

Legal Advice Policy - Vol 4

Talbot County

No. 20-C-04-005095

10/24/05 -
11/14/05

MSA - 51831 - 4

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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EXHIBIT 47

**SEE
ATTACHED
3-RING
BINDER**

46

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
DONNA HILL STATON
DEPUTY ATTORNEY GENERAL
MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL



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November 14, 2005

Hand Delivered

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 for filing in the above-referenced matter please find defendant Department of Natural Resources' Motion For Summary Judgement, together with accompanying Memorandum and proposed Order. Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph P. Gill".

Joseph P. Gill
Assistant Attorney General

Enclosures

cc (via overnight mail):
Victoria M. Shearer, Esq.
Michael L. Pullen, Esq.
H. Michael Hickson, Esq.
David R. Thompson, Esq.
Richard A. DeTar, Esq.

IN THE CIRCUIT COURT OF MARYLAND
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,

*

Plaintiff,

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v.

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Case No.: 2-C-04-005095 DJ

DEPARTMENT OF NATURAL
RESOURCES, *et al.*

*

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Defendants.

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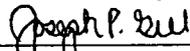
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**DEPARTMENT OF NATURAL RESOURCES’
MOTION FOR SUMMARY JUDGMENT**

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 Joseph P. Gill, Marianne D. Mason and Paul J. Cucuzzella, Assistant Attorneys General, consistent with the Court’s Scheduling Order of April 14, 2005, hereby moves pursuant to Maryland Rules 2-501 for an order in its favor of summary judgment. As fully set forth in the accompanying Department Of Natural Resources’ Memorandum In Support Of Motion For Summary Judgment, the undisputed material facts establish that the Critical Area Commission’s denial under Md. Code Ann., Nat. Res. § 8-1809, of plaintiff Talbot County’s Bill 933 as an amendment to Talbot County’s Critical Area program was a proper exercise of the Commission’s statutory authority. Consequently, DNR is entitled to judgment as a matter of law.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



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Dated: November 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 2005, copies of the foregoing Department Of Natural Resources' Motion For Summary Judgment were sent via overnight mail to:

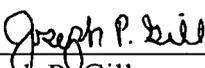
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Joseph P. Gill

**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.

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* * * * *

**DEPARTMENT OF NATURAL RESOURCES' MEMORANDUM
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission" or "Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Joseph P. Gill, Marianne D. Mason, and Paul J. Cucuzzella, Assistant Attorneys General, file this Memorandum in support of its Motion for Summary Judgment.

INTRODUCTION

In 2004, Talbot County asked the Critical Area Commission to approve an amendment to its local Critical Area program pursuant to the Critical Area law, Natural Resources Article 8-1801 *et seq.* ("Critical Area Law"). If approved, the amendment would have withdrawn growth allocation that the County had reserved for the Towns of St. Michaels, Easton and Oxford in 1989, and that the Towns had relied upon in developing their Critical Area programs. The amendment would also have negated two development projects previously approved by the Town of St. Michaels, one of

which had been approved by the Commission as a refinement to St. Michael's Critical Area program. In its oversight role, the Commission determined that the Talbot County proposed amendment did not meet the criteria for approval. Although the Commission offered to work with the County to resolve problems in the proposed amendment, the County instead filed suit. The facts are not in dispute and DNR is entitled to judgment as a matter of law.

STATEMENT OF FACTS

A. The Critical Area Law

The General Assembly enacted the Critical Area Law with the goal of fostering "more sensitive development activity for certain shoreline areas [of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habitats." *Id.* § 8-1801(b)(1). As designed, the Critical Area Law established a Statewide resource protection program "on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." In order to achieve the purposes of the Critical Area Law, particularly with respect to oversight of local government critical area programs, the General Assembly created the Critical Area Commission. NR §§8-1803(a), 1806, 1808(a) ("each local jurisdiction shall have primary responsibility for developing and implementing a program, subject to review and approval of the Commission").

The Critical Area Law mandates that each local jurisdiction with lands in the critical area – those lands within 1,000 feet of the heads of tide of the Chesapeake Bay and its tributaries, NR §8-1807(a) – develop a critical area program. NR §8-1808. Each program is to include, at a minimum, a comprehensive program map that designates lands within the critical area as Resource

Conservation Area (RCA), Limited Development Area (LDA), or Intensely Developed Area (IDA). The designations depended upon the density of existing development as of enactment of the local jurisdiction's program.¹ *Id.* § 8-1808(c); COMAR 27.01.02.02A. The Critical Area designations of RCA, LDA and IDA guide future development of lands in those areas in accordance with the local jurisdiction's Critical Area program.

The General Assembly provided for future growth in the Critical Area by establishing a process for a local jurisdiction to request Commission approval for a change in land designation. NR §8-1809. This is known as "growth allocation." Growth allocation is "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." NR § 8-1802 (a)(4). The applicable Critical Area criteria states:

Intensely developed and limited development areas may be increased subject to these guidelines:

(1) The area of expansion of intensely developed or limited development areas, or both, may not exceed an area equal to 5 percent of the county's portion of the resource conservation area lands that are not tidal wetlands or federally owned; [and]

(2) When planning future expansion of intensely developed and limited development areas, *counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.*

COMAR 27.01.02.06A (emphasis added).

¹ RCA land is characterized by natural environments dominated by wetlands, forests and abandoned fields, COMAR 27.01.02.05A. It may only be developed at a rate of one residential unit per twenty acres. COMAR 27.01.02.05C.(4). LDA land is characterized by low or moderate development (up to four dwelling units per acre), and contains some natural plant and animal habitats. *Id.* 27.01.02.04A. IDA land is an area where developed land uses predominate, where little natural habitat exists, and where housing density equals or exceeds four dwelling units per acre. COMAR 27.01.02.03A.

B. Talbot County's Critical Area Program

In 1989, Talbot County adopted and the Critical Area Commission approved the County's Critical Area Program. The County's program accommodated the growth needs of the Talbot County municipalities by including Planning Maps 1, 2 and 3 "showing anticipated growth areas around the towns of Easton, Oxford and St. Michaels." Second Amended Complaint, ¶17. "Using those 1989 planning maps, growth allocation was reserved for Easton (155 acres), Oxford (195 acres), and St. Michaels 245 acres." *Id.* "No growth allocation was reserved for the Town of Queen Anne." *Id.*

Until its recent enactment of Talbot County Council Bill No. 933 (Bill 933), discussed *infra*, the County had codified the growth allocation reserved for the Towns as §190-109 D (9) of the Talbot County Zoning Code ("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"). Bill 933, attached as **Exhibit 1**, p. 4, §190-109 D (9) (deleted provisions). The same ordinance had specified that the "number of reserved areas allocated among the towns for rezoning . . . should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter." *Id.*, p. 5, §190-109 D (11) (deleted provisions).

C. The Towns' Critical Area Programs

In the years following passage of the Critical Area Law, the Towns of Easton, Oxford and St. Michaels moved forward to adopt their own Critical Area Programs. As discussed *infra*, Easton, Oxford and St. Michaels each based their respective growth allocation procedures on the growth

allocation reserves allotted by the County in 1989. As also discussed *infra*, the Towns have awarded growth allocation for specific project developments pursuant to their respective adopted procedures.

D. Bill 933

On December 23, 2003, the Talbot County Council enacted Bill 933. Although the County ordinance provided for a growth allocation review every four years, and the Critical Area Law provides for local program review every four years,² Bill 933 was the “first comprehensive review and revision to the County’s local program since it was adopted in 1989.” Amended Complaint, ¶

22. Among other things, the Bill:

- Repealed Planning Maps 1, 2 and 3;
- Eliminated the reserved growth allocations for the Towns of Easton, Oxford, and St. Michaels; and
- Provided that any growth allocation awarded to any of the three Towns that was unutilized on the effective date of the ordinance shall revert to the County. “Unutilized” growth allocation is growth allocation previously allocated to the Towns, less growth allocation already awarded by a Town for a project where, as of the effective date of the ordinance, there has been no actual physical commencement of some significant and visible construction.
- By its terms, made no provision to accommodate future growth of the Towns

Talbot County is obligated under the Critical Area Law to “coordinate with affected municipalities” to “accommodate [municipal] growth needs.” COMAR 27.01.02.06A (2). Four years prior to enactment of Bill 933, the County cooperated with the Towns of St. Michaels, Easton and

² As of 2004, each Critical Area local jurisdiction was required to review its local program and program map at least every four years, NR § 8-1809(g), and could propose to the Critical Area Commission program or program map amendments as many as four times per year. *Id.* § 8-1809(h). In 2004, the General Assembly changed the every four-year review requirement to every six years.

Oxford in drafting Talbot County Bill 762, which provided a process for “supplemental” growth allocation, i.e., growth allocation in addition to the growth that the County had reserved for the Towns in 1989.³ Despite its legal obligation to cooperate with local governments, and its prior history of cooperation with the Towns, Talbot County had no discussions with the Towns of St. Michaels, Easton and Oxford before introducing Bill 933. December 16, 2003 letter from the President of the Commissioners of St. Michaels to the President of the County Council of Talbot County, attached as **Exhibit 2.**⁴

D. The Commission’s Review

By letter dated December 29, 2003, Talbot County submitted Bill 933 to the Critical Area Commission as a proposed amendment to its Critical Area program. A copy of the letter is attached as **Exhibit 3.** The Executive Director of the Critical Area Commission, Ren Serey, requested additional information, which the County provided by letter dated January 19, 2004, attached as **Exhibit 4.** By letter dated February 5, 2004, the Commission advised the County that it had accepted the proposed amendment for review. **Exhibit 5.** Acceptance of the proposal started the 90-day review period mandated by law. *See* NR §8-1809(o)(1) (“Commission shall act on the proposed

³ The County enacted Bill 762, “Supplemental Growth Allocation to Municipalities in Talbot County,” in 2000. Bill 762 gave the County joint review, in conjunction with affected municipalities, over supplemental awards of growth allocation to municipalities. Second Amended Complaint, ¶¶ 37, 39. “The bill was drafted in coordination with affected municipalities, circulated to the municipalities and their attorneys for comment, amended to incorporate their suggested changes and approved by the Critical Area Commission.” Second Amended Complaint, ¶37.

⁴ The letter states: “So far as we can determine with regard to other municipalities in Talbot County, and to be sure with regard to St. Michael’s, in advance of the introduction of Bill 933 the County did not:

- Inform us of any problem that would require such legislation;
- Seek our suggestions for a solution or cooperation in solving such a problem
- Provide us with a copy of the proposed Bill for comments and suggestions, on a matter that is important to the Town.”

program amendment within 90 days of the Commission's acceptance of the proposal").

For proposed program amendments, a panel of members of the Critical Area Commission, which in total consists of 29 voting members, NR § 8-1804(a), must conduct a public hearing in the jurisdiction that proposed the amendment. *Id.* §8-1809(o)(1). The Commission appointed a panel ("Panel") of five members. March 17, 2004 Memorandum to Panel Members from Commission staff, attached as **Exhibit 6**. The Panel conducted a well-attended public hearing on March 24, 2004 in Easton, Maryland, and received numerous public comments on the proposed amendment. Thereafter, the Panel met on April 7, April 19, and May 5, 2004 to discuss Bill 933 Amendment. Prior to the meetings, each member of the Panel received a copy of all public comments submitted before the close of the record on April 5. Minutes of April 7, 2004 Panel Meeting, p. 2 of 5, attached as **Exhibit 7**. Panel members also received information on the growth allocation processes of the Towns of Easton, Oxford and St. Michaels, including copies of relevant pages of their respective Critical Area programs or ordinances. *Id.*

At its April 19, 2004 meeting, the Panel reviewed the growth allocation actions of other county and municipal Critical Area programs. Minutes of April 19, 2004 Meeting, p. 4, attached as **Exhibit 8**. No other County had changed its original growth allocation procedures. *Id.* The Panel also reviewed the impact of Bill 933 on each of the Towns' approved Critical Area programs. The Purpose and Intent of the St. Michaels' approved program "shows a reliance on the previously awarded growth allocation by the County, and carries over to [its] ordinance regarding Growth Allocation Districts." *Id.* at pp. 4-5. Excerpts from the St. Michael's Critical Area program are attached as **Exhibit 9**. *See, e.g.*, p. III-30 ("The Growth Allocation Process is intended to insure that the Town's limited growth allocation, as determined in the Talbot County Local Chesapeake Bay

Critical Area Program . . . is managed to insure equity in the award of growth. . . .) (emphasis added).

The Panel noted that the Town of Oxford's approved Critical Area program also assumes that the Town has growth allocation. Exhibit 8, p. 5. Attached as **Exhibit 10** are excerpts from the Oxford's program. *See, e.g.*, p. 118 (referencing deduction of parcels that do not qualify for growth allocation from "the total Town Growth Allocation." The same is true for the Critical Area program for the Town of Easton: "The Talbot County Comprehensive Plan encourages growth in certain areas" and the Town "expect[s] the County to allocate growth allocation for these areas." Attached as **Exhibit 11** are excerpts from Easton's program. *See, e.g.*, p. 11 ("the Town of Easton should reasonably expect the county to assign some portion of the growth allocation for their growth needs").

The Panel continued its deliberations on May 5, 2004. At the May 5 meeting, the Panel reviewed the impact of Bill 933 on specific projects. **Exhibit 12** (Minutes of May 5, 2004 Panel Report). As noted, Talbot County had reserved 245 acres of growth allocation for St. Michaels. Of this, the Town had awarded 21 acres for the Strausburg subdivision, approved by the Commission as a "refinement" to St. Michaels' Program in October 2003.⁵ St. Michaels had also awarded 70.29 acres of growth allocation for the Miles Point III Project, which was then under review by the Commission. Talbot County had reserved 155 acres of growth allocation for the Town of Easton. Easton had used all 155 acres, plus an additional 28.762 acres of supplemental growth allocation pursuant to Bill 762. *See* n. 3. The total acreage included 36.42 acres for the Cooke's Hope Project, which had been approved by the Town but not yet reviewed by the Commission. Oxford had

⁵ A program "refinement" is any change to an adopted program "that the Commission determines will result in a use of land or water . . . in a manner consistent with the adopted program." NR §8-1802(a)(9)(ii). A program refinement may be approved by the chairman of the Commission within 30 days and without a public hearing. NR §8-1809(p).

received 195 acres of growth allocation from the County, and had awarded 15.223 of these acres.

As noted in the Panel Report, two of the above projects – the Strausberg Subdivision in St. Michaels and the Miles Point III application – were projects for which “growth allocation has been awarded by [the Town of St. Michaels], but under Bill 933, would be considered unutilized and accordingly would revert to the County.” Exhibit 12, p. 2. Thus, were the Commission to approve Bill 933, neither project, both of which had been approved by the Town of St. Michaels under its approved Critical Area program, could lawfully go forward. The Panel also contemplated that a third project could possibly be affected: the Cooke’s Hope project, which had been awarded growth allocation by the Town of Easton and was pending Commission review. *Id.*, p.3.

Finally, the Panel reviewed growth allocation procedures in other Critical Area programs. Panel members discussed the importance of “procedures being clearly set forth in a coordinated manner in the ordinances and programs of the counties and affected municipalities,” and the “significance of amending one local program in such a way that it creates conflicts with other approved programs.” Exhibit 12, p. 4. At the close of discussion, the Panel voted to recommend denial of Talbot County’s proposed amendment. **Exhibit 13** (May 5, 2004 Supplemental Panel Report).

E. The Commission’s Decision

On May 5, 2004, the full Commission voted (1) to deny approval of Bill 933 and (2) to ask the County to work with Commission staff to develop growth allocation provisions that would be compatible with the Critical Area Law. A copy of the May 5, 2004 Commission Meeting Minutes is attached as **Exhibit 14**. As stated in the Minutes:

Dave Blazer [a member of the Panel] moved on panel

recommendation to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria. The basis for the motion is as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent manner. The motion was seconded by [Commission Member] Bill Giese and carried unanimously.

Exhibit 14, pp. 7-9.

F. The Litigation

On May 14, 2004, Commission Staff formally advised Talbot County that its proposed amendment was denied, but that the "Commission fully supported inviting Talbot County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria." A copy of the May 14, 2004 letter is attached as **Exhibit 15**. The County declined the Commission's offer and filed suit. Its Second Amended Complaint contains 78 paragraphs in Counts I through V. Distilled, Talbot County alleges that the Commission's action is contrary to law and was untimely. On this record, the facts are undisputed and the Commission is entitled to judgment as a matter of law.

ARGUMENT

This Court's review of the Commission's action in denying a program amendment is narrow.

The Critical Commission acts in a “quasi-legislative” capacity when it reviews local critical area programs and program amendments. *North v. Kent Island Limited Partnership*, 106 Md. App. 92, 103 (1995). “Where an administrative agency is acting in a manner which may be considered legislative in nature (quasi-legislative), the judiciary’s scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries.” *County Council of Prince George’s County v. Offen*, 334 Md. 499, 507 (1994), quoting *Dep’t of Natural Resources v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 221-24 (1975).

A. The Critical Area Commission Acted Within Its Legal Authority in Denying Talbot County’s Proposed Program Amendment.

The Critical Area Law provides that the Critical Area Commission shall approve a program amendment if the amendment meets“(1) [t]he standards set forth in [NR] §8-1808(b)(1) through (3) . . . and (2) [t]he criteria adopted by the Commission under [NR] §8-1808.” NR §8-1809(j). One of the standards is that a program shall “establish land use policies . . . which accommodate growth.” The “criteria” consists of the provisions of COMAR Title 27, Subtitle 1, entitled “Criteria For Local Critical Area Program Development.” COMAR 27.01. One such criteria is at COMAR 27.01.02.06A(2), which states: “When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.” In reviewing a proposed amendment, the Critical Area Commission applies the standards and criteria in light of its “oversight responsibility” to assure that all local jurisdictions act “in a consistent and uniform manner subject to State criteria and oversight.” *North*, 106 Md. App. at 103-04 (1995) (quoting NR §8-1801(b)(2)); *id.* at 106 (“Commission was designed to be an oversight committee”). See also *Kent Island Defense League*,

LLC v. Queen Anne's County Board of Elections, 145 Md. App. 684, 686-87 (2002) (Critical Area Commission performs oversight of local Critical Area programs); *Bellanca v. County Commissioners of Kent County*, 86 Md. App. 219, 222 (1991) (same).

Talbot County's Bill 933 flouted the standards, criteria, and purposes of the Critical Area Law. The Bill did not accommodate growth. In fact, on its face, it removed growth allocation that the County previously granted to the Towns of St. Michaels, Easton, and Oxford. It also made no provision for use of growth allocation previously approved by the Town of St. Michaels for the Strausberg and Miles Point III project. Nor did Talbot County develop Bill 933 "in coordination" with the Towns of St. Michaels, Easton or Oxford, as required by the Criteria, and as it had done in 2000 with its supplemental growth allocation bill (Bill 762). All three Towns have at all times opposed Bill 933.

Finally, Bill 933 directly undermines the purpose of the Critical Area Law's statutory scheme. *See Boyle v. Maryland-National Capital Park and Planning Commission*, 385 Md. 142, 154 (2005) ("Important in determining legislative intent . . . is the purpose of the statutory scheme of which the statute under review is a part"). The Critical Area Law is a Resource Protection Program established "on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." NR §§8-1801(b)(2). By its terms, Bill 933 creates inconsistencies among approved County and Town Critical Area programs: the approved municipal programs provide for growth allocation, but under 933 there is no longer any growth allocation reserved for the Towns. By its application, Bill 933 renders null and void projects previously approved, not by Talbot County, but by other jurisdictions: St. Michaels and Easton. In order to approve Bill 933, the Commission

would have had to turn a blind eye to the inconsistency and chaos created by this Bill and thereby abandon its oversight obligations in reviewing program amendments. *North*, 106 Md. App. at 106, This the Commission could not and did not do.

B. The Critical Area Commission Timely Denied Talbot County's Proposed Amendment.

Talbot County asserts that the Commission did not adhere to the time frames of the Critical Area Law in its program amendment denial because it did not meet the ten working day administrative processing time provided by NR §8-1809(m)(2), and therefore did not deny its proposed amendment with 90 days. Talbot County thus concludes that Bill 933 is deemed approved. Second Amended Complaint, ¶¶24-31. The County raises this assertion for the first time on appeal. It has no merit.

The Critical Area Law provides that, within ten working days of receiving a proposed amendment, the Commission shall mail a notification to the local jurisdiction that the project has been accepted or return the proposal as incomplete. NR §8-1809(m)(2). In this case, Talbot County submitted its proposed amendment on December 29, 2003. Critical Area Commission Executive Director Ren Serey determined that the proposal was incomplete,⁶ and the County provided additional information by letter dated January 19, 2004. January 19, 2004, however, was Martin Luther King Day and therefore a legal holiday.⁷ Thus, the earliest date that the letter could have been mailed was January 20, 2004, and the earliest date the Critical Area Commission could have received

⁶ Exhibit 4, p. 2 ("Mr. Ren Serey has requested additional information regarding Bill 933 which has been outlined with this cover letter").

⁷ The United States Post Office is closed on legal holidays.

it was January 21, 2004.⁸ Ten working days after January 21, 2004⁹ was February 5, 2004, the date Commission mailed a letter to Talbot County stating that its application had been accepted for processing. Ninety (90) days from that date was May 5, 2004, the date the Commission acted timely to deny the proposed amendment.

Second, even if the Commission somehow overshot the 10 working day window for processing the County's application, there is no legal consequence associated with failure to comply with the rule. The fact that there is no consequence means that the 10 working day processing time frame is directory, not mandatory.¹⁰ The only sanction provided in the Critical Area Law is for failure to act on a proposed amendment "within 90 days of the Commission's acceptance of the proposal." NR §8-1808(o) (if Commission does not act within 90 days, program amendment is deemed approved). Here, there is no dispute that the Commission acted within 90 days of acceptance of Talbot County's proposal on May 5, 2004.

CONCLUSION

For the foregoing reasons, the Critical Area Commission acted within its statutory authority

⁸ The Commission received the letter, but the date stamp on it is illegible. See Exhibit 4 (copy of letter).

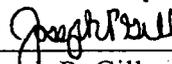
⁹ "In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included." Art. 1, §36.

¹⁰ "The question of whether a statutory provision using the words 'shall' is mandatory or directory 'turns upon the intention of the Legislature. . . ." *Solomon v. Board of Physician Quality Assur.*, 132 Md.App. 447, 456 (2000) (internal quotation marks omitted). "One indication that the Legislature intended a time limitation to be directory instead of mandatory is if . . . there is no sanction for noncompliance." *Id.* See also *Resetar v. State Board of Education*, 284 Md. 537, 548 (1979) ("we have regarded as significant the fact that the language of the statute under consideration provided no penalty for failure to act within the time prescribed"); *cert. denied*, 444 U.S. 838 (1979). Here, there is no penalty for failure to meet the 10 working day requirement.

in denying Talbot County's proposed amendment to its Critical Area program. Accordingly, DNR respectfully requests this Court to grant its Motion for Summary Judgment.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Joseph P. Gill
Marianne D. Mason
Paul J. Cucuzzella
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8350
Attorney for Defendant
Department of Natural Resources

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 2005, a copies of the foregoing Department Of Natural Resources' Memorandum in Support of Motion for Summary Judgment were sent via overnight mail to:

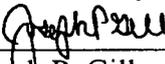
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Easton, Maryland 21601



Joseph P. Gill

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003
Bill No. 933*
 AS AMENDED
Expiration Date: January 22, 2004

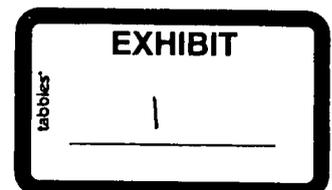
Introduced by: Mr. Carroll, Ms. Harrington, Mr. Duncan

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

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 16, 2003 at 1:30 p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order *Julie Mainz*
Secretary



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118
119 Maps 1, 2, and 3, attached, are hereby repealed.
120

121 * * *

122
123 **§ 190-109 D (9)**
124

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

133 * * *

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

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

145
146 (b) In determining whether the twenty-acre threshold has been reached, the contiguous areas
147 of existing commercial and/or industrial zoning districts, whether located in the Critical
148 Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for~~
149 ~~the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St.~~
150 ~~Michaels for growth allocation or growth allocation associated with annexations, and 36~~
151 ~~acres for the County for growth allocation for property outside of the towns and outside~~
152 ~~of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~

153
154
155 **§ 190-109 D (11)**

156
157 ~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9)~~
158 ~~and (10) should be reviewed by the County and Towns by June 1, 1993 for possible~~
159 ~~reallocation and at least every four years thereafter.~~

160 * * *
161
162 **§ 190-109 D (14)**

163
164 ~~Specific annexation requests for property included in the acres reserved for the towns in~~
165 ~~§ 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by~~
166 ~~the County for consistency with the County Comprehensive Plan and shall be subject to~~
167 ~~all current ordinances regulating annexations. The County shall not act on rezoning~~
168 ~~requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request~~
169 ~~for the property has been denied by the town or until 12 months after an annexation~~
170 ~~request for the property has been submitted to the town, whichever occurs first. If the~~
171 ~~County approves a rezoning request not associated with an annexation request for~~
172 ~~property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the~~
173 ~~property rezoned shall be subtracted from the acres reserved for the Town for annexation~~
174 ~~in § 190-109D(9) and (10).~~

175
176 **§ 190-109 D (15)**

177
178 ~~Growth allocation requests for property that has been annexed within five years of the~~
179 ~~request shall be reviewed by the County for consistency with the County Comprehensive~~
180 ~~Plan. Growth allocation request(s) for property that has been in the town for more than~~
181 ~~five years prior to the request does not require review by the County; however, the towns~~

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

184
185 § 190-109 D (16)

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

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

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

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

196
197 (a) For purposes of this subsection, the term “unutilized” includes the total growth
198 allocation acreage allocated to the County under State law, less growth allocation
199 acreage that (1) has been previously allocated by any town or the County; and,
200 (2) prior to the effective date of this ordinance, has resulted in actual physical
201 commencement of some significant and visible construction; (3) which has been
202 undertaken in good faith, with the intention to carry it through to completion; and,
203 (4) which has occurred pursuant to a validly issued building permit.

204
205 (b) For purposes of this subsection, growth allocation acreage allocated to the County
206 does not include growth allocation allocated to the towns under § 8-1808.1 (b)
207 (5% of the total resource conservation area in the town at the time of
208 original approval of the town’s critical area program by the Critical
209 Area Commission).

210
211 (c) For purposes of this subsection, County growth allocation acreage that has been
212 previously allocated by any town shall first be counted as part of that town’s
213 allocation under § 8-1808.1 (b) and, to the extent the town’s allocation has been
214 exceeded, growth allocation that has been utilized prior to the effective date of
215 this ordinance shall be deducted against the County’s remaining growth
216 allocation. Growth allocation awarded by any town that remains unutilized on the
217 effective date of this ordinance shall revert to the County. Growth allocation
218 awarded by the County, prior to or after the effective date of this ordinance, shall
219 be deducted from the total growth allocation acreage allocated to the County
220 under § 8-1808.1 (b).

221
222 2. Severability.

223 The County Council intends that, if a Court issues a final decision holding that any part
224 of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or

225 invalid, the remaining provisions hereof and the application thereof to all other persons and
226 circumstances remain in full effect.

SECTION THREE: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty
(60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 933 having been published, a public hearing was held on Tuesday, December 16, 2003.

BY THE COUNCIL

Read the third time.

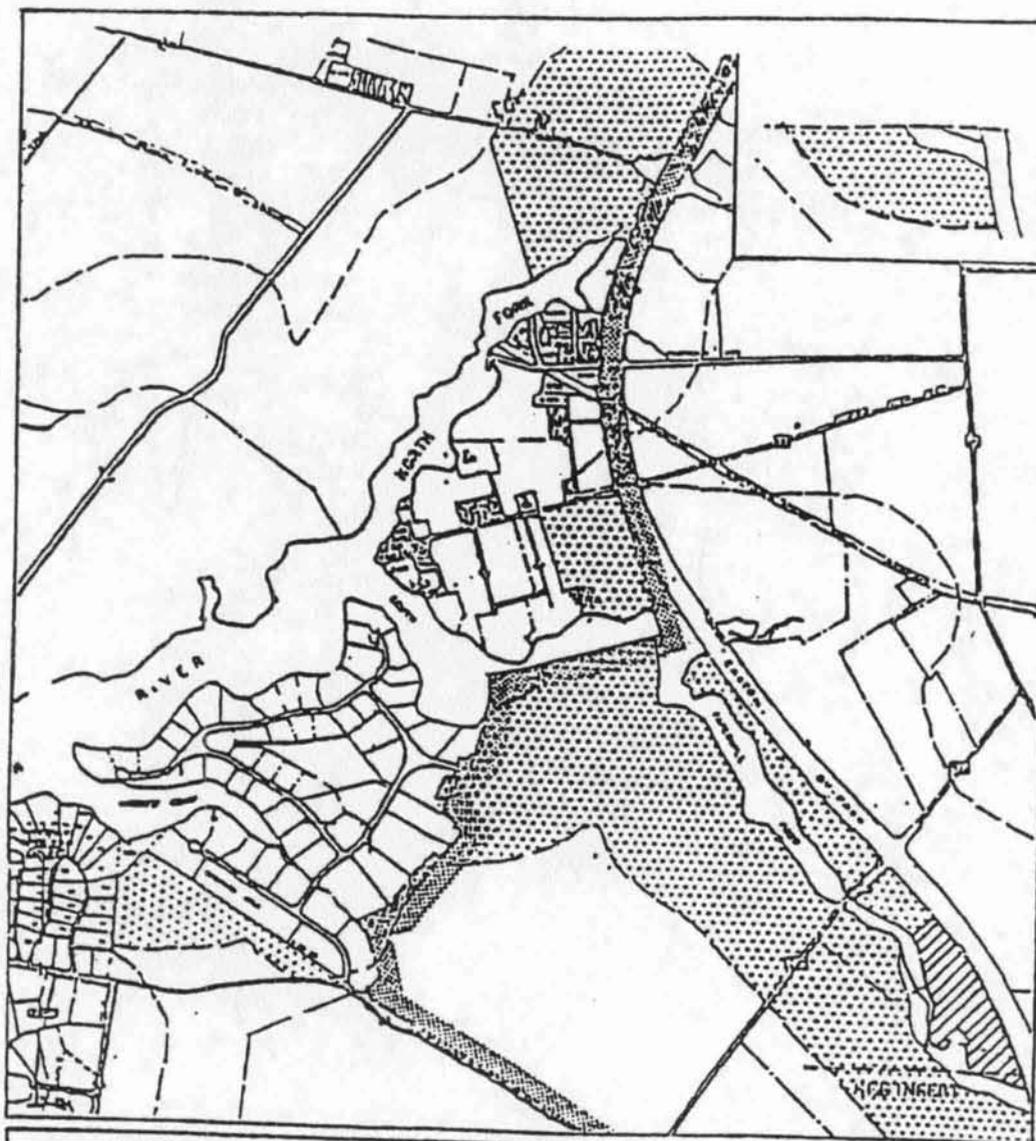
ENACTED December 23, 2003*

AS AMENDED

By Order *Julie Maus*
Secretary

Foster - Nay
Duncan - Aye
Harrington - Aye
Spence - Aye
Carroll - Aye

ZONING



Area Allocated for Town Development

TOWN OF EASTON
Talbot County, Maryland

 RCA for Annexation or Rezoning

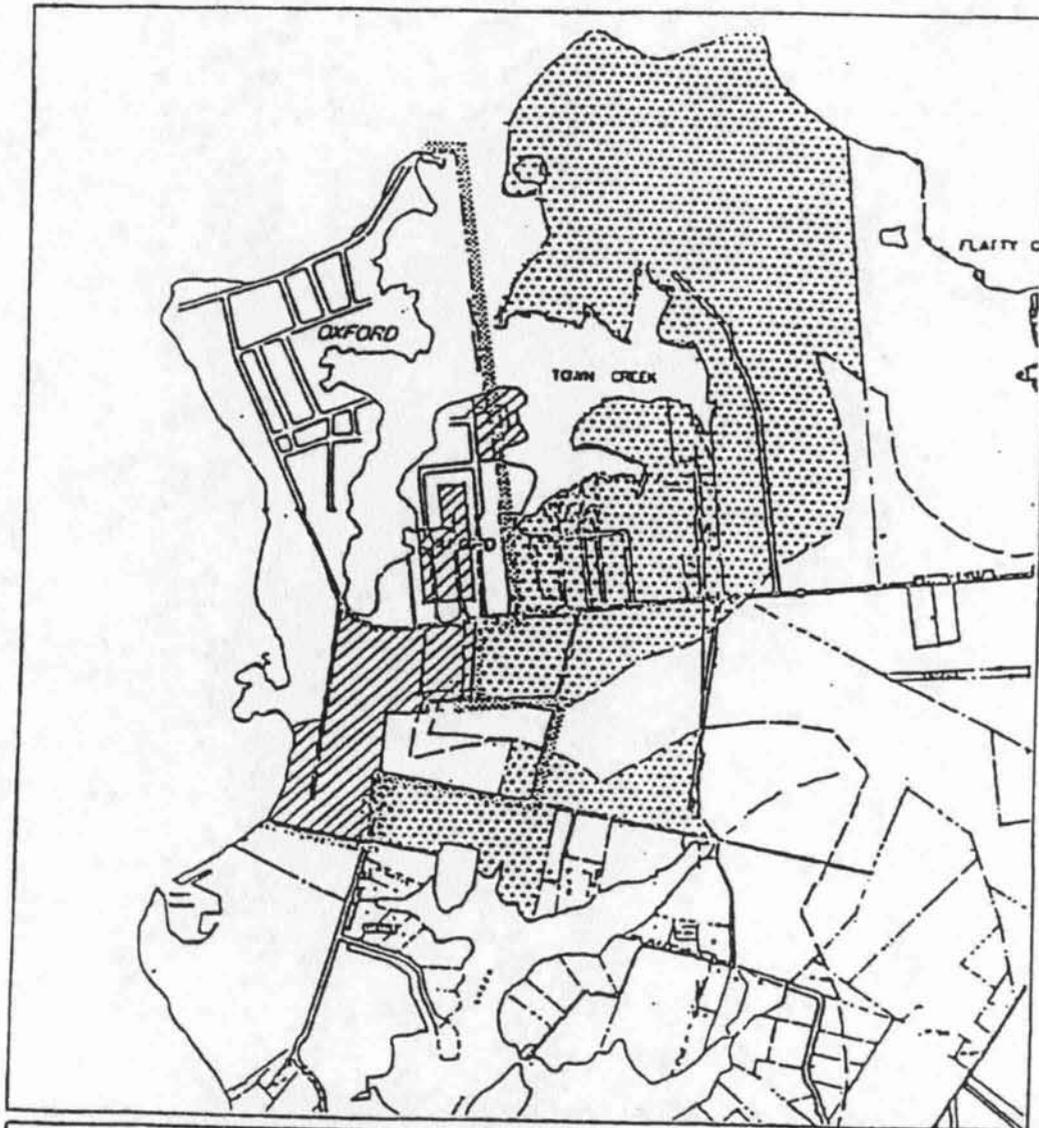
 LDA for Rezoning

Map No 1

 miles

Wiles Dailey Pruske
Horton, Va. Sarasota, Fla.

ZONING



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

 RCA for Annexation or Rezoning

 LDA for Rezoning

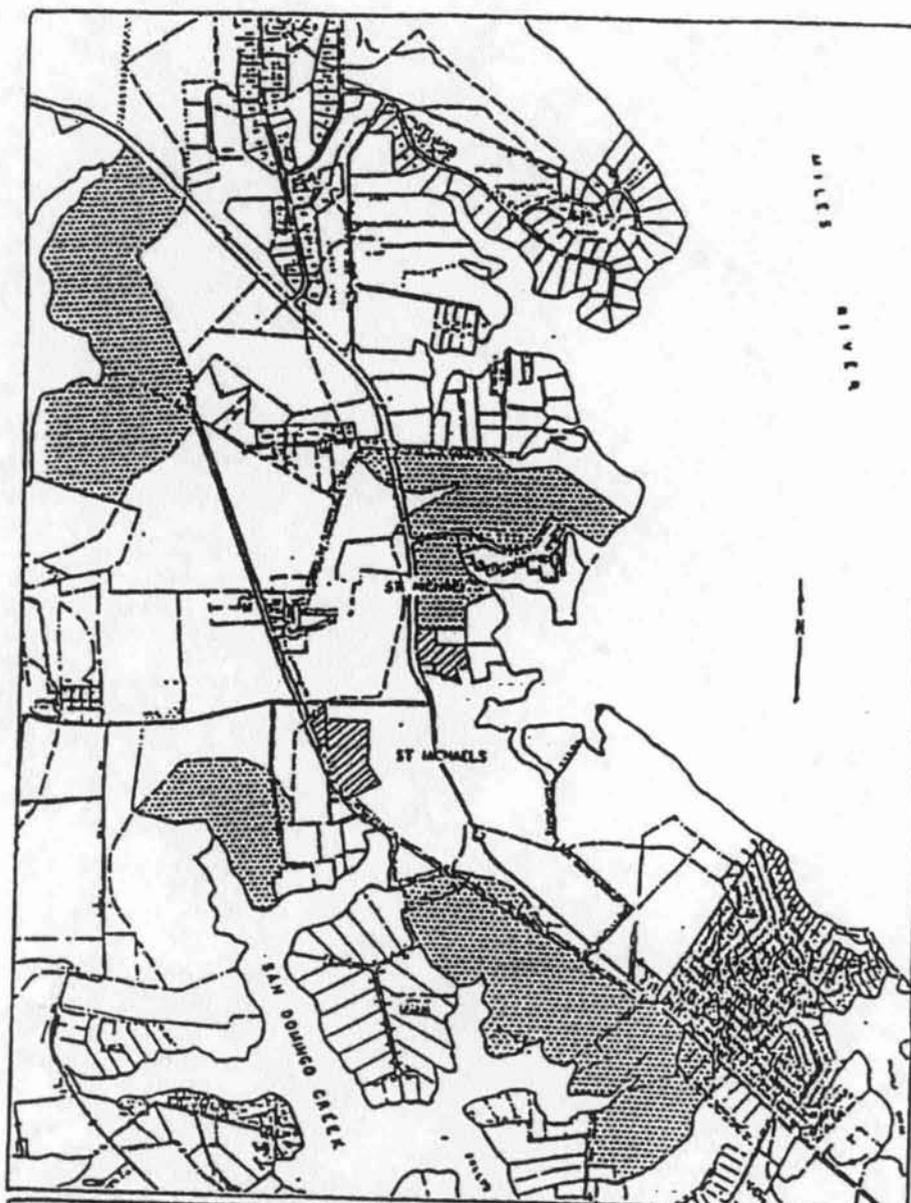
Map No

 miles



Wiles Dailey Prosske
Roxton Va. Sarasota, Fla.

