

Legal Advice & Policy - Vol 3

Talbot County

No. 20-2-04-005095

3/8/05 -  
10/19/05

MJA-SIB31-3

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 \*

\*\*\*\*\*

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MILES & STOCKBRIDGE P.C.

RECEIVED

October 19, 2005

OCT 21 2005

DNR - LEGAL DIVISION

**VIA HAND DELIVERY**

Mary Ann Shortall, Clerk  
Circuit Court for Talbot County  
11 N. Washington Street  
Easton, Maryland 21601

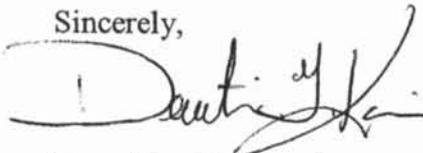
Re: Talbot County, Maryland v. Department of Natural Resources-Critical Area  
Commission for the Chesapeake and Coastal Bays, et al.  
Case No. 20-C-04-005095

Dear Mrs. Shortall:

Enclosed please find Miles Point Property, LLC's and The Midland Companies, Inc.'s Motion to Intervene and accompanying Statement of Grounds and Authorities for filing in the above-captioned matter. Also enclosed is a Proposed Answer to the Amended Complaint as well as our appearance fee.

Please call me if you have any questions concerning the attached filings.

Sincerely,



Demetrios G. Kaouris

DGK/cem

Encl.

cc: H. Michael Hickson, Esquire  
Paul J. Cucuzzella, Esquire  
Marianne D. Mason, Esquire  
J. Joseph Curran, Jr., Attorney General  
David R. Thompson, Esquire  
Bryjna Booth, Esquire  
Michael L. Pullen, Esquire (via hand delivery)  
Daniel Karp, Esquire (via Federal Express)  
Victoria Shearer, Esquire (via Federal Express)

IN THE CIRCUIT COURT FOR  
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND

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Plaintiff

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v.

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Case No. 20-C-04-005095

DEPARTMENT OF NATURAL  
RESOURCES-CRITICAL AREA  
COMMISSION FOR THE CHESAPEAKE  
AND COSTAL BAYS, et al.

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Defendants

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MILES POINT PROPERTY, LLC'S AND THE MIDLAND COMPANIES, INC.'S  
MOTION TO INTERVENE

Intervenors Miles Point Property, LLC and The Midland Companies, Inc. (collectively "Miles Point"), through their attorneys, Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge P.C., pursuant to Maryland Rule 2-214(a), move to intervene in the above-referenced matter on the ground that Miles Point claims an interest in the transaction that is the subject of this case and disposition of this case will as a practical matter impede Miles Point's ability to protect its interest. There is perhaps no other party that will be impacted as directly as Miles Point by a decision in this case, and therefore Miles Point should be permitted to intervene as a defendant.

Miles Point is the developer of certain real property located in the Town of St. Michaels, Maryland (the "Town"). The development is known as the Miles Point Project (the "Project"). The property upon which the Project will be built was annexed into the Town in 1980 and is described in an annexation agreement among the Town, Talbot County and Miles Point's predecessor-in-title (the "Property"). Miles Point secured from the Town 70.86 acres of growth allocation to change the overlay critical area designation of the Property from Resource

Conservation Area ("RCA") to an Intense Development Area ("IDA"). The change in the critical area designation allows Miles Point to develop the Property in accordance with plans that have been submitted to and approved by the Town.

In December 2003, Talbot County (the "County") enacted Bill 933 for the purpose of stopping the Project. Bill 933 constitutes a change to the County's critical area program and purports to take back from the Town growth allocation that the County provided to the Town pursuant to the County's critical area program adopted in 1986. The "taking back" of growth allocation purportedly includes retroactively taking back the growth allocation that the Town has awarded to Miles Point for the Project. At the time the County enacted Bill 933, the Project was only one of two projects in Talbot County where growth allocation was being sought from a municipality and the project was minor in scope--receiving no public attention from the Talbot County Council.

In accordance with Section 8-1809(i) of the Natural Resources Article of the Maryland Code, all amendments to the County's critical area program must be approved by the Critical Area Commission for the Chesapeake Bay and Atlantic Coastal Bays (the "CAC"). When the County submitted Bill 933 to the CAC for its approval, the CAC declined to approve Bill 933 as an amendment to the County's critical area program because, *inter alia*, Bill 933 did not comply with the critical area statute and/or regulations adopted by the CAC. The County then filed this lawsuit challenging the CAC's refusal to approve Bill 933 as an amendment to the County's critical area program.

Miles Point has a substantial interest in the transaction (*i.e.* the County's proposed program amendment to its critical area program) that is the subject of this case. Miles Point will be substantially impacted if the County prevails in this litigation. The growth allocation already awarded by the Town to Miles Point will likely be "taken back" by the County if this Honorable

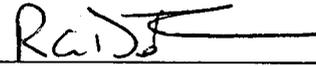
Court were to determine that the CAC was not justified in refusing to approve Bill 933 as a program amendment to the County's critical area program. Accordingly, Miles Point will be unable to develop the property in accordance with the growth allocation award it has received from the Town. Miles Point has spent a significant amount of time and substantial amounts of money to prepare the development plans and to obtain approvals from the Town to develop the Property in accordance with those plans.

Additionally, a determination in this case in favor of the County will impair Miles Point's ability to protect its interest in the approved development plans. Although a decision in this case will not strictly be *res judicata* as to Miles Point if it does not participate in this case, any decision by this Court as to Bill 933 may be persuasive and likely applied in subsequent litigation relating to Bill 933. Additionally, granting Miles Point the opportunity to intervene in this case will promote judicial efficiency. It is reasonable to expect that Miles Point will initiate subsequent legal challenges to Bill 933 in the event the CAC's decision is not upheld and Miles Point is not permitted to intervene in this case.

Accompanying this Motion to Intervene and incorporated herein by reference are Miles Point Property, LLC's and The Midland Companies, Inc.'s Statement of Grounds and Authorities in Support of Motion to Intervene and a Proposed Answer to the Amended Complaint. For the reasons set forth herein and in the accompanying Statement of Grounds and Authorities, Miles Point should be permitted to intervene in this case pursuant to Maryland Rule 2-214(a).

WHEREFORE, Miles Point Property, LLC and The Midland Companies, Inc. respectfully request that the Court enter an Order granting the Motion to Intervene and designating them as defendants in this case.

Respectfully submitted,



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Richard A. DeTar  
Demetrios G. Kaouris  
Miles & Stockbridge, P.C.  
101 Bay Street  
Easton, Maryland 21601  
(410) 822-5280

Attorneys for Intervenors  
The Midland Companies, Inc. and Miles  
Point Properties, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of October 2005, a copy of the foregoing Motion to Intervene was mailed first class, postage prepaid to:

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803  
Attorney for St. Michaels, MD

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  
Attorneys for Maryland Department of Natural Resources

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

hand-delivered to:

Michael L. Pullen, Esquire  
Talbot County Courthouse  
11 N. Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County, MD

and Federal Expressed to:

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



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Richard A. DeTar

IN THE CIRCUIT COURT FOR  
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND

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Plaintiff

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v.

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Case No. 20-C-04-005095

DEPARTMENT OF NATURAL  
RESOURCES

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Defendant

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ORDER

Having considered Miles Point Property, LLC's and The Midland Companies, Inc.'s  
Motion to Intervene and any opposition thereto, it is this \_\_\_\_ day of \_\_\_\_\_, 2005:

ORDERED, that the Motion to Intervene be and is hereby Granted; and

IT IS FURTHER ORDERED, that Miles Point Property, LLC and The Midland  
Companies, Inc. are hereby designated as defendants in the above-captioned case.

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Judge, Circuit Court for Talbot County

IN THE CIRCUIT COURT FOR  
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND

\*

Plaintiff

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v.

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Case No. 20-C-04-005095

DEPARTMENT OF NATURAL  
RESOURCES-CRITICAL AREA  
COMMISSION FOR THE CHESAPEAKE  
AND COASTAL BAYS, et al.

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Defendants

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**MILES POINT PROPERTY, LLC'S AND THE MIDLAND COMPANIES, INC.'S**  
**STATEMENT OF GROUNDS AND AUTHORITIES**  
**IN SUPPORT OF MOTION TO INTERVENE**

Miles Point Property, LLC and The Midland Companies, Inc. (collectively "Miles Point"), by and through their attorneys, Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge P.C., hereby file this Statement of Grounds and Authorities in Support of Motion to Intervene and state as follows:

**I. INTRODUCTION**

This case arises out of Talbot County's (the "County") enactment of Bill 933, pursuant to which the County Council purported to "take back" growth allocation that it had previously provided to the Town of St. Michaels and the Town of Oxford for purposes of planning for growth in the critical area within these municipalities. As detailed below, in reliance on the County's granting of growth allocation to these Towns, Oxford and, in particular, St. Michaels devoted considerable local resources toward establishing and implementing local municipal critical area programs. Because Bill 933 constituted a proposed amendment to the County's critical area program, it had to be approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "CAC") in accordance with Section 8-1809(i) of the Natural

Resources Article of the Maryland Code. Recognizing the enactment of Bill 933 was not in compliance with the applicable critical area regulations set forth in COMAR 27.01.01 et al., the CAC declined to approve Bill 933 as a program amendment to the County's critical area program. As a result, the County filed this lawsuit challenging the CAC's denial of the County's program amendment.

The evidence in the record of this case establishes that the purpose for the County's enactment of Bill 933 is to collaterally attack the Midland/Miles Point development (the "Miles Point Project") in St. Michaels, Maryland. The Town of St. Michaels has awarded Miles Point, the developer, approximately 70 acres of growth allocation for the Project. If it is determined that the CAC should have approved the program amendment proposed by Bill 933, the growth allocation that has been awarded for the Miles Point Project by the Town of St. Michaels (the "Town"), and ratified by the CAC, may be deemed to be invalid. Without this growth allocation, the Miles Point Project cannot proceed in accordance with the plans that have been submitted to and approved by the Town. Accordingly, Midland has a significant stake in the outcome of this litigation and should be permitted to intervene.

## **II. BACKGROUND FACTS**

### **A. The Miles Point Project**

The property that is the subject of the Miles Point Project is located within the Town (the "Property"), having been annexed into the Town in 1980. In connection with that annexation, Miles Point's predecessor-in-title to the property, the Town of St. Michaels *and the County* entered into an Annexation Agreement reflecting that the Property is intended for future growth in the Town. A true and correct copy of the Annexation Agreement is attached hereto as Exhibit

1.

Between 1998 and 2000, Miles Point submitted three different plans to the Town pursuant to which Miles Point sought growth allocation to develop the Property as contemplated by the Town and Talbot County pursuant to the Annexation Agreement. During the Town's growth allocation deliberations, it sought and obtained direction from the County, specifically Dan Cowee, who was then the Talbot County Director of Planning. With respect to the Town's award of growth allocation for the Miles Point Project, the County Director of Planning advised the Town of St. Michaels Planning Commission (the "Town Planning Commission") as follows:

You're dealing with two separate issues. The first one is growth allocation and I've read your information on it, I read our information on it, and everything that I've seen so far points a finger to the fact that your comprehensive plan, **the County's Comprehensive Plan, our zoning ordinance**, and your zoning ordinance all basically **dictate that that's an area for future growth**, and that's the process that we go through every five to ten years. We go through, we review our comprehensive plans, we locate those areas outside town boundaries, inside town boundaries, for future growth. I, I think that's a given. I think you know that's a given. **That everything that we read says that's an area to be further developed in one fashion or another.**

(Exhibit 2, Transcript from St. Michaels Planning Commission Meeting on November 5, 1998 at page 10) (emphasis added). The Talbot County Director of Planning went on to say "[y]ou're going to look at the County's plan and see that it has been approved by the Critical Area Commission and it indicates that growth allocation should be applied to that property at some point in the future." (Exhibit 2, Transcript from St. Michaels Planning Commission Meeting on November 5, 1998 at page 10).

Following various legal proceedings involving each of the three plans submitted by Miles Point, Miles Point, citizens groups from the St. Michaels area and the Town of St. Michaels participated in mediation in 2002 and 2003 at the request of the Attorney General's Office and the Secretaries of Planning and Smart Growth. The purpose of the mediation was to resolve the disputed issues surrounding the specific development plan for the Miles Point Project. Following input from the Town and various citizens groups, Miles Point submitted an

application, referred to as the Miles Point II Application, in 2003 that requested growth allocation for the Property. The Miles Point II Application included not only the property already within the Town but also approximately 17 acres of land owned by Miles Point located within the County. Accordingly, the Miles Point II application required the Town to annex that property. After several public hearings between September and November 2003, the Town Planning Commission gave its approval to the Miles Point II Application, and the Town of St. Michaels annexed the 17 acres by resolution dated October 28, 2003. However, as a result of the County Council's opposition to the Miles Point development project, the County declined to relinquish zoning authority over the 17 acres of land annexed by the Town of St. Michaels until expiration of five (5) years in accordance with Section 9(c) of Article 23A of the Maryland Code. As a result, Miles Point submitted a revised application, referred to as the Miles Point III Application, that did not include the newly annexed property in the development plan. The Town of St. Michaels approved the Miles Point III Application and awarded growth allocation to Miles Point to convert the approximately 70 acres of land from a Resource Conservation Area ("RCA") to an Intense Development Area ("IDA"). The designation of the Property as IDA permits Miles Point to develop the Property to the level of density permitted by the underlying R-1 zoning of the Property that the County agreed to in the Annexation Agreement.

**B. The County enacted Bill 933 without any coordination with the Town of St. Michaels or the other municipalities affected by the legislation contrary to the Critical Area law and criteria.**

Pursuant to Section 8-1809(j) of the Natural Resources Article, the CAC is required to review a proposed amendment to a local critical area program for consistency with the standards set forth in section 8-1808(b)(1) through (3) and the criteria adopted by the CAC. Among the criteria adopted by the CAC is COMAR 27.01.02.06A(2), which provides in pertinent part as follows:

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.**

COMAR 27.01.02.06A(2) (emphasis added). The record in this case is devoid of any coordination between the County and the Town to accommodate the Town's growth. On the contrary, the timing and perhaps the sole purpose of Bill 933 was specifically intended to stop the Town from growing as planned.

On November 18, 2003, after the County recognized that the Miles Point Project would likely receive growth allocation from the Town, the County initiated Bill 933, without any input and/or discussion with the Town. Bill 933 provides in pertinent part that it repeals the previous awards of growth allocation to municipalities located within the County, including the 245 acres provided to the Town.<sup>1</sup> At that time (and currently), there were no major growth allocation requests pending in any of the Towns within Talbot County except for the Miles Point Project.

The County then forwarded Bill 933 to the Talbot County Planning Commission (the "County Planning Commission") for its recommendation. At a public hearing before the County Planning Commission, representatives of the Towns of Oxford, St. Michaels and Trappe objected to Bill 933 because the County had failed to consult with them prior to its introduction. (Exhibit 3, Minutes of December 3, 2003 County Planning Commission Meeting). *The County Planning Commission recommended against the adoption of Bill 933.* (Exhibit 3, Minutes of December 3, 2003 County Planning Commission Meeting).

Thereafter on December 16, 2003, at a public hearing before the County Council on Bill 933, the Towns of Oxford and St. Michaels requested that the County delay enactment of Bill 933 to provide time for the municipalities to coordinate with the County relative to their anticipated growth and their need for growth allocation. (Exhibit 4, Excerpt of Transcript from

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<sup>1</sup> When the County adopted its critical area program in 1986, 245 acres of growth allocation were provided to the Town of St. Michaels.

December 16, 2003, County Council Meeting at 122-125; 127-130). The discussion at the December 16, 2003 public hearing clearly demonstrates that Bill 933 was intended by the County Council to thwart the Miles Point Project and growth within the Town of St. Michaels. (Exhibit 4, Excerpts of Transcript from December 16, 2003 County Council Meeting at 130-32, 135-37, 138-40).

The County Council voted to approve Bill 933 on December 23, 2003. The President of the County Council, Phil Foster, recognized that the County had failed to cooperate with the Towns of St. Michaels and Oxford in enacting Bill 933. Mr. Foster commented as follows during the public hearing:

This bill really is about power and it's about control. And I guess I am reacting against this nonsense of a partnership. It isn't a partnership when you grant somebody authority to do something and then take it back from them. It is a retaking.

(Exhibit 5, Transcript from December 23, 2003, County Council Meeting at pg. 37). In conclusion, the record in this matter demonstrates an utter and complete lack of coordination between the County and the Town, contrary to the criteria adopted by the CAC.

**C. The County's motive in enacting Bill 933 was to stop the Miles Point Project.**

The timing of the introduction of Bill 933, on the eve of the Town Planning Commission's recommendation of growth allocation for the Miles Point Project and approval of the Miles Point II Application, certainly is persuasive evidence of the County's motive to stop the Miles Point Project. However, more direct evidence establishes without question the County enacted Bill 933 solely to stop the Miles Point Project.

The County, acting through its County Council (and the County attorney), identified the Honorable John C. North ("Judge North") as an agent and spokesperson on behalf of the County in connection with Bill 933. At the hearing before the CAC on March 24, 2004, the County expressly called upon Judge North to speak to the CAC panel during the time allocated to the

County. A transcript containing relevant excerpts from the March 24 hearing is attached hereto as Exhibit 6.<sup>2</sup> It is noteworthy that Judge North was appointed by this particular County Council and currently serves on the Talbot County Planning Commission. See Exhibit 7 attached hereto. At the public hearing on the Miles Point growth allocation request before the panel of the CAC on April 1, 2004, Judge North acknowledged that the County enacted Bill 933 only after it became apparent that the Commissioners of St. Michaels would grant growth allocation for the Miles Point Project. A true and correct copy of relevant excerpts from Judge North's statement to the panel of the CAC on April 1, 2004 is attached hereto as Exhibit 8 (See page 5 thereof). Specifically, Judge North stated:

I applaud the efforts of the Town Council to have attempted so long and so vigorously to ward off what they very accurately perceived as a gross imposition on this entire community. But after having raised taxes in the Town twice to meet legal expenses exceeding a million dollars, ladies and gentlemen, fending off Mr. Valanos, after doing that they ran out of steam and consequently the Town voted to grant the growth allocation to this project. **Fortunately, the County of Talbot, in the form of the County Council, came galloping to the rescue and said this matter should not proceed in this fashion, and consequently they instituted a bill to recover unused growth allocation from all municipalities in the County of Talbot. [Emphasis added].**<sup>3</sup>

(Exhibit 8, Excerpt from Transcript of April 1, 2004 CAC Hearing at pg. 5). In conclusion, the County's own designated representative made it abundantly clear that the County enacted Bill 933 for the purpose of stopping the Midland Project.

**D. The Miles Point Project has been awarded 70.86 acres of growth allocation by the Town of St. Michaels.**

The Town awarded the Miles Point Project 70.86 acres of growth allocation following numerous lengthy hearings in the fall of 2003 and winter of 2004. In accordance with Section 8-

<sup>2</sup> Judge North's opposition to growth allocation for the Midland/Miles Point project is quite personal because Judge North's personal residence is on Yacht Club Road, adjacent to the development site. (Exhibit 8, Excerpt from Transcript of April 1, 2004 CAC Hearing at pg. 2).

<sup>3</sup> In response to Judge North's baseless assertion that the Commissioners of St. Michaels simply ran out of steam to oppose the project, the Town attorney advised the CAC panel that the Town Planning Commission voted 5-0 in favor of the Miles Point growth allocation request and the Commissioners voted 5-0 in favor of awarding growth allocation.

1809(i) of the Natural resources Article, the Town submitted to the CAC its request for an amendment to its local critical area plan as a result of the Town's approval of Miles Point's request for growth allocation. The CAC attempted to impose conditions upon the Town's grant of growth allocation to Miles Point, but this Honorable Court held that the CAC did not have the authority to do so. (Exhibit 9, Opinion and Order dated April 11, 2004, J. Sause). On remand to the CAC, on May 4, 2005, it awarded a growth allocation map amendment without any conditions. Accordingly, the Miles Point Project currently has awarded to it 70.86 acres of growth allocation for the Project from the Town.

### III. ARGUMENT

#### **Miles Point should be permitted to intervene as a matter of right pursuant to Maryland Rule 2-214(a)(2).**

Miles Point should be permitted to intervene in this case pursuant to Maryland Rule 2-214(a). A decision by this Court will have a substantial impact upon whether Miles Point can develop the Property in accordance with the plans that have been approved by the Town of St. Michaels. If Miles Point is not permitted to intervene, it will not have an ability to protect its interest in developing the Project as currently approved.

A party seeking to intervene in a case as a matter of right pursuant to Maryland Rule 2-214(a)(2) must establish four elements, as follows:

1. the application for intervention must be timely;
2. the party seeking intervention must have an interest in the subject-matter of the action;
3. the disposition of the action would at least potentially impair the applicant's ability to protect its interest; and
4. the applicant's interest must be inadequately represented by the existing parties.

See Chapman v. Kamara, 356 Md. 426, 739 A.2d 387, 396 (1999). Because Midland meets each of the four elements, it is entitled to intervene in this case.

1. Midland timely filed its Motion to Intervene.

Maryland Rule 2-214 does not require that a party seeking intervention file a motion to intervene within any specified period of time. Maryland Rule 2-214 merely requires that a motion to intervene be timely filed. In determining whether a motion to intervene is timely filed, the courts consider the following four factors: (A) the purpose for which intervention is sought; (B) the probability of prejudice to the parties already in the case; (C) the extent to which the proceedings have progressed when the movant applies to intervene, and (D) the reasons for the delay in seeking intervention. See State Planning v. Mayor of Hagerstown, 288 Md. 9, 415 A.2d 296 (1980).

In this case, Miles Point seeks to intervene to protect its interest in the approved development plans for the Miles Point Project, including the award of 70.86 acres of growth allocation. Unlike any of the other defendants in this case, Miles Point has an approved project that would be detrimentally impacted if this Honorable Court were to determine that the CAC did not have the authority to reject the modifications to Talbot County's critical area plan proposed by Bill 933.

There is absolutely no prejudice that could result to the parties from Miles Point's participation in this case. Generally, in determining whether there is prejudice the courts consider the delay that may be caused by the addition of an intervening party to a case. See e.g. Montgomery County v. Ian Corp., 282 Md. 459, 385 A.2d 80 (1978)(noting granting of motion to intervene would cause delay in trial of case). The facts of the case are essentially undisputed and involve strictly a legal issue as to the authority of the CAC to reject the amendments to the County's critical area program proposed by Bill 933. Additionally, Midland's approved development plans are a matter of public record and undisputed. There also exists a record before the CAC establishing what evidence was considered by the CAC in deciding to reject the

County's plan amendment. Accordingly, Miles Point has no need nor intention to take discovery. No trial date has been scheduled and no hearings on dispositive motions have been conducted in this matter. Pursuant to this Court's Scheduling Order, dispositive motions must be filed on November 11, 2005. Miles Point intends to file a dispositive motion on or before November 11, 2005, in accordance with this Court's Scheduling Order.

The delay in Midland seeking participation in this case is within the time frame where other courts have permitted intervention. The Complaint was filed less than 16 months ago. See Maryland Radiological Soc., Inc. v. Health Svcs. Cost Review Comm'n, 285 Md. 383, 402 A.2d 907 (1979) (filing of motion to intervene one and one half years after filing of complaint deemed timely); Benning v. Allstate, 90 Md.App. 592, 602 A.2d 233 (1992)(filing of motion to intervene 9 months after filing of complaint and 18 days before trial held timely). Moreover, Midland has not become involved in this dispute in part because it has been litigating whether the CAC lawfully imposed conditions upon the Town's award of 70.86 acres of growth allocation for the Miles Point Project. Indeed it would not make sense for Miles Point to participate in this proceeding until it was assured that the growth allocation awarded to it by the Town was valid and approved by the CAC as an amendment to the Town's critical area plan. Midland received a favorable decision from the Circuit Court for Talbot County holding that the CAC was not authorized to impose conditions upon the Town's award of growth allocation for the Miles Point Project. See Exhibit 9, Opinion and Order (J. Sause). For these reasons, Miles Point's Motion to Intervene is timely, and will not result in prejudice to the other parties involved in this case.

**2. Midland has an interest in the subject matter of the case.**

In this case the County seeks a declaration from this Court that the CAC exceeded its authority when it declined to approve Bill 933 as an amendment to the County's critical area plan. This Court's affirmance of the CAC's action is necessary for Miles Point to retain the

70.86 acres of growth allocation awarded to it and to continue with its development plans for the Miles Point Project. Miles Point and the Town have spent a considerable amount of time and money to develop a plan that was acceptable to both parties. A determination that the CAC lacked the authority to disapprove the County's program amendment may have an impact upon the Miles Point Project in light of the County's contention that it can "take back" the growth allocation that the Town has already awarded to Miles Point. Miles Point's interest in this case is neither contingent nor speculative. Because Miles Point has a clear interest in the subject matter of this case, it should be permitted to intervene.

3. The disposition of this case would impair Midland's ability to protect its interest.

In evaluating whether disposition of a case may potentially impair a person's ability to protect its interest, an applicant needs to "merely show that he might be disadvantaged by the disposition of the action in which he sought to intervene . . . [and] need not make the additional showing that the disposition of that action would be *res judicata* as to him." Board of Trustees v. Baltimore, 317 Md. 72, 89 n 19, 562 A.2d 720, n 19 (1989). Miles Point clearly would be disadvantaged by a decision in favor of the County in this case. If this Court were to determine that the CAC was without authority to reject to program amendments proposed by Bill 933, Bill 933 would apply to the growth allocation awarded to the Miles Point Project and the County would likely contend that the award of growth allocation to Miles Point is invalid. Accordingly, a decision in favor of the County could be fatal to the approvals Miles Point has already secured from the Town for the Miles Point Project. Although a decision by this Court would not be *res judicata* as to Miles Point unless it were made a party to this case, it certainly could have persuasive effect and therefore impact upon Miles Point's development plans.

the citizens group were not identical and that the county's representation may not be adequate, the Court of Appeals explained:

Here, the interests of the existing parties and appellants are not the same. Although the county government is undoubtedly committed to sustaining its zoning decision, the fact remains that it is occupied with the planning and zoning of a substantial area of the county affecting many property owners. At the same time, appellants, as aggrieved parties in the zoning appeal, are necessarily concerned with a more limited geographical area. Consequently, their ultimate objectives do not necessarily coincide with those of the existing parties. Appellants are therefore understandably concerned that the public agencies who are the "existing parties" might fail to appeal and adverse ruling of the circuit court, choosing instead to concentrate their efforts elsewhere. To be sure, the interests represented are not shown to be adverse, but such a showing is not necessary to the conclusion that existing representation *may* be inadequate.

TKU, 276 Md. 205, 351 A.2d at 139.

The same reasons apply in this case. Although the CAC, Town of St. Michaels and Town of Oxford have an interest in affirming the CAC's decision and invalidating Bill 933, the Towns are concerned with the application of Bill 933 to areas within their borders as well as the municipality's authority that is eliminated by this legislation. The issues involved in this case have a far more direct impact on Miles Point than the Towns. If this Court decides that the CAC exceeded its authority, the Towns, due to their limited resources and/or differing priorities, may decide not to appeal that decision. Because the existing representation in this matter may be inadequate, Miles Point should be permitted to intervene to protect its interests in this case. See also Inlet Associates v. Assateague House Condominium Association, 313 Md. 413, 545 A.2d 1296, 1301 (1988) (wherein property owners instituted an action against the Town of Ocean City seeking an injunction to prevent conveyance of the municipality's public right-of-way to Inlet, and Inlet was permitted to intervene in the action as a party defendant); Hikmat v. Howard County, 148 Md. App. 502, 813 A.2d 306 (2002) (affirming trial court's conclusion that county's interest was different from intervenors and that it was not clear that county government would provide adequate representation for them).

V. CONCLUSION

For the foregoing reasons, this Honorable Court should enter an Order permitting Miles Point to intervene in this case as a defendant. Miles Point filed its Motion to Intervene in a timely manner in that its participation will not delay these proceedings and is not adequately represented by the existing parties to the case. Additionally, Miles Point has an identifiable interest in the subject matter of this case that it will not be able to protect unless it is permitted to intervene.

Respectfully submitted,



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Richard A. DeTar  
Demetrios G. Kaouris  
Miles & Stockbridge, P.C.  
101 Bay Street  
Easton, Maryland 21601  
(410) 822-5280

Attorneys for Intervenors  
The Midland Companies, Inc. and Miles  
Point Properties, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of October 2005, a copy of the foregoing Motion to Intervene was mailed first class, postage prepaid to:

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803  
Attorney for St. Michaels, MD

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  
Attorneys for Maryland Department of Natural Resources

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

hand-delivered to:

Michael L. Pullen, Esquire  
Talbot County Courthouse  
11 N. Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County, MD

and Federal Expressed to:

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



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Richard A. DeTar

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made as of this 27<sup>th</sup> day of May, 1980, by and among TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (hereinafter sometimes referred to as "Talbot County"); THE COMMISSIONERS OF ST. MICHAELS, a municipal body corporate of the State of Maryland (hereinafter sometimes referred to as "St. Michaels"); and PERRY CABIN ASSOCIATES, a Maryland limited partnership (hereinafter referred to as "Owner").

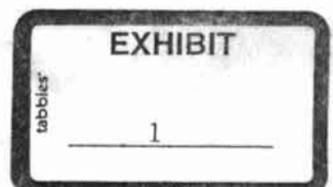
W I T N E S S E T H :

WHEREAS, Owner recently acquired approximately 183.35 acres of land known as Perry Cabin Farm (hereinafter referred to as "Perry Cabin Farm"), which consists of Parcels 2, 3 and 4 as shown on the Plat entitled "FINAL PLAT, PLAT SHOWING A SURVEY OF PERRY CABIN FARM IN AND NEAR THE TOWN OF ST. MICHAELS, TALBOT COUNTY, MARYLAND", dated August, 1977, prepared by J. R. McCrone, Jr., Inc., which Plat is recorded among the Plat Records of Talbot County, Maryland, at Plat Liber 45, folio 8; and

WHEREAS, Parcel 4 (consisting of 12.695 acres) was conveyed to the Chesapeake Bay Maritime Museum, Inc., a charitable institution, as a gift; and

WHEREAS, a part of Parcel 3, consisting of 11.008 acres, as shown on the plat prepared by J. R. McCrone, Jr., Inc., entitled "Perry Cabin Farm and Adjacent Lands", dated April, 1980 and attached hereto as Exhibit "A", was conveyed to Talbot County Maryland, as a gift to be used for recreational purposes; and

WHEREAS, Owner desires to develop the remaining 159.647 acres, as shown on Exhibit "A", (hereinafter referred to as "the Property"), a portion of which lies within the existing boundaries of St. Michaels and the balance outside but contiguous and adjoining the corporate area thereof, and Owner desires that the



part outside of the existing corporate area of St. Michaels be annexed by and become part of St. Michaels; and

WHEREAS, St. Michaels is concerned with the future use and development of Perry Cabin Farm and wishes to exercise control over its use and development through the means of annexing that part of the Property now outside of the existing corporate area of St. Michaels and control its use and development by designating its zoning classification in accordance with St. Michaels Comprehensive Development Plan; and

WHEREAS, Owner desires the Property to be annexed by St. Michaels so as to become a part thereof as long as matters relating to the future development of the Property as hereinafter set forth are first resolved such as, without limitation, zoning, subdivision, utilities and roadways; and

WHEREAS, Talbot County, as the owner thereof, is agreeable to the 11.008 acre parcel being annexed by St. Michaels so as to become a part thereof; and

WHEREAS, Talbot County, by virtue of Section 9 of Article 23A of the Annotated Code of Maryland, must approve the zoning classifications of annexed property which permits a land use substantially different from the use specified in the current and duly adopted master plan of Talbot County; and

WHEREAS, St. Michaels believes that the annexation is desirable and both St. Michaels and Talbot County are agreeable to the proposed development as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties to this Annexation Agreement hereby agree as follows:

1. THE ANNEXATION PROPERTY. The Property, the 11.008 acre parcel, and the underlying interest in Talbot Street (subject to the use thereof by the public and maintenance by the State Highway Administration) from the present northern boundary

line of St. Michaels to the Public Road known as Yacht Club Road shall, in accordance with and by virtue of the provisions of Section 19 of Article 23A of the Annotated Code of Maryland, be annexed and become incorporated within the corporate boundaries of St. Michaels in accordance with the terms and conditions of this Annexation Agreement.

2. DEVELOPMENT OF THE PROPERTY. The Property is to be developed substantially in accordance with the Preliminary Plan prepared by Lewis Clarke Associates, Landscape Architecture, Raleigh, North Carolina, dated September 25, 1979, a copy of which is attached hereto as Exhibit "B", ("Preliminary Plan"). The Preliminary Plan shall be implemented as follows:

2.1 The 6.358 acre parcel shown on Exhibit "A", (hereinafter referred to as the "Inn Property") may be developed by the conversion and use of the existing main residence and barn and existing additions thereto into an inn-restaurant. Owner shall construct the Road shown on the Preliminary Plan from Talbot Street to the entrance of the inn-restaurant in accordance with the standards set forth in St. Michaels ordinances. Owner shall, upon completion of the road convey the road to St. Michaels, from which time the road shall be maintained as a part of the public road system of St. Michaels. Furthermore, prior to use of the Inn Property as an inn-restaurant:

(i) Owner shall construct a parking lot or lots and storm drains therefor at Owner's expense in conformity with all applicable requirements of St. Michaels; and

(ii) Owner shall, at its expense, connect the Inn Property to the Talbot County Sanitary District sewer system or use, improve and expand, if necessary, the existing on-site septic systems, subject to approval by the Talbot County Health Department; and

(iii) St. Michaels shall permit Owner, at Owner's expense, to connect the Inn Property to the St. Michaels water system in order to supply water needs for the operation of the inn-restaurant, subject to payment to St. Michael's of usual connection and usage charges at usual rates.

2.2 The Inn Property and the 11.008 acre parcel, now owned by Talbot County, shall, simultaneously with annexation, be considered as two separate subdivided lots pursuant to the Land Subdivision Regulations of St. Michaels. The balance of the Property shall be developed in Subdivision Sections not larger than thirty (30) acres in size. A subdivision plan for each subdivision Section shall be prepared, at Owner's expense, and be submitted to the appropriate authorities of the town of St. Michaels for their consideration and review in accordance with the laws of St. Michaels. No subdivision plans shall be put into effect without compliance with this Annexation Agreement, and all applicable zoning laws and subdivision regulations. Prior to the sale or improvement (by the construction of any structure thereon) of any lot or parcel of real estate in the Property the following conditions must be satisfied for the entire Subdivision Section of which the lot is a part:

(i) Subdivision Plat, with the approval of the Planning Commission of St. Michaels (or the Board of Appeals of St. Michaels) indicated thereon, shall be recorded among the Plat Records of Talbot County.

(ii) Sewer lines, mains and trunks shall be installed, extended to each lot in the Subdivision Section, and connected to the Talbot County Sanitary District Sewer System, at Owner's expense.

(iii) Circulating water lines, mains and trunks shall be installed, extended to each lot in the Subdivision Section, and connected to the St. Michaels water system at

Owner's expense. Such lines, mains, trunks and connections shall be installed in accordance with the specifications of St. Michaels. Additionally, Owner shall, at its expense, install a water line inside the property line of each residential lot to a point where a water meter pit is to be located, construct the water meter pit to accommodate water meters of the type used by St. Michaels, install in each pit a water meter with a shut-off valve, and provide each pit with an appropriate cover. Water mains and trunks shall be extended, in accordance with specifications of St. Michaels, to the boundaries of the Property at Owner's expense, in size and capacity to provide a water supply, at reasonable pressure, to service the Property in its entirety as development is contemplated herein. Upon completion to specifications and acceptance by St. Michaels, the water lines, mains, trunks, pits, valves and meters shall be conveyed to St. Michaels and become a part of the municipal water system.

(iv) Fire hydrants shall be installed, at Owner's expense, of a type specified by St. Michaels in such a manner that no residential dwelling in a Subdivision Section shall be more than 600 feet from a fire hydrant. Upon completion to specifications and acceptance by St. Michaels, the fire hydrants shall be conveyed to St. Michaels and become a part of the municipal water system.

(v) All roads and cul de sacs in the Subdivision Section shall be installed and improved, at Owners expense, to the standards and requirements set forth in ordinances of St. Michaels.

(vi) All electric distribution lines and equipment and all telephone lines shall be installed, at Owner's expense, according to the specifications and requirements of the St. Michaels Utilities Commission and the Chesapeake and Potomac Telephone Company of Maryland, respectively.

(vii) All requirements for drainage, street lights (installed in conformity with the requirements of the St. Michaels Utilities Commission) and other improvements required by the St. Michaels Land Subdivision Regulations shall be satisfied at Owner's expense and those improvements shall be conveyed to St. Michaels in a good state of repair.

(viii) The above conditions shall be deemed satisfied as to a Subdivision Section if Owner gives a public works bond or letter of credit as provided in Paragraph 7 of this Annexation Agreement for the Subdivision Section, in form and amount satisfactory to St. Michaels, to insure completion of the above conditions. The amount of the bonds or letters shall be subject to at least a yearly review by a registered engineer, on behalf of St. Michaels, to ascertain whether the amounts of the bonds or letters of credit are adequate to complete the improvements for which they were posted. Upon written recommendation to St. Michaels by the engineer, and upon St. Michaels furnishing a copy of the recommendation to Owner, Owner shall be immediately required to increase the amount of the bonds or letters or shall be permitted to reduce the amount of the bonds or letters of credit, in accordance with the recommendations of the engineer for St. Michaels.

