IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

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

* *

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DNR - LEGAL DIVISION

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	:	

TALBOT COUNTY'S MOTION FOR SUMMARY JUDGMENT

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, moves pursuant to Maryland rule 2-501 for summary judgment as there are no genuine disputes of material fact and the County is entitled to judgment as a matter of law, for the reasons set forth in the memorandum of law filed herewith.

ALLEN, KARPINSKI, BRYANT
& KARP

BY: Daniel Karp/cs
DANIEL KARP

11/14/05
Exh. 48

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

TALBOT COUNTY, MARYLAND

BY: _____

MICHAEL L. PULLEN
Talbot County Attorney
142 N. Harrison Street
Easton, Maryland 21601
(410) 770-8093

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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	:	

MEMORANDUM IN SUPPORT OF TALBOT COUNTY'S MOTION FOR SUMMARY JUDGMENT

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 instant memorandum of law in support of its motion for summary judgment.

INTRODUCTION

On or about June 11, 2004, Talbot County, Maryland filed a Complaint for declaratory judgment (Count I), writ of mandamus (Count II), and appeal from an administrative agency decision (Count III) with respect to the May 14, 2004 determination of the Maryland Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (hereinafter referred to as "CAC") denying approval of Talbot County Bill No. 933 as a local amendment to Talbot

County's Local Critical Area program.

On or about July 6, 2004, Defendant CAC filed a motion to dismiss. Thereafter, the County filed an Amended Complaint, and Defendant CAC withdrew its motion to dismiss as to Count II of the Amended Complaint. On or about September 23, 2004, the Commissioners of St. Michaels moved to intervene in the case. Plaintiff opposed intervention by St. Michaels. On or about November 11, 2004, the Town of Oxford moved to intervene. A hearing on the towns' motions to intervene and the CAC's motion to dismiss was held on November 17, 2004 (Calvin Sanders, J., presiding). By order dated December 1, 2004, the Court granted the towns' motions to intervene. By order dated December 8, 2004, the Court denied the CAC's motion to dismiss with respect to Count I (declaratory judgment) and granted it with respect to Count III (administrative appeal). Thus, the remaining Counts are Count I for declaratory judgment and Count II for mandamus.

On or about February 18, 2005, Talbot County filed its Second Amended Complaint, adding relevant facts. On April 14, 2005, a scheduling conference was held. The Court set a discovery deadline of October 14, 2005 and a dispositive motions deadline of November 14, 2005.

On or about October 19, 2005, five days past the discovery deadline, Miles Point LLC and Midland Companies, Inc. filed a motion to intervene. That motion has been opposed by Talbot County, and is currently pending before the Court.

STATEMENT OF FACTS

Talbot County, Maryland, is a charter county and a political subdivision of the State of Maryland. The CAC is a Commission within the Department of Natural Resources created by statute, §8-1803, Natural Resources Article of the Maryland Code. The Commissioners of St. Michaels, intervenor-defendant, is a municipal corporation in Talbot County (hereinafter "St. Michaels") and, thus, it derives all of its corporate and municipal powers entirely from the State of Maryland.. Similarly, the Town of Oxford (hereinafter "Oxford"), intervenor-defendant, is a Maryland municipal corporation deriving all of its corporate and municipal powers entirely from the State of Maryland.

A. Enactment of the Chesapeake Bay Protection Act.

The Chesapeake Bay has been in decline for a number of years. One of the principal causes of that decline is pollution from the adjacent land mass. Studies have shown a direct link between population proximity to the shore and pollution in the adjacent Bay waters and rivers. One of the Maryland General Assembly's statewide responses to the decline of the Bay was the enactment of the Chesapeake Bay Protection Act in 1984. The Act required the 16 counties, Baltimore City, and 44 municipalities surrounding the Bay each to implement a land use and resource management program designed to mitigate the damaging impact of water pollution and loss of natural habitat, while also accommodating the jurisdiction's future growth. The Critical Area Act recognizes that the land immediately surrounding the Bay and its tributaries has the greatest potential to affect water quality and

wildlife habitat and, thus, it designated "all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment" as the "Critical Area." Md. Code, Nat. Res. Art., §8-1807 (a) (2). The critical area is a 1,000 foot ribbon encircling the Bay that transects County-municipal boundaries.

The Chesapeake Bay Critical Area Program is enacted in the Maryland Code, Natural Resources Article, Title 8, Subtitle 18, entitled "Chesapeake Bay Critical Area Protection Program." The applicable regulations adopted are contained in the Code of Maryland Regulations (COMAR), Title 27, "Critical Area Commission for the Chesapeake and Atlantic Coastal Bays."

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

(a) The General Assembly finds and declares that:

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

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

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

(4) Human activity is harmful in these shoreline areas, where the new

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

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

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

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

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

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

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

Id.

The purposes of the Chesapeake Bay Critical Area Protection Program, as stated in §8-1801(b) are:

> (1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality in natural habitats; and
>
> (2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

Id.

The Critical Area law provided that land lying within the critical area be mapped as either "Resource Conservation Area" (RCA), "Limited Development Area" (LDA), or "Intensely Developed Area" (IDA), based upon the density of existing development as of December 1, 1985.

B. Creation of the Critical Area Commission ("CAC").

The Critical Area law created a statewide Critical Area Commission ("CAC") to oversee the development and implementation of local land use programs directed towards the Critical Area. Md. Code, Nat. Res. Art., §§8-1803 to 8-1806. The powers of the CAC are "all powers necessary for carrying out the purposes of this subtitle," including (1) to "adopt regulations and criteria" in compliance with State law; (2) to "conduct hearings in connection with policies, proposed programs, and proposed regulations;" and (3) to "contract for consultant or other services." Id., §18-806.

C. **Growth Allocation.**

Growth Allocation is defined as "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." Md. Code, Nat. Res. Art., §8-1802 (a)(4). "Local jurisdiction" is defined to include a county or municipal corporation with planning and zoning powers in which any part of the Critical Area is located. Md. Code, Nat. Res. Art., §8-1802 (a)(7). The Critical Area law provides the "5% rule," i.e., that "[g]rowth allocation for a local jurisdiction shall be calculated based on 5 percent of the total resource conservation area in the local jurisdiction at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government." Md. Code, Nat. Res. Art., §1808.1(b). When St. Michaels, Oxford, and Talbot County each enacted their respective local Critical Area programs, they each therefore had growth allocation acres within their respective boundaries to use for additional growth potential. In other words, each jurisdiction was allotted a finite number of acres to be used as growth allocation to reclassify land within their boundaries from RCA to LDA or IDA, and from LDA to IDA.

A landowner or developer wishing to develop a property to a density that exceeds the property's existing Critical Area classification as RCA or LDA must apply to the local jurisdiction(s) for approval of growth allocation; reclassification is a legislative act by the local governing body. Awards of growth allocation by each jurisdiction are subject to Critical Area Commission approval. If growth allocation is awarded, the area is remapped

from RCA to either LDA or IDA, or from LDA to IDA.

D. Talbot County's Adoption of a Local Critical Area Program and Voluntary Reservation of Growth Allocation Acres for the Towns.

The Critical Area Commission must approve any proposed local critical area program. Md. Code, Nat. Res. Art., §8-1809. In accordance with this requirement, Talbot County submitted its proposed program to the Critical Area Commission for review and approval. See, Talbot County Council Resolution No. 56 dated May 23, 1989, with attached Critical Area Plan, attached hereto as Exhibit 1. The Critical Area Commission approved Talbot County's proposed program and it became effective August 13, 1989. See Talbot County Critical Area Zoning Ordinance, attached hereto as Exhibit 2. At the time, three planning maps were included showing anticipated growth areas around the towns of Easton, Oxford, and St. Michaels. Using those 1989 planning maps, growth allocation acreage was "reserved" by the County for Easton (155 acres), Oxford (195 acres), and St. Michaels, (245 acres). Id., p. 49 (¶b). No growth allocation was reserved for the Town of Queen Anne. The acres of growth allocation "reserved" for the Towns consisted of land (1) that was located in the County, not in any Town; and (2) that was part of the County's growth allocation under the State Critical Area law. The County's "reservation" of growth allocation acres for the use of the Towns was voluntary on its part, as it was not required by any State law.

The County's Critical Area ordinance also provided that the number of reserved acres allocated to the Towns "shall be reviewed by the County and Towns by June 1, 1993

for possible reallocation and at least every 4 years thereafter." Exhibit 2, p. 50 (¶d). The County's ordinance further provided that "[s]pecific annexation requests for property included in the acres reserved for the Towns . . . shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations." Id., p. 50 (¶g).

Talbot County has 2,554 total acres of growth allocation under the State 5% formula. No more than half of the total expansion permitted by growth allocation may be located in the RCA. Md. Code, Nat. Res. Art. § 8-1808.1 (c) (3). If Talbot County is unable to utilize the other half within or adjacent to existing IDA or LDA areas, then that portion may be used in the RCA. Md. Code, Nat. Res. Art. Art. § 8-1808.1 (c) (5).

To implement this State requirement as part of the local program, Talbot County enacted § 190-109 D. (9) (a), (b), and (c). These provisions do the following:

1. 2,554 acres were sub-divided into 2 parts; 2,426 acres for growth in the RCA, and 128 acres for growth in the LDA;
2. 1,213 acres (½ of the total 2,426 acres for RCA growth) was fixed as the maximum number of acres to be reclassified from RCA to another classification. This limit encompassed all lands lying within the Critical Area within incorporated towns.
3. Of those 1,213 acres, 155 acres were reserved for the Town of Easton, 195 acres were reserved for the Town of Oxford, 245 acres were reserved for the Town of St. Michael's for growth allocation associated with annexations, and 618 acres was reserved for the County. Talbot County Code § 190-109 D. (9) (a).
4. When 1,092 acres (90% of the 1,213 acres) has been approved for use by the towns

and/or the County, the County may then request that the Critical Area Commission implement the exception in Md. Code, Nat. Res. Art. Art. § 8-1808.1 (c) (5) to release the remaining ½ of the County's total growth allocation, for use in the RCA.

5. If the Critical Area Commission approves that request, the County would then have the full 2,426 acre allotment under the 5% rule.

Fourteen years passed after the County enacted § 190-109 D. (9) (a), (b), and (c) before the County adopted Bill 933. During that time, until the present, the following changes occurred in the RCA Critical Area in the County:

1989 Reservation of RCA Growth Allocation

Local Jurisdiction	Total acres – 1,213	Percent (%) of Total (R)
County	618	51%
St. Michaels	245	20%
Oxford	195	16%
Easton	155	12%
Queen Anne	-0-	-0-

Between 1989 and 2003, prior to adoption of Bill 933, the County granted requests for 302 acres of growth allocation. St. Michaels granted requests for 20 acres, Oxford granted requests for 15 acres, and Easton used its full allocation of 195 acres.

2003, prior to adoption of Bill 933

Local Jurisdiction	Total acres – 721	Percent (%) of Total (R)
County	316	43%
St. Michaels	225	31%
Oxford	180	24%
Easton	-0-	-0-
Queen Anne	-0-	-0-

Along with adoption of Bill 933, the County separately granted Easton's request for 156 acres of supplemental growth allocation using the joint review process established by Bill 762, to be used for development of 156 acres of RCA Critical Area adjacent to the Tred Avon River on Md. Rt. 33 (St. Michael's Road). The following table shows the total growth allocation for RCA Critical Area currently available assuming Bill 933 is not in effect, and then assuming it is:

2005 – Bill 933 not in effect

Local Jurisdiction	Total acres – 565	Percent (%) of Total (R)
St. Michaels	225	39%
Oxford	180	31%
County	160	28%
Easton	-0-	-0-
Queen Anne	-0-	-0-

2005 – Bill 933 in effect

Local Jurisdiction	Total acres – 565	Percent (%) of Total (R)
County	565	100%
St. Michaels	-0-	-0-
Oxford	-0-	-0-
Easton	-0-	-0-
Queen Anne	-0-	-0-

St. Michael's and Oxford have used a total of 35 acres of growth allocation for RCA Critical Area since 1989. Between them, absent Bill 933, they control 405 acres of RCA growth allocation. In comparison, the County has 160 acres and the other municipalities have none. In 2003, simultaneously with adoption of Bill 933 the County gave

approximately ½ of its total growth allocation to Easton (through Bill 925) using the joint review process under Bill 762.

E. Oxford and St. Michaels' Adoption of Local Critical Area Programs.

Both St. Michaels and Oxford adopted local critical area programs. St. Michaels' Critical Area Local Program was enacted June 1, 1988, more than one year before the County's Local Program was adopted. With respect to Oxford, much of the area included in the 1989 (anticipated) growth areas around Oxford has already been developed, in the County, without any request for or award of growth allocation and annexation of that area has specifically been rejected by Oxford.

F. Requirement That Each Local Jurisdiction Periodically Review Its Critical Area Program and Provision for Program Amendments and Refinements.

Each local jurisdiction is required to review its entire Critical Area program and propose any "necessary amendments to its entire program, including local zoning maps, at least once every 6 years."[1] Md. Code, Nat. Res. Art., §8-1809(g).

Moreover, §8-1809(h), entitled "Proposed program amendments and refinements," provides that "[a]s often as necessary but not more than 4 times per calendar year, each local jurisdiction may propose program amendments and program refinements to its adopted program." Id. Section 8-1809(i) provides that "[a] program may not be amended except with the approval of the Commission." Id.

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[1] The six-year review provision replaced an earlier requirement that local jurisdictions review their programs every four (4) years.

G. The Mandatory Statutory Criteria to be Applied by the CAC to Local Critical Area Program Amendments.

Section 8-1809(j) sets forth the mandatory standards for approval by the CAC, as follows:

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

Id.

The standards set forth in §1808 (b)(1) through (3) are as follows:

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

Id.

The "criteria adopted by the Commission under §8-1808" of this subtitle appears to refer to subsection (d) entitled "Criteria for program development; joint committee," which states as follows:

> (1) The Commission shall adopt by regulation on or before December 1, 1985 criteria for program development and approval, which are necessary or

appropriate to achieve the standards stated in subsection (b) of this section. Prior to developing its criteria and also prior to adopting its criteria, the Commission shall hold at least 6 regional public hearings, 1 in each of the following areas:

(i) Harford, Cecil, and Kent counties;
(ii) Queen Anne's, Talbot, and Caroline counties;
(iii) Dorchester, Somerset, and Wicomico counties;
(iv) Baltimore City and Baltimore County;
(v) Charles, Calvert, and St. Mary's counties; and
(vi) Anne Arundel and Prince George's counties.

Id.

The criteria or "guidelines" adopted by the Commission are found in COMAR, Title 27. COMAR 27.01.10.01 requires that "[i]n developing their Critical Area Programs," local jurisdictions shall coordinate "[l]ocal permitting and approval processes" so that "cumulative impacts of regulated activities can be readily assessed." 27.01.10.01 (D). In subsection (I), the criteria require that "[e]ach jurisdiction shall attempt to establish cooperative arrangements with adjacent jurisdictions and with State and federal agencies concerning the policies and objectives for lands within and adjoining the jurisdiction's Critical Area." In subsection (P), the guidelines state that "Counties and municipalities within their political boundaries are encouraged to develop their Critical Area protection programs cooperatively so that programs can be developed more efficiently and so that common land use objectives can be realized."

Intensely developed (IDAs) and limited development areas (LDAs) may be increased subject to the guidelines. COMAR §27.01.02.06 (A). The first guideline is that "[t]he area of expansion of intensely developed [IDAs] or limited development areas [LDAs], or both, may not exceed an area equal to 5 percent of the county's portion of the

resource conservation area [RCA] lands that are not tidal wetlands or federally owned . . ." COMAR §27.01.02.06(A)(1). The second guideline is that "[w]hen planning future expansion of intensely developed areas [IDAs] and limited development areas [LDAs], counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." COMAR §27.01.02.06(A)(2).

H. The Provisions of Talbot County Bill 762.

On April 25, 2000, Talbot County duly enacted Bill 762, entitled "A Bill to Establish Procedures for Awarding Supplemental Growth Allocation to Municipalities in Talbot County." Bill 762 recognized the changes that had occurred since the 1989 adoption of the County's Critical Area ordinance and established a joint review process to award supplemental growth allocation to municipalities. A copy of Talbot County Bill 762 is attached hereto as Exhibit 3. Bill 762 provided that "the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate." Id. The Towns participated in the drafting, amendment, and approval of Bill 762.

Bill 762 was sent to the CAC for review and approval as a local program refinement. The CAC determined that Bill 762 complied with the critical area criteria (COMAR 27.01.02.06A(2)) that requires counties, in coordination with affected municipalities, to establish a process to accommodate the growth needs of municipalities when planning future expansion of intensely developed and limited development areas. The CAC approved Bill 762. The joint review process for growth

allocation for the Town of Easton instituted by Bill 762 has been used successfully by Easton and the County to jointly approve 156 acres of growth allocation for a project in Easton, which the CAC also approved.

The County engaged in extensive dialog with the Towns before adopting Bill 762. August 19, 1999 correspondence from Easton's Town Attorney details the process the County would later adopt in Bill 762. See, Exhibit 4.

On March 16, 2000, a draft of Bill 762 was circulated to Town attorneys for municipalities in the County with land in the Critical Area. On March 24, 2000, a copy of the Bill was circulated to the Mayor of Easton and the Presidents of the Town Commissioners' of St. Michael's and Oxford. See, Exhibit 5. On March 28, 2000, Bill 762 was introduced and a public hearing was scheduled for April 11, 2000. See, Exhibit 6. On April 6, 2000, the Planning Commission reviewed Bill 762, their recommendation states that, "Commission members were familiar with the proposal since they participated in a number of joint workshops with the towns and the County Council." See, Exhibit 7. By letter dated April 13, 2000, Mr. Hickson, St. Michaels Town Attorney, responded to the March 16 letter from the County attorney with comments and a suggested amendment that was incorporated into the Bill. See, Exhibit 8. On April 18 at the public hearing, St. Michaels' Town Manager confirmed the clarifications requested by Mr. Hickson were in the Bill. On April 25, 2000, after adoption, the Bill, having been amended as requested, was re-sent to the Mayor of Easton and the Presidents of the Town Commissioners' of St. Michael's and Oxford. See, Exhibit 9.

Bill 762 was forwarded to the CAC for approval. The CAC minutes of June 7, 2000 reflect, "Ms. Hoerger, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, Bill 762 which established procedures for awarding supplemental growth allocation in the municipalities in Talbot County. In anticipation of future growth the County has established a joint review process that will be conducted with each town when considering allotting additional growth allocation which will include the Planning Commission, the Talbot County Council, Town Commissions, and any other Commission involved all that the local level." See, Exhibit 10. The CAC supported the Chairman's determination that this was a Refinement to the County's Local Program. The CAC Staff Report dated July 5, 2000, states:

> "... the County has established a joint review process that it will conduct with each town when considering allotting additional growth allocation. The new joint review process will include the Planning Commissions, the Talbot County Council, Town Commissions, and any other Commission involved at the local level.
>
> Bill No. 762 is consistent with COMAR 27.01.02.06 A. (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."

Id. The CAC voted to approve Bill 762 as part of the County's Local Critical Area Program.

I. Use of the Joint County/Municipal Review Process to Award Growth Allocation.

The joint county/municipal review process established by Bill 762 was used to award 156 acres of growth allocation to Easton for the "Elm Street" project, 250 residential dwelling units in Easton's Critical Area adjacent to the Tred Avon River and Md. Rt. 33 (St.

Michaels Road), west of the Easton by-pass. On October 14, 2003, Easton requested growth allocation. See, Exhibit 11. On November 18, 2003, the County introduced Bill No. 925 to grant the request. See, Exhibit 12. The County held a hearing, adopted detailed Findings of Fact, negotiated Conditions acceptable to the Developer, and approved Bill 925 on December 16, 2003. The "Elm Street" project is being constructed as a result of the County's grant of growth allocation. The entire process, from request to approval, took the County just 2 months, 2 days.

J. Processing of Bill 925 and Bill 933.

Bill 925 and Bill 933 were introduced by the County Council on the same day. Further, Bill 925 and Bill 933 were each adopted by the County Council on the same day. The County and CAC process times are compared below:

EVENT	BILL 925	BILL 933
County Council introduction	November 18, 2003	November 18, 2003
County Council adoption	December 16, 2003	December 16, 2003
Planning Officer submits to CAC for review	December 29, 2003	December 29, 2003
CAC recieves submission	December 30, 2003	December 30, 2003
CAC acknowledges receipt	December 30, 2003	
CAC accepts for processing	December 30, 2003	
CAC votes	January 7, 2004	
CAC notifies County of vote	January 8, 2004	
CAC acknowledges receipt		January 15, 2004
Planning Officer re-submits to CAC		January 19, 2004
CAC accepts for processing		February 5, 2004
CAC votes		May 5, 2004
CAC notifies County of vote		May 14, 2004

For Bill 925: the CAC received it, accepted it for filing as an amendment, voted on it, and notified the County within 5 working days. See, documents regarding processing of Bill 925 (Exhibits 11, 12, and 15).

For Bill 933: the CAC failed to accept it for processing for more than a month, and failed to vote on it for more than four months. See, documents regarding processing of Bill 933 (Exhibits 14, 16-24).

K. The Provisions of Talbot County Bill 933.

Bill 933 causes that same joint review process in Bill 762 to apply uniformly with respect to all of the Towns in Talbot County. Despite the fact that the CAC approved Bill 762, it nevertheless refused to approve Bill 933. Both State and County law provided for quadrennial comprehensive review of the County's local critical area program, including the three 1989 planning maps. The purpose of the review was, inter alia, for possible recalculation and reallocation of reserved growth allocation. Those comprehensive reviews should have occurred in 1993, 1997 and 2001. However, no comprehensive reviews of Talbot County's local critical area program took place until 2003. Consequently, until 2003, the three planning maps adopted in 1989 remained static as a prospective look to the future, frozen in time.

By 2003, any continued usefulness or relevance of the 1989 planning maps in the County's Critical Area ordinance had been wholly eliminated through adoption of two (and now, in 2005, three) intervening County Comprehensive Plans. Many other changes occurred between 1989 and 2003. Town boundaries, planned growth areas, municipal growth needs, planning policies, and, not the least, the Bay's health (continuing to decline)

all changed, as did State and local growth policies. There were ongoing, revised environmental assessments, revised environmental policies, and adoption of other goals, agreements (the Chesapeake Bay 2000 Agreement), and metrics to establish and measure the success of the national, inter-state, and statewide effort to reverse the Bay's decline.

Talbot County performed the required quadrennial review of its Critical Area program and proposed an amendment of its program in the form of Bill 933 (and the other Bills that accompanied it: Bills 929, 930, 931, and 932). Md. Code, Nat. Res. Art., §8-1809(g). Bill 933 took into account the actual events during the 14 years since adoption of the 1989 planning maps, repealing those outdated maps. A copy of Talbot County Bill 933, as Amended, is attached hereto as Exhibit 13.

Bill 933 is a bill to review and reallocate the number of reserved acres of growth allocation allocated among the Towns to comply with the Chesapeake Bay Critical Area program's four year review requirement. The purpose of Bill 933 was to reallocate growth allocation equally and uniformly, and make the process of joint review for supplemental growth allocation already adopted in 2000 through Bill 762, and already approved by the CAC, applicable to all growth allocation requests.

Bill 933 recognized that the 1989 planning maps, the basis for the reservation of growth allocation, had not been reviewed every four years as required and were outdated:

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

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

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

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

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

Exhibit 15, p. 2.

Bill 933 also recites that Talbot County has a total of 2,554 acres of growth allocation under the State formula (5%). Under State law, with certain exceptions, no more than half of the expansion permitted by growth allocation in the critical area may be located in the RCA (resource conservation area). Id. Bill 933 notes that under State law, if Talbot County is unable to utilize a portion of the County's total growth allocation within or adjacent to existing intensely or limited development areas, then that portion of the growth allocation which cannot be so located may be located in an RCA. The County has followed this requirement of State law by restricting the use of available growth allocation by providing that not more than 1,213 acres of land lying within the Critical Area of the County shall be reclassified from RCA to any other zone. Id., p. 3. Bill 933 states that the County may not

utilize the remaining 50% of available RCA growth allocation (1,213 acres) until the CAC grants permission, under the exception provided in State law (Md. Code, Nat. Res. Art., §8-1801.1 (c)(5)), based upon a showing that the County is unable to utilize that portion of its available growth allocation in areas adjacent to limited or intensely developed areas. Id.

Bill 933 provides that in order to trigger release of the withheld 50% of the County's growth allocation, the County zoning ordinance already provides (in § 190-109 D (9)(b)) that when 1,092 acres has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the CAC to double the maximum number of acres that may be reclassified from RCA from 1,213 to 2,425 acres. Id. Bill 933 states that §190-109 D (9)(a), adopted in 1989, reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County. Id. Oxford has utilized only 15.223 acres, St. Michaels conditionally allocated only up to 20 acres, and the County currently had a total of 316.229 acres of growth allocation remaining. (Bill 925, enacted simultaneously with Bill 933, transferred 156 acres to Easton, leaving the County with 160 acres now). Bill 933 noted that the County currently has a total of 316.229 acres of growth allocation, and if it grants a pending application for supplemental growth allocation submitted by the Town of Easton, which it has, it will have only 160.229 acres of growth allocation. Id. Bill 933 states that:

> [U]nder current law the Town of Oxford, or the Town of St. Michaels, either separately or in combination, could forever block the County from accessing the remaining growth allocation under §190-109 D (9)(b) by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under §190-109 D (9)(b).

Id.

Bill 933 recites that Easton had fully allocated its reserved growth allocation acres, and that the County continues to work cooperatively with Easton in approving projects for which the Town has requested supplemental growth allocation (under the joint process set up by Bill 762). In fact, the County has since awarded the full 156 acres requested by Easton in that application.

Bill 933 also states that "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." Id., p. 4. Bill 933 notes that Talbot County is nearing completion of its four-year review, and as part of that process desires to make the following amendments to the County's critical areas program to . . .

> [B]etter reflect the original intent of the State law governing growth allocation, which calculated growth allocation for the County as 5% of the RCA, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project.

Id.

Bill 933 provides, first, that the 1989 maps 1, 2, and 3 are repealed. Id. Bill 933 next deletes the provision of the zoning ordinance from 1989 that "reserved" a certain number of the County's growth allocation acres for the use of the Towns. Id., 4-5. Bill 933 also

deletes provisions of the zoning ordinance regarding annexations by the Towns. Id., p. 5-6. Bill 933 specifically provides that its provisions apply only to "unutilized" growth allocation acres, and that its provisions do not apply to any growth allocation acres for which the developer has obtained "vested rights" under Maryland law (i.e., has obtained a valid building permit and has proceeded to complete substantial construction under that permit). Id., p. 6. Bill 933 does not apply to growth allocation awarded to the Towns by Md. Code, Nat. Res. Art., §8-1808.1 under the 5% rule. See, Bill 933 Section 2, ¶1(b). Bill 933, as Amended, was enacted on December 23, 2003. Id., p. 8.

On December 29, 2003, Talbot County forwarded Bill 933 to the CAC for its review as a local program amendment. See, Letter from Talbot County Planning Office to CAC, dated December 29, 2003, attached hereto as Exhibit14. State law requires the CAC, within 10 working days of receiving a proposed program amendment, to either (1) mail a notification to the local jurisdiction that the proposal has been accepted for processing; or (2) return the proposal as incomplete. Md. Code, Nat. Res. Art., §8-1809 (m)(2). The CAC did neither with respect to Bill 933. However, it sent a letter dated January 8, 2004 to the County informing it that the CAC had voted on Bill 925 and it had been approved. See, Letter dated January 8, 2004 from CAC to Talbot County regarding Bill 925, attached as Exhibit 15.

The County resubmitted Bill 933 to the CAC on January 19, 2005. See, Letter from Talbot County Planning Office to CAC enclosing another copy of Bill 933, dated January 19, 2004, attached hereto as Exhibit 16. The CAC again failed to comply with the requirements of § 8-1809 (m)(2) by failing to either mail a notification to Talbot County that

the proposal had been accepted for processing or to return the proposal as incomplete within 10 working days of receiving the transmittal of January 19, 2004. The CAC finally "accepted" Bill 933 for review on February 5, 2004. See, Letter from CAC to Talbot County dated February 5, 2004, attached hereto as Exhibit17.

L. The CAC's Consideration of Bill 933.

(a) The CAC Panel Hearing of March 24, 2004.

Bill 933, deemed a local program amendment, was first considered by a Panel of the CAC at a public hearing on March 24, 2004. A transcript of that hearing is attached hereto as Exhibit 18. The Chairman of the CAC, Martin Madden, was present at the public hearing. The purpose of the hearing was to gather information about the County's proposed amendments to its Critical Area program and to hear public comment regarding Bill 933. Id., p. 21, 23-24.

At the hearing, Mr. Pullen (the County Attorney) made a presentation to the Panel in which he explained that Bill 762 had established a joint review process for supplemental growth allocation for the Town of Easton, and that Bill 933 withdrew the "reserved" acres unconditionally provided to the Towns in 1989, and established the same joint review process that was established in Bill 762 with respect to supplemental growth allocation requests by Easton, and which was approved by the CAC. Id., p. 27-35. In this manner, Mr. Pullen explained, Bill 933 complied fully with the State criteria requiring counties to "coordinate" with affected municipalities in establishing a "process" to accommodate the growth needs of municipalities in the counties' Critical Area programs. Id. Mr. Pullen further explained that State law, through the 5% rule and the COMAR regulation requiring

counties to establish a process, in coordination with affected municipalities, to accommodate the growth needs of municipalities obviously demonstrated the General Assembly's intent to give primary responsibility over growth allocation, and over a growth allocation process, to the counties. Id. Mr. Pullen further explained that the initial reservation of the County's growth allocation acres for the use of the Towns, without establishing a process by which any input whatsoever was required from the County, essentially gave a "blank check" to the Towns to do whatever they wanted with the County's growth allocation acres. This initial 1989 "reservation" of growth allocation acres to the Towns was contrary to State law, which requires "coordination" in establishing a "process" and requires "consistency" between local Critical Area programs. Id.

Mr. Hickson, representing the Town of St. Michaels, opposed Bill 933 because it "takes back all of the growth allocation that was previously reserved for the towns and puts it completely in the control of the county; that's to say, the county has the last word." Id., p. 60. Of course, this was factually incorrect inasmuch as Bill 933 adopted the same joint review process incorporated by Bill 762. Mr. Hickson also complained that the County did not contact the Towns first and/or consult with the Towns before enacting Bill 933. Id., p. 66. However, inasmuch as Bill 762 had been circulated to the Towns and they had made recommendations for changes and ultimately approved Bill 762 in its final version, there was no reason for the County to also circulate Bill 933, which merely adopted the same joint review process adopted by Bill 762 and approved by the CAC.

Both St. Michaels and Oxford complained that Bill 933 would unlawfully "usurp" the zoning and planning authority of the (those)Towns within their corporate boundaries.

Id., p. 73; 83-84. However, this assertion ignored the counties legitimate interests, which the State has recognized, in having some input into development in and around towns, even though such development affects the environment within counties, and ignored the fact that State law requires countieso establish a process for awarding growth allocation that accommodates the growth needs of municipalities.

Mr. Thompson, speaking on behalf of his clients Vance and Nancy Strausburg, brought up the issue of Bill 933's potential effect on the Strausburg growth allocation approved by St. Michaels. Id., p. 157-61. Mr. Thompson pointed out that the Strausberg growth allocation was "final" and that St. Michaels and the CAC had approved it. Id. Mr. Thompson asserted that Bill 933 would "take back" the growth allocation for the Strausburg property because no vested property rights had been obtained by the Strausburgs. Id. This argument ignores Bill 933, Section 2, ¶1(b), which clearly states that it does not apply to growth allocation awarded to municipalities under the 5% rule.

(b) The May 5, 2004 CAC Panel Report Regarding Bill 933.

The CAC Panel Report of May 5, 2004 regarding Bill 933 is attached hereto as Exhibit 19. The Panel Report discusses the Strausburg growth allocation by St. Michaels, which was approved by the CAC as a refinement to St. Michaels' program in October 2003. Id., p. 2.

The Panel Report also notes that St. Michaels has "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." Id. After noting the purposes for the provisions stated in Bill 933, the Panel Report next notes that Bill 933 applies to "acreage already awarded by a Town,"

unless property rights have been vested. Id. The Panel Report goes on to state that "Commission staff understands that at this time there are two, 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." Id. The Report specifically refers to the Strausburg annexation in St. Michaels, the Miles Point III project, and the possibility that the Cooke's Hope project (in Easton, approved through the joint review process of Bill 762) could be affected. Id., p. 2-3.

The Panel Report notes the COMAR regulation requiring "counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." COMAR §27.01.02.06 (A)(2). Id., p. 3. The Panel Report also notes that Bill 933, along with a separate portion of the County Code, establishes a process for joint review and hearing process by the Towns and the County of growth allocation requests. Id. Specifically, the Panel Report states that the process established by Bill 933 (through its adoption of the process established by Bill 762) is one by which the County and the Towns would work cooperatively:

> County Code Section 190-109 D (9) outlines a **joint review process** whereby elected officials from Talbot County and the affected municipality **work cooperatively together** on projects involving the Towns' proposed use of growth allocation.

Id., p. 3 (emphasis added).

The Report also notes that the process referred to, as established as to Easton for supplemental growth allocation by Bill 762 and established as to all the Towns by Bill 933,

was approved by the CAC as a program refinement to Talbot County's program in June 2000. Id.

The Panel Report next states that the Panel "discussions to date have focused" upon three items: (1) the applicable sections of the Critical Area Law and Criteria governing growth allocation; (2) the effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements; and (3) the interpretation of the growth allocation criteria in COMAR requiring the counties, in coordination with affected municipalities, to establish a process to accommodate the growth needs of municipalities. Id., p. 3-4.

The Panel Report further states that CAC staff have performed research regarding the various County Critical Area programs and program amendments around the State previously approved by the CAC. Id., p. 4. The Report notes that those programs fall into three general categories, one of which is programs in which "the County participates in a coordinated review process with the municipality, either simultaneously with, or following the Town's review process." Id.

The "research" (or at least a portion of it) referred to in the Panel Report was produced by the CAC during discovery and is attached hereto as Exhibit 20. The research shows that the CAC has approved many County programs and/or amendments to programs that require towns to obtain county approval of growth allocation requests, or require a joint review process. Id.

The Panel Report notes the statutory objectives and criteria which the CAC is required to apply to program amendments such as Bill 933. Id., p. 4-5. However, the

Report then focuses upon the possible "effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements." Id., p. 4-5. The Report concludes that "[t]he approved Town programs show that Bill 933 will affect the established growth allocation procedures of St. Michaels and Oxford." Id., p. 5. The Report goes on to state that "[i]n addition to the effect on approved Town programs, Bill 933 will affect the following specific program amendments: the Strausburg Subdivision growth allocation . . . the Miles Point III Project growth allocation . . . and potentially Cooke's Hope in Easton . . ." Id.

The Panel Report states that the Panel "has discussed the meaning of the COMAR provision relating to 'coordination' between the counties and affected municipalities." Id. The Report states that the Panel acknowledges the various potential meanings of the term, but finds that it means, according the Webster's dictionary, "to harmonize in a common effort." Id. The Panel concluded that "at a minimum 'coordination' involves the participation of the affected parties." Id. The Report states that the Panel "has also discussed the effect of Bill 933 on" the Strausburg growth allocation, the Miles Point III allocation, the "established municipal growth allocation processes," and "the effects of Commission actions on prior actions and current procedures." The Report concludes by noting that the "Panel will resume its discussion of this matter on May 5, 2004." Id.

(c) The May 5, 2004 CAC "Supplement to Panel Report" Regarding Bill 933.

The CAC Panel issued a "Supplement" to its Panel Report dated May 5, 2004, attached hereto as Exhibit 21. The Supplement contains a motion on behalf of the Panel "to

deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program . . ." Id. The basis for the motion 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.

Id.

(d) The May 5, 2004 Meeting of the Panel of the CAC.

The CAC Panel considering Bill 933 held a meeting on May 5, 2004. See, Transcript of CAC Meeting of May 5, 2004, attached hereto as Exhibit 22. At meeting number 2, the CAC considered St. Michaels' growth allocation request for the Miles Point III Project. Id., p. 3 (Meeting no. 2). This was very interesting, inasmuch as the approval of the Miles Point III request was one of the reasons cited by the CAC in its Panel Report and Supplement as a reason why Bill 933 should not be approved. This is also interesting inasmuch as the CAC had delayed "accepting" County Bill 933 for review until the Miles Point III growth allocation from St. Michaels was already accepted and scheduled for review.

At meeting number three, Bill 933 was considered by the Panel. Id., p. 113, et seq. The CAC first received the Panel Report (discussed above) prepared by Mr. Ren Serey. Id. Mr. Serey noted that Bill 933 would "affect" the Strausburg allocation. Id., p. 118. He also mentioned the research performed by staff regarding approved programs in other counties, some of which approved a process of joint review by the counties and the towns, as

proposed by Bill 933. Id., p. 118-19. Mr. Serey also noted that the Panel considered the goals and criteria required by the Critical Area statute and regulations. Id., p. 120. Mr. Serey noted the joint review process instituted by Bill 762. Id., p. 115-16. Mr. Serey also stated that Bill 933 would "undo a previously approved growth allocation, and that's the Strausburg growth allocation." Id., p. 117. Mr. Serey noted the Panel's research regarding growth allocation systems in other counties, stating that "the third category is a coordinated process where both entities [the county and town] make the decisions together." Id., p. 119.

Following Mr. Serey's comments, Mr. Pullen addressed the Panel. Id., p. 120-21. Mr. Pullen noted that programs in Caroline County, St. Mary's County, Wicomico County, and Queen Anne's County were all approved by the CAC even though they contained different approaches to growth allocation. Id., p. 121-22. Mr. Pullen noted that Bill 933 falls within the parameters of those previously approved programs and policies. Id., p. 122. Mr. Pullen also explained that comparison of Bill 933 to inconsistent provisions of existing municipal programs based on the 1989 County ordinance was not the correct standard. Id. The reason is that, by definition, a program amendment is a change to a program and it will necessarily be different than existing elements of the current program. Id. Mr. Pullen pointed out that if proposed amendments are compared with inconsistent existing program elements, no amendment would ever be approved. Id., p. 122-23.

With regard to the CAC's apparent concern regarding reliance by the municipalities' upon the County's initial reservation of growth allocation acres, Mr. Pullen noted that this was not an appropriate consideration in evaluating Bill 933, because Maryland law is clear

that absent vested property rights, which Bill 933 specifically did not impair, laws purporting to affect property rights may be changed. Id., p. 123. Thus, a property owner (or municipality) has no legal right to rely upon alleged property rights that are not vested. Id., p. 123-24.

Mr. Pullen further noted that the Cooke's Hope project in Easton, already approved through the joint review process established by Bill 762, would not be affected by Bill 933. Id., p. 124. Mr. Pullen noted that Bill 933 would simply take the joint review process already established in Bill 762 with respect to the Town of Easton and make it uniformly applicable to all of the Towns in the County. Id., p. 128. Mr. Pullen stressed that Bill 762 was exactly the County-created process required by COMAR to accommodate the growth needs of the Towns. Id. He also noted that the County had circulated Bill 762 to all of the Towns in the County, and had incorporated the comments of St. Michaels' Town Attorney directly into Bill 762. Id. Bill 933 merely adopted the same procedure utilized in Bill 762 with respect to all of the Towns. Id. Therefore, in enacting Bill 933, the County did not fail to "coordinate" with the Towns. Id. Many local programs in the State with the same joint review process were previously approved by the CAC. Id.

Mr. Alspach (representing the Talbot Preservation Alliance) addressed the argument that the joint review process established by Bill 933 would allegedly provide the County with a "veto" over proposed Town developments requiring growth allocation. Id., p. 134-36. He pointed out that the County could not arbitrarily veto the Towns' requests for growth allocation under the joint review process without violating State criteria requiring the County to "accommodate the growth needs" of the affected Towns. Id., p. 136. If the

County arbitrarily refused to approve growth requests, the Towns would have legal recourse. Id. Bill 933 did nothing more than ensure that all parties affected by growth allocation will be heard in the process. Id.

Mr. Blazer, speaking for the CAC Panel, stated that:

> The panel also believes that the supplemental growth allocation process of Bill 762 that I believe Mr. Pullen talked a little bit about which is incorporated in the County code may be a desirable growth allocation process, however, as presently drafted, Bill 933 really doesn't harmonize or come in line with the supplemental growth allocation process of the County code. There were some inconsistencies that the panel was uncomfortable with in our determination of our recommendation.

Id., p. 138-39.

Mr. Blazer then moved on behalf of the Panel to deny approval of Bill 933. Id., p. 139. Mr. Blazer stated that there were "two major bases for the motion," which he explained as (1) Bill 933 would negate at least one previous CAC action of approving a local program change for the Strausburg growth allocation; and (2) Bill 933 "would create conflicts between the County program and several of the approved municipal programs that the Commission has agreed to." Id., p. 139-40.

Marianne Mason, counsel for the CAC, next stated the following:

> Ms. Mason: **The process that the County has said that they intend to use, that is the joint process through Bill 762, the panel believed was definitely in line with or appropriate under the state law and criteria,** but the actual wording of the bill which is what the panel had to look at created the problem for this Commission of negating the Commission action.

Id., p. 141. Thus, without explaining how the "wording" of Bill 933 allegedly created a "problem," Ms. Mason conceded that the joint review process implemented by Bill 933 was "appropriate under the state law and criteria." Id. Having made the determination that

Bill 933 was "appropriate under the state law and criteria," the CAC was required to approve it.

(e) The CAC's May 14, 2004 Letter Rejecting Bill 933.

On May 14, 2004, the CAC sent a letter to the County's Office of Planning and Zoning notifying it officially of the CAC's decision at the May 5, 2004 hearing. See, Letter from CAC to Talbot County's Director of Office of Planning and Zoning, dated May 14, 2004, attached hereto as Exhibit 23. The letter states that "[u]pon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration fo 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." Id. The letter then stated the reasons for denying approval of Bill 933, parroting the language of the Supplement to the Panel Report, as follows:

> Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement of 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.

Id.

ARGUMENT

I. STANDARD OF REVIEW OF THE CAC'S DECISION.

The Circuit Court possesses the inherent power to review an agency decision to prevent illegal, arbitrary, or capricious administrative action. Hurl v. Bd. of Educ., 107 Md. App. 286, 304, 667 A.2d 970, 979 (1995); Bucktail v. Talbot County, 352 Md. 530, 550, 723 A.2d 440, 449 (1999); Spencer v. Md. State Bd. of Pharmacy, 380 Md. 515, 530 (2004)(even in the absence of an applicable statutory scheme providing for judicial review, "an implied limitation upon an administrative agency's authority is that its decisions 'be not arbitrary or capricious.'"). See also, cases explaining mandamus actions as they apply to ministerial or non-discretionary functions of administrative agencies, discussed in Crim. Inj. Comp. Bd. v. Gould, 273 Md. 486, 500-504, 331 A.2d 55, 65-66 (1975)).

Thus, the standards of judicial review are essentially the same whether the Court is proceeding pursuant to the Administrative Procedure Act ("APA") or pursuant to its inherent power to review administrative actions. Hurl, 107 Md. App. at 305, 667 A.2d at 979. It is appropriate, therefore, for a court to examine and rely upon cases decided under the APA for guidance. Id. This Court may not uphold the CAC's denial of Bill 933 unless it is sustainable on the agency's findings and for the reasons stated by the agency. Anderson v. Dep't of Public Safety & Corr. Servs., 330 Md. 187, 623 A.2d 198 (1993); Bucktail, 352 Md. at 552-553, 723 A.2d at 450-451.

II. BILL 933 WAS APPROVED BY OPERATION OF LAW BECAUSE THE COMMISSION FAILED TO ACT WITHIN 90 DAYS OF RECEIPT OF THE BILL.

Bill 933 was sent to the Commission on December 29, 2003. The CAC took no action on the Bill until May 5, 2004 when the CAC voted to not accept Bill 933, or May 14, 2004, when they formally notified the County of their decision.

Talbot County forwarded Bill 933 to the CAC on December 29, 2003 for its review as a local program amendment. See, Exhibit 14. State law requires the CAC, within 10 working days of receiving a proposed program amendment, to either (i) mail a notification to the local jurisdiction that the proposal has been accepted for processing; or (ii) return the proposal as incomplete. Md. Code, Nat. Res. Art. §8-1809 (m)(2). Talbot County again forwarded Bill 933 (along with other Bills) to the CAC on January 19, 2004. See, Exhibit 16. The CAC again failed to comply with the requirements of §8-1809 (m)(2), by failing to either mail a notification to Talbot County that the proposal has been accepted for processing or to return the proposal as incomplete within 10 working days of receiving the transmittal of December 29, 2003, or, alternatively, 10 working days of receiving the transmittal of January 19, 2004. The CAC finally accepted Bill 933 for review on February 5, 2004. See, Exhibit 17.

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

amendments: the Commission shall act on the proposed program amendment within 90 days of the Commission's acceptance of the proposal. If action by the CAC is not taken within 90 days, the proposed program amendment is deemed approved." Bill 933 became operative pursuant to § 8-1809 (o) by virtue of the CAC's delay in accepting Bill 933 and its concomitant failure to act within the appropriate period of time established by State law.

III. IN DENYING APPROVAL OF BILL 933, THE CAC EXCEEDED ITS STATUTORY AUTHORITY, WHICH IS LIMITED TO APPLICATION OF THE STATE GOALS AND CRITERIA.

The role of the CAC is to examine a local program amendment to determine whether the amendment is consistent with the State criteria. North v. Kent Island Ltd. P'ship, 106 Md. App. 92, 105, 664 A.2d 34, 40 (1995). Maryland Code, Natural Resources Article, Section 8-1809(j) provides that the CAC "shall approve" programs and program amendments that meet: "(1) The standards set forth in Md. Code, Natural Resources Art., §8-1808(b)(1)-(3); and (2) The criteria adopted by the CAC under Md. Code, Natural Resources Art., §8-1808." Id.

The "standards" set forth in §8-1808(b)(1) through (3) are entitled "Goals of program," and state as follows:

> (b) *Goals of program.* -- A program shall consist of those elements which are necessary or appropriate:
>
> (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
>
> (2) To conserve fish, wildlife, and plant habitat; and

(3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

The "criteria" adopted by the CAC under Md. Code, Natural Resources Art., §8-1808 are found in COMAR, Title 27. COMAR 27.01.10.01 requires that "[i]n developing their Critical Area Programs," local jurisdictions shall coordinate "[l]ocal permitting and approval processes" so that "cumulative impacts of regulated activities can be readily assessed." 27.01.10.01 (D). In subsection (I), the criteria require that "[e]ach jurisdiction shall attempt to establish cooperative arrangements with adjacent jurisdictions and with State and federal agencies concerning the policies and objectives for lands within and adjoining the jurisdiction's Critical Area." In subsection (P), the guidelines state that "Counties and municipalities within their political boundaries are encouraged to develop their Critical Area protection programs cooperatively so that programs can be developed more efficiently ~~and so that~~ common land use objectives can be realized."

The applicable criteria for expansion of IDAs and LDAs are found in COMAR 27.01.02.06 (A), as follows:

> A. 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;

(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.

The goals and criteria are the only matters the CAC was permitted to consider in deciding whether to approve Bill 933 as a local program amendment. North v. Kent Island Ltd. P'ship, 106 Md. App. at 105, 664 A.2d at 40. However, in denying Bill 933, the CAC gave two bases completely different from those required to be considered by the statutory criteria. In doing so, the CAC exceeded its authority and its actions were illegal and ultra vires.

A. The CAC's First Basis for Rejection of Bill 933 Relied Upon Factors Other Than the Statutory Criteria.

The first basis identified by the CAC for rejecting Bill 933 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.

Exhibit 23.

This basis for rejection of Bill 933 has nothing whatsoever to do with the applicable criteria, and the CAC's denial letter does not provide any explanation whatsoever as to how or why it believes this reason for rejecting Bill 933 does relate to any of the applicable criteria. In fact, the denial letter sent to the County fails to even mention the applicable goals or criteria. There was simply no statutory authority for the CAC to reject a program amendment because it has a potential affect upon a previous action of the CAC. This consideration is simply not within the criteria to be considered and, thus, was outside the

authority of the CAC to consider, and certainly was an inappropriate and unlawful basis for the CAC to deny approval of Bill 933.

B. The CAC's Second Basis for Rejection of Bill 933 Relied Upon Factors Other Than the Statutory Criteria.

The second reason stated by the CAC for rejection of Bill 933 is as follows:

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

Exhibit 23, p. 1.

Thus, the second reason the CAC rejected Bill 933 was because Bill 933 changed the previous 1989 "reservation" of County growth allocation acres for the Towns. There is no authority in the statutory goals and criteria for the CAC to deny approval of Bill 933 on this basis, and the CAC cited none. The applicable criteria state that the "Commission shall approve" program amendments that establish land use policies for development which "accommodate growth" (§8-1808(b)(3)) and that establish a "process to accommodate the growth needs of the municipalities." (COMAR 27.01.02.06(A)). Bill 933 does so, and the CAC agreed because it did not deny approval of Bill 933 on that basis. There are no criteria permitting the CAC to reject a program amendment merely because it changes from a process whereby the County had no input in the use of the County's growth allocation acres, to a process wherein the Towns and the County have joint input with respect to growth allocation requests.

Further, the goals and criteria do not authorize the CAC to reject a local program amendment on the basis that the affected municipal programs "have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County" in 1989. If this were so, the counties would be barred from ever amending their local programs. In effect, the counties could never change their land use policies, regardless of actual changes in circumstances and regardless of whether the amendment established a cooperative, joint review process. This clearly could not have been the intent of the legislature in enacting the goals and criteria. By requiring the counties (as opposed to the municipalities) to establish a process (COMAR 27.01.02.06(A)(2)), the legislature plainly intended the opposite.

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The CAC's second basis for rejection of Bill 933 also impermissibly considered Bill 933's potential effect upon property rights that are not vested, although this is not a permissible consideration under the applicable goals and criteria.[2] As long as Bill 933 sets up a cooperative review process which accommodates the growth needs of the municipalities (the only applicable criteria), then the CAC was required to approve it. In its second reason for rejecting Bill 933, the CAC states that "[t]he conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local

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[2] Similarly, this is an impermissible consideration under Maryland law. Under Maryland law, the County Council is entitled to change laws affecting "property rights," as long as those property rights are not vested. Bill 933 does not affect any vested property rights. The goals and criteria cannot be interpreted or applied in a manner which infringes upon the legislative prerogative of the County. See Md. Constitution, Art. XI-A, §3; Md. Code, Art. 25A, §5 ("full power" delegated by the State to charter counties to enact local ordinances to promote the public health, safety and welfare). See also Ritchmount P'ship v. Bd. of Supervisors of Elections, 283 Md. 48, 62-63, 388 A.2d 523, 532 (1978).

programs are implemented in a consistent and uniform manner." Exhibit 23. However, this is not one of the goals or criteria that the CAC is permitted to consider in approving or rejecting a local program amendment. Rather, the provision apparently relied upon by the CAC in making this statement is contained within §8-1801(b) which lists the "purposes" of the Critical Area statute. Section 8-1801(b)(2) states that it is the purpose of the General Assembly in enacting this subtitle "(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." However, as stated, this provision is not one of the "goals" or "criteria" the CAC is permitted to consider when reviewing a local program amendment. Rather, the CAC was constrained to rely only upon the statutory goals (§8-1808(b)(1)-(3)) and criteria (§8-1808(d) and COMAR, Title 27) provided in the Critical Area statute. Because the CAC relied upon a statutory provision it was not permitted to rely upon in rejecting Bill 933, its decision exceeded its statutory authority and was, therefore, illegal. Thus, this Court must set aside the CAC's rejection of Bill 933 as illegal and void, and declare Bill 933 approved as a local program amendment to Talbot County's Critical Area program.

IV. IN DENYING APPROVAL OF BILL 933, THE CAC ACTED ARBITRARILY AND CAPRICIOUSLY.

A. The CAC's Bases for Rejecting Bill 933 Are Arbitrary and Capricious Because the CAC Acknowledged That Bill 933 Complied With the Appropriate Statutory Criteria and, Moreover, It Acknowledged That Bill 933 Initiated a Cooperative Joint Review Process That Was Previously Approved by the CAC.

The first basis for the CAC's rejection of Bill 933 was because it might affect another program refinement in St. Michaels, the Strausburg growth allocation. The CAC simply did not have any statutory authority to consider this issue, much less to reject Bill 933 on this basis. A review of the CAC's consideration of Bill 933 shows that the CAC's rejection of Bill 933 was completely arbitrary, inasmuch as the CAC acknowledged that Bill 933 fully complied with the applicable statutory criteria.

In its Panel Report, the CAC specifically concedes that Bill 933 satisfies both the criteria encouraging local jurisdictions to "work cooperatively" and the criteria which requires that "counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." COMAR 27.01.10.01 and 27. 01.02.06 (A)(2). The CAC's Panel Report states that:

> **County Code Section §190-109 D (9) outlines a joint review and hearing process whereby elected officials from Talbot County and the affected municipality will work cooperatively together on projects involving the Town's proposed use of growth allocation.**

Id. (emphasis added).