ZONING



Area Allocated for Town Development

TOWN OF ST MICHAELS
Talbot County, Maryland

 RCA for Annexation or Re-zoning
 LDA for Re-zoning

 Map No. 1
 0 1 2 3 4 5 miles
 Wiles Dalley Franke
 Ruston, Va. Sarasota, Fla.



The Commissioners of St. Michaels

P.O. BOX 206

ST. MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80
INCORPORATED 1804

(410) 745-9535
FAX (410) 745-3463
TDD/TTY RELAY 1-800-735-2258

December 16, 2003

HAND DELIVERED

Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
142 N. Harrison Street
Easton, Maryland 21601

Re: Opposition to proposed Talbot County Bill No. 933

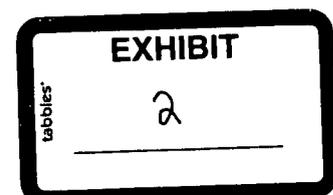
Dear President Foster Council Members:

On November 18, 2003, the County Council of Talbot County introduced legislation in the form of County Bill No. 933 that would remove from the Towns' control all growth allocation acreage previously allotted, whether unallocated, *already allocated*, or *currently under consideration* for allocation to a specific parcel of land. In essence, Bill 933 would deprive the Towns of their ability to award growth allocation on land within their own municipal boundaries. More than half of the land located within Town of St. Michaels is also located within the Chesapeake Bay Critical Area. Therefore, with respect to the significant part of the municipality located within the Critical Area, Bill No. 933 would effectively take land planning and zoning functions over that area from the Town and give it to Talbot County. We believe the enactment of Bill No. 933 by the County Council is unnecessary, inconsistent with State law and will have a negative impact on the Towns of Talbot County.

So far as we can determine with regard to other municipalities in Talbot County, and to be sure with regard to St. Michaels, in advance of the introduction of Bill 933 the County did not:

- Inform us of any problem that would require such legislation;
- Seek our suggestions for a solution or cooperation in solving such a problem
- Provide us with a copy of the proposed Bill for comments and suggestions, on a matter that is important to the Town.

We regret this state of affairs. To the extent possible, we hope to improve communications between the County and the Town.



Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
December 16, 2003
Page 2

To that end, we offer by this letter what we hope you will accept as forthright and constructive comments and suggestions regarding Bill No. 933.

1. We think that this drastic step is unnecessary to manage available growth allocation among the towns and the County in a way that will achieve the stated purpose of the Bill, and to qualify the County for an additional allotment of growth allocation for use as IDAs. We believe that the current provisions of the County Code and a cooperative effort among the affected jurisdictions could accomplish the necessary results.
2. Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over all land within the Town, to the same extent as all other municipalities in this State. The Bill would create a situation in which the municipalities in Talbot County would effectively have less planning and zoning powers within their boundaries than other municipalities in this State, in violation of Maryland Constitution, Article XI-E (Municipal Corporations), Section 1.
3. The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, relating to growth allocation, requires "a process to accommodate the growth needs of the" Town. We can find nothing about either the Bill, or the manner in which the Bill has come about, to indicate that it will create or facilitate such a process. As drafted, the Bill would have the effect of dismantling the right and ability of St. Michaels to self-determination regarding growth and development in the Critical Area within the Town.
4. For 20 years the Towns have exercised careful stewardship of their growth allocation. This fact is evidenced by the amount of allocation acreage remaining, and indicates that Bill 933 is unnecessary.
5. The County is a party to at least two contracts, of which we are aware, that could be either impaired or breached by the Bill and/or by acts taken pursuant to the Bill. Those contracts are as follows:
 - a. The agreement for the assumption for the Town's sewer system by County Sewer District No. 2, which we believe has been subsequently assumed by the County;
and
 - b. The Annexation Agreement relating to Perry Cabin Farm.Rather than engage in counter-productive rhetoric, we enclose a copy of those documents herewith for your review. In addition to the Town, property owners may have rights pursuant to those contracts.

We urge the County Council to review the facts contained in the enclosed Position Paper and to carefully consider whether adoption of Bill 933 today is the best interest of all Citizens of Talbot County. As far as we are aware, there is no deadline facing the County that would preclude a careful study of the issues, and a concerted effort by all affected parties to reach an equitable solution. If it is truly the Council's intent to fairly distribute the County's growth

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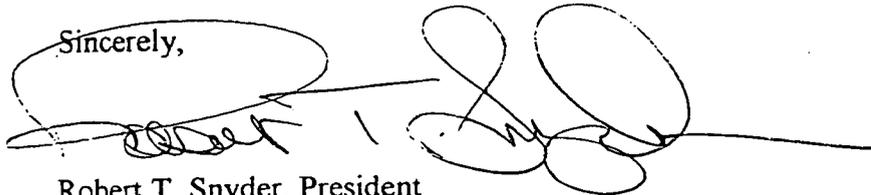
Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
December 16, 2003
Page 3

allocation, then a constructive dialog between the Towns and the County can only improve the end results.

We respectfully urge you to consider these issues and to postpone action on Bill 933 until you have met with the elected officials of the Towns of Easton, Oxford and St. Michaels regarding this important matter. Please note that we normally have our public Town meetings on the second and fourth Tuesday of each month. However, if provided with sufficient advance notice and barring some legal requirement that we hold our meeting on a particular date, we offer to reschedule our meetings if it would facilitate a joint meeting of the County and the affected Towns.

Thank you for your consideration.

Sincerely,



Robert T. Snyder, President
THE COMMISSIONERS OF ST. MICHAELS

RTS/ct
Enclosure

CC: Hon. Delegate Jeanne Haddaway
32 S. Washington Street
Easton, MD 21601

Hon. Sidney S. Campen, Jr., President
Commissioners of Oxford
P.O. Box 399
101 Market Street
Oxford, MD 21654

Hon. Robert C. Willey, Mayor
Hon. John Ford, President
Easton Town Council
P.O. Box 520
14 South Harrison Street
Easton, Maryland 21601

Hon. Cheryl Lewis, President
Trappe Town Council
P.O. Box 162
Trappe, MD 21673

000088



The Commissioners of St. Michaels

SETTLED 1670-80
INCORPORATED 1804

P.O. BOX 206
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Position Paper

From: The Commissioners of St. Michaels
To: County Council of Talbot County, Maryland
Re: Talbot County Bill No. 933
Date: December 16, 2003

The Commissioners of St. Michaels wish to have this document entered into the record of the public hearing on proposed County Bill No. 933 (hereafter the "Bill"). We unanimously oppose the Bill for several reasons, which will be addressed herein.

1.

Bill No. 933 Is Unnecessary

We do not think that this drastic step is necessary to manage available growth allocation among the Towns and the County in a way that will achieve the stated purpose of the Bill, to qualify the County for an additional allotment of growth allocation for use as IDAs. The reasons for our belief are:

- a. The current County Code, Chapter 190 (Zoning) Section 190-109 (Administration), Subsection D (Growth allocation district boundary amendments in the Critical Area), Part (11), provides for periodic reviews "for possible reallocation" of growth allocation. We believe that this existing process could be used to meet and solve the stated problem in a way that would be mutually agreeable and within the applicable State laws.
- b. We understand that the Critical Area Commission frequently does not require full compliance with Maryland Code, Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (5). Therefore, this avenue should be explored.

From our viewpoint, Bill 933 would result in a tremendous amount of Town funds and resources having been wasted in reliance upon a set of facts that form the basis of existing Town planning and zoning documents that has been in place for decades.

2.

Bill No. 933 Is Not Consistent With State Law

We believe that the Bill would be contrary to State laws and policies. This is because it would take from the Town government, and place in the County government, certain home rule,

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planning and zoning powers. In 1804, the Town of St. Michaels was granted the status of a municipal corporation by the State of Maryland. As an incorporated municipality, St. Michaels is intended by State law to have certain powers. Among the powers granted exclusively to Maryland municipalities are those expressed in the following:

1. Maryland Constitution, Article XI-E (Municipal Corporations), Section 1 (providing that "the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall *in their terms and in their effect apply alike* to all municipal corporations");
2. Maryland Code, Article 66B (Land Use); and
3. Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area).

We believe that these Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over all land within the Town, to the exclusion of the County. We believe the Bill would have the effect of limiting the planning and zoning powers of municipalities in Talbot County in a way in which those same powers are not limited for other municipalities throughout the State.

Despite claims to the contrary, State policy still favors the concept that growth and new development should occur within and around existing municipalities. See Maryland Code, State Government Article, Title 9 (Miscellaneous Executive Agencies), Subtitle 14 (Office Of Smart Growth), Section 9-1402 (Legislative findings and purpose). See also the attached letter to the Commissioners from John W. Frece, Acting Director of the Governor's Office of Smart Growth in April of 2003 and the attached letter from Secretary Audrey E. Scott of the Maryland Department of Planning to Mr. Valanos of the Midland Companies dated August 2003. We believe that the effect of the Bill would be to take from the Town's control all or substantially all of the available growth allocation allotted by the State to the County. Therefore, the Town would be left without access to a reasonable quantity of the County's available growth allocation to effect the State policies relating to growth within and around the Town. Moreover, we believe that the Bill would have the effect of preventing or discouraging the concentration of new development in and around existing municipalities in Talbot County in accordance with the smart growth principles. We believe that if the County's purpose of the Bill is to make available when needed additional growth allocation for use in allowing development as "Intensely Developed Areas" (or "IDAs", as that term is used in the State Critical Area laws and regulations), then there are better and less radical ways in which to accomplish that purpose without taking from the incorporated municipalities in Talbot County the right of self-government, as the Bill would do.

3.

The Bill Is Contrary To State A Regulation

The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, provides, in part:

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- A. Intensely developed and limited development areas may be increased subject to these guidelines:
- (1);
 - (2) When planning future expansion of intensely developed and limited development areas, *counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.* [Emphasis added.]

Bill 933 does not create or facilitate “a process to accommodate the growth needs of the” Town. The Bill was drafted and introduced without our knowledge or input of the very Towns state law requires to be accommodated. As drafted, the Bill would have the effect of dismantling the right and ability of the Towns to self-determination regarding growth and development in the Critical Area.

4.

Bill 933 Will Have A Negative Impact On All Talbot County Municipalities

To date the Towns of Oxford and St. Michaels have used the growth allocation allotted to their respective areas sparingly, if at all; holding out for the best development plans and policies for their respective situations. This is not to say that the Town of Easton has not done likewise. Easton, in its judgment, based on its unique situation, has determined that some of the plans submitted to it are worthy of growth allocation. St. Michaels believes that Easton is the best judge of when its growth allocation should be used in the Easton area. Likewise, St. Michaels and Oxford are the best judges of the location, design and extent of development that should be permitted in and adjacent to our Towns.

We believe that by enacting Bill No. 933, Talbot County would be positioning itself to make decisions for the towns in Talbot County that are solely municipal functions. Towns have different interests, serve different governmental purposes, and have different powers from those of counties. By their average density of development and the extent of governmental services typically provided by municipalities, as opposed to the average density and extent of governmental services in counties, municipalities have goals that are different from county goals. Therefore, the decisions relating to growth, and under what circumstances growth allocation should be used, are destined to be different.

We respectfully disagree with the proposition in Bill 933 that there is any shortage in growth allocation that would dictate that Talbot County reverse the policies resulted in the towns' original allotments of growth allocation. The boundaries of the towns in Talbot County have not changed in any way that was not contemplated by the growth allocation acreage allotted, and the maps that designated the areas for growth, as originally enacted by the County. Moreover, because of its concentration of land within the critical area, Talbot County is one of those counties that are exempted from the normal limitation on the percentage of growth allocation that can be located in the Resource Conservation Area (“RCA”) See Maryland Code,

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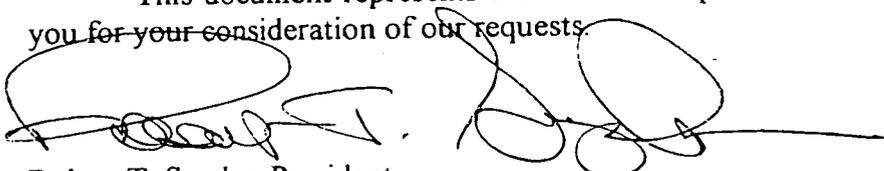
Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003

Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (3) and Part (5).

The Towns have operated with the understanding that the original allotment of growth allocation acreage to their respective areas was a permanent act; or at least not subject to being suddenly and retroactively withdrawn without notice. The adoption of the Bill will have one resounding effect on future relations between the County and the municipalities in Talbot County. That Bill will encourage the Towns in the future to quickly use and exhaust anything that is made available to them by the County, before it can be withdrawn. Hence, any growth allocation that is made available to the municipalities in the future is likely to be used before it can be withdrawn. It is likely that the "use-it-as-fast-as-you-can" attitude will not be limited to growth allocation, but will flow over to every benefit or opportunity that the County makes available to the towns in the future. That type of relationship and attitude will ultimately not be beneficial for the County and its citizens.

We, the elected officials of the Town of St. Michaels, respectfully ask that you reconsider the actions begun with the introduction of Bill 933, and the negative effects that the Bill would have if enacted. We believe that a careful study of the Bill and its ramifications will lead you to the conclusion that its passage is not warranted. Please take the time to work with the Towns for a solution to this situation that can benefit all Talbot citizens.

This document represents the unanimous position of the Town Commissioners. Thank you for your consideration of our requests.



Robert T. Snyder, President
THE COMMISSIONERS OF ST. MICHAELS

RTS/ct

CC: Hon. Delegate Jeanne Haddaway
32 S. Washington Street
Easton, MD 21601

Hon. Sidney S. Campen, Jr., President
Commissioners of Oxford
P.O. Box 399
101 Market Street
Oxford, MD 21654

Hon. Robert C. Willey, Mayor
Hon. John Ford, President

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Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003

Easton Town Council
P.O. Box 520
14 South Harrison Street
Easton, Maryland 21601

Hon. Cheryl Lewis, President
Trappe Town Council
P.O. Box 162
Trappe, MD 21673

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TALBOT COUNTY OFFICE OF PLANNING & ZONING

COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

PHONE: 410-770-8030

FAX: 410-770-8043
TTY: 410-822-8735

December 29, 2003

Ms. Lisa Hoerger
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Easton Supplemental Growth Allocation
Talbot County Bill 933

RECEIVED

DEC 31 2003

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Dear Ms. Hoerger:

Enclosed you will find Talbot County Bill 933 serving to review and reallocate the number of reserved acres of growth allocation allocated among the Towns for rezoning. The Bill is brought consistent with §190-109D(11) of the Talbot County Zoning Ordinance in order to comply with the Chesapeake Bay Critical Area Commission four-year review requirement.

The Talbot County procedure for this review and zoning ordinance text amendment requires legislative action by the County Council similar to a Zoning Map Amendment and is treated as such in the process used for review.

Bill 933 and all other relevant materials are attached for your consideration. Please review these enclosed materials and let me know when and where you propose to have the public hearing for this project or if no public hearing is required when you will discuss it with the Commission. Thank you for your consideration.

Sincerely,

George Kinney, AICP
Talbot County Planning Officer

Cc: Andy Hollis, Talbot County Manager
Mike Pullen, Talbot County Attorney

Enc

EXHIBIT

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TALBOT COUNTY OFFICE OF PLANNING & ZONING

COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

FAX: 410-770-8043
TTY: 410-822-8735

ONE: 410-770-8030

January 19, 2004

Mrs. Lisa Hoerger
State of Maryland Critical Area Commission
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Amendments to Talbot County Critical Area Program

Dear Mrs. Hoerger:

Enclosed you will find a copy of Legislative Bill 922, 926, 927, 929, 931, 932 and 933 submitted to the Critical Area Commission for their review as an amendment to the Talbot County Critical Area Program in compliance with the four-year review requirement.

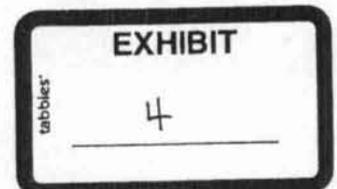
The Talbot County Planning Commission reviewed the original legislation and forwarded their recommendation to the County Council. The County Council held their required public hearings and subsequently voted to pass the new legislation on the below listed enactment dates with an effective date of sixty calendar days from the date of its passage.

Bill 922 (as amended) – Notification to contiguous property owners - Enacted December 9, 2003.

Bill 926 – Article II Definitions and Word Usage – Enacted December 9, 2003.

Bill 927 – Article IV Land Use Regulations by Zoning Districts – Enacted December 9, 2003.

Bill 929 (as amended) – Article XI Critical Area Provisions – Enacted December 16, 2003.



Bill 931 (as amended) – Article XII Site Plan Review – Enacted December 16, 2003.

Bill 932 – Article XIV Administration Section 190-109D, Growth Allocation District Boundary Amendments in the Critical Area, Growth Allocation for specific uses in the RC Zone – Enacted December 9, 2003.

Bill 933 (as amended) – Review and Reallocate the number of Reserved Acres of Growth Allocation allocated among the towns for rezoning – Enacted December 23, 2003.

Bill 933 was submitted to your office with a cover letter dated December 29, 2003. Mr. Ren Serey has requested additional information regarding Bill 933 which has been outlined within this cover letter. A chart outlining the original Growth Allocation reserved, allocated and remaining for each eligible incorporated town and the County is attached.

Talbot County is working with the Department of Natural Resources, Heritage Biodiversity Division, to update our County Habitat Protection Area maps. We are working to incorporate these updated maps into our GIS system to be utilized during building permit and development activity review.

If you require further information or clarification, feel free to contact myself or the Assistant Planning Officer. Please notify this office when the attached amendments will be scheduled for Commission review.

Sincerely,
Talbot County Office of Planning and Zoning


George Kinney
Planning Officer

Enclosures

C: County Council, President Phillip C. Foster
R. Andrew Hollis, County Manager
Michael Pullen, County Attorney
Mary Kay Verdery, Assistant Planning Officer

GROWTH ALLOCATION ACREAGES

Jurisdiction	Project Description	Original Reserved	Total Allocated	Total Remaining
Town of St. Michaels		245 Acres		
	Broad Reach Farm, Strausburg		20.1 Acres	224.9 Acres
Town of Easton		155 Acres		
	155 Acres of original reserve allocated			
	Ratcliffe Farm-Easton Village		156 Supplemental Acres	0 Acres
Town of Oxford		195 Acres		
	Bachlor's Point		13.223 Acres	
	Bachlor's Point		2 Acres	179.777 Acres
Talbot County		618 Acres		
	See Attached		301.771 Acres	316.229 Acres
TOTAL:		1213 Acres		720.906 Acres
* 1213 Original Limit, 1213 Potential Additional Limit, 128 Reserved LDA to IDA = 2554 Acres				
				2004 Jan

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

February 5, 2004

Mr. George Kinney, Planning Officer
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: Talbot County Bill 933

Dear Mr. Kinney:

This office has received County Council Bill 933 for processing. This bill pertains to the review and reallocation of growth allocation acres reserved for the towns in Talbot County.

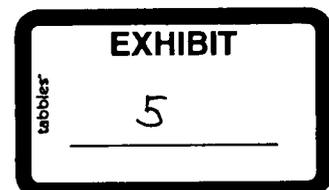
The Critical Area Commission is today accepting Bill 933 for processing. The Chairman will make an amendment or refinement determination within 30 days of the date of this letter, and Commission staff will notify you of his determination and the procedures for review by the Critical Area Commission.

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

Sincerely,

Lisa A. Hoerger
Natural Resources Planner
LAH/jjd

cc: The Honorable Richard F. Colburn
The Honorable Jeannie Haddaway
The Honorable Adelaide C. Eckardt
The Honorable Sidney S. Campen, Jr.
The Honorable Robert C. Willey
The Honorable Cheryl Lewis
The Honorable Philip C. Foster, Esq.
The Honorable Robert T. Snyder
Mr. R. Andrew Hollis
St. Michaels Planning Commission



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CRITICAL AREA COMMISSION
1804 West Street, Suite 100
Annapolis, Maryland 21401

MEMORANDUM

To: Dave Blazer, Chair; Gary Setzer; Bill Giese; Ed Richards; Joe Jackson
From: Mary Owens, Lisa Hoerger
Date: March 17, 2004
Subject: Talbot County Bill 933
County Council Bills 922, 926, 927, 929, 931, 932

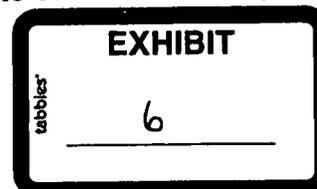
Thank you for agreeing to serve on the Talbot County Panel. The public hearing is scheduled for Wednesday, March 24, 2004 at 7:30 p.m. at the Easton High School, 723 Mecklenburg Avenue, Easton. The hearing will be in the cafeteria. Directions to this location are attached.

The hearing for Talbot County Bill 933 will immediately follow the hearing on the other six Talbot County Bills. A copy of Bill 933 is included as Attachment (A). Within the Bill, **boldface** indicates a heading or defined term; underlining indicates language added to existing law by original bill; ~~strikethrough~~ indicates language deleted from existing law by original bill, and * * * indicates existing law unaffected.

The purpose of this Bill is to reallocate growth allocation that had been previously set aside for use by the Towns of Easton, St. Michaels, and Oxford. The County's original Critical Area Ordinance, adopted in 1989, reserved 155 acres for the Town of Easton, 195 acres for the Town of Oxford, and 245 acres for the Town of St. Michaels. The ordinance included three maps of the Towns and surrounding areas. These maps identified potential areas for annexation or rezoning. The Ordinance also specified that the number of reserved acres should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. These reviews have not taken place, and the County believes that the 1989 maps and projections have no continued validity for any planning or zoning purpose.

Bill 933 states that the withdrawal of growth allocation from the municipalities is part of the County's comprehensive review of its local Critical Area Program. The Bill also states that this action is necessary because, among other things,:

- The original awards of growth allocation to the towns have "no continued validity for any planning and zoning purpose;"



- FORBIDDEN AREA FACILITY
- The original awards are “inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;” and
 - “Growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County’s legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program...”

At this time, Easton has used 183.762 acres (including 28.762 acres of supplemental growth allocation) and has requested an additional 156 acres of supplemental growth allocation from the County. The Town of St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15.223 acres. The County is proposing to amend their zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns. Section 2 of the Bill includes provisions that relate to growth allocation that has been awarded by a Town and “unutilized.” A definition of the term “unutilized” is included in that section. It is the County’s intent that growth allocation awarded by a Town that has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit shall revert to the County. It is the understanding of Commission staff that at this time, there is only one growth allocation project for which growth allocation has been awarded, but would be considered unutilized. This is the Strausburg Subdivision in St. Michaels, which involved 21 acres of growth allocation to change the Critical Area designation from RCA to LDA for a ten lot residential subdivision. The Commission approved this growth allocation request on October 1, 2003.

Although Bill 933 removes provisions pertaining to the reservation of growth allocation acreage for the Towns from the County Code, other parts of §190-109 of the Code address how the use of growth allocation by the Towns is to be accommodated in the future. In accordance with §27.01.02.06.A(2) of COMAR, “Counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.” The provisions of Section §190-109.D(9) outline a joint review and hearing process whereby elected officials from Talbot County and the affected municipality work cooperatively together on projects involving the use of growth allocation. See Attachment (B).

STATEMENT OF CLOSING MEETING

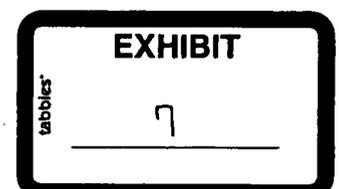
Panel of Critical Area Commission for Chesapeake and Atlantic Coastal Bays
April 7, 2004
Crownsville, Maryland

David Blazer, Chair, Panel Considering Talbot County Proposed Program Amendments

Statutory Authority for Closing Meeting:
State Government Article 10-508(a)(7), "to consult with counsel to obtain legal advice."

Reasons for Closing Meeting:

1. To consult with counsel to obtain legal advice on the applicable sections of the Critical Area law and criteria governing the panel's deliberations.
2. To consult with counsel to obtain legal advice on the applicability of other State laws, policies, and regulations (including but not limited to, Planning & Zoning, Smart Growth) cited by commenters in the record of the proceedings.
3. To consult with counsel to obtain legal advice about the effect of Bill 933 on any other Critical Area Program, program amendment, or program refinement approved by the Commission.
4. To consult with counsel to obtain legal advice on the conflicting interpretations offered by commenters on the meaning of Commission criteria COMAR 27.01.02.06 A.



Tail
minutes

Panel Meeting – Conference Room B, People’s Resource Center, 100 Community Place, Crownsville, Maryland

Panel Members:
David Blazer, Chairman
Joe Jackson
Bill Giese
Ed Richards
Gary Setzer

Commission counsel: Marianne Mason

Staff:
Ren Serey, Executive Director
Lisa Hoerger, CAC planner
Mary Owens, CAC, Chief of Program Implementation
George Kinney, Talbot County Planning Officer

Bill 922

This bill is in regard to notice to contiguous property owners in regard to site plan reviews. Commission staff had no concerns or comments about this bill.

Bill 926

This bill changes, deletes or adds certain definitions in the County Zoning Ordinance. Added definition for specimen tree, forest preservation plan, normal maintenance, marsh creation, mitigation, natural vegetation (relative to clearing in and outside of Buffer), and disturbance. Deletes definition of tree in accordance with sanction letter sent by CAC. Several questions/comments directed at County staff including: When the term “substantial alteration” comes into play? (George Kinney to look into it.); definition of dwelling unit will need to be changed in accordance with the 2004 bill; clarify that Buffer is landward of MHW of tidal waters, tributary streams and the edge tidal wetlands.

Bill 927

This bill amends the land use table including uses in the RCA. Some are new, some have been changed. Staff concerned about parks and playgrounds and possible intense uses, staff suggest that the allowance of parks and playgrounds be limited to passive recreation. Land application of sludge not permitted within 200 feet of tidal waters and tributary streams. While acknowledging that this is stronger than the criteria, staff suggests that it include tidal wetlands as well.

Bill 929

Amends Zoning Ordinance, Article 11. Adds requirement for forest preservation plan when clearing is proposed in Critical Area and Buffer. The plan must be approved by Planning

Officer. Adds language on permitted clearing. Staff concerned about re-approval for certain activities, e.g., removal of invasives. How long is the approval good for? Staff suggestion to limit approvals to a certain period of time. Entirely new section on Buffer Exemption Areas is generally consistent with the Commission's policies. Maps are not yet approved at the local level. Staff concerned about the unlimited size of new accessory structures in BEAs (George Kinney indicated there was unlimited size, but they are permitted no closer to the water than the existing structure.) Also concerned about lack of mitigation when a structure is placed on top of existing impervious. George Kinney did not think any mitigation would be required in those instances. Staff explained intent behind BEA policy in always providing some mitigation.

Bill 931

Amends Article 12 of Zoning Ordinance relevant to site plan review process. It generally cleans up the language. References to Buffer made consistent with sanction letter, provides provisions for customary maintenance of lawn. It also inserts requirement for Buffer establishment when agricultural uses are changed to development. Inserts language for protection of HPAs and references guidance for protection of FIDs. In regard to afforestation requirements, the program does not require afforestation on properties less than seven acres in size. This is inconsistent with criteria and what all other jurisdictions do. Commission staff has raised this issue on numerous occasions. George Kinney will take the issue back to the Council. Also, there is an inconsistency between the criteria and the County Program in regard to mitigation for clearing between 20 and 30% of a site. Mitigation is supposed to occur at a 1.5 to 1 ratio for the entire area cleared.

Bill 932

This bill adds a new section in regard to the County's growth allocation process.

The above bills together make up the County's comprehensive review. Also required are habitat protection area maps and accounting of growth allocation. The County is working with DNR to update their maps. The growth allocation accounting is consistent with Commission's records except for Cooke's Hope project. The Commission has not approved Cooke's Hope growth allocation yet.

Panel requests that staff put together a staff report or letter with these potential conditions of approval outlined. Panels most significant concerns are in regard to Bill 931 where County Program is inconsistent with criteria.

Bill 933

Each member of the Talbot County panel received a copy of all public comments submitted prior to the close of the record (5:00 pm on April 5, 2004). They also received information (i.e., copies of relevant pages of their respective Critical Area programs or ordinances) on the growth allocation processes of the Towns of Easton, Oxford and St. Michaels. David Blazer, chairman of the panel, received maps associated with Talbot County's Comprehensive Plan. Some were the official, adopted maps, while one was a draft map.

Lisa Hoerger, Commission planner, summarized Bill 933. The Bill amends and deletes certain sections of the County's zoning ordinance pertaining to growth allocation. The County originally gave specific acreage amounts to the Towns within the County. This bill takes back the acreage originally granted and amends the ordinance to require a joint review process for growth allocation requests within the municipalities.

At approximately 10:00 am in Conference Room B of the People's Resource Center at 100 Community Place, Crownsville, Maryland, David Blazer, chairman of the panel, calls for a closed session under the authority of State Government Article 10-508(a)(7), to consult with counsel to obtain legal advice.

Joe Jackson made a motion to close the session to consult with counsel. The chair called for a vote.

Ed Richards - aye

Bill Giese - aye

Gary Setzer - aye

Joe Jackson- aye

David Blazer, chair - aye

Members of the public asked if the session would be opened again for further deliberations and the chair indicated that it was likely that the session would not be opened again due to time constraints but that further open deliberations would occur at the Commission's offices at 9:30 am on April 19, 2004. Members of the public left the room.

The chairman moved to have the panel continue discussions in a closed session in the Commission's office at 8:30 am on Monday, April 19, 2004. All voted in favor.

Panel meeting adjourned at 3:50 pm.

Minutes submitted by LeeAnne Chandler, Critical Area Commission.

Panel Meeting: April 19, 2004- Critical Area Commission Conference Room
1804 West Street, # 100, Annapolis, Maryland.

Panel Members:

David Blazer, Chairman

Bill Geise

Joe Jackson

Ed Richards

Gary Setzer

Critical Area Commission (CAC) Counsel: Marianne Mason

Critical Area Commission Staff:

Ren Serey: Executive Director

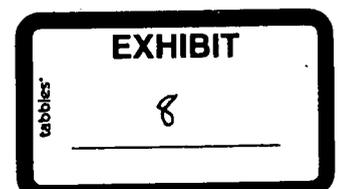
Mary Owens: Chief, Program Implementation

Regina Esslinger: Chief, Project Review

Lisa Hoerger: Staff Planner, Talbot County and St. Michael's amendment reviews

Wanda Cole: Staff Planner, Recorder of minutes of panel meeting

Closed Session



At 0930 hrs, Dave Blazer opened the panel meeting to an open session. He informed the gallery that the panel had just completed its closed session to discuss legal questions.

In attendance in the gallery:

Judge John C. North, III

Thomas Deming, esq.

George Kinney, Talbot County Planning Officer

Mike Pullen, Counsel for Talbot County

Hope Harrington, Councilwoman

Pete Carroll, Councilman

Martin Madden, Chairman, Critical Area Commission

Judith Evans, Commissioner at Large- Western Shore

Ken Pensyl, Director, MDE Stormwater Management Program

Peggy Campbell, Secretary to the Commission Chairman

Eight others not identified

Bill 931

Sets an application process for growth allocation. Panel had no comments nor recommended changes.

Bill 926

Changes to Definitions section of Ordinance.

1. Dwelling Unit- recommend changing the definition to be consistent with the new definition set by Statute.
2. Shoreline Development Buffer- slight changes. Restate to say, "Area measured 100 feet wide..."

Mary Owens had asked George Kinney to look at the definition of "Construction of Substantial Alteration" on page 2, Item B to be sure it doesn't kick some projects out of the Critical Area review process. The County needs to clarify this prior to the May 5, 2004 CAC meeting.

Bill 927

Land use Table in the RC Zone. Needs bullets to clarify limits:

- Pg 3 Parks & Playgrounds- recommend adding additional bullet to address passive recreation uses.
- Pg 8 & 9- for treated septic, sludge application for agriculture and horticulture, community sewage treatment plant, recommend restrict these uses to:
 1. No closer than 200 feet from tidal wetlands;
 2. Assure uses are restricted from the 100-foot zone.

Bill 929

Critical Area Special Provisions. Page 8, Item H, bottom paragraph Cutting and clearing vegetation in the 100' Buffer: the second half of the sentence allows cutting or clearing activity as long as it is approved under the Forest Conservation Plan. Recommend that the language of Item H be revised to state, "The Forest Protection Plan shall include either of a) inspections by the County (falling trees), or b) provisions for removal of exotics & invasive species."

Bill 929

Page 12, 6B includes a new section for proposing Buffer Management Areas. The County's version is stricter regarding the setback. Question posed to the County:

- If a marina is entirely covered in impervious surfaces, and a building is proposed to be placed over this impervious area, would the footprint of the building require 2:1 mitigation?

A gauge would be whether a project represents a change in use, then yes, it requires 2:1; if an existing operation, it would not. CAC's perspective is the use occurring on the land. Recommend slight change: mitigation 2:1 for new development activities. The BMA provisions will not become operative until the BMA maps are done.

Bill 931

Existing grandfathered parcels for afforestation. Recommend deleting the reference to those situations. CAC staff will work with County staff to develop language regarding 15% afforestation, regardless of the parcel size.

- Page 31 [?].
- Page 33, Item C. Forest Replacement. Item C appears to read that the first 20% of clearing is mitigated at 1:1 and that the next 10% of clearing at 1.5 to 1. Delete "additional 10%".
- Page 34 references 7 acres. (?)

Bill 933

CAC was given considerable information to review. Is this Bill approvable? Is it consistent with CAC policy and decisions made in the past? CAC must look at three Criteria for approval:

- That it meets the goal of the Program... and other approvals issued by CAC
- Minimizes adverse impacts to water quality and habitat
- Under § 8-1808 of Subtitle, account for the number, movement, and activities of people and near the shoreline.

Mary Owens stated that in reviewing local Program amendments, CAC has an obligation to see that the implementation is consistent, and to be aware of the effect it has actions has on previous actions it has taken. St. Michael's, Oxford and Easton's Programs were approved under this same set of standards. None of these approvals were litigated and the approvals still stand.

The staff provided information that summarized how each county handles growth allocation to their municipalities. Some are similar to Talbot County, some are not. Wicomico County had originally allocated acreage to Salisbury but had a sunset date on its use. Dorchester County is the most active in granting allocation to its Towns specific acreage and the Towns control that use. CAC approved Dorchester's Program update in 2001.

Ed Richards asked if "reallocation" means total withdrawal? The four-year review never took place for Talbot County, so this question has never been answered. What does "coordinate and accommodate," mean? Bill 762 deals with supplemental allocation but not the original allocation.

No other County has changed its original procedures. Talbot County is the first. Queen Anne's County has a "may be reverted back to the County" procedure. Its acreage is not assigned.

The Panel discussed St. Mary's County. Leonardtown had growth allocation based on their own RCA acreage. When additional allocation was needed, the Town applied to the County with the developer as an applicant for a County project, and growth allocation was awarded to the project. The County no longer treats the Town as an applicant, and the Town may ask the County for additional acreage without having a specific site or project in mind.

The Panel discussed the Programs of the Talbot County Towns. St. Michael's has finished its comprehensive review but hasn't submitted it to CAC for approval. There was a change to its growth allocation process in 2002, whereby the local government would finalize its approval prior to sending to CAC. The growth allocation becomes the map amendment. The Town never reprinted its Ordinance.

The St. Michael's Program, "Purpose and Intent", suggests the Town thought the County had awarded it a particular allocation and they developed their own process of

how to use it. This program was approved by CAC, shows a reliance on the previously awarded growth allocation by the County, and carries over to their Ordinance regarding growth allocation Districts.

Section 34 of Oxford's Program, Growth Allocation Districts, on page 118 states that parcels that receive growth allocation will be deducted from the Town's growth allocation, and describes what would be counted against the Town's growth allocation. This is also reflected in their Intnet and Purpose- an assumption that they have specific amount of growth allocation.

Easton's Program page 11, the paragraph after # 7, The Talbot County Comprehensive Plan encourages growth in certain areas and suggest the Towns expect the County to allocate growth allocation for these areas. The Town Council and CAC approved the Program.

Questions were raised about Cooke's Hope and Easton Club. Did the County have to change its Program to address the Supplemental Allocation for Cooke's Hope and Easton Point? Cooke's Hope has not been issued permits yet as CAC has not yet approved it. The project needed 36 acres and the Town used its 7 acres and asked the County for the balance.

Bill 933 also appears to affect Easton's growth allocation. Last week it submitted a "Supplemental allocation to CAC. CAC has not yet accepted the submittal. Language: Any growth allocation not used by the Towns by the date Bill 933 is enacted will revert to the County.

The Panel discussed the effect of Bill 762 along with Bill 933. Bill 762, dated 7/5/00, the County had established a joint review process for a Town's Supplemental growth allocation. CAC looked at it as growth allocation in addition to what the Towns already had. Bill 933 eliminates all Supplemental allocations that remain "unutilized" as they revert back to the County.

Marianne referenced the minutes for Bill 762, when it was being proposed: Dan Cowee stated that the Town of Easton is out of growth allocation acreage, and the Town's request put the County into a review process to determine if (additional?) growth allocation can be approved or not. This statement shows a joint process. Questions were asked about a joint hearing process. Councilman Higgins asked if it would affect St. Michael's? Assumption was correct, that they had not used up all their growth allocation acreage. The County's records regarding the intent of Bill 762 is giving CAC guidance in looking at Bill 933.

Ed Richards asked if Bill 762 crates a gap or do we assume there is a gap? Bill 933 does not cross-reference Bill 762. Panel Chairman, Dave Blazer, asked whether Bill 933 rescinds the grant of the 7 acres of growth allocation to Cooke's Hope? Gary Setzer noted that a number of people pointed to that statement in Bill 933 and asked

why 933 had to be adopted. The CAC approval of Bill 762 must have reaffirmed the County's process was OK at that time.

Ed Richards stated that Bill 762 is a good process. Bill 933 discusses Supplemental allocations but does not address growth allocations already made, and does not cross-reference Bill 762. What will the County's Program look like after it is approved? Need to have a clear understanding of what the process is going to be since so many have been involved at this point. Ren Serey stated that when Bill 762 came to CAC and was approved as a refinement, it established a process on what to do when the Town ran out of growth allocation.

Ed stated that it is not clear exactly what is the proposed amendment to the Program. Additional information is needed to state this clearly.

How does CAC handle the Strasburg request that was approved by the Commission? Mary stated that Strasburg is already approved, but Midlands and Cooke's Hope have not been approved by CAC. These are the three projects affected by Bill 933.

Marianne advised the Panel must be cognizant of the affect of its approval of Bill 933 on its previous actions. Chairman Blazer stated that if CAC approves Bill 933, which is inconsistent with something already approved, it must state what it looked at to reach this new position. Gary and Ed added that not only Bill 762, but also other actions taken, such as ones the Towns have already approved. Can CAC approve something that undoes something the Town has done? The Town was under the assumption it was working in accordance with its adopted Program, which CAC approved.