3. CONSTRUCTION. A building permit for any structure shall not be issued by St. Michaels unless all of the following requirements have been met for the Subdivision Section in which the property to which the building permit applies is located:

(a) All requirements of the Building Code, Zoning Ordinance and Subdivision Regulations of St. Michaels are complied with; and

(b) All requirements of Paragraph 2.2 of this Annexation Agreement have been complied with; and

(c) Adequate procedures are established to insure proper maintenance of all designated open spaces in the Subdivi-

sion Section by the owners of the lots in that Subdivision Section.

4. GENERAL. Owner shall reserve easements over and under strips of land 5 feet in width along both sides of all interior single family residential lot lines, except townhouse lots (resulting in 10 foot wide strips) and strips of land 10 feet in width along the outer edges of all residential lots and other parcels bordering upon open spaces, streets, roads and cul de sacs, for the purpose of constructing, inspecting and maintaining lines and conduits, and the necessary or proper attachments in connection therewith for the transmission of electric and telephone services and for water and sanitary sewer lines and storm water drainage, and fire hydrants, sidewalk and streets lights in the strips adjacent to streets, roads and cul de sacs; and Owner shall reserve the right, for the benefit of St. Michaels and public utility companies, to enter upon the reserved strips of land for any of the purposes for which the easements are reserved as above set forth.

5. ZONING.

(a) The Inn Property shall be classified, simultaneously with annexation, as Waterfront Development Zone, for use as a Hotel-Conference Center; Inn pursuant to the provisions St. Michaels Zoning Ordinance, and the balance of the Property shall be classified, simultaneously with annexation, as Residential Zone, R-1. It is anticipated that the Property be developed substantially in accordance with the Preliminary Plan. In the R-1 Zone townhouse units are permitted only by means of a special exception for Planned Developments (PUD). Therefore, it is the intention of St. Michaels and Owner that Special Exceptions for Planned Developments will be applied for and granted on a Subdivision Section by Subdivision Section basis which will include up to a total of 150 townhouse units for the Property on the east

side of Talbot Street (Md. Rt. 33), as now located, and a proportionate number of townhouse units on the west side thereof. Each application shall be considered on its own merits, however, Special Exceptions for Planned Developments are to be granted so long as applications therefor provide for development substantial in accordance with the Preliminary Plan (Exhibit B), subject to such reasonable condition, not in conflict with this Agreement or the laws of St. Michaels, as the St. Michaels' Board of Appeals may require.

(b) Members of the Council for Talbot County hereby consent to the annexation and this Agreement and expressly approve the zoning classification and subdivision of the annexed property under the Zoning Ordinance and Subdivision Regulation of St. Michaels as set forth above, and approve the concept of the development encompassed in this Annexation Agreement, in full knowledge that the zoning classification allows land use substantially different from the use for the land specified in the current and duly adopted master plan of Talbot County.

6. BUILDING PERMITS. St. Michaels agrees to act upon applications for building permits submitted by Owner in the same manner and within the same time periods as it normally acts upon applications for building permits submitted by anyone else in St. Michaels.

7. LETTER OF CREDIT. In lieu of any bonds for public improvements, Owner, at its election, may furnish to St. Michaels an irrevocable letter(s) of credit, in form approved by St. Michaels' attorney, certifying that adequate funds are and will remain available at a sound and reputable banking or financial institution authorized to do business in the State of Maryland; such irrevocable letter(s) of credit to be in effect for the length of time required to complete the public improvements, and in a form to allow St. Michaels to procure the funds irrevocably committed to complete the required public improvements if con-

struction of the improvements shall be in default. If the public improvements are not completed within the time periods established when a letter(s) of credit are provided St. Michaels may, at its option, use the funds provided by the letter(s) of credit and complete the public improvements in accordance with this Agreement.

8. ORDINANCE. The Resolution to be adopted by St. Michaels approving and incorporating this Agreement and implementing the terms hereof shall be in form set forth on Exhibit "C".

9. BINDING EFFECT. This Annexation Agreement shall be recorded among the Land Records of Talbot County, Maryland and all of the terms and conditions hereof shall run with the land and be binding upon and inure to the benefit of the parties hereto, successor owners of record of the land which is the subject of this Agreement, assignees, lessees, and upon any successor municipal authorities of St. Michaels and successor municipalities.

10. ENFORCEABILITY AND SEVERABILITY. This Annexation Agreement shall be enforceable in any court of competent jurisdiction and venue by any of the parties hereto by any appropriate action, at law or in equity, to secure the performance of the covenants herein contained. If any provision of this Annexation Agreement is held invalid, such provision shall be deemed to be excluded herefrom and the invalidity thereof shall not affect any of the other provisions contained herein. It is expressly understood that the zoning classifications hereinabove set forth shall survive this Annexation Agreement.

11. ADDITIONAL INSTRUMENTS. The parties mutually covenant to execute such other and further documents as may be necessary or reasonable to the consummation of the transaction hereunder. Additionally, this Agreement may only be amended or modified by an instrument in writing signed by all of the necessary parties or their successors or assigns.

12. MISCELLANEOUS PROVISIONS.

(a) Owner agrees that it will reimburse St. Michaels for reasonable legal fees incurred in connection with the Annexation Agreement and the execution and consummation thereof. Payment shall be made upon request after annexation has been completed. It is understood by the parties that H. Michael Hickson and Banks & Nason, P.A. is not representing Owner, and that their legal fees are being paid directly by St. Michaels and that this agreement covers only reimbursement to St. Michaels of legal fees paid in connection herewith by it. Additionally, inasmuch as St. Michaels deems it necessary to engage the services of an independent engineer to insure that road construction and utility installation is in accordance with this Agreement and with the specifications provided in the Land Subdivision Regulations, Owner agrees to pay the reasonable cost thereof; provided it shall first receive and approve the contract or agreement with such an engineer and the schedule of fees payable in connection therewith, which approval shall not be unreasonably withheld.

(b) It is the intention of the parties hereto that all questions with respect to the construction of this Annexation Agreement and rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Maryland.

(c) This Annexation Agreement may be executed simultaneously in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(d) The paragraph titles contained in this Annexation Agreement are intended only for convenience of reference to the subject matter hereunder and for no other purposes and shall not be considered in any way as limiting, defining,



Exhibit 165  
MP 111

TRANSCRIPT  
ST. MICHAELS PLANNING COMMISSION  
WORK SESSION - NOVEMBER 5, 1998

RICK MEGAHAN: Steve, would you introduce our guests.

STEVE DEL SORDO: You now have gathered before you the experts on growth allocation in Talbot County and how it impacts on [inaudible word or two]. Dan Cowee is the Director of the County Planning Office and he's the person next to Rob Noble and then we have some representatives in the Critical Area Commission. Perhaps you folks would introduce yourselves.

JOHN NORTH: Yes, I'm John North, Chairman of Critical Areas.

UNKNOWN MAN: Would you speak up, please.

JOHN NORTH: [Clears throat.] I'll speak up.

[APPLAUSE]

STEVE DEL SORDO: There's a seat in the front and there are some seats up here for people if they would like them if they have trouble hearing. We do have a microphone that doesn't carry all the way.

JOHN NORTH: I'm John North, I'm Chairman of the Chesapeake Bay Critical Area Commission. To my right is Ren Serey who is the Executive Director of Critical Areas and to his right is Lisa Hoerger who is the Critical Area Planner responsible for Talbot County among other jurisdictions. We're at your service Ladies and Gentlemen.

UNKNOWN MAN: Thank you.

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**BONNIE KASTEN:** Speak up please so people can hear you.

**DAN COWEE:** You're dealing with two separate issues. The first one is growth allocation and the growth allocation I've read your information on it, I've read our information on it, and everything that I've seen so far points a finger to the fact that your comprehensive plan, the County's comprehensive plan, our County zoning ordinance and your zoning ordinance all basically dictate that that's an area for future growth, and that's the process that we go through every five to ten years. We go through, we review our comprehensive plans, we locate those areas outside Town boundaries, inside Town boundaries, for future growth. I, I think that's a given. I think you know that's a given. That everything that we read says that's an area to be further developed in one fashion or another. In 19, I, I believe it was 81, there was a zoning change and an annexation for that property and I, I think that you responded to that a minute ago.

**GENE HAMILTON:** Yeah.

**DAN COWEE:** At that time I'm sure that there was some controversy within the community over whether that should be annexed or whether it shouldn't be annexed, and I'm sure there was a controversy over the type of development that occurred on it probably. I, I don't know, I was not here at that time but I, I assume that that big of a piece of property being annexed into the Town was controversial. At that time, and you are correct there was an R1 designation applied to that property and if John Doe walked in here today and said "I would like to develop that per the current requirements," you would look at those current requirements under R1. You would also have to look at the overlay zone as Judge North has just discussed, and see whether or not to apply that for an area of future growth. Well the first thing you're going to do is you're going to look at your comprehensive plan. What does that say. It says "future growth." You're going to look at the County's. What does that say. It says "future growth." You're going to look at the County's plan and see that it has been approved by the by the Critical Area Commission and it indicates that growth allocation should be applied to that property at some point in the future. Now when that, when that point is in the future, that's up to you all. I think the second issue -- that's enough on the first

TALBOT COUNTY PLANNING COMMISSION  
TALBOT COUNTY GOVERNMENT BUILDING  
TALBOT COUNTY COUNCIL MEETING ROOM  
EASTON, MARYLAND  
MINUTES FOR DECEMBER 3, 2003

Members Present

Richard Hutchison, Chairman  
John Sewell, Vice Chairman  
Officer  
William C. Boicourt  
Linda Makosky  
Robert Zuehke

Staff Present

George Kinney, Planning Officer  
Mary Kay Verdery, Assistant Planning  
Officer  
Debbie Moore, Recording Secretary

**Zoning Text Amendment – Bill 933**

**A Bill to review and reallocate the number of reserved acres of growth allocation allocated among the Towns for rezoning in compliance with the requirements of Chapter 190, Talbot County Code, "Zoning" § 190-109 D. (11)**

Mr. George Kinney presented the staff report.

Chairman Hutchison noted the Bill was written, partially, with a misunderstanding of growth allocation. He presented figures on how the calculations were supposed to have been calculated. 1, 213 RCA to IDA or LDA is the 1<sup>st</sup> 1/2, once this is used, the second 1,213 can be requested. It is not correct that 128 acres is the only growth allocation acreage that can go to IDA.

➤ Mr. Philip Dinkle, Commissioner of Town of St. Michaels.

Mr. Dinkle read a letter the Town had written to the Commission. It noted that Bill 933 would deprive its ability to award growth allocation. The Commissioners of St. Michaels requested the Planning Commission to table their consideration of this Bill until their January meeting, in order to give time for more consideration.

➤ Michael Hickson, Esq., Banks, Nason, & Hickson, P.A., 113 South Baptist St., Salisbury

Mr. Hickson stated that this legislation would very much affect the future of the Town. Almost all the process is complete in regard to the Strausburg property. This legislation would undo all of the work they have done regarding this property. He noted that to take such a drastic, disruptive, radical step as this, is like throwing the baby out with the bathwater. He stated that the Perry Cabin property was annexed in 1980, pursuant to an Annexation Agreement, and in the 1980's they received 245 acres for IDA, now all of a sudden without any consultation or input, the Council has introduced this Bill. He asked

EXHIBIT

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that the Planning Commission postpone their hearing on this, not make a recommendation to the County at all, and conduct a workshop where this could be discussed. He asked the Planning Commission to allow the Towns to meet with them, to discuss the problems that prompted this Bill. Possibly conduct a workshop. He stated he felt this Bill is contrary to State law. To put the ultimate control of growth allocation totally in the County hands is counter-productive. Good planning dictates that growth occur in and around the current existing Towns. This takes away the autonomy of the individual Towns. The Towns have the right to determine their own destiny. He also asked that the Commission make no recommendation, and schedule some work sessions to address this issue.

Chairman Hutchison noted that when this growth allocation was determined, they felt that all the acreage would be gone by now. He stated there was a mechanism in the Ordinance to have these discussions with the Towns. They haven't done that till now, because we have had plenty of growth allocation. However, on page 190:178, item 11, of the Planning Ordinance addresses this matter, and that this suggested legislation is not needed, if they follow the current Ordinance. He also noted they are wanting to do away with the maps, however item #16 on page 179, which discusses the maps are to be used as guides only, and not definitive, in deciding growth allocation issues. He feels the legislation is unfair, and flawed.

Mr. Hickson said he feels if the Commission simply makes a recommendation, either for or against, then the County Council can still act. He recommended again, that the Commission have work sessions. Chairman Hutchison stated he was not sure the Council would wait that long for a response.

Mr. Dave Thompson noted his recollection is they have 60 days before the Council can move without a comment from the Commission.

Mrs. Makosky noted the population of the Town vs. the population of the County and the responsibility of the County to address the health, safety and welfare of the majority of the citizens. She believed that the County was justified in exercising this power.

Mr. Sewell noted that for years now, they have been saying that the communication between the Town and the County has been cut off, and this is an excellent example.

➤ Steve Florkewicz, East Morango Street, St. Michaels

He spoke in favor of acceptance of the Bill. He agreed with Mrs. Makosky in that what happens in St. Michaels will affect the County in general, and that the Town Commissioners have chosen to ignore any comment from people out side of the Town, regarding projects such as Miles Point.

- David Thompson, Esq., 130 N. Washington St., Easton

Mr. Thompson spoke as a legal representative of Trappe and Oxford, as well as Mr. and Mrs. Strausburg (whose property received growth allocation from the Town of St. Michaels). Mr. Thompson stated that politics has begun to replace planning. He stated there is a rush to bring to the table a Bill, which we already know is flawed. A good piece of legislation requires multiple drafts, good planning, and thorough planning. He recommended that the Commission not make a decision on this Bill, and suggested meetings to discuss this issue.

- Barry Gillman, St. Michaels Town Commissioner

Mr. Gillman spoke against this Bill. He stated it seemed that there was a belief that if St. Michaels doesn't do something that no development will occur. This is just not the case. If Bill 933 is directed at the Inn at Perry Cabin Farm, it is not appropriate. There will be no permits unless the infrastructure, including sewage, can handle it.

- Mr. Robert Fletcher, 24640 Yacht Club Rd., St. Michaels

Mr. Fletcher stated he attended the St. Michaels Commissioner meetings, and they were not very accepting of the other residents comments, and felt they were intimidating to people that lived in the County. He stated the Miles Point project, or any other project similar, is total lunacy. The issues facing St. Michaels are huge, and should not be rushed into these decisions.

- Michael Hickson

He spoke in defense of the St. Michaels Commissioners in regards to their meetings. He also noted that the Commissioners are working with the County in regards to the quality of the sewage treatment for the Town, along with the expansion.

- Mr. Robert Amdur, Bozman

He spoke against the level of density as in regards to the Miles Point project, but had no comment directly toward this Bill.

- Mike Pullen, Esq., Talbot County Attorney, Washington St., Easton

Mr. Pullen addressed issues regarding Bill 933. Chairman Hutchison noted legislation should be presented before them before it is introduced to Council. This is an exception, and noted they are not in the 60 day comment period, however, Mr. Pullen clarified that they were in the 60 day comment period.

Mr. Pullen indicated that the maps designating the area allocated for town development in the back of the Zoning Ordinance were adopted in 1989 with the requirement and that

they would be reviewed and amended in four years, by 1993, and every four years thereafter. This was apparently intended to coincide with the State law requirement that the local critical area program be reviewed and proposed amendments be forwarded to the state Critical Area Commission for their quadrennial review and approval. None of those four-year reviews have taken place as anticipated. The maps remain a prospective, forward-looking view from 1989. The maps do not reflect the actual growth that has occurred since then, nor the current town boundaries in some instances.

Mr. Pullen stated that by eliminating these maps from the Zoning Ordinance the planning and zoning functions are separated. The planning function is more appropriately performed through the periodic reviews and updates to the Talbot County Comprehensive Plan and not through the Zoning Ordinance.

State law provides that after subtracting 128 acres reserved for reclassification from LDA to IDA the remaining balance may be reclassified from Rural Conservation zoning to any other zoning classification. Half of the 2,426 acre remaining balance, 1,213 acres, has been allocated between the towns of Easton, Oxford, St. Michaels, and the County. When 90% of this first half has been utilized, the County may request dispensation from the Critical Area Commission of the second 1,213 acre allocation.

Under the existing arrangement, if either the Town of Oxford or the Town of St. Michael's elects to not utilize the growth allocation acreage allotted to them in 1989, individually or collectively, it will be impossible for Talbot County to utilize 90% of the first half of the total amount of growth allocation allotment. This will effectively prevent the County from ever being able to request or utilize the above-mentioned dispensation of the second 1,213 acre allocation from the Critical Area Commission.

Mr. Pullen noted that the Town of Easton has utilized all of its allotted growth allocation acreage and that Talbot County has reviewed subsequent individual applications for growth allocation within the Town of Easton in accordance with existing procedures for supplemental growth allocation in the Zoning Ordinance. This has worked well. Withdrawal of the 1989 allocation from the Towns would simply mean that the Towns' and the County's process to award growth allocation would be coordinated, and that no Town could unilaterally award growth allocation. Adopting this procedure county-wide would put all of the municipalities on the same playing field as the Town of Easton. From a policy standpoint uniformity among the Towns and joint participation in the process, including both the Town and the County, is intended to achieve coordination between the jurisdictions involved, which, hopefully, will result in better development, and greater consistency with the goals of the Critical Area Program.

Mrs. Makosky spoke in favor of the Bill. She feels that it is time for the County to use that power, let the bill take place, and then the negotiations will happen.

Mr. Zuehkle stated his view is opposite of Mrs. Makosky.

Mr. Zuehkle moved to recommend to the County Council to withdraw Bill 933 and instead use the review process as outlined in the current Ordinance, Item 11 on Page 190

Section 178, and within that process recognize that the related maps were intended as guides, as opposed to law. Also as stated in Item 16 Page 190 Section 179.

Mr. Sewell seconded.

Makosky voted NO because she believes it is necessary for the Bill to pass in order to trigger the much wished for process of discussion that everyone has been asking for.

Motion passed 3-1

1 COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

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Council Meeting

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December 16, 2003

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1:30 p.m.

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County Council Chambers, Easton, Maryland

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16 COUNCIL MEMBERS:

17 PHILIP FOSTER, President

HOPE HARRINGTON

18 PETER CARROLL

HILARY SPENCE

19 THOMAS DUNCAN

20

21 Reported by

David C. Corbin

EXHIBIT

1           it's just exactly what I said. Everybody is so  
2           busy, yet this vote that you take has the  
3           responsibility at having both sides of this  
4           argument understood so that your decision is  
5           not influenced by any one party. I just hope  
6           that you will take the time to either postpone  
7           your decision, postpone your vote, make sure  
8           you've garnished all the information involved,  
9           and then make whatever vote you choose to make.  
10          You can't vote on something unless you've got  
11          all the facts and there can't just be one side  
12          of the story. That's all I ask. Thank you.

13                       (Reporter changed paper.)

14           MR. HIXON: President Foster, members of  
15           the County Council, thank you for the  
16           opportunity today. As I said earlier, I  
17           represent all five of the commissioners of St.  
18           Michaels and they are very sorry that they  
19           couldn't be here today for this extremely  
20           important issue. More than 50 percent of the  
21           town of St. Michaels is located in the critical

*Talbot County Council Meeting*  
*Taken on December 16, 2003*

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1 area. And that's what makes this issue so  
2 important to this town of St. Michaels. If we  
3 were in the middle of Kansas, it would be a  
4 different issue. I respectfully suggest it is  
5 even somewhat of a different issue for the town  
6 of Easton because it's not so intensely  
7 surrounded by water. This is a very important  
8 issue, and at least all of the town has to go  
9 on is the face of this bill. Looking at the  
10 bill itself, it would appear that at the very  
11 least the County Council is going to assume a  
12 veto power over any development proposal or any  
13 planning -- any development proposal that may  
14 come forth in the town in the critical area.  
15 To this point I respectfully suggest that there  
16 has been no indication to the towns as to what  
17 the problem is and the invitation to the towns  
18 to get together collectively with the County  
19 and work on solving this problem in a less  
20 drastic way. I would suggest that this is an  
21 extremely drastic way to withdraw all of the

1 growth allocation from the towns and start over  
2 again. It may well be if the towns can get  
3 together we can come up with some sort of  
4 formula that would please every one, or at  
5 least please most of the people. But this way  
6 in my judgment this affects a transfer of power  
7 from the towns to the County. Each of the  
8 towns in this County have been autonomous up to  
9 this point and they all have a different  
10 character, different flavor, different goals,  
11 different places to live. They appeal to  
12 different people. Some of us would want to  
13 live in St. Michaels, others of us would not.  
14 The same is true with the other three towns in  
15 this County. I suggest this is going to  
16 homogenize the towns in this County, it's going  
17 to take away their important character and  
18 flavor, their individuality. I suggest that  
19 it's going to be problematic as far as the  
20 Maryland constitution and some state laws and  
21 other laws are concerned. Judge North referred

*Talbot County Council Meeting*  
*Taken on December 16, 2003*

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1 to a state regulation. He apparently  
2 interprets it one way, I interpret it another.  
3 I suggest that there is a cooperative and  
4 reasonable process in place right now and that  
5 this bill will remove that process. Again, the  
6 town of St. Michaels would like to cooperate  
7 with the County as much as we can. We have  
8 scheduled meetings right now the second and  
9 fourth Tuesday of the month. Given advance  
10 notice, I'm sure the commissioners would be  
11 happy to reschedule their meeting so they could  
12 come to a joint meeting of the towns and County  
13 and address what the real problem is and try to  
14 work toward a real solution. Thank you very  
15 much. I have a letter and documents I would  
16 like to submit for the record and a copy for  
17 each of you.

18 MR. FOSTER: Thank you. If you would give  
19 that to Mr. Urbanczyk.

20 JOHN WOLFE: My name is John Wolfe, I'm a  
21 resident of St. Michaels. We have a unique

*Talbot County Council Meeting*  
*Taken on December 16, 2003*

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1           came out. So I heartily support the 933.

2           MR. FOSTER: Thank you. Mr. Thompson.

3           DAVID THOMPSON: Thank you, Mr. President.

4           I am here today on behalf of the commissioners  
5           of Oxford. You heard briefly from Kathy  
6           Ratcliffe, and Paul Martin is here with her. I  
7           had the opportunity --

8           MR. FOSTER: Mr. Campen is in the hall, so  
9           I guess you got --

10          DAVID THOMPSON: And I was going to tell  
11          you I had the opportunity to speak with Sid  
12          this morning. I attended the planning  
13          commission meeting at which this bill was  
14          considered. And the chairman, who probably has  
15          the most hands-on experience in the County in  
16          terms of the development of the Talbot County  
17          critical area plan and the legislation that  
18          resulted therefrom, Richard Hutcheson, made a  
19          very cogent explanation of the existing law and  
20          what it permits. And what he pointed out to  
21          those in attendance is that the law in effect

1 right now contemplates a dialogue with the  
2 towns and with the towns planning commissions  
3 and the County's planning commission on these  
4 growth allocation issues. And he pointed out  
5 that the reason that that had not been done to  
6 date is because there had been no need to do  
7 it. The use of growth allocation acreage had  
8 been so minor up to this point that it wasn't  
9 necessary. He pointed out, as you all now  
10 know, that there is sufficient growth  
11 allocation acreage available to accommodate the  
12 needs of the town of Easton without the  
13 enactment of this bill. It is probably  
14 accurate that the town of Oxford has more  
15 growth allocation acreage than its current  
16 growth area suggests. The town of Oxford would  
17 appreciate the opportunity for its planning  
18 commission to do its job, that is planning,  
19 with the County planning commission. And we  
20 believe that the existing legislation is  
21 appropriate, that this is an unnecessary step

1 at this time. Unfortunately what this does is  
2 it necessarily brings under the microscope the  
3 legal relationships between the towns and the  
4 counties. And if the County legislates in a  
5 way that many believe violates state law or the  
6 state constitution, it necessitates the  
7 litigation microscope to resolve that. And  
8 then we come up with unintended consequences  
9 that none of us really wanted in the first  
10 place. The current law does contemplate a  
11 dialogue between the planning agencies within  
12 the County. That dialogue should be given the  
13 opportunity to work without wholesale amendment  
14 of the law, which I believe, like Mr. Hixon,  
15 will cause other consequences and the  
16 unintended consequences that we all have to  
17 deal with. Thank you for your time.

18 MR. FOSTER: Mr. Thompson, are you  
19 suggesting that if this bill is defeated that  
20 Oxford would voluntarily relinquish some  
21 portion of this growth allocation.

*Talbot County Council Meeting*  
*Taken on December 16, 2003*

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1           DAVID THOMPSON: I am suggesting that  
2           Oxford would welcome the opportunity to have  
3           its planning commission sit down with the  
4           County planning commission and discuss just  
5           that circumstance. But Oxford, like the town  
6           of St. Michaels, and I'm sure the town of  
7           Easton, would like to maintain the autonomy to  
8           do its own planning within the town. Your  
9           bill, for instance, says that it reaches into  
10          the town and gives the County the authority to  
11          deal with property inside the towns. I suspect  
12          that you will find that legally problematic as  
13          we get down the road. You probably don't want  
14          to go there. Certainly my municipal clients  
15          don't want you to go there. Thank you.

16               MR. FOSTER: Repeat your name again since  
17               it's a new bill.

18               BETH JONES: My name is Beth Jones and I  
19               live at 9005 North St. Michaels Road right  
20               outside of St. Michaels and right before Bay  
21               Hundred. I'm speaking today as president of

*Talbot County Council Meeting*  
*Taken on December 16, 2003*

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1 Bay Hundred Foundation, which is part of a  
2 seven organization coalition to get the County  
3 involved actually in decisions that affect us  
4 all. There's a ground swell of support, as I  
5 mentioned before, for this bill 933. In fact  
6 just over the last week a hearty bunch of about  
7 40 folks went out and collected 1,037  
8 signatures and also stimulated, I believe, as  
9 far as I know, 55 e-mails and at least two  
10 letters in support of 933. So where is this  
11 coming from. Well, I think we have learned a  
12 lesson as we have watched the St. Michaels  
13 commissioners and the St. Michaels planning  
14 commission grapple with a mega development  
15 proposal at the north end of town that would  
16 affect us all and yet many of us who have  
17 signed the petition do not have a voice at the  
18 table. And so we look to the County Council to  
19 represent us in decisions that will affect us.  
20 People have spoken about the sewer implication,  
21 the traffic implications, the school

1           implications, not just for this midland project  
2           but for projects of this size throughout the  
3           County. We have signers not only from the Bay  
4           Hundred and Riverview Terrace and 86 designated  
5           St. Michaels residents and then another 70 some  
6           who have St. Michaels post office boxes so  
7           we're not quite sure yet where they live, but  
8           we have people from down the Oxford peninsula  
9           who have signed on and a large number of folks  
10          from Easton. What we have been hearing is that  
11          indeed the way that the County Council has  
12          worked with the Easton Town Council in  
13          resolving or at least in hearing and  
14          considering and improving the Elm Street  
15          development that's proposed for 33 and the  
16          bypass is a model that we would like to  
17          emulate. For the record I would like to give  
18          you these petitions.

19                   MR. FOSTER: Thank you. Yes, sir.

20                   ROBY HURLEY: Thank you, Council, my name  
21                   is Roby Hurley. I'm not a lawyer, I'm a lowly

1 basically runs silent or makes the whole  
2 ordinance silent and leaves a hole on that  
3 process of growth allocation. There's also  
4 conflicts with the '92 planning act and general  
5 planning principals. The '92 planning act  
6 vision states in rural areas growth is directed  
7 to existing population centers. There's also a  
8 vision saying -- requiring mechanisms --  
9 regulatory mechanisms are stream lined. If you  
10 take all those strikeouts as you have listed in  
11 933, it then becomes silent. Thank you.

12 MR. FOSTER: Thank you. I assume that's  
13 everybody. Anybody who was cut off on the  
14 first round, want to extend their remarks.  
15 Mr. Goetze, I indicated earlier anybody who  
16 wants to speak, you need to come forward. If  
17 there's anybody who wants to speak after him  
18 for the first time, please come up and take the  
19 chair.

20 AL GOETZE: I will be very brief. I am Al  
21 Goetze and my address is St. Michaels,

*Talbot County Council Meeting  
Taken on December 16, 2003*

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1 Maryland. I'd like to speak along the lines of  
2 approval of this bill. The scenario I would  
3 like the Council to think about and remember is  
4 this, a group of town citizens from St.  
5 Michaels elected to office, charged with the  
6 doing the right thing, they -- accordingly to  
7 the law and reference the regulations in doing  
8 that, and then after saying no to the proposal,  
9 which they did, going to court to challenge --  
10 to be challenged about their no and winning.  
11 This is the record, is it not. This is what  
12 did happen. They were not in favor initially  
13 of this development. Then after agonizing over  
14 the legal cost for winning, the justifiable  
15 prohibitions, mostly of great concern for the  
16 decline or trashing of the Miles River industry  
17 asset, they caved in to the single purpose  
18 profit driven developer land grab. As you all  
19 know, I've been involved for a long time in  
20 Talbot County, particularly relative to what is  
21 happening to Talbot rivers, all of them,

1 including the Miles. In terms of the  
2 commission, rightfully in terms of their  
3 defense, they agreed over a three year period  
4 to study the waters off of St. Michaels for  
5 three years. And the University of Maryland  
6 Horn Point laboratory, I think the best  
7 authority anyone could ever find, and I was  
8 involved as well and assisted in the  
9 presentation. And we reported back after three  
10 years of study and the final line was that  
11 dissolved oxygen in that river today is not  
12 capable of sustaining marine life. And also I  
13 think when we talk about whether it's marine  
14 life or anything that relates to the  
15 opportunity for the citizens of this County to  
16 make a living, this very definitely relates to  
17 the question of whether or not the watermen and  
18 the fishing industry can have a product and a  
19 possibility of succeeding. Again, I would very  
20 much be in support of the bill.

21 MR. FOSTER: Thank you, Mr. Goetze.

1           ARNOLD SMITH: This is the first time  
2 around.

3           MR. FOSTER: Yes.

4           ARNOLD SMITH: Thank you for the  
5 opportunity to appear before you. My name is  
6 Arnold Smith and I'm a resident of St.  
7 Michaels. And until the end of this month I  
8 will continue to serve as a member of the  
9 planning commission. And my voice was the  
10 ~~descending~~ <sup>dissenting</sup> voice in the planning commission's  
11 recent approval of a growth allocation for the  
12 midland folks. And because it very much  
13 impacts, affects your legislative piece here, I  
14 speak primarily to the midland proposal. It  
15 was a bad idea when it was proffered, it was  
16 dreadfully out of sync with the realities of  
17 life in St. Michaels. It was virtually on all  
18 four's inconsistent with the comprehensive plan  
19 and had some glaring deficiencies in terms of  
20 the critical areas program. That was six years  
21 ago when this war began. And after waiting for

*Talbot County Council Meeting*  
*Taken on December 16, 2003*

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1 six years and waiting for improvement, waiting  
2 for something else to happen, and having gone  
3 through nine successive victories in terms of  
4 the town being upheld in rejecting the  
5 application, along comes the latest proposal  
6 which has been ramrodded through and the one in  
7 which I just referenced I was the minority  
8 voice. Suffice it to say, the clear  
9 evidentiary requirement of having the best  
10 example of a critical area -- of a growth  
11 allocation award has never met the test in St.  
12 Michaels. What has been provided has been  
13 minimal on all scores, from the 300-foot buffer  
14 which they do not provide, instead going with  
15 the legal limit of 100 feet instead of the  
16 300 feet, to all the problems associated with  
17 such incredible density, traffic, air  
18 pollution, water pollution, the septic  
19 situation. All of which were never fully given  
20 extra pluses. Thus what they supplied was the  
21 minimum instead of giving the maximum. And

*Talbot County Council Meeting  
Taken on December 16, 2003*

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1 this situation continues today. Very little  
2 has been accomplished over these six years  
3 except the same glaring problems which face us  
4 every day in St. Michaels, still are on the  
5 table. I had hoped that we would have had a  
6 better presentation from midland, but instead  
7 we got a minimal presentation. Thank you for  
8 your opportunity.

9 MR. FOSTER: Are you for or against the  
10 bill.

11 ARNOLD SMITH: I'm for your 933.

12 MR. FOSTER: Okay. Thank you. No other  
13 new speakers. Mr. Hixon, you wanted to extend  
14 your remarks.

15 MR. HIXON: Yes, sir. Thank you. I did  
16 want to make a few more points. I think land  
17 use planning, comprehensive plans, zoning  
18 ordinances, all of which the town has in place  
19 and has had in place for many decades, all of a  
20 sudden I don't know what 933 is going to do to  
21 them, but I think they're going to go

*Talbot County Council Meeting*  
*Taken on December 23, 2003*

Page 1

1 COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

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Council Meeting

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December 23, 2003

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1:30 p.m.

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County Council Chambers, Easton, Maryland

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COUNCIL MEMBERS:

17

PHILIP FOSTER, President

HOPE HARRINGTON

18

PETER CARROLL

HILARY SPENCE

19

THOMAS DUNCAN

20

21

Reported by

David C. Corbin

*Corbin & Hook Reporting, Inc.*  
*(410) 268-6006 - (866) 337-6778*

EXHIBIT

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1           and to be responsible for. I don't think that  
2           was probably a very good way of doing it. I  
3           think that was a kind of a Pontius Pilate sort  
4           of thing, we'll wash our hands of it, and if  
5           anything goes wrong in any of those towns, they  
6           won't be able to blame us because we're not the  
7           ones that made the decision. This bill really  
8           is about power and it's about control. And I  
9           guess I'm reacting against this nonsense of a  
10          partnership. It isn't a partnership when you  
11          grant somebody authority to do something and  
12          then you take it back from them. It is a  
13          retaking. Reallocation is to retake, and I  
14          guess as revenue enhancement is to tax  
15          increase. I mean it's just another way of  
16          saying the same thing, maybe a prettier way of  
17          saying the same thing. What moved me in the  
18          letter from St. Michaels, and I'm not sure  
19          what, you know, their priorities are, but what  
20          moves me in this is the argument of what kind  
21          of situation are we setting up here when we

EXCERPT

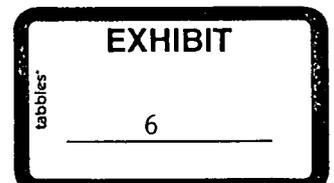
MEETING OF A PANEL  
OF  
THE STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School  
Easton, Maryland

Reported by. David M. Schafer, AA, CCR



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MEMBERS OF THE PANEL:

- Dave Blazer, Chair
- William Giese
- Joseph Jackson
- Gary Setzer
- Edwin Richards

---

Marianne Mason, Assistant Attorney General

1                   MR. PULLEN: Mr. Chairman, if I may, I  
2 would like to yield the balance of the County's  
3 presentation at this point to a person who needs no  
4 introduction to the Panel, the Honorable John C.  
5 North.  
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I, David M. Schafer, a Notary Public in and  
for the State of Maryland, County of Wicomico, do  
hereby certify the foregoing excerpt a true and  
accurate record of the aforementioned proceeding.

As Witness, my hand and Notarial Seal this  
2nd day of April 2004, at Delmar, Maryland.

---

David M. Schafer

My Commission expires August 2006

11 North Washington St.  
Easton, MD 21601  
(410) 770-8058  
e-mail: [khaddaway@talbgov.org](mailto:khaddaway@talbgov.org)  
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OFFICE OF PLANNING & ZONING

*Appointed by County Council:*  
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PLANNING & ZONING COMMISSION

*Appointed by County Council to 5-year terms:*  
Richard Hutchison, *Chair (chosen by Commission in Jan., 1-year term), 2006*  
Linda Makoski, 2002; William C. Boicourt, 2004; Robert C. Zuehlke, 2006; John C. North II, 2008.

*Meetings:* 1st Wednesday, 9:00 a.m.

ZONING ADMINISTRATION

Mary Kay Verdery, *Assistant Planning Officer* (410) 770-8030  
e-mail: [mverdery@talbgov.org](mailto:mverdery@talbgov.org)

DEPARTMENT OF PUBLIC WORKS

*Appointed by County Council:*  
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web: [www.talbgov.org/pw/publicworks.html](http://www.talbgov.org/pw/publicworks.html)

RECYCLING DIVISION

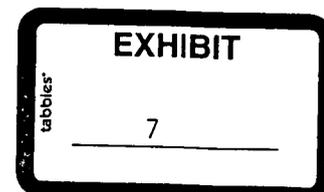
Derrick Brummell, *Coordinator* (410) 770-8168  
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SANITATION DIVISION

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ROADS DEPARTMENT

*Appointed by County Council*  
Richard Ball, Jr., *Superintendent* (410) 770-8150  
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web: [www.talbgov.org/pw/publicroad.html](http://www.talbgov.org/pw/publicroad.html)



EXCERPT

MEETING OF A PANEL  
OF  
THE STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Thursday, April 1, 2004

Time: 7:00 p.m.

Location: Steamboat Building  
St. Michaels, Maryland Chesapeake Maritime Museum

Reported by. David M. Schafer, AA, CCR

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MEMBERS OF THE PANEL:

Gary Setzer, Chair

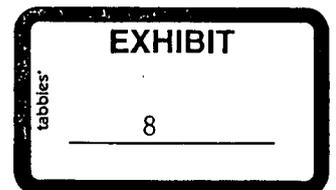
Judith Evans

Joseph Jackson

Dave Blazer

Edwin Richards

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1 JUDGE NORTH: Good evening, Mr. Chairman,  
2 ladies and gentlemen. Thank you very much for your  
3 attendance here this evening.

