

Legal Advice to Polia, - Vol. 2

Talbot County

Civil Action 2p-c-py-pd5 095

10129104-
316105

MSA-S-1831-2

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND *
142 North Harrison Street *
Easton, Maryland 21601 *

Plaintiff *

Civil Action No.: 20-C-04-005095

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 *

PLEADINGS INDEX

- 1. June 11, 2004 Complaint for Declaratory Judgment, Petition for Writ of Mandamus, and Appeal from Administrative Agency
- 2. June 11, 2004 Notice to Administrative Agency of Judicial Review
- 3. July 6, 2004 Motion To Dismiss
- 4. July 20, 2004 Amended Complaint; Opposition To Motion To Dismiss
- 5. August 27, 2004 Withdrawal Of Motion To Dismiss Count II; Verified Answer To Count II
- 6. August 31, 2004 Amendment To Verified Answer To Count II
- 7. September 8, 2004 First Request For Production Of Documents

8. September 25, 2004 St. Michaels' Motion To Intervene/Proposes Answer/Proposed Counterclaim
9. October 12, 2004 Opposition To St. Michaels' Motion To Intervene
10. October 14, 2004 Notice of Motions Hearing
11. October 22, 2004 Response To First Request For Production Of Documents
12. October 29, 2004 Memorandum In Reply To Opposition To St. Michaels' Motion to Intervene
13. November 1, 2004 Motion To Intervene (Oxford)
14. November 22, 2004 Supplemental Memorandum Of Law In Support Of Motion To Dismiss Count III
15. November 29, 2004 Supplemental Memorandum In Support Of Motion To Dismiss Count III
16. December 1, 2004 ORDER granting intervention motions
17. December 8, 2004 ORDER dismissing Count III
18. December 14, 2004 Answer To Complaint (St. Michaels) and Counterclaim
19. December 15, 2004 Answer To Complaint (Oxford) and Counterclaim
20. February 18, 2005 Requests for Production of Documents from St. Michaels to DNR and Talbot County
21. February 18, 2005 Second Amended Complaint
22. March 6, 2005 Order For Scheduling Conference
23. March 8, 2005 Answer Of Town Of Oxford To Second Amended Complaint
24. March 16, 2005 DNR's Answer To Second Amended Complaint
25. March 24, 2005 Notice To Attorney General

26. March 29, 2005 Plaintiff's Second Requests for Documents and Interrogatories to DNR; First Request for Production of Documents to St. Michaels and Oxford
27. April 1, 2005 DNR's Response To First Request For Production Of Documents From St. Michaels
28. April 14, 2005 Pretrial Scheduling Order
29. April 22, 2005 Response To First Request For Production Of Documents From St. Michaels
30. May 3, 2005 St. Michaels' Response To The First Request For Production Of Documents Of Plaintiffs
31. June 9, 2005 Answers To Plaintiff's First Set Of Interrogatories To CAC; Response To Second Request For Production of Documents
32. September 9, 2005 Notice Of Service Of Discovery - From St. Michaels to Talbot County (Request for Admissions, Interrogatories, Request for Production)
33. September 13, 2005 Notice Of Service Of Discover (Response Of Oxford to Production Request from Talbot County; Interrogatories from Oxford to Talbot County
34. October 13, 2005 Response To Request For Admissions Of Fact
35. October 19, 2005 Motion To Intervene by Miles Point Properties, LLC
36. October 24, 2005 Defendant DNR's Consent to Miles Point, LLC's and The Midland Companies' Inc., Motion to Intervene
37. October 24, 2005 Talbot County's Response to Commissioners of St. Michaels' Second Request for Production of Documents
38. October 27, 2005 Town of Oxford's Consent to Miles Point, LLC's and The Midland Companies, Inc.'s Motion to Intervene
39. November 4, 2005 Talbot County's Opposition to Miles Point LLC and The Midland Companies, Inc.'s Motion to Intervene

40	November 10, 2005	Defendant DNR's Notice of Entry of Appearance of Joseph P. Gill
41	November 10, 2005	Supplement to Talbot County's Opposition to Miles Point LLC and The Midland Companies, Inc.'s Motion To Intervene
42	November 14, 2005	Motion of St. Michael's to Incorporate and Adopt by Reference The Motion for Summary Judgment filed by Miles Point Property, LLC and The Midland Companies, Inc.
43	November 14, 2005	Talbot County's Supplemental Response to Motion To Intervene
44	November 14, 2005	Talbot County's Nunc Pro Tunc Motion for Extension Of Time to File Motion for Summary Judgment
45	November 14, 2005	Talbot County's replacement copy of first page of Talbot County's Supplemental Opposition filed on November 10, 2005
46	November 14, 2005	Defendant DNR's Motion for Summary Judgment w/ Memorandum and Proposed Order
47	November 14, 2005	Commissioners of St. Michael's Motion for Summary Judgment, Memorandum in Support Thereof and Exhibits and Opinion and Final Order Granting Summary Judgment and Declaratory Relief
48	November 14, 2005	Talbot County's Motion for Summary Judgment
49	November 14, 2005	Miles Point Property, LLC's and The Midland Companies, Inc.'s Motion for Summary Judgment and Statement of Grounds and Authorities in Support Thereof
50	November 14, 2005	Motion for Summary Judgment by the Town of Oxford
51	December 7, 2005	Signed Order Granting Right to Intervene and Supplemental Scheduling Order
52	December 13, 2005	Town of Oxford's Opposition to Talbot County's Motion for Summary Judgment

- 53 December 13, 2005 Defendant DNR's Memorandum in Opposition to Talbot County's Motion for Summary Judgment
- 54 December 14, 2005 The Commissioner's of St. Michael's Opposition to Talbot County's Motion for Summary Judgment, Memorandum in Opposition Thereof, Exhibits and Proposed Order
- 55 December 14, 2005 Miles Point Property, Inc.'s and The Midland Companies, Inc.'s Opposition to Talbot County's Motion for Summary Judgment

RECEIVED

IN THE CIRCUIT COURT FOR TALBOT COUNTY

MAR 9 2005

DNR - LEGAL DIVISION

TALBOT COUNTY MARYLAND

Vs.

Case No: 20-C-04-005095

DEPT. NATURAL RESOURCES
CRITICAL AREA COMM

* * * * *

ORDER FOR CIVIL NON-DOMESTIC SCHEDULING CONFERENCE

Scheduling Conference has been scheduled for:

APRIL 14, 2005
1:30 PM

Presiding: *The Honorable George B. Rasin, Jr.*

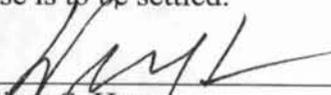
At the Courthouse, 11 North Washington Street, Easton, Maryland in accordance with Maryland Rule 2-504.1 for the purposes set forth in the provisions of the Differentiated Case Management Plan for Talbot County. Requests for change of that date will be considered only in accordance with those provisions. If you are not available on the above date, you must notify the Assignment Clerk at 410-822-4444 immediately.

Attendance: Parties who are represented by an attorney are not required to attend. Attorneys are required to attend, but may participate in the scheduling conference by telephone in accordance with the provisions attached which relate to use of Court Call facilities.

Note: As required by rule 2.504.1, counsel shall confer in person or by telephone and attempt to reach agreement or narrow the areas of disagreement regarding the matters that may be considered at the conference and complete sufficient initial discovery to enable them to participate meaningfully and in good faith in the conference and to make decisions regarding settlement, consideration of available and appropriate forms of alternative dispute resolution, limitation of issues, stipulations and other matters that may be considered at the conference.

If there is a possibility of settlement, bona fide negotiations should be entered into promptly and this office should be advised as soon as possible if the case is to be settled.

3-6-05
Date


William S. Horne
Judge

Attachments: Excerpt from Case Management Plan
Court Call Information

2005 MAR 7 AM 8 23
TALBOT COUNTY
EASTON, MARYLAND

Memo

To: All Counsel
From: George B. Rasin, Jr., Judge
Date: February 15, 2005
Subject: Court Call Telephonic Appearance

We have begun the use of CourtCall to conduct telephonic appearances by counsel ("CourtCall Appearances") for our scheduling conferences. We hope that this will make your practice more productive and enjoyable and will reduce the cost of litigation.

Counsel may make a Court Call Appearance by serving and submitted to CourtCall, **NOT LESS THAN FIVE (5) COURT DAYS PRIOR TO THE HEARING DATE** a Request for Telephonic Appearance Form and paying a fee of \$55.00 for each CourtCall Appearance. For example, the submission and payment for a CourtCall Appearance on March 10, 2005 must be made not later than March 3, 2005. Required submission and payment procedures are detailed within the accompanying instruction sheet entitled: "**How to Use CourtCall.**"

A CourtCall Appearance is made as part of a Court's regular calendar and all counsel who have timely filed their request form and paid the fee may appear by dialing the Courtroom's dedicated **toll free teleconference number, and access code (if any) which will be provided by CourtCall, LLC on the confirmation faxed to your office.** A pre-hearing check-in will occur five minutes prior to the scheduled hearing time. A CourtCall Appearance is voluntary and may be made without consent of the other party or advance consent of the Court, which, however, reserves the right to reject any request. In matters where only one party elects to make a CourtCall Appearance, the matter will be heard on the Court's speakerphone.

The CourtCall Calendar shall be conducted in conformity with state law and rules of court. The request forms are now available for pick-up in the participating Courtrooms or by calling the CourtCall Program Administrator, **CourtCall, LLC** at (310-342-0888) or (888-882-6878. For information about CourtCall please call CourtCall, LLC, not the participating Courtrooms!!!

Excerpt of Case Management Plan - Civil Non-Domestic

2.1 The Scheduling Conference

2.1.1 Who shall attend

Scheduling Conferences are held before a judge designated by the Administrative Judge to hear these matters. Attendance at scheduling conference is required of all attorneys whose appearance is entered in the case. If a party is not represented by counsel, the party must attend. The Court may hold a scheduling conference in chambers, in open court or by telephone or other electronic means. The conference will be conducted in accordance with Maryland Rule 2-504.1

2.1.2 Content of Conferences

A scheduling conference will include discussion of any matter relevant to management of the case, including assignment to a procedural track, establishment of dates for the designation of experts and for completion of discovery, deadlines for filing motions, notices concerning computer-generated evidence and other pretrial procedures, establishment of a settlement conference date, issuance of a Scheduling Order and other matters referred to in Rules 2-504 through 2-504.2. Authorization may be given for an attorney to participate in a scheduling conference by telephone in accordance with paragraph 2.1.3 of this plan. At the conclusion of the conference the Court will issue a Scheduling Order setting forth matters decided which control the subsequent course of the action. The dates set in the Scheduling Order are strictly enforced and subject to modification by the Court only to prevent manifest injustice.

Trial Date. In most instances no trial date shall be set at scheduling conference. Rather, the case will be managed in such a manner as to facilitate settlement prior to or at the time of the Settlement Conference. A merits hearing will be scheduled only if and when a meaningful settlement conference fails to resolve all pending issues in the case. The purpose of this policy is to ensure that those cases scheduled for trial cannot be resolved by alternate dispute resolution methods and that any case scheduled for trial is actually ready to go to trial. This policy is designed to facilitate settlement as early on in the case as possible to spare the parties unnecessary expense and delay. By setting a date for the merits hearing later on in the case, the Court can more accurately predict the number of cases to be heard and the trial taking place on the scheduled day is far more likely.

2.1.3 Telephone participation in scheduling conference

(A) Definitions: In this paragraph (i) "attorney" means an attorney who has entered an appearance in an action to be considered at a scheduling or pretrial conference and has full authority to make decisions with respect to the conduct of the action and, in particular, all matters which may be discussed at a scheduling conference; (ii) "telephone participation" and "participation by telephone" mean participation in accordance with CourtCall procedures; and (iii) "Court Call procedures" means the procedures set forth on the page entitled "How to Use CourtCall"

(B) When authorized. An attorney may elect to participate in a scheduling conference by telephone, unless such participation is specifically not permitted by the Administrative Judge in that particular case. Approval of other attorneys and parties is not required. An unrepresented party is not authorized to participate by telephone at any time.

(C) Effect. Attorneys participating by telephone will be considered for all purposes to be in the presence of the Court in the room where the Court is conducting scheduling conferences. An attorney who is not physically present or participating by telephone at the time stated in the Notice of Scheduling Conference will be considered absent and subject to all decisions made at the scheduling conference and/or to appropriate sanctions for failure to appear.

(D) Arrangements for participation. Arrangements for telephone participation must be made by the attorney *directly* with CourtCall, in accordance with CourtCall procedures, at least five (5) Court days before the date of the conference. Court personnel are not permitted to vary any CourtCall procedures, accept any form of payment due in connection with such participation or contact CourtCall on behalf of any attorney. Failure to arrange for telephone participation through CourtCall within the time and in the manner prescribed by the CourtCall procedures will not constitute reason for postponement or continuance of a conference.

(E) Fees. Fees payable to CourtCall are established by contract. A separate fee is payable with respect to each case, whether or not an attorney has multiple cases at the same conference. If a continuance is approved before the conference day, any fee already paid will be applied to the new hearing date; in all other cases, including complete cancellation of a conference, the fee is non-refundable. A portion of each fee will be remitted to the Court and used as directed by the County Administrative Judge and approved by the County Council.

CourtCall, LLC
Telephonic Court Appearances
6383 Arizona Circle
Los Angeles, California 90045
(TEL) 310-420-0888 888-882-6878
(FAX) 310-743-1850 888-883-2946

How To Use CourtCall!

Filling Out The Form

1. Serve: Not less than 5 Court Days before the hearing **COMPLETELY** fill out the original of the Request for CourtCall Appearance (the "Request Form"). Retain the original Request Form in your file. **DO NOT FILE IT WITH THE COURT.** Check the box indicating the method of payment of the fee. **INCOMPLETE REQUEST FORMS MAY RESULT IN A DELAY IN PROCESSING!!**

2. Fax to CourtCall: Fax a copy of the Form to CourtCall not less than 5 Court days prior to the hearing. Do not fail to do so, as the CourtCall Calendar is set through these faxes!! **LATE FILINGS, IF ACCEPTED, ARE SUBJECT TO A LATE FEE!!**

3. Payment by Credit Card: Fill out credit card information *only* on the copy faxed to CourtCall and have that copy **SIGNED** by the **PERSON WHOSE NAME IS ON THE CREDIT CARD.**

4. Payment by Check: Fax a copy of check – write case # on check-payable to Telephonic Hearing Account to CourtCall with your Form and mail your check and a copy of your Form to CourtCall.

5. Proof of Payment/Calendar Confirmation: Under normal circumstances you should receive a Confirmation from CourtCall, by fax, within 24 hours of submission of a completed Request Form. The Confirmation will contain your teleconference number and access code (if any**).

IF YOU DO NOT RECEIVE YOUR FAXED CONFIRMATION FROM COURTCALL ON OR BEFORE THE COURT DAY PRECEDING YOUR HEARING, CALL COURTCALL IMMEDIATELY TO VERIFY YOUR STATUS – WITHOUT A WRITTEN CONFIRMATION YOU ARE NOT ON THE COURTCALL CALENDAR!

FOR INFORMATION AND QUESTIONS ABOUT A COURTCALL APPEARANCE, CALL COURTCALL, NOT THE CLERK/COURT!

When You Make The Call

*** YOU MUST CALL THE TOLL FREE NUMBER ON YOUR CONFIRMATION 5 MINUTES BEFORE YOUR SCHEDULED HEARING TIME.. NEVER USE A CELLULAR OR PAY PHONE.** If prompted, dial your Access Code.** You will be advised whether you are joining the call in progress or if you are the first to call or you may be placed on "music-on-hold."

* If Court has commenced, **DO NOT INTERRUPT!** You will have an opportunity to speak. If the call is in progress and you hear voices, wait until an opportunity to speak arises without interrupting others. The Clerk may be performing a check-in and will get to you.**

* After check-in wait until your case is called. Use your speakerphone while waiting if you are able to mute the microphone to eliminate ambient noise. When your case is called you **MUST USE THE HANDSET.** Identify yourself each time you speak and use common courtesy.

* If you are the first person on the call be patient, even if you experience silence or are placed on "music-on-hold," as the Clerk will join the call in due course. As others join you will hear a mild beep-beep" indicating others are on the line. Until your case is called do not speak other than with the Clerk. ** If the Clerk does not join the call **within 15 minutes after your scheduled hearing time, have a staff member call CourtCall on our toll free Help Line – (888) 882-6878 and we will be happy to assist you. DO NOT LEAVE THE LINE!**

**If the Confirmation from CourtCall does not list an access code with your assigned teleconference number, your matter will be heard privately, not in open court. The 5 minute check-in period will be conducted by a Teleconference Specialist who will conduct the conference in accordance with the Court's instructions. You will be placed on "music-on-hold" while you wait for the Judge to call your matter. The rules regarding cell phones and use of handsets apply.

IF YOUR HEARING IS CONTINUED YOU MUST NOTIFY COURTCALL OF THE CONTINUANCE, IN WRITING, PRIOR TO YOUR COURTCALL APPEARANCE TO HAVE YOUR FEE APPLY TO THE CONTINUED HEARING. MATTERS CONTINUED AT THE TIME OF THE HEARING REQUIRE A NEW FORM AND A NEW FEE FOR THE CONTINUED DATE.

ATTORNEY OF RECORD (Name /Address/Phone/Fax): State Bar No. _____ ATTORNEY FOR (Name): _____	DO NOT FILE WITH COURT COMPLETELY FILL OUT/CORRECT FORM BEFORE SUBMITTING TO COURTCALL!!
Talbot County Circuit Court	CASE NUMBER: JUDGE/DEPARTMENT: DATE AND TIME: NATURE OF HEARING:
REQUEST FOR COURTCALL TELEPHONIC APPEARANCE	

1. _____ (Name of specific attorney appearing telephonically) requests a CourtCall telephonic calendar appearance at the above referenced proceeding and agrees to provisions of the Rule/Order/Procedure Re: CourtCall Telephonic Appearances. **I UNDERSTAND THAT I DIAL INTO THE CALL FIVE MINUTES BEFORE ITS SCHEDULED START TIME.**
2. Not less than five Court days prior to hearing, a copy of this document was served on all other parties and faxed to CourtCall, Telephonic Appearance Program Administrator at (310) 572-4679 OR (888) 88-FAXIN.
3. The non-refundable CourtCall Appearance Fee in the sum of \$55.00 (plus additional fee of \$35.00 if late filing is accepted) is paid as follows:
 - Check (copy attached-write case # on check and fax to CourtCall at (310-743-1850) or (888-883-2946) payable to Telephonic Hearing Account and original mailed to CourtCall at 6365 Arizona Circle, Los Angeles, California 90045, telephone (310-420-0888) or (888-882-6878).
 - Charged to CourtCall Debit Account No.: _____
 - Charged to VISA, MasterCard or American Express:

TO BE COMPLETED ONLY ON THE COPY SUBMITTED TO CourtCall, LLC: Credit Card: <input type="radio"/> VISA <input type="radio"/> MasterCard <input type="radio"/> American Express Credit Card Number: _____ Expiration Date: _____ To pay by credit card, the copy of this form submitted to CourtCall, LLC, must be signed by the person whose card is to be charged and must be faxed to CourtCall at (310) 572-4670 or (888) 88-FAXIN with the above credit card information completed. The signature below constitutes authorization to charge the above referenced credit card. Date: _____ Name on Card: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> Type Name Signature </div>
--

4. Request Forms are usually processed within 24 hours. Call CourtCall if you do not receive a faxed Confirmation from CourtCall on or before the Court day preceding your CourtCall Appearance. **WITHOUT A WRITTEN CONFIRMATION YOU ARE NOT ON THE COURTCALL CALENDAR!**

Dated: _____

Signature

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

Case Number: 20-C-04-005095 DJ

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

REC-1111

MAR 9 2005

FOLD HERE

DNR - LEGAL DIVISION



RECEIVED

FEB 24 2005

TALBOT COUNTY, MARYLAND

TALBOT COUNTY GOVERNMENT BUILDING

142 N. HARRISON STREET

EASTON, MD 21601

PHONE: 410-770-8092

DNR - LEGAL DIVISION

Fax: 410-770-8089

TTY: 410-822-8735

mpullen@talbgov.org

MICHAEL L. PULLEN
County Attorney

LETTER OF TRANSMITTAL

TO: Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
J. Joseph Curran, Jr., Attorney General

FR: Terry Ertter, Legal Assistant

DATE: February 18, 2005

RE: **Talbot County, Maryland v. Department of Natural Resources**
Circuit Court of Maryland for Talbot County
Civil Action No. 2-C-04-005095 DJ

For your convenience, I have enclosed courtesy copies of the Second Amended Complaint and exhibits.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

2005 FEB 18 PM 4 14
CIRCUIT COURT
TALBOT COUNTY
EASTON, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs.

DEPARTMENT OF NATURAL :
RESOURCES CRITICAL AREA :
COMMISSION FOR THE CHESAPEAKE :
AND ATLANTIC COASTAL BAYS :

Defendant :

vs. :

Civil Action No. 2-C-04-005095 DJ

THE COMMISSIONERS OF :
ST. MICHAELS :

and :

TOWN OF OXFORD, MARYLAND :

Intervenors, Defendants :
and Counter-Plaintiffs :

SECOND AMENDED COMPLAINT

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, Victoria Shearer, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files this Second Amended Complaint seeking a declaratory judgment declaring that Bill 933 (Exhibit "A") has been validly enacted as a local program amendment to Talbot County's Critical Area Program, and seeking a writ of mandamus directing the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, to approve Bill No. 933 as a local program amendment to Talbot County's Critical Area Program. In support of this action, Plaintiff states as follows:

Parties

1. Talbot County, Maryland, is a charter county and a political subdivision of the State of Maryland.
2. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, hereinafter "Critical Area Commission", is a Commission within the Department of Natural Resources created by § 8-1803, Natural Resources Article, Md. Ann. Code.
3. The Commissioners of St. Michaels, intervenor-defendant, is the corporate name of a Maryland municipal corporation generally known as the Town of St. Michaels or "St. Michaels" hereinafter. St. Michaels derives all its corporate and municipal power entirely from the State of Maryland.
4. The Town of Oxford, or "Oxford" hereinafter, intervenor-defendant, is a Maryland municipal corporation deriving all its corporate and municipal power entirely from the State of Maryland.

The Legal Framework

5. The Chesapeake Bay has been in decline for a number of years. One of the principal causes of that decline is pollution from the adjacent land mass. Studies have shown a direct link between population proximity to the shore and pollution in the adjacent Bay waters and rivers.
6. Inter-jurisdictional cooperation is essential to address the Bay's continuing decline by coordinated land use policies including all land masses (States, Counties, and municipalities) surrounding the Bay and its watershed. One such effort is the Chesapeake 2000 Agreement, signed by the Chesapeake Bay Commission, the State of Maryland, the Commonwealth of Pennsylvania, the Commonwealth of Virginia, the District of Columbia, and the United States of America.
7. Another such effort, the Maryland General Assembly's statewide response to the decline of the Bay, is the Chesapeake Bay Critical Area Program, Natural Resources Article § 8-1801 *et. seq.*¹, The Chesapeake Bay Critical Area Program is comprised of Title 8, Subtitle 18, "Chesapeake Bay Critical Area Protection Program" and regulations contained in the Code of Maryland Regulations (COMAR) Title 27, "State Critical Area Commission."

¹ Further references to Title 8, Subtitle 18 of the Natural Resources Article will only include the numeric designation. In the event other articles or subtitles of the Maryland Annotated Code are referred to, a complete citation will be used.

8. The Maryland General Assembly adopted legislative findings of fact when it enacted the Chesapeake Bay Critical Area Program, § 8-1801 (a), viz.:

(a) The General Assembly finds and declares that:

(1) The Chesapeake and the Atlantic Coastal Bays and their tributaries are natural resources of great significance to the State and the nation;

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;

(3) The capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited;

(4) Human activity is harmful in these shoreline areas, where the new development of non water-dependent structures or the addition of impervious surfaces is presumed to be contrary to the purpose of this subtitle, because these activities may cause adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and Atlantic Coastal Bays, and thus it is necessary wherever possible to maintain a buffer of at least 100 feet landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands;

(5) National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region;

(6) Those portions of the Chesapeake and the Atlantic Coastal Bays and their tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore-Washington metropolitan corridor and along the Atlantic Coast;

(7) The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake and the Atlantic Coastal Bays, and their tributaries;

(8) The restoration of the Chesapeake and the Atlantic Coastal Bays and their tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands, particularly in the buffer;

(9) The cumulative impact of current development and of each new development activity in the buffer is inimical to these purposes; and

(10) There is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake and the Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality and natural habitats.

9. The Purposes of the Chesapeake Bay Critical Area Protection 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)

10. The critical area includes "all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article." § 8-1807 (a) (2). The critical area is a 1000 foot ribbon encircling the Bay that transects County-municipal boundaries.

11. Land lying within the critical area is mapped as either "Resource Conservation Area" (RCA), "Limited Development Area" (LDA), or "Intensely Developed Area" (IDA) based upon the density of existing development as of December 1, 1985. Section 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 a remapped from RCA to either LDA or IDA.

12. The Critical Area Commission must approve any proposed local critical area program. *Id.* § 8-1809 (i). In accordance with this requirement, Talbot County submitted its proposed program to the Critical Area Commission for review and approval. The Critical Area Commission approved Talbot County's proposed program and it became effective August 13, 1989.

13. Section 8-1809 (g), requires each local jurisdiction to review its entire program and propose any necessary amendments to its program, at least once every 4 years, beginning with the 4-year anniversary of the program's effective date, and every 4 years thereafter. The Critical Area Commission must approve any proposed local program amendments. *Id.* § 8-1809 (i).

14. 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.

15. COMAR 27.01.02.06 A. (2), part of the criteria adopted by the Commission, 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."

Count I Declaratory Judgment

16. The allegations of paragraphs 1-15 are incorporated by reference herein as if fully set forth.

17. When Talbot County adopted (and the Critical Area Commission approved) its program in 1989, 3 planning maps were included showing anticipated growth areas around the towns of Easton, Oxford, and St. Michaels. Using those 1989 planning 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.

18. "Reserving" County growth allocation for municipalities in a County ordinance, based on County planning maps, for future (anticipated) municipal growth does not transfer growth allocation to a municipality without the continuing consent of the County's elected representatives.

19. The County's continuing consent to "reserve" growth allocation for municipalities may be freely withdrawn by the County's elected representatives, in the valid exercise of the legislative prerogative granted to Talbot County by Article 25 A §5 (the "Express Powers Act") and by the County Charter.

20. The municipalities, as such, have no vested rights to require the County to continue the "reservation" of growth allocation, nor to prevent the County from changing the 1989 the "reservation" of growth allocation to any municipality.

21. State law creates growth allocation, and State law assigns control over awards of growth allocation to the counties.

22. There is no provision in State law that operates to permanently transfer growth allocation from the County to St. Michaels, or to Oxford, without the County's original and continuing consent. Nor is there any provision in State law that prohibits the County from modifying this "reservation" in its own ordinance, subject only to the authority of the Critical Area Commission to review the local program change to determine if it meets State standards and criteria pursuant to § 8-1809 (j).

23. In accord with the quadrennial review requirement of Section 8-1809 (g), Talbot County duly enacted Bill 933 as a proposed local program amendment and submitted it to the Critical Area Commission for their review. Bill 933, and other Bills that accompanied it, (Bills 929, 930, 931, and 932), resulted from the first comprehensive review and revision to the County's local program since it was adopted in 1989.

24. Talbot County forwarded Bill 933 to the Critical Area Commission on December 29, 2003 for its review as a local program amendment.

25. State law requires the Critical Area Commission, within 10 working days of receiving a proposed program amendment, to either (i) mail a notification to the local jurisdiction that the proposal has been accepted for processing; or (ii) return the proposal as incomplete. § 8-1809 (m) (2)

26. Talbot County again forwarded Bill 933 to the Critical Area Commission on January 19, 2004.

27. The Critical Area Commission failed to comply with the requirements of § 8-1809 (m) (2), by failing to either mail a notification to Talbot County that the proposal has been accepted for processing or to return the proposal as incomplete within 10 working days of receiving the transmittal of December 29, 2003, or, alternatively, 10 working days of receiving the transmittal of January 19, 2004.

28. The Critical Area Commission accepted Bill 933 for review on February 5, 2004. The Critical Area Commission's belated acceptance of Bill 933 for review on February 5, 2003, was in violation of the requirements of Maryland law.

29. Section 8-1809 (o) provides that, "for proposed program amendments: the commission shall act on the proposed program amendment within 90 days of the commission's acceptance of the proposal. If action by the commission is not taken within 90 days, the proposed program amendment is deemed approved."

30. The Critical Area Commission failed to comply with the requirement that the commission act on a proposed program amendment within 90 days of the commission's acceptance of the proposal by (1) unduly delaying acceptance of the proposed program amendment beyond the 10 days permitted by § 8-1809 (m) (2), and by (2) failing to take action within 90 days of the date for acceptance.

31. Bill 933 became operative pursuant to § 8-1809 (o), by virtue of the Commission's failure to act within the appropriate period of time established by State law.

32. Alternatively, although Bill 933 fully complied with the standards set forth in § 8-1808 (b) (1) through (3) and with the criteria of the critical area program adopted by the Commission under § 8-1808, the Critical Area Commission refused to approve it as a local program amendment.

33. Both State and County law provided for quadrennial comprehensive review of the County's local critical area program, including the 1989 planning maps, for, *inter alia*, possible recalculation and reallocation of reserved growth allocation. Those comprehensive reviews should have occurred in 1993, 1997, and 2001. However, no comprehensive reviews of Talbot County's local critical area program took place until 2003. Consequently, until 2003, the 3 planning maps adopted in 1989 remained static as a prospective look to the future, frozen in time.

34. By 2003, any continued usefulness or relevance of the 1989 planning maps had been wholly eliminated through adoption of 2 intervening, (and now, in 2005, 3) County Comprehensive Plans.

35. Many other changes occurred between 1989 and 2003. Town boundaries, planned growth areas, municipal growth needs, planning policies, and, not the least, the Bay's health, (continuing decline) all changed, as did State and local growth policies. There were ongoing, revised environmental assessments, revised environmental policies, and adoption of other goals, agreements, (The Chesapeake Bay 2000 Agreement) and metrics to establish and measure the success of the national, inter-state, and statewide effort to reverse the Bay's decline.

36. Bill 933, which was adopted in 2003 as part of the required quadrennial comprehensive review of Talbot County's local critical area program, took into account actual events during the 14 years since adoption of the 1989 planning maps. Bill 933 properly repealed those outdated maps.

37. In addition to intervening adoption of County Comprehensive Plans that show substantially different municipal growth areas than the 1989 planning maps, other circumstances changed as well. On April 25, 2000, Talbot County duly enacted Bill 762 and submitted it to the Critical Area 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 "B" and it is incorporated by reference herein. Bill 762 complied with the critical area criteria [COMAR 27.01.02.06 A. (2)], that require 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.

38. Bill 762 was drafted in coordination with affected municipalities, circulated to the municipalities and their attorneys for comment, amended to incorporate their suggested changes, and approved by the Critical Area Commission.

39. Bill 762 is now and has been part of Talbot County's local critical area program since 2000. Bill 762 gives Talbot County joint review, in conjunction with affected municipalities, over supplemental awards of growth allocation to municipalities.

40. Even in the absence of the procedure established by Bill 762, Bill 933 is a legitimate exercise by Talbot County of the State-delegated authority to control the process by which growth allocation is awarded.

41. Bill 933 repealed the outdated 1989 planning maps repealed the 1989 "reservation" of growth allocation to the towns based on those planning maps.

Count II Declaratory Judgment

42. The allegations of paragraphs 1-41 are incorporated by reference herein as if fully set forth.

43. Bill 933 meets the standards set forth in § 8-1808 (b) (1) through (3).

44. Bill 933 meets the criteria adopted by the Commission under § 8-1808.

45. Bill 933 meets the standards and criteria established by § 8-1809 (j), as the benchmark for the Critical Area Commission's decision to approve local program amendments.

46. Bill 933 is consistent with other county programs throughout the State of Maryland concerning the method for awarding growth allocation to municipalities. Those county programs had been previously approved by the Critical Area Commission, remain approved, and are currently in effect in other Maryland counties.

47. Even though Bill 933 met all applicable criteria and standards, and even though enactment of Bill 933 promotes the environmental policies upon which the State critical area law is based, the Critical Area Commission failed, neglected, and refused to approve Bill 933 as a local program amendment to the 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.

48. The Commission's refusal to approve Bill 933 is 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 their consideration and applied improper criteria in making its decision.

Count III Declaratory Judgment

49. The allegations of paragraphs 1–50 are incorporated by reference herein as if fully set forth.

50. The General Assembly has enacted statewide restrictions on development in the critical area. These Statewide restrictions apply equally in municipalities and counties. In particular, in areas mapped as RCA, new development is limited to 1 dwelling unit per 20 acres.

51. As the State's legislature, the Maryland General Assembly inherently possesses full power to legislate for the entire State and for its political subdivisions, subject only to limitations imposed by the United States Constitution and the Maryland Constitution. By contrast, the State's municipal corporations only possess authority to legislate in those areas authorized by the Maryland Constitution or by the Maryland General Assembly. Furthermore, the authority of municipal corporations is often limited by the decisions of the General Assembly to preempt areas of statewide concern.

52. The Maryland General Assembly created "growth allocation," by enacting § 8-1808.1. Growth allocation permits new development at densities greater than 1 per 20 on land mapped RCA.

53. Growth allocation is created by State law and delegated by the State to the counties. This is a valid exercise of legislative power by the State.

54. State law defines a "local jurisdiction," to include both municipalities and counties having land in the critical area. Growth allocation is calculated under the same State formula for all "local jurisdictions" by multiplying the total amount of RCA in the local jurisdiction by 5%. §8-1808.1 (b). Municipalities and counties are treated identically under the formula. Each gets 5% of the local jurisdiction's RCA as its growth allocation.

55. Applying the State formula, (growth allocation acreage = 5% of land mapped RCA) results in 2,554 acres of growth allocation for Talbot County based on approximately 51,080 acres classified RCA.

56. St. Michaels had approximately 98.04 acres classified as RCA. According to the State formula, $5\% \times 98.04 = 4.9$ acres of growth allocation. Oxford, similarly, had a relatively small amount of growth allocation under the State formula. This result flows directly from State law, not County law.

57. State law does not transfer growth allocation from the counties to the municipalities. Instead, State law delegates, and mandates, that Maryland's counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities. Talbot County has done so.

58. Maryland's counties have adopted differing approaches to awarding growth allocation to municipalities. Many counties require municipalities to apply to the county for awards of growth allocation. All these differing approaches are consistent with Maryland State law and have been approved by the Critical Area Commission.

59. Under Maryland law, the question of what process counties create to accommodate the growth needs of municipalities is to be determined by the counties, in coordination with affected municipalities, in the exercise of this State-delegated power to Maryland counties.

60. The Critical Area Commission, by refusing to approve Bill 933, usurped and illegally interfered with the County's State-delegated authority to determine what processes to adopt to provide for the growth needs of municipalities.

Count IV Declaratory Judgment

61. The allegations of paragraphs 1-60 are incorporated by reference as if fully set forth herein.

62. The primary reason for the Commission's decision², as explained in the letter of May 14, 2004 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. Michael's program for the Strausburg growth allocation approved in October 2003."

63. This reasoning assumes that the Commission's decision to approve a particular project for a single property owner is superior to, and takes precedence over the County's exercise of its State-delegated legislative prerogatives. In effect, according to the Critical Area Commission's reasoning, one property owner's project approval prohibits the County from validly exercising its State-delegated police power to legislate.

64. The first reason stated by the Critical Area Commission in support of its decision is contrary to law. Growth allocation awards, absent vested rights, are subject to the superior, and ongoing, right of the State or County, in the exercise of its lawful authority, to enact legislation. It is not within the prerogative of the Critical Area Commission to unilaterally determine that its prior project approval takes precedence over a validly enacted County ordinance.

² This "local program change" was, in reality, a map amendment affirming a request for approximately 20 acres of growth allocation. It was not a text amendment to St. Michaels' critical area program.

65. The second reason given by the Critical Area Commission for refusing to approve Bill 933 was that:

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 which create is contrary to the commission's oversight responsibility to insure that local programs are implemented in a consistent and uniform manner.

66. The Critical Area Commission has already approved many county programs that require municipalities to request growth allocation from the county. Thus, to the extent that the critical area commission is required to exercise oversight to insure that local programs are implemented in a consistent and uniform manner, that obligation requires approval of Bill 933, because Bill 933 is consistent with the critical area commission's previous approvals of similar procedures in other counties.

67. There is no evidence that St. Michaels local critical area program was premised on growth allocation reserves provided by the County. St. Michaels' program was adopted in 1987, two years before the County's program was adopted in 1989.

68. There is no evidence that Oxford's critical area program was premised on growth allocation reserves provided by the County. Much of the area included in the 1989 (anticipated) growth areas around Oxford has already been developed, in the County, and annexation of that area has specifically been rejected by Oxford.

69. 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:

- (1) Bill 933 meets the standards set forth in § 8-1808 (b) (1) through (3); and
- (2) Bill 933 meets the criteria adopted by the Commission under § 8-1808; and
- (3) Bill 933 became effective by reason of the Commission's failure to accept and process the Bill, and to act on the Bill within the time permitted by State law.

70. The Critical Area Commission, the Commissioners of St. Michaels and the Town of Oxford deny this.

Count V Mandamus and Certiorari

71. The allegations of paragraphs 1-72 are incorporated by reference herein as if fully set forth.

72. The Critical Area Commission is charged with the responsibility of reviewing local program amendments to determine whether they comply with the standards set forth in § 8-1808 (b) (1) through (3) and the criteria adopted by the Commission under § 8-1808.

73. 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 their decision.

74. 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.

75. 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.

76. The Commission erred as a matter of law by applying the wrong standards and criteria, and by ignoring the proper standards and criteria.

77. The Commission erred as a matter of law in misinterpreting the standards and criteria applicable to their decision; the Commission misconstrued the law and the facts and their own statutory powers.

78. The Commission acted contrary to law and beyond the scope of their 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 them in considering Bill 933 as a local program amendment.

WHEREFORE, Plaintiff requests the Court to review the decision of the Critical Area Commission on its 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 remand this case to the Critical Area Commission for further consideration of Bill 933 as a local program amendment in light of the Court's decision in this case. In addition, Plaintiff prays:

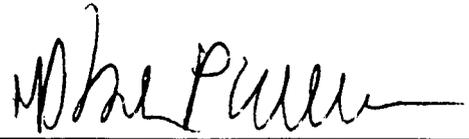
- A. That the Court assume jurisdiction over this controversy and issue a declaratory judgment;
- B. That the Court declare that the Critical Area Commission is required to consider

only the standards set forth in § 8-1808 (b) (1) through (3); and the criteria adopted by the Commission under § 8-1808, when reviewing a proposed local program amendment.

- C. That the Court determine that the Commission exceeded the proper scope of its authority by failing to consider only those standards and criteria.
- D. That the Court determine that the Commission failed to adequately articulate appropriate findings of fact to justify their decision to not approve Bill 933 as a local program amendment.
- E. That the Court determine that the reasons expressed by the Critical Area 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.