Gary pointed out in the County's original Code, 190.109 A and D (?), that there are 3 asterisks ; assume this means the remaining part of the Ordinance stays in place. Paragraph B states what the County will do if it runs out of its 50% growth allocation... the last sentence reads, "upon Critical Area Commission approval, the County shall approve growth allocation acreage for its Towns." This sentence still remains in the County's Ordinance. The operative word is "reserved".

Ed stated that he would like to see the Talbot County staff and delegation withdraw its application, clarify the issues, and resubmit with the issues resolved. Chairman Blazer said the County should outline its coordination efforts. He noted that in Talbot County Council minutes dated 12/10/03, David Thompson of Oxford asked Talbot County to sit down and discuss its ideas with the Town planners, but the Town wanted autonomy. Gary asked staff to summarize what coordination was involved. Chairman Blazer noted Mr. Hickson of St. Michael's stated that the Town was against the Bill and suggested they get together to rethink it.

Mary noted that Dorchester County is working with the City of Cambridge on three growth allocations associated with annexations, and is proposing text changes regarding growth allocation for annexations. The County has met with the Towns to identify the Town's needs.

Chairman Blazer suggested the Panel meeting be adjourned for today, and reconvene in the morning of May 5, 2004 at Crownsville to address the remaining items. Ed Richards so moved and Joe Jackson seconded the motion. All were in favor. The Panel adjourned at 1120 hrs.

quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such 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 as per 8-1809 (g) (Proposed Amendments).

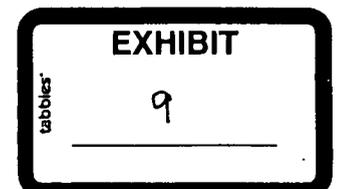
The thrust of the Critical Area Criteria is to encourage the County to locate the entire growth allocation in or adjacent to areas that are already developed, such as the municipalities or existing IDA's and LDA's in the County. The Criteria intimate that the municipalities should be given priority for growth allocation. The Criteria also suggest that no more than half of the Growth Allocation should be located in existing RCA's, but recognize that it is possible that certain counties, including Talbot County, may not be able to so locate all of the growth allocation. If this is the case, the Criteria provide for allocating the unused portion of the growth allocation in stand-alone RCA's. The Talbot County Comprehensive Plan encourages locating growth in or near the existing towns, thus the Town of St. Michaels should reasonably expect the County to assign some portion of the growth allocation for its growth needs.

St. Michaels has determined that there are several areas within and adjacent to the corporate limits for which it will request growth allocation in order to permit development to occur at densities permitted in the St. Michaels Zoning Ordinance. These areas, which are currently LDA and RCA are shown on Map 2-1. Under the LDA designation, the Town would not be permitted to allow the full density currently permitted, thus it will need growth allocation to permit conversion of these areas to new IDA's. Growth allocation has been requested from the County for these areas which total approximately 445 acres in the Critical Area.

Program Goals

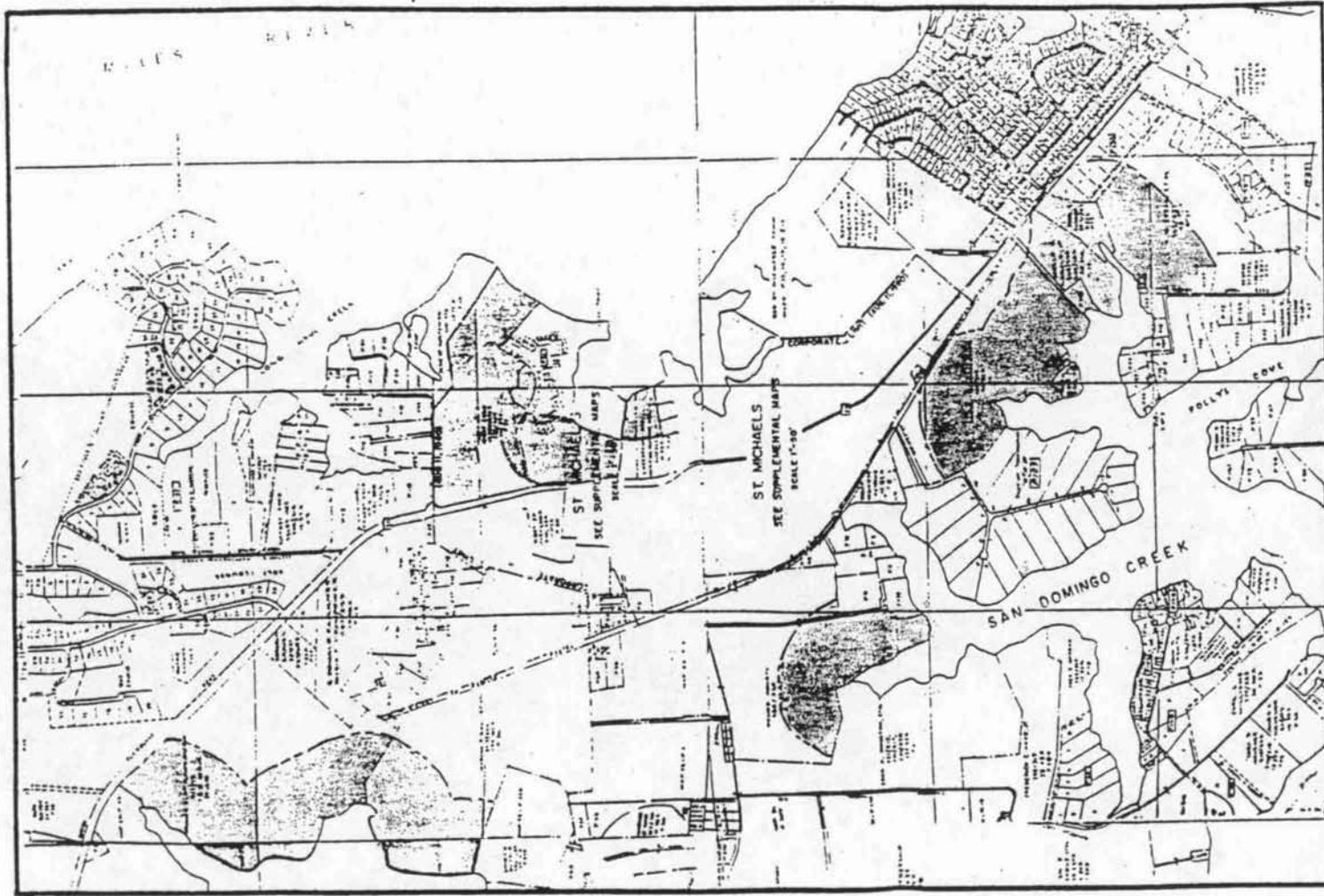
Using the designated development areas, the Town has established the following general goals to guide the creation of specific regulations within the Critical Area.

1. To direct future intense development to locations outside the Town's Critical Area to the extent possible. When future intense development activities are proposed in the Critical Area they shall be accommodated exclusively in designated Intensely Developed Areas.
2. To maintain medium development densities in the Limited Development Areas.
3. To reserve a portion of Resource Conservation Areas for compatible uses including but not limited to, fisheries, resource utilization activities (e.g., park land or passive recreation) and for achieving habitat protection objectives.



FUTURE GROWTH ARE

Map II-1



APPX. 403.1 ACR



FUTURE GROWTH /

ST. MICHAELS, MA

REDMAN/JOHN!
ASSOCI

4. To exclude the following types of development activities due to their adverse impact on habitats and water quality unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.

Non-maritime heavy industry.

Transportation facilities not including the proposed St. Michaels Parkway or others necessary to serve the region.

Sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities.

5. To exclude the following types of development from the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.

Solid or hazardous waste collection or disposal facilities.

Sanitary landfills

6. To develop policies and programs necessary to achieve local program objectives for Intensely developed, Limited Development and Resource Conservation areas identified within the St. Michaels Critical Area.
7. To assure those development and redevelopment activities which are permitted to occur within portions of the Town's Critical Area and/or Critical Area buffer are developed in a manner consistent with appropriate Local program elements to achieve water quality and habitat resource protection benefits.

Designation of Development Areas

Intensely Developed, Limited Development and Resource Conservation Areas are designated on the Critical Area Map, Appendix 6, Map 1. The developed areas have been mapped based on existing land use data as of December 1985. The IDA's delineated are those areas where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs.

Any Town area mapped IDA meets at least one of the following general criteria:

1. Public sewer and water collection and distribution systems are currently serving the area.
2. Industrial, institutional, or commercial uses are concentrated in the area.

3. If residential, the housing density is greater than three dwelling units per acre with sewer and water or greater than 5 units per acre if sewer and water does not serve the site.

Any Town Area mapped LDA meets at least one of the following general criteria:

1. Housing densities range from one dwelling unit per five (5) acres up to four dwelling units per acre.
2. The area is not dominated by agriculture, wetlands, forest, barren land, surface waters, or open space.
3. The area is served by public sewer and/or water.

In addition to these general guidelines, it was necessary to develop detailed mapping rules which include assumptions not covered by the State criteria. These decision rules are found in Appendix 3, and were instrumental in providing an understandable and defensible basis for mapping areas in a manner consistent with the broader definitions for each area contained in section 14,15.02 of the Chesapeake Bay Critical Area Criteria.

Resource Conservation Areas constitute the residual mapped areas and are characterized by nature-dominated environments such as wetlands, forests, and resource-utilization activities such as agriculture, forestry, fisheries or aquaculture. These areas have been designated as Resource Conservation Areas (RCA) on the Critical Area Map, Appendix 6, Map 1. The density in these areas is less than one dwelling unit per five (5) acres. The dominant land use is forest, wetland, open space, or open water. The RCAs are areas that are remaining after all the detailed mapping decision rules have been applied to a tract or parcel of land thereby eliminating IDA and LDA type parcels and uses.

DEVELOPMENT OBJECTIVES

Intensely Developed Areas Objectives

To guide future development and redevelopment efforts the following program objectives have been framed for the Intensely developed areas within St. Michaels.

1. Minimize the expansion of Intensely Developed areas into areas not designated Intensely Developed.
2. Accommodate additional development permitted under the term of the Town's zoning ordinance provided water quality is not impaired.
3. Target Town (Intensely Developed Areas) stormwater management problem areas for public improvements to reduce runoff values and improve runoff water quality.
4. Minimize expansion of development into buffer portions of the Intensely

Developed Area or other Intensely Developed Areas designated as "Habitat Protection Areas" (see Habitat Protection Areas element).

5. Encourage public access to the Town's shoreline.
6. Establish programs for woodland resources creation and enhancement in Intensely Developed Areas in the form of urban forestry, street tree plantings, landscaping and open land buffer plantings.
7. Utilize State programs which assist the Town in enhancing biological resources in IDA's which are protective of water quality and contribute to urban wildlife habitat.

Limited Development Areas Objectives

The following objectives are designed to capitalize on opportunities to enhance water quality and natural habitat in areas where moderate density development patterns will continue to occur in the Town:

- ✓ 1. Maintain or improve the quality of runoff and groundwater entering the Bay and its tributaries.
- ✓ 2. Maintain to the extent practicable existing areas of natural habitat.
- ✓ 3. Accommodate additional low density development or moderate intensity development not exceeding a net density of four units per acre.
4. Maintain the character of existing low and moderate density areas as defined by the current mix of development and natural vegetation.
5. Provide for the orderly growth of the Town within those portions of the Critical Area beyond the Town limits that have been designated as growth areas.

Resource Conservation Areas Objectives

The following objectives are designed to maintain the biological values of these Resource Conservation Areas within the Town's Critical Area.

1. Restrict development activities within Resource Conservation Areas to a level consistent with the Chesapeake Bay Critical Area Criteria.
2. At the time development is proposed, determine if the Buffer needs to be expanded beyond 100 feet to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.
3. Maintain and enhance forest cover in Resource Conservation Area designated lands to maintain their biological productivity and habitat values.

4. Utilize State programs and incentive/disincentive programs to maintain and enhance the features present on Resource Conservation area sites.

Implementation Strategies to Guide Development in the Critical Area

To achieve the objectives outlined for the Development element of the Town's Local Program will require several local actions. These actions, designed to implement the proposed program may take many forms. Some actions will revise and amend the Town's development ordinances and processes currently used for review of development proposals. Other actions may include projects which can be undertaken by the Town through staff or appointed Boards or Commissions. Efforts to achieve these objectives are often process oriented. Continuing re-evaluation of progress will be required to ascertain the community's effectiveness in achieving these objectives.

The following recommendations are intended to establish an initial list of tasks and projects that are designed to achieve St. Michaels program objectives. They should be periodically reviewed and revised. As State programs evolve and changes are made to the Critical Area Law and criteria, comparable adjustments to the St. Michaels Local Program should be considered.

The Town's implementation strategies include:

1. Preparation and adoption of an overlay zone corresponding to the Town's Critical area which superimposes Critical Area - oriented development standards on Intensely Developed Areas, Limited Development and Resource Conservation Areas. These standards will be applicable to all development in the Critical Area, and would apply in addition to those within the current zoning ordinance and underlying base zoning districts. The overlay zone establishes development standards for three mapped areas, i.e., Intensely Developed Areas, Limited Development Areas, and Resource Conservation Areas. The overlay zone text will specify those standards to be considered applicable for each of the three areas, and to assure that development and related land disturbances are essentially consistent with the State Criteria (proposed Overlay Zone in Chapter 3 - Implementation). The overlay zone further reflects buffer exemption provisions consistent with Resource Protection objectives.
2. Preparation of a check list for site plan reviews and guidance for use by the developers as well as Town staff which has approval authority. The check list will serve to familiarize users with all information necessary to be shown or identified on a specific site proposed for development to assure resources to be protected are properly identified.
3. Preparation of a mitigation manual which identifies alternative mitigation techniques for various kinds of disturbances to site resources as well as techniques (structural and non-structural) for mitigating water quantity and quality related impacts. This manual will be helpful in assessing whether or not 10 percent reduction in pollutant loadings are achieved for new

2. Location of slips in a manner which minimizes dredging needs and volumes. Dredged channels should decrease in width and depth toward shore with provision made for berthing deeper draft boats farthest from shore. Design of slips which are two feet (2) deeper at mean low water than the lowest projection of boats moored in them will minimize turbidity and bottom disturbances.
3. Maintenance of water circulation patterns to include tidal flow patterns, and preservation of salinity and distribution of nutrients in the water. Dimensions and locations of channels should be designed to achieve maximum flushing of the marina basin area.
4. Maintenance of the flow and volume of the natural drainage system, both on site and on adjacent properties.
5. Approaches taken through design to reduce storm water runoff volumes and erosion. Use of impervious ground surfacing should be minimized where possible. Maximum distances should be maintained between water and land areas proposed to be used for parking and loading purposes, to minimize the consequences of site runoff.
6. Effective use and location of site screening and vegetation in a manner which minimize noise and lighting impacts to surrounding residential uses.
7. Many off-site considerations which are significant should be reviewed in relation to the proposed marine facility location. It should be the applicant's responsibility to further assure the review body that their location proposals or projects should not adversely affect:
 - (a) Maintenance of state water quality standards.
 - (b) Land and water circulation needs. Marine locations should avoid interference with traffic flow on Town streets and the land/water transportation patterns of the surrounding area.
 - (c) Preservation of rooted submerged aquatic vegetation of value to fish, shellfish and wildlife in the area.
 - (d) Preservation of area wetlands, (tidal and non-tidal), fish spawning areas, shellfish beds and waterfront nesting sites.

Section IX. Growth Allocation Process

Several areas of the Town or adjacent areas where growth may occur have been mapped as Limited Development Areas or Resource Conservation Areas based on existing land use as of December 1, 1985. These areas may have to be converted to a different management category, e.g., converted from an LDA to an IDA through use of the County's growth allocation. These areas are identified and discussed in the Development Section of the St. Michaels Local Program.

The Town has requested growth allocation from the County to provide for these anticipated growth areas. The Town has mapped these growth areas in order to determine the approximate acreage of growth allocation that will be required and so that the County may anticipate the Town's growth needs in establishing their growth allocation process. It is also recommended that the Town adopt a local process for subsequent allocation of growth when it is determined development proposals which are consistent with the Town Comprehensive Plan and Local Program.

The Commissioners of St. Michaels may award growth allocation that permits an increase in the permitted density or intensity of use of a site over and above what is currently permitted at the time a specific development proposal is submitted. Prior to awarding growth allocation the Town Commissioners will review the proposed development plans and determine if they meet the objectives of the Local Program and are consistent with the St. Michaels Comprehensive Plan.

The following are additional provisions for guiding the award of the Town's growth allocation are recommended for inclusion in the St. Michaels Critical Area Overlay Zone:

Purpose and Intent

It is the purpose of the St. Michaels Growth Allocation Process to establish objectives, procedure, standards and criteria for determining appropriate locations and projects where growth allocation may be awarded to permit conversion of existing Limited Development Areas (LDA) and/or Resources Conservation Areas (RCA) to a new LDA and/or IDA. Upon approval of a proposed development project, the Planning Commission may assign a portion of the County's total Growth Allocation existing in LDA and RCA areas, as designated in the St. Michaels Critical Area Program. The Growth Allocation may be awarded to development projects which the Planning Commission deems to be the best examples of critical areas development and land use, and which demonstrate consistency with the Comprehensive Plan, Local Program and Critical Area Criteria.

* The Growth Allocation Process is intended to insure that the Town's limited growth allocation, as determined in the Talbot County Local Chesapeake Bay Critical Area Protection Program (Local Program) is managed to insure equity in the award of growth while also resulting in development projects in the Town's Critical Area which achieve the goals and objectives of the Local Program as determined by the Town Commissioners. Further, it is the intent of the Town to establish a process whereby only those development projects which the Town Commissioners concludes are examples of sensitive development in the critical area are given growth allocation.

Project Location Criteria

It is the intent of the Town to encourage projects for growth allocation to be located in or adjacent to existing Limited Development or Intensely Developed Areas. In approving projects for Growth Allocation award the Planning Commission will give consideration to the following guidelines for the location of the growth allocation projects to the extent possible:

St. Michaels Zoning Ordinance Section 5.11

- b) That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
- c) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- d) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activities or vessels, or from boat cleaning and maintenance operations are minimized;
- e) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
- f) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area.
- g) That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area; and
- h) That interference with the natural transport of sand will be minimized.
- i) That no disturbances will occur to historic waterfowl staging and concentration areas.

11. Growth Allocation District - GA

The Growth Allocation district ("GA") shall be a floating zone. The floating zone is not mapped but is designated for use in areas classified as Resource Conservation Areas (RCA) and/or Limited Development Areas within the Town of St. Michaels Critical Area Overlay District ("O"). The purpose of the floating zone is to permit a change in the land management classification established in the Critical Area Overlay District on specific sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification. Only projects which have been approved by the Town Commissioners

for award of the Critical Area Growth Allocation are eligible for the floating zone designation.

The Growth Allocation ("GA") provides for changing the land management classification of Resource Conservation Areas (RCA) and Limited Development Areas (LDA) in the Critical Area District ("O"). The Growth Allocation district ("GA") shall only be permitted on sites or portions of sites which have been approved as amendments to the St. Michaels Critical Area Program by the Critical Area Commission. Granting of the Growth Allocation ("GA") district classification shall further be limited as set forth below.

a. Growth Allocation District ("GA") - The following provisions shall apply to the Growth Allocation ("GA") district:

1) Submission Requirements

- a) Five (5) copies of the request for growth allocation and "GA" floating zone classification and all required items for submission shall be submitted to the Town of St. Michaels Planning Commission.
- b) Concept plans, site plans and subdivision plats shall be prepared as per the applicable requirements of the Zoning Ordinance and/or Subdivision Regulations.

2) Procedure for Processing GA District Applications:

- a) All grants of the floating zone district by the Town Commissioners shall meet the same procedural requirements as for amending the Critical Area Overlay District, contained in Section 14.
- b) All applications for the GA Growth Allocation District Classification shall be accompanied by a preliminary site plan or subdivision plat prepared as per the requirements of the St. Michaels Zoning Ordinance and the Subdivision Regulations.
- c) All applications will be reviewed by the Planning Commission for consistency with the Town of St. Michaels Comprehensive Plan, the Town of St. Michaels Critical Area Program, and the Town of St. Michaels Zoning Ordinance. The Planning Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

- d) After revising the site plan or plat based on the Planning Commission Review, the developer shall submit a preliminary site plan or plat.
 - e) The Planning Commission shall then hold a public hearing on all submissions. Submissions shall include the following:
 - i) Presentation of projects by the developers;
 - ii) Staff review comments; and
 - iii) Public comments.
 - f) The Planning Commissioners will then make its final recommendation and forward the application to the Critical Area Commission for review and approval.
 - g) Following approval of the application by the Critical Area Commission the Town Commissioners shall hold a public hearing on the proposed development projects. The hearing shall include the following:
 - i) Presentation of projects by the developers;
 - ii) Planning Commission recommendations;
 - iii) Critical Area Commission recommendations; and
 - iv) Public comments.
 - h) The Town Commissioners will then make the final decision on awarding growth allocation and may grant the floating zone request. The Town Commissioners may also establish conditions of approval to accompany the "GA" district classification, including a time limitation for completion of the proposed project.
- 3) Recording the GA Growth Allocation District
- a) The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.
 - b) Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision

Regulations and shall delineate the Growth Allocation District on the record plat or site plan.

12. MARITIME MUSEUM ZONE - MM

The intent and purposes of the Maritime Museum Zone are to:

1. Preserve and perpetuate the character and orientation of the Town to the Chesapeake Bay and its tributaries (hereinafter collectively the Chesapeake Bay) on land that is adjacent to or near the St. Michaels Harbor; and

2. Control and limit the intensity of land use adjacent to and near the Harbor so that there is an atmosphere of openness; and

3. Encourage appreciation, understanding, collection, preservation, perpetuation, exhibition and education concerning the history of the Chesapeake Bay, the animal life, marine life and plant life indigenous to the Chesapeake Bay, and man's commercial, recreational and other activities directly related to the Chesapeake Bay by means of artifacts, exhibits, models, displays, examples, art, writings, and teachings regarding vessels, equipment, customs, methods and heritage; and

4. Encourage maritime museums which have as their purposes preservation and education; and

5. Encourage, perpetuate and protect the existence of residential uses adjacent to the Harbor, adjacent to maritime museums, and in areas of the Town through which maritime museum visitors must travel for ingress and egress; and

6. The maritime museum zone is intended to contain restrictions and provisions which make it compatible with residential uses and adjacent residential zones, without the need for controls generally imposed through the special exception process.

a. Permitted Principal Uses:

1. Maritime Museums which meet all or part of (but do not go beyond) the criteria set forth in sub-paragraphs 3 and 4 of the intent and purposes paragraph of the MM Zone. A maritime museum is so defined.

2. Single family detached dwellings.

3. Two-family dwellings.

4. Semi-detached dwellings.

5. Public parks.

SECTION 34. "GA" GROWTH ALLOCATION DISTRICT

Oxford
Region

34.01 - Purpose and Intent

Growth Allocation is an area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land) in the County, a portion of which the Town may convert to more intense management areas to accommodate land development. The Growth Allocation District is designated for use within the Critical Area District on lands classified as Resource Conservation Areas (RCA) and/or Limited Development Areas (LDA). The purpose of the "GA" District is to designate areas of the Critical Area District where the Planning Commission and Town Commissioners may approve a change in the current land management classification on specific sites and for specific development projects that they may be developed to the extent permitted by this ordinance and the new land use management classification. Only specific development projects, for which the preliminary plat has been approved by the Planning Commission, shall be approved for the "GA" Growth Allocation District reclassification and thereby receive Critical Area Growth Allocation.

34.02 - Location.

The granting of the "GA" Growth Allocation District reclassification shall be consistent with the Town of Oxford Critical Area program. When approving the "GA" Growth Allocation District, the Planning Commission and the Town Commissioners shall use the following guidelines to determine if the location of the proposed land management classification under the "GA" District classification is consistent with the Town of Oxford Critical Area Program:

1. New IDA will be located in existing LDA or adjacent to existing IDA;
2. New LDA will be located adjacent to existing LDA or IDA;
3. To the extent possible no more than half of the growth allocated will be located in the RCA.
4. If the Town is unable to utilize any portion of its Growth Allocation within or adjacent to existing IDA or LDA, that portion of the Growth Allocation which cannot be so located may be located in the RCA;
5. New IDA and LDA will be located so as to minimize impacts to Habitat Protection Areas and in a manner that optimizes benefits to water quality.
6. New IDA or LDA located in the RCA will conform to all criteria of the Town of Oxford Critical Area Program for such areas; and
7. When Growth Allocation is permitted in RCA not adjacent to IDA or LDA the developer will be required to minimize the impact of the development on water quality and wildlife habitat and provide for resource enhancement in the design of such development.

EXHIBIT	
tabbles	10

34.03 - Conditions of Approval.

1. A condition of approval shall be that the projects approved for the "GA" Growth Allocation District shall be substantially completed within three (3) years of the date of approval. If after three years the project is not completed, the "GA" Growth Allocation District classification shall be withdrawn.
2. The Supervisor of Public Works shall determine whether a project is substantially completed or not. Substantially completed projects are defined as projects in which all public improvements, such as roads, community sewer and/or water facilities, etc., have been built, as required by the Town or State.
3. The development of a proposed project must demonstrate to the Planning Commission that the following design standards will be met or exceeded in order to be approved:
 - a. All applicable requirements of the Town of Oxford Critical Area Program, the Zoning Ordinance and the Subdivision regulations.
 - b. Limit the area of disturbance for non-residential development to no more than 60 percent of the total site area.
 - c. The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of Best Management Practices on portions of the site to be retained in agriculture use.
 - d. The development incorporates the comments and recommendations of the Planning Commission and the Maryland Department of Natural Resources in the project design.
 - e. The developer executes covenants that guarantee maintenance of the required open space areas.

34.04 - Computing the Use of the Growth Allocation.

1. 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 Town of Oxford as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless conditions such as the following obtain:
 - a. On Qualifying Parcels as described in d below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: 1) individually owned lots; 2) any required buffers; 3) impervious surfaces, utilities,

stormwater management measures, on-site sewage disposal measures; 4) any areas subject to human use such as active recreation areas; and, 5) any additional acreage needed to meet the development requirements of the criteria.

- b. The remainder of the parcel may not count against the Town's growth allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture) and was restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the Planning Commission. A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.
- c. A minimum 100 foot naturally vegetated Buffer must be established and included in any acreage deductions. In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the Town's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.
- d. Qualifying Parcels: Parcels of land that qualify for application of the above accounting guidelines are the following:
 - (1) Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA, where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:
 - (a) minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;
 - (b) minimizes adverse impacts to Habitat Protection Areas; and
 - (c) optimize benefits to water quality.
 - (2) Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's and where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams providing such designation conforms to the requirements of 1' (b) and (c) above.
- e. On all other parcels that receive Growth Allocation and that do not meet these qualifications the entire parcel of record as of December 1985 will be deducted from the total Town Growth Allocation.

34.05 - Process.

The Town's Growth Allocation may be used on a proposed development site to permit densities that are consistent with the Comprehensive Plan, the Critical Area Program, and the existing zoning when a specific development project is proposed. The procedures set forth in Section 15.10 and following procedures will be followed in determining if a site and/or project qualifies for Growth Allocation.

1. All applications for Growth Allocation shall be submitted to the Planning Commission for investigation and recommendation to the Town Commissioners for Growth Allocation.
2. All applications for the Growth Allocation District Classification shall be accompanied by a sketch plan, or development plan which provides sufficient information to permit Planning Commission review for consistency with Critical Area Program requirements.
3. The Planning Commission will review concept, sketch, or comprehensive development plans submitted for consistency with the Critical Area Program and will provide technical comments and recommendations to the applicant prior to submission of preliminary plats consistent with the requirements of Town Subdivision regulations. Permitted development density or intensity will be determined at this time, subject to the applicant obtaining approvals from local, State and Federal authorities for such things as sewer, water, access, dredging permits, and forest management plans.
4. After the applicant has addressed the Planning Commission's recommendations, a sketch plan may be revised and submitted for review with respect to Growth Allocation District designation.
5. A public hearing on the application for Growth Allocation amendment will be held by the Town Commissioners.
6. In approving an application for Growth Allocation, the Town Commissioners may establish conditions of approval that are consistent with the intent of the Oxford Critical Area Program.
7. Applications for Growth Allocation will be forwarded to the Critical Area Commission after the Town Commissioners have conducted their public hearing and granted an approval subject to Critical Area Commission review (conditional approval). The Town Commissioners may only adopt Growth Allocation requests that have been approved by the Critical Area Commission.
8. Following adoption by the Town Commissioners, the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.
9. Prior to approving the final site plan or subdivision plat, the Planning Commission will ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

10. Final Subdivision Plats and Site Plans shall be processed as per the requirements of this Ordinance and/or the Town of Oxford Subdivision Regulations.

34.06 - Recording a change in the "GA" Growth Allocation District.

1. The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.
2. Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations and shall delineate the Growth Allocation District on the record plat or site plan.

**Chesapeake Bay
Critical Area Program**

Oxford, Maryland

December 1995

- New IDA and LDA's should be located in such a way that impacts to Habitat Protection Areas are minimized and in such a manner that optimize benefits to water quality.
- New IDA and LDA's which are located within RCA's should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

Accounting for Growth Allocation

The Town of Oxford will utilize the following guidelines for determining the amount of growth allocation acres to be counted against the Town's total Growth Allocation acreage:

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 Town of Oxford as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless conditions such as the following obtain:

- On Qualifying Parcels as described below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: 1) individually owned lots; 2) any required Buffers; 3) impervious surfaces, utilities, stormwater management measures, on-site sewage disposal measures; 4) any areas subject to human use such as active recreation areas; and, 5) any additional acreage needed to meet the development requirements of the criteria.
- The remainder of the parcel may not count against the County's growth allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture) and was restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the Commission. A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.
- In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the Town's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.

Qualifying Parcels

Parcels of land that qualify for application of the above accounting guidelines are the following:

1. Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA, where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:
 - a. minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;
 - b. minimizes adverse impacts to Habitat Protection Areas; and
 - c. optimize benefits to water quality.
2. Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's and where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams providing such designation conforms to the requirements of 1.(b) and (c) above.

On all other parcels that receive Growth Allocation and that do not meeting these qualifications the entire parcel of record as of December 1, 1985 will be deducted from the total Town Growth Allocation.

ELEMENT B: WATER-DEPENDENT FACILITIES

Since its earliest days, Oxford has been a waterfront-oriented community with an economy based on shipbuilding and the seafood harvesting industry. Eventually these industries were dominated by the seafood packing industry which ultimately suffered from an insufficient number of employees and the rising value of waterfront real estate. Through the years, the recreational boating industry has continued to grow and has changed the economic focus from seafood processing and shipbuilding operations to the marina and boat repair industry. In light of statewide, as well as local conditions, Oxford has slowly lost its economic base as a home port for seafood harvesting.

Marinas

In spite of the limited size and confined waters of Town Creek there are nine commercial marinas as well as two public docks and berthing areas. Additionally, there is one public marina and one yacht club on the Tred Avon River, within the Town limits.

There are at present approximately 453 commercial slips in Oxford's marinas, with nearly 383 of these slips within Town Creek. There are also various private properties within Town Creek

Eastern Critical Area Program Document

disturbances are essentially consistent with the State Criteria (see description of overlay zone in Chapter Three - Implementation).

2. Preparation of a site plan review check list and guidance for use by the developers as well as Town staff approval authorities. The check list will serve to familiarize users with all information necessary to be shown or identified on a specific site proposed for development to assure resources to be protected are properly identified.
3. Preparation of a mitigation manual which identifies alternative mitigation techniques for various kinds of disturbances to site resources as well as techniques (structural and non-structural) for mitigating water quantity and quality related impacts. This manual will be helpful in assessing whether or not 10 percent reduction in pollutant loadings are achieved for new development in Intensely Developed Areas, likewise it will assist in determining whether or not redevelopment achieves 10 percent reductions in pollution from pre-development levels to ascertain the degree or magnitude of mitigation required offsite.
4. Preparation of landscape standards for developed sites which incorporate standards for aerial extent of planting by type of plant units on a per acre basis or portion thereof. These standards should be consistent with the Forest and Woodland protection element of this program. Urban forestry planting considerations and plantings which enhance wildlife food value should be incorporated to achieve program intent and accomplish previously identified objections.
5. Modification of the Town's plans for park development to include model or demonstration buffer plantings with the assistance and cooperation of State agencies and/or civic organizations in the Town.
6. Identification of specific sites which represent appropriate locations for retrofitting measures to address existing Stormwater Management problems, as public improvements.
7. Encouraging redevelopment of privately-owned sites within the Intensely Developed Area where structures are vacant or under-utilized and/or large portions of the site are currently occupied by impervious surfaces.
8. Focus efforts to expand the size and/or enhance plantings in the existing Town waterfront areas located in The Buffer.

Growth Areas

The Critical Area Criteria provide for the designation of new IDA and LDA's in the Critical Area. Generally the acreage which can be converted to a more dense or intense land use is equal to five percent (5%) of the total RCA area in Talbot County. The computation of what is termed the "growth allocation" excludes tidal wetlands in the Resource Conservation Area. In addition, the Critical Areas Criteria mandate that Talbot County establish a process that accommodates the growth needs

of its municipalities.

The Criteria establish guidelines for creating new IDA's and LDA's are as follows:

1. New IDA's should be located in existing LDA's or adjacent to existing IDA's.
2. New LDA's should be located adjacent to existing LDA's or IDA's.
3. New IDA and LDA's which are located within Resource Conservation Areas should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
4. If the County is able to utilize its growth allocation as prescribed above, no more than half of the expansion allocated in the Criteria of the Commission may be located in RCA's (adjacent to LDA's or IDA's).
5. If the County is unable to utilize a portion of the growth allocated to the County as per 1 and 2 above, within or adjacent to existing IDA's or LDA's as demonstrated in the Talbot County Local Program approved by the Commission, then that portion of allocated expansion which cannot be so located may be located in the RCA in addition to expansion allocated in 4 above. A developer shall be required to cluster any development in any area authorized.
6. New IDA's and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimizes benefits to water quality.
7. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such 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 as per 8-1809 (g) (Proposed Amendments).

The thrust of the Critical Area Criteria are to encourage the County to locate the entire growth allocation in or adjacent to areas that are already developed, such as the municipalities or existing IDA's and LDA's in the County. The Criteria intimate that the municipalities should be given priority for growth allocation. The Criteria also suggest that no more than half of the growth allocation should be located in existing RCA's, but recognize that it is possible that certain counties, including Talbot County, may not be able to so locate all of the growth allocation. If this is the case, the Criteria provide for allocating the unused portion of the growth allocation in stand-alone RCA's. The Talbot County Comprehensive Plan encourages locating growth in or near the existing towns, thus the Town of Easton should reasonably expect the County to assign some portion of the growth allocation for their growth needs.

As part of its program development, Esaton has identified IDA and/or LDA areas within the Town or on the fringe of the Town in which it expects growth of the Town to occur at a density of greater than one dwelling unit per twenty acres. The Town anticipates growth to include Easton Point and a portion of the Dudrow Farm.

This area represents 140 acres and may require designation to an Intensely Developed Area or Limited Developed Area by Talbot County to realize the growth potential currently being identified in the Town's Comprehensive Plan and Local Program. (See Map 1)

Footnotes

1. Chesapeake Bay Critical Area Commission, A Guide to the Chesapeake Bay Critical Area Criteria (Annapolis: Chesapeake Bay Critical Area Commission, May 1986) pp. 3-4.

2 Ibid., p. 4.

3 Ibid.

TOWN OF EASTON
CHESAPEAKE BAY CRITICAL AREA
LOCAL PROGRAM

Originally Approved June 26, 1988

Comprehensively Revised _____, 1993

RECEIVED

JUL 29 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

ORIGINAL PROGRAM PREPARED BY:
REDMAN/JOHNSTON ASSOCIATES
IN ASSOCIATION WITH
THE EASTON PLANNING AND ZONING COMMISSION,
TOWN STAFF, AND
THE EASTON TOWN COUNCIL

Critical Area Commission

PANEL REPORT

May 5, 2004

APPLICANT: Talbot County

PROPOSAL: County Council Bill 933
Review and Reallocation of Growth Allocation for the
Towns

COMMISSION ACTION: Vote

COMMISSION PANEL: Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed
Richards and Gary Setzer

PANEL RECOMMENDATION: Pending Panel Discussion

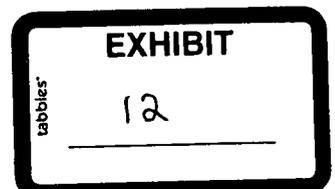
STAFF: Ren Serey

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809 (h)

DISCUSSION:

The Talbot County Council submitted Bill #933 for approval by the Commission. The Bill's stated purpose is "to review and reallocate the number of reserved acres of growth allocation allocated among the [Talbot County] towns." Previously, the County had set aside a specified number of acres of growth allocation for use by the Towns of Easton, St. Michaels, and Oxford. The County's original Critical Area Ordinance, adopted in 1989, reserved 155 acres for the Town of Easton, 195 acres for the Town of Oxford, and 245 acres for the Town of St. Michaels. The 1989 Talbot County Critical Area Program ordinance included three maps of the Towns and surrounding areas. These maps identified potential areas for annexation or rezoning. The Ordinance also specified that the number of reserved acres should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. These reviews have not taken place.

As of today, Easton has used more than its original allotment of 155 acres of growth allocation. Easton has awarded 183.762 acres (including 28.762 acres of supplemental growth allocation, awarded under the County's "supplemental" growth allocation process, discussed below). This total includes 36.42 acres associated with the Cooke's Hope Project, which has been approved by the Town, but not yet reviewed by the Commission. The Town also



requested an additional 156 acres of supplemental growth allocation from the County. The request for supplemental growth allocation was approved, and those projects are moving forward.

Oxford has awarded 15.223 acres of the original 195 acres allotted by the County.

Of the 245 acres allotted to St. Michaels, the Town has awarded 21.00 acres for the Strausburg Subdivision, which was approved by the Commission as a refinement to the Town's Program in October 2003. The Town has also recently approved the use of 70.92 acres of growth allocation for the Miles Point III Project, which is currently under review by the Commission.

Talbot County Bill 933 repeals the ordinance provisions that allocated specific numbers of growth allocation acres to the Towns.

Bill 933 states that the withdrawal of growth allocation from the municipalities is part of the County's comprehensive review of its local Critical Area Program. The Bill also states that this action is necessary because, among other things:

- The original awards of growth allocation to the towns have "no continued validity for any planning and zoning purpose;"
- The original awards are "inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;" and
- "Growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program..."