4 You have a handful to consider all these  
5 facts and suggestions, and I applaud you're  
6 industrious application, as witnessed by the note  
7 taking that you're engaged in constantly.

8 I live on Yacht Club Road. My name is  
9 John North. I think I forgot to say that, too. I  
10 live at the end of Yacht Club Road and have lived  
11 there for something like 18 years. My family has  
12 owned property on Yacht Club Road for over 50 years,  
13 and I've lived in Talbot County all my life.

14 I learned to swim in the Miles River when  
15 I was about three. And since that time, I think  
16 it's fair to say that I have spent more time sailing  
17 on the Miles and swimming in the Miles, sometimes  
18 simultaneously or nearly so, than anyone else in

19 this room. I think I know the subject pretty well.

20 A few facts. St. Michaels is located on

21 an isthmus, a narrow band of land with the Miles

□

4

1 River on one side of it and San Domingo Creek on the

2 other, both bodies of water seriously degraded. I

3 know that they are seriously degraded because, one,

4 I'm told that by scientists; and two, as far as the

5 Miles is concerned, I've observed that personally

6 myself over an extended period of time.

7 When I was younger there were lots of

8 bottom grasses in the Miles, lots of oysters, lots

9 of crabs and fish. Today there are no bottom

10 grasses, there are no oysters, very few crabs, very

11 few fish. The Miles is in a sad state of depletion.

12 You should understand that because St.

13 Michaels is located on an isthmus there are many

14 problems presented by that. There is a very

15 practical problem with respect to traffic flow. All

16 the residents of Tilghman and Wittman and Bozman and

17 Neavitt and Claiborne, the whole north end of the

18 county in order to get out, so to speak, to reach

19 Easton or Route 50 have got to go through St.

20 Michaels. There is only one way through St.

21 Michaels, one narrow street right down the middle of

□

5

1 town.

2 Some years ago there were efforts made to

3 explore the possibility of building a bypass around

4 St. Michaels, over San Domingo Creek. The Corps of

5 Engineers said it could not be done because of the

6 gross environmental problems presented by that. So  
7 there will be no bypass.

8           There is only one way through town. And  
9 when you build another two or three hundred houses  
10 on the north end of town you obviously create very  
11 serious traffic problems for the rest of the county,  
12 particularly is that so when you consider that in  
13 the summertime the main route through St. Michaels  
14 is virtually impassable anyhow because of the  
15 tremendous influx of tourists which the town is  
16 blessed to have in many ways. So we have a very  
17 substantial problem with respect to traffic.

18           We have a very substantial problem with  
19 respect to the quality of the water that abuts the  
20 town.

21           Some years back, six or seven years back  
□

6

1 now, the Town was presented by Mr. Valanos with his  
2 proposal to develop this property in question. At  
3 that time I was asked for my views on the subject,  
4 and I gave them and I paraphrased Mrs. Carter and  
5 said "just say no", and the Town Council accepted  
6 that suggestion and just said no to the proposed  
7 growth allocation.

8           This matter, as a result, went to the  
9 Circuit Court and to the Court of Appeals and the  
10 Town was sustained.

11           Mr. Valanos modified his plan somewhat.  
12 The Town again said no, it went to the Circuit  
13 Court, the Town was sustained, it went to the Court  
14 of Appeals, again the Town was sustained.

15           A third time Mr. Valanos comes back.

16 This project is modified slightly, and the Town  
17 again says no, is sustained by the Circuit Court,  
18 goes to the Court of Appeals, the Court of Appeals  
19 sends it back and said take a better look at things.

20 About that time the Town ran out of  
21 steam, the Town ran out of money, the Town ran out  
□

7

1 of determination.

2 I applaud the efforts of the Town Council  
3 to have attempted so long and so vigorously to ward  
4 off what they very accurately perceived as a gross  
5 imposition on this entire community.

6 But after having raised taxes in the Town  
7 twice to meet legal expenses exceeding a million  
8 dollars, ladies and gentlemen, fending off Mr.  
9 Valanos, after doing that they ran out of steam and  
10 consequently the Town voted to grant the growth  
11 allocation to this project.

12 Fortunately the County of Talbot, in the  
13 form of a County Council, came galloping to the  
14 rescue and said this matter should not proceed in  
15 this fashion, and consequently they instituted a  
16 bill to recover unused growth allocation from all  
17 municipalities in the County of Talbot.

18 I think all the authorities are in  
19 agreement that that is perfectly in accord with the  
20 COMAR regulations. I don't think there is any real  
21 dispute on that point, though there are arguments to  
□

8

1 be made about it.

2 So we are in a situation now where the

3 Town has granted growth allocation. Should they be  
4 sustained in that? I urge you that they should not  
5 be sustained. And to that point let me read you a  
6 couple of letters which I think you will find of  
7 interest.

8           The first letter is from a gentleman well  
9 known in this community, who writes as follows: I'm  
10 a lifelong resident of St. Michaels and a taxpayer;  
11 12-year former member of Planning and Zoning; a  
12 former Town Commissioner; and presently judge of the  
13 Orphans' Court of Talbot County.

14           The proposed plan would adversely affect  
15 the traffic, sanitary sewer, air quality, and add  
16 additional pollution to the Miles River, whether the  
17 present or additive wastewater facilities are used,  
18 and cause havoc with the general welfare and safety  
19 of the citizens already living here.

20           The density of homes will create gridlock  
21 on the highway, Route 33, and lead to all other

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1 public utilities and burden all other public  
2 utilities already overburdened presently.

3           St. Michaels needs many improvements,  
4 especially streets, curbs and drainage, before  
5 expanding to new expansions that will not compliment  
6 our present lifestyle.

7           The quality and quantity of these homes  
8 will not in any way generate necessary revenue for  
9 improvements that are necessary and will create many  
10 problems you are unable to address at this time;  
11 example, schools and tourism.

12           I strongly urge you to deny this

13 application.

14 James E. Thomas, better known as Sawdy  
15 Thomas.

16 A second letter, from J. Charles Fox,  
17 better known as Chuck Fox.

18 To whom it may concern: I have worked on  
19 behalf of the Chesapeake Bay for 20 years, serving  
20 in various federal, state and nongovernmental  
21 organizations.

□

10

1 I served as the Secretary of the Maryland  
2 Department of Natural Resources in the Glendening  
3 administration. In that capacity I chaired the  
4 Governor's Chesapeake Bay cabinet and represented  
5 the Critical Area Commission in numerous high-level  
6 forums.

7 I also served as the assistant  
8 administrator for water at the U.S. Environmental  
9 Protection Agency in the Clinton administration,  
10 responsible for implementing the Federal Clean Water  
11 and Safe Drinking Water Acts.

12 I've worked for a number of conservation  
13 organizations, including the Environmental Policy  
14 Institute, which worked closely with the Hughes  
15 administration in securing enactment of the original  
16 Critical Areas Act and its subsequent regulations.

17 Perhaps most importantly I've come to  
18 value intensely the unique natural resources of  
19 Talbot County, particularly the Town of St. Michaels  
20 and the Miles River.

21 I'm very familiar with the site of the

□

11

1 proposed project and the environmental challenges  
2 confronting the Miles River and the Chesapeake Bay.

3           Over the past 20 years, despite  
4 significant efforts by federal, state and local  
5 governments, the Chesapeake's health has not  
6 improved. A clear scientific consensus concludes  
7 that in order to restore the Chesapeake we will have  
8 to sharply reduce pollution and restore sensitive  
9 habitat. Unfortunately, the proposed Miles Point  
10 project will do just the opposite.

11           Talbot County confronts significant  
12 growth related challenges. The county attracts tens  
13 of thousands of new residents and visitors almost  
14 every year, in large part because of the unique  
15 natural resources that define the county, yet these  
16 same new residents and visitors jeopardize the  
17 county's precious natural resources. How well the  
18 County manages this apparent paradox will define the  
19 quality of life for future generations.

20           In general, both the county and  
21 municipalities must find a means of channeling

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1 growth to those areas best suited to accommodate it.  
2 By definition this should exclude environmentally  
3 sensitive areas adjacent to important water  
4 resources; however, the proposed Miles Point project  
5 would be located in just such an area, contributing  
6 to pollution and habitat loss on the Miles River.  
7 The Miles Point project likely also will contribute  
8 significantly to existing traffic problems in St.  
9 Michaels.

10 In the end the county and the Town of St.  
11 Michaels must find a way to reduce pollution and  
12 restore habitat to be successful in achieving its  
13 goals for the Miles River and the Chesapeake Bay.  
14 This will not be an easy task.

15 It is my sincere hope that these goals  
16 will form the basis of future debates between Talbot  
17 County, the Town of St. Michaels and the citizens of  
18 the region. Sincerely, J. Charles Fox.

19 PANEL MEMEBER SETZER: Judge North, could  
20 I ask you to sum up now.

21 JUDGE NORTH: I'm sorry?  
□

13

1 PANEL MEMEBER SETZER: Could I ask you to  
2 sum up, please? And if you have additional letters,  
3 you can submit them.

4 JUDGE NORTH: All right. I'll sum up  
5 with a letter from Governor Hughes.

6 To whom it may concern: The legislation  
7 to save the Chesapeake Bay was instituted and  
8 sponsored by my administration during my second term  
9 as Governor. The keystone of that legislation was  
10 the Critical Areas law. One of the basic purposes  
11 of that law is to minimize human intrusion on lands  
12 bordering on the water. In furtherance of that  
13 goal, the law provides that there can be no lower  
14 than one house built per 20 acres in Resource  
15 Conservation Areas.

16 St. Michaels is beautifully located, with  
17 the Miles River on one side and San Domingo creek on  
18 the other, both of which are already degraded.

19 To permit the construction of several  
20 hundred homes in this area would be environmentally  
21 irresponsible and flagrantly inconsistent with the  
□

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1 goals of the Critical Area law.

2 Some weeks ago I testified before the  
3 Planning Commission that incremental growth of  
4 established municipalities was anticipated by the  
5 legislature in providing for growth allocation but  
6 it was never intended to allow hundreds of new  
7 dwelling units in a Resource Conservation Area in  
8 one fell swoop. This would quickly consume a  
9 county's growth allocation and destroy the principle  
10 of controlled incremental growth.

11 The Critical Areas law was enacted to  
12 protect the waters of Maryland and help restore the  
13 Chesapeake Bay to a healthy condition. In over 30  
14 years in public office I know of no law that has had  
15 more support from the citizens of Maryland.

16 As residents of the Eastern Shore we are  
17 blessed with many beautiful rivers and creeks and  
18 much of the bay's shoreline; therefore, we have a  
19 special responsibility to be vigilant in protecting  
20 those natural resources and committed to carrying  
21 out the intent and spirit of the Critical Area law.  
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15

1 Respectfully submitted, Harry Hughes.

2 In summation, gentlemen and ladies, it  
3 seems to be quite evident that there is overwhelming  
4 evidence that this growth allocation should be  
5 denied.

6 I should also tell you that the three

7 former representatives to the Critical Area  
8 Commission -- the three are Bill Corkran, Doctor --  
9 come on head -- Doctor Shepard Krech and Paul Jones,  
10 Esquire, all had authorized me to say that they  
11 would vote against granting growth allocation in  
12 this instance.

13 Thank you very much.

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I, David M. Schafer, a Notary Public in  
and for the State of Maryland, County of Wicomico,  
do hereby certify the foregoing excerpt a true and  
accurate record of the aforementioned proceeding.

As Witness, my hand and Notarial Seal this  
2nd day of April 2004, at Delmar, Maryland.

\_\_\_\_\_  
David M. Schafer  
My Commission expires August 2006

04-01-04 North Excerpt

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CIRCUIT COURT  
OF TALBOT COUNTY  
MISTON, MARYLAND

2005 APR 14 AM 10 29

THE CIRCUIT COURT FOR TALBOT COUNTY

THE MIDLAND COMPANIES, INC. et al

v.

MARYLAND DEPARTMENT OF  
NATURAL RESOURCES et al

Civil # 5088

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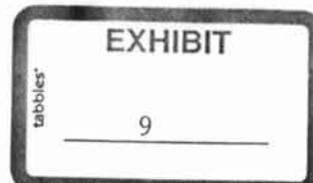
DECLARATORY JUDGMENT  
and  
ANCILLARY RELIEF BY WAY OF MANDAMUS

On May 5, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, an agency of the Department of Natural Resources (the Commission) took action with respect to a "program amendment" requested by the Town of St. Michaels (the Town). Developers interested in the project (plaintiffs) have challenged that action in this proceeding and subsequently filed a motion for summary judgment, which is now before the Court. A similar motion was filed by the Commission. At a hearing on those motions, we allowed intervention of Fogg Cove Homeowners Association, Inc. (on the representation that it is a property owner) and a number of individual residents of St. Michaels, who had also interposed a motion for summary judgment..

The existence of requests for summary judgment by all parties indicates a consensus on the requisite finding with respect to the absence of genuine dispute as to any material fact. Independently of that consensus, we so find.

**The cause of action**

Unfortunately, before proceeding to the issues involved here, we must first ferret out that which the Court is asked to address or, more properly, what are the cognizable cause(s) of action. The title of that pleading is "Complaint For Judicial Review, Mandamus and For Declaratory Relief." This must be taken as an attempt to satisfy the requirement of Rule 1-301 that "Every pleading and paper filed shall contain . . . a brief descriptive title of



the pleading or paper which indicates its nature.”

The title is then followed by this statement:

Pursuant to the Courts and Judicial Proceedings Article, Section 3-401 et seq. and 12-201, Annotated Code of Maryland, Petitioners/Plaintiffs, . . . hereby bring this Complaint against the Respondent/Defendant . . . to obtain Judicial Review of a decision of the . . . [Commission], to issue a mandamus concerning action of the . . . [Commission] that Plaintiffs/Respondents believe to be illegal and beyond the scope of the . . . [Commission’s] lawful authority and for Declaratory Relief relating to actions which the . . . [Commission] has asserted that it will take against Petitioners/Plaintiffs’ interests . . . .

The claims for relief, which by Rule 2-305 “shall contain . . . a demand for judgment for relief sought”, wholly ignore matters of mandamus or judicial review. It seeks that this Court:

A. Declare as unlawful, *ultra vires*, and otherwise not permitted by Maryland law the Conditions on the award of IDA growth allocation for Miles Point III imposed by the Respondent/Defendant . . . [Commission] that *development of the Miles Point III Project shall be set back from the landward edge of tidal waters at least 300'* and that a forest vegetation buffer management plan shall be developed cooperatively with the . . . [Commission] and subject to it further review and approval;

B. Declare that the Conditions imposed by the . . . [Commission] are void and of no lawful force and effect such that the Critical Area Commission’s approval of 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 remains valid and in effect, but the Conditions of that approval are stricken.

C. Award the Petitioners/Plaintiffs the cost of this case; and

D. Such other and further relief as the Court deems appropriate.<sup>1</sup>

By stipulation of the parties, what we understand to be the here-italicized portion paragraph A, was dismissed, for the reason that “there is no present or actual controversy between the parties with respect to. . . [the condition].”

Apparently unrecognized is the fact that one of the statutes invoked, Courts

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<sup>1</sup> A second count was dismissed by stipulation.

and Judicial Proceedings §12-301 has absolutely no application in this case.<sup>2</sup> Furthermore, Courts Article, §3-409 (b) would preclude any right of declaratory relief if there were any other statutory avenue for review of the action of the Commission.

Because intervenors allege the existence such other avenues of relief, we detour briefly to consider those claims. The first suggestion is that plaintiffs should have filed a request for judicial review under Title 7, Chapter 2, of the Rules. Those provisions provide no *right* of appeal, but by their express terms are applicable only "where judicial review is authorized by statute." We are aware of no statute conferring a right of review or "appeal" from a determination of the Commission. Sensing that result, intervenors propose that the request for judicial review should be directed against the action of the Town. For purposes of brevity, we shall assume, but certainly not decide, the existence of a statute permitting judicial review of the action of the Town, although it was clearly a legislative action. Cf. *Queen Anne's Conservation, Inc. v. County Comm'rs*, 382 Md. 306. The common sense explanation of plaintiffs' failure to seek judicial review of the Town's action is that it has no difference with the Town's action. The obvious and complete legal answer is that any decision rendered in a proceeding in which the Commission is not a party will have absolutely no effect upon its actions. Intervenors' contentions are wholly without merit.

We return to the relief sought by the complaint. Although mandamus is referred to in the title of the complaint, its hoary head is not otherwise raised, even in the claims for relief. Although Courts Article, §3-409 (c) would have permitted its combination with an action for declaratory judgment, such is not the result here, since the complaint does not contain either the verification or the specific claim for relief required by Rule 15-701. *Brack v. Wells*, 184 Md. 86, 89. No cause of action is stated for mandamus.

A similar situation arose in *Redding v. Board of County Comm'rs*, 263 Md. 94, 112, where it was held that the plaintiff could not obtain relief by way of mandamus but that such might be afforded as ancillary relief to a declaratory judgment:

The *form* of the 'Petition for Injunction, Mandamus and Such Further Relief as to the Court May Seem Proper' . . . gives us some difficulty. The petition is far from a model of careful pleading. Rather, it presents a 'shotgun' approach with the hope of the pleader that one shot will hit his opponent and bring him down. We interpret the petition as an action at law for declaratory relief . . . *i.e.*, to declare the order . . . of the Board of Appeals null and void with ancillary relief by way of injunction or mandamus, if required, pursuant to [former] Maryland Rules BF 40, 41, 42 and 43. It can hardly be an action for a writ of mandamus, as such, pursuant to Rules BE 40-46 [now Rule 15-701] in that (1) the petition was not verified as required by Rule BE 40 c and (2) there is no prayer for relief setting forth

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<sup>2</sup> The section deals solely with the right of appeal of final judgments of a circuit court.

the peremptory form of the writ of mandamus sought. See [former] Rule BE 45. Indeed, the prayer for relief *is for declaratory relief* and the relief obtained from the lower court was a declaration that the order . . . was null and void. In its opinion, the lower court suggests that a writ of mandamus *might issue* to compel the Board of Appeals to grant the motion to strike the evidence introduced at the second hearing on behalf of Redding or that the Board be enjoined from attempting to enforce its order . . . , but the fact is that neither a writ of mandamus nor a writ of injunction did issue. Instead, declaratory relief was awarded – properly in our opinion – there being no necessity under the circumstances for issuing writs of mandamus or of injunction. [Italics in original]

Our first declarations will be that this action is solely one for declaratory relief, but that mandamus or injunctive relief may be granted as ancillary relief if it appears that such is necessary under the circumstances.

#### **The action of which plaintiffs complain**

As embodied in a letter of May 14, 2004, which is as much about its action as we are going to know absent what might be pure surmise following a page-by-page review of the record, the Commission stated:

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 [Resource Conservation Area] to IDA [Intensely Developed Area]. 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 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 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 . . . . 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.

We have little other guidance, other than a lengthy "Panel Report", dated May 5, 2004, by the Commission's hearing panel, which discusses its investigation and discussion in wide-ranging terms. In a space provided for "Commission Action" appears the single word "Vote"; and "Panel Recommendation" is stated to be "Pending Panel Discussion." These do not represent either ultimate findings of fact (which remained "pending panel discussion") or reasons for any action taken, even to the degree of the Panel's providing specific recommendations. As will be seen, an agency has a duty to provide both findings of fact and reasons for its action.

#### **The law**

The basic component of the Critical Area statute (Natural Resources Article, Title 8, Subtitle 18, hereafter cited by "§") is the requirement that each jurisdiction establish a critical area protection program, based upon criteria established by the Commission.

Thereafter, a "program amendment" or a "program refinement"<sup>3</sup> requires approval by the Commission before its application. The latter type of action is not involved here.<sup>4</sup>

A "Program amendment. . . [is] any change to an adopted [Critical Area] program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area . . . in a manner not provided for in the adopted program . . . [and, specifically] includes a change to a zoning map that is not consistent with the method for using the growth allocation contained in an adopted program" (§8-1802 (a) (15)).

In *North v. Kent Island Limited Partnership*, 106 Md. App. 92, Queen Anne's County had determined that the critical area designation of an area on Kent Island should be changed from limited development area (LDA) to intensely developed area (IDA), on the grounds of mistake in the original mapping. As required, approval was sought from the Critical Area Commission. The Commission denied the amendment based upon a finding that there had been no mistake in the mapping. It was held that the Commission lacked authority to deny the amendment on that basis.

Speaking for the Court, Judge Fisher carefully defined the respective rights of the Commission and local governments, at 106:

The Commission was designed to be an oversight committee. Section 8-1801(b) (2). The original drafting group considered forming the Commission as a permitting agency for all projects in the critical area. The drafting group concluded that such a role was undesirable because the Commission would become tangled in collisions with local agencies and developers over the specifics of particular projects. George W. Liebmann, *The Chesapeake Bay Critical Area Act: The Evolution of a Statute*, *The Daily Record*, April 20, 1985, at 1. The drafting group also considered constituting the Commission as an appeal board. Because this would impose substantial hearing burdens on the Commission and create a conflict between the Commission and local zoning boards, the group decided against such a provision. The drafting group also considered allowing an appeal directly to the Commission from the permit granting agency. The drafting group rejected this

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<sup>3</sup> "Program refinement" means any change to an adopted program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program . . . [and] includes: 1. A change to a zoning map that is consistent with the development area designation of an adopted program; and 2. The use of the growth allocation in accordance with an adopted program" (§8-1802(a)(16)).

<sup>4</sup> Left to our own devices, we might have concluded that the action here involved might have been more properly regarded as a "program refinement" because "The use of the growth allocation in accordance with an adopted program" is specifically said to be a program refinement by the final sentence of the statute quoted in the preceding footnote. However, the parties seem to agree that this action involves a program amendment; and we shall do nothing to change that course. *Swart v. Department of Natural Resources* (Court of Appeals, No. 94 September Term 2004, decided March 14, 2005).

approach because it would either result in duplicative appeals or grant the Commission pendent jurisdiction to address issues which did not fall under its regulations. Because there was a need for the Commission to check upon local permit determinations involving zoning and subdivision, the group drafted a provision granting the Commission the right to intervene at any stage of administrative, judicial, or "other original proceeding concerning project approvals. Section 8-1812.

Based upon this interpretation of the statute, the Court held, at 105:

The role of the Critical Area Commission is to examine the amendment to determine whether the amendment is consistent with the criteria. In contrast to § 8-1809(h)(2)(i), which requires the local approving authority to make a finding of mistake, § 8-1809(j) provides a separate standard of review to be applied. Section 8-1809(j) provides:

(j) *Standards for approval by Commission.* -- The Commission shall approve programs and program amendments that meet:

(1) The standards set forth in § 8-1808 (b)(1) through (3)<sup>5</sup> of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle.<sup>6</sup>

It was just as squarely held, at 106, that "It is not the role of the Commission to reexamine whether there was an actual mistake in the original zoning. To allow the Critical Area Commission to revisit the question of mistake would render meaningless the hearings before the Planning Commission and the County Commissioners. In addition, this would create a state level zoning board, which was not the intention of the General Assembly in establishing the Critical Area Commission."

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<sup>5</sup> Those standards, referred to as "*Goals of program*" are that "A program shall consist of those elements which are necessary or appropriate: (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; (2) To conserve fish, wildlife, and plant habitat; and (3) To establish land use policies for development in the Chesapeake Bay Critical Area 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."

<sup>6</sup> §8-1808 (e) (1): "The Commission shall adopt by regulation . . . criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section." These criteria are contained in Title 27 of COMAR.

### Application of *North* to the present case

It was noted in *North* that "There were two ways in which the County could have redesignated the parcel: (1) The County could have redesignated the parcel based on a mistake in the original mapping; or (2) The County could have redesignated the parcel based on the use of the County's growth allocation." 106 Md. App. at 107. The first was involved in that case; this case involves the second method; but we perceive no difference in the applicable legal requirements.

In critical area parlance, "Growth allocation means the number of acres of land in the Chesapeake Bay Critical Area . . . that a local jurisdiction may use to create new intensely developed areas and new limited development areas" (§18-102 (a)(10)). Under §8-1808.1, the allocation is equal to "5 percent of the total resource conservation area in a local jurisdiction . . . at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government. Subsection (c) of that section provides "guidelines" for use of growth allocation:

When locating new intensely developed or limited development areas, local jurisdictions shall use the following guidelines:

(1) New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas;

(2) New limited development areas should be located adjacent to existing limited development areas or intensely developed areas;

(3) Except as provided in paragraph (5) of this subsection, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;

(4) New intensely developed or limited development areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed or limited development areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of this subtitle; and

(5) . . . if the county is unable to utilize a portion of the growth allocated to the county in paragraphs (1) and (2) of this subsection within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in paragraph (3) of this subsection. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

In this case, it is undisputed that the Town of St. Michaels followed all procedures required by its critical area ordinance and found that the use of growth allocation at the Perry Cabin site was consistent with the "guidelines" contained in §18-1808.1 (c) just quoted.. Importantly, as in *North*, use of the guidelines is to be made by "local jurisdictions" in connection with "locating new intensely developed or limited development areas." In other words, application of the guidelines is entrusted *solely* to the local jurisdiction. The matter is the more binding in light of the provisions of §8-1808.1, which provides that "in the event of any inconsistency between the criteria [of the Commission] and the provisions of this section, this section shall control."

The result is that stated in *North*,, 106 Md. App. at 107:

In this case, once the Planning Commission determined that there was a mistake in the original zoning, the program amendment should have been referred to the Critical Area Commission to determine whether it met the criteria. The Commission has jurisdiction to examine the . . . [action of the local jurisdiction] and determine whether the . . . [action] meets the established criteria. The sole issue before the Commission should have been whether the property satisfies the definition of IDA as set forth in the criteria.

In the final analysis, it is difficult to understand just what the Commission did in this case. That is itself a virtually fatal flaw. An agency must prepare findings of fact and conclusions of law that are adequate for judicial review. Although not raised by plaintiff, this is an practical prerequisite to any sort of judicial consideration. It is also a *duty* of the agency. As flatly held by the Court of Appeals in *Baker v. Board of Trustees*, 269 Md. 740, 747

As long ago as *Adams v. Board of Trustees*, 215 Md. 188, 195 . . . we reversed, as not supported by the evidence, an action taken by the Board without a finding of fact, or an assignment of reasons for the result reached. Only the circumstance that the record before us makes it clear that the Board could have reasonably reached the result which it did, *Heaps v. Cobb*, . . . 185 Md. at 380 . . . saves this case from a similar fate. To be certain that the teaching *Adams* is not again overlooked, we propose to remand, for appropriate findings of fact, any case which hereafter reaches us in the posture of this one.

This is no more than a recognition of the fundamental right of a party to be apprised of the facts relied upon by the agency, *Blue Bird Cab Co. v. Department of Employment Security*, 251 Md. 458, 466 . . . even in the absence of a statutory provision, is frequently required by a court as an aid to judicial review, 2 Davis, *Administrative Law Treatise*, § 16.05 at 444-49 (1958); 2 Am. Jur. 2d *Administrative Law* § 447 at 256 (1962), and cases cited. *See also* Code (1957, 1971 Repl. Vol.) Art. 41, § 254 which imposes this requirement on those agencies of the State which are subject to our Administrative Procedure Act.

Were this all, we might simply remand the case to the Commission with

instructions to provide the necessary information – not that this would end the matter, but it would at least provide an identifiable context for our consideration. However, it is quite clear here that the Commission felt able – even to the extent of an apparent inconsistency in applying LDA standards to an IDA district – to create standards out of whole cloth. The sole issue before the Commission involves a wholly objective determination, that being whether the amendment proposed by the Town satisfies the definition of IDA as set forth in the applicable criteria. Conjecture as to whether the situation could be made better by the addition of bells and whistles is beyond the authority of the Commission – if it exists at all, it is within the sole province of the Town. To simply remand the case for articulation of its misconceptions would be idle indeed.

What remains is the question of whether the Court should provide ancillary relief at this time. Under Courts Article, §3-411, our declaratory judgment will have “the force and effect of a final judgment or decree.” Judgment though it is, it is simply what its name says it is and provides no practical relief whatever in that it provides for no further attention by anyone to the approval sought by the Town. The Commission would hold an unenforceable decision, and the Town would hold an unacted-upon request for approval.

We shall also provide mandatory relief, because (i) “[f]urther relief based on a declaratory judgment or decree may be granted if necessary or proper” upon application and further proceedings under Courts Article §3-412, and there can be no doubt about the facts that further relief would be requested or that is *prima facie* “necessary or proper” under the circumstances of this case; (ii) under authority of *Redding v. Board of County Comm'rs, supra*, mandatory relief is a “necessity under the circumstances”<sup>7</sup>; (iii) mandatory relief is permissible under plaintiffs’ request for “other and further relief as the Court deems appropriate”; and (iv) because further delay could only (and, we think, unnecessarily) prolong this matter,

### **DECLARATORY RELIEF**

For reasons stated above, the Court **FINDS AND DECLARES** that:

1. This action is solely one for declaratory relief, but mandamus, injunctive or other mandatory relief may be granted as ancillary relief if it appears that such is necessary under the circumstances.

2. The action of The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the Commission) with respect to the request of the Town of St. Michaels

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<sup>7</sup> and (iii) The *Redding* case involved a hearing and rehearing of charges against a police officer. It was declared that the discharge of the officer after the first hearing was valid and that the re-hearing was unauthorized and void. In short, further mandatory relief would have been without purpose.

for approval of a program amendment was improper and void for the following reasons:

a-The Commission failed to provide findings of fact and a statement of reasons for the result reached.

b-So far as can be gleaned from the record, the Commission considered matters not germane to the single issue of whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area.

### MANDATORY RELIEF

For reasons stated above, it is **FURTHER ORDERED** that:

3. The Commission is directed to consider and determine, on the basis of the existing record, whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area.

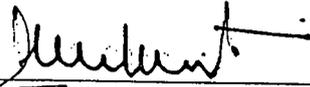
4. For purposes of Natural Resources Article §8-1809 (o)(1), the time for decision shall be extended until the first meeting of the Commission which is at least 10 days after its receipt of this Judgment.

5. The Commission is further directed to give full consideration to the legal requirements that (i) the sole issue before the Commission is whether the property satisfies the definition of IDA as set forth in the criteria and (ii) in applying criteria, those contained in §8-1808.1 are controlling in the case of inconsistency with those of the Commission.

6. In order to avoid lack of clarity heretofore discussed, the Commission is further directed to observe the legal requirement that it render its decision in writing and include findings of fact and a statement of reasons for the result reached.

7. The provisions of this Order are without prejudice to any right to subsequent review following action by the Commission.

8. Costs of this proceeding shall be paid by defendants and intervenors.



John W. Sause, Jr.  
Chief Judge (ret)  
Sitting by Designation

April 11, 2005

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL RESOURCES-  
CRITICAL AREA COMMISSION FOR THE  
CHESAPEAKE AND COASTAL BAYS, et al.

Defendants

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

\* \* \* \* \*

**MILES POINT PROPERTY, LLC'S AND THE MIDLAND COMPANIES, INC.'S  
PROPOSED ANSWER TO AMENDED COMPLAINT**

Intervenors Miles Point Property, LLC and The Midland Companies, Inc. (collectively "Miles Point"), by and through their attorneys, Richard A. DeTar and Miles & Stockbridge, P.C., hereby file this Proposed Answer to the Amended Complaint for Declaratory Judgment, Petition for Writ of Mandamus and Appeal from Administrative Agency (the "Amended Complaint") filed by Talbot County, Maryland (the "County") and in support hereof state as follows:

I.

The Complaint fails to state a claim upon which relief can be granted. In support hereof, Miles Point incorporates by reference the Motion to Dismiss and Memorandum in Support of Motion to Dismiss filed in this action by the Department of Natural Resources, Critical Area Commission for the Chesapeake and Coastal Bays ("CAC").

II.

In response to the specific averments set forth in the Amended Complaint, Miles Point responds as follows:

1. Miles Point admits the averments set forth in Paragraph 1 of the Amended Complaint.

2. Miles Point admits the averments set forth in Paragraph 2 of the Amended Complaint.

3. Miles Point admits that in 1984 the General Assembly enacted the Chesapeake Bay Critical Area Protection Program, codified in Sections 8-1801 to 8-1817 of the Natural Resources Article of the Maryland Code. The purposes of enacting the critical area program are set forth in Section 8-1801(b) of the Natural Resources Article of the Maryland Code.

4. Miles Point denies that each County within the Critical Area has primary responsibility for developing and implementing a local critical area protection program. Miles Point admits that the criteria for establishing the program are subject to review and approval of the CAC.

5. Miles Point admits the averments set forth in Paragraph 5 of the Amended Complaint.

6. Section 8-1809(g) of the Natural Resources Article speaks for itself and therefore no response is necessary to the averment quoting this Section. Nevertheless, Miles Point denies that Section 8-1809(g) was quoted accurately in the Amended Complaint. Miles Point admits that the Commission must approve any proposed program amendments to the critical area program of the County as well as municipalities within the County that are required to have a critical area program.

7. Miles Point denies that the adoption of local program amendments by the County Council is strictly a legislative process established and controlled by the Talbot County Charter. Miles Point admits that program amendments in and for Talbot County are usually initiated by the introduction of a bill, followed by a public hearing and advertisement and ultimately a County Council vote. Miles Point admits that if a program amendment is adopted by a local legislative body, such as the County, the program amendment is forwarded to the CAC for its

review and approval. Miles Point is without sufficient knowledge, information and belief to admit or deny that the County enacted and submitted proposed local program amendments to the CAC in accordance with the quadrennial review requirement of Section 8-1809(g) of the Natural Resources Article of the Maryland Code.

8. Section 8-1809(j) of the Natural Resources Article speaks for itself and therefore no response is necessary to the averment quoting this section. Miles Point admits that Section 8-109(j) was correctly quoted.

9. Miles Point admits the averments set forth in Paragraph 9 of the Amended Complaint, except whether Talbot County's local program fully complies with the guidelines established by Section 8-1801.1 of the Natural Resources Article of the Maryland Code.

10. Miles Point admits that COMAR 27.01.02.06A(2) is part of the criteria for program development for the critical areas program. Miles Point admits that the County correctly cited COMAR 27.01.02.06A(2) in Paragraph 10 of the Amended Complaint. Miles Point further states that the County did not coordinate with affected municipalities when it enacted Bill 933.

11. Midland admits that Talbot County adopted the local critical area program in 1989 and that it included three maps showing anticipated growth areas around the Towns of Easton, St. Michaels and Oxford. Miles Point also admits that the 1989 ordinance and program were approved by the CAC. Miles Point is without sufficient knowledge, information or belief to admit or deny whether using those maps, the County reserved growth allocation for Easton, Oxford and St. Michaels, although Miles Point admits the County provided growth allocation to each of the referenced municipalities.

12. Miles Point admits that the 1989 critical area plan provided for quadrennial review of the entire critical area program, including the three maps, but is without sufficient

knowledge, information or belief to admit or deny the remaining averments set forth in Paragraph 12 of the Amended Complaint.

13. Miles Point admits that on April 25, 2000, the County duly enacted and submitted Bill 762 to the CAC for review as a local program amendment. The remaining averments set forth in Paragraph 13 of the Amended Complaint are denied.

14. Miles Point is without sufficient knowledge, information or belief to admit or deny the averments set forth in Paragraph 14 of the Amended Complaint as to the application of Bill 762. Miles Point denies that the Town of St. Michaels has not utilized growth allocation reserved to it.

15. Miles Point denies the averments set forth in Paragraph 15 of the Amended Complaint.

16. Miles Point admits that in December 2003, the County Council approved comprehensive program amendments to the local critical area program, including Bill 933 and forwarded those amendments to the CAC for review. Miles Point admits a copy of Bill 933 was attached as an exhibit to the Amended Complaint.

17. The averments set forth in Paragraph 17 of the Amended Complaint constitute a legal conclusion to which no response is necessary. Nevertheless, the averments are denied. Miles Point further states that prior to the enactment of Bill 933, the County failed to coordinate with either the Towns of Oxford and St. Michaels to address their need for growth.

18. Miles Point admits that pursuant to Section 8-1809(o)(1) of the Natural Resources Article of the Maryland Annotated Code (cited in the Amended Complaint as § 8-1809(n)(i)), the CAC is required to act on proposed amendments within 90 days of the CAC's acceptance of the proposed amendment to the critical area plan. The remaining averments set forth in Paragraph 18 of the Amended Complaint are denied.

19. Miles Point admits that the CAC refused to approve Bill 933 as a local program amendment. Miles Point denies that Bill 933 complies with the standards set forth in Section 8-1808(b)(1) through (3) of the Natural Resources Article of the Maryland Annotated Code and/or criteria adopted by the CAC. The remaining averments set forth in Paragraph 19 of the Amended Complaint are denied.

20. The responses set forth in Paragraphs 1 through 20 of this Proposed Answer are incorporated herein by reference as if set forth in full herein.

21. Miles Point denies the averments set forth in Paragraph 21 of the Amended Complaint.

22. Miles Point denies the averments set forth in Paragraph 22 of the Amended Complaint.

23. Miles Point admits that the CAC failed and/or refused to approve Bill 933 as a local program amendment to the County's critical area program. The remaining averments set forth in Paragraph 23 of the Amended Complaint are denied.