Therefore, the Panel Report acknowledges that, if Bill 933 is approved, then the growth needs of the municipalities will be accommodated by the joint review process previously established by Bill 762, which provides for the local jurisdictions to act

cooperatively. The CAC specifically recognized in its Panel Report that Bill 933 met the very criteria regarding cooperation and accommodation of the growth needs of the municipalities that the CAC was supposed to be applying, but clearly failed to apply.

Moreover, at the May 5, 2004 hearing, counsel for the CAC specifically stated that Bill 933 met the state goals and criteria. See Exhibit 22, p. 141 (counsel for the CAC stated that "[t]he process that the County has said that they intend to use [under Bill 933], that is the joint process through Bill 762, the panel believed was definitely in line with or appropriate under the state law and criteria . . .").

Furthermore, the Panel Report also specifically notes that the joint review process set up by Bill 933 was already approved when the CAC approved Bill 762 as a refinement to Talbot County's Program in June 2000. Id.

It is entirely arbitrary and illegal for the CAC to disapprove Bill 933 when the CAC (1) acknowledged that Bill 933 met the state law and criteria; (2) specifically acknowledged that Bill 933 met the applicable criteria because it set up a cooperative joint review process which accommodated the growth needs of the municipalities; and (3) specifically recognized Bill 933 as implementing the very same joint review process that the CAC previously approved when it approved Bill 762.

Upon finding that Bill 933 met the applicable statutory goals and criteria, the CAC was required to approve it; and it was not permitted to look any further, for example, at whether the process established would potentially effect another local program's approved non-vested growth allocation award.

The second basis for the CAC's rejection of Bill 933 was that it would create an alleged "conflict" between the County's and Towns' local programs by causing previously reserved growth allocation acres to revert to the County. This basis for rejection of Bill 933 is plainly arbitrary and capricious. It simply does not make sense for the CAC to claim, on the one hand, that Bill 933 would create a "conflict" due to deletion of the reserved growth allocation reserves to the Towns, while on the other hand, the CAC concedes that the joint review process complies with the goals and criteria of the Critical Area statute by establishing a cooperative process that accommodates the growth needs of the municipalities and, moreover, the CAC already approved the very same joint review process when it approved Bill 762.

It appears that it was of particular importance to the CAC that the municipal programs were allegedly "premised upon" the County's 1989 decision to "reserve" growth allocation acres for the use of the Towns. First, this is not a permissible consideration because it is not one of the statutory goals or criteria. Second, this alleged "reliance" is completely irrelevant. Before Bill 933, the County had no input in how its growth allocation acres were utilized by the Towns; now, under Bill 933, the County will have joint input with the Towns in how those growth allocation acres are utilized. The CAC's perception (or assumption) of an alleged conflict is both speculative and incorrect. To the contrary, Bill 933 corrects a prior "conflict" created in 1989 when the County reserved growth allocation to the Towns without establishing a process by which the County and the Towns could cooperatively consider development.

In any event, there was no "reliance" because St. Michaels' program was enacted over one year before the County's program. The Town of St. Michaels' Critical Area Local Program as adopted in June 1, 1988 is attached hereto as Exhibit 24. It merely states that "the Town of St. Michaels should reasonably expect the County to assign some portion of the growth allocation for its growth needs," (p. II-4), and that the "Town has requested growth allocation from the County." Id., p. III-30. As a practical matter, therefore, St. Michaels hoped it would receive growth allocation acres from the County but did not "rely" upon the County's reservation of growth allocation acres in adopting its local critical area program.

Moreover, the St. Michaels Critical Area Plan was adopted on June 1, 1988, prior to the County's Plan. See, Excerpt from St. Michaels' Critical Area Plan, adopted June 1, 1988, attached hereto as Exhibit 25. St. Michaels' Critical Area Plan states that "[g]enerally the amount of total Resource Conservation Area acreage which can be converted to a more dense or intense land use is limited to five percent (5%) of the total RCA are in the County." Id., p. II-3. The Plan also notes that "the Critical Area Criteria mandate that the County establish a process that accommodates growth needs of municipalities." Id. St. Michaels' Critical Area Plan states that 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 IDAs and LDAs in the County." Id., p. II-4. The Plan further states that "the Town of St. Michaels should reasonably expect the county to assign some portion of the growth allocation for its growth needs," and also states that St. Michaels "will request growth allocation" from the County and further states

that "[g]rowth allocation has been requested from the County for these areas which total approximately 445 acres in the Critical Area." Id. Again, the St. Michaels Critical Area Plan shows that while St. Michaels hoped it would receive growth allocation acres from the County, it did not "rely" upon it.

With respect to Oxford, it clearly did not rely upon the County's 1989 growth allocation because much of the area included in the County's 1989 (anticipated) growth areas around Oxford has already been developed, in the County, and annexation of that area has specifically been rejected by Oxford. Thus, any alleged reliance by Oxford upon the "reservation" of growth allocation acres in 1989 is irrelevant.

Furthermore, this basis is plainly arbitrary inasmuch as it flies in the face of Maryland's well established vested rights doctrine. The Critical Area statute, and its goals and criteria, do not permit the CAC to reject an otherwise valid local program amendment merely because the CAC feels the amendment could affect a previous growth allocation approved by a Town, where the developer or property owner has no vested property rights. Yet, this appears to be the reason underlying both rationales for rejecting Bill 933.

B. This Court May Not Affirm the CAC's Decision Regarding Bill 933 on a Basis Not Relied Upon by the CAC.

This Court may not affirm the CAC's decision regarding Bill 933 on a basis not relied upon by the CAC. It is well established that upon judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. Anderson, 330 Md. 187, 623 A.2d 198. In Bucktail v. Talbot County, 352 Md. at 552-553, 723 A.2d at 450-451, a non-statutory judicial review

action, the Court in an opinion by Judge Rodowsky noted that "[a] reviewing Court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. See also Towson Univ. v. Conte, 384 Md. 68, 128, 862 A.2d 942, 975-76 (2004); State Comm'n on Human Relations v. Kaydon Ring & Seal, Inc., 149 Md. App. 666, 702, 818 A.2d 259, 281 (2003); Johnson v. Crim. Injuries Compensation Bd., 145 Md. App. 96, 106-07, 801 A.2d 1092, 1098-99 (2002); Berkshire Life Ins. Co. v. Md. Ins. Admin., 142 Md. App. 628, 653, 791 A.2d 942, 956 (2002); Brodie v. MVA, 367 Md. 1, 3-4, 785 A.2d 747, 748-49 (2001)(court will review an adjudicatory agency decision solely on the grounds relied upon by the agency); United Parcel Serv., Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 576-77, 650 A.2d 226, 230 (1994); Harford County v. Earl E. Preston, Jr., Inc., 322 Md. 493, 505, 588 A.2d 772, 778 (1991); United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., 298 Md. 665, 679, 472 A.2d 62, 69 (1984).

St, Michaels and Oxford will no doubt argue, in support of the CAC's decision, that the County did not first "contact" the Towns to discuss the provisions of Bill 933 prior to enacting Bill 933, and that the County's failure to do so violated the second criteria set forth in COMAR 27.01.02.06 (A)(2). In other words, the Towns contend that Bill 933 was properly rejected by the CAC because the County allegedly failed to "coordinate" with the Towns in carrying out its duty to "establish a process to accommodate the growth needs of the municipalities." The first major flaw in this assertion is that the CAC did not base its decision to reject Bill 933 upon this reason. Rather, the CAC stated that Bill 933 would allegedly "negated" the Strausburg growth allocation, already approved by the CAC, and

that Bill 933 would create "conflicts" because it would cause growth allocation acres previously "reserved" to the Towns to revert to the County if no vested rights have been obtained. The Towns may not assert that the CAC, a State agency, was correct in rendering its decision upon a basis which the CAC did not rely.

The second major flaw in this argument is that it presupposes that the criteria's reference to "cooperation" somehow requires a county to obtain the pre-approval of municipalities prior to enacting a legislative proposal. This cannot possibly be what the General Assembly intended in enacting the criteria, however, because to interpret the provision in this manner would usurp the authority of Talbot County (a Charter County) to enact legislation. This is no doubt why the CAC did not premise its rejection of Bill 933 upon this basis in the first place.

Even assuming that the CAC based its decision upon this issue (and clearly it did not), and assuming further that the County was required to seek pre-approval of Bill 933 from the Towns (and clearly it was not), the third reason this argument fails is that the County did "coordinate" with the Towns in enacting Bill 933 because Bill 933 merely eliminated the restriction that acres previously reserved would be used exclusively by a particular Town and initiated the same joint review process already established by Bill 762. Bill 762 was circulated to the Towns, and changes suggested by the Towns were voluntarily incorporated into Bill 762 by the County. The CAC approved Bill 762 as a local program refinement. Inasmuch as Bill 933 implements the very same joint review process already agreed to by the Towns and already approved by the CAC in Bill 762, there was no reason for the County to also circulate Bill 933 to the Towns, and it cannot be said that the County

failed to "coordinate" with the Towns in establishing the process initiated by Bill 933. Even if it could be so stated, it would not matter, again, because the CAC did not reject Bill 933 on this basis and, thus, its decision cannot be sustained on this basis.

C. The CAC Arbitrarily Rejected Bill 933 Though Bill 933 Establishes a Joint Review Process Previously Approved by the CAC as In Compliance With the Statutory Goals and Criteria.

The CAC rejected Bill 933, inter alia, because it would allegedly "create conflicts between the County program and several approved municipal programs." However, by rejecting Bill 933, the CAC rejected the very joint review process enacted by Talbot County Bill 762, which the CAC had previously approved as a local program refinement. The irony is only heightened because Bill 933, by eliminating reservation of growth allocation for particular Towns, establishes a joint review process by which the County and all Towns will share approval of growth allocation projects. Without Bill 933, St, Michaels and Oxford are provided an exclusive process, not requiring coordination or cooperation with the County, contrary to the Critical Area criteria,

Two conclusions are apparent from the planning assumptions in Talbot County Code § 190-109 D. (9) (a), (b), and (c) (see Tables, pp. 10-11, infra.) First, the 1989 planning maps have not proven useful as a guide to the future. Development has not occurred either on the pace or at the locations those plans predicted. Second, the 1989 plan in § 190-109 D. (9) (b) to request the CAC to release the second-half of the County's total RCA growth allocation has failed. As planned, the County was to request the CAC to release the remaining ½ of the RCA growth allocation when 1,092 acres of RCA growth allocation had been used. See § 190-109 D. (9) (b). Between them, St. Michael's and Oxford control 405

acres of RCA growth allocation. The County can never reach the 1,092 acres until St. Michaels and Oxford use most of the 405 acres, unless they were no longer "reserved" for their exclusive use. Bill 933 eliminated those two Towns' exclusive control over pace and location of the County's future growth. Bill 933 gives all Towns equal opportunity to request growth allocation as needed using the joint review process established by Bill 762, approved by the CAC. It also gives that equal opportunity to unincorporated areas in the County. Growth allocation comes almost entirely from the County's unincorporated areas, (approximately 51,000 RCA acres), not from RCA areas in the Towns. Neither St. Michaels nor Oxford have the right to insist, nor the CAC to require, that future growth in the RCA Critical Area for the County, Easton, and Queen Anne be limited to 160 acres until Oxford and St. Michaels decide (if ever) to use a sufficient part of the 405 acres "reserved" by County law. Bill 933 does not "take" growth allocation from RCA areas within the Towns; it recognizes the 5% formula gives Towns growth allocation based on the RCA Critical Area acreage within the Towns when the Town adopted its Local Critical Area Program. See Bill 933, Section 2, Para. 1 (b).

Bill 933 thoughtfully resolves issues of fairness, equal opportunity, control, and uniform processes for granting growth allocation. Bill 933 applies only to the County's growth allocation, not the Towns, utilizing the 5% formula applied to 51,000 acres in the County as a separate political subdivision. Bill 933 does not control growth allocation resulting from the 5% formula applied to RCA Critical Area in the Towns. That is for the Towns to utilize independently. Bill 933 requires that each Town have an equal opportunity to utilize growth allocation generated from 51,000 acres of RCA in the

County's unincorporated areas. Towns participate as equal partners with the Council in the joint review process of Bill 762. Bill 933 gives all RCA Critical Area property owners the same process, the same opportunity, and equal input in the joint review process. Without Bill 933 Town officials can ignore County residents while using the development rights generated from those same residents' County Critical Area RCA properties. The joint review process is appropriate, as previously approved by and admitted by the CAC. The CAC rejected Bill 933 because it allegedly created "conflicts." In fact, its effect is the exact opposite. Therefore, the CAC's finding was plainly arbitrary; its refusal to approve Bill 933 for this reason perpetuates an existing inconsistency and lack of coordination between local programs dating from 1989. Talbot County Code §§ 190-109 D. (9) (a), (b), and (c)(See, Tables, infra.) were based on certain planning assumptions. Those assumptions have proven to be unsound. Fourteen years later, after the first comprehensive review of its Local Critical Area Program, the County recognized that fact. The CAC has no legal authority to keep the County in a time-capsule and burden it with outdated plans that now must be recognized as mistaken, albeit honest and well-intentioned. Bill 933 rectifies problems, inequities, and unforeseen results from the failed 1989 planning projections embodied in §§ 190-109 D. (9) (a), (b), and (c).

D. The CAC Arbitrarily Rejected Bill 933 Though Bill 933 Establishes a Joint Review Process Which Is Identical to Other County Programs Previously Approved by the CAC.

The Panel Report states that "at the Panel's request, Commission staff provided research summarizing the process by the various Critical Area counties to provide for the use of growth allocation by the municipalities." Exhibit 19, p. 4. The "research" shows that

there are three general categories of local programs enacted by counties throughout Maryland which have previously been approved by the CAC. One of the categories of programs approved by the CAC is those in which "the County participates in a coordinated review process with the municipality, either simultaneously with, or following the Town's review process." Id. Despite its acknowledgment that it previously approved other joint review processes in other counties (and approved Bill 762 in Talbot County), the CAC nevertheless rejected Bill 933, without explaining how Bill 933 either deviates from the statutory goals or criteria or how Bill 933 is allegedly different from all of the other joint county/municipal review programs already approved by the CAC. The CAC's rejection of Bill 933 was clearly arbitrary.

E. Rejection of Bill 933 Because of its Alleged Affect upon the Strausburg Growth Allocation was Arbitrary and Capricious.

The CAC is not authorized by law to base its decision to accept a local program amendment on whether it will or will not affect one of their prior decisions. They have no authority to insulate their own prior decisions from the effect of any law. They have no authority to even consider that effect.

There is no evidence in the record that accepting Bill 933 would negate the Strausburg growth allocation. The Commission's assumption that the County will, in the future, attempt to apply Bill 933 to the Strausburg annexation is pure speculation.

Bill 933, in Section 2, Para. 1, (b) recognizes that each Town has 5% of its own RCA as growth allocation. St. Michaels allocated all of its 5% to the Strausburg property.

Clearly, to that extent Bill 933 cannot effect the Strausburg property. The CAC's reliance upon this rationale for rejecting Bill 933 was arbitrary and capricious.

Even if Bill 933 would apply to the Strausburg growth allocation, that can have no bearing on the CAC's analysis or decision. The law is well-settled that changes in the law apply to all property that has not acquired vested rights. The CAC is not a court. It has no authority to make judgments based on vested rights. The statutory goals and criteria are all that the CAC is empowered to apply. If the County were to attempt to apply Bill 933 to the Strausburg growth allocation, that attempt could always be resisted. The CAC cannot imagine a hypothetical dispute , usurping non-existent authority to pre-judge it, and use that as a basis to disapprove Bill 933. The Courts are better suited than the CAC to resolve such disputes, if and when they exist.

F. The CAC Does Not Have the Authority to Prevent the Talbot County Council From Enacting Legislation That Meets the Critical Area Criteria By Ignoring Maryland's Vested Rights Doctrine.

It simply is not the concern of the CAC, nor within its authority, to render a decision based upon anything other than the statutory criteria. It certainly may not reject a program amendment based upon the CAC's refusal to recognize the judicially created and well settled principle of vested property rights. Permitting the Commission to make judgments on that basis usurps and infringes upon the power of the courts, as well as the "full power" delegated by the State to charter counties to enact local ordinances which its elected representatives determine will best promote the public health, safety, and welfare. The "full power" delegated by the State to charter counties in the Express Powers Act, Article 25A § 5 includes full power to enact local ordinances that apply to all properties, including

properties that have acquired project approvals and zoning map amendments, but have not acquired vested rights. The CAC's previous approval of the map amendment for the Strausburg growth allocation does not render it immune from being "affected" by a subsequently enacted local program amendment.

The CAC has no legal authority to consider whether any property which was the subject of a prior map amendment has acquired vested rights in determining whether to approve a local ordinance enacted by a charter County. The CAC has no legal authority to disapprove Bill 933 as a local program amendment because it may affect one of its previous map amendments. If, however, the County elects to apply Bill 933 to the Strausburg growth allocation, the question ultimately will be for a Court to decide. The CAC has no power to immunize its map amendments from the "full power" delegated by the State to charter counties to enact ordinances to promote the public health, safety, and welfare, by refusing to approve Bill 933 as a local program amendment.

G. In Rejecting Bill 933 on the Basis of the Strausburg Growth Allocation, the CAC Ignored Bill 933's Severability Clause.

Even if the Critical Area Commission was authorized to base its decision on its determination that approval of Bill 933 would negate the Strausburg growth allocation, that determination is insufficient to justify the Commission's disapproval of Bill 933. The severability clause included in Bill 933 states that "The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or invalid, the remaining provisions hereof and the application thereof to all other persons and circumstances remain

in full effect." Exhibit 13. Assuming the CAC is permitted to act as a court of law and decide the issue of vested rights, and thus is authorized to determine that Bill 933 would negate the Strausburg growth allocation, the CAC is nevertheless required to evaluate the balance of the Bill under the statutory criteria in light of the severability clause. The Commission made no finding that the remainder of Bill 933 was inconsistent with the applicable criteria. The remainder of Bill 933 is consistent with the statutory criteria as a matter of law.

V. EXTRANEOUS ISSUES RAISED BY THE INTERVENOR TOWNS.

A. This Court May Not Affirm the CAC's Rejection of Bill 933 For a Reason Not Relied Upon by the CAC.

As discussed supra, this Court may not affirm the decision of the CAC on a basis not relied upon by the CAC. The intervenor Towns assert that Bill 933 is unconstitutional, for a variety of alleged reasons. However, the CAC did not reject Bill 933 on the basis that it was purportedly unconstitutional. Therefore, even assuming this Court agrees with the Towns' arguments regarding the alleged "unconstitutionality" of Bill 933, this Court may not affirm the CAC's decision on that basis. The constitutionality of Bill 933 was neither considered nor decided by the CAC, and certainly was not a basis for its rejection of Bill 933. See Panel Report (Exhibit 19), Supplement to Panel Report (Exhibit 21), and May 14, 2004 letter rejecting Bill 933 (Exhibit 23). Thus, the Towns may not collaterally attack the constitutionality of Bill 933 in this Court or otherwise argue that the Commission should have rejected Bill 933 on some basis other than it did.[3] Assuming this Court reverses the

[3] The proposed Order submitted by St. Michaels with its motion to intervene specifically sought a ruling that "the joinder of St. Michaels will allow the Court to consider **the issues raised by St. Michaels at the Commission but which were not 'addressed' by**

decision of the CAC, and if and when Bill 933 eventually takes effect, the Towns will be able to challenge the constitutionality of Bill 933 at that time.

B. Even Assuming, Arguendo, That This Court Were Permitted to Affirm the CAC's Rejection of Bill 933 For a Reason Not Relied Upon by the CAC, Bill 933 is Plainly Constitutional.

To the extent the Towns seek affirmance of the CAC's decision on the basis that Bill 933 is unconstitutional, this Court may not affirm on that basis, as discussed supra.

To the extent the Towns seek an independent declaration that Bill 933 (or the Critical Area statute) is unconstitutional, it is not. In its Counterclaim, St. Michaels asserts that Bill 933 is unconstitutional and/or ultra vires (¶¶31.11 - 31.13), and asserts further that "[a]pproval or validation of County Bill No. 933 would be illegal and invalid" because it would "illegally monopolize the limit placed on the area of expansion of intensely developed or limited development areas;" that it would "illegally revoke" the growth allocations to municipalities; that it would "retroactively revoke" allocations St. Michaels has allocated to developers; that it would grant the County Council "the power to hear, and the unfettered discretion to deny, applications" for growth allocations in St. Michaels "contrary to the will of St. Michaels;" that it would otherwise "affect" the authority of St. Michaels over its planning and zoning. See, St. Michaels' Counterclaim, p. 10-12.

This theory overlooks several important points. First, the State 5% rule creates County growth allocation using the 51,000 RCA Critical Area acres in the County's unincorporated areas. County citizens' RCA Critical Area properties are the overwhelming source of the County's growth allocation, not municipal RCA. Second, Bill 933 does not

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the Commission . . ." (Emphasis added). Thus, St. Michaels concedes, as it must, that this issue was not one relied upon by the Commission in rendering its decision.

apply to municipal RCA. See, Section 2, Para. 1 (b). In effect, St. Michaels and Oxford's claims amount to this: County RCA generates County growth allocation. Fourteen years before Bill 933, in 1989, certain planning assumptions were made in §§ 190-109 D. (9) (a), (b), and (c) Talbot County Code. Even though it is apparent those plans are no longer current or meaningful, and even though the County has now had three intervening Comprehensive Plans, the County is constitutionally prohibited from repealing its own ordinance. In effect, the Constitution has the County stuck in a time-warp.

St. Michaels' Counterclaim seeks a declaration that this Court find that Bill 933 is unconstitutional on its face and unconstitutional as applied to St. Michaels. The Town of Oxford makes similar, if not identical, claims in its Counterclaim.

The intervenors' constitutional arguments appear to be premised upon the fact that Bill 933 would require the joint process that already exists for Easton to also apply to Oxford and, St. Michaels. They want to retain sole authority given to them in 1989 by a County ordinance. First, the County was not legally required to "reserve" growth allocation for the Towns in 1989 when it established its local program. Second, there is no law that prevents the County from deciding to "unreserve" growth allocation as part of its comprehensive review of land use policies in the Critical Area. The Towns were given a blank check in 1989 and not required to coordinate with the County. The County's growth allocation is based on State's 5% rule applied to the 51,000 acres of RCA Critical Area in the unincorporated area of the County, not on municipal RCA. The County has a legitimate interest in the use of that growth allocation, certainly sufficient to give it's elected representatives the right to choose to participate in the process.

It is worth noting in this regard that the St. Michael's zoning ordinance states that, "Growth Allocation is a finite resource, created by the State and delegated to the counties of Maryland. Talbot County has delegated a part of its Growth Allocation to the Town and the surrounding area." See, Excerpt from St. Michaels Zoning Ordinance, Section 5 (11)(b)("Intent"), enacted by Ordinance 109 on May 18, 2004, attached hereto as Exhibit 26. This is a specific recognition by St. Michaels of the fact that growth allocation is created by the State and the State has delegated it to the counties. Moreover, it concedes (as it must) that the County voluntarily "reserved" a portion for St. Michaels and Oxford.. The County had such authority and it clearly has the authority to "unreserved" it as long as doing so does not affect vested property rights. Bill 933 specifically recognizes vested rights and does not interfere with them.

Maryland law focuses all analyses upon the doctrine of vested rights. Sterling Homes Corp. v. Anne Arundel County, 116 Md. App. 206, 217-18, 695 A.2d 1238, 1244 (1997). "The doctrine of vested rights is predicated on the legal theory that an owner who obtains a lawful permit, commences to build in good faith, and completes substantial construction on the property, wins the right to complete the construction unaffected by a subsequent change in the zoning regulations." Id. See also Sycamore Realty v. People's Counsel, 344 Md. 57, 67, 684 A.2d 1331, 1336 (1996). The theory of vested rights, when applied in the Critical Area context, provides that growth allocation acres which are not the subject of vested property rights may also lawfully be "unreserved." Just as a local legislative body has the lawful prerogative to legislatively change or control a zoning approval where rights are not vested, similarly, the Talbot County Council has the

legislative prerogative to "unreserve" unvested growth allocation it previously reserved.

One of St. Michaels' and Oxford's arguments is that the joint review process provided by Bill 933 would "illegally monopolize the limit placed on the area of expansion" or enable the County to have a "veto" over any Town growth allocation requests. This is simply not true. It is important to note that Bill 933 merely returns to State law prior to the County's 1989 reservation of growth allocation. Nothing is being taken from St. Michaels and Oxford which they were given under Critical Area law. When the Critical Area law was enacted, it provided that each local jurisdiction (the counties and municipalities) would have 5% of their RCA to use as growth allocation. §8-1808.1(b). Thus, Talbot County had growth allocation of 5% of its RCA, and each municipality had 5% of its RCA to use as growth allocation. The Critical Area law was essentially a State-wide environmental "downzoning" intended to better and more closely control development in Maryland's Critical Area. However, the statute made some concession for development by allocating 5% of the RCA for growth (minus wetlands and federal property). Each local jurisdiction was to establish its own local program to decide how to use its 5% of its RCA, i.e., its growth allocation. The General Assembly anticipated that much of this "growth" in the Critical Area would occur in, near or around municipalities and, thus, where IDAs and LDAs were increased through the use of growth allocation, the regulations require the "counties, in coordination with affected municipalities, to establish a process to accommodate the growth needs of the municipalities." COMAR 27.01.02.06(A)(2).

St. Michaels and Oxford assert that Bill 933 is unconstitutional because it infringes upon their Article 66B planning and zoning powers. By allowing the County to participate in a joint review process to utilize the County's growth allocation reserved, by the County in a 1989 plan, for use exclusively by St. Michaels and Oxford. Bill 933 is plainly constitutional.

First, Bill 933 specifically provides in Section 2 (b) that:

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

Thus, Bill 933 is inapplicable to the growth allocation St. Michaels and Oxford have under the 5% rule. Bill 933 merely provides, entirely consonant with the language and the intent of the Critical Area law, that where St. Michaels or Oxford request the use of a portion of the County's growth allocation, that they engage in a joint review process with the County. The joint review process is constitutional despite the Towns' protestations regarding the alleged infringement of their "zoning powers" under Article 66B.

St. Michaels and Oxford's argument ignores the different purposes served by Article 66B and the Critical Area law. The former grants municipalities traditional zoning powers and the latter establishes density and land use restrictions State-wide in the Critical Area 1,000 ft. ribbon to encircle and protect the Chesapeake Bay and its tributaries regardless county/municipal boundaries. The Maryland General Assembly is the sole source of all municipal zoning authority. It enacted both laws, thus intending them to be read together rather than to conflict. If Bill 933 is within the County's power to enact, and

clearly it is, just as the 1989 plan was, it cannot be unconstitutional because it is authorized by the General Assembly's grant of power to the County. By asserting that Bill 933 is unconstitutional as infringing upon its Article 66B powers, St. Michaels and Oxford necessarily attack the General Assembly's power to enact the Critical Area law itself. The General Assembly, as the source of municipal zoning power, may withdraw that power altogether. Certainly it may limit development in the Critical Area, enact the 5% rule giving the overwhelming mass of growth allocation to the counties, and then require counties, in coordination with affected municipalities, to develop a process to accommodate the growth needs of the municipalities.

The Towns' argument regarding alleged infringement of their Article 66B powers is gravely misplaced because it is based upon the false premise that the planning and zoning powers of a municipality under Article 66B are implicated by the Critical Area law. They are not. Indeed, Article 66B and the Critical Area statute are two entirely separate legislative enactments by the General Assembly, with entirely different (though related) functions. Article 66B, enacted by the General Assembly, provided planning and zoning powers to municipalities. Mayor & Council of Rockville v. Rylyns Enters., 372 Md. 514, 575, 814 A.2d 469, 500 (2002)("Municipalities wield only such zoning powers as are granted to them by the Legislature."). The powers granted under Article 66B address a municipality's traditional planning and zoning authority with respect to Euclidean zoning, such as whether land is categorized as business, industrial, residential, etc. The zoning or rezoning of land from one category to another is controlled by the municipalities pursuant to the powers granted and provisions adopted under Article 66B, as well as Maryland law.

The Critical Area statute, on the other hand, was enacted by the General Assembly for the purpose of protecting the Chesapeake Bay and its tributaries, and it delineates three categories of land within the Critical Area: RCA, LDA and IDA. These Critical Area categories have nothing to do with traditional Euclidean zoning. Those areas were identified initially by each local jurisdiction based upon the amount of developed and/or undeveloped land within an area. See COMAR 27.01.02.03, .04, and .05. Unlike a traditional "rezoning" (whether piecemeal or comprehensive), a change from one land category to another under the Critical Area statute is governed solely by the provisions and criteria contained within the Critical Area statute, not based upon Article 66B or law applicable to traditional zoning. In this regard, a change in classification of Critical Area categories of land does not require a change in the underlying Euclidean zone of the land (although the two may occur simultaneously or subsequently). Rather, the two processes are distinct. Article 66B relates to the planning and zoning authority of a town with respect to land planning and use categories; while the Critical Area law relates to protection of the Bay and whether requested changes in the three identified Critical Area land categories should be granted under the statutory criteria adopted. This in no manner implicates nor intrudes upon a municipality's power over its Article 66B planning and zoning.

The Maryland General Assembly enacted both Article 66B and the Critical Area statute. Clearly, the General Assembly intended that those Acts were separate inasmuch as they have entirely separate purposes and provisions, but they should be construed and applied harmoniously. Anne Arundel County v. Bd. of Educ., 248 Md. 512, 523-524, 237 A.2d 426, 431 (1968)("Statutes which relate to the same subject-matter and are not

inconsistent with each other are in pari materia, and should be construed together so that they will harmonize with each other and be consistent with their general object and scope, even though they were passed at different times and contain no reference to each other.") (quoting Pressman v. Elgin, 187 Md. 446, 450 (1947)); Buchholtz v. Hill, 178 Md. 280, 288, 13 A.2d 348, 352 (1940). On the one hand, municipalities have planning and zoning authority within the municipality; on the other hand, the counties are required to establish Critical Area processes that accommodate the growth needs of municipalities. The Critical Area law is plainly constitutional, as is Bill 933 which makes the existing joint review process uniform for all, including Easton and Queen Anne, and by which the growth needs of all municipalities may be accommodated. The Towns' entirely separate planning and zoning powers are neither implicated nor impeded.

In North v. Kent Island, the Court of Special Appeals specifically rejected the notion that the Critical Area law can be equated with typical Article 66B zoning, or that the CAC has any role with respect to traditional zoning, stating as follows:

> It is not the role of the Commission to reexamine whether there was an actual mistake in the original zoning. To allow the Critical Area Commission to revisit the question of mistake would render meaningless the hearings before the Planning Commission and the County Commissioners. **In addition, this would create a state level zoning board, which was not the intention of the General Assembly in establishing the Critical Area Commission.** The Commission was designed to be an **oversight committee**. §8-1801(b)(2). Section 8-1801(b) (2). The original drafting group considered forming the Commission as a permitting agency for all projects in the critical area. The drafting group concluded that such a role was undesirable because the Commission would become tangled in collisions with local agencies and developers over the specifics of particular projects. George W. Liebmann, The Chesapeake Bay Critical Area Act: The Evolution of a Statute, The Daily Record, April 20, 1985, at 1. The drafting group also considered constituting the Commission as an appeal board. **Because this would impose substantial**

> **hearing burdens on the Commission and create a conflict between the Commission and local zoning boards, the group decided against such a provision.** The drafting group also considered allowing an appeal directly to the Commission from the permit granting agency. The drafting group **rejected this approach because it would either result in duplicative appeals or grant the Commission pendent jurisdiction to address issues which did not fall under its regulations.** Because there was a need for the Commission to check upon local permit determinations involving zoning and subdivision, the group drafted a provision granting the Commission the right to intervene at any stage of administrative, judicial, or 'other original proceeding concerning project approvals. Section 8-1812. In this case, once the Planning Commission determined that there was a mistake in the original zoning, the program amendment should have been referred to the Critical Area Commission to determine whether it met the criteria. The Commission has jurisdiction to examine the rezoning and determine whether the rezoning meets the established criteria. The sole issue before the Commission should have been whether the property satisfies the definition of IDA as set forth in the criteria. Instead, **the Critical Area Commission undertook an independent review to determine whether there was a mistake in the rezoning. This action was outside the scope of its power. The Commission has jurisdiction as the final arbiter of program changes, but does not have jurisdiction to review piecemeal rezoning.** The legislative charge to the Critical Area Commission does not include the quasi-judicial function of evaluating whether there was a mistake in the original mapping.

Id., 106 Md. App. at 106-107, 664 A.2d at 41 (emphasis added).

The Critical Area statute and its provisions are entirely separate and apart from the traditional zoning powers of municipalities, as was the intent of the General Assembly in enacting both statutes. While Article 66B and traditional zoning authority ensures that zones are created and uniformity within those zones assured, the purpose and intent of the Critical Area law is to protect the identified "critical areas" of the Bay and its tributaries that require environmental protection. The change in classification of land from RCA to LDA or IDA, or from LDA to IDA is the separate, exclusive function of the Chesapeake Bay Protection Act, not Article 66B or traditional Euclidean planning and zoning. When a

request is made for a change in Critical Area land-use classification, the issue is not "rezoning" or even the authority of the Towns to plan or zone. Rather, the change in classification of Critical Area land is purely a function of protecting the Chesapeake Bay by applying the environmental regulations under the Critical Area law, including guidelines and criteria for approving growth allocation to reclassifiy land in one Critical Area category to another. The powers provided to the Towns by Article 66B simply are not unconstitutionally infringed by that process.

Moreover, to accept St. Michaels' and Oxford's assertions that the joint review process for growth allocation provided in many jurisdictions throughout the State as previously approved by the CAC infringes upon municipalities' planning and zoning authority under Article 66B would nullify the General Assembly's requirement in the Critical Area criteria that when planning future expansion of IDAs and LDAs "counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." COMAR 27.01.02.06(A)(2). It is implicit in this criteria that the General Assembly intended that counties and municipalities both have input with respect to future expansion of IDAs and LDAs (i.e., growth allocation requests).. Bill 933 complies with the mandate of the Critical Area statute requiring it to establish a process. Bill 933 plainly does not infringe upon or "usurp" the municipalities' planning and zoning authority under Article 66B.

St. Michaels and Oxford argue that Bill 933 will provide the County with a "veto" over proposed development in and around their boundaries. Easton has recently been awarded 156 acres of RCA growth allocation through a joint-review. No doubt, there may

be instances where honest differences of opinion compel elected officials with the courage of their convictions to disagree. However, State law requires counties to develop a process to accommodate the growth needs of municipalities. Talbot County has done so; the CAC has acknowledged and approved that process. That process has worked, and there is no reason to assume it will not continue to do so. Counties cannot arbitrarily deny growth allocation requests. If a county were to do so, there is judicial recourse. Those instances are not to be presumed or imagined, then used to strike down the joint review as unconstitutional. The joint review does not provide counties with a "veto" over municipalities regarding growth allocation. Instead, it provides the County and each affected municipality with shared input and equal authority over how the public trust over citizens' growth allocation is utilized, for the benefit of the entire County, not for the exclusive privilege of landowners and developers in or around Oxford or St. Michaels, as determined exclusively by those municipalities. Easton, certainly, and Queen Anne as well, are entitled to a level playing field and equal opportunity. Growth allocation is a limited, County-wide resource. How it is used is important for the well-being and the future of the entire County. County citizens in unincorporated areas, from whose properties growth allocation is derived, should fairly receive consideration in the process. Oxford and St. Michaels now enjoy exclusive control of 71% of RCA growth allocation currently available to the County. Easton although much larger, has none. The only basis for that claim is the 1989 County planning map and reservation based on those long out-dated plans. The County 1989 plans are now long-since obsolete.

The General Assembly encourages counties and towns to cooperate to protect the Chesapeake Bay. Talbot County has a process that requires cooperation. The County has been responsible and responsive to the growth needs of Easton. was that the towns and counties would cooperate. St. Michaels and Oxford seek to ignore that requirement and to completely exclude the County from having any input whatsoever in the growth allocation process. The Critical Area statute requires as much and despite the fact that such growth allocation approvals will directly affect the environment of the entire County (and entire State Critical Area). Thus, the Towns oppose Bill 933 on a basis that is inimical to the very purposes of the Critical Area statute and directly contrary to its requirements.

CONCLUSION

In sum, the CAC had no authority to reject Bill 933 for either of the two bases upon which it purported to do so. Its authority is strictly limited to consideration of the goals and criteria established in the Critical Area statute and regulations. It is not authorized to consider anything other than those specific goals and criteria. The CAC clearly violated the limits of its authority, and rejected Bill 933 on bases far beyond those it is statutorily permitted to consider The refusal to approve Bill 933 is illegal and void.

In addition, the CAC conceded in the Panel Report that (1) Bill 933 provides for a joint review process that is already approved by the CAC, ,Bill 762; and (2) that Bill 933 accommodates the growth needs of the municipalities. The CAC was therefore legally constrained, based upon the applicable goals and criteria, to approve Bill 933.

St. Michaels, Oxford, and the CAC cannot justify rejection of Bill 933 on a ground not relied on by the CAC in its decision. It is well established that an agency decision may

be upheld only for the reasons stated by the agency. Finally the Critical Area statute and Bill 933 are plainly constitutional.

Respectfully submitted,

ALLEN, KARPINSKI, BRYANT
& KARP

BY: Daniel Karp/vs
DANIEL KARP

Victoria Shearer
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 Pullen/vs
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 14th day of November 2005, a copy of the foregoing Talbot County's Motion for Summary Judgment and Memorandum in Support Thereof 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

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 Gruber, Of Counsel
for Plaintiff Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

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

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

Defendant

ORDER

Upon consideration of the parties' Cross Motions for Summary Judgment, and the oppositions thereto, it is this _____ day of _____, 2005, by the Circuit Court for Talbot County,

ORDERED, that Talbot County's Motion for Summary Judgment be and is hereby GRANTED; and it is further

ORDERED and **DECLARED** as follows:

_____ (1) The decision of the Critical Area Commission refusing to approve Talbot County Bill 933 is hereby **REVERSED**; and the Commission is **ORDERED** to adopt and approve Bill 933 as a local program amendment to Talbot County's Critical Area program. The Court issues the following declaratory judgment:

(a) That the Critical Area Commission is required to consider only the standards set forth in § 8-1808 (b) (1) through (3); and the criteria adopted by the Commission under § 8-1808, when reviewing a proposed local program amendment;

(b) That the Critical Area Commission exceeded the proper scope of its authority by failing to consider only those standards and criteria;

(c) That the Commission failed to adequately articulate appropriate findings of fact to justify their decision to not approve Bill 933 as a local program amendment;

(d) That the reasons expressed by the Critical Area Commission for refusing to approve Bill 933 as a local program amendment are legally insufficient to justify its decision;

(e) That Bill 933 meets the applicable standards and criteria, and it should therefore be approved as a local program amendment;

(f) That the Critical Area Commission abused its discretion in failing, neglecting, and refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program.

Or, in the alternative:

_____ (2) In denying approval of Talbot County Bill 933, the Critical Area Commission acted contrary to law and in excess of its jurisdiction, and its decision is

REVERSED, and this case is **REMANDED** to the Critical Area Commission for further consideration of Bill 933 as a local program amendment in light of the Court's opinion in this case.

Judge,
Circuit Court for Talbot County

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	:	

EXHIBITS TO TALBOT COUNTY'S MOTION FOR SUMMARY JUDGMENT

1. Talbot County Council Resolution No. 56, dated May 23, 1989, with attached Critical Area Plan.

2. Talbot County Critical Area Zoning Ordinance.

3. Talbot County Bill 762.

4. August 19, 1999 correspondence from Easton's Town Attorney details the process the County would later adopt in Bill 762.

5. March 24, 2000 correspondence with a copy of Bill 762, circulated to the Mayor of Easton and the Presidents of the Town Commissioners' of St. Michael's and Oxford.

6. Documents regarding March 28, 2000 introduction of Bill 762 and a public hearing scheduled for April 11, 2000.

7. April 6, 2000 recommendation of the Planning Commission regarding Bill 762.

8. Letter dated April 13, 2000 from Mr. Hickson, St. Michaels Town Attorney.

9. April 25, 2000 letter re-sending Bill 762 to the Mayor of Easton and the Presidents of the Town Commissioners' of St. Michael's and Oxford.

10. June 7, 2000 CAC Minutes.

11. October 14, 2003 growth allocation request from Easton.

12. November 18, 2003 introduction of Bill No. 925.

13. Talbot County Bill 933.

14. Letter from Talbot County Planning Office to CAC enclosing Bill 933, dated December 29, 2003.

15. Letter dated January 8, 2004 from CAC to Talbot County regarding Bill 925.

16. Letter from Talbot County Planning Office to CAC enclosing another copy of Bill 933, dated January 19, 2004.

17. Letter from CAC to Talbot County dated February 5, 2004.

18. Transcript of CAC public hearing of March 24, 2004.

19. CAC Panel Report dated May 5, 2004, regarding Bill 933.

20. "Research" by CAC.

21. "Supplement" to CAC Panel Report, dated May 5, 2004.

22. Transcript of CAC Meeting of May 5, 2004.

23. Letter from CAC to Talbot County's Director of Office of Planning and Zoning, dated May 14, 2004.

24. Town of St. Michaels' Critical Area Local Program as adopted in June 1, 1988.

25. Excerpt from St. Michaels' Critical Area Plan, adopted June 1, 1988.

26. Excerpt from St. Michaels Zoning Ordinance, Section 5 (11)(b)("Intent"), enacted by Ordinance 109 on May 18, 2004.

RESOLUTION

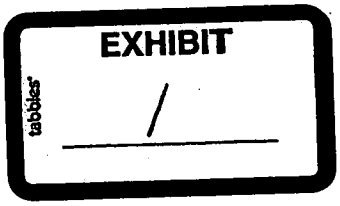
A RESOLUTION TO ADOPT THE TALBOT COUNTY, MARYLAND CRITICAL AREA PLAN.

WHEREAS, the County Council of Talbot County, State of Maryland, deems it desirable to adopt the Talbot County Critical Area Plan as mandated by the Chesapeake Bay Critical Area Law, passed in 1984 by the General Assembly of the State of Maryland, in an effort to cleanup the Chesapeake Bay.

WHEREAS, the purposes of the Talbot County Critical Area Plan are to protect water quality; conserve fish, wildlife and plant habitats; establish land use policies in Talbot County's Critical Area; promote environmentally sensitive plans and practices; encourage conservation of all wetlands within the Critical Area; and restore shellfish and finfish productivity through protection and cultivation of aquatic vegetation.

BE IT RESOLVED BY the County Council of Talbot County, Maryland that the Talbot County, Maryland Critical Area Plan, as attached, is hereby adopted.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.



COPY

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1989 Legislative Session Legislative Day No. May 9, 1989

RESOLUTION NO. 56

Introduced by: The County Council

A RESOLUTION TO ADOPT THE TALBOT COUNTY, MARYLAND CRITICAL AREA PLAN.

By the Council May 9, 1989

Introduced, read first time, ordered posted, and public hearing scheduled on May 23, 1989 at 3:00 P.M. in the Council Hearing Room, Court House, Easton, Maryland.

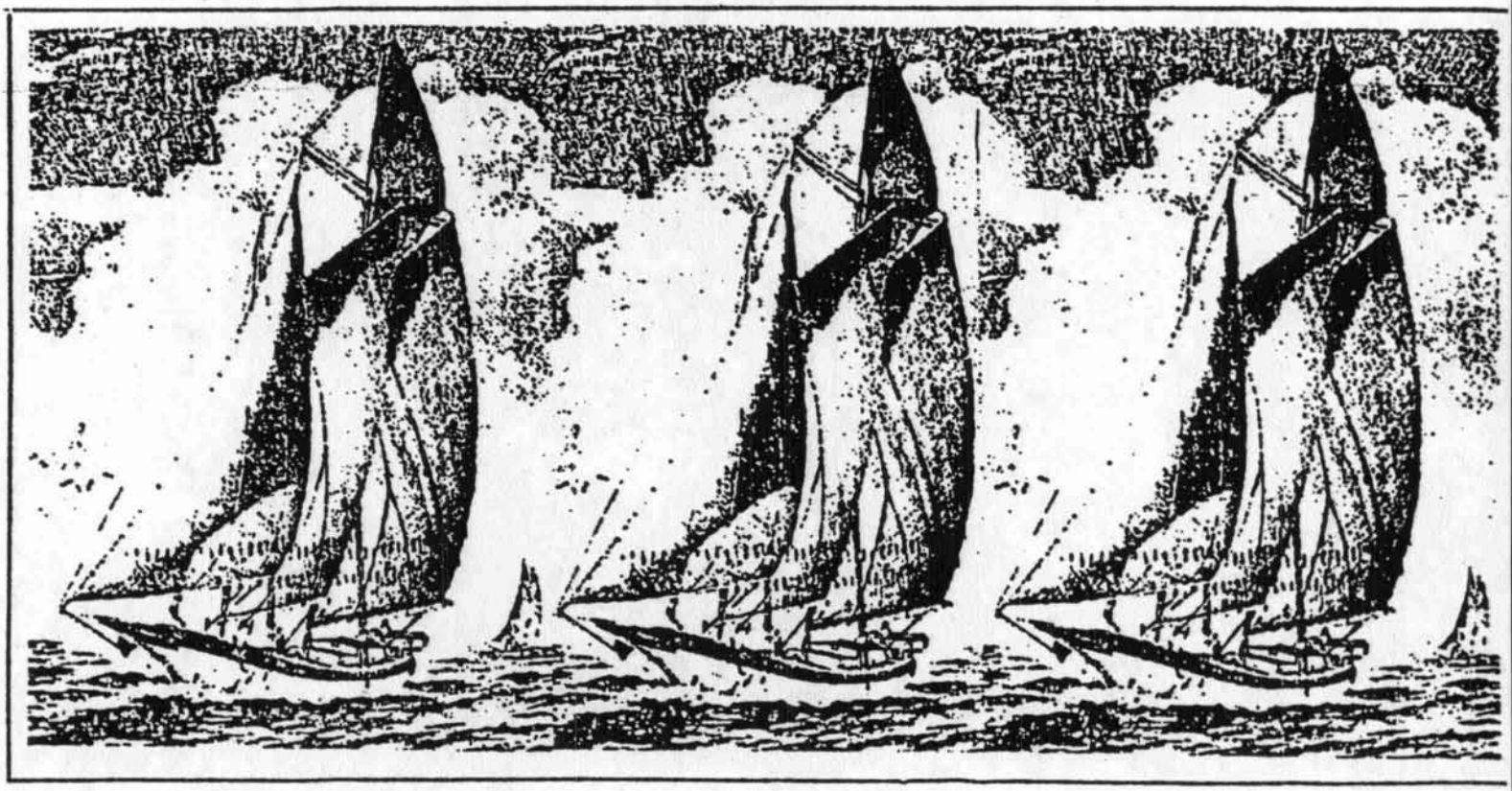
By Order, Mary Foster
Secretary

CRITICAL AREA PLAN

COPY

TALBOT COUNTY MARYLAND

DRAFT
MAY, 1989



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CHAPTER I
INTRODUCTION

The Talbot County Critical Area Plan is mandated by the Chesapeake Bay Critical Area Law, passed in 1984, in which the General Assembly of the State of Maryland took a landmark stand to clean up the Chesapeake Bay and protect the waters and surrounding lands from further environmental decline. Talbot County's positive response in support of the State mandate is embodied in this Plan.

PURPOSE

The purposes of the Talbot County Plan directly reflect those of the Critical Area Law and are as follows:

- To protect water quality by reducing pollution and its effects, whatever the sources;
- To conserve fish, wildlife and plant habitats;
- To be an integral part of the Talbot County Comprehensive Plan;
- To establish land use policies in Talbot County's Critical Area, which allow for growth while minimizing the negative effects on the environment that can result from development or other activities;
- To promote the most environmentally sensitive plans and practices where development is allowed in shoreline areas;
- To encourage the conservation of all types of wetlands within the Critical Area so that they can continue to function in their natural capacities as marine nurseries, filters and absorbers of flood and erosive impacts; and
- To restore both shellfish and finfish productivity through protection and cultivation of submerged aquatic vegetation beds.

ORGANIZATION

The Talbot County Critical Area Plan is divided into chapters that focus either on environmental or implementation issues associated with this Plan. Chapters III through XI present the environmental goals and policies of the Plan. A series of policies are listed that are intended to provide strategies for achieving each specific goal. Chapters II and XII are implementation sections. Chapter II deals with development in the Critical Area and describes the methods used by the County to delineate Intensely Developed Areas (IDA), Limited Development Areas (LDA) and Resource Conservation Areas (RCA). It also describes the methods to be used for allocating future growth in the Critical Area. Chapter XII lists the methods the County will use to develop a zoning ordinance and other regulatory documents to enforce the objectives of this Plan. It also lists methods for dealing with existing development, variances from the standards of the Plan and other County programs for its implementation.

CHAPTER II

DEVELOPMENT IN THE CRITICAL AREA

INTRODUCTION

One of the key elements which will affect the effectiveness and enforceability of Talbot County's Critical Area Plan is the accuracy of the Critical Area maps. This chapter addresses the process of mapping and delineating the development areas and establishes guidelines to direct, control and allocate growth in the Critical Area.

CRITICAL AREA DESIGNATION

The Critical Area of Talbot County as defined by the Critical Area Law includes ...all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide ... all land and water areas within 1000' of the landward boundaries of State or private wetlands and the heads of tide, as defined in Title 9 of the Natural Resources Article of the State Code". The boundary line used to enclose the above described Critical Area was transferred from the State of Maryland tidal wetlands maps.

Once this Critical Area was delineated, the acreage within its boundary was computed, This equals 64,847 acres or 38% of the unincorporated area in Talbot County. The total Critical Area, including incorporated towns, equals 65,689 acres.

IDENTIFICATION OF DEVELOPMENT AREAS

The next task in the mapping process was to divide all land and water within the Critical Area into three classifications based on existing land uses and densities, termed Intensely Developed Areas (IDA), Limited Development Areas (LDA) and Resource Conservation Areas (RCA). Because these land classification maps both guide and limit future development in the Critical Area, they are the foundation of the Talbot County Critical Area Plan.

In order to ensure that the land classification process be as accurate as possible, a numer of information sources were considered and evaluated. The resources selected and used as the basis for the delineation of the development areas were as follows:

1. Aerial photographic maps (1985), 1' = 600" with the following natural features identified on each map:

    a. Wetlands (tidal and non-tidal);
    b. Forest resources;
    c. Agricultural resources;
    d. Mean high water line;
    e. Perennial and intermittent tributary streams; and
    f. Submerged aquatic vegetation.

2. Land uses, as determined by a field survey and photo interpretation from 1985 aerial photographs, 1" = 600";

3. Tax assessment maps, 1" = 600", indicating all property lines, property identification numbers, acreage and property owner's names (on larger parcels only);

4. Computer listing of all property within the County identifying each parcel, map number, market value of land, market value of improvements, acreage and the land use classification prepared from July, 1985 tax assessment records updated to the spring of 1986 by the Maryland Department of State Planning and the Department of Assessments and Taxation;

5. Existing Talbot County zoning maps, 1" = 600";

6. Extensive knowledge of existing and committed land development, utility systems and other physical characteristics of the County by the Planning Staff and Planning Commission members; and

7. Other public documents (building permit records, tax assessment records, etc.) as necessary to determine the presence of structures or if footings/foundations were started by December 1, 1985.

The following policies guided the classification of lands within the Critical Area:

Policy A: That the requirements of the Critical Area Legislation be followed.

Policy B: Classification of LD..'s, IDA's and RCA's should be accomplished in a manner that provides maximum protection of the County's primary natural resource, the Bay, its tributaries and the adjoining land area.

Policy C: That designations be made on a parcel by parcel method.

Specific criteria were then selected in order to classify each of the development areas. These appear below.

CRITERIA FOR DELINEATION OF INTENSELY DEVELOPED AREAS

IDA's included any area of twenty or more contiguous acres where residential, commercial, institutional and/or industrial development predominated and relatively little natural habitat was present. In addition, the area had to exhibit at least one of the following characteristics:

1. Housing density was equal to or greater than four dwelling units per acre; or
2. Industrial, institutional or commercial uses were concentrated in an area; or
3. Public sewer and water systems were currently serving the area and housing density was greater than three dwelling units per acre.