In Bill 933, Talbot County proposes to amend its zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns. This includes acreage already awarded by a Town, unless the growth allocation has resulted in "actual physical commencement of some significant and visible construction... pursuant to a validly issued building permit." (Section 2 of Bill 933). It is the County's intent that growth allocation awarded by a Town that has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit shall revert to the County.

Commission staff understands that at this time there are two, and possibly three, growth allocation projects in Talbot municipalities for which growth allocation has been awarded by a Town, but under Bill 933, would be considered unutilized and accordingly would revert to the County. First is the Strausburg Subdivision in St. Michaels, which involved 21.00 acres of growth allocation to change the Critical Area designation from Resource Conservation Area

(RCA) to Limited Development Area (LDA) for a ten lot residential subdivision. The Commission approved this growth allocation request as a refinement to St. Michaels' Critical Area Program on October 1, 2003. Second is the Miles Point III application, which the Town approved for 70.92 acres of growth allocation in January 2004. The Town has submitted this growth allocation request to the Commission, and the Commission is currently reviewing it.

Third, it is possible that Bill 933 may affect the Cooke's Hope Project in Easton. For this project, the Town of Easton used a combination of the original "reserved" growth allocation acreage and some supplemental growth allocation that it received from the County under the process of Bill 762. Thus, the Cooke's Hope project was reviewed through the County's supplemental growth allocation process. The Town of Easton recently sent this growth allocation to the Commission, but it has not yet been reviewed or approved by the Commission, and therefore, has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit

In accordance with §27.01.02.06.A(2) of COMAR, "Counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." Although Bill 933 removes provisions pertaining to the reservation of growth allocation acreage for the Towns from the County Code, the Bill does not itself set forth a process for the County's Towns to obtain future growth allocation acreage. For that process, the County has informed the Commission that it will use other parts of §190-109 of the County Code which address how the use of growth allocation by the Towns is to be accommodated in the future. County Code Section §190-109 D (9) outlines a joint review and hearing process whereby elected officials from Talbot County and the affected municipality work cooperatively together on projects involving the Town's proposed use of growth allocation. This process, "Procedures for Awarding Supplemental Growth Allocation to Municipalities in Talbot County," was enacted by the County at a time when Easton was close to exhausting its original growth allocation allotment. This process was approved by the Commission as a refinement to Talbot County's Program in June 2000.

A copy of Bill 933 is attached. Within the Bill, **boldface** indicates a heading or defined term; underlining indicates language added to existing law by original bill; ~~strikethrough~~ indicates language deleted from existing law by original bill, and * * * indicates existing law unaffected.

The Panel's discussions to date have focused on the following issues:

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.
- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

At the Panel's request, Commission staff provided research summarizing the process used by the various Critical Area counties to provide for the use of growth allocation by the municipalities. The various processes appear to fall into three general categories: 1) growth allocation acreage is given by the County to a municipality and the County is not involved in the review and approval process; 2) the County may or may not identify a certain number of acres that are "set aside" for the municipalities, but the County must be consulted, and in some cases, must review the use of growth allocation before the town can use it; and 3) the County participates in a coordinated review process with the municipality, either simultaneously with, or following the Town's review process.

The Panel has considered the information about the various processes and procedures used by the Critical Area counties with regard to municipalities' use of growth allocation. They have discussed the importance of the procedures being clearly set forth in a coordinated manner in the ordinances and programs of the counties and affected municipalities. They have also discussed the significance of amending one local program in such a way that it creates conflicts with other approved programs. At the public hearing on March 24, 2004, and in written comments submitted for the record, the Panel received information from numerous commentors stating their views about the applicability of other State laws, policies, and regulations to the proposed Program amendment from Talbot County. On advice of counsel, the Panel agreed that the Commission's role regarding Bill 933 should be focused on the provisions of the Annotated Code of Maryland §8-1809(j) which state that

"The Commission shall approve Programs and Program amendments that meet:
(1) The standards set forth in §8-1808(b)(1) through (3) of this subtitle; and (2) The Criteria adopted by the Commission under §8-1808 of this subtitle."

The goals of the Critical Area law, referenced above are:

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
2. To conserve fish, wildlife, and plant habitat; and
3. To establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

The Panel requested information regarding the effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements. Commission staff provided this information, and the Panel discussed the information, particularly the approved Programs of Oxford, St. Michaels and Easton. The approved Town programs show that Bill 933 will affect the established growth allocation procedures of St. Michaels and Oxford. Easton is not specifically affected because the Town has already utilized all of its original reserved growth allocation acreage.

In addition to the effect on approved Town programs, Bill 933 will affect the following specific program amendments: the Strausburg Subdivision growth allocation (awarded by the Town of St. Michaels and approved by the Commission in October 2003), the Miles Point III Project growth allocation (awarded by the Town of St. Michaels and currently under review by the Commission) and potentially Cooke's Hope in Easton, depending on the final analysis of how the procedure used affected the 7.66 acres of growth allocation remaining from Easton's original reservation.

The Panel has discussed the meaning of the COMAR provisions relating to "coordination" between counties and affected municipalities. The Panel has acknowledged the various potential interpretations of this term. The Panel believed that the definition in Webster's Dictionary, "to harmonize in a common effort," seems to be a comprehensive and reasonable definition. The Panel seemed to agree that at a minimum "coordination" involves the participation of the affected parties. The Panel has also discussed the effect of Bill 933 on:

- the Strausburg growth allocation;
- the Miles Point III growth allocation;
- established municipal growth allocation processes;
- the effects of Commission actions on prior actions and current procedures.

The Panel will resume its discussion of this matter on May 5, 2004.

Critical Area Commission

SUPPLEMENT TO PANEL REPORT

May 5, 2004

APPLICANT: Talbot County

PROPOSAL: Comprehensive Review of Local Program, County Council Bill 933

COMMISSION ACTION: Vote

PANEL MEMBERS: Dave Blazer (Chairman), Gary Setzer, Bill Giese, Joe Jackson and Ed Richards

PANEL RECOMMENDATION: Deny

STAFF: Ren Serey

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809 (j)

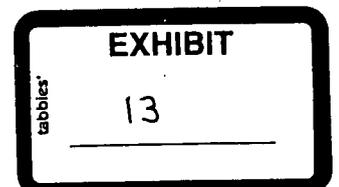
DISCUSSION:

I move on behalf of the panel to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria.

The basis for the motion is as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.



Critical Area Commission
for the Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
May 5, 2004

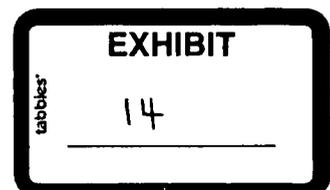
The full Critical Area Commission met at the People's Resource Center Crownsville, Maryland. The meeting was called to order by Chairman Martin G. Madden with the following Members in **Attendance**:

Margo Bailey, Kent County
Dave Blazer, Worcester County Coastal Bays
Dr. Earl Chambers, Queen Anne's County
Judith Cox, Cecil County
Ella Ennis, Calvert County
Judith Evans, Western Shore Member at Large
William Giese, Dorchester County
Ed Gilliss, Baltimore County
Pat Goucher, Department of Planning
Joseph Jackson, Worcester County, Chesapeake Bay
Thomas McKay, St. Mary's County
Daniel Mayer, Charles County
Stevie Prettyman, Wicomico County
William Rice, Somerset County
Edwin Richards, Caroline County
Duncan Stuart for Otis Rolley, Baltimore City
Barbara Samorajczyk, Anne Arundel County
Douglas Wilson, Harford County
Fred Samadani for Louise Lawrence, Maryland Department of Agriculture
Gary Setzer, Maryland Department of the Environment
Jim McLean, Md Depart of Business and Economic Development
Frank Dawson, Maryland Department of Natural Resources
Meg Andrews, Maryland Department of Transportation
Allison Ladd, Dept. Housing and Community Development

NOT IN ATTENDANCE:

James N. Mathias, Jr., Ocean City
Gail Booker Jones, Prince George's County

Chairman Madden welcomed the Commission's newest member, Stevie Prettyman from Wicomico County and he acknowledged Effie Reynold's participation at last month's Commission meeting for Jim McLean, Maryland Department of Business and Economic Development. The Chairman welcomed Fred Samadani representing the Maryland Department of Agriculture in Louise Lawrence's absence, Duncan Stuart representing the City of Baltimore for Otis Rolley and Paul Cucuzzella for the Attorney General's Office with Marianne Mason. He recognized Judge North, the former Chair of the Critical Area Commission, who was in the audience for an agenda item.



Chairman Madden explained to the Commission the legal parameters for setting the Agenda order for the meeting as well as explaining the guidelines, with the assistance of Commission Counsel Marianne Mason, for accepting remarks from the public. (These guidelines are documented and attached to and made a part of these Minutes). A motion was made and seconded to approve the Minutes of April 7, 2004 as read. The motion carried unanimously.

St. Mary's County: Wanda Cole presented for Vote the proposal by the St. Mary's County Department of Recreation and Parks to construct an addition onto an existing metal building at the Piney Point Museum, which is located in the IDA on the Potomac River. The addition will house a boat collection from the Lundeberg School of Seamanship. The existing building and the addition will be located, in the 100-foot Critical Area Buffer. There will be no clearing required and there are no HPAs. No stormwater management or sediment and erosion control is required as this project involves less than 5,000 square feet of disturbance. The property is mapped as an IDA and the 10% Rule for reduction of pollutants must be met. Ms. Cole iterated the requisite characteristics that qualify this project for a conditional approval because the project is located in the 100-foot Buffer. **Gary Setzer moved on behalf of the project subcommittee that the Commission conditionally approve the building addition to the Piney Point Museum as required by the Code of Maryland Regulations. The motion was seconded by Thomas McKay and carried unanimously.**

Baltimore City: Dawnn McCleary presented for Vote the Maryland Port Administration's proposed MPA Critical Area Institutional Management Plan for phosphorus reduction through offsite mitigation. This plan sets out how the Port will look for offsite areas on which to meet requirements for the 10% Rule for pollutant reduction in the IDA. There are five proposed Port development project sites. The Plan discusses all the offsite mitigation sites that have been researched and will track the phosphorus removal requirements of each project and the ability to meet the requirements as the projects progress. Each development project and any offsite mitigation proposal will have to come to the Commission for approval and the approval of this Plan does not confer approval on any specific offsite mitigation option nor any specific development proposal. **Gary Setzer moved that the Commission approve the Critical Area Institutional Management Plan as prepared by the Maryland Port Administration. The motion was seconded by Jim McLean and carried unanimously.**

Worcester County: LeeAnne Chandler presented for Concurrence with the Chairman's determination of Refinement, Worcester County's request for growth allocation to change the Critical Area designation of an 8.1 acre property from RCA to LDA. The property is waterfront to Pawpaw Creek on the western outskirts of the village of Public Landing. The property is made up of two parcels and, if growth allocation is awarded, the two parcels will be combined and then re-subdivided into three single-family residential lots, one of which will be waterfront. An additional 0.61 acres of forest will be added to meet the 15% afforestation requirement when the property is subdivided. Located adjacent to existing LDA, the property meets the adjacency guidelines for growth allocation and the entire property will be deducted from the County's growth allocation reserve. There are two State threatened plant species known to occur in the vicinity of the property, though appropriate habitat is limited to the already protected Buffer. There is some possibility that the wetlands on the property are State tidal wetlands. The County is coordinating the investigation of the

acreage and will notify the Commission when the acreage is verified. If necessary, the lot boundaries will be adjusted and the growth allocation acreage deduction may decrease. This request has been approved by the County Commissioners of Worcester County. **The Commission supported the Chairman's determination of Refinement.**

Chairman Madden moved that the Commission adjourn to Executive Session: The Chairman quoted the Statutory Authority for closing meetings under State Government Article 10-508(a)(7), "to consult with counsel to obtain legal advice." He further stated that his reasons for closing the meeting were to consult with counsel to obtain legal advice 1) on the applicable sections of the Critical Area law and criteria governing the Commission's deliberations. 2) on the applicability of other State laws, policies, and regulations. 3) about whether the Commission may consider the effect of Talbot County Bill 933 on any other Critical Area Program, program amendment, or program refinement approved by the Commission. 4) on the interplay between Talbot County Bill 762 and Bill 933. 5) on the interplay between the proposed Program Amendment from Talbot County (Bill 933) and the proposed Program amendment from St. Michaels for the Miles Point III growth allocation. 6) on the scope of the Commission's authority in the context of taking action on a program amendment for growth allocation. 7) on the meaning of Commission Criteria in COMAR 27.01.02.06 A. and B. **The motion was seconded by Jim McLean and carried unanimously.**

The meeting reconvened and Chairman Madden called upon Lisa Hoerger to present St. Michaels Ordinance #304, Text Changes to Amend the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures in the Town of St. Michaels.

Town of St. Michaels: Lisa Hoerger presented for Vote Ordinance #304, Text Changes to Amend the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures for the Town of St. Michaels. The first change involves eliminating duplication in approval of map amendment and growth allocation requests that currently requires that a formal map amendment process be followed to amend the map after a request for growth allocation has already been approved. The Town contends that the award of growth allocation is, in and of itself, a map amendment. The second change involves the correction of the order for Town Commission and Critical Area Commission review and approval of text and map amendments affecting the Critical Area to be compatible with the review process for growth allocations. The Town amended its growth allocation review and approval process in 1999. A Commission panel hearing on Ordinance #304 was held in St. Michaels on April 1, 2004 and there was no public comment. **Gary Setzer moved on panel recommendation that Ordinance #304 as enacted by the St. Michaels Town Commissioners, which amends the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures used by the Town, be approved by the Commission. The motion was seconded by Joe Jackson and carried unanimously.**

Town of St. Michaels: Lisa Hoerger presented for Vote, Resolution 2003-06, Annexation of the Miles Point, LLC Property submitted by the St. Michaels Town Commissioners. The purpose of the resolution is to annex 42.066 acres of land into the town. Approximately 17.156 acres are upland and the remaining acreage is a portion of the bed of the Miles River. The entire property is located within the Critical Area. This annexation resulted in a change

to the Town's Critical Area maps and incorporated one parcel into the Town boundaries. The current designation is RCA and the property was annexed with that designation. This property was previously included in a pending growth allocation application, but the application was withdrawn as a result of the Talbot County Council voting not to permit the rezoning of the annexed land for a period of five years. The annexed land includes 24.91 acres of submerged State land for the purpose of establishing the jurisdiction for the Town to manage that area as the Town has a Board of Port Wardens and a waterway management ordinance. **Gary Setzer moved that the Commission approve Resolution 2003-06 adopted by the St. Michael's Town Commissioners, which annexes the 42.066 acre Miles Point, LLC Property into the Town, based on the staff report as presented. The motion was seconded by Joe Jackson and carried unanimously.**

Town of St. Michaels: Mary Owens presented for Vote the request by the Town of St. Michaels for 70.863 acres of Growth Allocation for the Miles Point III project. She told the Commission that the Town Commissioners have awarded this acreage, which changes the Critical Area designation from RCA to IDA. The development is based on Traditional Neighborhood Design principles, which will include 280 new dwelling units, a commercial component, and a Town park. The property is experiencing significant erosion with only shrub scrub vegetation along portions of the shoreline. The Town Commissioners addressed the growth allocation guidelines regarding the location of new IDAs or LDAs, identifying habitat protection areas, minimizing impacts to the RCA and the provision of a 300-foot setback. The Town asserts that the adjacency guideline is met because there is an existing IDA to the south of the project site; that they have addressed the 300-foot setback which is not included in the Town's Critical Area Program and that the proposed 100-foot Buffer is sufficient. All HPA's including the 100-foot Buffer, nontidal wetlands, submerged aquatic vegetation and historic waterfowl areas in the Miles River have been identified by the Town and the developer-applicant. The Town proposes to deduct the acreage of the entire parcel so that the Commission's policies relating to deduction methodology and development are not applicable. Of the 224.9 acres of the 245 original growth allocation acres reserved for the Town in 1989 by Talbot County, only 20.10 acres has been awarded. A Commission panel held a public hearing on April 1, 2004. The hearing was well attended. Substantial public comments were received until the record closed on April 13, 2004

Ms. Owens gave a synopsis (attached to and made a part of these Minutes) of the major points discussed by the Panel who met on April 13, 2004 and again this morning. She summarized the panel considerations in analyzing this project: 1) The Standard of Review - The Panel's discussion centered on determining if a proposed amendment meets the goals of the Critical Area Program and the provisions of the Critical Area Criteria. 2) the Protection of Habitat and Water Quality - The focus was on three of the guidelines for growth allocation that specifically address the minimization of environmental impacts associated with the use of growth allocation as set out in COMAR 27.01.02.06. 3) Wildlife Habitat and Corridors - The Panel's primary concerns pertained to the lack of a 300-foot setback, the percentage of the site proposed to be developed in impervious surfaces and any opportunities to provide additional open space or habitat. COMAR 27.01.02.03.C(8) was referenced. 4) Shoreline Access and Buffer Management - This part of the discussion involved the proposed plans for establishment and planting of the Buffer and included some discussion of prior actions by the Commission. It was discussed that in the past, the Commission has required as a condition of

approval of growth allocation, that a Buffer Management Plan be submitted. 5) Stormwater Management - The preliminary concept plans for detention show that the 10% pollutant reduction requirement for IDAs is achievable through the implementation of on-site Best Management Practices (BMPs) and that certain types of BMPs provide habitat benefits. The Panel expressed an interest in exploring stormwater management options that provided habitat benefits. 6) Shore Erosion Control - The Panel was familiar with erosion problems on the site, and they discussed the viability of a marsh creation along the extensively eroded Miles River proposed by the applicant. They also discussed the conflict between establishing the Buffer in natural vegetation and providing sufficient sunlight for the marsh grasses. 7) Wastewater Treatment- The Panel had reviewed information on the wastewater treatment issues and a discharge permit from MDE was distributed for the Talbot County Region II Wastewater Treatment Plant. This is the plant that would treat wastewater from the Miles Point III project and it is proposed to be upgraded. The Town Commissioners' conditions of approval for the project address the timing of permit issuance with the planned upgrades.

Chairman Madden opened up the meeting to public comment. Eighteen citizens spoke, 7 spoke in support and 11 were in opposition of the project.

Gary Setzer moved on panel recommendation to approve the growth allocation request with the following conditions: 1) The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer. 2) The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access. 3) In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission. 4) A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be 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 motion was seconded by Joe Jackson.

In response to a question by Meg Andrews regarding what the status of the wastewater treatment has to be before the development can go forward, Gary Setzer replied that authorizations have been issued by the Department of the Environment to increase the capacity of the treatment plant and it also requires the County to develop a plan that addresses the infiltration problems. Gary read an MDE report which requires the treatment plant expansion. Commissioner McKay, although supportive of the 300-foot setback, commented that he believes that this condition is establishing a precedent which should be left to the local governments to impose. A discussion followed during which several Commission members stated that they believed a 300-foot setback was appropriate due to the significant amount of development proposed for the site.

The Chairman called the question. The motion carried 19-1, Ella Ennis standing opposed.

Talbot County: Lisa Hoerger presented for Vote Talbot County's Comprehensive Local Program Review of County Council Bills 922, 926, 927, 929, 931, 932. Ms. Hoerger said that there are two purposes for the changes. One purpose of the current Bills is to address required changes that respond to the Commission's directive to correct mistakes, conflicts or omissions in the local Program and are related to clearing of trees and forest vegetation in the Buffer and the definition of those resources. (A Bill was enacted during the 2004 General Assembly session that addresses the only outstanding required change of the counting of dwelling units for the maximum dwelling unit density in the RCA of one per 20 acres for all Critical Area jurisdictions). Other changes are in response to the County's required update of its Critical Area Program, which address matters related to updating and streamlining the local Program. The changes include: designating first time Buffer Management Areas and providing regulations for development in these areas; listing permitted uses in the RCA; specifying which RCA uses require growth allocation; and, altering local administrative procedures including submittal requirements for applicants, and notice to adjacent property owners concerning applications for approval of site plans and major subdivision. Ms. Hoerger summarized each Bill for the Commission as outlined in her staff report (attached to and made a part of these Minutes). Ms. Hoerger said that the County is working with DNR's Heritage Division to obtain updated Habitat Protection Area maps. Also, even though new buffer Exemption Areas have been designated they have not yet been adopted by the County Council and will be reviewed by the Commission at a later time. An updated chart (attached to and made a part of these Minutes) of the growth allocation was reported by the County. A Commission panel held a public hearing on March 24, 2004. **Dave Blazer reported that the panel reviewed and discussed these County Bills and he moved for approval of the County Council bills on panel recommendation with the following conditions:**

Bill 926 - Chapter 190, Article II Definitions and Word Usage, § 190-14

Section Three, Dwelling Unit (See page 2) - Change the definition of dwelling unit to state, "Dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence."

Section Nine, Shoreline Development Buffer (See page 4) - Amend the definition of shoreline development buffer to state, "The area at least 100 feet wide measured landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands." Section One, Development Activities (CA) (See page 2) - Request deletion of the last two sentences in item "b." This is where "substantial alteration" is defined. The motion was seconded and carried unanimously.

Bill 927 - Chapter 190, Article IV Land Use Regulations by Zoning Districts, § 190-19

Section Four, Parks and Playgrounds (Public and Private - See page 3) - Add another bullet that states, "Limited to passive recreation."

Sections Eighteen, Twenty, and Twenty-One, Treated Septage Land Applications, Community Sewage Treatment Plant, Sludge Application for Agricultural and Horticultural Purposes (See page 8-9) - Add "tidal wetlands" to the bullet that restricts these uses to within 200 feet of mean high water or tributary streams or ensure that these activities are otherwise restricted within the 100-foot Buffer of tidal wetlands.

Bill 929 - Chapter 190, Article XI Critical Area Special Provisions, §190-88

190-88 B (3) [h] (See page 8) - In place of [h] insert the following language:

"The Forest Preservation Plan shall include either of the following:

- a) A time period for implementing the plan and provisions for a final inspection by the County after which the Plan will be certified complete; or**
- b) Provisions for removal of invasive/exotic species and/or maintenance of native vegetation for a period of up to 5 years including provisions for annual inspections by the County."**

190-88.1 B (6) (b) (See page 12) - Replace "Mitigation equal to an area two times the square footage of the proposed impervious surface in the Buffer area..." with "Mitigation equal to an area two times the square footage of the development activity in the Buffer area..."

Bill 931 - Chapter 190, Article XII Site Plan Review §190-92

190-93 E (9) (a) (See page 31) & 190-93 E (9) (d) [i] (See page 34) - Delete the references to parcels up to seven acres that must provide 15% afforestation. This language excludes grandfathered parcels under seven acres from the afforestation requirement. If it is the County's intent to allow certain allowances for grandfathered parcels under seven acres then the County may propose an exemption for certain classes of activities (i.e. new dwelling).

190-93 E (9) (d) [c] (See page 33) - Delete the phrase, "...additional 10%..." The motion was seconded by Joe Jackson and carried unanimously.

Talbot County: Ren Serey presented for Vote Talbot County Council Bill #933, Review and Reallocation of growth allocation for the Towns of Easton, St. Michaels and Oxford. Mr. Serey said that previously, the County had set aside a specified number of acres of growth allocation for use by the Towns with no conditions upon it. The original County Critical Area Ordinance adopted in 1989 included maps of the Towns and surrounding areas, which identified potential areas for annexation or rezoning. The original Ordinance also stated that

there should be a review for possible reallocation at least every four years which has not been done. In 2000, when Easton had used all of its growth allocation, the County implemented a new process for "supplemental growth allocation" which involves joint hearings by the County Council and the Town of Easton and the joint approval of growth allocation. That process has been used recently for Cooke's Hope and Ratcliffe growth allocations. In St. Michael's growth allocation has been awarded to the Strausburg Subdivision by the Town and approved by the Commission. Growth allocation for the Miles Point III Project also was submitted for review and approval by the Commission.

Bill #933 repeals the existing Ordinance provisions that allocated specific numbers of growth allocation acres to the Towns and states that this withdrawal of growth allocation is part of the County's comprehensive review. In Bill# 933, Talbot County proposes to amend its zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns, including acreage already awarded by a Town, unless it has already resulted in "actual physical commencement of some significant and visible construction pursuant to a validly issued building permit." There are two and possibly three growth allocation projects that will be affected by Bill 933: the Strausburg Subdivision in St. Michaels, the Miles Point III application and Cooke's Hope project in Easton. The Bill removes provisions pertaining to the reservation of growth allocation acreage for the Towns to obtain future growth allocation acreage, but it does not set forth a process for the County's Towns to obtain future growth allocation acreage.

The panel for this issue has discussed the applicable sections of the Critical Area Law and Criteria governing growth allocation; the effect of Bill# 933 on other approved Critical Area Programs, program amendments, or program refinements; the interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, specifically the provision that states "when planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." Also discussed were the established municipal growth allocation processes; and, the effects of Bill 933 on prior Commission actions and current procedures.

Commission Counsel advised the Panel that the Commission's role regarding Bill 933 should be focused on the provisions of the Annotated Code of Maryland Section 8-1809(j) regarding approval of Programs and program amendments and the goals of the Critical Area Program.

Chairman Madden opened the meeting for comment by the County Attorney, who spoke in favor of Bill #933 and the Attorney for St. Michael's, who spoke in opposition to Bill #933.

Dave Blazer moved on panel recommendation to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria. The basis for the motion is as follows: Accepting Bill #933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michael's Program for the Strausburg growth allocation approved in October 2003. Accepting

Bill #933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner. The motion was seconded by Bill Giese and carried unanimously.

Old Business

~~Chairman Madden announced that the three Commission Bills were passed and the Governor is expected to sign them on May 26th, 2004.~~

Commission Counsel, Marianne Mason, Esquire, updated the Commission on legal matters. She said that she argued before the Wicomico Zoning Board the Lewis variance case on remand, which was deliberated for six hours and then turned down.

New Business

There was no new business reported.

There being no further business the meeting adjourned at 5:05 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 14, 2004

Mr. George Kinney, AICP
Director, Office of Planning and Zoning
108 Maryland Avenue, Suite 102
Easton, Maryland 21601

Re: **Talbot County Proposal**
Program Amendment: Bill 933

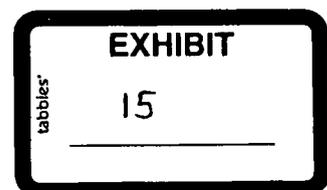
Dear Mr. Kinney:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its regularly scheduled meeting on May 5, 2004 the Critical Area Commission considered County Bill #933, Talbot County's proposed amendment to its local Critical Area program concerning the reallocation of growth allocation reserve acres. Upon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration of the Panel's Report and its Supplement (both attached), statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program. The vote was unanimous, with one member abstaining.

The basis for the Commission's decision, as set out in the Supplement to the Panel Report, was as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

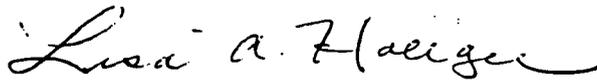


Mr. Kinney
May 14, 2004
Page 2

The Panel recommended and the Commission fully supported inviting Talbot County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria. Commission staff are available at your convenience to discuss new growth allocation procedures or to arrange a meeting with the Commission's Program Implementation Subcommittee.

Please contact me if you have questions or need additional information.

Sincerely,



Lisa Hoerger
Natural Resource Planner

cc: Honorable Philip Carey Foster
Mr. R. Andrew Hollis, Talbot County
Mr. Mike Pullen, Talbot County
Ms. Mary Kay Verdery, Talbot County
Ms. Marianne Mason, DNR- AG

001553

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.

*

*

* * * * *

ORDER

The Court has considered the Department Of Natural Resources' Motion For Summary Judgment and accompanying Memorandum, together with written opposition thereto, and has heard argument on same in open court. The Court finds that the undisputed material facts establish that:

1. Plaintiff Talbot County failed to develop Bill 933, an amendment to its Critical Area program, in coordination with the Towns of St. Michaels, Oxford and/or Easton, such lack of coordination being a violation of applicable Critical Area Criteria (COMAR 27.01.02.06A); and
2. If approved by the Critical Area Commission as an amendment to Talbot County's Critical Area program, Talbot County's Bill 933 would have created inconsistencies between Talbot County's Critical Area program and the programs of the Towns of St. Michaels, Oxford and/or Easton, and would have improperly removed grants of growth allocation previously awarded by the Town of St. Michaels.

Accordingly, the Court concludes that, consistent with its statutory obligation to ensure that local Critical Area programs are established “on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight,” Md. Code Ann., Nat. Res. § 8-1801(b)(2), the Critical Area Commission’s disapproval of Bill 933 as an amendment to Talbot County’s Critical Area program was a lawful exercise of the Commission’s statutory authority under Nat. Res. § 8-1809 to review local program amendments. It is therefore, this __ day of _____, 2006,

ORDERED that the Department Of Natural Resources’ Motion For Summary Judgment is hereby GRANTED.

Judge

45



TALBOT COUNTY, MARYLAND
OFFICE OF LAW

MICHAEL L. PULLEN
County Attorney

11 N. Washington Street
Easton, MD 21601
Phone: 410-770-8092
Fax: 410-770-8089

LETTER OF TRANSMITTAL

RECEIVED

TO: ✓ Paul J. Cucuzzella, Esq.
H. Michael Hickson, Esq.
David R. Thompson Esq.
Richard A. DeTar, Esq.
Victoria Shearer, Esq.

NOV 17 2005

DNR - LEGAL DIVISION

FR: Terry Ertter, Legal Assistant *tade*

DATE: November 14, 2005

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

I have enclosed replacement copies of the first page of Talbot County's supplemental opposition mailed on November 10, 2005. Unfortunately, a single typo was discovered on this page, so to avoid confusion kindly replace the entire document. I apologize for any inconvenience.

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, et al. :

Defendants :

2005 NOV 10 PM 1
CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

SUPPLEMENT TO TALBOT COUNTY'S OPPOSITION TO
MILES POINT LLC AND THE MIDLAND COMPANIES, INC.'S
MOTION TO INTERVENE

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, supplements its Opposition to Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene by submitting an additional Exhibit.

In footnote 3 of Talbot County's Opposition, the County asserted that "upon information and belief, Midland has paid fees in excess of \$100,00.00 for legal services rendered by counsel for St. Michaels incurred obtaining approval of the Miles Point project." Attached hereto as Exhibit 4 is a copy of an invoice from St. Michaels to the Midlands Companies for "annexation and growth allocation process" in the amount of \$121,216.25, for legal services rendered through October 2003. It also shows "legal fees paid to date" by Midlands to St. Michaels in the amount of

44

Paul

CIRCUIT COURT
IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND
EASTON, MARYLAND

TALBOT COUNTY, MARYLAND

2005 NOV 16 AM 11 58

Plaintiff

vs.

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

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

Defendants

RECEIVED

NOV 18 2005

DNR - LEGAL DIVISION

TALBOT COUNTY'S NUNC PRO TUNC MOTION FOR
EXTENSION OF TIME TO FILE MOTION FOR SUMMARY JUDGMENT

Talbot County, Maryland, Plaintiff, by and through ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, moves pursuant to Maryland Rule 1-204(a) for an extension of time of one day to file its Motion for Summary Judgment, and as reasons therefore states the following:

1. Motions for Summary Judgment in this case were due by November 14, 2005. Talbot County's Motion for Summary Judgment, Memorandum in Support Thereof, and Exhibits, were entrusted to Quick Messenger Service on Monday, November 14, 2005, to be filed with the Court by no later than 4:30 p.m.
2. Unfortunately, while driving toward the Talbot County Circuit to file the Motion, Quick Messenger Service's driver, Jessie Kling, encountered a problem

with his vehicle. See, Affidavit of Jessie Kling, attached hereto as Exhibit A.

3. As explained in Mr. Kling's Affidavit, in the course of delivering the Motion for Summary Judgment to the Talbot County Circuit Court, his vehicle's tire blew out, causing a flat tire. Because he has a special type of tire on his vehicle, Mr. Kling was not able to change the tire or place a spare tire on his vehicle. Instead, he was required to call a tow truck to tow his vehicle to a repair shop. Id., ¶4.

4. Mr. Kling was delayed for at least two hours waiting for the tow truck to arrive and to tow him to a repair facility. Consequently, he did not arrive at the Talbot County Circuit Court until 6:15 p.m., after the Clerk's Office was closed. He left the pleading with an employee of the County Attorney's Office. Id., ¶5.

5. Talbot County's Motion for Summary Judgment was filed first thing the next morning, on November 15, 2005. The service copies of the Motion were timely mailed to all other counsel on November 14, 2005. Talbot County of course did not alter the Motion at any time after it was delivered at 6:15 p.m. on November 14 until the time it was filed on the morning of November 15, 2005.

6. The Court should excuse the late filing of Talbot County's Motion for Summary Judgment inasmuch as the reason for the late filing was not due to any fault of the County and, instead, was due to a problem with the vehicle of the messenger delivering the Motion.

7. Moreover, the Court should excuse the late filing of Talbot County's Motion inasmuch as the Motion was immediately filed the next morning, all parties

were sent their service copies of the Motion in a timely fashion, and no party is prejudiced by the brief delay in the filing of the Motion. A proposed Order is attached.

WHEREFORE, for all of the foregoing reasons, Plaintiff Talbot County moves this Court to extend the deadline for filing its Motion for Summary Judgment *nunc pro tunc* for one day, to November 15, 2005.

Respectfully submitted,

ALLEN, KARPINSKI, BRYANT
& KARP

BY: Daniel Karp / sdc
DANIEL KARP

Victoria M. Shearer / sdc

VICTORIA M. SHEARER

Suite 1540

100 E. Pratt Street

Baltimore MD 21202-1089

Attorneys for Plaintiff, Talbot County

(410) 727-5000

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: Michael L Pullen / sdc

MICHAEL L. PULLEN

Talbot County Attorney

142 N. Harrison Street

Easton, Maryland 21601

(410) 770-8093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November 2005, a copy of the foregoing *Nunc Pro Tunc* Motion for Extension of Time was mailed first-class, postage prepaid to:

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

Marianne D. Mason, Esquire
Joseph Gill, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

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

Michael Pullen, Esquire
Talbot County Courthouse
11 N. Washington Street
Easton, Maryland 21601

Richard A. DeTar, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601

Victoria M. Shearer / tade

Of Counsel for Plaintiff Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs. :

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

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

Defendant

ORDER

Upon consideration of Talbot County's *Nunc Pro Tunc* Motion for Extension of Time to File its Motion for Summary Judgment, and any opposition thereto, it is this day of _____, 2005, by the Circuit Court for Talbot County,

ORDERED, that Talbot County's Motion for Extension of Time of one day to file its Motion for Summary Judgment be and is hereby **GRANTED**; and it is further

ORDERED, that Talbot County's Motion for Summary Judgment, filed on November 15, 2005, is deemed timely filed.

Judge, Talbot County Circuit Court

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL
RESOURCES CRITICAL AREA
COMMISSION, et al.

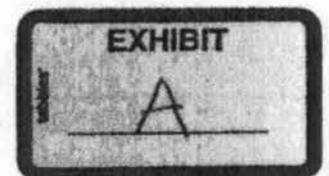
Civil Action No. 2-C-04-005095 DJ

Defendants

AFFIDAVIT OF JESSE KLING

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true:

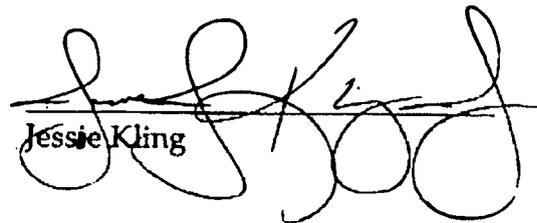
1. I am over 18 years of age, competent to testify, and have personal knowledge of the facts and information set forth herein.
2. I am an employee of Quick Messenger Service.
3. On November 14, 2005, was dispatched by my employer to deliver a legal pleading from the law firm of Allen, Karpinski, Bryant & Karp, 100 East Pratt Street, Baltimore, Maryland to be filed in the Clerk's Office at the Talbot County Circuit Court in Easton, Maryland before 4:30 p.m.
4. In the course of delivering the legal pleading to the Talbot County Circuit Court, my vehicle's tire blew out, causing a flat tire. Because I have special



tires on my vehicle, I could not change the tire or place a spare tire on my vehicle. Instead, I had to call a tow truck to tow my vehicle to a repair shop.

5. I was delayed for at least two hours waiting for the tow truck to arrive and to tow my vehicle to the repair facility. Consequently, I did not arrive at the Talbot County Circuit Court until 6:15 p.m., after the Clerk's Office was closed. I left the pleading with an employee of the County Attorney's Office.

11-16-05
Date


Jessie Kling

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

TALBOT COUNTY, MARYLAND

Plaintiff

2005 NOV 14 : PM 12 43

v.

Case No. 2-C-04-005095 DJ

DEPARTMENT OF NATURAL
RESOURCES CRITICAL AREA
COMMISSION, et al.

RECEIVED

Defendants

NOV 17 2005

**TALBOT COUNTY'S SUPPLEMENTAL
RESPONSE TO MOTION TO INTERVENE**

DNR - LEGAL DIVISION

Talbot County, Maryland, by and through ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, submits the following Supplemental Response to the Motion to Intervene filed by Miles Point Property, LLC and the Midland Companies, Inc., (hereinafter "Interveners"):

1. Interveners request the Court's permission to intervene as of right under Maryland Rule 2-214 (a). Interveners represent, "... without Miles Point's participation in the above-captioned matter, any decision made in this case will not be binding upon Miles Point. Accordingly, we believe it is in everyone's best interests to have Miles Point participate." (See Letter dated October 19, 2005, attached hereto as Exhibit A). Interveners also state, "the disposition of this case would impair Midland's ability to protect its interest," and, "If this Court were to determine that the CAC was without authority to reject to (sic) 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.” Interveners’ Memorandum, p. 11.

2. Miles Point has no award of growth allocation. Putting that aside for purposes of discussion, Interveners’ reason for intervening is to participate in the litigation so that the final outcome will bind them, because a final, binding outcome on all parties in a single proceeding is in everyone’s best interest.

3. Talbot County agrees. All parties share a common interest to place the litigation in a procedural posture so that when it becomes final it will bind all parties, including Miles Point Property, LLC, and the Midland Companies, Inc. Talbot County withdraws its opposition and consents to the intervention so that the Interveners will also be bound by the final outcome of this litigation, and requests the Court to grant the procedural relief Interveners seek.

4. Talbot County’s consent has been induced by Interveners’ representation that they seek to be bound, and will be bound when permitted to intervene, by the final outcome of the litigation. This is itself one of Interveners’ express purposes and it is mutually acceptable. This condition has the added benefit of eliminating additional prejudice from yet more delay, about which the County expressed concern when initially opposing intervention. If intervention were to be denied under Rule 2-214 (a), it would be immediately appealable, and would thereby cause unnecessary additional expense and further delay which can be avoided. See County Commr’s of Carroll County v. Gross, 301 Md. 473, 483 A.2d 755 (1984).