24. Miles Point denies the averments set forth in Paragraph 24 of the Amended Complaint.

25. Miles Point denies the averments set forth in Paragraph 25 of the Amended Complaint.

26. Miles Point admits that a declaratory judgment will serve to terminate the uncertainty or controversy arising out of Bill 933 and that an actual controversy exists between the County on one hand and Miles Point on the other as to the CAC's refusal to approve Bill 933 as a program amendment. The remaining averments set forth in Paragraph 26 of the Amended Complaint are denied.

Miles Point denies that the County is entitled to the relief requested in the *ad damnum* clause following Paragraph 26 of the Amended Complaint.

27. The responses set forth in Paragraphs 1 through 26 of this Proposed Answer are incorporated herein by reference as if set forth full herein.

28. Miles Point denies the averments set forth in Paragraph 28 of the Amended Complaint.

29. Miles Point admits the averments set forth in Paragraph 29 of the Amended Complaint. Miles Point further states that the criteria adopted by the CAC includes regulations set forth in the Code of Maryland Regulations.

30. Miles Point admits that the issue before the CAC was whether Bill 933 complied with the established standards and criteria of the CAC. Miles Point also admits that if Bill 933 complied with the requirements and criteria of the CAC, the CAC was required to approve the program amendment. Miles Point denies that the CAC lacked discretion to consider the regulations in addition to the statutes in determining whether Bill 933 complied with the Critical Area Program.

31. Miles Point denies the averments set forth in Paragraph 31 of the Amended Complaint.

32. Miles Point denies the averments set forth in Paragraph 32 of the Amended Complaint.

33. Miles Point denies the averments set forth in Paragraph 33 of the Amended Complaint.

34. Miles Point denies the averments set forth in Paragraph 34 of the Amended Complaint.

35. Miles Point denies the averments set forth in Paragraph 35 of the Amended Complaint.

Miles Point denies that the County is entitled to the relief requested in the *ad damnum* clause following Paragraph 35 of the Amended Complaint.

36-40. Miles Point denies that Talbot County is entitled to appeal the decision of the CAC pursuant to Title 7, Chapter 200 of the Maryland Rules. Miles Point adopts and incorporates by reference the arguments set forth by the CAC in its Motion to Dismiss relative to Count III of the Amended Complaint.

### III.

Miles Point asserts the following affirmative defenses pursuant to Maryland Rule 2-323:

- (1) Illegality;
- (2) Waiver;
- (3) Laches; and
- (4) Estoppel.

#### Verification

I solemnly affirm under the penalties of perjury that the contents of the foregoing Answer to Amended Complaint are true and correct to the best of my knowledge, information and belief.

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George Valanos for Miles Point Property,  
LLC and The Midland Companies, Inc.

Respectfully submitted,

---

Richard A. DeTar  
Miles & Stockbridge, P.C.  
101 Bay Street  
Easton, Maryland 21601  
(410) 822-5280

Attorneys for Intervenors  
The Midland Companies, Inc. and Miles  
Point Properties, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of October 2005, a copy of the foregoing Proposed Answer to Amended Complaint was mailed first class, postage prepaid to:

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803  
Attorney for St. Michaels, MD

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  
Attorneys for Maryland Department of Natural Resources

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

hand-delivered to:

Michael L. Pullen, Esquire  
Talbot County Courthouse  
11 N. Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County, MD

and Federal Expressed to:

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

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Richard A. DeTar

Circuit Court for Talbot County

City or County

CIVIL-NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: [ ] PLAINTIFF [x] DEFENDANT CASE NUMBER: 20-C-04-5095

CASE NAME: Talbot County v Dept. of Natural Resources (Clerk to insert)

JURY DEMAND: [ ] Yes [x] No Anticipated length of trial: \_\_\_\_\_ hours or 1/2 days
RELATED CASE PENDING? [ ] Yes [x] No If yes, Case #(s), if known: 20-C-04-5095

Special Requirements? [x] Interpreter/communication impairment Which language \_\_\_\_\_
(Attach Form 1-332 if Accommodation or Interpreter Needed) Which dialect \_\_\_\_\_
[ ] ADA accommodation: \_\_\_\_\_

NATURE OF ACTION (CHECK ONE BOX)

DAMAGES/RELIEF

Grid containing categories: TORTS, LABOR, REAL PROPERTY, OTHER, A. TORTS, B. CONTRACTS, C. NONMONETARY with various checkboxes for damages and relief types.

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)
A. Mediation [ ] Yes [x] No C. Settlement Conference [ ] Yes [x] No
B. Arbitration [ ] Yes [x] No D. Neutral Evaluation [ ] Yes [x] No

TRACK REQUEST

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

[x] 1/2 day of trial or less [ ] 3 days of trial time
[ ] 1 day of trial time [x] More than 3 days of trial time
[ ] 2 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY.

Date 10/19/2005 Signature [Handwritten Signature]



IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND

Plaintiff

vs.

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

Defendant

vs.

THE COMMISSIONERS OF  
ST. MICHAELS

and

TOWN OF OXFORD, MARYLAND

Interveners, Defendants  
and Counter-Plaintiffs

RECEIVED

OCT 17 2005

DNR - LEGAL DIVISION

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

**RESPONSE TO REQUEST FOR ADMISSIONS OF FACT**

From: Talbot County, Maryland  
To: The Commissioners of St. Michaels

Talbot County, Maryland, (the "County") by undersigned counsel, pursuant to Maryland Rule 2-424, responds to The Commissioners of St. Michaels First Request for Admission of Facts as follows:

The information contained in this Response is being provided in accordance with the provisions and intent of the Maryland Rules (the "Rules"). By providing the information Requested, Talbot County does not waive objections to its Response or the information contained therein being admitted into evidence on the grounds of materiality, relevance,

ADMISSIONS

hearsay, or other proper grounds for objection.

The information sought in the Requests for Admissions of Fact may be the subject of additional discovery, including document production, supplemental interrogatory answers and depositions. Accordingly, these Responses are not provided in lieu of, and substitution of, or as a summary of the substantial information to be generated through additional discovery and the County reserves the right to supplement its responses if additional information becomes available through discovery. Moreover, to the extent that information requested through these Requests is revealed in the course of further discovery, such information shall be deemed to be automatically incorporated herein, obviating the need for supplementation of specific answers to which it may relate unless otherwise required by the Rules.

#### **General Objections**

The County objects to the Request for Admission of Facts (the "Request") to the extent they seek documents or other information that is protected from discovery by the attorney-client privilege, the attorney-client work product doctrine, the legislative privilege, the executive privilege, or documents or information that was prepared in anticipation of litigation. The County objects to the extent the Request seeks documents or other information within The Commissioners of St. Michaels ("St. Michaels") possession, or to the extent the Request seeks legal conclusions. The County objects to the extent the Request seeks documents or information that is not relevant, is not likely to lead to the discovery of admissible information, or is otherwise not discoverable. The County objects to the extent the Requests are vague, overly broad, or seek information beyond the scope of permissible discovery. The County objects to the extent the Requests are unduly burdensome and are not calculated to lead to discoverable information.

### Specific Responses

**Request No 1:** The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates any communication that occurred prior to November 15, 2003, between Talbot County (including its officers, officials, employees or agents (hereinafter the "County")) and St. Michaels (including any of its officers, officials, employees or agents (hereinafter "St. Michaels")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 1 because it seeks a binding admission that will conclusively establish this matter (Rule 2-424 (d)), even though discovery is ongoing, St. Michaels has requested the County to supplement its responses, and Rule 2-401 (e) requires the County to supplement its discovery responses.

The County objects to Request No. 1 because it is vague, ambiguous, and overly broad. For example and without limitation, as defined by St. Michaels Definitions paragraph R, "the terms 'relating to', 'related to', and 'regarding'... means *to constitute, contain information about, pertain to, or in any way directly or indirectly bear upon or deal with, that subject matter.*" Request No. 1 includes not only Bill 933, but, "... *and/or the subject or purpose of what became Bill 933.*" The term "communication" is defined so broadly as to include "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." As the Court noted in *St. James Constr. Co. v. Morlock*, 89 Md. App. 217, 230-231 (1991) "Many of the requests ... contained terms of such an ambiguous nature that no attorney worth his or her salt would allow their client to admit to them."

The County objects to Request No. 1 because it is unduly burdensome. The County has produced thousands of documents in this litigation and is in the process of producing still more.

Review of each document against the ambiguous, ill-defined, and broad standards of the Request is unduly burdensome.

The County objects to Request No. 1 because it is not the proper subject of a Request for admission and is not properly limited or framed with sufficient particularity or clarity as required under the Rule.

Requests for admissions of fact serve a limited but useful function. Because of their misuse, however, parties do not obtain a great deal of satisfaction from them as a discovery device. Regularly the propounding party seeks to obtain more of an admission than that to which he is entitled and consequently the answer given is all but useless. The purpose of the rule is not to press known discovery requests. Rather, it is intended to eliminate from trial those matters over which the parties truly have no dispute . . . The authenticity of documents, the corporate status of parties, and the undisputed foundation for evidence are but examples. Neimeyer and Richards, *Maryland Rules Commentary* 234-35 (1984). (cited in *St. James Constr. Co. v. Morlock*, 89 Md. App. 217, 230-231 (1991).

Talbot County objects to Request No. 1 because it is inconsistent with the requirements of Rule 5-1006 that require a party offering summaries of voluminous documents to prepare and provide them, and improperly purports to shift that burden onto the County. The County incorporates the General Objections herein. Without waiving any of the foregoing objections, the County denies Request No. 1 as stated.

**Request No. 2:** The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates to any communication that occurred prior to November 15, 2003, between the County and Oxford (including any of its officers, officials, employees or agents (hereinafter "Oxford")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 2 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 2 as stated.

**Request No. 3:** The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates to any communication that occurred prior to November 15, 2003, between the County and Easton (including any of its officers, officials, employees or agents (hereinafter "Easton")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 3 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 3 as stated.

**Request No. 4:** The County has produced no documents to St. Michaels as a part of discovery in this litigation that represents, refers to or relates to any communication that occurred prior to November 15, 2003, between the County and Trappe (including any of its officers, officials, employees or agents (hereinafter "Trappe")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 4 and incorporates by reference the Response to Request No. 1. In addition, the County states that Trappe has no land lying within the critical area. Without waiving any of the foregoing objections, the County denies Request No. 4 as stated.

**Request No. 5:** The County has no document authored prior to November 15, 2003 in its possession or control that discusses, references or relates to any communications between the County and St. Michaels concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 5 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 5 as stated.

**Request No. 6:** The County has no document authored prior to November 15, 2003 in its possession or control that discusses, references or relates to any communications between the County and Oxford concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 6 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 6 as stated.

**Request No. 7:** The County has no document authored prior to November 15, 2003 in its possession or control that discusses, references or relates to any communications between the County and Easton concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 7 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 7 as stated.

**Request No. 8:** The County has no document authored prior to November 15, 2003 in its possession or control that discusses, references or relates to any communications between the County and Trappe concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

**Response:** The County objects to Request No. 8 and incorporates by reference the Response to Request No. 1 and No. 4. Without waiving any of the foregoing objections, the County denies Request No. 8 as stated.

**Request No. 9:** There was no communication, of which the County has knowledge at this time, which occurred before November 15, 2003 between the County and St. Michaels relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill 933.

**Response:** The County objects to Request No. 9 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 9 as stated.

**Request No. 10:** There was no communication, of which the County has knowledge at this time, which occurred before November 15, 2003 between the County and Oxford relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill 933.

**Response:** The County objects to Request No. 10 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 10 as stated.

**Request No. 11:** There was no communication, of which the County has knowledge at this time, which occurred before November 15, 2003 between the County and Easton relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill 933.

**Response:** The County objects to Request No. 11 and incorporates by reference the Response to Request No. 1. Without waiving any of the foregoing objections, the County denies Request No. 11 as stated.

**Request No. 12:** There was no communication, of which the County has knowledge at this time, which occurred before November 15, 2003 between the County and Trappe relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill 933.

**Response:** The County objects to Request No. 12 and incorporates by reference the Response to Request No. 1 and No. 4. Without waiving any of the foregoing objections, the County denies Request No. 12 as stated.

**Request No. 13:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and St. Michaels, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine St. Michaels's "growth needs."

**Response:** The County objects to Request No. 13 and incorporates by reference the Response to Request No. 1. St. Michaels Definitions, paragraph J., purports to define "... 'growth needs' ... as having the meaning attributed thereto in COMAR Section 27.01.02.06 A. (2)." That COMAR Section does not define "growth needs", which is vague, ambiguous, overly broad, the meaning of which is left to opinion, speculation, or conjecture. The Request calls for a legal conclusion. Without waiving any of the foregoing objections, the County denies Request No. 13 as stated.

**Request No. 14:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine St. Michaels "growth needs."

**Response:** The County objects to Request No. 14 and incorporates by reference the Response to Request No. 1 and No. 13. Without waiving any of the foregoing objections, the County denies Request No. 14 as stated.

**Request No. 15:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and Easton, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine Easton's "growth needs."

**Response:** The County objects to Request No. 15 and incorporates by reference the Response to Request No. 1 and No. 13. Without waiving any of the foregoing objections, the County denies Request No. 15 as stated.

**Request No. 16:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine Easton's "growth needs."

**Response:** The County objects to Request No. 16 and incorporates by reference the Response to Request No. 1 and No. 13. Without waiving any of the foregoing objections, the County denies Request No. 16 as stated.

**Request No. 17:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and Oxford, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine Oxford's "growth needs."

**Response:** The County objects to Request No. 17 and incorporates by reference the Response to Request No. 1 and No. 13. Without waiving any of the foregoing objections, the County denies Request No. 17 as stated.

**Request No. 18:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine Oxford's "growth needs."

**Response:** The County objects to Request No. 18 and incorporates by reference the Response to Request No. 1 and No. 13. The Request calls for a legal conclusion. Without waiving any of the foregoing objections, the County denies Request No. 18 as stated.

**Request No. 19:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and Trappe, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine Trappe's "growth needs."

**Response:** The County objects to Request No. 19 and incorporates by reference the Response to Request No. 1., No. 4, and No 13. Without waiving any of the foregoing objections, the County denies Request No. 19 as stated.

**Request No. 20:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine Trappe's "growth needs."

**Response:** The County objects to Request No. 20 and incorporates by reference the Response to Request No. 1, No. 4, and No. 13. The Request calls for a legal conclusion. Without waiving any of the foregoing objections, the County denies Request No. 20 as stated.

**Request No. 21:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge, at this time, referring to, relating to or regarding any attempt by the County to act "in coordination" with St. Michaels to accommodate St. Michaels "growth needs."

**Response:** The County objects to Request No. 21 and incorporates by reference the Response to Request No. 1.and No. 13. St. Michaels Definitions, paragraph K., purports to define "... 'in

coordination with' ... as having the meaning attributed thereto in COMAR Section 27.01.02.06 A. (2)." That COMAR Section does not define "in coordination with", which is vague, ambiguous, overly broad, the meaning of which is left to opinion, speculation, or conjecture. The Request calls for a legal conclusion. Without waiving any of the foregoing objections, the County denies Request No. 21 as stated.

**Request No. 22:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act "in coordination" with St. Michaels to accommodate St. Michaels "growth needs."

**Response:** The County objects to Request No. 22 and incorporates by reference the Response to Request No. 1, No. 13 and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 22 as stated.

**Request No. 23:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge, at this time, referring to, relating to or regarding any attempt by the County to act "in coordination" with Easton to accommodate Easton's "growth needs."

**Response:** The County objects to Request No. 23 and incorporates by reference the Response to Request No. 1, No. 13, and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 23 as stated.

**Request No. 24:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act "in coordination" with Easton to accommodate Easton's "growth needs."

**Response:** The County objects to Request No. 24 and incorporates by reference the Response to Request No. 1, No. 13, and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 24 as stated.

**Request No. 25:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge, at this time, referring to, relating to or regarding any attempt by the County to act “in coordination” with Oxford to accommodate Oxford’s “growth needs.”

**Response:** The County objects to Request No. 25 and incorporates by reference the Response to Request No. 1, No. 13, and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 25 as stated.

**Request No. 26:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act “in coordination” with Oxford to accommodate Oxford’s “growth needs.”

**Response:** The County objects to Request No. 24 and incorporates by reference the Response to Request No. 1, No. 13, and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 26 as stated.

**Request No. 27:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge, at this time, referring to, relating to or regarding any attempt by the County to act “in coordination” with Trappe to accommodate Trappe’s “growth needs.”

**Response:** The County objects to Request No. 23 and incorporates by reference the Response to Request No. 1., No. 4, No. 13, and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 27 as stated.

**Request No. 28:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act “in coordination” with Trappe to accommodate Trappe’s “growth needs.”

**Response:** The County objects to Request No. 28 and incorporates by reference the Response to Request No. 1., No. 4, No. 13, and No. 21. Without waiving any of the foregoing objections, the County denies Request No. 28 as stated.

**Request No. 29:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act on a cooperative basis with Easton regarding Talbot County Bill number 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

**Response:** The County objects to Request No. 29 and incorporates by reference the Response to Request No. 1. Any “... attempt by the County to act on a cooperative basis...” with Easton “...regarding Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill 933” is undefined, vague, ambiguous, overly broad, the meaning of which is left to opinion, speculation, or conjecture. Without waiving any of the foregoing objections, the County denies Request No. 29 as stated.

**Request No. 30:** During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act on a cooperative basis with St. Michaels regarding Talbot County Bill number 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

**Response:** The County objects to Request No. 30 and incorporates by reference the Response to Request No. 1 and No. 29. Without waiving any of the foregoing objections, the County denies Request No. 30 as stated.

**Request No. 31:** During the drafting of and to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act on a cooperative basis with Oxford regarding Talbot County Bill number 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

**Response:** The County objects to Request No. 31 and incorporates by reference the Response to Request No. 1 and No. 29. Without waiving any of the foregoing objections, the County denies Request No. 31 as stated.

**Request No. 32:** During the drafting of and to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act on a cooperative basis with Trappe regarding Talbot County Bill number 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

**Response:** The County objects to Request No. 32 and incorporates by reference the Response to Request No. 1, No. 4 and No. 29. Without waiving any of the foregoing objections, the County denies Request No. 32 as stated.

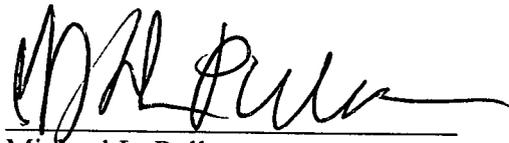
**Request No. 33:** The County is required to work "in coordination" with the Municipalities before developing a plan to accommodate the growth needs of the Municipalities.

**Response:** The County objects to Request No. 33 and incorporates by reference the Response to Request No. 1. The phrases "in coordination with the Municipalities" "before developing a

plan” and “to accommodate the growth needs of the Municipalities” are undefined, vague, ambiguous, overly broad, the meaning of which is left to opinion, speculation, or conjecture. The Request calls for legal conclusions. Without waiving any of the foregoing objections, the County denies Request No. 33 as stated.

**Request No. 34:** The County is required to accommodate the “growth needs” of the Municipalities in its critical area program and amendments thereto.

**Response:** The County objects to Request No. 34 and incorporates by reference the Response to Request No. 1 and No 13. The phrase “accommodate the ‘growth needs’ of the Municipalities” is undefined, vague, ambiguous, overly broad, the meaning of which is left to opinion, speculation, or conjecture. The Request calls for legal conclusions. Without waiving any of the foregoing objections, the County denies Request No. 34 as stated.



Michael L. Pullen  
Talbot County Office of Law  
11 North Washington St  
Easton, Maryland 21601  
(410) 770- 8094  
Talbot County Attorney

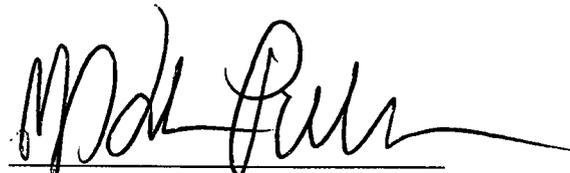
I HEREBY CERTIFY that on this 13th day of October, 2005, a copy of Talbot County's Response to Request for Admissions of Fact to The Commissioners of St. Michaels was mailed first-class, postage prepaid to:

Paul J. Cucuzzella, Esquire  
Maryland Dept of Natural Resources  
480 Taylor Avenue, C-4  
Annapolis, Maryland 21401

Victoria Shearer, Esquire  
Allen, Karpinski, Bryant & Karp, P.A.  
100 E Pratt St Ste 100  
Baltimore, Maryland 21202-1089

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
P.O. Box 44  
Salisbury, Maryland 21803-0044

David R Thompson, Esquire  
Cowdrey, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



Michael L. Pullen

IN THE CIRCUIT COURT FOR TALBOT COUNTY, 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 :

Interveners, Defendants :  
and Counter-Plaintiffs :

**NOTICE OF SERVICE OF DISCOVERY**

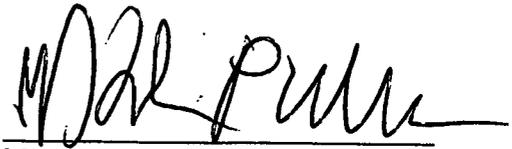
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P.O. Box 44  
Salisbury, Maryland 21803-0044

David R Thompson, Esquire  
Cowdrey, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



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

### Certificate of Service

I HEREBY CERTIFY that on this 13 day of October, 2005, a copy of the foregoing was mailed first-class, postage prepaid to:

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

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

Victoria Shearer, Esquire  
Allen, Karpinski, Bryant & Karp, P.A.  
100 E Pratt St Ste 100  
Baltimore, Maryland 21202-1089

David R Thompson, Esquire  
Cowdry, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



Of Counsel for Plaintiff  
Talbot County, Maryland



**RECEIVED**

SEP 20 2005

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL  
RESOURCES, et al

Defendants

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

\* \* \* \* \*

**NOTICE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of September, 2005, a copy of the RESPONSE TO THE FIRST REQUEST FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF and a copy of the FIRST SET OF INTERROGATORIES to Talbot County, Maryland from the Town of Oxford, were hand-delivered to: Michael L. Pullen, Esquire, Talbot County Office of Law, Courthouse, 11 N. Washington Street, Easton, Maryland 21601 and sent via facsimile and first class mail, postage prepaid to:

Daniel Karp, Esquire  
Victoria 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

H. Michael Hickson, Esquire  
Jesse Hammock, Esquire  
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  
Brynja M. Booth  
Cowdrey, Thompson & Karsten, P.A.  
130 N. Washington Street  
P.O. Box 1747  
Easton, MD 21601  
(410) 822-6800

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of September, 2005, a copy of the foregoing Notice of Service was sent first class mail, postage prepaid to:

Daniel Karp, Esquire  
Victoria 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

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

Michael L. Pullen, Esquire  
Talbot County Office of Law  
Courthouse  
11 N. Washington Street  
Easton, Maryland 21601



David R. Thompson

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL  
RESOURCES, et al

Defendants

\*

\*

\*

\*

\*

\*

IN THE

CIRCUIT COURT

FOR

TALBOT COUNTY,

MARYLAND

Case No. 20-C-04-005095DJ

\* \* \* \* \*

**RESPONSE BY THE TOWN OF OXFORD TO  
TO THE FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS BY PLAINTIFF**

The Town of Oxford ("the Town"), by its undersigned counsel, pursuant to Maryland Rule 2-424, responds to the First Requests For Production of Documents propounded by Talbot County, Maryland as follows.

The information contained in this Response is being provided in accordance with the provisions and intent of the Maryland Rules ("the Rules"). By providing the information requested, the Town does not waive evidentiary objections to the use of its Response or the information contained therein on the grounds of materiality, relevance, hearsay, or other proper grounds for objection at any evidentiary proceeding.

The information sought by Talbot County's Requests for Production of Documents may be the subject of additional discovery, including document production, supplemental interrogatory answers and depositions. Accordingly, these Responses are not provided in lieu of, in substitution of, or as a summary of information to be generated through additional discovery. The Town reserves the right to supplement this Response if additional

information becomes available. Moreover, to the extent that information requested through these Requests is revealed or produced in the course of further discovery, such information shall be deemed to be automatically incorporated herein, obviating the need for supplementation of specific answers to which it may relate unless otherwise required by the Rules.

### **General Objections**

The Town objects to the Requests for Production of Documents (the "Requests") to the extent they seek documents or other information that is protected from discovery by the attorney-client privilege, the attorney work product doctrine, the legislative privilege, the executive privilege, or was prepared in anticipation of litigation. The Town objects to the extent the Requests seek documents or other information already within the County's possession or to the extent the County seeks legal conclusions. The Town objects to the extent the Requests seek documents or information that is not relevant, is not likely to lead to the discovery of admissible information, or is otherwise not discoverable. The Town objects to the extent the Requests are vague, overly broad, or seek information beyond the scope of permissible discovery. The Town objects to the extent the Requests are unduly burdensome and are not calculated to lead to discoverable information.

### **Specific Responses**

**Request No. 1:** Copies of the Town's Critical Area Program, including the text of the program originally adopted and all program amendments and refinements proposed or adopted by the Critical Area Commission including all documents and correspondence by and between the Town and the Critical Area Commission.

**Response No. 1:** The Town objects to the extent that Request No. 1 seeks documents

protected by the attorney client privilege, the work product doctrine, the legislative privilege or the executive privilege. If it was the County's intent to request that the Town produce all amendments and refinements drafted, proposed and/or adopted by the Town and submitted to the Critical Area Commission, and all program related documents as changed by the Town and the Critical Area Commission, then, without waiving any of the aforesaid objections, the Town will produce all responsive non-privileged documents as they are kept in the ordinary course of business at the Town Office, 101 Market Street, Oxford, Maryland 21654, at a time agreeable to counsel.

**Request No. 2:** All documents that refer or relate to actual, proposed, attempted, or suggested annexations to the Town of St. Michaels, whether approved, denied, supported, or opposed by the Town, from 1989 to the present.

**Response No. 2:** The Town of Oxford has no such documents in its possession. Assuming that the reference to "The Commissioners of St. Michaels" in this Request is in error, the Town of Oxford responds that it maintains, in the ordinary course of business, documents relating to all proposed annexations to the Town of Oxford. Those documents are available for inspection and will be produced for inspection and copying as they are maintained in the ordinary course of business in the Town Office. The Town objects to Request No. 2 to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, the legislative privilege or the executive privilege, and to the extent it is overly broad and unduly burdensome by virtue of the unqualified reference to "all documents that refer or relate" to unspecified annexation inquiries.

**Request No. 3:** All documents that refer or relate to the growth allocation acreage reserved to The Commissioners of St. Michaels in Talbot County's critical area program,

including all documents that memorialize, contain, refer or relate to any correspondence, discussion, meeting, agreement, understanding, or representation by or between the Town and the County concerning growth allocation.

**Response No. 3:** The Town of Oxford has no such documents in its possession. Assuming that the Plaintiff intended to refer to the Town of Oxford rather than the Commissioners of St. Michaels, the Town objects to Request No. 3 to the extent that it seeks documents protected by the attorney client privilege, the work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 3 in that it is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. Without waiving any of the aforesaid objections, or any other applicable objection, the Town will produce all non-privileged responsive documents as they are maintained in the ordinary course of business in the Town Office, at a time agreeable to counsel.

**Request No. 4:** The Commissioners of St. Michaels comprehensive plans in place when the Town's critical area program was first developed and adopted, to and including the present.

**Response No. 4:** The Town of Oxford has no such documents in its possession. Assuming that the Plaintiff intended to refer to the Town of Oxford rather than the Commissioners of St. Michaels, the Town will produce all responsive and non-privileged documents as they are maintained in the ordinary course of business in the Town Office.

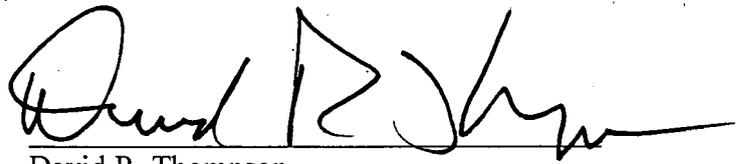
**Request No. 5:** All documents showing The Commissioners of St. Michaels growth policies and plans in place when the Town's critical area program was first developed and adopted, to and including the present.

**Response No. 5:** The Town of Oxford has no such documents in its possession. Assuming that the Plaintiff intended to refer to the Town of Oxford rather than the

Commissioners of St. Michaels, the Town objects to Request No. 5 to the extent that it seeks documents protected by the attorney client privilege, the attorney work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 5 in that it is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Without waiving any of these objections, the Town will produce all responsive non-privileged documents as they are maintained in the ordinary course of business in the Town Office.

**Request No. 6:** All documents that refer or relate to Talbot County Bill 762.

**Response No. 6:** The Town of Oxford maintains for a reasonable time, in the ordinary course of its business, copies of all correspondence and documents that relate to matters involving the Town, including documents provided to the Town by Talbot County. The Town does not file documents by reference to bill numbers or index numbers assigned by Talbot County. Accordingly, the Town cannot locate documents by the reference to "Talbot County Bill 762" as referenced in Request Number 6. Accordingly, the Town objects to Request No. 6 in that it is too vague to permit a response, is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Without waiving this objection, the Town will produce all responsive non-privileged documents as they are maintained in the ordinary course of business in the Town Office.

  
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

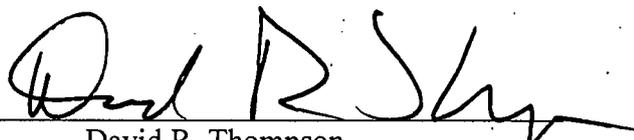
**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of September, 2005, a copy of the foregoing Response to Plaintiff's First Request for Production of Documents was hand delivered to Michael L. Pullen, Esquire, Talbot County Office of Law, Courthouse, 11 N. Washington Street, Easton, Maryland 21601 and sent via facsimile and first class mail, postage prepaid to:

Daniel Karp, Esquire  
Victoria 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

H. Michael Hickson, Esquire  
Jesse Hammock, Esquire  
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



D. If an act, event, transaction, occasion, instance, matter, course of conduct, course of action, person or writing is mentioned or referred to in response to more than one of these Interrogatories, you need not completely identify and describe it or him in every instance, provided you supply a complete identification in one such instance, and in each other such instance make a specific reference to the place, paragraph and page number in the answers to these Interrogatories where it, he or she is fully identified and described.

E. Provide the following information in chronological order with respect to each oral communication which is the subject matter in whole or in part of any of these Interrogatories.

1. Who was present;
2. The dates thereof;
3. Where the same occurred, e.g., if in direct person-to-person conversation, the place from which each person involved participated; and,
4. What was said by each person involved during such conversation and the order in which it was said, identifying what was said with the person speaking.

F. Whenever, in response to these Interrogatories, reference is made to a natural person, state his full name and present address, if known, and his present or last known business position and affiliation.

#### DEFINITIONS

A. The phrase "accommodate the growth needs of the municipalities" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A (2).

B. 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.

C. The term "any" means any and all.

D. "Bill 933" shall refer to Talbot County Bill 933, as attached to the County's Second Amended Complaint.

E. 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.

F. The term "Complaint" refers to the pleading entitled "Complaint" that is filed in the above captioned litigation.

G. The "Critical Area Commission" shall refer to the Maryland Critical Area Commission For The Chesapeake and Atlantic Coastal Bays.

H. 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.

I. The phrase "growth needs" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

J. The term "in coordination with" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

K. The term "including" means "including but not limited to."

L. "Identify," "identity," "identification" when referring to a natural person means to provide an identification sufficient to serve such person with process to require his or her attendance at this Court and shall include, without limitation, his or her full name, present or last known address, present or last known business affiliation, title or occupation, and each of his or her positions during the applicable period of time covered by any answer referring to such person. When used in reference to a writing or document (including, without limitation, any business records) such words mean to give a sufficient characterization of such writing or document as properly to identify it in a subpoena issued pursuant to the Maryland Rules and shall include, without limitation, the following information with respect to each such document.

1. The date appearing on such document, and if it has no date, the answer shall so state and shall give the date or approximate date such document was prepared;

2. The identity or descriptive code number, file number, title, or label of such document;

3. The general nature and description of such document, and if it was not signed, the answer shall so state and shall give the name of the person or persons who prepared it;

4. The name of the person to whom such document was addressed and the name of each person other than such addressee to whom such document, or copies of it, were given or sent;

5. The name of the person having present possession, custody or control of such document; and

6. Whether or not any draft, copy or reproduction of such document contains any postscripts, notation, change or addendum not appearing on the document itself, and if so, the answer shall give the description of each draft, copy or reproduction.

M. The word "Municipalities" shall refer to the municipal governments of Easton, Oxford, St. Michaels, and Trappe, Maryland.

N. 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.

O. The term "person" as used herein means, in the plural as well as singular, any natural person, firm, association, partnership, corporation, or other form of legal entity, unless the context indicates otherwise, as well as any individual, unincorporated association or society, municipal or other corporation, the State, Talbot County, its agencies or political subdivision, any Court, or any other governmental entity.

P. The term "present time" as used herein means the date on which these Interrogatories were served on you.

Q. 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.

R. "The facts upon which you rely" in support of any allegation of legal theory, contention, denial, etc. or "the facts, matters and circumstances" surrounding a transaction or occurrence refers to a full and complete statement of all evidence within your knowledge upon which you rely to support the allegation or which surrounds the transaction or occurrence. In addition thereto, identify, pursuant to Section *L supra*, those individuals with knowledge of these facts, and all documents reflecting these facts or relied upon by you, and if the facts relied upon are related to an oral communication, then provide a statement of (i) the name, address and business position of each and every person who participated in such communication, whether as a speaker, hearer or overhearer; (ii) the date, time and place of such oral communication ; and (iii) the subject matter of such oral communication with sufficient particularity to reveal and make understandable each and every subject matter therein referred to and the subject of each thereof. A failure in any one Interrogatory which requests the facts upon which you rely to request the identity of individuals or documents or to state the substance of any oral communication upon which you rely should not be construed as a waiver of the requirements set forth in this paragraph.

S. The terms "writing" and/or "document" as used herein mean all records, papers and books, transcriptions, pictures, drawings or diagrams of every nature, whether transcribed by hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means

made, whether in your actual or constructive possession or under control or not, relating or pertaining in any way to the subject matters in connection with which it is used and includes originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photostats, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

T. The words "you", "your", and "County" refer to the party to whom these Interrogatories are addressed, Plaintiff Talbot County, Maryland.

INTERROGATORY NO. 1: Identify by name, title and address, each and every individual who will provide an affidavit on behalf of the Plaintiff or who will testify in the Plaintiff's case in connection with the matters alleged in the Second Amended Complaint in this matter.

INTERROGATORY NO. 2: Identify by title, date, author, and by name and address of the current custodian, each and every document which Talbot County contends is relevant to any claim by the County that it has or will "accommodate the growth needs of the municipalities" within Talbot County, including specifically the Town of Oxford.

INTERROGATORY NO. 3: Describe in detail all acts by Talbot County or any of its officials or agencies to coordinate the substance of or purpose of Bill 933 with the planning or growth needs of the Town of Oxford.

INTERROGATORY NO. 4: Describe and identify in detail any facts that support an argument or position in this case that Talbot County has or will accommodate the growth needs or growth policies of the municipalities of Talbot County, including the Town of Oxford.

INTERROGATORY NO. 5: Describe and identify in detail all acts which Talbot County characterizes as all "cooperative actions" performed or taken by Talbot County or any of its agencies with respect to the Town of Oxford and the County's introduction of and enactment of Bill 933.

INTERROGATORY NO. 6: Identify in detail all electronic, digital, oral, or written communications that any elected or appointed official, or any individual employed by Talbot County, has had with any elected or appointed official of the Town of Oxford, or any employee of the Town of Oxford, concerning the subjects of Bill 933, or critical area growth allocation in general.

INTERROGATORY NO. 7: Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, and state the subject matter of the information possessed by that person.

INTERROGATORY NO. 8: If you intend to rely upon any documents or other tangible things to support a position that you have taken or intend to take in the action, provide a brief description, by category and location, of all such documents and other tangible things, and identify all persons having possession, custody, or control of them.

INTERROGATORY NO. 9: If you allege that any elected or appointed official of the Town of Oxford, or any employee of the Town of Oxford, has made any admissions, statements, or taken any actions against the Town's interests in this case, describe fully each such admission, statement or action against interest made, whether verbal, written or otherwise, including in such description for each admission the identity of the person making such admission, the substance of each admission, the place and date each admission was made, and identify (name, address and telephone number) all witnesses to the admission.

INTERROGATORY NO. 10 Identify each person whom you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and attach to your answers any written report made by the expert concerning those findings and opinion.

INTERROGATORY NO. 11: Identify all written, e-mail, or digital communications between any county employee, or county elected or appointed official, and the Maryland Department of Planning or any official, or employee thereof, concerning the substance of Bill 933. In lieu of identifying each such communication, provide copies thereof and attach them to your answer to this interrogatory.

INTERROGATORY NO. 12: Identify all written, e-mail, or digital communications between any county employee, or county elected or appointed official, and the Maryland Department of the Environment or any official, or employee thereof, concerning the substance of Bill 933. In lieu of identifying each such communication, provide copies thereof and attach them to your answer to this interrogatory.

INTERROGATORY NO. 13: Identify all written, e-mail, or digital communications between any county employee, or county elected or appointed official, and the Maryland Department of Natural Resources, or employee thereof, concerning the substance of Bill 933. In lieu of identifying each such communication, provide copies thereof and attach them to your answer to this interrogatory.

