectural, and cultural character of the Town;

10.6.1.4.2 Promotion and/or improvement of the Town harbor and other navigable water in the Town, public waterfront property, maritime history, marine traffic, marine life and commercial marine activities in the Town;

10.6.1.4.3 Promotion and/or improvement of the tourism industry in the Town, including improvements to the streetscape in commercial areas frequented by tourists;

10.6.1.4.4 Projects and facilities to improve the traffic flow and parking facilities, including possible public transportation within and adjacent to the Town to reduce the volume of vehicles on Talbot Street;

10.6.1.4.5 Projects and facilities to integrate the Miles Point Project with the settled area of the Town through the acquisition, construction and maintenance of connecting routes for pedestrians, cyclists and motorists;

10.6.1.4.6 Promotion, protection and enhancement of the scenic beauty and environmental resources of the Town;

10.6.1.4.7 Promotion and support of cultural, educational and recreational activities for the citizens, including the youth, to improve the quality of life for the residents;

10.6.1.4.8 Projects to plan for and improve the future of the Town;

10.6.1.4.9 Acquisition, improvement and maintenance of parks and open spaces;

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

10.6.1.4.12 Other activities, projects, facilities and improvements having purposes of a similar nature, or intended to achieve benefits of a similar nature, in the Town or for the Town residents;

10.6.1.4.13 Providing Maintenance, repair, upkeep, and perpetuation of the above-described resources, improvements, facilities, projects and activities; and

10.6.1.4.14 Any other expenditures which the Town Commissioners deem to be in the best interest of the Town.

10.6.2 Procedures. All of the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part of, shall be deposited into, and shall be subject to the terms and conditions of, the Town Collateral Improvement Fund. The Town Collateral Improvement Fund shall be a part of the budgeted Town funds, subject to the same procedures, safeguards, and controls as the Town General Fund, and subject to the use, control and discretion of the Town Commissioners in the same manner as the Town General Fund, except as otherwise stated in this Section 10.6. The Town shall not be required to spend all or any of the collections and deposits of the Annual Unit Payments in the year in which they are collected. The Town may accumulate funds in the Collateral Improvement Fund account for future capital projects and for other purposes consistent with the purposes of the Collateral Improvement Fund and deemed appropriate by the Town Commissioners. The Collateral Improvement Fund shall be maintained as a separately and distinct fund from all other public funds available to the Town except to the extent that disbursements may be made from the Collateral Improvement Fund to the Town General Fund as set forth in Section 10.6.1.

10.7 Town General Fund. All payments received by the Town pursuant to this Agreement, which are not designated in this Agreement or in the Schedule Of Consideration To The Town for a specific use or designation that indicates an intent contrary to their being deposited in the Town General Fund, shall be deposited in, and shall become a part of, the Town General Fund.

10.8 Consumer Price Index ("C.P.I."). Due to the time that it is likely to take before all of the necessary Development Approvals could be granted, and the time over which the payments may be paid thereafter, the dollar amount of the payments that are shown on the Schedule Of Consideration To The Town, that are designated with the symbol "± C.P.I.", shall be subject to annual adjustment based on the annual changes in the C.P.I., using the C.P.I. for April 2004 as the base year. Therefore, the dollar amount of such payments subject to the C.P.I. that are payable in 2004 shall be in the dollar amount shown on the Consideration Chart. For each succeeding year after 2004 in which a payment subject to the C.P.I. is due, beginning in 2005 and in each succeeding year thereafter for a year in which such a designated payment is due, the dollar amount of such payment shall be adjusted (up or down) by: (1) dividing the dollar amount of that payment as shown on the Consideration Chart by the C.P.I. for the month of April 2004; and by then (2) multiplying the result of that calculation by the C.P.I. for the month of April of the even numbered year last preceding the date on which the payment is due according to the terms of this Agreement; (3) the result of which calculation is the dollar amount of the payment due to the Town with the C.P.I. adjustment.

10.9 Limitation on the Conveyance of Subdivided Lots. The parties hereto recognize the importance to the character of the Town that the rate of development of the Subject Property be limited. Therefore, as further consideration to the Town, the Developer hereby agrees, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the Owners and the HOA, that the herein described limitations shall apply to the Developer's right to convey subdivided lots within the Subject Property (whether for the Perry Cabin Land only, or to include both the Perry Cabin Land and the Hunteman Property) pursuant to the Development Plan.

10.9.1 The number of conveyances of subdivided lots that the Developer shall be permitted to convey with respect to the Subject Property (whether for the Perry Cabin Land only, or to include both the Perry Cabin Land and the Hunteman Property), shall be limited during each twelve (12) month cycle as follows (measured in any combination of dwelling units and/or live/work units) as described in the following chart (see next page):

Line	Time Period	Maximum Number of Lots Conveyed
1	During the first twelve (12) month period, beginning on the date of the first recorded conveyance of a subdivided lot, the number of lots that may be conveyed by right for the current year.	50

2	During each succeeding twelve (12) month period after the first twelve (12) month period, beginning on the anniversary of the date the first recorded conveyance pursuant to line 1 of this chart, the number of lots that may be conveyed by right for the current twelve month period (not carried over from a previous twelve month period.	40
3	If less than the maximum number of lots hereby permitted to be conveyed by this Section 10.9 during a previous twelve month period (50 during the first year, 40 during each subsequent year), according to lines 1 and 2 of this chart, are actually conveyed during that twelve month period, then the difference between the maximum number of lots permitted to be conveyed for that twelve month period and the number of lots actually conveyed during that twelve month period, may be carried over to subsequent years twelve month period, subject to the limitation on line 4 of this chart.	Unlimited
4	Notwithstanding the provisions and limitations stated in lines 1, 2 and 3of this chart, the maximum number of lots that may be conveyed during a single twelve month period, including the number of lots permitted to be conveyed that are allowed by line 3 of this chart to be carried over from previous years.	60

10.9.2 Developer's Report of Conveyances. The Developer shall be required to provide a written report to the Town, identifying each conveyance of a subdivided lot of the Subject Property , which report shall include: (a) identify the Owner(s) of each conveyed lot by full name(s) and current mailing address(s) as provided to the Maryland Department of Assessments & Taxation, (b) identify the lot by the number, block, section and otherwise, assigned to the lot within the Subject Property on the final recorded subdivision plat, and (c) the date of recordation of conveyance of the lot to the Owner.

10.9.3 Issuance of Building Permits. There is no limitation in this Agreement on the number of building permits that the Town will issue per year. The Town shall issue building permits requested by Owners of lots within the Subject Property in the same manner and within the same time frame as is the normal custom and practice of the Town, recognizing that normal time periods may vary depending upon the number of building permit requests that are pending and the number of employees of the Town that are available to process building permit requests. Notwithstanding the provisions of this Section 10.9.3 as further set forth in Section 14 of this Agreement (Defaults), the Town may refrain from issuing any building permits within the Subject Property if the Developer is in breach of its obligations under this Agreement.

10.9.4 Applications Submitted When A Payment Is Due And Unpaid. An application for a building permit relating to a Unit for which a payment, as described in the Schedule Of

Consideration To The Town is due but has not been paid in full to the Town, shall not be issued by the Town, and if said building permit is issued by the Town, upon written notification to the Owner by the Town, the Owner of the lot on the Subject Property to which the issued building permit relates shall not use or act on the issued building permit, and shall cease and desist all construction pursuant thereto, until payment of said amount due to the Town is paid in full.

10.9.5 For the purpose of this Section 10.9, the issuance of a building permit for construction on a lot, and the pouring of footers for construction on that same lot, shall be tantamount to the conveyance of a lot in counting the number of lots the Developer can convey within any twelve month period.

10.9.6 Developer Conveyances of Lots in Violation of Section 10.9.1. If the Developer violates the limitation on the number of lots that may be conveyed within a twelve (12) month period pursuant to Section 10.9.1, then the Town may take any of the following actions with respect to each request for a building permit relating to a lot conveyance that exceeds the limitation: (a) deny the application if the issuance thereof would violate a Town law; or (b) return the application to the applicant along with a written notice that: (i) conveyance of the lot for which a building permit is sought constitutes a violation of limits on the number of lot conveyances that are permitted during any one year, as provided by this Section 10.9.1 of this Agreement, to which the applicant, as an Owner or agent of an Owner, is bound; (ii) the first date of the next year on which building permit applications can be submitted; and (iii) that building permits will be issued in the order in which the applications therefore are received on or after the first date when such applications can be accepted by the Town. If a building permit is inadvertently issued in violation of a limitation of this Section 10.9.3, and is not recalled or cancelled, then such building permit shall be counted toward the limit for the next year after the inadvertent violating issuance is discovered.

10.10 Additional Units. It is not the intention of the parties to permit or consent to additional Units, beyond the number specified in Section 8.2 of this Agreement. However, if any Unit is ever constructed on the Subject Property, or if the use of any structure on the Subject Property is ever converted to one or more Units, such that there are more Units on the Subject Property than the total number of Units indicated in Section 8.2 of the this Agreement, then the Owner of each such additional Unit shall, immediately upon such construction or conversion, become liable to the Town, and pay to the Town, on a per Unit basis all of the same fees, charges and payments on a per Unit basis for each of the Units as provided on the Schedule Of Consideration To The Town (Exhibit 10). The due date for the payments relating to such converted Unit shall be based on the original date of conveyance, construction and occupancy of the structure, rather than based on the conversion date.

10.11 Security, Enforcement And Collection Of Consideration. The following provisions shall apply to the enforcement and collection by the Town of the Consideration granted to the Town and described in Section 10 (Consideration To The Town) and/or Exhibit 10 (Schedule Opf Consideration To The Town) of this Agreement:

10.11.1 Collection of Other Monetary Payments Due Pursuant To Section 10. Any monetary payments, other than Annual Unit Payments, due and payable to the Town pursuant to this Agreement that remain unpaid for thirty (30) days after the due date for such payment shall be subject to a late charge and interest on the unpaid balance at the same rate as is provided for unpaid Annual Unit Payments pursuant to Section 10.5 of this Agreement.

10.11.2 Withholding of Permits. Any other provision of this Agreement to the contrary notwithstanding, the Developer and the Owner(s) consent and agree that all applications, administrative processing, and permits relating to a lot or Unit on the Subject Property for which a payment or performance is due to the Town, as described in the Schedule Of Consideration To The Town, and which has not been satisfied, shall be returned to the applicant, postponed or denied by the Town until such payment or performance has been satisfied.

10.11.3 Declaration of Covenants, Restrictions and Conditions for the Project. The Declaration shall contain provisions to impose on the Developer, the HOA, and the Owners, respectively, the duties and responsibilities consistent with the terms of this Section 10 and with Exhibit 10 (Schedule Of Consideration To The Town) to this Agreement, including those perpetual duties that will extend beyond the life of this Agreement; designate the Town as a third-party beneficiary for the purpose of enforcing its roights contained therein pursuant to this Section 10; and give the Town the power to assess, lien and collect from the Owners costs incurred by the Town pursuant to this Section 10.

10.11.4 Town As Third-Party Beneficiary. The Commissioners Of St. Michaels, and its successors, are hereby irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose and with the right to enforce upon the Developer, the Owners and the HOA, their respective duties to the Town agreed to in this Agreement and/or in Exhibit 10 (Schedule Of Consideration to The Town) to this Agreement, with the Town Commissioners having the power to make all decisions and take all actions for the Town relating thereto to such enforcement. In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the same purpose and with the same rights. Town shall have the right to the cost of collection, including attorneys fees, related to such enforcement actions in the event that the Town prevails in any such action.

10.12 Amendment To Include The Hunteman Property. In the event that the Town agrees to amend this Agreement to add the Hunteman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment") within one (1) year after the date on which the Developer offers the Amendment as provided by Section 9.8 of this Agreement, thereby granting Qualified Vested Rights to the Hunteman Property as of the date of the Amendment, then as consideration therefore the Town shall have the irrevocable right to accept, and receive from the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property (as thus redefined), including the Owners, as part of the

Amendment, the additional consideration relating to the Hunteman Property as and when described in Exhibit 10(Schedule Of Consideration To The Town) hereto, and as further explained and/or modified by this Section 10, relative to the Subject Property (including the Hunteman Property) as thus defined in by the Amendment to this Agreement.

10.13 Upon written request by the Developer having an ownership interest in a Unit, or an Owner of a Unit, the Town shall issue a written estoppel certificate, indicating the status of the payments relating to such Unit that are both: (1) required by this Agreement to be paid to the Town; and (2) have been paid to the Town.

Section 11: Regulation by Other Public Agencies. The parties acknowledge that other public agencies, not within the control of Town, possess authority to regulate aspects of the development of the Subject Property separately from the Town, and that this Agreement does not limit the authority of such other public agencies. To the extent permitted by law, where the Town can reasonably do so without prejudicing its own independence of decision-making or other governmental duties, the Town shall reasonably cooperate with the Developer, at the Developer's expense, in support of any application by Developer to any other public agency for any permit or approval, which is required for the Project. Within fifteen (15) days of any request, Town shall provide to Developer or to such other public agencies information possessed by Town which is not confidential, privileged or the proper subject of discussion by the Town Commissioners in an executive session pursuant to the Maryland Public Meetings Act, and which is necessary for processing such applications.

Section 12. Public Facilities

Subject to the consideration stated in Section 10 of this Agreement, the Public Facilities (including Parks and Open Space) relating to the Development Plan for the Subject Property shall be developed pursuant to the terms and conditions set forth in the Public Facilities Agreement (Exhibit 4), which is incorporated herein by reference.

Section 13. Administration of Performance

13.1 Processing Cooperation and Assistance. To the extent permitted by law, the Town shall reasonably cooperate with the Developer, at the Developer' expense, in securing any and all entitlements, authorizations, utility connections, permits or approvals which may be required by any other governmental or quasi-governmental entity in connection with the Development of the Project or the Subject Property. Without limiting the foregoing, the Town shall reasonably cooperate with the Developer in any dealings with federal, state and other local governmental and quasi-governmental entities concerning issues affecting the Subject Property. At the Developer's expense, the Town shall keep the Developer fully informed, except where to do so would reveal confidential or privileged information, with respect to its communications with such agencies that could impact the development of the Subject Property.

13.2 Processing During Third Party Litigation. The filing of any Third Party lawsuit(s) against the Town and/or the Developer relating to this Agreement or to other development issues affecting any portion of the Subject Property or the Project shall not hinder, delay or stop the

development, processing or construction of the Project, approval of the Future Approvals, or issuance of ministerial permits or approvals, unless: (1) there is an applicable law providing to the contrary; or (2) the Third Party obtains a court order preventing the activity. However, the Developer acknowledges that the Developer may be proceeding at its own peril.

13.3 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between Town and Developer. During the Term of this Agreement, clarifications of details or specific procedures of this Agreement and the Development Plan and the Development Approvals may be appropriate with respect to the details of performance of Town and Developer. If and when, from time to time, during the terms of this Agreement, Town and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by Town and Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by Town and the Developer. Operating memoranda are not intended to, and cannot, constitute an amendment to this Agreement or allow a major modification to the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The Town Attorney shall be authorized, upon consultation with, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 6.5 (Amendment and Waiver). The authority to enter into such operating memoranda is hereby delegated to the Town Manager, and the Town Manager is hereby authorized to execute any operating memoranda hereunder without further action from the Planning Commission or Town Commissioners.

13.4 Good Faith Compliance Review

13.1 Notice of Non-Compliance; Cure Rights. If at the completion of any Periodic Review, as defined in Section 13.4.3 of this Agreement, the Town reasonably concludes, on the basis of substantial evidence, that Developer is not in good faith compliance with a specific substantive term or provision of this Agreement, then the Town may issue and deliver to the Developer a written Notice of Defaultas required by Section 14.3. Developer may cure any matter set forth by the Notice of Default within the period established by Section 14.

13.4.2 Limitation on Town's Right to Modify or Terminate Agreement. Town shall not take any action to terminate or modify this Agreement except upon substantial evidence showing a failure of Developer to perform a material duty or obligation under this Agreement which has not been cured by Developer as provided under Section 14.4 of this Agreement.

13.4.3 Failure of Periodic Review. The Town's failure to review, at least annually, compliance by the Developer with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a breach by any other Party of this Agreement.

Section 14: Default and Remedies.

14.1 In the event of a dispute arising from, or an alleged default or breach of, this Agreement all parties shall have the right to pursue an action for a declaratory judgment action, specific performance or termination of this Agreement. A party may also maintain an action to reform this Agreement should equitable circumstances merit reformation. Except as otherwise set forth in this Agreement, all other remedies, legal or equitable, are waived. All actions relating to this Agreement brought by, for or on behalf of the Town shall be brought by The Commissioners Of St. Michaels, a Maryland municipal corporation, and shall be directed solely by the Town Commissioners. All actions relating to this Agreement brought against the Town and/or the Planning Commission as an agency of the Town shall be brought solely against The Commissioners Of St. Michaels, a Maryland municipal corporation, and shall be defended solely at the direction of the Town Commissioners. Further, this Agreement is not intended to expand of limit the rights and remedies of the parties hereto, and their successors in interest, under the applicable land-use laws.

14.2 Developer Default; Additional Town Remedies. In the event Developer is in default under the terms of this Agreement, Town shall have the right:

14.2.1 To refuse processing of an application for, or the granting of any permit, approval or other land use entitlement for, development or construction of the Subject Property or portion thereof owned or controlled by Developer, including but not limited to the withholding of grading, excavation, building and occupancy permits; and/or

14.2.2 To sue for damages if the default relates to non-payment and/or non-performance of consideration due and owing to the Town pursuant to consideration to the Town (Section 10) and the Schedule of Consideration to the Town (Exhibit 10).

14.3 Notice of Default or Breach. In the event a party to this Agreement believes that another party is in breach or default of an obligation under this Agreement, said party shall provide a written Notice of Default and shall deliver said Notice of Default pursuant to the Notices provision of Section 6.6.

14.4 Opportunity to Cure. A party in receipt of a Notice of Default shall have thirty (30) days to cure a default before the non-defaulting party may institute any legal action or terminate this Agreement pursuant to a breach or default. If a breach or default has not been cured within the thirty (30) day period, the non-defaulting party may pursue all remedies permitted under this Agreement.

Section 15: Mortgagee Protection; Certain Rights of Cure.

This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Subject Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Subject Property or its development. Town acknowledges that the lenders providing such

financing may require certain Agreement modifications and agrees upon request, from time to time, to discuss with Developer and representatives of such lenders to negotiate in good faith any such request for modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed- in-lieu of foreclosure on the Subject Property shall be entitled to the following rights and privileges:

15.1 Mortgagee Protection. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Subject Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform the Developer Obligations, or to guarantee such performance, prior to taking title to all or a portion of the Subject Property.

15.2 Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Subject Property, or any part thereof, shall be entitled to receive from the Town a copy of any Notice of Violation delivered to the Developer, provided that Mortgagee has submitted a request in writing to Town in the manner specified herein for giving notices and the notice makes specific reference to this subsection. If Town receives such a request from a Mortgagee, Town shall provide Mortgagee with a copy of any Notice of Violation that is sent to Developer concurrently with the sending of the Notice to Developer.

15.3 Mortgagee's Time to Cure. The Town shall provide a copy of any Notice of Violation to the Mortgagee within ten (10) days of sending the Notice of Violation to the Developer. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such Notice of Violation.

15.4 Cure Rights. Any Mortgagee who takes title to all of the Subject Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of the Developer under this Agreement as to the Subject Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of the Developer arising prior to acquisition of title to the Subject Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or non-monetary obligations due under this Agreement for the Subject Property, or portion thereof acquired by such Mortgagee, have been satisfied.

Section 16: Estoppel Certificates.

Either party may at any time, and from time to time, deliver written notice to the other party requesting that the other party certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and is a binding obligation of the parties, (ii) this Agreement has not been amended or, if amended, identifying the each amendment, and (iii) the requesting party is not in breach of this Agreement or, if in default, the nature and extent of each default. A party shall not rely upon the estoppel certificate of another party to this Agreement

against whom it would be used unless that certificate is signed by such party against whom it would be used and its attorney.

Section 17: Conflicts of Laws, Rules, Regulations

17.1 Conflict with County, State or Federal Laws or Action of Other Governmental Jurisdiction. In the event that any County, State or federal law or regulation enacted after the Effective Date, or any governmental action, other than an action by Town, taken after the Effective Date, prevents or precludes compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended by Town as may be necessary to comply with such County, State or federal law or regulation or non-Town governmental action; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws, regulations or non-Town governmental action and to the extent such laws, regulations or non-Town governmental action do not render such remaining provisions impractical to enforce. Town also agrees to process Developer's proposed changes to the Project as may be necessary to comply with such County, State or federal law and to process such proposed Project changes in accordance with Town procedures and findings.

17.2. Notice. Neither party shall claim that a conflict, as described in Section17.1, exists, unless that party has given the other party at least thirty (30) days written notice of the conflict. The notice shall identify the law, regulation or non-Town governmental action, the date the law or regulation was enacted or the date the non-Town governmental action was taken, and the manner in which the law, regulation or non-Town governmental action conflicts with one or more provisions of this Agreement.

17.3 Modification Conference. Within thirty (30) days after notice is given as provided in Section 20.2, Town staff and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such law, regulation or non-Town governmental action. In such negotiations, Town and Developer agree to preserve the terms of this Agreement, including the Developer Obligations and the rights of Developer as derived from this Agreement, to the maximum feasible extent while resolving the conflict. Town and Developer agree to cooperate with each other in attempting to resolve the conflict in a manner that minimizes any financial impact of the conflict upon Developer and Town.

17.4 Town Consideration. Within thirty (30) days after the modification conference, regardless of whether the parties reach an agreement on the effect of such law or regulation upon this Agreement, the matter shall be scheduled for hearing before the Town. Notice of such hearing shall be given pursuant to the Development Agreement Statutes and Enabling Ordinance. The Town, at such hearing, shall consider the exact modification or suspension that shall be necessitated by such law, regulation or non-Town governmental action. Developer shall have the right to offer oral and written testimony at the hearing. No modification or suspension of this Agreement shall be effective unless approved by the affirmative vote of not less than a majority of the authorized voting members of the Town and by Developer.

17.5 Cooperation in Securing Permits or Approvals. Provided Town and Developer agree to a modification or suspension of this Agreement pursuant to this Section17, Town shall use its best efforts to assist Developer in the timely securing of any permits or approvals which may be required as a result of such modifications to, or suspensions of, all or any part of this Agreement.

17.6 Challenge Regarding New Law or Regulation. Developer and/or Town shall have the right to challenge by appropriate judicial proceedings any such new law, regulation or non-Town governmental action preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

17.7 Tolling of Term during Suspension. The term of this Agreement, as provided in this Section17, shall be tolled during the period that any suspension of the Agreement imposed by Section 17 is in full force and effect.

17.8 Third Party Litigation Regarding Agreement. In the event any legal action or special proceeding is commenced by any person or entity other than a Party to this Agreement, challenging this Agreement or any provision herein, the parties agree to cooperate with each other in good faith to defend said lawsuit. Notwithstanding the foregoing, Town may elect to tender the defense of any lawsuit filed by a third person or entity to Developer, in such event, Developer shall hold the Town harmless from and defend the Town from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. The Developer shall not settle any lawsuit on grounds which include, but are not limited to non-monetary relief without the consent of the Town. The Town shall act in good faith, and shall not unreasonably withhold consent to settle.

Section 18: Miscellaneous Provisions

18.1 Recordation of Agreement. This Agreement shall be recorded in the County Land Records within twenty (20) days of the Effective Date of this Agreement at the Developer's expense.

18.2 Entire Agreement. Except as to representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, as described in Section 10.3 of this Agreement, this Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

18.3 Invalidity, Unenforceability, Severability, And Savings Clause.

18.3.1 Savings Clause - Annual Unit Payments. If the number and/or duration of the Annual Unit Payments would cause a court of competent jurisdiction to render or

declare such Payments and/or this Agreement to be invalid, void or unenforceable for any reason other than being in violation of the rule against perpetuities, then the number and/or duration of such Payments that would cause a court of competent jurisdiction to render or declare such Payments and/or this Agreement to be invalid, void or unenforceable shall automatically, and by the terms of this Agreement, be reduced to the largest number and/or the longest duration that would not cause such court to render or declare such Annual Unit Payments and/or this Agreement to be invalid, void or unenforceable, thereby saving the validity and enforceability of the Annual Unit Payments and this Agreement.

18.3.2 Savings Clause. If any term(s) and/or provision(s) of this Agreement would cause a court of competent jurisdiction to render or declare this Agreement, or such offending term(s) and/or provision(s), to be in violation of the rule against perpetuities, then such offending term(s) and/or provision(s) of this Agreement that would cause a court of competent jurisdiction to render or declare this Agreement to be in violation of the rule against perpetuities shall automatically, and by the terms of this Agreement, be amended as follows:

18.3.2.1 First, reduce the duration or number of years of the such offending term(s) and/or provision(s) only to the extent necessary such that they, individually or in combination, do not violate the rule against perpetuities; and

18.3.2.2 Second, if the provisions of Section18.3.2.1 of this Agreement are not sufficient to save the validity and enforceability of the offending term(s) and/or provision(s) of this Agreement, then such offending term(s) and/or provision(s) shall be severed and deleted from this Agreement only to the extent necessary to save the validity and enforceability of this Agreement.

18.3.3 If, after applying Sections 18.3.1 and 18.3.2 of this Agreement, any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect and, if possible, the parties shall amend this Agreement so as to effect the original intention of the parties. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Agreement by providing written notice thereof to the Town.

18.4 Governing Law. This Agreement and the actions of the parties hereunder shall in all respects be governed by and construed in accordance with the laws of the State of Maryland.

18.5 Incorporation of Exhibits and Other Documents by Reference. All **exhibits** and other documents attached to or referred to in this Agreement are incorporated herein by reference As additional terms of this Agreement.

18.6 Cross-Reference; Headings. When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or **exhibit**, such reference shall be deemed to be to this Agreement unless otherwise indicated. The headings and captions used in this Agreement are for convenience and ease of reference only and shall be used to interpret, expand or limit the terms of this Agreement.

18.7 Rules of Construction and Interpretation. Any term used in an exhibit hereto shall have the meaning as in this Agreement unless otherwise defined in such exhibit. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

18.8 No Party Deemed Drafter. The final language of this Agreement is the result of extensive negotiations. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the parties agree that none of them shall be deemed to be the drafter thereof.

18.9 Business Days. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

18.10 Time of Essence. Time is of the essence in all things pertaining to the performance of this Agreement.

18.11 Consent. Where a consent or approval of either party is required or necessary under this Agreement, such consent or approval shall not be unreasonable withheld.

18.12 Waivers. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party will have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the Town or Developer, as the case may be, as set forth by Section 0. Any such written waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

18.13 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

18.14 Third-Party Beneficiaries. The Town is expressly intended as third party beneficiaries of this Agreement, including, but not limited to, the Consideration To The Town set forth in Section 10 hereof.

18.16 Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to this Agreement against another for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys fees, litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof.

18.17 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

18.18 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

18.18 Project as a Private Undertaking. It is understood and agreed by and between the parties hereto that: (a) the Project is a private development; (b) neither party is acting as the agent of the other in any respect hereunder; (c) each party is an independent contracting entity with respect to the provisions of this Agreement; (d) Town has no interest in or responsibilities for any improvements to the Subject Property until Town accepts the improvements pursuant to the provisions of this Agreement or in connection with any subdivision approvals; and (e) Developer shall have the full power and exclusive control of the Subject Property subject to the obligations of Developer set forth in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement.

18.20 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such instruments and other writings and take such actions as may be reasonably necessary to carry out the intent or fulfill the provisions of this Agreement or to evidence or consummate any transaction contemplated by this Agreement. Without in any manner limiting the specific rights and obligations set forth in this agreement, the parties hereby declare their intention to cooperate with each other and affecting the terms of this agreement, and to coordinate the performance of their respective obligations under the terms of this agreement.

18.21 Covenant of Good Faith and Fair Dealing. Neither party shall do anything that shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement. Each party shall refrain from doing anything that would render its performance under this Agreement impossible or impracticable. Each party shall do everything which this Agreement contemplates that such party shall do to accomplish the intent and to fulfill the provisions of this Agreement.

18.22 No Obligation to Develop. It is understood that Developer's development of the Project depends upon a number of factors including, but not limited to, the housing and

commercial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement. However, the Developer(s), for themselves and their successors, collectively acknowledge and agree as follows: (1) that all Development Approvals contemplated by this Agreement are exclusive to the Development Plan contemplated by this Agreement; (2) that they shall relinquish all such Development Approvals that are not used for and in connection with the Development Plan; and (3) they waive all rights and claims to an impermissible change of mind with respect to any future application to the Town for any land-use permit or approval for the Subject Property; so that (4) it is intended and agreed that neither party hereto shall gain any advantage over the other with regard to any future use of the Subject Property other than the Development Plan.

18.23 Rule Against Perpetuities. If any of the covenants, restrictions or other provisions of this Agreement shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

IN WITNESS WHEREOF, Developer and Town have executed this Agreement on the dates set *forth below*.

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

By: _____ 2-16-04
George A. Valanos, President Date

ST. MICHAELS POINT, L.L.C.

By: _____ 2-16-04
George A. Valanos, Managing Member Date

MILES POINT PROPERTY, LLC

By: _____ 2-16-04
George A. Valanos, Managing Member Date

TND DEVELOPMENT, INC.

By: 2-16-04
George A. Valanos, President Date

TOWN:
THE COMMISSIONERS OF ST. MICHAELS

By: St. Michaels Planning Commission

By: 2-19-04
Frederick N. Megahan, Chairman Date

Cheril S. Thomas, Town Manager

APPROVED AS TO FORM:

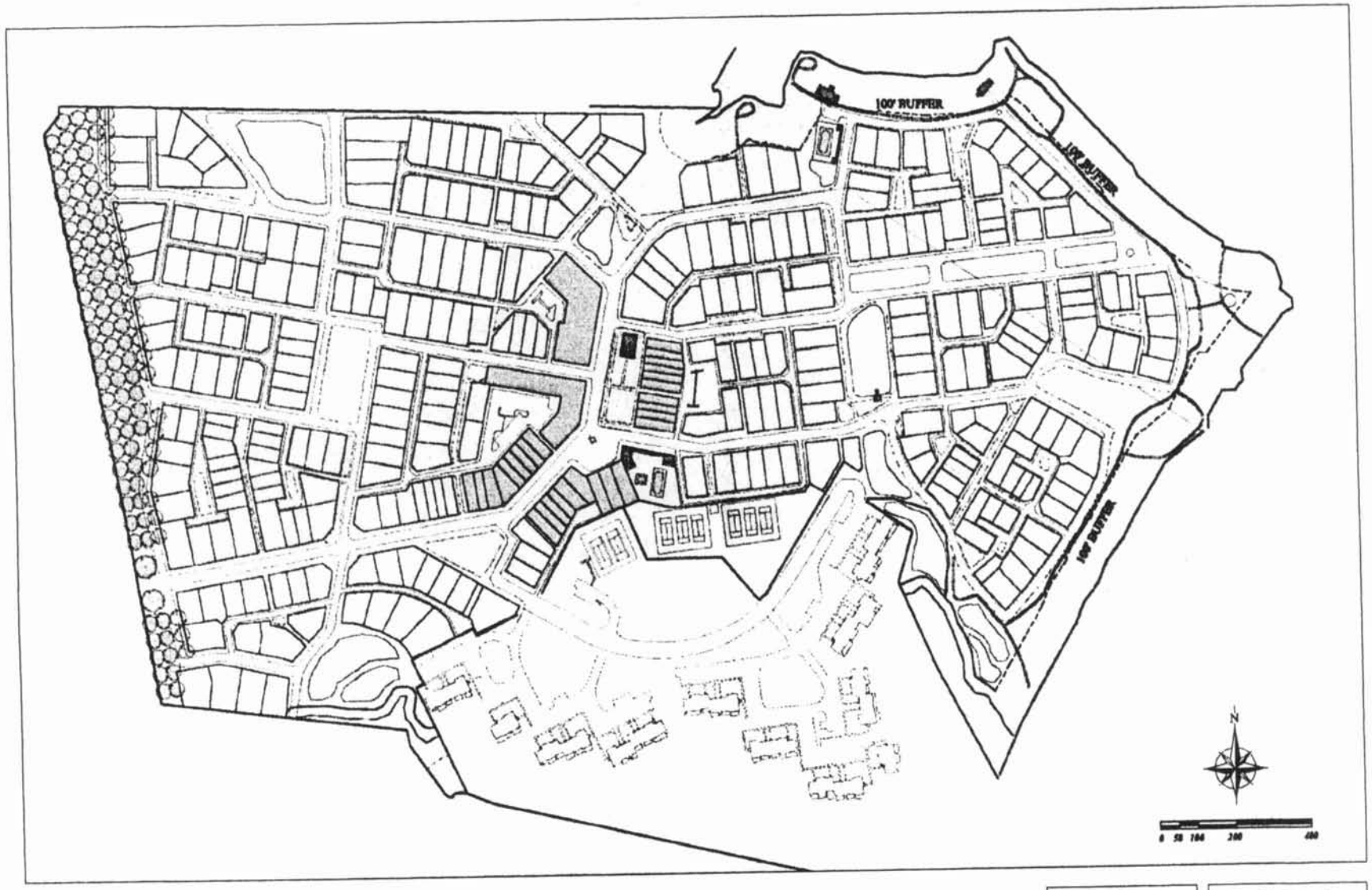
By: H. Michael Hickson
Town Attorney

By: Richard A. DeTar
Attorney for the Developer(s)

Exhibit #1

St. Michaels, Maryland

Miles Point
Concept Plan



KEY

Center Residential, Commercial, Inc

Central Residential

Edge Residential

Civic Structure

Miles Point Concept Plan
St. Michaels, Maryland
December 23, 2005

Duany Plater-Zyberk & Company

LIBER 1225 FOLIO 467

Exhibit "C"

MILES POINT

TOWN OF ST. MICHAELS, MD

THE MIDLAND COMPANIES

DEVELOPER

DUANY PLATER-ZYBERK & COMPANY

TOWN PLANNERS

ANDRES DUANY, LUDWIG FONTALVO-ABELLO, ANTHEA GIANNIOTES, JAY GRAHAM, MELISSA KIMBALL, OSCAR MACHADO, BARRY MAHAFFEY, GARY MODJESKA, MICHAEL MORRISSEY, JORGE PLANAS, DAVID SAN ROMAN, GALINA TAHCHIEVA, GEORGE VALANOS, MIKE WATKINS

LIBER 1225 FOLIO 468

General Notes

This Design Code was conceived to guide the development of Miles Point.

The provisions of the Design Code are derived from the vernacular architectural and planning traditions of the region. These have been modified to incorporate technical, social and environmental progress.

This Design Code is enacted by reference within the Community Association Documents.

This Design Code applies to the design of all the private buildings and landscapes. Private buildings shall be approved by the Miles Point Architect (MPA) for the compliance with its requirements.

Public and Civic buildings are exempted from the provisions of this Code; their design is to be negiotiated with the Miles Point Architect (MPA).

Variances to this Code may be granted on the basis of unusual programmatic requirements, peculiar site constraints, hardship, or architectural merit as determined by the Miles Point Architect (MPA).

Local building code(s) shall take precedence over the provisions of this Design Code.

The Design Code consists of five interrelated documents:

The Regulating Plan

The Thoroughfare Standards

The Urban Standards

The Architectural Standards

The Landscape Standards

Following these five documents is the Design Review Policy and Procedure that will be used to enforce the Design Code.

The Regulating Plan

A drawing which maps with precision the Neighborhood Edge, General, and Center Zones. The Regulating Plan shows the approximate form and locations of Open Spaces such as parks, squares and plazas as well as the approximate trajectories of the thoroughfares.

The Thoroughfare Types

A matrix of drawings, specifications, and dimensions which assemble vehicular and pedestrian ways into sets specialized in both capacity and character. The Thoroughfares which range from rural to urban are assigned to appropriate locations in the Thoroughfare Types Plan.

The Urban Standards

A matrix of text and drawings that regulates those aspects of private building which affect the public realm. The Urban Standards vary according to the zoning categories of the Regulating Plan. The Urban Standards define the streetscape and encourage the provision of certain building elements which influence social behavior, such as stoops and porches. They also encourage certain building types in order to serve a full range of age, income and occupation. The Urban Standards specify the frontage types and permitted uses.

The Architectural Standards

A matrix of text that specifies the materials and configurations permitted for walls, attachments, roofs, openings and storefronts. The Architectural Standards are intended to produce visual compatibility among disparate building types. They relate the new buildings to the vernacular building traditions of the region, thus inheriting a suitable response to climate.

The Landscape Standards

A list of plant species with instructions regarding their location, planting pattern, and maintenance. The lists are separated into those pertaining to public Open Spaces and Thoroughfares and those pertaining to Private Lots at frontage yards. The Public and Private planting lists are coordinated towards achieving a visually coherent reforestation of the urban fabric. The selection and disposition of the species is intended to support the rural to urban transect character of each zone and to coalesce the private and public landscaping towards an ecosystem harmonious with the region.

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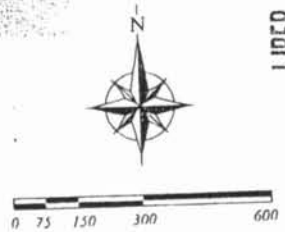
FOLIO 5 LBK 1 25



LIBER 1225 FOLIO 470

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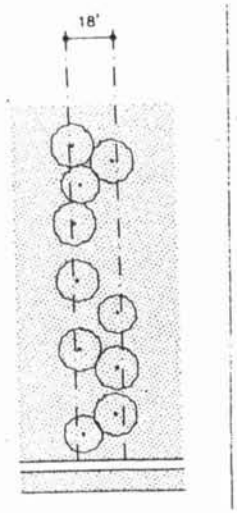

Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-0

Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	N/A
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	Varies
Planter Type	Continuous
Tree Pattern	Varied pattern
Tree Species	A mix of: American Holly, Eastern Red Cedar, Red Maple, Serviceberry, Sourwood, Swamp Bay Magnolia
Ground Cover	Lawn

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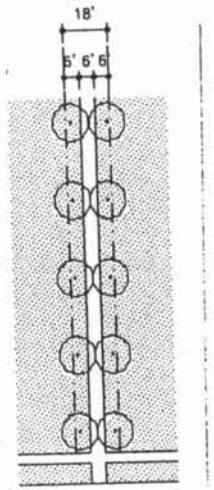
Revision Date: August 27, 1998

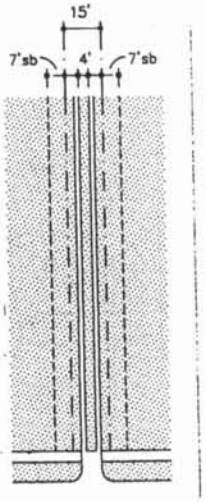


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-6a has trees on the public side only.

PS-18-6

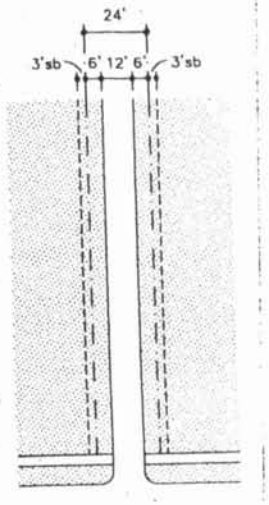
Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	6 ft.
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Passages may be different and any one of: American Holly, Crapemyrtle, Golden Raintree, Yellowwood
Ground Cover	Lawn



Lanes service the rear of lots and are rural in character having only a pair of narrow, unpaved ruts that may or may not be centered in the ROW.

LA-15-4

Precedent	Harrison Alley
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	15 ft.
Pavement Width	2 gravel ruts at 2 ft. each
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn

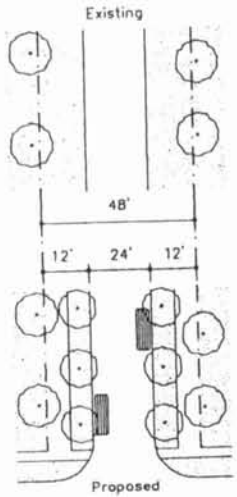


Alleys service the rear of lots nearest the Neighborhood Center where the density is greatest and uses may be mixed. They are more urban in character with a strip of paving at the center and shoulders that may or may not be paved.

AL-24-12

Precedent	N/A
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	24 ft.
Pavement Width	12 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn

LIBER 1225 FOLIO 471



Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

RD-48-24

Precendent	Perry Cabin Drive
Type	Road
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	48 ft.
Pavement Width	24 ft.
Curb Type	Header Curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	8.8 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft. and 6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 25 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

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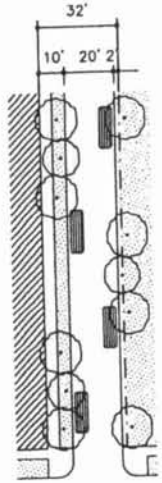
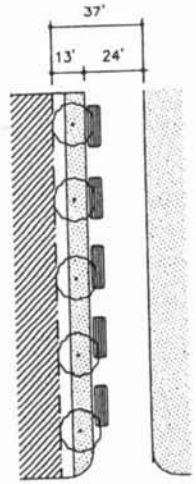


Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

RD-32-20

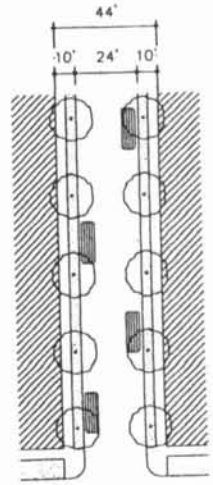
Precendent	Grace Street
Type	Small road
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	32 ft.
Pavement Width	20 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	15 m.p.h.
Pedestrian Crossing Time	3.9 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Swale
Tree Pattern	Clusters at 30 ft. on center average
Tree Species	Scarlet Oak
Ground Cover	Lawn



Drives define the edge between an urbanized and a natural condition, usually along a waterfront, a park, or a promontory. One side has sidewalks and buildings, the other side is more rural in character with natural-istic planting and rural detailing.

DR-37-24

Precendent	The Strand
Type	Drive
Movement	Slow movement
Traffic Lanes	Two way
Parking Lanes	One side
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	Swale and 4" header curb at planter
Curb Radius	10 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	6.5 seconds
Sidewalk Width	5 ft.
Planter Width	8 ft.
Planter Type	Continuous
Tree Pattern	30 ft. on center average
Tree Species	Inland: Red Maple; Waterfront: to be determined
Ground Cover	Lawn

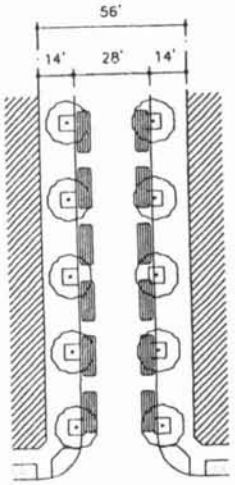


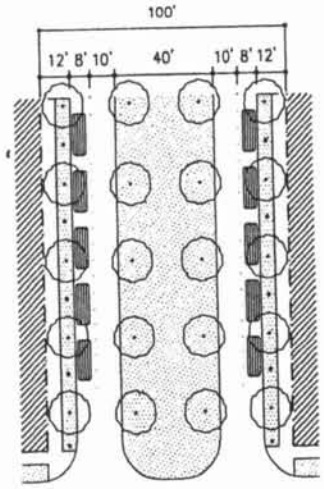
Streets are appropriate for residential buildings at the Neighborhood Center and General. A single species of tree should be planted in steady alignment in continuous planting strips. A vertical canopy is necessary to avoid building facades at shallow frontage setbacks.

ST-44-24

Precedent	None
Type	Small residential street
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	4" Header curb
Curb Radius	5 ft.
Vehicular Design Speed	20 m.p.h.
Pedestrian Crossing Time	5.5 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Willow Oak
Ground Cover	Lawn

FOLIO 5 27 1 4 0 7 0 3





Commercial streets are appropriate for commercial buildings at the Neighborhood Center. Trees are confined by individual planters, creating a sidewalk of maximum width, with areas accommodating street furniture. Clear trunks and high canopies are necessary to avoid interference with shopfronts, signage and awnings.

CS-56-28

Precedent	Talbot Street
Type	Commercial street
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	54 ft.
Pavement Width	28 ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	5 seconds
Sidewalk Width	9 ft.
Planter Width	5 ft.
Planter Type	Individual, except at arcade
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

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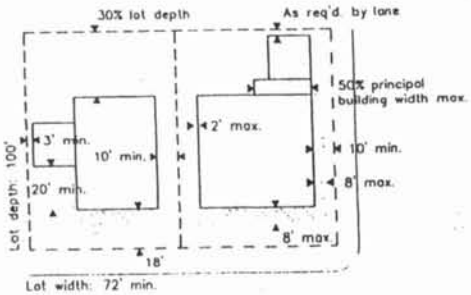
Avenue is a local, slow-movement thoroughfare suitable for General, Center, and Core Urban Zones. Avenues are appropriate as approaches to civic buildings. In residential areas, the median may be wider and planted naturalistically to become greenway. The streetscape details may vary as the avenue passes from one zone to another.