5. Interveners' voluntary choice to participate in this litigation and to submit to the Court's personal jurisdiction for the stated purpose of having all parties bound by the outcome should be granted for the reasons Interveners stated in their Motion.

6. Interveners intend to file a dispositive motion by November 11, 2005 in accordance with the Court's scheduling order. (Motion to Intervene, p. 10).

7. Talbot County had no opportunity for discovery from Interveners because they chose to not seek intervention until after discovery concluded. The County requests it be opened to permit a reasonable opportunity for discovery as to Interveners only. The County requests the same extension, until discovery to Interveners concludes, within which to respond to Interveners' dispositive motion(s). The County does not condition consent to intervention on any extension of either discovery or time to file a response to Interveners' dispositive motion(s).

8. Talbot County consents to intervention so that all parties will be before the Court in a single proceeding and so that all parties, including Interveners will be bound by the final outcome of the litigation. A proposed order is attached.

Respectfully submitted,

ALLEN, KARPINSKI, BRYANT
& KARP

BY:


DANIEL KARP

Victoria Shearer/MP

VICTORIA M. SHEARER
Suite 1540
100 E. Pratt Street
Baltimore MD 21202-1089
(410) 727-5000

TALBOT COUNTY, MARYLAND

BY:

Michael L. Pullen
MICHAEL L. PULLEN
Talbot County Attorney
142 N. Harrison Street
Easton, Maryland 21601
(410) 770-8092

MILES & STOCKBRIDGE P.C.

October 19, 2005

VIA HAND DELIVERY

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

VIA FEDERAL EXPRESS

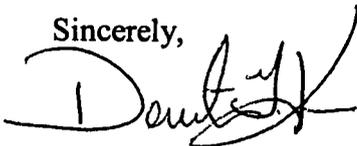
Daniel Karp, Esquire
Victoria Shearer, Esquire
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore, Maryland 21202

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 Lady and Gentlemen:

Enclosed please find Miles Point Property, LLC's and The Midland Companies, Inc.'s (collectively "Miles Point") Motion to Intervene, accompanying Statement of Grounds and Authorities as well as a Proposed Answer to the Amended Complaint filed in the above-captioned matter. I am sure you recognize that without Miles Point's participation in the above-captioned matter, any decision made in the case will not be binding upon Miles Point. Accordingly, we believe it is in everyone's best interests to have Miles Point participate in the above-referenced matter. I have included for your convenience a Consent to the Motion to Intervene that you may file with the Court to expedite this matter.

Sincerely,



Demetrios G. Kaouris

DGK/cem
Encl.

Plaintiff's Suppl. Response
Exhibit A

RECEIVED

OCT 19 2005

Office of Law

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November 2005, a copy of the foregoing Talbot County's Supplemental Response to Motion to Intervene was mailed first-class, postage prepaid to:

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

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

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

Victoria Shearer, Esq.
Allen Karpinski Bryant & Karp, P.A.
100 East Pratt St., Suite 1540
Baltimore, Maryland 21202-1098

Richard A. DeTar, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601


_____ Of
Counsel for Plaintiff Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

v. : Case No. 2-C-04-005095 DJ

DEPARTMENT OF NATURAL :
RESOURCES CRITICAL AREA :
COMMISSION, et al. :

Defendants :

CONSENT ORDER PERMITTING INTERVENTION

Upon the Motion for Intervention submitted by Miles Point Property, LLC and the Midland Companies, Inc., (“Interveners”), and upon the Consent of the Commissioners of St. Michaels, the Town of Oxford, the Department of Natural Resources, Critical Area Commission, and of Talbot County, Maryland, the Court finds that:

1. Interveners have made a voluntary choice to participate in this litigation and have submitted to the Court’s personal jurisdiction for the stated purpose of having all parties bound by the final outcome;
2. Talbot County agreed to put the litigation in a procedural posture so that, when final, it will bind all parties, including Miles Point Property, LLC, and the Midland Companies, Inc. Talbot County consented to the Motion to Intervene, withdrew its opposition, and requested the Court to grant intervention conditioned upon Miles Point Property, LLC and the Midland Companies, Inc., being bound by the final outcome of the litigation.
3. The Commissioners of St. Michaels, the Town of Oxford, and the Department of Natural Resources, Critical Area Commission, have all consented to the intervention.

IT IS THEREFORE, this _____ day of _____, 2005, by the
Circuit Court for the Talbot County, Maryland;

ORDERED, that Miles Point Property, LLC and the Midland Companies, Inc.'s
Motion to Intervene is hereby **GRANTED**. Interveners are parties and are legally bound by
the final outcome of this litigation. To that end, any award of growth allocation to Miles
Point Property, LLC or Midland Companies, Inc., shall be subject to the final outcome of
this litigation. Any act, application, proceeding, approval, or award of growth allocation in
the interim, if any, shall not be final, and shall likewise be subject to the final outcome of
this litigation; and it is further,

ORDERED, that Talbot County is permitted to obtain discovery from Interveners
Miles Point LLC and the Midland Companies, Inc. The following schedule is applicable: the
County will issue discovery requests to the Interveners within ten (10) days after the date of
this Order; Interveners must respond to the County's discovery requests within twenty (20)
days after those discovery requests are issued by Talbot County; any discovery disputes
will be immediately placed before the Court via telephonic conference; upon resolution of
any discovery disputes and receipt of complete discovery responses from Interveners,
Talbot County will have eighteen (18) days within which to respond to Interveners'
dispositive motion(s).

Judge, Circuit Court for Talbot County

42

TALBOT COUNTY, MARYLAND

Plaintiff

v.

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

Defendants

* IN THE ~~DNR~~ LEGAL DIVISION

* CIRCUIT COURT

* OF MARYLAND FOR

* TALBOT COUNTY

*

* Case No. 20-C-04-005095

* * * * *

**MOTION OF ST. MICHAELS TO INCORORATE AND ADOPT BY REFERENCE THE
MOTION FOR SUMMARY JUDGMENT FILED BY MILES POINT PROPERTY, LLC
AND THE MIDLAND COMPANIES, INC.**

The Commissioners Of St. Michaels, by and through its undersigned attorney, hereby moves to incorporate and adopt by reference the arguments set forth in the Motion for Summary Judgment and Statement of Grounds and Authorities, and the accompanying Exhibits, filed by Miles Point Property, LLC and The Midland Companies, Inc.

Respectfully submitted,

H. Michael Hickson

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

Attorney for The Commissioners Of St. Michaels

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November 2005, a copy of the foregoing Motion 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
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

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

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

Richard A. DeTar, Esquire
Demetrios G. Kaouris, Esquire
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
Attorney for Miles Point, LLC and The Midland Companies, Inc.

H. Michael Hickson
H. Michael Hickson

41

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, et al. :

Defendants :

RECEIVED

NOV 14 2005

DNR - LEGAL DIVISION

**SUPPLEMENT TO TALBOT COUNTY'S OPPOSITION TO
MILES POINT LLC AND THE MIDLAND COMPANIES, INC.'S
MOTION TO INTERVENE**

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, supplements its Opposition to Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene by submitting an additional Exhibit.

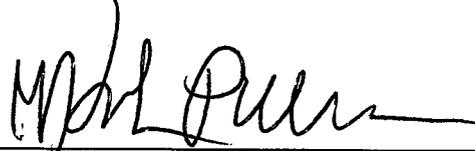
In footnote 2 of Talbot County's Opposition, the County asserted that "upon information and belief, Midland has paid fees in excess of \$100,00.00 for legal services rendered by counsel for St. Michaels incurred obtaining approval of the Miles Point project." Attached hereto as Exhibit 4 is a copy of an invoice from St. Michaels to the Midlands Companies for "annexation and growth allocation process" in the amount of \$121,216.25, for legal services rendered through October 2003. It also shows "legal fees paid to date" by Midlands to St. Michaels in the amount of

\$17,500.00. Clearly, Midland's alleged "interest" in intervening in this case has been and is more than adequately represented by St. Michaels, which is already a party.

Respectfully submitted,

OFFICE OF THE TALBOT COUNTY ATTORNEY

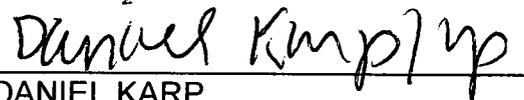
BY:



MICHAEL L. PULLEN
Talbot County Attorney
11 N. Washington Street
Easton, Maryland 21601
(410) 770-8092

ALLEN, KARPINSKI, BRYANT & KARP

BY:



DANIEL KARP



VICTORIA M. SHEARER
100 E. Pratt Street, Suite 1540
Baltimore, Maryland 21202-1089
Attorneys for Plaintiff, Talbot County
(410) 727-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2005, a copy of the foregoing Supplement to Talbot County's Opposition to Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene was mailed first-class, postage prepaid to:

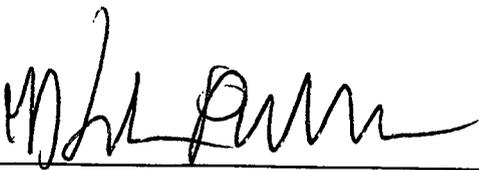
H. Michael Hickson, Esquire
Banks, Nason & Hicks, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044

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

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

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

Richard A. DeTar, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601


_____ of Counsel
for Plaintiff Talbot County, Maryland



The Commissioners of Saint Michaels
P.O. BOX 206

SETTLED 1670-80
INCORPORATED 1804

SAINT MICHAELS, MARYLAND 21663-0206

(410) 745-9535
FACSIMILE (410) 745-3463
TDD/TTY RELAY 1-800-735-2258

INVOICE

October 31, 2003

Mr. George Valanos
The Midland Companies
1228 Thirty-First Street, NW
Washington, DC 20007

Invoice for annexation and growth allocation process. Costs through October 2003.
Invoice does not include staff time. Staff time will be billed at a later date.

Court Reporting thru Planning Commission meeting 11/6/03	\$ 7,572.00
Advertising	\$ 6,646.20
Legal	\$121,216.25
Consultants	\$ 13,439.26
Copies	\$ 955.50
Total Cost exclusive of staff time to date	\$149,829.21

Less fees paid to date	\$ 17,500.00
Total Amount Due	\$132,329.21

Payment due 11/15/03	\$25,000.00
Payment due 12/15/03	\$25,000.00

Next Statement date 12/31/03

Cheryl Thomas

hand delivered 11/24/03

EXHIBIT 4

936

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
DONNA HILL STATON
DEPUTY ATTORNEY GENERAL
MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES

JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
STUART G. BUPPERT, II
SHAUN P. K. FENLON
RACHEL L. EISENHAUER
ROGER H. MEDOFF
SHARA MERVIS ALPERT
SAUNDRA K. CANEDO
PAUL J. CUCUZZELLA
ASSISTANT
ATTORNEYS GENERAL
WRITER'S DIRECT DIAL NO.:

FAX NO.:

(410) 260-8364

(410) 260-8352
pcucuzzella@dnr.state.md.us

November 10, 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 for filing in the above-referenced matter please find defendant Department of Natural Resources' Notice Of Entry Of Appearance. In accordance with Md. Code Ann., Cts. & Jud. Proc. § 7-202(b), the Department is exempt from the filing fee associated with it attorney's appearance in this matter. Thank you for your assistance..

Very truly yours,

Handwritten signature of Paul J. Cucuzzella in black ink.
Paul J. Cucuzzella
Assistant Attorney General

Enclosure

cc: Victoria M. Shearer, Esq.
Michael L. Pullen, Esq.
H. Michael Hickson, Esq.
David R. Thompson, Esq.
Richard A. DeTar, 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.

*

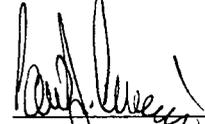
* * * * *

NOTICE OF ENTRY OF APPEARANCE

Defendant Department of Natural Resources ("DNR"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, move pursuant to Rule 2-131 that the appearance of **Joseph P. Gill, Assistant Attorney General, Department of Natural Resources, 580 Taylor Ave., C-4, Annapolis, Maryland 21401, (410) 260-8350**, be entered in this matter as attorney for the DNR.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Paul J. Cucuzzella
Marianne D. Mason
Assistant Attorneys General
Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8352

Dated: November 10, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of November, 2005, copies of the foregoing

Notice Of Entry Of Appearance were sent via U.S. Mail to:

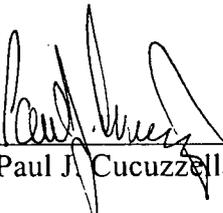
Victoria M. Shearer, Esq.
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 East Pratt Street
Baltimore, Maryland 21202-1089

Michael L. Pullen, Esq.
142 N. Harrison Street
Easton, Maryland 21601

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

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

Richard A. DeTar, Esq.
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601



Paul J. Cucuzzella

39

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, et al.

Defendants :

RECEIVED

NOV 8 2005

DNR - LEGAL DIVISION

**TALBOT COUNTY'S OPPOSITION TO MILES POINT LLC AND THE
MIDLAND COMPANIES, INC.'S MOTION TO INTERVENE**

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, files this memorandum in opposition to Miles Point Property, LLC and The Midland Companies, Inc.'s Motion to Intervene.¹

INTRODUCTION

On June 11, 2004, Talbot County, Maryland filed a Complaint for declaratory judgment, writ of mandamus, and appeal from an administrative agency, from the May 14, 2004 determination of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("The CAC") denying approval of Talbot County Bill No.

¹ For convenience, the County hereinafter refers to movant as "Midland."

933 as a local amendment to Talbot County's Local Critical Area program. The Complaint asserts two legal bases for challenging the Commission's failure to approve Bill No. 933: (1) Bill 933 meets the relevant State statutory standards and criteria for approval in Maryland Code, Natural Resources Article, §8-1809(j), but the Commission arbitrarily, capriciously, and illegally refused to approve the Bill; and (2) the Commission did not act on the proposed local program amendment (Bill 933) within the 90-day time period required by Maryland Code, Natural Resources Article, §8-1809 (d)(2), and that as a matter of law the program amendment reflected by Bill 933 is therefore deemed approved. See Complaint at ¶¶ 18-19.

On or about September 23, 2004, the Commissioners of St. Michaels ("St. Michaels) filed a motion to intervene. Thereafter, the Town of Oxford also filed a motion to intervene. Both motions were granted. A scheduling conference was held on April 14, 2005. At the scheduling conference, counsel for St. Michael's (Mr. Hickson) requested six (6) months of discovery, insisting that he needed that period of time to conduct and complete discovery. The County (Mr. Pullen) opposed that request inasmuch as there was no reason any discovery needed could not be completed within two to three months. The Court granted St. Michaels' request for a six (6) month discovery period and set a discovery deadline of October 14, 2005. The Court also set a dispositive motions deadline of November 14, 2005. Despite St. Michaels' insistence that the discovery period be six (6) months in length, St. Michaels failed to conduct any discovery at all. The only logical conclusion,

therefore, is that St. Michaels' request for a six (6) month discovery period was nothing more than a delay tactic. Similarly, Midland's current Motion to Intervene at the eleventh hour is interposed for the purpose of either delay or so that Midland can intervene without having to provide discovery to Plaintiff.

ARGUMENT

I. MIDLAND'S MOTION TO INTERVENE MUST BE DENIED BECAUSE IT WAS NOT TIMELY FILED.

Maryland Rule 2-214(a) permits intervention only "upon timely motion." Midland's motion is far from timely. The timeliness of a motion to intervene is a threshold issue to be resolved before reaching the substantive merits of the motion. Hartford Ins. Co. v. Birdsong, 69 Md. App. 615, 519 A.2d 219 (1987). Timely application is a prerequisite for intervention. Coalition for Open Doors v. Annapolis Lodge No. 622, Benevolent & Protective Order of Elks, 333 Md. 359, 635 A.2d 412 (1994). Before proceeding to consider the substantive merits of an intervention motion, a trial court should require that the applicant demonstrate the promptness of his request. Md. Radiological Soc'y, Inc. v. Health Servs. Cost Review Comm'n, 285 Md. 383, 402 A.2d 907 (1979). Whether the applicant has demonstrated the promptness of his request to intervene rests in the sound discretion of the trial court, which, unless abused, will not be disturbed on appeal. Id.

As a general guide for trial courts considering the issue of timeliness of a motion to intervene, the following framework applies: (1) the purpose for which intervention is sought; (2) the probability of prejudice to the parties already in the

case; (3) the extent to which the proceedings have progressed when the movant applies to intervene; and (4) the reason or reasons for the delay in seeking intervention. Id. See also, Pharmaceia Eni Diagnostics, Inc. v. Washington Sub. San. Comm'n, 85 Md. App. 555, 584 A.2d 714 (1991).

Midland's claimed purpose for seeking intervention is "to protect its interest in the approved development plans for the Miles Point project, including the award of 70.86 acres of growth allocation." Midland's Memorandum, p. 9. This assertion is plainly incorrect. First, Midland has absolutely no legally protectable interest in the development plans because it has no vested property rights. As explained in detail below in Section II, Maryland law recognizes only those property interests that are vested by issuance of a valid building permit and substantial construction pursuant to a validly issued permit. Midland has no legal interest or entitlement whatsoever to the growth allocation acres, and its claim that the growth allocation acres have been awarded is misleading because Midland's current request for growth allocation has not yet been approved. Midland only recently applied for growth allocation acres for its latest development plan (Plan 3), and the Commissioners of the Town of St. Michaels have not yet voted upon Midland's current application. (See, Section II, below, for a further explanation of this issue). Therefore, the "purpose for which intervention is sought" factor militates against permitting Midland's untimely motion to intervene.

The second factor, the probability of prejudice to the parties already in the

case, also clearly militates against permitting Midland to intervene at this juncture. This case was filed in order to challenge the decision of the CAC considered at a hearing on May 5, 2004 and a decision issued by letter to the County dated May 14, 2004. At that very same hearing before the CAC, Midland's representatives were present, as were representatives of Oxford and St. Michaels. Midland's/St. Michaels' request for a local program amendment regarding growth allocation for the Miles Point project was before the CAC at the same hearing at which Bill 933 was considered. This suit and the suit captioned Midland Companies, Inc. v. Dep't of Natural Resources, Talbot County Circuit Court, Case No. 5088 both emanated from the May 4, 2004 hearing. While Case No. 5088 has already been resolved and is now before the Court of Special Appeals, the instant case is still months away from a hearing on motions for summary judgment due to St. Michaels' request for an extended discovery period. Despite the fact that Midland has clearly known of this litigation from its inception, Midland waited until five days **after the discovery deadline** to file its motion to intervene.

Midland argues that the County is not prejudiced by this delay because Midland does not intend to seek discovery. To the contrary, the County is clearly prejudiced because it has no opportunity to take discovery from Midland without further delaying this case. This is no doubt what Midland intended when it delayed filing its motion until just after the discovery deadline. In this respect, it is worth noting that certain documents are attached to Midland's motion to intervene which

the County has never seen before. The only manner in which the County could take discovery from Midland at this juncture would be for the Court to delay the case, which also would prejudice the County. The County opposed St. Michaels' request for extension of the discovery deadline to October, and certainly opposes any further extension of the discovery period that would be necessitated by Midland's intervention at this late juncture of the case, wherein dispositive motions are due in one week. St. Michaels and Midland have been collaborating all along with respect to obtaining approval for the growth allocation acres for the Miles Point project, and if Midland believed that St. Michaels was not adequately (and completely) representing its interests in the case, then it should have intervened long ago. Its failure to do so clearly prejudices the County, either through inability to obtain discovery from Midland or the concomitant delay that would result if the County were permitted to obtain such discovery.

The third factor to be considered with respect to timeliness of a motion to intervene is the extent to which the proceedings have progressed when the movant applies to intervene. The fourth factor is the reason or reasons for the delay in seeking intervention. Both of these factors militate in favor of denying Midland's motion. This case has already been pending since June 2004 and, as stated, the discovery deadline passed before Midland filed its motion to intervene. The case law cited by Midland wherein the courts permitted intervention after a year and a half and 18 days prior to trial are inapposite because the circumstances which led the

court to do so in those cases were entirely different from the circumstances of this case. And while, as Midland agrees, this case involves purely legal issues, St. Michaels (whose attorney is, quite frankly, working in conjunction with attorneys for Midland) nevertheless sought to delay this case by requesting a six month discovery period, and then failed to even conduct any discovery at all.

Midland asserts its delay in attempting to intervene in this case should be excused 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." Midland's Memorandum, p. 10. Midland asserts that it would not make sense for it to participate in this case 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." Id. This argument simply does not make sense inasmuch as (1) Midland could have (and should have) intervened many months ago regardless of its litigation against the CAC; and (2) Midland still does not have approval by the Commissioners of St. Michaels of the growth allocation acres it has requested (by application dated September 28, 2005) for its current plan. Midland is clearly attempting to do something at the last minute which it consciously chose not to do long ago, to the obvious prejudice of the County. Accordingly, its motion to intervene should be denied as untimely.

II. MIDLAND IS NOT ENTITLED TO INTERVENE BECAUSE IT DOES NOT HAVE A "LEGALLY PROTECTABLE" INTEREST IN THIS CASE BECAUSE IT HAS NO VESTED PROPERTY RIGHTS.

Midland asserts a right to intervene at this late juncture of the case under Rule 2-214(a)(2) on the basis that "the 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." Midland's Memorandum in Support of Motion to Intervene, p. 10-11. Midland also argues that it has an interest because it has "spent a considerable amount of time and money to develop a plan . . ." *Id.*, p. 11. Midland's arguments are simply irrelevant because neither assertion provides Midland with the requisite "legally protectable" interest necessary to intervene as a matter of right, as it has no vested property rights. Rather, Midland's interest in this case is no greater than the interest of any citizen generally "affected" by proposed legislation.

Maryland Rule 2-214(a) provides as follows:

Rule 2-214. Intervention.

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

A person who seeks to intervene as of right as a party defendant under Rule 2-214(a) must establish a "legally protectable" interest relating to the property or transaction that is the subject of the action, and must further establish that it is "so

situated that the disposition of the action may, as a practical matter, impair or impede the ability to protect that interest.” Montgomery v. Bradford, 345 Md. 175, 198, 691 A.2d 1281,1292 (1997). “[I]n order to be a ground for intervention, the interest asserted must be one which it is essential to protect and which is not otherwise protected.” Birdsong, 69 Md. App. at 626-28, 519 A.2d 219; Bradford, 345 Md. at 186, 691 A.2d at 1286. Thus, the interest asserted cannot be merely speculative, rather it “must be a direct, significant legally protectable interest to support the claim of intervention as of right.” Bradford, 345 Md. at 186, 691 A.2d at 1286 (quoting Birdsong, 69 Md. App. at 626-28).

Midland cannot establish the first prong of the test for intervention because its alleged “interest” is not a legally protectable one, as Midland does not have any vested right in its property sought to be developed or, therefore, in the growth allocation acres allegedly “reserved” for its project by St. Michaels. It is well established in Maryland that in order to obtain a “vested right” in the existing zoning use which will be protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a valid permit or occupancy certificate where required and (2) must proceed under that valid permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. Sykesville v. West Shore Communications, Inc., 10 Md. App. 300, 315, 677 A.2d 102, 109-10 (1996); Sycamore Realty Co., Inc. v. People’s Counsel of Baltimore, 344 Md. 57, 684 A.2d 1331, 1336 (1996). See also, Marzullo v. Kahl, 366 Md. 158, 192-93, 783 A.2d 169, 188-89 (2001); Sterling

Homes Corp. v. Anne Arundel County, 116 Md. App. 206, 695 A.2d 1238 (1997); Prince George's County v. Sunrise Dev't Ltd. P'ship, 330 Md. 297, 623 A.2d 1296 (1993); Prince George's County v. Equitable Trust Co., 44 Md. App. 272, 278, 408 A.2d 737, 741 (1979); Rockville Fuel Co. v. Gaithersburg, 266 Md. 117, 127, 291 A.2d 672 (1972); Richmond Corp. v. Bd. of County Comm'rs, 254 Md. 244, 255-56, 255 A.2d 398, 404 (1969). The vested rights doctrine rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by a subsequent change of the applicable building or zoning regulations. Prince George's County v. Equitable Trust Co., 44 Md. App. at 278, 408 A.2d at 741.

In this case, Midland does not have any legally protectable interest because it does not have any vested rights. It has not received a valid permit and it has not proceeded under a valid permit to a point of substantial construction. Moreover, Midland's claims of expenditure of money in attempting to develop the property are completely irrelevant because "the mere expenditure of money is not enough to vest rights." Sterling Homes, 116 Md. App. at 227, 695 A.2d at 1249. Simply put, Midland has no legally protectable right whatsoever in the property or in the growth allocation acres allegedly awarded to the project. Thus, is not legally entitled to any protection whatsoever from any changes that occur to zoning provisions or provisions of the County's (or the municipalities') Critical Areas program.

Moreover, Bill 933 is a legislative act by the Talbot County Council to amend

its Critical Areas program. While the legislation may "affect" Midland (or myriad other developers or property owners) that does not mean that every property owner in Talbot County has a legally protected interest entitling them to intervene in this case. Midland stands in no greater position than any other citizen "affected" by legislation. Midland, as any other citizen, is free to seek through the democratic process to influence legislation; but that does not equate with a legally protectable interest, as required to support intervention.

Midland's bald assertion that it will "lose" growth allocation acres is simply irrelevant inasmuch as Midland has no vested rights whatsoever in its development in general, or in the growth allocation acres in particular. Without a vested right, Midland has no "legally protectable" interest. Midland's lack of any legally protectable interest is underscored by the fact that Midland does not even have approval of the growth allocation acres it requires for its proposed development project. Attached hereto as Exhibit 1 is a copy of Miles Point's request to the Commissioners of the Town of St. Michaels for growth allocation for the project now known as "Miles Point 3 -150' Plan," dated September 28, 2005. Midland's current growth allocation request must be approved by the Commissioners of the Town of St. Michaels. While Midland asserts in its request (Exhibit 1) that the Town Commissioners are bound to approve the request based upon Maryland's "impermissible change of mind" rule, that assertion is plainly incorrect. The impermissible change of mind rule applies only to rezonings. See, e.g., Polinger v. Briefs, 244 Md. 538, 224 A. 2d 460 (1966)(rezoning was arbitrary and capricious

because in 1962 the zoning authority found no evidence of change in the single-family residential development of the area which would justify rezoning for multi-family density; but in 1964, without any change in circumstance, fact or applicable law, it found change sufficient to sustain a rezoning for fourfold residential density); Lambert v. Seabold, 246 Md. 562, 229 A.2d 116 (1967)(court held that there was no change in the character of the neighborhood since the Board's previous decision denying the owners' petitions for reclassification of zoning). The Town of St. Michael's application for a map amendment to allocate growth allocation for Midland's project has nothing to do with a rezoning and, therefore, the impermissible change of mind rule clearly does not apply.

Moreover, the impermissible change of mind rule is inapplicable for the additional reason that the Commissioners of St. Michael's are not a zoning or administrative body but, rather, a legislative body. A legislative body clearly cannot be bound by the impermissible change of mind rule (or any other form of "res judicata") because legislators are voted in and out of office and each individual elected official is free to vote in the manner they choose and/or to change their mind on an issue. In fact, that is the basis for legislative action - that legislators may be influenced by their constituency to change their minds on issues.

In its current growth allocation request to the Town of St. Michaels (Exhibit 1), Midland relies upon a settlement agreement with the CAC dated September 7, 2005 to support its contention that it has a legally protectable interest in this case. See, Settlement Agreement between CAC and Midland Companies, dated September 7, 2005, attached hereto as Exhibit 2. Midland's apparent theory is that

it has a legally protectable interest because the settlement agreement provides that the CAC pre-approves Midland's Plan 3 for the Miles Point project. However, this assertion ignores the fact that the Commissioners of St. Michaels must first approve Midland's September 28th request for growth allocation for Plan 3 before the CAC may consider the local program amendment. Currently, the Midland/Miles Point project has no growth allocation awarded to it. Even if it did have such growth allocation, however, Midland nevertheless has no vested rights whatsoever and, thus, no "legally protectable" interest justifying intervention.

Even assuming the settlement agreement had the effect claimed by Midland (and clearly it does not), Midland may not rely upon the settlement agreement with the CAC to assert a legally protectable interest because the settlement agreement is improper, ultra vires and illegal. First, the settlement agreement provides that the CAC pre-approves the developer's (Midland's) plan that has not yet been approved by a local jurisdiction. Exhibit 2, p. 6-7. The CAC has no authority to prospectively approve a developer's plan requesting or regarding growth allocation before the local jurisdiction has approved the request.

Second, the settlement agreement provides that the CAC will withdraw its two previous rulings, subject to the St. Michael's Commissioners' approval or consent to those withdrawals. Id., p. 6 and 8. It is improper for the CAC to take official action conditioned upon the approval of a local jurisdiction. Rather, the CAC is supposed to be an impartial state agency applying objective statutory criteria. See North v. Kent Island Ltd. P'ship, 106 Md. App. 92, 105, 664 A.2d 34 (1995)(stating that "[t]he role of the Critical Area Commission is to examine the amendment to determine

whether the amendment is consistent with the criteria.”); Midland Companies, Inc. v. Md. Dep’t of Natural Resources, Civil No. 5088, p. 10 (April 11, 2005)(Exhibit 9 to Midland’s Motion to Intervene)(“[t]he 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.”).

Third, the settlement agreement provides that the CAC and Midland will later develop a “mutually agreeable stormwater management plan.” Exhibit 2, p. 7. The CAC does not have the authority to agree to negotiate with a developer with respect to development plans or requirements. This provision is in the settlement agreement despite the fact that one of the original conditions upon the CAC’s approval of the amendment was that “[t]he Stormwater Management Plan shall be reviewed and approved by the Commission.” Midland’s Exhibit 9, p. 5. Now, in the settlement agreement, the CAC contractually requires itself to a “mutually agreeable” plan. This is plainly improper and exceeds the CAC’s authority, which is limited to applying objective statutory criteria. The agreement also prospectively allows placement of the stormwater management ponds “within the 150’ setback but outside of the 100’ buffer.” Exhibit 2, p. 7. The CAC lacks the statutory authority to enter into an agreement with a developer to provide such preapprovals or to “negotiate” with the developer regarding a development requirement. The CAC’s statutory role is to objectively apply statutory criteria; not to bargain with developers and/or contract away statutory requirements. See Chesapeake Outdoor Enters. v. City Council of Baltimore, 89 Md. App. 54, 597 A.2d 501 (1991)(holding that a municipality may not contract away the exercise of its zoning authority; thus, where the City of Baltimore

had issued notices that outdoor signs did not comply with zoning requirements, the City could not lawfully thereafter enter into agreements with the advertiser which allowed the signs to remain in place with modifications; the City's right to enforce its ordinances could not be bargained away, by agreement or otherwise); Atman Glazer P.B. Co. v. Mayor & Aldermen of Annapolis, 314 Md. 675, 552 A.2d 1277 (1989)(a municipal zoning body may not by agreement lawfully bind itself to a future zoning or conditional use decision; the practice of contract zoning, in the absence of statutory authority for the imposition of conditions, is universally condemned; city could not surrender or impair its obligation to independently and impartially consider the application in accord with procedures established by law).

Fourth, the settlement agreement provides that any changes made by Midland in "implementing the Approvable Plan as detailed at Exhibits C, D and E must be approved, in advance, by the Chairman of the CAC." Exhibit 2, p. 7. This provision is plainly impermissible and unlawful in that it permits the Chairperson of the CAC to single-handedly change a developer's plan after it has already gone through the process and has received the requisite approvals from the local jurisdiction and the CAC itself. Thus, the settlement agreement enables the CAC Chairman to impermissibly contract away the CAC's authority, and to give himself the sole authority to approve changes to the developer's plan after the fact. The provision therefore impermissibly allows the Chairman, and the developer, to make an end run around the required process. The provision is clearly improper and unlawful and, at the very least, creates a grave appearance of impropriety.

Fifth, the settlement agreement modifies "the general CAC planting

guidelines" (presumably for the buffer area), something which the CAC again has no authority to do. Exhibit 2, p. 7. The CAC simply cannot bargain away the State statutory criteria and guidelines.

The unlawful and ultra vires settlement agreement aside, it is clear that Midland does not have any vested property rights whatsoever in its development (much less the requested growth allocation acres) and, thus, it does not have the requisite "legally protectable" interest entitling it to intervene in this case. In Montgomery County v. Bradford, 345 Md. 175, 691 A.2d 1281 (1997), the Court held that the county did not have a legally protectable interest in intervening, stating as follows:

Nor is there any merit in Montgomery County's further contention that it has a protectable legal interest in avoiding the potential impact that a ruling in plaintiffs' favor would have on its own population of 'at-risk' schoolchildren. In this connection, the County maintains that should the plaintiffs be successful in persuading the court that 'at-risk' children in Baltimore City public schools require enhanced educational resources and services pursuant to Article VIII, §§ 1 of the Maryland Constitution, then at some later time the County, at considerable additional expense, may be required to supplement the resources which it currently provides to its own 'at-risk' schoolchildren.

As to this, the County's concerns are indirect, remote, and speculative; they do not focus directly on the 'transaction' involved in these cases, *viz*, whether the plaintiffs' actions, directed, as they are, solely to the constitutional adequacy of the education provided to children in the Baltimore City public schools, implicates Montgomery County's legal interest in any way which would give it a right to intervene in these cases under Rule 2-214(a). **Were it otherwise, according to the plaintiffs, and that was all that was needed to establish a right to intervene, then any applicants' generalized interest in participating in the formulation of a constitutional standard, to which the person may be subjected, could intervene as a party from which an interpretation of a constitutional provision might emerge.** We share the plaintiffs' position on this issue.

Id., 345 Md. at 199, A.2d at 1292-93 (emphasis added). Similarly, in this case, if Midland's arguments are accepted, then any developer in the entire County could intervene as of right asserting a general desire or alleged entitlement to growth allocation acres, though the developer has no vested rights in either the property or the growth allocation acres. The only issue in this case is the propriety of the CAC's application or non-application of objective statutory criteria to Bill 933. In other words, the issue in this case is not the substance of Bill 933; rather, the issue is whether the CAC exceeded its authority in denying Bill 933. Inasmuch as Midland's claimed interest goes only to the affect of Bill 933, it does not support Midland's claimed right to intervene in this case. Midland simply has no legally protectable interest because it has no vested property rights and, therefore, no right to intervene.

Assuming Midland had a legally protectable property right (and clearly it has none) and the Court therefore considered the second prong of the test for intervention of right, Midland claims that it meets that prong because its development may be affected or that it would be "disadvantaged" in the future by a decision in favor of the County. As in Bradford, this assertion is pure speculation and, thus, cannot support is motion to intervene. Shenk v. Md. Dist. Savings & Loan Co., 235 Md. 326, 201 A.2d 498 (1964)(suggestion that there may be some future aspect of the proceedings affecting interest adversely is merely speculative and affords no present basis upon which to become a party to the proceedings). Whether or not legislation will "affect" a citizen, such as Midland, does not provide a right to intervene. For all of these reasons, Midland's motion to intervene should

be denied.

III. MIDLAND'S ALLEGED INTEREST IS MORE THAN ADEQUATELY REPRESENTED BY THE EXISTING PARTIES.

Midland asserts that its claimed interest in this case is not adequately represented by the existing parties because "[t]he concerns of the CAC and the towns are more general and relate to each of the respective party's authority." Midland's Memorandum, p. 12. Midland claims that its interests are "concrete and specific because it has been awarded growth allocation that the County will contend is invalid in the event the CAC's decision is not upheld." Id. This assertion is (1) legally irrelevant because Midland has no vested property rights in its development nor an award of growth allocation acres and, thus, no "interest" at all; and (2) even if Midland had vested property rights, it does not have approval from the Commissioners of St. Michaels for its current application for growth allocation acres for the Miles Point project. Even if it receives such approval from the Commissioners, that program amendment will still have to be approved by the CAC (inasmuch as the settlement agreement in which the CAC purports to preapprove the program amendment is ultra vires and, thus, void). Therefore, Midland's claimed interest is not "legally protectable" and clearly is neither "concrete" nor "specific."

To the extent that Midland has a legally protectable interest (and clearly it does not), and that interest is not purely speculative and attenuated (and clearly it is), Midland still is not entitled to intervene because the Town of St. Michaels adequately represents its interests. St. Michaels has repeatedly "gone to bat" for Midlands with respect to obtaining approval for the Miles Point project. In fact, the two have acted completely in concert, even entering into a Development Rights and

Responsibilities Agreement ("DRRA") for this express purpose. See, DRRA between St. Michaels and Midlands, attached hereto as Exhibit 3.² The DRRA places St. Michaels and Midland in contractual privity with one another with respect to this case.³ Thus, contrary to Midland's contentions, its interests are identical to St. Michaels' interests, i.e., to obtain defeat of Bill 933 because (they believe) it will jeopardize the Miles Point project by providing the County with a say in how the growth allocation acres previously reserved solely to the towns will be utilized in the future. See Md. Radiological Soc'y, 285 Md. 383, 391-92, 402 A.2d 907, 912 (1979)(when applicant for intervention merely asserts a position that is precisely the same, and holds like consequences for him, as that championed by an existing party, then he can gain admittance only if he can show collusion, nonfeasance or bad faith on the part of those existing parties). Where the interest of an existing party and an intervenor-applicant are identical, a compelling showing should be required to demonstrate why this representation is not adequate. Id., 285 Md. at 391, 285 A.2d at 912. Midland has clearly failed to make the requisite showing of

² The DRRA was entered into after Bill 933 was enacted and sent to the CAC for review. The DRRA specifically recognizes as much in Section 5.2.7 (page 16). Moreover, the DRRA does not provide Midland with any vested rights in its development proposal or any claim for growth allocation acres. It specifically provides that the "Qualified Vested Rights" granted to the developer (and, thus, any consideration in exchange to St. Michaels) "do not apply to existing and future applicable county, state and federal laws or regulations " and that "in the event that applicable county, state and federal regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations . . ." DRRA, Section 9.2.4 (page 28).

³ In addition, upon information and belief, Midland has paid fees in excess of \$100,00.00 for legal services rendered by counsel for St. Michaels incurred obtaining approval of the Miles Point project.

how its interests are at all different from, or not adequately represented by, St. Michaels. Therefore, on this basis as well, Midland is not entitled to intervene.

CONCLUSION

For all of the foregoing reasons, Midland's Motion to Intervene should be denied.

Respectfully submitted,

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: Michael Pullen /s/
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Attorneys for Plaintiff, Talbot County
(410) 727-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of November, 2005, a copy of the foregoing Opposition to the Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene was mailed first-class, postage prepaid to:

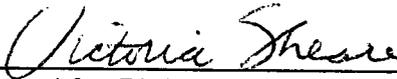
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101 Bay Street
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_____ Of
Counsel for Plaintiff Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

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

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

Defendant

ORDER

Upon consideration of Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene, and the Opposition thereto, it is this _____ day of _____, 2005, by the Circuit Court for Talbot County,

ORDERED, that Miles Point LLC's and the Midland Companies, Inc.'s Motion to Intervene is hereby **DENIED**.