INTERROGATORY NO. 14: Identify all written, e-mail, or digital communications between any county employee, or county elected or appointed official, and the Critical Area

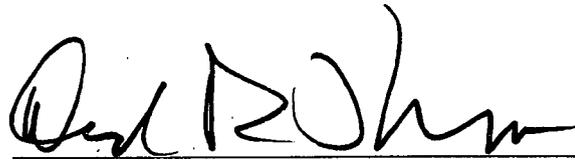
Commission, or employee thereof, concerning the substance or enactment of Bill 933. In lieu of identifying each such communication, provide copies thereof and attach them to your answer to this interrogatory.

INTERROGATORY NO. 15: Identify all written, e-mail, or digital communications between any county employee, or county elected or appointed official, and the Maryland Association of Counties or any official, or employee thereof, concerning the substance of Bill 933. In lieu of identifying each such communication, provide copies thereof and attach them to your answer to this interrogatory.

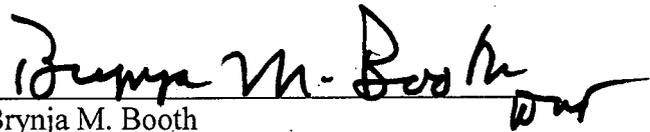
INTERROGATORY NO. 16: Identify each and every communication between the Talbot County Manager and the Talbot County Planning Officer concerning the contents or substance of or procedure relating to the enactment of Bill 933. In lieu thereof, provide copies of all such communications.

INTERROGATORY NO. 17: Identify each and every communications between the Talbot County Manager and any member of the Talbot County Council concerning the contents or substance of or procedure relating to the enactment of Bill 933. In lieu thereof, provide copies of all such communications.

INTERROGATORY NO. 18: Identify each and every communication between any member of the Talbot County Council and John C. North II concerning the substance of Talbot County Bill 933, or the enactment thereof. In lieu thereof, provide copies of all such communications.



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

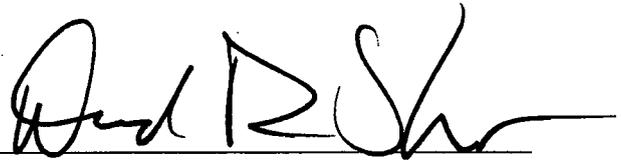
CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of September, 2005, a copy of the foregoing Interrogatories from the Town of Oxford to Talbot County, Maryland were hand delivered to Michael L. Pullen, Esquire, Talbot County Office of Law, Courthouse, 11 N. Washington Street, Easton, Maryland 21601 and sent via facsimile and first class mail, postage prepaid to:

Daniel Karp, Esquire  
Victoria 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

H. Michael Hickson, Esquire  
Jesse Hammock, Esquire  
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



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: hickson@bnhlaw.com

September 9, 2005

**RECEIVED**

SEP 13 2005

**DNR - LEGAL DIVISION**

**VIA FIRST CLASS MAIL**

Circuit Court of Maryland  
Talbot County  
P.O. Box 723  
Easton, Maryland 21601  
Attn: Court Clerk

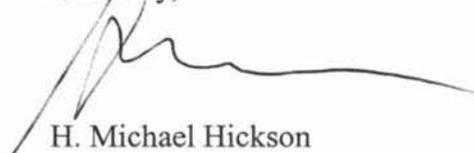
RE: Talbot County, Maryland, et al. v. Department of Natural Resources, et al.  
Case No.: 20-C04-005095DJ

Dear Clerk:

Enclosed please find an original Notice of Service of Discovery, for filing, in the above-referenced action.

Thank you for your attention to this matter.

Sincerely,



H. Michael Hickson

JBH/kr

Enclosure

cc: Daniel Karp, Esq. (w/encl.)  
Michael L. Pullen, Esq. (w/encl.)  
Paul J. Cucuzzella, Esq. (w/encl.)  
David R. Thompson, Esq. (w/encl.)

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**

I HEREBY CERTIFY that on this 9th day of September, 2005, a copy of The Commissioners of St. Michaels' First Request for Admissions of Fact, First Set of Interrogatories and Second Request for Production of Documents to Talbot County, Maryland, were sent, via Federal Express to:

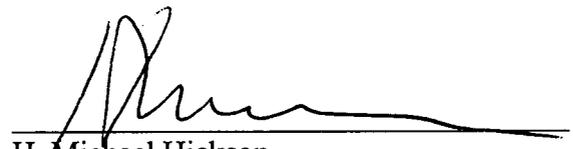
Michael L. Pullen, Esquire  
11 North Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County

And by first class mail, postage prepaid, 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. Cucuzzella, 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.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044  
Telephone: 410-546-4644  
Attorney for The Commissioners  
of St. Michaels

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* \* \* \* \*

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

\* \* \* \* \*

**THE COMMISSIONERS OF ST. MICHAELS  
FIRST REQUEST FOR ADMISSION OF FACTS**

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

**FROM:** The Commissioners of St. Michaels  
Counter Plaintiff

The Commissioners of St. Michaels ("St. Michaels"), by its undersigned attorney, pursuant to Maryland Rule 2-424, requests that Plaintiff, Talbot County, Maryland (the "County"), within the time after service of this Request required by the Maryland Rules, admit that each of the Statements of Fact, set forth below, are true. In accordance with Maryland Rule 2-424, if unable to admit any of the following Statements of Fact, or the genuineness of any of the following documents, the party or parties to whom these requests are directed is requested to set forth in detail the reasons why the truth of any such statements or the genuineness of any such documents cannot be admitted or denied, in whole or in part.

## DEFINITIONS

A. The phrase "accommodate the growth needs of the municipalities" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

B. 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.

C. The term "any" means any and all.

D. "Bill 933" shall refer to Talbot County Bill 933, as attached to County's Second Amended Complaint.

E. 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.

F. The term "Complaint" refers to the pleading entitled "Complaint" that is filed in the above captioned Litigation.

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

H. 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.

I. The phrase "Growth Allocation" means and refers to the 155 acres reserved for Easton, the 195 acres reserved for Oxford and the 245 acres reserved for St. Michaels for growth allocation by Talbot County.

J. The phrase "growth needs" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

K. The term "in coordination with" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

L. The term "including" means "including but not limited to."

M. "Identify," "identity," "identification" when referring to a natural person mean to

provide an identification sufficient to serve such person with process to require his or her attendance at this Court and shall include, without limitation, his or her full name, present or last known address, present or last known business affiliation, title or occupation, and each of his or her positions during the applicable period of time covered by any answer referring to such person. When used in reference to a writing or document (including, without limitation, any business records) such words mean to give a sufficient characterization of such writing or document as properly to identify it in a subpoena issued pursuant to the Maryland Rules and shall include, without limitation, the following information with respect to each such document.

1. The date appearing on such document, and if it has no date, the answer shall so state and shall give the date or approximate date such document was prepared;
2. The identity or descriptive code number, file number, title, or label of such document;
3. The general nature and description of such document, and if it was not signed, the answer shall so state and shall give the name of the person or persons who prepared it;
4. The name of the person to whom such document was addressed and the name of each person other than such addressee to whom such document, or copies of its, were given or sent;
5. The name of the person having present possession, custody or control of such document; and
6. Whether or not any draft, copy or reproduction of such document contains any postscripts, notation, change or addendum not appearing on the document itself, and if so, the answer shall give the description of each draft, copy or reproduction.

N. The word "Municipalities" shall refer to the municipal governments of Easton, Oxford, St. Michaels, and Trappe, Maryland, and all of their respective officers, officials and employees.

O. 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.

P. The term "person" as used herein means, in the plural as well as singular, any natural person, firm, association, partnership, corporation, or other form of legal entity, unless the context indicates otherwise, as well as 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.

Q. The term "present time" as used herein means the date on which these Interrogatories

were served on you.

R. 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.

S. "The facts upon which you rely" in support of any allegation of legal theory, contention, denial, etc. or "the facts, matters and circumstances" surrounding a transaction or occurrence refers to a full and complete statement of all evidence within your knowledge upon which you rely to support the allegation or which surrounds the transaction or occurrence. In addition thereto, identify, pursuant to Section J *supra*, those individuals with knowledge of these facts, and all documents reflecting these facts or relied upon by you, and if the facts relied upon are related to an oral communication, then provide a statement of (i) the name, address and business position of each and every person who participated in such communication, whether as a speaker, hearer or overhearer; (ii) the date, time and place of such oral communication; and (iii) the subject matter of such oral communication with sufficient particularity to reveal and make understandable each and every subject matter therein referred to and the subject of each thereof. A failure in any one Interrogatory which requests the facts upon which you rely to request the identity of individuals or documents or to state the substance of any oral communication upon which you rely should not be construed as a waiver of the requirements set forth in this paragraph.

T. The terms "writing" and/or "document" as used herein mean all records, papers and books, transcriptions, pictures, drawings or diagrams of every nature, whether transcribed by hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under control or not, relating or pertaining in any way to the subject matters in connection with which it is used and includes originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photostats, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

U. The words "you," "your," and "County" refer to the party to whom these Interrogatories are addressed, Plaintiff Talbot County, Maryland.

## STATEMENTS OF FACT

1. The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates any communication that occurred prior to November 15, 2003, between Talbot County (including its officers, officials, employees or agents (hereinafter the "County")) and St. Michaels (including any of its officers, officials, employees or agents (hereinafter "St. Michaels")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

2. The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates to any communication that occurred prior to November 15, 2003, between the County and Oxford (including any of its officers, officials, employees or agents (hereinafter "Oxford")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

3. The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates to any communication that occurred prior to November 15, 2003, between the County and Easton (including any of its officers, officials, employees or agents (hereinafter "Easton")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

4. The County has produced no document to St. Michaels as a part of discovery in this litigation that represents, refers to or relates to any communication that occurred prior to November 15, 2003, between the County and Trappe (including any of its officers, officials, employees or agents (hereinafter "Trappe")) concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

5. The County has no document authored prior to November 15, 2003, in its possession or control that discusses, references or relates to any communications between the County and St. Michaels concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

6. The County has no document authored prior to November 15, 2003, in its possession or control that discusses, references or relates to any communications between the

County and Oxford concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

7. The County has no document authored prior to November 15, 2003, in its possession or control that discusses, references or relates to any communications between the County and Easton concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

8. The County has no document authored prior to November 15, 2003, in its possession or control that discusses, references or relates to any communications between the County and Trappe concerning, regarding or pertaining to Talbot County Bill 933 and/or the subject or purpose of what became Bill 933.

9. There was no communication, of which the County has knowledge at this time, which occurred before November 15, 2003 between the County and St. Michaels relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

10. There was no communication, of which the County has knowledge at this time, that occurred before November 15, 2003 between Talbot County and Oxford relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

11. There was no communication, of which the County has knowledge at this time, that occurred before November 15, 2003 between the County and Easton relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

12. There was no communication, of which the County has knowledge at this time, which occurred before November 15, 2003 between the County and Trappe relating to Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

13. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and St. Michaels, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine St. Michaels's "growth needs."

14. During the drafting of and up to and including the purported enactment of Talbot

County Bill 933, the County did not determine St. Michaels's "growth needs."

15. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and Easton, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine Easton's "growth needs."

16. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine Easton's "growth needs."

17. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication between the County and Oxford, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine Oxford's "growth needs."

18. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine Oxford's "growth needs."

19. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to determine Trappe's "growth needs."

20. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not determine Trappe's "growth needs."

21. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act "in coordination" with St. Michaels to accommodate St. Michaels's "growth needs."

22. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act "in coordination" with St. Michaels to accommodate St. Michaels's "growth needs."

23. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act "in coordination" with Easton to accommodate Easton's "growth needs."

24. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act "in coordination" with Easton to accommodate Easton's "growth needs."

25. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act "in coordination" with Oxford to accommodate Oxford's "growth needs."

26. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act "in coordination" with Oxford to accommodate Oxford's "growth needs."

27. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act "in coordination" with Trappe to accommodate Trappe's "growth needs."

28. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, the County did not act "in coordination" with Trappe to accommodate Trappe's "growth needs."

29. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding any attempt by the County to act on a cooperative basis with Easton regarding Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

30. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time,

referring to, relating to or regarding an attempt by the County to act on a cooperative basis with St. Michaels regarding Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

31. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding an attempt by the County to act on a cooperative basis with Oxford regarding Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

32. During the drafting of and up to and including the purported enactment of Talbot County Bill 933, there was no communication, of which the County has knowledge at this time, referring to, relating to or regarding an attempt by the County to act on a cooperative basis with Trappe regarding Talbot County Bill No. 933 and/or the subject or purpose of what became Talbot County Bill No. 933.

33. The County is required to work "in coordination" with the Municipalities before developing a plan to accommodate the growth needs of the Municipalities.

34. The County is required to accommodate the "growth needs" of the Municipalities in its critical area program and amendments thereto.



H. Michael Hickson  
Banks, Nason & Hickson, P.A.  
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P.O. Box 44  
Salisbury, Maryland 21803-0044  
Telephone: 410-546-4644  
Attorney for The Commissioners  
of St. Michaels

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of September, 2005, that an exact copy of the foregoing FIRST REQUEST FOR ADMISSIONS OF FACTS was sent via Federal Express to:

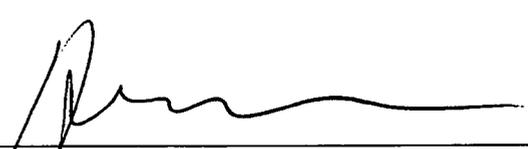
Michael L. Pullen, Esquire  
11 North Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County

And 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

Paul J. Cucuzzella, 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



---

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Salisbury, Maryland 21803-0044  
Telephone: 410-546-4644  
Attorney for The Commissioners of  
St. Michaels

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* \* \* \* \*

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

\* \* \* \* \*

**ST. MICHAELS' FIRST SET OF INTERROGATORIES 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 2-421, hereby propounds the following Interrogatories to Talbot County, Maryland (the "County").

Pursuant to the provisions of the aforementioned Maryland Rule, the County shall file a response within Thirty days after service of these Interrogatories. Please answer each Interrogatory separately and fully, in writing, under oath, and include all information available to the County directly or through agents, representatives, or attorneys.

**INSTRUCTIONS**

A. These Interrogatories are continuing in character, and therefore require the County to file supplementary answers if it obtains further or different information before trial.

B. Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrence(s) mentioned or complained of in the pleadings.

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

C. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's agents, representatives, spouse and family, and, unless privileged, his attorneys. The term "representative" shall mean and include any and all agents, servants and employees.

D. If an act, event, transaction, occasion, instance, matter, course of conduct, course of action, person or writing is mentioned or referred to in response to more than one of these Interrogatories, you need not completely identify and describe it or him in every instance, provided you supply a complete identification in one such instance, and in each other such instance make a specific reference to the place, paragraph and page number in the answers to these Interrogatories where it, he or she is fully identified and described.

E. Provide the following information in chronological order with respect to each oral communication which is the subject matter in whole or in part of any of these Interrogatories:

1. Who was present;
2. The dates thereof;
3. Where the same occurred, *e.g.*, if in direct person-to-person conversation, the place from which each person involved participated; and,
4. What was said by each person involved during such conversation and the order in which it was said, identifying what was said with the person speaking.

F. Whenever, in response to these Interrogatories, reference is made to a natural person, state his full name and present address, if known, and his present or last known business position and affiliation.

### DEFINITIONS

A. The phrase "accommodate the growth needs of the municipalities" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

B. 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.

C. The term "any" means any and all.

D. "Bill 933" shall refer to Talbot County Bill 933, as attached to the County's Second Amended Complaint.

E. 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.

F. The term "Complaint" refers to the pleading entitled "Complaint" that is filed in the above captioned Litigation.

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

H. 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.

I. The phrase "growth needs" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

J. The term "in coordination with" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

K. The term "including" means "including but not limited to."

L. "Identify," "identity," "identification" when referring to a natural person mean to provide an identification sufficient to serve such person with process to require his or her attendance at this Court and shall include, without limitation, his or her full name, present or last known address, present or last known business affiliation, title or occupation, and each of his or her positions during the applicable period of time covered by any answer referring to such person. When used in reference to a writing or document (including, without limitation, any business records) such words mean to give a sufficient characterization of such writing or document as properly to identify it in a subpoena issued pursuant to the Maryland Rules and shall include, without limitation, the following information with respect to each such document.

1. The date appearing on such document, and if it has no date, the answer shall so state and shall give the date or approximate date such document was prepared;

2. The identity or descriptive code number, file number, title, or label of such document;

3. The general nature and description of such document, and if it was not signed, the answer shall so state and shall give the name of the person or persons who prepared it;

4. The name of the person to whom such document was addressed and the name of each person other than such addressee to whom such document, or copies of its, were given or sent;

5. The name of the person having present possession, custody or control of such document; and

6. Whether or not any draft, copy or reproduction of such document contains any postscripts, notation, change or addendum not appearing on the document itself, and if so, the answer shall give the description of each draft, copy or reproduction.

M. The word "Municipalities" shall refer to the municipal governments of Easton, Oxford, St. Michaels, and Trappe, Maryland.

N. 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.

O. The term "person" as used herein means, in the plural as well as singular, any natural person, firm, association, partnership, corporation, or other form of legal entity, unless the context indicates otherwise, as well as 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.

P. The term "present time" as used herein means the date on which these Interrogatories were served on you.

Q. 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.

R. "The facts upon which you rely" in support of any allegation of legal theory, contention, denial, etc. or "the facts, matters and circumstances" surrounding a transaction or occurrence refers to a full and complete statement of all evidence within your knowledge upon which you rely to support the allegation or which surrounds the transaction or occurrence. In addition thereto, identify, pursuant to Section L *supra*, those individuals with knowledge of these facts, and all documents reflecting these facts or relied upon by you, and if the facts relied upon are related to an oral communication, then provide a statement of (i) the name, address and business position of each and every person who participated in such communication, whether as a speaker, hearer or overhearer; (ii) the date, time and place of such oral communication; and (iii) the subject matter of such oral communication with sufficient particularity to reveal and make understandable each and every subject matter therein referred to and the subject of each thereof. A failure in any one Interrogatory which requests the facts upon which you rely to request the identity of individuals or documents or to state the substance of any oral communication upon which you rely should not be construed as a waiver of the requirements set forth in this paragraph.

S. The terms "writing" and/or "document" as used herein mean all records, papers and books, transcriptions, pictures, drawings or diagrams of every nature, whether transcribed by

hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under control or not, relating or pertaining in any way to the subject matters in connection with which it is used and includes originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photostats, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

T. The words "you," "your," and "County" refer to the party to whom these Interrogatories are addressed, Plaintiff Talbot County, Maryland.

### INTERROGATORIES

Interrogatory No. 1: Identify, separately, each provision of the Talbot County Code, Chapter 190 (Zoning), Article XIV (Administration), Section 190-109 (Amendments), Subsection C (Amendments to the Critical Area provisions of this Chapter 190, Zoning), and Subsection D (Growth allocation district boundary amendments in the Critical Area), as they existed immediately before the purported enactment of Talbot County Bill No. 933, which you contend, alone or with other such provisions, "establish a process to accommodate the growth needs" of any of the Municipalities. (See COMAR 27.01.02.06.A.(2).)

Interrogatory No. 2: Identify and provide a detailed description of each act, by or on behalf of the County, which you contend was "in coordination with" any or all of the Municipalities, to draft, establish, enact or implement Bill 933, and/or the subject matter, purpose or contents of Bill 933. (See COMAR 27.01.02.06.A.(2).)

Interrogatory No. 3: Identify each provision of Bill 933 and/or other Talbot County laws of regulations, which you contend, alone or with other such provisions, establishes a process to determine and/or accommodate the "growth needs" of any of the Municipalities. (See COMAR 27.01.02.06.A.(2).)

Interrogatory No. 4: Identify and provide a detailed description of each act, by or on behalf of the County, to identify or determine the "growth needs" of any of the Municipalities since January 1, 1989. (See COMAR 27.01.02.06.A.(2).)

Interrogatory No. 5: Identify and provide a detailed description of each act, by or on behalf of the County, "to accommodate the growth needs" of any of the Municipalities since January 1, 1989.

Interrogatory No. 6: Identify and provide a detailed description of each act, by or on behalf of the County, taken on a cooperative basis with any of the Municipalities, relating to Bill 933 or the subject matter thereof. (See Maryland Code, Natural Resources Art., § 8-1801, (b), (2).)

Interrogatory No. 7: Identify all persons who have personal knowledge of the matters and facts stated in your answer to Interrogatory Nos. 2, 4, 5 and/or 6, above.

Interrogatory No. 8: Identify all oral or written communications you have had with regard to the substance of your Complaint.

Interrogatory No. 9: If you intend to rely upon any documents or other tangible things to support a position that you have taken or intend to take in the action, provide a brief description, by category and location, of all such documents and other tangible things, and identify all persons having possession, custody, or control of them.

Interrogatory No. 10: Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, and state the subject matter of the information possessed by that person.

Interrogatory No. 11: If you allege that St. Michaels has made any admissions, statements or taken any actions against its interests in this case, describe fully each such admission, statement or action against interest made, whether verbal, written or otherwise, including in such description for each admission the identity of the person making such admission, the substance of each admission, the place and date each admission was made, and identify (name, address and telephone number) all witnesses to the admission.

Interrogatory No. 12: If it is your contention that the County is not required to adopt a plan to "accommodate the growth needs" of St. Michaels, state all facts upon which you base said contention.

Interrogatory No. 13: If it is your contention that the County is not required to work “in coordination” with the Municipalities before developing a plan to accommodate growth needs of the Municipalities, state all facts upon which you base said contention.

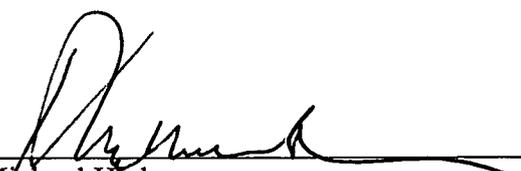
Interrogatory No. 14: If it is your contention that Bill 933 and/or provisions of the Talbot County local critical area plan accommodates the growth needs of St. Michaels, state all facts upon which you base said contention.

Interrogatory No. 15: If it is your contention that Bill 933 accommodates the growth needs of Oxford, state all facts upon which you base said contention.

Interrogatory No. 16: If it is your contention that the Growth Allocation has “no continued validity for any planning and zoning purpose,” as stated in Bill 933, state all facts upon which you base said contention.

Interrogatory No. 17: If it is your contention that the “current principles of zoning and land use goals and policies” of Talbot County are “inconsistent” with the Growth Allocations, state all facts upon which you base said contention.

Interrogatory No. 18: If it is your contention that the “Chesapeake Bay Critical Area Protection Program” gives control to the County to affect, influence, control or otherwise direct development of critical areas located in whole or in part within any of the Municipalities, state all facts upon which you base said contention.



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P.O. Box 44  
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Telephone 410-546-4644  
Attorney for The Commissioners Of  
St. Michaels

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of September, 2005, that an exact copy of the foregoing FIRST SET OF INTERROGATORIES TO PLAINTIFF was sent by Federal Express to:

Michael L. Pullen, Esquire  
11 North Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County

And 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

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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, Esq.  
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Telephone 410-546-4644  
Attorney for The Commissioners Of  
St. Michaels

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* \* \* \* \*

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

\* \* \* \* \*

**SECOND 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 (the "County"), file within thirty (30) days of service of this Second 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. The phrase "accommodate the growth needs of the municipalities" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

B. 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.

C. The term "any" means any and all.

D. "Bill 933" shall refer to Talbot County Bill 933, as attached to County's Second Amended Complaint.

E. 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.

F. The term "Complaint" refers to the pleading entitled "Complaint" that is filed in the above captioned Litigation.

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

H. 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.

I. The phrase "Growth Allocation" means and refers to the 155 acres reserved for Easton, the 195 acres reserved for Oxford and the 245 acres reserved for St. Michaels for growth allocation by Talbot County.

J. The phrase "growth needs" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

K. The term "in coordination with" is defined as having the meaning attributed thereto in COMAR Section 27.01.02.06.A(2).

L. The term "including" means "including but not limited to."

M. "Identify," "identity," "identification" when referring to a natural person mean to provide an identification sufficient to serve such person with process to require his or her attendance at this Court and shall include, without limitation, his or her full name, present or last known address, present or last known business affiliation, title or occupation, and each of his or her positions during the applicable period of time covered by any answer referring to such person. When used in reference to a writing or document (including, without limitation, any business records) such words mean to give a sufficient characterization of such writing or document as properly to identify it in a subpoena issued pursuant to the Maryland Rules and shall include, without limitation, the following information with respect to each such document.

1. The date appearing on such document, and if it has no date, the answer shall so state and shall give the date or approximate date such document was prepared;

2. The identity or descriptive code number, file number, title, or label of such document;

3. The general nature and description of such document, and if it was not signed, the answer shall so state and shall give the name of the person or persons who prepared it;

4. The name of the person to whom such document was addressed and the name of each person other than such addressee to whom such document, or copies of its, were given or sent;

5. The name of the person having present possession, custody or control of such document; and

6. Whether or not any draft, copy or reproduction of such document contains any postscripts, notation, change or addendum not appearing on the document itself, and if so, the answer shall give the description of each draft, copy or reproduction.

N. The word "Municipalities" shall refer to the municipal governments of Easton, Oxford, St. Michaels, and Trappe, Maryland.

O. 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.

P. The term "person" as used herein means, in the plural as well as singular, any natural person, firm, association, partnership, corporation, or other form of legal entity, unless the context indicates otherwise, as well as 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.

Q. The term "present time" as used herein means the date on which these Interrogatories were served on you.

R. 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.

S. "The facts upon which you rely" in support of any allegation of legal theory, contention, denial, etc. or "the facts, matters and circumstances" surrounding a transaction or occurrence refers to a full and complete statement of all evidence within your knowledge upon which you rely to support the allegation or which surrounds the transaction or occurrence. In addition thereto, identify, pursuant to Section M *supra*, those individuals with knowledge of these facts, and all documents reflecting these facts or relied upon by you, and if the facts relied upon are related to an oral communication, then provide a statement of (i) the name, address and business position of each and every person who participated in such communication, whether as a speaker, hearer or overhearer; (ii) the date, time and place of such oral communication; and (iii) the subject matter of such oral communication with sufficient particularity to reveal and make understandable each and every subject matter therein referred to and the subject of each

thereof. A failure in any one Interrogatory which requests the facts upon which you rely to request the identity of individuals or documents or to state the substance of any oral communication upon which you rely should not be construed as a waiver of the requirements set forth in this paragraph.

T. The terms "writing" and/or "document" as used herein mean all records, papers and books, transcriptions, pictures, drawings or diagrams of every nature, whether transcribed by hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under control or not, relating or pertaining in any way to the subject matters in connection with which it is used and includes originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photostats, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

U. The words "you," "your," and "County" refer to the party to whom these Interrogatories are addressed, Plaintiff Talbot County, Maryland.

### **REQUESTS FOR PRODUCTION**

**Request No. 1:** All documents referenced in your answers to St. Michaels' First Set of Interrogatories or First Request for Admissions of Fact.

**Request No. 2:** All legislative history relating to Talbot County Bill No. 762.

**Request No. 3:** All legislative history relating to Talbot County Bill No. 933.

**Request No. 4:** All legislative history relating to the following present or former section of the Talbot County Code, Chapter 190 (Zoning), Article XIV (Administration), Section 190-109 (Amendments), Subsection C (Amendments to the Critical Area provisions), (iv) (Growth Allocation District Boundary Amendments in Critical Area), [i], which now or previously stated:

**"Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be**

reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

“Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the County Council may consider appropriate. The procedure for awarding supplemental growth allocation shall be the same as that for initiating a text amendment to the Critical Area provisions in the Zoning Ordinance as set forth in Section 19.14(c)(iii).\*

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

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

“[\* Amendment, Bill 699 – Effective May 29, 1999]”

**Request No. 5:** All legislative history relating to the following present or former section of the Talbot County Code, Chapter 190 (Zoning), Article XIV (Administration), Section 190-109 (Amendments), Subsection C (Amendments to the Critical Area provisions), (iv) (Growth Allocation District Boundary Amendments in Critical Area), [j], which now or previously stated:

“Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For

purposes of this Section, LDA zoning districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than twenty (20) contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of twenty (20) or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area. In determining whether the twenty (20) acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-critical Area, shall be considered. Of the 128 acres, twenty-four (24) acres is reserved for the Town of Easton, forty-four (44) acres for the Town of Oxford, twenty-four (24) acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and thirty-six (36) acres for the County for growth allocation for property outside of the Towns and outside of areas shown as possible annexation areas (See Maps 1, 2 and 3).\*

“[\* Amendment, Bill 459 - Effective November 9, 1991]”

**Request No. 6:** All documents and things relating to, or indicating, the use, granting or award of growth allocation by Talbot County, to Easton, Oxford, and St. Michaels, since growth allocation became available in Talbot County, including, but not limited to, information indicating with respect to each use, grant or award of growth allocation, the owner of the property for which such growth allocation was awarded, the date of such award, and the quantity of growth allocation awarded.

**Request No. 7:** All documents and things relating to, or indicating, that the Growth Allocation has “no continued validity for any planning and zoning purpose,” as stated in Bill 933.

**Request No. 8:** Those portions of the draft Talbot County Comprehensive Plan as it existed at the time of the introduction of Bill 933, or the current version of the Talbot County Comprehensive Plan, that contain or relate to the “current principles of zoning and land use goals and policies” of Talbot County, which are “inconsistent” with the Growth Allocations.

**Request No. 9:** All documents referring to, relating to or regarding the alleged control given by the "Chesapeake Bay Critical Area Protection Program" to the counties of Maryland to affect, influence, control or otherwise direct development of critical areas located in whole or in part within any of the Municipalities.

**Request No. 10:** All documents referring to, relating to or regarding any award of growth allocation by the Municipalities since January 1, 1989.

**Request No. 11:** All documents referring to, relating to or regarding any testimony given by any officers, officials, employees or agents of the County, addressing, regarding or related to any award or contemplated award of growth allocation by the Municipalities since January 1, 1989.

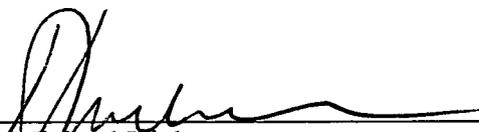
**Request No. 12:** All documents referring to, relating to or regarding any act, by or on behalf of the County, which you contend was "in coordination with" any or all of the Municipalities, to draft, establish, enact or implement Bill 933, and/or the subject matter, purpose or contents of Bill 933. (See COMAR 27.01.02.06.A.(2).)

**Request No. 13:** All documents referring to, relating to or regarding each provision of the current, and all earlier iterations and drafts of, Bill 933 and/or any other Talbot County law of regulation, which you contend, alone or with other such provisions, establishes a process to determine and/or accommodate the "growth needs" of any of the Municipalities. (See COMAR 27.01.02.06.A.(2).)

**Request No. 14:** All documents referring to, relating to or regarding each act, by or on behalf of the County, to identify or determine the "growth needs" of any of the Municipalities since January 1, 1989. (See COMAR 27.01.02.06.A.(2).)

**Request No. 15:** All documents referring to, relating to or regarding each act, by or on behalf of the County, "to accommodate the growth needs" of any of the Municipalities since January 1, 1989.

**Request No. 16:** All documents referring to, relating to or regarding each act, by or on behalf of the County, taken on a cooperative basis with any of the Municipalities, relating to Bill 933 or the subject matter thereof. (See Maryland Code, Natural Resources Art., § 8-1801, (b), (2).)

  
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 9th day of September, 2005, that an exact copy of the foregoing SECOND REQUEST FOR PRODUCTION OF DOCUMENTS was sent by Federal Express to:

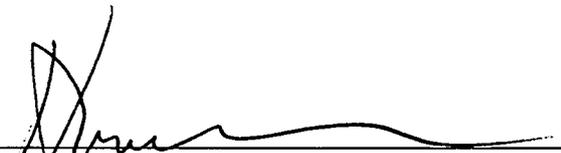
Michael L. Pullen, Esquire  
11 North Washington Street  
Easton, Maryland 21601  
Attorney for Talbot County

And 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

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.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, MD 21803-0044  
Telephone 410-546-4644  
Attorney for The Commissioners Of St. Michaels



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](mailto:pcucuzzella@dnr.state.md.us)

June 9, 2005

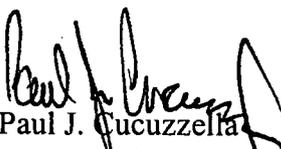
Clerk of the Court  
Circuit Court for Talbot County  
11 N. Washington Street  
P.O. Box 723  
Easton, Maryland 21601

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 Department Of Natural Resources' Notice Of Service Of Discovery Materials. Thank you very much for your assistance.

Very truly yours,

  
Paul J. Cucuzzella  
Assistant Attorney General

Enclosure

cc: Victoria M. Shearer, Esq.  
Michael L. Pullen, Esq.  
Jesse B. Hammock, Esq.  
David R. 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, *et al.*,

\*

\*

Defendants.

\*

\* \* \* \* \*

**NOTICE OF SERVICE OF DISCOVERY MATERIALS**

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that, on this 9th day of June, 2005, copies of (1) the Answers To Plaintiff's First Set Of Interrogatories To Department Of Natural Resources, Critical Area Commission For The Chesapeake And Atlantic Coastal Bays and (2) the Response To Second Request For Production Of Documents From Plaintiff Talbot County were sent via U.S. Mail to:

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

Victoria M. Shearer, Esq.  
Allen, Karpinski, Bryant & Karp, P.A.  
Suite 1540  
100 East Pratt Street  
Baltimore, Maryland 21202-1089

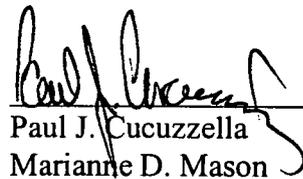
Michael L. Pullen, Esq.  
142 N. Harrison Street  
Easton, Maryland 21601

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

The undersigned has retained the originals of the discovery materials and will make them available for inspection upon request.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzzella

Marianne D. Mason

Assistant Attorneys General

Maryland Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

(410) 260-8352

Fax: (410) 260-8364

*Attorneys for defendant DNR*

Dated: June 9, 2005

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, *et al.*

\*

\*

Defendants.

\*

\* \* \* \* \*

**ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO  
DEPARTMENT OF NATURAL RESOURCES, CRITICAL AREA COMMISSION FOR  
THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**

TO: Plaintiff Talbot County, Maryland

FROM: Defendant Department Of Natural Resources,  
Maryland Critical Area Commission For The  
Chesapeake And Atlantic Coastal Bays

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, for its Answers To Plaintiff's First Set Of Interrogatories To Department Of Natural Resources, Critical Area Commission For The Chesapeake And Atlantic Coastal Bays, state:

**GENERAL RESPONSES**

1. The information provided in the responses below is not solely based upon the personal knowledge of the executing parties. Information provided may also include knowledge

obtained by the executing parties from the parties' agents, representatives and attorneys, unless privileged.

2. The responses below were drafted and prepared by counsel; the phraseology used may therefore be that of counsel.

3. To a number of its responses DNR refers to documents that contain responsive information. These responsive documents are incorporated by reference and made a substantive part of the corresponding response. All documents referenced in these responses, with the exception of those attached hereto, have been compiled by DNR, and are organized in file form at the Office of the Attorney General, 580 Taylor Avenue, C-4, Annapolis. Maryland 21401 (the "OAG"). Any party may arrange to examine and review these documents, and have copies made thereof, by coordinating directly with undersigned counsel.

### RESPONSES

**INTERROGATORY No. 1.** List all local jurisdictions with land lying within the critical area. The list shall be segregated by county, and shall list all municipalities within each county with land lying within the critical area.

RESPONSE: Attached to these Responses is a list that contains responsive information. The list is incorporated herein this response by reference.

**INTERROGATORY No. 2.** Identify all counties and municipalities that have adopted or participate in a joint county-municipal process to award growth allocation. "Joint county-municipal process" means any procedure in which both the county and municipality, including any commission, board, agency, official, executive, employee, officer, or agent, have authority to review, evaluate, or make a decision or recommendation with regard to awarding growth allocation for land lying within or proposed for annexation to a municipality.

RESPONSE: DNR objects to this interrogatory on the grounds that the term "joint county-municipal process," as defined in the interrogatory, is vague and ambiguous. Read broadly, the term

could include all counties with critical area lands that also have municipalities with critical area lands. DNR further objects because the interrogatory calls for statements and conclusions of law, not statements of fact, that the parties can discover for themselves through research of the respective county and local ordinances and codes. Without waiver of these objections, information responsive to this interrogatory is contained in the documents compiled for review and inspection at the OAG.

**INTERROGATORY No. 3.** Separately identify each local program or program amendment or refinement that has been reviewed by the Critical Area Commission (whether approved, modified, or denied by the Commission) for each county and municipality that creates, establishes, or refers to any joint county-municipal process (as defined in Interrogatory No. 2) by which growth allocation is to be awarded to a municipality, or to a landowner (including an applicant, contract purchaser, developer or other entity having a property interest) concerning land lying within a municipality.

RESPONSE: DNR objects to this interrogatory for some or all of the reasons that it objects to Interrogatory No. 2. Without waiver of this objection, information responsive to this interrogatory is contained in the documents compiled for review and inspection at the OAG.

**INTERROGATORY No. 4.** As to each local program or program amendment or refinement identified in Interrogatory No. 3, state whether it was part of the original local program approval, or was processed as a program amendment or refinement by the Critical Area Commission, the date(s) it was considered by the Commission, the action taken, and identify all staff reports, transcripts, minutes, non-privileged legal opinions, and other documents in your possession, custody, or control that record, refer, or relate to each.

RESPONSE: DNR objects to this interrogatory for some or all of the reasons that it objects to Interrogatory No. 2. Without waiver of this objection, information responsive to this interrogatory is contained in the documents compiled for review and inspection at the OAG.