Daniel Karp / MP
Daniel Karp

Victoria Shearer / MP
Victoria Shearer
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore MD 21202-1089
Attorneys for Talbot County, Maryland
(410) 727-5000



Michael L. Pullen
11 N. Washington St.
Easton, Maryland 21601
Talbot County Attorney
(410) 770-8092

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2005, a copy of the foregoing Second 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

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

David R Thompson Esq
Cowdry Thompson & Karsten PA
130 N Washington St
P.O. Box 1747
Easton, Maryland 21601



Of Counsel for Plaintiff
Talbot County, Maryland

1 **A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF**
2 **GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO**
3 **COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-**
4 **YEAR REVIEW REQUIREMENT**
5

6
7
8
9 WHEREAS, when Talbot County adopted its Critical Area Program effective August 13,
10 1989, it adopted three maps showing then anticipated growth areas around the Towns of Easton,
11 St. Michaels, and Oxford, and
12

13 WHEREAS, at the time of adoption, § 190-109 D (11) provided that the number of
14 reserved areas allocated among the towns based on those maps for rezoning for growth allocation
15 should be reviewed by June 1, 1993 for possible reallocation, and at least every four years
16 thereafter. None of the four-year reviews have occurred and these maps continue to reflect a
17 prospective look to the future from 1989; and
18

19 WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development
20 during the ensuing 14 years, nor do they represent current planning for growth areas around the
21 towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded
22 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded
23 15.223 acres of growth allocation; and
24

25 WHEREAS, the 1989 projections have no continued validity for any planning or zoning
26 purpose; and
27

28 WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem"
29 annexation, which is inconsistent with current principles of proper planning and the land use
30 goals and polices in the existing and draft Talbot County Comprehensive Plans; and
31

32 WHEREAS, the process created by the 1989 zoning ordinance is both redundant and
33 inconsistent or potentially inconsistent with the Comprehensive Planning Process; the
34 Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately
35 accomplishes planning for growth areas around Towns; and
36

37 WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the
38 State formula for calculating the total amount for each county [5% of the total resource
39 conservation area located within the County]; and
40

41 WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with
42 certain exceptions, no more than one-half of the expansion permitted by growth allocation in the
43 critical area may be located in resource conservation areas (RCA); and
44

45 WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if
46 Talbot County is unable to utilize a portion of the County's total growth allocation within or
47 adjacent to exiting intensely or limited development areas, then that portion of the growth
48 allocation which cannot be so located may be located in an RCA; and
49

50 WHEREAS, Talbot County has followed this requirement of State law by restricting the
51 use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That
52 section provides that not more than 1,213 acres of land lying within the Critical Areas of the
53 County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived
54 from the total acreage available for growth allocation in the entire county by the following
55 formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available
56 growth allocation), less 128 acres reserved for reclassification from limited development areas to
57 intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres
58 divided by $\frac{1}{2}$ = 1,213 acres.]; and
59

60 WHEREAS, the County may not utilize the remaining 50% of available growth
61 allocation [1,213 acres] until the Critical Area Commission grants permission, under the
62 exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is
63 unable to utilize that portion of its available growth allocation in areas adjacent to limited or
64 intensely developed areas; and
65

66 WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, §
67 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for
68 growth allocation by the towns and/or the County, then the County shall request permission from
69 the Maryland Critical Area Commission to double the maximum number of acres that may be
70 reclassified from RCA from 1,213 to 2,426 acres; and
71

72 WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989
73 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of
74 Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County; and
75

76 WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation,
77 and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth
78 allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has
79 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth
80 allocation; and
81

82 WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it
83 grants a pending application for supplemental growth allocation submitted by the Town of
84 Easton for 156 acres, the County will have 160.229 acres of growth allocation; and
85

86 WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either
87 separately or in combination, could forever block the County from accessing the remaining
88 growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or
89 exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and
90

91 WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it,
92 and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in
93 approving projects for which the Town has requested supplemental growth allocation; and
94

95 WHEREAS, growth in and around the towns affects not only the particular town, but also
96 the County as a whole, and the County should, therefore, have some ability to protect the
97 County's legitimate interests as they are affected by development in the critical area, as
98 contemplated by State law when it gave this control to the counties under the Chesapeake Bay
99 Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and
100

101 WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot
102 County review its entire critical area program and propose any necessary amendments to its
103 entire program, including local zoning maps, at least every 4 years beginning in 1993 and every
104 4 years thereafter; and
105

106 WHEREAS, Talbot County is currently near completion of such a 4-year review, and as
107 part of that process desires to make the following amendments to the County's critical area
108 program to better reflect the original intent of the State law governing growth allocation, which
109 calculated growth allocation for Talbot County as 5% of the resource conservation area in the
110 County, and gave the County the authority to determine, within the limits imposed by State law
111 and regulations, how that growth allocation would be utilized, and reallocated among the Towns
112 and the County, project by project.
113

114
115 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT
116 COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is
117 hereby amended as set forth herein.
118

119 Maps 1, 2, and 3, attached, are hereby repealed.
120

121 * * *

122
123 **§ 190-109 D (9)**
124

125 (a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying
126 within the Critical Area within incorporated towns, shall be reclassified from the Rural
127 Conservation (RC) District (or town zoning districts established for the Resource
128 Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres,~~
129 ~~155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of~~
130 ~~Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation~~
131 ~~associated with annexations, and 618 acres is reserved for the County.~~
132

133 * * *

134
135 **§ 190-109 D (10)** Reclassification of land within incorporated towns
136

137 (a) Not more than 128 acres of the Critical Area of the County, including lands within the
138 incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an
139 Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts
140 include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas
141 of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC)
142 or Limited Industrial (LI). Town zoning districts include all districts classified as LDA.
143 The requested IDA classification shall include areas of 20 or more contiguous acres of
144 LC, GC, LI or town zoning districts established for the IDA of the Critical Area.
145

146 (b) In determining whether the twenty-acre threshold has been reached, the contiguous areas
147 of existing commercial and/or industrial zoning districts, whether located in the Critical
148 Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for~~
149 ~~the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St.~~
150 ~~Michaels for growth allocation or growth allocation associated with annexations, and 36~~
151 ~~acres for the County for growth allocation for property outside of the towns and outside~~
152 ~~of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~
153

154
155 **§ 190-109 D (11)**
156

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9)~~
158 ~~and (10) should be reviewed by the County and Towns by June 1, 1993 for possible~~
159 ~~reallocation and at least every four years thereafter.~~
160

161 * * *

162 **§ 190-109 D (14)**
163

~~Specific annexation requests for property included in the acres reserved for the towns in~~
165 ~~§ 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by~~
166 ~~the County for consistency with the County Comprehensive Plan and shall be subject to~~
167 ~~all current ordinances regulating annexations. The County shall not act on rezoning~~
168 ~~requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request~~
169 ~~for the property has been denied by the town or until 12 months after an annexation~~
170 ~~request for the property has been submitted to the town, whichever occurs first. If the~~
171 ~~County approves a rezoning request not associated with an annexation request for~~
172 ~~property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the~~
173 ~~property rezoned shall be subtracted from the acres reserved for the Town for annexation~~
174 ~~in § 190-109D(9) and (10).~~
175

176 **§ 190-109 D (15)**
177

~~Growth allocation requests for property that has been annexed within five years of the~~
179 ~~request shall be reviewed by the County for consistency with the County Comprehensive~~
180 ~~Plan. Growth allocation request(s) for property that has been in the town for more than~~
181 ~~five years prior to the request does not require review by the County; however, the towns~~

182 shall inform the County of such reclassification to ensure that the total reserved acres,
183 listed above, are not exceeded.

184
185 § 190-109 D (16)

186
187 ~~The location of growth allocation requests within Towns or growth allocation requests~~
188 ~~associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3,~~
189 ~~however, the total acres reserved per town shall not be exceeded.~~

190 SECTION 2. Effective Date and Severability; legislative intent.

191 1. Vested Rights: Effective Date of Zoning Text Amendments

192
193 This ordinance shall apply to the total growth allocation acreage allocated to the County
194 under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains
195 unutilized on the effective date of this ordinance.

- 196
197 (a) For purposes of this subsection, the term "unutilized" includes the total growth
198 allocation acreage allocated to the County under State law, less growth allocation
199 acreage that (1) has been previously allocated by any town or the County; and,
200 (2) prior to the effective date of this ordinance, has resulted in actual physical
201 commencement of some significant and visible construction; (3) which has been
202 undertaken in good faith, with the intention to carry it through to completion; and,
203 (4) which has occurred pursuant to a validly issued building permit.
- 204
205 (b) For purposes of this subsection, growth allocation acreage allocated to the County
206 does not include growth allocation allocated to the towns under § 8-1808.1 (b)
207 (5% of the total resource conservation area in the town at the time of
208 original approval of the town's critical area program by the Critical
209 Area Commission).
- 210
211 (c) For purposes of this subsection, County growth allocation acreage that has been
212 previously allocated by any town shall first be counted as part of that town's
213 allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been
214 exceeded, growth allocation that has been utilized prior to the effective date of
215 this ordinance shall be deducted against the County's remaining growth
216 allocation. Growth allocation awarded by any town that remains unutilized on the
217 effective date of this ordinance shall revert to the County. Growth allocation
218 awarded by the County, prior to or after the effective date of this ordinance, shall
219 be deducted from the total growth allocation acreage allocated to the County
220 under § 8-1808.1 (b).

221
222 2. Severability.

223 The County Council intends that, if a Court issues a final decision holding that any part
224 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.

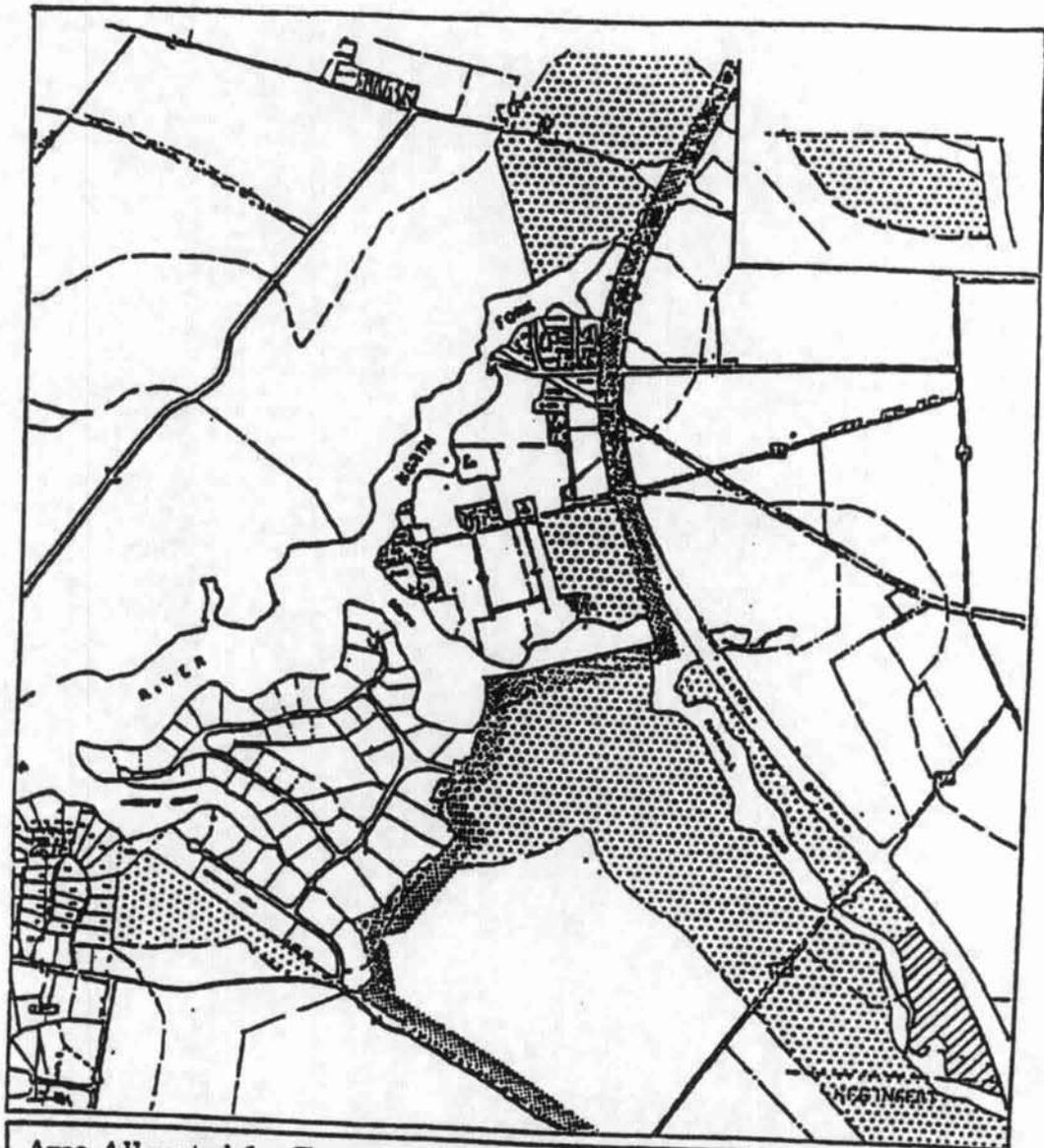
ENACTED December 23, 2003*

AS AMENDED

By Order *Debra Mawz*
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



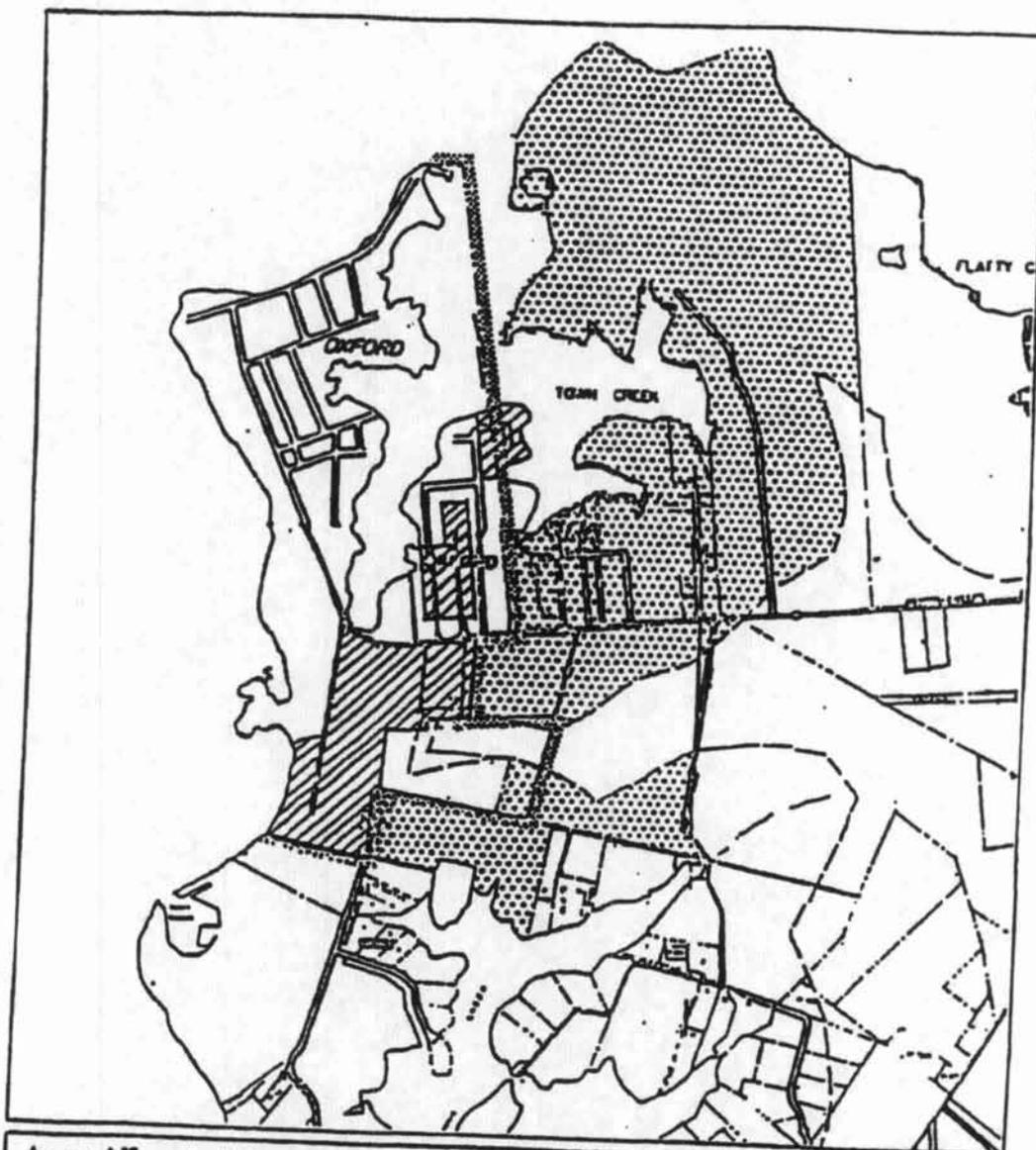
Map No. 1



Wiles Dailey Pronske

Easton, Va. Sarasota, Fla.

ZONING



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

 RCA for Annexation or Rezoning

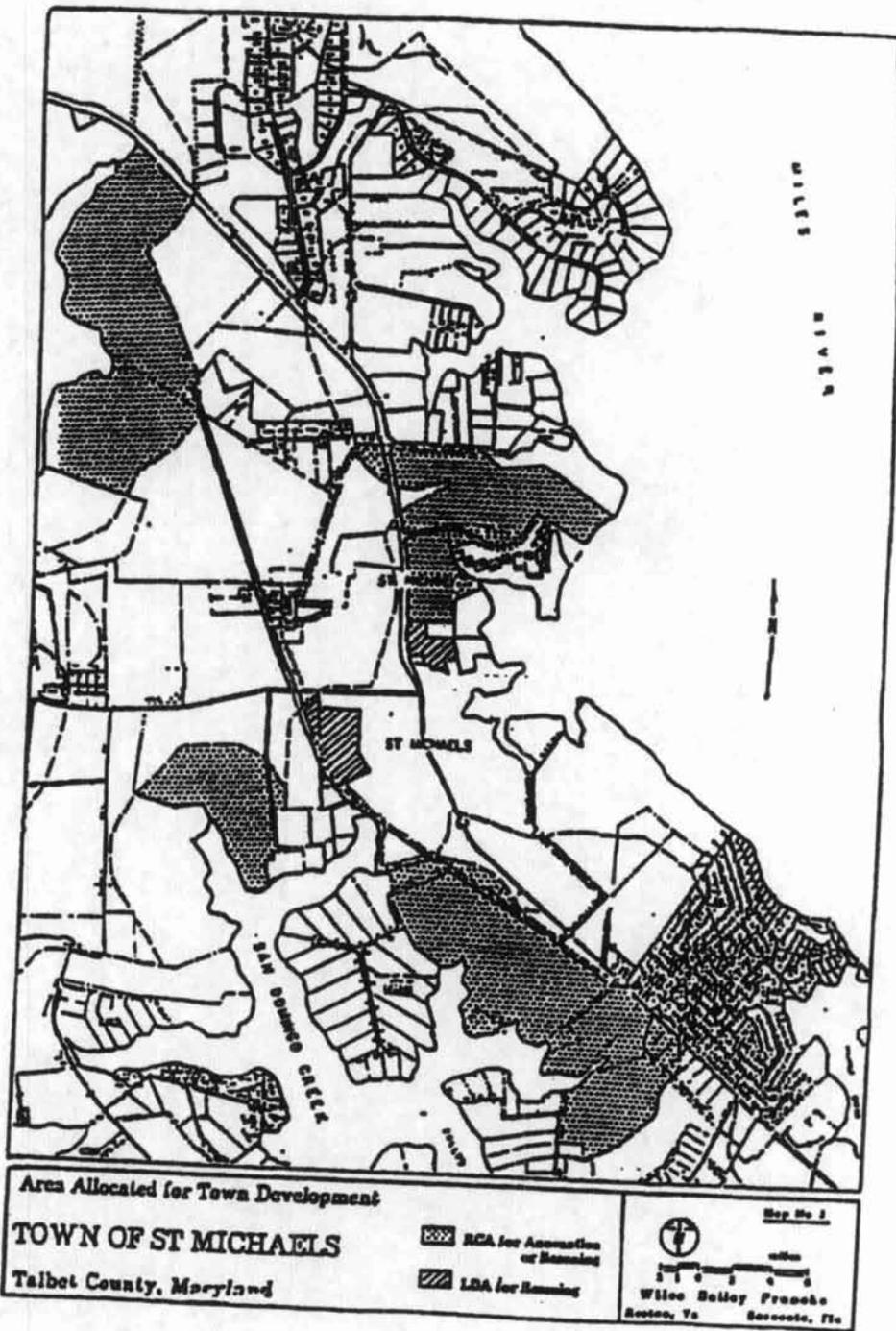
 LDA for Rezoning

Map No _____

 miles

Wiles Dailey Pronske
Roxton Va Sarasota, Fla.

ZONING



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

Jeniza Momb
Secretary

1 **A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL**
2 **GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY,**
3 **MARYLAND.**
4

5
6 SECTION ONE: BE IT ENACTED, by the County Council of Talbot County, that
7 Title 19-14 (c) (iv) (c) [i] be repealed and re-enacted to establish procedures for awarding
8 supplemental growth allocation to municipalities in Talbot County, Maryland, as follows:
9

10
11 [i] Not more than 1,213 acres of the Critical Areas of the County, including
12 all land lying within the Critical Area within incorporated towns, shall be reclassified
13 from the Rural Conservation (RC) District (or town zoning districts established for the
14 Resource Conservation Area of the Critical Area) to any other zoning district. Of these
15 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the
16 Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation
17 associated with annexations, and 618 acres is reserved for the County.
18

19 When 1,092 acres (ninety [90] percent of 1,213 acres) has been approved for growth
20 allocation by the Towns and/or the County, then the County shall request permission
21 from the Maryland Critical Area Commission to double the maximum number of acres
22 that may be reclassified from the Rural Conservation District (or comparable town
23 districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the
24 County shall reserve acreage for each town.
25

26 If the commission approves the doubling of the number of acres that may be rezoned
27 under this Section, the County will have its full allocation of 2,554 acres for growth as
28 specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213
29 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below =
30 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426 acre
31 allocation (1,213 + 1,213) at the time of the establishment of this Section (August 13,
32 1989).
33

34 Upon request for supplemental growth allocation by any municipal corporation within the
35 County, the County Council may transfer growth allocation to the municipal corporation
36 and may impose such conditions, restrictions, and limitations upon the use of any such
37 supplemental growth allocation, if any, as the Council may consider appropriate. All such
38 requests shall comply with the following requirements.
39

40 [1] Application Process. The applicant shall file their application with the
41 municipality. In addition to complying with all municipal requirements, the applicant
42 shall also provide the information required by § 19.14 (c) (iv) [b] of the Talbot County
43 Zoning Ordinance, as amended, and shall also comply with the design standards set forth
44 in § 19.14 (c) (iv) [b] [1] through [9], of the Talbot County Zoning Ordinance, as
45 amended. The municipality shall forward the application to the County Council for
46 consideration and review within five (5) working days.
47

48 [2] Staff and Planning Commission Review. The planning staff and the
49 Planning Commission shall review the application in accordance with the procedures set
50 forth in §19.14 (c) (iv) (c) [1] through [4], except that municipal and county staff reports
51 shall be forwarded to the Planning Commissions of both jurisdictions and the planning
52 staff shall schedule a joint hearing on the application before the Planning Commissions of
53 both jurisdictions. The designated chairperson of each Planning Commission shall co-
54 chair the hearing. Each Planning Commission shall vote separately and make its
55 recommendations to its respective council or commission. Each Planning Commission
56 shall provide a copy of its recommendations to the other jurisdiction.
57

58 [3] Council Review. The county and municipal councils or commissions
59 shall hold a joint hearing on the application, co-chaired by the designated chairperson of
60 each council or commission which may be coordinated jointly with the Critical Area
61 Commission. The county and municipal councils or commissions shall make their

1 respective decisions separately as independent entities. The County Council shall
2 evaluate the application in accordance with § 19.14 (c) (iv) [d].
3

4 [4] Amendments to Approved Projects. Any amendment to an approved
5 project shall be subject to County Council review and approval for a period of five (5)
6 years following the date of initial approval.
7
8
9
10

11 BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days
12 following its enactment.
13
14
15
16
17
18

19 PUBLIC HEARING
20

21 Having been posted and Notice of time and place of hearing and Title of Bill No.
22 762 having been published, a public hearing was held on Tues. April 18, 2000
23
24
25
26
27
28
29
30

31 BY THE COUNCIL
32
33

34 Read the third time.
35

36 ENACTED April 25, 2000 *
37 *AS AMENDED*
38

39
40 By Order


Secretary

41
42
43
44
45
46 Spence - aye
47 Dyott - aye
48 Foster - aye
49 Higgins - aye
50 Harrison - aye

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



RECEIVED Martin G. Madden
Chairman

MAY 18 2004

TALBOT COUNTY COUNCIL

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

**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.

Second Amended Complaint

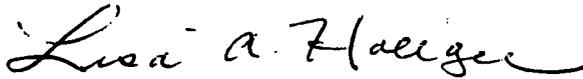
Exhibit C

Mr. Kinney
May 14, 2004
Page 2

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 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

12

34. Oxford is so situated that the disposition of this action and a declaration concerning the validity of Bill 933 without the Town's participation will impair or impede the ability of Oxford to protect its interests, and the existing parties to this action do not have identical interests to those of the Town of Oxford and would not adequately represent the interests of the Town of Oxford.

35. The Town of Oxford, and its citizens, own land conveyed by deed within the critical area within the Town of Oxford, and have the right to seek growth allocation reclassification and development or redevelopment approvals of those lands from the Town of Oxford, without interference from the county government, which has no zoning or subdivision authority within the Town. The rights of the Town and its citizens are affected by Bill 933, and the Town and its citizens have the right to have the validity of Bill 933 determined, and the right to participate in this case as to the validity of Bill 933.

IV.

Oxford Should Be Permitted To Intervene, Pursuant To Maryland Rule 2-214 (b) (1), Because The Claims And The Issues In The Complaint Involve Common Questions Of Law And Fault In Relation To The Town of Oxford

36. 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 Oxford, County Bill No. 933 is nevertheless invalid based on the reasons set forth in this Motion, and as set forth in the proposed Counterclaim attached hereto.

37. The claims, and the issues raised in the Complaint against the Department of Natural Resources involve common questions of law, to wit, the validity of County Bill No. 933,

and its impact within municipal boundaries and upon municipal critical area programs approved by the Commission, and the proper planning and zoning relationship between the Town of Oxford and Talbot County.

V.

**The Town of Oxford 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**

38. The validity of County Bill No. 933 and its application within the Town of Oxford is drawn into question in this action.

39. The Town of Oxford is a municipal corporation and a political subdivision of the State.

40. County Bill No. 933 has a direct impact upon the Town of Oxford, and adversely impacts the Town's interests by usurping planning and zoning powers reserved to the Town of Oxford by state law.

WHEREFORE, For all of the reasons set forth above, the Town of Oxford respectfully requests that this Court enter an Order joining The Town of Oxford as an additional defendant party to this action.



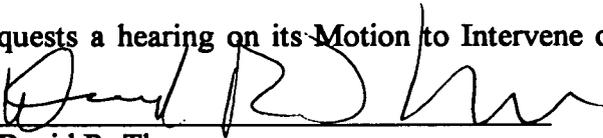
David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
(410) 822-6800
Attorneys for Movant, Town of Oxford

STATEMENT OF POINTS AND AUTHORITIES

1. The record herein.
2. Maryland Rule 2-214.
3. Md. Code Ann. Courts and Judicial Proc. Article § 3-405, § 3-406
4. The Town of Oxford hereby adopts and incorporates the points and authorities of the Town of St. Michaels in its Motion to Intervene filed herein.

REQUEST FOR HEARING

The Town of Oxford respectfully requests a hearing on its Motion to Intervene on the date scheduled by this court.



David R. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2004, a copy of the foregoing Motion To Intervene 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

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

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

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels



David R. Thompson

I further certify that a copy of this motion was faxed to each of the above counsel, and hand delivered to Michael L. Pullen, Attorney for Talbot County, at his address as set forth above, on this 1st day of November, 2004.



David R. Thompson

ZONING ORDINANCE



Oxford, Maryland

Adopted July 9, 1996



SECTION 33. TOWN OF OXFORD CRITICAL AREA OVERLAY DISTRICT ("O")

33.01 - Statement of Intent.

The purpose of the Critical Area Overlay District ("O") is to implement Oxford Critical Area Program and to protect and enhance water quality and habitat resources located within the Oxford Critical Area. The geographic areas for which the following district regulations apply shall be the Oxford Critical Area District as defined in Section 4.03 and as designated on the Town of Oxford Critical Area Overlay District Maps.

The intent of this district is to provide special regulatory protection for the resources located within the Oxford Critical Areas and to foster more sensitive development activity for shoreline areas. Another objective is to minimize adverse impacts to water quality and natural habitats. As such, the Town of Oxford considers the Oxford Critical Area Program to be legally part of this Zoning Ordinance. The Program shall require that all project approvals are consistent with the Critical Area Law and therefore minimize adverse impacts on water quality, conserve fish, wildlife and plant habitat and establish policies for growth management.

33.02 - Land Use Management District Classifications.

Within the Town of Oxford Critical Area Overlay District ("O") there shall be three land use management area classifications:

1. Intensely Developed Areas (IDA);
2. Limited Development Areas (LDA); and
3. Resource Conservation Areas (RCA) which shall be as shown on the Official Critical Area Map. These land use management areas correspond to the definitions established in the Chesapeake Bay Critical Area Criteria, as amended, for each area and specifically as identified on the Town of Oxford Critical Area maps, adopted as part of the Oxford Critical Area Program. Mapped land use management area classifications are based on land uses established on or before 1 December 1985, except for areas where the land classification may be changed by granting the Growth Allocation (GA) floating zone district classification. The following regulations shall be applied based on the specific land management classification.

33.03 - Density Provisions

1. Intensely Developed Areas (IDA)

Permitted density in the Intensely Developed Area (IDA) shall be as established in the underlying base zone.

2. Limited Development Areas (LDA)

The density of development and minimum lot sizes permitted within a Limited Development Area (LDA) shall be as established in the underlying base zone.

3. Resource Conservation Areas (RCA)

Residential densities in Resource Conservation Areas (RCAs) shall be no more than one (1) dwelling unit per twenty (20) acres, except as provided for in 5 below, and Section 9.01.

4. Determining Density

Determination of density shall be based on the gross site area of the parcel, excluding tidal wetlands, except that in determining residential densities for a site in the RCA, private wetlands may be included in the calculation of one (1) unit per twenty (20) acre density, provided the development density on the upland portion of the site does not exceed one (1) dwelling unit per eight (8) acres.

Minimum and maximum lot sizes shall be governed by standards applicable to the underlying base zoning districts, and this ordinance. Nothing in this regulation shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members, provided no such conveyance shall result in a density of greater than one (1) dwelling unit per twenty (20) acres -- except as provided in 5 below.

5. Intra-family Transfer: The one (1) unit per twenty (20) acre density limitation in the RCA shall not prevent a bona fide intra-family transfer subjected to the following limitations:

- a. Intra-family transfer will be permitted on parcels of land in Oxford where it is shown that the parcel was recorded on or before 1 March 1986 and such parcel is at least seven (7) acres and not more than sixty (60) acres in size.
- b. A bona fide intra-family transfer shall be subject to all the requirements to the Town of Oxford Subdivision Regulations and a notation shall be placed on the final subdivision plan denoting the lot(s) that are created under these provisions.
- c. Subdivision of land under the bona fide intra-family transfer provisions contained herein shall be subject to the following limitations:
 - (1) Parcels 7 acres to less than 12 acres cannot be subdivided into more than a total of 2 lots.
 - (2) Parcels 12 acres to less than 60 acres cannot be subdivided into more than 3 lots.

- (3) A lot created pursuant to these provisions may not be subsequently conveyed to any person except:
- (a) where the conveyance is to a member of the owner's immediate family or
 - (b) where the conveyance of the lot is as part of a default on a mortgage or deed of trust.
- (4) Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. In addition, any lot created under this section may not be transferred or sold to a third party, not a member of the owner's immediate family or holder of a mortgage or deed to trust on the property, unless and until the Planning Commission has determined that the following can be conclusively provided:
- (a) a change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer and when such circumstances are consistent with the warrants and exception contained herein, or;
 - (b) other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCAs warrant an exception.
- (5) Deeds of transfer shall include the provisions contained in (4) above as covenants which shall restrict the subsequent transfer or sale of a lot or lots created pursuant to the intra-family transfer provisions contained herein to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property.

33.04 - General Regulations.

1. Except as provided below, permitted uses, accessory uses and special exception uses in the Critical Area District shall be limited to those permitted within the existing applicable underlying base zoning district, as shown on the Official Oxford Zoning Maps.
2. Existing industrial and commercial facilities, including those directly supporting agriculture, forestry, aquaculture shall be allowed in the RCA. However, additional land may not be zoned for industrial or commercial development.
3. The following uses are prohibited in the Critical Area District due to their high potential for adverse impact on plant and wildlife habitats and water quality, unless it has been

demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.

- a. Non-maritime heavy industry; and
- b. Transportation facilities.

4. The following uses are prohibited in the Critical Area District:

- a. New solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles;
- b. New sanitary landfills;
- c. New sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities;
- d. New commercial and industrial maritime or related facilities in the Buffer within Resource Conservation Areas (RCAs);
- e. The application of sludge in the Buffer;
- f. New wash plant for surface mining and mineral extraction uses in the Buffer; and
- g. New sand and gravel mining and related uses in the Buffer.

33.05 - General Buffer Regulations.

Except as provided for in Section 8.04 (Buffer Exemption Area Provisions), new buildings, structures, activities, and facilities permitted in the underlying zoning district (base zoning district) are prohibited within the Buffer, except the following:

- 1. Community piers, individuals private piers, docks, and launching ramps facilities.
 - a. For community piers, only the following uses shall be permitted to locate in the Buffer:
 - (1) slips;
 - (2) docks, piers, launching ramps, access roads, paths; and
 - (3) loading/unloading area.

b. Where community or individual slips or piers are to be provided in the subdivision that is approved after April 26, 1988, (date of the Oxford Critical Area Program adoption), the number of slips or piers, shall be the lesser of (1) or (2) below:

- (1) Up to one slip for every fifty (50) feet of shoreline in a subdivision in the Limited Development Area (LDA) and Intensely Developed Areas (IDA), and one slip per three hundred (300) feet of shoreline in a subdivision in the Resource Conservation Area (RCA); or
- (2) The foregoing provisions of Section 33.05 b notwithstanding, with respect to projects for which applications for community or individual slips or piers have been submitted to the Oxford Board of Port Wardens prior to May 30, 1988 the maximum number of slips or piers shall be as set forth below:

Platted Lots or Dwellings in the Critical Area	Slips
up to 15	1 for each lot
16 -40	15 or 75%, whichever is greater
41 -100	30 or 50%, whichever is greater
101 - 300	50 or 25%, whichever is greater
over 300	75 or 15%, whichever is greater

(3) The Board of Appeals may grant a variance from the provisions of this subsection in accordance with Section 11.02.7.

c. New commercial marinas and other related commercial maritime facilities where permitted in LDA and IDA, expansion of existing commercial marinas and other related commercial maritime facilities in RCA, and uses accessory thereto, provided that non-water-dependent uses and activities shall not be located in the Buffer. Only the following which are considered commercial marine "water-dependent" uses, shall be permitted in the Buffer:

- (1) moorings, buoys, and slips;
- (2) docks, piers, launching ramps, access roads and paths;
- (3) loading and unloading areas;
- (4) fueling areas; and

- (5) public areas.
- d. Public beaches and other public water-oriented recreation and education facilities, uses and related structures, provided that non-water-dependent uses and activities shall not be permitted in the Buffer. Only the following, which are considered public "water-dependent" uses, may be permitted to locate in the Buffer:
 - (1) lifeguard stations;
 - (2) nature study/passive recreation facilities with no structures or impervious surfaces;
 - (3) moorings, buoys, and slips;
 - (4) docks, piers, launching ramps, access roads and paths; and
 - (5) loading and unloading areas.
- e. Fisheries and related commercial water-dependent facilities, provided that non-water-dependent uses and activities shall not be permitted in the Buffer. Only the following, which are considered fisheries "water-dependent" uses, shall be permitted to locate in the Buffer;
 - (1) docks, piers, launching ramps, access roads and paths;
 - (2) seafood offloading docks;
 - (3) fueling area; and
 - (4) shore facilities for aquaculture.
- f. Research facilities operated by county, state or federal government agencies or educational institutions conducting marine related studies provided non-water dependent facilities are located outside of the Buffer.
- g. Commercial water-dependent fisheries facilities including, but not limited to, structures for crab shedding, fish off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations, and fisheries activities, may be permitted in the Buffer, in IDAs, LDAs and RCAs.

2. No cutting or clearing of trees or natural vegetation is permitted in the Buffer except that limited cutting or clearing of trees is permitted for the following purposes under an approved Forest Management Plan:
 - a. For personal use, providing that Buffer functions are not impaired and trees cut are replaced;
 - b. To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
 - c. In conjunction with horticultural practices used to maintain the health of individual trees;
 - d. To provide access to private piers;
 - e. To install or construct an approved shore erosion protection device or measure; or
 - f. To protect forests from extensive pest or disease infestation or threat from fires if approved by the Department of Agriculture or the Bay Watershed Forester.
3. Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions as set forth in the policies of the Oxford Critical Area Program.

33.06 - Development Standards in Intensely Developed Areas (IDAs)

All development and redevelopment in IDA shall be subject to the following development standards and/or conditions, in addition to those established in other sections of this ordinance, except that development on lots qualifying under Section 9.01, 3. must only comply with these provisions insofar as possible as determined by the Planning Commission:

1. All sites for which development or redevelopment activities are proposed, and which require building permit, subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical Area.
2. No structure or uses associated with development in an Intensely Developed Area shall be permitted within the Buffer, except for water-dependent facilities, unless the site is within a Buffer Exemption Area;
3. Development and redevelopment shall be subject to the Habitat Protection guidelines in the Oxford Critical Area Program;

4. Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve a ten (10%) percent reduction of pre-development pollutant loadings unless the Town Commissioners have approved offsets as set forth in the Oxford Critical Area Program.
5. Development and redevelopment projects shall delineate those site areas not covered by impervious surfaces that are to be maintained or established in vegetation. Where vegetation is not proposed, the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in 33.08 below;
6. Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:
 - a. Construct appropriate structural measure to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or
 - b. Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be use.) If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

33.07- Development Standards in Limited Development Areas (LDAs) and Resource Conservation Areas (RCAs).

Development and redevelopment in an areas designated Limited Development (LDA) or Resource Conservation (RCA) shall be subject to the following standards, except that development on lots of record qualifying under Section 9.01, 3. must only comply with these regulations insofar as possible as determined by the Oxford Planning Commission. However, water dependent facilities and habitat protection areas are not subject to the "in so far as possible" exception.