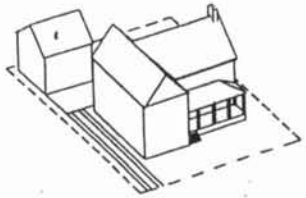
AV-100-36

Precedent	
Type	Avenue
Movement	Speed movement
Traffic Lanes	Two ways
Parking Lanes	One sides
R.O.W. Width	100 ft.
Pavement Width	18 ft. + 18ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	10 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft.
Planter Type	Continuous center, Individual sides
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

LIBER 1225 FOLIO 473

NEIGHBORHOOD EDGE - LARGE HOUSE

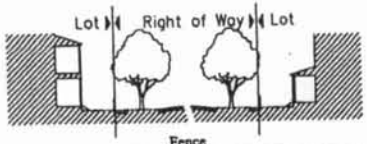




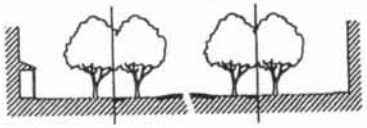
Large House is a single-family residence on its own large lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	72 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



Fence



Common Lawn

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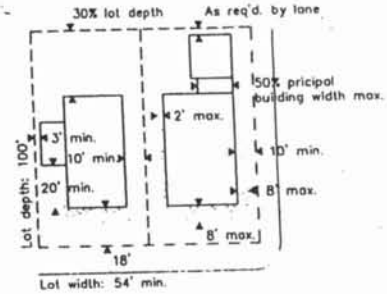
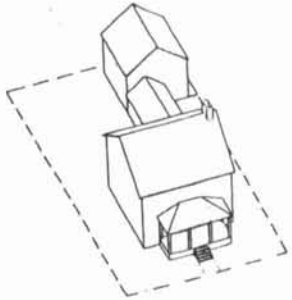
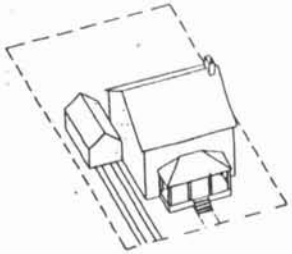
NEIGHBORHOOD EDGE - HOUSE



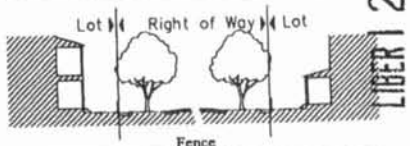




A House is a single-family residence on its own lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 54 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines are a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	54 ft.min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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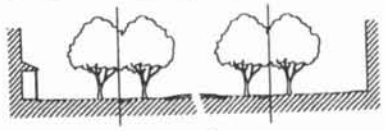
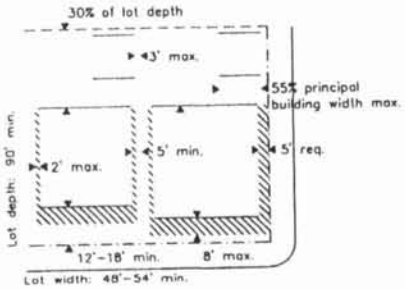
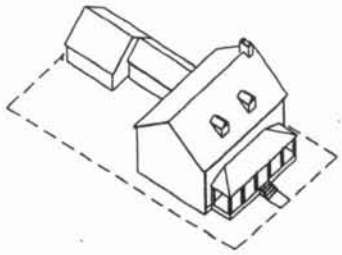


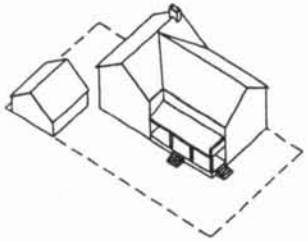
Common Lawn

LIBER 12 25 FOLIO 4 74

NEIGHBORHOOD GENERAL - HOUSE



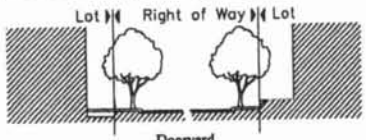




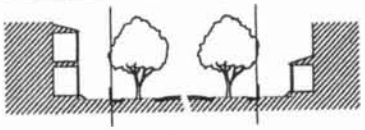
A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 55% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	48 - 54 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	5 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



Dooryard



Fence

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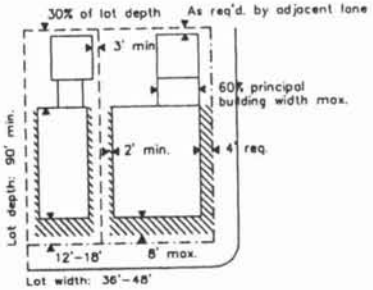
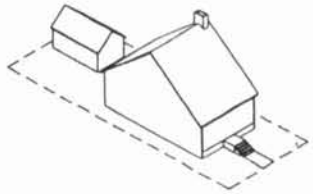
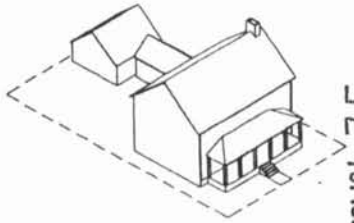
NEIGHBORHOOD GENERAL - COTTAGE



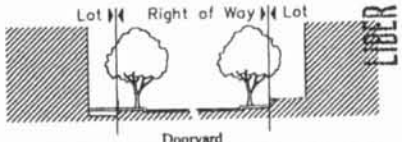




A Cottage is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 30 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	30 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	3 stories max.
of first floor above grade	2.5 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types

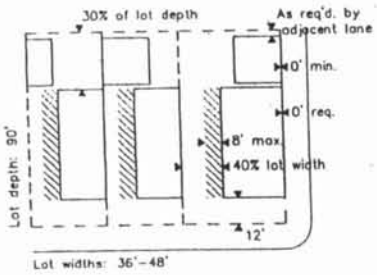


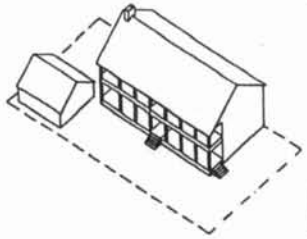
Dooryard

Fence

LIBER 1225 FOLIO 475

NEIGHBORHOOD GENERAL - SIDE YARD HOUSE

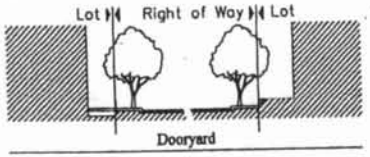




Side yard House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from the North or West side, and a minimum of 40% of the lot depth from the South or East side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	36 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 ft.
at building side	0 ft. & 40% of the lot min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	60% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



Dooryard

Fence

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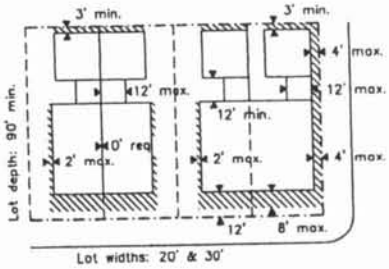
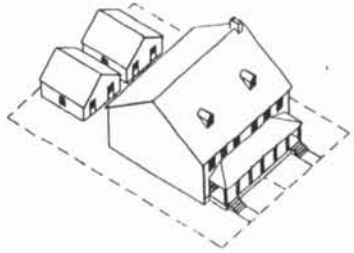
NEIGHBORHOOD GENERAL - DUPLEX HOUSE

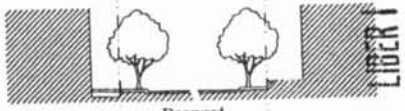




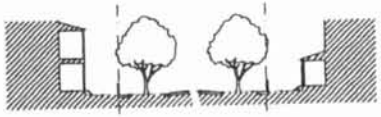
A Duplex House is two units sharing a lot, each with its yard. At corner locations, each duplex can have its own entry. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from one side, 0 feet or 4 feet minimum from the other, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 ft.
at building side	0 ft. & 0 ft. or 4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	4 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



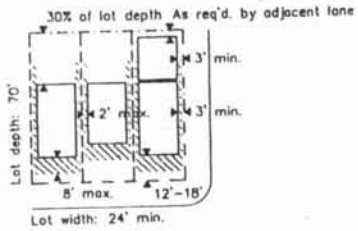
Dooryard



Fence

LIBER 12225 FOLIO 476

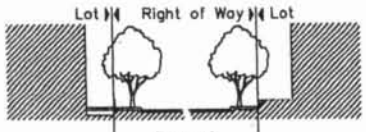
NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE



Rosewalk Cottage is a single-family residence on its own lot, with frontage on a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal building measured from the lot lines are 6-12 feet from the front, a minimum of 3 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 70 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	6 -12 ft.
at building side	3 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max., 3 ft. max. at corner lots
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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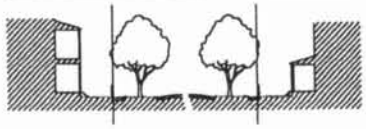

Fence

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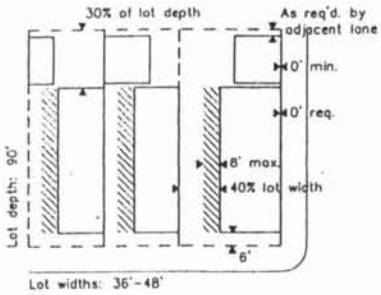
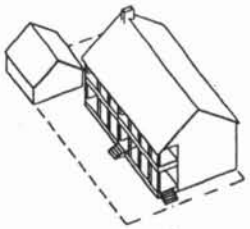
LIBER 1225 FOLIO 477

NEIGHBORHOOD CENTER - SIDE YARD HOUSE

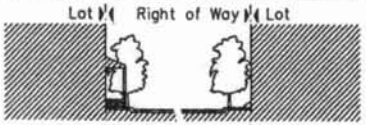




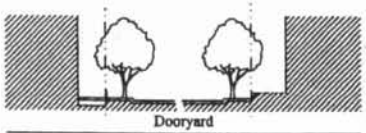
Side yard House is a single-family residence on its own lot. Within the Neighborhood Center this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from the North or West side, a minimum of 40% of the lot width from the South or East side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	36 - 48 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. & 40% of the lot min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	6 ft. max.
at building side	8 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



Porch or Stoop



Dooryard

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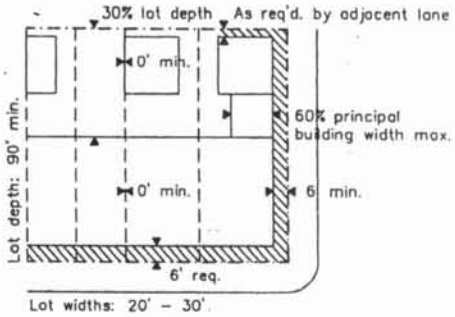
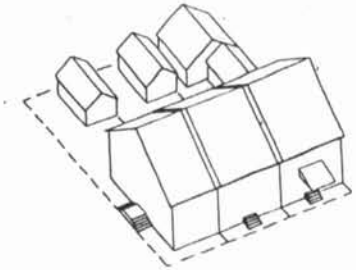
NEIGHBORHOOD CENTER - ROW HOUSE

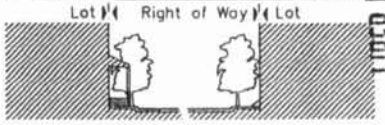




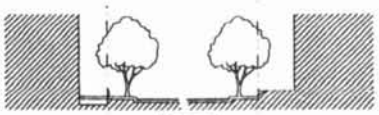
A Row House is a single-family attached residence on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from one side, 0 feet or 6 feet minimum from the other, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. & 0 ft. or 6 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage	6 ft. max.
at building side	0 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



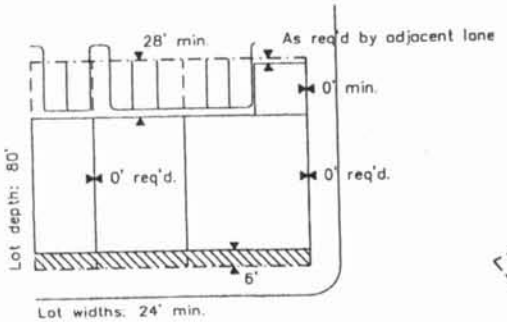
Stoop

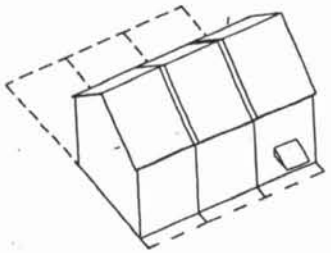


Dooryard

LIBER 1225 FOLIO 478

NEIGHBORHOOD CENTER - SHOP/HOUSE

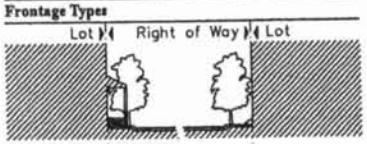




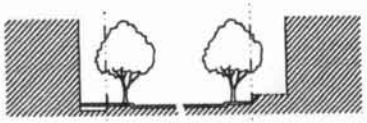
Shop/ House is a single building which may be residential and/or commercial, and may be attached to others, on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 24 feet in width by approximately 80 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from each side, and a minimum of 28 feet from the rear. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. An outbuilding containing a garage (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of three and one-half stories in height. Outbuildings may be a maximum of one story in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 80 ft.
Lot coverage by roofs	90 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. min.
at building rear	28 ft.
at outbuilding side	0 ft. min.
Building frontage at setback	100% of lot width min.
Encroachments	
at building frontage	8 ft. max. (2 ft. into ROW is permitted)
at building side	-
Height	
of principal building	3.5 stories max.
of first floor above grade	0 ft. req.
of outbuilding	1 story max.

Frontage Types



Arcade



Shop

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LIBER 1225 FOLIO 479

WALLS

Materials

Walls shall be "select" grade wood siding, cedar shingles, lightweight concrete siding (eg. "Hardieplank"), board and batton, stucco,or tumbled or wood moulded red brick to be approved by the Miles Point Architect (MPA).

Foundation walls shall be brick, stucco or parged block.

Walls of outbuildings may, in addition to the wall materials, be board and batten.

Trim shall be 5/4" wood or simulated wood (eg. "Synwood" or lightweight concrete).

Piers shall be brick or stucco.

Retaining walls shall be brick.

Garden walls are permitted in side and rear yards and shall be brick.

Fences along frontages shall be wood pickets painted white. Side and rear yard fences shall be wood pickets or closed wood boards painted white or stained.

Lattice shall be wood. Vinyl is permitted only at crawl space enclosures.

Wood shall be painted or stained, except cedar shingles and exterior wood floors.

Panelized materials are not permitted.

Paints and stains on walls shall not be dark colors; and, on trim shall be white or cream. A maximum of two different colors shall be used on all of the buildings on a single lot: one base color and one complementing or contrasting trim color (excluding shutters which must be dark color with exception of white on cedar house).

Configuration

Walls above the foundation, and below the eave shall be of a single material.

Walls shall have no more than 4 outside corners to the frontage.

Gable ends may be a different material than the wall below.

Wood Siding may be lapped, dutch-lapped, or, on Colonial buildings, beaded.

Lightweight concrete siding shall emulate lapped or beaded siding , eased, with no more than 6 inches exposed to the weather.

Parging shall be cement with a smooth sand-finish.

Stucco shall be cementitious with a smooth sand finish.

Brick mortar joints shall be concave or grapevine.

Trim shall be no more than 5/4 inches in depth or 6 inches in width at corners and around openings, except at the front door which may be any size or configuration.

Piers shall be no less than 16 inches square.

Columns shall be of the Doric or Tuscan orders detailed strictly proposrtional and per The American Vignola.

Posts shall be no less than 6 inches square and chamfered.

Intercolumnation on the ground floor shall have vertically proportioned openings.

Crawlspace enclosures shall be enclosed with horizontal boards, louvers, shingles, or framed lattice.

Garden walls at frontages shall be no less than shoulder height. Elsewhere garden walls shall be no more than 7' in height.

Fences at frontages may be as tall as waist height. Fences in rear yards shall be no more than 7' in height.

Lattice shall be framed and mounted between, not in front of or behind, posts.

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ATTACHMENTS

Materials

Stoops shall be brick or wood.

Chimneys shall be brick, or parged masonry.

Flues shall be clay or metal painted to match the roof.

Porches shall be made of wood.

Porch screen frames shall be 5/4 inch maximum and finished in wood or "Synwood."

Railings shall be wood.

Front walks, if any, shall be gravel, brick, slate or stone.

Cornice and soffit shall be wood or cellular PVC.

Configuration

Chimneys shall extend to the ground, have a corbelled cap (no more than 5 courses) and either project from the wall, or, be flush with the wall and exposed at the ground floor and above the roof only.

Intercolumniation on the ground floor of porches shall have vertically proportioned openings.

Railings shall have top and bottom rails centered on pickets or sawn balusters. Bottom rails shall be vertically proportioned and shall clear the floor. Spaces between pickets or balusters shall be no more than 3 inches.

Balconies that cantilever shall be visibly supported by brackets and shall be no more than 3 feet in depth.

Porches shall have a minimum depth of 6 feet and may be enclosed by see through screens.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

Equipment including HVAC, utility meters and the like, shall be placed in rear yards and the rear half of the side yards.

ROOFS

Materials

Roofs shall be standing seam terne metal, 5V-crimp, wood shingle, or asphalt shingle to be approved by the Miles Point Architect. Asphalt shingle roofs are permitted on outbuildings and principal buildings where gable ends front the street with the exception of vista terminations and frontage on squares, greens, passages, bodies of water or greenways.

Roofs colors shall be silver, dark gray, black, red, or green.

Gutters and downspouts shall be galvanized metal, painted metal or copper.

Flashing shall be metal or painted metal.

Configuration

Principal roofs on detached and semi-detached buildings shall be a symmetrical gable with pitch between 9:12 and 14:12 or a symmetrical hip between 3:12 and 6:12. Roofs with a symmetrical gable fronting the street may have a pitch of 6:12.

Ancillary roofs may be sheds if angled no less than 3:12 and attached to a side wall, rear wall or rear roof slope of the principal roof.

Backbuilding roofs may, in addition to the principal roof forms, be gambrel roofs.

Roofs of a single volume shall be of the same material.

Eaves shall be continuous. Eaves which overhang less than 14 inches shall have a closed soffit. All closed soffits shall have crown moulding and ogee gutters. Eaves which overhang more than 14 inches shall have exposed rafters and half round gutters or a closed soffit with brackets and crown moulding. All pitched roofs shall be trimmed, at minimum, with gable and eave boards all around.

Dormers shall be habitable, no wider than the window below, and placed no closer to the edge of the roof than if centered above the window below.

Roof penetrations shall be placed on the rear slope and finished to match the color of the roof.

Skylights shall be flat glass and mounted on roof slopes not facing frontages.

Towers shall not extend more than 15 feet above the roof ridge and shall not have a floor area exceeding 150 square feet. Towers are permitted on pre-designated lots.

OPENINGS

Materials

Windows shall be wood, vinyl-clad wood, cellular PVC, or extruded aluminum-clad wood and clear glass to be approved by the Town Architect.

Doors and garage doors shall be wood or composite wood with raised panels and painted.

Openings in brick walls to have jack arches the bottom of which shall be no less than 10 inches below the cornice above.

Gates in openings of garden walls shall be made of wood.

Screen doors shall be wood.

Shutters shall be made of wood with louvers or raised panels.

Configuration

Windows shall be single, double or triple-hung. Windows, openings and window sashes shall be rectangular with a vertical or square proportion. The centerline of windows shall align vertically. In section, the centerline of the window sash shall align within the centerline of the wall, (no flush mounted windows). Accent windows are permitted at gable ends to be approved by the Town Architect.

Transoms shall be rectangular, arched or fan-shaped.

Window openings shall include an apron below the exterior window sill.

Multiple windows in the same rough opening shall be separated by a 4 inch minimum post.

Muntins, shall be authentic (true divided panes) or simulated (milled and fixed on the interior and exterior surfaces) no more than 7/8" in width. Window panes shall be similar proportions throughout the building.

Bay windows shall have no less than 3 sides and shall extend to the floor inside and to the ground outside, or, be visually supported by brackets.

Doors, shall be hinged and have raised panels, louvers or raised panels and glass.

Garage doors may be hinged or sliders. Those facing a frontage shall be a maximum of 9 feet wide.

Shutters shall be operable and the size and shape of the associated opening.

Upper story openings shall be centered above lower story openings. Openings in gabled ends must be centered.

LIBER 1225 FOLIO 480

STOREFRONTS

Materials

Storefronts shall be made of wood, synthetic wood (e.g.: "Synwood") or metal.

Signs shall be painted wood, painted metal or porcelain.

Awnings shall be a light metal armature with a canvas membrane.

Configuration

Storefronts shall be designed individually. The storefront should be detailed while the rest of the building should be simple. The storefront, doors, awnings and signage shall be a unified design.

Doors shall be recessed a minimum of 3' and located near the center of the storefront, except at corners.

Storefront glazing shall be a minimum of 75% of the first floor elevation. All glass shall be clear.

Awnings shall be permitted to encroach the full width of the sidewalk and be within reach at the drip edge. Awnings shall be a minimum of 6 ft. deep. Awnings shall be rectangular in shape with straight edges. Awnings may have side panels but shall not have a bottom (soffit) panel. The vertical drip of an awning may be stenciled with signage.

Awnings shall be dark green sloping rectangles without side or bottom panels. Awnings shall not be internally lit.

Storefront windows shall be between 2 feet and 2.5 feet above ground level and shall reach to within 1 foot of the ceiling. Storefront windows shall be lit from dusk to midnight.

Signs attached to buildings shall be integral to the storefronts, no more than 2 feet in height by any length, and shall be externally illuminated. Signs may contain multiple individual signs which refer to tenants of the building.

Neon signs of no greater than 4 S.F. are permitted inside storefronts.

Blade signs may be attached perpendicular to the facade and extend up to 4 feet from the frontage line and shall not exceed 2 feet in height.

Address numbers shall be a max. of 8" in height.

Storefronts and signage shall be painted a single dark gloss background color. Lettering may be any color.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

MISCELLANEOUS

Variances may be granted by on the basis of architectural merit by the Design Review Committee.

Properties and improvements shall conform to the intention, not the "letter", of The Architectural Regulations.

The following shall be located in rear yards: HVAC equipment, meters, solar panels, antennas, satellite dishes, garbage cans.

The following shall not be permitted: panelized materials, copper anodized aluminum.

Exterior light fixtures shall be compatible with the style of the building.

Driveways at frontages are allowed for properties without alley access and shall be a maximum of 10 feet wide. Alley driveways may be no wider than the garage doors they serve.

Paved Ruts shall be brick, gravel or grass pavers (e.g. "Grasscrete" blocks). Paved ruts are 2 feet wide and spaced 4 feet apart.

Front walks, if any, shall be gravel, brick, slate or stone.

LIBER 1225 FOLIO 481

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TREES

The Front Yard

The summer landscape will be enhanced with the extended bloom time of improved varieties of crapemyrtles introduced by the National Aroretum. White and Pale Pink preferred.

In addition to the tree in the adjacent thoroughfare,

Crapemyrtle

The Rear Yard

Medium size flowering trees and evergreens will add variety and privacy to the private gardens.

In addition to the trees in the Front Yard,.

Yellowwood
Carolina Silverbell
Southern Magnolia
Foster Holly

GROUNDCOVER

All Yards

Low maintenance gardens for seasonal residents can employ native perrenials to add interest without creating a rigorous maintenance routine. Serious gardeners can enhance this palette with additional perennials. Natives are encouraged.

Fescue/Bluegrass Blend
Foamflower
St. Johnswort
Creeping Phlox
Fern
Leadwort
Green-and-Gold
Barrenwort

INSTRUCTIONS

For every 25 feet of frontage or fraction thereof, one species or cultivar of tree from this list shall be planted. Planting other tree species is permitted, but shall not count toward the fulfillment of the objective of establishing a visually coherent spatial structure for microclimate.

Tree heights at the time of planting vary according to species and availability and shall be determined by the Landscape Supervisor.

The placement of trees in frontages shall be within 10 feet of the frontage line and in alleys within 4 feet of either side of the rearlot line. Trees in the Village Edge may be placed anywhere, except at least one tree shall be placed within 8 feet of the rearlot line.

The soil profile shall be protected from deep compaction during building construction by mandating and staking alley or lane access during construction. Compacted soil areas shall be decompacted and hydrological permeability assured by mechanically breaking up remnant basement soil and rototiling 2-3 inches of recycled organic matter before the addition of a mix of organically amended topsoil.

Energy conservation measures, such as planting shade trees near the southern facades of buildings to block summer sun, are encouraged.

Landscape Plans for private gardens should be prepared by a qualified professional in the field of landscape architecture or garden design.

UNDERSTORY

All Yards

Flowering trees and shrubs are predominately natives for sustainability and to emphasize the distinct nature of the Chesapeake coastal plain to visitors. Non-native with historic associations are noted with an asterisk.

Serviceberry
Sourwood
Redbud
Fringetree
Oakleaf Hydrangea
Viburnum species
Winterberry
Inkberry
Dwarf summersweet
Dwarf Fothergilla
Hydrangea
Coast Azalea
Pinxter Azalea
Swamp Azalea
Boxwood*
Witchhazel
Lace Cap Hydrangea*

OTHER

All Yards

The fence line garden is a distinctive feature of St. Michaels. These plants are found at the base of the fence and climbing on the fehce.

Hollyhocks
Daylilies
Iris
Trumpet Honeysuckle
Climbing Hydrangea
Trumpet Vine
Climbing Rose Species
Clematis

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LIBER 1225 FOLIO 482

Critical Area Commission

PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	County Council Bill 933 Review and Reallocation of Growth Allocation for the Towns
COMMISSION ACTION:	Vote
COMMISSION PANEL:	Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed Richards and Gary Setzer
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (h)

DISCUSSION:

The Talbot County Council submitted Bill #933 for approval by the Commission. The Bill's stated purpose is "to review and reallocate the number of reserved acres of growth allocation allocated among the [Talbot County] towns." Previously, the County had set aside a specified number of acres of growth allocation for use by the Towns of Easton, St. Michaels, and Oxford. The County's original Critical Area Ordinance, adopted in 1989, reserved 155 acres for the Town of Easton, 195 acres for the Town of Oxford, and 245 acres for the Town of St. Michaels. The 1989 Talbot County Critical Area Program ordinance included three maps of the Towns and surrounding areas. These maps identified potential areas for annexation or rezoning. The Ordinance also specified that the number of reserved acres should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. These reviews have not taken place.

As of today, Easton has used more than its original allotment of 155 acres of growth allocation. Easton has awarded 183.762 acres (including 28.762 acres of supplemental growth allocation, awarded under the County's "supplemental" growth allocation process, discussed below). This total includes 36.42 acres associated with the Cooke's Hope Project, which has been approved by the Town, but not yet reviewed by the Commission. The Town also

EXHIBIT
4

requested an additional 156 acres of supplemental growth allocation from the County. The request for supplemental growth allocation was approved, and those projects are moving forward.

Oxford has awarded 15.223 acres of the original 195 acres allotted by the County.

Of the 245 acres allotted to St. Michaels, the Town has awarded 21.00 acres for the Strausburg Subdivision, which was approved by the Commission as a refinement to the Town's Program in October 2003. The Town has also recently approved the use of 70.92 acres of growth allocation for the Miles Point III Project, which is currently under review by the Commission.

Talbot County Bill 933 repeals the ordinance provisions that allocated specific numbers of growth allocation acres to the Towns.

Bill 933 states that the withdrawal of growth allocation from the municipalities is part of the County's comprehensive review of its local Critical Area Program. The Bill also states that this action is necessary because, among other things:

- The original awards of growth allocation to the towns have "no continued validity for any planning and zoning purpose;"
- The original awards are "inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;" and
- "Growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program..."

In Bill 933, Talbot County proposes to amend its zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns. This includes acreage already awarded by a Town, unless the growth allocation has resulted in "actual physical commencement of some significant and visible construction... pursuant to a validly issued building permit." (Section 2 of Bill 933). It is the County's intent that growth allocation awarded by a Town that has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit shall revert to the County.

Commission staff understands that at this time there are two, and possibly three, growth allocation projects in Talbot municipalities for which growth allocation has been awarded by a Town, but under Bill 933, would be considered unutilized and accordingly would revert to the County. First is the Strausburg Subdivision in St. Michaels, which involved 21.00 acres of growth allocation to change the Critical Area designation from Resource Conservation Area

(RCA) to Limited Development Area (LDA) for a ten lot residential subdivision. The Commission approved this growth allocation request as a refinement to St. Michaels' Critical Area Program on October 1, 2003. Second is the Miles Point III application, which the Town approved for 70.92 acres of growth allocation in January 2004. The Town has submitted this growth allocation request to the Commission, and the Commission is currently reviewing it.

Third, it is possible that Bill 933 may affect the Cooke's Hope Project in Easton. For this project, the Town of Easton used a combination of the original "reserved" growth allocation acreage and some supplemental growth allocation that it received from the County under the process of Bill 762. Thus, the Cooke's Hope project was reviewed through the County's supplemental growth allocation process. The Town of Easton recently sent this growth allocation to the Commission, but it has not yet been reviewed or approved by the Commission, and therefore, has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit

In accordance with §27.01.02.06.A(2) of COMAR, "Counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." Although Bill 933 removes provisions pertaining to the reservation of growth allocation acreage for the Towns from the County Code, the Bill does not itself set forth a process for the County's Towns to obtain future growth allocation acreage. For that process, the County has informed the Commission that it will use other parts of §190-109 of the County Code which address how the use of growth allocation by the Towns is to be accommodated in the future. County Code Section §190-109 D (9) outlines a joint review and hearing process whereby elected officials from Talbot County and the affected municipality work cooperatively together on projects involving the Town's proposed use of growth allocation. This process, "Procedures for Awarding Supplemental Growth Allocation to Municipalities in Talbot County," was enacted by the County at a time when Easton was close to exhausting its original growth allocation allotment. This process was approved by the Commission as a refinement to Talbot County's Program in June 2000.

A copy of Bill 933 is attached. Within the Bill, **boldface** indicates a heading or defined term; underlining indicates language added to existing law by original bill; ~~strikethrough~~ indicates language deleted from existing law by original bill, and * * * indicates existing law unaffected.

The Panel's discussions to date have focused on the following issues:

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

At the Panel's request, Commission staff provided research summarizing the process used by the various Critical Area counties to provide for the use of growth allocation by the municipalities. The various processes appear to fall into three general categories: 1) growth allocation acreage is given by the County to a municipality and the County is not involved in the review and approval process; 2) the County may or may not identify a certain number of acres that are "set aside" for the municipalities, but the County must be consulted, and in some cases, must review the use of growth allocation before the town can use it; and 3) the County participates in a coordinated review process with the municipality, either simultaneously with, or following the Town's review process.

The Panel has considered the information about the various processes and procedures used by the Critical Area counties with regard to municipalities' use of growth allocation. They have discussed the importance of the procedures being clearly set forth in a coordinated manner in the ordinances and programs of the counties and affected municipalities. They have also discussed the significance of amending one local program in such a way that it creates conflicts with other approved programs. At the public hearing on March 24, 2004, and in written comments submitted for the record, the Panel received information from numerous commentors stating their views about the applicability of other State laws, policies, and regulations to the proposed Program amendment from Talbot County. On advice of counsel, the Panel agreed that the Commission's role regarding Bill 933 should be focused on the provisions of the Annotated Code of Maryland §8-1809(j) which state that

> "The Commission shall approve Programs and Program amendments that meet:
> (1) The standards set forth in §8-1808(b)(1) through (3) of this subtitle; and (2) The Criteria adopted by the Commission under §8-1808 of this subtitle."

The goals of the Critical Area law, referenced above are:

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

3. To establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

The Panel requested information regarding the effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements. Commission staff provided this information, and the Panel discussed the information, particularly the approved Programs of Oxford, St. Michaels and Easton. The approved Town programs show that Bill 933 will affect the established growth allocation procedures of St. Michaels and Oxford. Easton is not specifically affected because the Town has already utilized all of its original reserved growth allocation acreage.

In addition to the effect on approved Town programs, Bill 933 will affect the following specific program amendments: the Strausburg Subdivision growth allocation (awarded by the Town of St. Michaels and approved by the Commission in October 2003), the Miles Point III Project growth allocation (awarded by the Town of St. Michaels and currently under review by the Commission) and potentially Cooke's Hope in Easton, depending on the final analysis of how the procedure used affected the 7.66 acres of growth allocation remaining from Easton's original reservation.

The Panel has discussed the meaning of the COMAR provisions relating to "coordination" between counties and affected municipalities. The Panel has acknowledged the various potential interpretations of this term. The Panel believed that the definition in Webster's Dictionary, "to harmonize in a common effort," seems to be a comprehensive and reasonable definition. The Panel seemed to agree that at a minimum "coordination" involves the participation of the affected parties. The Panel has also discussed the effect of Bill 933 on:

- the Strausburg growth allocation;
- the Miles Point III growth allocation;
- established municipal growth allocation processes;
- the effects of Commission actions on prior actions and current procedures.

The Panel will resume its discussion of this matter on May 5, 2004.

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

Introduced by: Mr. Carroll, Ms. Harrington, Mr. Duncan

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 16, 2003 at 1:30 p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order Janice Marks
Secretary

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

WHEREAS, when Talbot County adopted its Critical Area Program effective August 13, 1989, it adopted three maps showing then anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford, and

WHEREAS, at the time of adoption, § 190-109 D (11) provided that the number of reserved areas allocated among the towns based on those maps for rezoning for growth allocation should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. None of the four-year reviews have occurred and these maps continue to reflect a prospective look to the future from 1989; and

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

WHEREAS, the 1989 projections have no continued validity for any planning or zoning purpose; and

WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, which is inconsistent with current principles of proper planning and the land use goals and polices in the existing and draft Talbot County Comprehensive Plans; and

WHEREAS, the process created by the 1989 zoning ordinance is both redundant and inconsistent or potentially inconsistent with the Comprehensive Planning Process; the Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately accomplishes planning for growth areas around Towns; and

WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the State formula for calculating the total amount for each county [5% of the total resource conservation area located within the County]; and

WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with certain exceptions, no more than one-half of the expansion permitted by growth allocation in the critical area may be located in resource conservation areas (RCA); and

WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if Talbot County is unable to utilize a portion of the County's total growth allocation within or adjacent to exiting intensely or limited development areas, then that portion of the growth allocation which cannot be so located may be located in an RCA; and

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

WHEREAS, the County may not utilize the remaining 50% of available growth allocation [1,213 acres] until the Critical Area Commission grants permission, under the exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is unable to utilize that portion of its available growth allocation in areas adjacent to limited or intensely developed areas; and

WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, § 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from RCA from 1,213 to 2,426 acres; and

WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County; and

WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth allocation; and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it grants a pending application for supplemental growth allocation submitted by the Town of Easton for 156 acres, the County will have 160.229 acres of growth allocation; and

WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either separately or in combination, could forever block the County from accessing the remaining growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and

WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it, and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in approving projects for which the Town has requested supplemental growth allocation; and

WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot County review its entire critical area program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning in 1993 and every 4 years thereafter; and

WHEREAS, Talbot County is currently near completion of such a 4-year review, and as part of that process desires to make the following amendments to the County's critical area program to better reflect the original intent of the State law governing growth allocation, which calculated growth allocation for Talbot County as 5% of the resource conservation area in the County, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is hereby amended as set forth herein.

Maps 1, 2, and 3, attached, are hereby repealed.

* * *

§ 190-109 D (9)

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.~~

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~

§ 190-109 D (11)

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.~~

* * *

§ 190-109 D (14)

~~Specific annexation requests for property included in the acres reserved for the towns in § 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).~~

§ 190-109 D (15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns~~

~~shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 D (16)

~~The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.~~

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains unutilized on the effective date of this ordinance.

(a) For purposes of this subsection, the term "unutilized" includes the total growth allocation acreage allocated to the County under State law, less growth allocation acreage that (1) has been previously allocated by any town or the County; and, (2) prior to the effective date of this ordinance, has resulted in actual physical commencement of some significant and visible construction; (3) which has been undertaken in good faith, with the intention to carry it through to completion; and, (4) which has occurred pursuant to a validly issued building permit.

(b) For purposes of this subsection, growth allocation acreage allocated to the County does not include growth allocation allocated to the towns under § 8-1808.1 (b) (5% of the total resource conservation area in the town at the time of original approval of the town's critical area program by the Critical Area Commission).

(c) For purposes of this subsection, County growth allocation acreage that has been previously allocated by any town shall first be counted as part of that town's allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been exceeded, growth allocation that has been utilized prior to the effective date of this ordinance shall be deducted against the County's remaining growth allocation. Growth allocation awarded by any town that remains unutilized on the effective date of this ordinance shall revert to the County. Growth allocation awarded by the County, prior to or after the effective date of this ordinance, shall be deducted from the total growth allocation acreage allocated to the County under § 8-1808.1 (b).

2. Severability.

The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or

5 invalid, the remaining provisio[redacted]hereof and the application thereo[redacted] all other persons and
6 circumstances remain in full effect.

SECTION THREE: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 933 having been published, a public hearing was held on Tuesday, December 16, 2003.

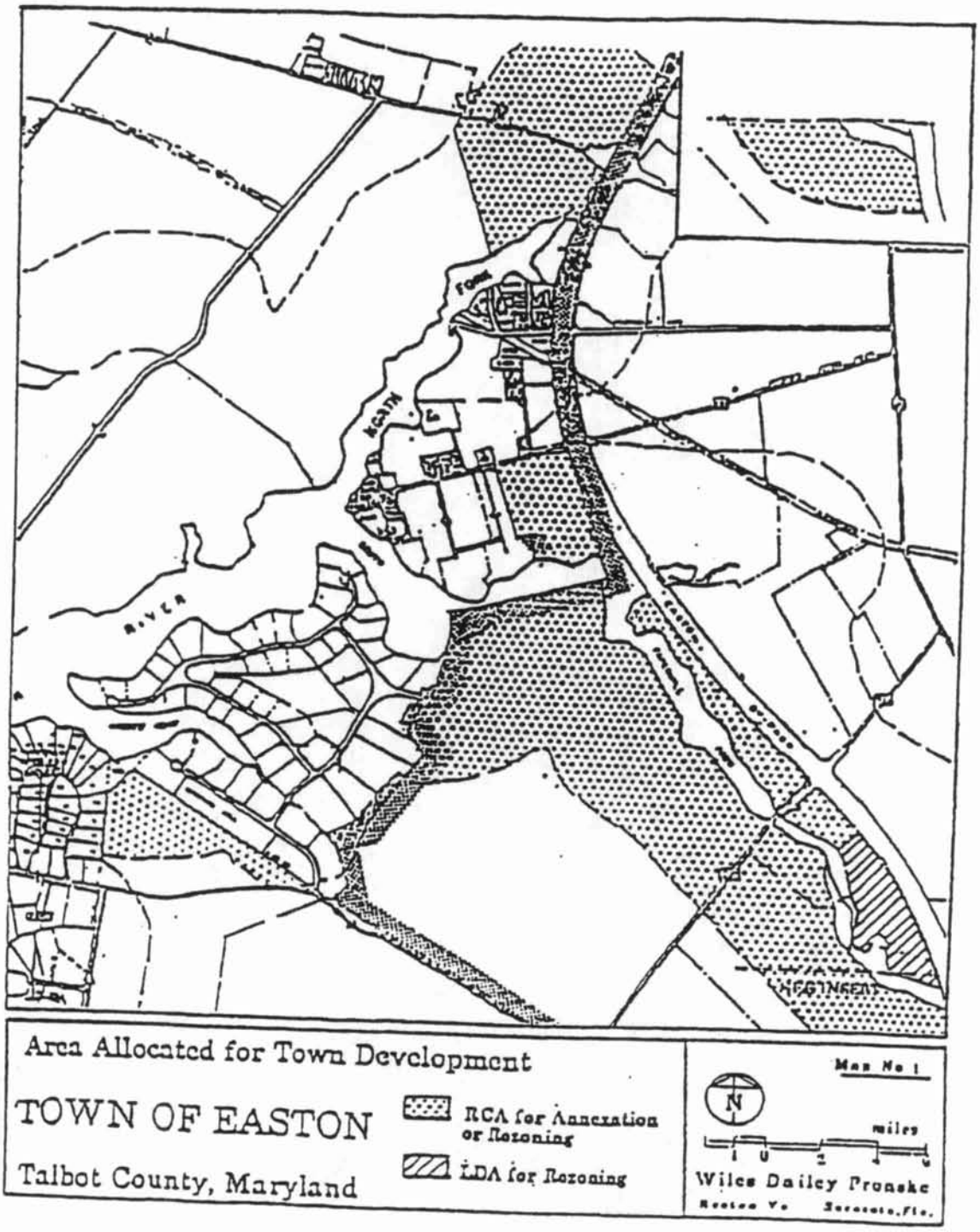
BY THE COUNCIL

Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

Foster – Nay
Duncan – Aye
Harrington – Aye
Spence – Aye
Carroll - Aye


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
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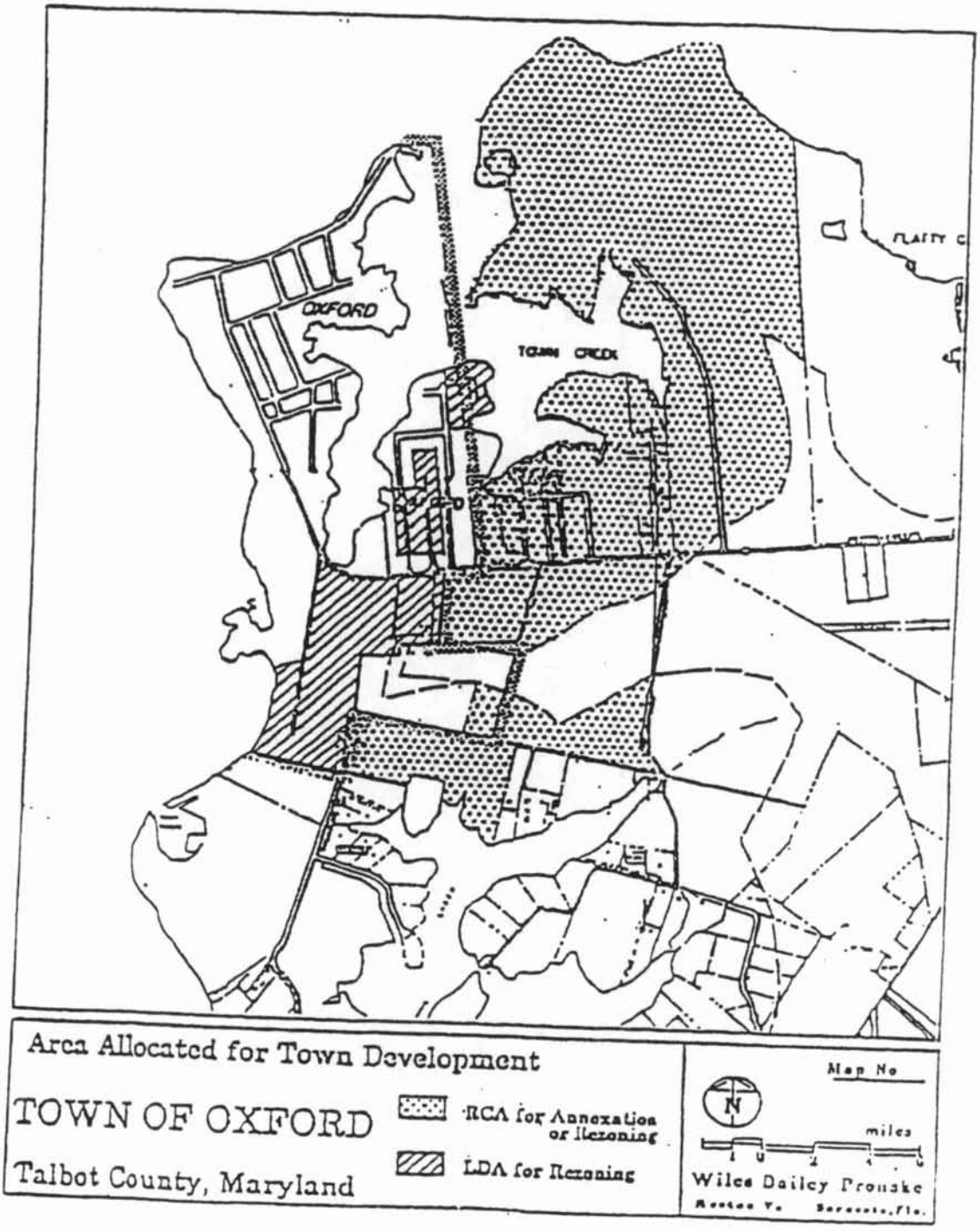
OXFORD
TOWN CREEK
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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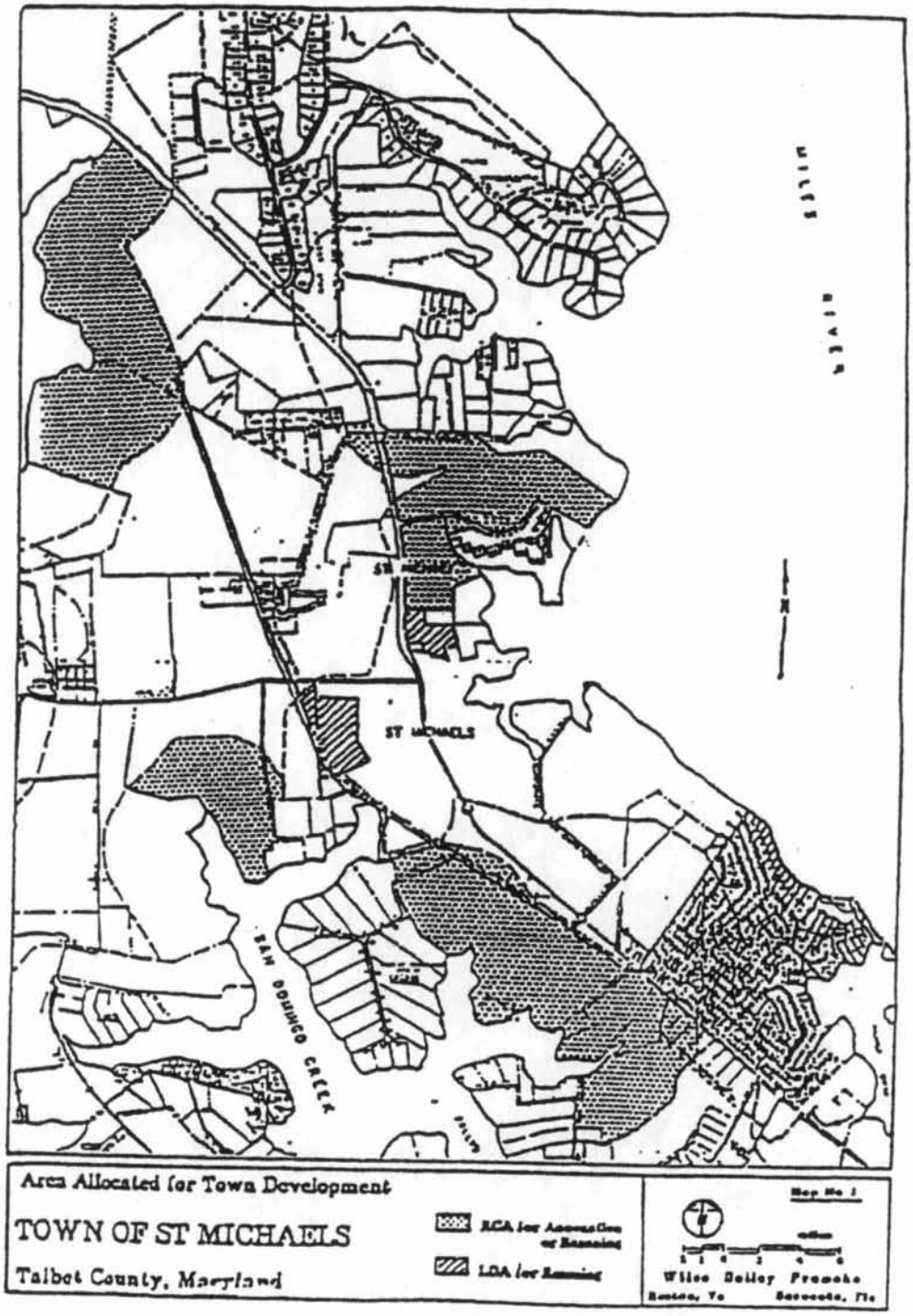
MILES RIVER
ST MICHAELS
SAN DOMINGO CREEK
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
Wilson Bailey Pranche
Boston, Va
Sarasota, Fla

Critical Area Commission

SUPPLEMENT TO PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	Comprehensive Review of Local Program, County Council Bill 933
COMMISSION ACTION:	Vote
PANEL MEMBERS:	Dave Blazer (Chairman), Gary Setzer, Bill Giese, Joe Jackson and Ed Richards
PANEL RECOMMENDATION:	Deny
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (j)

DISCUSSION:

I move on behalf of the panel to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria.

The basis for the motion is as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

EXHIBIT
5

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff	*	IN THE
		CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

* * * * * * * * * * * * * *

PROPOSED ANSWER TO COMPLAINT

The Commissioners Of St. Michaels ("St. Michaels"), Defendant, by H. Michael Hickson, its attorney, in answer to the initial Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Initial Complaint"), as amended by the Amended Complaint (the "Amended Complaint"), (collectively the "Complaint") filed by Talbot County, Maryland (the "County") in the above-captioned case, says:

A. The Complaint, and all counts contained therein, fails to state a claim upon which relief can be granted. St. Michaels relies on and joins in the Motion To Dismiss filed by the Department Of Natural Resources. St. Michaels would respond only to those counts of the Complaint that have survived the said Motion To Dismiss at the time St. Michaels is required to file its Answer to the Complaint.

B. In accordance with Maryland Rule 2-323 (c), the averments of the claim for relief, as contained in the Initial Complaint (because they are not altered by the Amended Complaint) are hereby answered paragraph-by-paragraph, *ad seriatim*, as follows:

1. To the extent that paragraphs 1, 2 and 3 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.

2. To the extent that paragraph 4 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is denied that counties have primary responsibility for developing and implementing a local critical area protection program that is applicable within an incorporated municipality that has adopted a local critical area protection program that has been reviewed and approved by the Maryland Critical Area Commission

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P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

For The Chesapeake And Atlantic Coastal Bays (the "Commission"); all other averments of fact thereof are admitted.

3. To the extent that paragraph 5 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are admitted except that St. Michaels is without knowledge or information sufficient to form a belief as to the effective date of Talbot County's proposed program.

4. To the extent that paragraph 6 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.

5. To the extent that paragraph 7 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are denied.

6. To the extent that paragraph 8 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.

7. To the extent that paragraph 9 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are denied.

8. To the extent that paragraph 10 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.

9. To the extent that paragraph 11 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is admitted that the County local critical area program (hereinafter the "County Critical Area Program") included three maps showing areas around the Towns of Easton, St. Michaels, and Oxford; that the County reserved growth allocation to the following municipalities in the following quantities: Easton (155 acres), Oxford (195 acres), and St. Michaels. (245 acres); and that no growth allocation was reserved for the Town of Queen Anne. All other averments in paragraph 11 of the Initial Complaint are denied.

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21803-0044
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10. To the extent that paragraph 12 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments are denied.

11. To the extent that paragraph 13 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is admitted that the County submitted County Bill No. 762 to the Commission for review as a local program amendment. All other averments in paragraph 13 of the Initial Complaint are denied.

12. To the extent that paragraph 14 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is admitted that to date the provisions of County Bill No. 762 have been applied only to the Town of Easton. All other averments in paragraph 14 of the Initial Complaint are denied.

13. The averments in paragraph 15 of the Initial Complaint are denied.

14. It is admitted that the County Council forwarded County Bill No. 762 to the Commission for review. All other averments in paragraph 16 of the Initial Complaint are denied.

15. It is admitted that County Bill No. 933 purports to repeal the 1989 maps and the reservations of growth allocation to the towns of Easton, St. Michaels and Oxford. To the extent that paragraph 17 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments are denied.

16. To the extent that paragraphs 18 and 19 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied.

17. To the extent that paragraph 20 of the Initial Complaint contains averments to which an answer is required, the answers previously stated herein to the paragraphs 1 through 19 of the Initial Complaint are hereby reiterated; all other averments thereof are denied.

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18. To the extent that paragraphs 21, 22 and 23 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied.

19. To the extent that paragraph 23 of the Initial Complaint avers that the Commission acted to disapprove County Bill No. 933 as an amendment to the County Critical Area Program on or before May 5, 2004, and that the Commission thereafter issued a written notification of such action to the County dated May 14, 2004, such averments are admitted. To the extent that paragraph 23 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments are denied.

20. It is denied that the Commission did not act on the proposed amendment contained in County Bill No. 933 within the time required by law. To the extent that paragraph 24 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments thereof are denied.

21. To the extent that paragraphs 25 and 26 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all such averments thereof are denied.

22. To the extent that paragraph 27 of the Initial Complaint contains averments to which an answer is required, the answers previously stated herein to the paragraphs 1 through 26 of the Initial Complaint are hereby reiterated; all other averments thereof are denied.

23. It is denied that the Commission failed to act on the proposed program amendment reflected by County Bill No. 933 within the time required by law. To the extent that paragraph 28 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, the other such averments thereof are denied.

24. The averments in paragraph 29 of the Initial Complaint are admitted.

25. To the extent that paragraph 30 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied. Further answering, even assuming, *arguendo*, that

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County Bill No. 933 conforms to all requirements of Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and to all provisions of the Code Of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission), (said code sections and regulations being collectively referred to hereinafter as the "State Critical Area Program"), the members of the Commission are required to disapprove County Bill No. 933 if it is in conflict with another State law.

26. The averments in paragraph 31 of the Initial Complaint are denied. Further answering, even assuming, *arguendo*, that the information before the Commission demonstrated that County Bill No. 933 met all requirements of the State Critical Area Program, there were other grounds raised on the record of the Commission, each of which requires the Commission to disapprove County Bill No. 933.

27. It is denied that the Commission considered and/or relied upon extraneous facts, arguments, and findings that do not bear upon or control its decision to approve or disapprove Bill 933 as a local program amendment. To the extent that paragraph 32 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments thereof are denied.

28. To the extent that paragraphs 33, 34 and 35 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied.

29. To the extent that paragraph 36 of the Initial Complaint contains averments to which an answer is required, the answers previously stated herein to the paragraphs 1 through 35 of the Initial Complaint are hereby reiterated; all other averments thereof are denied.

30. All averments of paragraphs 37 and 38 of the Initial Complaint, which are not merely statements or conclusions of law to which no response is required, are denied.

31. St. Michaels denies the averment in paragraph 39 of the Initial Complaint that the decision to disapprove County Bill No. 933 occurred on May 14, 2004. To the

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extent that the remainder of paragraph 39 of the Initial Complaint contains averments to which an answer is required, all such averments are denied.

32. It is admitted that the County participated in the proceedings before the Commission relative to County Bill No. 933. All other averments in paragraph 40 of the Initial Complaint are denied.

C. Any and all averments and averments of the Complaint not otherwise specifically answered herein are hereby DENIED.

D. In accordance with Maryland Rule 2-323 (g), the following affirmative defenses are asserted as to all counts contained in the Complaint:

1. All issues raised by this litigation that have been previously determined against the Plaintiff or its predecessors in interest are barred from being re-litigated by the doctrine of collateral estoppel.
2. The Plaintiff is estopped from asserting the claims contained in the Complaint.
3. Talbot County Bill No. 933, and the enactment thereof, is illegal.
4. All issues raised by this litigation that have been previously determined between the parties or their predecessors in interest are barred from being re-litigated by the doctrine of *res judicata*.
5. The enactment of Talbot County Bill No. 933 is *ultra vires*.
6. The Plaintiff has waived any and all rights sought to be advanced by the Complaint.

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VERIFICATION

I solemnly affirm, under the penalties of perjury, that the matters and facts contained in the

foregoing Answer To Complaint are true and correct to the best of my knowledge, information and belief.

Cheril S. Thomas, Town Manager
The Commissioners Of St. Michaels

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2004, that an exact copy of the foregoing ANSWER TO COMPLAINT was mailed by regular U.S. Mail, postage pre-paid to:

Daniel Karp, Esquire
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore, Maryland 21202-1089
Attorney for Talbot County, MD

Paul J. Cueuzzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
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Attorneys for Maryland Department of Natural Resources

Michael L. Pullen, Esquire
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County

H. Michael Hickson

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TALBOT COUNTY, MARYLAND, Plaintiff	*	CIVIL CASE NO. 20-C-04-005095DJ
Vs.	*	IN THE CIRCUIT COURT
DEPARTMENT OF NATURAL RESOURCES, Defendant	*	FOR TALBOT COUNTY, MARYLAND
* * * * * * *	*	
THE COMMISSIONERS OF ST. MICHAELS Counter-Plaintiff	*	
Vs.	*	
TALBOT COUNTY, MARYLAND, Counter-Defendant	*	

* * * * * * * * * * * * * *

PROPOSED COUNTERCLAIM
(For Declaratory Judgment)

The Commissioners Of St. Michaels ("St. Michaels"), Defendant and Counter-Plaintiff herein, by its attorney, H. Michael Hickson, files this Counterclaim against Talbot County, Maryland (the "County"), Plaintiff and Counter-Defendant, pursuant to Maryland Rule 2-331 and Maryland Code, Courts and Judicial Proceedings Article, Title 3 (Courts of General Jurisdiction - Jurisdiction/Special Causes of Action), Subtitle 4 (Declaratory Judgment), and says:

1. The County has initiated the above-captioned case against the Defendant, the Maryland Department Of Natural Resources, alleging in the Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Initial Complaint"), as amended by the Amended Complaint (the "Amended Complaint"), (collectively the "Complaint") that the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Critical Area Commission") improperly disapproved Talbot County Bill No. 933.