**INTERROGATORY No. 5.** Identify all program amendments, refinements, and project approvals concerning an award of growth allocation for land lying within a municipality, or proposed for annexation within a municipality, that have been processed by the Critical Area Commission (whether approved, modified, or denied) from each county and municipality that participate in a joint county-municipal process, as defined in Interrogatory No. 2, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission as to each.

RESPONSE: DNR objects to this interrogatory for some or all of the reasons that it objects to Interrogatory No. 2. Without waiver of this objection, information responsive to this interrogatory is contained in the documents compiled for review and inspection at the OAG.

**INTERROGATORY No. 6.** Identify all program amendments, refinements, or project approvals that have been processed (whether approved, modified, or denied) by any county(ies) and by the Critical Area Commission for growth allocation for land lying within a municipality or proposed for annexation within a municipality, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission for each.

RESPONSE: DNR objects to this interrogatory on the grounds that it is over-broad, unduly burdensome, and calls for information that is not relevant nor will lead to the discovery of relevant information. Without waiver of this objection, information responsive to this interrogatory is contained in the documents compiled for review and inspection at the OAG.

**INTERROGATORY No. 7.** State whether the Critical Area Commission has ever taken the position that State law creates growth allocation within municipalities for municipal use, absent an award of growth allocation by the county, and if so, identify all documents that contain, refer to, or relate to that position.

RESPONSE: DNR objects to this interrogatory on the grounds that the phrase "ever taken the position," as used in the interrogatory, is vague and ambiguous. Without waiver of this objection, the Critical Area Commission has never produced any official documents nor has it had occasion to take any official position interpreting that the Critical Area Law "creates growth allocation within municipalities for municipal use."

**INTERROGATORY No. 8.** State whether the Critical Area Commission has ever taken the position that State law requires counties to award fixed amount(s) of growth allocation to municipalities. If so, identify each such instance, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission for each.

RESPONSE: DNR objects to this interrogatory on the grounds that the phrase “ever taken the position,” as used in the interrogatory, is vague and ambiguous. Without waiver of this objection, the Critical Area Commission has never produced any official documents nor had it had occasion to take any official position interpreting that the Critical Area Law “requires counties to award fixed amount(s) of growth allocation to municipalities.”

**INTERROGATORY No. 9.** State whether the Critical Area Commission has ever taken the position that State law prohibits a county from participating in a process to award growth allocation on the basis that the project(s) proposed for or requesting growth allocation lie within a municipality. If so, identify each such instance, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission for each.

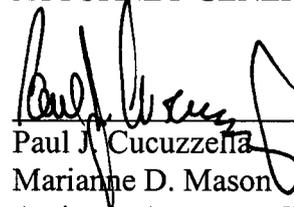
RESPONSE: DNR objects to this interrogatory on the grounds that the phrase “ever taken the position,” as used in the interrogatory, is vague and ambiguous. Without waiver of this objection, the Critical Area Commission has never produced any official documents nor has it had occasion to take any official position interpreting that the Critical Area Law “prohibits a county from participating in a process to award growth allocation on the basis that the project(s) proposed for or requesting growth allocation lie within a municipality.”

**INTERROGATORY No. 10.** If you intend to rely upon any documents or other tangible things to support a position that you have taken or intend to take in the action, provide a brief description by category and location, of all such documents and other tangible things, and identify all persons having possession, custody, or control of them.

RESPONSE: Any such documents are included among those that have been compiled for review and inspection at the OAG, or are among those that have previously been produced by DNR in this matter.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



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Paul J. Cucuzzella

Marianne D. Mason

Assistant Attorneys General

Maryland Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

(410) 260-8352

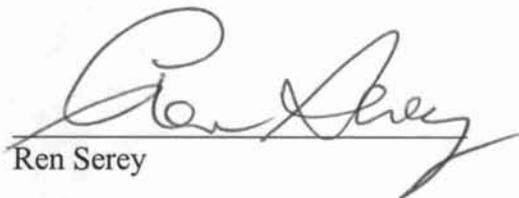
Fax: (410) 260-8364

*Attorneys for defendant DNR*

Dated: June 9, 2005

**DECLARATION**

I declare, this 9th day of June, 2005, under penalty of perjury, that the Responses provided in the foregoing Answers To Interrogatories are true and correct to the best of my knowledge, information and belief.

  
Ren Serey

State of Maryland            )  
  )  
County of Anne Arundel    )        ss

Sworn and subscribed to before me, this 9th day of June, 2005.

  
Notary Public

My commission expires: 3-1-06

CRITICAL AREA  
JURISDICTIONS AND ACREAGES

REGION/JURISDICTION	TOTAL ACRES	IDA	LDA	RCA	GROWTH ALLOCATION TOTAL	ALLOCATION USED
<u>UPPER WESTERN SHORE</u>						
ANNE ARUNDEL CO.	48,869	5,133	20,929	22,807	918	758
Annapolis	1,729	915	589	225		
Highland Beach	(included in County Program)	-	-	-		
BALTIMORE CITY	5,192	4,102	224	448	22	0
BALTIMORE CO.	23,606	5,980	7,039	10,587	461	110
HARFORD CO.	8,205	926	1,242	6,037	278	b
Have de Grace	590	443	0	147		
<u>LOWER WESTERN SHORE</u>						
CALVERT CO.	24,771	2,086	4,037	18,648	757	285
Chesapeake Beach	952	307	254	387		
North Beach	149	102	16	31		
CHARLES CO.	30,424	269	2,206	27,949	1,130	0
Indian Head	164					
Port Tobacco	(included in County Program)					
PRINCE GEORGE'S CO.	15,727	693	1,438	13,596	328	134
ST. MARY'S CO.	43,754	1,614 <sup>a</sup>	7,660 <sup>a</sup>	34,480 <sup>a</sup>	1,724 <sup>a</sup>	0
Leonardtwn	277	38	157	82		

REGION/JURISDICTION	TOTAL ACRES	IDA	LDA	RCA	GROWTH TOTAL	ALLOCATION USED
<u>UPPER EASTERN SHORE</u>						
CAROLINE CO.	15,940	0 <sup>a</sup>	2,675 <sup>a</sup>	13,265 <sup>a</sup>	650 <sup>c</sup>	b
Denton	206	59	147	0		
Federalsburg	397	249	148	0		
Greensboro	130	117	-	13		
Hillsboro	61	0	26	35		
CECIL CO.	25,428	487	5,082	19,859	960	0
Charlestown	175	80	95	-		
Chesapeake City	214	22	194	-		
Elkton	1,179	228	268	683		
North East	244	115	129	-		
Perryville	587	102	391	39		
Port Deposit	213	110	28	93		
KENT CO.	35,699	16	3,200	32,453	1,405	0
Betterton	166	32	62	72		
Chestertown	348	190	26	132		
Millington	113	47	36	30		
Rock Hall	492	336	156	-		
QUEEN ANNE'S CO.	39,981	725	8,755	30,501	1,528	153
Centreville	343	116	186	41		
Church Hill	41	0	30	11		
Queen Anne	52	36	0	16		
Queenstown	165	27	b	b		
<u>LOWER EASTERN SHORE</u>						
DORCHESTER CO.	176,600	102	9,690	166,808	2,900	200 <sup>c</sup>
Brookview	Excluded	-	-	-		
Cambridge	917	502	415	0		
Church Creek	Excluded	-	-	-		
Eldorado	Excluded	-	-	-		
Galestown	Excluded	-	-	-		
Secretary	131	69	62	0		
Vienna	64	28	26	0		

REGION/JURISDICTION	TOTAL ACRES	IDA	LDA	RCA	GROWTH ALLOCATION TOTAL	ALLOCATION USED
SOMERSET CO.	37,343	313	6,960	30,070	1,503	25
Crisfield	763	347	148	268		
Princess Anne	445	250	177	18		
TALBOT CO.	65,689	772	7,419	57,498	2,554	0
Easton	336	96	16	224		
Oxford	184	141	44	0		
St. Michaels	321	199	24	98		
WICOMICO CO.	21,286 <sup>a</sup>	282 <sup>a</sup>	2,916 <sup>a</sup>	18,088 <sup>a</sup>	909 <sup>a</sup>	b
Fuitland	38	b	b	b		
Mardella Springs	126	0 <sup>a</sup>	126 <sup>a</sup>	0 <sup>a</sup>		
Salisbury	844	669 <sup>a</sup>	175 <sup>a</sup>	0 <sup>a</sup>		
Sharptown	96	57 <sup>a</sup>	39 <sup>a</sup>	0 <sup>a</sup>		
WORCESTER CO.	9,600	33 <sup>a</sup>	97 <sup>a</sup>	9,470 <sup>a</sup>	473 <sup>a</sup>	63 <sup>a</sup>
Pocomoke City	Excluded	-	-	-		
Snow Hill	229	103 <sup>a</sup>	66 <sup>a</sup>	60 <sup>a</sup>		
TOTALS (APPROXIMATE)	641,613	29,665	95,835	515,269	18,495	

## Notes:

Excluded - All or part of the jurisdiction has received an exclusion from the Critical Area Program.

a - Jurisdiction's Program not approved; acreage subject to change.

b - Information not yet available

c - Estimated acreage

**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, *et al.*

\*

\*

Defendants.

\*

\* \* \* \* \*

**RESPONSE TO SECOND REQUEST FOR PRODUCTION OF DOCUMENTS  
FROM PLAINTIFF TALBOT COUNTY**

TO: Plaintiff Talbot County, Maryland

FROM: Defendant Department Of Natural Resources,  
Maryland Critical Area Commission For The  
Chesapeake And Atlantic Coastal Bays

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

**GENERAL RESPONSES**

1. All documents referenced in these responses (with the exception of those attached hereto) have been compiled by DNR, and are organized in file form at the Office of the Attorney General, 580 Taylor Avenue, C-4, Annapolis. Maryland 21401 (the “OAG”). Any party may arrange

to examine and review these documents, and have copies made thereof, by coordinating directly with undersigned counsel.

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

### RESPONSES

**Request No. 1.** Copies of all documents identified in your Answers to Interrogatories.

**Response:** The documents requested are among those that have been compiled for review and inspection at the OAG.

**Request No. 2.** Copies of each local ordinance in each County and municipality that have adopted or participate in a joint county-municipal process to award growth allocation. "Joint county-municipal process" means any procedure in which both the county and municipality, including any commission, board, agency, official, executive, employee, officer, or agent, have authority to review, evaluate, or make a decision or recommendation with regard to awarding growth allocation for land lying within or proposed for annexation to a municipality.

**Response:** DNR objects to this Request on the grounds that the term "joint county-municipal process," as defined in the Request, is vague and ambiguous. Read broadly, the term could include all counties with critical area lands that also have municipalities with critical area lands. DNR further objects because the parties can research for themselves the respective county and local ordinances and codes. Without waiver of these objections, the documents requested are among those that have been compiled for review and inspection at the OAG.

**Request No. 3.** All documents showing the processes by which all counties consider requests for awards of growth allocation within municipalities or for land being annexed into a municipality.

**Response:** DNR understands "documents showing the process," as used in the Request, as meaning "documents establishing the process." Such documents, as DNR understands the Request, are the respective county and local ordinances and codes establishing the process by which the

respective counties consider requests for awards of growth allocation within municipalities. DNR objects to this Request because the parties can research for themselves the respective county and local ordinances and codes. Without waiver of this objection, the documents requested are among those that have been compiled for review and inspection at the OAG.

**Request No. 4.** All documents relating or referring to the Critical Area Commission's evaluation, approval, or disapproval of all proposed critical area programs, amendments, or refinements concerning the method(s) used by counties to award growth allocation for land lying within or proposed for annexation to a municipality.

**Response:** The documents requested are among those that have been compiled for review and inspection at the OAG.

**Request No. 5.** A listing of all awards of growth allocation within each municipality. As to each, all records showing whether that award was made by the municipality alone, the County alone, or by both the municipality and the County.

**Response:** A copy of a listing of all proposed program amendments for awards of growth allocation is provided with these Responses. The codes that proceed each "Amendment/Refinement Name" identify from what jurisdiction the action arose. The records referenced in the Request are among those that have been compiled for review and inspection at the OAG.

**Request No. 6.** A listing of all requests for growth allocation within each municipality that have been denied. As to each, all records showing whether that denial was made by the municipality alone, the County alone, by both the municipality and the County, or by the Critical Area Commission.

**Response:** See Response to Request No. 5 above..

**Request No. 7.** All documents submitted to, relied upon, or generated by Critical Area Commission staff in connection with review and approval by the Critical Area Commission of Dorchester County Bill 2004-028, creating a County-municipal review process for growth allocation.

**Response:** The documents requested are among those that have been compiled for review and inspection at the OAG.

**Request No. 8.** All recordings, transcripts, minutes or summaries of all hearings held before the Critical Area Commission, and all documents provided to, considered by, reviewed, relied upon, or generated in connection with review and approval of Dorchester County Bill 2004-028.

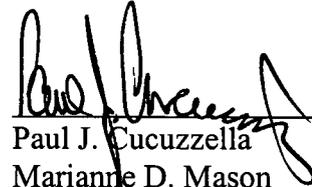
**Response:** To DNR's knowledge and information, no transcripts were generated during the Critical Area Commission's review of Dorchester County Bill 2004-028. Otherwise, the documents requested are among those that have been compiled for review and inspection at the OAG. Recordings of the hearings referenced can likewise be reviewed and inspected at the OAG.

**Request No. 9.** All documents that contain, relate, or refer to Critical Area Commission guidelines, policies, directives, opinions, letters of advice, determinations, or position papers regarding County processes to award growth allocation to municipalities or to developers or landowners with land lying within or proposed for annexation into municipalities.

**Response:** The guidelines referenced may be found in Title 27 of COMAR. A copy of the Critical Area Commission's "Guidelines For The Counting Of Growth Allocation," as amended October 4, 1995, is provided with these Responses. Otherwise, the documents requested are among those that have been compiled for review and inspection at the OAG

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



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Annapolis, Maryland 21401  
(410) 260-8352  
Fax: (410) 260-8364  
*Attorneys for defendant DNR*

Dated: June 9, 2005

## Growth Allocation Amendments

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
AAA-004	Baymeadows Growth Allocation	Approved	9.7	11.2	LDA to IDA	yes
AAA-008	Madison Growth Allocation (Bill 30-94)	Approved	8.25	19.5	LDA to IDA	yes
AAA-019	Homeport Farm Growth Allocation	Approved	18.75	81.30	RCA to LDA	yes
BCA-005	Growth Allocation Goose Landing (Resolution 54-93)	Approved	15.5	15.5	RCA to LDA	yes
BCA-006	Growth Allocation Salvo Property (Resolution 55-93)	Approved	3.89	3.89	RCA to LDA	yes
BCA-007	Growth Allocation Gunter Property (Resolution 35-92)	Approved	8	8	RCA to LDA	yes
BCA-008	Growth Allocation Gall Property (Resolution 53-93)	Approved	22.85	22.85	RCA to LDA	yes
BEA-003	Growth Allocation Rigbie Bluff II	Approved	2.181	2.181	LDA to IDA	yes
BEA-004	Betterton Bay Club Growth Allocation	Approved	41.9	69.9	RCA to LDA	yes
BEA-005	Rescind GA for Betterton Bay Club	Approved	-41.9	69.9		
CAA-008	Growth Allocation for Solomon's Self Storage	Approved	1.0	1.2	LDA to IDA	yes
CAA-009	Text Amendments	Approved	14.2	?	LDA to IDA	no
CAA-015	Bell Atlantic Growth Allocation	Approved	0.46	0.46	LDA to IDA	yes
CAA-016	Bridgeview Office Building Growth Allocation	Approved				
CAA-019	Allor Growth Allocation	Approved	0.43	5.44	RCA to LDA	no
CEA-007	Earl White Growth Allocation	Approved	1.15	16.95	RCA to LDA	yes
CEA-010	Stephen Molitor Special Growth Allocation	Approved	0.75	42.56	RCA to LDA	no

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
CEA-011	Rettig Growth Allocation	Approved	3.332	88.7	RCA to LDA	no
CEA-012	Knight's Island Preserve GA (*see CEA-13 for more info	Approved	26.72*	382.2	RCA to LDA	no
CEA-013	Knight's Island Preserve GA Adjustment (*see CEA-12 f	Approved	25.72*	382.2	RCA to LDA	no
CEA-014	Knowles Property Growth Allocation	Approved	0.43	88.99		
CEA-017	National Humane Education Society Growth Allocation	Approved	12.45	100	RCA to LDA	no
CEA-018	Whiteoak Growth Allocation	Approved	5.8	61.759	RCA to LDA	no
CEA-021	Parker Growth Allocation	Denied				
CEA-023	Wapiti Wildemess Retreat Center Growth Allocation	Approved	40	433	RCA to LDA	no
CFA-002	McCready Memorial Hospital Growth Allocation	Approved	17.12	17.12	LDA to IDA	yes
CMA-002	Walmart GA and IDA regulations	Approved	21.15		LDA to IDA	yes
CRA-001	Brick Mill Landing Growth Allocation	Approved	12	74.19	RCA to LDA	yes
CRA-003	GA Request for Holsinger	Approved	4.002	24.519	RCA to LDA	yes
CTA-003	Stepney Manor Growth Allocation	Approved	43	43	RCA to IDA	yes
CYA-003	Ritter Property – Growth Allocation and Annexation	Approved	3.47	22.16	RCA to LDA	yes
CYA-005	Young Property Growth Allocation	Approved	20.4	20.4	LDA to IDA	yes
DCA-001	Growth Allocations (5) and Text Amendments	Approved	460.9*	?	RCA to LDA	yes**
DCA-002	Blake/Bahr Growth Allocation (Town Point Rd)	Approved	28.2	31.1	RCA to LDA	yes**
DCA-003	Sunset Farms Growth Allocation	Approved	107.7	138.9	RCA to LDA	yes**
DCA-004	Grover Cooper Growth Allocation	Approved	21.3	23.45	RCA to LDA	yes**
DCA-005	Middleton Train Growth Allocation	Approved	38.2	41.38	RCA to LDA	yes**

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
DCA-006	Wigglesworth Growth Allocation	Denied	0 (denied)	20		
DCA-007	Ferry Landing Growth Allocation	Approved	6.23	9.59	RCA to IDA	
DCA-008	Kenneth Cox Growth Allocation	Approved	16.96	68.52	RCA to LDA	yes**
DCA-009	Beverly Estates Growth Allocation	Approved	25.1	25.67	RCA to LDA	yes**
DCA-010	Deep Water Phase II Growth Allocation	Approved	12.1	34.37	RCA to LDA	no
DCA-013	McCauley Growth Allocation	Approved	10.3	25.6	RCA to LDA	yes**
DCA-014	Riverview Growth Allocation	Approved	12.1	24	RCA to LDA	no
DCA-015	Beagle Run/Vaughn Growth Allocation	Approved	6.3	12.52	RCA to LDA	yes**
DCA-016	Sewell Ferry/Sherman's Landing Growth Allocation	Approved	30.58	34.6	RCA to LDA	yes**
DCA-017	Spiros Pallas	Approved	30.5	34.1	RCA to LDA	yes**
DCA-018	Ferry Farms Growth Allocation	Approved	59	128.3	RCA to LDA	no
DCA-019	Huntington Crossing Growth Allocation	Approved	8.3	64.16	RCA to LDA	no
DCA-020	Barnett Growth Allocation	Denied	0 (denied)	43		
DCA-024	Sipler Property Growth Allocation	Approved	2	56	RCA to LDA	yes
DCA-036	Hadagro Farms Growth Allocation		6.92	11.6	RCA to LDA	no
DCA-038	Pack Rat Storage Growth Allocation	Approved	2.36	2.36	LDA to IDA	yes
DCA-041	Hooper's Island VFD Growth Allocation Request	Approved	0.44	18.21	LDA to IDA	no
EAA-001	Londonberry GA	Approved	21.722	21.722	RCA to IDA	yes
EAA-002	DiDonato Growth Allocation	Approved	6.62	9.94	RCA to IDA	yes
EAA-006	Easton Club Growth Allocation	Approved	119	119	RCA to IDA	yes

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
ELA-004	Weed Property Growth Allocation	Approved	6.5	14.8	LDA to IDA	yes
GRA-002	Mapping Mistake, Annexation, and Growth Allocation	Approved	0.89	0.89	LDA to IDA	yes
HCA-002	Text Change and 2 GA Amendments (County Bill 89-73)	Approved	57.8	?	RCA to IDA	yes
HCA-005	Riverside South 40 Growth Allocation (County Bill 91-46)	Approved	23	111 (?)	RCA to IDA	yes
HCA-010	McGrady Growth Allocation	Approved	7.4	7.4	RCA to IDA	yes
HCA-016	Osborn Property Growth Allocation	Approved	6.82	30.0	LDA to IDA	yes
IHA-002	Robinson Terminal Warehouse Growth Allocation	Approved	9	25.5	LDA to IDA	no
IHA-004	Riverwatch Growth Allocation	Approved	13	30.73	RCA to IDA	yes
LEA-002	Tudor Hall Village GA	Approved	4.05	390	LDA to IDA	yes
LEA-003	Tudor Hall Village GA #2	Approved	31.64	390	LDA to IDA	yes
LEA-004	Lenoardtown Landing Growth Allocation	Approved	3.136	2.63+ .506	LDA to IDA	yes
PEA-002	Former Firestone Property Growth Allocation	Approved	40.00	125.6	LDA to IDA	yes
PEA-003	Richmond Hills Growth Allocation	Approved	2.7	10.35	LDA to IDA	yes
PGA-001	Waterside Growth Allocation	Approved	36.9	36.9	RCA to LDA	
PGA-002	Port America Growth Allocation	Approved	98	98	LDA to IDA	
PGA-010	Tepaske Property Growth Allocation	Approved	15.4	15.4	RCA to LDA	yes
PGA-014	National Harbor Growth Allocation	Approved	13.8	534	RCA to LDA & LDA t	yes
QAA-006	Charles Breeding Growth Allocation	Approved	16.4	18.8	RCA to IDA	yes
QAA-009	Kent Island Golf Club Growth Allocation	Approved	20.0753/4.6	138.155	RCA to LDA/LDA to I	yes
QAA-013	Winchester Creek Limited Partnership Growth Allocation	Approved	26.553	?	RCA to LDA	no

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
QAA-016	Gateway Storage Growth Allocation	Approved	2.34	2.34	LDA to IDA	yes
QAA-017	Friendly Foods Inc Growth Allocation	Approved	1.953	1.953	LDA to IDA	yes
QAA-025	The Anorage Growth Allocation	Approved	20.159	20.159	RCA to IDA	yes
QAA-026	Cox Creek Landing Growth Allocation	Approved	22.23	22.23	RCA to IDA	yes
QAA-027	Grasonville Station Growth Allocation	Approved	5.0103	5.0103	LDA to IDA	yes
QAA-028	Ellendale Growth Allocation	Approved	25.73	89.775	RCA to IDA	yes
QAA-029	Maryland General Land Company Growth Allocation	Approved	2.124	14.801	LDA to IDA	yes
QTA-004	Washington Brick and Terra Cotta Co GA and Annexatio	Approved	15.056	15.056	RCA to LDA	yes
QTA-006	Comegys Growth Allocation Request	Approved	3.46	3.46	LDA to IDA	yes
SMA-003	Eppard Growth Allocation	Denied	0 (denied)	14		
SMA-004	Maydel Manor Growth Allocation	Denied	0 (denied)	246		
SMA-005	Avenmar Growth Allocation	Approved	16	222	RCA to LDA	yes
SMA-006	Bashford Creek Estates Growth Allocation	Denied	0 (denied)	22.93		
SMA-007	Calvert Estates Growth Allocation	Denied	0 (denied)	24.6		
SMA-008	Lore's Landing Growth Allocation	Denied	0 (denied)	15.9		
SMA-009	St. Winifred Estates Growth Allocation	Approved	15.22	60.4	RCA to LDA	yes
SMA-010	Christmas Hill Growth Allocation	Approved	6.319	66.4	RCA to LDA	no
SMA-011	Windward Cove Growth Allocation	Approved	6	13.3	RCA to LDA	no
SMA-013	McGuyer's Subdivision Growth Allocation	Approved	1.5	29	RCA to LDA	no
SMA-014	Maydell Manor Growth Allocation	Approved	6	84	RCA to LDA	no

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
SMA-015	Calvert Estates and Chesapeake Industrial Park GA	Approved	9.25	24.6 (?)	LDA to IDA	yes
SMA-016	St. Clement's Woods Growth Allocation	Approved	18.5	18.5	RCA to LDA	yes
SMA-019	Lacey Property Growth Allocation	Approved	1.5	1.5	RCA to LDA	no
SMA-020	Gardiner's Place Subdivision Growth Allocation	Approved	17.77	65.05	RCA to LDA	no
SMA-022	Wrightson Farm Growth Allocation	Approved	3.0	37.47	RCA to LDA	no
SMA-023	Eagan Growth Allocation	Approved	6.3	6.3	RCA to LDA	no
SMA-026	Bohanan Subdivision Growth Allocation	Approved	7.341	7.341	RCA to LDA	no
SMA-026	Bohanan Growth Allocation	Approved	7.341	7.341	RCA to LDA	no
SMA-027	Thomas Colton Growth Allocation	Approved	11.51	11.51	RCA to LDA	no
SMA-027	Thomas Colton Growth Allocation	Approved	11.51	11.51	RCA to LDA	no
SMA-028	Prospect Hill Growth Allocation	Approved	1.303	63.18	RCA to LDA	no
SNA-004	Burbage Funeral Home Growth Allocation	Approved	1.63	1.63	LDA to IDA	yes
SOA-001	Somerset Springs Growth Allocation	Denied	0 (denied)	1,244		
SOA-002	Vessey Growth Allocation	Approved	20,000 sq	2 acres	RCA to LDA	no
SOA-005	Van Wagenberg Growth Allocation	Approved	1	109.5	RCA to LDA	no
SOA-006	Coulbourn's Cove Growth Allocation	Approved	57	68	RCA to LDA	no
SOA-007	Monie Creek Growth Allocation	Approved	15	23.12	RCA to LDA	no
SOA-008	Wayne Muir Growth Allocation	Approved	3.1	3.1	LDA to IDA	yes
SOA-009	Margaret Lutz Growth Allocation	Approved	5.9	5.9	RCA to LDA	no
SOA-010	Waterloo Landing Growth Allocation	Approved	13.2	128.4	RCA to LDA	no

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
SOA-012	Miller Growth Allocation	Approved	5.49	5.49	RCA to IDA	no
SOA-013	Coffin Growth Allocation	Approved	30.73	51.82	RCA to LDA	no
SOA-014	Egypt Farm Land Growth Allocation	Approved	9.2	?	LDA to IDA	yes
SOA-015	Convent of the Little Sisters Growth Allocation	Approved				
SOA-016	Noble Farm Growth Allocation	Approved	31.4	87.2	RCA to LDA	no
SOA-016	Noble Farm Growth Allocation	Approved				
SOA-017	Evans Boat Yard Growth Allocation	Approved	1.92	1.92	LDA to IDA	no
SOA-022	Wal-Mart Growth Allocation	Approved	51.11	178	RCA to IDA	no
STA-006	Strausburg Annexation and Growth Allocation	Approved	20.1	136	RCA to LDA	yes
TCA-003	Avalon Limited Partnership Growth Allocation	Approved	25.5	?	RCA to LDA	yes
TCA-011	Bachelor Point Growth Allocation	Approved	13.223	15.223 (?)	RCA to LDA	yes
TCA-012a	William Hunter Growth Allocation	Approved	70.28	1137.47	RCA to LDA	yes
TCA-012b	Willis/North Bend II Growth Allocation	Approved	37	79.38	RCA to LDA	yes
TCA-012c	Claiborne Gooch Growth Allocation	Approved	16	106.48	RCA to LDA	yes
TCA-012d	Robert Pascal Growth Allocation	Approved	19.38	19.38	RCA to LDA	no
TCA-012e	FSU Inc, et al Growth Allocation	Approved	14.43	18.23	RCA to LDA	no
TCA-012f	John Sullivan Growth Allocation	Approved	2	23	RCA to LDA	no
TCA-012g	Fred McEnany Growth Allocation	Approved	2.12	2.12	RCA to LDA	yes
TCA-012h	Lyles Carr et al Growth Allocation	Approved	14.72	15.79	RCA to LDA	yes
TCA-014	McLaird and Cedar Commons Growth Allocations	Approved	22.858	65.148 (?)	RCA to LDA	no

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
TCA-015	LPIW Growth Allocation	Approved	24.2	24.2	RCA to LDA	no
TCA-022	Dickerson Marina Growth Allocation (County Bill 564)	Approved	7.11	?	RCA to IDA	no
TCA-029	Spurry Growth Allocation	Approved	15.863	15.863	RCA to LDA	yes
TCA-033	Tred Avon Farm GA	Approved	5.31	45	RCA to LDA	no
TCA-037	Ayres Growth Allocation	Approved	23.92	23.92	RCA to LDA	no
TCA-038	Whitehall Farm Growth Allocation	Approved	16.34	93.684	RCA to LDA	no
TCA-040	Supplemental Award of Growth Allocation - Bill 925	Approved				
WCA-005	Bay Point Plantation Growth Allocation	Approved	38	141	RCA to IDA	yes
WIA-002a	Tyaskin Trust Growth Allocation	Approved	23.14	142.7	RCA to LDA	no
WIA-002b	Back Creek Growth Allocation	Approved	16.23	22.93	RCA to LDA	no
WIA-002c	The Shallows Growth Allocation	Approved	24.62	27.81	RCA to LDA	no
WIA-003a	Hollering Point Growth Allocation	Approved	26.67	32.78	RCA to LDA	no
WIA-003b	Redden Ferry Estates Growth Allocation	Approved	44.92	61.18	RCA to LDA	no
WIA-004	Kensington Woods Growth Allocation	Approved	37.72	37.72 (?)	RCA to LDA	yes
WIA-005	Cooper Landing Growth Allocation	Approved	24.59	24.59	RCA to LDA	no
WIA-006	River Woods Growth Allocation	Approved	19.03	19.03	RCA to LDA	no
WIA-008	Richardson Growth Allocation	Approved	0.60	40.6	RCA to LDA	no
WIA-008	Richardson Growth Allocation	Approved	0.60	40.6	RCA to LDA	no
WOA-001	Fulton Growth Allocation	Approved	2.7	10.75	RCA to LDA	yes
WOA-002	Brittingham Growth Allocation	Approved	6	7	RCA to LDA	yes

<i>Amend/Refine #</i>	<i>Amendment/Refinement Name</i>	<i>Denied or Approved?</i>	<i>Acres Deducted</i>	<i>Size of Parent Parcel</i>	<i>Type of GA</i>	<i>Growth Area?</i>
WOA-003	Butler Growth Allocation	Approved	*21	21	RCA to LDA	yes
WOA-004	Cannery Group Growth Allocation	Approved	5.158	5.158 (?)	RCA to LDA	yes
WOA-005	Brittingham/Clyde Curtis Growth Allocation	Approved	6	7	LDA to IDA	yes
WOA-006	Robert Mason Growth Allocation	Approved	27.47	56.88	RCA to IDA	yes
WOA-007	YMCA Growth Allocation	Approved	4.77	22.66	LDA to IDA	yes

JURISDICTION CODES

AN - Annapolis  
AA - Anne Arundel County  
BA - Baltimore City  
BC - Baltimore County  
BE - Belterton  
BR - Brookview  
CA - Calvert County  
CM - Cambridge  
CR - Caroline County  
CE - Cecil County  
CV - Centreville  
CS - Charles County  
CL - Charlestown  
CB - Chesapeake Beach  
CY - Chesapeake City  
CT - Chestertown  
CC - Church Creek  
CH - Church Hill  
CF - Crisfield  
DE - Denton  
DC - Dorchester County  
EA - Easton  
ED - Eldorado  
EL - Elkton  
FE - Federalsburg  
FR - Freitland  
GR - Greensboro  
HC - Harford County  
HG - Havre de Grace  
HB - Highland Beach  
HI - Hillsboro  
IH - Indian Head  
KC - Kent County  
LE - Leonardtown  
MS - Mardela Springs  
MI - Millington  
NB - North Beach  
NE - North East  
OC - ocean city  
OX - Oxford  
PE - Perryville  
PO - Pocomoke City  
PD - Port Deposit  
PG - Prince George's County  
PA - Princess Anne  
QQ - Queen Anne  
QA - Queen Anne's County  
QT - Queenstown  
RH - Rock Hall  
SM - St. Mary's County  
ST - St. Michael's  
SA - Salisbury  
SE - Secretary  
SH - Sharptown  
SN - Snow Hill  
SO - Somerset County  
TC - Talbot County  
VI - Vienna  
WI - Wicomico County  
WO - Worcester County  
WC - Coastal Bays

Policy Adopted by Critical Area Commission  
February 3, 1993 (Amended October 4, 1995)

## GUIDELINES FOR THE COUNTING OF GROWTH ALLOCATION

### CRITICAL AREA COMMISSION

#### INTRODUCTION

The Critical Area criteria require that lands are to be classified into one of three management categories based on certain characteristics of land use that existed as of December 1, 1985. For each of those categories, [Intensely Developed (IDA), Limited Development (LDA), and Resource Conservation (RCA) Areas], policies and criteria are specified to guide the nature and location of future development. Under the conditions of COMAR 27.01.02.06, some subsequent expansion and intensification of new development beyond that provided in the original land management classification are allowed, but subject to overall acreage limitation for each jurisdiction and to guidelines for the location of such development. The area of expansion permitted is called Growth Allocation and is defined as an area equal to 5% of a county's Resource Conservation lands that are not tidal wetlands or federally owned. The question has arisen as to what portion of a given development site should be considered development in this context and, therefore, subtracted from a jurisdiction's Growth Allocation. The purpose of this paper is to explain the Commission's position on this issue.

#### CRITERIA REQUIREMENTS

As provided for in the criteria, the potential grandfathering of land uses is based on legal parcels of land that were recorded as of December 1, 1985. In determining whether development on such lands counts against a jurisdiction's Growth Allocation during the interim period (that is, between December 1, 1985 and the date of local Program approval), the criteria refer to the "land that was subdivided" and state that the "area of land" (e.g., the parcel that existed as of December 1, 1985) is to be charged against the Growth Allocation [see COMAR 27.01.02.07B(2), (3), and (4)]. Similarly, for any parcel of land described above which is to be subdivided after December 1, 1985, and, after local Program approval, designated for new IDAs or LDAs, the total acreage of the parcel should logically be counted against the Allocation, even though the entire parcel may not actually be developed or fully designated as a new IDA or LDA. This would treat the counting of growth allocation uniformly both before and after local Program approval.

#### DISCUSSION

The land classification system required by the criteria was adopted by the Commission to address the goals of the Critical Area Law: the minimization of adverse impacts on water quality; the conservation of fish, wildlife, and plant habitat; and the accommodation of development while avoiding the adverse environmental effects associated with that development. Conservation of the protective land uses of agriculture and forests was also an objective of the Commission, as well as the concentration of new development in or near areas of existing

development. Thus, the density criterion for the Resource Conservation Area and the development standards for the Development Area were based on water quality considerations, the protection of extensive habitat areas of regional significance and the retention of farm and forest land. The subdivision and development of RCA lands beyond the density permitted by the criteria, and the intensification of development on lightly or moderately occupied LDA lands, were considered by the Commission to result in a significant reduction in these values. Thus, the Commission provided that the total acreage of land so developed should be counted against the Growth Allocation.

In order to "mitigate" the significant reduction in these values, criteria were developed to guide the location and extent of future growth allocation areas. These criteria are found in COMAR 21.01.02.06. These guidelines indicate that new IDAs should be located adjacent to existing LDAs or IDAs. The guidelines provide that no more than half of the allocated expansion may be located in RCAs; however, rural jurisdictions in Southern Maryland and the Eastern Shore may be able to utilize a greater percentage of their growth allocation in RCA areas if they can demonstrate that they are unable to locate growth allocation adjacent to LDAs and IDAs. In addition, new IDAs and LDAs should be located in order to minimize impacts to Habitat Protection Areas, and for use of growth allocation in RCAs, new IDAs and LDAs should be located at least 300 feet beyond the landward edge of tidal wetlands and tidal waters. The 300-foot Buffer is proposed in order to "mitigate" the significant reduction in the value of RCA lands resulting from the use of growth allocation, and serves to preserve some of the wildlife habitat benefits of the RCA. Though these guidelines are not mandated, they are required to at least be considered and addressed by local jurisdictions in all growth allocation decisions.

It has been suggested that only the development "pad" or area of direct disturbance in a new development or subdivision should be counted against Growth Allocation. For example, if a 100-acre parcel in an RCA was to be subdivided into 20 two-acre parcels, and 60 acres were to remain in open space, it is argued that only a 20,000 square foot development pad associated with each two-acre lot should be counted and therefore, only 10 acres of Growth Allocation would be used. There are several objections to this approach. First, it runs counter to the third goal of the Critical Area Law which recognizes that the number, movement, and activities of persons can cause adverse environmental impacts even if direct pollution from development is controlled. This goal suggests that the area of disturbance from new development clearly extends well beyond the immediate development pad. Second, the Commission sought to address the habitat protection goal of the Law, and the conservation for forest and farm land, by establishing the '1 unit per 20 acres density' criterion for RCA lands. When this density is exceeded by conversion to IDA or LDA development, then a parcel no longer exhibits RCA characteristics and the total acreage should be counted against Growth Allocation. Finally, the approach given in the example above would permit nearly a tenfold increase in development in RCA lands over that originally contemplated by the Commission when it proposed Growth Allocation as a means to provide some flexibility in accommodating new development in the Critical Area. Thus, a jurisdiction with 5,000 acres of Growth Allocation could, in theory, convert nearly 50,000 acres of RCA lands to LDA uses, a situation clearly not intended in the original formulation of Growth Allocation.