Circuit Court for Talbot County Judge,

EXHIBIT 1

MILES & STOCKBRIDGE P.C.

Richard A. DeTar
rdetar@milesstockbridge.com
(410) 820-0224

September 28, 2005

VIA HAND DELIVERY

Barry Gillman, President
Commissioners of the Town of St. Michaels
c/o Cheryl S. Thomas, Town Commissioner
300 Mill Street
St. Michaels, MD 21663

Re: Request for Award of Growth Allocation for the Project Known as "Miles Point 3 - 150' Plan"

Dear Mr. Gillman:

We represent Miles Point Property, LLC ("Miles Point"), the owner of certain real property located within the Town of St. Michaels referred to herein as the "Perry Cabin Farm." The Perry Cabin Farm consists of approximately 72 acres and fronts on Maryland Route 33 and Yacht Club Road. It is identified on Tax Map 23, Grid 20, Parcel 111. Pursuant to Section 5.11 of the St. Michaels Zoning Ordinance and on behalf of Miles Point, we are hereby submitting this request for an award of growth allocation (the "Instant Application") based upon the development plan reflected in the enclosed concept plan. Two plat sized versions and twelve (12) 11x17 copies of the concept plan are being provided pursuant to Debbie Renshaw's request. We are also enclosing herewith Miles Point's execution of the Town's ADMINISTRATIVE FEES AS OF FEBRUARY 9, 2005 and ten (10) copies of the Site Statistics, Impervious Area and Zoning Compliance Calculations.

Please note that the Perry Cabin Farm has already received approval from both the Town Commissioners and the Chesapeake Bay Critical Area Commission (the "CAC") for a growth allocation map amendment reclassifying all of the acreage of the Perry Cabin Farm that is in the critical area as an intensely developed area ("IDA"). This occurred in connection with a prior growth allocation award made by the Commissioners on February 18, 2004 (the "Prior Award"). The Instant Application seeks approval of a slightly modified, very similar development plan in

connection with the growth allocation floating zone designation.¹ Because of the similarity in the development plans, it is Miles Point's intention to submit the entire record from the Prior Award and to focus its presentation on those aspects of the Instant Application that are new and different from the Prior Award. We believe that under well established Maryland law known as the "impermissible change of mind doctrine," the Commissioners' adjudicative fact findings and determinations from the Prior Award are binding on the Instant Application except to the limited extent of material differences, if any, from the Instant Application and the Prior Award as applied to the applicable standards.

Please also note that the Instant Application is not being submitted in lieu of the Prior Award. The Instant Application is being submitted in order to obtain an approval from the Commissioners of a development plan that is consistent with the conditions imposed by the CAC on the IDA growth allocation map amendment for the Perry Cabin Farm that has been approved pursuant to the Settlement Agreement between the CAC and Miles Point, dated September 7, 2005 (a copy of which is also enclosed herewith). As you may know, due to continuing litigation concerning this project it is not yet clear whether at the conclusion of all of the litigation the development plan on which Miles Point may lawfully proceed will be the so-called "100' Plan" associated with the Prior Award, or, if approved by the Commissioners, the so-called "150' Plan" submitted with the Instant Application. For these reasons, Miles Point is requesting approval of the Instant Application independent from the Prior Award.

By separate wire transfer you should receive today payment from Miles Point in the amount of \$20,000 representing the filing fee for a growth allocation application. If there are any questions concerning this application or there is any further information that you will need from Miles Point at this time, please let me know at your earliest convenience.

Sincerely,



Richard A. DeTar

RAD/clm

Enclosures: Concept Plan, Acknowledgement of Administrative Fees, Site Calculations, Settlement Agreement with the Critical Area Commission

cc: Miles Point Property, LLC
H. Michael Hickson, Esquire (with Enclosures)

¹ The growth allocation floating zone designation is plan specific in the Town's Zoning Ordinance.

THE COMMISSIONERS OF ST. MICHAELS

ADMINISTRATIVE FEES AS OF FEBRUARY 9, 2005

Page 1 of 4

NOTE: FOR ALL APPLICATIONS DESIGNATED BY AN ASTERISK*, FEES SHOWN ARE DEPOSITS AGAINST EXPENSES ONLY. NOTE EXPLANATION OF FEES AT END OF THIS DOCUMENT. APPLICANT MUST SIGN AGREEMENT TO FEE SCHEDULE PRIOR TO PROCESSING OF APPLICATION

BUILDING, GRADING, SIGN AND DEMOLITION PERMITS Cost of work \$0-\$49,999 <hr/> Cost of work \$50,000 and up	\$35.00 Zoning Certificate Fee PLUS costs of inspections Note: Expenses incurred in excess of the fee collected must be paid prior to the issuance of an occupancy permit <hr/> \$8.00 per \$1,000 – all inclusive
BOARD OF APPEALS:	NOTE: each action appealed, or each action requested constitutes a separate application even if all actions involve the same property or applicant
Special Exception	\$400 plus cost of Stenographer and transcript
Variance	\$400 plus cost of Stenographer and transcript
Allegation of Error*	\$600.00 plus cost of Stenographer, transcript and all Town expenses in excess of the fee - see pages 3 and 4. Application fee only is refunded if allegation is upheld by the Board of Appeals
PLANNING COMMISSION	
Subdivision (Minor)* 4 lots or less	\$200 per lot, plus all Town expenses in excess of the fee - see pages 3 and 4.
Subdivision (Major)*	\$300 per lot/\$5,000 minimum Plus all Town expenses in excess of the fee - see pages 3 and 4.
Line Revision*	\$100 plus all Town expenses in excess of the fee - see pages 3 and 4.
Site Plan Review- Simplified	\$150
Site Plan Review- Major*	\$300 plus all Town expenses in excess of the fee - see pages 3 and 4.

THE COMMISSIONERS OF ST. MICHAELS

ADMINISTRATIVE FEES AS OF FEBRUARY 9, 2005

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TOWN COMMISSIONERS:	
Annexation*	\$10,000 plus all Town expenses in excess of the fee - see pages 3 and 4. Supplemental deposit required.
Growth Allocation*	\$10,000 plus all Town expenses in excess of the fee - see pages 3 and 4. Supplemental deposit required.
Request for legislation* - non-zoning or otherwise not requiring a public hearing	\$1,000 plus all Town expenses in excess of the fee - see pages 3 and 4. Introduction of legislation will not be held unless reimbursement of costs is current.
Request for legislation* - zoning or other legislation requiring public hearings	\$2,000 plus all Town expenses in excess of the fee - see pages 3 and 4. Public Hearing will not be held until reimbursement of costs is current.
Piecemeal rezoning*	\$5,000 plus all Town expenses in excess of the fee - see pages 3 and 4. Public Hearing will not be held until reimbursement of costs is current.
HISTORIC DISTRICT COMMISSION:	
<p>Minor Impacts:</p> <ol style="list-style-type: none"> 1. Accessory structures less than 300 square feet 2. Modifications to existing accessory structures 3. Modifications to primary structures that result in no change to the total square footage of the structure 4. Appurtenances 5. Signs 6. Fences 7. HVAC equipment <p>Applications in the "Minor Impact" category requiring a variance are considered to be "Moderate Impact"</p>	\$50
<p>Moderate Impacts:</p> <ol style="list-style-type: none"> 1. Accessory structures greater than 300 square feet 2. Additions resulting in less than a 25% increase in the square footage of a structure. 	\$ 150

THE COMMISSIONERS OF ST. MICHAELS

ADMINISTRATIVE FEES AS OF FEBRUARY 9, 2005

Page 3 of 4

Major Impacts*: 1. Additions resulting in an increase of 25% or greater of the square footage of the structure 2. All new primary structures	\$ 250* plus all Town expenses in excess of the fee - see pages 3 and 4.
BED AND BREAKFAST INN	
Initial review and permit	\$250
Yearly renewal	\$100
VACATION RENTAL	
Initial review and permit	\$250
Yearly renewal	\$100
COPIES/MANUALS	
Comprehensive Plan (inc. draft plans)	\$30
Zoning Ordinance (inc. Critical Area Plan)	\$30
Copies (Office)	.25 per page
Copies (Oversized)	Actual cost of reproduction

* The following conditions apply to all applications noted in the above schedule by an asterisk. No such application shall be considered complete until the applicant agrees in writing to the terms set forth below:

1. The applicant shall pay the reasonable costs incurred by the Town from third parties who invoice the Town for their services rendered to the Town. All billing rates, fees and out-of-pocket costs of all such third party costs shall be at their rates otherwise charged to the Town. Third party costs could include, but not be limited to, legal fees, consulting fees, court reporting, publishing and posting of public notices, printing and reproduction, etc.

2. The applicant shall reimburse the Town for the reasonable time spent by Town employees relating to the consideration, analysis and/or evaluation of the issues relating to, and/or the processing of the application on behalf of the Town. Town employees will log their time spent on the application, and reimbursement to the Town for this time will be at the rate of \$35 per hour.

THE COMMISSIONERS OF ST. MICHAELS

ADMINISTRATIVE FEES AS OF FEBRUARY 9, 2005

Page 4 of 4

3. Upon final disposition of the application, including any administrative or judicial appeals or withdrawal of the application, and after first satisfying all third party costs and employee time reimbursements for which the applicant is liable under these requirements, the Town shall refund to the applicant the remaining balance of the monies deposited with the Town over and above the initial application fee.

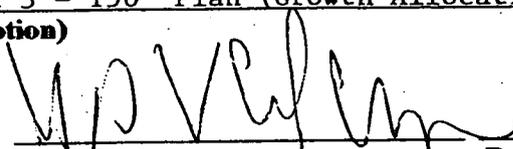
4. The Town will bill its third party costs and employee time directly to the applicant periodically, but not less often than monthly. No final action will be taken on any application with an outstanding balance. At any time during the processing of the application that the applicant is more than 30 days in arrears, all action on the application will cease until the Town's costs are reimbursed in full.

5. In the case of applications for annexation and/or growth allocation involving 10 or more acres, or a proposed development with 5 or more structures or 5 or more commercial or residential units, the applicant will immediately deposit with the Town an additional initial amount equal to the listed fee (the "Fund"), which shall be drawn on by the Town to pay for the Town's third party costs and employee time incurred. Applicant shall immediately replenish the Fund to its initial amount any time the balance falls below Two Thousand Dollars (\$2,000) At any time the Fund falls below Two Thousand Dollars (\$2,000) and remains un-replenished for 30 days, or a bill for expenses remains unpaid for 30 days, all processing of the application will stop until such time as this condition is corrected. If the application is approved, no final action shall be taken on the approval if there is an outstanding account for expenses associated with that application. If the application is disapproved no new application for processing may be filed by the applicant until the outstanding account is cleared.

I have read, understand and agree to the terms as listed above regarding my application

Number _____ for Miles Point 3 - 150' Plan (Growth Allocation)
(Project Description)

George Valanos
Print Name


Signature

9-28-05
Date

George Valanos
**Property Owner if Owner is not
The applicant**


Signature of Property Owner

9-28-05
Date

EXHIBIT 2

SETTLEMENT AGREEMENT

This Settlement Agreement (also referred to as the "Agreement") is made and entered into this 7th day of September, 2005, by and between: (i) The Midland Companies, Inc., and Miles Point Property, LLC, (collectively, the "MIDLAND PARTIES"), and each of the MIDLAND PARTIES' successors and assigns, divisions, units, officers, agents, servants, representatives, employees and independent contractors; and (ii) The Maryland Department of Natural Resources and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "CRITICAL AREA COMMISSION"), and their successors and assigns, agencies, departments, divisions, units, officers, agents, servants, representatives, employees and contractors.

Definitions

A. The term "PARTIES" shall mean, collectively, the MIDLAND PARTIES and the CRITICAL AREA COMMISSION.

B. The term "CIVIL ACTION" shall mean the lawsuit captioned *The Midland Companies, Inc., et al. v. Maryland Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al.*, Case No. 2-C-04-005088 AA, Circuit Court of Maryland for Talbot County, presently on appeal to the Court of Special Appeals of Maryland, where the case is captioned *Maryland Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al. v. The Midland Companies, Inc., et al.*, Case No. 308, September Term, 2005.

C. The term "FIRST COMMISSION ACTION" shall mean the action, as referenced in the CIVIL ACTION, taken by the CRITICAL AREA COMMISSION on May 5, 2004, wherein the CRITICAL AREA COMMISSION approved with certain conditions an application

submitted to the CRITICAL AREA COMMISSION by the Commissioners of the Town of St. Michaels, Maryland (the "Town"), to award growth allocation under the Town's Critical Area Program enabling the MIDLAND PARTIES to develop a 72-acre parcel of property known as the Perry Cabin Farm located in the Town and the Critical Area (as defined by Md. Code Ann., Nat. Res. § 8-1807(a)). A copy of the FIRST COMMISSION ACTION is attached as Exhibit A.

D. The term "SECOND COMMISSION ACTION" shall mean the action taken by the CRITICAL AREA COMMISSION on May 4, 2005, wherein the CRITICAL AREA COMMISSION, in compliance with an April 11, 2005 Order of Circuit Court for Talbot County in the CIVIL ACTION, approved the application for growth allocation referenced in paragraph C above. A copy of the SECOND COMMISSION ACTION is attached as Exhibit B.

E. The term "RELEASED CLAIMS" includes any and all claims, demands, damages, actions, causes of action, obligations, debts of whatsoever kind or nature, known or unknown, which arise or may arise, or which arose or may have arisen, as a result of, or in any way growing out of, injuries or damages incurred as a result of either the FIRST COMMISSION ACTION or the SECOND COMMISSION ACTION, whether or not they are contemplated at the present time and whether or not they arise following execution of this Agreement.

Recitals

WHEREAS, on or about February 18, 2004, the Commissioners of the Town of St. Michaels, Maryland (the "Town") approved an award of growth allocation to reclassify a 72-acre parcel of property located on the Miles River and known as the Perry Cabin Farm from Resource Conservation Area to Intense Development Area ("IDA") and also to enable the MIDLAND PARTIES to develop the property pursuant to a specific development plan. In accordance with State of Maryland's Critical Area Law, Md. Code Ann., Nat. Res. ("NR") § 8-1801 *et seq.*, and

the Town's zoning ordinance, the Town forwarded the growth allocation approval to the CRITICAL AREA COMMISSION for final review and approval;

WHEREAS, on May 5, 2004, following a comprehensive review of the MIDLAND PARTIES' growth allocation application for the Perry Cabin Farm as approved by the Town and forwarded to the CRITICAL AREA COMMISSION, the CRITICAL AREA COMMISSION voted to award the request for growth allocation subject to certain conditions as set forth in the FIRST COMMISSION ACTION (Exhibit A). The COMMISSION imposed these conditions because it determined that the request for growth allocation as proposed by the MIDLAND PARTIES and the Town did not meet certain Critical Area Standards and Criteria as referenced at NR § 8-1809(j);

WHEREAS, on June 4, 2004, the MIDLAND PARTIES filed the CIVIL ACTION challenging the legality of the FIRST COMMISSION ACTION;

WHEREAS, on April 11, 2005, the Circuit Court for Talbot County issued an Order in the CIVIL ACTION declaring that the CRITICAL AREA COMMISSION had acted beyond the scope of its authority when it took the FIRST COMMISSION ACTION;

WHEREAS, on May 4, 2005, the CRITICAL AREA COMMISSION took the SECOND COMMISSION ACTION. In so doing, the CRITICAL AREA COMMISSION reiterated that under its interpretation of the Critical Area Law, the Town's growth allocation request for the Perry Cabin Farm did not meet certain Critical Area Standards and Criteria. The CRITICAL AREA COMMISSION, however, explained that, as constrained by the April 11, 2005 Order in the CIVIL ACTION, it was compelled to grant the award of growth allocation. The CRITICAL AREA COMMISSION noted that it disagreed with the April 11, 2005 Order, and that it had filed an appeal thereof;

WHEREAS, on June 6, 2005, the Court of Special Appeals issued an Order enjoining the MIDLAND PARTIES from undertaking any impervious surface construction on the Perry Cabin Farm, pending outcome of the appeal in the CIVIL ACTION;

WHEREAS, during the pendency of the CIVIL ACTION the MIDLAND PARTIES and staff for the CRITICAL AREA COMMISSION have engaged in detailed discussions regarding site development and landscape and buffer management plans for the Perry Cabin Farm with respect to the property's 100-foot buffer along the Miles River and an extended development setback therefrom. As a result of these discussions, the MIDLAND PARTIES have proposed a revised development plan (the "Approvable Plan"). The staff of the CRITICAL AREA COMMISSION has recommended to the COMMISSION that the Approvable Plan meets the Critical Area Standards and Criteria referenced at NR § 8-1809(j). A copy of the Approvable Plan is attached hereto as Exhibit C; a copy of an illustrated cross-section of the Approvable Plan is attached hereto as Exhibit D; and a copy of an agreed upon planting list for the 100-foot buffer and additional setback within the Approvable Plan is attached hereto as Exhibit E. Exhibits C, D and E are each incorporated herein by reference, and each are made a substantive part of this Agreement;

WHEREAS, the CRITICAL AREA COMMISSION has exercised its independent judgment by applying the Critical Area Standards and Criteria to the Approvable Plan, and has entered this Agreement only after, and as a result of, its determination that this Plan meets with said Standards and Criteria;

WHEREAS, because the MIDLAND PARTIES are willing to pursue development of the Approvable Plan which the CRITICAL AREA COMMISSION has determined meets the Critical Area Standards and Criteria, it is the desire of the PARTIES to end the litigation

involving the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION which form the basis of the CIVIL ACTION;

WHEREAS, although the MIDLAND PARTIES are willing to develop the Perry Cabin Farm pursuant to the Approvable Plan, the MIDLAND PARTIES are unwilling to dismiss the CIVIL ACTION involving the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION unless and until the Commissioners of St. Michaels (the "Town Commissioners") also approve the specific form of development set forth in the Approvable Plan so that the MIDLAND PARTIES are certain that they have the requisite approvals from the relevant state and local governmental agencies to proceed with development based upon the Approvable Plan;

WHEREAS, in order to allow adequate time for the Town Commissioners to consider the Approvable Plan before the CIVIL ACTION progresses to the point when it is heard and decided by the Court of Special Appeals, the PARTIES shall file a motion to stay the CIVIL ACTION;

WHEREAS, if the motion to stay is granted by the Court of Special Appeals and the Town Commissioners consider and take action on the Approvable Plan, the PARTIES intend for the following to occur: (a) in the event that the Town Commissioners approve the Approvable Plan, the PARTIES shall file a motion to dismiss the CIVIL ACTION on the basis that the subject matter of the CIVIL ACTION is moot; or (b) in the event that the Town Commissioners reject the Approvable Plan or fail to either approve or reject the Approvable Plan by December 31, 2005, this Settlement Agreement shall automatically terminate and the PARTIES shall resume the CIVIL ACTION through a final judgment;

WHEREAS, Intervenors in the CIVIL ACTION, Fogg Cove Homeowners Association, Inc, et al. ("Fogg Cove"), have declined to join in this Agreement, and intend to pursue their

appeal in the CIVIL ACTION notwithstanding this Agreement. Fogg Cove has represented to the PARTIES that it will not join in a motion to dismiss or in a notice of dismissal of the CIVIL ACTION; and

WHEREAS, the PARTIES agree to move forward with this Agreement notwithstanding Fogg Cove's decision not to join in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and premises hereunder, and other good and valuable consideration, the PARTIES agree as follows:

Agreement Provisions

1. **Recitals.** The Recitals above are incorporated into these Agreement Provisions by reference, and made a substantive part of them.

2. **Critical Area Commission Action.** Based upon the CRITICAL AREA COMMISSION'S determination that the Approvable Plan meets applicable Critical Area Standards and Criteria, and expressly recognizing that the CRITICAL AREA COMMISSION is under no obligation pursuant to this Settlement Agreement to reach this determination, the CRITICAL AREA COMMISSION does, this 7th day of September, 2005:

(A) withdraw both the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION, subject to the Town's consent to said withdrawals; and

(B) approve the Town's request for growth allocation for the Perry Cabin Farm, conditioned upon the requirement, consented to in advance by the MIDLAND PARTIES, that the MIDLAND PARTIES shall develop, establish and manage the Perry Cabin Farm based upon the buffer, additional setback, buffer plantings and other requirements contained in the Approvable Plan as detailed in Exhibits C, D and E hereto. For purposes of clarity, Exhibit C is intended to illustrate, among other details specified thereon, the following: (1) that vegetative

enhancements within the setback area from mean high tide will have an average width of at least 150' as measured as of the date of commencement of construction of impervious surface in the areas adjacent to the setback; and (2) an absolute minimum setback of impervious surface from mean high tide of 150', also measured as of the date of commencement of construction of impervious surface in the areas adjacent to the setback, with the exception that the CRITICAL AREA COMMISSION approves the location of storm water management ponds within the 150' setback but outside of the 100' Buffer. For further clarity, Exhibit C does not depict the entire 150' setback on the Perry Cabin Farm but is illustrative of the PARTIES' intentions with respect to all of the setback on the Perry Cabin Farm. The tables on the right side of Exhibit C recite the planting requirements agreed to between the PARTIES under this Agreement. The tables on the left side of Exhibit C recite the prior conditions imposed in connection with the FIRST COMMISSION ACTION and the general CRITICAL AREA COMMISSION planting guidelines, both of which are modified under this Agreement for the development on the Perry Cabin Farm. The PARTIES agree that, subsequent to the execution of this Agreement and prior to implementation of a stormwater management plan by the MIDLAND PARTIES on the Perry Cabin Farm, the MIDLAND PARTIES shall present a stormwater management plan for the property to staff of the CRITICAL AREA COMMISSION and that the MIDLAND PARTIES and staff of the CRITICAL AREA COMMISSION will make a good faith effort to develop therefrom a mutually agreeable stormwater management plan. Any changes made by the MIDLAND PARTIES in implementing the Approvable Plan as detailed at Exhibits C, D and E must be approved, in advance, by the Chairman of the CRITICAL AREA COMMISSION.

3. **Midland Action.** The MIDLAND PARTIES shall submit the Approvable Plan to the Town Commissioners in sufficient time that the Town Commissioners may act to either

approve or reject the Approvable Plan by December 31, 2005. If not so expressed by the Town, the Town's approval of the Approvable Plan shall also constitute, for purposes of this Agreement, the Town's consent to the CRITICAL AREA COMMISSION's withdrawals of both the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION CONSISTENT consistent with paragraph 2.(A) above.

4. Motion for Stay. Within seven (7) days of the actions taken by the CRITICAL AREA COMMISSION pursuant to paragraph 2 above, the PARTIES shall file with the Court of Special Appeals a joint motion for a stay (the "Motion for Stay") requesting that the Court of Special Appeals stay the CIVIL ACTION until such time that the Town Commissioners have either approved or disapproved the Approvable Plan, and further until the Court of Special Appeals rules upon a joint motion to dismiss, if filed by the PARTIES pursuant to paragraph 5, below. If the Motion for Stay is denied by the Court of Special Appeals, or if the Court of Special Appeals fails to take action on the Motion for Stay prior to ruling upon the merits of the appeal of the CIVIL ACTION, or if the Motion for Stay is granted by the Court of Special Appeals and later vacated or reversed by the Court of Appeals, the actions taken by the CRITICAL AREA COMMISSION pursuant to paragraph 2 above, and this Agreement, shall be null and void.

5. Motion To Dismiss. In the event that the Town Commissioners approve the Approvable Plan, then within ten (10) days of that action the PARTIES shall file with the Court of Special Appeals a joint motion to dismiss the CIVIL ACTION as moot (the "Motion to Dismiss"); however, if the Town Commissioners deny the Approvable Plan, or if the Town Commissioners fail to either approve or reject the Approvable Plan by December 31, 2005, then

the terms of this Settlement Agreement shall automatically terminate and the PARTIES shall resume litigating the CIVIL ACTION.

6. Denial of Motion to Dismiss. If the Motion to Dismiss is denied by the Court of Special Appeals, or if the Court of Special Appeals fails to take action on the Motion to Dismiss prior to ruling upon the merits of the appeal of the CIVIL ACTION, or if the Motion to Dismiss is granted by the Court of Special Appeals and later vacated or reversed by the Court of Appeals, the actions taken by the CRITICAL AREA COMMISSION pursuant to paragraph 2 above, and this Agreement, shall be null and void.

7. Release. So long as this Agreement does not terminate by operation of paragraph 5 above, and is not rendered null and void by operation of either paragraphs 4 or 6 above, the MIDLAND PARTIES do release, acquit and forever discharge the CRITICAL AREA COMMISSION, and any and all other persons, associations and corporations, whether herein named or referred to or not, who together with the CRITICAL AREA COMMISSION may be jointly or severally liable to either the MIDLAND PARTIES of and from all RELEASED CLAIMS, including any and all claims that were or could have been raised in the CIVIL ACTION.

8. Indemnification. So long as this Agreement does not terminate by operation of paragraph 5 above, and is not rendered null and void by operation of either paragraphs 4 or 6 above, the MIDLAND PARTIES will indemnify and hold harmless the CRITICAL AREA COMMISSION against any and all costs and losses, including counsel fees, in any suit or proceeding arising out of the RELEASED CLAIMS brought by or on behalf of any one or more of the MIDLAND PARTIES in which the CRITICAL AREA COMMISSION is named as a party and is brought subsequent to the date of this Agreement. In the event any third party who

is not directed or controlled by the MIDLAND PARTIES initiates any suit or proceedings arising out of or relating to the RELEASED CLAIMS, naming either or both of the MIDLAND PARTIES or the CRITICAL AREA COMMISSION, the named PARTY or PARTIES, in any such litigation shall each defend their position at each PARTY's own cost, including, but not limited to, the cost of attorneys' fees.

9. **General Provisions.**

a. **Construction.** Unless the context requires otherwise, singular nouns and pronouns in this Agreement shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

b. **Merger and Integration.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all other prior oral or written agreements between the PARTIES. It is expressly understood that no amendment, deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all PARTIES.

c. **Severability.** Each and every provision of this Agreement is severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of the Agreement.

d. **Meaning and Effect.** This Agreement has been negotiated by the PARTIES through their respective counsel. The PARTIES attest, by their respective signatures below, that they understand the meaning of this document and the consequences of signing it and acknowledge that each has entered into this Agreement freely and after the opportunity to consult with counsel. The PARTIES accept this Agreement as their free and voluntary act, without

duress, and intend to be legally bound by it. This Agreement is made without any reliance upon any statements or representations by the PARTIES or their representative not contained herein.

e. ~~Costs.~~ The PARTIES shall bear all of their own costs and shall be responsible for all or their own attorneys' fees in connection with the CIVIL ACTION and in connection with the negotiation, execution and performance of this Agreement.

f. **Applicable Law.** The performance, construction and enforcement of this Agreement and any documents executed in connection with this Agreement shall be governed by the laws of the State of Maryland, without regard to conflicts of law.

g. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have knowingly and voluntarily signed and sealed this Settlement Agreement.

CRITICAL AREA COMMISSION:

By: Martin G. Madden (SEAL)
Martin G. Madden
Chairman
[Signature]
Witness

9/7/2005
Date

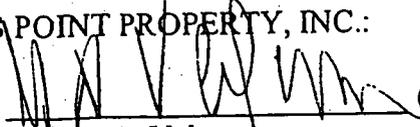
THE MIDLAND COMPANIES, INC.:

By: George A. Valanos (SEAL)
George A. Valanos
President
[Signature]
Witness

9-7-05
Date

MILES POINT PROPERTY, INC.:

By:


George A. Valanos
Managing Member

(SEAL)

9-7-05

Date



Witness

Robert W. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 14, 2004

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

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

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

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer.
2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.
3. In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.
4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be

EXHIBIT

A

Ms. Thomas
May 14, 2004
Page 2

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

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

Sincerely,



Mary R. Owens, Chief
Program Implementation Division

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

Critical Area Commission

DECISION

MAY 4, 2005

APPLICANT: Town of St. Michaels
(Midland Company, Miles Point III Growth Allocation Request)

On Remand from the Circuit Court for Talbot County, Maryland: *Midland et al. v. Critical Area Commission.*

PANEL RECOMMENDATION: See Panel Report

ACTION: Vote

BACKGROUND

The Town Commissioners of St. Michaels awarded 70.863 acres of growth allocation for the Miles Point Project, a residential development of 251 single-family units, 20 townhouses, 8 live/work units, an inn and a public waterfront park area. The Town submitted the request to the Commission for review and approval in 2004 (see the Panel Report of May 5, 2004 for the history of the project). The proposed project is adjacent to an existing IDA property south of the project site. The proposed development is located within the municipal boundaries of St. Michaels, and will be served by public sewer and water. The Town's proposal envisions intense development for the site, with impervious surface levels estimated to increase from the present state (primarily agricultural land at 0% impervious) to over 50% of the site. The developer proposes to dedicate the 100-foot Buffer area to the Town for use as a public park, including "gathering areas" for Town functions such as concerts and civic events.

Having determined in 2004 that the Town's proposed program amendment could "meet" the standards of Natural Resources Article 8-1808(b) (1) through (3) and the Commission's criteria **only** with the conditions to which the approval was subject, the Commission determined to approved the amendment **subject to the conditions**. Accordingly, the Commission approved the Town's request, subject to four conditions, as set forth in the Commission's letter of May 14, 2004, notifying the Town. That letter is part of the record for today's proceedings. These conditions were challenged by the developer. On appeal by the Midland Company, the circuit court for Talbot County granted mandatory relief in the form of an Order directing the Commission to take certain action at today's meeting.

The Circuit Court for Talbot County directed the Commission to take action on the Town of St. Michaels' request for program amendment in the Miles Point III matter at the first meeting which is at least ten days after the Commission's receipt of the Court's

EXHIBIT
R

Judgment in Case No. 5088, *Midland Companies, et al, v. Maryland Department of Natural Resources, Critical Area Commission*. The Commission received the Court's Judgment on April 14, 2005, and thus is obligated to act at today's meeting.

The original Panel in this growth allocation program amendment (from 2004) reconvened today, and reviewed the Court's opinion, the Panel Report and Supplemental Report from May of 2004, the Commission's notification to the Town of May 14, 2004, and, given the very limited time available, the original record of the proceedings. These documents, including the full record, were made available to all Commission members today.

The record before the Panel and the full Commission from the time of the original decision (May, 2004) remains the same as the record before the Panel and the Commission today, with the exception of the addition of the circuit court's opinion in the above case. The Commission has read, considered, and discussed the Panel's Report, Findings, and Recommendation dated today, May 4, 2005.

The Commission agrees with the Panel that, in considering an application for a program amendment, including a growth allocation, the Panel and the Commission have the obligation to consider the sections of the Maryland Code and the COMAR criteria adopted under §8-1808, as the General Assembly has directed the Commission to do in Natural Resources Article 8-1809 (i) and (j). Were the Commission able to again consider and determine if the proposed program amendment "meets" these statutory and regulatory criteria (without the challenged conditions), the Commission may very well determine that the amendment must be denied. However, the Commission recognizes that the Circuit Court stated (at page 11 of the April 11, 2005 Opinion) that the only issue for the Commission to consider is "whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area." The Commission has no choice but to attempt to comply with the directions in the Circuit Court's Order, and this Decision of the Commission is made under the strictures created by the Circuit Court's Order

The Commission further understands that the Circuit Court's Order of April 11, 2005 requires the Commission to act at today's (May 4, 2005) meeting, despite the fact that the Commission has appealed the circuit court's decision to the Court of Special Appeals. In addition to appealing the circuit court's decision to the Court of Special Appeals, the Commission has sought a stay of the circuit court's order both from the circuit court (no ruling on the Commission's motion) and from the Court of Special Appeals (stay denied, with leave to re-apply). Because the circuit court's order remains in effect, the Commission must act today on a decision with which it disagrees and has appealed.

The Commission has reviewed the Court's Order, and the Commission finds that the Court confined the Commission to a narrow set of considerations, that is: "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." (Opinion at page 11). From this sentence, the Commission understands that its function is limited to considering the existing record, and to determining whether the program amendment for growth allocation for the Miles Point property, as proposed for development, would meet the criteria for an IDA. (The Commission has ample evidence in the record to support a determination that the Miles Point property, as it currently exists, does not meet the criteria for an Intensely Developed Area, because the property is an undeveloped farm.) Thus, the Commission considered the record and the issue framed for its decision in light of the Court's statement that "the sole issue before the Commission is whether the property satisfies the definition of IDA as set forth in the criteria, and in applying criteria, those contained in §8-1808.1 are controlling in the case of inconsistency with those of the Commission." (Opinion at page 11, emphasis added). The constricted legal standard announced by the circuit court renders the Commission's fact-finding a perfunctory exercise.

STATUTE AND CRITERIA

The court's decision restricts the Commission to consider only the guidelines for growth allocation listed in Natural Resources Article §8-1808.1 and the Commission's criteria defining an Intensely Developed Area (COMAR 27.01.02.03). The relevant statutory provisions are set forth in the Panel Report, but we will repeat them here. The pertinent provisions of the Code, Natural Resources Article §8-1808.1 (c) are:

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;

(4) New intensely developed... areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed... 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.

The "criteria for an Intensely Developed Area" (Opinion at page 11) are found at COMAR 27.01.02.03 A and B:

A. Intensely developed areas are those areas where residential, commercial, institutional, and/or industrial, developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

(1) Housing density equal to or greater than four dwelling units per acre;

- (2) Industrial, institutional, or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area which the boundary of a municipality, whichever is less.

FINDINGS OF FACT AND STATEMENT OF REASONS

As discussed above in this Decision and in the Panel Report, the Commission's findings and recommendations are severely limited by the terms of the Court's order. Given that restriction, the Commission was mindful that it is not able to consider the statutory goals of the Critical Area Program, as required by Natural Resources Article 8-1809, nor is the Commission permitted to determine if the proposed program amendment "meets" those statutory goals or the Commission's criteria promulgated under §8-1808.

Based on the record, and in particular the facts set forth in the Panel Report and the Panel Reports from 2004, the Commission finds that:

- (1) The new IDA of Miles Point III will be located adjacent to an existing IDA.
- (2) The new IDA (after it is developed) will conform to the Commission's criteria for an intensely developed area and it has been designated on a map submitted by the Town as part of the application for program amendment.

The reasons for these findings are as follows:

- (1) The Town stated that the new IDA of Miles Point is adjacent, on the south side, to an existing IDA.
- (2) The new IDA will have residential uses predominating, (over 250 units on 70 acres) and will contain relatively little natural habitat, with impervious surface increasing from 0% to over 50%.
- (3) The new IDA will have housing density greater than three dwelling units per acre, and the area is served by public water and sewer collection.
- (4) The new IDA is greater than 20 acres.

DECISION

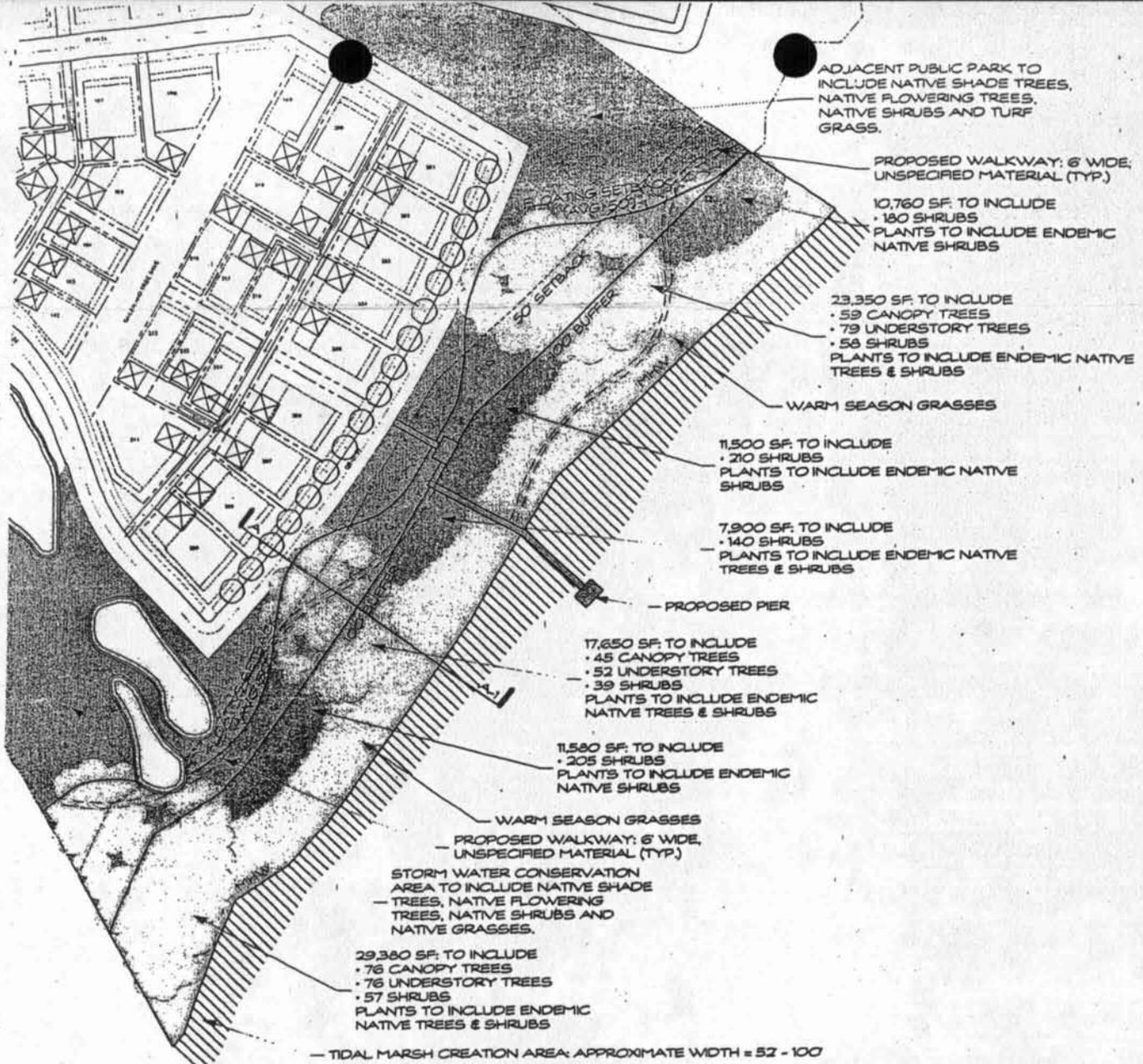
On the facts in the record, the sole issue the Commission is directed to consider by the circuit court, i.e. whether the property satisfies the definition of IDA as set forth in the criteria, (See Opinion at page 11) is easily decided. The Commission determines that the Miles Point III property will satisfy the definition of IDA when it is developed as proposed in the Town's requested program amendment. Because this determination appears to be the only one that is available under the circuit court's direction, the program amendment is approved.