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2. At all times here relevant St. Michaels has been, and continues to be, a Maryland municipal corporation, with its territory located entirely within the County, and with all of the

powers, rights and duties within its territory conferred on Maryland municipal corporations by the Constitution and laws of Maryland.

3. At all times here relevant the County has been, and continues to be, a political subdivision of the State of Maryland.

4. At various times though its history St. Michaels has exercised the exclusive powers and discretion relating to the annexation of land, as granted to Maryland municipal corporations by the Maryland Constitution and statutes, by entering into annexation agreements with owners wishing to have their land annexed to St. Michaels and by annexing said land pursuant to said agreements.

5. Beginning in 1954, and continuously thereafter, pursuant to the powers and authority granted to Maryland municipal corporations by Maryland Code (1951), Article 66B, as amended from time-to-time, St. Michaels has exercised exclusive planning, zoning and subdivision powers, authority and control over all areas within its municipal territory by:

5.1 Adopting, and thereafter maintaining and amending, a comprehensive plan;

5.2 Enacting, and thereafter maintaining, amending, administering, applying and enforcing, a zoning ordinance, a zoning map (dividing all land within St. Michaels into zoning districts, and defining boundaries of the historic district), and a subdivision ordinance; and

5.3 Establishing, and thereafter appointing and re-appointing members of, and otherwise maintaining, a planning commission, a zoning inspector, a board of appeals and a historic district commission to administer said ordinances.

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6. The State of Maryland enacted Chapter 794 of the 1984 Laws of Maryland, which has been subsequently amended and codified as Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), being hereinafter referred to as the "State Critical Area Laws".

7. Subsequent to the enactment of the State Critical Area Laws, what is now called the Critical Area Commission was constituted, its members were appointed and have been re-appointed from time-to-time, and it continues to exist and function by the authority of the State Critical Area Laws.

8. Subsequent to the enactment of the State Critical Area Laws, the Critical Area Commission adopted, and has thereafter amended from time-to-time, what is now the Code Of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission), being hereinafter referred to as the "State Critical Area Regulations".

9. The said State Critical Area Laws, as amended, and the said State Critical Area Regulations, as amended, are hereinafter collectively referred to the "State Critical Area Program".

10. Each member of the Critical Area Commission is a person who has been appointed thereto pursuant to the State Critical Area Laws, for which service he or she is entitled to receive compensation.

11. The duties and functions of the members of the Critical Area Commission require the exercise of discretion, judgment, experience and skill.

12. Each member of the Critical Area Commission, before exercising the powers and duties of his or her office as a member thereof, takes the oath or affirmation of office set forth in the Constitution Of Maryland, Article I (Elective Franchise), § 9 (Oath or affirmation of office).

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13. The following incorporated municipalities within the County (hereinafter collectively the "Municipalities") have land within their corporate boundaries that is also located within the Critical Area, as defined by the State Critical Area Laws:

13.1 The Town Of Easton;

13.2 The Town Of Oxford; and

13.3 St. Michaels.

14. In or about 1987, the County requested the following from each Municipality:

14.1 A map of areas within and surrounding the Municipality, designating thereon land areas anticipated by the Municipality to be developed in the future; and

14.2 A request by the Municipality for the number of growth allocation acreage that the Municipality desired to have reserved by the County for its exclusive use.

15. In or about 1987, in response to the above-described request of the County to the Municipalities therein, and in anticipation of adopting its own local critical area protection program (the "St. Michaels Critical Area Program"), St. Michaels submitted the following to the County:

15.1 A map showing approximately 403 acres of land that St. Michaels identified as developable land located in and surrounding St Michaels (hereinafter the "St. Michaels Future Growth Areas Map", a copy of which is attached hereto as Exhibit No. 1); and

15.2 A request by St Michaels for 445 acres of growth allocation to be reserved for its exclusive use (the "St. Michaels Growth Allocation Acreage Request").

16. After receiving from St. Michaels the St. Michaels Future Growth Areas Map and the St. Michaels Growth Allocation Acreage Request, the County took the following actions in connection with the development and adoption of the County local critical area protection program (the "County Critical Area Program"):

16.1 Adopted the St. Michaels Future Growth Areas Map;

16.2 Reserved to St. Michaels, for its exclusive use, 245 acres of growth allocation; and

16.3 Adopted and used an interim critical area plan within the County (exclusive of the Municipalities) until the County Critical Area Program was enacted as part of the County code (subject to approval by the Critical Area Commission) and was approved by the Critical Area Commission.

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17. Beginning in or about 1988, and continuing thereafter, in reliance on the State Critical Area Program and the actions of the County, St. Michaels took the following actions without the intervention or interference by the County, and with the approval of the Critical Area Commission:

17.1 Adopted, and thereafter amended, maintained, applied, and enforced the St. Michaels Chesapeake Bay Critical Area Local Program (the "St. Michaels Critical Area Program") in conformity with the State Critical Area Program with respect to all of the Critical Area located within St. Michaels;

17.2 Adopted, and thereafter amended and maintained, critical area overlay district maps;

17.3 Enacted, and thereafter amended, maintained, and enforced the critical area land use management district classifications mandated by the State Critical Area Program;

17.4 Designated upon the St. Michaels critical area overlay district maps the critical area land use management district classifications mandated by the State Critical Area Program;

17.5 Amended, and thereafter maintained and enforced, the St. Michaels Zoning Ordinance and the St. Michaels Subdivision Ordinance in conformity with the State Critical Area Program;

17.6 Included the St. Michaels Future Growth Areas Map as part of the St. Michaels Comprehensive Plan; and

17.7 Included the St. Michaels Future Growth Areas Map as part of the St. Michaels Critical Area Program.

18. The County adopted the County Critical Area Program, and thereafter until the introduction by the County of County Bill No. 933 in November of 2003, the County has consistently amended, maintained, and enforced, the County Critical Area Program in a manner that has recognized the exclusive power and authority of the Municipalities over the planning, zoning and subdivision of use and development of all land within their respective boundaries, including:

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18.1 Incorporation therein of the St. Michaels Future Growth Areas Map and a similar map from each of the other Municipalities (collectively the "Town Future Growth Areas Maps");

18.2 Incorporation therein of the reservation of growth allocation acreage for the exclusive use of the Municipalities in the following amounts (collectively the "Growth Allocation Reserved For The Municipalities"):

18.2.1 For the Town of Easton - 155 acres;

18.2.2 For the Town of Oxford - 195 acres; and

18.2.3 For St. Michaels - 245 acres;

18.3 The County Critical Area Program was fully applicable to, and was enforceable and enforced against, all land within the Critical Area that is located in the political boundaries of the County, except the land located within the Municipalities;

18.4 In all respects, other than those as outlined in paragraphs 18.1 and 18.2 hereof, the County Critical Area Program was not applied to, and was not enforceable or enforced against, land located within the Municipalities; and

18.5 Purportedly enacting County Bill No. 762 on or about April 15, 2000 to amend the County Critical Area Program to add a process for approval of supplemental growth allocation within a Municipality, which County Bill No. 762 was thereafter purportedly approved by the Critical Area Commission based on representations to the public, to the Municipalities, and to the Critical Area Commission that County Bill No. 762 would be applicable only to a Municipality after it has exhausted its allotted share of the Growth Allocation Reserved For The Municipalities.

19. Because of the juxtaposition of St. Michaels to the Miles River, San Domingo Creek and Broad Creek:

19.1 After the annexation of the Perry Cabin Farm, but before the annexation of the Strausburg Property and the Hunteman Property, to St. Michaels:

19.1.1 Approximately 66% of the land area of St. Michaels was within the Critical Area; and

19.1.2 Approximately 97% of the undeveloped land in St. Michaels was within the Critical Area; and

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19.2 After the annexation of the Strausburg Property and the Hunteman Property, to St. Michaels:

19.2.1 Approximately 68% of the land area of St. Michaels is within the Critical Area; and

19.2.2 Approximately 84% of the undeveloped land in St. Michaels is within the Critical Area.

20. As a practical matter, because of the proximity of St. Michaels to tidal waters, and because of the large percentage of the land in St. Michaels that is located within the Critical Area, and because of the even larger percentage of the remaining developable land in St. Michaels that is that located within the Critical Area, the discretionary power purportedly granted to the County Council by County Bill No. 933 would give the County Council the unfettered power to deny the award of growth allocation within St. Michaels, and thereby largely control the annexation of land to, and the planning, zoning and subdivision of land within, St. Michaels.

21. Pursuant to the exercise of its exclusive annexation, planning, zoning and subdivision powers (as described in paragraphs 4 and 6 hereof) and the St. Michaels Critical Area Program, and having a sufficient quantity of the Growth Allocation Reserved For St. Michaels available, prior to the purported adoption of Bill No. 933 and/or the claimed approval thereof by the Critical Area Commission, St. Michaels took the following actions and established the following interests:

21.1 In 1981 St. Michaels entered into an annexation agreement relating to the land known as Perry Cabin Farm, subject to certain terms and conditions relating to the zoning, development and use of said land.

21.2 In 1981 St. Michaels annexed and zoned the said Perry Cabin Farm, subject to the terms and conditions of said annexation agreement.

21.3 In 2003 St. Michaels entered into an annexation agreement relating to the land of Vance C. Strausburg and Nancy C. Strausburg (the "Strausburg Property"; deed refs. liber 497, folio 373 *et seq.* and Liber No. 511, folio 95 *et seq.*), consisting of

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approximately 136 acres, subject to certain terms and conditions relating to the award of growth allocation, zoning, development and use of said land.

21.4 In 2003 St. Michaels accepted, processed and approved applications for annexation and zoning of the said Strausburg Property, subject to the terms and conditions of said annexation agreement.

21.5 In 2003 St. Michaels entered into an annexation agreement relating to the land known as the Hunteman Property, consisting of approximately 17 acres of land described in a deed dated August 31, 2001 from Elsie W. Hunteman to Miles Point, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 93, and subject to certain terms and conditions relating to the award of growth allocation, zoning, development and use of said land.

21.6 In 2003 St. Michaels accepted, processed and approved an application for annexation of the said Hunteman Property, subject to the terms and conditions of said annexation agreement.

21.7. In February of 2004, pursuant to Maryland Code, Art. 66B, § 13.01, and St. Michaels Ordinance No. 290, the St. Michaels Planning Commission, for the benefit of St. Michaels, entered into a Development Rights And Responsibilities Agreement with The Midland Companies, Inc., *et al.* (the "DRRA"), which is subject to the award of 70.863 acres of growth allocation for a 72.167-acre portion of the Perry Cabin Farm, and which includes consideration to St. Michaels as described in Section 10 of the DRRA which could exceed $14 million. A copy of the DRRA, which is recorded among the Talbot County Land Records on February 26, 2004 at Liber No. 1225, folio 405, is attached hereto and incorporated herein by reference as Exhibit No. 2.

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22. Pursuant to the exercise of its exclusive annexation, planning, zoning and subdivision powers (as described in paragraphs 4 and 5 hereof) and the St. Michaels Critical Area Program, and having a sufficient quantity of Growth Allocation Reserved For St. Michaels available, prior to the purported adoption of Bill No. 933 and/or the claimed approval thereof by the Critical Area Commission, the following applications for the award of growth allocation were submitted to St. Michaels, and as required by law, accepted, processed and decided as follows:

22.1 From 1998 through 2003 numerous applications relating to the said Perry Cabin Farm and/or the Hunteman Property were decided, defended in court, mediated and negotiated, all of which efforts and devotion of resources contributed to the evolution and ultimate formation of a development plan for the said Perry Cabin Farm known as Miles Point III, which ultimately resulted in the award of 70.863 acres of growth allocation by St. Michaels, and the approval thereof by the Critical Area Commission, all in accordance with the terms of the DRRA (a copy of a letter from the Critical Area Commission announcing such approval is attached hereto and incorporated herein by reference as Exhibit No. 3); and

22.2 In 2003 an application relating to the Strausburg Property resulted in the award of 20.1 acres of growth allocation by St. Michaels, and the approval thereof by the Critical Area Commission, in addition to a 75-acre perpetual conservation easement granted to St. Michaels relating thereto the Strausburg Property (a copy of a letter from the Critical Area Commission announcing such approval is attached hereto and incorporated herein by reference as Exhibit No. 4).

23. To date the only growth allocation that has been awarded by St. Michaels is that described in paragraph 22 hereof.

24. St. Michaels anticipates that there will have to be an award of growth allocation with respect to the Hunteman Property in order for that land to be developed in the fashion that is anticipated by the annexation agreement described in paragraph 21.5 hereof.

25. All of the decisions and actions described in paragraphs 21 and 22 hereof have:

25.1 Been taken by St. Michaels prior to May 5, 2004;

25.2 Been taken by St. Michaels at substantial cost to St. Michaels in money and other limited resources;

25.3 Been taken by St. Michaels as an inseparable part of the exercise of its exclusive annexation, planning, zoning and subdivision powers and authority within St. Michaels; and

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25.4 Have established contractual and other rights and interests in St. Michaels and those having an interest in the affected land as to the manner of development of the Perry Cabin Farm, the Strausburg Property, and the Hunteman Property as part of St. Michaels.

26. The County claims to have adopted and enacted County Bill No. 933 as part of the County Critical Area Program on or about December 23, 2003.

27. Subsequent to purportedly adopting and enacting County Bill No. 933, the County submitted County Bill No. 933 to the Critical Area Commission for its approval.

28. County Bill No. 933 will not become effective unless and until it is reviewed and approved by the Critical Area Commission.

29. In its Complaint, filed in the above-captioned case, the County claims that County Bill No. 933 has been approved (by operation of law or otherwise), or is required by law to be approved, by the Critical Area Commission.

30. St. Michaels has rights, interests, goals and objectives relating to the orderly development of the Town, providing of infrastructure and government services, and the public health, welfare, safety and good government of the Town, which are preserved and/or advanced by the interests described in paragraphs 4, 5, 17, 18, 21 and 22 hereof (collectively the "St. Michaels Interests").

31. Approval or validation of County Bill No. 933 would be illegal and invalid because it would have the following effects, each of which is legally sufficient to invalidate County Bill No. 933, or to make it inapplicable to the St. Michaels Interests as hereinafter defined:

31.1 Illegally monopolize the limit placed on the area of expansion of intensely developed or limited development areas, as established by COMAR 27.01.02.06 A (1);

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31.2 Violate the requirement of COMAR 27.01.02.06 A (2), that counties establish a process to accommodate the growth needs of municipalities;

31.3 Violate the requirement of COMAR 27.01.02.06 A (2), that when establishing a process to accommodate the growth needs of municipalities, counties shall coordinate with the affected municipalities;

31.3 Illegally revoke all of the Growth Allocation Reserved For St. Michaels;

31.4 Retroactively revoke all growth allocation awarded by St. Michaels and approved by the Critical Area Commission, as described in paragraph 22 hereof;

31.5 Grant to the County Council the power to hear, and the unfettered discretion to deny, applications for the award of all growth allocation relating to land located within St. Michaels, contrary to the will and decision of St. Michaels;

31.6 Establish the affirmative vote of a majority of the members of the County Council in favor of an application for the award of growth allocation relating to land located within St. Michaels as an absolute prerequisite for the approval of such application;

31.7 Grant the members of the County Council the discretionary power to decide applications for growth allocation for land within St. Michaels without considering all of the applicable contents and criteria of the St. Michaels Comprehensive Plan, the St. Michaels Zoning Ordinance, the St. Michaels Subdivision Ordinance, or the St. Michaels Critical Area Program (collectively the "St. Michaels Land-Planning And Land-Use Documents");

31.8 Allow the members of the County Council, in considering an application for the award of growth allocation relating to land located within St. Michaels, to consider County land-planning and land-use objectives and criteria that are different from, and conflicting with, the objectives and criteria established by the St. Michaels Land-Planning And Land-Use Documents;

31.9 Effectively remove from St. Michaels, and place in the County Council, the ultimate annexation, planning, zoning and subdivision powers and authority granted by the State to St. Michaels, and exercised by St. Michaels, for the large percentage of St. Michaels that is located within the Critical Area;

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31.10 Conflict with the Maryland Constitution and statutes that grant to Maryland municipal corporations autonomy from County government, and certain exclusive powers and duties within the municipal territory, including the powers of annexation, planning, zoning and subdivision;

31.11 Conflict with Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area), which encourages development within municipalities at a density of at least 3.5 units per acre;

31.12 Conflict with State policy as expressed in Maryland Priority Places Strategy, established by Executive Order 2003.33, signed by Maryland Governor Ehrlich on October 8, 2003;

31.13 Cause different effects on municipalities in the same class;

31.14 Interfere with the contractual and property rights established between St. Michaels and the owners of land within St. Michaels; and

31.15 Interfere with and adversely affect the rights, interests, goals and objectives of St. Michaels relating to the orderly development of the Town, providing of infrastructure and government services, and the public health, welfare, safety and good government of the Town, which are preserved and/or advanced by the interests described in paragraphs 4, 5, 17, 18, 21 and 22 hereof (collectively the "St. Michaels Interests").

32. If validated by an order of this Court, County Bill No. 933 would adversely affect the St. Michaels Interests as follows (the "Adverse Affects"):

32.1 Invalidating the award by St. Michaels, and the approval by the Critical Area Commission, of 20.1 acres of growth allocation for the Strausburg Property, including a 75-acre perpetual conservation easement granted to St. Michaels as a condition for such award of growth allocation;

32.2 Invalidating the award by St. Michaels, and the approval by the Critical Area Commission, of 70.863 acres of growth allocation for a 72.167-acre portion of the Perry Cabin Farm, including a public waterfront park granted to St. Michaels as a condition for such award of growth allocation;

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32.3 Interfering with and invalidating the DRRA relating to a 72.167-acre portion of the Perry Cabin Farm, including the consideration to St. Michaels as described in Section 10 thereof and which could exceed $14 million;

32.4 Interfering with the administration and application of the St. Michaels Critical Area Program that was approved by the Critical Area Commission prior to the purported enactment of County Bill No. 933;

32.5 Interfering, and effectively invalidating St. Michaels Critical Area Program which, subject only to the review by the Critical Area Commission, placed in St. Michaels the exclusive right, free of County interference at least to the extent of 245 acres, to award growth allocation within its corporate boundaries;

32.6 Interfering with the exclusive authority of St. Michaels, pursuant to Maryland Code, Art. 66B, to effectively exercise planning, zoning and subdivision authority over the entire area within its corporate boundaries of St. Michaels;

32.7 Subordinating the St. Michaels Comprehensive Plan to the County Program and effectively rendering the St. Michaels Comprehensive Plan null and void within the Critical Area in St. Michaels;

32.8 Subordinating the St. Michaels Zoning Ordinance to the County Program and effectively rendering the St. Michaels Zoning Ordinance null and void within the Critical Area in St. Michaels; and

32.9 Subordinating the St. Michaels Subdivision Ordinance to the County Program and effectively rendering the St. Michaels Subdivision Ordinance null and void within the Critical Area in St. Michaels.

33. During the review of County Bill No. 933 by the Critical Area Commission, St. Michaels participated in each public hearing and meeting conducted by the Critical Area Commission related thereto, and submitted written communications to the Critical Area Commission, raising each of the issues addressed herein.

34. The County and St. Michaels are claiming conflicting interpretations and rights under the County Bill No. 933.

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Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

35. St. Michaels is a person, within the meaning of Maryland Code, Courts Article, § 3-406 (Authority to interpret), who may have determined any question of construction or validity arising under a law and obtain a declaration of rights, status, or other legal relations under such law.

36. The parties hereto are affected by the above-described County law by virtue of its purported limitation and withdrawal of all Growth Allocation Reserved For St. Michaels, and its purported application to all land within the Critical Area in St. Michaels.

37. There exists an actual controversy of a practicable and justicible issue involving antagonistic claims between the County and St. Michaels that is within the jurisdiction of this Honorable Court and that involves the rights and liabilities of the parties hereto under County Bill No. 933, and the propriety of the disapproval thereof by the Critical Area Commission, as set forth above, which controversy may be determined by a judgment of this Honorable Court.

38. The antagonistic claims that are present indicate that imminent and inevitable litigation will occur among the parties hereto.

39. A declaratory judgment or decree in this case will serve to terminate the uncertainties and controversies giving rise to this proceeding.

40. There is no statutory remedy applicable to this case that must be followed in lieu of this proceeding.

WHEREFORE, the Counter-Plaintiff, The Commissioners Of St. Michaels, requests:

A. That this Court determine and adjudicate the rights and liabilities of the parties with respect to County Bill No. 933; and

B. That this Court find and declare as follows:

1) That on its face County Bill No. 933 violates the State Critical Area Program;

Banks, Nason & Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

2) That on its face County Bill No. 933 violates and is in conflict with the Constitution and laws of the State of Maryland;

3) As it would apply to St. Michaels, County Bill No. 933 would violate the State Critical Area Program; and

4) As it would apply to St. Michaels, County Bill No. 933 would and be in conflict with the Constitution and laws of the State of Maryland.

C. Grant such other and further relief as this Court may deem just and proper.

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD 21803-0044
Telephone 410-546-4644
Attorney for The Commissioners Of St. Michaels

Attachments:

Exhibit No. 1	St. Michaels Future Growth Areas Map
Exhibit No. 2	Development Rights And Responsibilities Agreement
Exhibit No. 3	Letter from the Critical Area Commission indicating approval of the award of 70.863 acres of growth allocation relating to the Perry Cabin Farm
Exhibit No. 4	Letter from the Critical Area Commission indicating approval of the award of 20.1 acres of growth allocation relating to the Strausburg Property

CERTIFICATE OF SERVICE

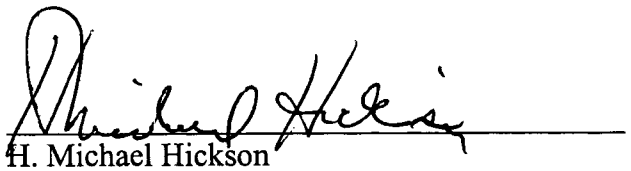
I HEREBY CERTIFY that on the 22nd day of September, 2004, an exact copy of the foregoing Counterclaim was mailed by regular U. S. Mail, postage prepaid, to:

Daniel Karp, Esquire
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore, Maryland 21202-1089
Attorney for Talbot County, MD

Paul J. Cueuzzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of Natural Resources

Banks, Nason & Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

Michael L. Pullen, Esquire
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County



H. Michael Hickson

Banks, Nason &
Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff	*	IN THE CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

* * * * * * * * * * * * * *

AFFIDAVIT OF
CHERIL S. THOMAS

I, CHERIL S. THOMAS, hereby declare and affirm, under the penalties of perjury, that the following matters and facts are true:

1. I am over the age of 18 years and competent to testify as to the matters and facts stated herein.

2. I am the Town Clerk and the Town Manager of The Commissioners of St. Michaels, a municipal corporation of the State of Maryland (hereinafter the "St. Michaels").

3. I am custodian of the documents and records of St. Michaels.

4. The matters and facts as stated in the Motion To Intervene, filed simultaneously herewith in the above-captioned case, are true to best of my knowledge, information and belief.

5. The following exhibits to the Motion To Intervene, filed simultaneously herewith in the above-captioned case, (the "Exhibits") are true and accurate copies of records of regularly conducted business activities of The Commissioners Of St. Michaels (hereinafter referred to as the "Town"); and the Exhibits were made and kept in the course of the regularly conducted business activity of the Town:

Exhibit No. 1	Approval by the Commission of the award of 20.1 acres of growth allocation to the Strausburg Property
Exhibit No. 2	Approval by the Commission of the award of 70.863 acres of growth allocation to the Perry Cabin Farm
Exhibit No. 3	Development rights and responsibilities agreement
Exhibit No. 4	Critical Area Commission Panel Report dated May 5, 2004
Exhibit No. 5	Supplemental Critical Area Commission Panel Report dated May 5, 2004

Cheril S. Thomas, Affiant

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury MD
21803-0044

Designated Critical Area Growth Allocation Areas

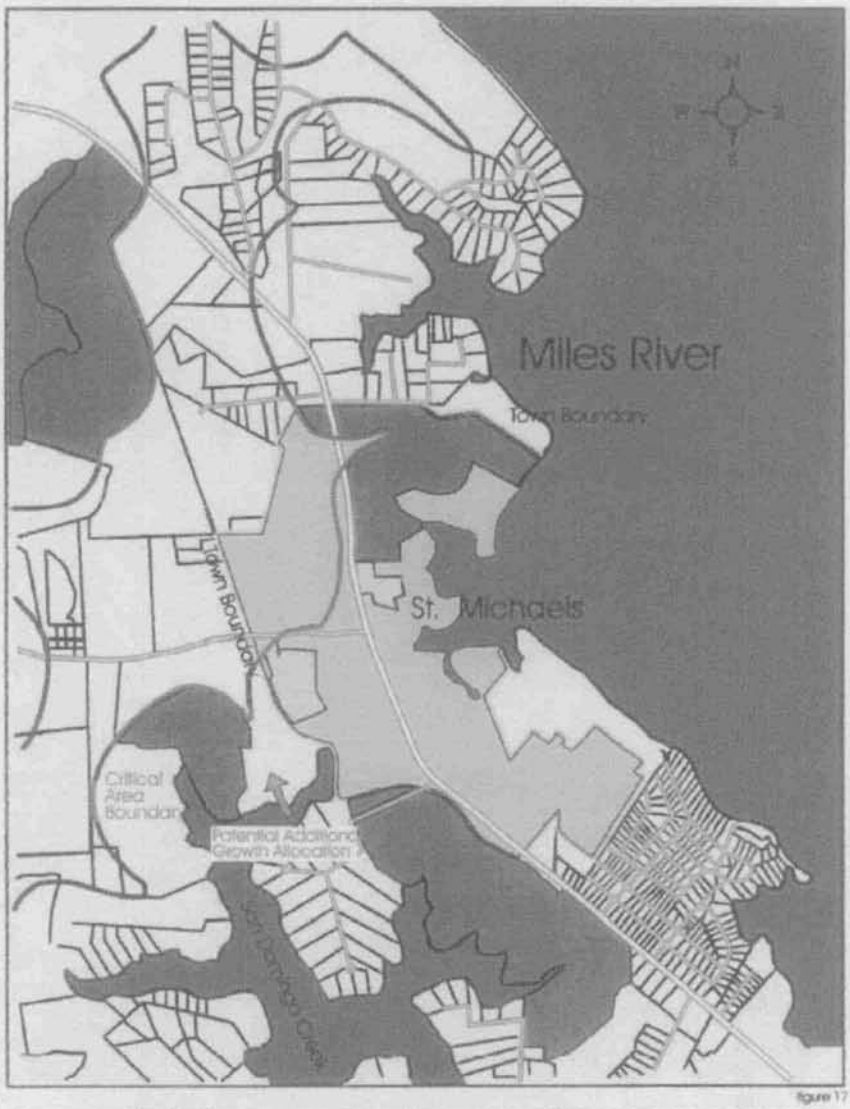


figure 17

Areas identified for future growth allocation and suitable for development in both the Talbot County Critical Area Program and the St. Michaels Critical Area Program

RCA for annexation or rezoning LDA for rezoning

EXHIBIT
tabbies
/

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPER'S RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement") is made and entered into this 16th day of February, 2004, by and between THE MIDLAND COMPANIES, INC. ("Midland"); ST. MICHAELS POINT, L.L.C. ("Point"); MILES POINT PROPERTY, LLC ("Miles"); TND DEVELOPMENT, INC. ("TND Inc."); and THE COMMISSIONERS OF ST. MICHAELS ("Town").

IMP FD SURE $ 20.00
RECORD FEE 75.00
TOTAL 95.00
Rcpt # 75790
MAS 6400 Blk # 568
Feb 20, 2004 03:44 PM

Section 1: RECITALS

This Agreement is entered into based upon the following facts and/or understandings:

1.1 When used in these Recitals, each of the terms defined in Section 2 of this Agreement shall have the meaning given to it therein.

1.2 The General Assembly of the State of Maryland adopted Section 13.01 of Article 66B ("Development Agreement Statute"), which authorizes each municipality possessing zoning powers pursuant to Article 66B to enact an ordinance designating and empowering a public principal to enter into a development rights and responsibilities agreements with persons having legal or equitable interests in real property, to provide that the laws, rules, regulations, and policies governing the use, density, or intensity of such real property shall be the laws, rules, regulations, and policies in force at the time the parties execute such agreements, subject to certain limitations.

1.3 In accordance with the Development Agreement Statute, and partially in response to a request from the Developer to the Town, the Town adopted Ordinance No. 290 ("Enabling Ordinance"), establishing rules, procedures and requirements for consideration of development rights and responsibilities agreements ("DRRAs").

1.4 The parties to this Agreement named herein as a Developer, being Midland, Miles, Point and TND, jointly and severally warrant and represent to the Town that the following matters and facts are true and correct:

1.4.1 The representations contained in this Agreement relevant to a determination of who has a legal and/or equitable interest in the Perry Cabin Land and/or the Hunteman Property, as hereinafter described.

1.4.2 The matters and facts, contained in this Agreement relevant to a determination of who has a legal and/or equitable interest in the Perry Cabin Land and/or the Hunteman Property, as hereinafter described.

1.4.3 Point has not retained for itself, or assigned or otherwise conveyed to anyone other than Miles, any interest in (a) the Contract of Sale for the Perry Cabin Land, between Point as purchaser and Perry Cabin Associates Limited Partnership as seller, (referred to in Section 2 of this Agreement) or (b) any interest in the Perry Cabin Land.

EXHIBIT 2

Clerk Commissioners of St. Michaels
P.O. Box 206
St. Michaels, MD 21663

1.4.4 Miles has not conveyed to anyone, and continues to hold, the sole and entire interest of the purchaser in the Contract of Sale for the Perry Cabin Land, between Point as purchaser and Perry Cabin Associates Limited Partnership as seller.

1.4.5 Miles has not conveyed to anyone, and continues to hold, the sole and entire legal and equitable title to the Hunteman Property.

1.5 The Developer has voluntarily, and on its own volition, petitioned the Town to enter into this Agreement and offered the herein described consideration to the Town, which is the sole consideration for the Qualified Vested Rights granted by this Agreement to the Developer and its successors in interest (both in its capacity as Developer and in its capacity as Owner of the Subject Property), and which consideration is solely consideration for the Qualified Vested Rights granted by this Agreement.

1.6 Developer desires to, and upon granting of the Development Approvals shall, develop the Subject Property, if it is to be developed by the Developer at all, as a traditional neighborhood development, substantially in the form shown on the concept plan entitled the "Miles Point Concept Plan" (attached hereto as **Exhibit** 1) and the Design Code relating thereto (attached hereto as **Exhibit** 2), respectively planned and prepared by the design firm of Duany Plater-Zyberk & Company.

1.7. The Miles Point Concept Plan depicts an overall concept plan for development of the entire Miles Point Property, including the Perry Cabin Land (as hereinafter described) and the Hunteman Property (as hereinafter described). As a result of the Talbot County Council's decision not to relinquish zoning control to the Town over the Hunteman Property at this time, pursuant to the authority of Maryland Code, Article 23A, § 9 (c), this Agreement is not conditioned upon the Town's issuance of, nor shall this Agreement terminate for the failure of the Town to grant, all or any of the local "Development Approvals" that are required for development of the Hunteman Property. Rather, this Agreement is immediately effective as to the Perry Cabin Land, and may become effective as to the Hunteman Property according to the terms of this Agreement, subject to the provisions for termination contained in Section 5 of this Agreement.

1.8 The Miles Point Annexation Agreement (attached hereto as **Exhibit** 3), has been amended by the Amendment To Miles Point Annexation Agreement, between the Town and Miles, , as it may be amended from time-to-time. In the event that the Development Approvals for the Hunteman Property are timely granted to the Developer by the Town in accordance with the Miles Point Concept Plan, the Developer hereby voluntarily offers and agrees to provide to the Town, in exchange for Qualified Vested Rights for such development of the Hunteman Property, the additional consideration described in this Agreement relating to the Hunteman Property.

1.9 The Town began around the Episcopal Parish, established in approximately 1677 on the banks of the Miles River and named after Saint Michael the Archangel; developed as a village primarily composed of persons who worked as watermen and ship-builders; was laid out and surveyed in 1778 by James Brannock; the Town was incorporated in 1804 as "The

Commissioners Of St. Michaels"; due to its relatively isolated location and transportation modes during the nineteenth and twentieth centuries, grew slowly and preserved its small-town character and its historically and architecturally significant structures; was transformed in the last quarter of the twentieth century into a tourist and recreational boating haven that attracts persons as tourists and residents who appreciate the environmental, architectural, historical and cultural beauty of the Town. Most of the development in the St. Michaels area during the last quarter of the twentieth century has been located on the outskirts of the Town, and has not attempted to incorporate, or employ land-use planning or structural design that is intended to replicate or suggest elements of the historic Town core, thus leaving the Town core substantially preserved and in stark contrast to development in the surrounding area in recent decades. The Town, the Developer (including in its capacity as Owner of the Subject Property), and their respective successors in interest, have an interest in perpetuating the character of the Town, and recognize the potential direct and indirect impacts on the Town as it presently exists of a development of the relative size and proximity to the Town core of that proposed by the Developer, both on the current Town residents and visitors, and on the advantages offered by the Town, as it presently exists, to the Owners and residents of dwellings located on the Subject Property.

1.10 By entering into this Agreement, the Developer achieves as its consideration all of the purposes, considerations and benefits which developers are intended to achieve by development rights and responsibilities agreements (DRRAs) pursuant to the Development Agreement Statute, including the following:

1.10.1 Providing the Developer with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, which assurance the Developer has sought in order to incur substantial commitments to develop the Subject Property, such that the development of every part of the Subject Property may be maintained and completed in the future during the term of this Agreement as a Traditional Neighborhood Development in accordance with the Development Plan as it relates to the Subject Property; and

1.10.2 Providing the prospective purchasers and future owners of the Subject Property with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement to assure them, to the fullest extent permitted by the Development Agreement Statute, that every part of the Subject Property will be developed and maintained during the term of this Agreement as a Traditional Neighborhood Development substantially in accordance with the Development Plan as it relates to the Subject Property; and

1.10.3 Providing the Developer with the right to petition the Town, and providing the Town with the right but not the duty, to amend the Agreement (the "Amendment") in accordance with the terms hereof, to add the Hunteman Property to the definition herein of the "Subject Property" in exchange for the additional consideration provided herein relating to the Hunteman Property as described in the Schedule Of Consideration To The Town (Exhibit 10), and thereby:

1.10.3.1 To obtain for the Developer, in its capacity as Developer and Owner of the Perry Cabin Land, and its successors in interest, all of the above-described benefits of the Qualified Vested Rights relating to the Hunteman Property during the term of this Agreement; and

1.10.3.2 To obtain for the Developer, in its capacity as Developer and Owner of the Hunteman Property, and its successors in interest, all of the above-described benefits of the Qualified Vested Rights relating to the Hunteman Property and the Perry Cabin Land during the term of this Agreement; and

1.10.4 Assisting in the preservation and perpetuation of the character of the Town core that make it a unique and attractive place to visit, live and own real estate by voluntarily offering and hereby committing to making the financial and other contributions described in Section 10 of this Agreement.

1.11 In consideration for granting the Qualified Vested Rights as described in this Agreement, the Developer, in its capacity as Developer and Owner of the Subject Property, and its successors in interest, shall grant, convey and pay to the Town the consideration, of the type, in the amounts, at the times, and upon the conditions, as described in Section 10 of this Agreement.

1.12 The Parties acknowledge that many of the benefits identified as consideration to the Town for entering into this Agreement constitute benefits or contractual obligations obtained by the Town which could not be acquired through utilization of existing regulations, ordinances, standards or policies. As further consideration and inducement to the Town to grant the Qualified Vested Rights described in Section 9 of this Agreement, Developer, in its current capacity as the developer and the Owner of the Subject Property, for itself and its successors and assigns, hereby acknowledges and agrees as follows with regard to the consideration for the Qualified Vested Rights granted by this Agreement to the Town, as described in Section 10 of this Agreement:

1.12.1 The consideration granted to the Town is not a limitation and/or exaction imposed upon development of the Subject Property;

1.12.2 The consideration granted to the Town is fair and reasonable in nature, amount and duration as compared to the value of the Qualified Vested Rights granted by this Agreement to the Developer, the Owners, and their respective successors in interest; and

1.12.3 The rights of the Developer, the Owners, and their respective successors in interest, to challenge the legality, amount, or nature of such consideration to the Town are hereby waived.

1.13 After conducting a duly noticed public hearing on the subject, the Planning Commission:

1.13.1 On February 16, 2004, after a public hearing that was conducted on January 8, 12, 15 and 20, 2004 in connection with an application for growth allocation relating to the Development Plan on the Subject Property, considered and determined that the proposed development of the Subject Property is consistent with the Comprehensive Plan and development regulations of the Town; and

1.13.2 On February 16, 2004, considered and determined that the terms, provisions, conditions and obligations in this Agreement are consistent with the Comprehensive Plan of the Town.

1.14 On February 16,2004, after a public hearing that was conducted on January 22, and February 5, 9, 12, and 16, 2004, considering this Agreement and the public comments thereon, the Planning Commission, pursuant to and with the authority of the Development Agreement Statute and the Enabling Ordinance, after a duly noticed public hearing for those purposes, determined by a motion, duly made, seconded, and approved by majority vote, that this Agreement is in the best interest of the Town and to enter into this Agreement on behalf of, for and in the name, of The Commissioners of St. Michaels, a Maryland municipal corporation. The approval of this Agreement by the Planning Commission in the name of the Town constitutes an administrative exercise of the planning, zoning and other police powers of the Town.

1.15 During the Planning Commission's consideration of this Agreement, the Planning Commission made the following Findings of Fact:

1.15.1 This Agreement is consistent with Town's Comprehensive Plan.

1.15.2 This Agreement provides for development of the Subject Property consistent with the uses, density, and intensity of development set forth in the Development Plan.

1.15.3 The execution of this Agreement and construction of the Development Plan will achieve the purposes of a Traditional Neighborhood Development, as stated in the Town Zoning Ordinance, as they relate to the Subject Property.

1.15.4 Additional public benefits of this Agreement and the construction of the Development consist of increased taxes and other financial contributions from the operation of the Development.

1.15.5 The Town hereby declares and acknowledges that the entering into of this Agreement was done with a systematic evaluation of factors relating to the public benefit and welfare, and the public purposes, herein described, all in accordance with the Development Agreement Statute and Enabling Ordinance.

1.16 This Agreement is intended to be, and should be construed as, a Development Rights and Responsibilities Agreement within the meaning of the Development Agreement Statute and the Enabling Ordinance. The Town and the Developer have taken all actions mandated by, and have fulfilled all requirements set forth in, the Development Agreement

Statute and the Enabling Ordinance, including requirements for notice, public hearings, findings, votes, and other procedural matters.

1.17 All parties entered into this Agreement voluntarily and solely in consideration of the benefits, rights and obligations set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Town and the Developer hereby agree as follows:

Section 2: Definitions

For all purposes of this Agreement, except as otherwise expressly provided or the context otherwise requires, the following terms shall have the following meanings:

2.1 "Annual Unit Payments" means the annual payments due and owing to the Town pursuant to this Agreement from the Owner of a residential unit or a live/work unit located on the Subject Property according to the within Development Plan (excluding the hotel/inn units), the first of which Annual Unit Payments for a dwelling unit or live/work unit shall be due on July 1st next following the date on which the Town first issues an occupancy permit for such dwelling or live/work unit, and an Annual Unit Payment for the same unit shall be due and payable to the Town on the same day of each consecutive year thereafter for a total of thirty (30) years, as more particularly set forth in Section 10 of this Agreement.

2.2 "Building Standards" means the generally applicable regulations and standards of Town for the construction and installation of buildings, structures, facilities and associated improvements including, without limitation, the applicable building code, plumbing code, electrical code, mechanical code and fire code.

2.4 "County" means Talbot County, a political subdivision of the State of Maryland.

2.5 "County Land Records" means the Land Records for Talbot County, Maryland, as maintained by the Clerk of the Circuit Court for Talbot County, Maryland.

2.6 "C.P.I." means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, without seasonal adjustment, with the index base period being 1982-84=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics (B.L.S.); or if the C.P.I. is no longer calculated and published by the B.L.S. and/or if the base period has been changed, then the equivalent substitute of that calculation and/or base period as determined and published by the B.L.S., or if no longer determined or published by the B.L.S., then by the equivalent substitute agency of the United States Government.

2.7 "Design Code" means the Design Code that specifies the design rules, regulations, covenants and restrictions applicable to the Development Plan, prepared by Duany Plater-Zyberk & Company, attached hereto as **Exhibit 2**.

2.8 "Developer" means successively during the term of this Agreement the one or more party(s) collectively having all of the rights and duties of the Developer pursuant to this Agreement, being: (1) Midland, Miles, Point or TND Inc with the legal and/or equitable interest in the Subject Property on the Effective Date of this Agreement as required by the Development Agreement Statute (the "Original Developer(s)"); and (2) the successors in interest to the Original Developer(s) regarding the rights and duties of the Developer pursuant to this Agreement (the "Developer Assignee(s)"), as such rights and duties are permitted to be assigned according to the terms and restrictions of this Agreement, including Section 6 of this Agreement. Developer shall not refer to or include persons or entities that acquire individual lots from the Developer for construction of Units thereon. The term "Developer" is used herein as a uniform term to refer to the succession of equitable and/or legal interest holders in the Subject Property who, during the term of this Agreement, act as the Developer of the Subject Property pursuant to this Agreement and are thereby obligated to the Town pursuant to this Agreement. Until the approved final subdivision plat and declaration for the Subject Property is recorded among the County Land Records, the rights and duties of the Developer pursuant to this Agreement are in the party(s) hereto who named as a Developer in this Agreement and are from time-to-time the legal and/or equitable owner(s) of the Subject Property. Thereafter, the rights and duties of the Developer pursuant to this Agreement follow the succession persons and/or entities to whom the role of Developer is properly assigned and accepted pursuant to the terms of this Agreement. Notwithstanding the fact that a party hereto is not the owner of a legal or equitable interest in some or all of the Subject Property, without absolving a Developer party hereto of its duties and responsibilities, one or more other parties hereto named as a Developer may as the result of its acts or deeds nevertheless be held responsible for the duties of the Developer. A party to this Agreement who is identified as "Developer" in this Agreement does not necessarily mean that entity will functionally serve as a developer of the Subject Property.

2.9 "Developer Assignee" means the assignee of the Developer's rights and responsibilities as to the Subject Property under this Agreement after the final subdivision plat for the Subject Property has been approved and recorded among the County Land Records, in accordance with the requisites for such assignment according to Section 6 of this Agreement.

2.10 "Developer Obligations" shall refer to the obligations of the Developer to comply with all of the Development Approvals, including, but not limited to, those set forth in a decision of the Town Commissioners to award growth allocation if growth allocation is awarded), the Miles Point Annexation Agreement, as, as it may be amended from time-to-time, **(Exhibit 3)** the Public Facilities Agreement, **(Exhibit 4)** the conditions imposed by the Planning Commission during the TND floating zone and subdivision review processes and the Design Code **(Exhibit 2)**. The term "Developer Obligations" is not intended to refer to the duties of the Developer imposed by Section 10 (Consideration To The Town) of this Agreement.

2.11 Development Agreement Statute" means the state enabling legislation authorizing the Town to enter into this Agreement that is codified at Article 66B, Section 13.01 of the Maryland Code.

2.12 "Development Approvals" means all permits, approvals, actions, and other entitlements applied for by the Developer, within the power of the Town, and necessary to be approved or issued by the Town to authorize the Developer to develop the Subject Property in accordance with the Development Plan and Design Code, including the construction and installation of infrastructure up to but not including the issuance of building permits for individual lots.

2.12.1 The Development Approvals shall include, but not be limited to:

2.12.1.1 Final, non-appealable award of critical area growth allocation for the Subject Property, converting the critical area land management classification therefore from RCA to IDA; and

2.12.1.2 Designation of the Subject Property as a TND floating zone and approval of the Traditional Neighborhood Development Plan for the Subject Property substantially in accordance with that section of the Miles Point Plan (**Exhibit 1**).

2.13 "Development Plan" means the plans, specifications and other documents describing to the intended development of the Subject Property in a manner substantially similar to the Miles Point Concept Plan, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003, attached hereto and incorporated herein by reference (**Exhibit 1** hereto), as it may be amended by the Town in the process of granting the Development Approvals.

2.14 "DRRA" means this Development Rights and Responsibilities Agreement, as it may be amended from time to time, including all addenda, schedules and exhibits incorporated by reference.

2.15 "Effective Date" means the Execution Date of the last of all the parties to execute this Agreement, provided that this Agreement is: (a) fully executed; and (b) is recorded in the County Land Records within twenty (20) days after being fully executed.

2.17 "Enabling Ordinance" means Ordinance No 2-2003, adopted by the Town on November 11, 2003, 2003 pursuant to the Development Agreement Statute, to establish procedures and requirements for the consideration of development rights and responsibility agreements.

2.18 "Execution Date" means, with respect to each party, the date on which the party executes this Agreement.

2.19 "Existing Land Use Regulations" means those certain Town land use laws, rules, regulations and policies, to the fullest extent permitted by the Development Agreement Statute, in effect on the Effective Date, applicable to and governing the use, density and/or intensity of

development of the Subject Property substantially in conformity with that portion of the Development Plan applicable to the Subject Property, except that Developer and Town may mutually agree that the Project will be subject to a later enacted or amended rule, regulation, ordinance, policy, condition, or environmental regulation that becomes effective after the Effective Date.

2.19 "Future Land Use Regulations" means those certain land use regulations which take effect after the Effective Date.

2.20 "Governmental Authority" means any applicable federal, state, county or Town governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over this Project.

2.21 "HOA" means the association of Owners which shall be formed pursuant to the Declaration of Covenants, Restrictions and Conditions for the Project (sometimes hereinafter the "Declaration"). The HOA shall be responsible for the annual collection of the Annual Unit Payments from the Owners of the residential units and the live/work units located within the Project, as specified in the Duty to Pay, Section 10.4 of this Agreement, and in the Schedule Of Consideration To The Town, incorporated herein as Exhibit 10, and payment of these funds to the Town.

2.22 "Hunteman Property" shall refer to those certain tracts or parcels of land east of Maryland Route 33 and binding on Yacht Club Road and being more particularly described as follows:

2.22.1 All that land described in the deed dated August 31, 2001, from Elsie W. Hunteman to Miles, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 96, et seq.;

2.22.2 Consisting of 17.156 acres, more or less and more particularly shown on a plat prepared by McCrone, Inc., titled "ANNEXATION PLAT OF THE LANDS OF ELSIE W. HUNTEMAN TO THE TOWN OF ST. MICHAELS SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND," dated March 1998, a copy of which plat is attached hereto as **Exhibit 7**; and

2.22.3 Consisting of two (2) tracts of land which are the subject of a petition for annexation to the Town and Town Commissioners Resolution No. 2003-06, adopted on October 28, 2003.

2.23 "Midland" means The Midland Companies, Inc., a District of Columbia Corporation, together with its successors and assigns to the extent permitted by this Agreement. Midland is at certain stages of the development process referred to as a "Developer" in this Agreement as that term is defined in Section 2. Midland acquired its rights in the contract of sale for the Perry Cabin Land from Point, and thereafter Midland assigned all of its rights in said contract and the Perry Cabin Land to Miles. Midland is the entity that has submitted all of the applications to the Town for growth allocation for development on the Subject Property. Midland, Miles, Point and TND Inc. are related entities in that George A. Valanos is the President of Midland and TND Inc. and the Managing Member of Miles and Point.

2.24 "Miles Point II" refers to the application for the award of growth allocation relating to a proposed project on the Perry Cabin Land and the Hunteman Property, submitted to the Town by letter dated September 9, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application, which application was withdrawn by Midland on or about December 19, 2003.

2.25 "Miles Point III" refers to the application for the award of growth allocation relating to a proposed project only on the Perry Cabin Land, submitted to the Town by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application. Miles Point III is the subject of this Agreement, and unless otherwise specified herein, where there is a factual distinction the term "Miles Point" refers to the application, concept plan and/or proposed project that is the subject of the application submitted by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland.

2.26 "Miles Point Annexation Agreement" shall refer to the Annexation Agreement dated October 28, 2003, and amended February, 2004 between the Town and Miles through which the Hunteman Property was annexed into the Town which is now or about to be recorded among the County Land Records.

2.27 "Miles" means Miles Point Properties, LLC, a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Miles is the current owner of the Hunteman Property. Miles is the contract purchaser of the Perry Cabin Land, by virtue of the assignment to Miles from Midland of all of its interest as purchaser in a contract for the purchase of the Perry Cabin Land. It is intended that Miles will be the owner of all of the Miles Point Property (consisting of the Perry Cabin Land and the Hunteman Property). Miles is a real estate holding company formed for purposes of taking ownership of the Miles Point Property. TND Inc. is responsible for obtaining the Development Approvals. When such Approvals are obtained and financing for the public facilities is in place, and construction of the development is scheduled to commence, it is intended that Miles will convey the Miles Point Property to TND Inc., at which time TND Inc. shall become the successor and assigns to Miles as the "Developer" to all or any part of the Miles Point Property. Although Miles is referred to as the Developer, obligated to the Town in that capacity herein until conveyance to TND Inc. of all of Miles' interest in the Miles Point Property, Miles will not functionally act as a developer of the Miles Point Property. George A. Valanos is the Managing Member of Miles.

2.28 "Miles Point Annexation" means the annexation accomplished by Town Resolution No. 2003-06, which extended the Town boundaries to include approximately 42.066 acres of land, of which approximately 17 acres is fast land, which represents the Hunteman Property.

2.29 "Mile Point Property" means collectively the land that is designated in this Agreement as the Perry Cabin Land and the land that is designated in this Agreement as the Hunteman Property.

2.30 "Mortgage" means any mortgage or deed of trust granted by an owner encumbering real property, encumbering any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the locality of the Subject Property (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale and leaseback documents, lease and leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute); provided that such mortgage, deed of trust or other form of security instrument, and any instrument evidencing any such other form of security arrangement, has been recorded among the County Land Records.

2.31 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other lender, and their successors and assigns, that is secured by the Subject Property.

2.32 "Owner" means all the persons and/or entities that are the current record title fee simple owner(s) of the Subject Property, and their successors in title to each lot or parcel of land that is a part of the Subject Property on which an individual residential unit or a live/work unit is located or intended to be located on the Subject Property pursuant to the subdivision and development of the Subject Property in accordance with the Development Plan. Each Developer hereby agrees to bind the Subject Property to the terms of this Agreement immediately upon becoming an Owner of the subject Property during the term of this Agreement. A duty of an Owner under this Agreement with respect to a particular subdivision lot or parcel of the Subject Property on which a Unit is intended to be located according to the Development Plan shall be the joint and several duty of each person and/or entity that is a record title fee simple owner of such lot or parcel of the Subject Property at the time such duty accrues or is due to be performed according to this Agreement.