The Commission recognizes, however, that there may be circumstances where the overall goals of the Critical Area Program would be enhanced if an area less than the full parcel being developed was to be deducted from a jurisdiction's Growth Allocation. For example, clustering of development, while encouraged by the criteria, may be limited by the full application of this rule. In order to provide for these special cases, the Commission will consider less than full parcel deduction only in the case of the use of the development envelope concept, explained more fully on the following pages.

## CRITICAL AREA COMMISSION POLICY

- Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the local jurisdiction as a Growth Allocation area, shall result in the acreage of the entire parcel not in tidal wetlands, counting against the jurisdiction's Allocation, unless the development envelope concept is used.

## Development Envelopes

- The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The "required buffers", in this instance, refers to the minimum 100' Buffer and the 25' nontidal wetlands buffer. Only one development envelope shall be established per parcel of land.
- If a development envelope is proposed in the RCA and less than 20 acres remain outside of the envelope, then the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the entire parcel must be deducted. This requirement is based on the principle that at least 20 acres are needed to maintain the RCA character. \*
- If there is a permanently protected Resource Conservation Area (for example, protected by easement) adjacent and contiguous to the less-than-20-acre residue, resulting in a minimum 20-acre residue, then the entire parcel does not have to be deducted.
- The remaining minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless permanent protection is in place.

## Parcel History

- The date of December 1, 1985 was the original mapping date for the Critical Area, and should be used for growth allocation as a beginning point of analysis; therefore, the subdivision history of a parcel in the RCA must be provided as part of a growth allocation application.
- For all growth allocations involving a parcel of land in the RCA which was subdivided subsequent to December 1, 1985, the acreage of the parcel as it existed on 12/1/85 will affect the amount of growth allocation deducted. The Critical Area Commission will ensure that the area of the original parcel (as of 12/1/85) not proposed for growth allocation meets the 'one dwelling unit/20 acre' RCA criterion. ✓
- The primary reason to go back to December 1, 1985, is to protect the existing RCA features as of the date that the Critical Area designations were made, and ensure that the remaining RCA land has RCA density.

#### New IDAs

- New IDAs must be at least 20 acres in size unless:
  - 1) they are contiguous to an existing IDA or LDA; or
  - 2) grandfathered commercial, industrial or institutional uses existed as of the date of local Program approval. The amount of growth allocation deducted shall be the equivalent to the area of the entire parcel or parcels subject to the growth allocation request.

#### Acreage Deducted vs. Area Mapped

- The amount of growth allocation deducted must equal the area mapped.
- If a jurisdiction has a clause in its Program which sets a time limit within which the growth allocation must be used, then it must be specified what is to happen should this time lapse. If the jurisdiction "decertifies" this area with the Commission, then the acreage goes back into the growth allocation reserve for the jurisdiction, and this may be handled as a Program refinement.

#### Site Features

- Identification of site features should be done in order to alert the CAC and local government that HPA issues could restrain future development.
- All Critical Area criteria must be met at the time of project development. The approval of growth allocation by the CAC for a parcel with sensitive site features in no way indicates the Commission's concurrence that this site is suitable for maximum development. All sensitive areas must be protected.

#### Buffer

- For growth allocation areas proposed in the RCA, a 300' naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, it shall not be deducted, even if that Buffer does not meet the 20-acre requirement.
- For waterfront projects, a minimum 100' naturally vegetated Buffer must be established and be included in any acreage deduction.

#### Adjacency

- Jurisdictions must address the adjacency guidelines contained in COMAR 27.01.02.06;  
  
New IDAs should be located in LDAs or adjacent to existing IDAs.  
New LDAs should be located adjacent to existing LDAs or IDAs.
- As part of a growth allocation amendment request to the CAC, local jurisdictions shall be required to provide a written assessment as to how the adjacency guidelines in COMAR 27.01.02.06 were considered.



LAW OFFICES  
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A Professional Association  
113 South Baptist Street  
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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

May 3, 2005

**RECEIVED**

FBI 2005

VIA FIRST CLASS MAIL

Michael L. Pullen, Esq.  
142 N. Harrison Street  
Easton, Maryland 21601

**BNR DIVISION**

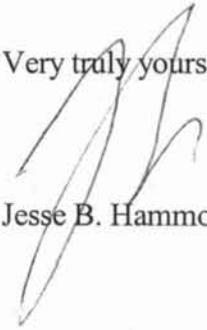
Re: *Talbot County, Maryland v. Department of Natural Resources, et al.*  
Case No.: 20-C04-005095DJ

Dear Mr. Pullen:

Enclosed is The Commissioners response to the discovery requests of the County. Because of the breadth of the County's requests, we expect that it will be several weeks before all documents have been assembled for your review. As soon as the documents have been assembled, we will notify you so that we may arrange a mutually agreeable time for your review thereof.

Should you have any questions, please do not hesitate to call.

Very truly yours,

  
Jesse B. Hammock

cc: David R. Thompson, Esq. (Via First Class Mail)  
Paul J. Cuezzezza, Esq. (Via First Class Mail)  
Daniel Karp, Esq. (Via First Class Mail)

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

**THE COMMISSIONERS OF ST. MICHAELS' RESPONSE  
TO THE FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS OF PLAINTIFFS**

The Commissioners of St. Michaels ("the Town"), by their undersigned counsel, pursuant to Maryland Rule 2-424, responds *ad seriatim* to the First Requests For Production of Documents propounded by Talbot County, Maryland as follows.

The information contained in this Response is being provided in accordance with the provisions and intent of the Maryland Rules ("the Rules"). By providing the information requested, the Town does not waive objections to its Response or the information contained therein being admitted into evidence on the grounds of materiality, relevance, hearsay, or other proper grounds for objection.

The information sought in these Requests for Production of Documents may be the subject of additional discovery, including document production, supplemental interrogatory

answers and depositions. Accordingly, these Responses are not provided in lieu of, in substitution of, or as a summary of the substantial information to be generated through additional discovery and the Town reserves the right to supplement its response if additional information becomes available through discovery. Moreover, to the extent that information requested through these Requests is revealed in the course of further discovery, such information shall be deemed to be automatically incorporated herein, obviating the need for supplementation of specific answers to which it may relate unless otherwise required by the Rules.

### **General Objections**

The Town objects to the Requests for Production of Documents (the "Requests") to the extent they seek documents or other information that is protected from discovery by the attorney-client privilege, the attorney work product doctrine, the legislative privilege, the executive privilege, or was prepared in anticipation of litigation. The Town objects to the extent the Requests seek documents or other information within the County's possession or to the extent the County seeks legal conclusions. The Town objects to the extent the Requests seek documents or information that is not relevant, is not likely to lead to the discovery of admissible information, or is otherwise not discoverable. The Town objects to the extent the Requests are vague, overly broad, or seek information beyond the scope of permissible discovery. The Town objects to the extent the Requests are unduly burdensome and are not calculated to lead to discoverable information.

### **Specific Responses**

**Request No. 1:** Copies of the Town's Critical Area Program, including the text of the program originally adopted and all program amendments and refinements proposed or adopted

by the Critical Area Commission including all documents and correspondence by and between the Town and the Critical Area Commission.

**Response No. 1:** The Town objects to the extent that Request No. 1 seeks documents protected by the attorney client privilege, the work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 1 as overly broad and unduly burdensome and not likely to lead to the discovery of admissible evidence. The Town objects to Request No. 1 to the extent that it seeks *all* program amendments and refinements “proposed or adopted” by the Critical Area Commission. The Town objects to Request No. 1 to the extent that the County’s request that the Town produce all “amendments and refinements proposed or adopted by the Critical Area Commission” is vague and ambiguous. If it was the County’s intent to request that the Town produce all amendments and refinements drafted, proposed and/or adopted by the Town and submitted to the Critical Area Commission, then, without waiving any of the aforesaid objections, the Town will produce all responsive non-privileged documents.

**Request No. 2:** All documents that refer or relate to actual, proposed, attempted, or suggested annexations to the Town of St. Michaels, whether approved, denied, supported, or opposed by the Town, from 1989 to the present.

**Response No. 2:** The Town objects to Request No. 2 in that it is overly broad, unduly burdensome, vague, and not likely to lead to the discovery of admissible evidence. The Town objects to Request No. 2 to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 2 to the extent that it requests “all” documents that “refer or relate to” annexations to the Town of St. Michaels. Notwithstanding, and without waiving these or any other

applicable objections, the Town will produce all responsive non-privileged documents.

**Request No. 3:** All documents that refer or relate to the growth allocation acreage reserved to The Commissioners of St. Michaels in Talbot County's critical area program, including all documents that memorialize, contain, refer or relate to any correspondence, discussion, meeting, agreement, understanding, or representation by or between the Town and the County concerning growth allocation.

**Response No. 3:** The Town objects to Request No. 3 to the extent that it seeks documents protected by the attorney client privilege, the work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 3 in that it is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. Notwithstanding, and without waiving any of the aforesaid objections, or any other applicable objection, the Town will produce all non-privileged responsive documents.

**Request No. 4:** The Commissioners of St. Michaels comprehensive plans in place when the Town's critical area program was first developed and adopted, to and including the present.

**Response No. 4:** The Town objects to Request No. 4 as vague, overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. The Town objects to Request No. 4 to the extent that it seeks documents protected by the attorney/client privilege, the work product doctrine, the legislative privilege, or the executive privilege. Notwithstanding, and without waiving any of these or any other applicable objections, the Town will produce all responsive and non-privileged documents.

**Request No. 5:** All documents showing The Commissioners of St. Michaels growth

policies and plans in place when the Town's critical area program was first developed and adopted, to and including the present.

**Response No. 5:** The Town objects to Request No. 5 to the extent that it seeks documents protected by the attorney client privilege, the attorney work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 5 in that it is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Notwithstanding, and without waiving any of these objections, the Town will produce all responsive non-privileged documents.

**Request No. 6:** All documents that refer or relate to Talbot County Bill 762.

**Response No. 6:** The Town objects to Request No. 5 to the extent that it seeks documents protected by the attorney client privilege, the attorney work product doctrine, the legislative privilege or the executive privilege. The Town objects to Request No. 5 in that it is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Notwithstanding and without waiving any of these objections, the Town will produce all responsive non-privileged documents.



---

Jesse B. Hammock  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, MD 21803-0044  
Telephone: 410-546-4644

Attorney for The Commissioner of St. Michaels

**Certificate of Service**

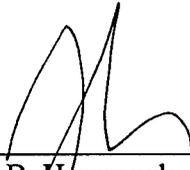
I HEREBY CERTIFY that on the 3<sup>rd</sup> day of May, 2005, an exact copy of the foregoing was mailed by first class U.S. Mail, postage prepaid, to the following:

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. Cucuzzella, 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



---

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Banks, Nason & Hickson, P.A.  
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Salisbury, MD 21803-0044  
Telephone: 410-546-4644  
Attorney for The Commissioners of St. Michaels

LAW OFFICES  
**BANKS, NASON & HICKSON**

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JESSE B. HAMMOCK

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

May 3, 2005

**VIA FIRST CLASS MAIL**

Circuit Court of Maryland  
Talbot County  
P.O. Box 723  
Easton, Maryland 21601  
Attn: Court Clerk

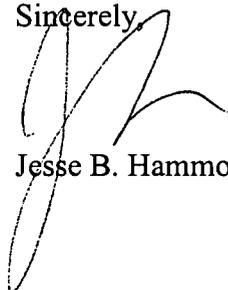
RE: Talbot County, Maryland, et al. v. Department of Natural Resources, et al.  
Case No.: 20-C04-005095DJ

Dear Clerk:

Enclosed please find an original Notice 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. (w/encl.)  
Michael L. Pullen, Esq. (w/encl.)  
Paul J. Cucuzzella, Esq. (w/encl.)  
David R. Thompson, Esq. (w/encl.)

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 MATERIAL**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of May, 2005, an exact copy of The Commissioners of St. Michaels' Response to the First Request for Production of Documents of Plaintiffs was mailed by first class U.S. Mail, postage prepaid, to the following:

Daniel Karp, Esquire  
Victoria M. Shearer, Esquire  
Allen, Karpinski, Bryant & Karp, P.A.  
Suite 1540  
100 E. Pratt Street  
Baltimore, Maryland 21202-1089  
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Attorneys for Town of Oxford



---

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Attorney for The Commissioners of St. Michaels





## TALBOT COUNTY, MARYLAND

TALBOT COUNTY GOVERNMENT BUILDING

142 N. HARRISON STREET

EASTON, MD 21601

PHONE: 410-770-8092

MICHAEL L. PULLEN  
County Attorney

Fax: 410-770-8089  
TTY: 410-822-8735  
mpullen@talbgov.org

April 22, 2005

**RECEIVED**

APR 24 2005

Jesse B. Hammock, Esq.  
Banks, Nason & Hickson P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044

**BNR**

**VIA FACSIMILE (410) 548-2568**

Talbot County v. Department of Natural Resources

Dear Mr. Hammock:

I have received and reviewed your letter of April 21, 2005 concerning Talbot County's response to St. Michael's First Request for Production of Documents. I include Talbot County's formal written response with this cover letter. The documents themselves were previously mailed to your office on April 4, 2005 pursuant to a still earlier discussion with Mr. Hickson. I had called to speak with Mr. Hickson concerning the County's response and to offer him the opportunity to physically inspect the documents and select those documents he wished to have copied. I also offered him the choice that I would send all of the documents out to a copy service to copy them all and send them all to your office. Mr. Hickson preferred that I have the documents copied and sent to your office, which, as I have indicated, I did on April 4, 2005.

I have considered your concern that the documents "were neither categorized nor appear to have been produced as kept in the ordinary course of business." The documents that were produced were sent out to a copying service per Mr. Hickson's and my earlier discussion to be copied prior to being sent to your office. Had Mr. Hickson elected to physically inspect the documents, they could have been produced as they were kept in the ordinary course of business. Because Mr. Hickson chose to have this office send them to a copy service, the requirement that they be produced as kept in the ordinary course of business was waived. Had I understood that, by offering your office the choice to physically inspect the documents, or to have the documents copied by a service *en masse*, that I would later be asked to categorize each document by each category of your request, I would never have offered that choice. Rather, in accord with the requirements of Maryland Rule 2-422, I would have simply made the original documents available (as kept in the ordinary course of business) for your inspection at this office and required you to select those documents that you wished to have copied. I believe your request that I now (retroactively) reorganize the documents as kept in the ordinary course of business or categorize them pursuant to each of your requests is untimely and unduly burdensome.

Should your office wish to inspect these documents, they will be made available at a mutually convenient time and date here at the Talbot County Court House, 11 North Washington St, Easton, Maryland 21601. If you wish to do so, please contact me to schedule a mutually convenient date and time. They will be produced as they are kept in the ordinary course of business.

Regarding your concern that several categories of documents appear to be omitted, I will review whatever documents exist to determine if there are additional documents responsive to your request and if there are I will produce all such non-privileged documents. In briefly reviewing your letter, it appears to me that you may be mistakenly assuming that constituent communications were "letters" and not e-mails. For example, I specifically recall an e-mail from Mr. or Mrs. Bollman. Because I want to respond to your stated concerns promptly, I have not yet reviewed the documents to determine if this is indeed the case, but will do so and advise accordingly.

Regarding the March 31, 2004 letter from this office to Mr. Thompson, that letter references the following documents:

- (1) E-mail's sent December 11, 2003 and December 12, 2003 between the county secretary, county attorney, planning officer and assistant planning officer regarding critical area legislation, consisting of 2 pages.
- (2) E-mail dated February 4, 2004 between county attorney and county secretary, 1 page, regarding legislative matters.
- (3) E-mail dated December 18, 2003 from county attorney to county council member with copies to county manager and county secretary regarding proposed legislation.
- (4) E-mail dated January 31, 2004, from county attorney to county council with copies to county manager and county secretary containing attorney client communication, attorney-client work product, and material related to Bill 933 for county council's consideration. 1 page, 6 page attachment.
- (5) E-mail dated February 3, 2004 consisting of 1 page with 9-page attachment, from county attorney's staff to county manager with a courtesy copy to county secretary containing an attorney client communication, attorney-client work product, and legislative and deliberative material related to Bill 933.
- (6) E-mail dated November 14, 2003 from county attorney to county council with courtesy copies to county manager, county secretary, assistant county secretary, planning officer, and assistant planning officer containing attorney client communication, attorney-client work product, and proposed legislation covered by the legislative and executive privileges. 1 page with 5-page attachment.
- (7) E-mail's dated December 11, 2003 and December 12, 2003 variously between county attorney, county secretary, planning officer, and assistant planning officer with courtesy copies to county manager consisting of attorney-client communications, attorney work product, referring to proposed legislation and amendments. 2 pages excluding attachments. These e-

mail's are privileged as attorney client communications, attorney work product, and by legislative and executive privilege.

(8) E-mail dated December 12, 2003 from county attorney to county council with courtesy copies to county manager, county secretary, county planner, and assistant county planner consisting of legislation with proposed amendments. 1 page, 12 pages of attachments.

(9) E-mail dated December 24, 2003 from county attorney to county planning officer and assistant county planning officer with courtesy copies to county manager and county secretary. This e-mail consists of an attorney client communication, attorney work product, and is covered by legislative and executive privilege. 1 page.

(10) E-mail dated February 4, 2004 from council member to county attorney and other council members, with courtesy copies to county manager and county secretary. This contains an attorney client communication and is covered by the legislative and executive privileges. 1 page.

(11) E-mail dated February 3, 2004 from county attorney to council members with courtesy copies to county manager and county secretary. 1 page, 7 page attachment. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

(12) E-mail dated December 19, 2003 from county attorney to council members with courtesy copy to county manager and county secretary consisting of 1 page with 1 page attachment concerning proposed amendment to legislation. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

(13) E-mail dated February 4, 2004 from county attorney to county secretary, 1 page with 7-page attachment. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

(14) E-mail dated January 31, 2004 from county attorney to planning officer and assistant planning officer with courtesy copies to county manager and county secretary regarding Bill 933. 1 page with 6-page attachment. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

(15) E-mail dated December 17, 2003 from county attorney to council member with courtesy copy to county manager and county secretary concerning Bill 933. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges. 1 page with 9-page attachment.

(16) E-mail dated December 12, 2003 to and from county attorney/county secretary regarding Bill 933. This contains attorney-client communications, attorney work product, and is covered by legislative and executive privilege. 1 page.

(17) E-mail dated January 15, 2004, from county attorney to assistant planning officer with courtesy copy to county secretary concerning amendments to critical area legislation. 1 page

with 6 pages of attachments. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

(18) E-mail dated October 28, 2003 from county attorney to county council with courtesy copies to county manager, acting county secretary, planning officer, and assistant planning officer concerning critical area legislation. 1 page with 13 pages of attachments. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

(19) E-mail from county secretary to county attorney with courtesy copies to county manager dated December 11, 2003 regarding amendments to Bills 931, 930, and 929. 2 pages. This contains an attorney client communication, attorney work product, and is covered by the legislative and executive privileges.

All of those documents fell within Mr. Thompson's Public Information Act request, and all were withheld based on the privileges stated in that letter. Those documents, although responsive to your request for production, are likewise not subject to disclosure in this action for the same reason that they were not subject to disclosure in response to the Public Information Act request. They are privileged. The specific bases for those privileges are set forth in the letter of March 31, 2004. I reserve the right to supplement the grounds for asserting privilege if challenged. If you believe any of those documents are not privileged, and are subject to production in response to your request, please advise, and please set forth the factual and legal basis for your position.

Thank you for your continued cooperation in this matter.

Sincerely,



Michael L. Pullen

cc: Daniel Karp, Esq.  
Victoria Shearer, Esq.  
David Thompson, Esq.  
Marianne Mason, Esq.  
Paul Cueuzzella, Esq.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, 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 :

Interveners, Defendants  
and Counter-Plaintiffs :

**RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM  
DEFENDANT COMMISSIONERS OF ST. MICHAEL'S**

Talbot County, Maryland, by its attorneys, , Allen, Karpinski, Bryant & Karp, Daniel Karp, Victoria Shearer, and Michael L. Pullen, pursuant to Maryland Rule 2-422, hereby responds to defendant commissioners of St. Michael's First Request for Production of Documents.

### General Responses

1. Copies of responsive and non-objectionable documents presently within the possession, custody or control of the Plaintiff have been previously copied, Bates stamped, and provided by first class mail, postage prepaid, on April 4, 2005. The Plaintiff maintains the originals of these documents within their custody or control, and the same will be made available for inspection and photocopying upon request made to the undersigned counsel.
2. Plaintiff's investigation into the incidents described in the Complaint is ongoing. The responses below contain, subject to specified objections, only that amount of responsive documentation in the possession, custody or control of the defendant as of the date of this Response. The Plaintiff will supplement its response if and as it obtains additional responsive non-objectionable documentation.
3. With respect to each response to below, the Plaintiff has withheld those documents, though, responsive, that are protected by attorney-client, legislative, and executive privilege.

### Specific Responses

**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.

**RESPONSE TO REQUEST NO. 1:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**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.

**RESPONSE TO REQUEST NO. 2:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**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.

**RESPONSE TO REQUEST NO. 3:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**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.

**RESPONSE TO REQUEST NO. 4:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 5:** To the extent not produced in response to any other requests, 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 officeholder, evidencing, referring to, reflecting upon, relating to, or regarding Bill 933 or the substance thereof.

**RESPONSE TO REQUEST NO. 5:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 6:** All documents which evidence, refer to, reflect upon, or relate to any communication between the County and St. Michael's concerning, relating to or regarding Bill 933, or the substance thereof.

**RESPONSE TO REQUEST NO. 6:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 7:** All documents which evidence, refer to, reflect upon, or relate to any attempt to make communication with St. Michael's by the County concerning, relating to or regarding Bill 933, or the substance thereof.

**RESPONSE TO REQUEST NO. 7:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**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.

**RESPONSE TO REQUEST NO. 9:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 9:** All documents which evidence, referred to, reflect upon, will 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.

**RESPONSE TO REQUEST NO. 9:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

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

**RESPONSE TO REQUEST NO. 10:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

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

**RESPONSE TO REQUEST NO. 11:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

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

**RESPONSE TO REQUEST NO. 12:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**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.

**RESPONSE TO REQUEST NO. 13:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

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

**RESPONSE TO REQUEST NO. 14:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 15:** All documents, including recordings and transcripts thereof, which evidence, referred to, reflect upon, would relate to any public hearing held by the Talbot County planning commission, concerning, relating to or regarding Bill 933 or the substance thereof.

**RESPONSE TO REQUEST NO. 15:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 16:** All documents, including recordings and transcripts thereof, which evidence, referred 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.

**RESPONSE TO REQUEST NO. 16:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

**REQUEST NO. 17:** All documents that you intend to use in trial of the above captioned matter.

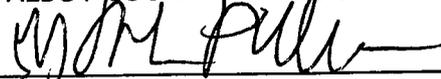
**RESPONSE TO REQUEST NO. 17:** All non-privileged documents within the custody or control of Talbot County, Maryland that are responsive to the request have been produced.

ALLEN, KARPINSKI, BRYAN & KARP



BY: DANIEL KARP  
100 E. Pratt Street, Suite 1540  
Baltimore, Maryland 21202  
(410) 727-5000  
Attorneys for Plaintiff/Counter-Defendant

TALBOT COUNTY OFFICE OF LAW:



By: Michael L. Pullen, County Attorney  
11 N. Washington Street  
Easton, Maryland 21601  
(410) 770-8092

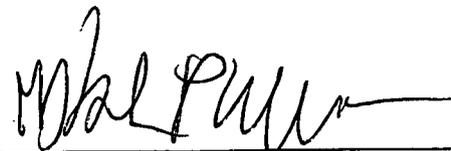
**Certificate of Service**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of April, 2005, a copy of Plaintiff's Response to St. Michaels' First Request for Production of Documents 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



Counsel for Plaintiff

**IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND**

TALBOT COUNTY, MARYLAND :  
Plaintiff/Counter-Defendant :  
vs. : Civil Action No. 2-C-04-005095 DJ  
DEPT OF NATURAL RESOURCES :  
Defendant :

**NOTICE OF SERVICE OF DISCOVERY**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of April, 2005, a copy of Plaintiff/Counter-Defendant's Response to Intervenor/Counter-Plaintiff's First Request for Production of Documents to Plaintiff/Counter-Defendant was mailed first-class, postage prepaid to:

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

David R. Thompson, Esquire  
Cowdrey, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
P.O. Box 44  
Salisbury, Maryland 21803-0044

ALLEN, KARPINSKI, BRYAN & KARP

Daniel Karp /np  
BY: DANIEL KARP  
100 E. Pratt Street, Suite 1540  
Baltimore, Maryland 21202  
(410) 727-5000  
Attorneys for Plaintiff/Counter-Defendant

TALBOT COUNTY OFFICE OF LAW:

A handwritten signature in black ink, appearing to read "Michael L. Pullen", written over a horizontal line.

By: Michael L. Pullen, County Attorney  
11 N. Washington Street  
Easton, Maryland 21601  
(410) 770-8092



IN THE CIRCUIT COURT FOR TALBOT COUNTY

CASE NAME

Talbot County MD v. Dept. Natural Resources  
Critical Area Commission

CASE NUMBER

20-C-04-005095

PRETRIAL SCHEDULING ORDER - CIVIL DOMESTIC

Track Assignment:

Expedited-simple issues, less than 1/2 day

Standard - 1 1/2 - 2 days

Standard 1/2 to 1 day

Complex - more than 2 days, complex issues

Pursuant to Rule 2-504(a) a Pre-Trial Conference was held this date and present were:

Michael Pullen Attorney for Plaintiff(s)  
Brynja Booth Attorney for Plaintiff(s) O & J Ford  
Michael Nicholson Attorney for Defendant(s) St. Michaels  
Paul J. Cuzzocchia Attorney for Defendant(s) Dept Natl Resource

THE FOLLOWING MATTERS CONSIDERED, THE COURT FINDS, AND WHERE APPLICABLE, ORDERS:

- 1. Deadline for disclosure of experts Plaintiff Defendant
2. All discovery, including depositions shall be completed by 10/14/05 except for good cause shown.
3. All amendments to pleadings shall be filed by 11/14/05.
4. All motions, including motions for summary judgment, if any, shall be filed by 11/14/05.
5. Settlement Conference will be held on 12/14/05 at 12/14/05 unless the case has been settled prior to that date.
6. Counsel shall comply with Rule 2-504.2 in filing their Pretrial Statements five days prior to settlement conference.
7. Pretrial Conference with Trial judge, if requested by Court or counsel shall be held at 5:00 p.m. on
8. Counsel's estimation of trial time: time for hearing on all Motions is 1/2 day
9. This X court jury trial is expected to take a total of
10. Trial date at am/pm. Trial date to be set at settlement conference
11. Any party intending to use any deposition recorded by videotape or audiotape, shall comply with Rule 1-416(g).
12. All requests for motions in limine shall be filed with the Court at least one week prior to the first day of trial.
13. Voir Dire, with witness list, shall be submitted at least 48 business hours before trial.
14. Requests for jury instructions are requested by the Court 48 business hours before trial.
15. Counsel shall be in the courtroom at 8:30 a.m. on the first day of trial in order to have any documentary evidence that shall be proffered into evidence pre-marked by the courtroom clerk and for any outstanding preliminary matters to be decided.
16. IF CASE SETTLES, COUNSEL SHALL NOTIFY THE COURT IMMEDIATELY AT 410-822-4444.

4/14/05 Date

George B. Rasner, Jr. Judge



J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL  
DONNA HILL STATON  
DEPUTY ATTORNEY GENERAL  
MAUREEN M. DOVE  
DEPUTY ATTORNEY GENERAL



JOSEPH P. GILL  
ASSISTANT ATTORNEY GENERAL  
PRINCIPAL COUNSEL  
MARIANNE D. MASON  
ASSISTANT ATTORNEY GENERAL  
DEPUTY COUNSEL

STUART G. BUPPERT, II  
SHAUN P. K. FENLON  
RACHEL L. EISENHAEUER  
ROGER H. MEDOFF  
SHARA MERVIS ALPERT  
SAUNDRA K. CANEDO  
PAUL J. CUCUZZELLA  
ASSISTANT  
ATTORNEYS GENERAL

WRITER'S DIRECT DIAL NO.:

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

FAX NO.:

(410) 260-8364

(410) 260-8352

[pcucuzzella@dnr.state.md.us](mailto:pcucuzzella@dnr.state.md.us)

April 1, 2005

Jesse B. Hammock, Esq.  
Banks, Nason & Hicks, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044

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

Dear Jesse:

Enclosed please find the Department of Natural Resources' response to your client's First Request For Production Of Documents. The production includes copies of documents bate stamped 000001 to 001622, together with copies of two transcripts from hearings held at the Critical Area Commission's May 5, 2004 meetings. The Department is also in possession of seven (7) recorded audio cassettes that are responsive to your requests. Copies of these cassettes will follow in short-order

By copy of this letter, I am also providing copies of all of the materials contained herein to Mr. Thompson. The Department has already produced copies of all of these materials to Ms. Shearer and Mr. Pullen

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul J. Cucuzzella".

Paul J. Cucuzzella  
Assistant Attorney General

Enclosures

cc: Victoria M. Shearer, Esq.  
Michael L. Pullen, Esq.  
David R. Thompson, Esq.

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](mailto:pcucuzzella@dnr.state.md.us)

April 1, 2005

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 Department Of Natural Resources' Notice Of Service Of Discovery Materials. 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.  
Jesse B. Hammock, Esq.  
David R. 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, *et al.*,

\*

\*

Defendants.

\*

\* \* \* \* \*

**NOTICE OF SERVICE OF DISCOVERY MATERIALS**

I HEREBY CERTIFY, pursuant to Maryland Rule 2-401(d)(2), that, on this 1st day of April, 2005, a copies of defendants' Response To First Request For Production Of Documents From Commissioners Of St. Michaels were sent via U.S. Mail to:

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

Victoria M. Shearer, Esq.  
Allen, Karpinski, Bryant & Karp, P.A.  
Suite 1540  
100 East Pratt Street  
Baltimore, Maryland 21202-1089

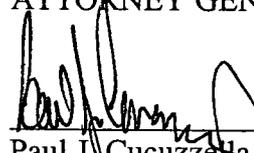
Michael L. Pullan, Esq.  
142 N. Harrison Street  
Easton, Maryland 21601

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

The undersigned has retained the originals of the discovery materials and will make them available for inspection upon request.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzzella  
Marianne D. Mason  
Assistant Attorneys General  
Maryland Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
(410) 260-8352  
Fax: (410) 260-8364  
*Attorneys for defendant DNR*

Dated: April 1, 2005

**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, *et al.*

\*

\*

Defendants.

\*

\* \* \* \* \*

**RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
FROM DEFENDANT COMMISSIONERS OF ST. MICHAELS**

TO: Defendant The Commissioners Of St. Michaels

FROM: Defendant Department Of Natural Resources,  
Maryland Critical Area Commission For The  
Chesapeake And Atlantic Coastal Bays

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

**GENERAL RESPONSES**

1. Copies of responsive and non-objectionable documents presently within the possession, custody or control of the defendant are provided along with this Response. The defendant maintains the originals of these documents within their custody or control, and the same

will be made available for inspection and photocopying upon request made to the undersigned counsel.

2. The defendant's investigation into the incidents described in the Complaint is ongoing. The responses below contain, subject to specified objections, only that amount of responsive documentation in the possession, custody or control of the defendant as of the date of this Response. The defendant will supplement their responses as they obtain additional responsive, non-objectionable documentation.

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

### RESPONSES

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

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

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

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

**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, related to, or regarding Bill 933 or the substance thereof.

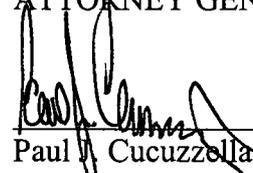
**Response:** Copies of documents responsive to this request are provided.

**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 ro regarding Bill 933, or the substance thereof.

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

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzzella  
Marianne D. Mason  
Assistant Attorneys General  
Maryland Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
(410) 260-8352  
Fax: (410) 260-8364  
*Attorneys for defendant DNR*

Dated: April 1, 2005



IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs. :

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

Defendant :

vs. :

THE COMMISSIONERS OF  
ST. MICHAELS :

and :

TOWN OF OXFORD, MARYLAND :

Interveners, Defendants  
and Counter-Plaintiffs :

RECEIVED

MAR 31 2005

DNR - LEGAL DIVISION

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

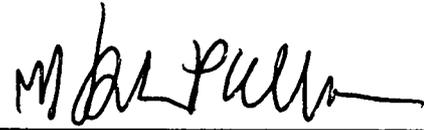
**NOTICE OF SERVICE OF DISCOVERY**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, copies of Plaintiff's Second Request for Production of Documents to the Department of Natural Resources, Plaintiff's First Set of Interrogatories to the Department of Natural Resources, Plaintiff's First Request for Production of Documents to The Commissioners of St. Michaels, and Plaintiff's First Request for Production of Documents to The Town of Oxford were mailed first-class, postage prepaid to:

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

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

David R Thompson, Esquire  
Cowdry, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



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

**Certificate of Service**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing documents were mailed first-class, postage prepaid to:

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

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

David R Thompson, Esquire  
Cowdry, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



Of Counsel for Plaintiff  
Talbot County, Maryland

**IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND**

TALBOT COUNTY, MARYLAND

:

Plaintiff

:

vs.

:

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

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

:

:

**RECEIVED**

:

Defendant

MAR 31 2005

vs.

:

**DNR - DIVISION**

THE COMMISSIONERS OF  
ST. MICHAELS

:

:

and

:

TOWN OF OXFORD, MARYLAND

:

Interveners, Defendants  
and Counter-Plaintiffs

:

**AFFIDAVIT IN SUPPORT OF SECOND AMENDED COMPLAINT**

I HEREBY AFFIRM UNDER PENALTIES OF PERJURY, that the statements contained within the Second Amended Complaint, are true to the best of my knowledge, information and belief.

*Michael L. Pullen* — 3-29-05

Michael L. Pullen

Date

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing Affidavit in Support of 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.  
P.O. Box 44  
Salisbury, Maryland 21803-0044

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



---

Of Counsel for Plaintiff  
Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, 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

Interveners, Defendants  
and Counter-Plaintiffs :

**TALBOT COUNTY'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS  
TO DEPARTMENT OF NATURAL RESOURCES**

TO: Department of Natural Resources,  
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

FROM: Talbot County, Maryland

**Instructions**

Pursuant to Maryland Rule 2-422 (c) you are required to file a written response within thirty days after service or within fifteen days after the date on which your initial pleading or motion is required, whichever is later, to the following request.

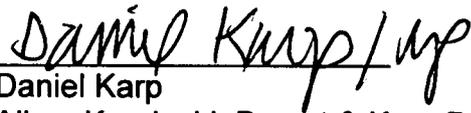
Pursuant to Maryland Rule 2-422 (d), you shall produce them as they are kept in the ordinary course of business or shall organize and label them to correspond to the categories in the request.

As to items that are in your possession, custody, or control, you are requested to produce and permit the party filing this request, or someone acting on the party's behalf, to inspect and copy the following designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) and to inspect and copy, test, or sample tangible things which constitute or contain matters within the scope of Maryland Rule 2-402 (a).

### Documents

1. Copies of all documents identified in your Answers to Interrogatories.
2. Copies of each local ordinance in each County and municipality that have adopted or participate in a joint county-municipal process to award growth allocation. "Joint county-municipal process" means any procedure in which both the county and municipality, including any commission, board, agency, official, executive, employee, officer, or agent, have authority to review, evaluate, or make a decision or recommendation with regard to awarding growth allocation for land lying within or proposed for annexation to a municipality.
3. All documents showing the processes by which all counties consider requests for awards of growth allocation within municipalities or for land being annexed into a municipality.
4. All documents relating or referring to the Critical Area Commission's evaluation, approval, or disapproval of all proposed critical area programs, amendments, or refinements concerning the method(s) used by counties to award growth allocation for land lying within or proposed for annexation to a municipality.
5. A listing of all awards of growth allocation within each municipality. As to each, all records showing whether that award was made by the municipality alone, the County alone, or by both the municipality and the County.
6. A listing of all requests for growth allocation within each municipality that have been denied. As to each, all records showing whether that denial was made by the municipality alone, the County alone, by both the municipality and the County, or by the Critical Area Commission.
7. All documents submitted to, relied upon, or generated by Critical Area Commission staff in connection with review and approval by the Critical Area Commission of Dorchester County Bill 2004-028, creating a County-municipal review process for growth allocation.

8. All recordings, transcripts, minutes or summaries of all hearings held before the Critical Area Commission, and all documents provided to, considered by, reviewed, relied upon, or generated in connection with review and approval of Dorchester County Bill 2004-028.
9. All documents that contain, relate, or refer to Critical Area Commission guidelines, policies, directives, opinions, letters of advice, determinations, or position papers regarding County processes to award growth allocation to municipalities or to developers or landowners with land lying within or proposed for annexation into municipalities.