CRITERIA FOR DELINEATION OF LIMITED DEVELOPMENT AREAS

LDA's included any area of twenty or more contiguous acres developed in low or moderate intensity uses. The areas had a developed residential density of one dwelling unit per five acres up to four dwelling units per acre. The areas were not subject to extensive re-subdivision. And, they had an historic identification and concentration of rural development such as a village or crossroads area zoned for such development. In addition, the following characteristics were used:

1. Areas were not dominated by agriculture, wetlands, forest, barren land, surface water or open space;

2. Areas had public water or sewer system or both; and

3. Areas were designated as LDA by Planning Commission hearing.

DELINEATION OF RESOURCE CONSERVATION AREAS

RCA's included the balance of the Critical Area not previously designated as an IDA (Intensely Developed Area) or a LDA (Limited Development Area). This remaining land was reviewed for qualification for RCA, characterized by housing densities of less than 1 dwelling unit per 5 acres, and the dominant land use was agriculture, forests, barren land, wetlands, surface water or open space.

Summary of Critical Area Classification

The following Table 2.1, Critical Area Classifications, indicates the total area for each of the three development area classifications. An appendix to this Plan records and catalogs each of the individual development areas, and is on file at the Planning Department. This catalog of IDA's and LDA's contains the following information for each of the 76 individual areas, as illustrated on Map 1.

1. IDA or LDA identification number;
2. Tax map (1" = 600") with IDA or LDA outline;
3. Tax map number;
4. Number of residential acres;
5. Number of residential lots;
6. Number of developed residential lots;
7. Percentage of lots developed;
8. Developed Density (DU/ACRE);
9. Non-residential acres; and
10. Total acres.

TABLE 2.1

CRITICAL AREA CLASSIFICATIONS

Intensely Developed Areas	585	acres
Limited Development Areas	7,606	acres
Resource Conservation Areas	57,498	acres
Critical Area Total	65,689	acres

EXPANSION OF DEVELOPMENT AREAS AND FUTURE ALLOCATION

The State Legislation provides for the future expansion of Intensely Developed and Limited Development Areas within the Critical Area. The total area of expansion may not exceed an area equal to 5% of the County's Resource Conservation Area excluding non-tidal wetlands or federally owned lands. No more than one-half of this allocated expansion may occur in the Resource Conservation Area. The calculation of Talbot County's future growth allocation is as follows:

TABLE 2.2
EXPANSION FORMULA FOR TALBOT COUNTY

Total Resource Conservation Area		57,498
Less Lands in Tidal Wetlands and Federally Owned	-	6,416
Net Resource Conservation Area		51,082
Apply 5% Growth Expansion	x	.05
Total Growth Allowed		2,554
Allowed in RCA (max. 50%)		1,277
Allowed in IDA/LDA		1,277

As indicated in Table 2.2 above, the total future growth allocation in the Critical Area is 2,554 acres.

The general policies for creating new IDA's and LDA's within the Critical Area are as follows:

Policy A: New IDA's should be located in existing LDA's or adjacent to existing IDA's.

Policy B: New LDA's should be located adjacent to existing LDA's or IDA's.

Policy C: New IDA's 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.

Policy D: New IDA's and LDA's should be located to minimize impacts to Habitat Protection Areas and to optimize benefits to water quality.

The Amendments to the Critical Area Law, Chapter 602, further state that if Talbot County is unable to utilize a portion of the growth allocated, within or adjacent to existing IDA's or LDA's, then that portion may be located in the RCA. Any development resulting from this condition must be clustered.

The County does not intend to utilize the 50% of the Growth Allocation that is to be reserved for the LDA (1,277 acres). The Critical Area Criteria states that intense development should be directed outside the Critical Area. Further, one of the principle goals of land use planning in Talbot County is to preserve the County's rural character and channel development into the incorporate towns. To these ends the County intends to preclude any new IDAs from being created in the County. Because of the limited area of the towns, the opportunity to apply the LDA Growth Allocation to the towns is inherently limited. Therefore the County will limit the LDA Growth Allocation to 5% and the RCA Growth Allocation to 95%, thus:

Total Growth Allowed	2,554 acres
Allowed in RCA (95%)	2,426 acres
Allowed in LDA (5%)	128 acres

The thrust of the Critical Area Legislation is to encourage the counties to located the entire growth allocation in or adjacent to areas that are already developed. Municipalities should be given the highest priority for growth allocation. Talbot County will use additional methods for distributing the growth allocation it has available as listed below.

1. To Incorporated Municipalities: Easton, St. Michaels and Oxford have expressed their need for expansion of development beyond their corporate boundaries. Their requests have been evaluated and they will be provided growth allocations because they each exhibit urban character and have designated IDA's adjacent to their corporate boundaries.

2. To Unincorporated Villages: Numerous village centers already exist which have the development intensity and character necessary to be classified as LDA's. Allocations of future growth to allow these centers to expand when municipal services, i.e. water and sanitary sewer, become available.

3. For Infill: Numerous opportunities exist to fill in existing IDA's or LDA's. Growth allocations can be used to continue or complete the established character and intensity of development.

AMENDMENTS TO AREA DESIGNATIONS AND THE CRITICAL AREA MAP

The County will adopt a procedure for amending the Critical Area Map to accommodate the expansion of an IDA or LDA, and to make corrections based on new information that a property owner or other person or agency may bring to light, indicating an inaccuracy in the Map. Any such amendment to the Critical Area Map must be approved by both the County Council and the Chesapeake Bay Critical Area Commission.

CHAPTER III

WATER QUALITY

INTRODUCTION

A primary function of the Critical Area Legislation is to protect the quality of water in Talbot County. This chapter is divided into five sections: Streams, Sediment Control, Erosion, Impervious Surfaces and Stormwater Management, each dealing with a set of goals and policies to meet the Critical Area Legislation's objectives for protecting the water quality of Talbot County.

Talbot County is almost entirely surrounded by the Chesapeake Bay and its tributaries, giving the County over 600 miles of shoreline. The saline or brackish influence of the Bay extends well up the major rivers and creeks in the County. The most effective way to safeguard the water quality of the County is to regulate the activities that destroy it. These include activities associated with development, forestry or agriculture.

The effects of these activities are quite clear as indicated here by the type of pollutants they produce.

- *Sediments*, either deposited or still suspended, can destroy the environment of shellfish and vegetation. This problem is addressed fully in the section on Sedimentation.

- *Excess nutrients* cause an overgrowth of algae which blocks out light and prevents normal plant growth. Decaying algae destroy the environment of aquatic plants and animals.

- *Toxic chemicals* make waters unsuitable for marine life and introduce poisons that find their way up the food chain.

- *Salts* used for winter de-icing disturb the chemical balance of waters and have a further damaging effect upon life due to the toxicity of the chlorides.

- *Fecal coliform bacteria* in water are an indication of pollution and of potentially dangerous bacterial contamination.

All these water pollutants severely stress the intricate balance of the Bay and the quality of all the waters of the County.

The following chart describes activities that could result in pollution of surface waters. The activities are divided into major development activities and post-development activities. Such a division indicates the stage at which effective regulation should take place.

Table III-1 POTENTIAL WATER POLLUTING ACTIVITIES

Activity	Potential Pollutants
Major Development activities	
soil disturbance	sediments, nutrients
use of fertilizers	nutrients
pest control	toxic chemicals
disposal of cleared vegetation	nutrients
disposal of demolition debris	toxic chemicals
use of contaminated fill	toxic chemicals, nutrients
fuel storage	toxic chemicals
use and storage of vehicles & machinery	toxic chemicals, nutrients
Post-Development Activities	
release of boat sanitary waste	nutrients, fecal coliform bacteria
on-site and central sewage disposal, regional sewer lines	nutrients & toxic chemicals, fecal coliform bacteria or biological pollutants
use of fertilizers	nutrients

Activity	Potential Pollutants
Post Development Activities, Cont...	
pest control	toxic chemicals
road de-icing	salts, toxic chemicals
fuel, other toxic chemical storage	toxic chemicals
use and storage of vehicles	toxic chemicals
toxic waste storage: tanks, containers at surface, underground tanks and lagoons	toxic chemicals
abandoned sand and gravel pits: illegal dumping	nutrients

Source: Rogers, Golden & Halpern

A. STREAMS

INTRODUCTION

Precipitation and ground springs feed fresh water into streams that eventually find their way into the Chesapeake Bay. Along the way streams are subject to many polluting conditions that can greatly impair the quality of water they deliver to the Bay. It is at the point where this fresh water from streams meets the salt water of the Bay and its tributaries that an extremely important zone is created. Called the "turbidity maximum zone", it is the place where particular chemical and physical environments are created that

support a variety of plant and fish habitats that are important food chain links in the life the Chesapeake Bay supports. A decrease in stream water quality in the County eventually will affect other waterbodies in Talbot County.

In addition to being important in contributing to the Bay's water quality, streams are significant in their own right as anadromous fish propagation waters. The Critical Area Commission has identified these propagation waters as being important fish habitats, vital to the continuation of certain fish species and to the economy of Talbot County.

GOALS and POLICIES

GOALS 1: **To protect the water quality of streams in order to improve plant, wildlife and fish habitats.**

Policy A: If development occurs adjacent to a stream, or where the scale or intensity of a project is great, a developer should be required to:

1. Identify any streams in the project area, on or off-site, that would be crossed or might otherwise be affected during the development activities;
2. Show that the development will not cause increases in the frequency and severity of floods;
3. Retain tree canopy along stream banks;
4. Provide for the retention of the natural substrate for stream beds;
5. Prohibit the placement of concrete, riprap or other artificial surfaces on the bottom of natural streams unless it can be demonstrated to the proper agency that it will improve the water quality and fish habitats;
6. Show that development will not increase non-point and point source pollution; and
7. Provide a buffer for development along the shoreline.

B. SEDIMENT CONTROL

INTRODUCTION

Sediment control practices are important in protecting both water quality and plant and animal habitats. The harm caused by uncontrolled sedimentation is devastating. Clogged spawning streams and fish nurseries result in fewer and fewer fish each season. Living shellfish beds can slowly disappear under a blanket of fresh sediment that eventually kills

them. While still suspended in water, particles can block out sunlight and destroy underwater plants. With these plants gone, waterfowl and other water creatures lose a source of food and shelter.

Development and farming may cause erosion and sedimentation. Grading, transporting, tilling or other disturbances of earth often lead to soil being washed away and into bodies of water. These suspended particles eventually settle out as sediment. For this reason, sediment control practices must be viewed as part of a larger program involving both erosion control and environmentally sound agricultural practices as set fourth in the Best Management Practices Program.

GOALS and POLICIES

GOAL 1: **To prevent harmful sediment from development and agriculture from entering the Chesapeake Bay, its tributaries and natural habitats.**

Policy A: In order to reduce soil erosion and prevent sedimentation from entering water bodies, a Soil Erosion and Sediment Control Plan should be required whenever development within the Critical Area will involve grading, transporting or other forms of disturbance to land by the movement of earth.

Policy B: Certain practices should be followed when development occurs including:

1. Assessing the physical characteristics of the site to determine how it can be developed with the smallest risk of environmental damage;
2. Minimizing the grading by using the existing topography;
3. Minimizing off-site impacts by using vegetative buffer strips between the disturbed and adjacent areas;
4. Preventing clean water from getting dirty by diverting runoff;
5. Removing sediment from dirty water before it leaves the site by diverting it to a trapping device so that the suspended sediment can be deposited;
6. Requiring temporary seeding or mulching on areas which will be exposed for a long period of time prior to construction; and
7. Providing for permanent stabilization of disturbed areas.

Policy C: The responsibility for implementing the Erosion and Sediment Control Plan should be assigned to individuals who have been certified by the Water Resources Administration.

Policy D: A periodic inspection program should be established to determine when erosion and sediment control measures need maintenance or repair. Inspections should occur after heavy precipitation.

Policy E: A Sediment Control Plan should be required for all timber harvesting of 5,000 square feet or more of disturbed area in the Critical Area. This plan shall be developed according to the State guidelines entitled "Standard Erosion and Sediment Control Plan for Harvesting Operations".

C. SOILS AND EROSION

INTRODUCTION

Erosion is a natural process affecting shorelines, hillsides and other places where the forces of wind or water are able to move soil. In the case of shore erosion, a dynamic process of erosion and deposition occurs in which the entire shore area is always changing. In many situations, accelerated erosion is primarily the result of man's activities. This section focuses on controlling those situations in which erosion is harmful to plant and animal life and water quality.

Certain areas are considered to be of high erosion potential . These include steep slopes that are poorly covered by plants, shorelines subject to vigorous wave action, newly plowed fields, areas cleared for development and those affected by seasonal floods. Particular soil types present in Talbot County are very easily eroded. The County has identified and mapped (see Map 4) areas of no significant erosion, mild erosion and significant erosion. It shall be a policy to apply the correct stabilization methods to the identified erosion problem.

Erosion control measures fall into two categories; structural and non-structural. Non-structural methods include vegetative stabilization, or using plants which slow down the overland flow of water and hold earth in place with their root systems. Structural methods include the installation of riprap, bulkheads and other non-vegetative devices.

GOALS and POLICIES

GOAL 1: To prevent the erosion of shorelines thereby improving water quality, protecting natural habitats and preventing deposition of sediments.

Policy A: Minimize adverse effects of fill and suspended sediments on shellfish beds, submerged aquatic vegetation beds, wetland vegetation, and fish spawning and nursery areas.

Policy B: Reduce deposition of eroded materials in channels and navigable areas.

Policy C: Provide for stabilization of shorelines, where necessary, to prevent loss of real estate and structures.

Policy D: Minimize effects on water quality from both erosion and the construction of protection works.

Policy E: Where practical, non-structural shore protection measures should be used in order to discourage erosion and to conserve and protect fish, plant and wildlife habitat.

Policy F: Structural shore protection measures which provide the maximum amount of habitat for vegetation, fish and invertebrates should be encouraged. Revetments or riprap should be favored over bulkheads.

Policy G: Structural erosion measure will not be encouraged where no significant erosion occurs.

Policy H: Changes in shoreline character should be considered in determining the type of shore protection.

GOAL 2: **To assure compatibility between soil types and proposed land uses to protect water quality, natural habitats and vegetation.**

Policy A: The County has identified and mapped (see Map 3) soil types based on composition, texture, slope, degree of erosion and permeability. It should be County policy to match development with suitable soil types.

GOAL 3: **To prevent soil erosion during development activities.**

Policy A: Development should not be permitted on steep slopes (those greater than 15 percent) unless it can be shown that such development is the only effective way to maintain or improve the stability of the slope. Development must also be consistent with the density, water quality and habitat protection policies for Limited Development Areas.

Policy B: Grading should be completed as soon as possible after it is begun. Immediately after grading is complete, permanent vegetative cover should be established in the area.

Policy C: When cut slopes are made and fill slopes are brought up to grade, these areas should be revegetated as the work progresses. This is known as staged seeding.

Policy D: Grading of large or sensitive areas should be minimized during the season of maximum erosion potential (November 1 to April 1).

Policy E: Soil and other materials should not be temporarily nor permanently stored in locations which would result in the unnecessary destruction of vegetation.

D. IMPERVIOUS SURFACES

INTRODUCTION

A consequence of most forms of land development is the creation of impervious surfaces. These surfaces shed stormwater and hinder penetration of water into the ground. Roads and parking areas accumulate toxic materials from the operation and storage of motor vehicles. Runoff from these areas includes such contaminants as lead, asbestos, oil and grease. Certain types of pesticides and wood preservatives may be commonly found in urban runoff; these substances are among those listed as the most environmentally damaging pollutants. The contaminated water flows off impervious surfaces and into nearby waters creating harmful conditions for aquatic life. This polluted water eventually finds its way into the Chesapeake Bay.

GOALS and POLICIES

GOAL: To prevent harmful stormwater runoff from developed areas in the Critical Area from entering the water bodies of the County.

Policy A: Impervious areas should be limited on a parcel to be developed to minimize runoff.

Policy B: Impervious surfaces should be kept away from the water's edge, except when needed to serve water-dependent facilities. Buffers of natural vegetation should be kept between impervious surfaces and surface waters.

Policy C: Precipitation should be absorbed as close as possible to where it fell.

Policy D: New development, including structures, roads, parking areas and other impervious surfaces, should not be permitted in the Buffer, except when associated with water-dependent facilities.

E. STORM WATER MANAGEMENT

INTRODUCTION

Once precipitation reaches the earth it requires proper management. The most common improvements expected to affect stormwater flow in the Critical Area are roadways and residences. Immediate effects are often off-site erosion and sedimentation. Increases in the number and size of floods and stream channel erosion are common results of development.

Stormwater runoff increases with development because areas for absorption decrease. This allows stormwater to travel across greater distances of dirty surface, picking up pollutants on the way. These pollutants are then deposited in the water supply, affecting plant and animal habitats and water quality.

Another more dramatic and destructive effect of changes in stormwater runoff patterns is increased flooding. High volumes of fast flowing water after major storms can result in damage to plant communities and wildlife habitats, property destruction and degradation of water quality due to debris and pollutants.

Diversion of stormwater due to development can also result in reduction of water flow to an area. Wildlife habitats and plant communities in adjacent areas can suffer due to depleted water supply.

GOALS and POLICIES

GOAL 1: **Maintain and improve the quality of runoff entering the Chesapeake Bay and its tributaries.**

Policy A: The County should impose, at the time of the development or redevelopment, technologies as required by applicable State and local ordinances to minimize adverse impacts to water quality caused by stormwater.

Policy B: All roadways, structures or other facilities that intercept, obstruct or divert tidal or sheet flow should provide for re-establishment of the flow through the use of appropriate systems and construction techniques.

Policy C: Access roadways should be permitted in flood prone areas only after meeting restrictive guidelines.

CHAPTER IV
HABITAT PROTECTION

INTRODUCTION

It is an identified purpose of the Critical Area legislation to protect the natural habitats of fish, plants and wildlife. This chapter is divided into three sections: Threatened and Endangered Species, Plant and Wildlife Habitats and Anadromous Fish. Each section contains its own introduction, goals and policies for achieving the objectives of this Plan.

A. THREATENED AND ENDANGERED SPECIES

INTRODUCTION:

There are three species in Talbot County that currently receive protection as determined by the Secretary of the Maryland Department of Natural Resources or the Secretary of the U.S. Department of the Interior: the bald eagle, Delmarva fox squirrel and sedge wren (see Map 5). It has been determined, by these agencies, that the continued existence of these species "are in question or are in jeopardy". The limited distribution of the habitats of these species makes them highly susceptible to local land disturbance. Goals and policies are identified for the habitats of these species to insure their ability to survive.

Bald eagle - The Chesapeake Bay region supports the second largest population of bald eagles in the east. The bald eagle is dependent on the Bay and its tributaries for feeding and on the adjacent land for nesting. The eagle feeds primarily on fish, thus good water quality is essential for the species' well-being. Most of the bald eagles in Maryland nest in the Critical Area. Protection of this endangered species is focused on protecting its nesting territories. Bald eagles normally use the same nesting territory over a number of years, but eventually will move to a new nest, generally in the same vicinity.

Delmarva fox squirrel - The Delmarva fox squirrel is a large, steel gray squirrel found on Maryland's Eastern Shore. Habitat required by the Delmarva fox squirrel is typically mature woodlands with little or no understory vegetation. On the lower Eastern Shore these squirrels inhabit loblolly pine woodlands. Woodlots as small as 5 to 10 acres can provide adequate habitat. Woodlands adjacent to agricultural land provide ideal conditions for Delmarva fox squirrels. The locations of all Delmarva fox squirrel populations are not known. In Talbot County, these squirrels may be present wherever available habitat is found.

Sedge wren - This species requires various marsh types as well as other wet or boggy areas and prefers large isolated zones. Due to its secretive nature, most of the locations of the species are not yet known.

GOALS & POLICIES

GOAL: **To protect and increase natural habitats for threatened and endangered species.**

Policy A: Establish protective measures for the habitats of threatened and endangered species. These measures should address the following:

Bald eagle - Protection of the bald eagle is based on restricting activities in its nesting territories. A protection zone should be provided around each nest:

1. That would limit timber harvesting, land clearing or construction;

2. That would limit improvements and maintenance to timber stands;

3. That would require approval of any proposed activity based on consultation with the agency administering the Non-Game and Endangered Species Program; and

4. That would be reviewed annually due to the fact that sometimes bald eagles will relocate their nests. New nest sites should automatically receive a zone of protection.

Delmarva fox squirrel - The following protection measures should be addressed:

1. Before land clearing or harvesting of mature woodlands the presence of Delmarva fox squirrels should be determined; and

2. Specific recommendations on timber harvesting and land clearing of Delmarva fox squirrel habitat should be obtained from the agency administering the Non-Game and Endangered Species Program.

Sedge wren - Protection guidelines include:

1. Before dredging or filling shall be permitted, the presence of the sedge wrens on the tract should be determined. If sedge wrens are present:

   - An appropriate habitat should be retained including nest sites;

   - No disruptive activity should take place during breeding or nesting season.

2. Specific recommendations concerning dredging or filling in or near sedge wren habitats should be obtained from the agency administering the Non-Game and Endangered Species Program.

B. PLANT AND WILDLIFE HABITAT

INTRODUCTION

The following is a brief look at the importance of providing for wildlife movement and habitats. In addition, this section includes lists and information about some of the wildlife found in the County coming under protection of this Plan.

A rich variety of natural site situations will support a variety of fish, wildlife and plants. Within this variety there are certain general considerations that apply to most wildlife and their habitats. Movement of wildlife through or between habitats is essential to an animal's survival. The reasons for an animal moving through an area are basic - for shelter, courtship, seasonal migrations, food and water. Stream corridors and the edge of the Bay represent special opportunities for wildlife movement because of their continuous nature. Natural vegetation at the water's edge can provide an extensive network of cover for the movement of wildlife.

Some of the habitats needing attention in the County include various aquatic areas, forests, wetlands and edges between larger areas. For example, the shallow aquatic habitats found in marshes, mud flats and areas supporting the growth of submerged aquatic vegetation are the most productive habitats in the Critical Area. Their integrity is absolutely essential to the development and growth of many aquatic species including those of economic importance. Another habitat type are the narrow, special habitats, such as hedgerows and edges between forest and field or forest and wetland. These are active and vital places for wildlife since they provide a variety of food and shelter opportunities in a short distance.

Blue crabs appear to grow especially well in the Bay and tributaries as they migrate between deep and shallow waters. Soft shell clams are found in sandy shoals flanking brackish tributaries. Oysters are found in the Bay and all tributaries with the greatest concentration being in the Choptank River basin.

This plan protects habitats of colonial nesting birds, waterfowl and interior dwelling birds and shellfish. The following is a list of major species found in Talbot County in each of these categories.

Geese and Swans

- Canada goose
- Snow goose
- Brand
- Mute swan
- Tundra swan

Dabbling Ducks

- Mallards
- Black ducks
- Blue-winged teal
- Green-winged teal
- American wigeon

Diving Ducks - There are two categories of diving ducks: Freshwater and Brackish/Open Sea .

Freshwater

- Canvasback duck
- Redhead duck
- Greater scaup
- Lesser scaup

Brackish/Open Sea

- Black scoter
- Surf scoter
- Common Scoter
- Red-Breasted merganser
- Common eider

Forest Interior Dwelling Birds

- Flycatcher, Acadian
- Hawk, red-shouldered
- Ovenbird
- Owl, barred
- Parula,northern
- Redstart, American
- Tanager, scarlet
- Vireo, red-eyed
- Vireo, yellow-throated
- Warbler, black and white
- Warbler, hooded
- Warbler, Kentucky
- Warbler, prothonotary
- Warbler, Swainson's
- Warbler, worm-eating
- Waterthrush, Louisiana
- Whip-poor-will
- Woodpecker, hairy
- Woodpecker, piliated

Colonial Nesting Birds

- Herons
- Egrets
- Terns
- Glossy Ibis

Shellfish

- Oysters
- Crabs
- Blue crabs
- Clams

GOALS & POLICIES

GOAL: To protect and increase natural habitats for plant and wildlife species.

Policy A: All types of wildlife habitat in Talbot County should be conserved using the following site development guidelines:

1. As much native vegetation as possible should be preserved, particularly at the water's edge;

2. The continuity of habitats should be preserved. The site design should allow wildlife movement across the site to natural areas on adjacent sites and to the water's edge. The site design should also allow movement between habitat types;

3. Vertical diversity should be preserved by maintaining natural bush and ground cover layers beneath stands of trees; and

4. Plants with high value to wildlife should be planted during or after development.

Policy B: Protection areas should be provided, as appropriate, around the natural wildlife habitats (See Map 5).

C. ANADROMOUS FISH

INTRODUCTION

The Chesapeake Bay Critical Area regulations define anadromous fish as "fish that travel upstream from their primary habitat in the ocean to freshwaters in order to spawn". The regulations include directions for establishment of policies to protect the habitat of anadromous fish propagation waters and to provide for unobstructed movement of spawning and larval forms of anadromous fishes in streams. Anadromous fish propagation waters are referred to as "...those streams which are tributary to the Chesapeake Bay where spawning of anadromous species of fish occurs or has occurred".

Anadromous fish species recorded in Talbot County waters include the striped bass (rockfish), yellow perch, white perch, alewife herring and blueback herring. Other species also found in the region include hickory shad and American shad. All of these are important links in the food chain of the Chesapeake Bay.

Serious population declines have occurred in many of these species, particularly the striped bass. Commercial harvest of striped bass is reported to have fallen from a high of 14.7 million pounds in 1973 to 1.7 million pounds in 1983. (U.S. Fish and Wildlife Service, 1985.) Since the Chesapeake Bay region is thought to be the spawning nursery water for nearly 90 percent of the Atlantic striped bass population, the protection of the propagation waters of the Bay is vitally important.

The Maryland Department of Natural Resources has conducted surveys of several bodies of water in Talbot County for the presence of spawning anadromous fish. Waters are considered to be spawning waters if DNR surveys have documented the presence of anadromous fish at any time. Parameters have been used to define the potential upstream limits of spawning waters. Downstream limits have been defined as the point where salinity is above the limits at which spawning occurs. A salinity level of about 4% during the spring spawning period was used as a guide (See Map 6).

The following bodies of water have been identified as spawning areas:

- Choptank River Basin
    - Bolingbroke Creek
    - Tuckahoe Creek
    - Norwich Creek
    - Miles Creek
    - Kings Creek
- Miles River
- Wye River East

The primary factors affecting a river's potential as a spawning area are the salinity level, flow regime, pH content, oxygen content and the presence of barriers across the stream. Sufficient flow must be present to maintain the eggs and larvae in the water column, but should not be so great as to sweep the eggs or larvae beyond the nursery grounds during the first one to two weeks after the eggs are laid.

Water quality has been shown to be very important in affecting survival. Pollutants with high toxicity for striped bass larvae include arsenic, cadmium, aluminum, copper, and pesticides such as malathion. These are pollutants which are commonly present in agricultural, industrial and residential runoff since they are present in fertilizers, pesticides and automobile-related compounds. Sediments suspended in the water column are also a major source of mortality for fish larvae. Erosion resulting from poor agricultural practices and runoff from industrial, residential and commercial development is a major stress.

GOALS and POLICIES

GOAL: To protect the anadromous fish species of the County.

Policy A: Within the Critical Area guidelines should be developed to protect the streams, stream banks and nursery areas shown on Map 6.

Policy B: Construction of shore-based facilities (such as marinas), dredging, filling and construction of jetties or bulkheads in areas of established Submerged Aquatic Vegetation (S.A.V.) within designated spawning waters should be discouraged.

Policy C: Power boats should be discouraged from operating in designated spawning waters during the spawning season. Wake and wave effects, propeller disturbance, noise and boat size should be kept to a minimum.

Policy D: Within the Critical Area buffers of natural vegetation should be maintained adjacent to all intermittent and perennial streams.

Policy E: Areas of significant sheet and gully erosion within active agricultural lands should be identified and controlled under Best Management Practices.

CHAPTER V

BUFFER AREAS

INTRODUCTION

The concept of a buffer area as a means of protecting and enhancing the water quality and natural resources of the Chesapeake Bay is an integral part of the Critical Area Plan. The land adjacent to a shore or wetland is generally more sensitive to disturbance than many other areas. It often contains the steepest slopes and, in many cases, the most erodible soils. Disturbance in the lands immediately adjacent to shores and wetlands therefore tends to result in a disproportionate amount of runoff, erosion and sedimentation.

Provision for a buffer area, in which land disturbance will be minimized, will be of immediate benefit in water quality control. The buffer serves an important function in filtering and trapping substances contained in runoff before they reach water bodies.

Another valuable function of a buffer area will be the maintenance of wildlife habitat. The transitional zone between the upland and wetland or aquatic systems often has significant habitat values. These areas provide a high diversity of plant species and contain a large amount of edge or ecotone habitat.

GOALS and POLICIES

GOAL 1: **To protect the water quality of the Bay and natural habitats by creating a buffer area.**

Policy A: Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries by creating a minimum 100' Buffer landward from the mean high water line of tidal waters, tributary streams and tidal wetlands.

Policy B: A vegetative filter strip of not less than 25' should be maintained at the shoreline of agricultural fields.

Policy C: The County should not allow clearing of vegetation in the Buffer, except for normal maintenance.

Policy D: Forested areas disturbed or cut should be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and re-establishes the wildlife corridor function of the Buffer.

GOAL 2: **To protect water quality and natural habitats by preventing shore erosion in the Buffer.**

Policy A: The Buffer should be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the shoreline where disturbances have occurred.

Policy B: Within the Buffer no development should be permitted, except to provide the property owner reasonable access to the water or those facilities that are water-dependent.

Policy C: The use of structural and non-structural shore erosion control measures should be permitted.

Policy D: The County should extend the Buffer and its requirements to include adjacent sensitive areas such as steep slopes or highly erodible soils. (See Soils Map #3)

GOAL 3: **To prevent adverse effects of agricultural land uses on water quality and natural habitats within the Buffer.**

Policy A: Agricultural activities are permitted in the Buffer as controlled by Best Management Practices. A 25' vegetative filter strip should be established at the shoreline and along tributary streams.

Policy B: The Best Management Practices should include a requirement for the implementation of grassland and manure management programs, where appropriate.

Policy C: When agricultural use of lands within the Buffer ceases and it is converted to other uses, the Buffer should be established. In establishing the Buffer, management measures should be undertaken to provide forest vegetation, where applicable, that assures the establishment of Buffer functions set forth in the policies of this Chapter.

GOAL 4: **To protect natural habitats and improve water quality in the County by controlling the cutting or clearing of trees.**

Policy A: Commercial harvesting of trees within the Buffer should be done in compliance with the Forest Management Plan.

Policy B: The cutting or clearing of trees in the Buffer for private use should be restricted.

TYPES OF PERMITTED, RESTRICTED AND PROHIBITED USES IN THE BUFFER

1. New Development Activities (structures, roads, parking areas, impervious surfaces, mining and septic systems)

   Such development activity should not be allowed, except for water-dependent facilities and to provide property owners with reasonable access to the water (see below).

2. Alteration of Existing Structures

   Minor alterations should be allowed; substantial alterations should be prohibited (additions that increase the area of impervious surface to more than 15%).

3. Agriculture (except livestock operations)

   Existing farming should be permitted, (except that a filter strip is required to be established). New or expanded farming operations which require the cutting or clearing of natural vegetation in the Buffer should be prohibited.

4. Agriculture (livestock operations)

   Feeding and watering must be set back from the water's edge; grazing should be permitted, providing it does not disturb stream banks or shorelines and conforms to Best Management Practices.

5. Commercial Timber Harvesting

   Timber harvesting should be allowed to within 50 feet of the water's edge for selective cutting or the clear-cutting of loblolly pine or tulip poplar provided that the cutting does not occur in a Habitat Protection Area described in Chapter IV and is done pursuant to a Buffer Management Plan.

6. Other Cutting or Clearing of Trees

   Cutting or clearing of trees should be allowed only for:

   - Personal use providing that Buffer functions are not impaired and trees cut are replaced;
   - Clearing the blockage of streams;

TYPES OF PERMITTED, RESTRICTED AND PROHIBITED USES IN THE BUFFER CONTINUED...

- Clearing fallen trees that have caused damage to dwellings or other structures;
- The purpose of stopping shore erosion;
- Horticultural practices used to maintain the health of individual trees;
- An approved shore erosion protection device or measure;
- A water-dependent facility; or
- The elimination of extensive pest or disease infestation or threat from fire.

7. Water-Dependent Facilities

Facilities should be allowed subject to the goals and policies Chapter XI

8. Shore Erosion Protection Devices or Measures

Such devices or measures should be allowed subject to the goals and policies of Chapter III.

CHAPTER VI

NON-TIDAL WETLANDS

INTRODUCTION

Non-tidal wetlands serve an important function in the maintenance of water quality and protection of natural habitats within the County. Among the functions served are the natural trapping and filtering of sediments, nutrients and minerals; the stabilization of shoreline by supporting vegetation; serving as natural stormwater retention areas; and providing natural habitat locations.

In Talbot County, most non-tidal wetlands are considered to be palustrine in nature, that is they are dominated by trees, shrubs, mosses or lichens. They occur at or near the heads of tributary streams, or in depressions in upland areas where the water table is at or near the surface or where the soil or substrate is covered by shallow water at some time during the growing season.

There are four types of palustrine wetlands found in Talbot County - Aquatic Bed (AB), Emergent (EM), Scrub/shrub (SS), and Forested (FO). General wetlands are inventoried on Map 7. Detailed maps of all non-tidal and tidal wetlands are available at the County Planning Office.

GOALS and POLICIES

GOAL: To protect the environmental quality of non-tidal wetlands in the County.

Policy A: A wetlands buffer should be maintained around identified non-tidal wetlands. Development and other activities should be prohibited unless these activities will not adversely affect the wetland.

Policy B: Alterations to non-tidal wetlands within the Buffer should not be permitted. Under some circumstances, alterations to non-tidal wetlands located outside the Buffer in the Critical Area might be permitted. The proposer of such an activity should show that the activity is of significant economic benefit or water dependent. If the impact is still unavoidable, than the proposer should prepare a plan for mitigating the alternative.

Policy C: Alteration to wetlands which is the result of diking, draining, or filling associated with the creation of new agricultural lands should not be allowed.

Policy D: Proposed development affecting non-tidal wetlands should include minimal alterations to the surface or subsurface flow of water into and from the wetland.

CHAPTER VII
AGRICULTURE

INTRODUCTION

Proper management of agricultural lands in the Critical Area is important to the environmental quality of the County (see Map 8). Non-point source pollution associated with agriculture can be harmful to fish, wildlife and plant habitats. Runoff can contain pesticides and soil eroded from fields. Not only do these pollutants ruin streams and marshes, but they can find their way up the food chain. Runoff carrying animal waste and soil from exposed land can easily enter the water system unless protective measures are taken. Clearly, many farming practices can be improved to minimize harm to the environment through the use of Best Management Practices.

As a protective land use, properly managed agricultural activities maintain the traditional quality and character of the Chesapeake Bay. Economically viable agriculture preserves the land from development with increased areas of impervious surfaces. Cropland also contributes to the food supply of wildlife. However, one of the paramount goals of the Critical Area Program is the preservation of plant and wildlife habitats which typically coincide with the forested areas. Discouraging development in the forested areas forces such activity onto the agricultural fields, consuming agricultural land and placing new development in highly visible locations, The conflict between habitat preservation and agricultural preservation in Talbot County cannot be resolved without establishing a priority because both are significant. In order to maximize the goals of preservation of the natural environment, habitat preservation should be strongly encouraged with agricultural lands in the Critical Area preserved whenever possible (See Map 8 - Natural Features/Agriculture and Map 5 - Wildlife Habitat).

GOALS and POLICIES

GOAL I: **To reduce agriculturally generated pollution that affects plant and animal habitats and water quality.**

Policy A: Compliance with the agricultural components of the State of Maryland's 208 Water Quality Plan should be required.

Policy B: Within 5 years from May 13, 1986, the effective date of the Chesapeake Bay Critical Area Criteria, all farms within the Critical Area should have in place and be implementing a Conservation Plan approved by the local Soil Conservation District. Landowners who have signed up as conservation district cooperators, but who do not have a Conservation Plan developed for them by the District, should be allowed to continue farming until a Conservation Plan is developed, provided that the goals and policies of this Chapter are being met.

Policy C: Until such time as a Conservation Plan is approved and in place, landowners should be encouraged to use the following practices:

1. Proper nutrient application rates;
2. Appropriate timing of nutrient application;
3. Appropriate method of nutrient application;
4. Reduced tillage practices;
5. Crop rotation; and
6. Planting of cover crops.

Policy D: Maintain a 25' vegetative filter strip along tidal shorelines and tributary streams within the Buffer.

GOAL 2: When new agricultural land is created, minimize the impact on plant, animal or fish habitats and water quality.

Policy A: The following methods should be prohibited for the creation of new agricultural lands:

1. Diking, draining or filling of wetlands, as described in Chapter VI;
2. Clearing of forest or woodlands on unstable soils if it will adversely affect water quality or destroy plant and wildlife habitat; and
3. Clearing of existing natural vegetation within the Buffer.

CHAPTER VIII

FORESTS & DEVELOPED WOODLANDS PROTECTION

INTRODUCTION

Forests and woodlands function in many ways in Talbot County. They are plant and wildlife habitats and water quality enhancers, as well as sites for timber production and recreational use. Proper identification, assessment and management of each forest is essential. Forest resources are divided into two categories; "forests" and "developed woodlands". Forests are dominated by trees and contain no other uses. Developed woodlands are forests that also contain other uses such as commercial , residential or industrial.

While forests function in many ways to improve the overall quality of life and enhance the environment of the County, they are also a source of timber and wood products. Trees provide sawtimber, veneer logs, poles, pilings, barrel staves, pulpwood, bedding chips and firewood, all of which help to fuel and support the local economy. Employment opportunities and income through the sale and marketing of forest products are enhanced by effective woodland management. It is in the best interest of the County to maintain this industry.

GOALS and POLICIES

GOAL I: To protect, maintain and increase the forests and developed woodlands of the County.

Policy A: Maintain an inventory of all forests and developed woodlands of the County (See Map 9).

Policy B: Areas in which preservation should be strongly encouraged for environmental functions and water quality maintenance include the swamp, bottomland and sloped forests immediately adjacent to the tributary streams of the Upper Choptank River and Tuckahoe Creek, the remaining upland forests abutting the Bay shore on the Lower Choptank River basin and in high shoreline erosion areas such as the Bay shore from Claiborne to Black Walnut Cove. (See Shore Erosion Map 4) Preservation should also include the large forested stands in the interior of the necks and the large upland forested stands abutting the Miles and Wye River East.

Policy C: A Forest Management Plan should be required for all timber harvesting occurring within any one year interval and affecting one or more acres in forest and developed woodland in the Critical Area.

Policy D: The County should require a Sediment Control Plan for timber harvests.

Policy E: The County should regulate the cutting or clearing of trees within the 100" Buffer. For this purpose a tree is considered to be four inches or greater at diameter breast height.

Policy F: The County should regulate the cutting or clearing of trees associated with current or planned development activities occurring on sites of one acre or more.

CHAPTER IX

NATURAL PARKS

INTRODUCTION

The Critical Area legislation defines natural parks as areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions. The legislation encourages local jurisdictions to identify areas where natural parks could be established with their boundaries based on biological or environmental criteria.

Preservation of these areas in their natural state would be a significant factor in the preservation of the water quality of the Bay as well as protecting and providing natural habitat areas. Recreational uses which would generally be compatible with such areas would include canoeing, hiking, birdwatching and other non-consumptive activities.

Sites have been identified in the County as potential natural park locations (see Map 10, Potential Natural Park Sites). Most of these areas are located, at least partially, within the Critical Area. The primary consideration for their selection was that the areas had to be in a relatively natural state with biological and geological resources intact. Descriptions of these sites can be found in the County's Land Preservation and Recreation Plan.

GOALS and POLICIES

GOAL: To encourage the establishment of natural parks in the Critical Area.

Policy A: Talbot County should conserve these areas by establishing easements, by acquisition or by other appropriate means.

Policy B: Areas selected for natural parks should be large enough to retain their natural character.

Policy C: Priority should be given to areas that act as buffers, helping to maintain water quality in the Chesapeake Bay and its tributaries.

Policy D: Recreational uses should be limited to those that are compatible with the maintenance of natural conditions.

CHAPTER X

SURFACE MINING/SOLID WASTE/SANITARY LANDFILL

INTRODUCTION

Careful selection of sites and protection of the environment during surface mining and solid waste/sanitary landfill operations can result in minimal adverse impacts on the environment. Reclamation of these sites upon cessation of the activity can transform them into amenities such as parks or recreation areas.

Talbot County contains a number of sites from which sands, gravel, shell marls, clay and diatomaceous earth are mined. With the exception of sand and gravel operations, mining activities are neither extensive nor do they have a significant economic impact. Sand and gravel mining, however, occurs in numerous locations, is a readily available resource and will steadily increase in importance as the County grows and construction of roads and buildings increase the demand for this construction material.

The main impact that may be associated with the sand and gravel extractive operations is the direct destruction of forested habitat along streams and in habitat protection areas, and runoff and water discharge from the operations.

GOAL and POLICIES

GOAL 1: **To protect the County's natural resources from the negative effects of surface mining.**

Policy A: Surface mining operations should not occur in:

1. The Buffer (100');
2. Designated Natural Heritage Areas;
3. Areas of highly erodible soils;
4 Designated Habitat Protection Areas; and
5. Areas where the Soil Conservation Service or Bay Forester determine that substantial loss of long-range productivity in agricultural or forest uses will occur.

Policy B: All surface activities in support of mineral exploration should limit disruption of natural vegetation.

Policy C: To the greatest extent possible, existing sand and gravel operations should conduct their extraction activities so as to provide a buffer of natural vegetation between the operation and the Mean High Water line of tidal waters or the edges of streams and tidal wetlands, whichever is further inland.

Policy D: All runoff resulting from mineral exploration/extraction should be retained on site.

Policy E: The entire mining site should be reclaimed as soon as possible after the cessation of a surface mining operation.

GOAL 2: To minimize adverse impacts on water quality caused by solid waste/sanitary landfill operations.

Policy A. No new or expanded solid or hazardous waste collection and disposal facilities or sanitary landfills shall be permitted in the Critical Area. Existing sanitary landfills or solid hazardous waste collection or disposal facilities shall be subject to Maryland State Regulations, COMAR Title 10, (See Surface Mining - Landfill Locations - Map 11).

CHAPTER XI

MARINAS AND WATER-DEPENDENT FACILITIES

INTRODUCTION

With over 600 miles of shoreline on the Bay and its tributaries, Talbot County has more shoreline than any other county in Maryland. The shoreline and the facilities associated with the shoreline have been an important feature of the County for centuries. Water-dependent activities such as fishing, clamming, oyster harvesting, crabbing, pleasure boating and waterfowl hunting are all part of Talbot County.

These activities require facilities which must be located on or adjacent to the water. Such facilities have specialized needs and environmental effects which must be balanced. Impacts which are associated with water-dependent facilities include spillage of petroleum products, sanitary wastes, litter, bulkheading and dredging. It is therefore important that water-dependent facilities be located in areas where such effects and impacts are minimized.

GOALS AND POLICIES

GOAL 1: **To limit the development of water-dependent facilities on the shoreline and to regulate them to minimize impacts on water quality and natural habitats.**

Policy A: In Intensely Developed and Limited Development Areas, non-water-dependent structures or operations associated with water-dependent projects or activities should be located outside the Buffer.

Policy B: New or expanded water-dependent development should not be permitted in those portions of the Buffer which occur in Resource Conservation Areas except as otherwise provided in this Plan.

Policy C: Impervious surfaces should be kept to an absolute minimum and disturbance to natural vegetation minimized.

Policy D: Selected commercial water-dependent fisheries facilities may be permitted.

GOAL 2: **To regulate the development of marinas in the County and thereby minimize the impact on the water quality of the Bay and its tributaries.**

Policy A: Expansion of existing commercial marinas may be permitted within the Intensely Developed and Limited Development Areas, and should be discouraged in Resource Conservation Areas.

Policy B: New commercial marinas and water-dependent facilities should be located where sufficient adjacent uplands are available to allow space for support and secondary activities.

Policy C: Marinas should not be located in highly productive natural habitats.

Policy D: The number of slips, piers and mooring buoys permitted at a commercial or municipal facility should be regulated.

CHAPTER XII

IMPLEMENTATION

There are a number of methods that Talbot County can use to carry out the goals and policies of this Plan. These methods fall into three basic categories and are described below:

A. County Regulations

Many of the goals and policies of this Plan are best carried out through the County's land development regulations contained within the Zoning Ordinance and Subdivision Regulations. Additional regulations may be adopted by the County to address impacts on Critical Area resources that the Zoning and Subdivision Ordinances cannot address.

B. County Programs

In addition to regulatory measures, there are a variety of non-regulatory programs or approaches that the County can consider and institute to carry out the goals and objectives of the Critical Area Plan. For example, public education programs could be instituted to inform the public about the sensitivity of Critical Area resources, how particular types of development or particular land use practices affect the Critical Area and what County residents and visitors can do to ensure the long-term preservation and conservation of Critical Area resources.

C. County Coordination and Cooperation with Other Agencies

Sometimes the County does not have direct regulatory control over a particular type of development or a particular impact that development may have on the community or on natural resources. Regulation of some types of development and some impacts of development rests in the hands of the State and Federal governments who maintain their own programs and enforce their own regulations. In order to ensure that the programs of State and Federal agencies are carried out in a way that best serves the purposes of the County's Critical Area Plan, it may be necessary for the County to coordinate its regulatory and educational efforts with those of State and Federal agencies.

The categories listed above will apply to each chapter of the Plan. The following section lists each chapter as it appears in the Plan, and the implementation methods proposed to achieve the goals and policies of that particular chapter.

CHAPTER II - DEVELOPMENT IN THE CRITICAL AREA

A. County Regulations

1. Incorporate the Critical Area and the individual "development areas", as indicated on Map 1, into the Zoning Ordinance as new or "overlay" districts within which the goals and policies of this Plan apply. Chapter II of this Plan describes the goals and policies used for delineation of these areas.

2. Amend the County Land Use Plan, Zoning Ordinance, water and sewer plans and other growth management or public facilities plans to direct new intense development outside of the Critical Area.

3. Subject new development in the County's Critical Area to a site plan review or special use approval process in which the applicant must demonstrate that the proposed development is consistent with the goals and policies of the Critical Area Plan. Build this consistency requirement into the Zoning and Subdivision Ordinances. Build into the site plan review an opportunity for appropriate non-County agencies to review and comment on the development proposal.

4. Modify the Zoning Ordinance to prohibit the location of new landfills and the expansion of existing landfills, solid or hazardous waste collection or disposal facilities anywhere in the Critical Area, unless no environmentally acceptable alternative exists outside the Critical Area and such a facility is needed to correct an existing water quality or wastewater management problem.

5. Modify the Zoning Ordinance to require that, prior to rezoning any property within the Critical Area, the County Council finds the rezoning to be consistent with the goals and policies of this Plan.

6. Initiate "corrective" rezonings, in light of the range of uses permitted in each zoning district, to bring zoning district boundaries into line with the boundaries of the Critical Area and individual "development areas" designated in this Plan and with the uses this Plan permits in those areas.

7. Certain new development activities, because of their intrinsic nature, or because of their potential for adversely affecting habitat and water quality, shall not be permitted in the Critical Area unless these development activities are needed to correct an existing water quality, or wastewater management problem or to provide a needed public service project or facility. The project must demonstrate to all appropriate County and State agencies that there will be a net improvement in water quality to adjacent bodies of water. These activities include the following:

   a. Non-maritime heavy industry;

b. Transportation facilities and utility transmission facilities, other than those necessary to serve permitted uses or regional and interstate facilities that must cross tidal waters; and

c. Other uses that the County considers significantly detrimental to water quality or fish, plant and wildlife habitat.

8. Modify the Zoning Ordinance to prohibit the establishment of new commercial or industrial uses in the RCA.

9. Modify the Zoning Ordinance to include provisions for planned unit developments, transfers of development rights and cluster developments to preserve open space, conserve natural habitats and improve water quality.

10. Modify the Zoning Ordinance to regulate the storage and land application of sludge.

11. Modify the Zoning Ordinance to regulate drilling, storage and transportation of oil, natural gas and other underground resources.

B. County Programs

1. Develop public information materials and programs regarding the impacts land development has on water quality and explain "Urban Best Management Practices" and other techniques for reducing those impacts. For existing development, encourage retrofitting measures to address any existing stormwater runoff problems, such as the installation of new stormwater infiltration areas, the frequent vacuuming of streets and parking lots and other measures identified by the National Urban Runoff Program.

2. Use "Urban Best Management Practices" and other techniques in the County's own public works operations, such as in the maintenance of roads and parking lots located in the Critical Area.

3. Establish programs to enhance biological resources such as urban forestry programs and wetlands restoration projects. Encourage new plantings of trees and other vegetation to enhance and expand forested conditions in the Critical Area.

C. County Coordination and Cooperation With Other Agencies

1. Channel applications for County approval of development in the Critical Area to the applicable State agencies for review and comment.

CHAPTER III - WATER QUALITY

Streams

A. County Regulations

1. Incorporate into the Zoning Ordinance and County regulations a requirement for a Shoreline Development Buffer of at least 100 feet in width along tidal shoreline and along tributary streams and maintain in the Buffer a 25 foot vegetated filter strip as a measure to minimize sedimentation and runoff.

2. Require a permit for the placement of concrete, riprap or other artificial surfaces on the bottoms of natural streams and for channelization, damming or other physical alteration to the course or circulation of streams. Issue such a permit only if the applicant can demonstrate that such activity will comply with the goals and policies established in this Plan.

B. County Programs

C. County Coordination and Cooperation with Other Agencies

1. Coordinate the County's regulatory efforts with those of the Water Resources Administration regarding alterations to non-tidal streams. Ensure that the permitting decisions of the Water Resources Administration are made in consideration of the goals and policies of this Plan.

2. Work with the appropriate State agencies to ensure that existing stream barriers are removed, if practical.

Sediment Control

A. County Regulations

1. Use existing County regulations.

B. County Programs

C. County Coordination and Cooperation with Other Agencies

1. Inform the Maryland Department of Natural Resources when an operator fails to follow the Sediment Control Plan he has filed with the County. The Department of Natural Resources is responsible for the enforcement of such plans.

2. Urban Best Management Practices Cost-Sharing Program - This Soil Conservation District program is similar to the agricultural cost-sharing programs, but is intended to implement Best Management Practices dealing with urban runoff and sedimentation problems.

3. Erosion and Sediment Control Approval - Under the Maryland Sediment Control Law of 1984, the Water Resources Administration has the authority to require approval of a sediment and erosion control plan before any soil disturbance takes place. The local Soil Conservation District should review and approve the plan. DNR can also grant enforcement to any county or municipality.

Soils and Erosion

A. County Regulations

1. Modify the Zoning Ordinance to apply the correct stabilization methods to the identified erosion problem. [Such restrictions could be imposed through the designation of "overlay" districts corresponding to the difficult erosion areas identified in this Plan.] Design a process to allow unforseeable changes in shoreline characteristics to be recognized.

2. Require a separate County permit for the installation of a shoreline erosion control structure or non-structural shoreline erosion control measures, with the goals and policies for approval of the permit coinciding with the goals and policies established by this Plan for such measures.

B. County Programs

1. Consider the creation of voluntary associations where effective erosion control requires structural or non-structural measures covering a significant length of shoreline and a number of contiguous property owners.

2. Work with the Tidewater Administration, the Soil Conservation Service and other State and Federal agencies to ensure that information reaches the public about different measures for controlling or coping with shoreline erosion, including the distribution of such educational materials as the Corps of Engineers "Shore Erosion Control" booklet. In addition, the County should develop its own guidebook which translates information provided by State and Federal agencies into site-specification guidelines relevant to particular portions of Talbot County.

C. County Coordination and Cooperation with Other Agencies

1. Forward any applications for County approval of shoreline erosion control measures to the Soil Conservation District and to the Coastal Resources Division of the Tidewater Administration for review and comment.

2. Coordinate County efforts to regulate the installation of structural erosion control measures with the Coastal Resources Division. The Coastal Resources Division can require a Coastal Facility Construction Permit for jetties, bulkheads and revetments. If direct regulation by the County is neither feasible nor authorized, then the County should work with the Coastal Resources Division to ensure that Coastal Facility Construction Permits are required so as to protect the resources of the Critical Area in accordance with this Plan.

3. Work with the Department of Natural Resources to ensure that information on the Department's Shore Erosion Control Programs reaches persons in Talbot County. These programs include technical assistance to landowners in assessing and managing shoreline erosion. They also include financial assistance in the form of low-interest loans for the construction of erosion control structures and direct cost-sharing for the implementation of non-structural controls and vegetative stabilization.

4. Work with the Soil Conservation Service to identify areas of significant sheet and gully erosion within active agricultural lands and to require that steps be taken to minimize erosion within the watersheds.

Impervious Surfaces

A. County Regulations

1. Review and amend the County's regulations to restrict the use of impervious surfaces.

2. Adopt regulations restricting impervious surfaces in flood prone areas.

B. County Programs

C. County Coordination and Cooperation with Other Agencies

Stormwater Management

A. County Regulations

1. Use flexible zoning and site planning techniques such as planned unit developments or cluster zoning to limit unnecessary impervious surfaces.