2.33 "Parties" or "Party" mean the parties or a party to this Agreement, being Town and/or Developer and including their successors or assigns

2.34 "Performance Bond" means a bond of a corporate surety licensed in the State of Maryland issued for the benefit of Town in the sum equal to one hundred percent (100%) of the estimated cost of the work for the applicable public improvements undertaken by Developer pursuant to the Public Facilities Agreement.

2.35 "Perry Cabin Land" shall refer to approximately 72.167 acres of land more particularly described as "Parcel 2" and "Parcel 2A" in a plat prepared by McCrone, Inc. titled "Growth Allocation Plat, The Lands of Miles Point Property, LLC and Part of the Lands of Perry Cabin Associates, Second Election District, Talbot County, Maryland" prepared for The Midland Companies", dated September 2003, a copy of which plat is attached hereto as **Exhibit 6.** The Perry Cabin Land is part of the same land described in a deed dated May 14, 1979 from Charles F. Benson and Harry C. Meyerhoff to Perry Cabin Associates, a Maryland partnership, recorded among the County Land Records in Liber No. 533, folio 486, *et seq.* The Perry Cabin Land was annexed to the Town pursuant to an Annexation Agreement dated May 6, 1980 between the

Town, Perry Cabin Associates Limited Partnership, and Talbot County, Maryland, recorded among the Land Records of Talbot County in Liber No. 548, folio 167 *et seq.* (the "Perry Cabin Farm Annexation Agreement") Midland is the equitable owner and contract purchaser of the Perry Cabin Land.

2.36 "Planning Commission" means the Planning Commission of the Town, created and constituted pursuant to Article 66B of the Maryland Code.

2.37 "Point" means St. Michaels Point, L.L.C., a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Point was the original contract purchaser of the Perry Cabin Land from Perry Cabin Associates. Point has assigned all of its right, title and interest in said contract of sale, and in the Perry Cabin Land, to Midland. It is intended that Point will have no further role in the ownership, development or sale of the Perry Cabin Land or the Hunteman Property. George A. Valanos is the Managing Member of Point.

2.38 "Project" means the development of the Subject Property as a Traditional Neighborhood Development in accordance with the Development Plan.

2.39 "Public Facilities Agreement" means the public facilities agreement between the Town and the Developer relating to construction and installation of the public facilities on the Subject Property in accordance with the Development Plan.

2.40 "Qualified Vested Rights" is the right granted to the Developer in Section 9 to the Existing Land Use Regulations as they apply to the development of the Subject Property in accordance with the Development Plan, in order for the Developer to obtain a certain use, density and intensity of development of the Subject Property without the Developer having to make substantial improvements to all portions of the Subject Property.

2.41 "Qualifications" means the qualifications, reservations and exemptions to the vested rights in the Existing Land Use Regulations otherwise provided to Developer in Section 9.1, which authority is reserved to the Town in Section 9.2 of this Agreement.

2.42 "Sewer Approval" means any action by the Developer which uses in whole or in part a sewer allocation or approval on the Subject Property for the development in accordance with the Development Plan, including: (1) installation of infrastructure; (2) entering into a binding contract to sell a lot in the Subject Property; or (3) conveying any lot in the Subject Property.

2.43 "Subject Property" means the real property that is subject to this Agreement, which as of the Effective Date shall be the Perry Cabin Land. This Agreement may be amended in the future such that the Subject Property also includes the Hunteman Property.

2.44 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Subject

Property as a Traditional Neighborhood Development that are consistent with the Development Plan.

2.45 "State" means the State of Maryland.

2.46 "Third Party" means any person or legal entity not a party to this Agreement.

2.47 "TND Inc." shall refer to "TND Development, Inc." a Maryland corporation, together with its successors and assigns to the extent permitted by this Agreement. When financing for the public facilities is in place and construction of the development is scheduled to commence it is intended that Miles will convey the Miles Point Property (consisting of the Perry Cabin Land and the Hunteman Property) to TND Inc., at which time TND Inc. shall become the successor and assign to Miles and TND Inc. will be the "Developer" as that term is defined in this Section 2. TND Inc. will develop and construct the infrastructure and community structures pursuant to the Public Facilities Agreement. George A. Valanos is the President of TND.

2.48 "Traditional Neighborhood Development" means a style of subdivision and development design that is described and governed by Town Zoning Ordinance (No. 109, as amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone).

2.49 "Town" means the "The Commissioners of St. Michaels", a municipal corporation, organized and existing under the laws of the State of Maryland, together with its successors and assigns.

2.50 "Town's Collateral Improvement Fund" means the fund described in Section 10 of this Agreement.

2.51 "Town Commissioners" means the elected officials that constitute the executive and legislative body of the Town, known as the Commissioners of St. Michaels.

2.52 "Unit" means a dwelling unit or a live/work unit as shown, authorized and limited by the Development Plan and the Development Approvals.

2.53 "Zoning Ordinance" means the zoning regulations contained in Town Ordinance No. 109, as amended, applicable to development of the Subject Property.

Section 3: Exhibits (list). The following documents are exhibits to this Agreement, are incorporated herein by reference, even though some or all of them may not be attached hereto.

Exhibit 1 – Drawing titled "Miles Point Concept Plan", showing the proposed development of the Perry Cabin Land and the Hunteman Property, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003.

Exhibit 2 – Design Code for Miles Point, for the development of the Miles Point Property, prepared by Duany Plater-Zyberk & Company.

Exhibit 3 – Miles Point Annexation Agreement, between the Town and Miles, dated October 28, 2003.
Exhibit 4 – Public Facilities Agreement, between the Town and TND Inc., dated October 28, 2003.
Exhibit 5 – Perry Cabin Farm Annexation Agreement.
Exhibit 6 – Plat of Perry Cabin Land.
Exhibit 7 – Plat of Hunteman Property Annexation.
Exhibit 9 – Public Facilities Agreement
Exhibit 10 – Schedule Of Consideration To The Town, consisting of 19 pages, and which is an integral part of Section 10 of this Agreement.
Exhibit 11 – Schedule Of Town Administrative And Utility Fees, Charges And Rates
Exhibit 12 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone)
Exhibit 13 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part f (TND Lot and Building Standards)
Exhibit 14 - Certification Of Interest In The Subject Property

Section 4: **Subject Property**. The real property that is subject to this Agreement is the Perry Cabin Land. It is contemplated by the parties that this Agreement may be amended in the future such that the Subject Property shall also include the Hunteman Property.

Section 5: **Effective Date, Recordation, Term, and Termination of Agreement**

5.1 This Agreement shall be effective, and confer all rights and obligations according to the terms of this Agreement, on the Effective Date of this Agreement.

5.2 Unless waived in writing by the Developer, and subject to the conditions precedent to termination described in Section 5.3 of this Agreement, this Agreement shall terminate upon the first to occur of the following described circumstances (hereinafter "Terminating Circumstances"), which Terminating Circumstances the Developer shall in good faith, timely and diligently attempt to avoid:

5.2.1 On the twenty-first (21st) day following the Effective Date, this Agreement has not been recorded among the County Land Records.

5.2.2 The failure of at least of one Developer, as defined herein, to have an interest, of the type required by the Development Agreement Statute, in the Perry Cabin Land at any time before the Developer obtains fee simple title to the Perry Cabin Land.

5.2.3 One hundred and eighty (180) days after the Developer has obtained all final Development Approvals and Sewer Approval for the Subject Property, and the Developer has failed within that time to obtain fee simple title to the Perry Cabin Land or fails to immediately thereupon subject the Perry Cabin Land to all of the terms and conditions of this Agreement. When a Developer is now or hereafter becomes the fee simple title owner of all of the Subject Property before the final subdivision plat and Declaration are recorded, that Developer hereby binds all of its successors in title to the Subject Property to the rights and duties of the Owner(s) of the Subject Property as described herein, as distinct from the rights and duties of the Developer. Notwithstanding anything to the contrary stated or implied in this Agreement, the Developer has no obligation to the Town to obtain or retain fee simple title to the Perry Cabin Land and shall make that decision solely at Developer's discretion.

5.2.4 Sixty (60) days after any one of the Development Approvals, after having been timely applied for by the Developer, has been denied by a binding decision which has been rendered final, subject to the following:

5.2.4.1 This Agreement is not intended to expressly or impliedly obligate the Town, or any officer, employee or administrative or executive body of the Town, to grant or award any discretionary or non-discretionary Development Approvals; on the contrary, each request for a Development Approval shall be impartially reviewed by the applicable reviewing governmental authority for the Town, based solely on the facts of record and the applicable laws and regulations.

5.2.4.2 In the event a Development Approval contains conditions, not expressly contemplated in this Agreement; the Developer may reject the Development Approval by providing within thirty (30) days of the Developer's receipt of the written Development Approval written notice to the Town of the Developer's objection to one or more conditions in which case the approval shall not constitute a Development Approval as that term is used in this Agreement, but shall be considered the denial of a Development Approval.

5.2.4.3 The conditions contained in the Planning Commission's Recommendation to the Town Commissioners concerning the Miles Point II application for growth allocation are expressly contemplated by the parties hereto to be the same or similar to the conditions for the Miles Point III application for growth allocation as may be recommended by the Planning Commission and imposed by the Town Commissioners.

5.2.5 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and granted, is not final by reason of an administrative or judicial remedy that has been pursued by a person legally entitled so to do, and that still is pending.

5.2.6 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and denied, is not final by reason of an administrative or judicial remedy that has been pursued by the Developer, and that still is pending.

5.2.7 Ten (10) years after any applicable law (including Talbot County Bill No. 933, enacted by the Talbot County Council on December 23, 2003) which purports to remove the power of the Town, as the sole and exclusive authority, to the exclusion of the Talbot County Council, to award the IDA growth allocation, contemplated by this Agreement, to permit development on the Perry Cabin Land in a form substantially similar to that shown on the Development Plan, has not been invalidated or otherwise rendered ineffective by: (a) a final and legally exhausted decision by any governmental agency authorized so to do; (b) a final and legally exhausted decision by a court of competent jurisdiction; or (c) applicable legislation.

5.2.8 When the Subject Property has been fully developed by the construction on the Subject Property of a Unit on all of the lots approved for a Unit according to the Development Plan and occupancy permits have been issued by the Town therefor, and all of the Developer Obligations and the payment of all consideration to the Town in connection with the Project, as specified by Section 10 of this Agreement, have been satisfied.

5.3 As conditions precedent to the termination of this Agreement by reason of the occurrence of any Terminating Circumstance described in Section 5.2 of this Agreement:

5.3.1 The Developer shall, by writing signed by an authorized officer of the Developer and delivered to the Town:

5.3.1.1 Relinquish all Development Approvals obtained by the Developer or its predecessors in interest in pursuit of the terms and requirements of this Agreement; and

5.3.1.2 Withdraw all applications for Development Approvals then pending that were sought pursuit of the terms and requirements of this Agreement; and

5.3.2 The Developer, for itself, its successor Developer Assigns, and its successors in interest as Owner of the Subject Property, hereby waives all

claims of impermissible change of mind in any subsequent administrative decision, as compared to any decision rendered in pursuit of a Development Approval pursuant to this Agreement, relating to all or any part of the Subject Property.

5.4 Notwithstanding anything to the contrary contained in this Agreement, if no Terminating Circumstance set forth in Section 5.2 has sooner occurred, or if all of the Terminating Circumstances set forth in Section 5.2 that have sooner occurred have been waived, then this Agreement shall nevertheless automatically terminate seventy-five (75) years after the date of this Agreement, subject, however, to Section 18.23 of this Agreement.

5.5 Developer and Town may mutually waive, in whole or in part, any or all of the Conditions set forth in Section 5.2 at any time prior to the deadline set forth in Section 5.3 for the satisfaction of such condition(s), provided that such waiver is in writing.

5.6 Developer or any Owner may require the Town to sign and provide, for recording in the County Land Records by the requesting Developer or Owner, written confirmation of the date and fact of the termination of this Agreement upon the occurrence of both of the following:

5.6.1 The occurrence of any Terminating Circumstance described in Section 5.2 hereof, which is not timely waived; and

5.6.2 The occurrence of the conditions precedent described in Section 5.3.1 of this Agreement.

5.7 Anything to the contrary in this Agreement notwithstanding, including but not limited to Sections 14 and 16 of this Agreement, if the approved final subdivision plat for the entire Subject Property and the approved Declaration in accordance with the Development Plan are recorded among the County Land Records and fee simple title to at least one lot or parcel of the Subject Property is thereafter conveyed to an Owner who is not the Developer, then development of the entire Subject Property shall not substantially deviate from the recorded subdivision plat, Declaration, the Development Plan, and the Developer Obligations in place at the time of such conveyance, and this Agreement unless the Developer obtains a final order from a court of competent jurisdiction.

Section 6: Binding Effect, Assignment, Notice and Release

6.1 Binding Effect of Agreement. The Subject Property is hereby made subject to this Agreement. Development of the Subject Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to the benefit of, the respective parties to this Agreement, and their successors in interest, and constitute covenants that shall run with the Subject Property.

6.1.1 Town. Whenever the term "Town" is used in this Agreement, such term shall include the successor governmental entity to the Town.

6.1.2 Developer. Whenever the term "Developer" is used in this Agreement, such term shall include the successor in interest to the Developer of the Subject Property (the "Developer Assignee"). Except where specifically stated to the contrary in this Agreement, the rights and duties of the Developer pursuant to this Agreement follow the person who is properly assigned such rights and duties in accordance with the requirements of this Agreement. A duty of the Developer pursuant to this Agreement shall be the liability of the person that is the Developer at the time the duty of the Developer accrues pursuant to this Agreement, and his successor Developer Assignees. When an Owner of some or all of the Subject Property is also the Developer of the Subject Property, the conveyance of title by said Owner to some or all of the Subject Property passes the rights and duties of the Owner to his successor in title to that same portion of the Subject Property; but does not assign the rights and duties of the Developer of the Subject Property pursuant to this Agreement unless both of the following conditions are satisfied: (1) the assignment of the rights and duties of the Developer is expressly stated in the conveyancing document, and (2) all of the requirements of this Agreement for the assignment are satisfied.

6.1.3 Owner. Except where specifically stated to the contrary in this Agreement, the rights and duties of the Owner of a particular parcel of the Subject Property pursuant to this Agreement follow the person who is the successor in title to that same parcel of the Subject Property. A duty of an Owner relating to a specific Unit or parcel of the Subject Property shall be the liability of the person or entity that is the Owner of said property at the time that duty accrues, and the successors in title of that Owner to that portion of the Subject Property. When the Developer of the Subject Property is also an Owner of some or all of the Subject Property, the Developer, in his solely capacity as an Owner, shall have the rights and duties of the Owner pursuant to this Agreement with respect to all of the Subject Property owned by the Developer.

6.2 Enforcement By Town. The Planning Commission has entered into and executed this Agreement on behalf of the Town pursuant the authority of the Development Agreement Statute and the Enabling Ordinance. Therefore, the Town, by and under the direction and authority of the Town Commissioners, shall have the right to enforce the terms of this Agreement.

6.3 Transfer and Assignment of Rights and Interests.

6.3.1 Assignment. There shall be only one Developer of the Subject Property at a given time for the purposes of this Agreement. The Developer for the purposes of this Agreement shall at all times be the same person or entity as the "Developer" for the purposes of (and as defined in) the Public Facilities Agreement until all obligations to the Town under the Public Facilities Agreement with respect to the Subject Property have been fully satisfied.

6.3.1.1 At all times before the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the

Development Plan and the approved Declaration in accordance herewith, the Developer shall be either Midland, Miles or TND Inc.

6.3.1.1.1 It is the intention of the parties that Miles will assign its ownership interest acquired and to be acquired in the Miles Point Property to TND Inc. and the Town hereby expressly consents to this assignment provided that George A. Valanos is the President of, and the owner of, or has control of the voting rights to, at least a 34 % equity interest in, TND Inc. at all times while TND Inc. is acting in the capacity of the Developer of the Subject Property (except in the event of the death of George A. Valanos; or in the event of a default by the Developer in the terms of a mortgage, deed of trust or other document securing the repayment of a loan by a lien on the Subject Property, which default results in the foreclosure and sale of the Subject Property).

6.3.1.2 After the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the Development Plan and the approved Declaration in accordance herewith:

6.3.1.2.1 The transfer of title to one or more lots and/or sections of the Subject Property shall not transfer the rights and duties of the Developer except in accordance with the conditions specified herein.

6.3.1.2.2 Developer shall not sell, assign or transfer its rights and obligations as Developer of the Subject Property under this Agreement to any person other than those described in Section 6.3.1.1, natural or legal, at any time during the Term of this Agreement, (as distinguished from the conveyance of title to land constituting some or all of the Subject Property without rights and/or duties of the Developer created by this Agreement) except in compliance with all of the following conditions:

6.3.1.2.2.1 All such rights and duties relating to all of the Subject Property are assigned by the assignor in writing;

6.3.1.2.2.2 All such rights and duties relating to all of the Subject Property are accepted by the assignee in writing;

6.3.1.2.2.3 The assignor is not in default on any obligation or duty of the assignor to the Town imposed by the Developer Obligations or by this Agreement;

6.3.1.2.2.4 The assignee is, or shall be upon execution of the assignment, the "Developer" for the purposes of the Public Facilities;

6.3.1.2.2.5 The assignee has demonstrated to the Town his or its ability to perform and satisfy the duties of the Developer under this Agreement; and

6.3.1.2.2.6 The assignment is consented to by the Town in writing, provided that such consent will not be unreasonably withheld.

6.3.1.3 Before the approved final subdivision plat and the approved Declaration are recorded among the County Land Records the Developer and its successors shall not sell or otherwise convey legal or equitable title to one or more individual lots or parcels of the Subject Property, on which a Unit is located or is contemplated to be located by the Development Plan, to an Owner.

6.3.1.4 Constructive Notice and Acceptance. Every person who, now or hereafter, owns or acquires any right, title or interest in or to the Subject Property, or any part thereof, is, and shall be, conclusively deemed to have consented and agreed to be bound by every provision contained in this Agreement applicable to all or the portion of the Subject Property acquired, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

6.3.1.5 Release of Developer. Upon the assignment of the all of the duties and obligations of the Developer (as distinguished from the duties under this Agreement of the Owners and HOA) under this Agreement and the Public Facilities Agreement, Developer will be released from its obligations under this Agreement with respect to the Subject Property, or portion thereof, so assigned arising subsequent to the effective date of such assignment, if Developer obtains the Town's written consent to such assignment.

6.4 Owner's Responsibilities. A transferee of the title to a lot or parcel of the Subject Property shall be responsible for satisfying the good faith compliance requirements of the Developer under this Agreement relating to the portion of the Subject Property owned by such transferee that have not been satisfied at the time the transferee takes title to the lot or parcel of the Subject Property. Nothing contained herein shall be deemed to grant to Town discretion to approve or deny any sale or transfer, except as otherwise expressly provided in this Agreement. A default by any transferee shall only affect that portion of the Subject Property owned by such transferee and shall not cancel or diminish in any way Developer's or any other transferee's rights hereunder with respect to any portion of the Subject Property not owned by such transferee.

6.5 Amendment and Waiver. This Agreement may be waived, amended or cancelled, in whole or in part, only by written consent of all of the necessary parties to such amendment or waiver. In every instance of a waiver, amendment or termination of a term of this Agreement, the Town, by and through the Planning Commission, shall be a necessary party thereto. In any waiver, amendment or termination of any of the Qualified Vested Rights, described in Section 9

of this Agreement, relating to any lot or parcel of the Subject Property, the record title owners of all lots or parcels of the Subject Property shall be necessary parties thereto. In any waiver, amendment or termination of any provision of a Development Approval, including a plat or condition that constitutes part of such approval, the record title owners of all lots or parcels of the Subject Property directly affected by such Development Approval shall be necessary parties thereto; but this provision shall not preclude a property owner from seeking and obtaining relief available pursuant to an applicable land-use law. In an amendment or termination of any other provision of this Agreement, only the Town and persons whose land is directly involved in such amendment or termination shall be necessary parties thereto. All such writings shall be signed by the appropriate officers of the Town and Developer and in a form suitable for recordation in the County Land Records, and shall be recorded in the County Land Records. This provision shall not limit any remedy of the Town or Developer as provided by this Agreement.

6.6 Notices. All notices and other communications in connection with this Agreement shall be in writing and delivered either by personal (hand) delivery or by United States certified or registered mail. Each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until actually received.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

TND Development, Inc.
1228 Thirty-First Street, N.W.
Washington, D.C. 20007
Telephone (703) 556-4000
Attn: George A. Valanos,
President

with a copy to:
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601
Attn: Richard A. DeTar
Telephone (410) 822-5280

Notices and communications to the Town shall be addressed to, and delivered at, the following address:

The Commissioners of St. Michaels
P. O. Box 206
300 Mill Street
St. Michaels, Maryland 21663
Attn: Town Manager
Telephone (410) 745-9535

with a copy to:
H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Telephone (410) 546-4644

Section 7: Representations, Warranties and Covenants

7.1 Both Parties. *Procedural Sufficiency*. Town and Developer, for itself, its successor Developer Assignees, and its successors in title to the Subject Property, hereby acknowledge and agree that all required notices, meetings, and hearings have been properly

given and held by the Town with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations or rights created by it on the grounds of any procedural infirmity or any denial of any procedural right.

7.2 Developer. Developer hereby makes the following representations, warranties and covenants to and with Town as of the Execution Date:

7.2.1 *Existence*. Developer is a corporation and/or limited liability company duly incorporated/organized and legally existing under the laws of the State of Maryland and is qualified to transact business in the State of Maryland.

7.2.2 Authori*zation*. Developer is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned is authorized to act on behalf of and bind Developer to the terms of this Agreement. Developer has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by Developer does not require any consent or approval that has not been obtained.

7.2.3 *Ownership of* Subject *Property*. On the Effective Date of this Agreement the Developer has the interest in the Perry Cabin Land that is required by the Development Agreement Statute. Unless and until this Agreement is terminated pursuant to Section 5, either Miles or TND Inc., has and shall retain legal and equitable title to the Hunteman Property for sufficient time: (a) for the control by the County over the land-use classification of the Hunteman Property to expire; and (b) for the provisions of the Miles Point Annexation Agreement, as it may be amended from time-to-time, relative to the Development Approvals by the Town relating to the Hunteman Property, to be considered and granted, along with the Amendment of this Agreement to include the Hunteman Property as part of the Subject Property. As indicated in the Certification Of Interest In The Subject Property, attached hereto as Exhibit 14, the legal, equitable, and lien holder interests currently held in the Perry Cabin Land, and the legal, equitable, and lien holder interests currently held in the Hunteman Property, are as follows:

7.2.3.1 Ownership of the Hunteman Property. Miles is the legal and equitable fee simple owner of the Hunteman Property.

7.2.3.2 Ownership of the Perry Cabin Land. Perry Cabin Associates Limited Partnership is the legal fee simple owner of the Perry Cabin Land. Perry Cabin Associates Limited Partnership has entered into a contract to sell the Perry Cabin Land. The assignee/purchaser of this contract is Miles. Miles is the equitable owner of the Perry Cabin Land.

Section 8: Development Rules and Restrictions.

8.1 Permitted Uses. The permitted uses of the Subject Property, in accordance with the Existing Land Use Regulations and the Development Approvals are as set forth in the Development Plan.

8.2 Number and Type of Units, Uses and Density. The total number and density of single-family residential Units, townhouse dwelling Units, live/work Units, (collectively the "Units") and an inn containing sleeping rooms, contemplated by this Agreement and the Development Plan to be located on the Subject Property in accordance with the Existing Land Use Ordinances, are as follows:

Type of Units	**To Be Located On The Perry Cabin Land** (± 72.167 acres)	**To Be Located On The Hunteman Property** (± 17.156 acres)	**Total** (89.323 acres)
Single-Family Dwelling Units (other than townhouses)	251	41	292
Townhouse Dwelling Units	20	0	20
Live/Work Units, consisting of commercial use on the 1st floor, commercial and/or residential use on the 2nd floor, and residential use on the 3rd floor, not to exceed a total of 15,000 sq. ft. of commercial interior space for all live/work Units	8	0	8
Inn Sleeping Rooms	24	0	30[1]

8.2.1 The use of the commercial areas of the live/work units and the inn on the Subject Property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.2.2 The maximum height and size of structures on the subject property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part

[1] Six (6) additional inn units are proposed on the Perry Cabin Land in the event the Development Approvals are obtained in the future on the Hunteman Property, in which case this Agreement shall become effective as to the Hunteman Property.

f (TND Lot and Building Standards), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.3 Developer Agreements. The Developer shall comply with: (i) this Agreement, (ii) the Developer Obligations, and (iii) all subsequent Development Approvals for which it is the applicant or a successor in interest to the applicant relating to the Subject Property.

8.4 Other Fees. In addition to the fees specifically mentioned in this Agreement, Developer agrees to pay all customary and usual Town fees, including but not limited to use fees for building inspections, permit and water connection and use fees, and water connection and use fees generally applicable on a Town-wide basis for similar projects, at the rate and amount in effect at the time the fee is required to be paid.

8.5 Timing of Development. The parties acknowledge that the most efficient and economic Development of the Subject Property depends upon numerous factors, some of which are not within the control of Developer, such as market orientation and demand, interest rates, competition, and similar factors, and that except as provided in Section 10.9.1 of this Agreement, the rate of development will be determined by the Developer, in its sole subjective business judgment and discretion. However, the Development Approvals shall remain effective for only the time periods specified therein and the rate of conveyance of lots or parcels within the Subject Property shall not exceed the rate set forth in Section 10.9.1of this Agreement. Subject to the Qualifications provided in Section 9.2 and the other terms and conditions of this Agreement; in the event any Subsequent Land Use Regulation is enacted which relates to the rate, timing or sequencing of development of property within Town, Town agrees that such Subsequent Land Use Regulation shall not apply to the Development Plan.

8.6 Phasing of Development. The construction of the development on the Subject Property shall be in a defined series of development phases in which:(1) there shall be no more than thirty (30) acres of the Subject Property under active construction at the same time; (2) all construction ongoing at the same time shall be confined land within a single phase; (3) a phase shall consist of contiguous parcels of land; and (4) the Developer shall at all times have on record at the Town office a drawing to scale that identifies the location and boundaries of the active phase. For the purpose of this Section 8.6, the term construction shall mean: (1) actual construction of infrastructure within a street or utilities right-of-way; or (2) actual grading or construction within a public or privately owned park or open space. In determining the area under construction, the area shall include: (1) the construction of streets and alleys, pipes, or the installation of wires and other conduits for collection of sewage or stormwater, or for the distribution water, electricity, gas, telephone, CATV or other utility services (exclusive of street and alley top-coat paving, installation of sidewalks and the installation of streetlight poles and fixtures) within a street or utility right-of-way area shall include all land between the boundary lines of the right-of-way for the length (lineal feet within the right-of-way) of the actual construction; and (2) the lesser of the entire platted area of the open space within which construction is occurring or the defined and identifiable area as shown on a building permit as the area of grading or construction; and (3) the entire area of a subdivision lot on which the construction of improvements is occurring. The area of a phase may be redefined from time-to-time by omitting a completely developed area within the phase and adding an undeveloped area

to the same phase, provided that the Developer shall first furnish the Town with a drawing to scale showing the area omitted and the area added to the phase, either by identifying the lots involved or with courses, distances and points of reference. For purposes of this Section 8.6, the term construction shall not include activity relating to the construction of improvements on a privately-owned subdivision lot. The Developer may cease construction in one defined phase before construction within that phase is completed, and commence construction in another defined phase, provided that no more than one phase, not exceeding 30 acres, is under construction on the Subject Property at any one time. Before commencing development of a new phase, or redefining the area of an existing phase to omit a completely developed area and adding an undeveloped area, the Developer shall provide the Town with a drawing to scale defining the land area that constitutes the development phase, by identified lots and/or with courses, distances and points of reference.

8.7 Time Limitation for Improvements on Privately-Owned Subdivided Lots. With regard to each lot created by and shown on the recorded final subdivision plat of the Project, on which lot it anticipated by the Development Plan that a Unit will be located thereon, it is the desire and intention of the parties hereto that a Unit be constructed on such lot within a reasonable time after it is sold and conveyed by the last Developer to the first Owner who is not a Developer. The benefits to all concerned of requiring that lots be promptly improved, include: (1) promoting construction within confined areas of the Project; and (2) to hastening the completion of all construction within confined areas of the Project. Therefore, the Declaration of Covenants, Restrictions and Conditions for the Project shall provide as follows:

8.7.1 The Owner of a lot in the Project who is not the Developer shall:

8.7.1.1 Within 24 months after acquiring legal title to the lot, cause the issuance of the requisite approvals by the Developer or the HOA of plans for construction of a Unit and any appurtenances thereto (collectively "Improvements") on the lot, obtain the building and any other required permits for construction of the Improvements on such lot, and the beginning of substantial construction of said Improvements on the lot by the digging and pouring the footers therefore; and

8.7.1.2 Thereafter, cause diligent and in good faith efforts resulting in substantial completion of the said Improvements and issuance of an occupancy permit therefor within a reasonable time, but in any event, within shorter of two (2) years after the issuance of the first building permit for such Improvements or four (4) years after the recorded conveyance in the land records of Talbot County of such lot to said Owner.

8.7.2 If the Owner fails to timely comply with the requirements of Sections 8.7.1 or 8.7.2, the Developer shall have the right, at its sole option, to take the following remedial action:

8.7.2.1 Re-acquire title to the lot from the Owner at the same contract price that the Owner paid for the lot, and the Owner shall be required to re-convey said lot to

the Developer for the consideration tendered by the Owner to the Developer at the time of the Owner's acquisition of the lot; or

8.7.2.2 Assume control of the construction of the Improvements on the lot from the Owner, and complete the construction of the Improvements on the lot for the Owner at the Owners' sole cost plus a 15 % management fee based on the other costs expended by the Developer for such completion, all of which shall be promptly paid by the Owner to the Developer. If not paid in full within thirty (30) days after billing the Owner shall pay interest at the legal rate on the unpaid balance, beginning on the billing date until paid in full. In the event that the Owner fails to pay in full within sixty (60) days after being billed by the Developer for the costs incurred and/or management fee earned by the Developer, then the Developer shall be entitled to a lien against the Owner's lot and the Improvements thereon pursuant to the terms and procedures of the Maryland contract Lien Act, as amended from time-to-time, and to collect the unpaid balance, interest thereon, and collection costs including attorneys fees by means by suit for breach of contract and/or by means of the Maryland contract Lien Act.

8.8 Moratoria. The parties hereby acknowledge and agree that this Agreement contemplates and provides for the development of the Project and that no moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation on the conditioning, rate, timing or sequencing of the development of property within the Town and affecting the Subject Property or any portion thereof shall apply to or govern the development of the Subject Property, whether affecting parcel or subdivision maps, building permits, occupancy permits or other approvals to develop or use land issued or granted by the Town, except as may be necessary to: (i) comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such state or federal law or regulation; (ii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Subject Property in which event any ordinance, rule, or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; (iii) maintain the Town's compliance with state sewerage, water systems and utility regulations; or (iv) fulfill the Town's essential governmental responsibilities pursuant to its reservations of authority. In the event of any such moratorium, future ordinance, resolution, rule or regulation, unless taken by the Town as provided under the four (4) exceptions contained above, Developer shall continue to be entitled to apply for and receive approvals as contemplated by this Agreement and in accordance with the Applicable Development Rules.

8.9 Changes and Amendments to the Development Plan. The parties acknowledge that refinement and further development of the Project may require changes to the Development Plan. In the event Developer finds that any such change is necessary or appropriate, Developer shall apply for an amendment to the Development Plan to effectuate such change and Town shall promptly process and act on such application for an amendment. Amendments to Development Approvals to allow changes to the Development Plan that do not also require an amendment to

the Existing Land Use Regulations shall be reviewed for consistency with the Existing Land Use Regulations and the Subsequent Land Use Regulations.

Section 9: Consideration to the Developer and Owners - Qualified Vested Rights

9.1 Grant of Qualified Vested Rights. Notwithstanding any future action of the Town to the contrary, whether by ordinance, resolution, initiative, or otherwise, for consideration provided in this Agreement to the Town, the Town hereby grants to the Developer during the Term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, Qualified Vested Rights in the Existing Land Use Regulations as they relate to the Development of the Subject Property in accordance with the Development Plan; subject, however, to the following:

9.1.1 The Developer and the Town may mutually agree that the Project will be subject to a Future Land Use Regulation.

9.1.2 The Developer and the Town may make amendments, additions and waivers to this Agreement adopted pursuant to Section 6 of this Agreement.

9.1.3 The Qualifications set forth in Section 9.2 of this Agreement.

9.2 Qualifications To Vested Rights. Notwithstanding anything to the contrary set forth in Section 9.1 above, the rights therein granted with respect to the Existing Land Use Regulations are hereby defined by the following Qualifications, which may limit, but anything to the contrary notwithstanding shall not expand, the Qualified Vested Rights granted by this Agreement beyond that authorized by the Development Agreement Statute:

9.2.1 Non-Conflicting Future Land Use Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are not in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property;

9.2.2 Conflicting Future Land Use Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property if the Developer has given the Town specific written consent to the application of such rules to development of the Subject Property;

9.2.3 Cost And Time Effects of Future Land Use Regulations. To the fullest extent permitted by the Development Agreement Statute and the Enabling Ordinance, any Future Land Use Regulation which increases the cost of development of the Subject Property, and any Future Land Use Regulation limiting the rate, timing or sequencing of development of the Subject Property, shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Subject Property.

9.2.4 County, State and Federal Laws and Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to existing and future applicable county, state and federal laws and regulations, together with any land use regulations, programs and actions, or inaction, that are reasonably (taking into consideration, among other things, the assurances provided to Developer hereunder) adopted or undertaken by the Town in order to satisfy a duty or obligation of the Town to comply with such applicable county, state and federal laws and regulations. In the event that applicable county, state or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations, in which event this Agreement shall remain in full force and effect provided that performance of the Agreement pursuant to the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.

9.2.5 Public Health, Safety or Welfare. The Qualified Vested Rights granted by Section 9.1 hereof in the Existing Land Use Regulations as they relate to the development of the Subject Property in accordance with the Development Plan, shall be subject to the power of the Town Commissioners to determine that compliance with laws, rules, regulations, and policies enacted or adopted after the Effective Date of this Agreement, to the extent such police powers are preserved for the Town by the Development Agreement Statute or the Enabling Ordinance, are essential to ensure the health, safety, or welfare of residents of all or part of the Town.

9.2.6 Building Standards. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit the application of present or future Building Standards, except that (taking into consideration the assurances to Developer in this Agreement) any future amendment thereto that reduces the amount of land within the Subject Property that can be utilized for structures and improvements, or increases the amount of open space within the Project, materially different from that depicted on the Development Plan, shall not be considered a provision of any of the Building Standards included within the exception provided by this Paragraph (6), but shall, to the extent permitted by the Development Agreement Statute and the Enabling Ordinance, not apply to and govern the Development of the Project unless it complies with another exception under this Section 9.

9.2.7 Customary Town Fees and Charges. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit customary Town fees and charges generally applicable and imposed by the Town pursuant to law upon all similarly situated applicants and property owners, including, but not limited to, the fees and charges for processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, annexation, growth allocation, proposed legislation, building permit fees, water system connection charges, occupancy permit fees, and other fees, charges and

processing costs imposed by law. This Agreement shall not limit the power of the Town to impose such fees, charges and requirements, and to amend the rates and charges generally applicable within the Town for such services after the date of this Agreement, which shall not be limited by the Qualified Vested Rights in the applicability thereof to the Subject Property, the Developer or the successors in interest thereof. Such fees and charges imposed by Town law are not intended to be consideration for this Agreement.

9.2.8 Other Agreements. This Agreement is not intended to alter or restrict the rights and duties of the parties to the Perry Cabin Farm Annexation Agreement, the Public Facilities Agreement or the Miles Point Annexation Agreement, as amended, relating to the Subject Property, as it or they may be modified according to their own terms. The terms of those agreements are not intended to be consideration for this Agreement.

9.2.9 Procedural Provisions. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit generally applicable procedural provisions, including those governing the processing of Development Approvals and Land Use Regulations such as requirements for notice, hearings, and hearing bodies.

9.2.10 This Agreement shall not relate to, bind or limit the Town, or its actions, operations, tariffs, rates, or policies in its capacity (if and when the Town ever becomes a supplier of utility services to the Subject Property, except that with regard to a particular utility service, the Town agrees to treat the Developer and the Subject Property as the Town treats other similarly situated developers and land within its applicable utility service territory at the time that the time of such treatment.

9.2.11 Police Powers; Full Extent of Law. The parties acknowledge that Town is restricted in its authority to limit its police powers by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to Town all of its police powers that cannot be so limited. It is expressly agreed that Town reserves its police power to adopt and enforce ordinances, regulations, policies and other enactments, and to take such other actions pursuant to said police power, affecting the Project necessary to ensure the public health, safety or welfare. In the exercise of its police powers, the Town shall recognize and consider the circumstances existing at the time this Agreement was authorized. In addition, such exercise of the police power shall be in a manner consistent with the purpose and intent of the Development Agreement Statute. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to Town all such powers and authority that cannot be restricted by contract.

9.3 Adoption of Comprehensive Plan and Development Plan; Further Approvals. In preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town considered the health, safety, and welfare of the existing and future residents and

populations of the Town and prepared and/or reviewed in this regard extensive environmental studies ("Environmental Studies") as well as traffic impact reports and other studies economic and non-economic relating to impacts of this Development Plan or similar development plans on the Town and its public facilities and services. Without limiting the generality of the foregoing, in preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town carefully considered and determined the projected needs (taking into consideration the planned development of the Project and the Town and adjacent areas) for police, fire, paramedic, and similar facilities and services within the Project, the Town and adjacent areas and the projected needs within the Project and such areas for stormwater management measures, public water and county sewer with the Region II District serving the Town, the needs of the residents for open space and parks, and the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project.

9.4 Acknowledgment of Future Land Use Regulations. The parties acknowledge that the allocation of development within the Subject Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations, such as the location of particular sensitive areas or other site-specific considerations. The parties acknowledge that in certain instances, the development of the Subject Property may be restricted and adversely affected and impacted by Future Land Use Regulations adopted by Town as provided in Section 9.2.

9.5 All Governmental Approvals Required Before Development Of Subject Property Required. It is acknowledged that this Agreement only provides assurances to Developer with respect to the Existing Land Use Regulations that will apply to the Development of the Subject Property and that prior to and as a condition precedent to the final decision to construct or develop any of the Public Facilities or any portions of the Project on the Subject Property, all government permits and approvals shall be obtained as required by the applicable regulations, in accordance with and as provided in Sections 9 (including but not limited to state and federal regulations).

9.6 Consideration for Assurances to Developer. The parties further acknowledge that the public benefits to be provided by Developer to Town pursuant to this Agreement, including without limitation the consideration to the Town set forth in Section 10 are in consideration for and reliance upon assurances that the Subject Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the development of the Subject Property may be affected by exercise of the reservations of authority, Developer is concerned that normally the courts extend to local agencies significant deference in the adoption of land use regulations, which might permit Town to attempt to apply inconsistent land use regulations in the future under the guise of the reservations of authority. Accordingly, Developer desires assurances that Town will not inequitably further restrict or limit the development of the Subject Property in conflict with the intent of this Agreement, except in strict accordance with the Qualifications of the Vested Rights set forth in Section 9.

9.7 Use of Annual Unit Payments. As further consideration to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, for the

preservation and improvement of the Town in general, and therefore for the benefit of the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, by the preservation and improvement of the Town of which the Subject Property is a part, the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part, and used by the Town in accordance with the purpose, of the Town Collateral Improvement Fund, as described in Section 10 of this Agreement.

9.8 Amendment To Include The Hunteman Property. After the County relinquishes or otherwise loses control over the land-use classification of the Hunteman Property, as provided by Maryland Code, Art. 23A, § (c), in the event that the Town issues all of the Development Approvals relating to and for the development of the Hunteman Property as an addition to the Traditional Neighborhood Development on the Perry Cabin Land in accordance with the Development Plan, and within a time and as otherwise specified by the Miles Point Annexation Agreement, as it may be amended from time-to-time by the Town Commissioners, the Developer shall have the right and duty to offer to the Town, and the Town shall have the duty to consider, but shall not have the obligation to approve, the amendment of this Agreement to add the Hunteman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment"), provided further that the Town agrees to the Amendment within one (1) year after the date on which such Amendment is offered by the Developer, thereby granting Qualified Vested Rights to the Hunteman Property as of the date of the Amendment.

Section 10: Consideration To The Town. As the sole and exclusive consideration for the Qualified Vested Rights granted by this Agreement to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, the said Developer, for itself its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby promises to make the payments to the Town, to convey the property rights to the Town, to undertake the duties as described in the Schedule Of Consideration To The Town (Exhibit 10), as further explained, modified and expanded by this Section 10, relative to the Subject Property as defined in this Agreement:

10.1 Infrastructure Costs, Fees, Charges, And Duties.

10.1.1 Privately-Owned Subdivision Infrastructure. It is the responsibility of the Developer to cause the installation at its expense of all infrastructure on the Subject Property. At the request of the Developer the Town ordinance creating the traditional neighborhood zone anticipates narrow public ways, that are of the open section design, and that some of the public ways will be privately owned. The Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby request and consent to the amendment of the Town Zoning Ordinance and the Town Subdivision Ordinance to provide for such narrow streets without curbs or gutters ("open section roads"), with gentle pervious swales as part of the stormwater management system, and other public ways that are more narrow and made of more porous paving material that may be privately owned and maintained by a responsible homeowners association, contrary to what is presently required by Town laws and regulations. Although the parties hereto

acknowledge the environmental benefits of narrow open section roads within the Critical Area, and that the proposal of the Developer to use such narrow open section roads within the Project is a significant positive factor in making the Project worthy of the growth allocation necessary to develop within the Critical Area, the Town anticipates that the cost to repair and maintain such open section roads and swales will be greater than for conventional roads with curbs and gutters to the current Town standards and specifications. Therefore, parties agree as follows with regard to repair, maintenance and re-construction of infrastructure on the Subject Property:

10.1.1.1 Publicly-Owned Subdivision Infrastructure. Upon construction to Town standards, inspection and acceptance by the Town, the Town shall in perpetuity repair, maintain and re-construct, at its own cost: the stormwater catch-basins and lines (up to, but not including, the stormwater management ponds); and roads, drives and streets within the Project (as identified in the Design Code and shown on the Concept Plan for the Project). The Town reserves the right, but not the duty, at its sole discretion, to acquire title to, own, maintain and control the passages, lanes, and alleys, (collectively "Privately Owned Public Ways") as identified in the Design Code and as shown on the Concept Plan for the Project.

10.1.1.2 Public Ways. All roads, drives, streets, alleys, lanes passages, and public ways of every type (collectively the "Public Ways") shall be open to the public at all times. The Town shall have the sole right to establish speed limits, and enforce all traffic laws on all Public Ways. The Town and all public utilities shall have the right to enter over, under and upon all Privately Owned Public Ways for the purpose of installing, repairing, maintaining and rebuilding wires, conduits, and other transmission, distribution and collection facilities related to furnishing public utility services.

10.1.2 Privately-Owned Subdivision Infrastructure. The Developer, and thereafter the Owners through the HOA, shall in perpetuity repair, maintain and re-construct, at its own cost, in such a manner to keep the Project worthy of growth allocation, the Privately Owned Public Ways, brick sidewalks, street lights, grass strips and trees along streets, stormwater management facilities with the exception of stormwater catch-basins and or lines (up to but not including the stormwater management ponds), and all open spaces not owned by the Town, located within or upon the Subject Property (all of which shall be included within the term "Privately-Owned Subdivision Infrastructure").

10.1.2.1 The provisions of this Section 10.1.2 ("Privately-Owned Subdivision Infrastructure"), including the following subsections of

Section 10.1.2, shall be incorporated in the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property.

10.1.2.2 The Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property shall be recorded in the County Land Records simultaneously with the recording of the approved final subdivision plat for the entire Subject Property.

10.1.2.3 No conveyance of a subdivision lot or construction of infrastructure shall commence on the Subject Property before the recording of such the approved final subdivision plat and such Declaration of Covenants, Restrictions and Conditions.

10.1.2.4 Before the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property is recorded in the County Land Records, the Developer shall submit to the Town, for the review and approval of the Town Attorney for consistency thereof with the terms of this Agreement, such Declaration of Covenants, Restrictions and Conditions.

10.1.2.5 The Developer, as Developer and Owner, shall, at its own expense, at all times until such time as all components of the Privately-Owned Subdivision Infrastructure are conveyed to the HOA, reasonably and diligently keep, maintain, repair and re-construct all such components of the Privately-Owned Subdivision Infrastructure in good order and state of repair.

10.1.2.6 When the Privately-Owned Subdivision Infrastructure is conveyed by the Developer to the HOA, the HOA shall accept, assume, undertake to reasonably and diligently perform all of the title and duties of, the ownership, repair, maintenance, re-construction, and replacement of the Privately-Owned Subdivision Infrastructure, keeping each component thereof at all times in good condition, and to assess and collect from the Owners revenues reasonably sufficient in amount to create and adequately fund operating and reserve fund, and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing, maintaining, re-constructing and replacing, from time-to-time as reasonably necessary, all of the Privately-Owned Subdivision Infrastructure.

10.1.2.7 The Declaration of Covenants, Restrictions and Conditions for the Project shall provide that the HOA shall have, accept and perform all of the rights and duties set forth in this Section 10. The Declaration of Covenants, Restrictions and Conditions shall also empower and require the HOA to: (a) make assessments against each lot on which a Unit is

located or is anticipated by the Development Plan in the Subject Property for the purpose of generating the funds for the HOA in an amount necessary to pay for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure; (b) to collect those assessments, and (c) to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a proper assessment has been made and for which timely payment has not been made to the HOA for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland contract Lien Act), or its successors, as amended from time-to-time.

10.1.2.8 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right to enforce upon the HOA and its Owners by judicial action and otherwise, the reasonable and timely performance of all HOA duties described in this Section 10.1.2, and with the right of the Town to collect from the HOA, and its Owners the attorneys fees and all other costs incurred by the Town relating to such enforcement actions in the event that the Town prevails in any such action.

10.1.2.9 For purposes of monitoring performance of the HOA with the provisions of this Section 10.1.2, the Town shall be entitled to without making a request therefor, and HOA shall furnish to the Town, as frequently as the HOA furnishes to its board of directors and/or its membership, the following documents relating to the HOA: disclosure statements, news letters to the membership, minutes of board of directors meetings, minutes of membership meetings, budgets, financial reports and statements, accounts receivable from Owners relating to the assessments to and collections from Owners, proposed rules or amendments to the HOA documents and any other information relating to the HOA as may be deemed necessary or desirable by the Town.

10.2 Consent To Regulatory Fees And User Charges. The Developer, for itself, its successor developer Assignees, and its successors in interest to the Subject Property, hereby acknowledge that all of the current Town fees, charges, costs and rates, shown on the Schedule Of Town Administrative And Utility Fees, Charges And Rates, attached hereto as Exhibit 11, are fair and reasonable in amount, and that they each have a reasonable relationship to the cost of providing the services to which they relate. Moreover, the Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, hereby consent to the increase of such Town fees, charges, costs and rates in subsequent years based on changes in the C.P.I., provided that all such increases of such Town fees, charges, costs and rates are also equally applicable to all other regular and customary users of such Town services.

10.3 Parks and Open Spaces.

10.3.1 In General. Parks and open spaces shall be located, developed and improved by the Developer in the locations and to the extent shown on the Miles Point Concept Plan (Exhibit 1), and in accordance with additional representations made by the Developer to the Town during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, relating to the Subject Property. Structures and improvements as so represented shall be constructed within the parks and open spaces at Developer's expense as shown on the Miles Point Concept Plan, and in accordance with additional representations by the Developer to the Town during the above referenced growth allocation and DRRA hearings. Rights in such parks and open spaces, with improvements, shall be granted as set forth in the Town Consideration Chart (Exhibit 10), constructed, maintained, and continuously opened for public use and enjoyment, as represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings. All of the above-referenced representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, shall constitute a material term of this Agreement. Simultaneously with the recording of the final subdivision plat for the Subject Property, the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records: (1) establish a Declaration of Covenants, Restrictions and Conditions for the Subject Property which provide for the ownership, maintenance and upkeep by the HOA of all parks and open spaces on the Subject Property that are not to be owned and maintained by the Town; and (2) within the time periods specified in the Schedule Of Consideration To The Town (Exhibit 10) the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records grant such rights and duties to the Town and the public in said parks and open spaces as has been represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings.

10..3.2 Hunteman Property Non-Structural Shoreline Stabilization. The Developer shall install the Non-Structural Shoreline Stabilization on the Hunteman Property at the same time that the Non-Structural Shoreline Stabilization is installed on the Perry Cabin Land.

10.3.3 Non-Structural Shoreline Stabilization. The subject of this Section 10.3.3 is the construction, repair, maintenance, and if necessary re-construction and replacement, of non-structural shoreline stabilization on the Perry Cabin Land and the Hunteman Property, as hereinafter described.

10.3.3.1 Definitions. The following definitions shall apply solely to Section 10.3.3:

10.3.3.1.1 The "Non-Structural Stabilization" means the shoreline stabilization described in the Power Point Presentation by Gene Slear, Vice President, Environmental Concern, Inc., presented September 25,

2003 (see Exhibit 45 to the Miles Point III public hearing of the Town Planning Commission), to be installed Environmental Concerns, Inc.), which, together with proper repair and maintenance, is intended to provide to the shoreline, where such stabilization is placed, repaired and maintained, perpetual protection from wind and/or wave action at the shoreline, including such action caused by hurricanes and other storms, that result in erosion of such shoreline.

10.3.3.1.2 The "Shoreline" means, and is more particularly described, as follows: (1) beginning at a point at the southern boundary line between the Perry Cabin Land the land of the Foggs Cove Townhouses at its intersection with the Miles River at mean high tide; then (2) running from said beginning point in a generally northerly direction along the shoreline formed by the intersection of the Perry Cabin Land and the Miles River at mean high tide to the common boundary line between the Perry Cabin Land to the Hunteman Property; and then (3) continuing therefrom in a generally northerly direction along the shoreline formed by the intersection of the Hunteman Property and the Miles River at mean high tide to the ending point at a shoreline stone revetment existing on the Hunteman Property; constituting a total distance, from the beginning point to the ending point, of approximately 2,100 lineal feet.

10.3.3.1.3 The "Non-Structural Shoreline Stabilization" means the Non-Structural Stabilization successfully applied to and established at the Shoreline.

10.3.3.2 The Developer shall, at its sole expense, cause the Non-Structural Stabilization to be constructed, installed, applied to and established at the Shoreline of both the Perry Cabin Land and at the Shoreline of the Hunteman Property by Environmental Concern, Inc. or by some other contractor equally experienced and knowledgeable about such matters that is acceptable to the Town (hereinafter the "Shoreline Contractor"), within the deadline established therefore in the award of growth allocation for the Perry Cabin Land. The Non-Structural Shoreline Stabilization shall be installed according to standards and specifications intended, together with reasonable and appropriate periodic repairs and maintenance as provided for in this Agreement, to establish a healthy and self-sustaining tidal wetland capable of providing perpetual prevention of erosion to the Shoreline, from wind and/or wave action of the Miles River, including such action caused by hurricanes and other storms.