Daniel Karp  
Allen, Karpinski, Bryant & Karp P.A.  
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Attorney for Talbot County, Maryland



Victoria Shearer  
Allen, Karpinski, Bryant & Karp P.A.  
100 East Pratt Street, Suite 1540  
Baltimore, Maryland 21202-1098  
Attorney for Talbot County, Maryland



Michael L. Pullen  
11 N. Washington St.  
Easton, MD 21601  
(410) 770-8093  
Attorney for Talbot County, Maryland

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing Second Request for Production of Documents 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  
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P.O. Box 44  
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David R Thompson, Esquire  
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P.O. Box 1747  
Easton, Maryland 21601



---

Of Counsel for Plaintiff  
Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, 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 :

Interveners, Defendants :  
and Counter-Plaintiffs :

**PLAINTIFF'S FIRST SET OF INTERROGATORIES TO**  
**DEPARTMENT OF NATURAL RESOURCES, CRITICAL AREA COMMISSION FOR**  
**THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**

TO: Department of Natural Resources, Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays

FROM: Talbot County, Maryland

**Instructions**

Pursuant to Rule 2-421, you are required to answer the following interrogatories within 30 days or within the time otherwise required by court order or by the Maryland Rules:

- (a) In accordance with Rule 2-421(b), your response shall set forth the interrogatory, and shall set forth the answer to the interrogatory separately and fully in writing

under oath or shall state fully the grounds for refusal to answer any interrogatory. The response shall be signed by you.

- (b) Also in accordance with Rule 2-421(b), your answers shall include all information available to you directly or through agents, representatives, or attorneys.
- (c) Pursuant to Rule 2-401(e), these interrogatories are continuing. If you obtain further material information before trial you are required to supplement your answers promptly.
- (d) If pursuant to Rule 2-421(c), you elect to specify and produce business records of yours in answer to any interrogatory, your specification shall be in sufficient detail to enable the interrogating party to locate and identify the records from which the answer may be ascertained.
- (e) If you perceive any ambiguities in a question, instruction, or definition, set forth the matter deemed ambiguous and the construction used in answering.

#### Definitions

In these interrogatories, the following definitions apply:

- (a) Document includes a writing, 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.
- (b) Identify, identity, or identification, (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 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.
- (c) 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.

- (d) Commission or Critical Area Commission means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (e) The term "you", "your", "your's", and "Defendant" shall refer to the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, all of its departments, agencies, offices, officers, officials, agents and employees, including but not limited to the Commissioners, staff, attorneys, and any other elected or appointed official, officer, agent, or employee.
- (f) 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.
- (g) The term "any" means any and all.
- (h) The terms "communicate" or "communication" means any oral, written, telephonic or otherwise recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever may, 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.
- (i) The term "including" means "including but not limited to."
- (j) 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.
- (k) The terms "relating to", "related to", and "regarding", any given subject matter, means to constitute, contain information of doubt, pertain to, or in any way directly or indirectly bear upon our deal with, and that subject matter.

#### Interrogatories

1. List all local jurisdictions with land lying within the critical area. The list shall be segregated by county, and shall list all municipalities within each county with land lying within the critical area.
2. Identify all counties and municipalities that have adopted or participate in a joint county-municipal process to award growth allocation. "Joint county-municipal process" means any procedure in which both the county and municipality, including any commission, board, agency, official, executive, employee, officer, or agent, have authority to review, evaluate, or make a decision or recommendation with regard to awarding growth allocation for land lying within or proposed for annexation to a municipality.

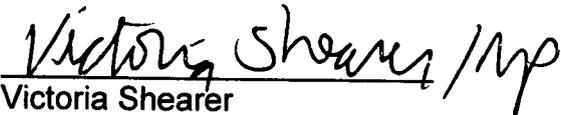
3. Separately identify each local program or program amendment or refinement that has been reviewed by the Critical Area Commission (whether approved, modified, or denied by the Commission) for each county and municipality that creates, establishes, or refers to any joint county-municipal process (as defined in Interrogatory No. 2) by which growth allocation is to be awarded to a municipality, or to a landowner (including an applicant, contract purchaser, developer, or other entity having a property interest) concerning land lying within a municipality.
4. As to each local program or program amendment or refinement identified in Interrogatory No. 3, state whether it was part of the original local program approval, or was processed as a program amendment or refinement by the Critical Area Commission, the date(s) it was considered by the Commission, the action taken, and identify all staff reports, transcripts, minutes, non-privileged legal opinions, and other documents in your possession, custody, or control that record, refer, or relate to each.
5. Identify all program amendments, refinements, and project approvals concerning an award of growth allocation for land lying within a municipality, or proposed for annexation within a municipality, that have been processed by the Critical Area Commission (whether approved, modified, or denied) from each county and municipality that participate in a joint county-municipal process, as defined in Interrogatory No. 2, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission as to each.
6. Identify all program amendments, refinements, or project approvals that have been processed (whether approved, modified, or denied) by any county(ies) and by the Critical Area Commission for growth allocation for land lying within a municipality or proposed for annexation within a municipality, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission for each.
7. State whether the Critical Area Commission has ever taken the position that State law creates growth allocation within municipalities for municipal use, absent an award of growth allocation by the county, and if so, identify all documents that contain, refer to, or relate to that position.
8. State whether the Critical Area Commission has ever taken the position that State law requires counties to award fixed amount(s) of growth allocation to municipalities. If so, identify each such instance, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission for each.
9. State whether the Critical Area Commission has ever taken the position that State law prohibits a county from participating in a process to award growth allocation on the basis that the project(s) proposed for or requesting growth allocation lie within

a municipality. If so, identify each such instance, and identify all staff reports, evaluations, recommendations, findings, non-privileged legal opinions, and action(s) by the Critical Area Commission for each.

10. If you intend to rely upon any documents or other tangible things to support a position that you have taken or intend to take in the action, provide a brief description, by category and location, of all such documents and other tangible things, and identify all persons having possession, custody, or control of them.



Daniel Karp  
Allen, Karpinski, Bryant & Karp P.A.  
100 East Pratt Street, Suite 1540  
Baltimore, Maryland 21202-1098  
Attorney for Talbot County, Maryland



Victoria Shearer  
Allen, Karpinski, Bryant & Karp P.A.  
100 East Pratt Street, Suite 1540  
Baltimore, Maryland 21202-1098  
Attorney for Talbot County, Maryland



Michael L. Pullen  
11 N. Washington St.  
Easton, MD 21601  
(410) 770-8093  
Attorney for Talbot County, Maryland

**Certificate of Service**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing Second Request for Production of Documents 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.  
P.O. Box 44  
Salisbury, Maryland 21803-0044

David R Thompson, Esquire  
Cowdry, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



---

Of Counsel for Plaintiff  
Talbot County, Maryland

**IN THE CIRCUIT COURT FOR TALBOT COUNTY, 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 :

Interveners, Defendants :  
and Counter-Plaintiffs :

**TALBOT COUNTY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
TO TOWN OF OXFORD, MARYLAND**

TO: Town of Oxford, Maryland

FROM: Talbot County, Maryland

**Instructions**

Pursuant to Maryland Rule 2-422 (c) you are required to file a written response within thirty days after service or within fifteen days after the date on which your initial pleading or motion is required, whichever is later, to the following request.

Pursuant to Maryland Rule 2-422 (d), you shall produce them as they are kept in the ordinary course of business or shall organize and label them to correspond to the categories in the request.

As to items that are in your possession, custody, or control, you are requested

to produce and permit the party filing this request, or someone acting on the party's behalf, to inspect and copy the following designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) and to inspect and copy, test, or sample tangible things which constitute or contain matters within the scope of Maryland Rule 2-402 (a).

### Definitions

- (a) Document includes a writing, 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.
- (b) Identify, identity, or identification, (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 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.
- (c) 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.
- (d) Commission or Critical Area Commission means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (e) The term "you", "your", "your's", and "Defendant" shall refer to the Town of Oxford, Maryland, all of its departments, agencies, offices, officers, officials, agents and employees, including but not limited to the Commissioners, staff, attorneys, and any other elected or appointed official, officer, agent, or employee.
- (f) 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.

- (g) The term "any" means any and all.
- (h) The terms "communicate" or "communication" means any oral, written, telephonic or otherwise recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever may, 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.
- (i) The term "including" means "including but not limited to."
- (j) 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.
- (k) The terms "relating to", "related to", and "regarding", any given subject matter, means to constitute, contain information of doubt, pertain to, or in any way directly or indirectly bear upon our deal with, and that subject matter.
- (l) The term "County" or "county" means Talbot County, Maryland.

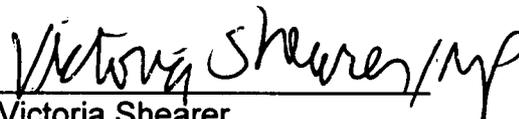
### Documents

1. Copies of the Town's Critical Area Program, including the text of the program originally adopted and all program amendments and refinements proposed or adopted by the Critical Area Commission including all documents and correspondence by and between the Town and the Critical Area Commission.
2. All documents that refer or relate to actual, proposed, attempted, or suggested annexations to the Town of St. Michaels, whether approved, denied, supported, or opposed by the Town, from 1989 to the present.
3. All documents that refer or relate to the growth allocation acreage reserved to The Commissioners of St. Michaels in Talbot County's critical area program, including all documents that memorialize, contain, refer or relate to any correspondence, discussion, meeting, agreement, understanding, or representation by or between the Town and the County concerning growth allocation.
4. The Commissioners of St. Michaels comprehensive plans in place when the Town's critical area program was first developed and adopted, to and including the present.

5. All documents showing The Commissioners of St. Michaels growth policies and plans in place when the Town's critical area program was first developed and adopted, to and including the present.
6. All documents that refer or relate to Talbot County Bill 762.



Daniel Karp  
Allen, Karpinski, Bryant & Karp P.A.  
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Baltimore, Maryland 21202-1098  
Attorney for Talbot County, Maryland



Victoria Shearer  
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Attorney for Talbot County, Maryland



Michael L. Pullen  
11 N. Washington St.  
Easton, MD 21601  
(410) 770-8093  
Attorney for Talbot County, Maryland

**Certificate of Service**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing Second Request for Production of Documents 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  
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P.O. Box 1747  
Easton, Maryland 21601



---

Of Counsel for Plaintiff  
Talbot County, Maryland

**IN THE CIRCUIT COURT FOR TALBOT COUNTY, 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 :

Interveners, Defendants :  
and Counter-Plaintiffs :

**TALBOT COUNTY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
TO COMMISSIONERS OF ST MICHAELS**

TO: The Commissioners of St. Michaels

FROM: Talbot County, Maryland

**Instructions**

Pursuant to Maryland Rule 2-422 (c) you are required to file a written response within thirty days after service or within fifteen days after the date on which your initial pleading or motion is required, whichever is later, to the following request.

Pursuant to Maryland Rule 2-422 (d), you shall produce them as they are kept in the ordinary course of business or shall organize and label them to correspond to the categories in the request.

As to items that are in your possession, custody, or control, you are requested

to produce and permit the party filing this request, or someone acting on the party's behalf, to inspect and copy the following designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) and to inspect and copy, test, or sample tangible things which constitute or contain matters within the scope of Maryland Rule 2-402 (a).

### **Definitions**

- (a) Document includes a writing, 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.
- (b) Identify, identity, or identification, (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 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.
- (c) 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.
- (d) Commission or Critical Area Commission means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (e) The term "you", "your", "your's", and "Defendant" shall refer to the Town of Oxford, Maryland, all of its departments, agencies, offices, officers, officials, agents and employees, including but not limited to the Commissioners, staff, attorneys, and any other elected or appointed official, officer, agent, or employee.
- (f) 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.

- (g) The term "any" means any and all.
- (h) The terms "communicate" or "communication" means any oral, written, telephonic or otherwise recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever may, 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.
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- (j) 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.
- (k) The terms "relating to", "related to", and "regarding", any given subject matter, means to constitute, contain information of doubt, pertain to, or in any way directly or indirectly bear upon our deal with, and that subject matter.
- (l) The term "County" or "county" means Talbot County, Maryland.

#### Documents

1. Copies of the Town's Critical Area Program, including the text of the program originally adopted and all program amendments and refinements proposed or adopted by the Critical Area Commission including all documents and correspondence by and between the Town and the Critical Area Commission.
2. All documents that refer or relate to actual, proposed, attempted, or suggested annexations to the Town of St. Michaels, whether approved, denied, supported, or opposed by the Town, from 1989 to the present.
3. All documents that refer or relate to the growth allocation acreage reserved to The Commissioners of St. Michaels in Talbot County's critical area program, including all documents that memorialize, contain, refer or relate to any correspondence, discussion, meeting, agreement, understanding, or representation by or between the Town and the County concerning growth allocation.
4. The Commissioners of St. Michaels comprehensive plans in place when the Town's critical area program was first developed and adopted, to and including the present.

5. All documents showing The Commissioners of St. Michaels growth policies and plans in place when the Town's critical area program was first developed and adopted, to and including the present.
6. All documents that refer or relate to Talbot County Bill 762.



Daniel Karp  
Allen, Karpinski, Bryant & Karp P.A.  
100 East Pratt Street, Suite 1540  
Baltimore, Maryland 21202-1098  
Attorney for Talbot County, Maryland



Victoria Shearer  
Allen, Karpinski, Bryant & Karp P.A.  
100 East Pratt Street, Suite 1540  
Baltimore, Maryland 21202-1098  
Attorney for Talbot County, Maryland



Michael L. Pullen  
11 N. Washington St.  
Easton, MD 21601  
(410) 770-8093  
Attorney for Talbot County, Maryland

**Certificate of Service**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing First Request for Production of Documents 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.  
P.O. Box 44  
Salisbury, Maryland 21803-0044

David R Thompson, Esquire  
Cowdry, Thompson & Karsten, P.A.  
P.O. Box 1747  
Easton, Maryland 21601



---

Of Counsel for Plaintiff  
Talbot County, Maryland



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

March 24, 2005

**VIA FIRST CLASS MAIL**

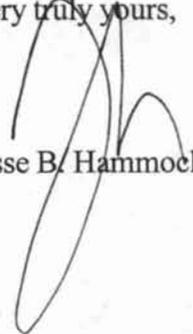
Ms. Margaret Ann Nolan  
Chief, Civil Division  
Office of the Attorney General  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, MD 21202

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

Dear Ms. Nolan:

Pursuant to our recent telephone call, enclosed please find the Notice to Attorney General pursuant to the Courts and Judicial Proceedings Article, Section 3-405(c) with the accompanying documents. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Jesse B. Hammock

JBH/kr

Enclosures

cc: Daniel Karp, Esq. (w/out encl.)  
Michael L. Pullen, Esq. (w/out encl.)  
Paul J. Cuezzella, Esq. (w/out encl.)  
David R. Thompson, Esq. (w/out encl.)

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  
\*

\* \* \* \* \*

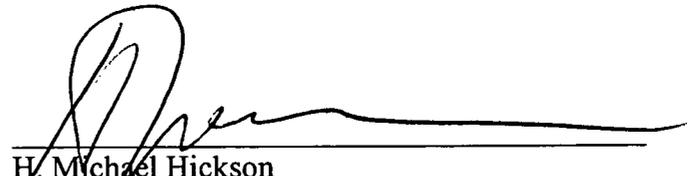
**NOTICE TO ATTORNEY GENERAL PURSUANT TO  
COURTS AND JUDICIAL PROCEEDINGS ARTICLE, SECTION 3-405(c)**

Defendant and Counter-Plaintiff, the Commissioners of St. Michaels ("St. Michaels"), by its counsel, H. Michael Hickson, pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, Section 3-405(c) hereby serves notice that the enclosed pleadings, filed in the above captioned action, call into question the constitutionality of the State of Maryland's Critical Area Laws and Regulations, codified in the Maryland Code, Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and Code of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission). Accordingly, St. Michaels serves upon the Attorney General, the following pleadings:

1. Complaint of Plaintiff, Talbot County;
2. Amended Complaint of Plaintiff, Talbot County;
3. Verified Answer to Count II of Defendant, Department of Natural Resources;
4. Amendment to Verified Answer to Count II of Defendant, Department of Natural Resources;
5. Proposed Answer to Complaint of Defendant and Counter-Plaintiff, St. Michaels;
6. Proposed Answer to Complaint of Defendant and Counter-Plaintiff, Town of Oxford;

Law Offices Of  
BANKS, NASON  
& HICKSON  
Professional Assoc.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, MD  
21863-0044

7. Answer to Counterclaim of Intervenor Town of Oxford by Plaintiff, Talbot County;
8. Answer to Counterclaim of Intervenor Commissioners of St. Michaels by Plaintiff, Talbot County;
9. Answer to Complaint of Defendant and Counter-Plaintiff, St. Michaels;
10. Counterclaim for Declaratory Judgment of Defendant and Counter-Plaintiff, St. Michaels;
11. Answer to Complaint of Defendant and Counter-Plaintiff, Town of Oxford;
12. Counterclaim for Declaratory Judgment of Defendant and Counter-Plaintiff, Town of Oxford;
13. Second Amended Complaint of Plaintiff, Talbot County;
14. Answer to Second Amended Complaint of Defendant and Counter-Plaintiff, St. Michaels;
15. Answer to Second Amended Complaint of Defendant and Counter-Plaintiff, Town of Oxford;
16. Answer to Second Amended Complaint of Defendant, Department of Natural Resources.



---

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 24<sup>th</sup> day of March, 2005, that an exact copy of the foregoing Notice To Attorney General Pursuant To Courts And Judicial Proceedings Article, Section 3-405(c), including the pleadings listed therein, was mailed by regular U.S. Mail, postage pre-paid to:

Margaret Ann Nolan  
Chief, Civil Division  
Office of the Attorney General  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, MD 21202

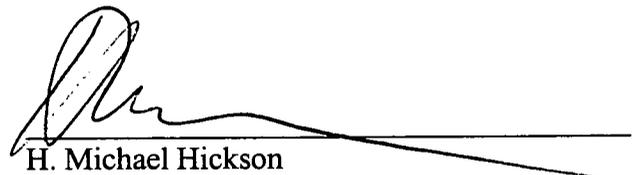
And, that a copy of the Notice to Attorney General pursuant to Courts and Judicial Proceedings Article, §3-405(c), without the pleadings listed therein, was mailed by regular U.S. Mail, postage prepaid, to:

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

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Brynja M. Booth, Esquire  
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Easton, Maryland 21601  
Attorneys for Town of Oxford

  
H. Michael Hickson



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. EISENHAEUER  
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](mailto:pcucuzzella@dnr.state.md.us)

March 16, 2005

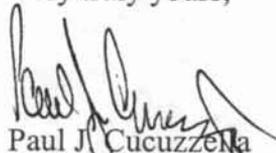
Clerk of the Court  
Circuit Court for Talbot County  
11 N. Washington Street  
P.O. Box 723  
Easton, Maryland 21601

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 Department Of Natural Resources' Answer To Second Amended Complaint. Thank you very much for your assistance.

Very truly yours,

  
Paul J. Cucuzzella  
Assistant Attorney General

Enclosure

cc: Victoria M. Shearer, Esq.  
Michael L. Pullen, Esq.  
H. Michael Hickson, Esq.  
David R. Thompson, Esq.

ANSWER

**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, et al.,

\*

\*

Defendants.

\*

\* \* \* \* \*

**DEPARTMENT OF NATURAL RESOURCES’  
ANSWER TO SECOND AMENDED COMPLAINT**

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rules 2-323 and 15-701, hereby answers the Second Amended Complaint (the “Complaint”), and states:

1. To the extent that paragraphs 1 through 5 of the Complaint contain allegations of fact, and not merely statements or conclusion of laws to which no responses are required or provided, DNR admits the allegations.
2. To the extent that paragraph 6 of the Complaint purports to explain the substance of the Chesapeake 2000 Agreement, the Agreement speaks for itself. Otherwise, paragraph 6 contains statements of law to which no responses are required or provided.

3. To the extent that paragraph 7 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR admits the allegations.

4. Paragraph 8 of the Complaint contains only statements or conclusions of law to which no response is required or provided. The statutes referenced speak for themselves.

5. To the extent that paragraphs 9 through 15 of the Complaint contain allegations of fact, and not merely statements or conclusion of laws to which no responses are required or provided, DNR admits the allegations.

6. Paragraph 16 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

7. DNR admits the allegations of facts contained in the second sentence of paragraph 17 of the Complaint regarding growth allocation reserved for the towns of Easton, Oxford and St. Michaels. DNR lacks sufficient knowledge or information to either admit or deny the remaining allegations of fact contained in paragraph 17.

8. To the extent that paragraphs 18 through 20 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

9. DNR admits the allegation contained in paragraph 21 of the Complaint that state law creates growth allocation. Otherwise, paragraph 21 contains statements or conclusions of law to which no response is required or provided.

10. To the extent that paragraph 22 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies

the allegations.

11. DNR admits the allegation of fact contained in paragraph 23 of the Complaint that Talbot County submitted Bill 933 to the Critical Area Commission for review. To the extent that the remainder of paragraph 23 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

12. DNR denies the allegations of fact contained in paragraph 24 of the Complaint.

13. Paragraph 25 of the Complaint contains only statements or conclusion of law to which no response is required or provided. The statute referenced speaks for itself.

14. As to the allegations of fact contained in paragraph 26 of the Complaint, DNR admits only that Talbot County sent Bill 933 to the Critical Area Commission under cover of letter dated January 19, 2004.

15. To the extent that paragraph 27 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

16. DNR admits the allegations of fact made in the first sentence of paragraph 28 of the Complaint. DNR denies the allegation in paragraph 28 that the Critical Area Commission "belatedly" accepted Bill 933 for review. The remainder of paragraph 28 of the Complaint contains statements or conclusions of law to which no responses are required or provided.

17. Paragraph 29 of the Complaint contains only statements or conclusion of law to which no responses are required or provided. The statute referenced speaks for itself.

18. To the extent that paragraphs 30 and 31 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided,

DNR denies the allegations.

19. DNR admits the allegation of fact contained in paragraph 32 of the Complaint that the Critical Area Commission did not approve Bill 933 as a local program amendment. To the extent that the remainder of paragraph 32 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

20. DNR admits the allegations of fact contained in paragraph 33 of the Complaint that Talbot County is required to conduct comprehensive reviews of its critical area program every four years, and that it did not conduct such reviews in 1993, 1997 or 2001. DNR denies the remaining allegations of fact contained in paragraph 33.

21. To the extent that paragraphs 34 through 36 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

22. DNR admits the allegations of fact contained in paragraph 37 of the Complaint that Talbot County enacted Bill 762 and submitted it to the Critical Area Commission as a proposed amendment to its critical area program. To the extent that the remainder of paragraph 37 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

23. DNR admits the allegation contained in paragraph 38 of the Complaint that the Critical Area Commission approved Bill 762 as a refinement to Talbot County's critical area program. As to the remaining allegations contained in paragraph 38, DNR lacks sufficient knowledge of information to either admit or denies these allegations.

24. DNR admits the allegation contained in paragraph 39 of the Complaint that Bill 762 has been incorporated into Talbot County's critical area program. The remainder of paragraph 39 contains statements or conclusions of law to which no responses are required or provided.

25. Paragraphs 40 and 41 of the Complaint contain only statements or conclusion of law to which no responses are required or provided.

26. Paragraph 42 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

27. Paragraphs 43 through 45 of the Complaint contain only statements or conclusion of law to which no responses are required or provided.

28. To the extent that paragraphs 46 through 48 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

29. Paragraph 49 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

30. To the extent that paragraphs 50 through 52 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

31. DNR admits the allegation contained in paragraph 53 of the Complaint that growth allocation is created by State law. The remainder of paragraph 53 contains statements or conclusions of law to which no responses are required or provided.

32. Paragraph 54 of the Complaint contains only statements or conclusion of law to which no responses are required or provided. The statute referenced speaks for itself.

33. DNR admits the allegations of fact contained in paragraphs 55 and 56 of the Complaint.

34. Paragraph 57 of the Complaint contains only statements or conclusion of law to which no responses are required or provided.

35. To the extent that paragraph 58 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

36. Paragraph 59 of the Complaint contains only statements or conclusion of law to which no responses are required or provided.

37. To the extent that paragraph 60 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

38. Paragraph 61 of the Complaint contains no separate allegations of fact, and thus no responses are required or provided.

39. The letter referenced in paragraph 62 of the Complaint speaks for itself. To the extent that the remainder of paragraph 62 and footnote 2 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

40. To the extent that paragraphs 63 and 64 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

41. The letter referenced in paragraph 65 of the Complaint speaks for itself.

42. DNR admits the allegation of fact contained in paragraph 66 of the Complaint that the Critical Area Commission has, in the past, approved some county critical area programs that require county municipalities to request growth allocation from the county. To the extent that the remainder of paragraph 66 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

43. DNR denies the allegation of fact in paragraph 67 that St. Michaels' critical area program was adopted in 1987. To the extent that the remainder of paragraph 67 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge to either admit or deny the allegations.

44. To the extent that paragraph 68 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge to either admit or deny the allegations.

45. To the extent that paragraph 69 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

46. Paragraph 70 of the Complaint contains an ambiguity: DNR is not certain as to what the term "this," as used in the paragraph, references. Because of this ambiguity, DNR does not respond to paragraph 70.

47. Paragraph 71 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

48. To the extent that paragraph 72 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR

admits the allegations.

49. To the extent that paragraphs 73 through 78 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

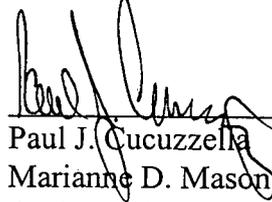
50. The remainder of the Complaint contains a prayer for relief, to which to response is required or provided.

**AFFIRMATIVE DEFENSES**

- 51. The Complaint fails to state a claim upon which relief can be granted.
- 52. The claims asserted in the Complaint are barred by illegality.
- 53. The claims asserted in the Complaint are barred by estoppel.
- 54. The claims asserted in the Complaint are premised upon the plaintiff's *ultra vires* enactment of Bill 933, thus the claims are barred.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzzella  
Marianne D. Mason  
Assistant Attorneys General  
Maryland Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
(410) 260-8352

Fax: (410) 260-8364  
*Attorneys for defendant Department of Natural Resources*

Dated: March 16, 2005

CERTIFICATE OF SERVICE

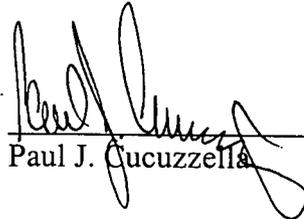
I hereby certify that on the 16th day of March, 2005, a copies of the foregoing Department Of Natural Resources' Answer To Second Amended Complaint was sent via first class mail, postage prepaid, to:

Victoria Shearer, Esq.  
Allen, Karpinski, Bryant & Karp, P.A.  
Suite 1540  
100 East Pratt Street  
Baltimore, Maryland 21202-1089

Michael L. Pullan, Esq.  
142 N. Harrison Street  
Easton, Maryland 21601

H. Michael Hickson, Esq.  
Banks, Nason & Hicks, P.A.  
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Salisbury, Maryland 21803-0044

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

  
Paul J. Cucuzzella



RECEIVED

MAR 10 2005

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL  
RESOURCES, *et al.*,

Defendants

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

\* \* \* \* \*

ANSWER BY THE TOWN OF OXFORD TO SECOND AMENDED COMPLAINT

The Town of Oxford, ("Oxford"), one of the Defendants, by its attorneys, David R. Thompson, Brynja M. Booth, and Cowdrey, Thompson & Karsten, A Professional Corporation, in answer to the Second Amended Complaint herein, and in response to each and every count thereof, states the following:

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

The Second Amended 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 Second 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 Second Amended Complaint are therefore barred.

4. The Plaintiff has waived any rights to assert the claims set forth in the Second Amended Complaint.

5. The Plaintiff has failed comply with necessary conditions precedent, and its claims are therefore barred.

III  
Specific Responses under Rule 2-323(c)

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

1. Oxford admits the factual averments of numbered paragraph 1.
2. Oxford admits the factual averments of numbered paragraph 2.
3. Oxford admits that St. Michaels is a Maryland municipal corporation, and denies the remaining averments of numbered paragraph 3.
4. Oxford admits that the Town of Oxford is a Maryland municipal corporation, and denies the remaining averments of numbered paragraph 4.
5. Oxford denies the averments of numbered paragraph 5 to the extent that said paragraph recites a vague oversimplification of the status of the Chesapeake Bay. Oxford asserts that studies of the Chesapeake Bay have shown direct sources of pollution which are materially different and more complex than the simplistic conclusion asserted in paragraph 5.
6. Oxford admits that various agreements and compacts have been signed by various governmental entities, and agrees that coordinated planning by all governments within the Chesapeake Bay watershed is a laudable goal. All other allegations are denied. Oxford asserts affirmatively that the Plaintiff has failed to participate in coordinated planning

with the municipalities of Talbot County in connection with the enactment of Talbot County Legislative Bill 933.

7. Oxford admits that the Plaintiff has cited in paragraph 7 the current statutory reference to the Chesapeake Bay Critical Area Program. The remaining allegations are denied.

8. With respect to numbered paragraph 8, Oxford admits that Plaintiff has quoted some statutory language that is currently set forth in Md. Code Ann. Natural Resources Art. § 8-1801(a). The remaining allegations are denied.

9. Oxford admits that Plaintiff has quoted current statutory language set forth in Md. Code Ann. Natural Resources Art. § 8-1801(b) in numbered paragraph 9. The remaining allegations are denied

10. Oxford admits that Plaintiff has quoted statutory language set forth in Md. Code Ann. Natural Resources Art. § 8-1807(a)(2) in numbered paragraph 10. The remaining allegations are denied.

11. In response to paragraph 11, Oxford admits that land within the critical area was to be mapped as RCA, LDA, or IDA, depending upon criteria addressed by state law and regulation, and that there is a growth allocation process to modify those classifications. All remaining allegations and characterizations are denied.

12. In response to paragraph 12, Oxford admits that Natural Resources Article § 8-1809(i) provides that local jurisdictions' critical area programs must be submitted to the Critical Area Commission. Oxford also admits that Talbot County submitted a proposed program to the Critical Area Commission that became effective August 13, 1989. All other allegations set forth in paragraph 12 are denied.

13. Oxford admits that the statute referred to in numbered paragraph 13 addresses local program amendments and review thereof by the Critical Area Commission. The remaining allegations and conclusions are denied.

14. Oxford admits that the Plaintiff has quoted a portion of the applicable statute, but denies the legal conclusions set forth in numbered paragraph 14.

15. Oxford admits that the County has quoted COMAR 27.01.02.06A(2) in numbered paragraph 15 of the Second Amended Complaint.

16. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-15 of the Second Amended Complaint as its response to paragraph 16.

17. Oxford admits that Talbot County adopted a local program in 1989, and enacted three maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and that the County prioritized acreage contiguous to towns for growth allocation conversion to permit higher land development densities consistent with town growth. Oxford admits that in 1989, the Talbot County Critical Area Program, and related zoning ordinance provisions, was approved by the Commission.

18. Oxford denies the averments, factual characterizations and legal conclusions set forth in paragraph 18.

19. Oxford denies the averments, factual characterizations and legal conclusions set forth in paragraph 19.

20. Oxford denies the averments, factual characterizations and legal conclusions set forth in paragraph 20.

21. The allegations, characterizations, and legal conclusions set forth in paragraph 21 are denied.

22. Oxford denies the averments, allegations and legal conclusions set forth in paragraph 22.

23. The allegations set forth in paragraph 23 are denied except that Oxford admits that Bill 933 was forwarded to the Critical Area Commission for review.

24. Oxford admits that Bill 933 was forwarded to the Critical Area Commission. Oxford has insufficient information at this time as to the exact date that the Bill was forwarded. Accordingly, all other factual allegations set forth in paragraph 24 are denied.

25. Oxford admits that the Plaintiff has referred to one provision of an applicable statute in paragraph 25.

26. Oxford has insufficient information at this time to admit or deny the allegations of paragraph 26; therefore, it is denied.

27. Oxford denies the allegations set forth in numbered paragraph 27.

28. Oxford denies the allegations set forth in numbered paragraph 28.

29. Oxford admits that in paragraph 29, the County has quoted a portion of the applicable statute. Any remaining assertions are denied

30. Oxford denies the allegations set forth in numbered paragraph 30.

31. Oxford denies the allegations set forth in numbered paragraph 31.

32. Oxford denies the allegations set forth in numbered paragraph 32.

33. The averments of numbered paragraph 33 are denied in that paragraph 33, as stated, misrepresents the status of the County's critical area program *vis-a-vis* the continuing dialogue between county and state officials concerning the County's critical area regulations.

34. Oxford denies the allegations and legal conclusions set forth in paragraph 34.

35. Oxford denies the allegations and legal conclusions set forth in paragraph 35.

36. Oxford denies the allegations and legal conclusions set forth in paragraph 36.
37. The allegations and legal conclusions set forth in paragraph 37 are denied, except that Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission.
38. The allegations of paragraph 38 are denied.
39. The allegations set forth in paragraph 39 are denied, in that Oxford asserts that Bill 762 does not apply within municipal boundaries as a matter of law. Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission.
40. The allegations set forth in paragraph 40 are denied.
41. The allegations set forth in paragraph 41 are denied.
42. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-42 of the Second Amended Complaint as its response to paragraph 42.
43. The allegations set forth in paragraph 43 are denied.
44. The allegations set forth in paragraph 44 are denied.
45. The allegations set forth in paragraph 45 are denied.
46. The allegations set forth in paragraph 46 are denied.
47. The allegations of numbered paragraph 47 are denied.
48. Oxford denies the allegations set forth in numbered paragraph 48.
49. In response to the allegations of paragraph 49, Oxford incorporates and adopts by reference its responses to paragraphs 1-49.

50. Oxford denies the legal conclusions of paragraph 50, but agrees that in areas mapped as RCA, there is a generally applied limitation applicable to new residential dwellings, establishing one dwelling unit per 20 acres as a density standard .

51. The allegations of numbered paragraph 51 are denied.

52. Oxford admits that growth allocation calculations and guidelines for local jurisdictions are set forth in Md. Code Ann. Natural Resources Article § 8-1808.1, and that the growth allocation process may permit new development at greater densities than 1 per 20 acres in areas that have been classified as RCA. Any remaining characterizations of the law in paragraph 52 are denied.

53. Oxford admits that Md. Code Ann. Natural Resources Article § 8-1808.1 sets forth growth allocation and development guidelines for local jurisdictions. All other allegations set forth in paragraph 53 are denied.

54. Oxford admits that the code section cited in numbered paragraph 54 applies to counties and towns. The remaining allegations of numbered paragraph 54 are denied.

55. The Town of Oxford lacks sufficient information at this time concerning the dimensions and calculations of the actual geographic areas mapped by Talbot County, and therefore denies the allegations of paragraph 55.

56. Oxford denies allegations and interpretations set forth in numbered paragraph 56.

57. Oxford denies the allegations and interpretations set forth in paragraph 57.

58. Oxford denies the characterizations, allegations, and interpretations set forth in paragraph 58.

59. Oxford denies the allegations set forth in paragraph 59.

60. Oxford denies the allegations set forth in paragraph 60.
61. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-61 of the Second Amended Complaint as its response to paragraph 61.
62. Oxford admits that Plaintiff has quoted a portion of a letter from the Critical Area Commission in paragraph 62. All other allegations are denied.
63. Oxford denies the allegations set forth in paragraph 63.
64. Oxford denies the allegations set forth in paragraph 64.
65. Oxford admits that Plaintiff has quoted a portion of a letter from the Critical Area Commission in paragraph 65.
66. Oxford denies the allegations set forth in paragraph 66.
67. Oxford denies the allegations set forth in paragraph 67.
68. Oxford denies the allegations, interpretations, and argument set forth in paragraph 68.
69. In response to numbered paragraph 69, Oxford admits that a declaratory judgment will serve to terminate the uncertainty and controversy giving rise to this proceeding, and further admits that there are actual controversies between Oxford and the County, which involve antagonistic claims which will result and have resulted in imminent and inevitable litigation. Oxford denies the allegations and conclusions of subparagraphs (1) through (3) of numbered paragraph 69.
70. Paragraph 70, as written, does not identify the "this" that is denied by the Defendants, unless it relates to subparagraphs (1) through (3) of the preceding paragraph. Oxford does admit that by virtue of the County's attempts to enact and enforce Bill 933, there

are antagonistic claims and an actual controversy exists concerning the relationships between county and municipal governments.

71. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-70 of the Second Amended Complaint as its response to paragraph 71.

72. Oxford denies the allegations set forth in paragraph 72 as an incomplete and therefore inaccurate statement of law.

73. Oxford denies the allegations set forth in paragraph 73.

74. Oxford denies the allegations set forth in paragraph 74.

75. Oxford denies the allegations set forth in paragraph 75.

76. Oxford denies the allegations set forth in paragraph 76.

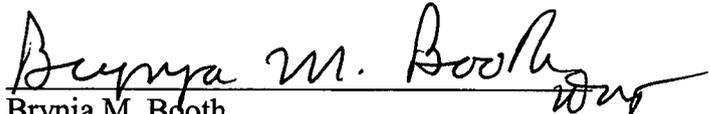
77. Oxford denies the allegations set forth in paragraph 77.

78. Oxford denies the allegations set forth in paragraph 78. Oxford further denies that the County is entitled to the relief sought in lettered paragraphs A through H immediately following numbered paragraph 78.

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 the reasons set forth in Oxford's Counterclaim herein, and for such other reasons as may be apparent during the proceedings in this matter, and that the Town of Oxford have such other and further relief as the nature of this case requires.

Respectfully submitted: \_\_\_\_\_

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of March, 2005, a copy of the foregoing Answer to the Second Amended Complaint was mailed by first class mail, postage prepaid to:

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