2. Require on site retention/detention techniques to satisfy drainage requirements.

B. County Programs

C. County Coordination and Cooperation with Other Agencies

CHAPTER IV - HABITAT PROTECTION

Threatened and Endangered Species

A. County Regulations

1. Modify the Zoning Ordinance to prohibit development within the "protection areas" identified in this Plan, unless it can be shown that the development will meet the goals and policies established in this Plan for activities within the "protection areas."

2. Incorporate into the Zoning and Subdivision Ordinances clustering provisions and other site design criteria that keep land development and other disturbances out of the "protection area".

3. Require tree harvesting and clearing operations in areas known to be the habitat of threatened or endangered species to follow the goals and policies established in this Plan for such operations, including the preparation and implementation of Forest Management Plans that include measures for protection and enhancement of those species.

B. County Programs

1. Create incentive programs for the dedication, acquisition or permanent reservation of habitat area.

C. County Coordination and Cooperation With Other Agencies

1. Whenever someone proposes to the County land development, tree harvesting or other activities that could affect a threatened or endangered species or species in need of protection identified in this Plan, forward a copy of the application and accompanying plans to the Maryland Forest, Park and Wildlife Service for review and comment.

Plant and Wildlife Habitat

A. County Regulations

1. Modify the Zoning Ordinance to make development within or around a unique plant or wildlife habitat area identified in this Plan subject to a special use or site plan review process that conditions approval of the proposed development on compliance with the goals and policies of this Plan applying to that habitat.

2. In accordance with the goals and policies established in this Plan, modify the Zoning Ordinance to establish a protection area around, and restrict development in or physical alterations to active colonial bird nesting sites, and habitat areas of local significance. [Not intended to restrict non-commercial passive recreation, educational activities, scientific observation, fishing, trapping or hunting in the protection area.]

B. County Programs

1. Create incentive programs for the dedication, acquisition or permanent reservation of habitat areas, such as reforestation and afforestation programs identified in Chapter VIII for Forests and Developed Woodlands.

2. Work with the Natural Heritage Program and such private organizations as the Nature Conservancy and the Maryland Environmental Trust to designate important and unique habitat areas or to acquire fee title to the land containing such habitats or conservation easements over the land.

3. Increase public awareness of, and encourage and facilitate enrollment in, the Conservation Easement Program administered by the Maryland Environmental Trust. This is a voluntary program in which the property owner agrees to preserve some or all natural characteristics of the land and transfers the right to develop that land to another property, person or entity.

4. Work with the Department of Natural Resource's Wildlife Administration to increase public awareness of the Maryland Acres for Wildlife Program. This program consists of voluntary enrollment of any rural area of one acre or more in a two-year program in which the Wildlife Biologist helps the land owner prepare a wildlife management plan and provides plants or seeds to create or enhance wildlife habitat

C. County Coordination and Cooperation With Other Agencies

1. Whenever someone proposes land development, tree harvesting or other activities that could affect a plant or wildlife habitat identified in this Plan, forward a copy of the application and accompanying plans to the appropriate agencies for review and comment.

Anadromous Fish

A. County Regulations

1. Modify the Zoning Ordinance to require that all land development activity located within watersheds of anadromous fish propagation waters within the Critical Area be subject to a special use or site plan approval process that conditions approval of the proposed development on compliance with the goals and policies established in this Plan.

2. Incorporate into the Zoning Ordinance and County regulations governing agricultural practices a requirement that a 25' vegetative filter strip be maintained along identified anadromous fish spawning streams, and their tributaries, as a measure to minimize sedimentation and runoff containing pesticides and nutrients.

B. County Programs

1. Institute a public education program regarding the role of anadromous fish in the economy and recreational life of Talbot County, human activities that can harm anadromous fish habitats, and steps that individuals can take to protect anadromous fish propagation waters.

C. County Coordination and Cooperation With Other Agencies –

1. Coordinate the County's regulatory efforts with those of the Water Resources Administration regarding alterations to non-tidal streams. The Water Resources Administration issues Waterway Obstruction and Construction Permits (also known as Watershed Permits). Ensure that the permitting decisions of the Water Resources Administration are made in consideration of the goals, objectives and policies of this Plan regarding the protection of anadromous fish propagation waters.

CHAPTER V - BUFFER

A. County Regulations

1. Incorporate into the Zoning Ordinance a set of overlay regulations that govern development in and restrict the use of lands located within the Buffer designated by this Plan and require development to meet the goals and policies established in this Plan for the Buffer.

2. Modify the Zoning Ordinance to prohibit new development and the expansion of existing development in the Buffer. This should include structures, impervious surfaces, surface mining and septic systems, except for those necessarily associated with agricultural activities and water-dependent facilities, permitted under the Critical Area Plan.

3. Modify the Zoning Ordinance to prohibit water-dependent uses and agricultural activities from locating in the Buffer unless they meet the goals and policies established in this Plan for such uses and for development within the Buffer.

4. Modify the Zoning Ordinance to re-establish the full Buffer when it is proposed to convert farm land to residential development by requiring the planting of new vegetation or maintenance of existing suitable vegetation to carry out the functions of the Buffer.

B. County Programs

1. Institute a public education program regarding the role that maintenance of the Buffer plays in protecting and improving Chesapeake Bay resources.

C. County Coordination and Cooperation With Other Agencies

1. Work with the Maryland Department of Agriculture, the Maryland Forest, Park and Wildlife Service and the Soil Conservation District to ensure that adequate management plans are prepared for commercial tree harvesting within the Buffer, to ensure that adequate "grassland and manure management plans" are prepared for livestock operations located in the Buffer, and to ensure that adequate Soil Conservation and Water Quality Plans are prepared for agricultural operations located in the Buffer.

CHAPTER VI - NON-TIDAL WETLANDS

A. County Regulations

1. Modify the Zoning Ordinance to require a 25' buffer be maintained around identified non-tidal wetlands. Development activities or other activities should be prohibited unless these activities will not adversely affect the wetland.

2. Modify the Zoning Ordinance and other County ordinances governing grading and the clearing of land to require development within the drainage areas of non-tidal wetlands within the Critical Area to meet the goals and policies established in this Plan for minimizing the alteration of surface or subsurface water flow into and from the wetland and for protecting the plant and wildlife habitat value of the wetland.

3. Require the preparation and implementation of mitigation plans, meeting the goals and policies established by this Plan, for any development which will unavoidably or necessarily damage or displace non-tidal wetlands. Require a performance bond as part of approval of the Plan to ensure that the mitigation work will be carried out.

B. County Programs

1. Develop and distribute a pamphlet or other public education materials explaining the requirements established by the Plan for the management and protection of non-tidal wetlands.

C. County Coordination and Cooperation With Other Agencies

1. Work with the appropriate State and Federal agencies to see that adequate wetland mitigation plans are prepared. Require that the Soil Conservation District or the Department of Natural Resources to review and comment on such mitigation plans before the County will approve them.

2. Work with the Soil Conservation District, the Department of Natural Resources and other State and Federal Agencies to develop and distribute a guidebook with information on how to create and manage a new non-tidal wetland. This would accompany the wetland mitigation requirement, as well as other efforts to establish new non-tidal wetlands. This guidebook could include information on how to prepare an acceptable mitigation plan, what types of vegetation to plant, how to maintain appropriate water levels to ensure the survival of the wetland and whom to contact in different government agencies for advice and assistance. It could also contain a list of qualified contractors who specialize in wetland mitigation and construction projects.

CHAPTER VII - AGRICULTURE

A. County Regulations

1. Require all farms within the Critical Area to adopt and implement, within five years of the adoption of the State Critical Area Criteria (13 May 1986), a Soil Conservation and Water Quality Plan approved by the County Soil Conservation District. Require farm owners to select and implement, as part of these plans, Best Management Practices that minimize adverse impacts on water quality, that conserve fish, plant and wildlife habitats.

2. Require a 25' vegetative filter strip be maintained at the shoreline of agriculture fields.

3. Consider clustering, planned unit developments and transfer of development rights provisions into the County's Zoning and Subdivision Ordinances to encourage the retention of large tracts of land so they will be available for agricultural use.

4. Require the preparation and implementation of Forest Management Plans for farms which have timber harvests that affect one acre or more in any one-year interval.

B. County Programs

1. Encourage the preservation of agricultural lands to prevent their conversion to non-agricultural uses. Continue County participation in the program operated by the Maryland Agricultural Land Preservation Foundation to acquire the development rights to agricultural land. This is a voluntary program in which farm owners work with the Foundation to establish an "agricultural preservation district" from which the Foundation may purchase the development rights.

2. Notify farm owners in the Critical Area of the requirement that they prepare a Soil Conservation and Water Quality Plan and select and institute Best Management Practices in their farming operations.

3. Work with the Soil Conservation District, the Maryland Department of Agriculture, and the U.S. Agricultural Stabilization and Conservation Service, to develop and distribute public education materials that increase public awareness of the State's Agricultural Cost-sharing Program and the Federal government's Agricultural Conservation Program. These programs provide financial assistance to farm owners for installing conservation Measures that protect water quality from agricultural runoff.

C. County Cooperation and Coordination with Other Agencies

1. Work with the Soil Conservation District to ensure that information on Best Management Practices and the preparation of acceptable Soil Conservation and Water Quality Plans reaches farm owners. It is the Soil Conservation District's responsibility to prepare or approve Soil Conservation and Water Quality Plans and to promote the adoption of the Best Management Practices necessary to implement such plans.

2. Established in 1977, the Maryland Agricultural Land Preservation Foundation works with local authorities to establish Agricultural Preservation Districts in which landowners can sell perpetual development rights easements to the Foundation.

CHAPTER VIII - FORESTS AND DEVELOPED WOODLANDS

A. County Regulations

1. Require a tree harvesting permit for any timber harvesting operation, including timber harvesting on agricultural land, that affects one or more acres of forest or developed woodland within any one-year interval.

2. Require the operator or land owner to file with the County a Sediment Control Plan, following the specifications set out by the Maryland Forest, Park and Wildlife Service, for all tree harvests involving 5,000 square feet or more of disturbed area, including harvesting on agricultural lands.

3. Consider clustering provisions, planned unit developments and transfer of development rights into the County's Zoning and Subdivision Ordinances to encourage the preservation of existing stands of forest.

4. Incorporate into the Zoning Ordinance provisions that restrict the percentage of forested area that may be cleared from a development site. Where more than this percentage of area is removed, require the planting of new trees elsewhere on the site on an acre for acre basis.

B. County Programs

1. Provide preferential tax assessment under the State's Forest Conservation and Management Program where the owner of forest land prepares and follows an approved Forest Management Plan.

2. Develop and distribute a pamphlet or other public education materials explaining the requirements established by the Critical Area Plan for the owners of forests and woodlands.

C. County Coordination and Cooperation With Other Agencies

1. Require that forestry management plans filed with the County be approved by the Bay Forester before the County will permit timber harvesting to occur.

2. Inform the Maryland Department of Natural Resources when an operator fails to follow the Sediment Control Plan he has filed with the County. The Department of Natural Resources is responsible for enforcement of such plans.

3. Work with the appropriate State agencies to increase public awareness of the Reforestation and Timberland Development Improvement Tax Deduction Program.

4. Work with the appropriate State agencies to increase public awareness of the State's new Woodlands Incentives Program which shares in the cost of replanting and improving stands of forest.

CHAPTER IX - NATURAL PARKS

A. County Regulations

B. County Programs

1. Encourage and facilitate the establishment of private non-profit land trusts for Talbot County that would acquire open land and conservation easements.

C. County Coordination and Cooperation with Other Agencies

1. Coordinate efforts with the State Comprehensive Outdoor Recreation Plan (SCORP). This statewide program and continuing plan is the State's primary plan for provision of recreational and outdoor space which is then acquired under Program Open Space.

2. Work with the Maryland Forest, Park and Wildlife Service, which administers the State Parks and State Forest programs, to acquire lands identified as potential natural parks.

CHAPTER X - SURFACE MINING/SOLID WASTE/SANITARY LANDFILLS

A. County Regulations

1. Modify the Zoning Ordinance to make surface mining activities subject to a form of special use approval or site plan review that conditions approval of the activity on compliance with the goals and policies established in this Plan. As part of this approval process, require the submission of a conceptual plan for post-excavation uses of the mining site, with the post-excavation reclamation of the land being compatible with the goals and policies of this Plan.

B. County Programs

1. Work with mine operators to educate them about potential threats that surface mining presents to Critical Area resources and prescribe measures they can incorporate into their operations to make surface mining as compatible as possible with preserving those resources.

C. County Coordination & Cooperation With Other Agencies

1. Work with the the surface mining division of the Water Resources Administration, the Department of Natural Resources and the State of Maryland to ensure that the County has the opportunity to review and comment on applications for State mining permits.

CHAPTER XI - MARINAS AND WATER DEPENDENT FACILITIES

A. County Regulations

1. Modify the Zoning Ordinance to make all water-dependent uses located in the Critical Area subject to a special use or site plan review and approval process, with such uses being allowed only if they meet the goals and policies established in this Plan.

2. Rezone areas that are suitable for the development or expansion of water-dependent facilities.

3. Modify the Zoning Ordinance to restrict industrial and port-related water-dependent facilities from locating in the Buffer. Associated non-water-dependent structures or facilities must be located outside the Buffer.

4. Modify the Zoning Ordinance to restrict new commercial marinas and other water-dependent commercial maritime facilities from locating in the RCA.

5. Modify the Zoning Ordinance to regulate the expansion of existing commercial marinas located in the RCA.

6. Modify the Zoning Ordinance to regulate new or expanded community piers and other non-commercial boat docking and storage facilities when located in the Buffer.

7. Modify the Zoning Ordinance to permit public beaches and water-oriented recreational or educational facilities to locate in the Buffer portion of the IDA, LDA and RCA.

8. Modify the Zoning Ordinance to permit water-dependent research facilities and activities to locate in the Buffer only if associated non-water-dependent structures or facilities are located outside the Buffer.

9. Modify the Zoning Ordinance to restrict selected water-dependent commercial fishing facilities from locating in the Buffer in the IDA, LDA or RCA.

B. County Programs

1. Institute a public information program geared toward marina operators and the boating public which identifies practices that they can adopt and use to minimize water pollution at marina operations.

C. County Coordination and Cooperation With Other Agencies

1. Condition any approval of a new marina or marina expansion on compliance with the sanitary requirements of the State Department of the Environment and applicable agencies. Have the staff of those agencies review applications for compliance with State requirements.

2. Coordinate County efforts to regulate the construction of piers, marinas and other waterfront structures with the appropriate State and Federal Agencies.

ADDITIONAL COUNTY REGULATIONS AND INTERGOVERNMENTAL COOPERATION

The following regulatory items shall also be developed and incorporated into the County Zoning Ordinance or other appropriate documentation.

1. Grandfathering

Grandfathering refers to provisions which allow certain pre-existing uses and conditions to continue even though they may be inconsistent with the new County regulations. After approval of this Plan and supporting ordinance, the County shall permit the continuation, but not necessarily the intensification or expansion of any use in existence on the date of the Plan and ordinance approvals, unless the use has been abandoned for more than one year or is otherwise restricted by existing County ordinances.

2. Variances

Any person who has financial or ownership interest in property affected by this Plan may request, and the County may grant, variances from the Plan requirements if in specific cases it can be proven that unnecessary, undue or unwarranted hardship results from strict enforcement of the requirements of this Plan and such a variance would not be contrary to the public interest. Whenever the County grants a variance from the requirements of this Plan it must send a copy of its findings to the Chairman of the Chesapeake Bay Critical Area Commission for review. Any person, firm, corporation or governmental agency aggrieved or adversely affected by the County decision, or the Chairman of the Chesapeake Bay Critical Area Commission, may appeal the action or decision on the variance to the Circuit Court of Talbot County, in accordance with the Maryland Rules of Procedure.

3. Intrafamily Transfers

The Critical Area Legislation defines Bona Fide Intrafamily Transfer as a means of giving an immediate family member (father, mother, son, daughter, grandfather, grandmother, grandson or granddaughter) a portion of the owner's property for the purpose of establishing a residence. The County

shall enact legislation to permit intrafamily transfers subject to their meeting the specific guidelines of this Plan. Submissions for subdivision will be forwarded to the Chesapeake Bay Critical Area Commission for review and comment.

4. Intergovernmental Cooperation

The Chesapeake Bay Critical Area Commission has called for each local government to attempt to establish cooperative arrangements with adjacent jurisdictions and with State and Federal agencies concerning the policies and objectives for lands within and adjoining the Critical Area. Many State agencies already have responsibility for enforcing regulations governing activities that affect Critical Area resources such as enforcement of the Wetlands Act (governing development in the tidal wetlands) by the State Board of Public Works and the Wetlands Division of the Water Resources Administration of the Department of Natural Resources. In addition to enforcing State regulations, State agencies also administer programs that provide technical assistance to County residents and County agencies as well as programs that provide financial assistance for County activities such as land acquisition. Similarly, Federal agencies, such as the Army Corps of Engineers and the Soil Conservation Service, are responsible for regulating particular aspects of development in the Critical Area and providing technical and financial assistance to County residents and County agencies. These State and Federal programs play a vital role in implementation of this Plan and they are needed to complement the County's own efforts in the same direction. Avenues for intergovernmental cooperation, therefore, need to be established between Talbot County and the appropriate State and Federal agencies.

GLOSSARY

Afforestation: The establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

Aquaculture: The farming or culturing of fish, aquatic plants and animals in water. Activities include the culture of clams and oysters on tidelands and subtidal areas. For the purposes of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

Aquifer: An underground bed or stratum of earth, gravel or porous stone that contains water.

Berm: A narrow zone just above the intertidal zone which is inundated only by exceptionally high or storm tides and which consists of non-wind driven coarse sand, shell fragments and debris.

BOD: Biochemical oxygen demand: A measure of the amount of oxygen consumed in the biological processes that break down organic matter in water. Large amounts of organic waste use up large amounts of dissolved oxygen, thus the greater the degree of pollution, the greater the BOD.

Buffer: An existing, naturally vegetative area, or an area established in vegetation and managed to protect aquatic, wetland, shoreline and terrestrial environments from man-made disturbances. The Buffer is 100 feet from tidal shoreline and from tributary streams.

Bulkheads: A wall or embankment constructed to protect against earthslides or shoreline erosion.

Cadium, Arsenic & Heavy Metals: These metallic elements have a high molecular weight. Heavy metals are generally toxic in low concentrations to animal life.

Clear-cutting: The removal of the entire stand of trees in one cutting.

Cluster Development: A residential development in which dwelling units are concentrated in selected areas of the site so as to provide natural habitat, preserve natural features or other open space uses on the remainder.

Colonial Nesting Waterbirds: Herons, egrets, terns and glossy ibis. For purposes of nesting these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

Community Piers:	Boat docking facilities associated with subdivisions and similar residential areas, and with condominimum, apartment and other multiple-family dwelling units. Private piers are excluded from this definition.
Commercial Harvesting:	A commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.
Development or Development Activities:	The construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures.
Developed Woodlands:	Areas of one acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial or industrial structures and uses.
Diatomaceous Earth (Diatomite):	A fine siliceous material resembling chalk used in waste water treatment plants to filter solids out of sewage effluent. May also be used as inactive ingredients in pesticide formulations applied as dust or powder.
Documented Breeding Bird Areas:	Forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.
Dredging:	A method for deepening streams, swamps or coastal waters by scraping and removing solids from the bottom.
Easement:	An interest in land owned by another that entitles its holder to a specific use or enjoyment.
Ecotone:	An ecological community of mixed vegetation formed by the overlapping of adjoining communities.
Erosion:	The wearing away of the land surface by wind or water, usually intensified by land-clearing practices.
Escarpment:	A steep slope or long cliff resulting from erosion or faulting and separating two relatively level areas of differing elevations.
Estuarine Flat Nursery Area:	Low lying, partly flooded grounds such as tideland, where fresh water meets salt water and young marine life develops. These are delicate ecosystems.

Eutrophication:	The normally slow process by which a lake evolves into a bog or marsh and ultimately assumes a completely terrestrial state and disappears. During eutrophication the lake becomes so rich in nutritive compounds, especially nitrogen and phosphorous, that algae and other microscopic plant life become super abundant, thereby 'choking' the lake, and causing it eventually to dry up.
Fallow Land:	Land that is plowed and tilled but left unseeded during a growing season.
Fastland:	That portion of a coast behind the coastline which marks the seaward limit of permanently exposed coast and or the landward limit of effective wave action. Often with a well-defined scarp or wave cut cliff defining the seaward edge of the fastland.
Fecal Coliform Bacteria:	A group of organisms common to the intestinal tracts of man and animals.
Forest:	A biological community dominated by trees and other woody plants covering a land area of one acre or more. This also includes forests that have been cut, but not cleared.
Forest Interior Dwelling Birds:	Species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos and woodpeckers).
Forest Management:	The protection, manipulation and utilization of the forest to provide multiple benefits, such as timber harvesting, water transportation, wildlife habitat, etc.
Forest Practice:	The alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.
Groin:	Stone or wooden jetty constructed perpendicular to shore in order to interrupt lateral shore sand movement and for the purpose of accumulating sand on the shore.
Habitat:	The natural abode of a plant or animal.
Herbicide:	A chemical used to destroy or control the growth of weeds, bush or other undesirable plants.
Highly Erodible Soils:	Soils with a slope greater than fifteen percent; or those soils with a K value greater than .35 and with slopes greater than five percent.

Historic Waterfowl Staging and Concentration Areas:	An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.
Hydric Soils:	Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of those soils.
Hydrophytic Vegetation:	Those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).
Impervious Surface:	Non-porous ground covers or areas above grade level such as sidewalks, roads, parking areas and roof tops that shed stormwater and hinder penetration of water into the ground.
Jetty:	A pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.
K Value:	The soil erodibility factor. Highly erodible soils have a K value greater than .35.
Marina:	Any facility used for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.
Natural Heritage Area:	Any community of plants or animals which is considered to be among the best statewide examples of its kind and is designated by regulation by the Secretary of the Department of Natural Resources.
Natural Park:	An area of natural habitat that provides opportunities for those recreational activities that are compatible with the maintenance of natural conditions.
Natural Vegetation:	Those plant communities that develop in the absence of human activities.

Non-Tidal Wetlands: Those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. Non-tidal wetlands include the palustrine class. These lands are usually characterized by one or both of the following:

- At least periodically, the lands support predominately hydophytic vegetation; and
- The substrate is predominantly undrained hydric soils.

Normal Maintenance: Exterior repairs to a structure or grounds such as painting, roof replacement/repair, rain gutter replacement or the clearing/trimming back of weeds, vines or unwanted vegetation that does not alter or change the character of existing structures or does not remove vegetation important to the Buffer or to shoreline erosion control.

Overburden: The strata or material overlying a mineral deposit or in between mineral deposits.

Pasture: Grass or other vegetation eaten as food by grazing animals or ground on which such vegetation grows.

Palustrine: All non-tidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one half part per 1,000 parts of water.

Permeability: The measure of a soils ability to drain water.

Pesticide: An agent used to control pests such as insects, weeds, fungi, bacteria and rodents. Some pesticides can contaminate water, air or soil and accumulate in man, animals and the environment. They have been shown to interfere with the reproductive processes of predatory birds and possibly other animals.

Phosphorous: An element that while essential to life, contributes to the eutrophication of lakes and other bodies of water.

Port: A facility or area established or designated by the State or County for purposes of waterborne commerce.

Planned Unit Development (P.U.D.): An area of land developed as a single family entity, or in approved tages, which is totally planned to provide for a variety of residential and compatible uses and common open space.

Public Boat State or County facility open to the public. Not a private facility

Dock Facility:	or one only to be used by the residents of a particular development.
Reach:	The stretch of water visible between bends in a river or channel.
Reclamation:	The reasonable rehabilitation of disturbed land for useful purposes, including the protection of natural resources and water bodies.
Reforestation:	The establishment of a forest through artificial or natural regeneration.
Revetment:	A sloped facing, as of masonry, used to support an embankment.
Riprap:	A layer of stones, gravel or boulders placed on a slope or shore to prevent loss of bank material by wave action or erosion.
Riparian Habitat:	A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines and wetlands.
Runoff:	The portion of rainfall, melted snow or irrigation water that flows across ground surfaces and eventually is returned to water bodies. Runoff can pick up pollutants from the air or land and carry them to the receiving waters.
Salt Water Intrusion:	The invasion of salt water into a body of fresh water. When this invasion is caused by oceanic waters, it is called sea water intrusion.
Sanitary Landfill:	An engineered method of solid waste disposal on land in a manner that protects the environment; waste is spread in thin layers compacted to the smallest practical volume and covered with soil at the end of each working day.
Seawall:	An embankment to prevent erosion of a shoreline.
Sedimentation:	The settling out of solids by gravity.
Shell Marl:	A mixture of clays, carbonates of calcium and magnesium, and remnants of shells, forming a loam used as fertilizer.
Shoaling:	The act of becoming shallow.
Shore Erosion:	A net loss of land over a given length of shoreline.
Shore Erosion Protection Works:	Those structures or measures constructed or installed to prevent or minimize erosion of shorelines.
Solid Waste:	Useless, unwanted or discarded material with insufficient liquid content to be free flowing.

Species in Need of Conservation: Those fish and wildlife species whose continued existence as part of the State's resources are in question and which may be designated by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article 10-2A-06 and 4-2A-03, Annotated Code of Maryland.

Spoil: Dirt or rock that has been removed from its original location, specifically materials that have been dredged from the bottoms of waterways or removed in the process of surface mining.

Spoil Piles: Rejected materials piled or deposited during surface mining.

Submerged Aquatic Vegetation (S.A.V.) Plant life that grows where water is six feet deep or less. This underwater community provides food and habitat to major fish species and is a source of food to waterfowl and aquatic mammals.

Surface Mining:

1. The breaking of the surface soil in order to extract or remove minerals;
2. Any activity or process that removes minerals from their original location;
3. The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities;
4. The processing of minerals at the site of extraction; or
5. The mining of limited amounts of any mineral when done for the purpose of prospecting or to determine the location, quantity, or quality of natural deposits.

Wash Plant: A facility where sand and gravel are washed during processing.

Waterfowl: Birds which frequent and often swim in water, nest and raise their young near water and derive at least part of their food from aquatic plants and animals.

Water table: The upper level of ground water.

Water-Dependent Activities: Those activities which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to a water body for transportation, recreation, energy production or transmission, or source of water and where the use of the water is an integral part of the activity.

Under the terms of the Critical Area definitions, an activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of its intrinsic nature.

These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water use industries, marinas and other boat docking structures, public beaches and other public water-

oriented recreation areas, and fisheries activities. Excluded from this definition are individual private piers installed or maintained by riparian landowners, which are not part of a subdivision which provides community piers.

Non-water dependent activities are all other activities not included in the definition of water-dependent activities.

Wildlife Corridor: A strip of land having vegetation that provides habitat and a safe passageway for wildlife.

CRITICAL AREA ZONING ORDINANCE

COPY

Talbot County,
Maryland

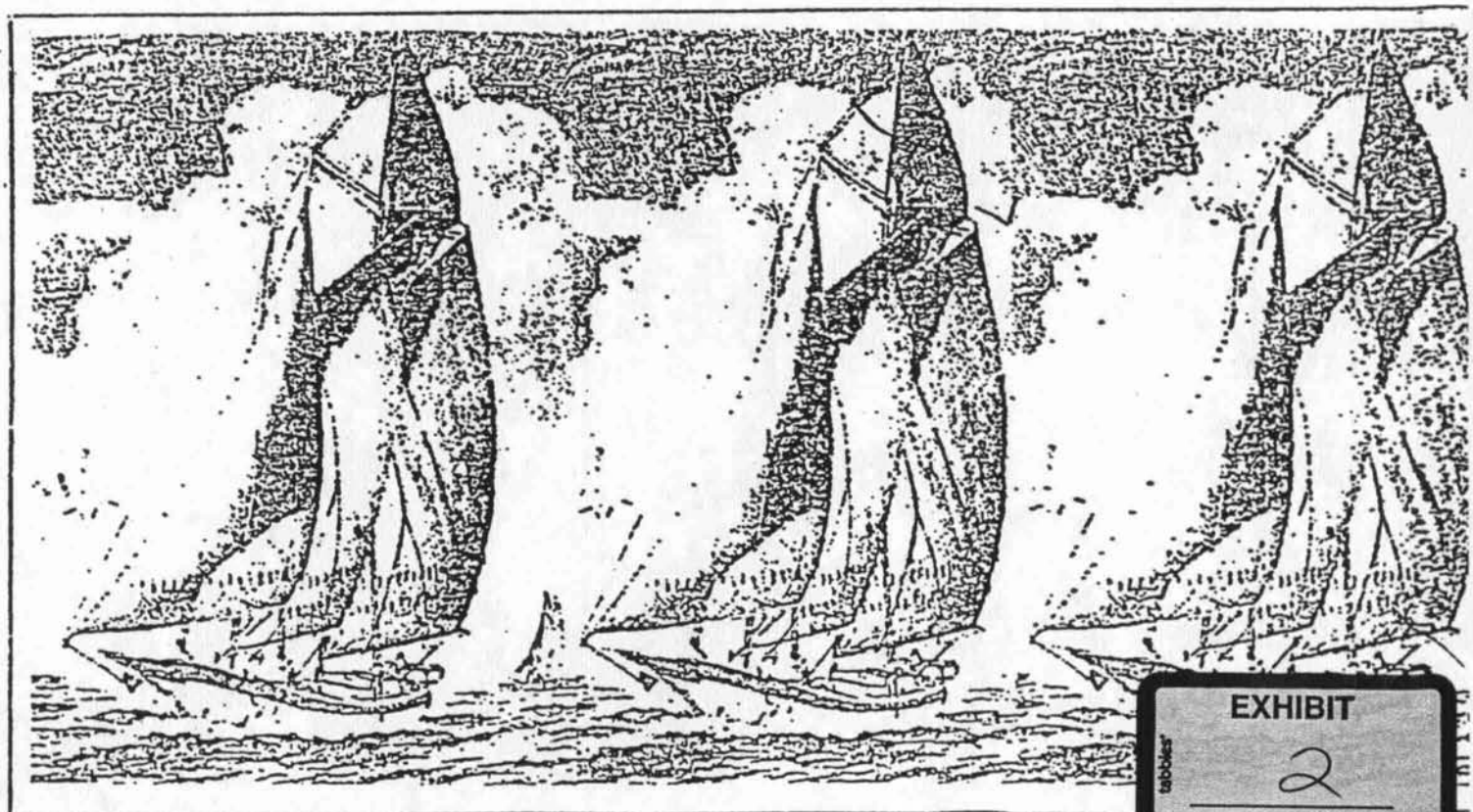

EXHIBIT
2

TALBOT COUNTY
CRITICAL AREA ZONING ORDINANCE

MAY, 1989

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C. Establishment of Zones

The Critical Area Law mandated the classification of land in the Critical Area into three development categories: Intensely Developed Areas (IDA), Limited Development Areas (LDA), and Resource Conservation Areas (RCA). The Talbot County Critical Area Plan mapped all land and water within the Talbot County Critical Area in accordance with these development classifications. Thus, each parcel within the Critical Area has a designation as Resource Conservation Area, Limited Development Area, or Intensely Developed Area. To achieve the purposes of the Critical Area Law, this ordinance establishes the following zoning districts:

1. Rural Conservation RC
2. Rural Residential RR
3. Village Center VC
4. Town Residential TR
5. Limited Commercial LC
6. General Commercial GC
7. Limited Industrial LI

Table 1 lists all former zoning districts (A-1 through M) in the left hand column. For each former zoning district a corresponding new zoning district appears in the 3 right columns of the Table. The assignment of new zoning districts varies according to the location of the parcel within the Resource Conservation Area (RCA), Limited Development Area (LDA), or Intensely Developed Area (IDA). For example, a parcel in the Critical Area formerly zoned A-1 is now designated RC (Rural Conservation) if the parcel is located in the Resource Conservation Area, and is now designated RR (Rural Residential) if the parcel is located in the Limited Development Area.

The initial establishment of the Rural Conservation and Rural Residential districts on parcels that are divided by the Critical Area boundary followed this rule: if a smaller portion of a divided property is less than 2 acres in area, it is subject to the same zoning district as the larger portion. If the smaller portion is 2 acres or larger, the parcel is subject to 2 zoning districts, the current zoning district for the portion outside the Critical Area and the new zoning district for the portion inside the Critical Area. The initial establishment of all other districts on parcels that are divided by the Critical Area boundary followed the parallel rule: if a smaller portion of a divided property is less than 1 acre in area, it is subject to the same zoning district as the larger portion. If the smaller portion is 1 acre or larger, the parcel is subject to 2 zoning districts, the current zoning district for the portion outside the Critical Area and the new zoning district for the portion inside the Critical Area.

TABLE 1

NEW ZONING DESIGNATIONS WITHIN CRITICAL AREA

Former Zoning Districts		Critical Area Development Areas					
		Resource Conservation Area RCA		Limited Development Area LDA		Intensely Developed Area IDA	
		New Zoning Districts					
Agricultural	A-1	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Agricultural	A-2	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Agricultural	A-5	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Agricultural/ Conservation	A-10	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Waterfront Residential	W-2	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Waterfront Residential	W-5	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Waterfront Residential/ Conservation	W-10	Rural Conservation	RC	Rural Residential	RR	Not Applicable	
Residential	R-10	Rural Conservation	RC	Town Residential	TR	Not Applicable	
Village	V-1	Rural Conservation	RC	Village Center	VC	Not Applicable	
Village Residential	V-2	Rural Conservation	RC	Village Center	VC	Not Applicable	
Commercial <20 acres	C-1	Rural Conservation	RC	Limited Commercial	LC	Not Applicable	
Commercial >20 acres	C-1	Rural Conservation	RC	Not Applicable		Limited Commercial	LC
Commercial <20 acres	C-2	Rural Conservation	RC	General Commercial	GC	Not Applicable	
Commercial >20 acres	C-2	Rural Conservation	RC	Not Applicable		General Commercial	GC
Industrial <20 acres	M	Rural Conservation	RC	Limited Industrial	LI	Not Applicable	
Industrial >20 acres	M	Rural Conservation	RC	Not Applicable		Limited Industrial	LI

II. USE CRITERIA

A. Purpose

This ordinance divides the Critical Area into the zoning districts described below in order to achieve the goals of the Critical Area Law and to effectively incorporate the Critical Area development classifications. In accordance with the purposes of the Critical Area Law, the following policies shall apply to these new zoning districts:

1. Development shall be limited in the Rural Conservation District, which shall be chiefly designated for agriculture, forestry, fisheries activities, other resource utilization activities, and for habitat protection;

2. Low intensity development is permitted in the Rural Residential and low and moderate intensity development is permitted in the Village Center Districts, but in both areas such development shall be subject to strict regulation to prevent adverse impacts on habitat and water quality; and

3. Intense development should be directed outside the Critical Area. Future intense development activities, when proposed in the Critical Area, shall be directed towards the Town Residential, Limited Commercial, General Commercial, or Limited Industrial Districts as warranted by the specific intended use.

B. Districts

The purpose of each of the districts is stated below with the density limits, permitted uses, special exceptions, and accessory uses indicated in the Land Use Table (Table 2) and the Residential District Density Limits Section (Section II.B.4).

1. Character and Purpose of Districts

a. Rural Conservation District - RC

This district shall be characterized by natural environments (wetlands, forests, or abandoned fields) and resource development activities (agriculture, forestry, fisheries, or aquaculture). The purpose of this district is to conserve the irreplaceable agricultural, forested, and natural environmental character of the County. Through this district the County's agricultural activities shall be preserved, encouraged, and protected. Agricultural activities are the primary uses in this district. There is no basis, under this ordinance, for recourse against the effects of any farming operations conducted in accord with this ordinance, including but not limited to noise, odor, vibration, fumes, dust, or glare. Development activities are intended to be in the form of large lots, clustered outside of Habitat Protection Areas, without public water or sewer service.

Any development in this district shall:

1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;

2) Provide adequate protection of breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries or coastal habitats in order to sustain populations of those species;

3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and

4) Conserve the existing developed woodlands and forest for the water quality benefits that they provide.

b. Rural Residential District - RR

This district shall be characterized by low intensity residential uses. The purpose of this district is to protect the environment and preserve the valuable natural resources found in the rural areas of the County while providing for a limited degree of residential development. Such development activities are intended to be in the form of large lots, clustered outside of Habitat Protection Areas, without public water or sewer service.

Any development in this district shall:

1) Maintain, and whenever possible improve, the quality of runoff and groundwater entering the Chesapeake Bay and it tributaries;

2) Maintain, to the extent practical, existing areas of natural habitat; and

3) Accommodate additional low or moderate intensity residential development if such development conforms to the water quality and habitat protection criteria in this ordinance.

c. Village Center District - VC

This district shall be characterized by low or moderate intensity residential and commercial uses. The purpose of this district is to provide an opportunity for a mixture of residential, commercial, and maritime/agricultural service uses at existing centers of development in rural areas of the County. These commercial uses shall be oriented toward serving the residents in the vicinity of each village. Development is directed to this district, so that the environment and the valuable natural resources in the rural areas of the County are protected and preserved. These uses may have public water and/or sewer service.

Any development in this district shall:

1) Maintain, or if possible improve, the quality of runoff and groundwater entering the Chesapeake Bay and it tributaries;

2) Maintain, to the extent practical, existing areas of natural habitat; and

3) Accommodate additional low or moderate intensity residential and commercial development if such development conforms to the water quality and habitat protection criteria in this ordinance.

d. Town Residential District - TR

This district shall be characterized by moderate intensity residential uses. The purpose of this district is to provide an opportunity for suburban residential development adjacent to the existing incorporated towns. Any existing natural habitat shall be preserved wherever possible. Public water and sewer service should be provided.

Any development in this district shall:

1) Improve the quality of runoff that enters the Chesapeake Bay or its tributary streams;

2) Accommodate additional residential development, provided that water quality is not impaired;

3) Conserve and enhance fish, wildlife, and plant habitats to the extent possible; and

4) Encourage the use of retrofitting measures to address existing storm water management problems.

e. Limited Commercial District - LC

This district shall be characterized by low intensity commercial uses. The purpose of this district is to provide an opportunity for commercial and office development serving County residents.

Any development in this district shall:

1) Improve the quality of runoff that enters the Chesapeake Bay or its tributary streams;

2) Accommodate additional commercial development, provided that water quality is not impaired;

3) Conserve and enhance fish, wildlife, and plant habitats to the extent possible; and

4) Encourage the use of retrofitting measures to address existing storm water management problems.

f. General Commercial District - GC

This district shall be characterized by moderate intensity commercial uses. The purpose of this district is to provide an opportunity for a broad range of commercial activities including retail, wholesale, storage, and contracting activities serving the County residents and visitors. These uses shall not be a nuisance to County residents because of odor, smoke, dust, fumes, heat, fire, glare, vibrations, noise, other hazardous conditions, or air or water pollution.

Any development in this district shall:

1) Improve the quality of runoff that enters the Chesapeake Bay or its tributary streams;

2) Accommodate additional commercial development, provided that water quality is not impaired;

3) Conserve and enhance fish, wildlife and plant habitats to the extent possible; and

4) Encourage the use of retrofitting measures to address existing storm water management problems.

g. Limited Industrial District - LI

This district shall be characterized by low intensity manufacturing uses. The purpose of this district is to provide an opportunity for light industrial/office-research uses that would provide employment and services to County residents. These uses shall not be a nuisance to County residents because of odor, smoke, dust, fumes, heat, fire, glare, vibrations, noise, air or water pollution, or other hazardous conditions.

Any development in this district shall:

1) Improve the quality of runoff that enters the Chesapeake Bay or its tributary streams;

2) Accommodate additional industrial development, provided that water quality is not impaired;

3) Conserve and enhance fish, wildlife, and plant habitats to the extent possible; and

4) Encourage the use of retrofitting measures to address existing storm water management problems.

2. Land Use Table

Table 2 indicates those uses which are permitted outright in each of the zoning districts. The table also indicates those uses which may be permitted in a district if a special exception is granted by the Board of Appeals. The process and criteria for approval of special exceptions are listed in Section 11 of the County Zoning Ordinance, with supplemental criteria for certain uses in Section II.B.7 of this ordinance. Lastly, accessory uses are listed. Accessory uses are allowed as a subordinate use once a permitted use or special exception is in existence or under construction as stated in Section 36.13 of the County Zoning Ordinance.

TABLE 2

LAND USE TABLE

P = Permitted Principal Uses and Structures
S = Special Exceptions
A = Accessory Uses

All setbacks are measured from property lines

AGRICULTURAL	RC	RR	TR	VC	LC	GC	LI
Agricultural Employee Temporary Housing All setbacks increased to 200 ft - Minimum lot size increased to 20 acres - Not more than 15 units, 6 people per unit	S						
Agricultural Processing - includes the concentrated handling or containment of livestock or crops (See Agricultural and Forestry Management, Section II.B.8)							
Agricultural Research Facilities (noncommercial) - commercial facilities not allowed in Critical Area (see Additional Land Use Regulations Section II.B.3.a)	S						
Fish and Game Hatcheries	P	P					
Grain Processing, Drying, Storage, and Wholesale (commercial) - all setbacks increased to 200 ft	P				S	S	S
Greenhouse and Plant Nursery Wholesale (commercial & noncommercial)	P				S	P	S
Greenhouse and Plant Nursery Retail Sales - limited to sales of shrubs & trees grown on site for at least one year - all setbacks increased to 50 ft for areas devoted to the growing of shrubs or trees - all setbacks increased to 200 ft for parking and sales activities - minimum lot size increased to 10 acres	S						
Dairy Barns, Livestock Feeding Lots, Poultry and Hog Houses, and Agricultural Lagoons - all setbacks increased to 200 ft - minimum lot size increased to 50 acres for Poultry and Hog houses larger than 1,500 sq ft.	P						
Poultry and Hog Houses larger than 1500 sq ft on parcels smaller than 50 acres	S						
Produce Stands (See Additional Land Use Regulations, Section II.B.3.b)	A			S	P	P	
	RC	RR	TR	VC	LC	GC	LI

	RC	RR	TR	VC	LC	GC	LI
AGRICULTURAL Continued							
Agricultural Production							
- includes growing field crops, grazing livestock and supplemental feeding (but not the operation of feeding pens or stations), hay production, orchards, vegetable growing, sod farming, vineyards, and Christmas tree growing. (See Agricultural and Forestry Management, Section II.B.8)							
All Agricultural Production Activities	P	P	P	P	P	P	P
- except Commercial Livestock Operations							
Commercial Livestock Operations	P						
Timber Harvesting	P	P	P	P	P	P	P
- in RR, VC, TR, LC: excludes harvesting on parcels of less than 10 acres (See Agricultural and Forest Management Section II.B.8)							
Timber Harvesting on parcels of less than 10 acres (See Agricultural and Forest Management Section II.B.8)		S	S	S	S		
RESIDENTIAL	RC	RR	TR	VC	LC	GC	LI
Employee Residence	A	A	A	A	A	A	A
- residence shall be not larger than 1,500 sq ft.							
- at least half of the household income shall be obtained from the owner of the subject property							
- excludes mobile homes							
Guest Residence (noncommercial only)	A	A					
- limited to parcels of 2 acres or greater							
- limited to one guest residence per parcel							
- excludes mobile homes							
- shall not be occupied by same individual for longer than 6 months (an individual occupying a guest residence for more than 3 months shall not reoccupy the residence for one month after ceasing occupancy)							
- may be indefinitely occupied by individual(s) related by blood or marriage to the property owner(s)							
- for properties smaller than 40 acres in RC and 10 acres in RR:							
- a guest residence shall not be larger than 1,500 sq ft and it shall not be rented or sold separately from the principal residence							
Mobile Homes (see Section 39, County Zoning Ordinance for mobile homes in RC, for purposes of this provision A-1 & A-2 equate with RC) (see Section 38, County Zoning Ordinance for mobile homes in all districts except RC)							
Single Family Residence	P	P	P	P	A	A	A
- includes all types of attached or detached dwellings constructed on site or manufactured off site (manufactured dwellings shall be placed on a permanent foundation, have minimum width of 24 ft, have a pitched roof with a slope of at least 3.5:12, and comply with all County Codes)							
- limited to one single family residence per parcel or lot							
	RC	RR	TR	VC	LC	GC	LI

RESIDENTIAL Continued	RC	RR	TR	VC	LC	GC	LI
Accessory Residential Uses	A	A	A	A	A	A	A
- includes structures not for human occupation detached carports and garages, game courts, greenhouses, satellite dishes, storage sheds, swimming pools and pool houses							
- includes home occupations (See Additional Land Use Regulations, Section II.B.3.d.)							
- in RC, RR, & VC includes: horse stables (minimum lot size increased to 2 acres plus 1 acre per horse and minimum setback for the stable increased to 100 ft)							
- in VC includes: an apartment							
- limited to one apartment per single family residence							
- limited to single family residences existing as of 8 November 1983							
- owner of single family residence must live in residence or apartment							
- an apartment in the single family residence is limited to 300 sq ft and 35% of gross area of principal structure							
- an apartment in an accessory residential structure is limited to 300 sq ft and not more than 2 bedrooms							
- single family residence shall retain single family appearance when an apartment is located in the residence							

RECREATION	RC	RR	TR	VC	LC	GC	LI
Conservation Areas (public or private)	P						
- includes arboretums, bird sanctuaries, demonstration forests, hunting preserves, reforestation areas, and wildlife reservations							
Indoor Recreation Facilities (commercial or noncommercial)				S	P	P	P
- includes billiard/pool halls, bowling alleys, health clubs, indoor ball courts, skating rinks, theaters with fewer than 500 seats, sports arenas with fewer than 500 seats							
- in VC: uses must be within 1/4 mile of state highway							
- all setbacks increased to 100 ft							
Outdoor Recreation Facilities							
- includes:							
Drive-in Theaters						S	
- Display screen shall not be visible from a public right of way							
- Screen structures shall be at least 100 feet from public right of way							
General Outdoor Commercial Recreation Activities							S
- includes miniature golf, driving ranges, commercial ballfields							
Golf Courses and Country Clubs (public or private)	S	S					
- Courses shall not be lighted for night play							
- excludes miniature golf courses and driving ranges							
Hunting Blinds	P	P		P			
- see Maryland State Law							

| RC | RR | TR | VC | LC | GC | LI |

	RC	RR	TR	VC	LC	GC	LI
RECREATION continued							
Motorcycle Event Courses (See Additional Land Use Regulations, Section II.B.3.c) - not allowed in Critical Area							
Parks and Playgrounds (public or private) - excludes commercial ballfields or motorized vehicle race courses	P	P	P	P			
Riding Stables and Horse Boarding (commercial) - all setbacks increased to 200 ft - minimum lot size increased to 10 acres or 1 acre per horse whichever is greater	S						
RETAIL SALES	RC	RR	TR	VC	LC	GC	LI
Automobile, Trucks, and Recreational Vehicles						P	P
Building Supply and Lumber Yards with outside storage					S	P	P
Farm Machinery and Supplies - setbacks increased to 200 feet from parcels in RC, RR, and TR districts for structures used for incidental milling of grain and feed						P	P
General Retail - includes sales of antiques, books, baked goods, clothing, crafts, drugs, dry goods, furniture, gifts, groceries, hardware, household items, liquor, plants (flowers, shrubs, trees), seafood, sports equipment, and items usually found in department stores, general stores, or variety stores - in VC: use shall be within 300 feet of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance), not exceeding 1,000 sq ft gross floor area, and excluding liquor sales - in LC: not exceeding 2,500 sq ft gross floor area				S	P	P	
Monuments and Memorial Stones - all setbacks increased to 100 feet for stone cutting activities						P	P
	RC	RR	TR	VC	LC	GC	LI

SERVICES	RC	RR	TR	VC	LC	GC	LI
Animal hospital, services, and boarding kennels - in VC: no outside animal pens and overnight boarding - setbacks increased to 50 feet	S	S		P	P	P	P
Automobile Service, Repair, Washing, and Fuel Sales - includes trucks and recreational vehicles - bulk storage of flammable liquids shall be underground - access driveways shall be at least 50 feet from RC, RR, and TR districts - in VC: use shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance) and not exceeding 1,000 square foot gross floor area)				P	P	P	P
Broadcast Facilities for Radio and Television	S				P	P	P
Building and Landscape Contracting and Maintenance - includes contracting for air conditioning, excavation, floor covering, glass repair, heating, landscaping, plumbing, and tree trimming - in LC: No exterior storage					P	P	P
Funeral Home and Crematoriums					P	P	P
Farm and Marine Equipment Service and Repairs				S	P	P	P
General Services - includes beauty parlor, barber shop, blacksmith, carpenter, dry cleaning, equipment rental, laundromats/laundry, locksmith, outdoor power equipment repair, photo processing, shoe repair, tailor shop, signs, sheet metal, printing & publishing, appliance repair, upholstery, taxidermy, welding - in VC: uses shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance) and not exceeding 1,000 sq ft gross floor area - in LC: not exceeding 2,500 sq ft gross floor area				S	P	P	P
Home Occupations (See Additional Land Use Regulations, Section II.B.3.d)	A		A	A			
Hotel/motel						S	
Inns - limited to accommodations with not more than 10 guest rooms and 30 guests - In VC: use shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance)				S	P	P	
	RC	RR	TR	VC	LC	GC	LI

	RC	RR	TR	VC	LC	GC	LI
SERVICES continued							
Professional Services - includes accounting, architecture, chiropractic medicine, clinics (medical or veterinary), dentistry, financial institutions, insurance, land planning, law, medicine, real estate, veterinary medicine - in VC: uses shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance), not exceeding 1,000 sq ft gross floor area, and no drive-through facilities - in LC: not exceeding 2,500 sq ft gross floor area and drive-through facilities				P	P	P	
Restaurants, Bars, or Night Clubs - excludes drive-through facilities - in VC: uses shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance), seating limited to 40, and excludes Bars and Night Clubs				S	P	P	
Restaurant with drive-through facilities						S	
Temporary Offices for on site construction personnel - after 6 months of operation, Planning Officer must authorise continued use for each subsequent 6 month period	P	P	P	P	P	P	P
Vehicle and boat parking and storage - excludes any vehicle repair or maintenance - in RC, VC, and LC: limited to indoor storage in structures existing as of (adoption date of ordinance)	P			P	P	P	P
	RC	RR	TR	VC	LC	GC	LI
INSTITUTIONAL							
Cemeteries and Mausoleums for humans and animals - minimum lot size increased to 20 acres for nonchurch related cemeteries - minimum lot size not increased when limited to use of property owner and owners' family members and their pets	P						
Churches or Temples and related cemeteries - in RC, RR, VC and TR: limited to 350 seats in main assembly hall	S	S	S	P	P	P	
Clubs, Lodges, Fraternal Societies	S			S	P	P	
Community and Cultural Facilities - includes public and quasipublic buildings and structures for recreation, conservation, cultural, museum, library, and public service uses - in VC: uses shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance) and not exceeding 1,000 sq ft gross floor area	S	S	S	P	P	P	P
	RC	RR	TR	VC	LC	GC	LI

INSTITUTIONAL	RC	RR	TR	VC	LC	GC	LI
Day Care - includes children and adults							
Family Day Care Facility - limited to 6 clients (including any relatives of the care provider)	P	P	P	P	P	P	P
Small Group Day Care Center - limited to 7 to 12 clients (including any relatives of the care provider)	S	S	S	S	P	P	P
Group Day Care Center - limited to more than 12 clients (including any relatives of the care provider)					P	P	A
Educational institutions, public or private, boarding and nonboarding - in RC and TR: limited to nursery schools and schools with grades K through 8	S		S	S	S	S	A
Emergency Services - includes fire, police, rescue, and ambulance uses - in RC: shall be within 1/4 mile of state highway	P			P	P	P	P
Government Offices				P	P	P	
Group Homes, large - for more than 8 residents unable to live independently because of mental or physical disorders	S	S	S	S	S	S	
Group Homes, small - for not more than 8 residents unable to live independently because of mental or physical disorders	P	P	P	P			
Rehabilitation Residences (See Additional Land Use Regulations, Section II.B.3.e)	S			S			
Hospital - all setbacks increased to 200 ft for utility or service structures - minimum lot area increased to 10 acres						S	
Post Offices				P	P	P	
Studios for instruction in art, music, dance, drama, crafts, or physical education - in VC: uses shall be within 300 ft of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance) and not exceeding 1,000 sq ft gross floor area			P	P	P	P	S
	RC	RR	TR	VC	LC	GC	LI

INDUSTRIAL	RC	RR	TR	VC	LC	GC	LI
Airports - not allowed in Critical Area (See Additional Land Use Regulations, Section II.B.3.f)							
Flammable Liquid Storage and Wholesale Distribution - all setbacks increased to 600 feet							S
Food Packing and Processing						P	P
Laboratories for scientific research and experimentation							P
Manufacturing Operations - includes any uses involved in assembling, processing, or packaging operations that do not create a public nuisance because of noise, vibration, dust, smoke, odor, glare, or environmental pollution - not allowed in the Critical Area							
Mineral Extraction Activities including sand and gravel operations - setbacks apply to all power driven machinery & extractive operations. (see Supplemental Special Exception Section II.7.b.)				S			
Paving Material Compounding - includes any asphalt and concrete processing - all setbacks increased to 1,000 feet from any structures intended for human occupancy. - minimum lot size increased to 5 acres - not allowed in the Critical Area							
Storage of Materials and Equipment Outside						P	P
Sawmills - all setbacks increased to 200 feet from RC, RR, VC, and TR districts	P				S	P	P
Scrap Metal Processing - not allowed in the Critical Area							
Trucking and Freight Stations with Terminals and Storage Yards - not allowed in the Critical Area							
Wholesale Business, Storage, and Distribution to other Wholesale or Retail Operations. - all setbacks shall be increased to 50 ft for outside storage							P

WATER DEPENDENT FACILITIES	RC	RR	TR	VC	LC	GC	LI
Community Piers and Related Boat Facilities (see Supplemental Special Exception Section II.7.a.1) & 2))	S	S	S	S			

RC RR TR VC LC GC LI

WATER DEPENDENT FACILITIES	RC	RR	TR	VC	LC	GC	LI
Commercial Marinas and Piers (See Section 40, County Zoning Ordinance) - includes piers, wharves, berthing and boat docking facilities, launching ramps, wet and dry storage facilities for seaworthy watercraft in operable condition, yacht clubs, retail sale of maritime related items (fishing equipment, bait, ice, etc.) minor repair of watercraft, watercraft sales, rental, and charter, marine equipment sales, watercraft fuel sales (with underground tanks), fishing facilities (such as crab sheds, fish offloading docks, shell fish culture operations, and fishery activities) - in RC: limited to expansion of existing Commercial Marinas and Piers (see Supplemental Special Exception Section II.7.a.1) & 3))	S			S	S	S	S
Ports and Related Industry - not allowed in Critical Area							
Water Oriented Public Recreation, Education, Research Areas (see Supplemental Special Exception Section II.7.1) & 4))	S			S	S	S	
Waterfront Structures (see Section 8.05, County Zoning Ordinance, except as noted below, and state and federal regulations) - includes private piers, docks, and wharves - excludes boat houses	P	P	P	P	P	P	P

UTILITIES	RC	RR	VC	TR	LC	GC	LI
Septic Systems - limited to systems serving a single residence or commercial establishment - setbacks shall be 15 ft for above ground and subsurface facilities	P	P	P	P	P	P	P
Sewage Collection, Treatment, and Disposal - includes septage product collection and sludge application for agricultural and horticultural purposes outside of the Shoreline Development Buffer (Maryland State approval required) - excludes septic systems for a single residence or commercial establishment - includes storage or disposal of septage only as part of the operations of a public Talbot County Waste Water Treatment Plant - setbacks shall be 15 ft for above ground and surface facilities	S	S	S	S	S	S	S
Solid Waste Collection and Processing, Junk Yards, and Wrecking Yards - not allowed in the Critical Area							
Solid Waste Disposal and Incinerators - not allowed in the Critical Area							
Substation for electrical, natural gas, or water transmission	S	S	S	S	S	S	S
Water Treatment	S	S	S	S	S	S	S
Utility Structures and Services other than essential services (See Section 7, County Zoning Ordinance)	S	S	S	S	S	S	S

	RC	RR	TR	VC	LC	GC	LI

3. Additional Land Use Regulations

a. Agricultural Research Facilities

Agricultural research facilities are commercial activities, relating to: 1. the effects of agricultural materials and substances on fish, avian, and wildlife breeding habits and reproductive trends, and 2. materials and substances normally used in standard agricultural practices, including the growing of field crops and the supplemental feeding of livestock and wildlife. The conditions for operation are:

1) livestock, wildlife, and crops shall not be offered for commercial resale;
2) any such activity shall be conducted on a site of at least 25 acres;
3) any structures, including feeder lots and barns, and research plots and ponds, shall be constructed at least 200 feet from any property lines, residential structures, tributary streams, drainage swale, or ditch with landscape buffering as recommended by the Planning Officer and as approved by the Board of Appeals. The Planning Officer shall submit annual reports to the Board regarding the impact on the environment of any such request. These reports shall be prepared by experts selected by the Planning Officer and paid by the operator of the subject research facility. The Planning Officer may initiate additional studies if necessary. The Board may require surety from the operator of the facility to insure clean up of any impact of the facility on the County. In addition, the following development standards shall be applied to any facility:
   a) Maximum site coverage for all principal and accessory buildings, excluding parking lots, shall not be more than 10%;
   b) A fence shall be constructed around all structures, research plots, and ponds within the research facility;
   c) An incinerator shall be constructed on the premises for the disposal of all nonliquid waste generated on the site;
   d) All liquid, semiliquid, or particulate waste generated on the site shall be safely transported and processed properly in accord with Maryland State Law;
   e) Any research involving fish or marine life shall be conducted in aboveground facilities, except that agricultural related products registered with the U.S. Environmental Protection Agency may be applied to inground ponds provided that the amount applied does not exceed the maximum recommended label rate of application for such products on crops or land. Ponds for such research shall be constructed in a manner which shall preclude leaching of any liquid from the facility or pond. The Planning Officer may require, at the expense of the operator, the construction of adequate test wells to permit the monitoring of potential leachate or leakage from the above ground facilities or ponds.
4) As may be required by state and/or federal law, air and smoke generated from the site shall be filtered so as to remove toxic or noxious fumes; and
5) Quarterly reports shall be submitted to the Planning Officer and Health Officer and shall include, but not be limited to, a current inventory of all chemicals, materials, and substances, excluding equipment, which are used in connection with the commercial research conducted on the site. Also included in the quarterly report shall be an inventory of all livestock or wildlife currently on the site for purposes of experimentation or research. Commercial research and commercial agricultural research shall mean any agricultural study, research, or experimentation for which a significant fee or other significant renumeration will be paid.

b. Produce Stands

Produce stands are structures for the display and sale of agricultural products grown locally (in the portions of Delaware, Maryland, and Virginia located east of the Susquehanna River and Chesapeake Bay). They shall not exceed 400 square feet in floor area and shall have no space for customers within the structure. Such structures shall be set back at least 20 feet from the property line and shall be located so as to provide safe ingress and egress from the public highway. Structures shall meet offstreet parking requirements as specified in the County Zoning Code, however, not less than 5 spaces shall be provided. Each stand may have up to 2 signs: 1 flat wall sign not exceeding 20 square feet and 1 freestanding sign not exceeding 40 square feet in area. All stands and related structures shall be considered seasonal or temporary in nature, and shall be removed at the end of the produce season consistent with the requirements and conditions of the stands' temporary permit. All applications for permits must be accompanied by a site plan showing the proposed location of the stand, parking areas, and entranceways to property from adjacent route(s), and proposed sign locations(s). All such produce stands shall be operated in accordance with any conditions set forth in the permit. In the event a structure used as a produce stand is not removed by the end of the produce season or November 15th of each year, the structure may be removed at the direction of the County Planning Officer, after reasonable notice to the land owner or stand operator. The expenses of such removal are the responsibility of the land owner or stand operator.

c. Motorcycle Event Courses

Motorcycle event courses may be used only for nontagable, nonlicensable, off-the-road bikes specifically designed and built for competitive riding. These vehicles must be transported to and from the site of the event, and shall not include street and road bikes. Setbacks from property lines, parking facilities, and sanitary facilities (minimum two toilets) to be determined by the Board of Appeals. Such event courses and associated facilities shall be located and/or landscaped so as to be inconspicuous and appear compatible with the surrounding area. Such event must be sanctioned by the American Motorcycle Association or by a recognized racing association requiring standards of equal or higher quality. Any such proposal shall be affirmatively approved in writing by the signatures of eighty-percent of all adult residents within 1,000 feet of the land to be used in connection with the event.

d. Home Occupations

Home occupations are the accessory use of a residence involving the conduct of an art or profession, the offering of a service, the conduct of a business, or the production of handicrafts on a residential site. The use is incidental and secondary to the use of the dwelling for residential purposes, and shall not change the character of the residential use or adversely affect the uses permitted in the residential district of which it is a part.