1. All sites for which development or redevelopment activities are proposed, and which require subdivision approval or site plan review and approval, or a building permit, shall identify environmental or natural features on that portion of the site within the Critical Area;

2. Site development shall be designed to assure that those features or resources identified as Habitat Protection Areas are afforded protection as prescribed in the Habitat Protection Element of Town of Oxford Critical Area Program;
3. Roads, bridges, and utilities serving development shall be so located as to avoid disturbances to habitat protection areas. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas, the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists;
4. All development activities which cross, or are located adjacent to, tributary streams in the critical Area shall:
 - a. not be located in the Buffer but be designed in a manner to reduce increases in flood frequency and severity;
 - b. provided for the retention of natural streambed substrate; minimized adverse impacts to water quality and storm water runoff; and
 - c. retain the existing tree canopy.
5. Development activities shall be located and designed to provide for the maintenance of the wildlife and plant habitats on the existing site and to maintain continuity with those on adjacent sites. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site.
6. Forest and development woodlands, as defined by the Oxford Critical Area Program, shall be created or protected in accordance with the following:
 - a. When no forest exists on the site, at least fifteen (15%) percent of the gross site area shall be afforested. The location of the afforested areas should be designed to reinforce protection to habitats on the site or to provide connections between forested areas when they are present on adjacent sites;

b. When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan (the developer shall submit plans for development and areas to be cleared to the Bay Watershed Forester of the Maryland Forest, Park and Wildlife service for comments and recommendations and shall transmit the comments to the Planning Commission). A grading permit must be obtained prior to any clearings or cutting associated with proposed development and in addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions:

- (1) All forests cleared or developed shall be replaced on not less than an equal areas basis on the site or on an alternative site approved by the Planning Commission;
- (2) No more than twenty (20%) percent of the forested or developed woodland within the site proposed for development may be removed, except as provided for in the requirement below, and the remaining eighty (80%) percent shall be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants). Removal of forest or developed woodland cover in the Buffer is prohibited;
- (3) The clearing of forest or developed woodlands up to twenty (20%) percent shall be replaced on an area basis of one to one. A developer may propose clearing up to thirty (30%) percent of the forest or developed woodland on a site, but the trees removed must be replaced at the rate of 1.5 times the area removed;
- (4) If more than thirty (30%) percent of the forest on a site is cleared, the forest is required to be replanted at three (3) times the total area extent of the cleared forest;
- (5) If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the above requirement;
- (6) Surety in the form of a performance bond or other means acceptable to the Town Attorney shall be provided in an amount suitable to assure forest replacement as required; and
- (7) The forests and developed woodlands required to be retained or created through afforestation shall be maintained through restrictive covenants, easements, or similar instruments in a form approved by the Town Attorney.

7. Development on slopes greater than fifteen (15%) percent shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability;

8. Except as otherwise provided in this subsection for stormwater runoff, manmade impervious surfaces are limited to 15% of a parcel or lot. However,

a. If a parcel or lot one-half (1/2) acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to twenty-five (25) percent of the parcel or lot.

b. If a parcel or lot one-fourth (1/4) acre or less in size was in nonresidential use on or before December 1, 1985, then man-made impervious surfaces associated with that development are limited to twenty-five (25) percent of the parcel or lot.

c. If an individual lot one (1) acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed twenty-five (25) percent of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed fifteen (15) percent.

d. These provisions do not apply to a trailer park that was in residential use on or before December 1, 1985.

e. The Oxford Board of Appeals may grant a variance from the provisions of this section in accordance with the Section 11.02, subsections 7 through 10.

9. Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:

a. Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion;

b. Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used.) If published data are not available, either the annual rate is assumed to be two (2) feet

per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

33.08 - Woodland Reforestation and Afforestation Standards.

Where reforestation or afforestation is required the following minimum standards shall be used within the Critical Area District:

1. The replacement or establishment of forests or developed woodlands shall assure a diversified plant community, but may include other types of tree plantings where necessary to correct an existing soil stabilization problem. Diverse forest plantings shall include a canopy layer, an understory layer, and a shrub layer.
2. For each acre of land where woodlands must be replaced or established, plantings shall consist of trees and/or wildlife shrub species spaced approximately at eight (8) foot intervals in rows eight (8) feet apart, or other suitable spacing as determined by the Bay Watershed Forester on a site-by-site basis, which result in a minimum of three-hundred (300) stems per acre after the first growing season.
3. Required planting plans shall be prepared and submitted with the site plan or preliminary and final subdivision plat. A planting plan shall be included as a required public improvement with site plans or subdivisions plats. The planting plan must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a professional registered forester, landscape architect, or an experienced landscape designer. The planting plan shall show:
 - a. The site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements and the general location of structures and uses of abutting properties;
 - b. Existing and proposed grades;
 - c. Existing vegetative cover to be retained and the location, general size and type of such vegetation;
 - d. The methods for protecting plant materials after construction;
 - e. A plant schedule and plan listing plants to be used giving their botanical and common names, size at time of planting, and quality of each;
 - f. An indication of whether plants are balled and burlapped, container grown or bare root; and

- g. An indication of the spacing and location of all proposed trees, shrubs and ground covers.

4. Plant Materials and Planting Schedule

- a. Although plant types should be chosen from the recommended plant list available from the Town Office or the Maryland State Bay Watershed Forester, plant types that vary from this list may be substituted with the approval of the local Bay Watershed Forester. Plants for afforestation or reforestation shall be approved by the Bay Watershed Forester for suitability in regard to the eventual size and spread, susceptibility to diseases and pests, and adaptability to existing soil and climate conditions.
- b. All planting should be done between December and April of each year. For the first two (2) years steps should be taken to control competing vegetation. Technical Assistance from the State's Bay Watershed Forester is highly recommended.

5. The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and cost estimate, the developer or owner shall enter into an agreement with the Town of Oxford to provide plantings as required. The agreement shall be in a form and substance as approved by the Town and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of one hundred and twenty percent (120%) of proposed plant materials, labor and maintenance costs to be used as follows:

- a. If all afforestation or reforestation is not completed within two (2) years after the first spring planting date following recordation, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited, or if a bond or surety has been posted, payment in full to the Town shall be ordered. The funds, so received, shall be used by the Town to defray the cost of providing the approved afforestation or reforestation for the site.
- b. If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be a continuing obligation of the property owner.
- c. All security posted will be held for a period of two (2) years after installation of the planting, to assure the proper maintenance and growth. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted to the extent necessary to replace the dead plant materials.
- d. The Town Commissioners or their designee may from time to time release those portions of the surety which may be appropriate.

6. Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.
7. All plantings shall be inspected by Town staff or the Bay Watershed Forester upon notification by the developer or owner and shall be approved according to the following standards:
 - a. The planting shall adhere to the approved plan. Substitutions or revisions may be made with the approval of the Bay Watershed Forester or the Planning Commission.
 - b. All plants shall be protected from vehicular encroachment by wheelstops, curbs or other barriers unless distance provides adequate protection.

33.09 - Special Provisions for Water-Dependent Facilities.

1. All applications for development of Commercial Marinas or other water related uses in the Oxford Critical Areas must include the following information:
 - a. Water depth contours shown at two (2) foot intervals at mean low water taken by sounding (unless otherwise specified by the Board of Port Wardens).
 - b. Existing and proposed grading surface of the land.
 - c. Location of natural features and the drainage areas of all non-tidal wetlands.
 - d. Land within the 100 year floodplain.
 - e. Location of all existing and proposed structures.
 - f. Location of all existing or proposed site improvements including storm drains, culverts, retaining walls and fences.
 - g. Description, method and location of water supply and sewerage disposal facilities.
 - h. Mean high and mean low water line.
 - i. All existing and proposed piers, buoys, launching ramps, shore protection structures.
 - j. Location and dimensions of all areas to be dredged including present and proposed depths.

- k. Volume of dredge spoil to be removed, type of material, location and dimensions of disposal area(s) including dikes.
 - l. Location of all existing and proposed land-based building and structures on the site and a description of uses and activities to be conducted in each.
 - m. Location and dimensions of all boat launching ramps.
 - n. Location and dimensions of all boat slips and mooring buoys.
 - o. Location of fuel dock and fuel storage tanks.
 - p. Location of all required buffer/yards/building restriction lines.
2. Applications for water-dependent use shall be accompanied by an environmental assessment report which indicates how the proposed project achieves the following criteria:
- a. That the activities will not significantly alter existing water circulation patterns or salinity regimes;
 - b. That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
 - c. That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
 - d. That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activities or vessels, or from boat cleaning and maintenance operations is minimized;
 - e. That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
 - f. That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the areas immediately surrounding the dredging operation or within the Critical Area.
 - g. That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area;
 - h. That interference with the natural transport of sand will be minimized; and

- i. That no disturbances will occur to aquatic areas of historic waterfowl staging and concentration areas.

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL
RESOURCES

Defendant

*
*
*
*
*
*
*
*
*
*

IN THE
CIRCUIT COURT
FOR
TALBOT COUNTY,
MARYLAND
Case No. 20-C-04-005095DJ

* * * * *

PROPOSED ANSWER TO COMPLAINT BY INTERVENOR

The Town of Oxford, ("Oxford"), Defendant, by David R. Thompson and Brynja M. Booth, and Cowdrey, Thompson & Karsten, A Professional Corporation, its attorneys, in answer to the Amended Complaint herein, states the following:

I
Rule 2-322(b)(2) Defenses

The Complaint, and each and every count thereof, fails to state a claim upon which relief can be granted.

II
Rule 2-323(g) Affirmative Defense

1. Bill 933, and its enactment process, are illegal, and the claims in the Amended Complaint are therefore barred.
2. The principles of estoppel bar the claims asserted by the Plaintiff.
3. The purported enactment of Bill 933 is ultra vires, and the claims in the Amended Complaint are therefore barred.
4. The Plaintiff has waived any rights to assert the claims set forth in the Amended Complaint.

5. The claims of the Plaintiff are barred by the doctrine of res judicata.
6. The claims of the Plaintiff are barred by the doctrine of collateral estoppel.

III
Specific Responses under Rule 2-323(c)

In accordance with Maryland Rule 2-323 (c), the averments of the Amended Complaint are hereby answered paragraph by paragraph, as follows:

1. Oxford admits the averments of numbered paragraph 1.
2. Oxford admits the averments of numbered paragraph 2.
3. Oxford admits the averments of numbered paragraph 3.
4. Oxford denies the averment of numbered paragraph 4, in that each municipality with planning and zoning jurisdiction, including the Town of Oxford, has the primary responsibility to develop and implement a local critical area program within its own jurisdiction. Oxford admits that Talbot County has the responsibility to develop a local program within its planning and zoning jurisdiction.
5. Oxford admits the averments of numbered paragraph 5.
6. Oxford admits the averments of numbered paragraph 6.
7. Oxford denies the averments of numbered paragraph 7.
8. Oxford admits that the Plaintiff has correctly quoted a small portion of the applicable statute, but denies the legal conclusion set forth in numbered paragraph 8 of the Amended Complaint.
9. Oxford admits that Talbot County adopted a local program that for a period of time was approved by the Commission. All remaining allegations of fact in numbered paragraph 9 are denied.

10. Oxford admits that the County has correctly quoted COMAR 27.01.02.06 A. (2) in numbered paragraph 10 of the Amended Complaint.

11. Oxford admits that Talbot County adopted its local program in 1989, and enacted three zoning maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and that the County allocated acreage outside of the Town, for growth allocation conversion to permit higher land development density consistent with town growth. Oxford admits that the 1989 county zoning ordinance and critical area program were approved by the Commission.

12. The averments of numbered paragraph 12 are denied in that paragraph 12, as stated, misrepresents the status of the County's critical program *vis-a-vis* the continuing dialogue between county and state representatives concerning the County's critical area regulations.

13. The factual allegations of numbered paragraph 13 are denied except that Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission. The legal conclusions, to which no response is required, are likewise denied.

14. The factual allegations of numbered paragraph 14 are denied, except that Oxford admits that the substantive and procedural provisions of Bill 762 have only been applied to the Town of Easton.

15. The allegations of numbered paragraph 15 are denied.

16. The allegations of numbered paragraph 16 are denied, except that Oxford admits Bill 933 was forwarded to the Critical Area Commission for review.

17. Oxford denies both the factual and legal conclusions set forth in numbered paragraph 17 of the Complaint.

18. Oxford denies the allegations of numbered paragraph 18 of the Amended Complaint.

19. Oxford denies the allegations of numbered paragraph 19 of the Amended Complaint.

20. Oxford adopts and incorporates by reference numbered paragraphs 1 through 19 of the Amended Complaint as its response to numbered paragraph 20.

21. Oxford denies the allegations of numbered paragraph 21.

22. Oxford denies the allegations of numbered paragraph 22.

23. The allegations of numbered paragraph 23 are denied. Oxford asserts affirmatively that the Critical Area Commission voted to disapprove Bill 933 on May 5, 2004, at an official proceeding at which the County Attorney and at least one County Council member were present.

24. Oxford denies the allegations of numbered paragraph 24.

25. Oxford denies the allegations of numbered paragraph 25.

26. In response to numbered paragraph 26, Oxford admits that a declaratory judgment will serve to terminate the uncertainty and controversy giving rise to this proceeding, and further admits that there is an actual controversy between Oxford and the County, which involves antagonistic claims which will result in imminent and inevitable litigation. Oxford denies the allegations and conclusions of subparagraphs (a) through (d) of numbered paragraph 26, and denies that the County is entitled to the relief sought in lettered paragraphs A through H immediately following numbered paragraph 26.

27. In response to the allegations of paragraph 27, Oxford incorporates and adopts by reference its response to paragraphs 1 through 26.

28. Oxford denies the allegations of numbered paragraph 28.

29. Oxford denies the allegations and conclusions of numbered paragraph 29, and asserts affirmatively that the Commission is responsible for applying all applicable laws in conducting its public functions.

30. Oxford denies the allegations and conclusions of numbered paragraph 30.

31. Oxford denies the allegations of numbered paragraph 31.

32. Oxford denies the allegations of numbered paragraph 32.

33. Oxford denies the allegations of numbered paragraph 33.

34. Oxford denies the allegations of numbered paragraph 34.

35. Oxford denies the allegations of numbered paragraph 35. Oxford further denies that the Plaintiff is entitled to the relief sought in the paragraph following numbered paragraph 35.

36. The Town of Oxford adopts and incorporates by reference its responses set forth above in paragraphs 1 through 35 to the allegations of numbered paragraph 36.

37. Oxford denies the allegations contained in numbered paragraph 37 of the Amended Complaint.

38. Oxford denies the allegations contained in numbered paragraph 38 of the Amended Complaint.

39. Oxford neither admits nor denies the request for judicial review set forth in paragraph 39, but denies the allegation that the Commission made its decision on May 14, 2004 disapproving Bill 933.

40. Oxford admits that Talbot County was a party to the proceedings before the Commission, and asserts affirmatively that the Town of Oxford was likewise a party to that proceeding.

WHEREFORE, in response to each and every claim for relief in each and every count of the Amended Complaint, the Town of Oxford asserts that the Plaintiff is not entitled to the relief sought or to any relief. The Town of Oxford respectfully requests that the Court declare Bill 933 invalid for all of the reasons set forth herein, and for such other reasons as may be apparent during the trial of this matter, and that the Town of Oxford have such other and further relief as the nature of this case requires.

Verification

In accordance with requirements that Mandamus related pleadings be verified, I hereby certify on behalf of the Town of Oxford that the matters and facts set forth herein are true and correct to the best of my knowledge, information and belief.

Sidney S. Campen, Commissioner of
the Town of Oxford

Respectfully submitted:

David R. Thompson

Brynja M. Booth
Cowdrey, Thompson & Karsten,
A Professional Corporation
P.O. Box 1747
Easton, MD 21601
(410) 822-6800
Attorneys for the Town of Oxford

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____, 2004, a copy of the foregoing Proposed Answer to Complaint was 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. Cuezzella, 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
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels

I further certify that a copy of this answer was faxed to each of the above counsel, and hand delivered to Michael L. Pullen, Attorney for Talbot County, at his address as set forth above, on this 1st day of November, 2004.

David R. Thompson

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* CIVIL CASE NO. 2-C-04-005095DJ

* IN THE

* CIRCUIT COURT

* FOR

* TALBOT COUNTY

* STATE OF MARYLAND

* * * * *

**PROPOSED COUNTERCLAIM FOR DECLARATORY JUDGMENT
BY INTERVENOR TOWN OF OXFORD**

The Town of Oxford (“Oxford”), Defendant, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, files this Counterclaim for Declaratory Judgment against Talbot County, Maryland, pursuant to Md. Code Ann., Cts. and Jud. Proc. Article, § 3-401, et seq., stating the following in support thereof.

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

2. The Town of Oxford is a Maryland municipal corporation, located entirely within the geographic boundaries of the County.

3. This Court has jurisdiction over the matters set forth within this Counterclaim pursuant to Md. Code Ann., Cts. and Jud. Proc. Art., § 3-406, which provides that “Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation...may have determined any question of construction or validity arising under the ...statute, ordinance, administrative rule or regulation...and obtain a declaration of rights, status, or other legal relations under it.”

4. The County has initiated the above-captioned case against the Maryland Department of Natural Resources (“DNR”), alleging that the Maryland Critical Area

Commission for the Chesapeake And Atlantic Coastal Bays (the "Critical Area Commission") improperly disapproved Talbot County legislative Bill 933.

5. At all times relevant hereto, Oxford 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 Oxford, a comprehensive plan, a subdivision ordinance, a zoning ordinance, and a zoning map dividing all land within Oxford into zoning districts, defining the historic district, and defining the critical area land management districts; and (2) establishing, appointing and maintaining a planning commission, a board of appeals and a historic district commission.

6. 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").

7. Pursuant to state law, in 1989, the County enacted its local critical area protection program (the "County Program"), which was thereafter approved by the Maryland Critical Area Commission. As part of the County Program, the County enacted three zoning maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and allocated acreage outside of the towns for growth allocation conversion to permit higher land development consistent with town growth.

8. Pursuant to the same state law, the Town of Oxford has adopted its own critical area program ("The Oxford Critical Area Program"), which has been approved by the Maryland Critical Area Commission (now known as the Maryland Critical Area Commission for the

Chesapeake and Atlantic Coastal Bays). The Oxford Critical Area Program has been updated and amended on several occasions, all with the approval of the Critical Area Commission.

9. The Oxford Critical Area Program and Zoning Ordinance, as approved by the Critical Area Commission includes a "Growth Allocation District" provision, whereby the Planning Commission of the Town of Oxford, and the Commissioners of Oxford, have the exclusive right and authority, subject to the applicable ordinances of the Town of Oxford and certain provisions of state law, including Critical Area Commission review, to process and approve any change in critical area land management classifications and to rezone land within the boundaries of the Town of Oxford.

10. As a matter of law, the Talbot County Council and Talbot County, Maryland (as a legal entity), have no planning and zoning jurisdiction within the Town of Oxford, nor does the County have any approval authority with respect to the rezoning or growth allocation reclassification process within the Town of Oxford, which is an independent municipal corporation with exclusive planning and zoning jurisdiction within town boundaries, subject only to Critical Area Commission review and oversight.

11. During the development of the original Talbot County Critical Area Program and during the development of the independent Critical Area Programs of Oxford, St. Michaels and Easton, previous Talbot County councils recognized the legal and jurisdictional relationships between the independent town governments and the county government. During those years, in compliance with state law, the County worked with the towns to identify annexation areas contiguous to the towns, wherein the towns were expected to exercise critical area growth allocation and zoning prerogatives in accordance with state laws applicable to municipal annexation.

12. Pursuant to the dictates of state law, which required municipal/county coordination, the County Council adopted zoning maps identifying annexation areas and growth allocation areas agreed to by the county planners, town planners, the County Council, and the elected commissioners of the towns. Those maps were a part of the Talbot County Zoning Ordinance, and together with the text of the Talbot County zoning ordinance, set forth the growth allocation/annexation area relationships between the towns and the county.

13. On or about December 23, 2003, the Talbot County Council enacted legislative Bill 933 in an effort to amend the County Program to eliminate the zoning maps referenced in paragraph 12 above, to assert county ownership of the growth allocation reclassification process. The purpose, intent, and purported effect of County Bill 933, *inter alia*, was to withdraw from the incorporated municipalities their rights to exercise growth allocation rezoning and reclassification and control within their own municipal boundaries, and to require the towns, including the Town of Oxford, to seek and obtain County Council approval for growth allocation rezonings, purporting to give the Talbot County Council approval authority and/or veto authority over the reclassification, rezoning, and development and redevelopment of critical area of lands within town boundaries.

14. During the review of County Bill 933 by the Critical Area Commission, the Town of Oxford, together with other Talbot County municipalities and the Maryland State Department of Planning, participated in the Critical Area Commission review process and in the public hearing and meeting conducted by the Critical Area Commission. The towns, including the Town of Oxford, and the Department of State Planning, opposed the approval of Bill 933 as an illegal usurpation of municipal authority.

15. Following the hearing, and after considering objections of the Department of State Planning and those of the Town of Oxford, the Town of St. Michaels and the Town of Easton, the Critical Area Commission, on May 5, 2004, completed its review of County Bill 933, pursuant to Maryland Code, Nat. Res. Art., § 8-1809, and disapproved County Bill 933, thereby preventing Bill 933 from becoming effective as an amendment to the County Program.

16. In disapproving County Bill 933, the Commission relied on some of the issues raised and/or addressed to the Critical Area Commission that were directly related to interests shared by Oxford, the Commission and others; but the Commission did not specifically address in its written communication the following other issues raised and/or adopted by the Town of Oxford in the course of its opposition to Bill 933:

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

16.2. 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;

16.3. 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;

16.4. 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;

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

17. Each of the above issues is legally sufficient, and each provides an independent basis, to invalidate County Bill No. 933, or to make it inapplicable to the Town of Oxford and all land within the boundaries of the Town of Oxford.

18. In addition to the foregoing issues, and in addition to the issues specifically noted by the Critical Area Commission in disapproving County Bill 933, Bill 933 is legally deficient and invalid in that it purports to amend duly adopted zoning maps for Talbot County, with no consideration or findings related to the required "change or mistake" standard applicable to the amendment of county zoning maps.

19. Bill No. 933 would adversely affect the Town of Oxford as follows:

19.1. Interfering with the administration and application of the Oxford Growth Allocation District provision of the Oxford Zoning Ordinance (a copy of which is attached hereto and incorporated herein by reference as Exhibit "A") that was approved by the Critical Area Commission prior to the County's enactment of Bill 933;

19.2. Interfering, and effectively invalidating Oxford's growth allocation zoning provisions, which, subject only to the review by the Commission, placed in Oxford the exclusive right, free of County interference, to make growth allocation rezoning classifications within Oxford's municipal boundaries;

19.3. Interfering with the exclusive authority of Oxford, pursuant to Maryland Code, Art. 66B, to effectively exercise planning and zoning authority over the entire area within its municipal boundaries;

19.4. Subordinating the Oxford Comprehensive Plan and Oxford zoning and planning decisions to the whims of the Talbot County Council and effectively rendering the Oxford Comprehensive Plan null and void within the Critical Area in Oxford, which encompasses most of the Town of Oxford; and

19.5. Subordinating any Oxford critical area rezoning, subdivision or redevelopment process to the whims of the County Council and effectively rendering the Oxford growth allocation and subdivision and development regulations null and void within the Critical Area in Oxford.

20. Each local jurisdiction in Maryland with critical area lands, including the Town of Oxford, is required by Maryland Code Ann. Natural Resources Article § 8-1808, to adopt a critical area program, to be approved by the Critical Area Commission. Oxford's growth allocation zoning provisions have been approved by the Critical Area Commission. Approval of County Bill 933 as requested by Talbot County is inconsistent with state law, and the Oxford Critical Area Program, and Oxford's zoning ordinance and the critical area provisions therein, which have been approved by the Critical Area Commission.

21. There exists an actual controversy of a justiciable issue involving antagonistic claims between the County and the Town of Oxford that is within the jurisdiction of this Court, and which involves a conflict of the rights and liabilities of the parties hereto under County Bill 933 under state law, and under the Oxford Zoning Ordinance, and the propriety of the disapproval thereof by the Critical Area Commission, as set forth above.

22. Regardless of the action of the Critical Area Commission with respect to Bill 933, the County was and is without legal authority to enact a zoning ordinance amendment to be

effective within the Town of Oxford, which enjoys independent and exclusive planning and zoning jurisdiction within town boundaries.

23. The antagonistic claims set forth herein are such that imminent and inevitable litigation will occur between the County and the Town of Oxford. A declaratory judgment or decree in this case will serve to terminate the uncertainties and controversies giving rise to this proceeding.

WHEREFORE, for all of the reasons set forth above, the Town of Oxford respectfully requests that:

A. This Court determine and adjudicate the rights and liabilities of the parties with respect to County Bill 933; and

B. That the Court find and declare as follows:

(1) That County Bill 933 violates the State Critical Area Program;

(2) That County Bill 933 violates and is in conflict with the Constitution and the laws of the State of Maryland;

(3) That County Bill 933, as applied to the Town of Oxford, violates the State Critical Area Program;

(4) That County Bill 933, as applied to the Town of Oxford, violates and is in conflict with the Constitution and the laws of the State of Maryland;

(5) That the Town of Oxford has exclusive planning and zoning jurisdiction within the town boundaries, and Talbot County and the Talbot County Council have no right to enact or enforce zoning laws within the Town of Oxford;

(6) That the County's attempt to repeal the zoning maps mapping the growth allocation and annexation areas was ultra vires and ineffective;

(7) That County bill 933 is inconsistent with Oxford's Critical Area Program, and is therefore ineffective within the Town of Oxford;

(8) And for such other and further relief as may be appropriate.

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
(410) 822-6800
Attorneys for Defendant/Counter-Plaintiff,
Town of Oxford

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____, 2004, a copy of the foregoing Counterclaim was 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

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
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels

David R. Thompson

I further certify that a copy of this counterclaim was faxed to each of the above counsel, and hand delivered to Michael L. Pullen, Attorney for Talbot County, at his address as set forth above, on this 1st day of November, 2004.

David R. Thompson

RECEIVED

NOV 1 2004

TALBOT COUNTY, MARYLAND,

* CIVIL CASE NO. 20-C-04-005095DJ

Plaintiff

DNR - LEGAL DIVISION IN THE

CIRCUIT COURT

Vs.

* FOR

DEPARTMENT OF NATURAL RESOURCES,

* TALBOT COUNTY

Defendant

* STATE OF MARYLAND

* * * * *

**MEMORANDUM IN REPLY TO
OPPOSITION TO ST. MICHAELS' MOTION TO INTERVENE**

The Movant, The Commissioners Of St. Michaels ("St. Michaels" or the "Town"), by its attorney, H. Michael Hickson, files this Memorandum in reply to the Opposition To St. Michaels' Motion To Intervene filed on behalf of Talbot County, Maryland (the "County").

INTRODUCTION

The County opposes the St. Michaels Motion To Intervene on three grounds. The County argues that intervention should be denied because: (1) the County claims that St. Michaels has no legally protectable interest in this case; (2) the County claims that any legally protectable interest of the Town in this case would be adequately represented by the Department of Natural Resources (the "Department"), which also represents the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Commission") in this case; and (3) St. Michaels proposes to raise additional grounds supporting the action of the Commission appealed from by the County. The County asks this Court to: (1) ignore that the purposes of applicable rule and statute favor intervention to fully determine an action before the court, to provide interested parties their day in court, and to avoid a multiplicity of suits; (2) ignore that St. Michaels has substantial unprotected rights at stake in this case; (3) ignore that St. Michaels is a government that will be affected by Talbot County Bill No. 933 ("Bill 933") if it is determined by this case to be valid; (4)

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

ignore that St. Michaels is in the position of having to either: (a) assert in this case all its arguments that would support the Commission's action invalidating Bill 933, (b) file a separate declaratory judgment action in this Court to assert all its arguments as to the invalidity of Bill 933, or (c) risk being estopped from asserting in any future litigation the same arguments that would support the invalidity of Bill 933 in this case; and (5) deny the St. Michaels Motion To Intervene.

St. Michaels is a governmental entity that will be affected by Bill 933 if it is determined to be valid. Further, St. Michaels has legally protectable interests that will not be adequately represented by the Department. In addition, if Bill 933 is determined to be valid it will affect the operation of St. Michaels land-use laws. Finally, the applicable rule and statute relating to intervention in this case favor intervention to fully determine an action before the court, to provide interested parties their day in court, and to avoid a multiplicity of suits. For each of those reasons, each of which is an independent basis for intervention in this case, whether pursuant to the declaratory judgment subtitle, "as a matter of right", permissive, the St. Michaels Motion To Intervene should be granted.

BACKGROUND

St. Michaels is a municipal corporation. Beginning in 1954, and continuously thereafter, pursuant to Article 66B,¹ 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. Pursuant to Article 66B, the Town has adopted a comprehensive plan, a zoning ordinance, and a subdivision ordinance (collectively the "St. Michaels Land-Use Controls").

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

¹ The State of Maryland granted substantial powers and authority to Maryland municipal corporations by Maryland Code (1951), Article 66B.

After the Chesapeake Bay Critical Area Protection Program was enacted in 1984, as Maryland Code, Natural Resources Article, Title 8, Subtitle 18, both the Town and the County enacted their own respective local critical area programs. As part of the County Critical Area Program, as originally enacted by the County and approved by the Commission, the County unconditionally reserved 245 acres of growth allocation to St. Michaels. The Town amended the St. Michaels Land-Use Controls to incorporate the provisions of the St. Michaels Critical Area Program.

Talbot County Bill No. 933

In 2003, the Talbot County Council proposed Bill 933 for enactment as an amendment to the Talbot County Critical Area Program. The effect of Bill 933, if approved, would be to revoke all growth allocation previously reserved to the Town by the County to the extent that such reserved growth allocation has not been both awarded and vested (by substantial construction pursuant to such award) to a specific project.²

Further, if Bill 933 is approved, no growth allocation could thereafter be awarded within the Town without the concurrence of the Talbot County Council. Currently, approximately 68% of all land, and approximately 84% of all undeveloped land, within St. Michaels is within the Critical Area. The St. Michaels Land-Use Controls and the St. Michaels Critical Area Program

² To date, the Town and the Critical Area Commission have approved two projects for the award of growth allocation within the Town, neither of which has been vested by substantial construction. One such project, involving approximately 20 acres of growth allocation awarded by the Town in 2003 for the Strausburg property, has not been appealed but no actual construction on the land is anticipated in the near future. The other project, known as Miles Point III, involves approximately 72 acres of growth allocation awarded by the Town in 2004 before the Critical Area Commission disapproved Bill 933. There is a development rights and responsibilities agreement (the "DRRA") in place between the Town and the owner-developer of Miles Point III, pursuant to Article 66B, §13.01, in which the Town has relinquished its right to amend the St. Michaels Land-Use Controls relative to the Miles Point III project in exchange for certain financial and other commitments from the developer and its successors intended to off-set the impact of the development on the Town. The DRRA, involving benefits to the Town in excess of more than \$12 million over 30 years, is recorded among the Land Records of Talbot County. The Town's decision to award growth allocation to the Miles Point III project is the subject of Case No. 20-C-04-005032, based on a petition for judicial review, now pending in this Court.

provide policies and limitations, as determined by the Town, that effectively establish criteria for how all land within and without the Town Critical Area may be developed. By giving the Talbot County Council the ultimate power to deny growth allocation within the Town, Bill 933 would have the effect of empowering the County Council to deny an application for the award of growth allocation within the Town despite the fact that the Town has approved that same application based on the criteria therefore contained in, and pursuant to, the St. Michaels Land-Use Controls.

The County Council forwarded Bill 933 to the Talbot County Planning Commission for a public hearing and recommendation. Subsequently, the County Planning Commission forwarded its recommendation against Bill 933 to the County Council, which conducted its own public hearing on the Bill. Thereafter, Bill 933 was enacted by the County Council subject to approval by the Commission. Bill 933 was then forwarded to the Commission, so that it could hold a public hearing and consider Bill 933 for approval. A public hearing on Bill 933 was conducted by the Commission on March 24, 2004, after which Bill 933 was disapproved, thereby rendering Bill 933 invalid.

The Town actively participated, by having a representative speak in opposition, at each public hearing on either the recommendation, enactment or approval of Bill 933, conducted respectively by the Talbot County Planning Commission, the Talbot County Council, and the Commission. In addition, the Town submitted written arguments to the Commission in opposition to Bill 933, raising the same issues that are the subject of the Proposed Counter-Claim that was filed with the Town's Motion To Intervene in this case.

The Instant Litigation

Subsequent to the disapproval of Bill 933 by the Commission, the County filed the complaint in this case against the Department, seeking to have the Commission's action reversed, thereby rendering Bill 933 valid. The County's complaint included a declaratory judgment action, a request for judicial review, and a mandamus action.

The Town established standing, participated, and raised the "other grounds" for disapproval of Bill 933 before the Commission. The "other grounds" constitute independent grounds for disapproval of Bill 933 by the Commission, but were not relied upon by the Commission. The "other grounds" also constitute independent grounds upon which this Court may affirm the action of the Commission. The Town has moved to intervene in this case, not only to support the Commission's grounds for disapproving Bill 933, but also to assert the "other grounds" for disapproval of Bill 933 that were raised by St. Michaels before the Commission.

The Town established standing and asserted the "other grounds" for disapproval of Bill 933 before the Commission. Therefore, if the Town does not intervene and assert the "other grounds" in this case, it must either assert the "other grounds" by filing a simultaneous declaratory judgment action against the County regarding the validity of Bill 933, or risk being estopped from asserting the "other grounds" against the County in any future litigation involving similar legislation. A simultaneous declaratory judgment action against the County regarding the validity of Bill 933 would be contrary to the goals of finally resolving all issues relating to the same subject in one lawsuit and judicial economy.

For these reasons, and because the Town has substantial legal interests that will not be protected by the other parties to the instant litigation, the Town's Motion to Intervene should be granted.

ARGUMENT

I.

St. Michaels Is Entitled To Intervene As A Matter Of Right Under Maryland Rule 2-214 (a)

When considering intervention according to Rule 2-214, as a general rule, “all persons should be made parties who are legally or beneficially interested in the suit.” *Reddick v. State*, 213 Md. 18, 29, 130 A.2d 762 (1957). The purposes of Rule 2-214 are to “fully determine an action before the court ... to provide interested parties their day in court, and to avoid a multiplicity of suits.” *Maryland Dept. of Personnel v. Bender*, 44 Md. App. 714, 719, 411 A.2d 107 (1980).

Rule 2-214(a) permits intervention on two independent grounds: (1) “when the person [seeking intervention] 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.” *Id.* Because the Town of St. Michaels meets not only one, but both tests, intervention, pursuant to Maryland Rule 2-214 (a), should be granted.

A.

St. Michaels Has An Unconditional Right To Intervene As A Matter Of Law

Maryland Rule 2-214(a)(1), addressing intervention “of right”, states, in pertinent part, that: “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. . . .*” (Emphasis supplied.) The declaratory

judgment statute relied upon in Talbot County's suit, in turn, provides St. Michaels with the "unconditional right to intervene" required for intervention pursuant to Rule 2-214(a)(1).

Maryland's declaratory judgment statute, Courts and Judicial Proceedings ("Courts") Article, § 3-405(a)(1) mandates that certain persons be made parties to declaratory judgment actions, stating: "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." *Id.* (Emphasis supplied.)

While the test for intervention pursuant to Courts Article, § 3-405(a)(1) may appear to be essentially the same test for intervention described in Maryland Rule 2-214(a)(2), discussed *infra*, such is not the case.³ At the very least, unlike Rule 2-214(a), § 3-405(a)(1) does not require the intervening party be "so situated that the disposition of the action may as a practical matter impair or impede [his] ability to protect [his] interest" or that the intervening party is not "adequately represented by existing parties", as is required by Rule 2-214(a)(2).⁴ Instead, all that is required to intervene according to the declaratory judgment statute is an existing declaratory judgment action, and the ability to set forth an interest affected therein.

Further, the Declaratory Judgment subtitle of the Courts Article is remedial and, as such, is to be liberally construed. Courts Article, § 3-402. Its purpose is to afford relief from uncertainty with respect to rights, status, and other legal relations. Any person⁵ who, as a result of a declaratory judgment, 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.

³ Maryland Rule 2-214 (a) (2), states:

Upon timely motion, a person *shall* be permitted to intervene in an action: . . . (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.* [*Emphasis added.*]

⁴ See footnote 1.

⁵ "Person", as that term is defined, applies to municipal corporations. See C.J.P. § 3-401.

Bender v. Maryland Dept. of Personnel, 290 Md. 345, 350, 430 A.2d 66 (1981). Because of its remedial purpose, any doubt as to whether a person is a necessary party in a declaratory judgment action should be resolved in favor of a party seeking to intervene.

However, in the case of St. Michaels, it clearly meets both criteria for being a necessary party in a declaratory judgment action. Therefore, St. Michaels is a necessary party. As a necessary party, intervention of St. Michaels should not just be permitted, it should be required.

**1.
St. Michaels Has Or Claims An Interest
Which Would Be Affected By The Declaration**

The Town has actively opposed Bill 933 at every stage because the Town “has or claims an interest that would be affected” by the enactment by the County Council, and by the approval by the Commission, of Bill 933. By this litigation, the County seeks to have the disapproval of Bill 933 by the Commission overturned, thereby validating the Bill. Hence, this litigation is merely an extension of a process that was commenced by the County in November of 2003, in which the Town has fully participated at each stage. Surely, the Town would not have expended such time, effort and expense if it had no interest which would be affected by the outcome.

As to the interests that St. Michaels wishes to protect, should the Commission's decision regarding Bill 933 be overturned, St. Michaels will be stripped of substantial powers, guaranteed by state law, to plan and regulate (including encourage or discourage) the subdivision, development and use of land within the Critical Areas located within the Town's borders; contracts previously entered into between private land owners and the Town will likewise be affected.⁶

⁶ These contracts include annexation agreements relating to the Perry Cabin Farm (in 1981), the Strausburg property (in 2003), and the Huntman property (2003); and a development rights and responsibilities agreement relating to the Miles Point III project (in 2004).

The Maryland Constitution, Article XI-E (Municipal Corporations), grants home rule powers to municipal corporations. Maryland Code, Art. 23A (Municipal corporations), § 2 (Express powers), (a), states

The legislative body of every *incorporated municipality* in this State . . . *shall have general power to pass such ordinances* not contrary to the Constitution of Maryland, public general law, or, except as provided in § 2B of this article, public local law *as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality.* . . .

Id. (Emphasis supplied.) Thus, municipalities, such as the Town, have been granted broad powers to exercise in the interest of their citizens.