10.3.3.3 For a period of ten (10) consecutive years, beginning immediately upon the completion of the installation of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Hunteman Property, and receipt by the Town of a written certificate of completion of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Hunteman Property by the Shoreline Contractor, the Developer shall, at its sole expense, shall cause the

following to be performed with regard to the Non-Structural Shoreline Stabilization:

10.3.3.3.1 Provide reasonable and appropriate periodic inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization as recommended and performed by the Shoreline Contractor, or its successor. The inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization shall be performed in accordance with the recommendations of the Shoreline Contractor at least annually, or more frequently as recommended by the Shoreline Contractor.

10.3.3.3.2 In the event of severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization, at the sole fair and reasonable discretion of the Town, severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization shall be promptly replaced at the Shoreline by either: (1) Non-Structural Stabilization; or (2) stone revetment.

10.3.3.3.3 At all relevant times after the initial installation of the Non-Structural Shoreline Stabilization, the Shoreline Contractor shall be selected with the consent of the Town. If the Developer or president of the HOA (as the case may be) fail to timely initiate the selection of a Shoreline Contractor when the arises, the Town shall have the sole right to select the Shoreline Contractor, which may include an expert and a general contractor, to assess the status of the Non-Structural Shoreline Stabilization, to recommend a method to improve the status of the Non-Structural Shoreline Stabilization, and to construct, install, repair or maintain the Non-Structural Shoreline Stabilization, as is reasonably necessary for the health of the artificial tidal wetland thereby created or the protection from erosion of the Shoreline.

10.3.3.4 Approvals and Information.

10.3.3.4.1 All inspections, repairs, maintenance, re-constructions and replacements of the Shoreline Areas shall be subject to the prior review and approval of the Town.

10.3.3.4.2 All such inspections, repairs, maintenance, re-constructions, and replacements to the Non-Structural Shoreline Stabilization shall be reported in writing to the Town. A copy of all reports, contracts, bills, invoices, statements, designs, specifications and all other documents relating to the Non-Structural Shoreline Stabilization shall be promptly furnished by the Developer or the HOA (as the case may be) to the Town.

10.3.3.5 The Developer may assign its obligations under this Section 10.3.3 to the HOA, provided the HOA shall, on behalf of the Owners, expressly undertake and assume such obligations in writing to the Town. The obligations of the Developer assumed by the HOA shall be performed by the HOA in a manner substantially similar to the manner in which the HOA is required to maintain the Privately-Owned Subdivision Infrastructure, as set forth in Section 10.1 of this Agreement. Without limiting the generality of the foregoing, the HOA shall, upon assignment by the Developer and acceptance by the HOA of the foregoing obligations of the Developer relating to the Non-Structural Shoreline Stabilization, for unexpired portion of the ten (10) year period for which the Developer was originally obligated:

10.3.3.5.1 Regularly repair and maintain the Shoreline Area, in accordance with sound property management standards;

10.3.3.5.2 Assess and collect from the Owners revenues reasonably sufficient to create and adequately fund an operating and reserve fund for the Shoreline Area and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing and maintaining from time to time as reasonably necessary, the Shoreline Areas; and

10.3.3.5.3 Diligently enforce the collection of Assessments against all Owners as necessary to provide funds necessary to properly maintain and repair the Shoreline Areas, in accordance with the Declaration of Covenants, Restrictions and Conditions for the Project and establish, enforce, foreclose and collect on a lien against the land and improvements of each lot for which an assessment has been made but for which payment has not been tendered to the HOA, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), on any successor statute, as amended from time to time.

10.3.3.6 If the Developer, or the HOA (if the obligations of the Developer have been assigned to and accepted by the HOA), fail to timely or adequately perform the obligations of the Developer as described in Section 10.3.3.3 of this Agreement, then the Town shall have the right to perform such duties at the expense of the Developer or the Owners (as the case may be), upon thirty (30) days prior written notice to the Developer or the HOA on behalf of the Owners (as the case may be) of the intention of the Town to perform such duties for and at the expense of the Developer or the Owners (as the case may be). Such notice shall state the nature of the work anticipated to be done and the reason for the necessity for such work. If the performance of the anticipated work leads to the discovery of other work that reasonably should have been discovered and performed by the Developer or the HOA, then Developer or the Owners (as the case may be) shall be liable for the cost of such additional work. The Owners

thus liable shall be the Owners of lots on the Subject Property that are assessable for expenses of the HOA pursuant to the Declaration, in the same proportion as the cost of the operation and maintenance of improvements in the subdivision owned and/or operated by the HOA are assessed to the lots of the Subject Property, as provided by the Declaration.

10.3.3.6.1 The Owners referred to in this Section 10.3.3 shall be the owners of each lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by HOA for, and on the same percentage basis as it is normally assessed by the HOA, as provided by the Declaration. Each Owner of a lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by the HOA shall be personally liable, jointly and severally with all co-owners of the same lot, for the share (based on the amount thereof that could be assessed to the Owner's lot) of the total cost incurred by the Town in performing the duties of the Owners pursuant to Section 10.3.3.3 of this Section. The Town shall also have the right to assess the lots of the subdivision of the Subject Property for such costs incurred by the Town in the proportion described herein. Such costs thus assessed shall be due and payable in full within 30 days after the assessment.

10.3.3.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall have the right, in its sole discretion, by notice to the HOA, to perform some or all of the obligations of the HOA pursuant to Section 10.3.3 of this Agreement.

10.3.3.7.1 To the extent the Town undertakes such obligations during the ten (10) year period after completion of the Non-Structural Shoreline Stabilization by the Developer, the HOA shall reimburse the Town for all direct and indirect costs incurred by the Town that are associated with such maintenance and repair.

10.3.3.7.2 A reasonable basis for the need for work required by this Agreement shall be the failure of the HOA, upon written demand therefore, to provide written evidence that such work have been timely or satisfactorily performed.

10.3.3.7.3 The failure of the HOA to promptly reimburse the Town for such costs shall entitle the Town to seek all available legal relief, including but not limited to the right, as third party beneficiary to this Agreement and the Declaration, to assess the Owners of each lot in the subdivision of the Subject Property with its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and

to enforce the assessment, lien and collection rights of the HOA against the Owners, to which rights the Owners hereby consent.

10.3.3.7.4 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each subdivision lot of the Subject Property for which an assessment has been rendered for its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

10.3.3.8 At the conclusion of the ten (10) year period described in Section 10.3.3.3 of this Agreement, the Developer or Owners through the HOA, shall, at their own expense, turn over the Non-Structural Shoreline Stabilization in good and healthy condition to the Town, after which the care and condition of the Non-Structural Shoreline Stabilization shall be at the sole expense of the Town.

10.3.3.9 The contents of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall be included in the Declaration to the satisfaction of the Town attorney, which Declaration the Town shall have the right to review and amend for such purpose before it is recorded in the County Land Records by the Developer.

10.3.3.10 The provisions of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall survive any transfer of title to the Subject Property, even if the Town should become the owner of some or all of the Shoreline.

10.4 <u>Duty To Pay Consideration To The Town</u>.

10.4.1 Each payment or duty indicated on the Schedule Of Consideration To The Town (**Exhibit** 10), intended to be paid or performed for the Town, shall be paid or performed in accordance with the terms stated on the Schedule Of Consideration To The Town,

to enforce the assessment, lien and collection rights of the HOA against the Owners, to which rights the Owners hereby consent.

10.3.3.7.4 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each subdivision lot of the Subject Property for which an assessment has been rendered for its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

10.3.3.8 At the conclusion of the ten (10) year period described in Section 10.3.3.3 of this Agreement, the Developer or Owners through the HOA, shall, at their own expense, turn over the Non-Structural Shoreline Stabilization in good and healthy condition to the Town, after which the care and condition of the Non-Structural Shoreline Stabilization shall be at the sole expense of the Town.

10.3.3.9 The contents of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall be included in the Declaration to the satisfaction of the Town attorney, which Declaration the Town shall have the right to review and amend for such purpose before it is recorded in the County Land Records by the Developer.

10.3.3.10 The provisions of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall survive any transfer of title to the Subject Property, even if the Town should become the owner of some or all of the Shoreline.

10.4 Duty To Pay Consideration To The Town.

10.4.1 Each payment or duty indicated on the Schedule Of Consideration To The Town (**Exhibit** 10), intended to be paid or performed for the Town, shall be paid or performed in accordance with the terms stated on the Schedule Of Consideration To The Town,

including: (1) the amount of the payment to the Town or nature of performance for the Town; (2) when the payment or performance is due to the Town; and (3) who is responsible for such payment or performance to the Town.

10.4.2 As indicated on the Schedule Of Consideration To The Town, when a payment is the responsibility of an Owner or the agent of an Owner, as distinguished from the Developer, and the time when the payment is due is based on an occurrence or status relating to the particular lot or parcel of the Subject Property on which a dwelling unit or a live/work unit (a "Unit") is intended to be located according to the Development Plan, the person(s) who is the Owner(s) of the lot, parcel or Unit at the time the occurrence or status relating to that lot, parcel or Unit triggers the duty to pay shall be the person(s) who has the duty to make the payment to the Town.

10.4.3 If a one-time per-unit payment, or annual per unit payment, as described in the Schedule Of Consideration To The Town (Exhibit 10), relating to a particular Unit of the Development Plan for the Subject Property, is due and payable to the Town at the time an Owner takes title to a Unit or lot on which such Unit is intended to be located, or if such a payment relating to a particular Unit becomes due and payable to the Town while the Owner has title to that Unit or lot on which such Unit is intended to be located, that Owner, and its successors in title to that Unit shall be liable to the Town for such payment.

10.4.4 If a lump-sum payment or performance required by the Developer to the Town under this Agreement, that does not relate to a particular lot, parcel or Unit of the Development Plan for the Subject Property, has not been satisfied at the time a Developer Assignee acquires the rights and duties of the Developer of the Subject Property pursuant to this Agreement, such Developer Assignee, and its successors in interest shall be liable for such payment or performance.

10.5. Annual Unit Payments - Collection And Liens. The Developers shall form the HOA and shall adopt and record among the County Land Records a Declaration of Covenants, Restrictions and Conditions relating to all of the Subject Property, at the same time as the final subdivision plat for the Subject Property is recorded among the County Land Records, which Declaration of Covenants, Restrictions and Conditions shall be subject to the review and approval of the Town attorney for consistency with the terms of this Agreement prior to the recording thereof, and which Declaration shall provide as follows:

10.5.1 The Owners of each Unit shall be liable to the Town for the timely payment of thirty (30) consecutive Annual Unit Payments relating to that particular Unit, as are specified in this Agreement and Exhibit 10 (Schedule Of Consideration to The Town) to this Agreement, each of which payments shall be due and payable on July 1 of each year, beginning on July 1 next following the date on which the occupancy permit is issued by the Town for such Unit.

10.5.2 The dollar amount of the Annual Unit Payment due from the Owners of each Unit shall be adjusted in the even numbered years, in accordance with the terms of this

Agreement and Exhibit 10, based on the change in the C.P.I. from April 2004 to April of the last even-numbered year prior to the due date of the Annual Unit Payment.

10.5.3 The Annual Unit Payments may be billed to the Owners 75 days before they are due and payable, provided that the due date is indicated on the bill.

10.5.4 An Annual Unit Payment that has not been paid in full and received by the Town or its billing authority on or before the later of 30 days after the date of the bill, or July 31 of the year for which the Annual Unit Payment applies, shall bear late charges and interest to the extent permitted by law on the unpaid balance of an Annual Unit Payment, which shall be payable beginning on July 1 of the year for which the Annual Unit Payment applies. The late charges shall be at the same rate, and on all other terms, that were in effect at the St. Michaels Bank, or its successor, on the first banking day of April of the year in which the Annual Unit Payment is due, for its consumer loan customers. The interest payable on such unpaid balance of the Annual Unit Payment shall be at prime rate plus two (2.0) percent; prime rate being the interest rate in effect at the St. Michaels Bank, or its successor, on the first banking day of April of the year in which the Annual Unit Payment is due, for its commercial customers. If any of these late charges or interest rates exceed the amount permitted by applicable law relating to the annual Unit Payments, then such charges and amounts shall be reduced to the maximum amount permitted by law.

10.5.5 At the sole discretion of the Town, upon written instruction by resolution of a majority of the Town Commissioners, which instruction may be rescinded and renewed by the Town Commissioners from time-to-time, the HOA shall have the duty to bill to and collect from the Unit Owners the Annual Unit Payments that are due to be paid by the Unit Owners to the Town. Such instruction from the Town to the HOA shall continue in effect, from year to year, unless and until rescinded. If the Town does not authorize the HOA to bill and collect the Annual Unit Payments, then the Town may perform such billing and collection itself, or delegate such duties to a third person.

10.5.5.1 The HOA shall promptly furnish to the Town a copy of all bills for the Annual Unit Payments that were sent by the HOA to the Unit Owners, which bills shall include: (1) date of the bill; (2) name and address to whom the bill was sent; (3) the address or other information to identify the Unit to which the bill applies; (4) the sequential number of the years which the Owner of the Unit has been billed for Annual Unit Payments; (5) the section and paragraph reference in the authority in the Declaration of Covenants, Restrictions and Conditions for the Annual Unit Payments; (6) the base amount of the Annual Unit Payment, as if it had been billed for payment in July of 2004 ($1,000 per Unit); (7) the adjustment in the amount billed based on the change in the C.P.I. from April 2004 to the C.P.I. of the last April of an even-numbered year before the Annual Unit Payment is due; (8) the date the payment is due; (9) the name of the payee and the address to where the payment should be sent; and (10) the fact that late charges and interest to the extent permitted by law on the unpaid balance of an Annual Unit Payment shall be payable beginning on July 1 of the year for which the Annual

Unit Payment applies if the amount due is not received and paid in full on or before the later of 30 days after the date of the bill or July 31 of the year for which the Annual Unit Payment applies. In addition, the HOA shall promptly after each billing furnish to the Town an accounting of the total billing, to include the total amount billed, the base amount billed ($1,000 per Unit) and the additional amount billed based on the change in C.P.I. since April 2004. The HOA shall be liable for all errors that it commits in the billing and collection process, including the failure to keep accurate records that frustrates any effort by the Town to bill or collect Annual Unit Payments, or any interest or late charges due thereon.

10.5.5.2 If the HOA has been instructed to bill and collect the Annual Unit Payments, the Town shall have no duty to inform the HOA of the change in the C.P.I., the change in the amount of the Annual Unit Payments as the result of the change in the C.P.I., or that the change in the C.P.I. must be billed to the Owners as part of the Annual Unit Payments. Nevertheless, if the HOA has been instructed by the Town to bill the Annual Unit Payments and fails to bill the correct dollar amount of the Annual Unit Payments to include the change in dollar amount based on the change in the C.P.I. as provided in this Agreement and Exhibit 10 hereto, then the HOA shall be directly liable to the Town for any deficiency in the amount billed and collected by the HOA as the result of the failure of the HOA to bill the correct dollar amount to the Unit Owners.

10.5.5.3 If the HOA collects Annual Unit Payments for the Town, the HOA shall remit to the Town, not less frequently than monthly on or before the first day of each month, all payments of Annual Unit Payments received since the last time such receipts were remitted to the Town. All such remittances shall be accompanied by an accounting of the receipts remitted, including, for each payment received: (1) the amount of the payment; (2) the Unit to which it applies; (3) the date the payment was received by the HOA; (4) the name and address of the payor; (5) any accounting received by the payor to indicate how the amount of the payment was arrived at, such as late charges or interest included; and (6) any other communication received with the payment. In addition, with each remittance the HOA shall furnish a list of each receipt and the total of the receipts being remitted.

10.5.5.4 If the HOA participates in the billing and/or collection of the Annual Unit Payments for the Town, then the HOA shall assist and cooperate with the Town, and participate, including providing testimony and documentary evidence, in any judicial action by the Town to establish, enforce or collect upon any lien, in which the billing and/or collection of the Annual Unit Payments by the HOA for the Town is an issue or factual predicate to the successful prosecution of the action by the Town.

10.5.6 The Owner(s) of a parcel of land which has been properly billed for an Annual Unit Payment pursuant to this Agreement (or the Declaration) that remains unpaid after the due date shall be in breach of this Agreement (and the Declaration) and shall be liable

for the costs incurred by the Town in collecting such unpaid balance, late charges and interest, including the cost of Town employee time, court costs, attorney fees on an hourly basis for actual time involved billed at normal hourly rates, and other relevant costs. It is acknowledged that unless the Town is able to process and litigate a number of such claims at the same time, that the cost of collection for a few delinquent accounts is likely to be relatively expensive in comparison to the amount sought to be collected, and that unless the Town is contractually entitled to collect the full amount of its collection costs from the Owners in breach of this Agreement (the Declaration), the relative cost of collection may be an incentive for Owners to refuse or delay payment of the Annual Unit Payments.

10.5.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a bill has been rendered for an Annual Unit Payment pursuant to Section 10.5 of this Agreement, and which such payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless an Annual Unit Payment (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto have remained unpaid for a period of at least six (6) months after the due date for such Annual Unit Payment.

10.6 Town Collateral Improvement Fund. The Town shall establish a special fund, titled the "Collateral Improvement Fund" by ordinance or charter amendment, as legally necessary.

10.6.1 Purposes and Use. The purposes and use of the Town Collateral Improvement Fund shall include, and shall be limited to, the following:

10.6.1.1 To replenishment of the Town's financial reserves that have been depleted by the extraordinary legal and other expenses incurred by the Town in processing, defending, mediating and settling the issues related to the Miles Point Property since 1998 to the date hereof;

10.6.1.2 To fund the Town General Fund for the excess (if any) of the cost of additional Town personnel, equipment, building space, and other costs incurred by the Town, caused by the development and occupation of the Subject Property (the "Additional Town Costs"), over the taxes and other governmental revenues reasonably anticipated to be generated by the development and occupation of the Subject Property and deposited into the Town General Fund (the "Additional Town Revenues"), by making annual transfers between the General Fund and the Town Collateral Improvement Fund as follows:

10.6.1.2.1 Annually, before the opening of each Town fiscal year, transfer from the Town Collateral Improvement Fund to the Town General Fund the sum of money equal to the excess (if any) of the reasonably anticipated dollar amount of expenditures from the Town General Fund during the coming fiscal year as the result of reasonably anticipated Additional Town Costs over the reasonably anticipated Additional Town Revenues during the same coming Town fiscal year; and

10.6.1.2.2 Annually, after the close of each immediately past Town fiscal year, make an adjusting transfer of funds between the Town Collateral Improvement Fund and the Town General Fund, so that the net dollar amount of the transfers into the Town General Fund from the Town Collateral Improvement Fund for the immediately past Town fiscal year is equal to the excess (if any) of the actual Additional Town Costs over the actual Additional Town Revenues for the same immediately past Town fiscal year;

10.6.1.3 Making street and other capital repairs that otherwise would have been made from 1998 through the date hereof but for the expenditures of Town for administrative processing, litigation and other matter relating to the Miles Point Property, in an amount equal to the cost the expenditure of the Town on such matters from 1998 through the date hereof, together with an adjustment based on the difference in the C.P.I. applied to such amount at April 2004 and the C.P.I. at the date(s) such amount is repaid to the Town general fund; and

10.6.1.4 Expenses and capital expenditures to benefit and perpetuate the character of the Town, including, but not limited to the following:

10.6.1.4.1 Perpetuation, promotion and improvement of the historical, architectural, and cultural character of the Town;

10.6.1.4.2 Promotion and/or improvement of the Town harbor and other navigable water in the Town, public waterfront property, maritime history, marine traffic, marine life and commercial marine activities in the Town;

10.6.1.4.3 Promotion and/or improvement of the tourism industry in the Town, including improvements to the streetscape in commercial areas frequented by tourists;

10.6.1.4.4 Projects and facilities to improve the traffic flow and parking facilities, including possible public transportation within and adjacent to the Town to reduce the volume of vehicles on Talbot Street;

10.6.1.4.5 Projects and facilities to integrate the Miles Point Project with the settled area of the Town through the acquisition, construction and maintenance of connecting routes for pedestrians, cyclists and motorists;

10.6.1.4.6 Promotion, protection and enhancement of the scenic beauty and environmental resources of the Town;

10.6.1.4.7 Promotion and support of cultural, educational and recreational activities for the citizens, including the youth, to improve the quality of life for the residents;

10.6.1.4.8 Projects to plan for and improve the future of the Town;

10.6.1.4.9 Acquisition, improvement and maintenance of parks and open spaces;

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

10.6.1.4.12 Other activities, projects, facilities and improvements having purposes of a similar nature, or intended to achieve benefits of a similar nature, in the Town or for the Town residents;

10.6.1.4.13 Providing Maintenance, repair, upkeep, and perpetuation of the above-described resources, improvements, facilities, projects and activities; and

10.6.1.4.14 Any other expenditures which the Town Commissioners deem to be in the best interest of the Town.

10.6.2 Procedures. All of the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part of, shall be deposited into, and shall be subject to the terms and conditions of, the Town Collateral Improvement Fund. The Town Collateral Improvement Fund shall be a part of the budgeted Town funds, subject to the same procedures, safeguards, and controls as the Town General Fund, and subject to the use, control and discretion of the Town Commissioners in the same manner as the Town General Fund, except as otherwise stated in this Section 10.6. The Town shall not be required to spend all or any of the collections and deposits of the Annual Unit Payments in the year in which they are collected. The Town may accumulate funds in the Collateral Improvement Fund account for future capital projects and for other purposes consistent with the purposes of the Collateral Improvement Fund and deemed appropriate by the Town Commissioners. The Collateral Improvement Fund shall be maintained as a separately and distinct fund from all other public funds available to the Town except to the extent that disbursements may be made from the Collateral Improvement Fund to the Town General Fund as set forth in Section 10.6.1.

10.7 Town General Fund. All payments received by the Town pursuant to this Agreement, which are not designated in this Agreement or in the Schedule Of Consideration To The Town for a specific use or designation that indicates an intent contrary to their being deposited in the Town General Fund, shall be deposited in, and shall become a part of, the Town General Fund.

10.8 Consumer Price Index ("C.P.I."). Due to the time that it is likely to take before all of the necessary Development Approvals could be granted, and the time over which the payments may be paid thereafter, the dollar amount of the payments that are shown on the Schedule Of Consideration To The Town, that are designated with the symbol "± C.P.I.", shall be subject to annual adjustment based on the annual changes in the C.P.I., using the C.P.I. for April 2004 as the base year. Therefore, the dollar amount of such payments subject to the C.P.I. that are payable in 2004 shall be in the dollar amount shown on the Consideration Chart. For each succeeding year after 2004 in which a payment subject to the C.P.I. is due, beginning in 2005 and in each succeeding year thereafter for a year in which such a designated payment is due, the dollar amount of such payment shall be adjusted (up or down) by: (1) dividing the dollar amount of that payment as shown on the Consideration Chart by the C.P.I. for the month of April 2004; and by then (2) multiplying the result of that calculation by the C.P.I. for the month of April of the even numbered year last preceding the date on which the payment is due according to the terms of this Agreement; (3) the result of which calculation is the dollar amount of the payment due to the Town with the C.P.I. adjustment.

10.9 Limitation on the Conveyance of Subdivided Lots. The parties hereto recognize the importance to the character of the Town that the rate of development of the Subject Property be limited. Therefore, as further consideration to the Town, the Developer hereby agrees, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the Owners and the HOA, that the herein described limitations shall apply to the Developer's right to convey subdivided lots within the Subject Property (whether for the Perry Cabin Land only, or to include both the Perry Cabin Land and the Hunteman Property) pursuant to the Development Plan.

10.9.1 The number of conveyances of subdivided lots that the Developer shall be permitted to convey with respect to the Subject Property (whether for the Perry Cabin Land only, or to include both the Perry Cabin Land and the Hunteman Property), shall be limited during each twelve (12) month cycle as follows (measured in any combination of dwelling units and/or live/work units) as described in the following chart (see next page):

Line	Time Period	Maximum Number of Lots Conveyed
1	During the first twelve (12) month period, beginning on the date of the first recorded conveyance of a subdivided lot, the number of lots that may be conveyed by right for the current year.	50

2	During each succeeding twelve (12) month period after the first twelve (12) month period, beginning on the anniversary of the date the first recorded conveyance pursuant to line 1 of this chart, the number of lots that may be conveyed by right for the current twelve month period (not carried over from a previous twelve month period.	40
3	If less than the maximum number of lots hereby permitted to be conveyed by this Section 10.9 during a previous twelve month period (50 during the first year, 40 during each subsequent year), according to lines 1 and 2 of this chart, are actually conveyed during that twelve month period, then the difference between the maximum number of lots permitted to be conveyed for that twelve month period and the number of lots actually conveyed during that twelve month period, may be carried over to subsequent years twelve month period, subject to the limitation on line 4 of this chart.	Unlimited
4	Notwithstanding the provisions and limitations stated in lines 1, 2 and 3of this chart, the maximum number of lots that may be conveyed during a single twelve month period, including the number of lots permitted to be conveyed that are allowed by line 3 of this chart to be carried over from previous years.	60

10.9.2 Developer's Report of Conveyances. The Developer shall be required to provide a written report to the Town, identifying each conveyance of a subdivided lot of the Subject Property , which report shall include: (a) identify the Owner(s) of each conveyed lot by full name(s) and current mailing address(s) as provided to the Maryland Department of Assessments & Taxation, (b) identify the lot by the number, block, section and otherwise, assigned to the lot within the Subject Property on the final recorded subdivision plat, and (c) the date of recordation of conveyance of the lot to the Owner.

10.9.3 Issuance of Building Permits. There is no limitation in this Agreement on the number of building permits that the Town will issue per year. The Town shall issue building permits requested by Owners of lots within the Subject Property in the same manner and within the same time frame as is the normal custom and practice of the Town, recognizing that normal time periods may vary depending upon the number of building permit requests that are pending and the number of employees of the Town that are available to process building permit requests. Notwithstanding the provisions of this Section 10.9.3 as further set forth in Section 14 of this Agreement (Defaults), the Town may refrain from issuing any building permits within the Subject Property if the Developer is in breach of its obligations under this Agreement.

10.9.4 Applications Submitted When A Payment Is Due And Unpaid. An application for a building permit relating to a Unit for which a payment, as described in the Schedule Of

Consideration To The Town is due but has not been paid in full to the Town, shall not be issued by the Town, and if said building permit is issued by the Town, upon written notification to the Owner by the Town, the Owner of the lot on the Subject Property to which the issued building permit relates shall not use or act on the issued building permit, and shall cease and desist all construction pursuant thereto, until payment of said amount due to the Town is paid in full.

10.9.5 For the purpose of this Section 10.9, the issuance of a building permit for construction on a lot, and the pouring of footers for construction on that same lot, shall be tantamount to the conveyance of a lot in counting the number of lots the Developer can convey within any twelve month period.

10.9.6 Developer Conveyances of Lots in Violation of Section 10.9.1. If the Developer violates the limitation on the number of lots that may be conveyed within a twelve (12) month period pursuant to Section 10.9.1, then the Town may take any of the following actions with respect to each request for a building permit relating to a lot conveyance that exceeds the limitation: (a) deny the application if the issuance thereof would violate a Town law; or (b) return the application to the applicant along with a written notice that: (i) conveyance of the lot for which a building permit is sought constitutes a violation of limits on the number of lot conveyances that are permitted during any one year, as provided by this Section 10.9.1 of this Agreement, to which the applicant, as an Owner or agent of an Owner, is bound; (ii) the first date of the next year on which building permit applications can be submitted; and (iii) that building permits will be issued in the order in which the applications therefore are received on or after the first date when such applications can be accepted by the Town. If a building permit is inadvertently issued in violation of a limitation of this Section 10.9.3, and is not recalled or cancelled, then such building permit shall be counted toward the limit for the next year after the inadvertent violating issuance is discovered.

10.10 Additional Units. It is not the intention of the parties to permit or consent to additional Units, beyond the number specified in Section 8.2 of this Agreement. However, if any Unit is ever constructed on the Subject Property, or if the use of any structure on the Subject Property is ever converted to one or more Units, such that there are more Units on the Subject Property than the total number of Units indicated in Section 8.2 of the this Agreement, then the Owner of each such additional Unit shall, immediately upon such construction or conversion, become liable to the Town, and pay to the Town, on a per Unit basis all of the same fees, charges and payments on a per Unit basis for each of the Units as provided on the Schedule Of Consideration To The Town (Exhibit 10). The due date for the payments relating to such converted Unit shall be based on the original date of conveyance, construction and occupancy of the structure, rather than based on the conversion date.

10.11 Security, Enforcement And Collection Of Consideration. The following provisions shall apply to the enforcement and collection by the Town of the Consideration granted to the Town and described in Section 10 (Consideration To The Town) and/or Exhibit 10 (Schedule Opf Consideration To The Town) of this Agreement:

10.11.1 Collection of Other Monetary Payments Due Pursuant To Section 10. Any monetary payments, other than Annual Unit Payments, due and payable to the Town pursuant to this Agreement that remain unpaid for thirty (30) days after the due date for such payment shall be subject to a late charge and interest on the unpaid balance at the same rate as is provided for unpaid Annual Unit Payments pursuant to Section 10.5 of this Agreement.

10.11.2 Withholding of Permits. Any other provision of this Agreement to the contrary notwithstanding, the Developer and the Owner(s) consent and agree that all applications, administrative processing, and permits relating to a lot or Unit on the Subject Property for which a payment or performance is due to the Town, as described in the Schedule Of Consideration To The Town, and which has not been satisfied, shall be returned to the applicant, postponed or denied by the Town until such payment or performance has been satisfied.

10.11.3 Declaration of Covenants, Restrictions and Conditions for the Project. The Declaration shall contain provisions to impose on the Developer, the HOA, and the Owners, respectively, the duties and responsibilities consistent with the terms of this Section 10 and with Exhibit 10 (Schedule Of Consideration To The Town) to this Agreement, including those perpetual duties that will extend beyond the life of this Agreement; designate the Town as a third-party beneficiary for the purpose of enforcing its roights contained therein pursuant to this Section 10; and give the Town the power to assess, lien and collect from the Owners costs incurred by the Town pursuant to this Section 10.

10.11.4 Town As Third-Party Beneficiary. The Commissioners Of St. Michaels, and its successors, are hereby irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose and with the right to enforce upon the Developer, the Owners and the HOA, their respective duties to the Town agreed to in this Agreement and/or in Exhibit 10 (Schedule Of Consideration to The Town) to this Agreement, with the Town Commissioners having the power to make all decisions and take all actions for the Town relating thereto to such enforcement. In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the same purpose and with the same rights. Town shall have the right to the cost of collection, including attorneys fees, related to such enforcement actions in the event that the Town prevails in any such action.

10.12 Amendment To Include The Hunteman Property. In the event that the Town agrees to amend this Agreement to add the Hunteman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment") within one (1) year after the date on which the Developer offers the Amendment as provided by Section 9.8 of this Agreement, thereby granting Qualified Vested Rights to the Hunteman Property as of the date of the Amendment, then as consideration therefore the Town shall have the irrevocable right to accept, and receive from the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property (as thus redefined), including the Owners, as part of the

Amendment, the additional consideration relating to the Hunteman Property as and when described in Exhibit 10(Schedule Of Consideration To The Town) hereto, and as further explained and/or modified by this Section 10, relative to the Subject Property (including the Hunteman Property) as thus defined in by the Amendment to this Agreement.

10.13 Upon written request by the Developer having an ownership interest in a Unit, or an Owner of a Unit, the Town shall issue a written estoppel certificate, indicating the status of the payments relating to such Unit that are both: (1) required by this Agreement to be paid to the Town; and (2) have been paid to the Town.

Section 11: Regulation by Other Public Agencies. The parties acknowledge that other public agencies, not within the control of Town, possess authority to regulate aspects of the development of the Subject Property separately from the Town, and that this Agreement does not limit the authority of such other public agencies. To the extent permitted by law, where the Town can reasonably do so without prejudicing its own independence of decision-making or other governmental duties, the Town shall reasonably cooperate with the Developer, at the Developer's expense, in support of any application by Developer to any other public agency for any permit or approval, which is required for the Project. Within fifteen (15) days of any request, Town shall provide to Developer or to such other public agencies information possessed by Town which is not confidential, privileged or the proper subject of discussion by the Town Commissioners in an executive session pursuant to the Maryland Public Meetings Act, and which is necessary for processing such applications.

Section 12. Public Facilities

Subject to the consideration stated in Section 10 of this Agreement, the Public Facilities (including Parks and Open Space) relating to the Development Plan for the Subject Property shall be developed pursuant to the terms and conditions set forth in the Public Facilities Agreement (Exhibit 4), which is incorporated herein by reference.

Section 13. Administration of Performance

13.1 Processing Cooperation and Assistance. To the extent permitted by law, the Town shall reasonably cooperate with the Developer, at the Developer' expense, in securing any and all entitlements, authorizations, utility connections, permits or approvals which may be required by any other governmental or quasi-governmental entity in connection with the Development of the Project or the Subject Property. Without limiting the foregoing, the Town shall reasonably cooperate with the Developer in any dealings with federal, state and other local governmental and quasi-governmental entities concerning issues affecting the Subject Property. At the Developer's expense, the Town shall keep the Developer fully informed, except where to do so would reveal confidential or privileged information, with respect to its communications with such agencies that could impact the development of the Subject Property.

13.2 Processing During Third Party Litigation. The filing of any Third Party lawsuit(s) against the Town and/or the Developer relating to this Agreement or to other development issues affecting any portion of the Subject Property or the Project shall not hinder, delay or stop the

development, processing or construction of the Project, approval of the Future Approvals, or issuance of ministerial permits or approvals, unless: (1) there is an applicable law providing to the contrary; or (2) the Third Party obtains a court order preventing the activity. However, the Developer acknowledges that the Developer may be proceeding at its own peril.

13.3 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between Town and Developer. During the Term of this Agreement, clarifications of details or specific procedures of this Agreement and the Development Plan and the Development Approvals may be appropriate with respect to the details of performance of Town and Developer. If and when, from time to time, during the terms of this Agreement, Town and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by Town and Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by Town and the Developer. Operating memoranda are not intended to, and cannot, constitute an amendment to this Agreement or allow a major modification to the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The Town Attorney shall be authorized, upon consultation with, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 6.5 (Amendment and Waiver). The authority to enter into such operating memoranda is hereby delegated to the Town Manager, and the Town Manager is hereby authorized to execute any operating memoranda hereunder without further action from the Planning Commission or Town Commissioners.

13.4 Good Faith Compliance Review

13.1 Notice of Non-Compliance; Cure Rights. If at the completion of any Periodic Review, as defined in Section 13.4.3 of this Agreement, the Town reasonably concludes, on the basis of substantial evidence, that Developer is not in good faith compliance with a specific substantive term or provision of this Agreement, then the Town may issue and deliver to the Developer a written Notice of Defaultas required by Section 14.3. Developer may cure any matter set forth by the Notice of Default within the period established by Section 14.

13.4.2 Limitation on Town's Right to Modify or Terminate Agreement. Town shall not take any action to terminate or modify this Agreement except upon substantial evidence showing a failure of Developer to perform a material duty or obligation under this Agreement which has not been cured by Developer as provided under Section 14.4 of this Agreement.

13.4.3 Failure of Periodic Review. The Town's failure to review, at least annually, compliance by the Developer with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a breach by any other Party of this Agreement.

Section 14: Default and Remedies.

14.1 In the event of a dispute arising from, or an alleged default or breach of, this Agreement all parties shall have the right to pursue an action for a declaratory judgment action, specific performance or termination of this Agreement. A party may also maintain an action to reform this Agreement should equitable circumstances merit reformation. Except as otherwise set forth in this Agreement, all other remedies, legal or equitable, are waived. All actions relating to this Agreement brought by, for or on behalf of the Town shall be brought by The Commissioners Of St. Michaels, a Maryland municipal corporation, and shall be directed solely by the Town Commissioners. All actions relating to this Agreement brought against the Town and/or the Planning Commission as an agency of the Town shall be brought solely against The Commissioners Of St. Michaels, a Maryland municipal corporation, and shall be defended solely at the direction of the Town Commissioners. Further, this Agreement is not intended to expand of limit the rights and remedies of the parties hereto, and their successors in interest, under the applicable land-use laws.

14.2 Developer Default; Additional Town Remedies. In the event Developer is in default under the terms of this Agreement, Town shall have the right:

14.2.1 To refuse processing of an application for, or the granting of any permit, approval or other land use entitlement for, development or construction of the Subject Property or portion thereof owned or controlled by Developer, including but not limited to the withholding of grading, excavation, building and occupancy permits; and/or

14.2.2 To sue for damages if the default relates to non-payment and/or non-performance of consideration due and owing to the Town pursuant to consideration to the Town (Section 10) and the Schedule of Consideration to the Town (Exhibit 10).

14.3 Notice of Default or Breach. In the event a party to this Agreement believes that another party is in breach or default of an obligation under this Agreement, said party shall provide a written Notice of Default and shall deliver said Notice of Default pursuant to the Notices provision of Section 6.6.

14.4 Opportunity to Cure. A party in receipt of a Notice of Default shall have thirty (30) days to cure a default before the non-defaulting party may institute any legal action or terminate this Agreement pursuant to a breach or default. If a breach or default has not been cured within the thirty (30) day period, the non-defaulting party may pursue all remedies permitted under this Agreement.

Section 15: Mortgagee Protection; Certain Rights of Cure.

This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Subject Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Subject Property or its development. Town acknowledges that the lenders providing such

financing may require certain Agreement modifications and agrees upon request, from time to time, to discuss with Developer and representatives of such lenders to negotiate in good faith any such request for modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed- in-lieu of foreclosure on the Subject Property shall be entitled to the following rights and privileges:

15.1 Mortgagee Protection. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Subject Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform the Developer Obligations, or to guarantee such performance, prior to taking title to all or a portion of the Subject Property.

15.2 Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Subject Property, or any part thereof, shall be entitled to receive from the Town a copy of any Notice of Violation delivered to the Developer, provided that Mortgagee has submitted a request in writing to Town in the manner specified herein for giving notices and the notice makes specific reference to this subsection. If Town receives such a request from a Mortgagee, Town shall provide Mortgagee with a copy of any Notice of Violation that is sent to Developer concurrently with the sending of the Notice to Developer.

15.3 Mortgagee's Time to Cure. The Town shall provide a copy of any Notice of Violation to the Mortgagee within ten (10) days of sending the Notice of Violation to the Developer. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such Notice of Violation.

15.4 Cure Rights. Any Mortgagee who takes title to all of the Subject Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of the Developer under this Agreement as to the Subject Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of the Developer arising prior to acquisition of title to the Subject Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or non-monetary obligations due under this Agreement for the Subject Property, or portion thereof acquired by such Mortgagee, have been satisfied.

Section 16: Estoppel Certificates.

Either party may at any time, and from time to time, deliver written notice to the other party requesting that the other party certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and is a binding obligation of the parties, (ii) this Agreement has not been amended or, if amended, identifying the each amendment, and (iii) the requesting party is not in breach of this Agreement or, if in default, the nature and extent of each default. A party shall not rely upon the estoppel certificate of another party to this Agreement

against whom it would be used unless that certificate is signed by such party against whom it would be used and its attorney.

Section 17: Conflicts of Laws, Rules, Regulations

17.1 Conflict with County, State or Federal Laws or Action of Other Governmental Jurisdiction. In the event that any County, State or federal law or regulation enacted after the Effective Date, or any governmental action, other than an action by Town, taken after the Effective Date, prevents or precludes compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended by Town as may be necessary to comply with such County, State or federal law or regulation or non-Town governmental action; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws, regulations or non-Town governmental action and to the extent such laws, regulations or non-Town governmental action do not render such remaining provisions impractical to enforce. Town also agrees to process Developer's proposed changes to the Project as may be necessary to comply with such County, State or federal law and to process such proposed Project changes in accordance with Town procedures and findings.

17.2. Notice. Neither party shall claim that a conflict, as described in Section17.1, exists, unless that party has given the other party at least thirty (30) days written notice of the conflict. The notice shall identify the law, regulation or non-Town governmental action, the date the law or regulation was enacted or the date the non-Town governmental action was taken, and the manner in which the law, regulation or non-Town governmental action conflicts with one or more provisions of this Agreement.

17.3 Modification Conference. Within thirty (30) days after notice is given as provided in Section 20.2, Town staff and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such law, regulation or non-Town governmental action. In such negotiations, Town and Developer agree to preserve the terms of this Agreement, including the Developer Obligations and the rights of Developer as derived from this Agreement, to the maximum feasible extent while resolving the conflict. Town and Developer agree to cooperate with each other in attempting to resolve the conflict in a manner that minimizes any financial impact of the conflict upon Developer and Town.

17.4 Town Consideration. Within thirty (30) days after the modification conference, regardless of whether the parties reach an agreement on the effect of such law or regulation upon this Agreement, the matter shall be scheduled for hearing before the Town. Notice of such hearing shall be given pursuant to the Development Agreement Statutes and Enabling Ordinance. The Town, at such hearing, shall consider the exact modification or suspension that shall be necessitated by such law, regulation or non-Town governmental action. Developer shall have the right to offer oral and written testimony at the hearing. No modification or suspension of this Agreement shall be effective unless approved by the affirmative vote of not less than a majority of the authorized voting members of the Town and by Developer.

17.5 Cooperation in Securing Permits or Approvals. Provided Town and Developer agree to a modification or suspension of this Agreement pursuant to this Section17, Town shall use its best efforts to assist Developer in the timely securing of any permits or approvals which may be required as a result of such modifications to, or suspensions of, all or any part of this Agreement.

17.6 Challenge Regarding New Law or Regulation. Developer and/or Town shall have the right to challenge by appropriate judicial proceedings any such new law, regulation or non-Town governmental action preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

17.7 Tolling of Term during Suspension. The term of this Agreement, as provided in this Section17, shall be tolled during the period that any suspension of the Agreement imposed by Section 17 is in full force and effect.

17.8 Third Party Litigation Regarding Agreement. In the event any legal action or special proceeding is commenced by any person or entity other than a Party to this Agreement, challenging this Agreement or any provision herein, the parties agree to cooperate with each other in good faith to defend said lawsuit. Notwithstanding the foregoing, Town may elect to tender the defense of any lawsuit filed by a third person or entity to Developer, in such event, Developer shall hold the Town harmless from and defend the Town from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. The Developer shall not settle any lawsuit on grounds which include, but are not limited to non-monetary relief without the consent of the Town. The Town shall act in good faith, and shall not unreasonably withhold consent to settle.

Section 18: Miscellaneous Provisions

18.1 Recordation of Agreement. This Agreement shall be recorded in the County Land Records within twenty (20) days of the Effective Date of this Agreement at the Developer's expense.

18.2 Entire Agreement. Except as to representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, as described in Section 10.3 of this Agreement, this Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

18.3 Invalidity, Unenforceability, Severability, And Savings Clause.

18.3.1 Savings Clause - Annual Unit Payments. If the number and/or duration of the Annual Unit Payments would cause a court of competent jurisdiction to render or

declare such Payments and/or this Agreement to be invalid, void or unenforceable for any reason other than being in violation of the rule against perpetuities, then the number and/or duration of such Payments that would cause a court of competent jurisdiction to render or declare such Payments and/or this Agreement to be invalid, void or unenforceable shall automatically, and by the terms of this Agreement, be reduced to the largest number and/or the longest duration that would not cause such court to render or declare such Annual Unit Payments and/or this Agreement to be invalid, void or unenforceable, thereby saving the validity and enforceability of the Annual Unit Payments and this Agreement.

18.3.2 Savings Clause. If any term(s) and/or provision(s) of this Agreement would cause a court of competent jurisdiction to render or declare this Agreement, or such offending term(s) and/or provision(s), to be in violation of the rule against perpetuities, then such offending term(s) and/or provision(s) of this Agreement that would cause a court of competent jurisdiction to render or declare this Agreement to be in violation of the rule against perpetuities shall automatically, and by the terms of this Agreement, be amended as follows:

18.3.2.1 First, reduce the duration or number of years of the such offending term(s) and/or provision(s) only to the extent necessary such that they, individually or in combination, do not violate the rule against perpetuities; and

18.3.2.2 Second, if the provisions of Section18.3.2.1 of this Agreement are not sufficient to save the validity and enforceability of the offending term(s) and/or provision(s) of this Agreement, then such offending term(s) and/or provision(s) shall be severed and deleted from this Agreement only to the extent necessary to save the validity and enforceability of this Agreement.

18.3.3 If, after applying Sections 18.3.1 and 18.3.2 of this Agreement, any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect and, if possible, the parties shall amend this Agreement so as to effect the original intention of the parties. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Agreement by providing written notice thereof to the Town.

18.4 Governing Law. This Agreement and the actions of the parties hereunder shall in all respects be governed by and construed in accordance with the laws of the State of Maryland.

18.5 Incorporation of Exhibits and Other Documents by Reference. All **exhibits** and other documents attached to or referred to in this Agreement are incorporated herein by reference As additional terms of this Agreement.

18.6 Cross-Reference; Headings. When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or **exhibit**, such reference shall be deemed to be to this Agreement unless otherwise indicated. The headings and captions used in this Agreement are for convenience and ease of reference only and shall be used to interpret, expand or limit the terms of this Agreement.

18.7 Rules of Construction and Interpretation. Any term used in an exhibit hereto shall have the meaning as in this Agreement unless otherwise defined in such exhibit. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

18.8 No Party Deemed Drafter. The final language of this Agreement is the result of extensive negotiations. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the parties agree that none of them shall be deemed to be the drafter thereof.

18.9 Business Days. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

18.10 Time of Essence. Time is of the essence in all things pertaining to the performance of this Agreement.

18.11 Consent. Where a consent or approval of either party is required or necessary under this Agreement, such consent or approval shall not be unreasonable withheld.

18.12 Waivers. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party will have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the Town or Developer, as the case may be, as set forth by Section 0. Any such written waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

18.13 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

18.14 Third-Party Beneficiaries. The Town is expressly intended as third party beneficiaries of this Agreement, including, but not limited to, the Consideration To The Town set forth in Section 10 hereof.

18.16 Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to this Agreement against another for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys fees, litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof.

18.17 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

18.18 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

18.18 Project as a Private Undertaking. It is understood and agreed by and between the parties hereto that: (a) the Project is a private development; (b) neither party is acting as the agent of the other in any respect hereunder; (c) each party is an independent contracting entity with respect to the provisions of this Agreement; (d) Town has no interest in or responsibilities for any improvements to the Subject Property until Town accepts the improvements pursuant to the provisions of this Agreement or in connection with any subdivision approvals; and (e) Developer shall have the full power and exclusive control of the Subject Property subject to the obligations of Developer set forth in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement.

18.20 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such instruments and other writings and take such actions as may be reasonably necessary to carry out the intent or fulfill the provisions of this Agreement or to evidence or consummate any transaction contemplated by this Agreement. Without in any manner limiting the specific rights and obligations set forth in this agreement, the parties hereby declare their intention to cooperate with each other and affecting the terms of this agreement, and to coordinate the performance of their respective obligations under the terms of this agreement.

18.21 Covenant of Good Faith and Fair Dealing. Neither party shall do anything that shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement. Each party shall refrain from doing anything that would render its performance under this Agreement impossible or impracticable. Each party shall do everything which this Agreement contemplates that such party shall do to accomplish the intent and to fulfill the provisions of this Agreement.

18.22 No Obligation to Develop. It is understood that Developer's development of the Project depends upon a number of factors including, but not limited to, the housing and

commercial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement. However, the Developer(s), for themselves and their successors, collectively acknowledge and agree as follows: (1) that all Development Approvals contemplated by this Agreement are exclusive to the Development Plan contemplated by this Agreement; (2) that they shall relinquish all such Development Approvals that are not used for and in connection with the Development Plan; and (3) they waive all rights and claims to an impermissible change of mind with respect to any future application to the Town for any land-use permit or approval for the Subject Property; so that (4) it is intended and agreed that neither party hereto shall gain any advantage over the other with regard to any future use of the Subject Property other than the Development Plan.

18.23 Rule Against Perpetuities. If any of the covenants, restrictions or other provisions of this Agreement shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

IN WITNESS WHEREOF, Developer and Town have executed this Agreement on the dates set *forth below.*

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

By: _____ 2-16-04
George A. Valanos, President Date

ST. MICHAELS POINT, L.L.C.

By: _____ 2-16-04
George A. Valanos, Managing Member Date

MILES POINT PROPERTY, LLC

By: _____ 2-16-04
George A. Valanos, Managing Member Date

TND DEVELOPMENT, INC.