1) All proposed home occupation uses, including the expansion or replacement of an existing use or structure, shall conform with the performance standards below, as well as all other applicable laws and regulations of the County, State and Federal government.

   a) The home occupation and its associated structures shall conform with all applicable standards for the zoning district.

b) Home occupations shall be conducted entirely within the residence or within an accessory structure. The area used for the home occupation shall not exceed 25% of the gross floor area of the residence. An accessory structure of more than 1,000 square feet shall not be used for a home occupation.

c) The home occupation shall in no way cause the residential appearance or character of the premises to differ from the surrounding residential area. Home occupations shall not be conducted in such a manner as to produce noise, dust, vibration, glare, smoke or smell, electrical interference, fire hazard, traffic, or any other nuisance not typically experienced in the zoning district where the property is located.

d) No use shall require internal or external construction features or the use of electrical, mechanical, or other equipment that would change the fire rating of the structure or in any way significantly increase the fire danger to neighboring structures or residences.

e) Signs shall be limited to one permanent, nonilluminated sign of not more than four square feet. Signs shall conform to the signage provisions of this ordinance.

f) No outside storage of material, goods, supplies, or equipment related to the operation of the home occupation shall be allowed. All storage shall take place within a walled structure.

g) Merchandise shall be limited only to products manufactured or substantially altered on the premises or to incidental supplies necessary for the conduct of the home occupation. Items shall not be purchased offsite and sold for resale.

h) To the extent that there is any sale of any item related to a home occupation, delivery of that item to the buyer should occur off the premises.

i) The home occupation shall not employ more than one nonresident employee.

j) Any need for parking generated by the home occupation shall be met off-street and in the side or rear yard of the structure. The Planning Officer shall determine the number of parking spaces required based on Section 8 of the County Zoning Ordinance.

k) No commercial vehicle shall be used in connection with the home occupation, used for delivery of goods to or from the premises, or parked on the property. This provision does not preclude the delivery of mail or packages by the Postal Service or by private or public shipping and courier services. Home occupations shall not generate more than an average of one truck delivery per day.

l) No more than one home occupation per residence shall be allowed.

m) Home occupations that attract customers, clients, or students to the premises shall not be allowed in multifamily dwelling units.

2) The following uses would not be appropriate as home occupations and should not be permitted:

- Vehicle or boat repair or painting.
- Construction equipment or materials storage;
- Equipment or vehicle rental;

- Fish or bait sales
- Furniture sales;
- Funeral director, mortuary or undertaker;
- Glazier's or painter's shop;
- Heating, plumbing, or air conditioning services;
- Laboratory or taxidermy shop;
- Medical or dental clinic;
- Private clubs;
- Restaurants;

3) The following is a nonexhaustive list of uses which usually may be conducted as home occupations within the limits established in this section. However, uses not listed below require a specific letter of confirmation from the Planning Officer.

- Art, handicraft, music, writing, photography, or similar studios;
- Bed and Breakfasts subject to the provisions of the following section;
- Direct sale product distribution (Amway, Avon, Tupperware, etc.);
- Dressmaker, seamstress, tailor;
- Hair cutting and styling;
- Home typing or computing services;
- Mail-order sales;
- Nonprincipal offices of physician, dentist, veterinarian, insurance agent, real estate or similar profession which typically serves several clients on a daily basis;
- Offices of accountant, architect, engineer, surveyor, land planner, lawyer, income tax preparer, minister, priest, rabbi, member of a religious order, psychotherapist, counselor, personal consultant, or similar professional which typically does not serve several clients on a daily basis;
- Repair of small appliances, office machines, cameras, and similar small items;
- Sale of produce and seasonal trees (roadside stands subject to further provisions);
- Telephone sales and order-taking;
- Tutor.

4) Specific Provisions for Bed and Breakfast Accommodations

Bed and Breakfast accommodations may be operated as home occupations subject to the following regulations:

a) Bed and Breakfast accommodations shall only be permitted as home occupations with the specific written permission of the Planning Officer. Such written permission shall be renewed every 2 years;

b) Parcels with Bed and Breakfast accommodations shall be at least 500 feet apart;

c) A Bed and Breakfast enterprise shall have no more than 4 guest bedrooms, accommodating no more than 12 guests at any one time; no paying guest shall stay on any one visit for more than 30 days; not more than 25% of the gross floor area may be devoted to guest bedrooms;

e) One off street parking space for each guest bedroom shall be provided in a side or rear yard;

f) Meal service is limited to one daily meal between 6 a.m. and 11 a.m. per paying overnight guest. The applicant should note that meal service is subject to Health Department approval of food preparation areas;

g) Bed and Breakfast accommodations shall be operated by owner-occupants of the residence. Any new owner of a residence in which a Bed and Breakfast is operated must apply to the Planning Officer for written permission to continue the operation; and

h) Bed and Breakfast enterprises shall be required to pay the Talbot County Accommodations Tax for each guest bedroom.

e. Rehabilitation Residence

Rehabilitation Residences for not more than eight court appointed youth. In addition, these residences shall:

1) provide adequate supervision and professional services through live-in houseparents;

2) be of sufficient size to accommodate the proposed number of residents or youth and staff and shall provide a minimum lot area of two acres per unit;

3) have adequate sanitary facilities for the proposed number of residents of youth and staff, certified by the Health Department;

4) be duly approved and/or licensed by all applicable State agencies;

5) provide ample outdoor space for recreation, free from hazard and appropriately equipped for the age and number of persons residing;

6) not constitute a nuisance caused by noise, vehicle traffic or parking, or any other physical activity; and

7) meet all other applicable requirements of this ordinance.

f. Airports

All runways, landing strips, and other parts of the airport or landing field normally used by aircraft shall be 1,000 feet from any lot occupied by a dwelling, school, church, or institution for human care. Hangars, storage buildings, repair shops, fuels storage areas, and any other buildings or structures shall be at least 200 feet from any lot occupied by a dwelling, school, church, or institution for human care. In addition, the following uses shall not be located in the Airport Zones:

1) High power transmission lines, in excess of 49 KV;
2) Manufacturing establishments or other uses which produce smoke interfering with the safe use of the airport;
3) Rifle ranges and private landing fields which would interfere with the health, safety, and general welfare of the public in the use of the airport;
4) Any plant, business, or structure that emits smoke, gas, and odors that would interfere with the health, safety, and general welfare of the public in the use of the airport; and
5) Any use which would create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking off, or maneuvering of aircraft.

4. **Residential District Density Limits**

a. Rural Conservation District - RC	1 dwelling unit per 20 acres
b. Rural Residential District - RR	1 dwelling unit per 5 acres
c. Village Center District - VC	1 dwelling unit per 1 acre without sewer service (with approval from Health Department) 4 dwelling units per 1 acre with sewer service (with approval from Public Works Department)
d. Town Residential District - TR	1 dwelling unit per 1 acre without sewer service (with approval from Health Department) 4 dwelling units per 1 acre with sewer service (with approval from Public Works Department)

5. **Rural Conservation District Density Transfer**

The residential density limits on a parcel in the Rural Conservation District may be increased through a joint subdivision (which is processed as any other subdivision). Only joint subdivisions in the Rural Conservation District, as described below, may be considered. A joint subdivision includes property in the sending area (habitat areas without significantly eroding shorelines) and the receiving area (areas with significantly eroding shorelines). See definition of Joint Subdivision for complete description of sending and receiving areas. Through a joint subdivision, the number of permitted dwelling units in the sending area portion of the subdivision may be transferred to the receiving area portion of the subdivision. Such a transfer may only take place through a joint subdivision. Any private agreement between property owners does not alter the allowed density on their properties until a subdivision is approved and recorded.

The maximum density in the receiving area, combining permitted and transferred units, is 1 dwelling unit per 5 acres. In addition, the joint subdivision shall show 20 acres of property in the sending area portion of the subdivision as protected from future development for each dwelling unit transferred to the receiving area. The protection from future development in the sending area shall be accomplished through fee title donation, conservation easements, and/or cooperative agreements with landowners. The Planning Officer shall determine the protection method most appropriate to the subject property. The following chart show the number of permitted dwelling units and the number of transferred units that may be accepted in the receiving area on lots created after (approval date of ordinance). Parcels or lots recorded prior to (approval date of ordinance) are allowed 1 unit, however, the total number of units allowed (as shown below) may not be exceeded.

# of Permitted Units 1 unit/20 acres	Acres of Land in Receiving Area	# of Transferred Units that may be Accepted in Receiving Area with eroding shorelines	Total # of Units Allowed 1 unit/5 acres
0	0 up to 5	0	0
0	5 up to 10	1	1
0	10 up to 15	2	2
0	15 up to 20	3	3
1	20 up to 25	3	4
1	25 up to 30	4	5
1	30 up to 35	5	6
1	35 up to 40	6	7
2	40 up to 45	6	8

and so forth.

6. Intrafamily Transfers

Notwithstanding the density limits established in section II.B.4, a property of record by 1 March 1986 and located in the Rural Conservation District may be subdivided by the owner by means of a Bona Fide Intrafamily Transfer subject to the following limits:

a. A parcel that is 7 acres or more and less than 12 acres may be subdivided into not more than 2 lots. A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into not more than 3 lots. The lots may be created at different times;

b. A parcel that is subdivided by means of a bona fide intrafamily transfer:

1) may be transferred only to a member of the owner's immediate family for the purpose of establishing a residence for that family member. Only the recipient of a lot through an intrafamily transfer may request a building permit for a structure on a lot created through this process. Such a building permit for a residential structure must be filed with the final subdivision plat creating the lot. For the purposes of this Section 6, immediate family means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter who has attained the age of 21 years.

2) may not be rented or leased to any party except for a member of the owner's immediate family.

3) must comply with the County Subdivision Regulations;

4) or a portion of a parcel that has been so subdivided may not be further subdivided;

5) is not eligible for joint subdivision under the Rural Conservation Density Transfer Section II.B.5;

6) may not be conveyed subsequently to any person other than a member of the owner's immediate family (except for a conveyance to a third party as security for a mortgage or deed of trust and except for a conveyance resulting from Court proceedings, including bankruptcy, divorce, mental competency, probate, foreclosure, etc. or from the disposition of a will). A variance from this limitation may be obtained from the Board of Appeals with the applicant showing that:

a) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for the purpose of ultimate commercial sale; and

b) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this section and warrants an exception. Changes in circumstances include situations where the intrafamily transfer recipient has not resided in the County for 5 years prior to application for a variance or suffers significant financial hardship. The Board may define such hardship as being unable to meet all financial obligations for the preceding 6 months.

c. Any deed for a lot created by bona fide intrafamily transfer shall contain a covenant stating that the lot is created subject to the provisions of this section;

7. Supplemental Special Exception Findings and Requirements

As indicated in the Land Use Table, the following uses may be allowed after approval of a Special Exception from the Board of Zoning Appeals. A request for a Special Exception shall follow all requirements and procedures established in Section 11 of the County Zoning Ordinance. In addition, the Board of Appeals shall determine whether: 1.) the findings and requirements listed below for each use have been met, 2.) the request is consistent with other applicable provisions of this ordinance, and 3.) the request is consistent with the intent and purpose of the Maryland Chesapeake Bay Critical Area Law. The Board shall consider the recommendation of the Planning Officer regarding these three criteria. The applicant is responsible for proving compliance with each finding and requirement, and consistency with this ordinance and the intent of the Critical Area Law. Information necessary for responding to these required findings, if not available locally, shall be obtained from appropriate state and federal agencies. Copies of all special exception requests shall be submitted to the State Critical Area Commission by the Planning Officer. Approvals may not be granted until the County receives notification from the Commission that it has received copies of the request.

a. Piers, Marinas, and Public Recreation, Education & Research Areas.

These facilities, which use water for transportation and derive economic benefits from shore access, include new, expanded, or redeveloped community piers, commercial marinas, and the replacement of these facilities. Below are the findings and requirements for all water dependent facilities of this type and then specific findings and/or requirements for each.

1) For all Community Piers, Commercial Marinas, and Public Recreation, Education, & Research Areas

a) The following findings must be made:

(1) The activity shall have minimal individual and cumulative impact on water quality and fish, wildlife, and plant habitat in the Critical Area through design and location criteria;

(2) The activity shall be water dependent;

(3) The project shall meet a recognized private right or public need;

(4) Adverse effects on water quality and fish, plant, and wildlife habitats shall be minimized; and

(5) Nonwater dependent structures or operations associated with water dependent projects or activities shall be located outside the Buffer with sufficient area provided for these associated structures or operations; and

b) The following requirements must be met:

(1) The activity shall not alter existing water circulation patterns or salinity regimes;

(2) The activity shall maintain or improve the flushing characteristics of the water body adjacent to the activity;

(3) Wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats shall not be disturbed;

(4) The operation procedures shall preclude any adverse impacts to water quality that may occur as a result of the activity, such as non-point source run off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations;

(5) The operation procedures shall insure that shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(6) The construction procedures shall insure that dredging will 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;

(7) The construction procedures shall insure that dredged spoil will not be placed within the Shoreline development buffer or elsewhere in a Habitat Protection Area except as necessary for:

(a) Backfill for permitted shore erosion protection measures,

(b) Use in approved vegetated shore erosion projects,

(c) Placement on previously approved channel maintenance spoil disposal areas, and

(d) Beach nourishment; and

(8) Interference with the natural transport of sand shall be minimized.

2) For community piers and related boat facilities

a) The following requirements must be met:

(1) The facilities shall not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;

(2) The facilities shall be community owned, established, and operated for the benefit of the residents of a platted and recorded riparian subdivision;

(3) A single point of access through the Shoreline Development Buffer to the facilities shall be provided;

(4) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed; and

(5) The number of slips, piers, or mooring buoys shall be the lesser of sections (a) or (b) below:

(a) One slip for each 300 feet of shoreline in the subdivision in the Rural Conservation District or for each 50 feet of shoreline in the subdivision in a Rural Residential, Village Center, or Town Residential District; or

(b) A density of slips, piers, or mooring buoys to platted lots or dwellings within the subdivision in the Critical area according to the following schedule:

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

3) For commercial marinas

a) The following requirements must be met:

(1) The operational procedures shall minimize the discharge of bottom wash water into tidal waters;

(2) The operational procedures shall meet the sanitary requirements of Maryland State Law (COMAR 10.17.02);

(3) New marinas shall not be located adjacent to Anadromous Fish Spawning Waters, Shellfish Beds, and Submerged Aquatic Vegetation Areas;

(4) Expansion of existing marinas in the Rural Conservation District shall not degrade water quality and shall result in an overall net improvement in the water quality within and at the entrance to the marina; and

(5) The number of slips or mooring buoys shall not exceed one for each vehicle parking space which shall be provided outside the Shoreline Development Buffer.

4) For water oriented public recreation, education, and research areas

For public beaches or other public water oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers the following requirements must be met:

a) Sanitary facilities shall be provided meeting the requirements of Maryland State Law;

b) Permeable surfaces shall be used wherever standard engineering practices allow, if no degradation of ground water would result;

c) Not more than 15% of existing natural vegetation shall be permanently disturbed; and

d) Service facilities shall be located outside the Shoreline Development Buffer wherever physically possible; and

e) Service facilities for passive recreation, such as nature study, and hunting and trapping, and for education, shall be located outside of the Shoreline development buffer.

b. Mineral Extraction Activities

The following requirements must be met:

1) The operational procedures shall protect the Critical Area from all sources of pollution from mineral extraction activities including, but not limited to: sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of waste, dusts, and spoils; all runoff shall be retained on site;

2) The postextraction or postexcavation use(s) of the site shall be proposed with the operation procedures to insure that extraction activities permit reclamation of the site within 2 years after excavation is completed;

3) Mineral Extraction Activities shall not:

(a) Be located in Habitat Protection Areas and Natural Heritage Areas;

(b) Be located in areas of highly erodible soils;

(c) Cause the loss for 25 years or more of productive forest and agriculture uses as determined by the Soil Conservation Service or Maryland Forest, Park, and Wildlife Service;

(d) Result in degradation of water quality or a loss of Anadromous Fish Spawning Waters, Shellfish Beds, and Submerged Aquatic Vegetation Areas;

(e) Be located within the Shoreline Development Buffer; or

(f) Have wash plants including ponds, spoil piles, and equipment located within the Shoreline Development Buffer.

4) Surety shall be provided to guarantee that all proposed reclamation activities are accomplished.

5) A 6 foot high solid fence shall enclose all extraction activities.

8. Agricultural and Forestry Management

Permitted Agricultural and Forestry uses in the Critical Area shall be conducted in accord with the following provisions. To determine compliance with these provisions, the Planning Officer shall request an annual report from the Soil Conservation District for agricultural uses and a report from the Maryland Forest, Park and Wildlife Service for forestry uses.

a. Agricultural Uses

i) The creation of new agricultural lands shall not be accomplished by:

a) diking, draining, or filling any palustrine wetlands;
b) clearing forests or woodlands with soils having a slope greater than 15%; or on soils with a "K" value greater than .35 and slope greater than 5%;
c) clearing vegetation that will adversely affect water quality or will destroy Plant and Wildlife Habitats; or
d) the clearing of existing natural vegetation within the Shoreline Development Buffer,

2) The following requirements shall be met for any agricultural uses:

a) Within 6 months of (adoption date of ordinance), land owners shall establish and maintain:

(1) A vegetated filter strip of not less than 25 feet along the tidal shoreline and tributary streams of agricultural fields:

(a) The width of the filter strip shall be measured landward from the Mean High Water Line of tidal water, tidal wetlands and from tributary streams (excluding drainage ditches). If the average slope of the strip is greater than 6% (measured from the water's edge to the landward edge of the strip, along a line perpendicular to the water), then the strip shall be expanded in 4 foot increments for each 1% of slope over 6%;

(b) The filter strip shall be composed of either trees and a dense ground cover, or a thick sod of grass, and shall be managed so as to provide water quality benefits and habitat protection consistent with the Shoreline Development Buffer Design Standards. Noxious weeds, including Johnson grass, Canada thistle, and multiflora rose, which occur in the filter strip, may be controlled by authorized means; and

(2) A Grassland and Manure Management Program where determined to be appropriate by the Soil Conservation District. The Program shall not permit the feeding or watering of livestock within 50 feet of the Mean High Water Line of tidal water and tidal wetlands, and of tributary streams, whichever is further inland.

b) Prior to 13 May 1991, landowners shall have agreed to be a conservation district cooperator and have agreed to use the following practices: Proper nutrient application rates, Appropriate timing of nutrient application, Appropriate method of nutrient application, Reduced tillage practices, Crop rotation, and Cover crop.

c) After 13 May 1991, landowners shall have in place and be implementing a current Soil Conservation and Water Quality Plan approved by the local District that adheres to the agricultural components of the Maryland 208 Water Quality Plan. Land owners who have such Plans under review by the local Soil Conservation District, but have not received final approval, may continue agricultural activities, following the practices listed in section b) above.

d) In preparing the Plan, the landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several Best Management Practices, those which minimize impacts to water quality, conserve fish, wildlife, and plant habitats, and integrate best with the farming operation. The Plan shall:

(1) assure that Best Management Practices for the control of nutrients, animal wastes, pesticides, and sediment runoff are used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and, further, shall minimize adverse effects on plants, fish, and wildlife resources. New agricultural drainage ditches are permitted only if the adjacent land has approved Best Management Practices in place;

(2) assure that animal feeding operations, including retention and storage ponds, feed lot waste storage, and manure storage minimize the contamination of water bodies;

(3) identify areas of significant sheet and gully erosion and propose Best Management Practices to protect Anadromous Fish Propagation Waters;

(4) include a 25 foot filter strip, as described in Section II.B.8.a.2)a)(1); and

(5) protect nontidal wetlands through preparation of a Nontidal Wetlands Management Plan as described in Section III.B.7.

(6) protect Habitat Protection Areas through preparation of a Habitat Protection Plan as described in Section III.B.8.

b. Forest Uses

1) A Forest Management Plan shall be completed for all timber harvesting occurring within any 1 year interval and affecting 1 or more acres in forests and developed woodland in the Critical Area. However, a Plan shall be completed for all timber harvesting in the Shoreline Development Buffer regardless of area. The Plan shall be prepared by a registered professional forester. The Plan shall be reviewed and approved by the Maryland Forest, Park and Wildlife Service through the District Forestry Board and the project forester. A copy of each Forest Management Plan shall be filed with the Planning Officer. The Plan shall:

a) include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas and incorporate protection measures for these areas;

b) provide for the continuity of habitat through forest management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation and reforestation;

c) consider forests as a protective land use to be managed so that maximum values for wildlife, water quality, timber, recreation, and other resources can be maintained, recognizing that, in some cases these uses may be mutually exclusive;

d) provide conservation measures to protect the hydrologic regime and water quality of Nontidal Wetlands, minimizing alterations to the surface or subsurface flow of water into and from the wetland through preparation of a Nontidal Wetlands Management Plan as described in Section III.B.7.; and

e) prohibit the cutting or clearing of trees within the Shoreline Development Buffer, except the commercial harvesting of trees may be permitted in the portion of the Buffer more than 50 feet from the Mean High Water line of tidal water and wetlands, and more than 50 feet from tributary streams. Such harvesting shall allow the selective cutting of any species or clearcutting of Loblolly Pine and Tulip Poplar trees. Commercial harvesting shall not be permitted within those portions of the Shoreline Development Buffer located in the following Habitat Protection Areas: Nontidal Wetlands, Habitats of Threatened and Endangered Species or Species in Need of Conservation, and Plant and Wildlife Habitats. For this activity the Plan shall also insure that:

(1) disturbance to stream banks and shorelines shall be avoided;

(2) the area disturbed or cut shall be replanted, or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the Shoreline Development Buffer; and

(3) the cutting does not involve the creation of logging roads and skid trails within the Shoreline Development Buffer.

f) permit the following forest activities in the Shoreline Development Buffer without approval from the Maryland Forest, Park, and Wildlife Service. These activities need not be addressed in the annual report regarding Forest Management submitted to the Planning Officer:

(1) The cutting of trees or removal of natural vegetation where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure or a water dependent facility, providing the device, measure, or facility has received all necessary state and federal permits;

(2) The cutting of individual trees for personal use provided that this cutting does not impair the water quality or existing habitat value or other functions of the Shoreline Development Buffer and provided that the trees are replaced on an equal basis for each tree cut;

(3) Removal of individual trees which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of steams, or resulting in accelerated shore erosion;

(4) Horticultural practices necessary to maintain the health of individual trees; and

(5) Other cutting techniques which may be undertaken within the Shoreline Development Buffer and under the advice and guidance of the Maryland Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

2) A Sediment Control Plan shall be required for all harvests of 5,000 square feet or more in the Critical Area, including harvesting on agricultural lands. This Plan shall also be reviewed and approved by the Maryland Forest, Park and Wildlife Service and shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations." The operations shall be implemented in accordance with specifications set out by the Maryland Forest, Park and Wildlife Service. The County will enforce this Plan with the assistance of the Maryland Department of Natural Resources;

III. DESIGN CRITERIA

The following provisions serve as a supplement to the Site Plan requirements, Section 37 of the County Zoning Ordinance for development activities in the Critical Area.

A. Introduction

1. Purposes

a. Development activities in all zoning districts in the Critical Area shall:

1) be consistent with the goals of the Critical Area Plan,
2) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands,
3) conserve fish, wildlife, and plant habitat,
4) be designed to address, beyond pollution control, the adverse environmental impacts created by the number, movement, and activities of persons in the project.

b. Development activities within the Rural Conservation District shall:

1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;
2) Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;
3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and
4) Conserve the existing developed woodlands and forest for the water quality benefits that they provide.

c. Development activities in the Rural Residential, Town Residential, and Village Center Districts, and in areas of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts shall:

1) Maintain, or if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and it tributaries;
2) Maintain, to the extent practical, existing areas of natural habitat; and
3) Accommodate additional low or moderate intensity development if the development conforms to the water quality and habitat protection criteria.

d. Development activities in areas of 20 or more contiguous acres of Limited Commercial, General Commercial, and Limited Industrial Districts shall:

1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
2) Accommodate additional development provided that water quality is not impaired;
3) Conserve and enhance fish, wildlife, and plant habitats to the extent possible; and
4) Encourage the use of retrofitting measures to address existing storm water management problems.

2. **Additional Uses Requiring a Site Plan**

Section 37 of the County Zoning Ordinance lists those uses for which site plans must be submitted. This list includes all nonresidential uses and all residential uses, but excludes single family development that does not require publicly funded offsite improvements. In order to achieve the purposes described in section III.A.1 above, a simplified site plan, (as described in Section 37.e of the County Zoning Ordinance) shall be submitted for all residential single family development unless offsite public improvements are necessary, then a full site plan shall be submitted for such uses, as now required. For residential single family development involving the creation of new lots, a simplified site plan shall be submitted with the preliminary subdivision plat creating these lots. In addition, a simplified site plan shall be submitted with the building permit for improvements on existing vacant lots or on developed lots. The Planning Officer may grant a waiver to the requirements for a simplified site plan for minor development activity on developed lots. As a guideline, such a waiver may be granted when the existing and proposed improvements generate less than 15% or 5,000 sq ft of impervious area on the site, whichever is less. Nevertheless, the building permit for minor development activity shall be consistent with Section III.B.2., Structure Location and Design.

3. **Additional Required Information on all Site Plans**

Section 37 of the County Zoning Ordinance also describes the information that must be included on a site plan, including a provision for simplified site plans for lesser projects. The County Subdivision Regulations also describe the information that must be included on a subdivision plat. In addition to the information now required for site plans, simplified site plans, and subdivision plats, the following items shall also be addressed in the submission process. Items 1, 2, and 3 are criteria which shall be used in designing and locating lots and structures. Items 4 through 9 are technical plans that insure the proposed development meets the purposes described in Section III.A.1 above. These technical plans shall be submitted with the site plan or simplified site plan for all development activities. The technical plans shall be approved by the designated agency prior to submission to the Planning Officer. The additional items are:

1. Lot Design,
2. Structure Location and Design,
3. Shoreline Development Buffer,
4. Soil Erosion & Sedimentation Control Plan,
5. Shore Protection Plan,
6. Stormwater, Floodplain, and Tributary Stream Management Plan,
7. Nontidal Wetlands Management Plan,
8. Habitat Protection Plan, and
9. Forest Replacement Plan.

4. **State Notification**

Copies of all site plan requests and subdivision requests shall be submitted to the State Critical Area Commission by the Planning Officer. Approvals may not be granted until the County receives notification from the Commission that it has received copies of the request.

B. Criteria

1. Lot Design

a. Lot Size. All lots shall meet the following minimum size requirements.

Rural Conservation RC	Rural Residential RR	Town Residential TR	Village Center VC	Limited Commercial LC	General Commercial GC	Limited Industrial LI
(1du/20ac* 1du/5ac**)	(1du/5ac*)	(1du/1ac* without sewer) (4du/1ac* with sewer)	(1du/1ac* without sewer) (4du/1ac* with sewer)			
1) Average lot size for all lots in a subdivision* **						
5 acres or less or 20 acres or more	3.5 acres or less	2 acres or less	2 acres or less	Not Applicable	Not Applicable	Not Applicable
2) Minimum lot size						
2 acres#	2 acres#	1 acre# without sewer	1 acre# without sewer	1 acre#	1 acre#	1 acre#
		10,000 sq ft## with sewer	10,000 sq ft## with sewer			

* permitted density of dwelling units per acre as stated in Section II.B.4.

** maximum density of dwelling units per acre possible in receiving area through a joint subdivision as stated in Section II.B.5.

*** residual parcels protected from future development through donation of title or easements in manner acceptable to the Planning Officer shall not be included in average lot size calculations

\# septic system approval required from Health Department

sewer (or shared facility) hook up approval required from Public Works Department

b. Lot Width. All lots shall meet the following minimum dimension requirements.

Rural Conservation RC	Rural Residential RR	Town Residential TR	Village Center VC	Limited Commercial LC	General Commercial GC	Limited Industrial LI
		for lots of 1 acre or more				
200 ft	200 ft	100 ft	100 ft	100 ft	100 ft	200 ft
		for lots smaller than 1 acre				
		75 ft	75 ft			

Lot width is measured along a line parallel to the street frontage between the front and rear yard setback areas. Street frontage shall be at least 50 feet and shall be measured along the front property line. Street frontage for a lot may be reduced to not less than 25 feet, if the lot has joint access to a street with an adjacent lot. The lot width dimension shall also be applied to water frontage (if any) and shall be

measured along a straight line drawn from the intersections of the side lot lines with the mean high water line. The width for lots with highly irregular water frontage shall be determined by the Planning Officer.

c. Lot Access

Lots in the RC, RR, and TR Districts that are 5 acres or smaller and that are created through subdivisions (of more than 2 lots) approved after (approval date of this ordinance) shall not use any adjacent state highways for access. Access shall be achieved through use of County roads or private roads. The Planning Officer may agree to access to a State Highway if no other reasonable alternative is available.

d. Lot Location

Lots that are 5 acres or smaller and that are created through subdivisions approved after (approval date of this ordinance) shall be clustered. In clustering lots, the first priority shall be to minimize any alteration to Habitat Protection Areas described in the project's Habitat Protection Plan (Section III.B.8.) and the second priority shall be to minimize development activities on land that has been used for agricultural purposes within the 2 years prior to the subdivision request.

2. Structure Location and Design

a. Setbacks. All structures shall meet the following minimum setback requirements from property lines.

	Rural Conservation RC	Rural Residential RR	Town Residential TR	Village Center VC	Limited Commercial LC	General Commercial GC	Limited Industrial LI
	for lots of 2 acres or more		for lots of 1 acre or more				
front	50 ft	50 ft	50 ft	50 ft	25 ft	50 ft	50 ft
rear	50 ft	50 ft	25 ft	25 ft	from LC, GC, and LI zoning districts		
					10 ft	10 ft	10 ft
					from all other zoning districts		
					25 ft	50 ft	50 ft
side	50 ft	50 ft	15 ft	15 ft	from LC, GC, and LI zoning districts		
					10 ft	10 ft	10 ft
					from all other zone districts		
					25 ft	50 ft	50 ft

	for lots smaller than 2 acres		for lots smaller than 1 acre	
front	50 ft	50 ft	25 ft	25 ft
rear	25 ft	25 ft	25 ft	25 ft
side	25 ft	25 ft	10 ft	10 ft

1) Shoreline Development Buffer

As required in the Section III.B.3, a Shoreline Development Buffer of at least 100 feet is required from Mean High Water and from Tributary Streams regardless of the specified setback.

2) Special Setbacks from State Highways

All setbacks from major state highways (Routes 50, 404, 333, 322, 33, 328, and 331) shall be increased to 150 feet in the RC, RR, VC, and TR Districts, and shall be increased to 50 feet in the LC District. Setbacks from all other state highways shall be increased to 100 feet in the RC, RR, VC, and TR Districts, and shall be increased to 50 feet in the LC District.

3) Lot Frontage

The front of the lot shall be along the street from which the lot receives access. If there is more than one street access, then lot frontage shall be determined by the Planning Officer. In any case the front yard setback shall apply to all street frontages, except as noted in section 2) above.

4) Special Front Yard Setbacks

Front yard setbacks may be reduced to the average front yard setback of all principal residential structures within 100 feet for new principal residential structures in the RC, RR, VC, and TR Districts.

5) Special Side Yard and Rear Yard Setbacks

Side yard setbacks shall be doubled for structures on lots created after (approval date of this ordinance) in the VC or TR Districts that are adjacent to parcels or lots in the RC or RR Districts that are 2 acres or larger. Side yard setbacks may be eliminated for structures on adjacent lots of 1 acre or less in the VC or TR Districts through the subdivision process with the agreement of the owner(s) of the subject lots. Side and rear yard setbacks may be reduced by half for accessory residential storage structures that are 300 square feet or smaller.

b. Structure Height

The Height Regulations in Section 20.04 of the County Zoning Ordinance shall apply to all structures in the RC, RR, VC, TR, LC, GC, and LI Districts.

c. Structure Siting

Residential structures shall be clustered so as to minimize any alteration to Habitat Areas and shall be consistent with the project's Habitat Protection Plan as described in Section III.B.8.

d. Signs

The Sign Regulations in Section 8.02 of the County Zoning Ordinance shall apply to proposed signs. References to the C-2 zoning district shall apply to the General Commercial (GC) zoning district.

3. **Shoreline Development Buffer**

a. A Shoreline Development Buffer shall be shown on the site plan for any development activity. The Buffer shall be managed to achieve the following purposes:
   1) Remove or reduce the sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay;
   2) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
   3) Maintain an area of transitional habitat between aquatic and upland ecological communities;
   4) Maintain the natural environment of streams;
   5) Protect riparian wildlife habitat; and
   6) Maintain natural vegetation.

b. The Buffer shall be at least 100 feet wide, measured landward from the Mean High Water Line of tidal waters and tidal wetlands, and from tributary streams. The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as soils with slopes greater than 15%, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. If the average slope in the Buffer is greater than 15% (measured from the water's edge to the landward edge of the Buffer, along a line perpendicular to the water), then the Buffer shall be expanded in 4 foot increments for each 1% over 15%.

c. New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems are not permitted in the Buffer. The only exception to this limit are structures and roads so closely associated with water dependent activities that they can not be located outside the buffer. Clearing existing natural vegetation in the Buffer is not allowed except for normal maintenance. Such maintenance shall be consistent with the forest activities in the Buffer not requiring approval from the Maryland Forest, Park and Wildlife Service as described in Section II.B.8.b.1.f), and may include the mowing of ground cover. Additional vegetation should be planted where necessary to protect, stabilize, or enhance the shoreline.

d. Existing areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, shall be maintained, with new facilities encouraged in Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts of 20 or more contiguous acres.

4. **Soil Erosion & Sedimentation Control**

a. A Soil Erosion and Sedimentation Control Plan shall be prepared. The purpose of the Plan is to insure that erosion control is the basis for sediment control and that sediment control practices are designed to reduce adverse water quality impacts whenever development activities, including certain types of timber harvesting (see Section II.B.8.) involve <u>any</u> clearing, grading, transporting, or other form of disturbance to land by the movement of earth. Specifically, this plan shall insure that development activities on soils likely to generate sediment, because of composition, texture, slope, or permeability, shall include protection measures that adequately address these characteristics and will prevent significant adverse impacts on water quality or plant, fish, or wildlife habitat.

b. The Plan shall be reviewed, with specific comments, by the Soil Conservation District, with permitting by the County Public Works Department and enforcement by the Maryland Department of Environment. The Plan shall be consistent with the Maryland Natural Resources Article requirements (Environmental Article Subsection 4-101 et seq, Annotated Code of Maryland).

c. In addition to the above referenced state law and as stated in the Maryland Critical Area Law, these principles and criteria shall be followed in the preparation of the Soil Erosion and Sedimentation Control Plan:

1) The physical characteristics of a site shall be assessed to determine how it can be developed with the smallest risk of environmental damage;

2) Grading shall be minimized by using the existing topography;

3) Off-site impacts shall be minimized by using vegetative buffer strips between the disturbed and adjacent areas;

4) Clean water shall be prevented from becoming dirty by diverting runoff;
5) Sediment shall be removed from dirty water before it leaves the site by diverting it to a trapping device so that suspended sediment can be deposited;

6) Temporary seeding or mulching shall be accomplished on areas which will be exposed for longer than 2 weeks prior to construction;

7) Permanent stabilization shall be provided for disturbed areas;

8) Development activities on slopes greater than 15%, as measured before development, may be acceptable if the Plan shows that such activity is the only effective way to maintain or improve the stability of the slope;

9) Grading shall be completed as soon as possible after it is begun; immediately after grading is complete, mulching, permanent vegetative cover, or other stabilizing techniques shall be established in the area;

10) Staged seeding, mulching, or other stabilizing techniques shall be accomplished as cut slopes are made and fill slopes are brought up to grade;

11) Grading activities shall be minimized between November 1 and April 1;

12) Soil and other construction materials shall not be temporarily or permanently stored in locations which would result in the unnecessary destruction of vegetation; and

13) The adverse effects of fill and suspended sediments on shellfish beds, submerged aquatic vegetation beds, wetland vegetation, and fish spawning and nursery areas shall be minimized.

5. **Shore Protection**

a. A Shore Protection Plan shall be prepared. The purpose of the Plan is to prevent shore erosion whenever development activity is adjacent to significantly eroding shorelines (with an erosion rate of more than 2 feet per year). Shore erosion shall be minimized without encouraging erosion along other shore areas. Preparation of a Shore Protection Plan is encouraged for less erosive areas.

b. The Plan shall be reviewed, with specific comments, by the Maryland Department of Natural Resources. Additional approval for structural protection measures may be required from the U.S. Army Corp of Engineers. Subsequent to state approval, a Building Permit shall be obtained from the County Public Works Department.

c. For all nonresidential development activities and all residential development activities involving the creation of more than 2 lots, the Plan shall be prepared by a registered professional engineer. It shall contain complete specifications for proposed shore erosion works, including information on the design storm, calculated wave runup, required stone weight and/or other data as required by the Maryland Department of Natural Resources. The owner of the property at the time of site plan submittal shall be responsible for installation of any shoreline improvements and on projects involving the creation of more than 2 lots, shall provide surety to guarantee the installation of such improvements. Maintenance of any shoreline improvements shall be the responsibility of the current property owner.

d. The following design guidelines shall be used in the development of the Shore Protection Plan:

1) The adverse effects of fill and suspended sediments on shell fish beds, submerged aquatic vegetation beds, wetland vegetation, and fish spawning and nursery areas shall be minimized;

2) Deposition of eroded materials in channels and navigable areas shall be reduced from historic rates;

3) Shorelines shall be stabilized to minimize loss of real estate and structures;

4) The effects on water quality from both erosion and the construction of protection works shall be minimized;

5) As a first choice, use of nonstructural shore protection measures, where applicable, is encouraged in order to conserve and protect fish, plant, and wildlife habitat; and

6) As a second choice, structural shore protection measures which provide the maximum amount of habitat for vegetation, fish, and invertebrates is encouraged; when using structural protection, revetments or riprap should be favored over bulkheads, where applicable.

e. The following criteria shall be used in determining the appropriateness of structural vs. nonstructural protection measures.

1) Nonstructural protection measures able to withstand a 50 year storm, such as bank grading and height reduction, beach enrichment and fill, and vegetative plantings, should be considered:

(a) In areas with an historic, predevelopment erosion rate of less than 1 foot per year;

(b) Where primary residential or commercial structures are more than 100 feet from mean high water;

(c) Where the existing bank is less than 3 feet in height, within 10 feet of mean high water; and/or

(d) The fetch, or exposed distance over water in front of the shore, and to 55 degrees to either side, is less than 800 feet.

2) In circumstances failing to meet these criteria, structural control measures able to withstand a 50 year storm, such as riprap, bulkheads, sheet piles, and other non-earth structures, should be considered. Construction procedures shall minimize destruction of tidal wetland vegetation. However, such destruction shall not be a governing factor for project approval, if any such damage is of a limited nature and is replaced on a square foot for square foot basis. Beach enrichment practices such as dredge fill and vegetative planting may be employed within the area between a control structure and mean low water in beach areas in order to enhance or initiate wetland vegetation where it is historically reasonable to expect such vegetation to thrive.

6. Stormwater, Floodplain, and Tributary Stream Management

a. A Stormwater, Floodplain, and Tributary Stream Management Plan shall be prepared. The Plan shall address the quality and quantity impacts of development activities so as to maintain and improve the water quality of the runoff and streams emptying into the Chesapeake Bay. Specifically the Plan shall improve the quality of stormwater runoff in highly developed areas, limit the amount of a development's impervious area, reduce the quantity of stormwater runoff in less developed areas, minimize roadway obstructions to the flood plain, and minimize its impacts on streams.

b. The Plan shall be approved and enforced by the County Department of Public Works and be consistent with the Talbot County Code, Section 16A-7 in terms of Stormwater and Section 20 in terms of floodplain management. The Stormwater, Floodplain, and Stream Management Plan shall be consistent with Maryland Sediment and Erosion Control requirements (Environmental Article Subsection 4-101 et seq, Annotated Code of Maryland).

c. The following criteria shall be used in preparation of the Plan. It is the responsibility of the applicant to demonstrate compliance with these criteria to the satisfaction of the County Public Works Director.

1) Stormwater Management

a) In the Rural Conservation, Rural Residential, Town Residential, and Village Center Districts and in the Limited Commercial, General Commercial, and/or Limited Industrial Districts of less than 20 contiguous acres:

(1). Constructed impervious areas shall be limited to 15% of a parcel or lot created prior to (approval date of this ordinance). A parcel or lot of 1 acre or less created prior to (approval date of this ordinance) and after 1 June 1986, may have impervious areas of up to 25%.

Constructed impervious areas shall be limited to 15% of a subdivision approved after (approval date of this ordinance). The impervious area of any public or private roads created in such subdivisions, shall be included in the impervious area calculations. A maximum impervious area shall be designated on the subdivision plat for each parcel or lot. Constructed impervious areas shall be limited to 25% of any parcels or lots of 1 acre or less.

(2) Development activities shall not cause downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a 10 year storm were the land in its predevelopment state;

(3) All stormwater storage facilities shall be designed with sufficient capacity to achieve the water quality goals of this Ordinance and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.

b) In the Limited Commercial, General Commercial, and/or Limited Industrial Districts of 20 or more contiguous acres:

(1) All proposed development or redevelopment activities shall include all technologies as required by applicable state and local ordinances to minimize adverse impacts to water quality caused by stormwater:

(a) Redevelopment activities that increase the impervious area of a parcel by more than 5,000 sq ft in a 12 month period, shall be designed to reduce phosphorus pollutant loadings of stormwater runoff by at least 10% below the level of pollutant run off from the site prior to redevelopment; and

(b) New development activities shall be designed to reduce phosphorus pollutant loadings of stormwater runoff by at least 10% from the predevelopment levels.

Offsets to achieve these reductions may be provided either on or off site, provided that water quality benefits are equivalent, that their benefits are obtained within the same water shed, and that the benefits can be determined through the use of modeling, monitoring, or other computation of mitigation measures.

(2) Exposed ground surfaces shall be established in vegetation;

(3) Impervious surfaces shall be at least 100 ft from the water's edge, except when needed to serve water dependent facilities; buffers of natural vegetation should be kept between impervious surfaces and surface waters.

2) Floodplain Obstructions

a) All private roadways, structures, or other facilities that intercept, obstruct, or divert tidal or sheet flow shall provide for reestablishment of the flow through the use of appropriate systems and construction techniques.

b) Private roadways in flood prone areas should not obstruct or alter the course, direction, or rate of predevelopment surface flow.

3) Tributary Stream Management. All development activities that must cross or affect streams, on or off site, shall be designed to:

a) Minimize adverse water quality and quantity impacts of stormwater;

b) Reduce increases in flood frequency and severity that are attributable to development;

c) Retain tree canopy so as to maintain stream water temperature within normal variation;

d) Provide a natural substrate for streambeds;

e) Avoid use of concrete riprap or other artificial surfaces for the bottoms of natural streams unless it can be demonstrated that water quality and fish habitats can be improved;

f) Not increase nonpoint and point source pollution; and

g) Absorb precipitation as close as possible to the point of its first contact with the surface;

7. Nontidal Wetlands Management

a. A Nontidal Wetlands Management Plan shall be prepared for any development activity containing or within 25 feet of a nontidal wetlands. Development activities in the drainage area of nontidal wetlands shall be designed to protect the hydrologic regime and water quality of the wetlands, minimize alterations to the surface or subsurface flow of water into and from the wetland, and not cause impairment of the water quality or the plant, wildlife, and habitat value of the wetland.

b. The Plan shall be reviewed, with specific comments, by the Maryland Department of Natural Resources.

c. For all nonresidential development activities and all residential development activities involving the creation of more than 2 lots, the Plan shall be prepared by a professional environmental engineer or biologist.

d. The following criteria shall be used in the preparation of the Plan:

1) A 25 foot buffer around nontidal wetlands shall be maintained. Development activities which may disturb the wetlands or the wildlife in the wetlands shall be prohibited in the buffer unless it can be shown that these activities will not adversely affect the wetland.

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2) The hydrologic regime and water quality of the identified nontidal wetlands shall be protected by providing that any disturbances in the drainage area of the wetlands will minimize alteration to the surface or subsurface flow of water into and from the wetland and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.

3) Development activities which would cause necessary and unavoidable impacts on the wetlands may be allowed if it is shown that these development activities are water dependent or of substantial economic benefit. Such development activities shall include mitigation measures that provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, onsite or near the affected wetland.