Beyond the powers granted by Article 23A, Article 66B (Land-Use) establishes a comprehensive regulatory scheme of land-use controls, and grants municipalities, including St. Michaels, exclusive land-use powers within their respective boundaries. Article 66B makes it the function and duty of the Town and its agencies to develop and adopt a comprehensive plan to serve as a guide to public and private actions and decisions to ensure the development of public and private property in appropriate relationships.⁷ But if Bill 933 is upheld, these Town powers, as they relate to the critical area, will be subjugated to the unfettered County discretion to deny any application for growth allocation within the Town, effectively controlling all development

⁷ The comprehensive plan is required to contain a statement of goals and objectives, principles, policies, and standards, which shall serve as a guide for the development and economic and social well-being of the Town. The comprehensive plan must provide for: (i) Transportation needs; (ii) The promotion of public safety; (iii) Light and air; (iv) The conservation of natural resources; (v) The prevention of environmental pollution; (vi) The promotion of a healthful and convenient distribution of population; (vii) The promotion of good civic design and arrangement; (viii) The wise and efficient expenditure of public funds; (ix) Adequate public utilities; and (x) An adequate supply of other public requirements. The comprehensive plan is intended for the general purpose of guiding and accomplishing the coordinated, adjusted, and harmonious development of the local jurisdiction and its environs; to promote the health, safety, morals, order, convenience, prosperity, and the general welfare of the local jurisdiction; and to promote efficiency and economy in the development process. Art. 66B, §§ 3.05 and 3.08. The comprehensive plan is intended to guide exercise of the zoning and subdivision powers as contained in titles 4 and 5 of Art. 66B.

(and therefore planning, subdivision and use) of all land within those areas of the Town. Yet, the County continues to argue that the Town has no substantial legal interests in the outcome of this case.

Consistent with the powers granted by Articles 23A and 66B, the Town legislative and administrative bodies have been the sole determiners of policies and legislation, and the administration and enforcement thereof, relating to the land-use matters. Bill 933 seeks to change all of that. Pursuant to Art. 66B, those policies have been adopted by the Town and embodied in the St. Michaels Comprehensive Plan,⁸ the Town zoning laws (collectively the "St. Michaels Zoning Ordinance"), and the Town subdivision laws (collectively the "St. Michaels Subdivision Ordinance") (hereinafter collectively the "St. Michaels Land-Use Controls"). The St. Michaels Land-Use Controls are effective and enforced throughout the Town.

Thus, Maryland law empowers the Town, as a municipality, to establish and implement important public land-use policies to promote and protect the public health, welfare and safety, for the benefit of the residents and owners of property within the Town, and the Town has done so. Clearly, the St. Michaels Land-Use Controls constitute the public policy of the Town, determined and adopted specifically for the Town pursuant to State law, intended to guide the development and economic and social well-being of the Town. A government entity that has the power to make public policy, rather than mere quasi-judicial or enforcement powers, has an interest in litigation that would affect the policies of that government entity. *Calvert County Planning Comm'n v. Howlin Realty Mgmt., Inc.*, 364 Md. 301, 320, 772 A.2d 1209 (2001) (Planning Commission charged with implementing important public policy guiding the economic development and public welfare of the county); *see also, Consumer Protection v. Consumer*

⁸ The contents of St. Michaels Zoning Ordinance and the St. Michaels Subdivision Ordinance are influenced by the St. Michaels Comprehensive Plan.

Pub., 304 Md. 731, 743, 501 A.2d 48, 54 (1985) (Consumer Protection Division exercised a broad range of functions that were closely identified with execution of public policy, its mandate to protect consumers and its role as a representative of the interests of the State).

Additionally, in accordance with Subtitle 18 of the Natural Resources Article, and with the approval of the Commission, St. Michaels adopted a local critical area program (the "St. Michaels Local Critical Area Program"), and has amended the St. Michaels Land-Use Controls to incorporate into them the applicable provisions of the St. Michaels Local Critical Area Program.⁹ Thus, the development policies set forth in the St. Michaels Land-Use Controls applicable to land located within the Chesapeake Bay Critical Area are influenced by, and inseparable from, the development policies set forth in the St. Michaels Local Critical Area Program.

A substantial part of the Town is located within the Chesapeake Bay Critical Area. The Town had sole discretion in deciding whether to adopt a local critical area program. The substance, and any amendment, of the St. Michaels Local Critical Area Program must comply with the provisions of Maryland Code, Nat. Res. Art., Title 8 (Water), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and the regulations adopted pursuant thereto, and is subject to the Commission's oversight.

⁹ In 1984, Maryland Code, Nat. Res. Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), was enacted for the following purposes:

- (1) To establish a Resource Protection Program for the Chesapeake and the Atlantic Coastal Bays and their tributaries by *fostering more sensitive development activity for certain shoreline areas* so as to minimize damage to water quality and 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. [*Emphasis added.*]

Nat. Res. Art., § 8-1801 (Legislative findings), (b). The term "Local jurisdiction" is defined by Nat. Res. Art., § 8-1802 (Definitions; persons covered), (a), (11), to mean "a county, or *a municipal corporation with planning and zoning powers*, in which any part of the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located." [*Emphasis added.*]

Bill 933 would have the effect of frustrating these public policies and laws, established by the Town's government pursuant to powers granted to all municipalities by State law, within the substantial part of the Town occupied by the Critical Area. The conflict of Bill 933 with those municipal powers of the Town granted by the Maryland Constitution, Art. Article XI-E (Municipal Corporations); by Maryland Code, Art. 23A, (Municipal Corporations); and Art. 66B (Land-Use); was raised as an issue by the Town to the Commission in writing, and orally at the public hearing and meetings of the Commission, relating to Bill 933, and constitute the substantial interest that the Town has in the outcome of the County's declaratory judgment action.¹⁰

This litigation, to determination the propriety of the Commission's disapproval of Bill 933, and is therefore its validity, will have such a substantial impact on the efficacy of the Town's public policies, embodied in the St. Michaels Land-Use Controls, that the Town's participation in this litigation is essential to the adequate protection of the Town's interests. Other Maryland cases have found standing and proper intervention by government agencies based on a broad range of functions that were closely identified with the execution of public policy. *Calvert County Planning Com'n v. Howlin Realty Management, Inc.*, 364 Md. 301, 320, 772 A.2d 1209 (2001); and *Consumer Protection v. Consumer Pub.*, 304 Md. 731, 743, 501 A.2d 48, 54 (1985). Moreover, had the Town not participated in the Commissions proceedings relating to Bill 933, and had the Commission approved 933, the Town clearly could have challenged the validity based on the "other grounds" in an independent declaratory judgment

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

¹⁰ See Memorandum Of Law In Opposition To County Bill No. 933, attached hereto, submitted to the Critical Area Commission on behalf of the Town at its public hearing on Bill 933, conducted on March 24, 2004.

action against the County.¹¹ Thus, the Town has a legally protectable interest that would be affected by Bill 933.

Stated simply, if the Town is not permitted to intervene in this litigation, it has the right to, and indeed must, file a declaratory judgment action to raise the same issues that it would raise in this case, namely that Bill 933 is in conflict with the Maryland Constitution and Maryland statutes that grant Maryland municipalities home rule powers and the exclusive right to exercise planning, zoning and subdivision control over all land within those municipalities.¹² Such a declaratory judgment action would raise the same basic issue as is at the heart of the instant case; the propriety of the Commission's disapproval of Bill 933; thus determining its validity. Therefore, in the interest of judicial economy, the Town should be permitted to intervene in this declaratory judgment action.

But even if the Town is permitted to intervene, only on the limited issues raised by the County, as the County argues, and the County were to prevail, the question of whether Bill 933 is valid will not be finally determined until the "other grounds" raised by the Town (*see* the Town's Proposed Counterclaim) have been addressed and resolved by a court of competent jurisdiction. Therefore, granting the Town's Motion To Intervene serves the remedial purposes of the Declaratory Judgments Act by facilitating a final and complete determination of a dispute, and the purpose of the intervention statutes by preserving judicial resources by preventing a

¹¹ Courts Article, § 3-406 (Authority to interpret)

Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or *whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation*, contract, or franchise, *may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation*, land patent, contract, or franchise *and obtain a declaration of rights, status, or other legal relations under it.* (Emphasis added.)

¹² Further, the Commission lacks the power to approve a critical area program amendment that is in conflict with State law because all members of the Commission are sworn to uphold the laws of the State, and are thereby duty-bound to disapprove any proposed program amendment in conflict therewith.

multiplicity of suits, and affording the Town relief from uncertainty as to its rights, were it not permitted to intervene. For all of the above reasons, the Town has satisfied the requirements for intervention as of right pursuant to Maryland Rule 2-114 (a) (1), and Courts Article, § 3-405. Therefore, the Town's Motion To Intervene should be granted.

B.
**St. Michaels Has Legally Protectable Interests
And Is Entitled To Intervene As A Matter Of Law**

The Town also meets the stricter requirements for intervene of right in this litigation, as set forth in Maryland Rule 2-214 (a) (2), which states:

Upon timely motion, a person shall be permitted to intervene in an action: . . .
 . (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. [Emphasis added.]*

As described in section I. A. 1 of this Memorandum, the Town has a legally protectable interest in the municipal home rule powers pursuant to the Maryland Constitution, and the exclusive land-use powers granted to it by Article 66B. As described below in section I. B. 1 hereof, the Town is so situated that the disposition of Bill 933 may as a practical matter impair or impede the ability of the Town to protect its interest. Finally, as described in section I. B. 2 hereof, the Town is not adequately represented by the existing parties in this case. Thus, intervention, pursuant to Md. Rule 2-214(a)(2) is warranted.

1.
**The Disposition Of Bill 933 In This Action
May Impair Or Impede The Interests Of St. Michaels**

Unlike the finding in *Montgomery County v. Bradford*,¹³ the impact of Bill 933 upon the

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

¹³ See 345 Md. 175, 691 A.2d 1281 (1997). In *Bradford*, the intervener argued that possible future effects upon State funding to Montgomery County posed as the basis for its intervention in an action seeking a declaration

Town in the instant case is not speculative, remote, or uncertain, but would follow automatically from judgment for plaintiff in this case, directing the approval of Bill 933 by the Commission.

The transaction that is the subject of this litigation is the propriety of the disapproval of Bill 933 by the Commission. As the results of that transaction (disapproval) currently stand: (1) the two development projects that have previously been awarded growth allocation by the Town will retain those awards;¹⁴ (2) the Town will retain the reserved unused growth allocation acres for future use on other projects; and, (3) the St. Michaels Land-Use Controls will remain fully effective within the Town critical area, and not subject to control by the County Council.

On the other hand, in the event that this Court directs the Commission to approve Bill 933, then: (1) the two specific development projects that have previously been awarded growth allocation by the Town will immediately lose their growth allocation awards; (2) all of the 245 acres of growth allocation originally reserved to the Town will immediately revert to unilateral control by the County Council; and (3) all future proposed development within the Town critical area, and the St. Michaels Land-Use Controls regulating such development, will immediately be subjugated to, and dependent upon, final discretionary approval of growth allocation by the County Council.

The impact of the transaction that is the subject of this litigation (approval or disapproval of Bill 933 by the Commission) on the effect and operation of St. Michaels Land-Use Controls within the Town critical area is not remote or contingent; it looms immediate and substantial. *Hartford Ins. Co. v. Birdsong, supra* at 69 Md.App. 628 (two contingencies, neither of which

that the Baltimore City Public School System was providing a substandard quality of education. Ultimately, the court held that such an argument was speculative and an insufficient ground for intervention.

¹⁴ As the result of Case No. 20-C-04-005032, now pending in this Court on a petition for judicial review, challenging the award of growth allocation for the Miles Point III project by the Town, that award of growth allocation could be reversed even if the disapproval of Bill 933 is affirmed in this case.

would be determined by the litigation in which intervention was sought). If Bill 933 is approved by a final decision of this Court, or by the Commission, nothing further need happen before the Town, and all projects previously receiving growth allocation from the Town, lose the growth allocation and the power to grant growth allocation for the development of any project within the Town without the approval of the Talbot County Council. Further, all land-use decisions within the Town critical area, which are dependent on an award of growth allocation, will be immediately conditional upon discretionary approval by the County Council, regardless of whether such approval by the County Council is governed by any standards consistent with Town policies embodied in the St. Michaels Land-Use Controls.

Clearly, the disposition of Bill 933 by this case will substantially impact the governing of land-use by the Town within the Town critical area in an immediate, definite and predictable manner. Therefore, the Town satisfies the second requirement for intervention as of right.

2.

**The Legally Protectable Interests Of St. Michaels
Are Not Adequately Represented**

At the present time the Maryland Department of Natural Resources (the "Department") is the only party in this case to defend against the County's attempt to force approval of Bill 933 by the Commission. The County claims in its opposition to the Town's intervention that the interests of the Town are adequately represented by the Department; such is not the case.

The County has cited *Public Service Co. Of New Hampshire v. Patch*, 136 F.3d 197 (1st Cir 1998), and *Mausolf v. Babbitt*, 85 F.3d 1295 (8th Cir. 1996) for the proposition that when one of the parties to litigation is an arm or agency of the government, and the case concerns a matter of "sovereign interest," the government agency is presumed to adequately represent the interests of all of its citizens. It should be noted that this doctrine, sometimes referred to as *parens patriae*

doctrine, has never been applied in this context in a reported Maryland appellate case. For its interpretation of this doctrine, the County has ventured to the First and Eighth Federal Appellate Circuits. The doctrine is not applied uniformly throughout the federal court system. Further, according to those and other cases, would-be intervenors can rebut this "presumption of adequate representation" only by identifying their "local and individual interests not shared by the general citizenry."

The County contends that the Department, being a State agency, will adequately represent the Town. In *New Jersey v. New York*, 345 U.S. 369, 73 S.Ct. 689, 97 L.Ed. 1081 (1953), the Court held that in cases involving sovereign interests, proposed intervenors would be denied leave to intervene unless they could demonstrate some compelling interest in their own right that is not properly represented by the state. This high standard was rejected by the Court of Appeals for the District of Columbia as too strict for cases not coming within the original jurisdiction of the Supreme Court. *Environmental Defense Fund, Inc. v. Higginson*, 631 F.2d 738, 739 (D.C. Cir. 1979). That court held that in cases filed in federal district court, a proposed intervenor must overcome the presumption of adequate representation by showing "that its interest is in fact different from that of the state and that that interest will not be represented by the state." *Id.* at 740.

Such a showing may be made when, for example, the government representative indicates a disinclination to represent the particularized interests of a proposed intervenor, *see, e.g. Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) ("Secretary's silence on any intent to defend the fishing groups' special interests is deafening"), or the state's interest and that of proposed intervenor do not align exactly. *See, e.g., In re Sierra Club*, 945 F.2d 776 (4th Cir. 1991) (environmental group allowed to intervene in suit challenging constitutionality of state regulation of hazardous waste because group was opposed to issuance of

permits and state is presumed to represent interests of all citizens, including those who might support new hazardous waste facilities).

The Department has interests much broader than those of the County or the Town, spanning the Chesapeake and Atlantic Coastal Bays, as implied by the full name of the Commission. Maryland Code, Nat. Res. Art., § 8-1801 (Legislative findings), states:

(b) It is the purpose of the General Assembly in enacting this subtitle:

(1) To establish a Resource Protection Program for the Chesapeake and the Atlantic Coastal Bays and their tributaries by *fostering more sensitive development activity* for certain shoreline areas so as to minimize damage to water quality and 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. [*Emphasis added.*]

The Commission has shown in the instant case its inclination not to address the Town's "other grounds", as evidenced by the content of its discussions at its public meetings and in the written notice of its disapproval. Unlike the self-serving interests of both the County and Town, the Commission's interest is only in carrying out its mandate from the State. To this end, during its processing of Bill 933, the Commission assumed its role as a neutral oversight committee. *North v. Kent Island Ltd. Partnership*, 106 Md.App. 92, 106, 664 A.2d 34 (1995). It carefully avoided discussing and relying on the grounds advanced by the Town for disapproval of Bill 993. The Department appropriately appeared disinterested in the struggle between the County and the Town, and appeared to steadfastly confine itself to the question of whether Bill 933 complies with the criteria imposed by the Chesapeake Bay Critical Area Protection Program (Nat. Res. Art., Title 8, Subtitle 18), and the State regulations adopted by the Commission pursuant thereto.

Clearly, the interests of the County are narrower than those of the Department, and just as clearly, are not represented by the Department. *See Mille Lacs Band of Chippewa Indians v.*

Minnesota, 989 F.2d 994, 1000 (8th Cir. 1993) (*parens patriae* doctrine did not apply because "[t]he counties' interests in land are narrower interests not subsumed in the general interest Minnesota asserts in protecting fish and game"). The interests of the County are in approval of Bill 933, which, if approved would: (1) reclaim all unused growth allocation from municipalities in Talbot County; (2) "repeal" the awards of growth allocation by the Town; and (3) require County Council approval of all future awards of growth allocation by municipalities in Talbot County. Thus, Bill 933 is a tool employed by the County in its current struggle with the Town for ultimate control over development within the Town.¹⁵ The County's interest is to make that tool legally binding on the three towns in Talbot County containing critical area. The Town's interest is in maintaining its independence from the County in the exercise within the Town of the powers granted by Article 66B.

Just as the interests of the County are narrower than those of the Department, the Town's interests are narrow and are not represented by the Department. See *Mille Lacs Band of Chippewa Indians v. Minnesota*, supra. Implicit in the delegation by the General Assembly to municipalities of the right to prescribe reasonable land-use regulations is the presumption that each municipality is uniquely suited to determine its particular needs relating to subdivision, development and use of land within its borders based on its own circumstances, to formulate policies to address those needs, and to translate those policies into a comprehensive plan, zoning and subdivision laws. Otherwise, it would be equally representative of all citizens, and more efficient, for the State to retain the right to regulate on that subject. Therefore, in exercising powers delegated by the State to formulate land-use policies, laws and regulations applicable only within St. Michaels, the Town is seeking to satisfy its own particular needs and interests for

¹⁵ The County is also currently in the process of revising its comprehensive plan to reduce the possibility of development in and around St. Michaels.

its citizens, as distinguished from those of the State in general. The Department could not possibly know and represent the Town's interests in that regard. Because Bill 933 runs counter to the Town's independent exercise of its Article 66B powers, in this case the Town's interests are not in an unbiased assessment of Bill 933. On the contrary, the Town is interested in defeating Bill 933 by any legal means, whether by the application of the Chesapeake Bay Critical Area Protection Program laws and regulations, or by the application of other laws which may be beyond the interest of the Commission, but which are not beyond the Commission's duty and authority to apply.¹⁶

The interests of the Town, being grounded in municipal home rule and the rights and powers granted to the Town by Article 66B, are substantially different from those of the Department. If the *parens patriae* doctrine were strictly applied without exception, the Department could represent everyone on both sides of this case. Obviously, that should not occur. However, the facts leading to this case, as recited herein, clearly demonstrate that the interests of the Town are not adequately represented by the Department. The Proposed Counterclaim shows that the Town continues to be prepared to advance those issues that the Commission avoided in its disapproval of Bill 933. If private parties are not permitted to litigate issues which do not uniquely affect them, and if the Department has declined to take up the Town's issues, then who other than the Town is there to advance the Town's issues?

Because the Town's interests would not be adequately represented by another party in this case, the Town satisfies the third and final requirement for intervention as of right, pursuant to Maryland Rule 2-114 (a) (2). Therefore, the Town's Motion To Intervene should be granted.

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

¹⁶ Because each Critical Area Commission member is required to take an oath of office in which he or she swears to uphold the laws of the State. Constitution Of Maryland, Article I (Elective Franchise), § 9 (Oath or affirmation of office). Therefore, the Critical Area Commission is duty-bound to disapproval any proposal that violates a State law. *Furnitureland South, Inc. v. Comptroller*, 364 Md. 126, 137, 771 A.2d 1061 (2001); and *Insurance Comm'r v. Equitable Life Assur. Soc. of U.S.*, 339 Md. 596, 616, 664 A.2d 862 (1995).

II.
St. Michaels Meets All Requirements For Permissive Intervention

Even if the Town is not granted intervention as a matter of right pursuant to Maryland Rule 2-214 (a), the Town satisfies all requirements for permissive intervention under Maryland Rule 2-214 (b) (2), which states:

(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.

Clearly, the Town is a "political subdivision of the State" for the purposes of this Rule. In contrast to the requirements for permissive intervention under Rule 2-214 (b) (1), permissive intervention for a governmental interest under Rule 2-214 (b) (2) does not require that the intervenor's "claim or defense [have] a question of law or fact in common with the action." The subject of this litigation is the validity of Bill 933; whether it was properly disapproved by the Commission. The Town incorporates herein the arguments from sections I. A. 1 of this Memorandum, describing how application of the St. Michaels Land-Use Controls to the Town critical area, and actual development (or the frustration thereof) of land within that area, and the Town Critical Area Program would be affected by Bill 933 if it is approved by the Commission. In this case "the validity of a [county] . . . ordinance . . . affecting the moving party is drawn in question in the action," as required by Rule 2-214(b)(2). Therefore, the Town meets all of the technical requirements for permissive intervention for a government interest.

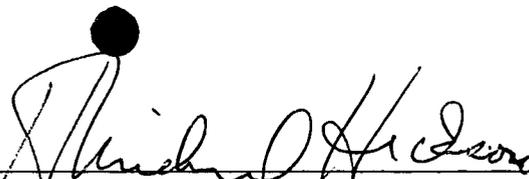
Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

Despite the fact that the Town meets the requirements, permissive intervention is a matter of discretion. *Stagge v. City Serv. Comm'n*, 217 Md. 466, 475, 143 A.2d 502 (1958). At least eight separate lawsuits have been filed in this Court, directly or indirectly relating to the various proposals for development of the land that is the subject of the Miles Point III project. If the Commission's disapproval of Bill 933 is affirmed on the narrow issues raised by the County in this case, the County will be free to enact new legislation intended to meet the objections of the Commission, but also intended to have effects on the Town similar to those of Bill 933, as described above. The "other grounds" raised by the Town at the Commission and proposed to be raised in this case go to the heart of the validity of Bill 933, or any similar subsequent legislation that may be enacted by the County that would affect the Town in ways similar to Bill 933. Therefore, for purposes of minimizing future litigation and for judicial economy, it is urged that the Town be granted permissive intervention in this case.

Because the Town satisfies all requirements for intervention for a governmental interest; because the Town has an interest in, and would be affected by the outcome of this case; and because the "other grounds" raised by the Town at the Commission and in its Proposed Counterclaim are likely to result in a reduction in future litigation and in judicial economy, it is respectfully submitted that the Town's Motion To Intervene should be granted based on permissive intervention.

CONCLUSION

Based on the applicable facts and the law, the Commissioners Of St. Michaels respectfully urge this Court to grant its 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

Attachment: Memorandum Of Law In Opposition To County Bill No. 933 [Submitted to the Critical Area Commission.]

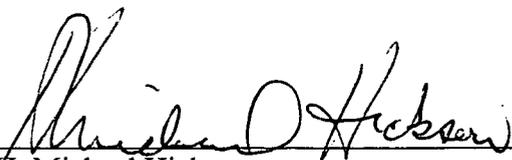
CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2004, a copy of the foregoing Memorandum in Reply to the Opposition to St. Michaels' Motion to Intervene, and the attachment thereto, 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

REQUEST OF THE COUNTY COUNCIL
OF TALBOT COUNTY, MARYLAND

* BEFORE THE
* CRITICAL AREA COMMISSION
* FOR THE CHESAPEAKE AND
* ATLANTIC COASTAL BAYS

FOR APPROVAL OF
TALBOT COUNTY BILL NO. 933

* * * * *

MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933

The Commissioners Of St. Michaels (the "Town"), a municipal corporation located entirely within Talbot County, by its attorney, H. Michael Hickson, respectfully files this Memorandum Of Law in opposition to Talbot County Bill No. 933, in addition to the written testimony filed and the oral comments made on behalf of the Town at the panel hearing of the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (hereinafter the "Commission"). In addition to the prepared written testimony to be filed herewith, the Town relies on the oral comments of its representatives at the hearing in support hereof. The Town hereby respectfully requests that the Commission DENY approval sought by Talbot County for its Bill No. 933. The applicable law, and the reasons why Talbot County Bill No. 933 should be denied, are discussed herein.

**I.
FACTUAL BACKGROUND**

The Commissioners Of St. Michaels (hereinafter the "Town") is a Maryland municipal corporation whose corporate boundaries are located solely within Talbot County, Maryland. Since 1972 the Town has independently exercised the planning and zoning powers granted to it by Maryland Code, Article 66B (Land Use). Those powers exercised by the Town have resulted in the adoption and amendment of comprehensive plans, and in the enactment, administration and enforcement of zoning and subdivision laws, applied solely to land within the Town.¹ The County has consistently exercised planning and zoning powers over land surrounding the Town that has not been subject to the Town planning and zoning powers.

¹ The Town exercised planning and zoning powers over an extra-territorial area within the County pursuant to a State law until that law was declared invalid. See *Gordon v. Commissioners of St. Michaels*, 278 Md. 128, 359 A.2d 543 (1976).

The Critical Area laws were first enacted by the State in 1984. Natural Resources Art., Section 8-1801 (Legislative findings), (a) (9) recognizes that there is "a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity *in a consistent and uniform manner along shoreline areas* of the Chesapeake . . . [Bay] and [its] tributaries so as to minimize damage to water quality and natural habitats." [*Emphasis added.*] Natural Resources Article, Section 8-1801, Subsection (b), states:

- (b) ***It is the purpose of the General Assembly in enacting this subtitle:***
- (1) To establish a Resource Protection Program for the Chesapeake and the Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and 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. [*Emphasis added.*]

The Critical Area laws empowered the Commission to adopt criteria for local programs, but limited the ability of the Commission to make substantive changes in such criteria that has previously been adopted. Those limitations are to prevent substantive amendments to the criteria by the Commission that would frustrate compliance therewith by the local governments and thereby "upset the *cooperative endeavor* between the State and the local governments that is *at the heart of the legislation.*" [*Emphasis added.*] 73 Opinions of the Attorney General (1988) [Opinion No. 88-001]; and 72 Opinions of the Attorney General (3), (3) (1987) [Opinion No. 87-016, at 5]. See Nat. Res. Art., § 8-1801 (b) (2).

Following the theme of cooperation to accomplish the purposes of the Critical Area laws established by Section 8-1801, (b) (2), the Commission adopted a regulation, designated as COMAR 27.01.02.06 A, which states, in part:

Location and Extent of Future Intensely Developed and Limited Development Areas.

- A. ***Intensely developed and limited development areas may be increased subject to these guidelines:***
- (2) 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.
[*Emphasis added.*]

Maryland Code, Natural Resources Article, Section 8-1808, (Program development, implementation and approval), Subsection (a) (1), states:

- (a) (1) It is the intent of this subtitle that *each local jurisdiction shall have primary responsibility for developing and implementing a program*, subject to review and approval by the Commission.
[*Emphasis added.*]

Pursuant to the legislative mandate of Section 8-1808 (a) (1), within a timely fashion thereafter, the County and the Talbot towns conferred to identify potential growth areas and to determine a quantity of growth allocation needed in the foreseeable future by each Talbot town. Thereafter, the County and each Talbot town, independently of each other, formulated and submitted its local Program to this Commission for review and approval. According to the County Program, quantities of growth allocation were reserved for each Talbot town, including 245 acres of growth allocation reserved for the Town. After this Commission approved the local critical area program for the Town (the "Town Program") it was enacted by the Town by amendments to the Town Comprehensive Plan, to the Town Zoning Ordinance, and to the Town Subdivision Ordinance. Since the establishment of the Town Program it has been implemented solely by the Town, without interference by the County, but subject to the requisite approvals by this Commission. At all times the Town Program has been intended by the Town to function independently of the County, and the county has not interfered.

The immediate effect of Bill No. 933 is to withdraw all unused growth allocation previously reserved to the towns in the County Program. The longer term effects of the Bill are more far-reaching. The Bill has been determined by the Chairman of the Commission to be an amendment, rather than a refinement, to the County Program. See Nat. Res. Art., § 8-1809 (Adopting programs; periodic reviews; amendment), Subsection (n). Therefore, the proposed amendment to the County Program is subject to review by the Commission pursuant to Nat. Res. Art., § 8-1809, Subsection (i).

A.
There Has Been No Cooperation Or Coordination By The County

In Amending The County Program As It Affects The Towns

No application for the award of growth allocation was submitted to the Town until 1997. At that time The Midland Companies ("Midland") submitted to the Town the first of its five (5) such applications for the award of growth allocation, all involving some or all of the same land. Seventy-two acres of that land was within the Town and the subject of a 1980 annexation agreement in which specific zoning was agreed to and granted, and certain development was contemplated. Therefore, while the Town had the duty to apply the applicable critical area criteria to any application for growth allocation relating to that land, because of the 1980 annexation agreement the Town had less than the normal discretion to deny growth allocation for that land if all criteria were satisfied. Shortly thereafter the Chesapeake Bay Maritime Museum submitted to the Town an application for the award of growth allocation, but that application was ultimately withdrawn. During the period from 1997 through the spring of 2002, three of the five Midland applications for the award of growth allocation were submitted to the Town, processed, and denied by the Town. Each of those denials was appealed by Midland through the judicial system, and the Town defended each of its decisions through the judicial process. Further, at the conclusion of that litigation, at the urging of Maryland Conflict Resolution Office ("MACRO"), a branch of the Maryland Attorney General's office, the Town promoted non-binding arbitration between Town citizen representatives and Midland. MACRO funded that arbitration, which resulted in some common ground being reached by the participants. In the spring of 2003, the Town Commissioners conducted a public workshop with Midland, in which a more specific group of common goals was identified and publicly announced. The entire Midland process cost the Town well in excess of \$1 million, and was highly publicized by frequent news accounts appearing in the local daily newspaper. The point is, that at no during the five years of the Town's expensive and all-consuming disputes with Midland, did the County take any action, publicly or otherwise, to indicate to the Town that County was going to do anything that would relieve the Town of the ability to grant the growth allocation sought by Midland. To the contrary, in March of 2000 the County informed the Town that recent changes to the County's Program did not impact the Town, and that the Town continued to have the sole power, under the County Program, to award the 245 acres of reserved growth allocation. Based on that information, the Town ultimately concluded that it should set about the task of working with

Midland toward a formulation of a development plan that was the most satisfactory to the Town, including issues of density, design, and critical area criteria.

In the meantime, in the late spring of 2003 a third applicant, the Strausburgs, submitted their application for the award of growth allocation to the Town, in conjunction with a petition for annexation. The Strausburg development plan involves use of the annexed land substantially the same as specified in the County comprehensive plan. Late in 2003 approximately 20 acres of growth allocation was awarded to the Strausburgs. The Strausburg application and the Town decision relating thereto were forwarded to this Commission, where the award of growth allocation, including a 75 acre perpetual forest conservation easement donated to the Town by the applicant, was reviewed and approved. Since then, all conditions of the Strausburg annexation have been waived, so that the annexation of the Strausburg property to the Town is complete.

While the Strausburg application and annexation were being processed, the Midland matter was also making progress. The fourth Midland application for growth allocation, involving a proposed project referred to as "Miles Point II", was submitted to the Town in September of 2003. The Miles Point II application included approximately 70 acres of the land that was annexed to the Town in 1980, and 18 acres of land located immediately outside of, but proposed to be annexed into, the Town. The public hearing process for the Miles Point II application by the Town Planning Commission lasted from late September through early November of 2003. It was apparent from comments of some members of the Town Planning Commission during that process that the Miles Point II application was likely to receive a favorable recommendation to the Town Commissioners. On November 24, 2003, the Town Planning Commission issued a written recommendation to the Town Commissioners in favor of awarding growth allocation for the Miles Point II.

During the late stages of the Miles Point II proceedings at the Town Planning Commission, after it was apparent that the Miles Point II application for growth allocation was receiving far more favorable comments and reaction than previous applications, Bill 933 publicly appeared for the first time on Friday, November 14, 2003, only as a title in a County website.

Upon inquiry by the Town to the County, copies of the Bill were not available, and no details on its content were provided. At a public meeting of the County council on November 18, with the Bill still unavailable to the public, the County Council introduced the Bill and referred it to the County Planning Commission for a public hearing. At that time it was stated that Bill 933 was necessary for the County to have enough growth allocation to award supplemental allocation to the Town Easton. Three days later, the County Council held a hastily convened workshop in which the members of the County Council chided the Commissioners of St. Michaels for entertaining the Midland Growth Allocation request and voted unanimously to urge the Commissioners to deny the Midland application.

Although the towns knew nothing about it until the last week, records of the Critical Area Commission staff document the following contacts have occurred from Talbot County, indicating that the County produced a Bill in the nature of what we are reviewing tonight, or at least had thought enough about it enough to know there was going to be such a Bill, without any contact or participation by the towns. Those records indicate the following contacts:

October 29, 2003 The County Manager called this Commission's Executive Director and informed him that the Bill would be introduced on November 18 or 25, that there would be a public hearing on December 16 or 23, that the Bill would be voted on in late December or early January, and that the bill would be to this Commission in January.

November 19, 2003 County councilman Carroll called this Commission's Executive Director about growth allocation regarding Midlands and Easton, and suggested a conference with the County Attorney.

November 24, 2003 There was a conference call with the County Manager.

November 24, 2003 There was a meeting about growth allocation between several Commission staff members and County Councilman Carroll, the County Manager, the County Attorney, and the County Planner. They discussed taking all growth allocation from the towns.

On December 1, 2003, a letter was sent from the Talbot County Council to Senator Madden, urging the Commission to deny any award of growth allocation the Town of St.

Michaels might make to Midland, citing lack of sewer capacity. The County letter does not mention the scheduled sewer plant expansion and upgrade, but cites the outdated plants statistics relating to the current sewer treatment plant.

On December 2, 2003, the County Planning Commission conducted a public hearing on the Bill. At that hearing representatives of three of the towns appeared and testified against the Bill, urging that before any such legislation should be introduced that there should be some dialog between the County and the towns, in which the perceived problem and possible solutions are revealed and discussed, to get input from the towns. The Talbot County Planning Commission recommended to the County Council that Bill 933 be withdrawn, as it is unnecessary, and urged the Council to talk to the towns about a compromise in the distribution of Growth Allocation acreage. The County Planning Commission also noted that the language of the Bill was incorrect, and that the County does have sufficient acreage to award supplemental growth allocation to Easton without taking it from the other towns.

On December 16, 2003, the County Council conducted a public hearing on a revised version of the Bill. The revised version, revealed to the public for the first time at that hearing, had a different name, different rationale and numerous changes to the text compared to the version reviewed by the County Planning Commission. The County Council voted to declare that the revised version did not contain any substantive changes from the version previously introduced by the County Council and heard by the County Planning Commission. At that hearing town representatives appeared and requested a dialogue with the County Council and Planning Commission to discuss the problem and find a better solution. At that same meeting the County Council voted to deny the Town's request that the County expressly relinquish County's five-year zoning control, pursuant to Maryland Code, Article 23A, Section 9 (c), over the 18 acres recently annexed to the Town, and which was part of the Miles Point II application for growth allocation. The fact that the Miles Point II application included 18 acres newly annexed to the Town made the Miles Point II application subject to the condition that the land be rezoned to a classification that is inconsistent with the existing County comprehensive plan with the County's express consent. The fact that the County council refused to give that consent

made it legally impossible for the Town to rezone that newly annexed land for five years. Therefore, Midland withdrew the Miles Point II application.

On December 23, 2003, the County Council voted to enact the Bill, to take effect 60 days after its enactment; that is, February 22, 2004. After the enactment of Bill 933 by the County Midland promptly submitted its fifth application to the Town for the award of growth allocation. The fifth application ("Miles Point III") included only acreage from the Miles Point II application that was annexed to the Town in 1980. Thus, all of the land that was the subject of the Miles Point III application had been within the Town for 24 years, and was the subject of the 1980 annexation agreement. The Miles Point III application has since been the subject of a public hearing by the Town Planning Commission, resulting in a favorable recommendation to the Town Commissioners. The Town Commissioners issued their approval of the Miles Point III application by written decision dated February 19, 2003.

Except for the public hearings conducted by the County Planning Commission and by the County Council that are required by law to enact any County laws of this nature, no officer, appointee or employee of the County has made any contact with the Talbot towns to inform the towns that the County Council perceived a problem with the County Program, to inform the towns of the nature of the perceived problem, to inform the towns as to how the County proposed to address the perceived problem, or to solicit suggestions from the towns for a solution to the perceived problem. **No meeting or discussion between any County representative and any of the towns relating to Bill 933, or any of the proposed changes in the County Program, has ever been suggested or participated in by any County representative before these Bills were enacted by the County.**

It appears from these events that when the County determined that a Midland application for growth allocation might be approved by St. Michaels, then the County quickly produced this legislation to take control of the growth allocation so that St. Michaels could not grant growth allocation without the County's consent.

All of the above actions of the County regarding growth allocation and the proposed amendment of the County Program can only be characterized as the antithesis of the coordination and cooperation required by the Critical area laws and regulations in the amendment of a county program.

B.

Bill 933 Does Not Accommodate Growth Needs Of The Affected Municipalities

Several years ago the Talbot County Code was amended to provide that when a town has exhausted the amount of growth allocation originally reserved to that town according to the Talbot County critical area program (the "County Program") as originally enacted and approved by the Commission, that town must thereafter seek supplemental growth allocation from the Talbot County Council (the "County Council") for any additional growth allocation that is to be awarded by that town. Instead of making a common pool of growth allocation available to all the towns and the County, for each jurisdiction to use by independently judging the applications that come to that jurisdiction, according to Bill 933 the County Council will sit as an independent judge of all applications for growth allocation within the towns, and effectively have the veto power if a town votes to award growth allocation. According to the County Program, the County Council is required to apply the County Comprehensive Plan and County criteria, and has the complete discretion to deny an application for growth allocation relating to land within a town even if all criteria are met. If the County Council participates in the judgment of whether growth allocation is granted within a town, there is no requirement that the County consider the town's comprehensive plan, laws or criteria for the award of the growth, and the County Council has the power to deny growth allocation despite the decision by the town government. Therefore, based on the significant area of St. Michaels and Oxford located within the critical area, and to a lesser extent in other towns, the County would effectively exercise planning and zoning control over land within the municipalities.

Bill No. 933, which repeals a number of current provisions in the County Code that constitute a part of the County Program, has the practical effect of withdrawing, or taking back, from the Talbot towns all of the unused growth allocation that was previously reserved to them by the County Program. Therefore, according to the Bill, all future applications for growth

allocation involving land within a town would follow the procedures established for the award of supplemental growth allocation. Under the County Program, when seeking supplemental growth allocation from the Talbot County (the "County"), both the town governing body and the County Council sit in judgment of the application for growth allocation, with each body making its decision independently of the other. The County Council would apply some criteria contained in the County Program that is not contained in the town criteria, such as compatibility with the County comprehensive plan. According to the County Program, if either governmental body fails to approve an application for supplemental growth allocation, then that application is considered denied.

In St. Michaels, over 68 percent of the land currently within the Town is located in the critical area, and over 84 percent of the undeveloped land within the Town is located in the critical area. The Town estimates that well more than one-half of the land within the Town of Oxford is located within the critical area. Therefore, in St. Michaels and in Oxford the withdrawal of all unused growth allocation from those towns would have the effect of immediately transferring ultimate planning and zoning authority over a significant part of those towns from the respective town governments to the County government.

According to the County Program, the process for the awarding of supplemental growth allocation by the County Council is discretionary even when all criteria are met. Therefore, the supplemental growth allocation process gives the County Council a "seat at the table" to negotiate with any applicant for supplemental growth allocation within a town for benefits to the County in exchange for the award by the County of supplemental growth allocation. This could cause the County, and the town in which supplemental growth allocation is being sought, to have conflicting or competing interests, which would affect on whether an application receives approval.