Pursuant to the Court of Special Appeals' May 3, 2005 Order, the Commission intends immediately to seek a stay from the Court of Special Appeals of the effective date of this Decision approving the program amendment. This Decision is therefore stayed, and shall not become effective until such time as the Court of Special Appeals (or such higher court as a stay may be sought from) makes a decision on the Commission's request.

Dated: May 4, 2005

By: Martin G. Madden
Martin G. Madden, Chairman

This Decision was voted on and approved at the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays' regular meeting of May 4, 2005. The vote recorded was 17 in favor and 5 opposed and 1 abstained.



Planting Area	C.A.C. Growth Allocation	Condition
100' Buffer	103,530 sf	Trees, Shrubs
200' Setback	188,672 sf	Turf Grass
Tidal Marsh	0 sf	
Total	292,202 sf	

Planting Area	Miles Point Agreement Principles, Sept. 2005
Trees & Shrubs	112,120 sf Canopy Trees, Understory Trees, Shrubs
Warm Season Grasses	55,800 sf Warm Season Grasses
Storm Water Conservation Area	46,160 sf Trees, Shrubs, Native Grasses
Public Park	66,894 sf Trees, Shrubs, Turf Grass
Tidal Marsh	76,000 sf Native Grasses
Total	356,974 sf

100' Buffer Plantings	C.A.C. Planting Guidelines*
*C.A.C. Planting Guidelines	1 Canopy Tree plus 2 Understory Trees or 1 Canopy Tree plus 3 shrubs per each 400 sf within 100' Buffer
Total 100' Buffer Plantings	259 Trees 259 Understory Trees 388 Shrubs
Total Plantings	1,036 Trees & Shrubs

100' Buffer Plantings	Miles Point Proposed Planting, Sept. 2005 Agreement
Total 100' Buffer Plantings	180 Canopy Trees 1" Caliper 207 Understory Trees 1" Caliper 889 Shrubs min. 5 gallon container grown
Total Plantings	1,276 Trees & Shrubs

Notes:
 • Planting stock size = 1" caliper (avg.)
 • Planting rates for seed mix = 35 lb/AC (avg.)

Key:

- 100' Buffer
- 200' Setback/Adjacent Open Spaces &
- Canopy Trees, Understory Trees, Shrubs
- Shrubs
- Warm Season Grasses
- Tidal Marsh Creation Area

MILES POINT
 CONCEPTUAL SHORELINE BUFFER PLAN

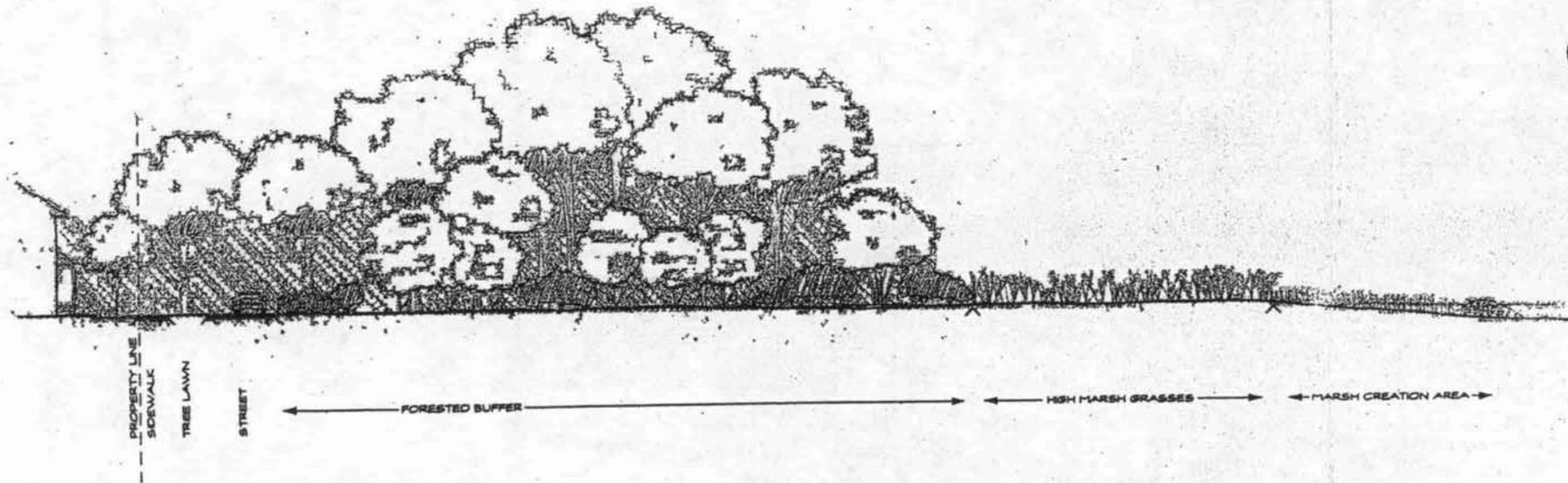
SCALE: 1" = 100'

02 SEPTEMBER 2005
 GRAHAM LANDSCAPE ARCHITECTURE

EXHIBIT

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Sublet



A-A1 TYPICAL SECTION 2
 Scale: 1" = 20'

Alles Point: Buffer
Management Plant List
5-Aug-05

Latin Name	Common Name	Size	Light	Moisture	Notes	Habitat Advantages
Trees						
Acer rubrum	Red Maple	20'	sun to light shade	moist, cool acidic		Excellent fall color. Buds, flowers and leaves provide food for many birds and mammals. Chipmunks and squirrels eat seeds and some songbirds use stalks for nest building.
Amelanchier arborea	Serviceberry	30'	sun to light shade	moist well drained		Fruit eaten by bluebirds, cardinals, and tanagers. Foliage is used by browsers.
Amelanchier canadensis	Serviceberry	15'	sun to light shade	wet to mod dry		Fruit eaten by bluebirds, cardinals, and tanagers. Foliage is used by browsers.
Carya ovata	Shagbark Hickory	30'	sun to light shade	moist to dry		Leaves are used by browsers. Nuts are also consumed by deer, turkey, foxes, wood ducks, and squirrels.
Cercis canadensis	Red Bud	25'	sun	moist		Great specimen tree but limited in wildlife value - provides color in the landscape.
Chionanthus virginicus	Fringe Tree	15'	sun to light shade	wet to mod dry		Limited wildlife value
Cornus florida	Flowering dogwood	15'	sun to light shade	moist		Fruit is an important food source for songbirds including evening grosbeak, cardinals, robins and cedar waxwings.
Ilex opaca	American Holly	20'	sun to light shade	moist		Used extensively by many songbirds including thrushes, mockingbirds, catbirds, bluebirds and thrashers. Foliage provides cover for songbirds and mammals.
Juniperus virginiana	Eastern Red Cedar	30'	sun to light shade	moist		Twigs and foliage are eaten by browsers. Seeds are eaten most extensively by cedar waxwings. Evergreen foliage provides nesting and roosting cover for songbirds, robins, mockers, junco, and warblers.
Magnolia virginiana	Sweetbay Magnolia	15'	sun to part sun	moist to wet		fruit attracts birds; larval food for swallowtails
Nyssa sylvatica	Black Gum	25'	sun to light shade	moist to wet		Fruit is relished by many songbirds. Users include wood ducks, robins, woodpeckers, thrashers, flickers, and mockingbirds.
Quercus alba	White Oak	100'	sun to light shade	moist		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer.
Quercus palustris	Pin Oak	30'	sun to part sun	moist to dry		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer.
Quercus phellos	Willow Oak	30'	sun to part sun	moist		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer.
Quercus rubra	Southern Red Oak	60'	sun to part sun	moist		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer.
Shrubs						
Aronia arbutifolia	Red Chokeberry	6'	sun to part sun	wet to dry	Plant in clumps	Fruit eaten by grouse, chickadees, and other songbirds.
Clethra alnifolia 'summersweet'	Summersweet clethra	4'-6'	sun to light shade	moist to wet		Limited wildlife value - Excellent for summer flower, shrub border. Good plant for wet areas with heavy shade.
Hydrangea arborescens	Smooth Hydrangea	4'	sun to light shade	moist to mod dry		
Hydrangea arborescens	Wild Hydrangea	6'	shade to part shade	moist		Berries used by a variety of wildlife.
Ilex glabra	Inkberry	6'	sun to shade	moist to mod dry		Used extensively by many songbirds, particularly thrushes, mockingbirds, robins, bluebirds and thrashers.
Ilex verticillata	Winterberry	8'	sun to light shade	moist to wet		Fruit capsules are used by some songbirds.
Ilea virginica 'Henry's Garnet'	Virginia Sweetspire	5'	sun to light shade	wet to mod dry		Attracts butterflies.
Lindera benzoi	Spicebush	6'	shade to part shade	dry to mod wet		Fruit is eaten by a variety of birds in small quantities including tree swallows and myrtle warblers.
Myrica pennsylvanica	Northern Bayberry	12'	sun to light shade	moist to dry		Limited wildlife value except as browse for deer and winter cover for songbirds.
Rhododendron catawbiense	Catawba rhododendron	8'	sun to shade	moist to mod dry		Limited wildlife value except as browse for deer and winter cover for songbirds.
Rhododendron viscosum	Swamp Azalea	8'	sun to light shade	moist to dry		Seeds are eaten by songbirds.
Rhus aromatica	Aromatic Sumac	6'	sun to part shade	moist to dry		Provides fruit for birds and other mammals.
Sambucus canadensis	Elderberry	12'	sun to light shade	moist to wet		Used heavily by grouse, scarlet tanager, bluebirds, thrushes and other songbirds.
Vaccinium corymbosum	Highbush Blueberry	8'	shade to part shade	mod wet to wet		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.
Viburnum acerifolium	Maple leaf viburnum	4'	sun to shade	moist to dry		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.
Viburnum dentatum	Arrowwood Viburnum	12'	sun to light shade	moist to dry		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.

EXHIBIT

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<i>Viburnum nudum</i>	Possum-Haw viburnum	6'	sun to light shade	wet to mod dry	Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.
Marsh Grasses					
<i>Hibiscus moscheutos</i>	Common Rose Mallow	6'	Sun	wet	Attracts butterflies
<i>Juncus roemerianus</i>	Black Rush	5'	Sun to partial shade	wet to moist	
<i>Myrica carifera</i>	Wax Myrtle				
<i>Myrica pensylvanica</i>					
<i>Rosa rugosa</i>	Rugose Rose	3'-6'			
<i>Scirpus robustus</i>					
<i>Solidago sempervirens</i>					
<i>Spartina alterniflora</i>					
<i>Spartina patens</i>					
Grasses					
<i>Andropogon glomeratus</i>	Bushy Bluestem				Provides wildlife food and cover.
<i>Andropogon virginicus</i>					
<i>Bouteloua curtipendula</i>	Side Oats Grama				Provides wildlife food and cover.
<i>Carex species</i>					
<i>Decantheium canadense</i>	Deer lounge				Provides wildlife food and cover.
<i>Dexchampsia cespitosa</i>					
<i>Elymus canadensis</i>	Canada Wild Rye				Provides food for many sparrow species
<i>Panicum virgatum</i>					Provides food for many sparrow species
<i>Schizachyrium scoparium</i>					
<i>Tridens flavus</i>	Purple Top				
Forb Seeds for Grass Mix					
<i>Aster novae-angliae</i>	New England Aster				
<i>Bidens cernua</i>	Nodding Bur Marigold				
<i>Eupatorium maculatum</i>	Spotted Joe-Pye Weed				
<i>Solidago graminifolia</i>	Grass-leaved Goldenrod				
<i>Mimulus ringens</i>	Square-stem Monkey Flower				
<i>Monarda fistulosa</i>	Wild Bergamot				
<i>Polygonum pennsylvanicum</i>	Pennsylvanica Smartweed				
<i>Senecio aureus</i>	Golden Ragwort				
<i>Verbena hastata</i>	Blue Vervain				
<i>Veronica novboracensis</i>	New York Ironweed				

EXHIBIT 3

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

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

Section 1: RECITALS

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

IMP FD SURE \$ 20.00
RECORD FEE 75.00
TOTAL 95.00
Rept # 75796
Bik # 560
Feb 20 2004 03:44 PM

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

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

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

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

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

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

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

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

St. Michaels Planning on behalf of The Commissioners of

LIBER 1 225-1006405

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

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

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

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

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

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

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

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

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

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

- 1.10.1 Providing the Developer with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, which assurance the Developer has sought in order to incur substantial commitments to develop the Subject Property, such that the development of every part of the Subject Property may be maintained and completed in the future during the term of this Agreement as a Traditional Neighborhood Development in accordance with the Development Plan as it relates to the Subject Property; and
- 1.10.2 Providing the prospective purchasers and future owners of the Subject Property with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement to assure them, to the fullest extent permitted by the Development Agreement Statute, that every part of the Subject Property will be developed and maintained during the term of this Agreement as a Traditional Neighborhood Development substantially in accordance with the Development Plan as it relates to the Subject Property; and
- 1.10.3 Providing the Developer with the right to petition the Town, and providing the Town with the right but not the duty, to amend the Agreement (the "Amendment") in accordance with the terms hereof, to add the Huntman Property to the definition herein of the "Subject Property" in exchange for the additional consideration provided herein relating to the Huntman Property as described in the Schedule Of Consideration To The Town (Exhibit 10), and thereby:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2: Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 2.22.1 All that land described in the deed dated August 31, 2001, from Elsie W. Hunteman to Miles, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 96, *et seq.*;
- 2.22.2 Consisting of 17.156 acres, more or less and more particularly shown on a plat prepared by McCrone, Inc., titled "ANNEXATION PLAT OF THE LANDS OF ELSIE W. HUNTEMAN TO THE TOWN OF ST. MICHAELS SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND," dated March 1998, a copy of which plat is attached hereto as Exhibit 7; and
- 2.22.3 Consisting of two (2) tracts of land which are the subject of a petition for annexation to the Town and Town Commissioners Resolution No. 2003-06, adopted on October 28, 2003.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.45 "State" means the State of Maryland.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 5.1 This Agreement shall be effective, and confer all rights and obligations according to the terms of this Agreement, on the Effective Date of this Agreement.
- 5.2 Unless waived in writing by the Developer, and subject to the conditions precedent to termination described in Section 5.3 of this Agreement, this Agreement shall terminate upon the first to occur of the following described circumstances (hereinafter “Terminating Circumstances”), which Terminating Circumstances the Developer shall in good faith, timely and diligently attempt to avoid:
 - 5.2.1 On the twenty-first (21st) day following the Effective Date, this Agreement has not been recorded among the County Land Records.
 - 5.2.2 The failure of at least of one Developer, as defined herein, to have an interest, of the type required by the Development Agreement Statute, in the Perry Cabin Land at any time before the Developer obtains fee simple title to the Perry Cabin Land.

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

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

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

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

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

- 5.2.5 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and granted, is not final by reason of an administrative or judicial remedy that has been pursued by a person legally entitled so to do, and that still is pending.
- 5.2.6 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and denied, is not final by reason of an administrative or judicial remedy that has been pursued by the Developer, and that still is pending.
- 5.2.7 Ten (10) years after any applicable law (including Talbot County Bill No. 933, enacted by the Talbot County Council on December 23, 2003) which purports to remove the power of the Town, as the sole and exclusive authority, to the exclusion of the Talbot County Council, to award the IDA growth allocation, contemplated by this Agreement, to permit development on the Perry Cabin Land in a form substantially similar to that shown on the Development Plan, has not been invalidated or otherwise rendered ineffective by: (a) a final and legally exhausted decision by any governmental agency authorized so to do; (b) a final and legally exhausted decision by a court of competent jurisdiction; or (c) applicable legislation.
- 5.2.8 When the Subject Property has been fully developed by the construction on the Subject Property of a Unit on all of the lots approved for a Unit according to the Development Plan and occupancy permits have been issued by the Town therefor, and all of the Developer Obligations and the payment of all consideration to the Town in connection with the Project, as specified by Section 10 of this Agreement, have been satisfied.
- 5.3 As conditions precedent to the termination of this Agreement by reason of the occurrence of any Terminating Circumstance described in Section 5.2 of this Agreement:
- 5.3.1 The Developer shall, by writing signed by an authorized officer of the Developer and delivered to the Town:
- 5.3.1.1 Relinquish all Development Approvals obtained by the Developer or its predecessors in interest in pursuit of the terms and requirements of this Agreement; and
- 5.3.1.2 Withdraw all applications for Development Approvals then pending that were sought pursuant of the terms and requirements of this Agreement; and
- 5.3.2 The Developer, for itself, its successor Developer Assigns, and its successors in interest as Owner of the Subject Property, hereby waives all

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

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

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

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

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

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

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

Section 6: Binding Effect, Assignment, Notice and Release

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

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

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

Miles Point Development Rights And Responsibilities Agreement

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

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

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

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

6.3 Transfer and Assignment of Rights and Interests

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7: Representations, Warranties and Covenants

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

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

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

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

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

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

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

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

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

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

Section 8: Development Rules and Restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 9.1.1** The Developer and the Town may mutually agree that the Project will be subject to a Future Land Use Regulation.
- 9.1.2** The Developer and the Town may make amendments, additions and waivers to this Agreement adopted pursuant to Section 6 of this Agreement.
- 9.1.3** The Qualifications set forth in Section 9.2 of this Agreement.

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

- 9.2.1 Non-Conflicting Future Land Use Regulations.** The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are not in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property;
- 9.2.2 Conflicting Future Land Use Regulations.** The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property if the Developer has given the Town specific written consent to the application of such rules to development of the Subject Property;
- 9.2.3 Cost And Time Effects of Future Land Use Regulations.** To the fullest extent permitted by the Development Agreement Statute and the Enabling Ordinance, any Future Land Use Regulation which increases the cost of development of the Subject Property, and any Future Land Use Regulation limiting the rate, timing or sequencing of development of the Subject Property, shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Subject Property.

- 9.2.4 County, State and Federal Laws and Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to existing and future applicable county, state and federal laws and regulations, together with any land use regulations, programs and actions, or inaction, that are reasonably (taking into consideration, among other things, the assurances provided to Developer hereunder) adopted or undertaken by the Town in order to satisfy a duty or obligation of the Town to comply with such applicable county, state and federal laws and regulations. In the event that applicable county, state or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations, in which event this Agreement shall remain in full force and effect provided that performance of the Agreement pursuant to the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.
- 9.2.5 Public Health, Safety or Welfare. The Qualified Vested Rights granted by Section 9.1 hereof in the Existing Land Use Regulations as they relate to the development of the Subject Property in accordance with the Development Plan, shall be subject to the power of the Town Commissioners to determine that compliance with laws, rules, regulations, and policies enacted or adopted after the Effective Date of this Agreement, to the extent such police powers are preserved for the Town by the Development Agreement Statute or the Enabling Ordinance, are essential to ensure the health, safety, or welfare of residents of all or part of the Town.
- 9.2.6 Building Standards. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit the application of present or future Building Standards, except that (taking into consideration the assurances to Developer in this Agreement) any future amendment thereto that reduces the amount of land within the Subject Property that can be utilized for structures and improvements, or increases the amount of open space within the Project, materially different from that depicted on the Development Plan, shall not be considered a provision of any of the Building Standards included within the exception provided by this Paragraph (6), but shall, to the extent permitted by the Development Agreement Statute and the Enabling Ordinance, not apply to and govern the Development of the Project unless it complies with another exception under this Section 9.
- 9.2.7 Customary Town Fees and Charges. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit customary Town fees and charges generally applicable and imposed by the Town pursuant to law upon all similarly situated applicants and property owners, including, but not limited to, the fees and charges for processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, annexation, growth allocation, proposed legislation, building permit fees, water system connection charges, occupancy permit fees, and other fees, charges and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.1 Infrastructure Costs, Fees, Charges, And Duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.3 Parks and Open Spaces

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.3.3.4 Approvals and Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

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

LIBER 1 225-1010444

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

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

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Public Facilities

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

Section 13. Administration of Performance

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

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

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

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

13.4 Good Faith Compliance Review

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

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

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

Section 14: Default and Remedies.

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

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

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

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

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

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

Section 15: Mortgage Protection; Certain Rights of Cure.

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

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

Miles Point Development Rights
And Responsibilities Agreement

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

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

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

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

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

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

Section 16: Estoppel Certificates.

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

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

Section 17: Conflicts of Laws, Rules, Regulations

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

17.2 Notice. Neither party shall claim that a conflict, as described in Section 17.1, exists, unless that party has given the other party at least thirty (30) days written notice of the conflict. The notice shall identify the law, regulation or non-Town governmental action, the date the law or regulation was enacted or the date the non-Town governmental action was taken, and the manner in which the law, regulation or non-Town governmental action conflicts with one or more provisions of this Agreement.

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

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

17.5 Cooperation in Securing Permits or Approvals. Provided Town and Developer agree to a modification or suspension of this Agreement pursuant to this Section 17, Town shall use its best efforts to assist Developer in the timely securing of any permits or approvals which may be required as a result of such modifications to, or suspensions of, all or any part of this Agreement.

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

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

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

Section 18: Miscellaneous Provisions

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

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

18.3 Invalidity, Unenforceability, Severability, And Savings Clause.

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

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

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

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

18.3.2.2 Second, if the provisions of Section 18.3.2.1 of this Agreement are not sufficient to save the validity and enforceability of the offending term(s) and/or provision(s) of this Agreement, then such offending term(s) and/or provision(s) shall be severed and deleted from this Agreement only to the extent necessary to save the validity and enforceability of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

De Olley

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

ST. MICHAELS POINT, L.L.C.

De Olley

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

MILES POINT PROPERTY, LLC

De Olley

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

TND DEVELOPMENT, INC.

E. C. O'Leary

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

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

By: St. Michaels Planning Commission

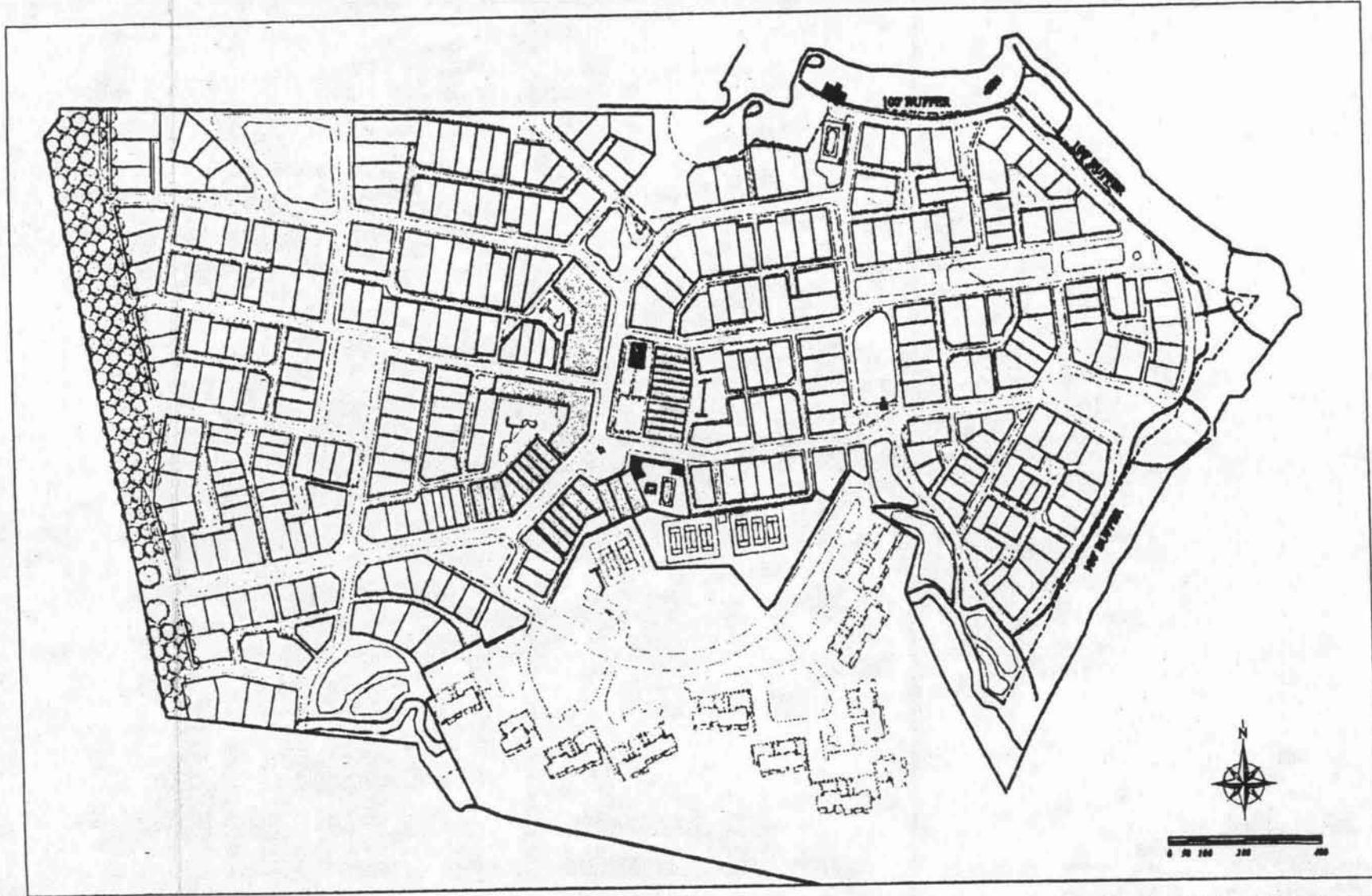
Cheril S. Thomas, Town Manager

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

APPROVED AS TO FORM:

By: H. Michael Hickson
H. Michael Hickson
Town Attorney

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



KEY

	Future Boundary (Proposed) for Miles Point
	Current Boundary
	Edge Boundary
	City Structure

Miles Point Concept Plan
St. Michaels, Maryland
December 11, 2009

SHAW PETERSON-STONE & COMPANY
2000 North Lane, Suite 200
St. Michaels, MD 20688
Phone: 410-326-1100

LIBER 1 2 2 5 FOLIO 4 6 7

MILES POINT
TOWN OF ST. MICHAELS, MD

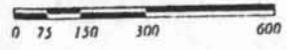
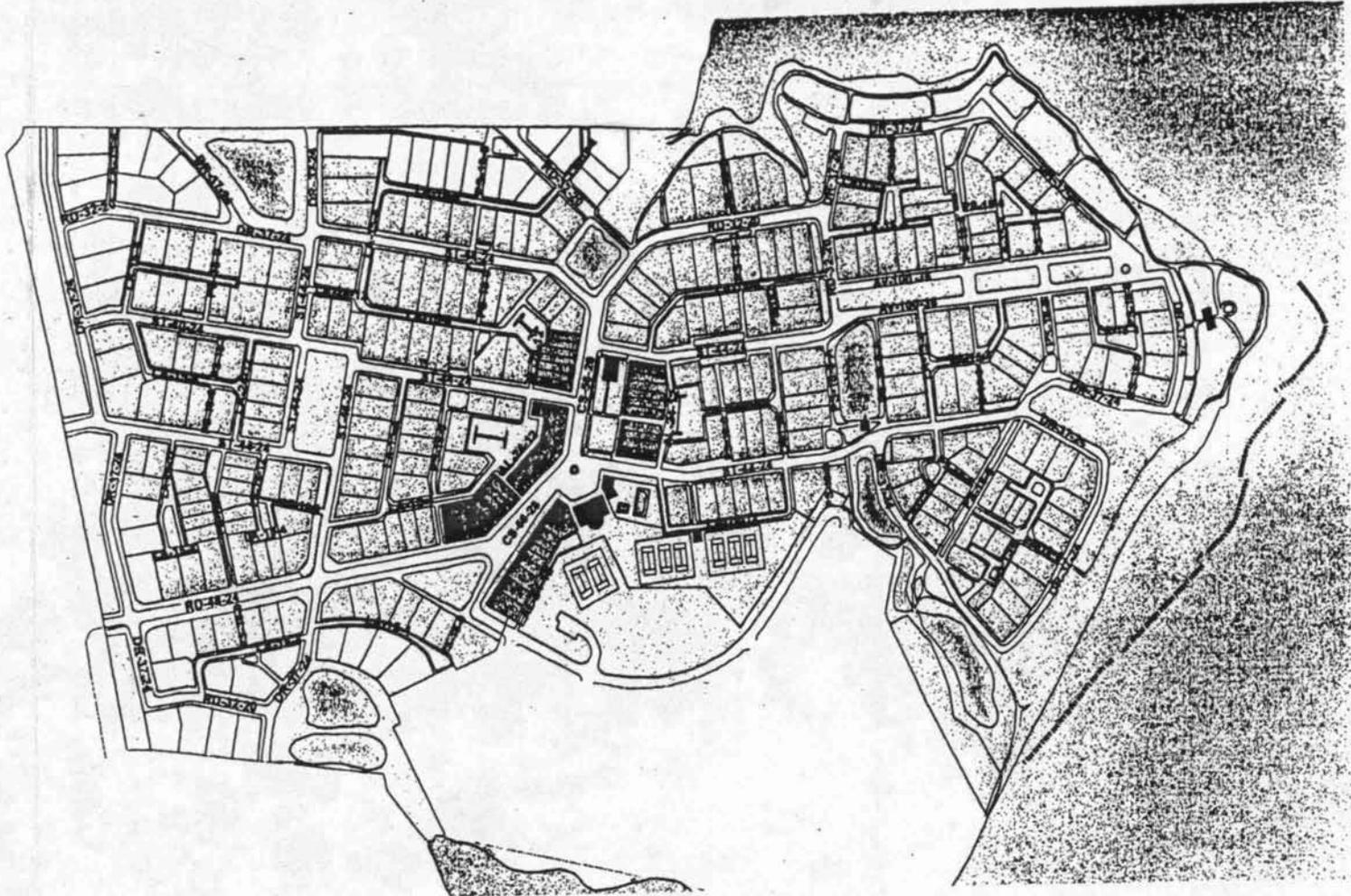


THE MIDLAND COMPANIES
DEVELOPER

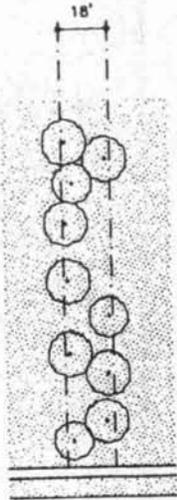
DUANY PLATER-ZYBERK & COMPANY
TOWN PLANNERS

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

LIBER 1225 FOLIO 458



LIBER 1225 FOLIO 470

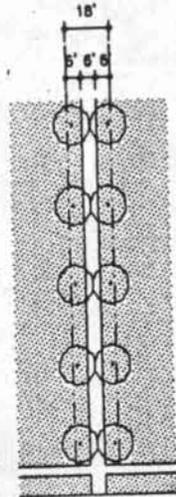


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-0

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

© 1998 Dunny Plaster-Zyberk & Company
Revision Date August 27, 1998

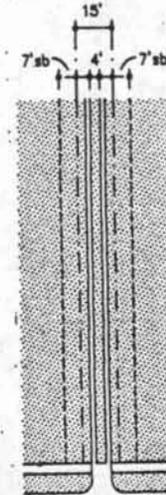


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

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

PS-18-6

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



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

LA-15-4

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

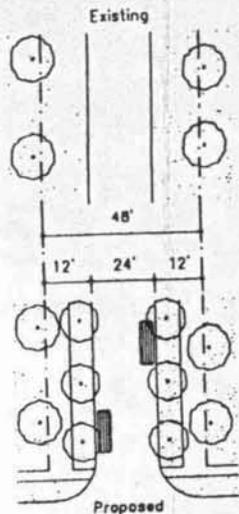


Alleys service the rear of lots nearest the Neighborhood Center where the density is greatest and uses may be mixed. They are more urban in character with a strip of paving at the center and shoulders that may or may not be paved.

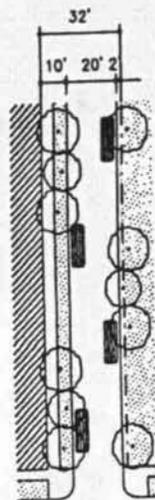
AL-24-12

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

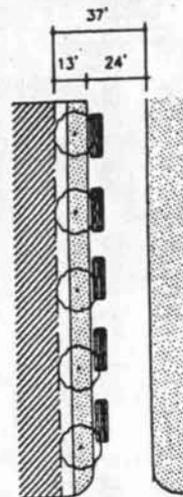
LIBERT 225 FOLDOUT 1



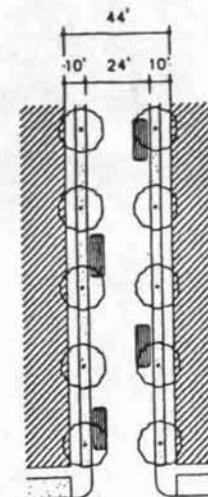
Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open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



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



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



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

RD-48-24

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

RD-32-20

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

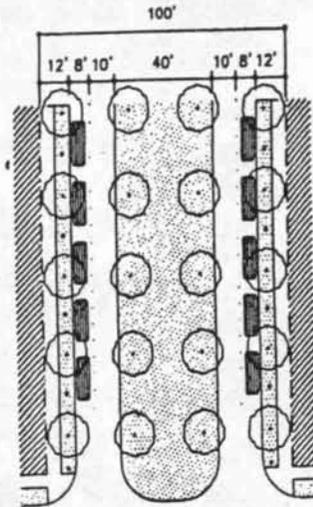
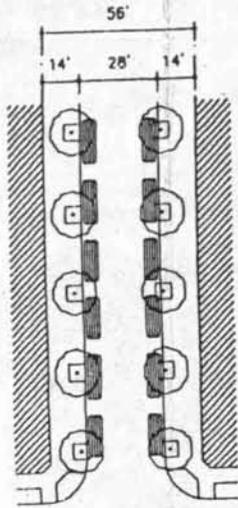
DR-37-24

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

ST-44-24

Precedent	No. 2
Type	Small residential street
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	4" Header curb
Curb Radius	5 ft.
Vehicular Design Speed	20 m.p.h.
Pedestrian Crossing Time	5.5 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Willow Oak
Ground Cover	Lawn

LIBRARY 225 FOLIO 472



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

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

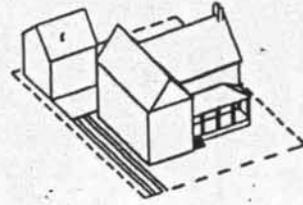
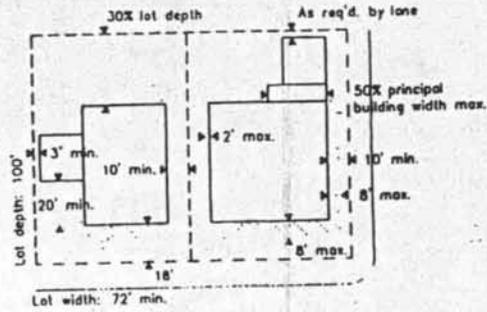
CS-56-28

Precedent	Talbot Street
Type	Commercial street
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	54 ft.
Pavement Width	28 ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	5 seconds
Sidewalk Width	9 ft.
Planter Width	3 ft.
Planter Type	Individual, except at arcade
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

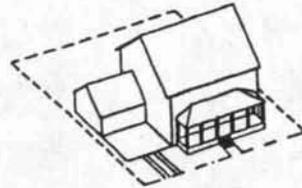
AV-100-36

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

NEIGHBORHOOD EDGE - LARGE HOUSE

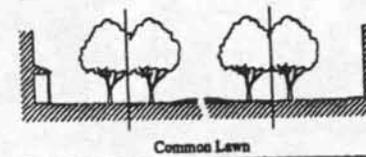
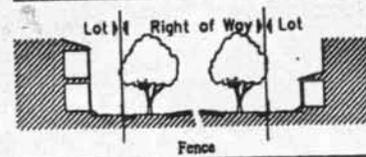


A Large House is a single-family residence on its own large lot. Within Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet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

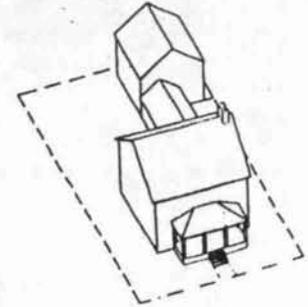
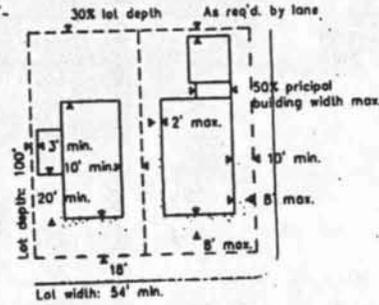


Lot size	72 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.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

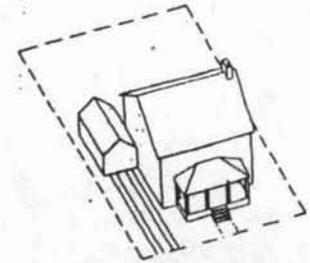
Frontage Types



NEIGHBORHOOD EDGE - HOUSE

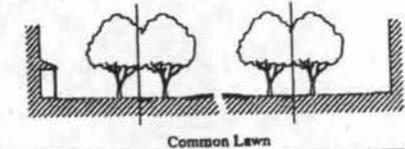
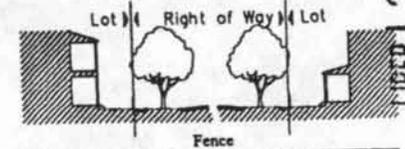


A House is a single-family residence on its own lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 54 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from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



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

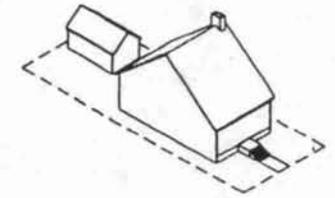
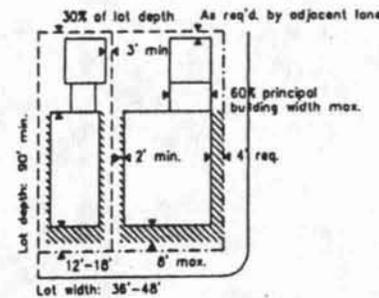
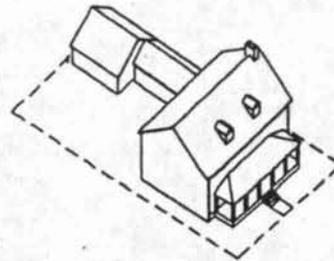
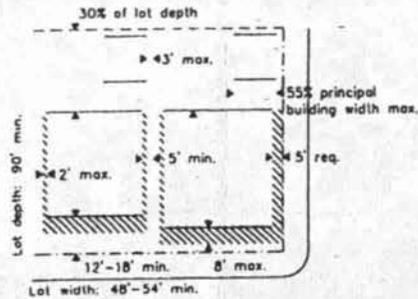
Frontage Types