8. Habitat Protection

a. A Habitat Protection Plan shall be prepared. The Plan shall prohibit development activities or other disturbances that would disrupt the nesting, breeding, stopover, and/or feeding activities of the wildlife within Threatened & Endangered Species Habitats or Plant & Wildlife Habitats, and activities or disturbances that would affect the anadromous fish population within Drainage Basins of Anadromous Fish Propagation Waters.

b. The Plan shall be reviewed, with specific comments, by the Maryland Forest, Park and Wildlife Service.

c. For all nonresidential development activities and all residential development activities involving the creation of more than 2 lots, the Plan shall be prepared by a professional biologist experienced in the management of natural resources described in this Habitat Protection section.

d. Substantial portions of the Habitats or Drainage Basins, described in Section 8.a. above, that lie within any parcel or lot should be protected from any development activity. What constitutes a substantial portion depends on the specific characteristics of the parcel and habitat involved, however, as a general rule less than 20% of a habitat area or drainage basin within a parcel should be disturbed. Protected portions of habitats or drainage basins should be conserved through fee title donation, conservation easements, cooperative agreements with landowners, and/or special provisions in forest management and soil conservation plans with acceptance of the protection method by the Planning Officer. In addition, development activities should be located, generally, as close to a public right of way as possible. The criteria below shall be followed in the preparation of the Plan:

1) Threatened and Endangered Species

Measures protecting the habitats of Threatened and Endangered Species shall address the following objectives:

a) Bald eagle nesting territories shall be identified and should be areas of restricted activity with a protection zone around each nest. Within the protection zone, timber harvesting, land clearing, or construction as well as improvements and maintenance to timber stands should be limited. Any activity within the protection zone should be consistent with the recommendations of the Maryland Nongame and Endangered Species Program. The location of the protection zone should be reviewed annually so as to assure protection of new or relocated nests;

b) Delmarva fox squirrel habitats shall be identified before land clearing or harvesting of mature woodlands. Timber harvesting and land clearing of these habitats should be consistent with the recommendations of the Maryland Nongame and Endangered Species Program; and

c) Sedge wren habitats shall be identified before dredging or fill is permitted. With the identification of such habitats, the habitat and nesting site shall be retained. No disruptive activity should take place during the breeding season within these Habitats. Permission to dredge or fill in or near these habitats should be obtained from the Maryland Nongame and Endangered Species Program.

2) Plant and Wildlife Habitat

The Plan shall conserve Plant and Wildlife Habitats, protecting the types of habitats which are required to support the continuous presence of a variety of species.

a) Buffer areas for colonial water bird nesting sites (particularly those of local significance - see definitions for Plant and Wildlife Habitats) shall be established. These areas shall be protected from development activities and from disturbance in the breeding season.

b) Development activities, especially for new water dependent facilities, shall be designed not to disturb sites of historic aquatic staging and concentration areas for waterfowl (particularly those of local significance).

c) Development activities or the clearing or cutting of trees shall be designed and implemented so as to conserve riparian habitat and forest interior wildlife species and their habitats (particularly those of local significance). Management measures shall include incorporating appropriate wildlife protection elements into forest management plans, and clustering development and using other site design standards which provide for the conservation of wildlife habitat. Measures shall also include soil conservation plans which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs including the provision of easements and other similar techniques that restrict land use;

d) Natural Heritage Areas shall be protected from alteration due to development activities or cutting or clearing of forests so that the structure and species composition of the areas are maintained.

e) Native vegetation should be preserved, as much as possible, particularly along the water's edge.

f) The continuity of habitats shall be preserved. The site design shall allow wildlife movement across the site to natural areas on adjacent sites and to the water's edge. The site design shall also allow movement between habitat types.

g) Vertical diversity of plant type shall be preserved by maintaining natural bush and ground cover layers beneath stands of trees.

h) Plants with high benefit to wildlife shall be planted during or after development.

3) Drainage Basins for Anadromous Fish Propagation Waters

Instream and streambank habitat of anadromous fish propagation waters shall be protected through the following techniques:

a) Land use and site design practices in the watershed of spawning streams shall minimize the adverse impacts of development on the water quality of the streams. Any adverse impacts of any activities shall be avoided by:

(1) Minimizing development activities or other land disturbances in the watershed;
(2) Maintaining, or, if practicable, improving water quality in streams;
(3) Minimizing, to the extent possible, the discharge of sediments into streams; and
(4) Maintaining, or, if practicable, increasing the natural vegetation of the watershed.

b) Unobstructed movement in streams shall be provided for spawning and larval forms of anadromous fish. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. The removal of existing barriers shall be accomplished wherever possible;

c) The construction, repair, or maintenance activities associated with bridges, or other stream crossings or with utilities and roads, which involve disturbance of the Shoreline Development Buffer or which occur instream shall be prohibited between March 1 and June 15;

d) Channelization or other physical alteration which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited;

e) Construction of shore based facilities (such as marinas), dredging, filling, and construction of jetties or bulkheads shall not be allowed in areas of established Submerged Aquatic Vegetation within spawning waters;

f) Development activities shall be designed so that power boats are discouraged from operating during spawning season in spawning waters; wake and wave effects, propeller disturbance, noise and boat size should be kept to a minimum; and

g) Natural vegetation shall be maintained within the Shoreline Development Buffer of all tributary streams.

9. Forest Replacement

a. A Forest Replacement Plan shall be prepared for any development activities which result in the cutting or clearing of forests and developed woodlands, or for development activities on sites of 7 acres or more that have less than 15% of the site in forest or developed woodland. In addition, a Forest Management Plan shall also be prepared, as described in Section II.B.8.b. By definition a forest or developed woodland is at least 1 acre in area, therefor, neither Replacement or Management Plans are required for cutting or clearing activities in wooded areas of less than 1 acre. However, a Forest Management Plan is required for any cutting or clearing activities of any size area in the Shoreline Development Buffer. The purpose of the Forest Replacement Plan is to maintain, and preferably increase, the total acreage in forest coverage in the Critical Area and conserve developed woodland vegetation to the greatest extent possible.

b. The Plan shall be reviewed, with specific comments, by the Maryland Forest, Park and Wildlife Service.

c. For all nonresidential projects and all residential projects involving the creation of more than 2 lots, the Plan shall be prepared by a registered professional forester.

d. The following criteria shall be used in preparing the Plan:

1) In the Rural Conservation, Rural Residential, Town Residential, and Village Center Districts, and in Limited Commercial, General Commercial, and/or Limited Industrial Districts covering less than 20 acres:

a) Existing forests and developed woodlands shall be protected in Habitat Protection Areas;

b) The removal of any existing forest or developed woodland shall be limited to 20% of the forest use on any parcel. The remaining 80% shall be protected and maintained through fee title donation, conservation easements, cooperative agreements with landowners and/or special provisions in forest management and soil conservation plans with acceptance of the protection method by the Planning Officer. Any forest or developed woodland that has been removed shall be replaced, preferably on site, on a not less than an equal area basis, with the same species or a species appropriate to the site as determined by the Maryland Forest, Park and Wildlife Service;

c) An additional 10% of any forest or developed woodland may be removed from forest use provided that the replacement forest shall be 1.5 times the area of this additional 10% of the forest or developed woodland being removed;

d) A fee-in-lieu shall be provided to the County, adequate to ensure the restoration or establishment of an equivalent forest area if the area of the site precludes the implementation of sections b) & c), above. At least two sites shall be identified for the restoration or establishment of equivalent forest area and a full cost estimate (including all acquisition and site preparation costs) shall be provided. The amount of the fee shall be determined by the Planning Officer based on the recommendation of the Maryland Forest, Park and Wildlife Service. The fee shall be placed in a County fund dedicated to forest restoration or establishment.

e) Surety shall be provided by the property owners or developers in an amount acceptable to the Maryland Forest, Park and Wildlife Service that will be suitable to assure satisfactory forest replacement as required in sections b) and c) above;

f) The conservation easements, restrictive covenants, or other protective instruments used to maintain all forest or developed woodland areas, or areas to be forested that are shown on the site plan shall be specified.

g) Grading permits shall be obtained before forests or developed woodlands are removed;

h) Any forest area removed before obtaining a grading permit, or any forest area removed that exceeds the maximum allowed in section b) and c) above shall be replaced at 3 times the area of forest removed; and

i) Unforested or partially forested parcels or lots of 7 acres or more, shall be planted to provide a forest or developed woodland cover of at least 15%.

2) In the Limited Commercial, General Commercial, and/or Limited Industrial Districts of 20 or more acres:

a) Forest and developed woodland resources shall be enhanced through techniques such as urban forestry (street tree plantings, gardens, landscaping, open land buffer plantings);

b) Destruction of forest and woodland vegetation shall be minimized; and

c) Existing forests and developed woodlands in Habitat Protection Areas shall be protected.

IV. ADMINISTRATIVE PROCEDURES

A. Zoning Code Text and Zoning Map Amendment Criteria

A request for an amendment to the regulations, restrictions, classifications, and boundaries established in this ordinance shall follow the procedures and criteria established in Section 15 of the County Zoning Ordinance except as noted below. In addition, the following criteria shall also be used in considering zoning text amendments and zoning map amendments.

1. Zoning Text Amendments

Requests for text amendments shall be consistent with Maryland State Critical Area Law. Any such request shall not result in permitting uses that would adversely affect any wildlife or plant habitats as a result of the uses' intrinsic nature and potential impact. Specifically, such requests shall not be granted if they would allow the following development or redevelopment activities in the Critical Area:

a. Nonmaritime heavy industry;

b. Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants);

c. Permanent sludge handling, storage, and disposal facilities with the exception of those facilities associated with current wastewater treatment operations in Talbot County, and excepting the agricultural or horticultural land application of sludge (with Maryland State approvals and approved application methods and rates) outside of the Shoreline Development Buffer;

d. Any development activity that would be detrimental to water quality or fish, wildlife or plant habitats identified in this ordinance;

e. Solid or hazardous waste collection or disposal facilities;

f. Sanitary landfills; and

g. Septage storage or holding facilities excepting those facilities on the site of a Talbot County Waste Water Treatment Plant.

Existing, permitted facilities of the type listed in section e, f, and g above shall be subject to the standards and requirements of Maryland State Law, COMAR Title 10.

2. Zoning Map Amendments

Requests for map amendments (or rezonings) shall be considered based on the Findings for Reclassification, Section 15.04 of the County Zoning Ordinance. Rezoning requests shall be consistent with the goals and policies of the Talbot County Comprehensive Plan, specifically those sections concerning the Chesapeake Bay Critical Area. In addition, the following criteria and procedures shall be used, except for map amendments where the applicant claims there is a mistake in the existing zoning classification, then only paragraph a. shall be applied.

a. Rezoning requests for property outside of the towns and outside of areas shown as possible annexation areas, should be reviewed by the County on an annual cycle, with requests submitted to the Planning Officer by October 1. However, in 1990 there are

2 review cycles and requests shall be submitted by April 1 or October 1. Subsequent to final County Council approval, all requests shall be submitted by the County to the Maryland Critical Areas Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by both the County Council and the Commission shall take effect 60 days after approval by the Commission. A request denied by the Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by County Council within 90 days of Commission denial. An extension of the 90 day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.

b. Not more than 1,213 acres of the Critical Areas of the County, including all incorporated towns, shall be rezoned from the Rural Conservation District (or town zoning district(s) 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 rezonings or rezonings associated with annexations and 618 acres is reserved for the County for rezonings of property outside of the towns and outside of areas shown as possible annexation areas (See Maps 1, 2, & 3).

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

If the Commission approves the doubling of the number of acres that may be rezoned under this section, then the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Areas Plan, that is: 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in section IV.A.2.c. below) = 2,554 acres. The Maryland Critical Areas Law does not allow for a full 2,426 acre limit (1,213 + 1,213) at the time of establishment of this ordinance

c. Not more than 128 acres of the Critical Area of the County, including all incorporated towns shall be rezoned from the Rural Residential, Town Residential, or Village Center Districts, or areas of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial (or town zoning district(s) established for the Limited Development Area of the Critical Area). The requested zoning districts should establish an area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (or town zoning district(s) established for the Intensely Developed Area of the Critical Area). In determining whether the 20 acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts shall be considered. Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for rezonings or rezonings associated with annexations, and 36 acres for the County for rezonings for property outside of the towns and outside of areas shown as possible annexation areas (See Maps 1, 2, & 3).

d. The number of reserved acres allocated among the Towns for rezoning in Sections IV.A.2.b.&c. above shall be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every 4 years thereafter.

e. In any one rezoning review cycle, not more than 100 acres should be approved by the County for rezoning from the Rural Conservation District to any other zoning district. Not more than 20 acres should be rezoned from the Rural Residential, Town Residential, or Village Center Districts or area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts (including contiguous areas of existing commercial or industrial zoning districts).

f. No overall acreage limit is established for rezonings from the Rural Residential or Town Residential districts to the Town Residential or Village Center districts, to establish less than 20 contiguous acres of the Limited Commercial, General Commercial, and/or Limited Industrial districts, or to town zoning districts established for the Limited Development Area of the Critical Area. There are no acreage limits on rezonings where the current and proposed zoning districts include only Limited Commercial, General Commercial, and/or Limited Industrial Districts that already cover 20 or more contiguous acres, or town zoning districts established for the Intensely Developed Area of the Critical Area.

g. Specific annexation requests for property included in the acres reserved for the Towns in Section IV.A.2.b.&c. above and as shown in Maps 1, 2, & 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests not associated with an annexation request for property adjacent to the Towns as shown on Map 1, 2, or 3, until an annexation request for the property has been denied by the Town or until 12 months after an annexation request for the property has been submitted to the Town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the Towns as shown on Map 1, 2, or 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in Section IV.A.2.b.&c. above.

h. Rezoning requests for property that has been annexed within 5 years of the request, shall be reviewed by the County for consistency with the County Comprehensive Plan. Rezoning requests for property that has been in the town for more than 5 years prior to the request, do not require review by the County, however, the towns shall inform the County of such rezonings to insure the total reserved acres, listed above, are not exceeded.

i. The location of rezoning requests within towns or rezoning requests associated with annexation requests is not limited to the areas shown in Maps 1, 2, 3, however, the total acres reserved per town shall not be exceeded.

j. When considering rezoning requests from the Rural Conservation District, priority shall be given based on the district requested in the following order: Village Center, Town Residential, Rural Residential, Limited Commercial, General Commercial, Limited Industrial. When considering rezoning requests from the Rural Residential, Town Residential, or Village Center Districts, priority shall be given based on the district requested in the following order: Limited Commercial, General Commercial, Limited Industrial.

k. All rezoning requests shall include a proposed site plan and or subdivision plat that meets the Design Criteria, Section III, of this ordinance. The request should make maximum effort to meet the intent of the Critical Area Policies and the Design Criteria in Section III of this ordinance. The request should:

1) create lots or parcels that maximize the opportunities for clustered development that protects habitat and agricultural resources,
2) locate structures so as to minimize impact on habitat protection areas and agricultural areas,
3) provide a minimally disturbed buffer along the shoreline,
4) minimize soil erosion and sediment runoff,
5) maximize protection of erosive shorelines,
6) have minimal effect on stormwater, floodplain, and stream character,
7) minimize impacts on nontidal wetlands,
8) maximize protection of plant and wildlife habitats, particularly for Threatened and Endangered Species, plant and wildlife common to the Chesapeake Bay region, and Anadromous Fish Propagation Waters, and
9) maximize protection of forests.

l. A rezoning request for the Rural Residential District should be adjacent to existing Rural Residential, Town Residential, or Village Center Districts. Such requests should not be adjacent to Limited Commercial, General Commercial, or Limited Industrial Districts of any size. Property proposed for the Town Residential District should be adjacent to the Rural Residential, Town Residential, or Village Center Districts or to an area of less than 20 contiguous acres of Limited Commercial, General Commercial, or Limited Industrial Districts, or to any area of Limited Commercial or General Commercial Districts. Property proposed for the Village Center District should be adjacent to an existing Rural Residential, Town Residential, or Village Center Districts or to any size area of Limited Commercial, General Commercial, or Limited Industrial Districts. For purposes of this section l., adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights of way.

m. A rezoning request to establish a total area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (including contiguous areas of existing commercial or industrial zoning districts) shall be adjacent to the Town Residential, Village Center, Limited Commercial, General Commercial, or Limited Industrial District. Such requests should not be adjacent to the Rural Residential District. For purposes of this section m., adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights of way.

n. A rezoning request to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (including contiguous areas of existing commercial or industrial zoning districts) should not be approved unless the proposed development activity is water dependent, will have substantial economic benefit to Talbot County, and can not be located within the limits of an incorporated town. Such a request should be located within or adjacent to Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section n., adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights of way. Such a request should be located so as not to conflict with the character and purpose of the Rural Conservation District.

B. Criteria For Nonconforming Uses, Lots, Parcels, and Structures

1. Purpose

This section is intended to limit the number and extent of non-conforming uses, lots, parcels and structures by prohibiting or limiting their enlargement, their reestablishment after abandonment, and their restoration after substantial destruction. The intent of this section is to permit nonconforming uses, lots and structures to continue, but to limit enlargement, alteration, restoration, or replacement that would increase the discrepancy between existing conditions in the Critical Area and the regulations contained in this ordinance. Uses, lots, parcels or structures lawfully established prior to (approval date of this ordinance) that do not conform to the provisions of this ordinance may continue as nonconformities subject to the limitations of this section.

2. Nonconforming Uses

The use of a parcel, lot or structure lawfully established prior to (approval date of this ordinance) that does not conform with the use regulations contained in this ordinance may be continued, subject to the limitations contained in this section. A nonconforming use shall not be intensified and it shall not be enlarged or expanded by more than 10% of gross floor area.

Existing surface mining wash ponds within the Critical Area that do not comply with the provisions of this ordinance regarding surface mining uses shall be reclaimed as soon as possible by the property owner after the sand and gravel operation has ceased. To the fullest extent possible, such existing sand and gravel operations shall conduct their extraction activities to provide a minimum 100 foot buffer of natural vegetation between the operation and the mean high water line of tidal waters, tidal wetlands, or the the edges of streams, whichever is further inland.

Any nonconforming use, including the nonconforming use of a lot, parcel or structure, that is discontinued or abandoned for a period of one year shall not be resumed thereafter and any future use of lot, parcel, or structure shall conform to the provisions of this ordinance.

3. Nonconforming Lots

a. Nonconforming undeveloped lots of record

A single lot or parcel of land within the Critical Area that was legally of record on (approval date of this ordinance) may be developed with a single family dwelling if a dwelling does not already exist there. Such lot or parcel may be so developed in accordance with the density and lot width provisions in effect prior to the adoption of this ordinance, notwithstanding that such development may be inconsistent with the current density and lot width provisions of this ordinance. Such a lot or parcel shall be developed in accord with the design provisions of this ordinance, section III, unless a variance is obtained meeting the requirements described in section IV.C of this ordinance, or unless construction activity has progressed to the point of the pouring of foundation footings or the installation of structural members by (the approval date of this ordinance). Such construction shall be completed in accordance with existing development approvals.

b. Nonconforming developed lots of record

Residential structures, located on parcels that do not conform with the density provisions of this ordinance, may be expanded in accord with all other provisions of the ordinance, so long as additional dwelling units are not created.

A parcel or lot that has been developed with two or more single family residences prior to (approval date of this ordinance) and that does not conform to the provisions of this ordinance may be divided subject to the provisions of this section and of the County Subdivision Ordinance. In no case shall the property be divided into more lots or parcels than there are existing single family residences and, in each case, one residence must be located on each parcel. Property containing mobile homes, employee residences, guest residences, or hotel, motel, or bed & breakfast uses may not be divided under this section.

c. Nonconforming portions of parcels

When the establishment of new zoning districts created by this ordinance places a portion of a parcel in a new zoning district and this portion does not meet the minimum density limit of the new zoning district, then this portion may be platted as a single lot through the County Subdivision Ordinance even though it does not meet the minimum density limit of the new zoning district.

4. Nonconforming Structures

A structure lawfully in existence as of (approval date of this ordinance) that does not conform to the provisions of this ordinance may be continued so long as it remains otherwise lawful and may be repaired or reconstructed, subject to the following provisions:

a. Nonconforming structures within the Shoreline Development Buffer may be expanded if the impervious area of the parcel's Shoreline Development Buffer and of the entire parcel on which the structure is located, is limited to 15% (25% for parcels or lots less than 1 acre created after 1 June 1986). In addition, setbacks, from property lines for such an expansion, shall not be less than the setbacks of the existing nonconforming structure;

b. Nonconforming structures outside the Shoreline Development Buffer may be expanded if the impervious area of the entire parcel on which the structure is located is limited to 15% (25% for parcels or lots less than 1 acre created after 1 June 1986); and

c. If a nonconforming primary structure within the Shoreline Development Buffer is damaged or destroyed to any extent, it may be repaired or reconstructed at its prior location within one year. A 6 month extension may be approved by the Planning Officer. All current provisions of this ordinance shall apply to the repair or reconstruction, except for the Shoreline Development Buffer provisions. The setback or the repair or reconstruction may not be less than the setback of the original nonconforming primary structure.

A nonconforming, accessory freestanding structure that is damaged or destroyed beyond 50 % of its assessed value shall be reconstructed or restored only in conformance with the provisions of this ordinance.

If any other nonconforming structure is destroyed to an extent exceeding 50% and is not restored or the use resumed within one year from the date of destruction, any future structure or use on the site shall comply with current provisions of this ordinance.

C. Variances

1. Purpose

A variance from the quantitative numerical requirements of this ordinance may be granted by the Board of Appeals in specific cases if such a variance would not be contrary to the public health, safety, or welfare, and if there are special conditions such as site features or other circumstances not created by the property owner, and if a literal enforcement of the provisions of this ordinance would result in unwarranted hardship to the property owner. A variance from the qualitative policy requirements of this ordinance may not be requested.

2. Criteria

The Board of Appeals shall not grant a variance from the terms of this ordinance unless and until the applicant has demonstrated and the Board of Appeals has found that:

a. A completed application for a variance has been submitted in writing to the Board of Appeals with a copy provided to the Chesapeake Bay Critical Area Commission at least two weeks prior to the scheduled hearing. The application must demonstrate that the criteria set forth in sections b through e, below, have been met;

b. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this ordinance would result in unwarranted hardship to the property owner;

c. A literal interpretation of this ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone within the Critical Area;

d. The granting of a variance will not confer upon the property owner any special privilege that would be denied by this ordinance to other owners of lands or structures within the Critical Area;

e. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property; and

f. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan, and the regulations adopted in this ordinance.

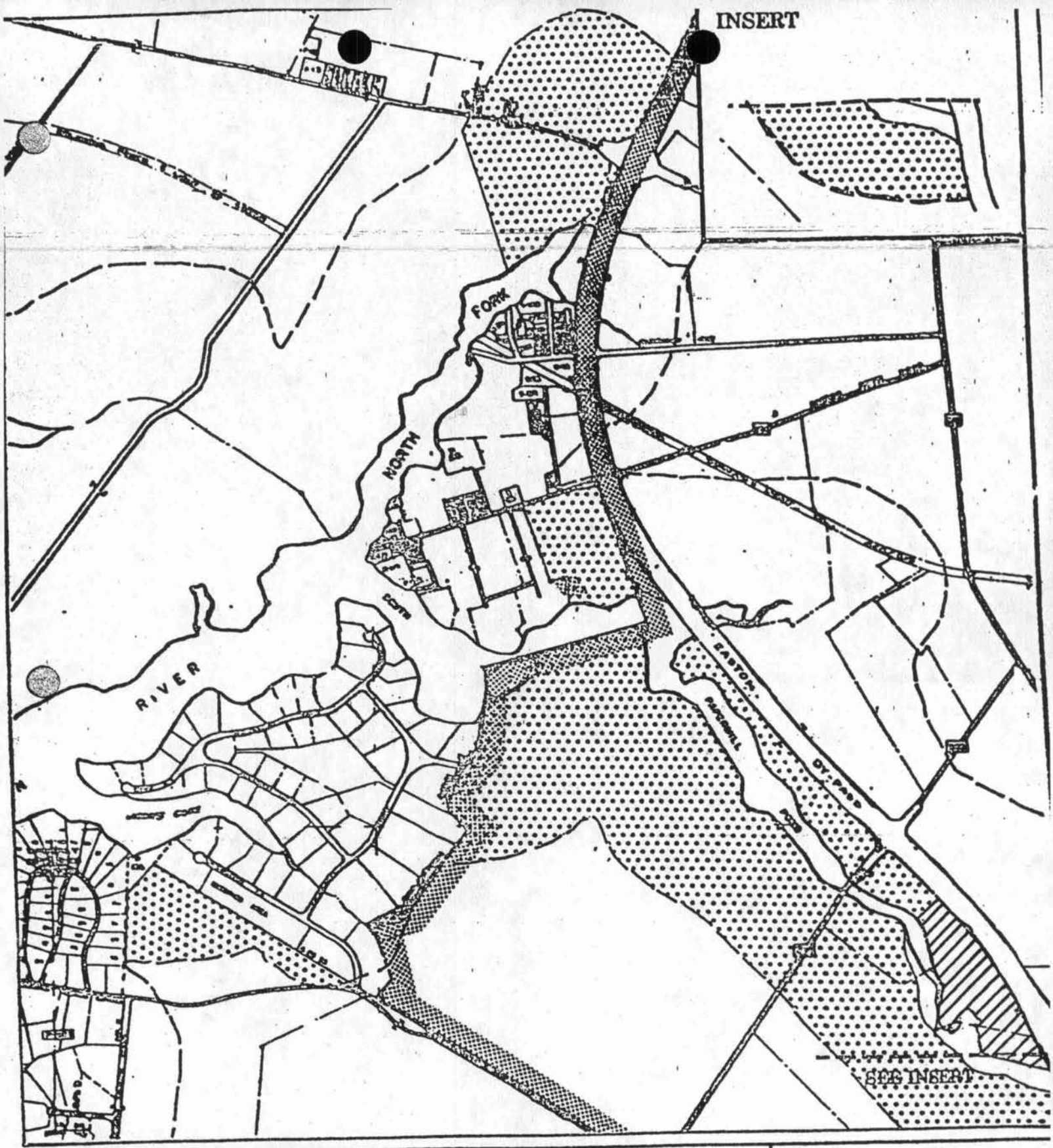
If the request for a variance arises under Section IV.B.3 regarding nonconforming lots of record, the applicant must demonstrate and the Board of Appeals must find that each of the above criteria have been met and further that, due to the pattern of lot ownership, it is not possible to reconfigure or consolidate lots so as to permit compliance with this ordinance.

3. Appeals

Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency aggrieved or adversely affected by any decision made under this ordinance. The Chairman of the Critical Area Commission may appeal an action or decision even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

D. Severability

The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable. Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any other remaining portion of this ordinance nor shall it affect the validity of the ordinance as a whole.



Area Allocated for Town Development

TOWN OF EASTON

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No 1

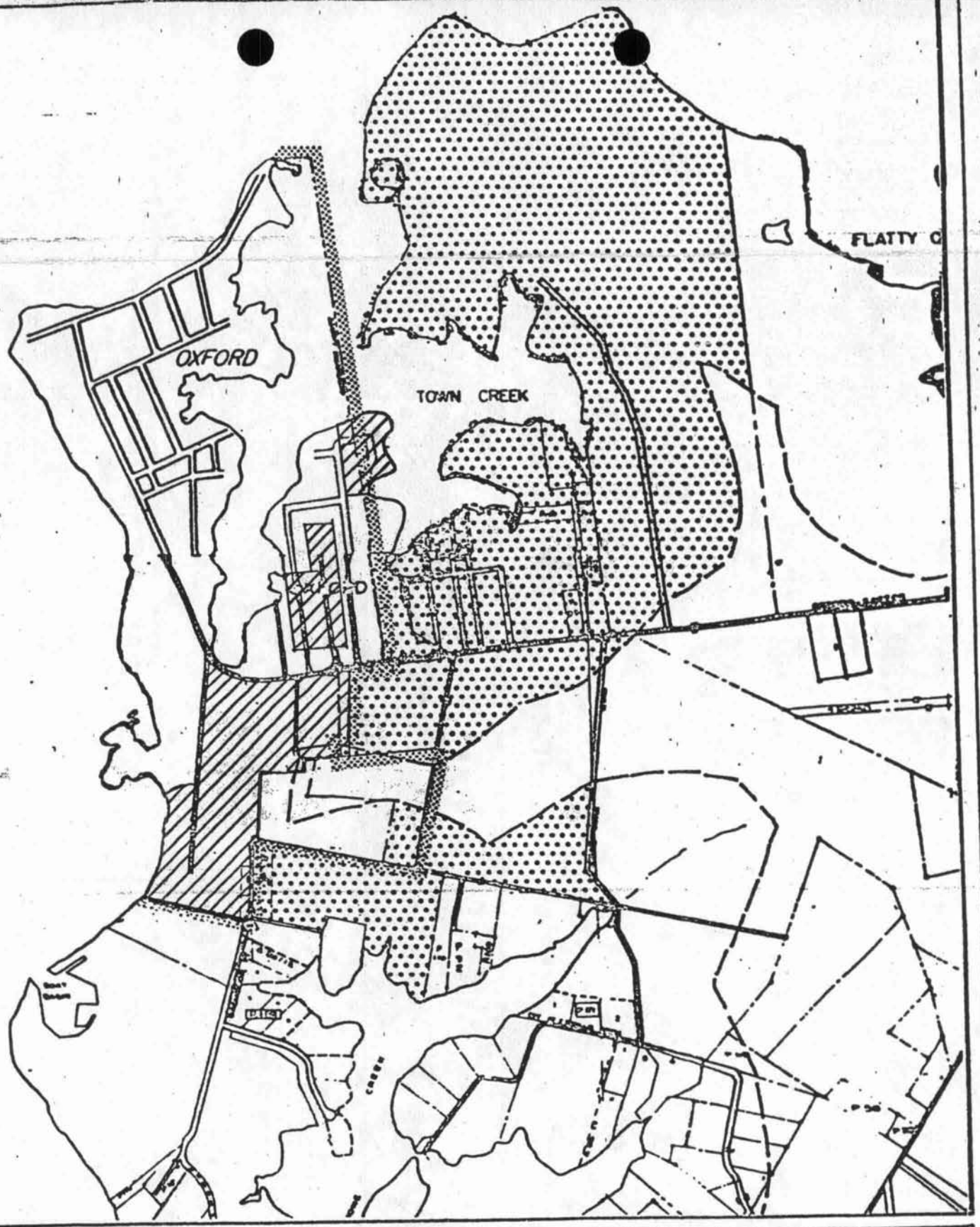
N

miles

1 0 2 4 6

Wiles Dailey Pronske

Reston Va Sarasota, Fla



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No

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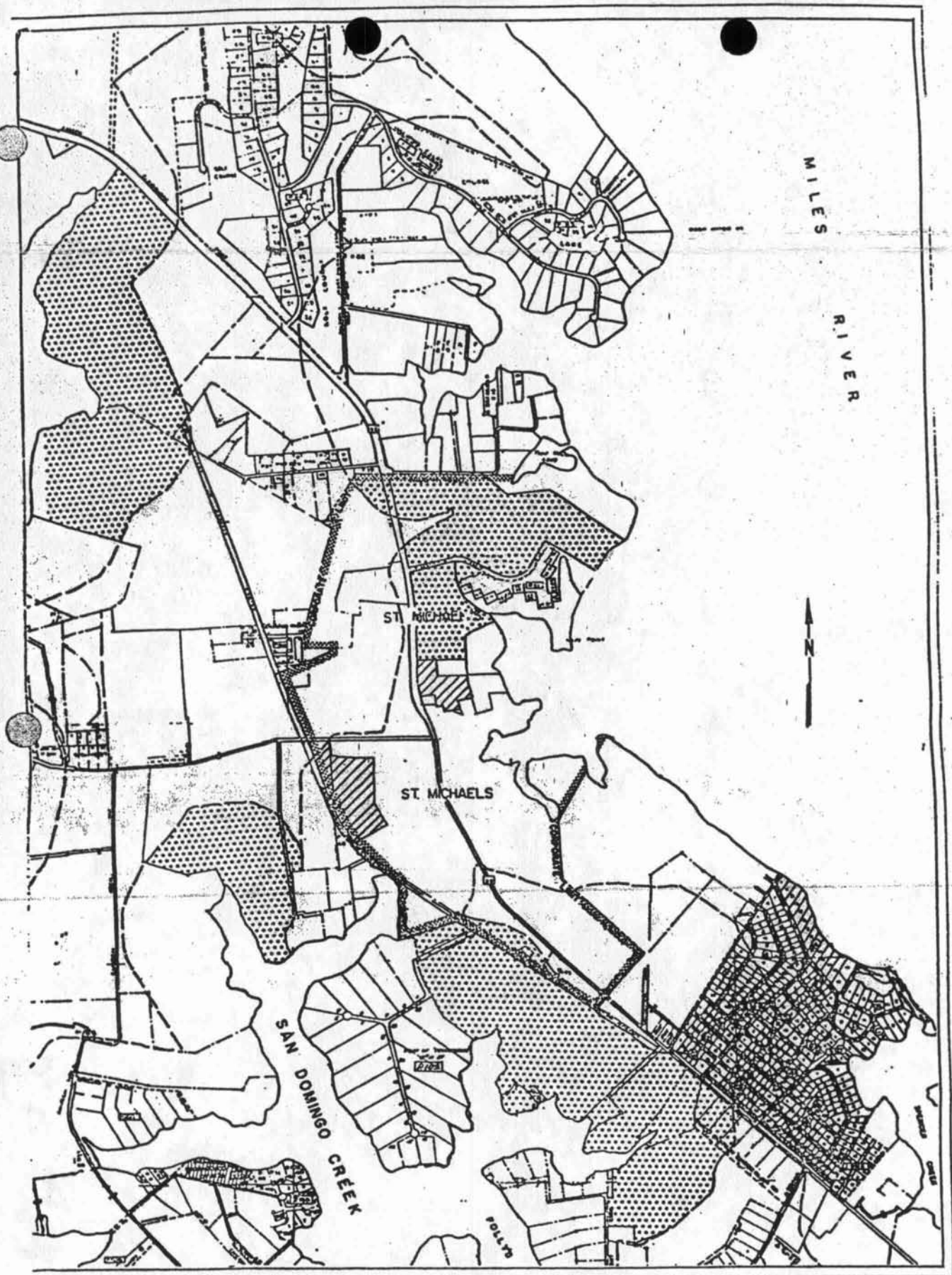
Wiles Dailey Pronske

Reston Va Sarasota, Fla.



Area Allocated for Town Development

TOWN OF ST MICHAELS

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No 3

N

miles

2 1 0 2 4 6

Wiles Dailey Pronske

Reston, Va Sarasota, Fla

V. DEFINITIONS

Afforestation
The establishment of trees on an area from which it has always or long been absent, or the planting of open areas which are not presently in forest cover.

Agriculture
All methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

Agricultural Easement
A nonpossessory interest in land which restricts the conversion of use of the land, preventing nonagricultural uses.

Anadromous Fish
Fish that travel upstream (from their primary habitat in the ocean) to fresh waters in order to spawn.

Anadromous Fish Propagation Waters
Those streams that are tributary to the Chesapeake Bay where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred. The following bodies of water have been identified as spawning areas in Talbot County:

a. Choptank River Basin
(Bolingbroke Creek, Tuckahoe Creek, Norwich Creek, Miles Creek, Kings Creek)
b. Miles River
c. Wye River East

Aquaculture
The farming or culturing of fish, aquatic plants and animals in water. Activities include the culture of clams and oysters on tidelands and subtidal areas. For the purposes of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

Aquifer
An underground bed or stratum of earth, gravel, or porous stone that contains water.

Barren Land
Unmanaged land having sparse vegetation.

Berm
A narrow zone just above the intertidal zone which is inundated only by exceptionally high or storm tides and which consists of nonwind driven coarse sand, shell fragments, and debris.

Best Management Practices (BMP's)
Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment. Agricultural BMP's include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass, and naturally vegetated filter strips, and proper nutrient application measures.

Biochemical Oxygen Demand (BOD)
A measure of the amount of oxygen consumed in the biological processes that break down organic matter in water. Large amounts of organic waste use up large amounts of dissolved oxygen, thus the greater the degree of pollution, the greater the BOD.

Buffer
An existing, naturally vegetative area or an area established in vegetation and managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made disturbances.

Bulkhead
A wall or embankment constructed to protect against earthslides or shoreline erosion, not including riprap (see riprap).

Cadium, Arsenic & Heavy Metals
Metallic elements that have a high molecular weight. Heavy metals are generally toxic in low concentrations to animal and marine life.

Clearcutting
The removal of an entire stand of trees in one cutting.

Cluster Development
A residential development in which dwelling units are concentrated in selected areas of the site so as to provide natural habitat, and preserve natural features or other open space uses on the remainder.

Colonial Nesting Water Birds
Herons, egrets, terns, and glossy ibis. For purposes of nesting, these birds congregate (that is colonize) in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

Commercial Harvesting
A commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.

Community Piers
Boat docking and launching facilities associated with subdivisions and similar residential areas and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

Comprehensive or Master Plan
A compilation of policy statements, goals, standards, maps, and pertinent data relative to the past, present, and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land use, water resources, and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.

Conservation Easement
A nonpossessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.

Cover Crop
The establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes or crop residues such as corn, wheat, or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.

Critical Area
All lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland, and
b. All land and water areas within 1,000 feet of the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland.

Modifications may be made to the boundaries of these areas through inclusions or exclusions proposed by the County and approved by the Critical Area Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Critical Area Commission
The Chesapeake Bay Critical Area Commission.

Density
The number of dwelling units per acre within a defined and measurable area. In calculating the density of development that is permitted on a parcel located within the Rural Conservation District, the area of any private tidal wetlands located on the property may be included, subject to the following conditions: 1) the density of development on the upland portion of the parcel shall not exceed 1 dwelling unit per 8 acres; and 2) the area of private wetlands shall be estimated on the basis of vegetative information as designated on the state wetlands maps.

Developed Woodlands
Those areas of one acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

Development Activities
Any activity shown on a subdivision plat, site plan, or building permit and resulting in the construction or substantial alteration of any residential, commercial, industrial, institutional, recreational (including golf courses), or transportation facilities or structures. The Planning Officer shall determine whether a proposed alteration is substantial. Generally, substantial residential alterations would cause the total impervious area on a lot to exceed 15% of the lot or 5,000 sq ft, whichever is less. Generally, substantial nonresidential alterations would add more than 5,000 sq ft of impervious area.

Diatomaceous Earth (Diatomite)
A siliceous material resembling chalk used in waste water treatment plants to filter solids out of sewage effluent. May also be used as an inactive ingredient in pesticide formulations applied as dust or powder.

Documented Breeding Bird Areas
Forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

Dredging
A method for deepening streams, swamps, or coastal waters by removing solids from the bottom.

Easement
An interest in land owned by another that entitles its holder to a specific use or enjoyment.

Ecosystem
A more or less self-contained biological community together with the physical environment in which the community's organisms occur.

Ecotone
An ecological community of mixed vegetation formed by the overlapping of adjoining communities.

Endangered Species
Any species of fish, wildlife, or plants which have been designated as endangered by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the state's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531 et seq., as amended. The Bald Eagle is an endangered species in Talbot County.

Erosion
The wearing away of the land surface by wind or water, usually intensified by land-clearing practices.

Escarpment
A steep slope or long cliff resulting from erosion or faulting and separating two relatively level areas of differing elevations.

Estuarine Flat Nursery Area
A low lying, partly flooded grounds such as tideland, where fresh water meets salt water and young marine life develops. These are delicate ecosystems.

Eutrophication
The process of change or "aging" of a water body in which the nutrient level (phosphates and nitrates) increases, encouraging the growth of algae with accompanying depletion of dissolved oxygen in the bottom waters.

Excess Stormwater Runoff
All increases in stormwater resulting from:

a. An increase in the imperviousness of the site, including all additions to buildings, roads and parking lots.
b. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
c. Alteration of drainageways or regrading of slopes;
d. Destruction of forest; or
e. Installation of collection systems to intercept street flows or to replace swales or other drainageways.

Fallow Land
Land that is plowed and tilled but left unseeded during a growing season.

Fastland
That portion of a coast behind the coastline which marks the seaward limit of permanently exposed coast and or the landward limit of effective wave action, often with a well-defined scarp or wave cut cliff defining the seaward edge of the fastland.

Fecal Coliform Bacteria
A group of organisms common to the intestinal tracts of man and animals.

Fisheries Activities
Commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, amphibians, and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

Forest
A biological community dominated by trees and other woody plants covering a land area of 1 acre or more. This also includes forests that have been cut, but not cleared. The significant forests in Talbot County are:

a. The swamp, bottomland, and sloped forests adjacent to the tributary streams of the Upper Choptank River and Tuckahoe Creek;
b. The upland forests abutting the Bay shore on the Lower Choptank River basin and in high shoreline erosion ares including the Bay shore between Claiborne and Black Walnut Cove; and
c. The forest stands in the interior of the necks and the upland forested stands abutting the Miles River and Wye River East.

Forest Interior Dwelling Birds
Species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

Forest Management
The protection, manipulation and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.

Forest Practice
The alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

Forestry
The cultivation, maintenance, management, and development of trees on forested lands.

Groin
A stone or wooden jetty constructed perpendicular to shore in order to interrupt lateral shore sand movement and for the purpose of accumulating sand on the shore.

Habitat
The natural abode of a plant or animal.

Habitat Protection Areas
The Shoreline Development Buffer, Nontidal Wetlands, Habitats of Species in Need of Conservation, Threatened and Endangered Species, Plant and Wildlife Habitats, and [the drainage basin of] Anadromous Fish Propagation Waters.

Herbicide
A chemical used to destroy or control the growth of weeds, brush or other undesirable plants.

Highly Erodible Soils
Those soils with a slope greater than 15 percent; or those with a K value greater than .35 and with slopes greater than 5 percent.

Historic Waterfowl Staging and Concentration Area
An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

Hydric Soils
Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

Hydrophytic Vegetation
Those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

Impervious Surface
Nonporous ground covers or areas above grade level such as sidewalks, roads, parking areas, and roof tops that shed stormwater and hinder penetration of water into the ground.

Jetty
A pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

Joint Subdivision
A type of subdivision by which residential density may be transferred within the Rural Conservation District. A joint subdivision includes property in a sending area and in a receiving area. The sending area is land within Plant and Wildlife Habitat Areas, Drainage Basins of Anadromous Fish Propagation Waters, natural park sites and recreation open space sites in the Rural Conservation District, excluding those portions of these areas that are within 500 feet (measured landward) of significantly eroding shorelines (with an erosion rate of at least 2 feet per year) plus adjacent shorelines within 100 feet. The receiving area is land in the Rural Conservation District which is within 500 feet (measured landward) of significantly eroding shorelines (with an erosion rate of at least 2 feet per year) plus adjacent shorelines within 100 feet. A joint subdivision allows the number of dwelling units permitted in the sending area to be shown in the receiving area in exchange for preserving the natural characteristics of the sending property by protecting it from future development. Such protection shall be accomplished by fee title donation, conservation easements, and/or cooperative agreements with landowners. The Planning Officer shall determine the protection method most appropriate to the subject property.

K Value
The soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

Landbased Aquaculture
The raising of fish or shellfish in any natural or manmade, enclosed, or impounded waterbody.

Land Clearing
Any activity that removes the vegetative ground cover.

Landforms
Features of the earth's surface created by natural causes.

Lot
A parcel of subdivided land that is shown on a duly approved and recorded subdivision map or other legal map.

Marina
Any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

Mean High Water Line
The average level of high tides at a given location.

Mineral Extraction

a. The breaking of the surface soil in order to extract or remove minerals;
b. Any activity or process that removes minerals from their original location;
c. The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities;
d. The processing of minerals at the site of extraction;
e. The mining of limited amounts of any mineral when done for the purpose of prospecting or to determine the location, quantity, or quality of natural deposits; or;
f. Extraction operations affecting more than 1 acre of land.

Natural Features

Components and processes present in or produced by nature, including but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Natural Heritage Area

Any communities of plants or animals which are considered to be among the best Statewide examples of their kind and are designated by regulation by the Secretary of the Department of Natural Resources.

Natural Parks

Areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.

Natural Vegetation

Those plant communities that develop in the absence of human activities.

Nature Dominated

A condition where landforms or biological communities, or both, have developed by natural processes in the absence of human intervention.

Nonpoint Source Pollution

Pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm run-off, or ground water seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather, by changes in land management practices.

Nonrenewable Resources

Resources that are not naturally regenerated or renewed.

Nontidal Wetlands

Those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface or lands where the soil or substrate is covered by shallow water at some time during the growing season. Non-tidal wetlands include the palustrine class. These lands are usually characterized by one or both of the following:

a. At least periodically, the lands support predominantly hydrophytic vegetation;
b. The substrate is predominantly undrained hydric soils.

Excluded from this definition are existing farm ponds and other existing man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat purposes.

Normal Maintenance
Exterior repairs to a structure or grounds such as painting, roof replacement/repair, rain gutter replacement, or the clearing/trimming back of weeds, vines, or unwanted vegetation that does not alter or change the character of existing structures or does not remove vegetation important to the Buffer or to shoreline erosion control.

Offsets
Structures or actions that compensate for undesirable impacts.

Open Space
Land and water areas retained in an essentially undeveloped state.

Overburden
The strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

Palustrine Wetlands
All nontidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean derived salts is below one-half part per 1,000 parts of water.

Parcel
A discrete area of land, subdivided or unsubdivided, in a single ownership.

Pasture
Grass or other vegetation eaten as food by grazing animals, or ground on which such vegetation grows.

Permeability
The measure of a soil's ability to drain water.

Pesticide
An agent used to control pests such as insects, weeds, fungi, bacteria, and rodents. Some pesticides can contaminate water, air, or soil and accumulate in man, animals, and the environment. They have been shown to interfere with the reproductive processes of predatory birds and possibly other animals.

Phosphorous
An element that while essential to life, contributes to the eutrophication of lakes and other bodies of water.

Physiographic Features
The soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

Planned Unit Development (P.U.D.)
An area of land developed as a single entity, or in approved stages, which is totally planned to provide for a variety of residential and compatible uses and common open space.

Plant and Wildlife Habitat Areas

A community of plants commonly identifiable by the composition of its vegetation and physiographic characteristics and features that provide food, water, and cover, nesting and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area. Plant and wildlife habitats include:

a. Colonial water bird nesting sites;

b. Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;

c. Existing riparian forests (for example, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline and which are documented breeding areas);

d. Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example relatively mature forested areas within the Critical Area of 100 acres or more or forest connected with such areas);

e. Other areas which may in the future be identified by State and Federal agencies as important plant or wildlife habitat areas;

f. Other plant and wildlife habitats determined to be of local significance in Talbot County include the habitats of:

Geese and Swans
- Canada goose
- Snow goose
- Brant
- Mute swan
- Tundra swan

Dabbling Ducks
- Mallards
- Black ducks
- Blue-winged teal
- Green-winged teal
- American wigeon

Diving Ducks

Freshwater
- Canvasback duck
- Redhead duck
- Greater scaup

Brackish/Open Sea
- Black scoter
- Surf scoter
- Common scoter
- Red-Breasted merganser
- Common eider

Forest Interior Dwelling Birds
- Flycatcher, Acadian
- Ovenbird
- Parula, northern
- Tanager, scarlet
- Vireo, yellow-throated
- Warbler, hooded
- Warbler, prothonotary
- Waterthrush, Louisiana
- Woodpecker, hairy
- Hawk, red-shouldered
- Owl, barred
- Redstart, American
- Vireo, red-eyed
- Warbler, black and white
- Warbler, Kentucky
- Warbler, worm-eating
- Whip-poor-will
- Woodpecker, piliated

Colonial Nesting Birds
- Herons
- Egrets
- Terns
- Glossy Ibis

Shellfish
- Oysters
- Crabs
- Blue crabs
- Clams

g. Natural Heritage Areas which have been designated by the State of Maryland.

Port

A facility or area established or designated by the state or local jurisdictions for purposes of waterborne commerce.

Private Harvesting
The cutting and removal of trees for personal use.

Project Approvals
The approval of development, other than development by a state or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

Public Boat Dock Facility
A state or county facility open to the public. Not a private facility or one to be used only by the residents of a particular development.

Public Water Oriented Recreation
Shore dependent recreation facilities or activities provided by public agencies which are available to the general public.

Reach
The stretch of water visible between bends in a river or channel.

Reclamation
The reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.

Redevelopment
The process of developing land which is or has been developed.

Reforestation
The reestablishment of a forest through artificial reproduction or natural regeneration.

Renewable Resource
A resource that can renew or replace itself and therefore with proper management can be harvested indefinitely.

Revetment
A sloped facing, as of masonry, used to support an embankment.

Riprap
A layer of stones, gravel, or boulders placed on a slope or shore to prevent loss of bank material by wave action or erosion.

Riparian Habitat
A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines and wetlands.

Runoff
The portion of rainfall, melted snow, or irrigation water that flows across ground surfaces and eventually is returned to water bodies. Runoff can pick up pollutants from the air or land and carry them to the receiving waters.

Salt Water Intrusion
The invasion of salt water into a body of fresh water, including underground aquifers. When this invasion is caused by oceanic waters, it is called sea water intrusion.

Sanitary Landfill
An engineered method of solid waste disposal on land in a manner that protects the environment. Waste is spread in thin layer, compacted to the smallest practical volume and covered with soil at the end of each working day.

Seasonally Flooded Water Regime
A condition where surface water is present for extended periods, especially early in the growing season. When surface water is absent, the water table is often near the land surface.

Seawall
A wall or embankment to prevent erosion of a shoreline.

Sedimentation
The settling out of solids by gravity.

Selection
The removal of single, scattered, mature trees, or other trees from uneven-aged stands by frequent and periodic cutting operations.

Setback
The minimum distance that a structure shall be set back from property lines, according to the relevant sections of this ordinance.

Shell Marl
A mixture of clays, carbonates of calcium and magnesium, and remnants of shells, forming a loam used as fertilizer.

Shoaling
The act of becoming shallow.

Shore Erosion
The wearing away of land by wind and water action resulting in a net loss of land over a given length of shoreline.

Shore Erosion Protection Works
Those structures or measures constructed or installed to prevent or minimize erosion of the shorelines.

Shoreline Development Buffer
The area at least 100 feet wide measured landward from the Mean High Water line of tidal waters, tidal wetlands, and from tributary streams. These areas are usually referred to as the Buffer.

Significantly Eroding Shoreline
Shoreline that erodes 2 feet or more per year.

Soil Conservation and Water Quality Plans
Land use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

a. How the landowner plans to treat a farm unit;
b. Which Best Management Practices the landowner plans to install to treat undesirable conditions; and
c. The schedule for applying those Best Management Practices.

Solid Waste
Useless, unwanted, or discarded material with insufficient liquid content to be free flowing.

Species in Need of Conservation
Those fish and wildlife species whose continued existence as part of the state's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, Sections 10-2A-03 & 4-2A-03, Annotated Code of Maryland.

Spoil
Dirt or rock that has been removed from its original location, specifically materials that have been dredged from the bottoms of waterways or removed in the process of surface mining.

Spoil Pile
Rejected materials piled or deposited during surface mining or dredging.

Steep Slopes
Slopes of 15 percent or greater incline.

Submerged Aquatic Vegetation (S.A.V.)
Plant life that grows where water is six feet deep or less. This underwater community provides food and habitat to major fish species and is a source of food to waterfowl and aquatic mammals.

Thinning
A forest practice to accelerate tree growth of quality trees in the shortest interval of time.

Threatened Species means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531 et seq., as amended. The Delmarva Fox squirrel and the Sedge wren are threatened species in Talbot County.

Topography
The existing configuration of the earth's surface including the relative relief, elevation and position of land features.

Transitional Habitat
A plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

Transportation Facilities
Anything that is built, installed, or established to provide a means of transport from one place to another.

Tree
A tall woody plant with a trunk of at least 4 inches in diameter measured 4 feet above grade.

Tributary Streams
Those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the County.

Utility Transmission Facilities
Fixed structures that convey or distribute resources, wastes, or both, including, but not limited to, electric lines, water conduits, and sewer lines.

Wash Plant
A facility where sand and gravel is washed during processing.

Water Based Aquaculture
The raising of fish and shellfish in any natural, open, free flowing water body.

Water Dependent Activities
Those activities which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to a water body for transportation, recreation, energy production or transmission, or source of water and where the use of the water is an integral part of the activity. An activity is water dependent if it cannot exist outside the Shoreline Development Buffer and is dependent on the water by reason of its intrinsic nature. These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water use industries, marinas, and other boat docking structures, public beaches, and other public water oriented recreation areas, and fisheries activities. Excluded from this definition are individual private piers installed or maintained by riparian landowners, which are not part of a subdivision providing community piers. Nonwater dependent activities are all other activities not included in the definition of water dependent activities.

Water Table
The upper level of ground water.

Water Use Industry
An industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

Waterfowl
Birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

Wildlife Corridor
A strip of land having vegetation that provides habitat and a safe passageway for wildlife.

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2000 Legislative Session, Legislative Day No. March 28, 2000

Bill No. 762

Introduced by: Ms. Spence

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND

By the Council March 28, 2000

Introduced, read first time, ordered posted, and public hearing scheduled on Tues. April 18 at 1:35 p.m. at the County Council Chambers, Court House, South Wing, Easton, Maryland 21601.

By Order Jessica Mortis
Secretary

EXHIBIT
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A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

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

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

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

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

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

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

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

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

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

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

BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days following its enactment.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 762 having been published, a public hearing was held on Tues. April 18, 2000

BY THE COUNCIL

Read the third time.