Further, according to revised language of Bill 933, unused growth allocation would include that growth allocation previously awarded by the towns in cases where the recipient has not obtained "vested rights" in the growth allocation by actually commencing substantial construction of improvements on the land pursuant to the development plan that was the subject

of the application for growth allocation. The requirement of vested rights is obviously aimed at the growth allocation awarded to the Strausburg property, being mentioned in the Bill and being the only case in which growth allocation was awarded but unused at that time.

Based on the above facts, it cannot reasonably be said that the intent of the County or the effects of Bill 933 will be to accommodate growth needs of the affected municipalities based on: (1) the lack of communication by the County with the towns in drafting and processing Bill 933; (2) the manner in which the County has both (a) withheld assistance to St. Michaels in its time of need with Midland, and (b) worked behind the scene against the direction in which St. Michaels is now moving with growth allocation for Midland; (3) the total withdrawal of all reserved growth allocation from the towns, which requires the towns to seek supplemental growth allocation from the County on a case-by-case basis; (4) the failure of the supplemental growth allocation procedures of the County Program to require that the County Council address town criteria and needs; (5) the purely discretionary power given to the County Council in the supplemental growth allocation procedures of the County Program; and (6) the ultimate control over planning and zoning within the towns given to the County Council in the supplemental growth allocation procedures of the County Program. Therefore, Bill No. 933 lacks a second essential requirement for approval by this commission under the State critical area laws and regulations.

II. ARGUMENT

A.

The Bill Is An Amendment That Fails To Meet The Statutory Standard

Natural Resources Article, Section 8-1809, Subsection (j), states:

- (j) 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. [*Emphasis added.*]

Therefore, the reasonable implication of Section 8-1809 (j) is that an amendment to a local program cannot be approved unless it meets such standards and criteria. *Guardian Life Ins. Co. of America v. Insurance Com'r of State of Md.*, 293 Md. 629, 446 A.2d 1140 (1982).

One requirement for approving the amendments effected by Bill 933, according to Natural Resources Article, Section 8-1809, Subsection (j), is satisfying the standards set forth in Natural Resources Article, Section 8-1808 (Program development, implementation and approval), Subsection (b), which states, in part:

(b) A program shall consist of those elements which are *necessary or appropriate*:

(3) *To establish land use policies* for development in the Chesapeake Bay 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. [*Emphasis added.*]

As will be discussed subsequently in this Memorandum, the County lacks the power to lawfully enact any planning, zoning or subdivision laws that would be effective within the Talbot towns because those powers are granted by law to the municipalities by Maryland Code, Article 66B. Further, the Bill would have the effect of taking away from the Talbot towns the power that they now have to use the growth allocation that is presently reserved to them according to the County Program. Presently, with respect to applications for unused reserved growth allocation involving land that has been annexed to the town for more than five years, the dual approval process, involving the County and the town in which the subject land is located, does not apply. Therefore, because a recommendation for supplemental growth allocation would not need to be sought from the County Planning Commission, and because a majority of the County Council would not have to vote to award supplemental growth allocation, it is now easier to obtain growth allocation within a town than it would be if the Bill is approved by the Commission. Therefore, it cannot reasonably be said that the Bill would accommodate growth. On the contrary, the Bill would make obtaining growth allocation, which is a requirement for growth in the critical area, more difficult than it is now.

Another requirement for approving the amendments effected by Bill 933, according to Natural Resources Article, Section 8-1809, Subsection (j), is satisfying the criteria adopted by the Commission under Nat. Res. Art. § 8-1808. One such criterion is set forth in COMAR

("Code of Maryland Regulations") 27.01.02.06 A (2), which requires that intensely developed and limited development areas may be increased pursuant to a process "*to accommodate the growth needs of the municipalities*" established by the County "*in coordination with affected municipalities*". [*Emphasis added.*]

The County Program, as proposed to be amended by the Bill, does not meet the growth needs of the Town. Moreover, to this date the County has not made any inquiry of the Town seeking to learn about its growth needs.

According to the way in which Bill 933 was developed by the County, without the knowledge or input of the most affected towns, one cannot reasonably conclude that the terms of the Bill were arrived at by any coordination by the County with the affected towns. See this Memorandum Of Law, Section I (Factual Background). Suddenly changing a basic component of the County Program, without consultation or input, thereby placing the towns under the absolute control of the County, indicates the antithesis of "*the cooperative endeavor between the State and the local governments that is at the heart of the legislation,*" described in 73 Opinions of the Attorney General (1988) [Opinion No. 88-001]; and 72 Opinions of the Attorney General (3), (3) (1987) [Opinion No. 87-016, at 5].

As discussed above, Nat. Res. Art, § 8-1801 (b) (2), strives for "*local governments establishing and implementing their programs in a consistent and uniform manner.*" The sudden changes in its program at this time, and the effects of those changes on the programs of the Talbot towns, hardly promote consistency or uniformity among local programs.

Moreover, there is no evidence to indicate that the growth needs of the towns have been addressed. On the contrary, after a costly five-year legal struggle by the Town with Midland, it appears that the County only sprang into action by enacting the Bill after it appeared that the Miles Point II application would be approved by the Town. The Bill had the effect of thwarting approval of the Miles Point II application, which would have permitted environmentally responsible growth within the Town. Similar to the history of the Easton Village project, recently approved by the County Council for 156 acres of supplemental growth allocation, the

proposed Miles Point project has been universally been spoken of with disfavor in public by the County Council. Therefore, one could reasonably conclude that the only thing that could cure such a negative attitude about the proposed Miles Point project, and lead to the award of supplemental growth allocation for that project by the County, would be a healthy dose of money paid by the developer to the County. The amount of money paid to or for the County is not the appropriate measure of what development projects are worthy of growth allocation within a town.

The County has shown, by its actions and its inactions, that there has been no coordination or cooperation by the County with the Towns in arriving at Bill 933.

An administrative agency is governed by the enabling statutes that created it. *Department of Economic and Employment Development v. Lilley*, 106 Md.App. 744, 666 A.2d 921 (1995). Generally, an administrative agency is required to follow its own procedures or regulations. Regulations validly prescribed by a government administrator are binding upon him even when the administrative action is discretionary in nature. *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 823 A.2d 626 (Md. 2003).

Since the Commission is controlled by Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and is bound to follow the regulations it has adopted, it is respectfully suggested that in its review of County Bill No. 933 it is incumbent upon the Commission, in exercise of its oversight responsibilities, to investigate and to determine whether, and to what extent, there has been, and will be, "implement[ed] . . . on a cooperative basis between the . . . affected local governments", "with local governments establishing and implementing their programs in a consistent and uniform manner", "in coordination with affected municipalities", resulting in the establish[ment of] a process to accommodate the growth needs of the municipalities." The County has refused to engage in any meaningful dialog with the Towns relating to Bill No. 933, and clearly, Bill No. 933 would add a layer of criteria and a layer of administrators that are, based on the State laws, regulations and oversight already put in place by the Legislature, unnecessary. In other words, according to the Legislature, a municipality is quite capable, with the oversight of the Commission, of

establishing and administering its own program within its jurisdictional territory to accomplish the goals of the Chesapeake Bay Critical Area Protection Program interference by the County.

Based on the failure of the Bill to satisfy the criteria for approval pursuant to Natural Resources Article, Section 8-1809, Subsection (j), and based on the unnecessary and counterproductive effect of the Bill on the purposes of the State Program, approval of the Bill should be denied by the Commission. That should be the end of the matter, but in case it isn't, the Bill violates other State laws and policies.

B.

The Bill Illegally Takes Planning And Zoning Powers From The Towns

As discussed above in Section II, A, of this Memorandum, there are some powers within municipalities, such as planning and zoning, that are granted exclusively to those municipalities. The Maryland Constitution, Article XI-E (Municipal Corporations), § 3 (Power of home rule), says:

Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article.

In *Campbell v. Mayor and Aldermen of the City of Annapolis*, 44 Md.App. 525, 532, 409 A.2d 1111 (1980), the court said:

One of the objectives of home rule was to assure Maryland municipalities the power of self-government. . . . The intent of Article XI-E was specifically to grant Maryland municipalities the *power to control their own local affairs*, and was *designed to permit local legislation to be enacted solely by those directly affected*. . . . [*Emphasis added.*]

Maryland Code, Art. 23A (Municipal Corporations), Section 9 (Definitions), Subsection (c), Part (1), states:

(1) A municipal corporation which is subject to the provisions of Article XI-E of the Maryland Constitution may not amend its charter or exercise its powers of annexation, incorporation or repeal of charter as to affect or impair in any respect the powers relating to sanitation, including sewer, water and similar facilities, and zoning, of the Washington Suburban Sanitary Commission or of the

TALBOT COUNTY, MARYLAND,

*

Plaintiff

* CIVIL CASE NO. 20-C-04-005095DJ

Vs.

* IN THE

DEPARTMENT OF NATURAL RESOURCES,

* CIRCUIT COURT

Defendant

* * * * *

* FOR

THE COMMISSIONERS OF ST. MICHAELS

* TALBOT COUNTY

Counter-Plaintiff

Vs.

* STATE OF MARYLAND

TALBOT COUNTY, MARYLAND,

*

Counter-Defendant

* * * * *

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.

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

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

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 through 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.

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).

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.

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:

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 Huntman 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

19.2 After the annexation of the Strausburg Property and the Huntman 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

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.

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

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 Huntman 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);

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;

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;

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.

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;

- 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 this 14th day of December, 2004, that an exact copy of the foregoing COUNTERCLAIM was mailed by regular U.S. Mail, postage pre-paid to:

Daniel Karp, Esquire
 Victoria M. Shearer, Esquire
 Allen, Karpinski, Bryant & Karp, P.A.
 Suite 1540
 100 E. Pratt Street

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

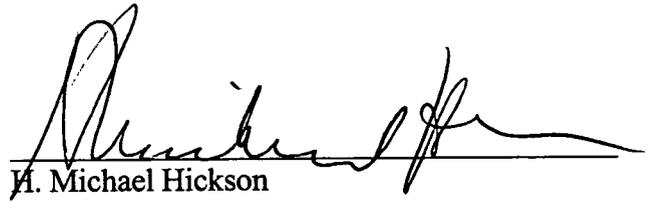
Law Offices Of
 BANKS, NASON
 & HICKSON
 Professional Assoc.
 113 S. Baptist Street
 P.O. Box 44
 Salisbury, MD
 21803-0044

Baltimore, Maryland 21202-1089
Attorney for Talbot County, MD

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

Annapolis, Maryland 21401
Attorneys for Maryland Department of
Natural Resources

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford



H. Michael Hickson

Designated Critical Area Growth Allocation Areas

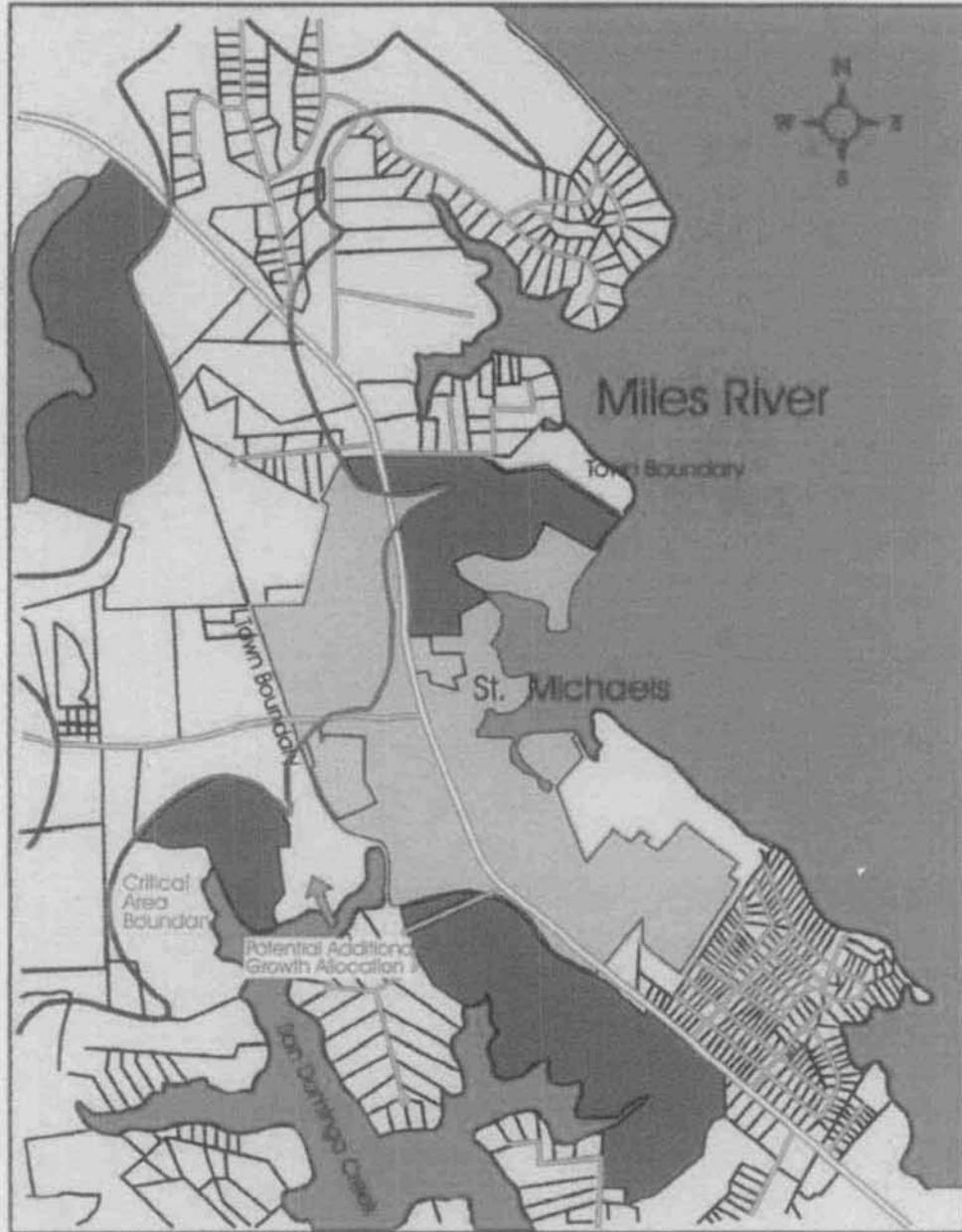


Figure 17

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



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").

Section 1: RECITALS

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

IMP FD SURE \$	20.00
RECORD FEE	75.00
TOTAL	95.00
Rept #	75798
MAS 6400	Blk # 568
Feb 20 2004	03:44 PM

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 Huntman 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 Huntman 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.

*the Commissioners of St. Michaels
P.O. Box 266
St. Michaels, MD 21663*

The Midland Companies, Inc.; St. Michaels Miles Point Development Rights Point, LLC; Miles Point Property, LLC & And Responsibilities Agreement TND Development, Inc.

St. Michaels Planning C on behalf of The Commissioners O

LIBER 1 225-1 of 6 05

EXHIBIT
2

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 Huntman 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 Huntman Property (as hereinafter described). As a result of the Talbot County Council's decision not to relinquish zoning control to the Town over the Huntman 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 Huntman Property. Rather, this Agreement is immediately effective as to the Perry Cabin Land, and may become effective as to the Huntman 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 Huntman 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 Huntman Property, the additional consideration described in this Agreement relating to the Huntman 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 Huntman Property to the definition herein of the "Subject Property" in exchange for the additional consideration provided herein relating to the Huntman 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 Huntman 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 Huntman Property, and its successors in interest, all of the above-described benefits of the Qualified Vested Rights relating to the Huntman 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 Huntman 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 Huntman 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 Huntman 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 Huntman 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 Huntman 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 Huntman 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

The Midland Companies, Inc.; St. Michaels Miles Point Development Rights
Point, LLC; Miles Point Property, LLC & And Responsibilities Agreement
TND Development, Inc.

St. Michaels Planning Commission
on behalf of
The Commissioners Of St. Michaels

LIBER 1 225 of 614 15

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 Huntman 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 Huntman 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 Huntman 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 Huntman 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 Huntman 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 Huntman 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 pursuant 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.

LIBER 17 of 65 FOLIO 42

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

The Midland Companies, Inc.; St. Michaels Point, LLC; Miles Point Property, LLC & TND Development, Inc. Miles Point Development Rights And Responsibilities Agreement

St. Michaels Planning Commission on behalf of The Commissioners Of St. Michaels

LIBER 1 225²¹ FOLIO 425

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 Authorization. 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 Huntman Property for sufficient time: (a) for the control by the County over the land-use classification of the Huntman 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 Huntman Property, to be considered and granted, along with the Amendment of this Agreement to include the Huntman 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 Huntman Property, are as follows:

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

The Midland Companies, Inc.; St. Michaels
Point, LLC; Miles Point Property, LLC &
TND Development, Inc.

Miles Point Development Rights
And Responsibilities Agreement

St. Michaels Planning Commission
on behalf of
The Commissioners Of St. Michaels

LIBER 1 225 FOLIO 61
26

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:

<u>Type of Units</u>	<u>To Be Located On The Perry Cabin Land</u> (± 72.167 acres)	<u>To Be Located On The Hunteman Property</u> (± 17.156 acres)	<u>Total</u> (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 1 st floor, commercial and/or residential use on the 2 nd floor, and residential use on the 3 rd 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 10.9.1 of 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, reconstruction, 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,

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, reconstruction, 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,

The Midland Companies, Inc.; St. Michaels
Point, LLC; Miles Point Property, LLC &
TND Development, Inc.

Miles Point Development Rights
And Responsibilities Agreement

St. Michaels Planning Commission
on behalf of
The Commissioners Of St. Michaels

LIBER 225 FOLIO 45 - 40 of 61 -

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 Huntman 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 Huntman 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 3 of 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 Huntman 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 Huntman 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 Default as 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 or 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 Section 17.1, 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 Section 17, 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 Section 17, 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 to the review and approval of this DRRRA, 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 Section 18.3.2.1 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.

DC O'Leary

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

ST. MICHAELS POINT, L.L.C.

DC O'Leary

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

MILES POINT PROPERTY, LLC

DC O'Leary

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

TND DEVELOPMENT, INC.

[Signature]

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

**TOWN:
THE COMMISSIONERS OF ST. MICHAELS**

By: St. Michaels Planning Commission

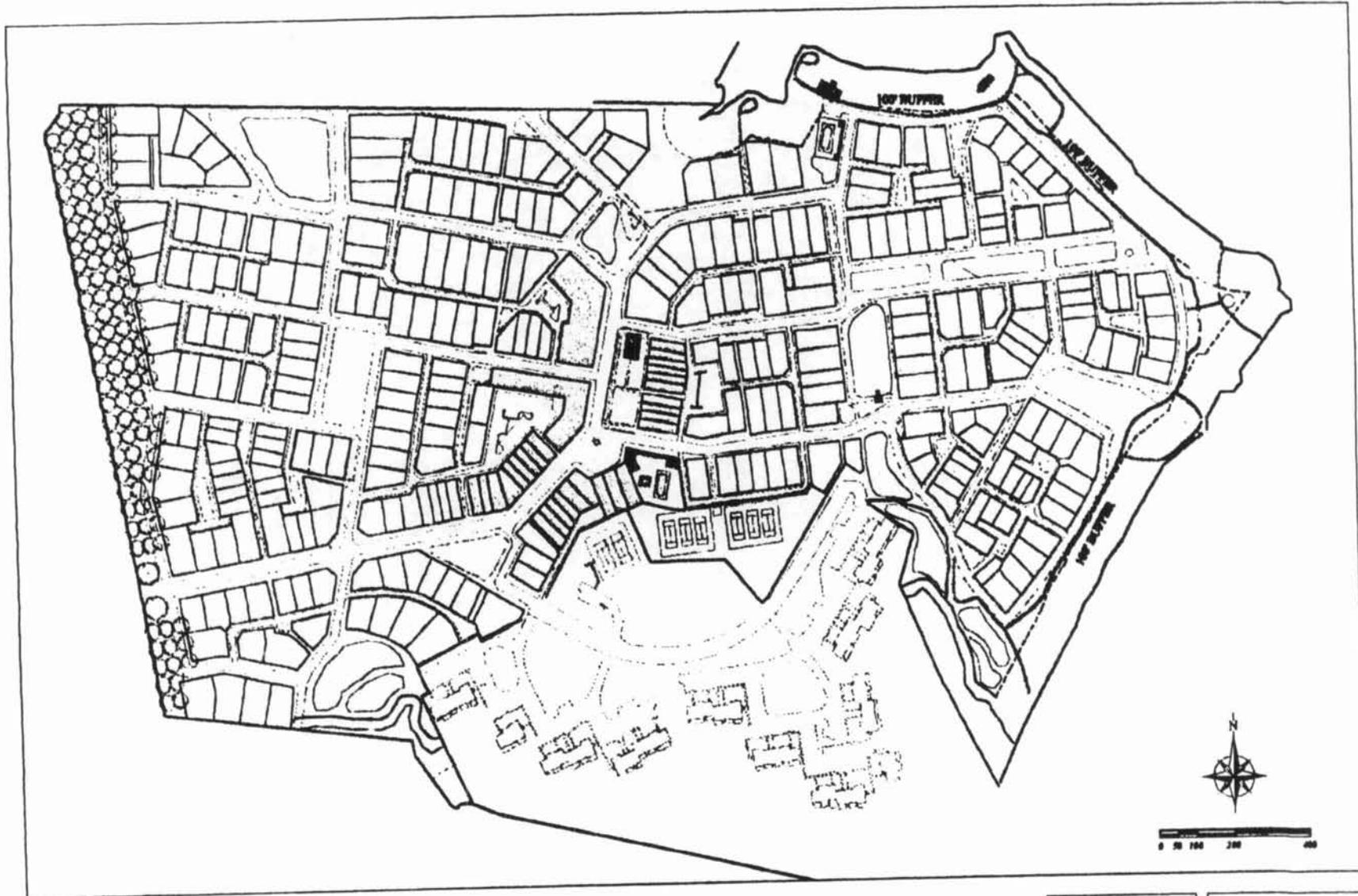
Cheril S. Thomas, Town Manager

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

APPROVED AS TO FORM:

By: [Signature]
H. Michael Hickson
Town Attorney

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



KEY

	Existing Buildings (Proposed for Preservation)
	Proposed Buildings
	Major Roads
	Utility Structures

Miles Point Concept Plan
St. Michaels, Maryland
December 24, 2001

QUARY PLYER-YORKER & COMPANY
1000 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 778-2200
quary@plyer.com

LIBER 1 225 FOLIO 467

MILES POINT
TOWN OF ST. MICHAELS, MD

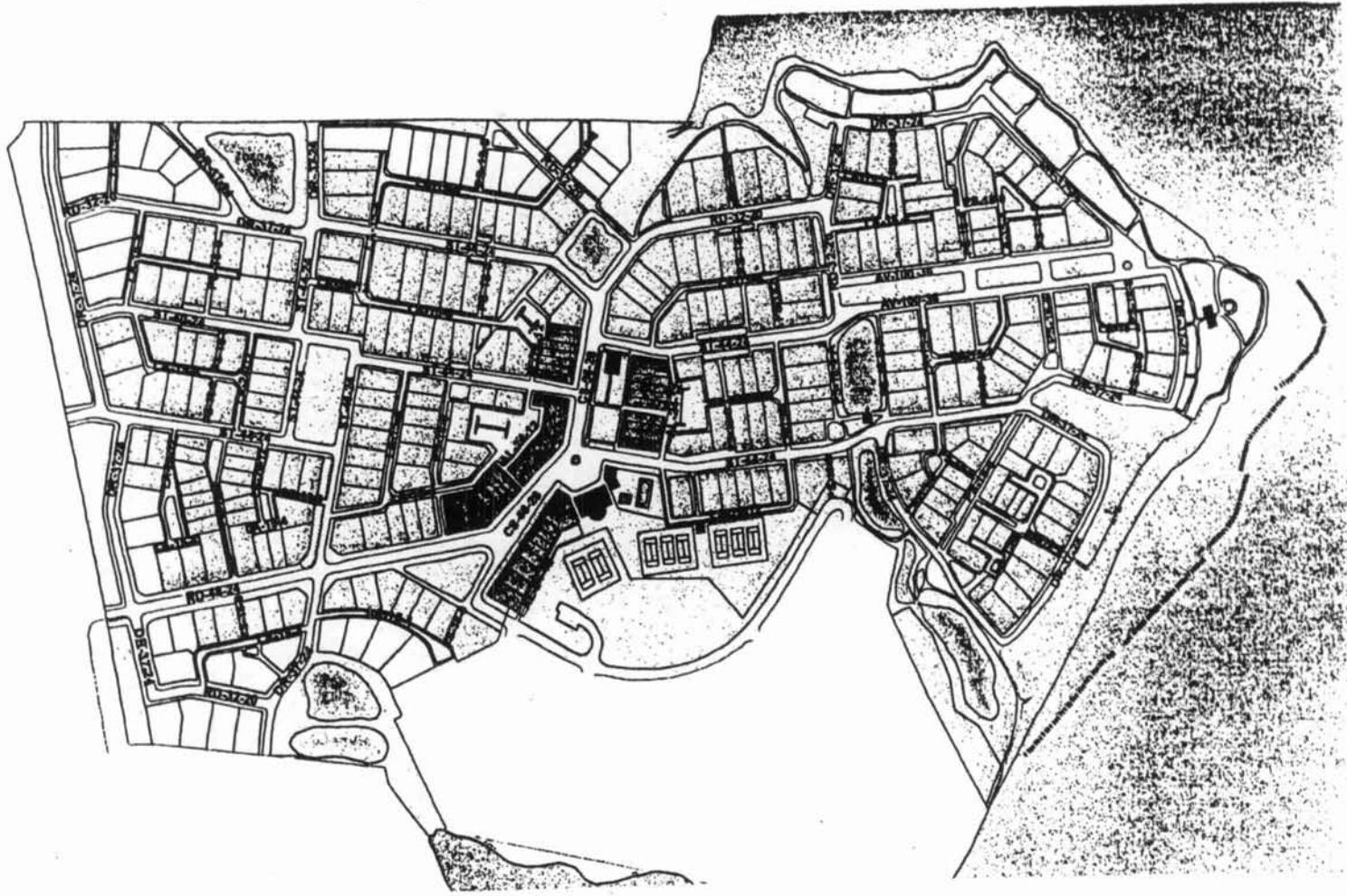


THE MIDLAND COMPANIES
DEVELOPER

DUANY PLATER-ZYBERK & COMPANY
TOWN PLANNERS

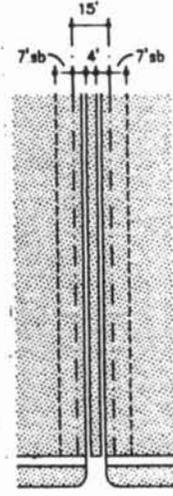
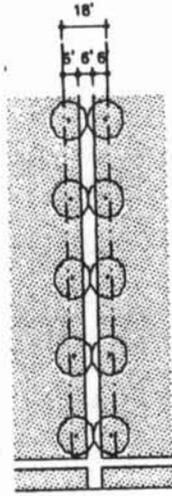
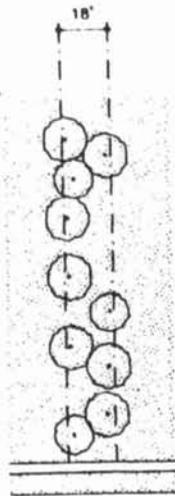
ANDRES DUANY, LUDWIG FONTALVO-ABELLO, ANTHEA GIANNIOTES, JAY GRAHAM, MELISSA KIMBALL, OSCAR MACHADO, BARRY MAHAFFEY,
GARY MODJESKA, MICHAEL MORRISSEY, JORGE PLANAS, DAVID SAN ROMAN, GALINA TAHCHIEVA, GEORGE VALANOS, MIKE WATKINS

8941010152210011



0 75 150 300 600

LIBER 1225 FOLIO 470



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

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

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.

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.

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

PS-18-0

PS-18-6

LA-15-4

AL-24-12

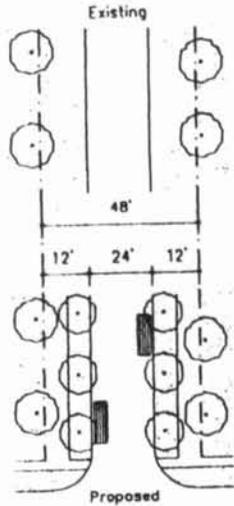
Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	N/A
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	Varies
Planter Type	Continuous
Tree Pattern	Varied pattern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

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	Alley, 30 ft. on center
Tree Species	Passages may be different and any one of: American Holly, Crape myrtle, Golden Rain tree, Yellowwood
Ground Cover	Lawn

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

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

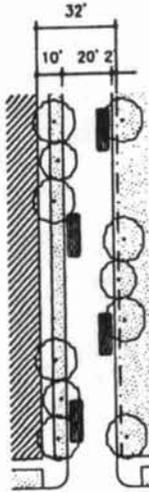
LIBER 225 FOLD 471



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

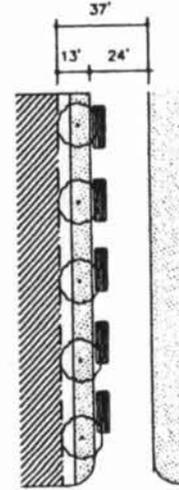
Precedent	Perry Cabin Drive
Type	Road
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	48 ft.
Pavement Width	24 ft.
Curb Type	Header Curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	8.8 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft.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



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

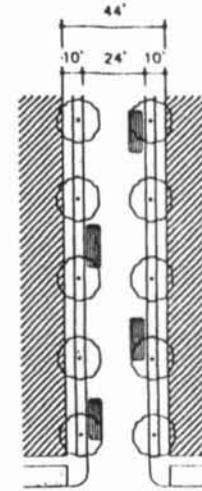
Precedent	Grace Street
Type	Small road
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	32 ft.
Pavement Width	20 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	15 m.p.h.
Pedestrian Crossing Time	3.9 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter 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

Precedent	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

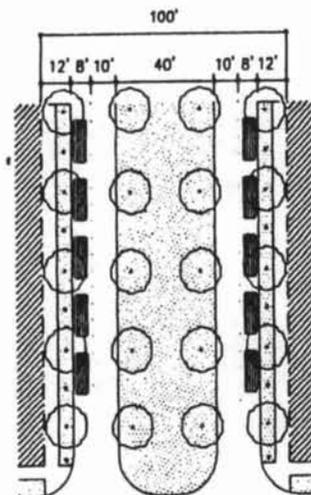
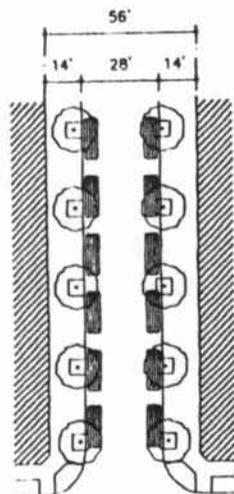


Streets are appropriate for residential buildings at the Neighborhood Center and General. A single species of tree should be planted in steady alignment in continuous planting strips. A vertical canopy is necessary to avoid building facades at shallow frontage setbacks.

ST-44-24

Precedent	Small residential street
Type	Yield movement
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

27 40104 5 FOLIO 472



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 naturally to become greenway. The streetscape details may vary as the avenue passes from one zone to another.

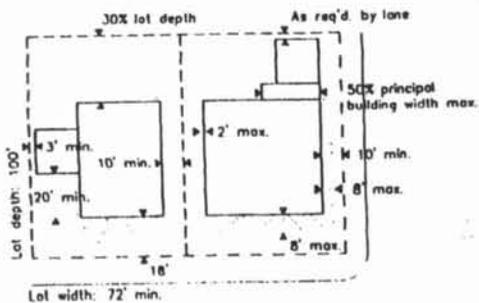
CS-56-28

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

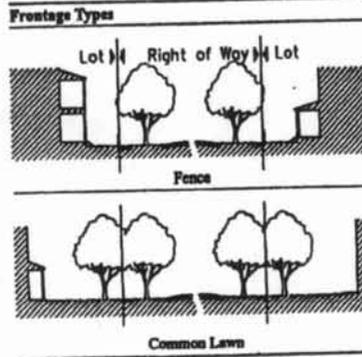
Precedent	Avenue
Type	Avenue
Movement	Speed movement
Traffic Lanes	Two way
Parking Lanes	One side
R.O.W. Width	100 ft.
Pavement Width	18 ft. + 18 ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	10 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft.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

NEIGHBORHOOD EDGE - LARGE HOUSE

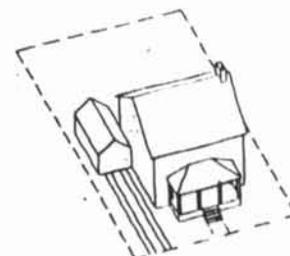
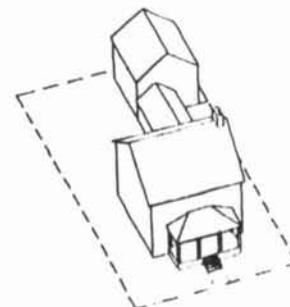
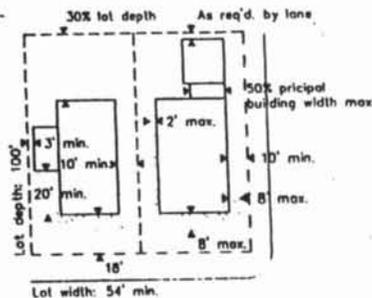


A Large House is a single-family residence on its own large lot. Within Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet 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.
at 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.

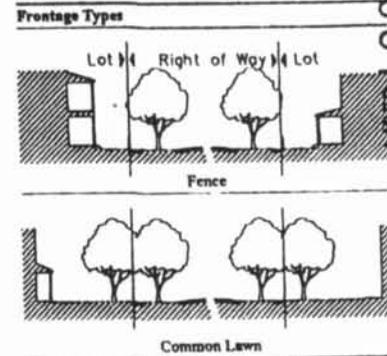


NEIGHBORHOOD EDGE - HOUSE



A House is a single-family residence on its own lot. Within 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 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.

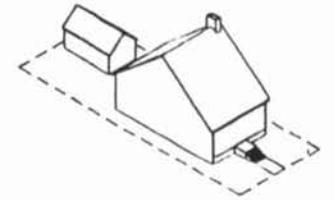
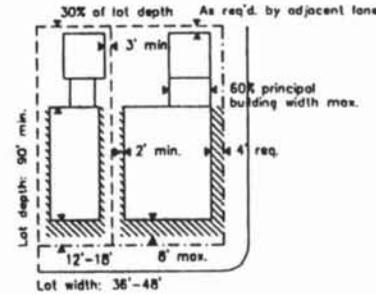
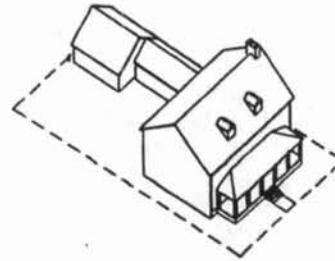
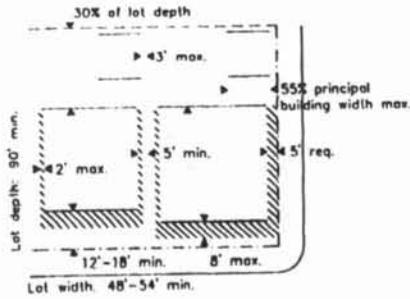
Lot size	54 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.
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.



LIBR 225 FOLIO 474

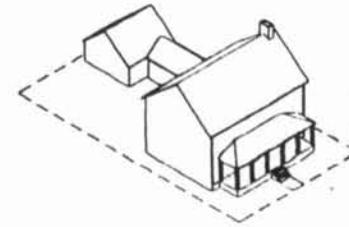
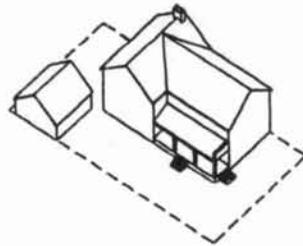
NEIGHBORHOOD GENERAL - HOUSE

NEIGHBORHOOD GENERAL - COTTAGE

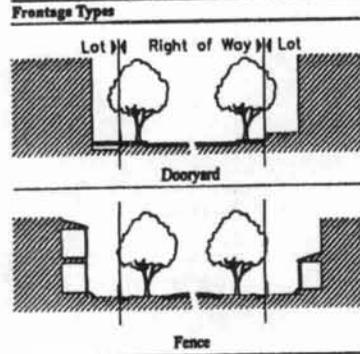


A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each 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.

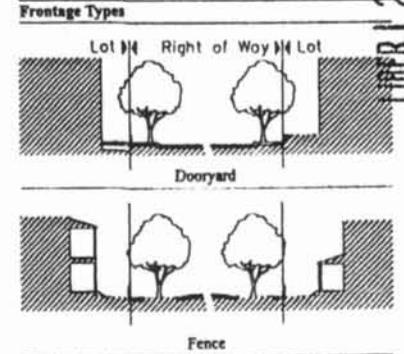
A Cottage is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 30 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from 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	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.

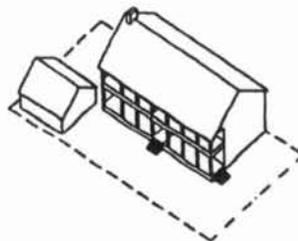
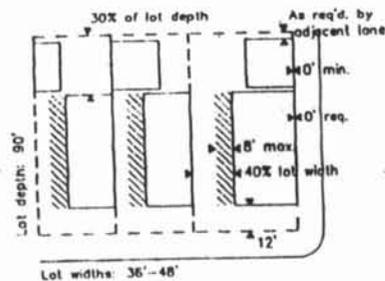


Lot size	30 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 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.



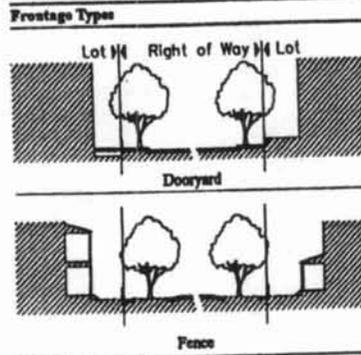
LIBER 225 FOLIO 475

NEIGHBORHOOD GENERAL - SIDE YARD HOUSE



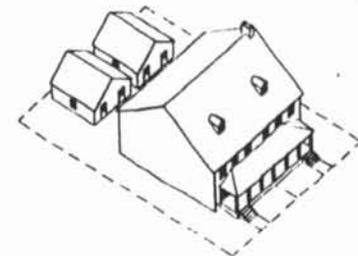
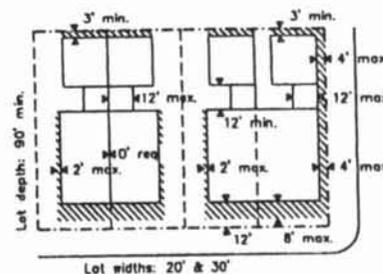
A Side yard House is a single-family residence on its own lot. Within Neighborhood General this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from the North or 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.