By: 2-16-04
George A. Valanos, President Date

TOWN:
THE COMMISSIONERS OF ST. MICHAELS

By: St. Michaels Planning Commission

By: 2-19-04
Frederick N. Megahan, Chairman Date

Cheril S. Thomas, Town Manager

APPROVED AS TO FORM:

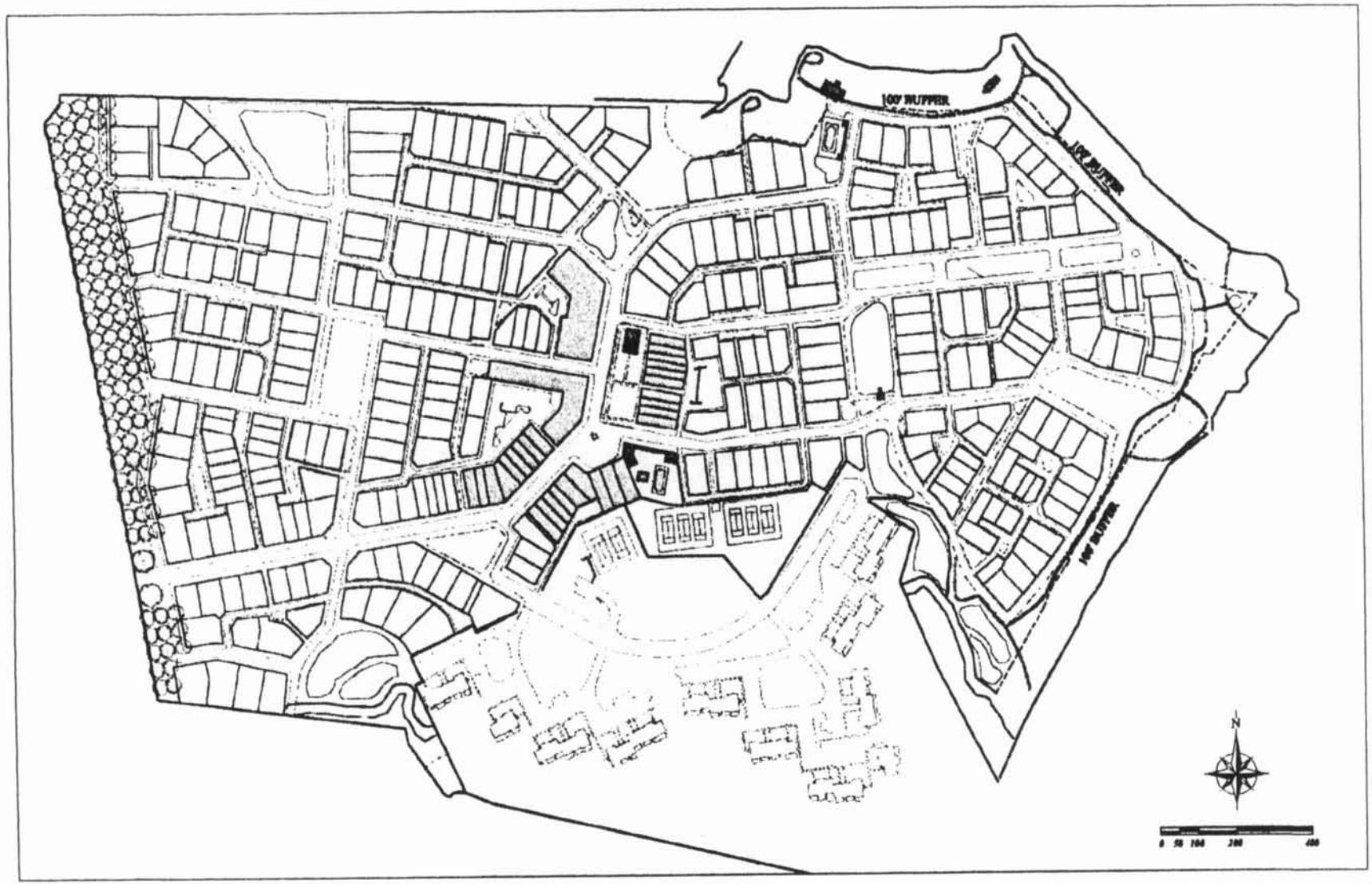
By:
H. Michael Hickson
Town Attorney

By:
Richard A. DeTar
Attorney for the Developer(s)

Exhibit #1

St. Michaels, Maryland

Miles Point
Concept Plan



KEY

Miles Point Concept Plan
St. Michaels, Maryland
December 21, 2001

Duany Plater-Zyberk & Company

LIBER 1225 FOLIO 467

MILES POINT

TOWN OF ST. MICHAELS, MD

THE MIDLAND COMPANIES

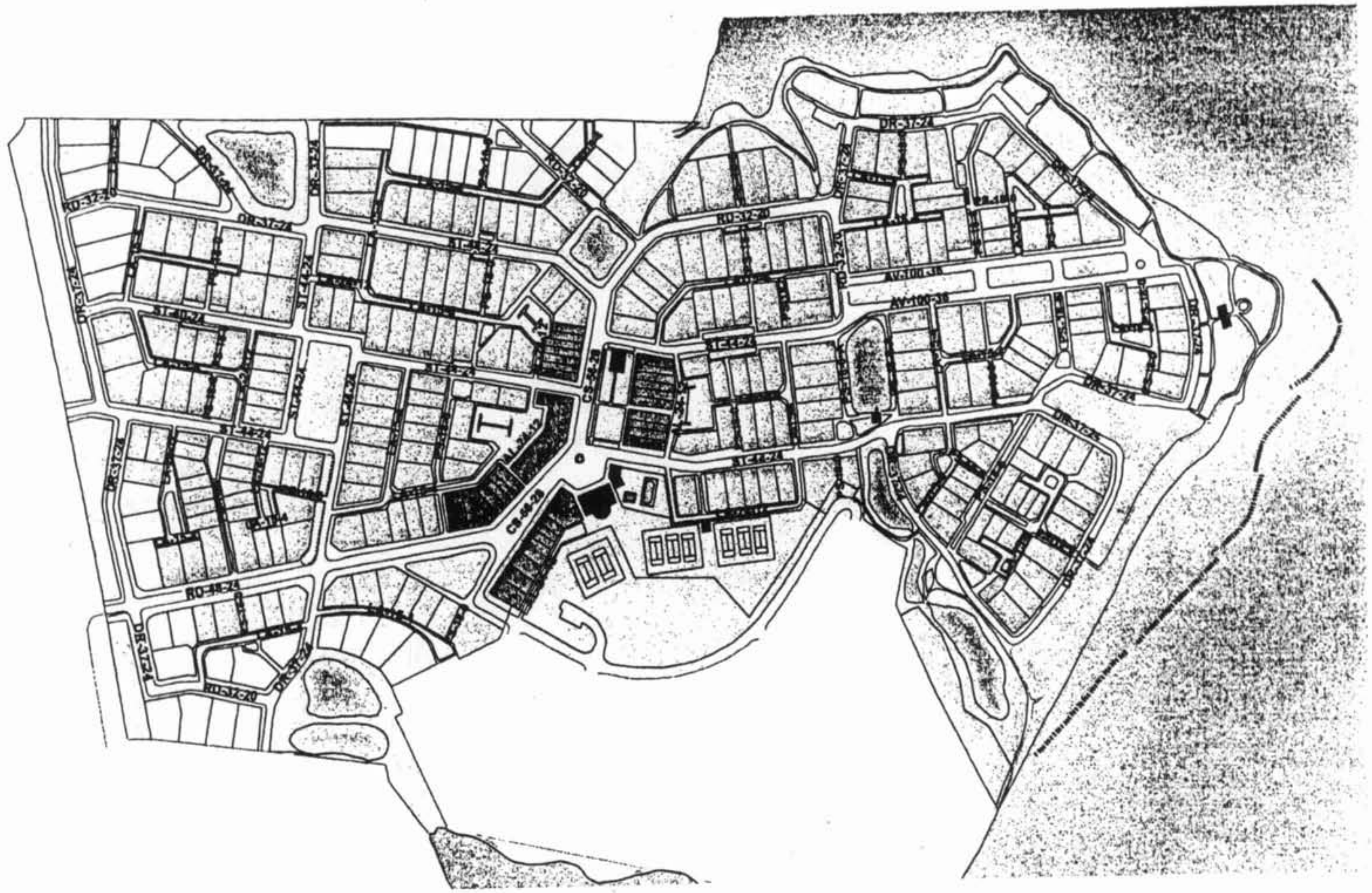
DEVELOPER

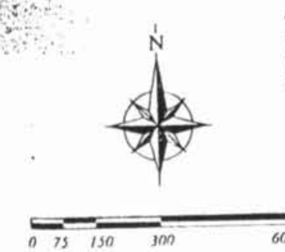
DUANY PLATER-ZYBERK & COMPANY

TOWN PLANNERS

ANDRES DUANY, LUDWIG FONTALVO-ABELLO, ANTHEA GIANNIOTES, JAY GRAHAM, MELISSA KIMBALL, OSCAR MACHADO, BARRY MAHAFFEY, GARY MODJESKA, MICHAEL MORRISSEY, JORGE PLANAS, DAVID SAN ROMAN, GALINA TAHCHIEVA, GEORGE VALANOS, MIKE WATKINS

LIBER 1225 FOLIO 468





LIBER 1225 FOLIO 470

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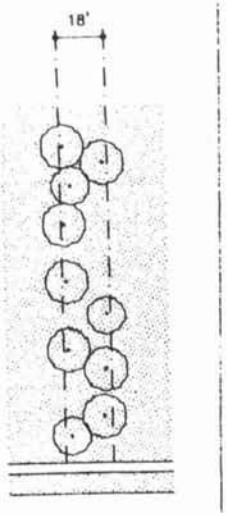
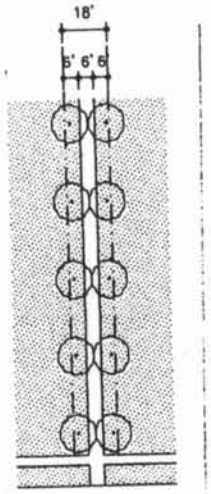


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-0

Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	N/A
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	Varies
Planter Type	Continuous
Tree Pattern	Varied pattern
Tree Species	A mix of: American Holly, Eastern Red Cedar, Red Maple, Serviceberry, Sourwood, Swamp Bay Magnolia
Ground Cover	Lawn

© 1998 Duany Plater-Zyberk & Company
Revision Date: August 27, 1998

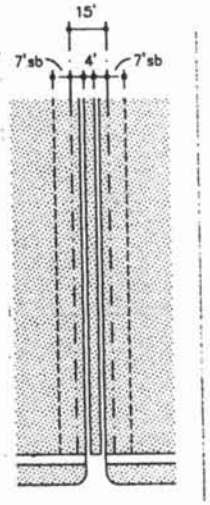


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-6a has trees on the public side only.

PS-18-6

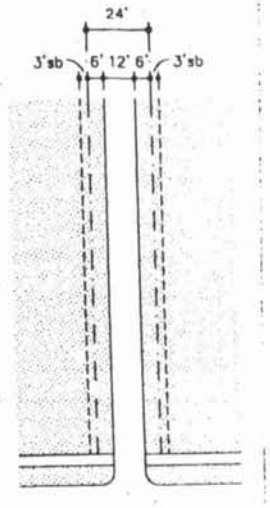
Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	6 ft.
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Passages may be different and any one of: American Holly, Crapemyrtle, Golden Raintree, Yellowwood
Ground Cover	Lawn



Lanes service the rear of lots and are rural in character having only a pair of narrow, unpaved ruts that may or may not be centered in the ROW.

LA-15-4

Precedent	Harrison Alley
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	15 ft.
Pavement Width	2 gravel ruts at 2 ft. each
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn

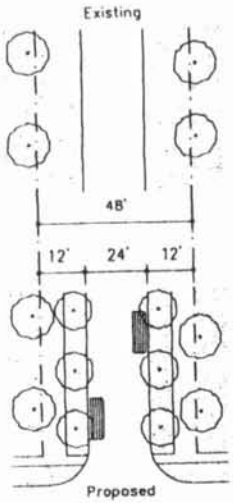


Alleys service the rear of lots nearest the Neighborhood Center where the density is greatest and uses may be mixed. They are more urban in character with a strip of paving at the center and shoulders that may or may not be paved.

AL-24-12

Precedent	N/A
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	24 ft.
Pavement Width	12 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn

LIBER 12225 FOLIO 47



Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

RD-48-24

Precendent	Perry Cabin Drive
Type	Road
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	48 ft.
Pavement Width	24 ft.
Curb Type	Header Curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	8.8 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft. and 6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 25 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

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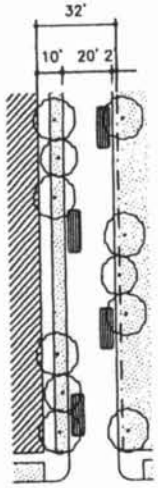
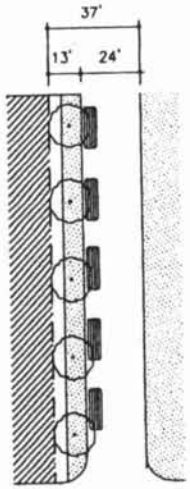


Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

RD-32-20

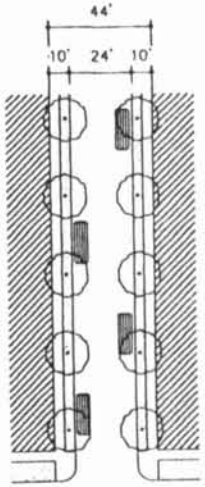
Precendent	Grace Street
Type	Small road
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	32 ft.
Pavement Width	20 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	15 m.p.h.
Pedestrian Crossing Time	3.9 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Swale
Tree Pattern	Clusters at 30 ft. on center average
Tree Species	Scarlet Oak
Ground Cover	Lawn



Drives define the edge between an urbanized and a natural condition, usually along a waterfront, a park, or a promontory. One side has sidewalks and buildings, the other side is more rural in character with natural-istic planting and rural detailing.

DR-37-24

Precendent	The Strand
Type	Drive
Movement	Slow movement
Traffic Lanes	Two way
Parking Lanes	One side
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	Swale and 4" header curb at planter
Curb Radius	10 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	6.5 seconds
Sidewalk Width	5 ft.
Planter Width	8 ft.
Planter Type	Continuous
Tree Pattern	30 ft. on center average
Tree Species	Inland: Red Maple; Waterfront: to be determined
Ground Cover	Lawn



Streets are appropriate for residential buildings at the Neighborhood Center and General. A single species of tree should be planted in steady alignment in continuous planting strips. A vertical canopy is necessary to avoid building facades at shallow frontage setbacks.

ST-44-24

Precedent	None
Type	Small residential street
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	4" Header curb
Curb Radius	5 ft.
Vehicular Design Speed	20 m.p.h.
Pedestrian Crossing Time	5.5 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Willow Oak
Ground Cover	Lawn

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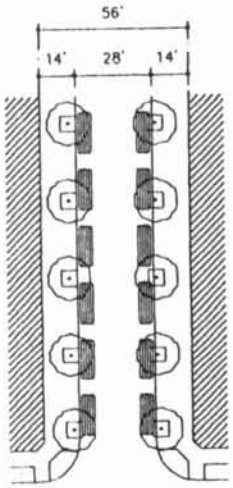

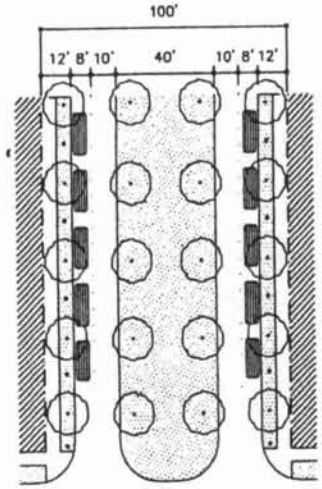

Commercial streets are appropriate for commercial buildings at the Neighborhood Center. Trees are confined by individual planters, creating a sidewalk of maximum width, with areas accommodating street furniture. Clear trunks and high canopies are necessary to avoid interference with shopfronts, signage and awnings.

Avenue is a local, slow-movement thoroughfare suitable for General, Center, and Core Urban Zones. Avenues are appropriate as approaches to civic buildings. In residential areas, the median may be wider and planted naturalistically to become greenway. The streetscape details may vary as the avenue passes from one zone to another.

CS-56-28

Precedent	Talbot Street
Type	Commercial street
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	54 ft.
Pavement Width	28 ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	5 seconds
Sidewalk Width	9 ft.
Planter Width	5 ft.
Planter Type	Individual, except at arcade
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

AV-100-36

Precedent	
Type	Avenue
Movement	Speed movement
Traffic Lanes	Two ways
Parking Lanes	One sides
R.O.W. Width	100 ft.
Pavement Width	18 ft. + 18ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	10 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft.
Planter Type	Continuous center, Individual sides
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

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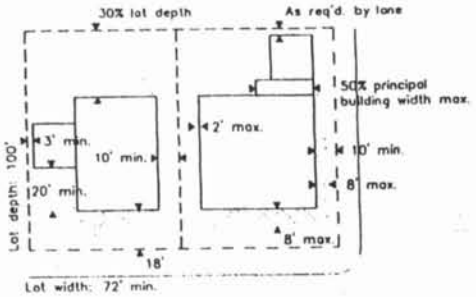
LIBER 1225 FOLIO 473

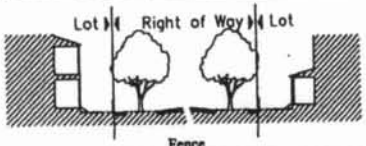
NEIGHBORHOOD EDGE - LARGE HOUSE



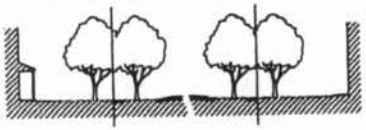
Large House is a single-family residence on its own large lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	72 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



Fence



Common Lawn

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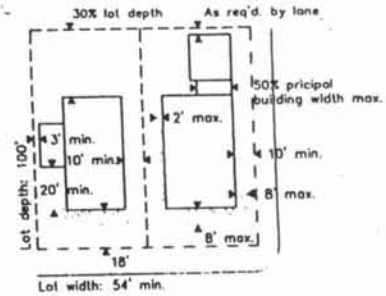
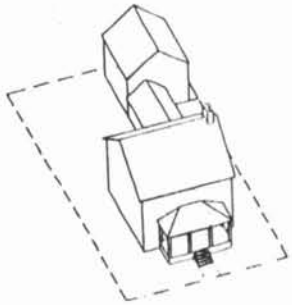
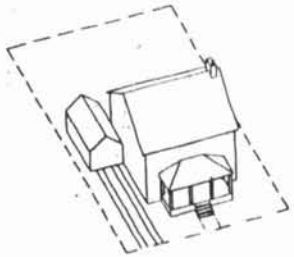
NEIGHBORHOOD EDGE - HOUSE



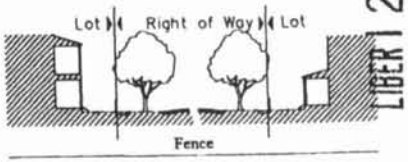




A House is a single-family residence on its own lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 54 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines are a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	54 ft.min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types

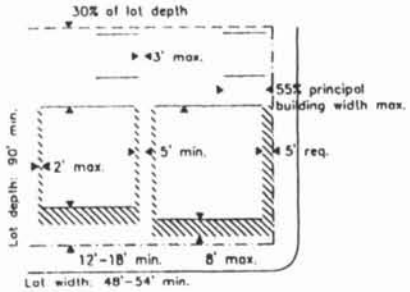


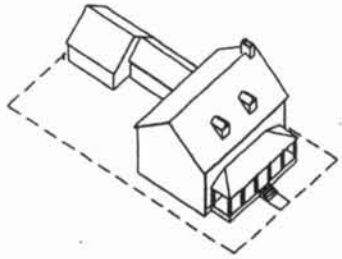
Fence

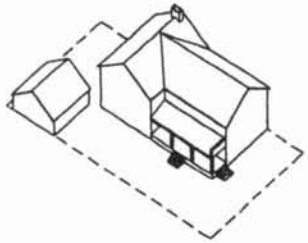
Common Lawn

LIBER 1225 FOLIO 474

NEIGHBORHOOD GENERAL - HOUSE



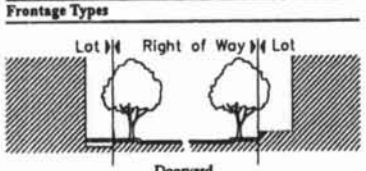




A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 55% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	48 - 54 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	5 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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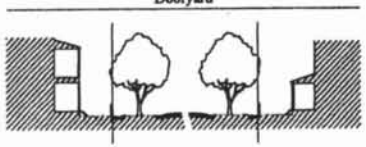

Fence

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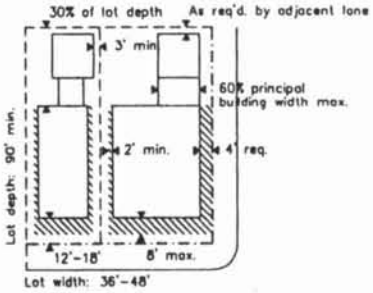
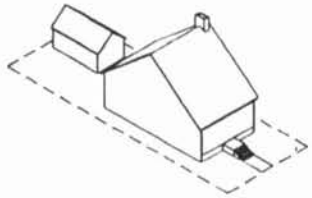
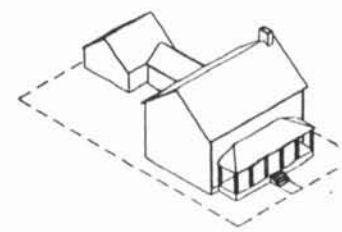
NEIGHBORHOOD GENERAL - COTTAGE



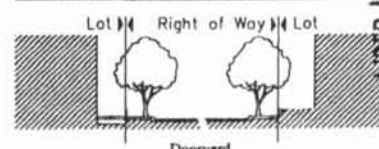




A Cottage is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 30 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	30 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	3 stories max.
of first floor above grade	2.5 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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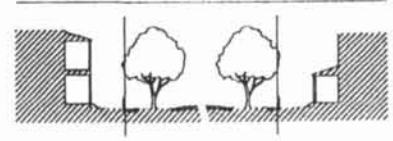
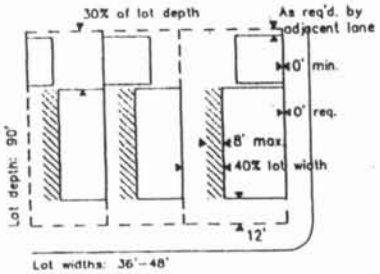
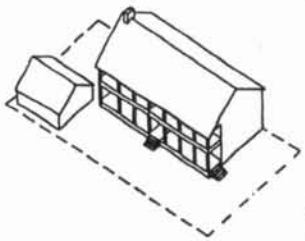


Fence

LIBER 1225 FOLIO 475

NEIGHBORHOOD GENERAL - SIDE YARD HOUSE

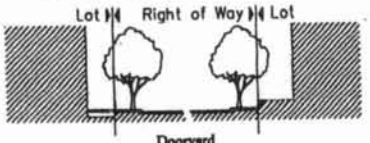




Side yard House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from the North or West side, and a minimum of 40% of the lot depth from the South or East side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	36 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 ft.
at building side	0 ft. & 40% of the lot min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	60% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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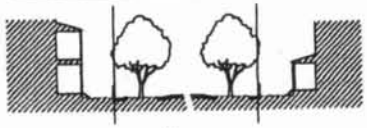

Fence

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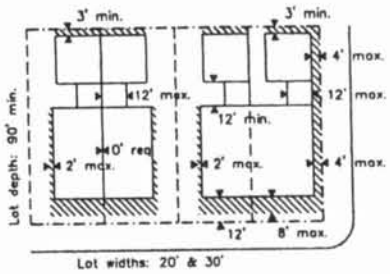
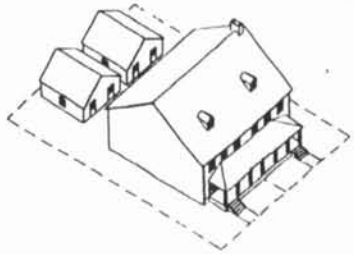
NEIGHBORHOOD GENERAL - DUPLEX HOUSE

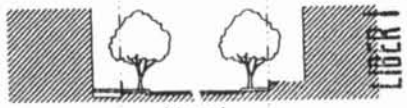




A Duplex House is two units sharing a lot, each with its yard. At corner locations, each duplex can have its own entry. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from one side, 0 feet or 4 feet minimum from the other, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 ft.
at building side	0 ft. & 0 ft. or 4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	4 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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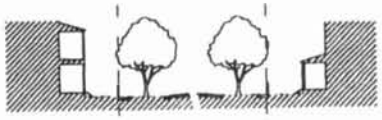
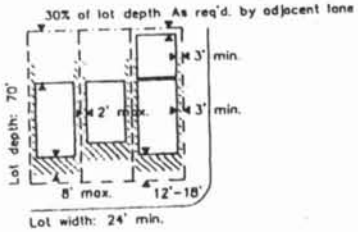


Fence

LIBER 12225 FOLIO 476

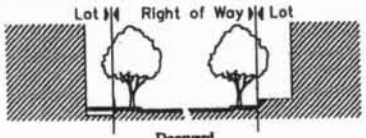
NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE



A Rosewalk Cottage is a single-family residence on its own lot, with frontage on a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal building measured from the lot lines are 6-12 feet from the front, a minimum of 3 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 70 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	6 -12 ft.
at building side	3 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max., 3 ft. max. at corner lots
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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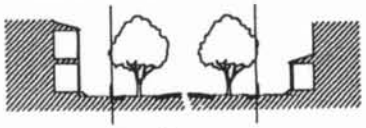

Fence

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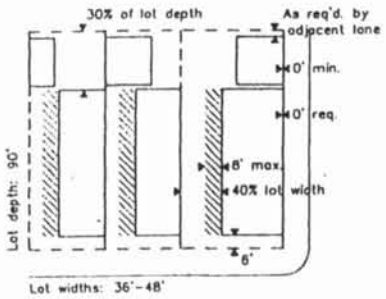
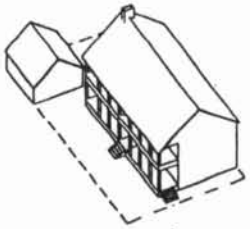
LIBER 1225 FOLIO 477

NEIGHBORHOOD CENTER - SIDE YARD HOUSE

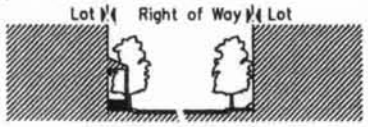




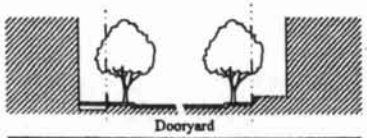
A Side yard House is a single-family residence on its own lot. Within the Neighborhood Center this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from the North or West side, a minimum of 40% of the lot width from the South or East side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	36 - 48 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. & 40% of the lot min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	6 ft. max.
at building side	8 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



Porch or Stoop



Dooryard

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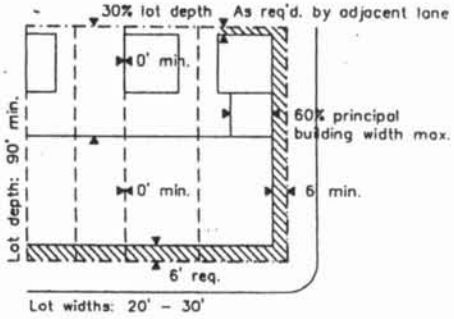
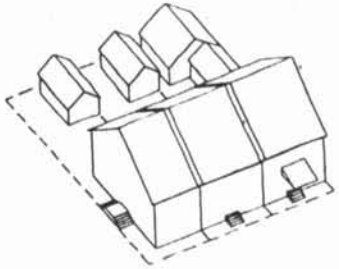
NEIGHBORHOOD CENTER - ROW HOUSE

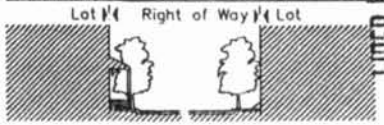




A Row House is a single-family attached residence on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from one side, 0 feet or 6 feet minimum from the other, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. & 0 ft. or 6 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage	6 ft. max.
at building side	0 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types

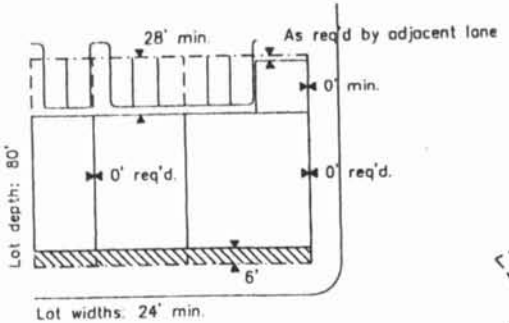


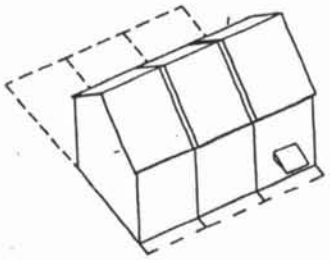
Stoop

Dooryard

LIBER 1225 FOLIO 478

NEIGHBORHOOD CENTER - SHOP/HOUSE

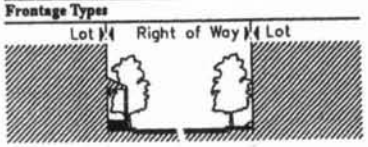




Shop/ House is a single building which may be residential and/or commercial, and may be attached to others, on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 24 feet in width by approximately 80 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from each side, and a minimum of 28 feet from the rear. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. An outbuilding containing a garage (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of three and one-half stories in height. Outbuildings may be a maximum of one story in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 80 ft.
Lot coverage by roofs	90 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. min.
at building rear	28 ft.
at outbuilding side	0 ft. min.
building frontage at setback	100% of lot width min.
Encroachments	
at building frontage	8 ft. max. (2 ft. into ROW is permitted)
at building side	-
Height	
of principal building	3.5 stories max.
of first floor above grade	0 ft. req.
of outbuilding	1 story max.

Frontage Types



Arcade

Shop

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LIBER 1225 FOLIO 479

WALLS

Materials

Walls shall be "select" grade wood siding, cedar shingles, lightweight concrete siding (eg. "Hardieplank"), board and batton, stucco,or tumbled or wood moulded red brick to be approved by the Miles Point Architect (MPA).

Foundation walls shall be brick, stucco or parged block.

Walls of outbuildings may, in addition to the wall materials, be board and batten.

Trim shall be 5/4" wood or simulated wood (eg. "Synwood" or lightweight concrete).

Piers shall be brick or stucco.

Retaining walls shall be brick.

Garden walls are permitted in side and rear yards and shall be brick.

Fences along frontages shall be wood pickets painted white. Side and rear yard fences shall be wood pickets or closed wood boards painted white or stained.

Lattice shall be wood. Vinyl is permitted only at crawl space enclosures.

Wood shall be painted or stained, except cedar shingles and exterior wood floors.

Panelized materials are not permitted.

Paints and stains on walls shall not be dark colors; and, on trim shall be white or cream. A maximum of two different colors shall be used on all of the buildings on a single lot: one base color and one complementing or contrasting trim color (excluding shutters which must be dark color with exception of white on cedar house).

Configuration

Walls above the foundation, and below the eave shall be of a single material.

Walls shall have no more than 4 outside corners to the frontage.

Gable ends may be a different material than the wall below.

Wood Siding may be lapped, dutch-lapped, or, on Colonial buildings, beaded.

Lightweight concrete siding shall emulate lapped or beaded siding , eased, with no more than 6 inches exposed to the weather.

Parging shall be cement with a smooth sand-finish.

Stucco shall be cementitious with a smooth sand finish.

Brick mortar joints shall be concave or grapevine.

Trim shall be no more than 5/4 inches in depth or 6 inches in width at corners and around openings, except at the front door which may be any size or configuration.

Piers shall be no less than 16 inches square.

Columns shall be of the Doric or Tuscan orders detailed strictly proposrtional and per The American Vignola.

Posts shall be no less than 6 inches square and chamfered.

Intercolumnation on the ground floor shall have vertically proportioned openings.

Crawlspace enclosures shall be enclosed with horizontal boards, louvers, shingles, or framed lattice.

Garden walls at frontages shall be no less than shoulder height. Elsewhere garden walls shall be no more than 7' in height.

Fences at frontages may be as tall as waist height. Fences in rear yards shall be no more than 7' in height.

Lattice shall be framed and mounted between, not in front of or behind, posts.

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ATTACHMENTS

Materials

Stoops shall be brick or wood.

Chimneys shall be brick, or parged masonry.

Flues shall be clay or metal painted to match the roof.

Porches shall be made of wood.

Porch screen frames shall be 5/4 inch maximum and finished in wood or "Synwood."

Railings shall be wood.

Front walks, if any, shall be gravel, brick, slate or stone.

Cornice and soffit shall be wood or cellular PVC.

Configuration

Chimneys shall extend to the ground, have a corbelled cap (no more than 5 courses) and either project from the wall, or, be flush with the wall and exposed at the ground floor and above the roof only.

Intercolumniation on the ground floor of porches shall have vertically proportioned openings.

Railings shall have top and bottom rails centered on pickets or sawn balusters. Bottom rails shall be vertically proportioned and shall clear the floor. Spaces between pickets or balusters shall be no more than 3 inches.

Balconies that cantilever shall be visibly supported by brackets and shall be no more than 3 feet in depth.

Porches shall have a minimum depth of 6 feet and may be enclosed by see through screens.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

Equipment including HVAC, utility meters and the like, shall be placed in rear yards and the rear half of the side yards.

ROOFS

Materials

Roofs shall be standing seam terne metal, 5V-crimp, wood shingle, or asphalt shingle to be approved by the Miles Point Architect. Asphalt shingle roofs are permitted on outbuildings and principal buildings where gable ends front the street with the exception of vista terminations and frontage on squares, greens, passages, bodies of water or greenways.

Roofs colors shall be silver, dark gray, black, red, or green.

Gutters and downspouts shall be galvanized metal, painted metal or copper.

Flashing shall be metal or painted metal.

Configuration

Principal roofs on detached and semi-detached buildings shall be a symmetrical gable with pitch between 9:12 and 14:12 or a symmetrical hip between 3:12 and 6:12. Roofs with a symmetrical gable fronting the street may have a pitch of 6:12.

Ancillary roofs may be sheds if angled no less than 3:12 and attached to a side wall, rear wall or rear roof slope of the principal roof.

Backbuilding roofs may, in addition to the principal roof forms, be gambrel roofs.

Roofs of a single volume shall be of the same material.

Eaves shall be continuous. Eaves which overhang less than 14 inches shall have a closed soffit. All closed soffits shall have crown moulding and ogee gutters. Eaves which overhang more than 14 inches shall have exposed rafters and half round gutters or a closed soffit with brackets and crown moulding. All pitched roofs shall be trimmed, at minimum, with gable and eave boards all around.

Dormers shall be habitable, no wider than the window below, and placed no closer to the edge of the roof than if centered above the window below.

Roof penetrations shall be placed on the rear slope and finished to match the color of the roof.

Skylights shall be flat glass and mounted on roof slopes not facing frontages.

Towers shall not extend more than 15 feet above the roof ridge and shall not have a floor area exceeding 150 square feet. Towers are permitted on pre-designated lots.

OPENINGS

Materials

Windows shall be wood, vinyl-clad wood, cellular PVC, or extruded aluminum-clad wood and clear glass to be approved by the Town Architect.

Doors and garage doors shall be wood or composite wood with raised panels and painted.

Openings in brick walls to have jack arches the bottom of which shall be no less than 10 inches below the cornice above.

Gates in openings of garden walls shall be made of wood.

Screen doors shall be wood.

Shutters shall be made of wood with louvers or raised panels.

Configuration

Windows shall be single, double or triple-hung. Windows, openings and window sashes shall be rectangular with a vertical or square proportion. The centerline of windows shall align vertically. In section, the centerline of the window sash shall align within the centerline of the wall, (no flush mounted windows). Accent windows are permitted at gable ends to be approved by the Town Architect.

Transoms shall be rectangular, arched or fan-shaped.

Window openings shall include an apron below the exterior window sill.

Multiple windows in the same rough opening shall be separated by a 4 inch minimum post.

Muntins, shall be authentic (true divided panes) or simulated (milled and fixed on the interior and exterior surfaces) no more than 7/8" in width. Window panes shall be similar proportions throughout the building.

Bay windows shall have no less than 3 sides and shall extend to the floor inside and to the ground outside, or, be visually supported by brackets.

Doors, shall be hinged and have raised panels, louvers or raised panels and glass.

Garage doors may be hinged or sliders. Those facing a frontage shall be a maximum of 9 feet wide.

Shutters shall be operable and the size and shape of the associated opening.

Upper story openings shall be centered above lower story openings. Openings in gabled ends must be centered.

LIBER 1225 FOLIO 480

STOREFRONTS

Materials

Storefronts shall be made of wood, synthetic wood (e.g.: "Synwood") or metal.

Signs shall be painted wood, painted metal or porcelain.

Awnings shall be a light metal armature with a canvas membrane.

Configuration

Storefronts shall be designed individually. The storefront should be detailed while the rest of the building should be simple. The storefront, doors, awnings and signage shall be a unified design.

Doors shall be recessed a minimum of 3' and located near the center of the storefront, except at corners.

Storefront glazing shall be a minimum of 75% of the first floor elevation. All glass shall be clear.

Awnings shall be permitted to encroach the full width of the sidewalk and be within reach at the drip edge. Awnings shall be a minimum of 6 ft. deep. Awnings shall be rectangular in shape with straight edges. Awnings may have side panels but shall not have a bottom (soffit) panel. The vertical drip of an awning may be stenciled with signage.

Awnings shall be dark green sloping rectangles without side or bottom panels. Awnings shall not be internally lit.

Storefront windows shall be between 2 feet and 2.5 feet above ground level and shall reach to within 1 foot of the ceiling. Storefront windows shall be lit from dusk to midnight.

Signs attached to buildings shall be integral to the storefronts, no more than 2 feet in height by any length, and shall be externally illuminated. Signs may contain multiple individual signs which refer to tenants of the building.

Neon signs of no greater than 4 S.F. are permitted inside storefronts.

Blade signs may be attached perpendicular to the facade and extend up to 4 feet from the frontage line and shall not exceed 2 feet in height.

Address numbers shall be a max. of 8" in height.

Storefronts and signage shall be painted a single dark gloss background color. Lettering may be any color.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

MISCELLANEOUS

Variances may be granted by on the basis of architectural merit by the Design Review Committee.

Properties and improvements shall conform to the intention, not the "letter", of The Architectural Regulations.

The following shall be located in rear yards: HVAC equipment, meters, solar panels, antennas, satellite dishes, garbage cans.

The following shall not be permitted: panelized materials, copper anodized aluminum.

Exterior light fixtures shall be compatible with the style of the building.

Driveways at frontages are allowed for properties without alley access and shall be a maximum of 10 feet wide. Alley driveways may be no wider than the garage doors they serve.

Paved Ruts shall be brick, gravel or grass pavers (e.g. "Grasscrete" blocks). Paved ruts are 2 feet wide and spaced 4 feet apart.

Front walks, if any, shall be gravel, brick, slate or stone.

© Duany Plater-Zyberk & Company

LIBER 1 225 FOLIO 4 8 1

TREES

The Front Yard

The summer landscape will be enhanced with the extended bloom time of improved varieties of crapemyrtles introduced by the National Aroretum. White and Pale Pink preferred.

In addition to the tree in the adjacent thoroughfare,

Crapemyrtle

The Rear Yard

Medium size flowering trees and evergreens will add variety and privacy to the private gardens.

In addition to the trees in the Front Yard,

Yellowwood
Carolina Silverbell
Southern Magnolia
Foster Holly

GROUNDCOVER

All Yards

Low maintenance gardens for seasonal residents can employ native perenials to add interest without creating a rigorous maintenance routine. Serious gardeners can enhance this palette with additional perennials. Natives are encouraged.

Fescue/Bluegrass Blend
Foamflower
St. Johnswort
Creeping Phlox
Fern
Leadwort
Green-and-Gold
Barrenwort

INSTRUCTIONS

For every 25 feet of frontage or fraction thereof, one species or cultivar of tree from this list shall be planted. Planting other tree species is permitted, but shall not count toward the fulfillment of the objective of establishing a visually coherent spatial structure for microclimate.

Tree heights at the time of planting vary according to species and availability and shall be determined by the Landscape Supervisor.

The placement of trees in frontages shall be within 10 feet of the frontage line and in alleys within 4 feet of either side of the rearlot line. Trees in the Village Edge may be placed anywhere, except at least one tree shall be placed within 8 feet of the rearlot line.

The soil profile shall be protected from deep compaction during building construction by mandating and staking alley or lane access during construction. Compacted soil areas shall be decompacted and hydrological permeability assured by mechanically breaking up remnant basement soil and rototiling 2-3 inches of recycled organic matter before the addition of a mix of organically amended topsoil.

Energy conservation measures, such as planting shade trees near the southern facades of buildings to block summer sun, are encouraged.

Landscape Plans for private gardens should be prepared by a qualified professional in the field of landscape architecture or garden design.

UNDERSTORY

All Yards

Flowering trees and shrubs are predominately natives for sustainability and to emphasize the distinct nature of the Chesapeake coastal plain to visitors. Non-native with historic associations are noted with an asterisk.

Serviceberry
Sourwood
Redbud
Fringetree
Oakleaf Hydrangea
Viburnum species
Winterberry
Inkberry
Dwarf summersweet
Dwarf Fothergilla
Hydrangea
Coast Azalea
Pinxter Azalea
Swamp Azalea
Boxwood*
Witchhazel
Lace Cap Hydrangea*

OTHER

All Yards

The fence line garden is a distinctive feature of St. Michaels. These plants are found at the base of the fence and climbing on the fehce.

Hollyhocks
Daylilies
Iris
Trumpet Honeysuckle
Climbing Hydrangea
Trumpet Vine
Climbing Rose Species
Clematis

© Duany Plater-Zyberk & Company

LIBER 1225 FOLIO 482

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

RECEIVED
MAY 19 2004

May 14, 2004

Ms. Cheryl Thomas, Town Manager
Town of St. Michaels
P. O. Box 206
300 Mill Street
St. Michaels, Maryland 21663-0206

Re: Town of St. Michaels Proposed Program Amendment
Miles Point III Growth Allocation Request

This letter notifies you of action by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays on the referenced growth allocation request. On May 5, 2004, at its regular meeting, the Critical Area Commission approved the Town's request to amend its Program to use 70.863 acres of growth allocation for the Miles Point III project to change the Critical Area designation of the property from RCA to IDA. The approval is subject to the following conditions:

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer.

2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.

3. In measuring the 300-foot setback and the100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.

4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be

EXHIBIT
3

developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

The Town is required to amend the Town's Critical Area Map to show this change within 120 days of receipt of this letter. Please provide a copy of the Town's amended map to the Commission when it becomes available. If you have any questions, please telephone me at (410) 260-3480. In closing, I would like to thank you and your staff for your cooperation and assistance over the last several months as the Commission reviewed this proposal.

Sincerely,

Mary R. Owens

Mary R. Owens, Chief
Program Implementation Division

cc: Honorable Robert Snyder, Town of St. Michaels
Mr. Mike Hickson, Town of St. Michaels
Ms. Debbie Renshaw, Town of St. Michaels
Ms. Marianne Mason, DNR-AG

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 2, 2003

Mr. Roby Hurley
Maryland Department of Planning
Lower Eastern Shore Regional Office
Salisbury Multi-Service Center
201 Baptist Street, Suite 24
Salisbury, Maryland 21801-4974

Re: Strausburg Farm Annexation and Growth Allocation

Dear Mr. Hurley:

At its meeting on October 1, 2003, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays concurred with the Chairman's determination that the Strausburg Farm annexation and growth allocation request is a refinement to the St. Michael's Critical Area program and it was approved. The refinement included the following three conditions:

1. Prior to recordation of the subdivision plat for the Strausburg property, the Town Planning Commission shall approve a Buffer Management Plan for the property. Implementation of the plan shall take place prior to issuance of any building permits.

2. Prior to recordation of the subdivision plat for the Strausburg property, the Town shall submit to the Commission staff, a conservation easement that will ensure that 76 aces adjacent to the subject growth allocation shall be maintained in uses appropriate to the Resource Conservation Area as those uses set forth in the Town Ordinance. The easement shall remain in perpetuity and recorded.

3. The amount of growth allocation shall be 20.1 acres.

This refinement should be incorporated into your Critical Area Program within 120 days from the date of this letter. Please send a copy of the Town's amended Critical Area map to the Commission when it is available.

EXHIBIT
tabbies
4

Thank you for your cooperation. If you have any questions, please telephone me at (410) 260-3478.

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger
Natural Resources Planner

cc: Ms. Jean Weisman
Ms. Deborah Renshaw

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff	*	IN THE CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

* * * * * * * * * * * * * *

ORDER GRANTING MOTION TO INTERVENE

Upon consideration of the Motion To Intervene filed by The Commissioners Of St. Michaels ("St. Michaels") and the opposition thereto, this Court hereby finds as follows relating thereto: (1) St. Michaels has timely filed its Motion such that the proceedings of this case will not be delayed and that no party will be prejudiced thereby; (2) St. Michaels has real interests in the matters described in its Motion as the "St. Michaels Interests" which would be adversely affected if Talbot County Bill No. 933 is declared valid, and St. Michaels has actively opposed the approval of Talbot County Bill No. 933 at the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Commission"); (3) the disposition of this action would at least potentially impair the ability of St. Michaels to protect the St. Michaels Interests; (4) the St. Michaels Interest will be inadequately represented by the existing parties to this case; (5) St. Michaels has a claim and/or a defense which presents a question of law or fact in common with this action; (6) the joinder of St. Michaels will allow the Court to consider the issues raised by St. Michaels at the Commission but which were not addressed by the Commission, thereby avoiding a multiplicity of litigation and judicial resources; and (7) St. Michaels has satisfied the procedural standards for intervention.

NOW, THEREFORE, based upon the above findings The Commissioners Of St. Michaels qualifies for both intervention by right and permissive intervention, and it is this _____ day of _____, 20___, by the Circuit Court for Talbot County, Maryland

ORDERED, that the Motion To Intervene by The Commissioners Of St. Michaels is hereby granted; and it is further

ORDERED, that The Commissioners Of St. Michaels is hereby joined as an additional defendant party to this action; and it is further

ORDERED, that The Commissioners Of St. Michaels shall promptly file and serve its initial pleadings as required by Maryland Rule 2-214 upon all parties of record to this action.

_____

Circuit Court Judge

7

TALBOT COUNTY, MARYLAND

TALBOT COUNTY GOVERNMENT BUILDING
142 N. HARRISON STREET
EASTON, MD 21601
PHONE: 410-770-8092

MICHAEL L. PULLEN
County Attorney

Fax: 410-770-8089
TTY: 410-822-8735
mpullen@talbgov.org

September 8, 2004

RECEIVED

SEP 10 2004

DNR - LEGAL DIVISION

Mrs. Nora Lee Gowe, Deputy Clerk
Clerk's Office
Circuit Court for Talbot County
11 N Washington Street
Easton, Maryland 21601

RE: *Talbot Co. v. DNR Critical Area Comm.*
Circuit Court for Talbot County, Case No.: 20-C-0-005095 DJ

Dear Mrs. Gowe:

I enclose for filing copies of Talbot County's Notice of Service for discovery served via regular first-class mail today.

Thank you for your continuing assistance.

Very truly yours,

Michael L. Pullen

MLP/tade
Enclosures

cc: Daniel Karp, Esq.
Paul J. Cucuzzella, Esq.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

TO: DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS, Defendant

BY: TALBOT COUNTY, Plaintiff

You are hereby requested, pursuant to the Maryland Rules to produce the following documents at the offices of Allen, Karpinski, Bryant & Karp, Suite 1540, 100 East Pratt Street, Baltimore, Maryland, within 30 days of service of this Request for Production of Documents upon you.

INSTRUCTIONS AND DEFINITIONS

A. This Request for Production of Documents covers all documents which are in the possession, control or custody of you or your employees, agents, servants and attorneys, unless privileged.

B. If you do not supply documents in response to a Request for Production herein, give the reason that the documents will not be supplied. If your reason relates to unavailability of records, in your response relate what efforts you have made to locate the documents requested. If you refuse to respond to any request, indicate the factual and legal basis for your refusal.

C. If anything is deleted or redacted from a document produced in response to this Request for Production, state the reasons for the deletion or redaction and the subject matter thereof.

D. If any document is withheld under a claim of privilege, furnish a list identifying each document for which the privilege is claimed including the date, author, recipient or recipients of copies, subject matter and the name and address of the custodian of the document and/or any copies thereof. Also state the basis upon which the privilege is claimed.

E. This Request for Production of Documents is continuing in nature and any responsive documents which are discovered or located after the date of Defendant's response shall be immediately produced.

F. For purposes of this Request for production of Documents, the word "document" refers to the complete original and each non-identical copy (whether different from the original because of notes on the copy or otherwise) of any writing or record, including but not limited to a book, pamphlet, binder, periodical, letter, memorandum, telegram, report, interoffice or intra-office communication, handwritten or other note, working paper, transcription, draft, application, permit, engineering plan, chart, paper, survey, index, tape, disc, photograph, data sheet, data processing card, computer printout, microfilm, microfiche, or any other written, typed, printed, graphic, record or transcribed matter.

G. The term "subject matter of the instant law suit" refers to Local Bill 933 as a local program amendment to Talbot County's Critical Area Program, the investigation, consideration, and decision with respect to Local Bill 933 and Plaintiff's application, the process by which Defendant and any of its representatives investigated, considered, and decided on any issues with respect to Local

Bill 933 and Plaintiff's application, and the facts, circumstances, and circumstances set forth in the Complaint and the Amended Complaint.

H. If a privilege is asserted with respect to any document, please prepare and submit a "privilege log" setting forth the material referred to in Maryland Discovery Guideline 9c.

Request No. 1. All statements which were previously made by the Defendant or any of its present or former Commissioners, officers, agents or employees concerning or in any way relating to the facts, circumstances, and subject matter of the instant law suit.

Request No. 2. All documents, including but not limited to correspondence, notes, reports, synopses, memoranda, journal entries and electronic mail, which relate describe, refer to, summarize or memorialize in anyway any communication, investigation, decision, or activity concerning the subject matter of the instant lawsuit . Your response should include, but not be limited to, documents sent to, received from, reviewed by, or involving:

(a) Critical Area Commission, including any of its Commissioners, employees, or representatives;

(b) Talbot County, including the Talbot County Attorney or any agent, representative or employee of the County Attorney, any member of the Talbot County Council, and any Talbot County employee, agents, or representatives;

(c) Town of St. Michaels, including Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(d) Town of Oxford, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(e) Town of Denton, including the Town Commission Members and any other Town

employees, agents, or representatives, including attorneys, unless privileged;

(f) Town of Trappe, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(g) Any other City or Town, including the Mayor and/or City Council Members and any other City or Town employees, agents, or representatives.

Request No. 3. All handbooks, manuals, rules, regulations, and memoranda relating to policies and practices of the Department of Natural Resources or any other governmental unit in conducting, monitoring and/or regulating the activities of the Chesapeake Bay Critical Area Commission.

Request No. 4. All handbooks, manuals, rules, regulations, and memoranda relating to policies and practices of the Chesapeake Bay Critical Area Commission concerning review, analysis, voting, approval or disapproval of proposed local program amendments to Critical Area Programs.

Request No. 5: Copies of all documents (including but not limited to statutes, regulations, or legislative materials) used by or on behalf of the Chesapeake Bay Critical Area Commission or any of its members, employees, or representatives, to review, analyze, vote on, approve or deny the proposed local program amendment(s) at issue in this case.

Request No. 6. All minutes, including video or audio tapes, of any private or public meetings or hearings concerning the subject matter of the instant law suit.

Request No. 7. All documents (including but not limited to correspondence, notes, memoranda, synopses, reports, journal entries, minutes, video or audio tape, and and electronic mail) which the Chesapeake Bay Critical Area Commission or any of its members, employees, or representatives reviewed, considered, or relied upon in the process of considering, or to make the

decision to disapprove Bill 933 as a local program amendment to Talbot County's Critical Area Program.

Request No. 8. All minutes of all meetings of the Critical Area Commission including but not limited to all committees and subcommittees thereof, whether in open session or executive session, held at any time after February 4, 2004, to the present for the purposes of considering Bill 933 as a proposed local program amendment.

Request No. 9. Copies of all documents submitted to the Critical Area Commission from February 4, 2004, to date by the Plaintiff, any agent or employee of the Town of Oxford, any agent or employee of the Town of St. Michaels, and anyone else, with respect to the subject matter of the instant law suit.

Request No. 10. Please produce copies of any and all program amendment proposals submitted by any County, municipality, or other governmental entity or organization, that the Critical Area Commission, or any member thereof, reviewed, considered, approved or denied, in connection with the subject matter of the instant law suit.

Request No. 11. Please produce copies of any agendas of any and all meetings of the Critical Area Commission and any of its subcommittees from February 2004 to date, concerning the subject matter of the instant law suit.

Request No. 12. Any and all documents listing all persons present at the meeting of the Critical Area Commission, held on May 5, 2004, including but not limited to, all members of the Critical Area Commission, the recorder of minutes, any/all staff, and members of the public.

Request No. 13. All documents upon which you rely for any contention that Defendant's investigation, consideration, and denial of Plaintiff's application for approval of Local Bill 933 as a

local program amendment was timely.