ENACTED April 25, 2000 *
AS AMENDED

By Order Jessica Mons
Secretary

Spence - aye
Dyott - aye
Foster - aye
Higgins - aye
Harrison - aye

RECEIVED
AUG 19 1999
TALBOT COUNTY COUNCIL

TOWN OF EASTON

CHRISTOPHER B. KEHOE
TOWN ATTORNEY
EMAIL: CKEHOE@EDTKLAW.COM

16 SOUTH WASHINGTON STREET
EASTON, MARYLAND 21601
TELEPHONE: (410) 822-1988
FACSIMILE: (410) 820-5053

August 19, 1999

This looks OK to me. H.

C. Eugene Butler, Mayor and
Members of the Easton Town Council

Robert D. Higgins, President and
Members of the Talbot County Council

Members of the Easton Planing & Zoning Commission

Members of the Talbot County Planning & Zoning Commission

Re: Growth Allocation Procedures Within Municipalities

Dear Ladies and Gentlemen:

On August 9, 1999, Daniel Cowee, the County Planner, Michael Pullen, the County Attorney, Tom Hamilton, the Town Planner, Lynn Thomas, the Assistant Town Planner and I met to discuss issues relating to the County Council's enactment of Bill No. 699 which pertains to the procedures and standards which will govern the award of Chesapeake Bay Critical Area growth allocation within municipalities in Talbot County. It is a follow up to the joint Council/Commission meeting held in the spring to discuss these matters.

At the meeting, the following topics were discussed and the following matters decided pending upon your approval:

seems to go beyond growth al. question

1. Application Process: Any development activity within the Town which would require growth allocation from the County will be reviewed by the Town according to the Town's subdivision regulations or the Town's site plan review process. The procedure utilized will vary according to the type of development proposed. We believe that it is most appropriate for the application for the development to be made to the Town. The Town in turn will refer copies of the application to the County Council for the County Council's consideration and review. Obviously, an applicant should provide all of the information necessary to allow for both Town and County joint review. We believe that there is already a close convergence between the Town zoning and subdivision regulations and the County zoning ordinance with regard to the type of information required to support a growth allocation request. The planning staff of the Town will make sure that the application requirements are completely compatible.

2. Staff Review: The project will be reviewed independently by County and Town staffs who will

EXHIBIT
tabbies
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make recommendations to their respective planning commissions with regard to the project. We recommend that copies of staff reports generated by each jurisdiction be forwarded to the other jurisdictions planning commission to encourage comity and close cooperation.

3. Planning Commission Review: We recommend that the Town Planning & Zoning Commission and the County Planning & Zoning Commission hold a joint hearing on the application. We believe that there is a substantial advantage in allowing both commissions to hear the same presentation at the same time and to interact with one another to resolve questions prior to making formal recommendations. We do not believe that issues such as who will chair the meeting, etc. will prove to be a problem; if we are wrong, we recommend that the chair of the Town Commission conduct the first meeting; the Chair of the County Commission conduct the second etc.

Each Commission would vote separately and make its recommendations to its respective Council. In addition, each Commission would make its recommendations available to the other jurisdiction.

4. For the same reason we recommend a joint hearing for the Town and County Planning Commission, we also recommend that the County Council and the Town Council hold a joint public hearing on the application. We do not believe that matters such as venues and rules of procedures will be problematic. Again, although the Councils will conduct a joint hearing, each Council will make its decision separately as an independent entity. The Councils' hearing will hopefully be coordinated with the Critical Area Commission hearing so as to eliminate additional hearings.

5. Conditions: Both the Town's subdivision and planned unit development process and the County's current growth allocation process permit the respective jurisdictions to attach conditions to an approval. We discussed the possibility that the review process could result in the Town and County granting an application for growth allocation but making the application subject to conditions which would be conflicting in some fashion. We feel that the procedures outlined above, with their emphasis on jointly held hearings and the exchange of staff reports and Planning & Zoning Commission recommendations, will minimize the possibility of this occurring.

6. Amendments to Approved Projects: The Town's land use regulations allow for amendments to approved projects. What role should the County have in the review of an amendment to a project involving an award of growth allocation? We believe that the best approach would be to require that any amendment to a project involving growth allocation be subject to County Council approval for a period of 5 years after the date of the initial approval. This time frame is analogous to the period of time over which the County can veto, under certain circumstances, Town zoning decisions upon an annexation and we feel that this proposal will allow the County to have some degree of confidence that the Town will not ignore its wishes and goals after the growth allocation is awarded.

It was recognized that the County zoning ordinance relating to growth allocation awards to municipalities will need some minor amendments in order to incorporate these provisions. The Town's zoning ordinance provisions relating to growth allocation procedures will have to be substantially revised. This step will take place either separately or as part of an overall review and revision of the

Town's Critical Area zoning regulations.

If the respective Councils are in agreement that the procedure outlined above is appropriate and workable, the staff of each jurisdiction will draft the appropriate legislation.

Very truly yours,

Christopher B. Kehoe

CBK/lsh

cc: Michael L. Pullen, Esquire
W. Thomas Hamilton
Daniel Cowee
Lynn B. Thomas

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

R. ANDREW HOLLIS
County Manager

March 24, 2000

The Honorable Robert C. Willey, President
Board of Commissioners
Town of Easton
P.O. Box 520
Easton, Maryland 21601

Dear Mr. Willey:

Enclosed please find a copy of a bill entitled, "A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND" which will be introduced at the Talbot County Council meeting on Tuesday, March 28, 2000 at 1:30 p.m. The date of the public hearing will be announced at the meeting and advertised in the Star Democrat on Friday, March 31, 2000.

Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Commissioners, Town of Easton

EXHIBIT 5

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010
TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

R. ANDREW HOLLIS
County Manager

March 24, 2000

The Honorable George Wilson, Jr.
Board of Commissioners
Town of St. Michaels
P.O. Box 206
St. Michaels, Maryland 21663

Dear Mr. Wilson:

Enclosed please find a copy of a bill entitled, "A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND" which will be introduced at the Talbot County Council meeting on Tuesday, March 28, 2000 at 1:30 p.m. The date of the public hearing will be announced at the meeting and advertised in the Star Democrat on Friday, March 31, 2000.

Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Commissioners, Town of St. Michaels

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
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PHONE: 410-770-8010
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ahollis@talbgov.org

R. ANDREW HOLLIS
County Manager

March 24, 2000

The Honorable Ronald Fox, President
Board of Commissioners
Town of Oxford
P.O. Box 339
Oxford, Maryland 21654

Dear Mr. Fox:

Enclosed please find a copy of a bill entitled, "A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND" which will be introduced at the Talbot County Council meeting on Tuesday, March 28, 2000 at 1:30 p.m. The date of the public hearing will be announced at the meeting and advertised in the Star Democrat on Friday, March 31, 2000.

Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Commissioners, Town of Oxford

term rentals, to establish minimal standards for short-term rentals, to provide administrative remedies for failure to adhere to such standards and to limit the use of short-term rentals through December 31 in the year 2000.

I would like to introduce this bill. Are there any other members of the Council that would also like to introduce?

MR. HIGGINS: Yes.

MS. SPENCE: Mr. Higgins. Anyone else? Mr. Dyott, Mr. Harrison.

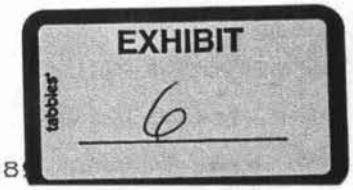
MR. FOSTER: Council.

MS. SPENCE: Council bill. Okay. Introduced by the Council. We will schedule this for public hearing on Tuesday, April 11, at 1:35 p.m.

MR. FOSTER: Mr. Pullen, the only changes in this were the two we talked about at the work session, the short-term rental?

MR. PULLEN: Yes, that's correct.

MS. SPENCE: Next bill will be known as Bill No. 762, a bill to establish procedures for awarding supplemental growth allocation to municipalities in Talbot



County, Maryland. I'm going to put my name on this bill as introducing this. Is this also by the Council? Mr. Foster?

MR. FOSTER: I had one question, and maybe Mr. Pullen can answer it. On No. 3, Council review, it says the County and municipal councils shall hold a joint hearing, co-chaired by the chairman, blah, blah, blah, which shall be coordinated jointly with the Critical Areas Commission. I'm wondering since we're talking about an entity that would be beyond the control of either the Town or the County if we should sort of put ourselves in a difficult situation there. Would it be better to say may or something that wouldn't hang us up if the Critical Areas Commission decided to be -- Mr. Cowee is shaking his head yes. I don't want to phrase this in the wrong way, but if for some reason they were not as enthusiastic --

MS. SPENCE: Right.

MR. FOSTER: -- as the other two councils on moving forward, it might be that the councils would want to go ahead, have their public hearing, anyway, and then try to work with the Commission as opposed to the preferrable

group, which would be for all three to be working together from the beginning.

MR. PULLEN: Right.

MS. SPENCE: Go ahead.

MR. HIGGINS: And in fact, the "Critical Area Commission" generally does not get involved with the whole Commission on a growth allocation issue.

MR. FOSTER: Good point, and they may refuse to be a part of this.

MR. HIGGINS: Well, and this would, in fact, be a staff review issue that they would not be a party joint to the hearing. You know, it would be a County Council hearing, it would be a Town Council hearing, but it would be up to review by the staff and then kind of rubber stamp from the Commission. Dan.

MR. COWEE: They would hold a panel, what they call a panel hearing, which is made up of like five members. Net five, five members including the staff will hold the hearing and then take back a recommendation on the basis of what they heard from that, from the input back to the whole Commission, but if that doesn't happen at the same time as

yours and the Town Council's happens, it could be months before you ever got through the process, so I agree with Mr. Foster. Having that as a may makes a lot more sense.

MR. FOSTER: And Mr. Higgins also makes I think a very good point because I remember the letter we got from Judge North on, I don't remember whether it was the handicapped bill, but basically indicating they weren't comfortable taking a position upfront or being a part of that process, and I want to include them, but I don't want the process to break down if they don't want to be included at a particular part in it.

MR. HIGGINS: I think it's appropriate to put the introduced with the may in it rather than have an amendment later on --

MR. FOSTER: It would be simpler.

MR. HIGGINS: -- that they may be included, and now, it'll be enough problem, just watch and see, getting two bodies scheduled for a public hearing, being the County Council and the Town Council. If you throw a third body in with people that are comprised from all over the State, like Dan said, you could end up being 60, 90, 120 days before you

could even set a time for a hearing, so I think that that will effectuate us operating better.

MS. SPENCE: Okay. We'll make that change.

MR. FOSTER: Change that word to may before it's introduced?

MS. SPENCE: Right.

MR. HARRISON: And we also had already changed the --

MS. SPENCE: Yes, up in Section 1, No. 1.

MR. FOSTER: Oh, what is that?

MS. SPENCE: The municipality shall forward the application to County Council for consideration, review within five working days. Okay.

MR. FOSTER: Okay.

MS. SPENCE: So with those two changes, I'm going to put that in this folder.

MR. FOSTER: What happens if they don't?

MS. SPENCE: Excuse me?

MR. FOSTER: There's nothing we can really do.

MR. HIGGINS: Send Batman over to them.

MR. FOSTER: Okay.

MS. SPENCE: So that's, with those changes, I'm going to slip that in that folder. Okay.

MR. FOSTER: Is there similar legislation moving through the Town?

MS. SPENCE: Should be.

MR. FOSTER: Is this coordinated with the --

MR. PULLEN: Yes, I'm sent him a copy of it, and he's reviewed it.

MS. SPENCE: Right.

MR. PULLEN: But I'm not sure that he's prepared a bill yet. I don't believe he has.

MS. SPENCE: But the notion is that will happen. They will have the same procedure in place as we have in ours.

MR. HOLLIS: We've also sent a copy of the legislation to all the municipalities with critical area.

MS. SPENCE: Okay. So they all know. Great. Okay. So this is known as Bill No. 762, public hearing on Tuesday, April 11th, at 1:35. That will be in here.

We also have an administrative resolution to, to introduce and read. A resolution to clarify the authority

3739

File - Bill No. 3/31 - 02

The Star-Democrat
Easton, MD

This is to certify that the annexed

Notice was published in

The Star-Democrat,

One of the newspapers printed and

published in Talbot County,

Maryland,

1 times in each of 1

successive weeks beginning the

31 day of March

2000

and the last insertion on the 31

day of March 2000.

Chesapeake Publishing Corporation
Publishers of The Star Democrat
Per

BT

TALBOT COUNTY PUBLIC NOTICE

Notice is hereby given that a public hearing will be held by the County Council of Talbot County, on Tuesday, April 11, 2000 at 1:35 p.m. in the Council Hearing Room, Courthouse, Easton, Maryland, for consideration of Bill No. 762, A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

Copies of the Bill are available for review in the Office of the County Manager during regular office hours. If you require communications assistance, please contact the County Manager's Office at (410) 770-8010 or TTY (410) 820-9377 by Friday, April 7, 2000,

All interested parties are hereby notified and invited to attend.

COUNTY COUNCIL OF TALBOT COUNTY

E76478

TALBOT COUNTY OFFICE
OF
PLANNING AND ZONING
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601
Phone 410-770-8030
Fax 410-770-8043

DANIEL R. COWEE
Planning Officer

FRANK V. HALL
Assistant Planning Officer

RECEIVED
APR 14 2000
TALBOT COUNTY COUNCIL

MEMORANDUM

TO: County Council Members and County Manager

FROM: Dan Cowee, Planning Officer

RE: Recommendation on Allocation Bill No. 762

DATE: April 13, 2000

The Planning Commission reviewed proposed legislative bill No.762, a bill to amend the Zoning Ordinance to establish procedures for awarding supplemental growth allocation to municipalities in Talbot County, at their regularly scheduled meeting on April 6, 2000. Commission members were familiar with the proposal since they participated in a number of the joint workshops with the towns and the County Council.

Mr. Cowee noted that there were non substantive changes that needed to be made to the bill to correct the proposed language. He stated that under paragraph two line four "Planning Officers" needed to be changed to "Planning Staffs" since not all jurisdictions have a Planning Officer by title. Paragraph two line eight states that the Planning Commissions make recommendations to respective councils. Some municipalities have commissions rather than councils so this sentence should be changed to read as follows:

> Each Planning Commission shall vote separately and make its recommendations to its respective council <u>or commission</u>.

In addition to this change, paragraph [3] should be changed to read as follows:

[3] Council Review. The county and municipal councils <u>or commissions</u> shall hold a joint hearing on the application, co-chaired by the designated chairperson of each council <u>or commission</u> which shall be coordinated jointly with the Critical Area Commission. The county and municipal councils <u>or commissions</u> shall make their respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 19.14 (c) (iv) [d].

EXHIBIT
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7

Commission members briefly discussed the review process as proposed and indicated that it seemed like a workable solution to address the growth allocation issue.

A motion was made by Mr. Hutchinson, seconded by Mr. Boicourt and unanimously passed to recommend to the Council that this bill be passed with the minor changes noted by Mr. Cowee.

As the Planning Officer for the County, I concur with the Planning Commission recommendation and recommend that the Council pass this legislation.

THE COMMISSIONERS OF ST. MICHAELS

SETTLED 1670 - 80

INCORPORATED 1804

FACSIMILE TRANSMITTAL SHEET

TO: Andy Hollis

FROM: Cheril Thomas

FAX NUMBER:

DATE: 4 17 00

COMPANY:

TOTAL NO. OF PAGES INCLUDING COVER:

PHONE NUMBER:

RE: County Bill 762

NOTES/COMMENTS:
Per your request – please let me know if you think my input at the public hearing is necessary. Thanks!

CONFIDENTIALITY NOTICE

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P.O. Box 206 St. Michaels, MD 21663
Phone: (410)745-9535 Fax: (410)745-3463
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EXHIBIT tabbies 8

LAW OFFICES OF
BANKS, NASON & HICKSON
PROFESSIONAL ASSOCIATION
118 BAPTIST STREET
P.O. BOX 44
SALISBURY, MARYLAND 21803-0044
e-mail: banklaw@shore.intercom.net

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

NIC B. KUVSHINOFF

TELEPHONE
(410) 546-6644
FAX
(410) 546-2560

April 13, 2000

Michael L. Pullen, Esquire
P. O. Box 1928
Easton, Maryland 21601-1928

Re: Talbot County Bill No 762

Dear Mr. Pullen:

Thank you for your letter dated March 16,2000, enclosing therewith what is now Talbot County Bill No. 762.

As you know, I am the Town attorney for St. Michaels. As you may be aware, the Town of St. Michaels has been going through a series of hearings relating to applications for growth allocation. During that process, the Applicant has, through its attorney, Mr. DeTar, told the Town that the Town is obligated to grant growth allocation to his client for a project known as "Perry Cabin, Phase II". The Town has recently denied that application. If Mr. DeTar is true to his word, then there will be litigation in the near future involving the application for growth application relative to Perry Cabin Farm in St Michaels, Maryland.

I note that Bill No. 762 is stated to amend Title 19-14(c)(iv)(c)[i]. There presently are no further subparagraph numbers or subparagraph letters in that section, so as to distinguish and indicate those unnumbered and unlettered paragraphs in that section which are not expressly addressed by Bill No 762, to indicate whether they are intended to be deleted or intended to remain in that section. One might infer from Bill No 762 that the remainder of Section 19-14(c)(vi)[i], which is not repeated in Bill No 762, is being repealed

I would respectfully request that the language of Bill No. 762 be changed, not to alter it substantively, but to include those paragraphs which I have highlighted in the enclosed copy of the present Section 19-14(c)(iv)(c)[i], so that there will be no doubt, in the future, as to whether they are intended to be deleted, or intended to remain, as a part of that section

Thank you for your attention and consideration of this matter. Please let me know whether it is your intention to accept my suggestion and furnish me with the most up to date copy of this Bill.

Please also copy me on any further proposed legislation involving growth allocation in the future.

Thank you for you attention to this matter.

Very truly yours,

H. Michael Hickson

HMH/pjh

Enclosure

cc. Cheril S. Thomas, Town Clerk/Manager

f:\hmh\amuir\landuse\growth\hrs\hr042mpullen.doc

Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two (2) year period, upon a recommendation by the Planning Officer and approval by the County Council.

A request denied by the Critical Area Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for Critical Area Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by the County Council within ninety (90) days of Critical Area Commission denial. An extension of the ninety (90) day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.*

[* Amendment, Bill 459 - Effective November 9, 1991 and Bill 642 - Effective April 25, 1997]

[h] Growth allocation district boundary amendment requests for property outside of the towns and outside of areas shown as possible annexation areas should be reviewed by the County on an annual cycle, with requests submitted to the Planning Officer by October 1st of each year.

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

ARE THESE PARAGRAPHS INTENDED TO REMAIN OR BE REPEALED?

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

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

acres). Upon Critical Area Commission approval, the County shall reserve acreage for each town.

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

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

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

In determining whether the twenty (20) acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. Of the 128 acres, twenty-four (24) acres is reserved for the Town of Easton, forty-four (44) acres for the Town of Oxford, twenty-four (24) acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and thirty-six (36) acres for the County for growth allocation for property outside of the Towns and outside of areas shown as possible annexation areas (See Maps 1, 2 and 3).*

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

[k] The number of reserved acres allocated among the Towns for rezoning in Section 19.14(c)(1)(iv)[i] & [j] & (iii) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four (4) years thereafter.

[l] In any one rezoning review cycle, not more than 100 acres should be approved by the County for reclassification from the Rural Conservation District to any other zoning district. Not more than twenty (20) acres should be reclassified from the Rural Residential, Town Residential, or Village Center Districts or area of less than twenty (20) contiguous acres of Limited

elimination of language Section 4(iii)(b) as in this amended version. Spence votes aye.

MR. DYOTT: Dyott, aye.

MR. FOSTER: Foster, aye.

MR. HIGGINS: Higgins, aye.

MR. HARRISON: Harrison, aye.

MS. SPENCE: Okay. And now, we need to vote on the bill as amended. On -- where are we?

MR. FOSTER: 761.

MS. SPENCE: 761, thank you. On Bill No. 761, Spence votes aye.

MR. DYOTT: Dyott, aye.

MR. FOSTER: Foster, aye.

MR. HIGGINS: Higgins, aye.

MR. HARRISON: Harrison, aye.

MS. SPENCE: Okay. Thank you, gentlemen. Next bill -- we have now passed 7:30, at which time we need to close the bids. Bids are now officially closed. Is there anyone in the audience that has a bid? Last call. Okay. Bids are now officially closed, and we'll go on with a vote on Bill No. 762, a bill to establish procedures for awarding

supplemental growth allocation to municipalities in Talbot County, Maryland.

There are some -- we have an amended version of that as well. Do you want to address these, this amended version?

MR. PULLEN: The amended version includes two unnumbered sections that were in the code originally that were not mentioned in the proposed bill, and the omission of their mention in the bill could have been interpreted as a repeal of those sections --

MS. SPENCE: Okay.

MR. PULLEN: -- and for that reason, they were specifically included verbatim in the new bill so that there would be no confusion.

MR. FOSTER: This addresses the concerns of the St. Michaels Town attorney?

MR. PULLEN: Yes.

MR. FOSTER: And goes no further than that?

MR. PULLEN: Correct.

MS. SPENCE: And a few little language changes in part 3, Council review, where they would use the term Commission as well as Council just to make sure everybody's

using the right language when we refer to the governing bodies and the planning bodies.

MR. FOSTER: Move the amendments as proposed in this amended draft.

MS. SPENCE: Do we have to vote on whether they're substantive or not?

MR. FOSTER: Yeah, but I guess you have to have them, a motion -- they have to be on the floor to make the determination whether they're substantive or not.

MS. SPENCE: Well, they're on the floor.

MR. FOSTER: Somebody has to second that and then --

MR. HARRISON: Second.

MS. SPENCE: Second, thank you. All right. We need to vote on whether or not they are substantive. Can I have a motion concerning that issue?

MR. HARRISON: I would move that the amendments to this bill are not substantive.

MR. FOSTER: Second.

MS. SPENCE: Second, moved and seconded. Spence votes aye.

MR. DYOTT: Dyott, aye.

MR. FOSTER: Foster, aye.

MR. HIGGINS: Higgins, aye.

MR. HARRISON: Harrison, aye.

MS. SPENCE: We now have to vote on approving the amendments as written. Spence votes aye.

MR. DYOTT: Dyott, aye.

MR. FOSTER: Foster, aye.

MR. HIGGINS: Higgins, aye.

MR. HARRISON: Harrison, aye.

MS. SPENCE: And now, we need to vote on the entire Bill No. 762 as amended. Spence votes aye.

MR. DYOTT: Dyott, aye.

MR. FOSTER: Foster, aye.

MR. HIGGINS: Higgins, aye.

MR. HARRISON: Harrison, aye.

MS. SPENCE: Okay. Thank you. We have two bid openings. The first bid, No. 00-16, request for proposals, construction management services, renovations and additonal, Talbot County administrative complex, courthouse - south wing.

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

TTY: 410-822-8735
FAX: 410-770-8007
aholllis@talbgov.org

R. ANDREW HOLLIS
County Manager

May 1, 2000

The Honorable Robert C. Willey, President
Board of Commissioners
Town of Easton
P.O. Box 520
Easton, Maryland 21601

Dear Mr. Willey:

Please be advised that at the Talbot County Council meeting on Tuesday, April 25, 2000, Bill No. 762, A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND, as amended, was enacted. This Bill will become effective on June 24, 2000.

A copy of the Bill has been enclosed for your review. Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Dan Cowee, Planning Officer

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R. ANDREW HOLLIS
County Manager

May 1, 2000

The Honorable Ronald Fox, President
Board of Commissioners
Town of Oxford
P.O. Box 339
Oxford, Maryland 21654

Dear Mr. Fox:

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Cc: Dan Cowee, Planning Officer

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R. ANDREW HOLLIS
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May 1, 2000

The Honorable George Wilson, Jr.
Board of Commissioners
Town of St. Michaels
P.O. Box 206
St. Michaels, Maryland 21663

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County Manager

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Enclosure

Cc: Dan Cowee, Planning Officer

ir next hearing as this has already been drafted by the legal office. Larry Duket moved on panel recommendation to approve the legislative proposal for Anne Arundel County discussed by the staff with the condition that the minor error appearing on page 1, line 17 in the preamble of Bill #12-00 be corrected. The motion was seconded by Dave Cooksey and carried unanimously.

Tracey Green, Circuit Rider, CBCAC and Office of Planning, presented for VOTE the City of Fruitland's four year Comprehensive Review. Ms. Green explained that the City of Fruitland has a very limited amount of Critical Area and a total of forty acres of which thirty eight acres are undeveloped. She explained that because of the administrative burden of doing a typical comprehensive review, the City has adopted a streamlined Critical Area ordinance to replace their existing Program and Ordinance. It will contain only those aspects of the Criteria that are applicable to the City's Critical Area. The ordinance, along with the City's official Critical Area map, will be considered the City's Critical Area Program. Ms. Green reviewed the condensed document for the Commission. A joint public hearing with the Critical Area Commission panel and the city Planning Commission and Council was held on May 9, 2000 and no public comments were received. Sam Johnson oved to approve the Fruitland Comprehensive Review changes as presented. The motion was seconded by Bill Bradley and carried unanimously.

Ms. Hoerger, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, Bill #762 which established procedures for awarding supplemental growth allocation in the municipalities in Talbot County. In anticipation of future growth the County has established a joint review process that will be conducted with each town when considering allotting additional growth allocation which will include the Planning Commission, the Talbot County Council, Town Commissions, and any other Commission involved at the local level. The Town of Easton has used up most of its original allocation since 1989. A request for additional acres was denied to the Town last year by the County. The Commission supported the Chairman's determination of Refinement.

Ms. LeeAnne Chandler, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, the proposal for growth allocation by Wicomico County to change the Critical Area designation on Tax Map 46, Parcel 116 , River Woods, from RCA to LDA. The proposed use is for a residential subdivision with 5 lots in the Critical Area. She said that with the appropriate mitigation for forest clearing the project eets the requirements for growth allocation as stated in the Wicomico County ordinance and will be consistent with COMAR 27.01.02.06 and the Commission policy on growth allocation. The property includes the 100-foot Buffer to "My Lord's Creek" and is completely forested. This project is recommended for approval by the Commission Staff

EXHIBIT
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RECEIVED
OCT 14 2003
TALBOT COUNTY MANAGER

TOWN OF EASTON
P. O. Box 520
Easton, Maryland 21601

October 14, 2003

Mr. R. Andrew Hollis
Manager
Talbot County
142 N. Harrison Street
Easton, Maryland 21601

Dear Mr. Hollis:

The Town Council of the Town of Easton respectfully request the Talbot County Council to consider granting growth allocation of 58.8 LDA, 97.2 IDA for a total of 156 acres for the Elm Street project.

The Town Council of the Town of Easton recently passed and the Mayor approved Ordinance No. 461, "AN ORDINANCE OF THE TOWN OF EASTON GRANTING THE APPLICATION OF ELM STREET DEVELOPMENT, LC FOR AN AMENDMENT TO AN EXISTING PLANNED UNIT DEVELOPMENT UNDER THE PROVISIONS OF THE EASTON ZONING ORDINANCE AND FOR AN AWARD OF GROWTH ALLOCATION."

We are awaiting the County Council's determination to grant growth allocation for the LDA and IDA.

Thank you for your consideration.

Very truly yours,

TOWN OF EASTON

Robert F. Karge
Town Clerk

RFK:kmr

EXHIBIT
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COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 925*

*** AS AMENDED**

Expiration Date: January 22, 2004

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

A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 9, 2003 at 1:30 p.m. at the County Council Chambers, County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By Order Jessica Morris
Secretary

EXHIBIT 12

A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE

WHEREAS, Talbot County Code § 190-109 D. (9) (d) provides that upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate; and,

WHEREAS, the Town of Easton has requested an award of supplemental growth allocation to increase the acreage reserved to the Town of Easton from 155 to 311 acres, which will decrease the available acreage remaining to the County from 317 to 161 acres; and,

WHEREAS, the Town of Easton has conditionally approved a PUD application and an application for growth allocation by Elm Street Development Company, LC to utilize 156 acres of growth allocation for a project located within the Town of Easton south of Md. Rt. 33; and,

WHEREAS, Talbot County Code § 190-109 D. (9) (d) [3] provides that the Council shall evaluate the application in accordance with § 190-109 D. (4), which provides that, after receiving the recommendation of the Planning Officer and Planning Commission and before approval or denial, the Council shall introduce a bill and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard; and,

WHEREAS, the Council has received the recommendations of the Planning Officer and Planning Commission regarding this application.

NOW, THEREFORE, in compliance with the requirement of Talbot County Code § 190-109 D. (4), the following bill is hereby introduced:

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that:

1. **Award.** Subject to the following conditions, restrictions, and limitations, Talbot County hereby awards 156 acres of supplemental growth allocation to the Town of Easton. This award shall include 97.20 acres to the Town for designation as an Intensely Developed Area (IDA), and 58.80 acres to the Town for designation as a Limited Development Area (LDA).

2. **Conditions, restrictions, and limitations.** This award of growth allocation is subject to the following conditions, restrictions, and limitations, and to the conditions set forth on Exhibit "A", which is incorporated by reference herein:

a. **Use.** The growth allocation shall be used exclusively for the project approved by the Town of Easton by Ordinance No. 461, effective October 9, 2003 (the "Project").

b. **Contingencies.** Easton Town Ordinance No. 461 incorporated Development Plans for the Project as Exhibit "A", and Findings of Fact as Exhibit "B". This award shall be contingent upon full compliance by Elm Street Development, LC, its successors and assigns, with the Development Plans, all requirements set forth in the Findings of Fact, and each of the "Conditions of Approval" attached as Exhibit "A" to the Town of Easton's Findings of Fact.

c. **Criteria.** Talbot County Code § 190-109 D (4) (b) provides that the Council may consider the following criteria in deciding whether to approve or disapprove an application for growth allocation, in addition to the specific requirements and purposes set forth elsewhere in Chapter 190, Zoning, of the Talbot County Code:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the county as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

[8] The protection of the public health, safety and welfare.

d. **Factual findings and approval.** This award of supplemental growth allocation is specifically conditioned upon the Council's review of information provided with regard to the forgoing criteria, and upon the Council's determination and adoption of written findings of fact that the Project, either as proposed or modified to mitigate impacts from the proposed development, satisfies the criteria and is otherwise in the public interest.

Notwithstanding any finding that the Project satisfies these criteria, the Council may nevertheless exercise its legislative discretion to deny the application in accordance with the provisions of Talbot County Code § 190-109 D (4) (c).

e. **Intersection improvements Rt. 322—Rt. 33, mitigation of off-site impacts to County roads, and road frontage improvements.** This award of supplemental growth allocation is specifically conditioned upon the County's review and approval of the proposed improvements to the Rt. 322—Rt. 33 intersection, including the applicant's proportional share of the costs for those improvements, and security for and timing of payment, and upon the Developer's agreement to mitigate off-site impacts to County roads, and the Developer's agreement to construct the road frontage improvements, all as set forth in the "Conditions" attached as Exhibit "A".

f. **Two year limit.** If the Project does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of approval by the Critical Area Commission, this supplemental award of growth allocation may revert to the County, upon recommendation of the Planning Officer and approval by the County Council in accordance with the provisions of Talbot County Code § 190-109 D (7) (b). Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two-year period, upon a recommendation by the Planning Officer and approval by the County Council in accordance with Talbot County Code § 190-109 D (7) (c).

g. **Project amendments.** Any amendment to the Project shall be subject to County Council review and approval for a period of five years following the date of initial approval in accordance with Talbot County Code § 190-109 D (9) (d) [4].

3. **Reservation.** The Town of Easton annexed the subject property in 1999. Pursuant to Art. 23A § 9 (c) (1), Md. Ann. Code, no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use specified in the County master plan extant prior to annexation without the express approval of the County Council. Approval of this ordinance shall not operate to limit the Council's prerogative under that State law in the event the Project is materially changed hereafter.

4. **Non-performance or breach.** In the event of non-performance or breach of: (a) any condition, restriction, or limitation imposed in connection with the award of this supplemental growth allocation, or (b) any agreement executed by Elm Street Development LC, its successors or assigns, with Talbot County, Talbot County may, in its discretion, amend, repeal, rescind, suspend, annul or revoke this supplemental award of growth allocation by introduction and adoption of a bill for that purpose.

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

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 925 having been published, a public hearing was held on December 9, 2003.

BY THE COUNCIL

Read the third time.

ENACTED December 16, 2003*
AS AMENDED

By Order Jessica Mavus
Secretary

Duncan - AYE
Harrington - ABSTAIN
Foster - NAY
Spence - AYE
Carroll - AYE

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

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

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

By the Council November 18, 2003

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

By Order Janice Mans
Secretary

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

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

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

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

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

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

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

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

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

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

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

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

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

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

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

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

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

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

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

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

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

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

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

* * *

§ 190-109 D (9)

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

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

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

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

§ 190-109 D (11)

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

* * *

§ 190-109 D (14)

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

§ 190-109 D (15)

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

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

§ 190-109 D (16)

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

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

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

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

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

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

2. Severability.

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

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

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

PUBLIC HEARING

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

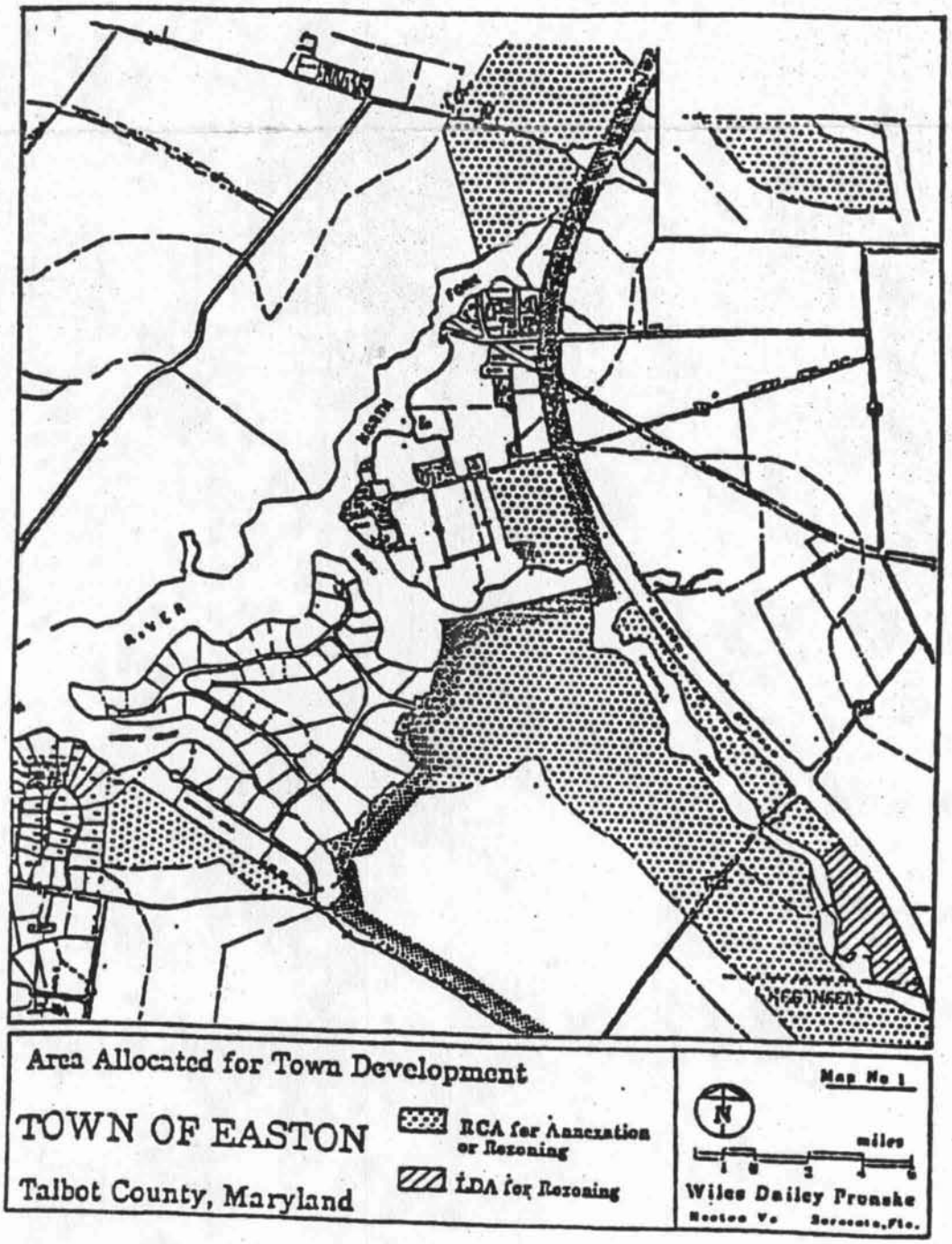
BY THE COUNCIL

Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

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


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
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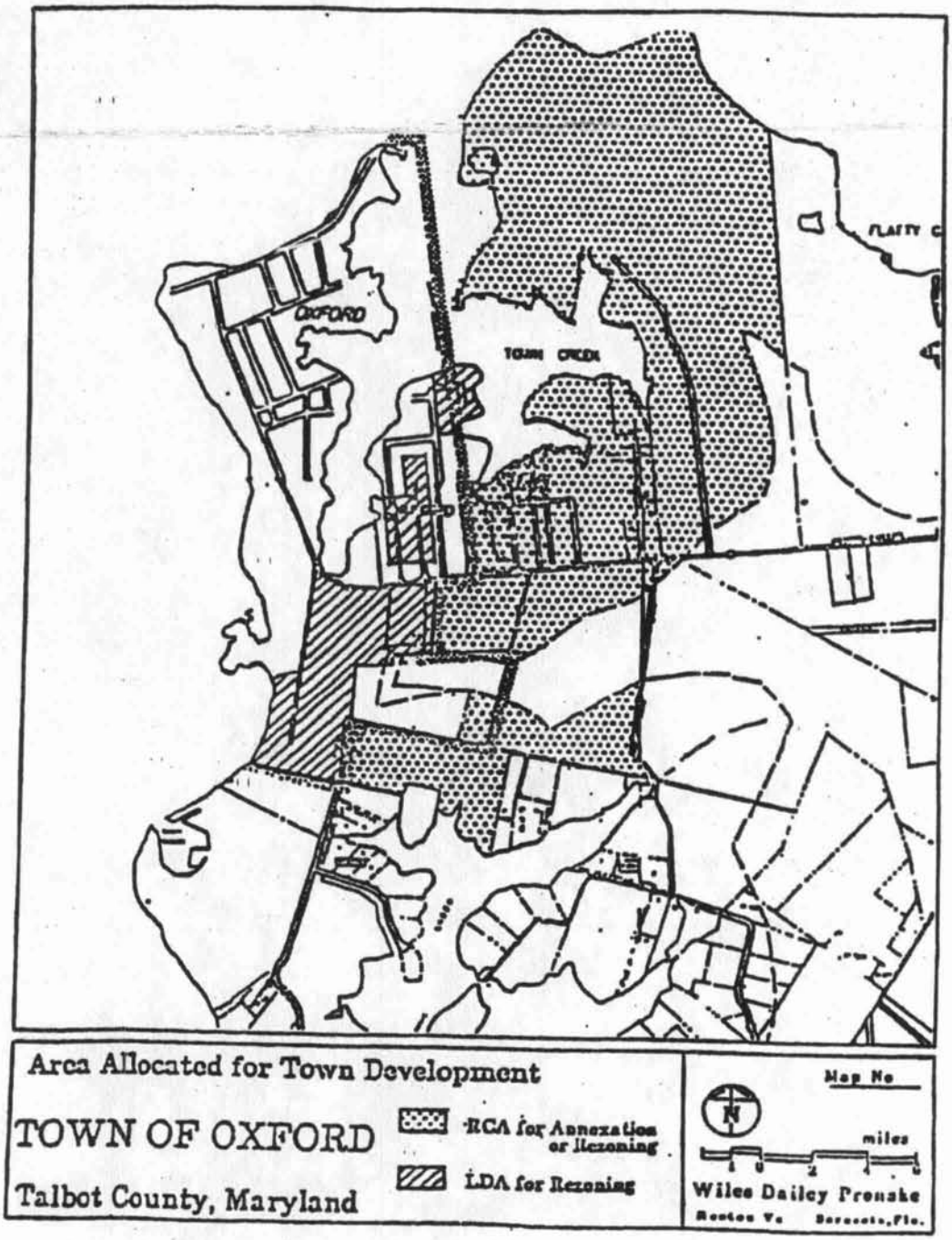
Wiles Dailey Pronske
Boston Va Sarasota, Fla.
RIVER
NORTH
FORK


OXFORD
TOWN CREEK
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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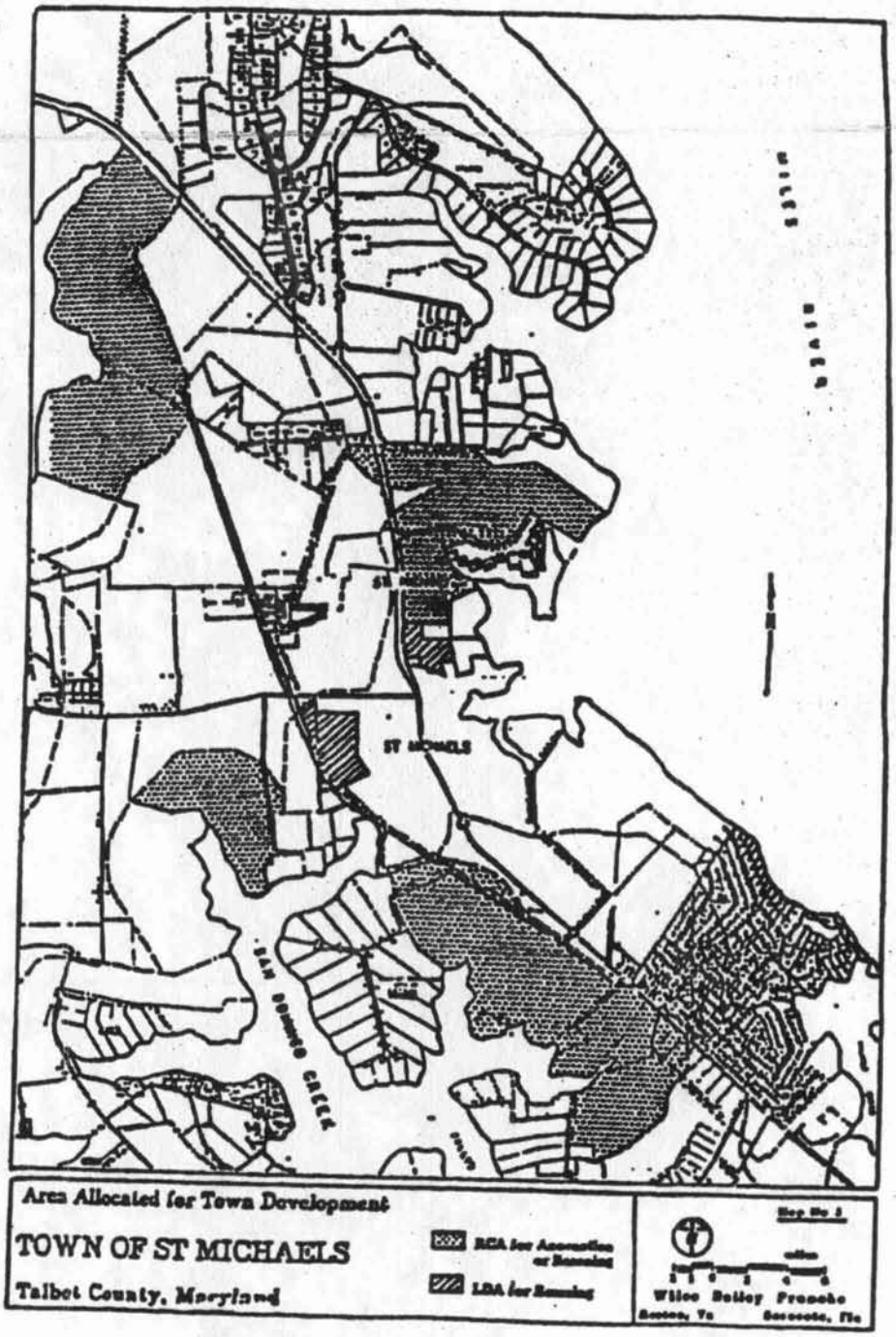
ST MICHAELS
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning

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

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
14

DEC 29 2003

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

RECEIVED
JAN 1 2 2004
TALBOT COUNTY MANAGER

January 8, 2004

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

Re: County Council Bill #925
Supplemental Award of Growth Allocation to the Town of Easton

Dear Mr. Kinney:

At its meeting on January 7, 2004 the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved County Council Bill #925 which awarded 156 acres of supplemental growth allocation to the Town of Easton. Please incorporate this amendment into the County's Critical Area program within 120 days from the date of this letter.

Thank you for attending the Commission's public hearing on County Council Bill #925 and for attending the monthly Commission meeting yesterday. If you have any questions, please telephone me at (410) 260-3478,

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger
Natural Resources Planner

cc: Mr. Andy Hollis, Talbot County Manager
Mr. Mike Pullen, County Attorney
Mr. Tom Hamilton, Easton Town Planner

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

EXHIBIT
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TALBOT COUNTY OFFICE OF PLANNING & ZONING
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

E: 410-770-8030
FAX: 410-770-8043
TTY: 410-822-8735

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.

EXHIBIT
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001545

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

001546

GROWTH ALLOCATION ACREAGES

Jurisdiction	Project Description	Original Reserved	Total Allocated	Total Remaining
own of St. Michaels		**245 Acres**		
	Broad Reach Farm, Strausburg		20.1 Acres	**224.9 Acres**
own 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

001547

L. Ehrlich, Jr.
Governor

ael S. Steele
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/

ebruary 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

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 Commissio

001550

EXHIBIT
17

PUBLIC HEARINGS

COPY

Talbot County Council Bills

922, 926, 927, 929, 931 and 933

BEFORE A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Minuscript

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

DISK ENCLOSED

Reported by: David M. Schafer, AA, CCR

EXHIBIT 18

PUBLIC HEARINGS

Talbot County Council Bills

Y909

2, 6, 92 929, 931 and 933

BEFORE A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School

Easton, Maryland

Reported by: David M. Schafer, AA, CCR

C-O-N-T-E-N-T-S

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MEMBERS OF THE PANEL:

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

—

Marianne Mason, Assistant Attorney General

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P-R-O-C-E-E-D-I-N-G-S

PANEL MEMBER BLAZER: Good evening. We are going to go ahead and get started.

Thank you all for being here. My name is Dave Blazer. I'm with the Critical Area Commission.

We have two hearings tonight. The first one, we'll be talking about several bills, and then after we conclude that public hearing we will start the second public hearing, dealing with Council Bill 933. I'll give us a little more detail as we go through.

The purpose of this hearing, the first hearing tonight, is to hear public comment on Talbot County Council Bills 922, 926, 927, 929, 931 and 932, which comprise amendments to the County's Critical Area Program associated with the comprehensive review of their program.

Talbot County approved these changes to their Critical Area Program on December 9 and December 16, 2003, and they were submitted to the Critical Area Commission.

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On February 5, 2004, the Commission staff determined that the submittal was complete.

On February 27, 2004, Chairman Madden determined that this change was an amendment to the Talbot County's Critical Area Program and appointed a panel to hold a public hearing. That's why we are here this evening. And this hearing is being recorded.

As I mentioned, my name is Dave Blazer. I'm with the Critical Area Commission, specifically with Worcester County and the Coastal Bays Watershed.

Seated over here to my left is Mr. Ed Giese with Dorchester County -- oh, I'm sorry -- Right. I'm sorry. Bill Giese with Dorchester County; Joe Jackson with Worcester County, the Chesapeake Bay side of the county; Marianne Mason, who is the counsel for the Critical Area Commission; Gary Setzer, who is the Maryland Department of the Environment representative; and Ed Richards with Caroline County.

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We are the Panel that's assigned to -- for this public hearing this evening.

This hearing is conducted in accordance with the provisions of the Annotated Code of Maryland, Natural Resources Article 8-18090. This section if the code requires a panel of Commission members to conduct a public hearing in the local jurisdiction submitting the proposed amendment to its Critical Area Program. This hearing is a part of the Critical Area Commission's duty under State law to evaluate these changes.

This panel's purpose is to gather information about the proposed amendments to the County's Critical Area Program. The Panel will not make a decision on these bills tonight. The Panel's role is to hear comments and evaluate the information received tonight and the information that may be submitted by members of the public after tonight until the record of hearing is closed.

The proceedings for tonight, we will have a presentation by the County staff, we will allow

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any town officials the opportunity for any presentations, elected officials will be offered an opportunity to provide comment, and then we'll hear proponents and then the opponents of the bill.

We also have some additional people here from the Critical Area Commission staff. Mr. Ren Serey is the Executive Director of the Commission, Lisa Hoerger is one of the staff members, and Mary Owens is another staff. Our chairman of the Critical Area Commission, former Senator Madden is here, as well, in attendance tonight. Mr. Chairman, thank you for being here.

We want to give everybody an opportunity to speak this evening. There's a lot of you, so we will try to keep this moving.

If you wish to speak tonight, please be sure that you have signed the attendance sheet and provided your full name and address. I believe that was circulated before. Statements will be recorded, and speakers should try to limit their comments to five minutes if possible.

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If several speakers from one group are in attendance, please choose a spokesperson for that group's comments.

This hearing was advertised in the Star Democrat on March 10, 2004.

The Panel intends to keep the record open until Monday, April 5, 2004, until the close of business. The deadline for receipt of written comments will be at the close of business on that Monday, April 5. Written comments should be sent to the Critical Area Commission, 1804 West Street, Suite 100, Annapolis, Maryland 21401.

As part of the Panel's duty to gather information about proposed amendments, the Panel may ask CA staff to investigate any pertinent issue further and to provide the Panel with written reports or memorandum. The Panel may also seek guidance or recommendations from other resource agencies, including the Maryland Department of Natural Resources and the Maryland Department of the Environment. The Panel may also seek the advice of

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legal counsel.

The Panel will meet to discuss the proposed program amendment on Wednesday, April 14 – April 7 – I'm sorry – correct, Wednesday April 7, at the morning of the Critical Area Commission's regularly scheduled monthly meeting at the Department of Housing and Community Development in Crownsville, Maryland.

The Panel may need to schedule one or more additional discussion meetings, and the Panel will announce any further meetings at that April 7th regular Commission member meeting.

The Critical Area Commission will consider the proposed amendments to the Talbot County Critical Area Program at a future meeting. Those meetings are held the first Wednesday of each month at the Department of Housing and Community Development Building in Crownsville, Maryland. This panel will provide a recommendation to the full Commission concerning those bills.

At this point we will ask the County

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staff to make a presentation. I believe Mr. George Kinney will be making that presentation to us. Mr. Kinney.

MR. KINNEY: Thank you. Members of the Panel, my name is George Kinney. I am the planning officer for Talbot County. I'd like to start out by saying that I'm fairly new to the Critical Area Program, so I have asked Mr. Dan Cowee also to join me tonight, who has a little bit more of a historical perspective, technical perspective with regard to the bill. However, I would like to run through each of the bills in a general Power Point presentation here and then respond to questions you may have afterwards.

Can you hear me alright over here?

THE COURT REPORTER: Mr. Chairman, do you mind if I move over?

PANEL MEMBER BLAZER: That's fine.

MR. KINNEY: With regards to the first set of bills before the Panel, you have listed Bill 922, 926, 927, 929, 931 and 932. Those bills

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represent the Talbot County effort to update the local Critical Area Program and compliment the four-year program review requirement.

Bill 926, I guess in a nutshell what it does is it really gets into the definition section of our Zoning Ordinance. Some of the key components that came out of that legislation were some definition changes, modifications and eliminations, I suppose. And some of the key ones I've highlighted here.

Bill 926 in some respects clearly defines the forest preservation plan and clearly ties it to the disturbance of natural vegetation.

We did modify the normal maintenance definition in our Zoning Ordinance to restrict the removal of vegetation.

We included a new definition for mitigation.

And we also modified the definition for natural vegetation, and removed the definition for tree that was previously located in the code.

With respect to Bill 927, that's where we got into analyzing our land-use table and the consistency of the uses within the RC zoning category. And for those of you that don't know the RC zoning category, it really reflects the Critical Area portion of the County.

Some of the highlights of those amendments included, again, evaluating the uses that would be permitted in that district and whether or not they were appropriate and supported the goals and initiatives of the Critical Area Program.

That evaluation led to the prohibition, removal and/or modification of particular quasi-commercial, institutional and/or utility uses deemed to be incompatible with those goals set out by the program.

One interesting provision of that is a modification to several of those land-use classifications that trigger at a 20,000 square foot impervious limit the need to award growth allocation once you get beyond that particular level.

With respect to Bill 929, this got into our Critical Area special provisions. And, again, some of the highlights that resulted from that legislation included really spelling out and articulating requirements for removal of natural vegetation and also for the need, when there's a need and what kind of activities prompt securing a forest preservation plan.

Secondly, this particular bill limits and modifies the list of activities that are permitted within the 100-foot buffer and really sets out more stringent standards for mitigation.