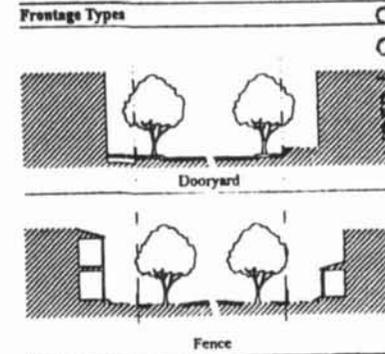
© DUANY PLATER-ZYBERK & COMPANY

NEIGHBORHOOD GENERAL - DUPLEX HOUSE



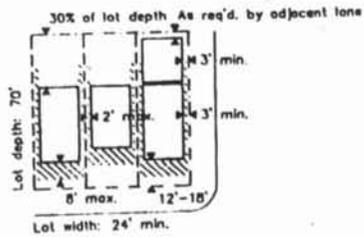
A Duplex House is two units sharing a lot, each with its yard. At corner locations, each duplex can have its own entry. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The 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.



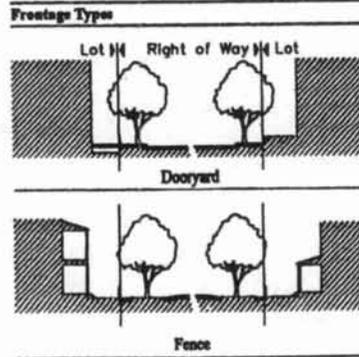
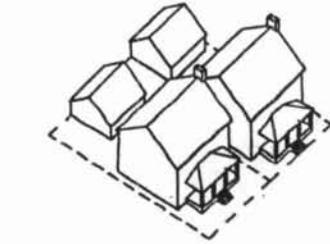
LIBERT 225 FOLIO 476

NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE



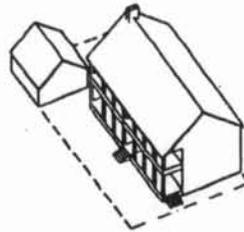
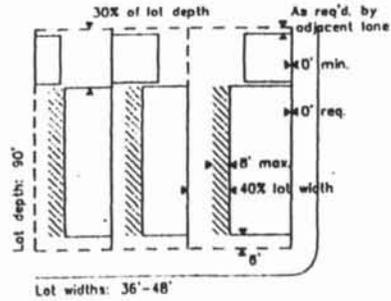
Rosewalk Cottage is a single-family residence on its own lot, with a rear lane and a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal 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.
outbuilding 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.



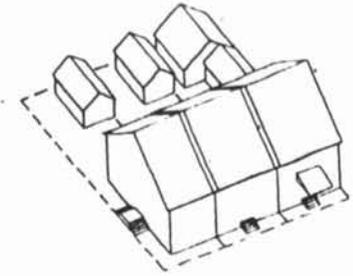
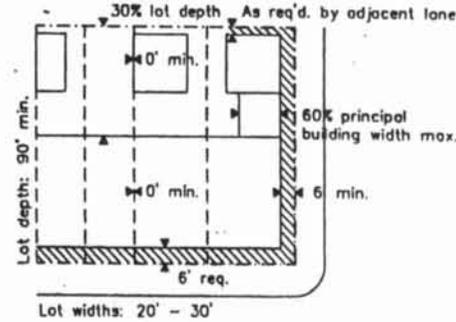
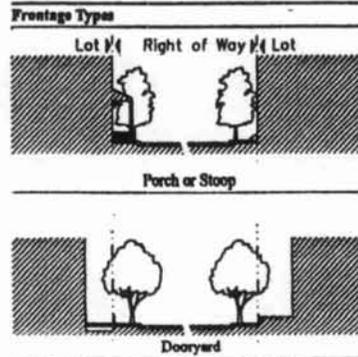
NEIGHBORHOOD CENTER - SIDE YARD HOUSE

NEIGHBORHOOD CENTER - ROW HOUSE



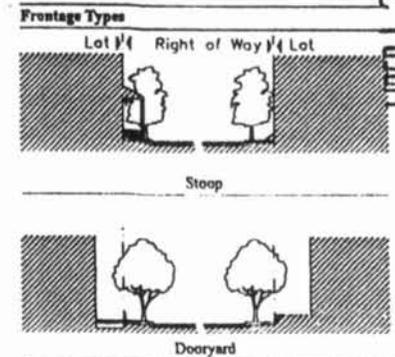
A Side Yard House is a single-family residence on its own lot. Within the Neighborhood Center this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from the North or 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.
at 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.

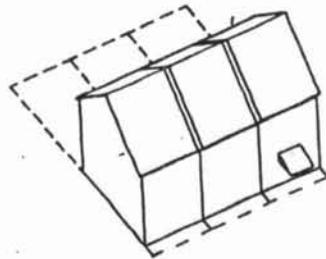
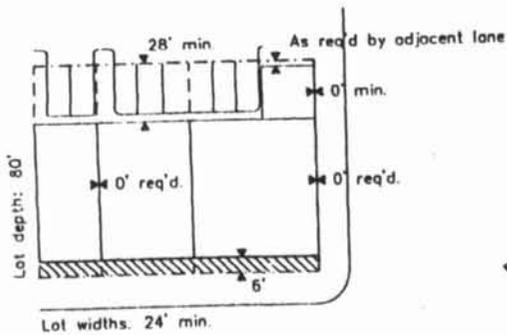


A Row House is a single-family attached residence on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from 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.

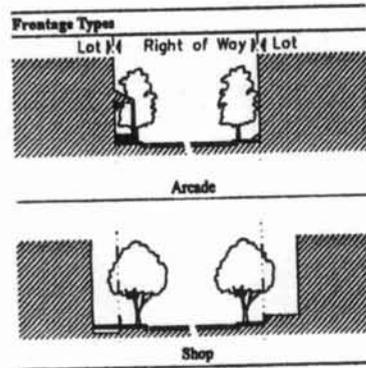


NEIGHBORHOOD CENTER - SHOP/HOUSE



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.



WALLS

Materials

Walls shall be "select" grade wood siding, cedar shingles, lightweight concrete siding (eg. "Hardieplank"), board and batten, 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, cased, 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 proportional and per The American Vitrola.

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

Intercolumniation on the ground floor shall have vertically proportioned openings.

Crawlspaces 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.

© DUANY PLATER-ZYBERK & COMPANY

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 seamterne 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.

Roof 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 1 225 JUL 4 8 08 4 PM '05 27 1 38 17

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

Variations 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.

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

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*

GROUNDCOVER

All Yards

Low maintenance gardens for seasonal residents can employ native perennials 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

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 fence.

Hollyhocks

Daylilies

Iris

Trumpet Honeysuckle

Climbing Hydrangea

Trumpet Vine

Climbing Rose Species

Clematis

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 rototilling 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.

Robert L. Ehrlich, Jr.
Governor

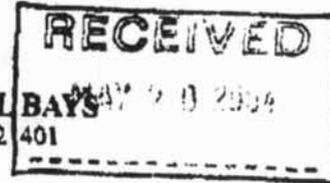
Michael S. Steele
Lt. Governor



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

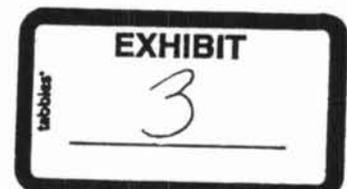
Ms. Cheryl Thomas, Town Manager
Town of St. Michaels
P. O. Box 206
300 Mill Street
St. Michaels, Maryland 21663-0206

**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 the 100-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

TTY For the Deaf
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



Ms. Thomas
May 14, 2004
Page 2

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, 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 acres 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.

TTY For the Deaf
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



Mr. Hurley
October 2, 2003
Page Two

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

Sincerely,



Lisa A. Hoerger
Natural Resources Planner

cc: Ms. Jean Weisman
Ms. Deborah Renshaw

COPY

RECEIVED

DEC 17 2004

ANR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* CIVIL CASE NO. 20-C-04-005095DJ
* IN THE
* CIRCUIT COURT
* FOR
* TALBOT COUNTY
* STATE OF MARYLAND

* * * * *

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

Banks, Nason & Hickson, P.A.
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.

Banks, Nason &
Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

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.

Banks, Nason &
Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

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

Banks, Nason &
Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

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

Banks, Nason &
Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

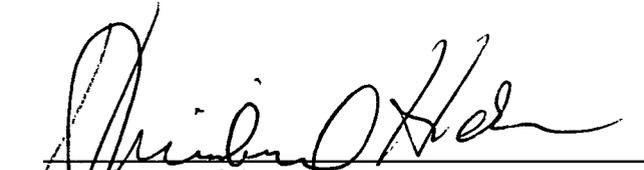
extent that the remainder of paragraph 39 of the Initial Complaint contains averments to which an answer is required, all such averments are denied.

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.


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 The Commissioners Of St. Michaels,
Defendant

foregoing Answer To Complaint are true and correct to the best of my knowledge, information and belief.



Cheryl S. Thomas, Town Manager
The Commissioners Of St. Michaels

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 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

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

Paul J. Cuezzella, 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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford


H. Michael Hickson

Banks, Nason &
Hickson, P.A.
P.O. Box 44
Salisbury, MD
21803-0044
410-546-4644

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* CIVIL CASE NO. 2-C-04-005095DJ
* IN THE
* CIRCUIT COURT
* FOR
* TALBOT COUNTY
* STATE OF MARYLAND

* * * * *

COUNTERCLAIM FOR DECLARATORY JUDGMENT
BY INTERVENOR TOWN OF OXFORD

The Town of Oxford (“Oxford”), Defendant, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, files this Counterclaim for Declaratory Judgment against Talbot County, Maryland, pursuant to Md. Code Ann., Cts. and Jud. Proc. Article, § 3-401, et seq., stating the following in support thereof.

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

2. The Town of Oxford is a Maryland municipal corporation, located entirely within the geographic boundaries of the County.

3. This Court has jurisdiction over the matters set forth within this Counterclaim pursuant to Md. Code Ann., Cts. and Jud. Proc. Art., § 3-406, which provides that “Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation...may have determined any question of construction or validity arising under the ... statute, ordinance, administrative rule or regulation... and obtain a declaration of rights, status, or other legal relations under it.”

4. The County has initiated the above-captioned case against the Maryland Department of Natural Resources (“DNR”), alleging that the Maryland Critical Area

Commission for the Chesapeake And Atlantic Coastal Bays (the "Critical Area Commission") improperly disapproved Talbot County legislative Bill 933.

5. At all times relevant hereto, Oxford 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 Oxford, a comprehensive plan, a subdivision ordinance, a zoning ordinance, and a zoning map dividing all land within Oxford into zoning districts, defining the historic district, and defining the critical area land management districts; and (2) establishing, appointing and maintaining a planning commission, a board of appeals and a historic district commission.

6. 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").

7. Pursuant to state law, in 1989, the County enacted its local critical area protection program (the "County Program"), which was thereafter approved by the Maryland Critical Area Commission. As part of the County Program, the County enacted three zoning maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and allocated acreage outside of the towns for growth allocation conversion to permit development consistent with town growth.

8. Pursuant to the same state law, the Town of Oxford has adopted its own critical area program ("The Oxford Critical Area Program"), which has been approved by the Maryland Critical Area Commission (now known as the Maryland Critical Area Commission for the

12. Pursuant to the dictates of state law, which required municipal/county coordination, the County Council adopted zoning maps identifying annexation areas and growth allocation areas agreed to by the county planners, town planners, the County Council, and the elected commissioners of the towns. Those maps were a part of the Talbot County Zoning Ordinance, and together with the text of the Talbot County zoning ordinance, set forth the growth allocation/annexation area relationships between the towns and the county.

13. On or about December 23, 2003, the Talbot County Council enacted legislative Bill 933 in an effort to amend the County Program to eliminate the zoning maps referenced in paragraph 12 above, to assert county ownership of the growth allocation reclassification process. The purpose, intent, and purported effect of County Bill 933, *inter alia*, was to withdraw from the incorporated municipalities their rights to exercise growth allocation rezoning and reclassification and control within their own municipal boundaries, and to require the towns, including the Town of Oxford, to seek and obtain County Council approval for growth allocation rezonings, purporting to give the Talbot County Council approval authority and/or veto authority over the reclassification, rezoning, and development and redevelopment of critical area lands within town boundaries.

14. During the review of County Bill 933 by the Critical Area Commission, the Town of Oxford, together with other Talbot County municipalities and the Maryland State Department of Planning, participated in the Critical Area Commission review process and in the public hearing and meeting conducted by the Critical Area Commission. The towns, including the Town of Oxford, and the Department of State Planning, opposed the approval of Bill 933 as an illegal usurpation of municipal authority.

15. Following the hearing, and after considering objections of the Department of State Planning and those of the Town of Oxford, the Town of St. Michaels and the Town of Easton, the Critical Area Commission, on May 5, 2004, completed its review of County Bill 933, pursuant to Maryland Code, Nat. Res. Art., § 8-1809, and disapproved County Bill 933, thereby preventing Bill 933 from becoming effective as an amendment to the County Program.

16. In disapproving County Bill 933, the Commission relied on some of the issues raised and/or addressed to the Critical Area Commission that were directly related to interests shared by Oxford, the Commission and others; but the Commission did not specifically address in its written communication the following other issues raised and/or adopted by the Town of Oxford in the course of its opposition to Bill 933:

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

16.2. 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;

16.3. 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;

16.4. 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;

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

17. Each of the above issues is legally sufficient, and each provides an independent basis, to invalidate County Bill No. 933, or to make it inapplicable to the Town of Oxford and all land within the boundaries of the Town of Oxford.

18. In addition to the foregoing issues, and in addition to the issues specifically noted by the Critical Area Commission in disapproving County Bill 933, Bill 933 is legally deficient and invalid in that it purports to amend duly adopted zoning maps for Talbot County, with no consideration or findings related to the required "change or mistake" standard applicable to the amendment of county zoning maps.

19. Bill No. 933 would adversely affect the Town of Oxford as follows:

19.1. Interfering with the administration and application of the Oxford Growth Allocation District provision of the Oxford Zoning Ordinance that was approved by the Critical Area Commission prior to the County's enactment of Bill 933;

19.2. Interfering, and effectively invalidating Oxford's growth allocation zoning provisions, which, subject only to the review by the Commission, placed in Oxford the exclusive right, free of County interference, to make growth allocation rezoning classifications within Oxford's municipal boundaries;

19.3. Interfering with the exclusive authority of Oxford, pursuant to Maryland Code, Art. 66B, to effectively exercise planning and zoning authority over the entire area within its municipal boundaries;

19.4. Subordinating the Oxford Comprehensive Plan and Oxford zoning and planning decisions to the whims of the Talbot County Council and effectively rendering

the Oxford Comprehensive Plan null and void within the Critical Area in Oxford, which encompasses most of the Town of Oxford; and

19.5. Subordinating any Oxford critical area rezoning, subdivision or redevelopment process to the whims of the County Council and effectively rendering the Oxford growth allocation and subdivision and development regulations null and void within the Critical Area in Oxford.

20. Each local jurisdiction in Maryland with critical area lands, including the Town of Oxford, is required by Maryland Code Ann. Natural Resources Article § 8-1808, to adopt a critical area program, to be approved by the Critical Area Commission. Oxford's growth allocation zoning provisions have been approved by the Critical Area Commission. Approval of County Bill 933 as requested by Talbot County is inconsistent with state law, and the Oxford Critical Area Program, and Oxford's zoning ordinance and the critical area provisions therein, which have been approved by the Critical Area Commission.

21. There exists an actual controversy of a justiciable issue involving antagonistic claims between the County and the Town of Oxford that is within the jurisdiction of this Court, and which involves a conflict of the rights and liabilities of the parties hereto under County Bill 933 under state law, and under the Oxford Zoning Ordinance, and the propriety of the disapproval of Bill 933 by the Critical Area Commission, as set forth above.

22. Regardless of the action of the Critical Area Commission with respect to Bill 933, the County was and is without legal authority to enact a zoning ordinance amendment to be effective within the Town of Oxford, which enjoys independent and exclusive planning and zoning jurisdiction within town boundaries.

23. The antagonistic claims set forth herein are such that imminent and inevitable litigation will occur between the County and the Town of Oxford. A declaratory judgment or decree in this case will serve to terminate the uncertainties and controversies giving rise to this proceeding.

WHEREFORE, for all of the reasons set forth above, the Town of Oxford respectfully requests that:

A. This Court determine and adjudicate the rights and liabilities of the parties with respect to County Bill 933; and

B. That the Court find and declare as follows:

(1) That County Bill 933 violates the State Critical Area Program;

(2) That County Bill 933 violates and is in conflict with the Constitution and the laws of the State of Maryland;

(3) That County Bill 933, as applied to the Town of Oxford, violates the State Critical Area Program;

(4) That County Bill 933, as applied to the Town of Oxford, violates and is in conflict with the Constitution and the laws of the State of Maryland;

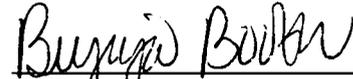
(5) That the Town of Oxford has exclusive planning and zoning jurisdiction within the town boundaries, and Talbot County and the Talbot County Council have no right to enact or enforce zoning laws within the Town of Oxford;

(6) That the County's attempt to repeal the zoning maps mapping the growth allocation and annexation areas was ultra vires and ineffective;

(7) That County bill 933 is inconsistent with Oxford's Critical Area Program, and is therefore ineffective within the Town of Oxford;

(8) And for such other and further relief as may be appropriate.


David R. Thompson, Esquire


Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
(410) 822-6800
Attorneys for Defendant/Counter-Plaintiff,
Town of Oxford

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2004, a copy of the foregoing Counterclaim was 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

Paul J. Cuezella, 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
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels


David R. Thompson

RECEIVED

DEC 17 2004

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL
RESOURCES

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* TALBOT COUNTY,
* MARYLAND
* Case No. 20-C-04-005095DJ

* * * * *

ANSWER TO COMPLAINT BY INTERVENOR

The Town of Oxford, ("Oxford"), Defendant, by David R. Thompson and Brynja M. Booth, and Cowdrey, Thompson & Karsten, A Professional Corporation, its attorneys, in answer to the Amended Complaint herein, states the following:

I
Rule 2-322(b)(2) Defenses

The Complaint, and each and every count thereof, fails to state a claim upon which relief can be granted.

II
Rule 2-323(g) Affirmative Defense

1. Bill 933, and its enactment process, are illegal, and the claims in the Amended Complaint are therefore barred.
2. The principles of estoppel bar the claims asserted by the Plaintiff.
3. The purported enactment of Bill 933 is ultra vires, and the claims in the Amended Complaint are therefore barred.
4. The Plaintiff has waived any rights to assert the claims set forth in the Amended Complaint.

5. The claims of the Plaintiff are barred by the doctrine of res judicata.
6. The claims of the Plaintiff are barred by the doctrine of collateral estoppel.

III
Specific Responses under Rule 2-323(c)

In accordance with Maryland Rule 2-323 (c), the averments of the Amended Complaint are hereby answered paragraph by paragraph, as follows:

1. Oxford admits the averments of numbered paragraph 1.
2. Oxford admits the averments of numbered paragraph 2.
3. Oxford admits the averments of numbered paragraph 3.
4. Oxford denies the averment of numbered paragraph 4, in that each municipality with planning and zoning jurisdiction, including the Town of Oxford, has the primary responsibility to develop and implement a local critical area program within its own jurisdiction. Oxford admits that Talbot County has the responsibility to develop a local program within its planning and zoning jurisdiction.
5. Oxford admits the averments of numbered paragraph 5.
6. Oxford admits the averments of numbered paragraph 6.
7. Oxford denies the averments of numbered paragraph 7.
8. Oxford admits that the Plaintiff has correctly quoted a small portion of the applicable statute, but denies the legal conclusion set forth in numbered paragraph 8 of the Amended Complaint.
9. Oxford admits that Talbot County adopted a local program that for a period of time was approved by the Commission. All remaining allegations of fact in numbered paragraph 9 are denied.

10. Oxford admits that the County has correctly quoted COMAR 27.01.02.06 A. (2) in numbered paragraph 10 of the Amended Complaint.

11. Oxford admits that Talbot County adopted its local program in 1989, and enacted three zoning maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and that the County allocated acreage outside of the Town, for growth allocation conversion to permit higher land development density consistent with town growth. Oxford admits that the 1989 county zoning ordinance and critical area program were approved by the Commission.

12. The averments of numbered paragraph 12 are denied in that paragraph 12, as stated, misrepresents the status of the County's critical program *vis-a-vis* the continuing dialogue between county and state representatives concerning the County's critical area regulations.

13. The factual allegations of numbered paragraph 13 are denied except that Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission. The legal conclusions, to which no response is required, are likewise denied.

14. The factual allegations of numbered paragraph 14 are denied, except that Oxford admits that the substantive and procedural provisions of Bill 762 have only been applied to the Town of Easton.

15. The allegations of numbered paragraph 15 are denied.

16. The allegations of numbered paragraph 16 are denied, except that Oxford admits Bill 933 was forwarded to the Critical Area Commission for review.

17. Oxford denies both the factual and legal conclusions set forth in numbered paragraph 17 of the Complaint.

18. Oxford denies the allegations of numbered paragraph 18 of the Amended Complaint.

19. Oxford denies the allegations of numbered paragraph 19 of the Amended Complaint.

20. Oxford adopts and incorporates by reference numbered paragraphs 1 through 19 of the Amended Complaint as its response to numbered paragraph 20.

21. Oxford denies the allegations of numbered paragraph 21.

22. Oxford denies the allegations of numbered paragraph 22.

23. The allegations of numbered paragraph 23 are denied. Oxford asserts affirmatively that the Critical Area Commission voted to disapprove Bill 933 on May 5, 2004, at an official proceeding at which the County Attorney and at least one County Council member were present.

24. Oxford denies the allegations of numbered paragraph 24.

25. Oxford denies the allegations of numbered paragraph 25.

26. In response to numbered paragraph 26, Oxford admits that a declaratory judgment will serve to terminate the uncertainty and controversy giving rise to this proceeding, and further admits that there is an actual controversy between Oxford and the County, which involves antagonistic claims which will result in imminent and inevitable litigation. Oxford denies the allegations and conclusions of subparagraphs (a) through (d) of numbered paragraph 26, and denies that the County is entitled to the relief sought in lettered paragraphs A through H immediately following numbered paragraph 26.

27. In response to the allegations of paragraph 27, Oxford incorporates and adopts by reference its response to paragraphs 1 through 26.

28. Oxford denies the allegations of numbered paragraph 28.

29. Oxford denies the allegations and conclusions of numbered paragraph 29, and asserts affirmatively that the Commission is responsible for applying all applicable laws in conducting its public functions.

30. Oxford denies the allegations and conclusions of numbered paragraph 30.

31. Oxford denies the allegations of numbered paragraph 31.

32. Oxford denies the allegations of numbered paragraph 32.

33. Oxford denies the allegations of numbered paragraph 33.

34. Oxford denies the allegations of numbered paragraph 34.

35. Oxford denies the allegations of numbered paragraph 35. Oxford further denies that the Plaintiff is entitled to the relief sought in the paragraph following numbered paragraph 35.

36. The Town of Oxford adopts and incorporates by reference its responses set forth above in paragraphs 1 through 35 to the allegations of numbered paragraph 36.

37. Oxford denies the allegations contained in numbered paragraph 37 of the Amended Complaint.

38. Oxford denies the allegations contained in numbered paragraph 38 of the Amended Complaint.

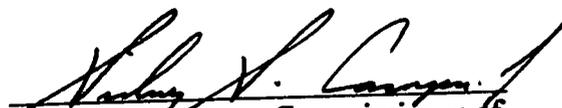
39. Oxford neither admits nor denies the request for judicial review set forth in paragraph 39, but denies the allegation that the Commission made its decision on May 14, 2004 disapproving Bill 933.

40. Oxford admits that Talbot County was a party to the proceedings before the Commission, and asserts affirmatively that the Town of Oxford was likewise a party to that proceeding.

WHEREFORE, in response to each and every claim for relief in each and every count of the Amended Complaint, the Town of Oxford asserts that the Plaintiff is not entitled to the relief sought or to any relief. The Town of Oxford respectfully requests that the Court declare Bill 933 invalid for all of the reasons set forth herein, and for such other reasons as may be apparent during the trial of this matter, and that the Town of Oxford have such other and further relief as the nature of this case requires.

Verification

In accordance with requirements that Mandamus related pleadings be verified, I hereby certify on behalf of the Town of Oxford that the matters and facts set forth herein are true and correct to the best of my knowledge, information and belief.



Sidney S. Campen, Commissioner of
the Town of Oxford

Respectfully submitted:



David R. Thompson



Brynja M. Booth
Cowdrey, Thompson & Karsten,
A Professional Corporation
P.O. Box 1747
Easton, MD 21601
(410) 822-6800
Attorneys for the Town of Oxford

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2004, a copy of the foregoing Answer to Complaint was 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. Cuezzella, 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
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels

I further certify that a copy of this answer was faxed to each of the above counsel, and hand delivered to Michael L. Pullen, Attorney for Talbot County, at his address as set forth above, on this 1st day of November, 2004.


David R. Thompson

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* * * * *
THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

* * * * *

**FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO PLAINTIFF**

TO: Talbot County, Maryland,
Plaintiff and Counter-Defendant

FROM: The Commissioners Of St. Michaels,
Defendant and Counter-Plaintiff

Defendant and Counter-Plaintiff, the Commissioners of St. Michaels ("St. Michaels"), pursuant to Maryland Rule 2-422, requests that the Plaintiff, Talbot County, Maryland ("County"), file within thirty (30) days of service of this First Request for Production of Documents, a written response to each request, and to produce those documents in its custody or control for inspection and copying in the offices of St. Michaels' counsel, Banks, Nason & Hickson, 113 Baptist Street, Salisbury, Maryland 21803 — 0044.

This Request is continuing in character so that if the County obtains further or additional documents, objects or things, as requested herein, after the initial production of such items and before trial, then it shall promptly supplement its response to this Request and produce such further or additional items for the inspection of the undersigned.

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

INSTRUCTIONS

(a) In accordance with Rule 2-422(c), the County's written response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is refused, in which event the reasons for refusal shall be stated. If a document or thing called for in this request is being withheld on the grounds that it is subject to attorney-client privilege or on any other ground, state with respect to such request, that a document or thing is being withheld and explain in full the nature and grounds of the privileged or other reason for which the document or thing is being withheld. If the refusal relates to part of an item or category, the part shall be specified.

(b) In accordance with Rule 2-422(d), the documents shall be produced as they are kept in the usual course of business, or you shall organize and label them to correspond with the categories of the request.

(c) Pursuant to Rule 2-422(a), these requests encompass all items within the County's possession, custody or control.

(d) The scope of the discovery requests herein contained include, but are not limited to, notes, documents, papers, books, accounts, letters, photographs, films, videotapes, data on computer medium such as disk or tape (including identification of the computer program or format in which the computerized data is recorded), objects or other tangible things producible pursuant to Maryland Rule 2-422.

(e) For any requested document or thing that is no longer in existence, identify the document, state how, when and why it passed out of existence, and identify each person having knowledge concerning each document evidencing its prior existence and/or any facts concerning its nonexistence.

DEFINITIONS

As used in these requests, the following terms are to be interpreted in accordance with these definitions:

(a) "Bill 933" shall mean and refer to Talbot County Bill No. 933.

(b) "St. Michaels" shall refer to the Commissioners of St. Michaels.

(c) The terms the "County", "you", "your", "your's", and "Plaintiff" or "Counter-Defendant" shall refer to Plaintiff, Talbot County, Maryland, all of its departments, agencies, offices, officers, officials, agents and employees, including, but not limited to, the Commissioners of Talbot County, the Talbot County Planning Commission, the County Manager, and any other elected or appointed official, officer, agent or employee of Talbot County, Maryland.

(d) The "Critical Area Commission" shall refer to the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays.

(e) In accordance with Rule 1-202(r), the term "person" includes any individual, unincorporated association or society, municipal or other corporation, the State, Talbot County, its agencies or political subdivisions, any Court, or any other governmental entity.

(f) The terms "you" and "your" include the person(s) to whom these requests are addressed, and all of that person's agents, representatives, or attorneys.

(g) In accordance with Rule 2-422(a), the terms "document" and "documents" include all writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated if necessary by you through detection devices into reasonably usable form.

(h) Where knowledge or information in the possession of a party is requested, such request includes knowledge of the party's agents, representatives and, unless privileged, his/her attorneys.

(i) The pronoun "you" refers to the party to whom these interrogatories are addressed and persons mentioned in clause (d) above.

(j) Unless otherwise specified herein, the time period in question or referred to herein shall be the period from January 1, 2002 through the present.

(k) The term "and" as used herein is both conjunctive and disjunctive as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(l) The term "any" means any and all.

(m) The terms "communicate" or "communication" mean any oral, written, telephonic or otherwise recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, agreements, and other understandings between or among two or more persons and has the broadest meaning permitted by the Maryland Rules of Procedure.

(n) The term "Complaint" refers to the pleading entitled "Complaint" that is filed in the above captioned Litigation

(o) The term "document" includes a writing, notes, drawing, graph, chart, photograph, recording, and other data compilation from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form, as defined by Rule 2-422 of the Maryland Rules of Procedure. (Standard General Definition (a).)

(p) The terms "identify", "identity", or "identification", mean as follows:

(1) When used in reference to a natural person, means that person's full name, last known address, home and business telephone numbers, and present occupation or business affiliation;

(2) When used in reference to a person other than a natural person, includes a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of person below), and the person's last known address, telephone number, and principal place of business;

(3) When used in reference to any person after the person has been properly identified previously means the person's name; and

(4) When used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g. letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer, appropriately labeled to correspond to the interrogatory. (Standard General Definition (b).)

(q) The term "including" means "including but not limited to."

(r) The word "or" as used herein is both conjunctive and disjunctive as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(s) The term "person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)

(t) The terms "relating to", "related to", and "regarding", any given subject matter, means to constitute, contain information about, pertain to, or in any way directly or indirectly bear upon or deal with, that subject matter.

REQUESTS FOR PRODUCTION

Request No. 1: All documents evidencing, referring to, reflecting upon, or relating to any communications between you and the Talbot County Planning Commission regarding Bill 933 or the substance thereof.

Request No. 2: All documents evidencing, referring to, reflecting upon, or relating to any communications between you and the Critical Area Commission regarding Bill 933 or the substance thereof.

Request No. 3: All documents evidencing, referring to, reflecting upon, relating to, or regarding any statements made by the County, or any of its present or former Commissioners, officers, agents or employees concerning or in any way relating to Bill 933 or the substance thereof.

Request No. 4: All documents evidencing, referring to, reflecting upon, relating to, or regarding any meeting or hearing held by the County concerning Bill 933 or the substance thereof, or in any other way related to the subject matter of the instant lawsuit.

Request No. 5: To the extent not produced in response to any other request, please produce each and every file maintained by the County, or on behalf of the County, or any of its employees, agents, subdivisions, departments or any office holder, evidencing, referring to, reflecting upon, relating to, or regarding Bill 933 or the substance thereof.

Request No. 6: All documents which evidence, refer to, reflect upon, or relate to any communication between the County and St. Michaels concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 7: All documents which evidence, refer to, reflect upon, or relate to any attempt to make communication with St. Michaels by the County concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 8: All documents which evidence, refer to, reflect upon, or relate to any communication between the County and the Town of Oxford concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 9: All documents which evidence, refer to, reflect upon, or relate to any attempt to make communication with the Town of Oxford by the County concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 10: All documents which evidence, refer to, reflect upon, or relate to any communication between the County and the Town of Easton concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 11: All documents which evidence, refer to, reflect upon, or relate to any attempt to make communication with the Town of Easton by the County concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 12: All documents which evidence, refer to, reflect upon, or relate to any communication between the County and the Town of Trappe concerning, relating to or regarding Bill 933, or the substance thereof.

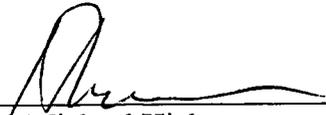
Request No. 13: All documents which evidence, refer to, reflect upon, or relate to any attempt to make communication with the Town of Trappe by the County concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 14: All documents which evidence, refer to, reflect upon, or relate to Bill 933, or the substance thereof in the custody and control of the Talbot County Planning Commission.

Request No. 15: All documents, including recordings and transcripts thereof, which evidence, refer to, reflect upon, or relate to any public hearing held by the Talbot County Planning Commission, concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 16: All documents, including recordings and transcripts thereof, which evidence, refer to, reflect upon, or relate to any public hearing held by the County Council of Talbot County, concerning, relating to or regarding Bill 933, or the substance thereof.

Request No. 17: All documents that you intend to use in trial of the above captioned matter.



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

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2005, that an exact copy of the foregoing FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was mailed by regular U.S. Mail, postage pre-paid to:

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

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

Paul J. Cuezzella, 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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford



H. Michael Hickson

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* * * * *
THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

* * * * *

NOTICE OF SERVICE OF DISCOVERY MATERIALS

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that on this 18th day of February, 2005, a copy of The Commissioners Of St. Michaels' First Request For Production of Documents to Plaintiff was sent, via U.S. Mail to:

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

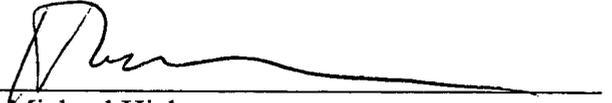
Paul J. Cuezzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of
Natural Resources

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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

Respectfully Submitted,



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

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

LAW OFFICES
BANKS, NASON & HICKSON

A Professional Association
113 South Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044

EDWARD G. BANKS, JR.
JOHN C. NASON
H. MICHAEL HICKSON
JESSE B. HAMMOCK

Telephone: 410-546-4644
Facsimile: 410-548-2568
e-mail: jhammock@bnhlaw.com

February 18, 2004

VIA FIRST CLASS MAIL

Maryland Critical Area Commission
for the Chesapeake and Atlantic Coastal Bays
c/o Paul J. Cueuzzella, Esq. &
Marianne D. Mason, Esq.
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401

RECEIVED

FEB 23 2005

DNR - LEGAL DIVISION

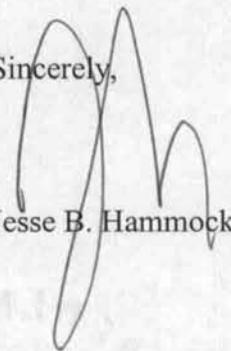
RE: Talbot County, Maryland, et al. v. Department of Natural Resources, et al.
Case No.: 20-C04-005095DJ

Dear Mr. Cueuzzella & Ms. Mason:

Enclosed please find the First Request for Production of Documents, in the above-referenced action.

Thank you for your attention to this matter.

Sincerely,


Jesse B. Hammock

JBH/kr

Enclosure

cc: Daniel Karp, Esq., Attorney for Talbot County
Michael L. Pullen, Esq., Attorney for Talbot County
Attorneys for Town of Oxford

FEB 23 2005

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* * * * *

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

* * * * *

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT MARYLAND CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**

TO: Maryland Critical Area Commission For
The Chesapeake And Atlantic Coastal Bays
Defendant

FROM: The Commissioners Of St. Michaels,
Defendant and Counter-Plaintiff

Defendant and Counter-Plaintiff, the Commissioners of St. Michaels ("St. Michaels"), pursuant to Maryland Rule 2-422, requests that the Defendant, The Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays ("Critical Area Commission"), file within thirty (30) days of service of this Request, a written response to each request, and to produce those documents in its custody or control for inspection and copying in the offices of St. Michaels' counsel, Banks, Nason & Hickson, 113 Baptist Street, Salisbury, Maryland 21803--0044.

This Request is continuing in character so that if the Critical Area Commission obtains further or additional documents, objects or things, as requested herein, after the initial production of

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

such items and before trial, then it shall promptly supplement its response to this Request and produce such further or additional items for the inspection of the undersigned.

INSTRUCTIONS

(a) In accordance with Rule 2-422(c), the Critical Area Commission's written response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is refused, in which event the reasons for refusal shall be stated. If a document or thing called for in this request is being withheld on the grounds that it is subject to attorney-client privilege or on any other ground, state with respect to such request, that a document or thing is being withheld and explain in full the nature and grounds of the privileged or other reason for which the document or thing is being withheld. If the refusal relates to part of an item or category, the part shall be specified.

(b) In accordance with Rule 2-422(d), the documents shall be produced as they are kept in the usual course of business, or you shall organize and label them to correspond with the categories of the request.

(c) Pursuant to Rule 2-422(a), these requests encompass all items within the Critical Area Commission's possession, custody or control.

(d) The scope of the discovery requests herein contained include, but are not limited to, notes, documents, papers, books, accounts, letters, photographs, films, videotapes, data on computer medium such as disk or tape (including identification of the computer program or format in which the computerized data is recorded), objects or other tangible things producible pursuant to Maryland Rule 2-422.

(e) For any requested document or thing that is no longer in existence, identify the document, state how, when and why it passed out of existence, and identify each person having knowledge concerning each document evidencing its prior existence and/or any facts concerning its nonexistence.

DEFINITIONS

As used in these requests, the following terms are to be interpreted in accordance with these definitions:

(a) "Bill 933" shall mean and refer to Talbot County Bill No. 933.

(b) "St. Michaels" shall refer to the Commissioners of St. Michaels.

(c) The terms the "you", "your", "your's", "Defendant" and "Critical Area Commission" shall refer to the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays.

(d) The terms "County" and "Plaintiff" shall refer to Plaintiff, Talbot County, Maryland, all of its departments, agencies, offices, officers, officials, agents and employees, including, but not limited to, the Commissioners of Talbot County, the Talbot County Planning Commission, the County Manager, and any other elected or appointed official, officer, agent or employee of Talbot County, Maryland.

(e) In accordance with Rule 1-202(r), the term "person" includes any individual, unincorporated association or society, municipal or other corporation, the State, Talbot County, its agencies or political subdivisions, any Court, or any other governmental entity.

(f) The terms "you" and "your" include the person(s) to whom these requests are addressed, and all of that person's agents, representatives, or attorneys.

(g) In accordance with Rule 2-422(a), the terms "document" and "documents" include all writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated if necessary by you through detection devices into reasonably usable form.

(h) Where knowledge or information in the possession of a party is requested, such request includes knowledge of the party's agents, representatives and, unless privileged, his/her attorneys.

(i) The pronoun "you" refers to the party to whom these interrogatories are addressed and persons mentioned in clause (d) above.

(j) Unless otherwise specified herein, the time period in question or referred to herein shall be the period from January 1, 2002 through the present.

(k) The term "and" as used herein is both conjunctive and disjunctive as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(l) The term "any" means any and all.

(m) The terms "communicate" or "communication" mean any oral, written, telephonic or otherwise recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, agreements, and other understandings between or among two or more persons and has the broadest meaning permitted by the Maryland Rules of Procedure.

(n) The term "Complaint" refers to the pleading entitled "Complaint" that is filed in the above captioned Litigation

(o) The term "document" includes a writing, notes, drawing, graph, chart, photograph, recording, and other data compilation from which information can be obtained, translated, if

necessary, through detection devices into reasonably usable form, as defined by Rule 2-422 of the Maryland Rules of Procedure. (Standard General Definition (a).)

(p) The terms "identify", "identity", or "identification", mean as follows:

(1) When used in reference to a natural person, means that person's full name, last known address, home and business telephone numbers, and present occupation or business affiliation;

(2) When used in reference to a person other than a natural person, includes a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of person below), and the person's last known address, telephone number, and principal place of business;

(3) When used in reference to any person after the person has been properly identified previously means the person's name; and

(4) When used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g. letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer, appropriately labeled to correspond to the interrogatory. (Standard General Definition (b).)