Request No. 14. To the extent not produced in response to any of the preceding Request for Production of Documents, the entirety of each and every file maintained by or on behalf of The Department of Natural Resources, the Critical Area Commission, or any other governmental unit as to which you have custody or control, pertaining or relating in any way to Plaintiff's application for Local Bill 933 as a local program amendment to Talbot County's Critical Area Program, and the consideration thereof.

ALLEN, KARPINSKI, BRYANT
& KARP

BY: _____

DANIEL KARP
100 E. Pratt Street
Suite 1540
Baltimore, Maryland 21202
(410) 727-5000
Attorneys for Plaintiff

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff		:
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2004, a copy of Plaintiff's First Request for Production of Documents to Defendant was mailed first-class, postage prepaid to:

Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

ALLEN, KARPINSKI, BRYANT
& KARP

BY: Daniel Karp /mp

DANIEL KARP
100 E. Pratt Street
Suite 1540
Baltimore, Maryland 21202
(410) 727-5000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2004, a copy of Plaintiff's First Request for Production of Documents to Defendant was mailed first-class, postage prepaid to:

Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

Daniel Karp/MP

Of Counsel for Plaintiff

6

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

STUART G. BUPPERT, II
SHAUN P. K. FENLON
RACHEL L. EISENHAUER
ROGER H. MEDOFF
SHARA MERVIS ALPERT
SAUNDRA K. CANEDO
PAUL J. CUCUZZELLA
ASSISTANT
ATTORNEYS GENERAL

FAX NO.:

(410) 260-8364

WRITER'S DIRECT DIAL NO.:

(410) 260-8352
pcucuzzella@dnr.state.md.us

August 31, 2004

Clerk of the Court
Circuit Court for Talbot County
11 N. Washington Street
P.O. Box 723
Easton, Maryland 21601

Re: Talbot County, Maryland v. Department of Natural Resources
Case No.: 2-C-04-005095 DJ

Dear Clerk:

Enclosed please find for filing in the above-referenced case the defendant's Amewdnment To Verified Answer To Count II. Thank you very much for your assistance.

Very truly yours,

Paul J. Cucuzzella
Assistant Attorney General

Enclosure

cc: Daniel Karp, Esq.
Michael L. Pullen, Esq.

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * *

AMENDMENT TO VERIFIED ANSWER TO COUNT II

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rule 2-341(a), submits this amendment to its Verified Answer To Count II, and states:

1. DNR strikes paragraph 11.c. of the Verified Answer To Count II.

2. In its Verified Answer To Count II, DNR mistakenly failed to respond to the allegations contained in paragraph 24 of the Complaint.

3. DNR denies the allegations contained in the first sentence of paragraph 24. The second sentence of paragraph 24 contains only statements or conclusions of law to which no responses are required.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

Paul J. Cucuzzella
Marianne D. Mason
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8352
Fax: (410) 260-8364
Attorneys for defendants

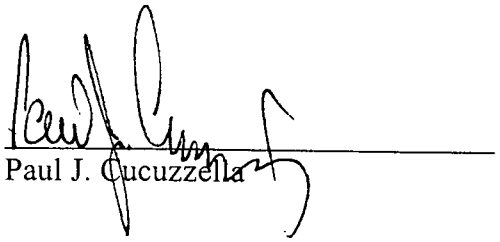
Dated: August 31, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2004, a copy of the foregoing Amendment To Verified Answer To Count II was sent via first class mail, postage prepaid, to:

Daniel Karp, Esq.
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 East Pratt Street
Baltimore, Maryland 21202-1089

Michael L. Pullan, Esq.
142 N. Harrison Street
Easton, Maryland 21601



Paul J. Cucuzzella

5

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL

JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

STUART G. BUPPERT, II
SHAUN P. K. FENLON
RACHEL L. EISENHAUER
ROGER H. MEDOFF
SHARA MERVIS ALPERT
SAUNDRA K. CANEDO
PAUL J. CUCUZZELLA
ASSISTANT
ATTORNEYS GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

FAX NO.:

(410) 260-8364

WRITER'S DIRECT DIAL NO.:

(410) 260-8352
pcucuzzella@dnr.state.md.us

August 27, 2004

Clerk of the Court
Circuit Court for Talbot County
11 N. Washington Street
P.O. Box 723
Easton, Maryland 21601

Re: Talbot County, Maryland v. Department of Natural Resources
Case No.: 2-C-04-005095 DJ

Dear Clerk:

Enclosed please find for filing in the above-referenced case the defendant's (i) Withdrawal Of Motion To Dismiss Count II and (ii) Verified Answer To Count II. Thank you very much for your assistance.

Very truly yours,

Paul J. Cucuzzella
Assistant Attorney General

Enclosures

cc: Daniel Karp, Esq.
Michael L. Pullen, Esq.

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * * *

WITHDRAWAL OF MOTION TO DISMISS COUNT II

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, hereby withdraw its Motion To Dismiss as to Count II of the Complaint only, and states:

1. Pending is DNR's Motion To Dismiss, in which DNR asks, *inter alia*, that Count II of the Complaint, for Writ of Mandamus, be dismissed because the Complaint was not verified as required by Maryland Rule 15-701(a). Subsequently, plaintiff amended the Complaint and provided the requisite Rule 15-701(a) verification.

2. DNR's Motion To Dismiss as to Counts I and III stands.

3. By the accompanying Answer To Count II, DNR answers, pursuant to Maryland Rules 2-323 and 15-701, only those allegations relevant to Count II.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

Paul J. Cucuzzella
Marianne D. Mason
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8352
Fax: (410) 260-8364
Attorneys for defendant

Dated: August 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2004, a copy of the foregoing Withdrawal Of Motion To Dismiss Count II was sent via first class mail, postage prepaid, to:

Daniel Karp, Esq.
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 East Pratt Street
Baltimore, Maryland 21202-1089

Michael L. Pullan, Esq.
142 N. Harrison Street
Easton, Maryland 21601

Paul J. Cucuzzella

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * *

VERIFIED ANSWER TO COUNT II

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rules 2-323 and 15-701, hereby answers Count II only[1] of the Amended Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Complaint"), and states:

1. To the extent that paragraphs 1 through 6 of the Complaint contain allegations of fact, and not merely statements or conclusion of laws to which no responses are required, DNR admits the allegations.

2. To the extent that paragraph 7 of the Complaint contains statements or conclusions

[1] Pending is DNR's Motion To Dismiss in which DNR asked the Court, pursuant to Maryland Rule 2-322, to dismiss all three Counts of the Complaint. By the accompanying Withdrawal Of Motion To Dismiss Count II, DNR withdraws its Motion To Dismiss as to Count II only.

of law, no response is required. As to those factual allegations contained in paragraph 7, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

3. Paragraph 8 of the Complaint contains no allegations of fact, only statements and conclusions of law, to which no responses are required.

4. To the extent that paragraphs 9 through 13 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required, DNR admits the allegations.

5. DNR denies the allegation contained in paragraph 14 of the Complaint that "[t]he Towns of St. Michaels and Oxford have not utilized the growth allocations reserved to them." As to the remaining allegations contained in paragraph 14, to the that the allegations are allegations of fact, and not merely statements or conclusion of laws to which no responses are required, DNR admits the allegations.

6. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 15 of the Complaint.

7. DNR admits the allegations contained in paragraph 16 of the Complaint.

8. Paragraph 17 of the Complaint contains no allegations of fact, only statements and conclusions of law, to which no responses are required.

9. DNR denies the allegations contained in paragraph 18 of the Complaint that "[t]he Commission accepted Bill 933 for review as a proposed program amendment on February 4, 2004," and that "[t]he Commission failed to act within 90 days and thus Bill 933 is deemed approval." The remaining allegations contained in paragraph 18 are either statements or conclusions of law, to which no responses are required.

10. Paragraph 19 of the Complaint contains no allegations of fact, only statement or conclusions of law, to which no responses are required.

11. DNR responds to the allegations contained in paragraphs 20 through 26 of the Complaint – the separately enumerated Count I for Declaratory Judgement – not because it intends to respond to, or waive its Motion To Dismiss as to, Count I, but because the allegations contained in paragraphs 20 through 26 are incorporated by reference into Count II by operation of paragraph 27 of the Complaint.

a. Paragraph 20 of the Complaint contains no separate allegations of fact, and thus no response is required.

b. Paragraphs 21 and 22 of the Complaint contain no allegations of fact, only conclusions of law, to which no responses are required.

c. To the extent that paragraph 23 of the Complaint contains allegations of fact, and not statements or conclusions of law to which no responses are required, DNR denies the allegations.

d. To the extent that plaintiff alleges in paragraph 23 of the Complaint that the Critical Area Commission denied approval of Bill 933 as an amendment to Talbot County's local Critical Area program, and notified the County in writing as such by letter dated May 14, 2004, DNR admits these allegations. The remaining allegations contained in paragraph 23 are statements or conclusions of law, to which no responses are required.

e. DNR denies the allegation contained in paragraph 25 of the Complaint that "[t]he Commission ignored the criteria established by State law as the benchmark for its consideration of local program amendment and applied improper criteria in making its decision."

The remaining allegations contained in paragraph 25 amount to statements or conclusions of law to which no responses are required.

f. Paragraph 26 of the Complaint contains no allegations of fact, only statements or conclusions of law, to which no responses are required.

12. Paragraph 27 of the Complaint contains no separate allegations of fact, and thus no response is required.

13. Paragraph 28 of the Complaint contains no allegations of fact, only statements or conclusions of law, to which no responses are required.

14. DNR admits the allegations contained in paragraph 29 of the Complaint.

15. Paragraphs 30 and 31 of the Complaint contain no allegations of fact, only statements or conclusions of law, to which no responses are required.

16. DNR denies the allegation contained in paragraph 32 of the Complaint that the Commission considered or relied upon "extraneous facts, arguments, and findings" when it considered Bill 933. The remaining allegations contained in paragraph 32, including the allegation that the "Commission exceeded it limited authority," amount to statements or conclusions of law to which no responses are required.

17. Paragraphs 33 through 35 of the Complaint contain no allegations of fact, only statements or conclusions of law, to which no responses are required.

18. DNR's Motion To Dismiss is pending as to Count III of the Complaint, and thus DNR does not respond, at this time, to paragraphs 36 through 40 of the Complaint.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

Paul J. Cucuzzella
Marianne D. Mason
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8352
Fax: (410) 260-8364
Attorneys for defendants

Dated: August 27, 2004

VERIFICATION

I solemnly affirm under the penalties of perjury that the contents of the foregoing Answer are true and correct to the best of my knowledge, information, and belief.

Ren Sorey
Executive Director
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2004, a copy of the foregoing Verified Answer To Count II was sent via first class mail, postage prepaid, to:

Daniel Karp, Esq.
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 East Pratt Street
Baltimore, Maryland 21202-1089

Michael L. Pullan, Esq.
142 N. Harrison Street
Easton, Maryland 21601

Paul J. Cucuzzella

VERIFICATION

I solemnly affirm under the penalties of perjury that the contents of the foregoing Answer are true and correct to the best of my knowledge, information, and belief.

Ren Serey
Executive Director
Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays

4

TALBOT COUNTY, MARYLAND

TALBOT COUNTY GOVERNMENT BUILDING
142 N. HARRISON STREET
EASTON, MD 21601
PHONE: 410-770-8092

MICHAEL L. PULLEN
County Attorney

Fax: 410-770-8089
TTY: 410-822-8735
mpullen@talbgov.org

July 20, 2004

RECEIVED

JUL 22 2004

DNR - LEGAL DIVISION

Mrs. Nora Lee Gowe, Deputy Clerk
Clerk's Office
Circuit Court for Talbot County
11 N Washington Street
Easton, Maryland 21601

RE: *Talbot Co. v. DNR Critical Area Comm.*
Circuit Court for Talbot County, Case No.: 20-C-0-005095 DJ

Dear Mrs. Gowe:

I enclose for filing copies of Talbot County's *Amended Complaint*, *Complaint* with exhibits, *Memorandum in Opposition to Motion to Dismiss* and a proposed *Order*.

Thank you for your continuing assistance.

Very truly yours,

Michael L. Pullen

MLP/tade
Enclosures

cc: Daniel Karp, Esq.
J. Joseph Curran, Jr., Attorney General

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, PETITION FOR WRIT OF *MANDAMUS*, AND APPEAL FROM ADMINISTRATIVE AGENCY

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files this instant Amended Complaint seeking a declaratory judgment, a writ of *mandamus*, and appeal in the administrative decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Costal Bays, refusing to approve Bill No. 933 as a local program amendment to Talbot County's Critical Area Program. Plaintiff adopts and incorporates by reference the entirety of its original Complaint for declaratory judgment, petition for writ of *mandamus*, and appeal from administrative agency, with all attachments, copy attached hereto. In addition, pursuant to Maryland Rule 15-701, Plaintiff submits the Affidavit of Talbot County Attorney Michael L. Pullen, as follows:

I HEREBY AFFIRM UNDER PENALTIES OF PERJURY, that the statements contained within this Amended Complaint, and the original Complaint attached hereto, are true and correct to the best of my knowledge, information, and belief.

07-20-04

Michael L. Pullen Date

Daniel Karp /MP

Daniel Karp
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore MD 21202-1089
Attorney for Talbot County, MD
(410) 727-5000

Michael L. Pullen
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County, MD
(410) 770-8093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2004, a copy of Plaintiff's Amended Complaint was mailed first-class, postage prepaid to:

Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

Of Counsel for Plaintiff

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND 142 North Harrison Street Easton, MD 21601	:	
Plaintiff	:	
vs.	:	Civil Action No. _____
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS 1804 West Street, Suite 100 Annapolis, Maryland 21401 SERVE: Marianne D. Mason, Deputy Counsel Office of the Attorney General 580 Taylor Avenue, C-4 Annapolis, Maryland 21401	:	
Defendant	:	

COMPLAINT FOR DECLARATORY JUDGMENT, PETITION FOR WRIT OF MANDAMUS, AND APPEAL FROM ADMINISTRATIVE AGENCY

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files the instant action seeking a declaratory judgment, a writ of mandamus, and appealing the administrative decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program. In support of this request, Plaintiff states:

Parties

1. Talbot County, Maryland, is a charter county and a political subdivision of the State of Maryland.

2. The Department of Natural Resources is a principal department of the State of Maryland, § 1-101, Natural Resources Article, Md. Ann. Code; and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays is a Commission of the Department, created by § 8-1803 Natural Resources Article, Md. Ann. Code. The Defendant is hereinafter referred to as "the Commission."

The Legal Framework

3. In 1984, the General Assembly enacted the Chesapeake Bay Critical Area Protection Program, codified as §§ 8-1801 through 8-1817 of the Natural Resources Article, Md. Ann. Code. The purposes of the program are:

"(1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality in natural habitats; and

(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." *Id.*, § 8 -1801 (b).

4. Each county within the critical area has primary responsibility for developing and implementing a local critical area protection program pursuant to

criteria established by the Commission and subject to review and approval by the Commission. *Id.*, § 8-1808 (a), (d) and 8-1809.

5. The Commission must approve any proposed critical area protection program prior to adoption. *Id.*, § 8-1809 (d). In accordance with this requirement, Talbot County submitted a proposed program to the Commission for review and approval. The Commission approved Talbot County's proposed program, and it became effective August 13, 1989.

6. Section 8-1809 (g) provides in relevant part that, "[e]ach local jurisdiction shall review its entire program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning with the 4-year anniversary of the date that the program became effective and every 4 years after that date." The Commission must approve any proposed program amendments. *Id.*, § 8-1809 (i).

7. Adoption of local program amendments by the County Council is a legislative process established and controlled by the Talbot County Charter. A bill is introduced, a public hearing is scheduled and advertised, followed by the Council's vote. If adopted the bill is forwarded to the Commission for its review as a local program amendment. In accord with the quadrennial review requirement of Section 8-1809 (g), Talbot County duly enacted and submitted proposed local program amendments to the Commission for its review.

8. Section 8-1809 (j) provides that, "The Commission shall approve

programs and program amendments that meet:

(1) The standards set forth in § 8 –1808 (b) (1) through (3) of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle."

Talbot County's Local Critical Area Program

9. Land lying within the critical area is mapped as either "Resource Conservation Area" (RCA), "Limited Development Area" (LDA), or "Intensely Developed Area" (LDA), based upon the density of existing development as of December 1, 1985. Md. Ann. Code, Natural Resources Article § 8 -1801.1, establishes a process through which density in an RCA may be increased through an award of growth allocation. If growth allocation is awarded, the area is remapped from RCA to either LDA or IDA. Section 8-1801.1 (c) establishes guidelines for locating new intensely developed or limited development areas in existing resource conservation areas. Talbot County's local program fully complies with those guidelines and has been approved by the Commission.

10. COMAR 27.01.02.06 A. (2) is part of the criteria for program development and provides that,

> "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

11. Talbot County adopted its local critical area program in 1989. It included 3 maps showing anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford. Using those maps, growth allocation acreage was reserved

for Easton (155 acres), Oxford (195 acres), and St. Michaels, (245 acres). No growth allocation was reserved for the Town of Queen Anne. The 1989 ordinance and program were approved by the Commission.

12. The 1989 ordinance provided for quadrennial review of those 3 maps for possible recalculation and reallocation of reserved growth allocation. The first quadrennial review was to have occurred in 1993, again in 1997, again in 2001, etc. None of those reviews ever took place. The 3 maps adopted in 1989 remained static as a prospective look to the future, frozen in time.

13. On April 25, 2000, Talbot County duly enacted and submitted Bill 762 to the Commission for review as a local program amendment. Bill 762 established a joint review process to award supplemental growth allocation to municipalities. A copy of Bill 762 is attached hereto as Exhibit "A" and it is incorporated by reference herein. Bill 762 complies with the critical area criteria set forth in COMAR 27.01.02.06 A. (2) which require the counties, in coordination with affected municipalities, to establish a process to accommodate the growth needs of municipalities when planning future expansion of intensely developed and limited development areas. Bill 762 was approved by the Commission.

14. In practice, the process established by Bill 762 has applied only to the Town of Easton because Easton was the only town that had utilized the growth allocation reserved to it under the 1989 maps. The Towns of St. Michaels and Oxford have not utilized the growth allocations reserved to them under the 1989

maps, and thus there was no occasion to apply the process established by Bill 762 to them.

15. Town boundaries, growth areas, and municipal growth needs changed significantly during the intervening 14 years after adoption of the 1989 maps. Bill 933, adopted in 2003, took into account actual events during that 14-year hiatus. During those years the Talbot County Comprehensive Plan had been reviewed, amended, updated, and adopted at 6-year intervals. The new comprehensive plans showed evolving town boundaries, revised town growth areas, and revised growth policies, not only for areas surrounding towns but also for the entire County.

16. In December 2003, the Talbot County Council approved comprehensive program amendments to the local critical area program, including Bill 933, and forwarded them to the Commission for review. A copy of Bill 933 is attached hereto as Exhibit "B" and it is incorporated herein by reference.

17. Bill 933 repealed the outdated 1989 maps, repealed the 1989 reservations of growth allocation to the towns based on those maps, and made the Bill 762 joint review process adopted and approved by the Commission in 2000 applicable to all the towns within the County.

18. The Commission accepted Bill 933 for review as a proposed program amendment on February 4, 2004. Pursuant to § 8-1809(n)(i), the Commission shall act on proposed program amendments within 90 days of the Commission's acceptance of the proposal. If action is not taken by the Commission within 90

days, the proposed program amendment is deemed approved. The Commission failed to act within 90 days and thus Bill 933 is deemed approved. This is one basis for this Complaint.

19. The Commission refused to approve Bill 933 as a local program amendment although it fully complied with the standards set forth in § 8–1808 (b) (1) through (3) of that subtitle and criteria of the critical area program adopted by the Commission under § 8–1808. The Commission's refusal to approve Bill 933 although it fully complied with all applicable standards and criteria is another basis for this Complaint.

Count 1 – Declaratory Judgment

20. The allegations of paragraphs 1-19 are incorporated by reference herein as if fully set forth.

21. Bill 933 meets the standards set forth in § 8–1808 (b) (1) through (3), Natural Resources Article, Md. Ann. Code.

22. Bill 933 meets the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code.

23. Even though Bill 933 meets the standards and criteria under §§ 8-1808 and 1809(j), the Commission failed, neglected, and refused to approve Bill 933 as a local program amendment to Talbot County's critical area program by letter dated May 14, 2004. A copy of that letter is attached hereto as Exhibit "C" and is incorporated by reference herein.

24. The Commission did not act on the proposed program amendment contained in Bill 933 within the 90-day period of time required by § 8-1809(n)(i), Natural Resources Article, Md. Ann. Code. As a matter of law the program amendment reflected by Bill 933 is therefore deemed approved.

25. The Commission's refusal to approve Bill 933 was arbitrary, capricious, and illegal. The Commission exceeded the proper scope of its authority. The Commission ignored the criteria established by State law as the benchmark for its consideration of local program amendments and applied improper criteria in making its decision.

26. A declaratory judgment will serve to terminate the uncertainty or controversy giving rise to this proceeding. An actual controversy exists between contending parties. Antagonistic claims are present between the parties involved that indicate imminent and inevitable litigation. Talbot County asserts that

(a) Bill 933 is deemed approved as a result of the Commission's failure to act within the time allowed by law; and

(b) Bill 933 meets the standards set forth in § 8–1808 (b) (1) through (3) of Title 8, Subtitle 18, Natural Resources Article, Md. Ann. Code; and

(c) Bill 933 meets the criteria adopted by the Commission under § 8-1808 of Title 8, Subtitle 18, Natural Resources Article, Md. Ann. Code; and

(d) The Commission was required to approve Bill 933 as a local program amendment to Talbot County's local critical area program.

The Commission denies this.

WHEREFORE, Plaintiff prays:

A. That the Court assume jurisdiction over this controversy and issue a declaratory judgment that the program amendment contained in Bill 933 be deemed approved because the Commission failed to act on it within the time required by law;

B. That the Court declare that the Commission is required to consider only the standards set forth in § 8–1808 (b) (1) through (3), Natural Resources Article, Md. Ann. Code; and the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code when reviewing a proposed local program amendment.

C. That the Court determine that the Commission exceeded the proper scope of its authority in failing to consider only those standards and criteria.

D. That the Court determine that the Commission failed adequately to articulate appropriate findings of fact to justify its decision not to approve Bill 933 as a local program amendment.

E. That the Court determine that the reasons expressed by the Commission for refusing to approve Bill 933 as a local program amendment are legally insufficient to justify their decision.

F. That the Court determine that Bill 933 meets the applicable standards and criteria, and determine that it should therefore be approved as a local program amendment.

G. That the Court determine that the Commission abused its discretion in failing, neglecting, and refusing to approve Bill 933 as a local program

amendment to Talbot County's critical area program.

H. And for such other and further relief as the nature of Plaintiff's cause may require.

Count II - Mandamus

27. The allegations of paragraphs 1-26 are incorporated by reference herein as if fully set forth.

28. Inasmuch as the Commission failed to act on the proposed program amendment reflected by Bill 933 within the time required by law, it is deemed approved.

29. The Commission is charged with the responsibility of reviewing local program amendments to determine whether they comply with the standards set forth in Natural Resources Article § 8–1808 (b) (1) through (3) and the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code.

30. The sole issue before the Commission was whether Bill 933 complied with these established standards and criteria. If Bill 933 complies, State law requires and directs the Commission to approve it as a program amendment. The Commission lacked discretion to consider matters other than the specific standards and criteria set forth in the statute as the benchmark against which to measure its decision.

31. The information before the Commission demonstrated that Bill 933 met these standards and criteria. The Commission's decision to disapprove Bill 933 as a program amendment is not based upon or supported by facts in the record and is

arbitrary.

32. The Commission exceeded its limited authority by considering and relying upon extraneous facts, arguments, and findings that do not bear upon or control its decision to approve or disapprove Bill 933 as a local program amendment.

33. The Commission erred as a matter of law by applying the wrong standards and criteria, and by ignoring the proper standards and criteria.

34. The Commission erred as a matter of law in misinterpreting the standards and criteria applicable to their decision; the Commission misconstrued the law and its own statutory powers.

35. The Commission acted contrary to law and beyond the scope of its own jurisdiction in disapproving Bill 933 as a local program amendment to Talbot County's critical area program. The Commission abused the discretionary powers reposed in it in considering Bill 933 as a local program amendment.

WHEREFORE, Plaintiff requests the Court to review the decision of the Commission, procedurally and if warranted on the merits, to reverse that decision, and to Order the Commission to adopt Bill 933 as a local program amendment to Talbot County's critical area program. Alternatively, Plaintiff requests the Court to determine that the Commission has acted contrary to law and in excess of its jurisdiction, and to reverse the decision and direct the Commission to approve Bill 933 as a local program amendment, and to award such other and further relief as the nature of Plaintiff's case may require.

Count III – Administrative Appeal under Maryland Rules, Chapter 200, Title 7

36. The allegations of paragraphs 1-35 are incorporated by reference herein as if fully set forth.

37. The Commission failed to act on Bill 933 within the time required by law and thus the program amendment contained in that Bill is deemed approved.

38. The Commission erred in refusing to adopt Bill 933 as a local program amendment to Talbot County's critical area program for the reasons set forth above.

39. Talbot County requests judicial review of the Commission's decision of May 14, 2004 refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program.

40. Talbot County was a party to the proceeding before the Commission.

WHEREFORE, Plaintiff requests the Court to review and reverse the decision of the Commission, and to award such other and further relief as the nature of Plaintiff's cause may require.

Daniel Karp //MP

Daniel Karp
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore MD 21202-1089
Attorney for Talbot County, MD
(410) 727-5000

Michael L. Pullen //MP

Michael L. Pullen
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County, MD
(410) 770-8093

LAW REF: BILL 762

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2000 Legislative Session, Legislative Day No. March 28, 2000

Bill No. 762

Introduced by: Ms. Spence

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND

By the Council March 28, 2000

Introduced, read first time, ordered posted, and public hearing scheduled on Tues. April 18 at 1:35 p.m. at the County Council Chambers, Court House, South Wing, Easton, Maryland 21601.

By Order Jessica Morris
Secretary

EXHIBIT A

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

SECTION ONE: BE IT ENACTED, by the County Council of Talbot County, that Title 19-14 (c) (iv) (c) [i] be repealed and re-enacted to establish procedures for awarding supplemental growth allocation to municipalities in Talbot County, Maryland, as follows:

[i] Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

When 1,092 acres (ninety [90] percent of 1,213 acres) has been approved for growth allocation by the Towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town.

If the commission approves the doubling of the number of acres that may be rezoned under this Section, the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below = 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426 acre allocation (1,213 + 1,213) at the time of the establishment of this Section (August 13, 1989).

Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate. All such requests shall comply with the following requirements.

[1] Application Process. The applicant shall file their application with the municipality. In addition to complying with all municipal requirements, the applicant shall also provide the information required by § 19.14 (c) (iv) [b] of the Talbot County Zoning Ordinance, as amended, and shall also comply with the design standards set forth in § 19.14 (c) (iv) [b] [1] through [9], of the Talbot County Zoning Ordinance, as amended. The municipality shall forward the application to the County Council for consideration and review within five (5) working days.

[2] Staff and Planning Commission Review. The planning staff and the Planning Commission shall review the application in accordance with the procedures set forth in §19.14 (c) (iv) (c) [1] through [4], except that municipal and county staff reports shall be forwarded to the Planning Commissions of both jurisdictions and the planning staff shall schedule a joint hearing on the application before the Planning Commissions of both jurisdictions. The designated chairperson of each Planning Commission shall co-chair the hearing. Each Planning Commission shall vote separately and make its recommendations to its respective council or commission. Each Planning Commission shall provide a copy of its recommendations to the other jurisdiction.

[3] Council Review. The county and municipal councils or commissions shall hold a joint hearing on the application, co-chaired by the designated chairperson of each council or commission which may be coordinated jointly with the Critical Area Commission. The county and municipal councils or commissions shall make their

respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 19.14 (c) (iv) [d].

[4] Amendments to Approved Projects. Any amendment to an approved project shall be subject to County Council review and approval for a period of five (5) years following the date of initial approval.

BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days following its enactment.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 762 having been published, a public hearing was held on Tues. April 18, 2000

BY THE COUNCIL

Read the third time.

ENACTED April 25, 2000 *
AS AMENDED

By Order Louisa Morris
Secretary

Spence -	aye
Dyott -	aye
Foster -	aye
Higgins -	aye
Harrison -	aye

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

Introduced by: Mr. Carroll, Ms. Harrington, Mr. Duncan

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 16, 2003 at 1:30 p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order Janice Marvis
Secretary

EXHIBIT
B

"Exhibit D"

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

WHEREAS, when Talbot County adopted its Critical Area Program effective August 13, 1989, it adopted three maps showing then anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford, and

WHEREAS, at the time of adoption, § 190-109 D (11) provided that the number of reserved areas allocated among the towns based on those maps for rezoning for growth allocation should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. None of the four-year reviews have occurred and these maps continue to reflect a prospective look to the future from 1989; and

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

WHEREAS, the 1989 projections have no continued validity for any planning or zoning purpose; and

WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, which is inconsistent with current principles of proper planning and the land use goals and polices in the existing and draft Talbot County Comprehensive Plans; and

WHEREAS, the process created by the 1989 zoning ordinance is both redundant and inconsistent or potentially inconsistent with the Comprehensive Planning Process; the Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately accomplishes planning for growth areas around Towns; and

WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the State formula for calculating the total amount for each county [5% of the total resource conservation area located within the County]; and

WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with certain exceptions, no more than one-half of the expansion permitted by growth allocation in the critical area may be located in resource conservation areas (RCA); and

WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if Talbot County is unable to utilize a portion of the County's total growth allocation within or adjacent to exiting intensely or limited development areas, then that portion of the growth allocation which cannot be so located may be located in an RCA; and

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

WHEREAS, the County may not utilize the remaining 50% of available growth allocation [1,213 acres] until the Critical Area Commission grants permission, under the exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is unable to utilize that portion of its available growth allocation in areas adjacent to limited or intensely developed areas; and

WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, § 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from RCA from 1,213 to 2,426 acres; and

WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County; and

WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth allocation; and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it grants a pending application for supplemental growth allocation submitted by the Town of Easton for 156 acres, the County will have 160.229 acres of growth allocation; and

WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either separately or in combination, could forever block the County from accessing the remaining growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and

WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it, and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in approving projects for which the Town has requested supplemental growth allocation; and

WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot County review its entire critical area program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning in 1993 and every 4 years thereafter; and

WHEREAS, Talbot County is currently near completion of such a 4-year review, and as part of that process desires to make the following amendments to the County's critical area program to better reflect the original intent of the State law governing growth allocation, which calculated growth allocation for Talbot County as 5% of the resource conservation area in the County, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is hereby amended as set forth herein.

Maps 1, 2, and 3, attached, are hereby repealed.

* * *

§ 190-109 D (9)

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.~~

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~

§ 190-109 D (11)

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.~~

* * *

§ 190-109 D (14)

~~Specific annexation requests for property included in the acres reserved for the towns in § 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).~~

§ 190-109 D (15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns~~

~~shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 D (16)

~~The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.~~

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains unutilized on the effective date of this ordinance.

(a) For purposes of this subsection, the term "unutilized" includes the total growth allocation acreage allocated to the County under State law, less growth allocation acreage that (1) has been previously allocated by any town or the County; and, (2) prior to the effective date of this ordinance, has resulted in actual physical commencement of some significant and visible construction; (3) which has been undertaken in good faith, with the intention to carry it through to completion; and, (4) which has occurred pursuant to a validly issued building permit.

(b) For purposes of this subsection, growth allocation acreage allocated to the County does not include growth allocation allocated to the towns under § 8-1808.1 (b) (5% of the total resource conservation area in the town at the time of original approval of the town's critical area program by the Critical Area Commission).

(c) For purposes of this subsection, County growth allocation acreage that has been previously allocated by any town shall first be counted as part of that town's allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been exceeded, growth allocation that has been utilized prior to the effective date of this ordinance shall be deducted against the County's remaining growth allocation. Growth allocation awarded by any town that remains unutilized on the effective date of this ordinance shall revert to the County. Growth allocation awarded by the County, prior to or after the effective date of this ordinance, shall be deducted from the total growth allocation acreage allocated to the County under § 8-1808.1 (b).

2. Severability.

The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or

invalid, the remaining provisions hereof and the application thereof to all other persons and circumstances remain in full effect.

SECTION THREE: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 933 having been published, a public hearing was held on Tuesday, December 16, 2003.

BY THE COUNCIL

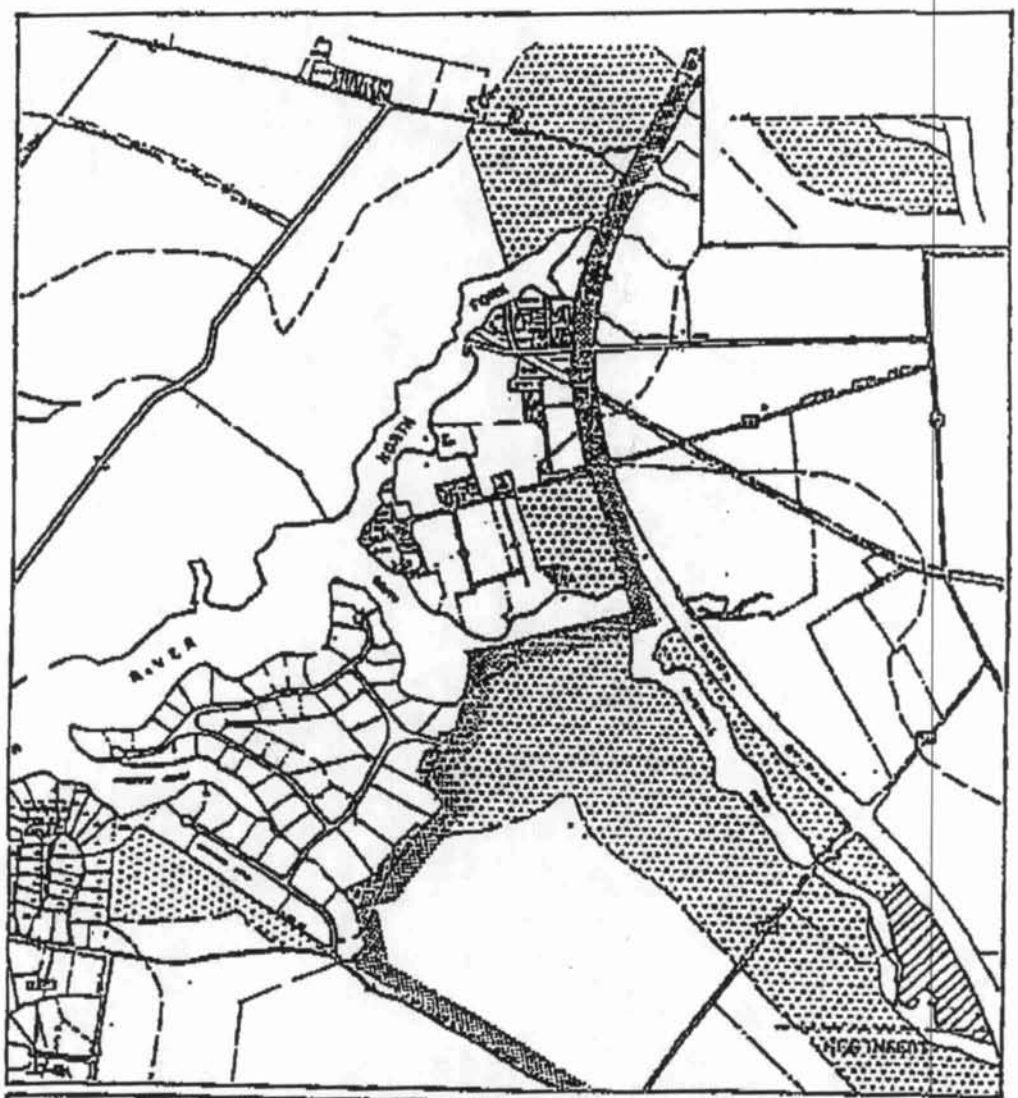
Read the third time.

ENACTED December 23, 2003*
AS AMENDED

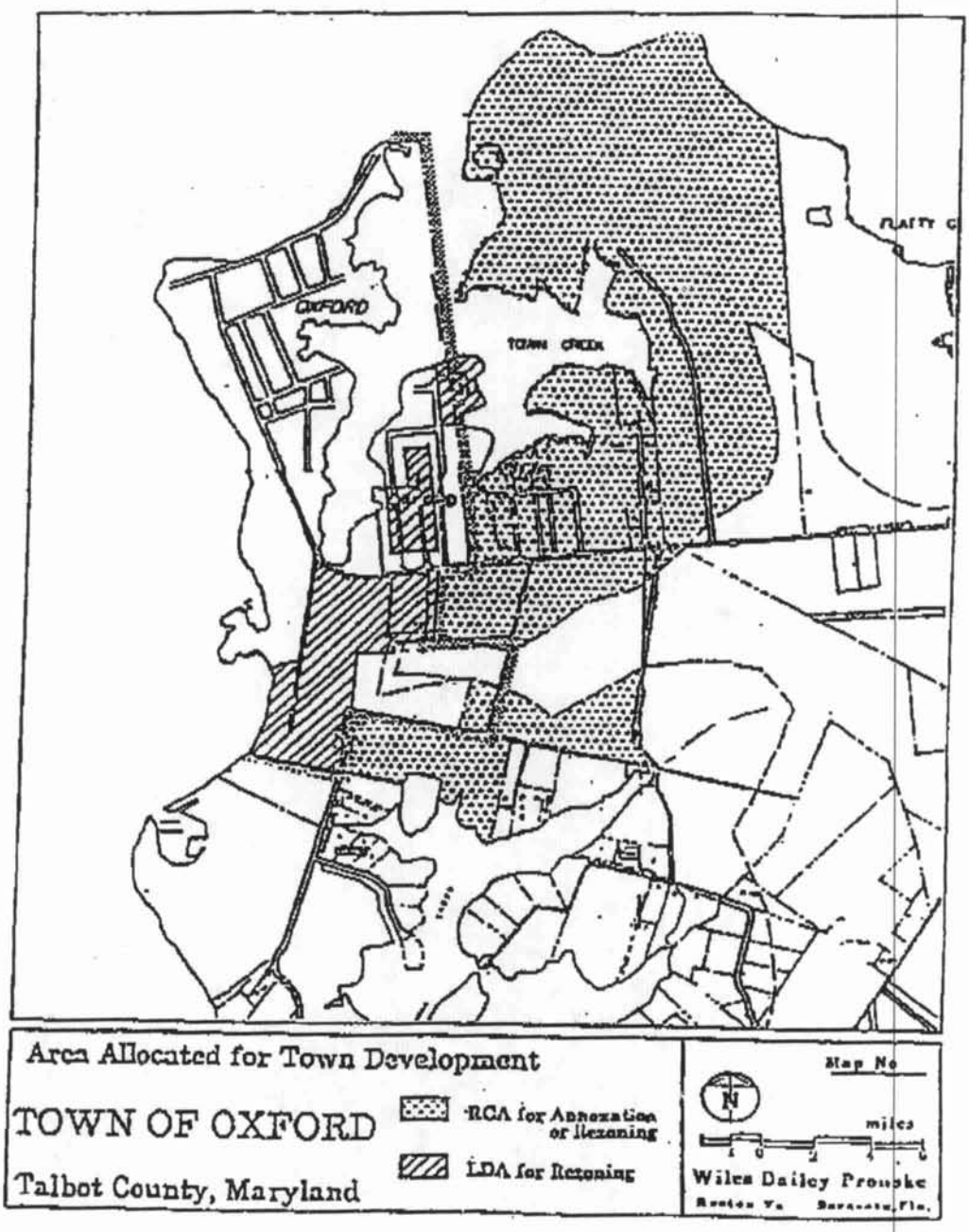
By Order Denise Mauz
Secretary

Foster – Nay
Duncan – Aye
Harrington – Aye
Spence – Aye
Carroll - Aye

ZONING


RIVER
Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No. 1
N
miles
Wilce Dailey Pronske

ZONING


OXFORD
TOWN CREEK
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No
N
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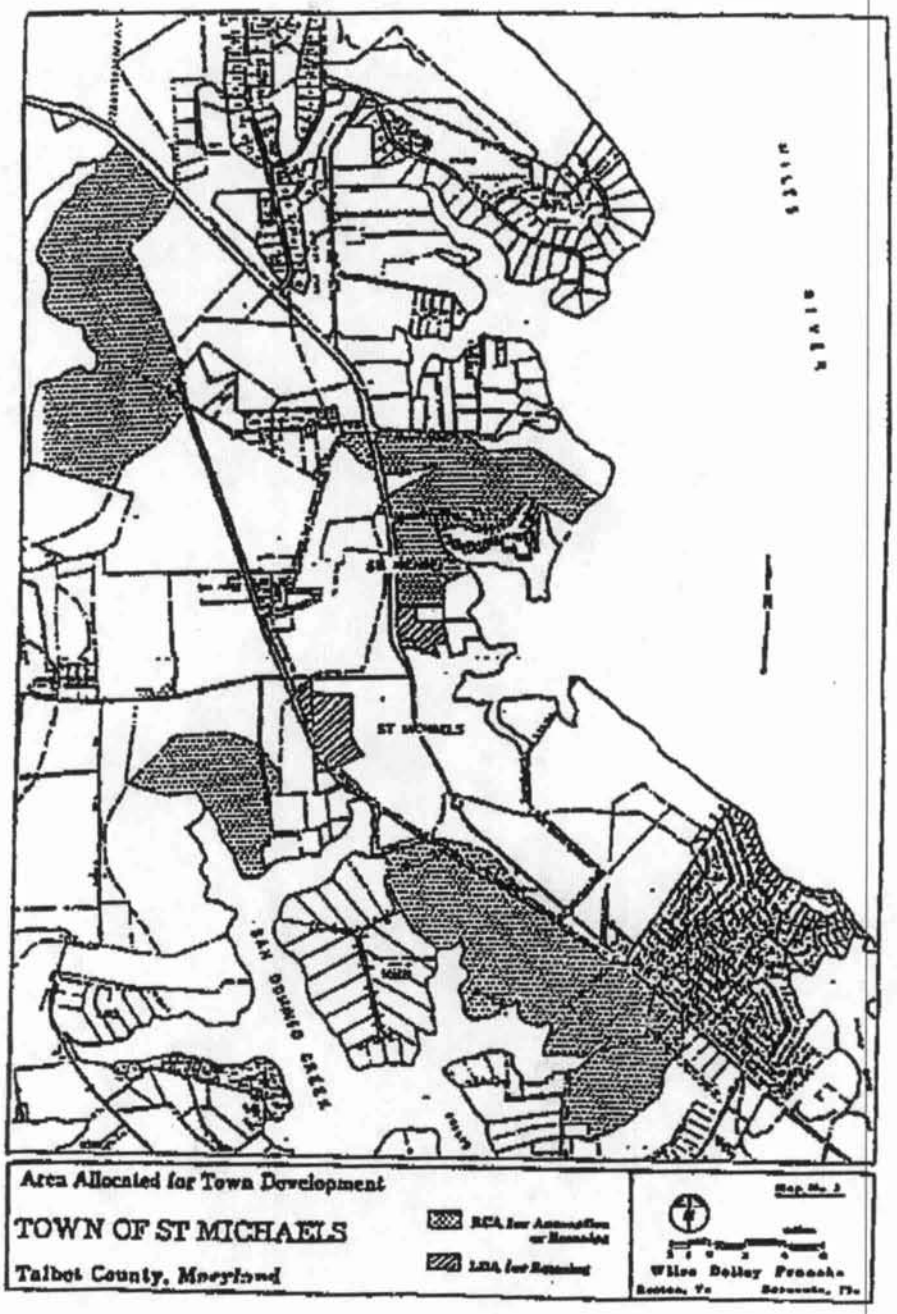
ZONING


ST MICHAELS
SAN DOMINGO CREEK
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
Wilson Dolley Francis

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 14, 2004

Mr. George Kinney, AICP
Director, Office of Planning and Zoning
108 Maryland Avenue, Suite 102
Easton, Maryland 21601

RECEIVED
MAY 21 2004

Re: Talbot County Proposal
Program Amendment: Bill 933

Dear Mr. Kinney:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its regularly scheduled meeting on May 5, 2004 the Critical Area Commission considered County Bill #933, Talbot County's proposed amendment to its local Critical Area program concerning the reallocation of growth allocation reserve acres. Upon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration of the Panel's Report and its Supplement (both attached), statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program. The vote was unanimous, with one member abstaining.

The basis for the Commission's decision, as set out in the Supplement to the Panel Report, was as follows:

> Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.
>
> Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

EXHIBIT
C

TTY For the Deaf
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

The Panel recommended and the Commission fully supported inviting Talbot County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria. Commission staff are available at your convenience to discuss new growth allocation procedures or to arrange a meeting with the Commission's Program Implementation Subcommittee.

Please contact me if you have questions or need additional information.

Sincerely,

Lisa A Hoerger

Lisa Hoerger
Natural Resource Planner

cc: Honorable Philip Carey Foster
Mr. R. Andrew Hollis, Talbot County
Mr. Mike Pullen, Talbot County
Ms. Mary Kay Verdery, Talbot County
Ms. Marianne Mason, DNR- AG

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files this memorandum in opposition to Defendant's motion to dismiss.

Talbot County, Maryland filed a Complaint for declaratory judgment, *writ of mandamus*, and appeal from an administrative agency, from the May 14, 2004 determination of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("The Commission") denying approval of Talbot County Bill No. 933 as an amendment to Talbot County's Local Critical Area program. Plaintiff alleged that Bill No. 933 meets the relevant statutory standards and criteria, but that The Commission arbitrarily, capriciously, and illegally refused to approve the Bill. Plaintiff also alleged that The Commission did not act on the proposed program amendment within the period of time required by statute, and that as a matter of law the program

amendment reflected by the Bill is therefore deemed approved. See Complaint at ¶¶ 18-19.

The Commission has now moved to dismiss the Complaint on several grounds. First, it contends that no "justiciable controversy" is presented because there is no dispute or adverse claim with respect the parties respective rights, status, or legal relations, and thus there is no basis upon which the court can enter a declaratory judgment.

The Commission's argument is misplaced. The Maryland Uniform Declaratory judgment Act is remedial, and its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, or other legal relations. As such, it must be liberally construed and administered. See Md. Code Cts. & Jud. Proc. Art. § 3-402; Maryland-National Capital Park and Planning Comm'n v. Washington National Arena, 282 Md. 588, 386 A.2d 1216 (1978)(there exists a strong legislative policy favoring the liberal use and interpretation of the declaratory judgment act to effectuate its broad remedial objectives.)

Defendant's primary argument seems to be that Plaintiff has no cause of action for declaratory judgment because it has available an alternative form of relief, namely, *mandamus*. Defendant asserts that there is no dispute or adverse claim with respect to its rights or status, or the legal relations between Talbot County on the one hand, and The Commission on the other. But Defendant's view of the declaratory judgment act is too narrow. None of the cases it cites holds, or even implies, that a declaratory judgment action is not a permissible, and perfectly appropriate, alternate method of

challenging an erroneous administrative decision, at least in the absence of a right to statutory review of the agency action. Compare Md. Code Cts. & Jud. Proc. Art. § 3-409(b)(if a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under the subtitle); Boyds Civic Asso. v. Montgomery County Council, 309 Md. 683, 526 A.2d 598 (1986)(property owners who contested procedures before planning commission presented a justiciable controversy which should be determined by way of an action for declaratory judgment). Md. Code Cts. & Jud. Proc. Art. § 3-409(c) expressly provides:

> A party may obtain a declaratory judgment or decree notwithstanding a concurrent common law, equitable, or extraordinary legal remedy, whether or not recognized or regulated by statute.

Indeed, in a proper case an action for declaratory judgment is simply an alternative to *mandamus* or statutory judicial review of an arbitrary, capricious, or illegal agency decision. See Murrell v. Mayor and City Council, 376 Md. 170, 195, 829 A.2d 548, 563 (2003). As long as there are no issues concerning exhaustion of administrative remedies (and there are none here), any person whose rights, status, or other legal relations are affected by a statute, municipal ordinance or administrative rule or regulation, may have determined any question of construction or validity under the statute, ordinance, administrative rule or regulation, and obtain a declaration of its rights, status, or other legal relations. Md. Code Cts. & Jud Proc. Art. § 3-406; see also Prince George's County v. Board of Trustees, 269 Md. 9, 304 A.2d 228 (1973) (as long as there is an actual dispute between the parties and a declaratory judgment

or decree will terminate the controversy giving rise to the proceeding, declaratory relief is appropriate where public agencies are at loggerheads).

There is nothing complicated about the concept of "justiciable controversy." Simply stated, a controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which has already accrued, wherein a legal decision is sought or demanded. Patuxent Oil Co., Inc. v. County Commissioners of Anne Arundel County, 212 Md. 543, 548, 129 A.2d 847, 849 (1957); Prince George's County v. Board of Trustees, 269 Md. 9, 304 A.2d 298 (1973); Harford County v. Schultz, 280 Md. 77, 371 A.2d 428 (1977); Hickory Point Partnership v. Anne Arundel County, 316 Md. 118, 557 A.2d 626 (1989). There is clearly a justiciable controversy between Talbot County on the one hand and The Commission on the other. As set forth in detail in the Complaint, The Commission is required to approve any proposed local program amendment before it can be effective. Talbot County proposed such a local program amendment, and submitted it to The Commission. The Complaint alleges that The Commission failed to act on the proposed amendment within the time required by law, and that when it did act its decision was contrary to law in that it was arbitrary, capricious, illegal, and was not based upon the only permissible statutory criteria. The Commission's failure to approve the program amendment has caused Talbot County actual harm. Consequently, the fact that Talbot County may have available alternate methods of obtaining judicial review, such as has an action for

mandamus, is irrelevant.[1] Consequently, the motion to dismiss the declaratory judgment claim should be denied.

Next, Defendant moves that the *mandamus* claim be dismissed because the Complaint is not verified as required by Maryland Rule 15-701(a). Defendant is of course correct in that a Complaint for *mandamus* must be verified. This oversight has been corrected by the filing of an Amended Complaint herewith. The Amended Complaint adopts and incorporates by reference the original Complaint, with all attachments, and contains the affidavit of Michael L. Pullen, the Talbot County Attorney. Inasmuch as Defendant's only preliminary objection to the *mandamus* claim is that it was not properly verified, and that the oversight has been corrected, the Defendant's motion to dismiss on this ground must be denied.

Defendant's final argument is that The Commission's review of Talbot County Bill No. 933 was not a "contested" case within the meaning of Md. Code State Gov't Art. § 10-202(d); that as a result the Administrative Procedure Act (Md. Code State Gov't Art. § 2-201, *et seq.* is not applicable); and that there is no statutory right of judicial review pursuant to Maryland Rule 7-201. Defendant relies principally on North v. Kent Island Ltd. Partnership, 106 Md. App. 92, 664 A.2d 34 (1995). There, the Queen Anne's County Planning Commission concluded that a mistake had been

---

[1] It is unknown at this time whether it will make any difference, either in the manner in which this case is litigated or in the ultimate result, whether this action is pursued as an action for declaratory judgment or an action for *mandamus*, or both. However, the fact that the alternate forms of relief may be overlapping, or even duplicative, is not a basis for dismissing a properly pled claim on a preliminary motion to dismiss.

made in the designation of the property at issue as limited development area rather than intensely developed area. The County Commissioners submitted the re-designation to the Commission for approval as an amendment to the County's Critical Area Program. The Commission held that there was no mistake in the designation of the property and denied the requested amendment. The property owner sought judicial review of the adverse ruling. The Commission moved to dismiss the appeal. The trial court denied the motion to dismiss, reversed the Commission's denial of re-designation, and remanded the case to the Commission with instructions to hold a contested case under the Maryland Administrative Procedure Act.