LIBER 225 FOLIO 474

NEIGHBORHOOD GENERAL - HOUSE

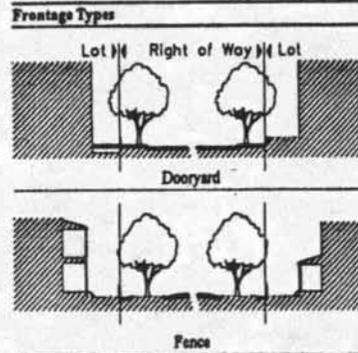
NEIGHBORHOOD GENERAL - COTTAGE



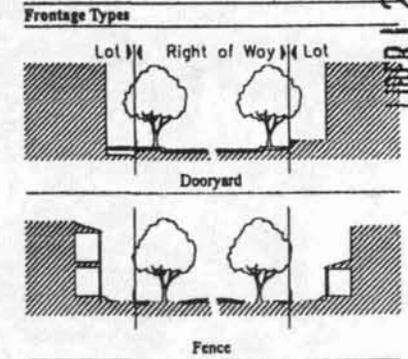
A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each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

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

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



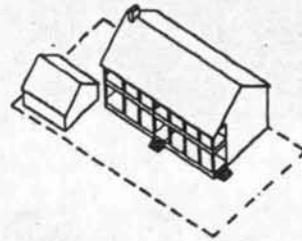
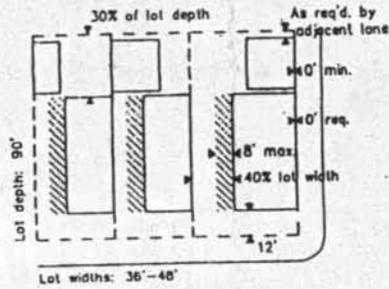
Lot size	30 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8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



LIBER 225 FOLIO 475

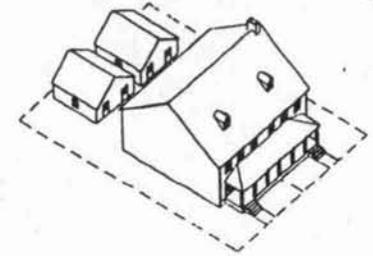
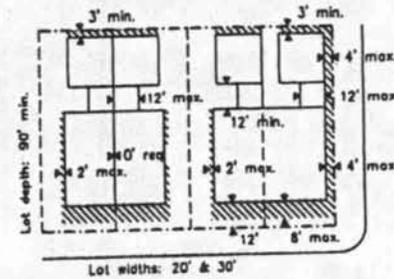
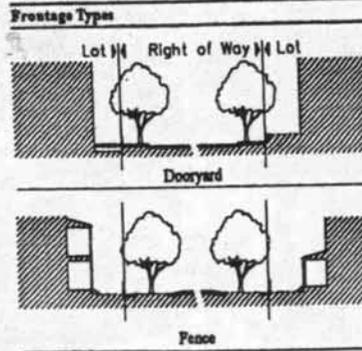
NEIGHBORHOOD GENERAL - SIDE YARD HOUSE

NEIGHBORHOOD GENERAL - DUPLEX HOUSE



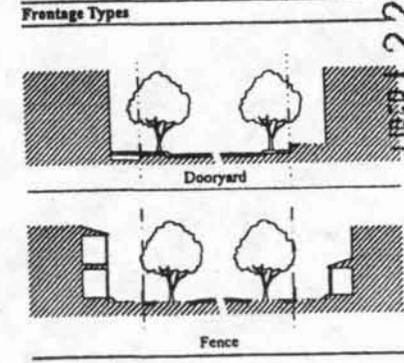
A Side yard House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from the North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

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

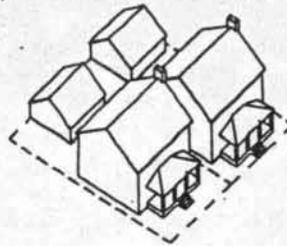
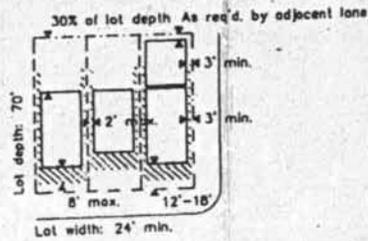


A Duplex House is two units sharing a lot, each with its yard. At corner locations, each duplex can have its own entry. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The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

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

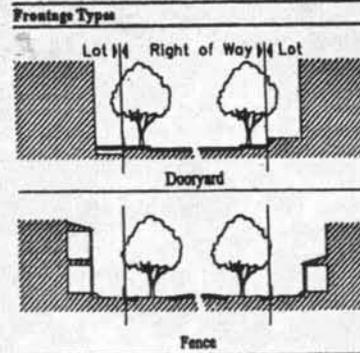


NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE



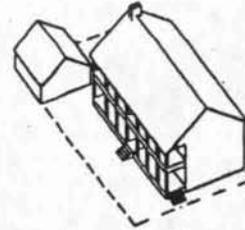
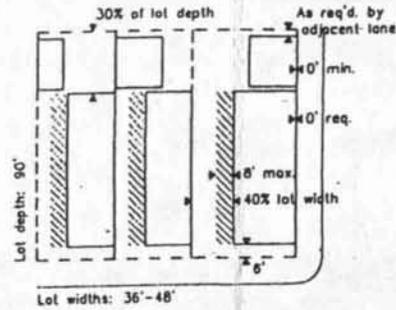
A Rosewalk Cottage is a single-family residence on its own lot, with frontage on a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal building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

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



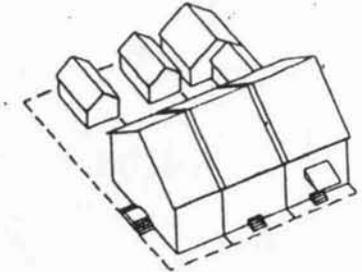
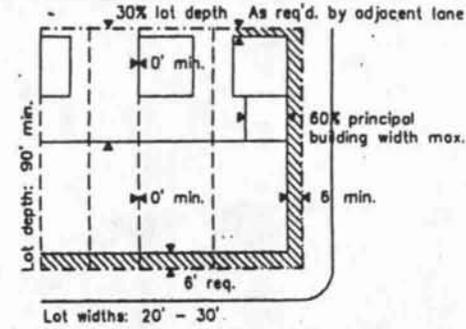
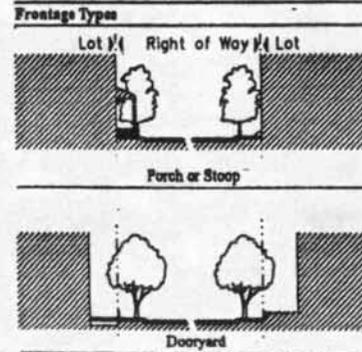
NEIGHBORHOOD CENTER - SIDE YARD HOUSE

NEIGHBORHOOD CENTER - ROW HOUSE



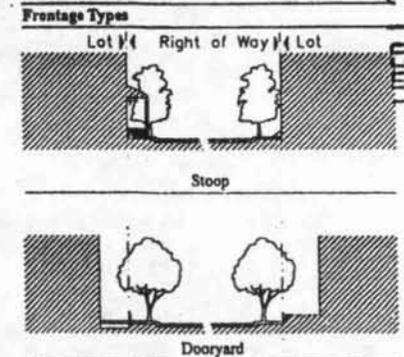
A Side yard House is a single-family residence on its own lot. Within the Neighborhood Center this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from the North or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

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



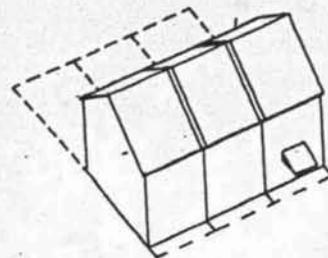
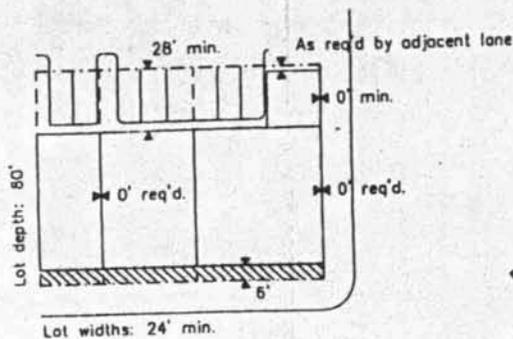
A Row House is a single-family attached residence on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from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

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



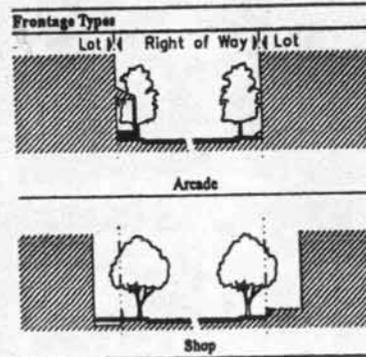
LIBER 225 FOLIO 478

NEIGHBORHOOD CENTER - SHOP/HOUSE



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

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



WALLS

Materials

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

Foundation walls shall be brick, stucco or parged block.

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

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

Piers shall be brick or stucco.

Retaining walls shall be brick.

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

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

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

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

Panelized materials are not permitted.

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

Configuration

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

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

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

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

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

Parging shall be cement with a smooth sand-finish.

Stucco shall be cementitious with a smooth sand finish.

Brick mortar joints shall be concave or grapevine.

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

Piers shall be no less than 16 inches square.

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

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

Intercolumnation on the ground floor shall have vertically proportioned openings.

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

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

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

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

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ATTACHMENTS

Materials

Stoops shall be brick or wood.

Chimneys shall be brick, or parged masonry.

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

Porches shall be made of wood.

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

Railings shall be wood.

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

Cornice and soffit shall be wood or cellular PVC.

Configuration

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

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

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

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

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

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

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

ROOFS

Materials

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

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

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

Flashing shall be metal or painted metal.

Configuration

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

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

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

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

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

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

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

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

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

OPENINGS

Materials

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

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

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

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

Screen doors shall be wood.

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

Configuration

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

Transoms shall be rectangular, arched or fan-shaped.

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

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

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

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

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

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

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

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

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STOREFRONTS

Materials

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

Signs shall be painted wood, painted metal or porcelain.

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

Configuration

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

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

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

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

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

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

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

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

Blade signs may be attached perpendicular to the facade and extend up to 4 feet from the frontage line and shall not exceed 2 feet in height.

Address numbers shall be a max. of 8" in height.

Storefronts and signage shall be painted a single dark gloss background color. Lettering may be any color.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

MISCELLANEOUS

Variances may be granted by on the basis of architectural merit by the Design Review Committee.

Properties and improvements shall conform to the intention, not the "letter", of The Architectural Regulations.

The following shall be located in rear yards: HVAC equipment, meters, solar panels, antennas, satellite dishes, garbage cans.

The following shall not be permitted: panelized materials, copper anodized aluminum.

Exterior light fixtures shall be compatible with the style of the building.

Driveways at frontages are allowed for properties without alley access and shall be a maximum of 10 feet wide. Alley driveways may be no wider than the garage doors they serve.

Paved Ruts shall be brick, gravel or grass pavers (e.g. "Grasscrete" blocks). Paved ruts are 2 feet wide and spaced 4 feet apart.

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

TREES

The Front Yard

The summer landscape will be enhanced with the extended bloom time of improved varieties of crapemyrtles introduced by the National Aroretum. White and Pale Pink preferred.

In addition to the tree in the adjacent thoroughfare,

Crapemyrtle

The Rear Yard

Medium size flowering trees and evergreens will add variety and privacy to the private gardens.

In addition to the trees in the Front Yard,,

Yellowwood

Carolina Silverbell

Southern Magnolia

Foster Holly

UNDERSTORY

All Yards

Flowering trees and shrubs are predominately natives for sustainability and to emphasize the distinct nature of the Chesapeake coastal plain to visitors. Non-native with historic associations are noted with an asterisk.

Serviceberry

Sourwood

Redbud

Fringetree

Oakleaf Hydrangea

Viburnum species

Winterberry

Inkberry

Dwarf summersweet

Dwarf Fothergilla

Hydrangea

Coast Azalea

Pinxter Azalea

Swamp Azalea

Boxwood*

Witchhazel

Lace Cap Hydrangea*

GROUNDCOVER

All Yards

Low maintenance gardens for seasonal residents can employ native perennials to add interest without creating a rigorous maintenance routine. Serious gardeners can enhance this palette with additional perennials. Natives are encouraged.

Fescue/Bluegrass Blend

Foamflower

St. Johnswort

Creeping Phlox

Fern

Leadwort

Green-and-Gold

Barrenwort

OTHER

All Yards

The fence line garden is a distinctive feature of St. Michaels. These plants are found at the base of the fence and climbing on the fence.

Hollyhocks

Daylilies

Iris

Trumpet Honeysuckle

Climbing Hydrangea

Trumpet Vine

Climbing Rose Species

Clematis

INSTRUCTIONS

For every 25 feet of frontage or fraction thereof, one species or cultivar of tree from this list shall be planted. Planting other tree species is permitted, but shall not count toward the fulfillment of the objective of establishing a visually coherent spatial structure for microclimate.

Tree heights at the time of planting vary according to species and availability and shall be determined by the Landscape Supervisor.

The placement of trees in frontages shall be within 10 feet of the frontage line and in alleys within 4 feet of either side of the rearlot line. Trees in the Village Edge may be placed anywhere, except at least one tree shall be placed within 8 feet of the rearlot line.

The soil profile shall be protected from deep compaction during building construction by mandating and staking alley or lane access during construction. Compacted soil areas shall be decompacted and hydrological permeability assured by mechanically breaking up remnant basement soil and rototilling 2-3 inches of recycled organic matter before the addition of a mix of organically amended topsoil.

Energy conservation measures, such as planting shade trees near the southern facades of buildings to block summer sun, are encouraged.

Landscape Plans for private gardens should be prepared by a qualified professional in the field of landscape architecture or garden design.

RECEIVED

OCT 31 2005

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL
RESOURCES

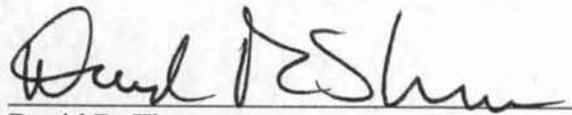
Defendant

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

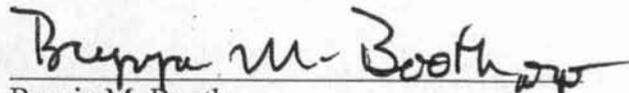
* * * * *

**TOWN OF OXFORD'S CONSENT TO MILES POINT, LLC'S
AND THE MIDLAND COMPANIES, INC.'S MOTION TO INTERVENE**

Defendant the Town of Oxford, by and through its attorneys David R. Thompson, Brynja M. Booth, and Cowdrey, Thompson & Karsten, a Professional Corporation, hereby consents to Miles Point, LLC's and The Midland Companies, Inc.'s (collectively "Miles Point") Motion to Intervene and to Miles Point being made a defendant in the above-captioned matter.



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

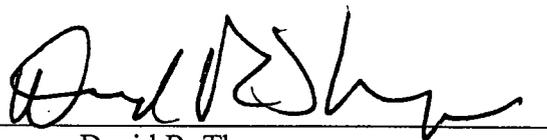
I hereby certify that on this 27th day of October, 2005, a copy of the foregoing Consent to Motion to Intervene was sent first class mail, postage prepaid to:

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

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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

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs. :

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

DEPT OF NATURAL RESOURCES :

Defendant :

RECEIVED

OCT 27 2005

**TALBOT COUNTY'S RESPONSE TO
COMMISSIONERS OF ST. MICHAELS'
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

DNR - LEGAL DIVISION

TO: COMMISSIONERS OF ST. MICHAELS
FROM: TALBOT COUNTY, MARYLAND

Talbot County, Maryland, Plaintiff/Counter-Defendant, by its attorneys, Allen, Karpinski, Bryant & Karp, Daniel Karp, Victoria Shearer, and Michael L. Pullen, submits the following response to the Second Request for Production of Documents from the Commissioners of St. Michaels, Intervenor/Counter-Plaintiff.

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 ("County") 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 the Second Request 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, 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 Second Request for Production of Documents (the "Second Request") to the extent it seeks documents or other information that are 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 it seeks documents or other information within The Commissioners of St. Michaels ("St. Michaels") possession, or to the extent it seeks legal conclusions. The County objects to the extent it 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 Second Request is vague, overly broad, or seeks information beyond the scope of permissible discovery. The County objects to the extent the Second Request is unduly burdensome, oppressive, and Requests documents or information that is not calculated to lead to discoverable information.

Responses

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

Response to Request No. 1: The County incorporates the specific responses and objections submitted in response to St. Michaels First Set of Interrogatories and First Request for Admissions of Fact. Without waiving those objections, all non-privileged documents have been or will be made available for inspection and copying at a mutually convenient date, time, and place.

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

Response to Request No. 2: The County objects to the extent this Request seeks disclosure of documents that are privileged by the legislative privilege, executive privilege, attorney-client privilege, or attorney work product privilege. Without waiving any of those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of Bill No. 762, as kept in the ordinary course of business in the County's legislative file have been or will be made available for inspection and copying at a mutually convenient date, time, and place.

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

Response to Request No. 3: The County objects to the extent this Request seeks disclosure of documents that are privileged by the legislative privilege, executive privilege, attorney-client privilege, or attorney work product privilege. Without waiving any of those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of Bill No. 933, as kept in the ordinary course of business in the County's legislative file have been or will be made available for inspection and copying at a mutually convenient date, time, and place.

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 that 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).*

Went 1092 acres (ninety (90) percent of 1213 acres) has been approved for growth allocation by the talents 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 1213 to 2426 acres). Upon Critical Area Commission approval, the County shall reserve the acreage for each town.

If the commission approves the doubling of the number of acres that may be rezoned under this section, in the County will have its full allocation of 2554 acres for growth as specified in the County's Critical Area Plan, that is 1213 acres (original limit) + 1213 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below = 2554 acres). The Maryland Critical Area Law does not allow for a full 2426 acre allocation (1213 + 1213) at the time of establishment of this Section (August 13, 1989).

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

Response to Request No. 4: The County objects to the extent this Request seeks disclosure of documents that are privileged by the legislative privilege, executive privilege, attorney-client privilege, or attorney work product privilege. Without waiving any of those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of Bill No. 699, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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 an old BA. The Requested ID a 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).”*if

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

Response to Request No. 5: The County objects to the extent this Request seeks disclosure of documents that are privileged by the legislative privilege, executive privilege, attorney-client privilege, or attorney work product privilege. Without waiving any of those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of Bill No. 459, as kept in the ordinary course of business in the County’s legislative file have been or will be produced at a mutually convenient date, time, and place.

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.

Response to Request No. 6: The County objects to the extent this Request seeks disclosure of documents that are privileged by the legislative privilege, executive privilege, attorney-client privilege, or attorney work product privilege. Without waiving any of those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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

Response to Request No. 7: The County objects to this Request because it falsely mischaracterizes Bill 933. Bill 933 contains no such statement, nor has the County ever made any such claim.

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.

Response to Request No. 8: The County objects to this Request because it falsely mischaracterizes Bill 933. Bill 933 contains no such statement, nor has the County ever made any such claim.

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.

Response to Request No. 9: The County objects to this Request because it is overly broad, oppressive, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The County objects to this Request because it calls for legal conclusions, and seeks to discover the legal theories, mental impressions, and work product of counsel. The laws, standards, and criteria enacted as part of the "Chesapeake Bay Critical Area Protection Program" speak for themselves and, as applied, call for interpretation by counsel. Those laws are available in the Md. Ann. Code, and COMAR, as interpreted by the Maryland Court of Appeals, the Maryland Court of Special Appeals, and by the Circuit Courts. Without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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

Response to Request No. 10: The County objects to this Request for the reasons stated in Responses to St. Michaels Interrogatories Nos. 4 and 5. The County objects to this Request because it does not seek to obtain copies of documents that are made, kept, or prepared by the County in the ordinary course of business, but documents that have been obtained by counsel in preparation for litigation and for trial, documents which are already in the possession of the Municipalities. This Request is designed to determine the nature and extent of counsel's trial preparation and not to discover information concerning any fact in dispute. Nevertheless, without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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 our related to any award or contemplated award of growth allocation by the Municipalities since January 1, 1989.

Response to Request No. 11: The County objects to this Request for the reasons stated in Response to Request No. 10. Without waiving any objection, any such testimony relating to the 155 acres of growth allocation awarded by the County to the Town of Easton in connection

with "Easton Village" will be made available for inspection and copying at a mutually convenient date, time, and place.

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, established, an act or implement bill 933, and/or the subject matter, purpose or contents of Bill 933.(see COMAR 27.01.02.06 .A.(2).)

Response to Request No. 12: The County objects to this Request for the reasons stated in answer to St. Michaels Interrogatory No. 2. Nevertheless, without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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 (sic) 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).)

Response to Request No. 13: The County objects to the extent this Request seeks disclosure of documents that are privileged by the legislative privilege, executive privilege, attorney-client privilege, or attorney work product privilege. Without waiving any of those objections the County objects to this Request for the reasons stated in response to the St. Michaels' Public Information Act Request dated October 16, 2005. Nevertheless, without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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) .)

Response to Request No. 14: The County objects to this Request and incorporates its response to St. Michaels' Interrogatory No. 4. Nevertheless, without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

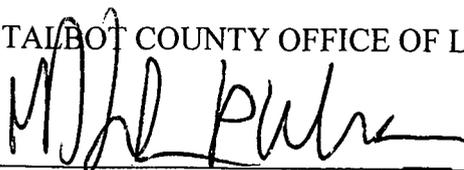
Request No. 15: All documents referring to, relating to or regarding each act, by or on behalf of the County, "to accommodate a growth needs" of any of the Municipalities since January 1, 1989.

Response to Request No. 15: The County objects to this Request and incorporates its response to St. Michaels' Interrogatory No. 5. Nevertheless, without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

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 Article, § 8-1801, (b), (2.))

Response to Request No. 16: The County objects to this Request for the reasons stated in the Answer to St. Michaels Interrogatory No. 6, which are incorporated by reference herein. Nevertheless, without waiving those objections, all documents made, kept, or generated by the County in connection with the introduction, consideration, or enactment of any Bill awarding growth allocation to Easton, Oxford, or St. Michaels, including all bills adopting or amending the County's local Critical Area program, as kept in the ordinary course of business in the County's legislative file have been or will be produced at a mutually convenient date, time, and place.

TALBOT COUNTY OFFICE OF LAW



By: Michael L. Pullen, County Attorney
11 N. Washington Street
Easton, Maryland 21601
(410) 770-8092

Certificate of Service

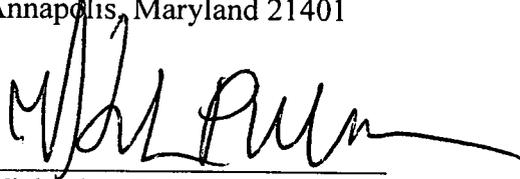
I HEREBY CERTIFY that on this 24th day of October, 2005, a copy of Talbot County's Response to The Commissioners of St. Michaels Second Request for Production of Documents was mailed first-class, postage prepaid to:

H. Michael Hickson, Esquire
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Cowdrey, Thompson & Karsten, PA
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Victoria Shearer, Esq.
Allen, Karpinski, Bryan & Karp
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Baltimore, Maryland 2120

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



Michael L. Pullen

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 24th day of October, 2005, a copy of Talbot County's Response to The Commissioners of St. Michaels' Second Request for Production of Documents was mailed first-class, postage prepaid to:

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

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Allen, Karpinski, Bryan & Karp
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TALBOT COUNTY OFFICE OF LAW



By: Michael L. Pullen

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :
Plaintiff :
vs. : Civil Action No. 2-C-04-005095 DJ
DEPT OF NATURAL RESOURCES :
Defendant :

**RESPONSE TO COMMISSIONERS OF ST. MICHAELS'
FIRST SET OF INTERROGATORIES TO TALBOT COUNTY**

TO: COMMISSIONERS OF ST. MICHAELS
FROM: TALBOT COUNTY, MARYLAND

Talbot County, Maryland, Plaintiff/Counter-Defendant, by its attorneys, Allen, Karpinski, Bryant & Karp, Daniel Karp, Victoria Shearer, and Michael L. Pullen, submits the following response to the First Set of Interrogatories from the Commissioners of St. Michaels, Intervenor/Counter-Plaintiff.

The information supplied in this Response is not based solely upon the knowledge of the executing party, but includes the knowledge of the party's agents, representatives and attorneys unless privileged. The word usage and sentence structure is that of the attorney who in fact prepared these Answers and this language does not purport to be the exact language of the executing party.

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 ("County") 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 the First Set of Interrogatories 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 First Set of Interrogatories (the "Interrogatories") to the extent it seeks 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 it seeks documents or other information within The Commissioners of St. Michaels ("St. Michaels") possession, or to the extent it seeks legal conclusions. The County objects to the extent it 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 Interrogatories are vague, overly broad, or seek information beyond the scope of permissible discovery. The County objects to the extent

the Interrogatories are unduly burdensome, oppressive, and request documents or information that is not calculated to lead to discoverable information.

Responses

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).)

Response to Interrogatory No. 1: The County’s contentions are set forth in the Complaint, as amended and supplemented, and as developed and presented during the course of this litigation through the work product, mental impressions, and trial strategy of counsel. The County contends that it has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. The County contends that Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments. The County contends that all parts of Talbot County Code §190-109 D. and E. should be construed together, as amended by Bill 933, and when so construed, they establish a process to accommodate the growth needs of the Municipalities.

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).)

Response to Interrogatory No. 2: The County objects to this Interrogatory because it falsely mischaracterizes and misstates the law applicable to enactment or consideration of Bill 933. The County has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

The County objects to this Interrogatory because it implies that County legislation must be enacted according to a non-existent legal standard that is impractical, uncertain, vague, and one that (if it did exist) would violate the full power to enact legislation delegated to charter counties by the General Assembly under the Express Powers Act, Article 25A §5, Md. Ann. Code. The County contends that Bill 933 was properly enacted in accordance with applicable procedures.

Without waiving those objections, by enacting Bill 933, the County has demonstrated its willingness to work jointly with all of the Municipalities to accommodate their growth needs. State law creates and delegates growth allocation acreage to the County. State law requires the County, in coordination with affected Municipalities, to establish a process to accommodate the growth needs of the Municipalities. The County, in coordination with affected Municipalities, has already established a process to accommodate the growth needs of Municipalities when the County enacted Bill 762. Bill 933 makes that joint review process that already exists between the Town of Easton and the County, the same process the Critical Area Commission has already approved, applicable to St. Michael's and Oxford as well.

Without waiving these objections, the County has engaged in an extensive planning process with each of the Municipalities for each of the three Comprehensive Plans adopted by Talbot County since January 1, 1989, viz., 1991, 1997, and 2004. Utilizing the joint county/municipal review process the County, in coordination with affected Municipalities, has established, the County has granted approximately 155 acres of growth allocation to the Town of Easton for municipal annexation and residential development of "Easton Village" adjacent to Maryland Route 333 (St. Michaels Road) in the critical area at the headwaters of the Tred Avon River. The County's award of growth allocation to the Town of Easton has been approved by the Critical Area Commission.

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

Response to Interrogatory No. 3: The County objects to this Interrogatory because it falsely mischaracterizes and misstates the law applicable to enactment or consideration of Bill 933. The County has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

The County contends that all parts of Talbot County Code §190-109 D. and E. should be construed together, as amended by Bill 933, and when so construed, they establish a process

to accommodate the growth needs of the Municipalities. The Response to Interrogatory No. 2 is incorporated by reference herein.

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).)

Response to Interrogatory No. 4: The County objects to this Interrogatory because it is vague, uncertain, and overly broad. The scope, breadth, and time span in this question make it oppressive and unduly burdensome, and as framed it is not reasonably calculated to lead to the discovery of admissible evidence. This case does not allege the existence of any controversy that began January 1, 1989. Any such claim would be long since barred by the statute of limitations and by laches.

Since January 1, 1989, elections have occurred in November 1990, 1994, 1998, and 2002, for all seats on the 5-member County Council. Members of the Council have changed, some have moved away, some are deceased. The County Planning Commission also consists of 5 members, each serving a term of 5 years. Since January 1, 1989 those members have also changed, some have moved away, some are deceased. Changes have also occurred among the elected municipal leaders and members of municipal planning commissions in the County. Since January 1, 1989, the County has developed, discussed, and ultimately approved 3 Comprehensive Plans, in 1991, 1997, and 2004. Each of those Plans involved a large number of committees and subcommittees appointed by the County Council, and a large number of citizen participants (for example, the 2004 Plan involved approximately 80 citizen volunteers who worked on the Plan over a three-year period).

See Answer to Interrogatory No. 2, which is incorporated by reference herein.

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.

Response to Interrogatory No. 5: The County incorporates the objections and response to Interrogatory No. 4.

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 Article., § 8-1801,(b.), (2).)

Response to Interrogatory No. 6: See Answer to Interrogatory No. 2, which is incorporated by reference herein.

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.

Response to Interrogatory No. 7: The County objects to this Interrogatory for the reasons stated in response to Interrogatory Nos. 2, 4, 5 and 6, which are incorporated by reference herein. Without waiving those objections, all members of the County Councils for the years 1989 through 1990, 1994, 1998, and 2002; all members of the Talbot County Planning Commission since January 1, 1989, municipal and County staff, all citizen participants in the County Comprehensive Plan process for the years 1991, 1997, and 2004; all County and Town staff 1989 to present, developers, attorneys, engineers, and members of the general public who participated in the municipal/county processes for awarding growth allocation to the Town of Easton in connection with municipal annexation and development within the Town of Easton as set forth in the County's Answer to Interrogatory No. 4.

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

Response to Interrogatory No. 8: The County objects to this Interrogatory because it is overly broad, oppressive, unduly burdensome, and not calculated to lead to the discovery of admissible evidence. Coupled with the ongoing obligation to supplement discovery responses, this Interrogatory literally requests the County to disclose and continually keep The Commissioners of St. Michaels apprised of ongoing communications concerning the case. The County objects to this Interrogatory because it seeks disclosure of attorney-client communications, communications that are protected by executive and legislative privilege, and communications that would disclose legal theories and mental impressions of counsel.

Without waiving those objections, the County has produced voluminous documents and transcripts in response to multiple Requests for Production of Documents and Public Information Act requests and the requested information is included in the documents that have been produced.

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 any 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.

Answer to Interrogatory No. 9: The County objects to this Interrogatory because it seeks disclosure of the legal theories, mental impressions, and trial strategy and tactics of counsel. Without waiving that objection, the County has produced voluminous documents and transcripts in response to multiple Requests for Production of Documents and Public Information Act requests. The County reserves the right to rely upon any documents or transcripts that have been produced. The County reserves the right to seasonably supplement the County's prior Response to the Requests for Production of Documents if additional documents become available, and to rely thereon.

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.

Answer to Interrogatory No. 10: All members of the County Councils for the years 1989 through 1990, 1994, 1998, and 2002; all members of the Talbot County Planning Commission since January 1, 1989, municipal and County staff, all citizen participants in the County comprehensive planning process for the years 1991, 1997, and 2004; all County and town staff, developers, attorneys, engineers, and members of the general public who participated in the municipal/county processes for awarding growth allocation to the Town of Easton in connection with municipal annexation and development within the Town of Easton as set forth in the County's Answer to Interrogatory No. 4. The subject matter of which these persons have knowledge is set forth in the Complaint, as amended and supplemented, the Responses to these interrogatories, and the documents that have been produced, and that the County has engaged in an extensive planning process with each of the Municipalities for each of the three Comprehensive Plans adopted by Talbot County since January 1, 1989, viz., 1991, 1997, and 2004. Talbot County has granted approximately 155 acres of growth allocation to the Town of Easton for municipal annexation and residential development of "Easton Village" adjacent to Maryland Route 333 (St. Michaels Road) in the critical area at the headwaters of the Tred Avon River, which has since been approved by the Critical Area Commission.

Interrogatory No. 11: If you allege that St. Michaels has made any admissions, statements or take any actions against its interests in this case, described 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.

Answer to Interrogatory No. 11: The County objects to this Interrogatory because it seeks disclosure of the legal theories, mental impressions, and trial strategy and tactics of counsel. Without waiving that objection, the County has produced voluminous documents and transcripts in response to multiple Requests for Production of Documents and Public Information Act requests. The County reserves the right to rely upon any documents or transcripts that have been produced. The County reserves the right to seasonably supplement the County's prior Response to the Requests for Production of Documents if additional documents become available, and to rely thereon.

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. Michael's, state all facts upon which you base such contention.

Answer to Interrogatory No. 12: The County's contentions are set forth in the Complaint, as amended and supplemented, and as developed and presented during the course of this litigation through the work product, mental impressions, and trial strategy of counsel. The County objects to this Interrogatory because it falsely mischaracterizes and misstates the law applicable to the consideration of Talbot County's local critical area program. Counsel does not choose to characterize the County's contentions as stated in this Interrogatory, but contends that this Interrogatory itself is flawed. The County contends that it has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. The County contends that Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

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 such contention.

Answer to Interrogatory No. 13: The County's contentions are set forth in the Complaint, as amended and supplemented, and as developed and presented during the course of this litigation through the work product, mental impressions, and trial strategy of counsel. The County objects to this Interrogatory because it falsely mischaracterizes and misstates the law applicable to the consideration of Talbot County's local critical area program. Counsel does not choose to characterize the County's contentions as stated in this Interrogatory, but contends that this Interrogatory itself is flawed. The County contends that it has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the

Municipalities. The County contends that Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

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 such contention.

Answer to Interrogatory No. 14: The County's contentions are set forth in the Complaint, as amended and supplemented, and as developed and presented during the course of this litigation through the work product, mental impressions, and trial strategy of counsel. The County objects to this Interrogatory because it falsely mischaracterizes Bill 933 and misstates the law applicable to the consideration of Bill 933 and to Talbot County's local critical area program. Counsel does not choose to characterize the County's contentions as stated in this Interrogatory, but contends that this Interrogatory itself is flawed. The County contends that it has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. The County contends that Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

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.

Answer to Interrogatory No. 15: The County's contentions are set forth in the Complaint, as amended and supplemented, and as developed and presented during the course of this litigation through the work product, mental impressions, and trial strategy of counsel. The County objects to this Interrogatory because it falsely mischaracterizes Bill 933 and misstates the law applicable to the consideration of Bill 933. Counsel does not choose to characterize the County's contentions as stated in this Interrogatory, but contends that this Interrogatory itself is flawed. The County contends that it has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. The County contends that Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

Interrogatory No. 16: If it is your contention that 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.

Answer to Interrogatory No. 16: The County objects to this Interrogatory because it falsely mischaracterizes Bill 933 and misstates the law applicable to the consideration of Bill 933. Neither Bill 933 nor the County has ever made any such statement.

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 (sic), state all facts upon which you base such contention.

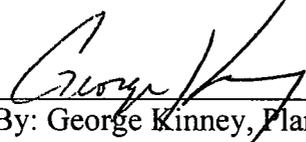
Answer to Interrogatory No. 17: The County objects to this Interrogatory because it falsely mischaracterizes Bill 933 and misstates the law applicable to the consideration of Bill 933. Neither Bill 933 nor the County has ever made any such statement.

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 such contention.

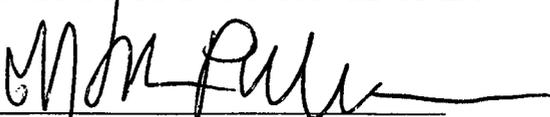
Answer to Interrogatory No. 18: The County’s contentions are set forth in the Complaint, as amended and supplemented, and as developed and presented during the course of this litigation through the work product, mental impressions, and trial strategy of counsel. The County contends that it has established a process, in coordination with affected Municipalities, to accommodate the growth needs of the Municipalities. The County contends that Bill 933 meets the standards and criteria that the Critical Area Commission is required to apply when considering local program amendments.

I SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING ANSWERS TO INTERROGATORIES ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

TALBOT COUNTY, MARYLAND


By: George Kinney, Planning Officer

TALBOT COUNTY OFFICE OF LAW:


By: Michael L. Pullen, County Attorney
11 N. Washington Street
Easton, Maryland 21601
(410) 770-8092

Certificate of Service

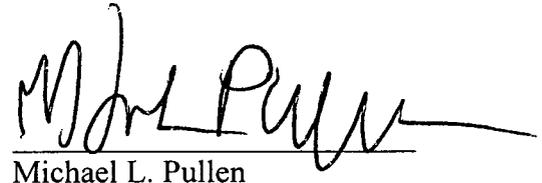
I HEREBY CERTIFY that on this 24th day of October, 2005, a copy of Talbot County's Responses to The Commissioners of St. Michaels First Set of Interrogatories was mailed first-class, postage prepaid to:

H. Michael Hickson, Esquire
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113 S. Baptist Street
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Paul J. Cucuzzella, Esquire
Marianne D. Mason, Esquire
Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401


Michael L. Pullen

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 24th day of October, 2005, a copy of Talbot County's Responses to The Commissioners of St. Michaels First Set of Interrogatories was mailed first-class, postage prepaid to:

Paul J. Cucuzzella, Esquire
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
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TALBOT COUNTY OFFICE OF LAW



By: Michael L. Pullen

36

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
DONNA HILL STATON
DEPUTY ATTORNEY GENERAL
MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES

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October 24, 2005

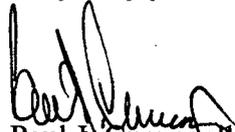
Clerk of the Court
Circuit Court for Talbot County
11 N. Washington Street
P.O. Box 723
Easton, Maryland 21601

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' Consent To Miles Point, LLC's And The Midland Companies, Inc.'s Motion To Intervene. 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.
Richard A. DeTar, 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.

*

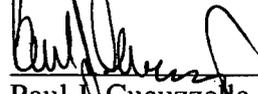
* * * * *

**DEPARTMENT OF NATURAL RESOURCES' CONSENT TO MILES POINT, LLC'S
AND THE MIDLAND COMPANIES, INC.'S MOTION TO INTERVENE**

Defendant Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, by and through its undersigned attorneys, hereby consents to Miles Point, LLC and The Midland Companies, Inc.'s (collectively "Miles Point") Motion to Intervene and to Miles Point being made a defendant in the above-captioned matter.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Paul J. Cucuzzella
Marianne D. Mason

Office of the Attorney General
Department of Natural Resources

580 Taylor Avenue, C-4
Annapolis, MD 21401

(410) 260-8352

*Attorneys for Department of Natural
Resources*

Dated: October 24, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October 2005, a copies of the foregoing

Consent were mailed first class, postage prepaid to:

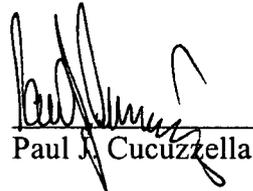
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Paul J. Cucuzzella