(q) The term "including" means "including but not limited to."

(r) The word "or" as used herein is both conjunctive and disjunctive as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(s) The term "person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)

(t) The terms "relating to", "related to", and "regarding", any given subject matter, means to constitute, contain information about, pertain to, or in any way directly or indirectly bear upon or deal with, that subject matter.

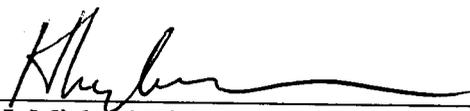
REQUESTS FOR PRODUCTION

Request No. 1: All documents evidencing, referring to, reflecting upon, or relating to any communications between you and the County, or any town therein, regarding Bill 933, or the substance thereof.

Request No. 2: All documents evidencing, referring to, reflecting upon, or relating to Bill 933 or the substance thereof, in your custody and/or control.

Request No. 3: To the extent not produced in response to any other request, please produce each and every file maintained by you or on your behalf evidencing, referring to, reflecting upon, relating to, or regarding Bill 933 or the substance thereof.

Request No. 4: All documents, including recordings and transcripts thereof, which evidence, refer to, reflect upon, or relate to any hearing held by the Critical Area Commission, concerning, relating to or regarding Bill 933, or the substance thereof.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2005, that an exact copy of the foregoing FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was mailed by regular U.S. Mail, postage pre-paid to:

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

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

Paul J. Cuezzella, 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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford



H. Michael Hickson

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

*

* CIVIL CASE NO. 20-C-04-005095DJ

* IN THE

* CIRCUIT COURT

* FOR

* TALBOT COUNTY

* STATE OF MARYLAND

*

* * * * *

* * * * *

NOTICE OF SERVICE OF DISCOVERY MATERIALS

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that on this 18th day of February, 2005, a copy of The Commissioners Of St. Michaels' First Request For Production of Documents To The Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays, was sent, via U.S. Mail to:

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

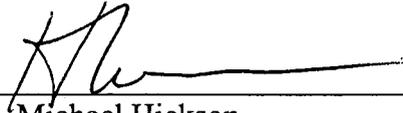
Paul J. Cueuzzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of
Natural Resources

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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

Respectfully Submitted,



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

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

LAW OFFICES
BANKS, NASON & HICKSON
A Professional Association
113 South Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044

EDWARD G. BANKS, JR.
JOHN C. NASON
H. MICHAEL HICKSON
JESSE B. HAMMOCK

Telephone: 410-546-4644
Facsimile: 410-548-2568
e-mail: jhammock@bnhlaw.com

February 18, 2004

VIA FIRST CLASS MAIL

Circuit Court of Maryland
Talbot County
P.O. Box 723
Easton, Maryland 21601
Attn: Court Clerk

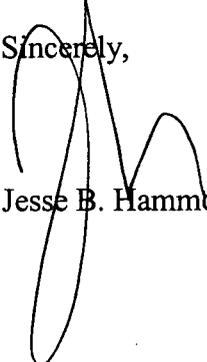
RE: Talbot County, Maryland, et al. v. Department of Natural Resources, et al.
Case No.: 20-C04-005095DJ

Dear Clerk:

Enclosed please find two original Notices of Service of Discovery Materials, for filing, in the above-referenced action.

Thank you for your attention to this matter.

Sincerely,


Jesse B. Hammock

JBH/kr

Enclosure

cc: Daniel Karp, Esq., Attorney for Talbot County
Michael L. Pullen, Esq., Attorney for Talbot County
Attorneys for Maryland Department of Natural Resources
Attorneys for Town of Oxford

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* * * * *

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

* * * * *

NOTICE OF SERVICE OF DISCOVERY MATERIALS

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that on this 18th day of February, 2005, a copy of The Commissioners Of St. Michaels' First Request For Production of Documents To The Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays, was sent, via U.S. Mail to:

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

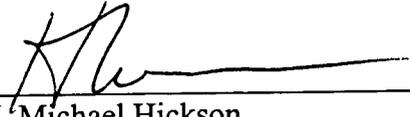
Paul J. Cuezzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of
Natural Resources

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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

Respectfully Submitted,



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

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* * * * *

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

* * * * *

NOTICE OF SERVICE OF DISCOVERY MATERIALS

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that on this 18th day of February, 2005, a copy of The Commissioners Of St. Michaels' First Request For Production of Documents to Plaintiff was sent, via U.S. Mail to:

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

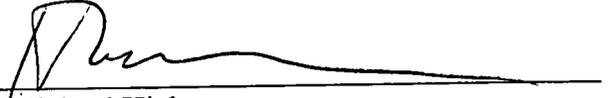
Paul J. Cuezzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of
Natural Resources

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

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

Respectfully Submitted,



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

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

TALBOT COUNTY MARYLAND TALBOT COUNTY
EASTON, MARYLAND

Plaintiff

vs

DEPT. NATURAL RESOURCES
CRITICAL AREA COMMISSION

Defendant

2004 DEC 8 PM 2 31

IN THE CIRCUIT COURT FOR
TALBOT COUNTY

CASE NO. 20-C-04-005095

RECEIVED

DEC 15 2004

ORDER

DNR - LEGAL DIVISION

This case came before the court for hearing on the 17th day of November, 2004, on the Motion to Dismiss filed by Defendant Department of Natural Resources (DNR) and its Critical Area Commission (Commission). The complaint filed by Plaintiff, Talbot County, Maryland (Talbot), seeks Declaratory Judgment in Count 1, Writ of Mandamus in Count 2, and an appeal of an administrative action of DNR in Count 3. In response to the filing of an amended Complaint, with affidavit, DNR has withdrawn its motion to dismiss Count 2.

Count 1 of the Complaint seeks declaratory judgment that Bill 933, a proposed amendment to Talbot's critical area program, was approved by the Commission as a matter of law. The complaint states that the Bill was enacted by the Talbot County Council in December 2003 and submitted to the Commission for approval on February 4, 2004; that the Commission failed to act on the proposed amendments within the 90 day period required by Section 8-1809(n)(i), Natural Resources Article, MD. Ann. Code; and that as a result of the failure to act during that time period the proposed amendments are deemed approved as a matter of law. Talbot also seeks court

declaration that the Commission, which subsequently refused to approve Bill 933, acted arbitrarily and illegally, applying improper criteria in making its decision to deny approval of the proposed amendments to Talbot's program although they complied with the applicable standards required by law.

The DNR bases its motion to dismiss Count 1 on the claim that there exists no justiciable controversy between the parties for which the court could award declaratory judgment. It claims that the status of Bill 933 has been resolved by the failure of the Commission to approve the Bill. Talbot claims that a controversy exists as to the viability of the amendments contained in Bill 933, and that the court, by declaratory judgment, should resolve that controversy by trial.

The court, having considered the pleadings and argument of counsel, concludes that there exists a situation of uncertainty with respect to the status of the critical area program of Talbot County, and that the court, by declaratory judgment, can remove that uncertainty in the interests of the parties and the citizens of Talbot County.

DNR has withdrawn its motion to dismiss Count 2 of the Complaint.

Count 3 of the Complaint seeks review by the court of the Commission's decision to disapprove the amendments submitted by Talbot under the Administrative Procedure Act. DNR claims that no statutory authority exists which would permit such a review and Talbot has cited no authority for such review.

It is, thereupon, this 8th day of December, 2004, by the Circuit Court for Talbot County,

ORDERED, that Defendant DNR's Motion to Dismiss Count 1 of the Complaint is denied, and it is further

ORDERED, Defendant DNR's Motion to Dismiss Count 3 of the Complaint is granted, said Count being hereby dismissed.

Calvin R. Sanders

Calvin R. Sanders, Judge

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

Case Number: 20-C-04-005095 DJ

RECEIVED

Paul J Cucuzzella Esq

Assistant Attorney General Dept. Of Natural Resources

580 Taylor Ave

Suite C4

Annapolis, MD 21401

DEC 15 2004

DNR - LEGAL DIVISION

FOLD HERE

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

Case Number: 20-C-04-005095 DJ

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

FOLD HERE

RECEIVED

DEC 6 2004

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL
RESOURCES

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* TALBOT COUNTY,
* MARYLAND
* Case No. 20-C-04-005095DJ

NOV 11 11 43 AM '04
CIRCUIT COURT
TALBOT COUNTY
MARYLAND

* * * * *

ORDER

Having considered the Motion to Intervene filed by The Commissioners of St. Michaels ("St. Michaels") and the Motion to Intervene filed by the Town of Oxford ("Oxford") in the above-captioned matter, and the memoranda of law and arguments of counsel in support thereof and in opposition thereto, which motions, memoranda and arguments were considered by the Court at a hearing on November 17, 2004; and

Finding that St. Michaels and Oxford (collectively the "Towns") each meet the criteria of Maryland Rule 2-214 (b)(2), being political subdivisions of the State, and this being an action involving the validity Talbot County Bill No. 933, which would affect the Towns;

NOW THEREFORE, it is, this 1st day of ^{December}~~November~~, 2004, by the Circuit Court for Talbot County, Maryland,

ORDERED that said Motions to Intervene of The Commissioners of St. Michaels and the Town of Oxford be, and are hereby, **GRANTED**; and it is further

ORDERED that The Commissioners of St. Michaels and the Town of Oxford are hereby joined as additional parties defendants to this action; and it is further

ORDERED that The Commissioners of St. Michaels and the Town of Oxford shall promptly file and serve their initial pleadings as required by Maryland Rule 2-214 upon all parties of record to this action.

Date: 12/1/04

Calvin R. Savelus
Judge

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
WRITER'S DIRECT DIAL NO.:

FAX NO.:

(410) 260-8364

(410) 260-8352
pcucuzzella@dnr.state.md.us

November 29, 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 defendant's Supplemental Memorandum In Support Of Motion To Dismiss Count III. Thank you very much for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul J. Cucuzzella".

Paul J. Cucuzzella
Assistant Attorney General

Enclosure

cc: Victoria M. Shearer, Esq.
Michael L. Pullen, Esq.
H. Michael Hickson, Esq.
David Thompson, 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.

*

* * * * *

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS COUNT III**

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 Supplement Memorandum In Support Of Motion To Dismiss Count III.

Argument

Intervenors the Commissioners of St. Michaels have filed their own Supplemental Memorandum Of Law In Support Of Motion To Dismiss Count III (the “St. Michaels’ Memorandum”).¹ The Critical Area Commission concurs with the points made by St. Michaels. Indeed, St. Michaels’ first point – that there is no authority under Title 7, Chapter 200 of the Maryland Rules for judicial review of the Critical Area Commission action involved herein, *see* St.

¹ During the motions hearing held in open Court on November 17, 2004, the Critical Area Commission withdrew its Motion To Dismiss as to Counts I and II, but maintained its Motion To Dismiss as to Count III.

Michaels' Memorandum at 1-2 – is correct and consistent with the argument first made by the Critical Area Commission in its Memorandum In Support Of Motion To Dismiss. *See* Memorandum In Support Of Motion To Dismiss at 4-6.

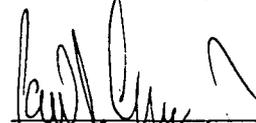
The Critical Area Commission also agrees with the second and third points made by St. Michaels: that judicial review under Title 7, Chapter 200 cannot co-exists with declaratory judgment, and that the procedural inconsistencies between judicial review actions and declaratory judgment action renders incompatible combining the two. *See* St. Michaels' Memorandum at 2-3. Should this case proceed as both a judicial review action and a declaratory judgment action, two distinct and incompatible sets of Rules would govern the combined actions' proceedings: Title 7, Chapter 200 for judicial review, and Title 2 for declaratory judgment. Moreover, the Critical Area Commission would be required to file with the Court an administrative record, *see* Rule 7-206, even though it has already produced all relevant documentation to Plaintiff through Title 2, Chapter 400 discovery. *See* Notice Of Service Of Discovery Materials dated October 22, 2004.

Conclusion

For the foregoing reasons, defendant's Motion To Dismiss as to Count III should be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Paul J. Cucuzzeffa
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: November 29, 2004

CERTIFICATE OF SERVICE

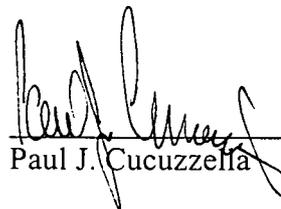
I hereby certify that on the 29th day of November, 2004, a copies of the foregoing Supplemental Memorandum In Support Of Motion To Dismiss Count III were sent via first class mail, postage prepaid, to:

Victoria M. Shearer, Esq.
Daniel Karp, Esq.
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540, 100 East Pratt Street
Baltimore, Maryland 21202-1089

Michael L. Pullen, Esq.
142 N. Harrison Street
Easton, Maryland 21601
Attorneys for Talbot County

David Thompson, Esq.
Cowdry, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for the Town of Oxford

H. Michael Hickson, Esq.
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels



Paul J. Cucuzzella

RECEIVED

NOV 29 2004

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* CIVIL CASE NO. 20-C-04-005095DJ
* IN THE
* CIRCUIT COURT
* FOR
* TALBOT COUNTY
* STATE OF MARYLAND

* * * * *

**SUPPLEMENTAL MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS COUNT III
(Judicial Review)**

The Commissioners of St. Michaels, Intervening Defendant, by its attorney, H. Michael Hickson, files this Supplemental Memorandum Of Law in support of the Motion To Dismiss filed by the Maryland Department of Natural Resources (the "Department"), with regard to Count III of the Complaint (titled by Talbot County as "Administrative Appeal under Maryland Rules, Chapter 200, Title 7") filed by Talbot County, Maryland (the "County").

The County has filed a Complaint containing three counts, one of which is a declaratory judgment action, pursuant to Maryland Code, Counts Article, Title 3, Subtitle 4 (Declaratory Judgment); and another of which counts is for judicial review, pursuant to Maryland Rules, Title 7 (Appellate And Other Judicial Review In Circuit Court), Chapter 200 (Judicial Review Of Administrative Agency Decisions).

**I.
THERE IS NO AUTHORITY FOR JUDICIAL REVIEW
OF THE ACTION BY THE CRITICAL AREA COMMISSION**

As the County recognizes by its titling of Count III, actions for judicial review are procedurally governed by the Maryland Rules, Title 7 (Appellate And Other Judicial Review In Circuit Court), Chapter 200 (Judicial Review Of Administrative Agency Decisions). However, that chapter of the Maryland Rules does not provide the authorization for such an action. Maryland Rule 7-201 (General Provisions), states:

(a) Applicability. The rules in this Chapter govern actions for judicial review of (1) an order or action of an *administrative agency, where judicial*

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

review is authorized by statute, and (2) a final determination of the trustees of the Client Protection Fund of the Bar of Maryland.

(b) Definition. As used in this Chapter, "*administrative agency*" means any agency, board, department, district, commission, authority, commissioner, official, the Maryland Tax Court, or other unit of the State or of a political subdivision of the State and the Client Protection Fund of the Bar of Maryland. [*Emphasis added.*]

Clearly, the Critical Area Commission is an administrative agency, as that term is used and defined by Maryland Rule 7-201. However, the County has cited no statute under which it has brought its count for judicial review. Indeed, there is no statutory authority for judicial review of actions taken by the Critical Area Commission.

Rule 7-202 (Method Of Securing Review), states, in part:

(a) By Petition. A person seeking judicial review under this chapter shall file a petition for judicial review in a circuit court authorized to provide the review.

As stated in *Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 723 A.2d 440 (1999):

The [above] cited rule . . . *does not grant a right of judicial review, and it is inapplicable where judicial review is not authorized by statute.* *Urbana Civic Ass'n, Inc. v. Urbana Mobile Village, Inc.*, 260 Md. 458, 462-63, 272 A.2d 628, 631 (1971). [*Emphasis added.*]

Id. at 541. Therefore, the County's Count III of its Complaint, for judicial review, should be dismissed.

II. A COUNT FOR JUDICIAL REVIEW CANNOT CO-EXIST WITH A DECLARATORY JUDGMENT COUNT

Even if a count for judicial review were authorized by statute, ordinarily it cannot co-exist with a count for declaratory judgment, included as part of the Complaint as Count I. Declaratory judgment actions are governed by Maryland Code, Courts Article, Title 3 (Courts Of General Jurisdiction - Jurisdiction/Special Causes Of Action), Subtitle 4 (Declaratory Judgment). Courts Art., § 3-409 (Relief provided), states, in part:

(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 this subtitle.* [*Emphasis added.*]

The general rule is that when administrative remedies exist, they must be exhausted before other actions, including requests for declaratory judgments, mandamus and injunctive relief, may be brought. *Board v. Secretary of Personnel*, 317 Md. 34, 42-43, 562 A.2d 700, 704 (1989). Under those circumstances, it was held in *Josephson v. City of Annapolis*, 353 Md. 667, 728 A.2d 690 (1998), that the requirement of exhaustion of administrative remedies includes the requirement that the right to judicial review of the administrative decision be exhausted.

If there is a statutory right of judicial review upon which the County is relying in support of its Count III, the County has failed to exhaust that remedy before initiating the declaratory judgment action contained in Count I of its Complaint. Therefore, Count III of the County's Complaint, for judicial review of the Critical Area Commission's actions, must be dismissed. *Josephson v. City of Annapolis, supra*.

III.
THERE ARE PROCEDURAL DIFFERENCES BETWEEN
ACTIONS FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT ACTIONS

The procedures that must be followed in an action for declaratory judgment are controlled by Maryland Rules, Title 7 (Appellate And Other Judicial Review In Circuit Court), Chapter 200 (Judicial Review Of Administrative Agency Decisions). For example, Rule 7-203 (Time For Filing Action) requires that a petition for judicial review be filed within 30 days after the action of which review is sought. Further, Rule 7-206 (c) requires that the record of the administrative agency be transmitted to the court "within 60 days after the agency receives the first petition for judicial review." In addition, Rule 7-208 (Hearing), provides in part:

(c) Additional Evidence. Additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

In contrast, no such requirements or constraints apply to declaratory judgment actions. Therefore, a judicial review action is inconsistent with a declaratory judgment action.

CONCLUSION

Based on the applicable facts and the law, there is no statutory authorization for a judicial review of the action complained of by the County. Even if such action were authorized, it cannot legally co-exist, and inconsistent, with a count for declaratory judgment relating to the same issues. Therefore, count III of the Complaint, for judicial review, should be dismissed so as to avoid unwarranted confusion in this case.

H. Michael Hickson, BMB

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 Intervening Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2004, a copy of the foregoing

Memorandum in Reply to the Opposition to St. Michaels' Motion to Intervene, and the attachment thereto, 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. Cuezzella, 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

David R. Thompson, Esquire
Brynja M. Booth, Esquire

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

Attorney for Talbot County

Cowdrey, Thompson & Karsten, P.A.

130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford

H. Michael Hickson, BMB
H. Michael Hickson

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

LAW OFFICE

COWDREY, THOMPSON & KARSTEN

A PROFESSIONAL CORPORATION

ROY B. COWDREY, JR.
DAVID R. THOMPSON+
KURT D. KARSTEN *
ROBERT J. MERRIKEN *
HUGH CROPPER, IV
CURTIS H. BOOTH
BRYNJA MCDIVITT BOOTH
ELIZABETH ANN EVINS

+ ADMITTED IN MD & VA
* ADMITTED IN MD & DC

130 NORTH WASHINGTON ST.

P. O. BOX 1747

EASTON, MARYLAND 21601

(410) 822-6800

FAX (410) 820-6586

ANNAPOLIS OFFICE
621 RIDGELY AVENUE
SUITE 402
ANNAPOLIS, MD 21401

OCEAN CITY OFFICE
P.O. BOX 535
9923 STEPHEN DECATUR
HIGHWAY, #D-2
OCEAN CITY, MD 21843

November 1, 2004

RECEIVED

NOV 3 2004

DNR - LEGAL DIVISION

HAND DELIVERED

Mary Ann Shortall
Clerk of the Circuit Court
Court House
11 N. Washington Street
Easton, MD 21601

Re: Talbot County, Maryland v. Department of Natural Resources
Case No.: 20-C-04-005095DJ

Dear Ms. Shortall:

Enclosed please find a Motion to Intervene, with a Proposed Answer to Complaint and Proposed Counterclaim for filing in the above captioned case. I have also enclosed a check in the amount of \$10.00 for the appearance fee.

Sincerely yours,



David R. Thompson

DRT/mb

Enc.

cc: All counsel

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

* CIVIL CASE NO. 2-C-04-005095DJ
* IN THE
* CIRCUIT COURT
* FOR
* TALBOT COUNTY
* STATE OF MARYLAND

* * * * *

MOTION TO INTERVENE

The Town of Oxford (“Oxford”), by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, moves pursuant to Maryland Rule 2-214 for leave to intervene as an additional party defendant in the above captioned case.

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. The Town of Oxford is a Maryland municipal corporation, located entirely within the geographic boundaries of the County.
3. At all times relevant hereto, Oxford 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 Oxford, a comprehensive plan, a subdivision ordinance, a zoning ordinance, and a zoning map dividing all land within Oxford into zoning districts, defining the historic district, and defining the critical area land management districts; and (2) establishing, appointing and maintaining a planning commission, a board of appeals and a historic district commission.

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. Pursuant to state law, the County enacted its local critical area protection program (the "County Program"), which was thereafter approved by the Maryland Critical Area Commission.

6. Pursuant to the same state law, the Town of Oxford has adopted its own critical area program ("The Oxford Critical Area Program"), which has been approved by the Maryland Critical Area Commission (now known as the Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays). The Oxford Critical Area Program has been updated and amended on several occasions, all with the approval of the Critical Area Commission.

7. The Oxford Critical Area Program and Zoning Ordinance, as approved by the Critical Area Commission includes a "Growth Allocation District" provision, whereby the Planning Commission of the Town of Oxford, and the Commissioners of Oxford, have the exclusive right and authority, subject to the applicable ordinances of the Town of Oxford and certain provisions of state law, including Critical Area Commission review, to process and approve any change in critical area land management classifications and to rezone land within the boundaries of the Town of Oxford.

8. As a matter of law, the Talbot County Council and Talbot County, Maryland (as a legal entity), have no planning and zoning jurisdiction within the Town of Oxford, nor does the County have any approval authority with respect to the rezoning or growth allocation

reclassification process within the Town of Oxford, which is an independent municipal corporation with exclusive planning and zoning jurisdiction within town boundaries, subject only to Critical Area Commission review and oversight.

9. During the development of the original Talbot County critical area program and during the development of the independent Critical Area plans of Oxford, St. Michaels and Easton, previous Talbot County councils recognized the legal and jurisdictional relationships between the independent town governments and the county government. During those years, in compliance with state law, the County worked with the towns to identify annexation areas contiguous to the towns, wherein the towns were expected to exercise critical area growth allocation and zoning prerogatives in accordance with state laws applicable to municipal annexation.

10. Pursuant to the dictates of state law, which required municipal/county coordination, the County Council adopted zoning maps identifying annexation areas and growth allocation areas agreed to by the county planners, town planners, the County Council, and the elected commissioners of the towns. Those maps were a part of the Talbot County Zoning Ordinance, and together with the text of the Talbot County Zoning Ordinance, set forth the growth allocation/annexation area relationships between the towns and the county.

11. On or about December 23, 2003, the Talbot County Council enacted Legislative Bill 933 in an effort to amend the County Program to eliminate the zoning maps referenced in paragraph 10 above, to assert county ownership of the growth allocation reclassification process. The purpose, intent, and purported effect of County Bill 933, *inter alia*, was to withdraw from the incorporated municipalities their rights to exercise growth allocation rezoning and reclassification and control within their own municipal boundaries, and to require the towns,

including the Town of Oxford, to seek and obtain County Council approval for growth allocation rezonings, purporting to give the Talbot County Council approval authority and/or veto authority over the reclassification, rezoning, and development and redevelopment of critical area lands within town boundaries.

12. During the review of County Bill 933 by the Critical Area Commission, the Town of Oxford, together with other Talbot County municipalities and the Maryland State Department of Planning, participated in the Critical Area Commission review process and in the public hearing and meeting conducted by the Critical Area Commission. The towns, including the Town of Oxford, and the Department of State Planning, opposed the approval of Bill 933 as an illegal usurpation of municipal authority.

13. Following the hearing, and after considering objections of the Department of State Planning and those of the Town of Oxford, the Town of St. Michaels and the Town of Easton, the Critical Area Commission, on May 5, 2004, completed its review of County Bill 933, pursuant to Maryland Code, Nat. Res. Art., § 8-1809, and disapproved County Bill 933, thereby preventing Bill 933 from becoming effective as an amendment to the County Program.

14. In disapproving County Bill 933, the Commission relied on some of the issues raised and/or addressed to the Critical Area Commission that were directly related to interests shared by Oxford, the Commission and others; but the Commission did not specifically address in its written communication the following issues raised and/or adopted by the Town of Oxford in the course of its opposition to Bill 933:

14.1. County Bill No. 933 is contrary to the grant of home rule powers to the municipalities by Maryland Constitution, Art. 11-E; is contrary to the express powers

granted to the municipalities by Maryland Code, Art. 23A, § 2; and is contrary to the planning and zoning powers granted to the municipalities by Maryland Code, Art. 66B;

14.2. 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;

14.3. 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;

14.4. 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;

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

15. Each of the above issues is legally sufficient, and each provides an independent basis, to invalidate County Bill No. 933, or to make it inapplicable to the Town of Oxford and all land within the boundaries of the Town of Oxford.

16. In addition to the foregoing issues, and in addition to the issues specifically noted by the Critical Area Commission in disapproving County Bill 933, Bill 933 is legally deficient and invalid in that it purports to amend duly adopted zoning maps for Talbot County, with no consideration or findings related to the required "change or mistake" standard applicable to the amendment of county zoning maps.

17. The County filed an Amended Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Complaint"), by which the County requests this Court to declare that Bill 933 is a valid enactment.

18. 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").

19. Notwithstanding the County's knowledge that other parties participated before the Critical Area Commission and opposed Bill 933, the County has sought judicial review of an agency decision, but has provided no notice to any of the interested parties that appeared before the agency and opposed the County's legislative Bill 933. Those parties who participated before the Critical Area Commission, whose interests are directly affected by Bill 933, are entitled to participate in judicial review of the process in which they participated, notwithstanding that the County and State provided no notice of this proceeding seeking judicial review.

20. The Town of Oxford supports the decision of the Critical Area Commission to disapprove Bill 933, and has a distinct legal interest in the law and procedure promoted by Bill 933. As a participant in the Commission's review and public hearing process, Oxford has an absolute right to participate as a party in the County's action seeking judicial review of the Commission's action.

21. Bill No. 933 would adversely affect the Town of Oxford as follows:

21.1. Interfering with the administration and application of the Oxford Growth Allocation District provision of the Oxford Zoning Ordinance (a copy of which is

attached hereto and incorporated herein by reference as Exhibit "A") that was approved by the Critical Area Commission prior to the County's enactment of Bill 933;

21.2. Interfering, and effectively invalidating Oxford's growth allocation zoning provisions, which, subject only to the review by the Commission, placed in Oxford the exclusive right, free of county interference, to make growth allocation rezoning classifications within Oxford's municipal boundaries;

21.3. Interfering with the exclusive authority of Oxford, pursuant to Maryland Code, Art. 66B, to effectively exercise planning and zoning authority over the entire area within its municipal boundaries;

21.4. Subordinating the Oxford Comprehensive Plan and Oxford zoning and planning decisions to the whims of the Talbot County Council and effectively rendering the Oxford Comprehensive Plan null and void within the critical area in Oxford, which encompasses most of the Town of Oxford; and

21.5. Subordinating any Oxford critical area rezoning, subdivision or redevelopment process to the whims of the County Council and effectively rendering the Oxford growth allocation and subdivision and development regulations null and void within the Critical Area in Oxford.

22. The interests of the Defendant Maryland Department of Natural Resources, which is not a political subdivision, and which has no authority to enact local zoning ordinances, or make local zoning and planning decisions, are not similar to the interests of the Town of Oxford. This is evidenced by the fact that the Commission did not include the analysis of the above issues among the reasons for 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 Town of Oxford as County Bill No. 933.

23. The Maryland Department of Natural Resources will not adequately present or protect local municipal prerogatives and municipal jurisdiction, and will not adequately represent or protect the interests of the Town of Oxford.

24. Oxford has waited until this time to intervene because it was never provided by the County or the Department of Natural Resources with a notice of the petition for judicial review of the Commission's action. After learning of the pendency of this case, counsel for the Town of Oxford inspected the file in the Clerk's Office, and noted a Motion to Dismiss the County's claims by the Department of Natural Resources. The interests of Oxford and the Maryland Department of Natural Resources are similar in connection with the Department's Motion to Dismiss the County's claims. Oxford hereby adopts the positions of the Maryland Department of Natural Resources ("DNR") as stated in said Motion to Dismiss, and reserves the right to file a pleading to that effect if intervention is granted before said Motion to Dismiss is resolved.

25. The issues on the merits will not be reached in this case, if ever, until after the said Motion To Dismiss is resolved.

26. Intervention by the Town of Oxford will not unduly delay or prejudice the adjudication of the rights of the original parties to this action because no scheduling order has been issued by the Court, and no discovery has been conducted by the parties, and no trial date has been established.

27. Intervention is sought at this time so that this case will proceed to trial on all Bill 933 issues, including municipal issues, so that the validity of County Bill No. 933 will be

decided in a single action, thereby avoiding a multiplicity of litigation and conserving judicial resources and public resources.

28. The proposed initial pleadings by Oxford, as required by Maryland Rule 2-214(c), are filed herewith.

II.

The Town of Oxford Has An Unconditional Right To Intervene, Pursuant To Maryland Rule 2-214 (a) (1), and as a Necessary Party To A Declaratory Judgment Action, and Should Have Been Named A Party Defendant by Plaintiff In the Action As Originally Filed.

29. Oxford is a mandatory party to this action, pursuant to Maryland Code, Courts Article, § 3-405 (a)(1), because the declaratory relief sought is a declaration that "Bill 933 complies with the standards of Md. Code § 8-1808 of Title 8, Subtitle 19, Natural Resources Article, Md. Ann. Code." Oxford has independent rights under the same statute, which are inconsistent with Bill 933 and inconsistent with declaration of rights sought by the County, and which are inconsistent with the positions asserted by the County before the Commission.

30. As the County is aware, the Town of Oxford, in correspondence with the Critical Area Commission and at the public hearings related to Bill 933, asserted the invalidity of Bill 933. Each local jurisdiction in Maryland with critical area lands, including the Town of Oxford, is required by Maryland Code Ann. Natural Resources Article § 8-1808, to adopt a critical area program, to be approved by the Critical Area Commission. Oxford's growth allocation zoning provisions have been approved by the Critical Area Commission. Approval of County Bill 933 is inconsistent with state law, and the Oxford Critical Area Program, and Oxford's zoning ordinance and the critical area provisions therein. The Bill 933 controversy involves the validity of both a municipal and a county ordinance. Oxford is a mandatory and necessary party to the County's Amended Complaint.

31. If the Court and the parties prefer, the Town of Oxford is willing to proceed with an independent and parallel declaratory judgment action asserting the invalidity of Talbot County Bill 933 for all of the reasons set forth herein, and for the reasons relied upon by the Critical Area Commission in disapproving Bill 933. In the context the pending suit, a parallel action by the Town of Oxford would be an unnecessary imposition on the Court and the parties. It is in the interests of judicial efficiency and economy to resolve all issues relating to the validity of County Bill 933 in one proceeding, with all interested parties before this Court. Intervention by the Town of Oxford in this action is appropriate.

32. Oxford is a necessary party to this action, pursuant to Maryland Code, Courts Article, § 3-405 (b), because County Bill No. 933 would have the effect of invalidating some or all of the Oxford Critical Area Program, the Oxford Comprehensive Plan, the Oxford Zoning Ordinance, and/or the Oxford Subdivision Ordinance, and would give the County Council and county government powers within the Town of Oxford that are not authorized by law, or by the Maryland Constitution, and which, by law, are reserved to municipalities, and particularly, to the Town of Oxford.

III.

Oxford Has The Right To Intervene, Pursuant To Maryland Rule 2-214 (a) (2), and Md. Code Ann. Courts and Jud. Proc. Art. § 3-406 Because Its Interests Would Be Adversely Affected By Talbot County Bill No. 933

33. Talbot County Bill No. 933 would cause the adverse effects and impacts upon the Town of Oxford described above, and would violate the rights of the Town of Oxford delegated exclusively to the municipal corporations of Maryland and denied by law to the county government.

Maryland-National Capital Park and Planning Commission. Except that where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, *the municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area annexed*; provided nothing in this exception shall be construed or interpreted to grant planning and zoning authority or subdivision control to a municipality not authorized to exercise that authority at the time of such annexation; and further *provided, that no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans or if there is no adopted or approved master plan, the adopted or approved general plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation without the express approval of the board of county commissioners or county council of the county in which the municipality is located.* [Emphasis added.]

Therefore, it is clear that except during the initial five-year period after an annexation, as provided in Maryland Code, Art. 23A, § 9 (c), a county has no planning or zoning authority over land within a Maryland municipality.

Maryland Code, Art. 23A (Municipal Corporations), § 2 (Express Powers), states, in pertinent part:

(a) *The legislative body of every incorporated municipality in this State, except Baltimore City, by whatever name known, shall have general power to pass such ordinances not contrary to the Constitution of Maryland, public general law, or, except as provided in § 2B of this article, public local law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality*; but nothing in this article shall be construed to authorize the legislative body of any incorporated municipality to pass any ordinance which is inconsistent or in conflict with any ordinance, rule or regulation passed, ordained or adopted by the Maryland-National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission, and nothing in this article shall be taken or construed to affect, change, modify, limit or restrict in any manner any of the corporate powers of the Mayor and City Council of Baltimore which it now has or which hereafter may be granted to it.

(b) *In addition to, but not in substitution of, the powers which have been, or may hereafter be, granted to it, such legislative body also shall have the following express ordinance-making powers:*

(30) To provide reasonable *zoning regulations* [Emphasis added.]

Exclusive planning powers are granted to municipalities by Maryland Code, Art. 66B, Section 3.01 (Grant of power), which states:

- (a) A **local jurisdiction** may enact, adopt, amend, and execute a plan as provided in this article and create by ordinance a planning commission with the powers and duties set forth in this article.
- (b) A **municipal corporation may** be included as part of a county plan under this article *if*:
 - (1) The **legislative body of the municipal corporation**, by a resolution directed to the legislative body of the county in which the municipal corporation is located, **indicates the intention to participate** in the county plan; **and**
 - (2) The legislative body of the county approves the resolution. [*Emphasis added.*]

Article 66B, Section 1.00 (Definitions), includes the following definitions applicable to the above statute:

- (f) (1) "Local legislative body" means the elected body of a political subdivision.
- (2) "Local legislative body" includes:
 - (i) A board of county commissioners;
 - (ii) A county council; *or*
 - (iii) **A governing body of a municipal corporation.**
- (g) "Local jurisdiction" means a county *or* municipal corporation and the territory within which its powers may be exercised. [*Emphasis added.*]

Thus, a municipality is not included in a county comprehensive plan unless the governing body of the municipality elects to do so.

Under State law, the zoning authority within municipal is granted exclusively to municipalities by Maryland Code, Article 66B, Section 4.01 (Grant of powers; statement of policy; construction of powers), which states:

- (a) (1) ***It is the policy of this State that:***
 - (i) The orderly development and use of land and structures requires comprehensive regulation through the implementation of ***planning and zoning controls***; and
 - (ii) ***Planning and zoning controls shall be implemented by local government.*** [*Emphasis added.*]

Note that the term "local government" is not plural, indicating that planning and zoning within the same jurisdiction cannot be controlled by more than one local government. Moreover, the language of Article 66B, Section 1.00 (Definitions), indicates that the term "local government"

means a county *or* a municipality, not a county *and* a municipality.

Maryland Code, Article 66B, Section 4.04 (Method of procedure) states, in part:

- (a) ***A local legislative body*** shall provide for the manner in which its regulations and restrictions and the boundaries of its districts shall be determined, established, enforced, and periodically amended or repealed. [*Emphasis added.*]

Further, Article 66B, Section 4.05 (Amendment, repeal and reclassification), states, in pertinent part:

- (a) (1) Zoning regulations, restrictions, and boundaries may periodically be amended or repealed.
(2) (i) Where the purpose and effect of the proposed amendment is to change the zoning classification, ***the local legislative body*** shall make findings of fact [*Emphasis added.*]

These provisions of Article 66B clearly indicate that only one legislative body is intended to control the zoning within a town, and the term "local legislative body" is defined to include the legislative body for a town.

Any law contrary to the proposition that planning and zoning powers within a municipality are within the exclusive control of such municipality is addressed in Article 66B, Section 7.05 (Repeal of inconsistent laws), which states, in pertinent part, as follows:

Except as otherwise provided in this article, ***any law or ordinance that is inconsistent with or contrary to the provisions of this article is repealed to the extent of the inconsistency.*** [*Emphasis added.*]

A local government ordinance which conflicts with a public general law enacted by the General Assembly is preempted and thus is invalid. *See, e.g., Boulden v. Mayor*, 311 Md. 411, 415-417, 535 A.2d 477, 479-480 (1988). A local ordinance is pre-empted by conflict when it prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law. *Boulden v. Mayor, supra*. By reason of the fact that in St. Michaels and Oxford are practically surrounded by water, most of there is in the critical area. The effect of Bill No. 933 would be to immediately remove all growth allocation reserve from those towns. Therefore, as to all land of St. Michaels and Oxford in the critical area, Bill 933 would place the ultimate planning and zoning powers in the County Council. The County has taken its authority to establish a local program under the Critical Area laws, and it has used that

authority to craft Bill 933 in such a way that in conflicts with Article 66B. Not all local laws establishing local programs conflict with Article 66B. Because Bill No. 933, as written creates a conflict with Article 66B, and because it is a local ordinance, the bill is pre-empted by Article 66B. Moreover, even if it were not a local law, Article 66B, Section 7.05 settles all conflicts in favor of Article 66B. The Court of Appeals has held that, in implementing its express powers, the council of a charter home rule county is empowered to enact countywide legislation effective in all municipal corporations within the county. *Town of Forest Heights v. Frank*, 291 Md. 331, 341-46, 435 A.2d 425 (1981). When the county has so acted, its legislation prevails over conflicting municipal enactments, unless the General Assembly prescribes differently by public general law. *Town of Forest Heights v. Frank, supra* at 350-51. In this instance, Article 66B, Section 7.05, a public general law, clearly indicates that that the planning and zoning power within their borders, granted to municipalities by Article 66B, prevails over other laws.

Given the fact that the County was not interested in seeking or listening to the concerns of the towns before enacting Bill 933, one could conclude that the Bill is more intended as a vehicle for the County to grab planning and zoning powers from the Towns than to address legitimate growth allocation concerns. That conclusion is reinforced by the second from the last "whereas" clause of the Bill, which states:

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. . . .

There is nothing in the Chesapeake Bay Critical Area Protection Program of the Natural Resources Article to indicate that growth allocation was intended by the Legislature to shift the power of planning and zoning within the municipalities of the State from those municipalities to the counties.

C.