The Court of Special Appeals reversed. It held that the proceedings before the Commission did not constitute a contested case. The Commission's sole role was to determine whether the proposed program amendment met the statutory criteria. The appellate court directed the circuit court to remand the case to the Commission so that it could review the amendment to determine whether it met the statutory criteria. At that point the County Commissioners could either grant or deny the re-designation, depending on how it is persuaded on the issue of mistake, and at that point the circuit court could review the record to determine whether the decision of the Commissioners is supported by substantial evidence. Thus, the case does not actually hold, as The Commission now suggests, that no right of statutory review exists.

Nevertheless, while Plaintiff does not concede the point, it is unable to point to any statute that expressly authorizes judicial review of the Commissions' decision to reject Talbot County Bill No. 933 as a local program amendment. Consequently, if the

court determines that there is no statutory right of review, Count III of the Complaint may be dismissed, as long as Plaintiff is permitted to pursue its declaratory judgment and *mandamus* claims.

For all of the aforegoing reasons, Defendant's motion to dismiss should be denied.

Daniel Karp
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore MD 21202-1089
Attorney for Talbot County, MD
(410) 727-5000

Michael L. Pullen
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County, MD
(410) 770-8093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2004, a copy of Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss was mailed first-class, postage prepaid to:

Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

Of Counsel for Plaintiff

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
Defendant	:	

ORDER

Upon consideration of Defendant's Motion to Dismiss and Plaintiff's opposition thereto, it is this _____ day of _____, 2004, by the Circuit Court for Talbot County,

ORDERED, that Defendant's Motion to Dismiss is hereby **DENIED**.

_____
Judge,
Circuit Court for Talbot County

3

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL

STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

STUART G. BUPPERT, II
SHAUN P. K. FENLON
RACHEL L. EISENHAUER
ROGER H. MEDOFF
SHARA MERVIS ALPERT
SAUNDRA K. CANEDO
PAUL J. CUCUZZELLA
ASSISTANT
ATTORNEYS GENERAL

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WRITER'S DIRECT DIAL NO.:

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pcucuzzella@dnr.state.md.us

July 6, 2004

Clerk of the Court
Circuit Court for Talbot County
11 N. Washington Street
P.O. Box 723
Easton, Maryland 21601

Re: Talbot County, Maryland v. Department of Natural Resources
Case No.: 2-C-04-005095 DJ

Dear Clerk:

Enclosed please find for filing in the above-referenced case the defendant's Motion To Dismiss, Memorandum In Support Of Motion To Dismiss, and proposed Order. Thank you very much for your assistance.

Very truly yours,

Paul J. Cucuzzella
Assistant Attorney General

Enclosures

cc: Daniel Karp, Esq.

Paul -
They're back!
MM

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * *

MOTION TO DISMISS

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, move pursuant to Maryland Rule 2-322(b)(2) to dismiss the Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Complaint") for failure to state a claim upon which relief can be granted. As more fully set forth in the accompanying Memorandum In Support Of Motion To Dismiss, DNR states:

1. Count I of the Complaint, for Declaratory Judgment, fails to state a claim because the form of the relief sought in Count 1 will not serve to resolve an uncertainty or insecurity with respect to any rights, status or other legal relations. *See* Maryland Rule 3-402.

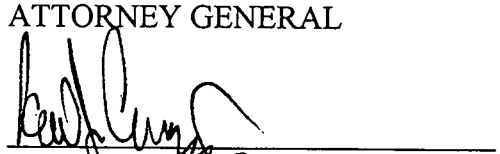
2. Count II of the Complaint, for Writ of Mandamus, fails to state a claim and is deficient because it is not verified and is not supported by affidavit. *See* Maryland Rule 15-701(a).

3. Count III of the Complaint, for judicial review of an administrative action under

Maryland Rule 7-201 *et seq.*, fails to state a claim because the cited rule does not grant a right of judicial review and the rule is inapplicable where judicial review is not authorized by statute. *See Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 541 (1999); Md. Code Ann., State Gov't §§ 10-202(d) and 10-222; Maryland Rule 7-201(a)(1).

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Paul J. Cucuzzella
Marianne D. Mason
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8352
Fax: (410) 260-8364
Attorneys for defendant

Dated: July 6, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2004, a copy of the foregoing Motion To Dismiss, together with accompanying proposed Order, was sent via first class mail, postage prepaid, to Daniel Karp, Esq., Allen, Karpinski, Bryant & Karp, P.A., Suite 1540, 100 East Pratt Street, Baltimore, Maryland 21202-1089

Paul J. Cucuzzella

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, file this Memorandum In Support Of Motion To Dismiss.

Argument

I. A Declaratory Judgment Will Not Resolve An Uncertainty Or Insecurity With Respect To A Right, Status Or Legal Relation.

In February 2004, plaintiff Talbot County submitted its Bill 933 to the Critical Area Commission for review as a proposed amendment to the Talbot County Critical Area Program. Under the State's Critical Area Law, Md. Code Ann., Nat. Res. II § 8-1801 *et seq.*, local governments are charged with the responsibility to implement programs, subject to oversight from the Critical Area Commission, that foster "more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats." Md. Code Ann., Nat Res. II

§ 8-1801(b). Talbot County adopted its Critical Area Program in 1989, and that Program was approved by the Critical Area Commission. Complaint ¶ 11. In accordance with its statutory requirement to review program amendments, *see* Md. Code Ann., Nat. Res. II § 8-1809(i), the Critical Area Commission accepted Bill 933 for review, and, after conducting a public hearing and receiving public comment, ultimately disapproved it as an amendment to Talbot County's Critical Area Program. Complaint ¶ 18-19. In Count I of the Complaint, Talbot County seeks a declaration from the Court invalidating the Critical Area Commission's disapproval of Bill 933.

In support of its declaratory judgment action, Talbot County makes two principal allegations of error committed by the Critical Area Commission in disapproving Bill 933: (1) the Commission did not act on Bill 933 within ninety days of accepting the bill for review, as required by Md. Code Ann., Nat. Res. II § 8-1809(n)(i), Complaint ¶ 24; and, (2) the Commission applied improper criteria – beyond that which it is permitted to consider in accordance with § 8-1809(j) when reviewing a proposed program amendment – when it disapproved Bill 933, Complaint ¶ 25. These allegations, however, do not create a justiciable controversy for which the Court could award declaratory judgment.

The purpose of declaratory judgment "is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Md. Code Ann., Cts. & Jud. Proc. § 3-402. "It is well settled that 'the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action.'" *Stevenson v. Lanham*, 127 Md.App. 597, 911 (1999) (citations omitted). Traditionally, declaratory judgment is used to resolve disputes between parties as to, for instance, the meaning of contract provisions and the parties' respective rights thereunder. *See, e.g., Northern Assurance Co. of America v. EDP Floors, Inc.*, 311 Md. 217, 223

(1987) (courts have jurisdiction to review the terms of a written contract and declare the rights of the parties under it); *Turner v. Manufacturer' Casualty Insurance Co.*, 206 Md. 601 (1955) (brought to determine rights and obligations of insurer and insured under terms of insurance policy); *Schultz v. Kaplan*, 189 Md. 402 (1947) (brought to determine whether lessor had the right under a lease to eject lessee). A justiciable controversy exists only when "there are interested parties *asserting adverse claims* upon a state of facts . . .". *Stevenson*, 127 Md.App. at 611, *quoting Boyds Civic Associations v. Montgomery County Council*, 309 Md. 683, 690 (1987) (emphasis added). *See also Northern Assurance*, 311 Md. at 223 (for purposes of declaratory judgment proceedings, an actual controversy exists when a party asserts a legal right that is challenged or denied by an adverse party, who also has or asserts a concrete interest), *citing* Md. Code Ann., Cts. & Jud. Proc. § 3-409(a).

Here, there is no dispute or adverse claim with respect to the parties' respective "rights, status or legal relations" under the Critical Area Law. The status of Bill 933 has been resolved by the Critical Area Commission: the Commission has disapproved the Bill. Talbot County, to be sure, does not allege that the Critical Area Commission's action on Bill 933 left the status of Bill 933 unresolved, as would be necessary for the issuance of declaratory judgment. Rather, Talbot County makes only allegations of legal error on the part of the Critical Area Commission, allegations which are not properly addressed by way of declaratory judgment.

In substance, Talbot County's prayer for declaratory judgment is nothing more than an alternative pleading for writ of mandamus. Both Count I of the Complaint, that for declaratory judgment, and Count II of the Complaint, that for writ of mandamus, make the same substantive allegations: that the Critical Area Commission erred in its review of Bill 933 in the two respects mentioned above. These are allegations of legal error committed by an administrative agency, and

thus should more properly be reviewed by the Court in considering a writ of mandamus. *See Board of Supervisors of Elections for Dorchester County v. County Commissioners of Dorchester County*, 200 Md. 114, 117 (1952) (mandamus may issue to compel a function or duty that is imposed by law upon a tribunal, public official or administrative agency). A request for declaratory judgment should be refused where another remedy will be more effective or appropriate under the circumstances. *See, Grimm v. County Commissioners of Washington County*, 252 Md. 626, 637 (1969).

II. The Complaint Is Not Verified And Thus Insufficient For Writ Of Mandamus.

Maryland Rule 15-701, which governs actions for writ of mandamus, states that any such action "*shall* be commenced by the filing of a verified complaint . . ." (emphasis added). A verified complaint is one which is supported by petitioner's oath or affidavit. *See, e.g., Major v. First Virginia Bank – Central Maryland*, 97 Md.App. 520, 528 (1993). The Court of Appeals has stated that a petition for writ of mandamus that is not supported by petitioner's affidavit is legally insufficient, and the writ must be refused. *See Brack v. Wells*, 184 Md. 86, 320-21, 322 (1944). *See also* 55 C.J.S. Mandamus § 300 (2003) ("[a]n unverified, or improperly verified, petition [for writ of mandamus] cannot itself serve as a basis for the issuance of a writ of mandamus"). Here, the Complaint is not supported by the plaintiff's oath or affidavit, and thus Count II for writ of mandamus must be dismissed.

III. The Critical Area Commission's Action On Bill 933 Was Not A Contested Case Action And Therefore Is Not Subject To Judicial Review.

As alleged, Talbot County's Bill 933, approved by the Talbot County Council in December 2003 as a proposed amendment to Talbot County's critical area program, was subsequently submitted by Talbot County to the Critical Area Commission for review. Complaint ¶¶ 16, 18.

Under the Critical Area Law, a locality may not amend its program without first receiving approval of the amendment from the Critical Area Commission. *Id.* ¶ 6; Md. Code Ann., Nat. Res. II § 8-1809(i). Once the Critical Area Commission accepts for review a locality's proposed program amendment, a Commission panel must hold a public hearing on the proposed amendment and the full Commission must act upon the proposed amendment within ninety days of accepting the proposal for review. *Id.* § 8-1909(o)(1). Here, as stated, the Critical Area Commission accepted Bill 933 for review, and ultimately refused to approve it. Complaint ¶¶ 18-19.[1]

By Count III of the Complaint, Talbot Count seeks judicial review in the form of an administrative appeal under Maryland Rule 7-201 *et seq.* of the Critical Area Commission's decisions to disapprove Bill 933. Pursuant to Maryland Rule 7-201(a)(1), judicial review of an action of an administrative agency is only permitted where such review is authorized by statute. *See Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 541 (1999). Talbot County does not allege that the Critical Area Law authorizes judicial review of the Commission's action on a proposed program amendment. Indeed the Critical Area Law does not authorize such review. Thus, it appears that Talbot County is alleging that the Administrative Procedures Act ("APA"), Md. Code Ann., State Gov't § 10-201 *et seq.*, entitles the County to judicial review. However, the APA only provides for judicial review of a final decision in a "contested case." Md. Code Ann., State Gov't § 222(a). If a proceeding before an administrative agency is not a contested case proceeding, as defined by Md. Code Ann., State Gov't § 10-201(d), any agency action taken as a result of the

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[1] Plaintiff makes allegations in the Complaint that the Critical Area Commission did not act upon Bill 933 within the ninety day period prescribed by the Critical Area Law. Complaint ¶ 18. While the defendant disputes this assertion, this is an issue of fact that the defendant need not address in this Motion To Dismiss.

proceeding is not subject to judicial review on administrative appeal.

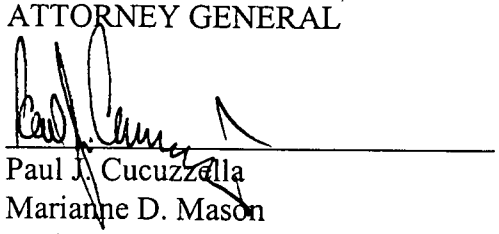
The Critical Area Commission's proceedings are not contested case proceedings. *See North v. Kent Island Limited Partnership*, 106 Md.App. 92, 103 (1995) (for a proceeding to meet the definition of "contested case," the agency must provide trial type procedures). Indeed, the Court of Special Appeal in *North* determined that nothing in the Critical Area Commission's program review procedure, as outlined in Md. Code Ann., Nat. Res. II § 8-1809, requires a contested case hearing. *Id.* The Court thus specifically held that "[t]he role of the Commission is quasi-legislative and does not encompass a contested case hearing." *Id.* Since the Commission's proceedings that reviewed, and ultimately rejected, the Bill 933 proposed program amendment were not contested case proceedings, Talbot County does not have a right of judicial review under Maryland Rule 7-201 *et seq.* as sought in Count III of the Complaint.

Conclusion

For the foregoing reason, defendants Motion To Dismiss should be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Paul J. Cucuzzella
Marianne D. Mason
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8352
Fax: (410) 260-8364
Attorney for defendants

Dated: July 6, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2004, a copy of the foregoing Memorandum In Support Of Motion To Dismiss, together with accompanying proposed Order, was sent via first class mail, postage prepaid, to Daniel Karp, Esq., Allen, Karpinski, Bryant & Karp, P.A., Suite 1540, 100 East Pratt Street, Baltimore, Maryland 21202-1089

Paul J. Cucuzzella

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff,	*	
v.	*	Case No.: 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES,	*	
	*	
Defendant.	*	

* * * * * * * * * * * * * *

ORDER

The Court, having considered defendant's Motion To Dismiss and Memorandum In Support Of Motion To Dismiss, together with any response thereto, and having found that the Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Complaint") fails to state a claim for which relief can be granted, does, this ___ day of _____, 2004,

ORDER that the Motion To Dismiss is hereby GRANTED and that the Complaint is hereby dismissed without prejudice.

_____
Judge, Circuit Court of Maryland
for Talbot County

2

CIRCUIT COURT FOR TALBOT COUNTY
Mary Ann Shortall
Clerk of the Circuit Court
11 N. Washington Street
P.O. Box 723
Easton, MD 21601
(410)-822-2611, TTY for Deaf: (410)-819-0909
MD Toll Free (1-800)339-3403 Fax (410)820-8168 Assignment Ofc (410)822-4444

RECEIVED
JUN 14 2004
DNR - LEGAL DIVISION

CASE NUMBER: 20-C-04-005095 DJ

Talbot County Maryland vs Dept Natural Resources Critical Area Comm Chesapeake/A

Dept Natural Resources Critical Area Comm Chesapeake/Atlantic Coastal Bays
1804 West Street
Suite 100
Annapolis MD 21401

NOTICE TO ADMINISTRATIVE AGENCY
OF JUDICIAL REVIEW

==========

You are advised that a petition for judicial review was filed on **06/11/2004** and assigned Civil Action No. **20-C-04-005095**.

Pursuant to Maryland Rule 7-202(d)(1), a copy of the petition is enclosed for the agency.

Date Issued: 06/11/04

Mary Ann Shortall

Mary Ann Shortall
Clerk of the Circuit Court
of Talbot County

CIRCUIT COURT FOR TALBOT COUNTY MARYLAND

PLEASE DATE, SIGN AND RETURN TO THE COURT THE COPY OF THIS NOTICE

DATE RECEIVED: _____

SIGNATURE: _____

Circuit Court for TALBOT COUNTY
City or County

CIVIL—NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111. ***A copy must be included for each defendant to be served.***

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: ☐ PLAINTIFF ☐ DEFENDANT CASE NUMBER: 20-C-04-005095 (Clerk to insert)

CASE NAME: TALBOT COUNTY, MARYLAND (Plaintiff) v DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS (Defendant)

JURY DEMAND: ☐ Yes ☒ No Anticipated length of trial: _____ hours or _____ days

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known: _____

HAS ALTERNATIVE DISPUTE RESOLUTION (ADR): Been Tried? ☐ Yes ☒ No Requested? ☐ Yes ☒ No

If yes, specify: _____

Special Requirements? ☐ Interpreter/communication impairment ☐ Other ADA accommodation: _____

2004 JUN 11 PM 2 42 CIRCUIT COURT OF TALBOT COUNTY EASTON, MARYLAND

NATURE OF ACTION
(CHECK ONE BOX)

TORTS
- ☐ Motor Tort
- ☐ Premises Liability
- ☐ Assault & Battery
- ☐ Product Liability
- ☐ Professional Malpractice
- ☐ Wrongful Death
- ☐ Business & Commercial
- ☐ Libel & Slander
- ☐ False Arrest/Imprisonment
- ☐ Nuisance
- ☐ Toxic Torts
- ☐ Fraud
- ☐ Malicious Prosecution
- ☐ Lead Paint
- ☐ Asbestos
- ☐ Other _____

LABOR
- ☐ Workers' Comp.
- ☐ Wrongful Discharge
- ☐ EEO
- ☐ Other _____

CONTRACTS
- ☐ Insurance
- ☐ Confessed Judgment
- ☐ Other _____

REAL PROPERTY
- ☐ Judicial Sale
- ☐ Condemnation
- ☐ Landlord Tenant
- ☐ Other _____

OTHER
- ☐ Civil Rights
- ☐ Environmental
- ☐ ADA
- ☒ Other _____

DAMAGES / RELIEF

A. TORTS

Actual Damages
- ☐ Under $7,500
- ☐ $7,500 - $50,000
- ☐ $50,000 - $100,000
- ☐ Over $100,000

- ☐ Medical Bills $_____
- ☐ Property Damages $_____
- ☐ Wage Loss $_____

B. CONTRACTS
- ☐ Under $10,000
- ☐ $10,000 - $20,000
- ☐ Over $20,000

C. NONMONETARY RELIEF
- ☒ Declaratory Judgment
- ☐ Injunction
- ☒ Other _____

TRACK REQUEST

With the exception of Baltimore County, Baltimore City, and Prince George's County, please fill in the estimated ***LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.***

- ☐ 1/2 day of trial or less
- ☐ 1 day of trial time
- ☐ 2 days of trial time
- ☐ 3 days of trial time
- ☐ More than 3 days of trial time

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Date: 6/11/04 *Signature:* _____

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND 142 North Harrison Street Easton, MD 21601	:	
Plaintiff	:	
vs.	:	Civil Action No. 20-C-04-005095
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE: AND ATLANTIC COASTAL BAYS 1804 West Street, Suite 100 Annapolis, Maryland 21401 SERVE: Marianne D. Mason, Deputy Counsel Office of the Attorney General 580 Taylor Avenue, C-4 Annapolis, Maryland 21401	:	
Defendant	:	

RECEIVED
JUN 14 2004
DNR - LEGAL DIVISION

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2004 JUN 11 PM 2 42

COMPLAINT FOR DECLARATORY JUDGMENT, PETITION FOR WRIT OF MANDAMUS, AND APPEAL FROM ADMINISTRATIVE AGENCY

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files the instant action seeking a declaratory judgment, a writ of mandamus, and appealing the administrative decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program. In support of this request, Plaintiff states:

Parties

1. Talbot County, Maryland, is a charter county and a political subdivision of the State of Maryland.

2. The Department of Natural Resources is a principal department of the State of Maryland, § 1-101, Natural Resources Article, Md. Ann. Code; and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays is a Commission of the Department, created by § 8-1803 Natural Resources Article, Md. Ann. Code. The Defendant is hereinafter referred to as "the Commission."

The Legal Framework

3. In 1984, the General Assembly enacted the Chesapeake Bay Critical Area Protection Program, codified as §§ 8-1801 through 8-1817 of the Natural Resources Article, Md. Ann. Code. The purposes of the program are:

"(1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality in natural habitats; and

(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." *Id.*, § 8 -1801 (b).

4. Each county within the critical area has primary responsibility for developing and implementing a local critical area protection program pursuant to

criteria established by the Commission and subject to review and approval by the Commission. *Id.,* § 8-1808 (a), (d) and 8-1809.

5. The Commission must approve any proposed critical area protection program prior to adoption. *Id.,* § 8-1809 (d). In accordance with this requirement, Talbot County submitted a proposed program to the Commission for review and approval. The Commission approved Talbot County's proposed program, and it became effective August 13, 1989.

6. Section 8-1809 (g) provides in relevant part that, "[e]ach local jurisdiction shall review its entire program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning with the 4-year anniversary of the date that the program became effective and every 4 years after that date." The Commission must approve any proposed program amendments. *Id.,* § 8-1809 (i).

7. Adoption of local program amendments by the County Council is a legislative process established and controlled by the Talbot County Charter. A bill is introduced, a public hearing is scheduled and advertised, followed by the Council's vote. If adopted the bill is forwarded to the Commission for its review as a local program amendment. In accord with the quadrennial review requirement of Section 8-1809 (g), Talbot County duly enacted and submitted proposed local program amendments to the Commission for its review.

8. Section 8-1809 (j) provides that, "The Commission shall approve

programs and program amendments that meet:

(1) The standards set forth in § 8 –1808 (b) (1) through (3) of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle."

Talbot County's Local Critical Area Program

9. Land lying within the critical area is mapped as either "Resource Conservation Area" (RCA), "Limited Development Area" (LDA), or "Intensely Developed Area" (LDA), based upon the density of existing development as of December 1, 1985. Md. Ann. Code, Natural Resources Article § 8 -1801.1, establishes a process through which density in an RCA may be increased through an award of growth allocation. If growth allocation is awarded, the area is remapped from RCA to either LDA or IDA. Section 8-1801.1 (c) establishes guidelines for locating new intensely developed or limited development areas in existing resource conservation areas. Talbot County's local program fully complies with those guidelines and has been approved by the Commission.

10. COMAR 27.01.02.06 A. (2) is part of the criteria for program development and provides that,

> "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

11. Talbot County adopted its local critical area program in 1989. It included 3 maps showing anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford. Using those maps, growth allocation acreage was reserved

for Easton (155 acres), Oxford (195 acres), and St. Michaels, (245 acres). No growth allocation was reserved for the Town of Queen Anne. The 1989 ordinance and program were approved by the Commission.

12. The 1989 ordinance provided for quadrennial review of those 3 maps for possible recalculation and reallocation of reserved growth allocation. The first quadrennial review was to have occurred in 1993, again in 1997, again in 2001, etc. None of those reviews ever took place. The 3 maps adopted in 1989 remained static as a prospective look to the future, frozen in time.

13. On April 25, 2000, Talbot County duly enacted and submitted Bill 762 to the Commission for review as a local program amendment. Bill 762 established a joint review process to award supplemental growth allocation to municipalities. A copy of Bill 762 is attached hereto as Exhibit "A" and it is incorporated by reference herein. Bill 762 complies with the critical area criteria set forth in COMAR 27.01.02.06 A. (2) which require the counties, in coordination with affected municipalities, to establish a process to accommodate the growth needs of municipalities when planning future expansion of intensely developed and limited development areas. Bill 762 was approved by the Commission.

14. In practice, the process established by Bill 762 has applied only to the Town of Easton because Easton was the only town that had utilized the growth allocation reserved to it under the 1989 maps. The Towns of St. Michaels and Oxford have not utilized the growth allocations reserved to them under the 1989

maps, and thus there was no occasion to apply the process established by Bill 762 to them.

15. Town boundaries, growth areas, and municipal growth needs changed significantly during the intervening 14 years after adoption of the 1989 maps. Bill 933, adopted in 2003, took into account actual events during that 14-year hiatus. During those years the Talbot County Comprehensive Plan had been reviewed, amended, updated, and adopted at 6-year intervals. The new comprehensive plans showed evolving town boundaries, revised town growth areas, and revised growth policies, not only for areas surrounding towns but also for the entire County.

16. In December 2003, the Talbot County Council approved comprehensive program amendments to the local critical area program, including Bill 933, and forwarded them to the Commission for review. A copy of Bill 933 is attached hereto as Exhibit "B" and it is incorporated herein by reference.

17. Bill 933 repealed the outdated 1989 maps, repealed the 1989 reservations of growth allocation to the towns based on those maps, and made the Bill 762 joint review process adopted and approved by the Commission in 2000 applicable to all the towns within the County.

18. The Commission accepted Bill 933 for review as a proposed program amendment on February 4, 2004. Pursuant to § 8-1809(n)(i), the Commission shall act on proposed program amendments within 90 days of the Commission's acceptance of the proposal. If action is not taken by the Commission within 90

days, the proposed program amendment is deemed approved. The Commission failed to act within 90 days and thus Bill 933 is deemed approved. This is one basis for this Complaint.

19. The Commission refused to approve Bill 933 as a local program amendment although it fully complied with the standards set forth in § 8–1808 (b) (1) through (3) of that subtitle and criteria of the critical area program adopted by the Commission under § 8–1808. The Commission's refusal to approve Bill 933 although it fully complied with all applicable standards and criteria is another basis for this Complaint.

Count 1 – Declaratory Judgment

20. The allegations of paragraphs 1-19 are incorporated by reference herein as if fully set forth.

21. Bill 933 meets the standards set forth in § 8–1808 (b) (1) through (3), Natural Resources Article, Md. Ann. Code.

22. Bill 933 meets the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code.

23. Even though Bill 933 meets the standards and criteria under §§ 8-1808 and 1809(j), the Commission failed, neglected, and refused to approve Bill 933 as a local program amendment to Talbot County's critical area program by letter dated May 14, 2004. A copy of that letter is attached hereto as Exhibit "C" and is incorporated by reference herein.

24. The Commission did not act on the proposed program amendment contained in Bill 933 within the 90-day period of time required by § 8-1809(n)(i), Natural Resources Article, Md. Ann. Code. As a matter of law the program amendment reflected by Bill 933 is therefore deemed approved.

25. The Commission's refusal to approve Bill 933 was arbitrary, capricious, and illegal. The Commission exceeded the proper scope of its authority. The Commission ignored the criteria established by State law as the benchmark for its consideration of local program amendments and applied improper criteria in making its decision.

26. A declaratory judgment will serve to terminate the uncertainty or controversy giving rise to this proceeding. An actual controversy exists between contending parties. Antagonistic claims are present between the parties involved that indicate imminent and inevitable litigation. Talbot County asserts that

(a) Bill 933 is deemed approved as a result of the Commission's failure to act within the time allowed by law; and

(b) Bill 933 meets the standards set forth in § 8–1808 (b) (1) through (3) of Title 8, Subtitle 18, Natural Resources Article, Md. Ann. Code; and

(c) Bill 933 meets the criteria adopted by the Commission under § 8-1808 of Title 8, Subtitle 18, Natural Resources Article, Md. Ann. Code; and

(d) The Commission was required to approve Bill 933 as a local program amendment to Talbot County's local critical area program.

The Commission denies this.

WHEREFORE, Plaintiff prays:

A. That the Court assume jurisdiction over this controversy and issue a declaratory judgment that the program amendment contained in Bill 933 be deemed approved because the Commission failed to act on it within the time required by law;

B. That the Court declare that the Commission is required to consider only the standards set forth in § 8–1808 (b) (1) through (3), Natural Resources Article, Md. Ann. Code; and the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code when reviewing a proposed local program amendment.

C. That the Court determine that the Commission exceeded the proper scope of its authority in failing to consider only those standards and criteria.

D. That the Court determine that the Commission failed adequately to articulate appropriate findings of fact to justify its decision not to approve Bill 933 as a local program amendment.

E. That the Court determine that the reasons expressed by the Commission for refusing to approve Bill 933 as a local program amendment are legally insufficient to justify their decision.

F. That the Court determine that Bill 933 meets the applicable standards and criteria, and determine that it should therefore be approved as a local program amendment.

G. That the Court determine that the Commission abused its discretion in failing, neglecting, and refusing to approve Bill 933 as a local program

amendment to Talbot County's critical area program.

H. And for such other and further relief as the nature of Plaintiff's cause may require.

Count II - Mandamus

27. The allegations of paragraphs 1-26 are incorporated by reference herein as if fully set forth.

28. Inasmuch as the Commission failed to act on the proposed program amendment reflected by Bill 933 within the time required by law, it is deemed approved.

29. The Commission is charged with the responsibility of reviewing local program amendments to determine whether they comply with the standards set forth in Natural Resources Article § 8–1808 (b) (1) through (3) and the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code.

30. The sole issue before the Commission was whether Bill 933 complied with these established standards and criteria. If Bill 933 complies, State law requires and directs the Commission to approve it as a program amendment. The Commission lacked discretion to consider matters other than the specific standards and criteria set forth in the statute as the benchmark against which to measure its decision.

31. The information before the Commission demonstrated that Bill 933 met these standards and criteria. The Commission's decision to disapprove Bill 933 as a program amendment is not based upon or supported by facts in the record and is

arbitrary.

32. The Commission exceeded its limited authority by considering and relying upon extraneous facts, arguments, and findings that do not bear upon or control its decision to approve or disapprove Bill 933 as a local program amendment.

33. The Commission erred as a matter of law by applying the wrong standards and criteria, and by ignoring the proper standards and criteria.

34. The Commission erred as a matter of law in misinterpreting the standards and criteria applicable to their decision; the Commission misconstrued the law and its own statutory powers.

35. The Commission acted contrary to law and beyond the scope of its own jurisdiction in disapproving Bill 933 as a local program amendment to Talbot County's critical area program. The Commission abused the discretionary powers reposed in it in considering Bill 933 as a local program amendment.

WHEREFORE, Plaintiff requests the Court to review the decision of the Commission, procedurally and if warranted on the merits, to reverse that decision, and to Order the Commission to adopt Bill 933 as a local program amendment to Talbot County's critical area program. Alternatively, Plaintiff requests the Court to determine that the Commission has acted contrary to law and in excess of its jurisdiction, and to reverse the decision and direct the Commission to approve Bill 933 as a local program amendment, and to award such other and further relief as the nature of Plaintiff's case may require.

Count III – Administrative Appeal under Maryland Rules, Chapter 200, Title 7

36. The allegations of paragraphs 1-35 are incorporated by reference herein as if fully set forth.

37. The Commission failed to act on Bill 933 within the time required by law and thus the program amendment contained in that Bill is deemed approved.

38. The Commission erred in refusing to adopt Bill 933 as a local program amendment to Talbot County's critical area program for the reasons set forth above.

39. Talbot County requests judicial review of the Commission's decision of May 14, 2004 refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program.

40. Talbot County was a party to the proceeding before the Commission.

WHEREFORE, Plaintiff requests the Court to review and reverse the decision of the Commission, and to award such other and further relief as the nature of Plaintiff's cause may require.

Daniel Karp //MP

Daniel Karp
Allen, Karpinski, Bryant & Karp, P.A.
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100 E. Pratt Street
Baltimore MD 21202-1089
Attorney for Talbot County, MD
(410) 727-5000

Michael L. Pullen //MP

Michael L. Pullen
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Easton, Maryland 21601
Attorney for Talbot County, MD
(410) 770-8093

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2000 Legislative Session, Legislative Day No. March 28, 2000

Bill No. 762

Introduced by: Ms. Spence

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND

By the Council March 28, 2000

Introduced, read first time, ordered posted, and public hearing scheduled on Tues. April 18 at 1:35 p.m. at the County Council Chambers, Court House, South Wing, Easton, Maryland 21601.

By Order Jessica Morris
Secretary

EXHIBIT
A

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

SECTION ONE: BE IT ENACTED, by the County Council of Talbot County, that Title 19-14 (c) (iv) (c) [i] be repealed and re-enacted to establish procedures for awarding supplemental growth allocation to municipalities in Talbot County, Maryland, as follows:

[i] Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

When 1,092 acres (ninety [90] percent of 1,213 acres) has been approved for growth allocation by the Towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town.

If the commission approves the doubling of the number of acres that may be rezoned under this Section, the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below = 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426 acre allocation (1,213 + 1,213) at the time of the establishment of this Section (August 13, 1989).

Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate. All such requests shall comply with the following requirements.

[1] Application Process. The applicant shall file their application with the municipality. In addition to complying with all municipal requirements, the applicant shall also provide the information required by § 19.14 (c) (iv) [b] of the Talbot County Zoning Ordinance, as amended, and shall also comply with the design standards set forth in § 19.14 (c) (iv) [b] [1] through [9], of the Talbot County Zoning Ordinance, as amended. The municipality shall forward the application to the County Council for consideration and review within five (5) working days.

[2] Staff and Planning Commission Review. The planning staff and the Planning Commission shall review the application in accordance with the procedures set forth in §19.14 (c) (iv) (c) [1] through [4], except that municipal and county staff reports shall be forwarded to the Planning Commissions of both jurisdictions and the planning staff shall schedule a joint hearing on the application before the Planning Commissions of both jurisdictions. The designated chairperson of each Planning Commission shall co-chair the hearing. Each Planning Commission shall vote separately and make its recommendations to its respective council or commission. Each Planning Commission shall provide a copy of its recommendations to the other jurisdiction.

[3] Council Review. The county and municipal councils or commissions shall hold a joint hearing on the application, co-chaired by the designated chairperson of each council or commission which may be coordinated jointly with the Critical Area Commission. The county and municipal councils or commissions shall make their

respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 19.14 (c) (iv) [d].

[4] Amendments to Approved Projects. Any amendment to an approved project shall be subject to County Council review and approval for a period of five (5) years following the date of initial approval.

BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days following its enactment.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 762 having been published, a public hearing was held on Tues. April 18, 2000

BY THE COUNCIL

Read the third time.

ENACTED April 25, 2000 *
AS AMENDED

By Order Jessica Morris
Secretary

Spence -	aye
Dyott -	aye
Foster -	aye
Higgins -	aye
Harrison -	aye

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

Introduced by: Mr. Carroll, Ms. Harrington, Mr. Duncan

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 16, 2003 at 1:30 p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order Janice Marvis
Secretary

EXHIBIT
B

"Exhibit D"

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

WHEREAS, when Talbot County adopted its Critical Area Program effective August 13, 1989, it adopted three maps showing then anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford, and

WHEREAS, at the time of adoption, § 190-109 D (11) provided that the number of reserved areas allocated among the towns based on those maps for rezoning for growth allocation should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. None of the four-year reviews have occurred and these maps continue to reflect a prospective look to the future from 1989; and

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

WHEREAS, the 1989 projections have no continued validity for any planning or zoning purpose; and

WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, which is inconsistent with current principles of proper planning and the land use goals and polices in the existing and draft Talbot County Comprehensive Plans; and

WHEREAS, the process created by the 1989 zoning ordinance is both redundant and inconsistent or potentially inconsistent with the Comprehensive Planning Process; the Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately accomplishes planning for growth areas around Towns; and

WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the State formula for calculating the total amount for each county [5% of the total resource conservation area located within the County]; and

WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with certain exceptions, no more than one-half of the expansion permitted by growth allocation in the critical area may be located in resource conservation areas (RCA); and

WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if Talbot County is unable to utilize a portion of the County's total growth allocation within or adjacent to exiting intensely or limited development areas, then that portion of the growth allocation which cannot be so located may be located in an RCA; and

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

WHEREAS, the County may not utilize the remaining 50% of available growth allocation [1,213 acres] until the Critical Area Commission grants permission, under the exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is unable to utilize that portion of its available growth allocation in areas adjacent to limited or intensely developed areas; and

WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, § 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from RCA from 1,213 to 2,426 acres; and

WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County; and

WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth allocation; and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it grants a pending application for supplemental growth allocation submitted by the Town of Easton for 156 acres, the County will have 160.229 acres of growth allocation; and

WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either separately or in combination, could forever block the County from accessing the remaining growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and

WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it, and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in approving projects for which the Town has requested supplemental growth allocation; and

WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot County review its entire critical area program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning in 1993 and every 4 years thereafter; and

WHEREAS, Talbot County is currently near completion of such a 4-year review, and as part of that process desires to make the following amendments to the County's critical area program to better reflect the original intent of the State law governing growth allocation, which calculated growth allocation for Talbot County as 5% of the resource conservation area in the County, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is hereby amended as set forth herein.

Maps 1, 2, and 3, attached, are hereby repealed.

* * *

§ 190-109 D (9)

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.~~

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~

§ 190-109 D (11)

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.~~

* * *

§ 190-109 D (14)

~~Specific annexation requests for property included in the acres reserved for the towns in § 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).~~

§ 190-109 D (15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns~~

~~shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 D (16)

~~The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.~~

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains unutilized on the effective date of this ordinance.

(a) For purposes of this subsection, the term "unutilized" includes the total growth allocation acreage allocated to the County under State law, less growth allocation acreage that (1) has been previously allocated by any town or the County; and, (2) prior to the effective date of this ordinance, has resulted in actual physical commencement of some significant and visible construction; (3) which has been undertaken in good faith, with the intention to carry it through to completion; and, (4) which has occurred pursuant to a validly issued building permit.

(b) For purposes of this subsection, growth allocation acreage allocated to the County does not include growth allocation allocated to the towns under § 8-1808.1 (b) (5% of the total resource conservation area in the town at the time of original approval of the town's critical area program by the Critical Area Commission).

(c) For purposes of this subsection, County growth allocation acreage that has been previously allocated by any town shall first be counted as part of that town's allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been exceeded, growth allocation that has been utilized prior to the effective date of this ordinance shall be deducted against the County's remaining growth allocation. Growth allocation awarded by any town that remains unutilized on the effective date of this ordinance shall revert to the County. Growth allocation awarded by the County, prior to or after the effective date of this ordinance, shall be deducted from the total growth allocation acreage allocated to the County under § 8-1808.1 (b).

2. Severability.

The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or

225 invalid, the remaining provisions hereof and the application thereof to all other persons and
226 circumstances remain in full effect.

SECTION THREE: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 933 having been published, a public hearing was held on Tuesday, December 16, 2003.

BY THE COUNCIL

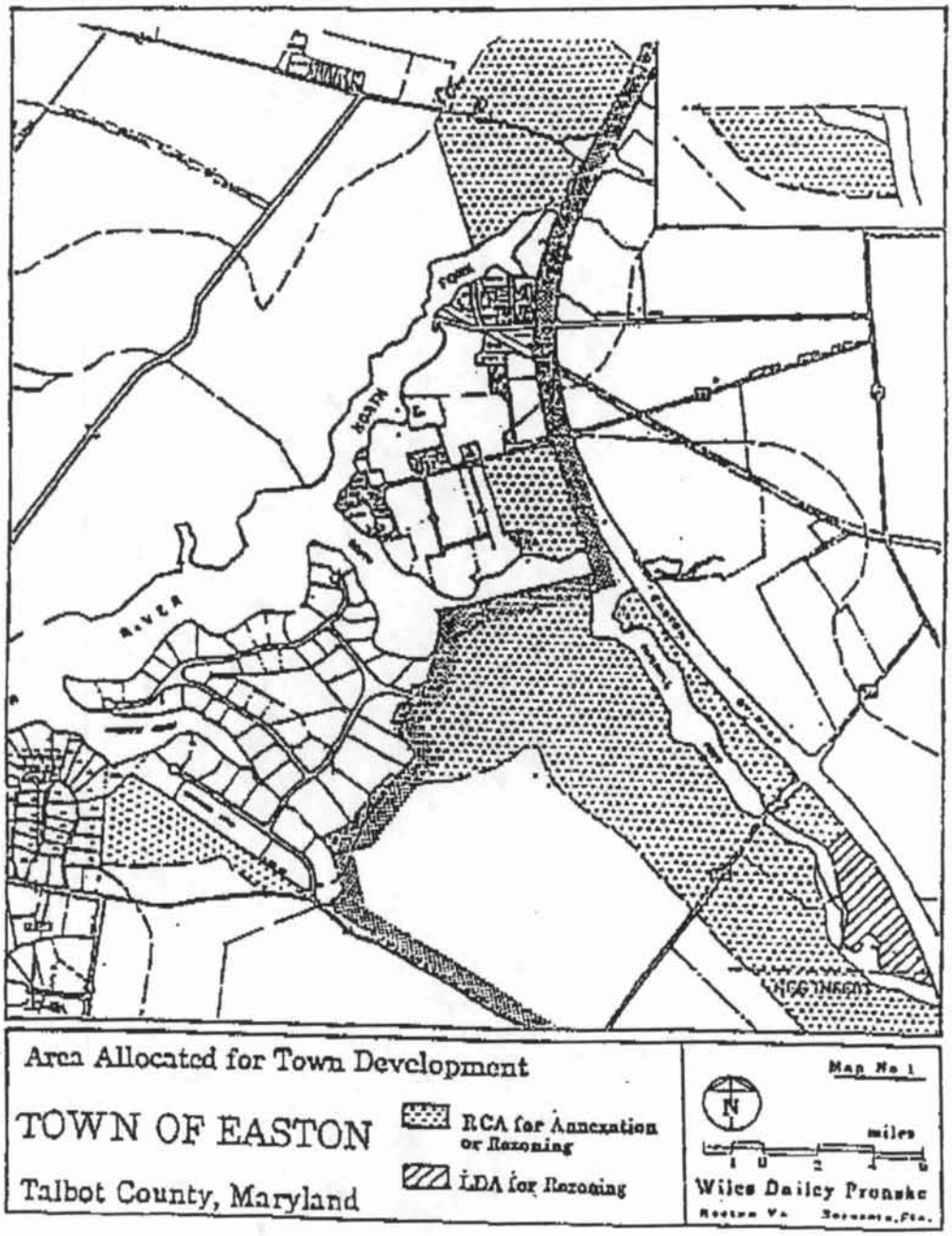
Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

Foster – Nay
Duncan – Aye
Harrington – Aye
Spence – Aye
Carroll - Aye

ZONING


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
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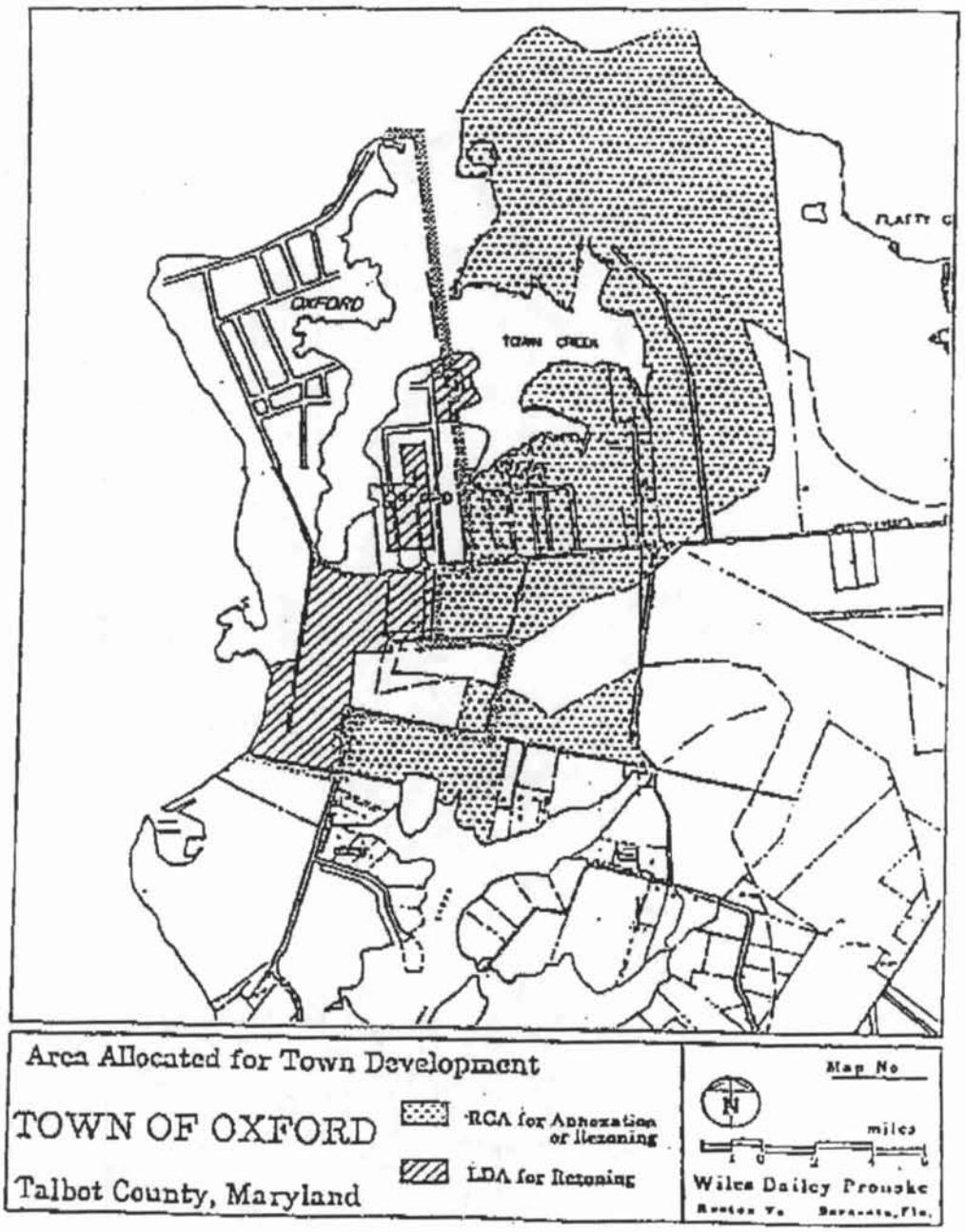
Wiles Dailey Pronske

ZONING


OXFORD
TOWN CREEK
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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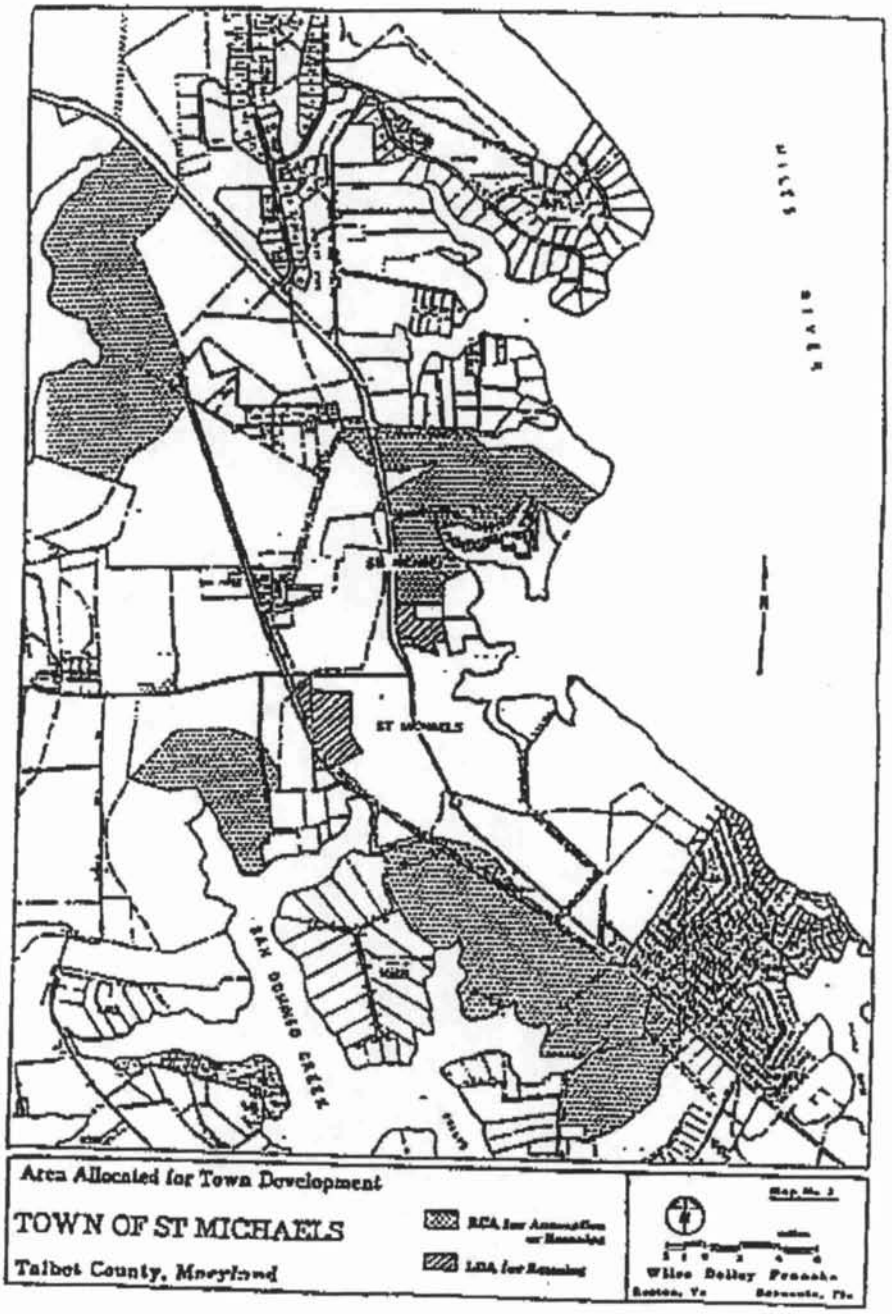
ST MICHAELS
SAN DOMINGO CREEK
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
Wilce Dolley Franks

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 14, 2004

Mr. George Kinney, AICP
Director, Office of Planning and Zoning
108 Maryland Avenue, Suite 102
Easton, Maryland 21601

RECEIVED
MAY 21 2004

Re: Talbot County Proposal
Program Amendment: Bill 933

Dear Mr. Kinney:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its regularly scheduled meeting on May 5, 2004 the Critical Area Commission considered County Bill #933, Talbot County's proposed amendment to its local Critical Area program concerning the reallocation of growth allocation reserve acres. Upon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration of the Panel's Report and its Supplement (both attached), statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program. The vote was unanimous, with one member abstaining.

The basis for the Commission's decision, as set out in the Supplement to the Panel Report, was as follows:

> Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.
>
> Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

EXHIBIT
C

TTY For the Deaf
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

The Panel recommended and the Commission fully supported inviting Talbot County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria. Commission staff are available at your convenience to discuss new growth allocation procedures or to arrange a meeting with the Commission's Program Implementation Subcommittee.

Please contact me if you have questions or need additional information.

Sincerely,

Lisa A Hoerger

Lisa Hoerger
Natural Resource Planner

cc: Honorable Philip Carey Foster
Mr. R. Andrew Hollis, Talbot County
Mr. Mike Pullen, Talbot County
Ms. Mary Kay Verdery, Talbot County
Ms. Marianne Mason, DNR- AG