Bill No. 933 Makes The Award Of Growth Allocation Within Towns More Difficult Than The Award Of Growth Allocation Outside Of Towns

The critical area laws are not the only Maryland laws and State policies that promote growth and development within municipalities. Article 66B indicates that in rural areas, such as

Talbot County, growth should be directed to municipalities. In that regard Maryland Code, Article 66B, Section 1.01 (*Visions*), states, in part:

In addition to the requirements of § 3.05(c) of this article, ***a commission shall implement the following visions*** through the [comprehensive] plan described in § 3.05 of this article:

- (3) ***In rural areas, growth is directed to existing population centers and resource areas are protected.***
[Emphasis added.]

The Smart Growth initiatives, adopted by the previous State administration, promoted the idea that growth and development should occur in and around municipalities and villages to make the construction and operation of infrastructure more economical and to preserve agricultural and natural resources. The Talbot County Council adopted the Smart Growth concepts in its recent decision approving supplementary growth allocation for the Easton Village project. (Copy of the Talbot County Council's Easton Village decision attached.)

The policy that growth and development should occur within or around established municipalities and villages, on October 8, 2003, Governor Ehrlich issued Executive Order 2003.33, announcing the Maryland Priority Places Strategy, which Order states, in part:

- A. Established. There shall be a ***Maryland Priority Places Strategy***. The Strategy shall be developed and ***implemented by the Maryland Department of Planning***.
- B. Purpose. The Strategy shall be to identify specific State actions that will be undertaken and definitive procedures that will be instituted ***to accomplish the following objectives***:
 - (1) ***Achieve the established goals of State planning policy and local comprehensive plans for development, economic growth, community revitalization, and resource conservation;***
 - (2) Accomplish these diverse goals through mutually supportive means; and
 - (3) ***Promote fiscal responsibility of State government to achieve the best "public return" on State investments in these goals.***
- C. The Maryland Priority Places Strategy shall be ***based on***:
 - (1) ***The eight statewide visions*** [contained in Art. 66B, § 1.01 (Visions)] ***of State Planning Policy for Economic Growth, Resource Protection and Planning established in the Economic Growth, Resource Protection and Planning Act of 1992;***
 - (2) ***The Priority Funding Areas Act of 1997*** [codified in the Maryland Code, State Finance And Procurement Art., Division I (State Finance), Title 5 (State Planning), Subtitle 7b (Priority Funding Areas)]; ***and***

- (3) Existing State and *local planning requirements, comprehensive plans, regulations, powers*, and processes.
- D. *The Maryland Department of Planning shall implement the Maryland Priority Places Strategy by developing initiatives to accomplish the following:*
- (1) Ensure that State programs, regulations and procedures, and funds are used strategically to achieve the goals of local comprehensive plans and State planning policy and *provide for the infrastructure necessary to support planned growth;*
 - (2) Better enforce existing laws, regulations and procedures that are designed to ensure mutually supportive public investments and actions;
 - (3) *Streamline State regulations and procedures to make quality, well designed growth easier to build inside Priority Funding Areas;*
 - (4) Identify key plans and functions of State government that affect growth and development and make appropriate changes to those plans and functions to better support the goals of the Maryland Priority Places Strategy;
 - (5) *Encourage resource protection and production outside of the Priority Funding Areas* for environmental protection, recreation, tourism, forestry, and agricultural purposes; and
 - (6) Enhance existing brownfield cleanup and redevelopment, transit oriented development, and community revitalization efforts.
- [*Emphasis added.*]

County Bill No. 933 and the County Program are contrary to the above-referenced State laws and policies because they immediately require weighing of evidence, interpretation of criteria, and approval by two governmental bodies, making complication and/or denial more likely.

The best illustration of this point is the written decision of the Talbot County Council approving supplemental growth allocation for the Easton Village project. Many of the criteria addressed by the County Council are also required to be addressed by the Town Commissioners of St. Michaels according to Town laws. It is conceivable that with regard to any such issue involving a record containing the same facts, that there will be substantial evidence supporting both sides of the same issue, and that the Town Commissioners could reach one conclusion while the County Council reaches the opposite conclusion on the same issue. Such a situation would create a legal quagmire if the owner of the affected land were to seek judicial review. In addition, there are criteria imposed by the County Code that are not imposed by the Town, and

which would not be an issue if not injected by the County into the supplementary growth allocation process. This includes such issues as compatibility with the County comprehensive plan. No other development within the Town of St. Michaels is required to meet such a standard. Further, the compatibility of a proposed development with existing and proposed development and land use in the surrounding area is not limited to areas within the Town. It stands to reason that development within a municipality would be more dense than development outside of the Town. Measuring the compatibility of development against County standards is an unnecessary, and at best duplicitous, requirement that lends nothing to a process that is intended to permit environmentally responsible development within municipalities. At worst, Bill No. 933 establishes a process that is ripe for: (1) legally cumbersome, arbitrary and capricious results; (2) treatment of property owners in violation of their due process and equal protection rights; and (3) administration by decision-makers who are not elected or appointed by the electorate of, or live within, the town in which the affected land is located. As it is in conflict with Maryland Executive Order 2003.33, County Bill No. 933 should not be approved by the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays.

In short, the effects of Bill 933 are neither necessary nor appropriate to accommodate growth within the Talbot towns. Moreover the Bill frustrates other Maryland laws and policies.

D.

Programs Of A Town And The County Are Not Intended To Be Combined

Maryland Code, Natural Resources Article, Section 8-1808 (Program development, implementation and approval), provides, in part:

- (a) (1) It is the intent of this subtitle that *each local jurisdiction* shall have *primary* responsibility for developing and implementing *a program*, subject to review and approval by the Commission. [Emphasis added.]

Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (11), defines the term "local jurisdiction" as "a county, *or a municipal corporation with planning and zoning powers*, in which any part of the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located." [Emphasis added.] Note that the word "or" does not have the same meaning as "and".

The language of Section 8-1802, Subsection (a), Part (11), is uncomplicated, in that it is referring to a local jurisdiction as either a county or a municipality, but not both a county and a municipality, relating to the application of development and implementation of a program affecting the same area.

Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (12) (i), defines the term "Program" to mean "the critical area protection program of a local jurisdiction." All municipal corporations within Talbot County have planning and zoning powers. St. Michaels, Oxford and Easton each have their own critical area protection program, as defined by Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (12) (i).

Thus, the term "program" is intended to refer to the critical area protection program of a county or a municipality; not a combined critical area protection program of more than one jurisdiction. Moreover, when the program of a town or a county is approved by the Commission, that program is reviewed, and is approved or fails, on its own; not in combination with the program of another local jurisdiction. The County Program was reviewed and approved by the Commission independently of the Talbot town programs. Each Talbot town program was reviewed and approved by the Commission independently of the County Program. The language of the Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), is clear that it does not contemplate the combination of local programs.

However, if local programs are intended to be implemented in combination, as is now contemplated by Talbot County with the enactment of Bill 933, then it is incumbent upon the Commission to review the County Program in conjunction with each town program, to determine whether, when administered in combination, they are compatible with the goals and objectives of the State critical area laws and regulations, and that they are not contrary to, or in conflict with, each other and/or other State land use laws or policies.

E.
In Light Of Existing Town Programs, Bill No. 933 Is Unnecessary
And Therefore Violates Substantive Due Process

Substantive due process, as applied in Maryland, requires that where a subordinate agency of the State, such as a municipal corporation, acts directly in the exercise of the police power, a limitation upon its right to exercise the power is that it must act *impartially*, that any interference by it with the unrestricted use of private property must be *reasonably necessary* to the public welfare, and consistent with the prohibitions of the Constitution" [*Emphasis added.*] *Mayor of Pocomoke City v. Standard Oil Co.*, 162 Md. 368, 376-77, 159 A. 902 (1932). The validity of legislative and governmental acts imposing building and use restrictions upon real property must be reasonably necessary for the adequate protection of the public welfare, safety, health, comfort, or morals. Maryland courts employ a heightened level of scrutiny - something over and above the "minimum rationality" test required under the federal constitution. Although almost any zoning ordinance could be said to be rationally related to a legitimate governmental interest, the "substantial relationship" test is not so yielding. *Levinson v. Montgomery County*, 95 Md.App. 307, 319-21, 620 A.2d 961 (1993).

Talbot County, by Bill No. 933, proposes to establish a second layer of regulation and administration over land within the critical area in municipalities, as if to say that the regulation and administration established and carried on by the towns, pursuant to State law, is not sufficient. Yet, there is nothing to indicate that the towns have failed to adequately establish and implement their own programs. Therefore, the application of additional County standards and discretion to land within towns is inappropriate and is not reasonably necessary. On the contrary, if the County is only concerned that towns will "hoard" growth allocation, then all the County needs do is establish a common bank of growth allocation that can be drawn upon by all Talbot towns and the County, subject to the criteria of the local program under which the growth allocation is being awarded. The function of the Commission is to act as an overseer. By injecting itself into the growth allocation process involving the towns the County Council is in effect saying that it has no confidence in the towns or in this Commission to follow the law and exercise sound judgment.

F.

Bill No. 933 Was Enacted For Purposes Unrelated To The Critical Area Laws

As a condition of the award of growth allocation for Easton Village the County Council exacted from the developer an "offer" to pay \$1± million, or to perform work worth an equivalent amount, for off-site improvements to Glebe Road. That exaction may lack the essential nexus to the impacts of the Easton Village project upon the County, and/or that may lack the roughly proportionality thereto, required by *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); and by *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 841, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). See *City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000). In any event, that exaction has no relationship to the criteria for the award of growth allocation. Given the fact that Bill No. 933 reserves for the County Council the discretion to deny any request for the award of supplementary growth allocation despite the fact that all criteria therefore are met, Bill No. 933 lacks the reasonable necessity for the protection of the public health, welfare and safety. Such unbridled discretion in the County Program leads to the possibility that Bill No. 933 is intended as a vehicle for the County to make more exactions similar to that in the case of Easton Village, which are unrelated to the purposes of the State critical area laws.

G.

**There Is No Demonstrated Need For Bill No. 933 To Be Operative
Prior To Commission Approval Or To Require Exercising The Award**

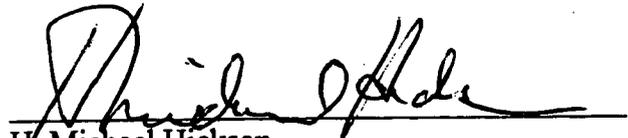
Bill 933 is worded such that it is intended to take effect 60 days after its passage by the County council, and to negate any award of growth allocation awarded by a town and approved by this Commission if no construction has begun pursuant to such award and approval of growth allocation before the effective date of Bill no. 933. The Town urges that the award of growth allocation by the Town for the Strausburg property is a valuable asset for the Town, and should not hinge on the start of construction at any time other than as provided in the decision of the town awarding growth allocation. Therefore, even if the Commission determines to approve Bill No. 933, there is no demonstrated need for it to take effect before it is approved by the Commission, or to in effect negate prior awards of growth allocation. Further, the requirement of substantial construction to vest rights in an award of growth allocation will only promote immediate construction when that may not necessarily be desirable in each case. Moreover, the County has ignored the power of municipalities to contractually grant vested rights by means of

a development rights and responsibilities agreement pursuant to the power granted by Maryland Code, Art. 66B, § 13.01.

III. CONCLUSION

For each of the reasons stated above, any one of which would be legally and factually sufficient to do so, The Commissioners Of St. Michaels urge that the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays DISAPPROVE of Talbot County Bill No. 933 in its entirety. Failing that, the Town urges that the effect of the amendments not be applied retrospectively or requiring substantial construction to vest rights in the award of growth allocation.

Respectfully submitted,



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:
The Commissioners of St. Michaels

Attachment: Talbot County Council decision approving supplemental growth allocation for Easton Village project.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2004, an exact a copy of the foregoing MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933 was delivered to the following:

Marianne D. Mason
Assistant Attorney General
For The Department Of Natural Resources

Michael L. Pullen
Talbot County Attorney

David R. Thompson
Attorney for the Towns of Oxford and Trappe

Christopher B. Kehoe
Attorney for the Town of Easton



H. Michael Hickson

Town Memorandum Of Law In Opposition To County Bill No. 933.doc

IN THE MATTER OF : BEFORE THE
THE APPLICATION OF : TALBOT COUNTY COUNCIL
THE TOWN OF EASTON, AND :
ELM STREET DEVELOPMENT, LC :
BILL NO. 925 :

FINDINGS OF FACT

The Talbot County Council ("County Council") held on December 9, 2003, a public hearing on the application of the Town of Easton and Elm Street Development Company, LC (the "Town" and "Applicant" respectively) for an award of growth allocation to the Town of Easton to convert Lot No. 16 of the Ratcliffe Manor Planned Unit Development, (the "Subject Property" or the "Property") from Resource Conservation Area (RCA) to Limited Development Area (LDA) and Intense Development Area (IDA) in order to construct thereon a planned unit development to be know as "Easton Village." The Applicant is the contract purchaser of the Property and the developer of the Easton Village development (the "Development")

Procedural History

The Subject Property is a 357± acre parcel of land located on the south side of St. Michael's Road and on the west bank of the Tred Avon River in the Town of Easton, described as a portion of Parcels 58 and 126 on Talbot County Tax Map Number 34. The Subject Property is more particularly shown on a plat entitled "Ratcliffe Subdivision PUD," dated May 19, 1999 as revised May 25, 1999, prepared by Stagg Design, Inc. (the "Ratcliffe PUD"). The specifics of the proposed development are set out on a series of four drawings¹ which are collectively referred to as the "Development Plans." The Ratcliffe PUD plat and Development Plans are part of the record.

¹The drawings are titled: "SITE ANALYSIS EASTON VILLAGE ON THE TRED AVON"; "PUD DEVELOPMENT PLAN EASTON VILLAGE ON THE TRED AVON"; "PHASING PLAN EASTON VILLAGE ON THE TRED AVON" and "GROWTH ALLOCATION PLAN EASTON VILLAGE ON THE TRED AVON." All are dated May 9, 2003 and all were prepared by Lane Engineering, Inc.

In 2001, the Applicant filed an application to amend Ordinance No. 410. In that application, the Applicant proposed to construct 340 dwelling units on Lot No. 16. The application generated a great deal of public concern and the application was denied by the Town Council for the Town of Easton (the "Town Council") in written Findings of Fact dated June 3, 2002. While the Town Council unanimously agreed that the Applicant had met the minimum criteria necessary to warrant approval, it nonetheless determined that granting the application was not in the best interests of the Town and its citizens at the time. Therefore the County Council never had to reach a decision on whether to grant Chesapeake Bay Critical Area Growth Allocation to the Town for use at Easton Village.

Following denial by the Town Council, the Applicant conducted a series of meetings with public interest groups, concerned citizens and public officials to make its proposal more acceptable to Town and County officials and the public. Once that process was completed, the Applicant filed a second application. There are several differences between the two applications including a reduction in the number of proposed units, better facilities for public access to the water, and a more comprehensive approach to providing affordable housing both within and outside of Easton Village.

On August 11, 2003 the Town and County Council held a public hearing to take public comment on the Easton Village development. At that public hearing, the Applicant's case was presented by its attorney, Joseph A. Stevens, Esquire. As part of his presentation, Mr. Stevens incorporated by reference the record developed as part of the February, 2002 application (the original application). At its regularly scheduled meeting on August 18, 2003, the Town Council developed a consensus concerning the applications and on October 9, 2003 Town Ordinance 461 became effective granting PUD and growth allocation approval to Easton Village.

The final step in the process is for the Talbot County Council to award 156 acres of supplemental growth allocation to the Town in accordance with Talbot County Code §190-109 D.(9)(d) to be used for the Easton Village development. Specifically, §190-109 D.(2) provides criteria for the County Council to consider and evaluate when awarding growth allocation, and §190-109 D. (9)(d)[3] provides that the Council shall evaluate the application in accordance with § 190-109 D.(4). The County Council has considered the record in this matter (such record being all the information submitted to both the Town and the County by the Applicant and the public through the various review processes and at the public hearings held on December 9, 2003, August 11, 2003 and February 12, 2002) and as a result of its evaluation of said evidence and information, makes the following findings:

§190-109D.(4)(b)[1] Consistency with the purposes and intent of the Comprehensive Plan.

Because Easton Village is located within the incorporated Town of Easton and, as such, is within a designated County and Town growth area, the request for growth allocation is consistent with the Talbot County Comprehensive Plan as demonstrated by the following excerpts from the plan:

- Page 4-2, Land Use Policy: *"The majority of future development (residential, commercial and industrial) within the County should be concentrated in suitable areas. Such areas include locations in and adjacent to existing towns and village centers where adequate public facilities and services exist or can be more cost-effectively provided to support development."*
- Page 4-4: *"The incorporated towns are logical locations for future residential, commercial, and industrial growth and development. Growth in the incorporated towns will prevent the outward sprawl of development and keep new growth within existing centers where adequate public facilities and services such as sewer, water, schools, government offices, police and fire protection, etc. can be efficiently provided. In addition, the impact upon the county road system will be minimized insofar as residents will be located physically close to the jobs, businesses and services they require."*
- Page 4-5: Land Use Map: *The site is located within the incorporated Town of Easton and should be designated as "Incorporated Town" on the County's Land Use Plan.*
- Page 4-13: *"The basic intent of the Land Use Plan is to channel most of the County's future residential, commercial and industrial growth into and around existing development centers and to conserve open space within rural areas of the County."*

Easton Village is located near the intersection of two traffic arterials serving Talbot County (MD RT. 33 and MD RT. 322). Proposed off-site traffic improvements, as described in more detail in the conditions set out in the Town's Findings of Fact which are incorporated in Town Ordinance No. 461, are to be funded and/or constructed by the developer. These allow the development to comply with the following excerpts from the Comprehensive Plan:

- Page 5-2, Transportation Policy: *"The County should not permit development that would create a traffic or safety hazard on roads serving the development unless the developer agrees to make or fund necessary improvements to the off-site access roadway."*

- Page 5-3, Transportation Policy: *"Strip forms of development should be discouraged. Access onto major public roads should be reduced whenever possible."*
- Page 5-7, Transportation Plan: *The site is accessed by a "Minor Arterial" which is immediately adjacent to a "Principal Arterial."*

Easton Village will dedicate a six (6) acre waterfront/water access park and pavilion with off-street parking to the Town. A proposed waterfront trail along the waterfront will be connected to a proposed trail following the abandoned rail right-of-way and will be connected to the Easton Point area via proposed construction of a pedestrian bridge. These proposed improvements allow the development to comply with the following excerpts from the Comprehensive Plan:

- Page 10-2, Parks and Recreation Policy: *"The County should continue to retain, maintain, and enhance access to public waters for County recreational boaters, outdoorsman, picnickers and swimmers."*
- Page 10-2, Parks and Recreation Policy: *"The County should further develop the existing system of bicycle trails in areas where this activity will not create automobile/bicycle hazards."*
- Page 10-2, Parks and Recreation Policy: *"The County should explore the feasibility of developing public and private greenways and open space linear parks in areas of the County where this will not create conflicts with private property rights and privacy."*

Easton Village is an environmentally-sensitive development; however, as proposed, the Easton Village complies with all environmental protection policies outlined in the Comprehensive Plan, including the following Comprehensive Plan excerpts:

- Page 8-1: *"Environmental deterioration does not have to be an inevitable consequence of growth and development. The construction of new homes, businesses, industries, schools and roads necessary to accommodate growth can occur without unduly threatening the County's environmental quality if steps are taken to ensure that new development is designed and built in an environmentally-sensitive manner."*
- Page 8-14 through 8-22: *Numerous Goals, Policies and Implementation Recommendations for Natural Resource Conservation and Sensitive Areas Protection are included in this section of the Plan. These goals, policies and recommendations are largely reflective of the Talbot County Zoning Ordinance Critical Area Growth*

Allocation Standards (19-14 (c) (IV) (b) discussed above.

Page 8-23: *"The intent of the County environmental protection measures is not to stop growth and development, but rather to ensure the compatibility of development with the continued productivity and value of environmentally sensitive areas."*

§190-109D.(4)(b)[2] Compatibility with existing and proposed development and land use in the surrounding area.

Easton Village is located within the western perimeter of the Town of Easton boundary.

The portion of the Dudrow property to the north, across St. Michaels Road, is within Town limits and is zoned Limited Commercial. The property is currently in agricultural use. A master-planned PUD is anticipated for this property.

The property to the east, across the Tred Avon River, is a mix of unincorporated residential and industrial uses. Easton Point is an industrial area with fuel docks and tanks, an asphalt plant, commercial marina and public landing. This area has a Critical Area designation of Intensely Developed Area (IDA). Residential communities to the east include West Glenwood neighborhood (LDA), Easton Club PUD (IDA) and Woodland Farms subdivision (LDA).

The incorporated property to the south is part of the Ratcliffe Farm PUD containing 15 waterfront lots and has a Critical Area designation of RCA.

The unincorporated property to the west is zoned TR and RAC. The property is currently a mix of woodland and agricultural uses. A portion of the Lee Haven Farm adjacent to Easton Village is designated as "Development Area" in the County's Comprehensive Plan.

Easton Village is surrounded by a diverse mix of improved and unimproved land uses. The proposed PUD would not be incompatible with these uses. The Traditional Neighborhood Design of the PUD is characteristic of older residential neighborhoods found in Easton, St. Michaels and Oxford. More importantly, the design and density of Easton Village is very compatible with the traditional residential neighborhoods located within the Town of Easton.

§190-109D.(4)(b)[3] Availability of Public Facilities.

The proposed development is located within the incorporated Town of Easton. All Town utilities and services are readily available to the site. Utilities will be extended to the site at the developer's expense. Town sewer will be provided as capacity is available in accordance with Town sewer allocation policies.

§190-109D.(4)(b)[4] The effects on present and future transportation patterns.

The nearby intersection of Rt. 322 (Easton Parkway) and Rt. 33 (St. Michaels Road) is currently operating at a "B" level of service. The Maryland State Highway Administration (MDSHA) requires improvements to an intersection only if the intersection, taking into account traffic from the proposed development, falls below a "D" level of service. Traffic studies prepared by Traffic Concepts and reviewed by Talbot County, the Town of Easton, Town consultants and MDSHA show that at full build out of Easton Village, this intersection does not fall below a "D" level of service. Nonetheless, the Town of Easton and the County will require, and the developer has committed to, funding and building the necessary intersection improvements to maintain or even improve the current level of service. The Council incorporates herein by reference the specific conditions for approval related to traffic impacts which are set forth in the Town's Findings of Fact as incorporated in Town Ordinance No. 461.

§190-109D.(4)(b)[5] The effect of population change within the immediate area.

Easton Village will be built-out over a period of years in response to market demand for housing in the Easton area. The Town of Easton is the primary designated growth area for Talbot County. Town, County and State smart growth plans all encourage future residential development and population growth to occur within designated growth areas as opposed to scattered lower-density residential development throughout the rural areas of the County.

As the residential, commercial, institutional and governmental hub of Talbot County, the Town of Easton is well-positioned to accommodate a population increase. In fact, both the Town and County Comprehensive Plans contemplate an increase in population in and around the Town of Easton.

§190-109D.(4)(b)[6] The past, present, and anticipated need for future growth of the County as a whole.

New housing demand in Easton and Talbot County is currently strong.

Recently approved residential subdivisions in a wide variety of price ranges are all experiencing strong sales as a result of high demand.

§190-109D.(4)(b)[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient and productive development and land use.

Easton Village is located within the incorporated Town of Easton. The decision that this property would be developed at town-scale densities was made in 1998 when the property was annexed. The use of growth allocation to allow this property to be developed in an environmentally friendly manner at town-scale densities is consistent with previous Town growth management decisions. Use of growth allocation for development within existing Towns is encouraged by State and County Critical Area and smart growth policies and regulations.

Both the Town of Easton Planning Commission and Talbot County Planning Commission have recommended approval of growth allocation for Easton Village.

§190-109D.(4)(b)[8] The protection of the public health, safety and welfare.

The development of Easton Village will not adversely affect the health, safety and welfare of the public for the following reasons:

- The development is consistent with the Town and County Comprehensive Plans.
- Proposed road improvements will enhance public safety on adjacent roadways.
- The proposed development design protects environmentally sensitive areas and improves water quality in adjacent waterways.
- The quality of development design will improve land values
- All necessary infrastructure improvements will be paid for by the developer.
- Lands will be dedicated for public use.

The Council has also considered criteria found in § 190-109 B.(6) of the Talbot County Code, and makes the following findings of fact:

§190-109 D.(2)(a) Create Lots or Parcels that maximize the opportunities for cluster development that protects habitat and agricultural resources;

The Development is proposed to occur on 34.4% or 70.6 acres of the site's 205 acres. The remaining 65.6 percent or 134.2 acres of open space is designed to protect the unique environmental features of the site.

§190-109 D.(2)(b) Locate structures so as to minimize impact on habitat protection areas and agricultural areas;

The site is designed with a total of 57.9 acres of 100 – 300 foot shoreline buffers. Delmarva Fox Squirrel habitat areas on the site are also preserved. The development site is located within the Town of Easton and is not identified as an agricultural preservation area by the County. The development plan contains an open space/pastoral area along the St. Michaels Road frontage.

§190-109 D.(2)(c) Provide a minimally disturbed buffer along the shoreline;

A contiguous shoreline development buffer of 57.9 acres is proposed. The buffer varies in width from 100 to 300 feet. Approximately 4,300 feet of shoreline has a 300 foot buffer and 2,000 feet has a minimum 100 foot buffer. Areas of the designated buffer currently in agricultural use will be reforested. No waterfront lots are proposed. A maximum 30 slip small-boat community pier is proposed vs. a proliferation of numerous private piers as exist in many of the County's waterfront subdivisions.

§190-109 D.(2)(d) Minimize soil erosion and runoff;

Prior to construction, a Sediment and Erosion Control Plan will be approved by Talbot County Soil Conservation District and enforced by the Maryland Department of Environment during construction.

§190-109 D.(2)(e) Maximize protection of eroding shorelines

Shoreline stabilization measures, including stone revetment and marsh creation techniques will be used to restore eroding shoreline areas.

§190-109 D.(2)(f) Have a minimal impact or cause an improvement to stormwater, floodplain and stream characteristics;

A Water Quality Management Plan will utilize innovative best management practices (BMPs) which will be designed in accordance with new Town and State stormwater management regulations. Filtration-type BMPs to be used to reduce nutrient loadings from pre-development levels. 100 foot forested buffers are proposed around all tributary streams. No non-water dependent development is proposed within the 100 year floodplain.

§190-109 D.(2)(g) Minimize impacts on non-tidal wetlands;

The plan proposes no permanent disturbance to non-tidal wetlands and associated buffers.

§190-109 D.(2)(h) Maximize protection of plant and wildlife habitats, particularly for threatened endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation and waters.

The developer is working with U.S. Fish and Wildlife and Maryland Department of Natural Resources to develop a Delmarva Fox Squirrel Habitat Protection Plan that will protect and enhance habitat. The proposed development has been redesigned to minimize development impact in wooded areas and adjacent fields, to create new forested wildlife corridors on the site, and to provide for off-site habitat creation and protection areas. Timing of construction and location of the proposed community pier will avoid impacts to submerged aquatic vegetation (SAVs) and anadromous fish spawning habitat.

§190-109 D.(2)(i) Maximize protection of forests.

Forest clearing for this development has been minimized to less than one acre. Proposed forest clearing within the Critical Area will be approximately 0.6 acres. Forest areas to be retained/protected totals approximately 31.7 acres within the Critical area. No forest clearing is proposed within proposed shoreline development buffers. Outside of the Critical Area forest clearing is 0.2 acres with 11.3 acres of existing forests protected.

In addition to the findings stated herein, the Talbot County Council incorporates by reference those findings of the Town Council set forth in the Findings of Fact incorporated as Exhibit B in the Town's Ordinance No. 461.

Summary of Findings

Easton Village is an environmentally sensitive residential development located within the Incorporated Town of Easton. The proposed development is consistent with the Town and County Comprehensive Plans and State of Maryland "Smart Growth" initiatives. The development complies with all Town, County and State Critical Area Growth Allocation policies and regulations. The award of Growth Allocation to allow for traditional neighborhood development of this site is a rational and logical next step following the 1998 annexation of the property.

Easton Village is precisely the type of development intended for the utilization of Critical Area Growth Allocation. The Maryland State Legislature and Talbot County specifically included Growth Allocation provisions in the Critical Area law to provide for future development within the Critical area that is consistent with local growth management plans and environmental protection regulations. Use of growth allocation for environmentally sensitive development within existing towns where adequate public facilities are available is a prime example of State, County and Town "Smart Growth" objectives.

WHEREFORE, the Talbot County Council finds that the proposed Development satisfies the foregoing criteria and is otherwise in the public interest such that the Council, in the exercise of its legislative discretion in accordance with the provision of Talbot County Code § 190-109 D.(4)(d), hereby grants the application subject to the Conditions of Approval (June 12, 2003) in Town Ordinance No. 461.

VOTING TO GRANT THE APPLICATION:

1 **A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO**
2 **THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICT-**
3 **IONS, AND LIMITATIONS ON ITS USE.**
4
5

6 WHEREAS, Talbot County Code § 190-109 D. (9) (d) provides that upon request for
7 supplemental growth allocation by any municipal corporation within the County, the
8 County Council may transfer growth allocation to the municipal corporation and may
9 impose such conditions, restrictions, and limitations upon the use of any such
10 supplemental growth allocation, if any, as the Council may consider appropriate; and,
11

12 WHEREAS, the Town of Easton has requested an award of supplemental growth
13 allocation to increase the acreage reserved to the Town of Easton from 155 to 311 acres,
14 which will decrease the available acreage remaining to the County from 317 to 161 acres;
15 and,
16

17 WHEREAS, the Town of Easton has conditionally approved a PUD application
18 and an application for growth allocation by Elm Street Development Company, LC to
19 utilize 156 acres of growth allocation for a project located within the Town of Easton
20 south of Md. Rt. 33; and,
21

22 WHEREAS, Talbot County Code § 190-109 D. (9) (d) [3] provides that the
23 Council shall evaluate the application in accordance with § 190-109 D. (4), which
24 provides that, after receiving the recommendation of the Planning Officer and Planning
25 Commission and before approval or denial, the Council shall introduce a bill and hold a
26 public hearing in order that interested parties and citizens shall have an opportunity to be
27 heard; and,
28

29 WHEREAS, the Council has received the recommendations of the Planning
30 Officer and Planning Commission regarding this application.
31

32 NOW, THEREFORE, in compliance with the requirement of Talbot County Code
33 § 190-109 D. (4), the following bill is hereby introduced:
34

35 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT
36 COUNTY, MARYLAND, that:
37

38 1. Award. Subject to the following conditions, restrictions, and limitations, Talbot
39 County hereby awards 156 acres of supplemental growth allocation to the Town of Easton.
40

41 2. Conditions, restrictions, and limitations. This award of growth allocation is
42 subject to the following conditions, restrictions, and limitations:

43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88

a. Use. The growth allocation shall be used exclusively for the project approved by the Town of Easton by Ordinance No. 461, effective October 9, 2003 (the "Project").

b. Contingencies. Easton Town Ordinance No. 461 incorporated Development Plans for the Project as Exhibit "A", and Findings of Fact as Exhibit "B". This award shall be contingent upon full compliance by Elm Street Development, LC, its successors and assigns, with the Development Plans, all requirements set forth in the Findings of Fact, and each of the "Conditions of Approval" attached as Exhibit "A" to the Town of Easton's Findings of Fact.

c. Criteria. Talbot County Code § 190-109 D. (4) (b) provides that the Council may consider the following criteria in deciding whether to approve or disapprove an application for growth allocation, in addition to the specific requirements and purposes set forth elsewhere in Chapter 190, Zoning, of the Talbot County Code:

- [1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;
- [2] Compatibility with existing and proposed development and land use in the surrounding area;
- [3] Availability of public facilities;
- [4] The effects on present and future transportation patterns;
- [5] The effect of population change within the immediate area;
- [6] The past, present, and anticipated need for future growth of the county as a whole;
- [7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;
- [8] The protection of the public health, safety and welfare.

d. Factual findings and approval. This award of supplemental growth allocation is specifically conditioned upon the Council's review of information provided with regard to the forgoing criteria, and upon the Council's determination and adoption of written findings of fact that the Project, either as proposed or modified to mitigate impacts from the proposed development, satisfies the criteria and is otherwise in the public interest. Notwithstanding any finding that the Project satisfies these criteria, the Council may nevertheless exercise its legislative discretion to deny the application in accordance with the provisions of Talbot County Code § 190-109 D. (4) (c).

89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121

e. Intersection improvements Rt. 322 - Rt. 33. This award of supplemental growth allocation is specifically conditioned upon the County's review and approval of the proposed improvements to the Rt. 322--Rt. 33 intersection, including the applicant's proportional share of the costs for those improvements, and security for and timing of payment.

f. Two year limit. If the Project does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of approval by the Critical Area Commission, this supplemental award of growth allocation may revert to the County, upon recommendation of the Planning Officer and approval by the County Council in accordance with the provisions of Talbot County Code § 190-109 D. (7) (b). Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two-year period, upon a recommendation by the Planning Officer and approval by the County Council in accordance with Talbot County Code § 190-109 D (7) (c).

g. Project amendments. Any amendment to the Project shall be subject to County Council review and approval for a period of five years following the date of initial approval in accordance with Talbot County Code § 190-109 D. (9) (d) [4].

3. **Reservation.** The Town of Easton annexed the subject property in 1999. Pursuant to Art. 23A § 9 (c) (1), Md. Ann. Code, no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use specified in the County master plan extant prior to annexation without the express approval of the County Council. Approval of this ordinance shall not operate to limit the Council's prerogative under that State law in the event the Project is materially changed hereafter.

4. **Non-performance or breach.** In the event of non-performance or breach of: (a) any condition, restriction, or limitation imposed in connection with the award of this supplemental growth allocation, or (b) any agreement executed by Elm Street Development LC, its successors or assigns, with Talbot County, Talbot County may, in its discretion, amend, repeal, rescind, suspend, annul or revoke this supplemental award of growth allocation by introduction and adoption of a bill for that purpose.

SECTION TWO: 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. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Secretary

Duncan - _____
Harrington - _____
Foster - _____
Spence - _____
Carroll - _____

Exhibit "A"

A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE.

Bill No. _____

Date of Introduction: November 18, 2003

Conditions

Approval of the request for growth allocation is contingent upon performance of the following conditions in connection with the Project, and performance of the promises, representations, and undertakings set forth below voluntarily assumed by the Developer in connection with mitigation of the impacts from the project.

As used in these conditions, the term "Developer" refers to Elm Street Development Company, LC, and includes any successors, assigns, or subsequent purchasers of the Project or development rights and obligations related to the Project. Time is of the essence in connection with Developer's performance. Developer agrees to fully perform the following conditions in a timely manner to the satisfaction of the County:

1. *Mitigation of off-site impacts to County roads.* The Developer shall pay to the County of the sum of \$1,500,000 to mitigate the effects of off-site impacts to County roads. The Developer shall make payment of \$750,000 before issuance of the first building permit for the Project. Payment of the balance of \$750,000 shall be in equal annual installments of \$150,000 per year, due in full, without set-off, on each anniversary of the first payment for the ensuing 5 years. Developer shall be given a credit against (1) any building excise tax adopted by the County, and (2) any development impact fee imposed by the County. In the event the County adopts a building excise tax, and/or a development impact fee that result in an assessment greater than \$6,000 per dwelling or building unit, Developer shall pay the difference on a per unit basis from the effective date of any such building excise tax and/or development impact fee. In no event shall Developer be entitled to any refund, under any circumstance, for any amount paid in accordance with these conditions, nor excused from past or future performance based on the County's action with respect to imposition of building excise taxes or development impact fees.

2. *Construction of intersection improvements to Md. Rt. 322 and 33.* Developer shall construct, at its expense, intersection improvements to Md. Rt. 322 - 33. These improvements shall be constructed in accordance with Exhibit "A-1", which is incorporated by reference. These improvements shall be constructed in accordance with a construction schedule attached as Exhibit "A-2", which is incorporated by reference. Developer shall post a surety bond in an amount determined by the County equal to 110% of the amount projected to be sufficient to fund construction of the proposed improvements. The County shall be designated as a third-party beneficiary of the surety bond, with the ability to cause or require forfeiture of the bond in the

event of Developer's non-performance or breach. Developer's failure to diligently pursue permitting or to complete construction in accordance with the milestones set forth on Exhibit "A-2", in the absence of circumstances which, as determined by the County, are beyond the control of the Developer and are such as to justify the delay, shall authorize the County to exercise its rights with respect to the surety bond. Construction of the intersection improvements shall be completed, in any event, prior to issuance of the 50th building permit for the Project.

3. *Road frontage improvements.* Developer shall construct, at its expense, road frontage improvements along the frontage of Md. Rt. 33 as shown on Exhibit "A-3" which is incorporated by reference. These improvements shall be constructed prior to the issuance of the first occupancy permit.

4. *Conditions by the Town of Easton.* Developer shall comply with the "Conditions of Approval" (June 13, 2002) listed on Exhibit "A" to Findings of Fact for Elm Street, LC adopted by the Town of Easton in connection with Ordinance 461, which are hereby adopted as part of the conditions on which this award of growth allocation is based.

5. *Supplemental and additional documents.* At the County's request, Developer shall prepare and execute such additional documents, in a form satisfactory to the County, which may, at the County's option, be recordable among the land records of Talbot County, Maryland, and which are, in the opinion of the County, sufficient to memorialize these terms and conditions.

6. *Amendment to Comprehensive Water & Sewer Plan.* Developer has voluntarily agreed to the foregoing terms and conditions with the expectation that the Project will proceed as planned without delays caused by water and sewer classifications under the Talbot County Comprehensive Water & Sewer Plan that will prevent construction and hook-ups to the Easton Wastewater Treatment Plant when capacity becomes available, as certified by the Easton Utilities Commission and/or Town Engineer, under the existing allocation policy, whether under the existing or the proposed new Easton Wastewater Treatment Plant. The County is not binding itself to future action on any application to amend the Comprehensive Water & Sewer Plan, but recognizes that if, due to any action or inaction on the County's part regarding amendment of the Comprehensive Water & Sewer Plan, the Project is delayed by a water and sewer classification providing for other than immediate access to available water and sewer capacity from the Easton Wastewater Treatment Plant under the existing allocation policy, then Developer's obligations to construct the road frontage improvements, intersection improvements, and payment of the balance due on any unpaid installment under Paragraph 1, shall be excused until such time as the Comprehensive Water & Sewer Plan is amended to provide immediate access. This subsection shall not be construed to apply to excuse Developer's performance for any delays caused by lack of existing or future wastewater treatment capacity, delays connected with permitting or construction of the new Easton Wastewater Treatment Plant, lack of allocation under the existing or any changed allocation policy, lack of infrastructure for the collection and/or pumping systems, or any other cause whatsoever except the County's decision to not classify the subject property under the County's Comprehensive Water & Sewer Plan for a classification making it eligible for immediate sewer and water service that is otherwise immediately available and that directly results in a delay to the Project. Developer agrees to cause any such request for amendment of the Comprehensive Water & Sewer Plan to be submitted in a timely fashion, in

due form, with appropriate and sufficient information and supporting data to permit approval by the Council without causing any delay to the Project. Failure by the Developer to do so eliminates any excused performance on the Developer's part by reason of this paragraph.