And, finally, a new portion or what will be a new addition to our Zoning Ordinance is a provision for buffer management areas.

Bill 931, this was more of just -- it was in the general site plan requirements. It was really just kind of a clean-up effort to get at some of the concepts that came out of the other legislation. Really, the only new language in here is some comments regarding the conversion of

farmland and the need to reestablish the buffer if that activity takes place.

Bill 932 got into the growth allocation section of our zoning code. And really what it did was support some of the principles that came out of 927 with regard to the changes in the land-use table. Where those prompted growth allocation, this sets forth the process for awarding that allocation.

Also in support of the legislation that's before you in this bundle our department and/or the County has also included or has worked through -- and I can pass this around -- has worked through a Critical Area Forest Preservation Plan Application with specific instructions, when it's needed and so forth. And also to compliment that is a list of native species, a native species list prepared by a local landscape architect which includes and incentivized mitigation credit table. And I'll pass both of these around.

Finally, again, we'd like to thank your Critical Area staff. A lot of these program

amendments have been developed in concert with their input and support.

We also wanted to just recognize the fact that we have submitted growth allocation charts to the Commission for your review and consideration which show remaining acreage and number of acres converted to an LDA or IDA designation.

We are continuing to work with the Commission to update the habitat protection maps and we are currently using our GIS capabilities to develop those buffer management areas throughout the county.

That's the review in a nutshell. I'd like to go ahead and pass these around for you to take a look at.

PANEL MEMBER BLAZER: Thank you. Mr. Kinney. Would you like these to be part of the record?

MR. KINNEY: Yes.

PANEL MEMBER BLAZER: Any questions from the Panel for Mr. Kinney? (No response.) Thank

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you, Mr. Kinney.

We want to open it up to any representatives from any of the towns who wanted to comment on the first section of the public hearing tonight. Are there any representatives who would like to speak on this hearing? (No response) Okay.

Are there any elected officials who would like to speak or make comments for the first public hearing here this evening? (No response) You guys are so quiet. No elected officials?

MS. SPENCE: A quick comment.

PANEL MEMBER BLAZER: Yes, ma'am. Would you identify yourself?

MS. SPENCE: Yes. My name is Hilary Spence. I'm a member of the Talbot County Council.

PANEL MEMBER BLAZER: All right.

MS. SPENCE: Very quickly, an awful lot of work went into these revision, and I want to thank Ren Serey and his staff for their tremendous help in putting those provisions and kind of guiding us through the process. And I'm sure the Commission

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is aware this was a quite long arduous process and quite a bit overdue.

But I want to commend members of our Council and our planning staff for working it through and getting it to fruition.

And it is my sincere hope that the Commission will act favorably on this group of bills so that we do, indeed, have an updated local program. Thank you.

PANEL MEMBER BLAZER: Thank you, Mrs. Spence. Any other elected officials? (No response)

Okay. I only have one person signed up for the Comprehensive Plan review bills, Mr. John Jessup. Mr. Jessup, if you wouldn't mind coming up to the microphone. Thank you.

MR. JESSUP: I'm John Jessup, treasurer of Talbot River Protection Association.

And my comments are on Bill 922, which can be abbreviated to be a contiguous property owner notification.

This bill goes beyond just contacting the

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people that one might think would be interested, and requires that people within a certain distance -- I think it's one mile -- I'm not sure -- contiguous property owners be notified when a general site plan review or an application for a major subdivision has been accepted by the Planning office and before technical advisory committee meetings.

Now, in the course of the public hearing of this in October, I got somewhat interested in this because as a public organization which takes part in deciding whether we favor or don't favor a development because of its impact on the quality of the water, we need to know when these things are coming upon us; therefore, I suggested that one thing we could do, to put as an amendment to the bill that the County's website, under the Technical Advisory Committee, publish a schedule of all subdivision plans as they are scheduled to be heard. That means that we are alerted and we can go to that website and we can say, uh-huh, this big company is planning a huge development or a big store and we

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need to be on top of what they are doing with their stormwater and other aspects of water quality.

And that amendment passed. And we are very grateful to the County Council for doing that.

But I think it's very important, if this to is be considered part of the Critical Area consideration, that it applies to all zoning areas, not just the Critical Areas. It's very important it be preserved.

A case in point is the Ratcliff Farm area. It's called the Elm Street Developers. It's called Easton Village. There was a lot of conflict about that because of the number of houses that set back from the impaired Tred Avon River and other aspects.

Our organization and others got together with the developers before the plans were finally approved and were able to work out and to negotiate improvements in their plans because we knew in advance what they were planning to do. So almost for that reason alone I think this bill needs to be

approved. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Jessup. Are there any other speakers on the comprehensive review bills? (No response)

Then we shall close the public hearing for those review bills from Talbot County, for the Talbot County Council Bills 922, 926, 927, 929, 931 and 932.

The public hearing, we will accept written comments through April 5th, through the close of business on Monday, April 5, so if you'd like to send comments to the Critical Area Commission, please do so by that date. And the address, again, is 1804 West Street, Suite 100, Annapolis Maryland 21401.

We shall close the public hearing for those bills. And if we can take about a five-minute break, is that all right? Two minutes, so we can kind of get a little bit organized with some stuff, and we'll get started right away. All right. Thanks.

(Meeting recessed 7:25 p.m. to 7:28 p.m.)

TALBOT COUNTY BILL 933

PANEL MEMBER BLAZER: All right. We're going to get started again. Thank you. Thank you. Good to see you all again. It's been so long.

FROM THE FLOOR: Two minutes.

PANEL MEMBER BLAZER: Actually three. Thank you all for being here this evening. We are going to call the public hearing to order.

The purpose of this hearing tonight is to hear public comment on Talbot County Council Bill 933, which withdraws reserves of growth allocation

acreage granted to the municipalities in the original Critical Area Program in Talbot County.

The County approved these changes to their Critical Area Program on December 23, 2003, and they were submitted the Critical Area Commission.

On February 5, 2004, Commission staff determined that the submittal was complete, and on February 27, 2004, Chairman Madden determined that this change was an amendment to Talbot County's Critical Area Program and appointed a panel to hold a public hearing. This hearing is being recorded.

My name is Dave Blazer. I'm the chair of this panel. I'm from Worcester County, the Coastal Bays Watershed.

With me this evening is Bill Giese from Dorchester County; Joe Jackson from Worcester County, the Chesapeake Bay side of the county; Marianne Mason, who is the counsel for the Critical Area Commission, and not a member of the Panel, I might say; Gary Setzer from the Maryland Department

of the Environment; and Ed Richards from Caroline County.

We also have Commission staff present; Ren Serey, the Executive Director; as I mentioned, Marianne Mason; Lisa Hoerger of the Commission staff; and Mary Owens, also of the Commission staff.

Our Chairman, Senator Madden, is here as well, who we introduced before. Again, thank you for being here, Mr. Chairman.

This hearing is conducted in accordance with the provisions of the Annotated Code of Maryland, Natural Resources Article Section 8-18090. This section of the code requires a panel of Commission members to conduct a public hearing in the local jurisdiction submitting the proposed amendment to be its Critical Area Program.

This hearing is part of the Critical Area Commission's duty under State law to evaluate these changes.

The Panel's purpose is to gather information about the proposed amendments to the

County's Critical Area Program.

This panel will not make a decision on Bill 933 tonight. The Panel's role is to hear comments and evaluate the information received tonight and information that may be submitted by members of the public after tonight, until the record of hearing is to be closed.

The order of proceedings; we will have a representative of the County, Michael Pullen, will speak and then we'll offer the Towns an opportunity to give presentations; we'll open the floor to any elected officials who would like to make comments, and then we'll open it up for the general public to provide comments, as well, this evening.

If you wish to speak tonight, please be sure that you have signed up the attendance sheet. We've got a list here that's still on the corner of the stage up here, so make sure you complete that out with your full name and address.

The statements will be recorded this evening.

And speakers should limit their time to about five minutes, if possible.

If there are several speakers from one group in attendance, please choose a spokesperson for your group's comments.

This hearing was advertised in the Star Democrat on March 10, 2004.

The Commission has already received written comments that will be passed on to the Panel members here.

The Panel intends to keep the record open until Monday, April 5, 2004, until the close of business on that Monday.

Written comments will be accepted up until that time, and you should send those comments to the Critical Area Commission at 1804 West Street, Suite 100, Annapolis Maryland 21410.

As part of the Panel's duty to gather information about proposed amendments, the Panel may ask the Critical Area Commission staff to investigate any pertinent issue further and to

provide the Panel with written reports or memorandum. The Panel may also seek guidance and recommendations from other resource agencies, including Maryland Department of Natural Resources and Maryland Department of the Environment. The Panel may also seek the advice of legal counsel.

This panel will meet to discuss the proposed program amendment on Wednesday April 7, 2004, and the morning of the Critical Area Commission's regularly scheduled monthly meeting at the Department of Housing and Community Development in Crownsville, Maryland. The Panel may need to schedule one or more additional meetings, and the Panel will announce any further meetings on that April 7th date when we meet.

The Critical Area Commission will consider the proposed amendments to the Talbot County Critical Area Program at a future meeting. Those meetings are held the first Wednesday of each month at the Department of Housing and Community Development Building in Crownsville, Maryland.

This Panel will provide recommendations to the full Commission concerning Talbot County Bill 933.

At this point we will ask Michael Pullen with Talbot County to give a presentation. Mr. Pullen.

MR. PULLEN: Thank you, Mr. Chairman and members of the Panel. My name is Michael Pullen. I am the County attorney for Talbot County. And thank you for the opportunity to speak to you this evening.

I'd like to talk briefly about Talbot County's Critical Area. We have 600 miles of shoreline. And to make that real, if we were to drive down I-95 south, when you travel 600 miles you'd be in Charleston, South Carolina. So we've got a tremendous amount of shoreline in the county.

We have over 51,000 acres of land in the Resource Conservation Area and nearly 40 percent of the county is in the Critical Area.

Now, our program was adopted in 1989, and

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there was growth allocation given to the towns at that time in accordance with the maps that were adopted, and the maps anticipated four-year reviews.

Since that time no reviews have taken place. The maps became outdated. And the Town of Easton has now used all of its growth allocation it was originally allocated in 1989. Oxford and St. Michaels have not.

Bill 933 repeals those outdated 1989 maps and it makes the process that has already been adopted, which I'll discuss in a minute, for supplemental awards of growth allocation to municipalities applicable to all the municipalities in the county.

Talbot's process for awarding supplemental growth allocation was enacted in April of 2000. It was Bill 762. What that bill did was established that process for supplemental awards of growth allocation. At that time it was directed primarily to the Town of Easton, which had used all of its growth allocation and needed this process,

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and this process was adopted and worked on in conjunction with the town at the time. And now this process has been in place since 2000. It has been approved by the Critical Area Commission.

This is Bill's 762 process. The process starts with an application filed in the town planning office. That application gets routed over to the County planning office and also to the Town Planning Commission.

The Town Planning Commission -- from the County planning office goes to the County Planning Commission. They schedule a joint hearing. That's the first of two public hearings on the application. The idea is that both Planning Commissions receive a common platform of factual information from which to make their decisions.

The separate -- the Planning Commissions meet separately and make separate recommendations; The town Planning Commission to the Town Council, the County Planning Commission to the County Council.

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After receipt of those recommendations the two councils, the Town and the County Council, schedule a second public hearing. This is a joint public hearing at which the public is invited to attend and provide testimony and information.

The respective councils then deliberate separately and each make findings of fact and take a vote, and the result on the application requires the joint approval of both the Town and the County Council.

The County's role in that process is equal to the Town, and the process requires interjurisdictional cooperation and collaboration. And the result of that process is, of course, subject to the Critical Area Commission's review and approval.

In summary, Bill 762, which was adopted in 2000, creates that process to accommodate the growth needs of municipalities. That process is actually required by COMAR, which I'll discuss in a moment. But to date Bill 762 has worked well and

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has a proven track record of success.

The first application to be approved using that process was the Cook's Hope. That was 36 acres within the Town of Easton.

The second application to be approved was Easton Village, only recently approved, and also approved by the Critical Area Commission for 156 acres, also within the Town of Easton.

The Easton Village project resulted in an net improvement, a net gain in the nonpoint-source pollution from that site, so at the end of that process, which began somewhat contentiously between various citizen groups and the developer and the Town, it ended collaboratively with approval the developer was happy with and the Town and the County and the citizen groups were apparently pleased with. So the County believes that that process worked very well and collaboratively and ended up with a very good project that has been approved by the Critical Area Commission.

This is the COMAR regulation that I

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alluded to earlier in my comments, and it says it requires counties, when planning future expansion of Intensely Developed and Limited Development Areas, the counties, in coordination with affected municipalities, shall -- mandatory -- establish a process to accommodate the growth needs of the municipalities.

This is Judge North's testimony before the Talbot County Council when they were considering whether to enact Bill 933. Judge North brought this particular COMAR reg to the County's attention during the course of his testimony and indicated that that COMAR regulation dictates that it is the responsibility of the County to work with municipalities to accommodate municipal growth. So unless you do this, unless you adopt Bill 933, you are not complying with what the law requires you to.

The point I think that Judge North was making is that COMAR requires a process. Counties are required to establish that process. And that process is designed to accommodate the growth needs

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of the municipalities. Simply writing a blank check to the municipalities is not a process and doesn't comply with that COMAR requirement. That process is established by Bill 762. And Bill 933 makes that process apply equally to all the municipalities within the County.

Currently what has happened, since Easton exhausted their growth allocation, St. Michaels and the Town of Oxford have not, there were really two separate ways for municipalities to obtain and award growth allocation in Talbot County. If you were a person in the Town of Easton you would be required to apply under the procedures of Bill 762 and follow that joint review process. If, on the other hand, you were from -- you were in St. Michaels or Oxford, you would not. Those decisions would be made exclusively by the respective Town Councils of those two jurisdictions.

The County believes that COMAR requires that joint review process, or at least permits the County to adopt it as a local option. And in this

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case the County has done that with the view towards promoting this interjurisdictional cooperation, with the idea that the protection of the Chesapeake Bay is a universal ethic, that the large amount of shoreline in the County, the large amount of land in the Critical Area in the county made the County's land-use policies, give them a greater effect on the overall health of the Chesapeake Bay than any particular municipality's land-use policies simply because of the difference in size of the respective jurisdictions.

We think that State law gives the counties the primary responsibility under the 5 percent calculation formula and under the COMAR reg that we just talked about, gives the counties the primary responsibility to set this process up and, likewise, requires counties to remain a part of that process rather than simply writing a blank check to the municipalities.

Environmental protection by its nature is collaborative. The State of Maryland has entered

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into the Chesapeake Bay Compact with the states of Virginia, West Virginia, Pennsylvania, New York, Delaware, District of Columbia. If those states can cooperate as they are required to do to protect and promote the health of the bay, the County believes that we and our municipal neighbors who are interdependent because of our physical proximity and location can do the same and that, in order to protect the bay, that we are required to do that.

So the County would ask for your approval of 933 as a measure that's designed to promote and enhance the Chesapeake Bay protection.

I'd be happy to answer any questions that the Panel may have.

PANEL MEMBER JACKSON: Any questions from the Panel members?

PANEL MEMBER SETZER: I do.

PANEL MEMBER BLAZER: Okay.

PANEL MEMBER SETZER: Mr. Pullen, you talked about 933 establishing a process.

FROM THE FLOOR: We can't hear you.

PANEL MEMBER SETZER: You talk about 933 establishing a process for the County to deal with the growth allocation.

Under the initial program that was adopted by the County, you had a process that was established, basically a four-year review process. That, in your mind, that doesn't satisfy the COMAR requirement for the County to establish a process?

MR. PULLEN: No, sir. I think that that four-year review requirement was a comprehensive requirement for the entire program to make changes, to fine-tune the program, the substance of the program, to bring it in line with evolving notions of environmental protection, evolving technologies, evolving land-use policies. So I don't think that four-year review requirement was necessarily a process to award growth allocation to the Town.

Initially what the County did was to simply write a blank check, in effect, and give the decision exclusively to the town.

It's almost like herding the cats, I

guess. If you are trying to enforce consistent rules and regulations and polices across the board, I think that the ability for a municipality to act unilaterally impairs the effectiveness of those policies.

So the County believes that it has the obligation to participate in the process.

PANEL MEMBER SETZER: Thank you.

PANEL MEMBER BLAZER: Yes, sir.

PANEL MEMBER RICHARDS: Is it on?

FROM THE FLOOR: No.

PANEL MEMBER RICHARDS: Well, we're going to get some feedback, I guess.

Mr. Pullen, I had some problems getting through all of the whereases there were so many of them in this bill, which led me to believe that you were trying to say something important in the whereases that were not included in the top part of the bill. In reading them I felt that you were indicating that you and the Council were indicating that there were problems created by the 1989 maps

and the allocation. And you've identify a couple of them in the whereases.

You also indicated that you felt that there was a potential of an even bigger problem down the road.

Was this part of the discussion when the bill was adopted by the Council? And have I correctly identified the whereases?

MR. PULLEN: Yes, you have, Mr. Richards. Since drafting that legislation, I have -- and I drafted it, so I can tell you that the whereas clauses were really the product of my own analysis. I think that some of those whereas clauses were probably ill-conceived and probably -- the problems that were addressed could be addressed in other ways. But at the time of the legis -- at the time it was drafted, those were perceived to be real problems. But since then, on reflection, some of those problems can be addressed without adopting 933.

But the fact remains that the policy that

933 promotes, I think, is consistent and is actually required by the COMAR reg that we discussed and is consistent with sound principles of environmental protection.

PANEL MEMBER RICHARDS: But you also mention whereases, the comprehensive planning process requirements of Article 66B. Do you have an alternate set of growth maps as a result of that process?

MR. PULLEN: We do, and I have copies which I'm going to make available to the Panel as exhibits.

The County and the towns are currently -- the County is currently nearing the end of its comprehensive planning process for a comprehensive update. I think some of the towns are closer to the end -- and perhaps have reached the end -- than the County. But in that process the County planning staff and the towns' planning staff, it's my understanding, have worked closely together to redefine the growth areas around the towns. And

those maps, as I indicated, will be made available to you. And they are -- I think when you compare them with the 1989 maps that Bill 933 repeals you will see quite a difference, quite a change in thinking from then to now and the town boundaries have changed and they'll be useful.

PANEL MEMBER RICHARDS: Thank you.

PANEL MEMBER JACKSON: At the end of the process on Bill 762, when you have the final findings by both the municipality and the County government, let's just say the findings are not concurrent. Who has the tie breaker in that?

MR. PULLEN: Well, if -- let me restate your question so I'm sure I understand it. If, for example, the Town imposes a condition and the County imposes a different condition?

PANEL MEMBER JACKSON: That is one set. Let's just say that you have conceptual approval by the Town but County does not or has other conditions that the Town doesn't agree on.

MR. PULLEN: Well, the developer is

subject to the joint review of both the Town and the County; therefore, if the conditions were different but supplemental, I believe the developer would be required to comply with all of the conditions.

If the conditions were different and inconsistent, that would be a problem. And I don't think that -- well, that's never occurred thus far. The problem that that might create would be a situation where a developer, in complying with one set of conditions, by definition couldn't comply with the other. I would hope that the process wouldn't create that dilemma for the developer. It is possible.

I think each particular case would have to be assessed on its own merit, depending on the type of conditions and the type of facts that were produced in the record. It is a problem potentially but not necessarily a fatal one.

PANEL MEMBER JACKSON: But it has not been addressed as far as this bill is concerned?

MR. PULLEN: 933?

PANEL MEMBER JACKSON: Yes.

MR. PULLEN: No. 933 doesn't address that situation because 933 operates by default because it removes the growth allocation from the 1989 maps from other towns. 762 then comes into play automatically. So 933 doesn't itself deal with that process.

PANEL MEMBER JACKSON: Okay.

PANEL MEMBER BLAZER: Thank you.

MR. PULLEN: Mr. Chairman, if I may, I would like to yield the balance of the County's presentation at this point to a person who needs no introduction to the Panel, the Honorable John C. North.

JUDGE NORTH: Good evening, Mr. Chairman, ladies and gentlemen. I'll lower the microphone a bit. Welcome to Talbot County.

PANEL MEMBER BLAZER: Thank you.

JUDGE NORTH: It's a pleasure to see familiar faces.

You have already observed on the screen

the comments which I made some weeks ago before a hearing of the Talbot County Council. My comments center around a code of Maryland regulations known as COMAR, which to me seems quite clear in that it reads, "When planning future expansion of Intensely Developed and Limited Development Areas, counties" -- underline counties -- "in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

And so I concluded from the reading of that, that essentially Talbot County had made an error years ago when, without condition or understanding, it granted a block of growth allocation to the several municipalities within the county. I think in hindsight, as with so many things in hindsight, one can argue that by doing that the County really abrogated its responsibility under COMAR, which requires the county, in effect, to remain in control.

In an effort to do a bit of research into

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the background of the history of the COMAR regulation and how it had been applied, I thought it appropriate to speak with a number of people who were involved early on with the Critical Area legislation. And, accordingly, I have in hand copies of correspondence in the form of faxes from a number of individuals, whose names I think will largely be familiar to you. I will quote not everything that they have written, but the pertinent parts and will submit their correspondence in toto to you for your consideration.

The first person with whom I spoke was Doctor Tori Brown, who resides in Baltimore and who was the chairman of the Department of Natural Resources when the Critical Area law was implemented. The Critical Area Commission, of course, is a part of the Department of Natural Resources.

Doctor Brown's response to my inquiry as to his understanding with respect to the COMAR citation in question reads as follows in his letter

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of March 22. It is addressed to Whom it May Concern. I write to comment on the dispute between the Town of St. Michaels and Talbot County that's currently before the Critical Area Commission. As secretary of the Department of Natural Resources, I was responsible for introducing the original Critical Areas Bill and for shepherding it through the legislature.

The Commission was at first located in the Department, the Department of Natural Resources. I was one of the original members of the Commission and responsible for the initial implementation of the law.

We spent a great deal of time and thought on the original organizational structure, the regulations and the processes that would make this new law function. Obviously, all future disputes and difficulties could not have been foreseen at that time.

This present dispute is a result of St. Michaels suggesting that it was granted its growth

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allocation by Talbot County and may do now with it as it wishes despite the objections of the County. This was clearly not intended to be the result of the original law or the regulations.

We intended that the counties would, in coordination with affected municipalities, plan future expansion of Intensely and Limited Development Areas. Emphasis mine. Quoted from COMAR 27.01.02.06A2.

The growth allocation was intended to belong to the counties, who, on a ongoing basis, would coordinate with the subdivisions, and not grant the growth allocation in total and have no continued control over its use.

I hope these comments are helpful. Sincerely, Tori C. Brown.

I thought that Doctor Brown showed great insight in his comments, and I took the liberty of faxing those comments to a number of early Commission members for their comment and their recollection.

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I have before me a letter from William H. Corkran Jr., who for many years was the town engineer for the Town of Easton and one of the original Commission members.

It is addressed to Whom it May Concern. I represented Talbot County as a member of the Chesapeake Bay Critical Area Commission for approximately ten years during the nineties.

My understanding has been and continues to be that the County must establish a process by which the growth requirements request of a municipality must be considered. Further, the County and the municipality must use the guidelines as established by the State of Maryland. Respectfully, William H. Corkran, Jr.

I have a second letter from a second resident of Talbot County, another early member of the Critical Area Commission, Doctor Sheppard Kreck, who says, To Whom it May Concern: My name is Sheppard Kreck, Jr. I'm sorry not to be able to attend the hearing and present my comments in

person. I've asked Judge North to do this for me. I'm a retired physician who has lived in Talbot County for the past 56 years.

I served on the original Critical Areas Commission from 1984 through 1994, when my tenure expired by law.

I have been following the Miles Point development project over the past four years and realize how difficult it has been for the municipality of St. Michaels, the Talbot County Council and Critical Area Commission to arrive at a consensus; however, I feel very strongly that COMAR 27.01.06.02.06 explains clearly -- and I quote -- when planning future expansion of ID and LTD areas, counties -- and I underline counties -- in coordination with affected municipalities, shall established a process to accommodate the growth needs of the municipalities.

Further, I again quote from COMAR. New IDA's and LDA's should be located in order to minimize impacts to habitat protection areas in a

manner that optimizes benefits to water quality.

Bill 933 applies uniformly throughout Talbot County and not explicitly to one municipality or another. There are two or three counties in the State that have never given growth allocation to municipalities. These municipalities must request growth allocation from the counties. This arrangement assures that the counties and municipalities jointly meet the goals and objectives of the Critical Areas law.

I ask that Bill 933 be approved. The Chesapeake Bay cannot speak for itself, as it gradually loses the raise against time. Thank you. Doctor Sheppard Kreck.

I conferred with a third Talbot County resident, Delegate, former Delegate Samuel Q. Johnson, III, who writes as follows: To Whom it May Concern: There is currently an issue regarding Critical Area growth allocation procedures in Talbot County. As someone who has been involved with this program for almost 20 years, I feel comfortable in

stating what I believe to be fact. Briefly, my involvement is as follows: In the early nineteen eighties I was a member of the Maryland General Assembly, when the Critical Areas legislation was introduced by Governor Hughes. Serving on the Environmental Matters Committee, I participated in all of the hearings and negotiations which followed for several years.

I was appointed by the Speaker to serve on the Critical Areas Legislative Oversight Committee, which was composed of four delegates and four senators.

After leaving the legislature in 1995, I was appointed by the governor to serve on the Critical Area Commission, which I did until my term expired in June of 2003.

Obviously, there were many issues debated in the two years it took to establish and implement the program. Those of us from the areas impacted the most wanted to be sure that there, indeed, was growth allocation and that it be controlled by the

county and not the State. After being joined by the Maryland Association of Counties endorsing our position, the governor's staff agreed and it was put in the final draft. The county would not only have final control over who and how much allocation was granted, they also would determine the application process to be followed.

This letter is not intended to be for or against any project. Sincerely, Samuel Q. Johnson.

Now, following the receipt of the letter from Doctor Tori Brown, I took it upon myself to fax copies of that letter to a number of former Commission members to the get their comments. And I have received back the following comments from Andrew Meyers of Denton. To Whom it May Concern. I have served eight years on the Critical Area Commission, and I agree with the opinion of Tori C. Brown. My address is Landing Road, Denton, Maryland.

A second letter. I agree with and support the position presented in this letter from

Doctor Brown. Counties were to utilize the growth allocation on the merits of each case. Municipalities were to coordinate and request growth allocation from the counties on the merit of each project. Howard W. Zanheiser, Critical Area Commission member from origin to 1991, Solomons, Maryland.

To Whom it may Concern: Having served on the Chesapeake Bay Critical Area Commission for 11 years, and now retired, I still have great interest in the Bay. I agree with Doctor Tori Brown's comments. Phillip J. Barker, Havre de Grace, former Mayor of Havre de Grace.

As an original member of the Critical Area Commission from 1983 to 1993, I endorse the comments of Doctor Brown regarding growth allocation as above set forth. Robert R. Price Jr., attorney at law, Centreville.

In the 11 years I served on the Chesapeake Bay Critical Area Commission, 1984 to 1995, I represented Charles County. During my

service all the Critical Area plans in the state were adopted.

It is my recollection that growth allocation was granted to the counties. Following specific criteria, the counties were to assign growth allocation within their jurisdiction.

Thank you for sharing the letter from Tori Brown, dated March 22. I concur with his evaluation as to the intention of the law with respect to the use of growth allocation.

I spent ten years as a member of the Commission and was pleased to serve on the program Amendments Committee and, as such, I was involved in drafting a number of position papers regarding the use of growth allocation.

I also was a member of and chaired a number of panels in my time on the Commission regarding the use of growth allocation.

And this is from Michael Whitten of Leonardtown, Maryland.

A further comment. I agree with Doctor

Brown's letter above concerning growth allocation. My understanding on the procedure used for granting growth allocation when municipalities are involved is the same as defined by Doctor Brown. Roger Williams, Kent County treasurer, Commission member 1988 to 2000.

To whom it may concern. I served as a member of the Critical Area Commission from 1987 until 1998, and was involved in the review of Critical Area plans for several counties and municipalities.

I agree with Doctor Brown as to the intended coordination between counties and municipalities with respect to growth allocation. Sincerely, Russell Blake, Pocomoke City.

Following those comments, I communicated with Doctor Sarah Taylor Rogers, who was the first executive director of the Critical Area Commission, who served initially under Judge Solomon List, later under my -- in my term of office, and she later, of course, became the secretary of Department of

Natural Resources.

Doctor Rogers' letter reads as follows: To Whom it may Concern: The Chesapeake Bay Critical Area Protection Act was passed by the General Assembly in 1984 because of concern about the decline of the natural resources of the Chesapeake Bay.

Skipping several of her other comments by way of background, the Commission members knew that 16 counties and 44 municipalities were affected by the Critical Area law. Keeping the intent of the law in mind, as well as the numerous jurisdictions affected by it, the Commission members developed criteria that would not only provide for the examination of existing patterns of land use but also would provide for the location and extent of future growth and a process to follow in locating that growth.

The Commission understood that the counties and municipalities needed the flexibility to determine how growth would be handled and where

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it would be located; thus, the only provisions that the Commission developed was a percentage amount for future growth based on a county's Resource Conservation Area and guidelines as to where the growth county -- where the -- where to locate the growth. Counties had the flexibility to choose how much to use, where to use it and what municipality to use it in a cooperative manner.

The majority of county program submittals, these growth areas were identified on the Critical Area maps. Other counties chose not to map the areas beforehand but use the growth as the need would arise within the county or from a municipality.

It is my understanding that Talbot County initially provided for specific areas of growth allocation to the municipalities, and has recently made the decision to withdraw these allocations. Given what I know to have been the nature and intent of the Commission in developing the criteria, such an action on the part of Talbot County would not be

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considered as being in violation of the criteria or the law.

I offer this perspective as the former executive director of the Chesapeake Bay Critical Area Commission from the time of the program's inception in 1984 until 1993. Sarah Taylor Rogers, Ph.D.

I then communicated with --

PANEL MEMBER BLAZER: Judge North --

JUDGE NORTH: Yes.

PANEL MEMBER BLAZER: We've allocated a certain amount of time for the County, and we are almost up.

JUDGE NORTH: I am sorry if I have rambled on at length. I'm virtually finished.

PANEL MEMBER BLAZER: Okay.

JUDGE NORTH: I have a second letter from J. Charles Fox, known as Chuck Fox, the recent past secretary of the Department of Natural Resources. And I will -- I will cut short his comments to this: It is my conclusion that the State's Critical Area

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Program conveys ultimate growth allocation authority to counties, not municipalities.

And finally a letter from the father of Critical Areas, Governor Harry Hughes. To Whom it may Concern: The legislation to save the Chesapeake Bay was initiated and sponsored by my administration during my second term as governor.

The keystone of that legislation was the Critical Area law. Realizing the significant effect of this law on the traditional land-use laws of Maryland, which historically gave major responsibility of this area to county governments, it was our firm intent that county government would play the primary role in growth allocation. It was also intended that counties would coordinate with municipalities in carrying out that responsibility but that the counties would be in control.

Whereas the municipalities act unilaterally, the county has the responsibility -- has the responsibility -- to withdraw the municipality's right to grant growth allocation.

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Basic responsibilities for growth allocation is the county, subject to the approval of the Critical Area Commission. Respectfully, Harry Hughes.

Thank you, ladies and gentlemen. I'll submit these if I may. Thank you.

PANEL MEMBER BLAZER: Thank you, Judge North. Thank you.

Are there any representatives of the towns that would like to make a presentation? If you'd come up and identify yourself and who you are with, please.

MR. HICKSON: Thank you. My name is Michael Hickson. I'm attorney for the Town of St. Michaels, and I would like to respond.

First of all, the Town would oppose Bill 933.

Mr. Pullen, the County attorney, took you 600 miles down Route 95 to Charleston. I would like to take you, instead, a couple of hundred years back, to 1804, when the village people of St.

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Michaels decided that their interests were not exactly the same as those of the county as a whole and they decided to incorporate.

And I think there is the crux of the problem. Some people like to live with lots of land around them and they have one perspective. Other people like to live with lots of people around them and they have a different perspective.

The interests of the County and the interest of the Town are not the same.

The difficulty that the Town has with 933 is that it takes back all of the growth allocation that was previously reserved for the counties and puts it completely in the control of the county; that's to say, the county has the last word.

St. Michaels would not mind if the growth allocation were taken back and put in a common pool. But the difficulty here is not just the taking back of the reserve, but the fact that it then throws the process -- it throws the current process for the awarding of growth allocation out which has been

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totally within the control of the town, subject to all the criteria of its laws and its local program which was approved by the Critical Area Commission, and instead sets up a different process for what the County calls supplemental growth allocation, in which the County, in effect, carries on a dual process.

It may be carried on in the same rooms with the members of the St. Michaels town bodies, but in effect it's an entirely separate decision making process. While on the one hand the Town officials look at the Town's laws, the Town's Comprehensive Plan, the Town's local program, if you look at the County program, the County officials are looking at things that are completely different. They are looking at the County's Comprehensive Plan, which does not control the Town under State law. And they are looking at other things that are not a part of the Town's decision-making process and the Town's concerns.

Judge North took a considerable amount of

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time reading letters about one particular COMAR provision. And I was thinking to myself, why all these letters about the same thing; he doeth protest too much.

I would commend the panel and the Commission to a careful reading of COMAR 27.01.02.06A2, and I'll quote. "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 affected municipalities.

All we are talking about here is creating a process. We are not talking about sitting in on the judgment.

And, secondly, we are talking about creating a process in coordination with the town; that is, the process of establishing the procedures should be done in coordination with the town.

And, thirdly, it says that it should be done to accommodate the Town's needs.

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Now, I've prepared a memorandum and supplied a copy of it to your counsel and other counsel, and I'll submit an original tonight with copies, and I've also prepared written testimony that I'll submit tonight that goes into some of the details, but I want to hit some of the high points. Some of it is legalese and legal oriented. I want to hit the high points of the important facts and I want to focus on this section. That was my intent from the beginning.

Coordination, cooperation, and accommodation. I don't see any of these things in here which, in effect, throws out the current process and throws the towns into a joint decision-making process in which the counties do what the State law, in my opinion, does not permit and what the village people in 1804 wanted to avoid.

The process of the arriving at Bill 933 goes something like this. In 1997 the Town of St. Michaels had never received an application for growth allocation at all. In that year for the

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first time it received an application from Midland, a developer that wanted to do a substantial development in Talbot -- in the Town. During that process Midland submitted successive Applications which the Town successively denied, which were successively litigated. There were in all six Circuit Court cases, two of which went to the Court of Appeals. All of this was very highly publicized in the local newspaper.

Three of those Applications were completed, the three cases litigated; all the while the Town is denying growth allocation applications and all the while the County does absolutely nothing but let the Town swing in the breeze and spend more than a million dollars in legal fees, consultants' Fees, time, conducting procedures, participating in litigation to defend its position.

Seeing that nothing was going to happen, the Town took ahold of reality and initiated a nonbinding mediation process with a professional mediator who is, in fact, the head of the department

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in land use at the University of Virginia. And Doctor Collins mediated between a group of citizen representatives and the developer all during the summer of, I believe it was 2002, to come up with a rough consensus. Not everybody was in agreement, but they came up with some general principles, one of which was a traditional neighborhood development plan would be preferable to a cookie cutter, old style development, it would fit better with the Town. And there were some environmental discussions, be assured.

After that mediation process, the Town then conducted a public workshop with the developer. And at the close of the public workshop the Town announced some principles of what it would want to see in a development, including traditional neighborhood development, taking care of the shoreline and some other things, open spaces. And a as a result of that the developer submitted his forth application.

(Change audiotape)

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This was in the fall of 2003. At that time the application process commenced. The Town Planning Commission received the Application and commenced its public hearing in September of 2003. Those public hearings were heavily participated in by citizens and noncitizens alike; those public hearings ended, I believe, on November 6, 2003, and a written fifty-some page decision was issued, I believe on November 24 of 2003.

Now, what the Town didn't know at that time and, in fact, didn't know until today, that on October 29, 2003, the County representatives had contacted the staff at the Critical Area Commission and, in fact, it advised them of the existence of County Bill 933, predicted when it would be introduced, when a hearing would be conducted on it, when it would be adopted and when it would be ready for the State Critical Area Commission.

No contact, no consultation, no request for input, no advice even that there was a problem from the County to any of the towns in this county.

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Subsequent to that there were additional contacts by County representatives with the State Critical Area Commission, and they are in my legal memo and my prepared testimony. Those contacts started, as I said, October 29, 2003, and go into November and December, all relating to either Bill 933 or the Easton and Midland projects.

Now, I submit to you that 933 has its very existence based upon the County's opposition to the Midland Application and the project known as Miles Point, because none of this even started until it appeared that the Town was going to consider, seriously consider granting growth allocation.

As you may know -- let me back up. The fourth Application, which is known as Miles Point II, included 72 acres that was annexed to the Town in 1980 pursuant to an Annexation Agreement, but it also included 18 acres outside of the town that was annexed in the fall of 2003. So, according to State law, the Town cannot change the zoning of land that is newly annexed for five years without the Town's

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express permission. That's contained in Article 23A, Section 9C of the Maryland Code.

The Town requested that the County relinquish the zoning control so that this 18 acres could be zoned to fit in with the proposed Miles Point II project. And on December 16, I believe it was, the County refused that request.

The County also -- I should back up. There was a Planning Commission hearing on 933, I believe it was on Octob -- November 2. I testified for the Town. I said at that time that there had been no input, no dialogue. And I asked that there simply be dialogue, that we step back, let us know what the problem is and see if we can't find a better solution.

The Planning Commission of Talbot County opined to the County commissioners that 933 was not necessary.

But the Bill went forward and there was a public hearing on, I believe it was December 16. I testified at that hearing on behalf of the Town. At

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that time, on that very day, during that very hearing, a new version of 933 was brought out. Now, we were told at that time that there were no substantive changes, and the County Council voted to that effect. But at very least there was a whole new set of whereas clauses.

Again I asked that we step back, that we have a dialogue, let us know what the problem is, we'll be happy to sit down, talk about it, try to work it out. What the County Council did on that date was -- and I'm certain now that it was the 16 of December, because they voted to postpone the vote on that particular legislation for a week. And, in fact, they did postpone it. On December 23 they voted and passed that bill. Again, no dialog, no contact, no nothing.

But as a result of the County refusing to relinquish it's five-year control over that 18 acres that was newly annexed, the developer withdrew it's fourth application known as Miles Point II, redrew it, left out the 18 acres that was annexed, scaled

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it down to only the 72 acres that had been in town since 1980 pursuant to an Annexation Agreement that described R1 zoning and, in fact, that's what the Town -- that's what was agreed to in that Agreement, R1 zoning. So it's not like anybody thought this land wasn't going to be developed. But, anyway, they scaled down the development. It's now called Miles Point III, it's 72 acres, it's a TND, and it's submitted to the Town in late December or early January of this year.

It's very similar to the previous project, except it's smaller, that's all; less units, same features, same environmental stuff, good stuff, really. I mean, we beat each other to death and came out with a pretty good plan.

It's processed, the Planning Commission holds it's hearings and so forth. I mean, we are really up to date. As far as 933, that's the end of it; no consultation, no requests, no accommodation into establishing a new process, and that's what that -- I really commend you to read it. It's not

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talking about participating down the road in future decisions on applications, it's talking about process.

And I want to talk about the process that 933 throws us into. One of your members asked about it, and I couldn't see which one from the back, but they were good questions, because this supplemental growth allocation process is not the same as what we have been dealing with, what we've been going through all this time when the County let us goes through at our expense and then yanks it away from us.

It's two separate processes, as I said, that occur at the same time in the same room with different people looking at different laws.

In the end, in my opinion, if the County Council doesn't agree to grant growth allocation, it doesn't happen. If either side -- if the County says no, there is no growth allocation; if the Town says no, there is no growth allocation.

But the interesting thing in here is that

the County in this process, in the County plan it says that the County Council has complete discretion. In other words, they can ignore all the rules and say no.

PANEL MEMBER BLAZER: We're going to have to kind of wind it up.

MR. HICKSON: Okay, I'll try to do that.

Counsel for the County pointed to Easton Village. That's what was happening in Easton Village. I've attached the Easton Village decision to my memorandum of law. It shows that there's a dual process, it shows they can ignore it each other. In the end the developer for Easton Village to make it happen went to the County and said what do you want. And what the County wanted was improvements on Glebe Road, which I'm told exceed a million dollars. Glebe Road is at least a mile and a half from the subject project and, in my opinion, has nothing to do with it.

That's how – that's the definition of

cooperation, that's the definition of coordination, is the way I've explained to you, totally ignoring us, going to the Critical Area Commission behind our back, yank – making us twist in the wind when they could have rescued us at that time, and now the yanking away from us when we want to go through with it. That's not my definition of cooperation. And if they can't see it then, how are they going to cooperate in the future? We don't have the same interest.

And State law, in Article 66B, gives us control in planning and zoning. The County does not have control in incorporated municipalities, and that's what this is all about. Thank you.

PANEL MEMBER BLAZER: Thank you.

MR. HICKSON: I will submit by material.

PANEL MEMBER BLAZER: Okay.

MR. HICKSON: I will also submit a letter that I have from Senator Coulburn.

PANEL MEMBER BLAZER: Okay.

MR. HICKSON: And a schedule showing that

84 percent of our town, 84 percent of the undeveloped land in our town is in the Critical Area; 68 percent of the town as a whole is in the Critical Area.

PANEL MEMBER BLAZER: I think we have some questions from the panel members.

MR. HICKSON: Yes, absolutely.

PANEL MEMBER RICHARDS: With your re-reading of the COMAR regulation, I take it that you challenge Judge North's reading of that particular section.

MR. HICKSON: I disagree with his interpretation. And I commend you to read it.

PANEL MEMBER RICHARDS: What do you think of his statements that the County abrogated its responsibility by making the allocation in 1989?

MR. HICKSON: I don't agree with that. Every award of growth allocation by a local jurisdiction goes to the State Critical Area Commission. The purpose is not to re-decide the case, but oversight to make sure that the local

jurisdictions are applying the criteria, not necessarily that you agree with them on the fact that they are applying the law.

I think there is already a dual process here. It's not the same process, but it's a dual process. We don't need three processes.

PANEL MEMBER RICHARDS: Also, Judge North read the letter from Governor Hughes. And if I heard correctly, Governor Hughes' letter said that Governor Hughes felt that the County has the right to withdraw the allocation. Do you agree with that statement?

MR. HICKSON: I think that's a confused area of the law. I think that while the Critical Area laws have been in effect for well over a decade, getting toward two decades, there is a lot of it that is confusing. I will be frank to admit that I had a great deal of time figuring it all out when I had to deal with this because in my town we are dealing with the Zoning Ordinance, a separate local program, the Subdivision Ordinance, the State

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regs, the State law, and you are trying to figure out what all that means. And sometimes, frankly, it just -- it's not always consistent.

I don't necessarily -- I don't know what the answer to that question is, frankly. But if they get it back, if you will, I think it then becomes a common pool that every jurisdiction in this County can draw on by granting growth allocation. I don't think anybody owns it.

I think that the -- the determination of how much growth allocation in Talbot County as a whole is, is obviously based on 5 percent of the Critical Area in the County. But it would be inconsistent with not only the critical area laws but some other laws in this state if most of the growth allocation were not granted and used in and around the municipalities. Otherwise, we would be perpetuating sprawl, we would have long, long sewer and water lines, and that's the opposite of what Smart Growth and another initiative that was signed by our current governor in this past October, and

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it's quoted in my brief but I don't remember what he's calling it, Priority Places or something like that, those two programs, the same thing with different names, attempt to get most development in and around municipalities for environmental reasons and for economic reasons, in my opinion.

So they may take it back. But if they take it back, it becomes part of a common pool, in my opinion.

PANEL MEMBER RICHARDS: Thank you.

PANEL MEMBER BLAZER: Any other questions? Great. Thank you Mr. Hickson.

Are there any other town representatives?

MR. FORD: I'm John Ford. I'm the president of the Easton Town Council.

Easton is unique among the municipalities in Talbot County in that it has used all of its originally allocated growth allocation for approved developments and has also so gone through a cooperative process of review with the County Council in order to get additional growth allocation

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acres approved.

Perhaps the most notable growth allocation award is the most recent one where Easton and Talbot County reviewed and ultimately approved the growth allocation request for the Elm Street development on Ratcliff Farm.

The end product of that review process is something I believe this community can be proud of and will serve as a benchmark for future development. There will be a well-designed, environmentally sensitive PUD of very high quality, along with a number of its actions that will benefit the community both on site and off.

I do not believe, however, that the process used to get to that final approval should serve as a model for future applications. The Town and County Councils did hold joint public hearings on two occasions to consider growth allocation for this project, but the project actually moved forward through a series of individual separate negotiations at several levels.

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I think the argument could be made that this project made it through the review process mainly because of the persistence and flexibility of the developer and because of the individual efforts of some elected officials and the efforts of the Talbot Preservation Alliance and the Talbot River Protection Association.

One of the things that the Easton Town Council will be focusing on through the review and update of our Zoning Ordinance is the development of a clearer understanding of what is expected from future developers.

I feel that with the process followed for the Elm Street project we moved in an opposite direction. I suspect that any developer looking at the two-and-a-half-year review of that project would wonder what exactly was expected from the Town and the County.

I'm not suggesting that negotiations with developers can be or should be completely eliminated, but those negotiations should have a

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basis from which to begin.

I do not believe that Bill 933 moves us closer to a clearer definition of what is expected from development. In its present form it merely adds another separate level of review, with no guarantee that what a municipality wants will be allowed to occur.

Cooperative planning between the County and the municipalities is essential and it should occur throughout the planning process, not only at the very end of that process. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Ford. Any questions? (No response)

Any other town representatives? Good evening.

MR. KEHOE: Good evening. My name is Christopher Kehoe. I'm the Town attorney for Easton. I know you have a long agenda and a long hearing tonight, and I'll be as brief as possible.

First, for the record, I would like to adopt the arguments made by Mr. Hickson on behalf of

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the Town of St. Michaels with regard to the argument he makes, and very ably, in his memorandum that Maryland zoning law codified in Article 66B and Article 11E of the Maryland Constitution would prohibit Talbot County or any other county from exercising planning and zoning authority within the boundaries of a municipality, as would be an inevitable consequence if Bill 933 becomes law.

Secondly, I listened with a great deal of interest and respect, of course, to Judge North's comments about what I'm going to characterize here as the original intent of the members of the Critical Area Commission with regard to growth allocation, and I was struck by the fact that the arrangement that's now under challenge here by the County; namely, the allocation of specific acreages back in 1989 to Easton, to St. Michaels and to Oxford, was approved by the very same Commission that these people, individuals were members of at the time.

And I think the Commission today has to

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put this into the context of that this is a change from a previously approved arrangement that has been in existence for a number of years.

Easton has used all of its growth allocation, so in one sense we have and we'll deal with in the future the supplemental procedures that Mr. Pullen has outlined. They have worked for Easton and the County in the past. Mr. Ford has suggested, and I certainly agree with him, that they perhaps are not the best model for a way to proceed in the future; nonetheless, they do function for the Town and the County at this point. However, simply because they work for Easton -- Easton has used up it's growth allocation -- it's not a justification for the removal of the growth allocation allotments that have been made to Oxford and St. Michaels.

And with that I will simply submit some written comments and leave you in peace for the evening. Thank you very much.

PANEL MEMBER BLAZER: Thank you, Mr. Kehoe. Any other town representatives?

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MR. CAMPEN: Good evening. My name is Sid Campen. I'm here on behalf of the Commissioners of Oxford, of which I'm president.

I would like to address several factual issues that have been raised with you and others about the 750 or so hearty souls that make up the Town of Oxford, perhaps the smallest jurisdiction that is affected by the Critical Areas mandate and 933.

If you look at the map of Oxford you will see that practically all of Oxford is within the Critical Area. I can show you that map. There is probably 5 acres that may not be in the Critical Area.

So 933 really affects Oxford in a rather unique way, because it says to Oxford that all additional growth that will take place within the corporate limits of Oxford will be under 933 and the County will determine whether Oxford will get growth allocation or not.

We've heard a lot tonight about

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cooperation and all that is supposed to take place and it may have worked in the earlier bill with the Town of Easton.

There is an opinion or a feeling that the people of Oxford have no appetite for growth. And that may be partially true with respect to extra territorial growth, annexation, expansion of the corporate limits of Oxford. But as a Commissioner I can tell you that growth is inevitable and there is not one part hearty soul in Oxford that disfavors infill growth within that town. And the reason for that is because Oxford has very limited sources of revenue and without some growth we're going to have considerable problems in maintaining the infrastructure that is being provided for the people of Oxford.

And contrary to the belief of a lot of people, Oxford is not comprised of all wealthy people who have just moved here. There are a number of people who have lived in Oxford all their lives, some of them quite old, in their nineties, who are

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struggling to pay the taxes that are increased every year so that we can meet our obligations.

There is a critical need in Oxford to see infill expansion within the Town of Oxford, and therein is our problem with 933. We feel that the County Council should have given some consideration to the infill needs of the various towns, particularly Oxford, because we have no ability to expand or to infill in that town without growth allocation. That is significant, because if we are left with the, if you will, coming to the table with our hat in our hand and asking this Council to provide us with growth allocation, we don't know whether we are going to get it or not.

We say, well, the Council is as interested in growth allocation and good Smart Growth as anyone. I suggest to you that no member of this Council or a council of recent memory has been a resident of the Town of Oxford or, for that matter, the Town of St. Michaels.

Consider, if you will, the needs of a

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town to govern itself; its Planning and Zoning Commission, it's appeals board, its government that will be run by people who -- it will be controlled by people who have no particular interest in the Town.

People in Oxford are members of Talbot County, but the Commissioners of Talbot County aren't necessarily members of the boards and the committees in the Town of Oxford.

Consider, if you will, that the needs of that small town, the budgetary needs, the wastewater treatment needs, all the other things that we are required to maintain are determined by a council that has no particular interest or, indeed, is not responsible to the people of Oxford or St. Michaels or the towns that they have no part of.

Our concern is jurisdictional and the results, the practical result of what 933 does. We have no quarrel with, nor do we contest the right of the County to take back whatever growth allocation it designated in 1986.

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I disagree with my brother who spoke a little earlier. I think that the County Council did, in fact, adopt the original 1989, rather, growth allocation consistent with COMAR, as has been stated by Judge North. It was done then. They have now elected to undo that.

What we ask is that they simply undo the portion outside of the territorial limits of the corporate Town of Oxford, leaving in the areas for infill.

I found it very interesting that the justification for 933 has sort of taken full circle. At first it was to help Easton. Then I read something about, well, Oxford and St. Michaels hold a pocket veto in that if they don't use their growth allocation, then the County cannot get to the 90 percent mark in order to trigger the balance of the twelve hundred acres that it might need for future growth.

Well, consider, if you will, that if the needs -- if the County needs 90 percent in order to

figure the balance of the twelve hundred acre growth allocation that it may wish to hold in a bank or whatever it wants to do, that leaves 10 percent. Ten percent of twelve hundred acres is 125 acres.

Our problem with the County is that all they needed to do was come to us or invite us to come to them and say, look, what are your infill needs, what will you need in the future, in the immediate future, in the next three to five to ten years; and, yes, if you need 20 acres or 30 acres or St. Michaels may need 20 or 30 or 50 or 75, whatever it was, they could have reached that threshold; 125 acres would have provided Oxford and St. Michaels, I suspect, with whatever the infill needs may be in the not too distant future.

We also have a problem in that we were told very specifically in 1989, you have, Oxford, 190 acres of growth allocation and that's all you're going to get, use it wisely. And I dare say Oxford has. We have used 15 acres, I think.

You cannot say that the towns have

squandered or used the growth allocation that they had or that they were allotted unwisely. That is certainly not the case.

We would ask that you reconsider 933 in that it has not taken into consideration the needs of the town, particularly the infill needs, and it does do violence to Article 66B and Article 23, which give the towns zoning authority, 66B does and 23A, gives the towns exclusive jurisdiction over planning and zoning. This bill conflicts with that significantly.

Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Campen. Another town representative.

MR. THOMPSON: Mr. Chairman, my name is Dave Thompson. I represent the Town of Oxford and the Town of Trappe. I will be very brief.

The Town of Trappe, as you know, has no Critical Area within it at this time, has no Critical Area plan. But as you also may know if you've looked at a map, the Critical Area is 800

feet from the borders of the Town of Trappe. The town's existing sewer facility utilizes as a discharge point a tributary stream.

Trappe is very interested in issues of municipal growth. We have had a substantial annexation within the last year. We are still dealing with the legal issues that pertain to that.

The fundamental problem that both the Town of Oxford and the Town of Trappe have with Bill 933 is its failure to take into account Article 66B and Article 23A. Other speakers made the point, so I will not dwell on it.

But municipalities in the State of Maryland have the same home rule that counties have in the State of Maryland. Municipalities, especially in the area of planning and zoning, have exclusive jurisdiction.

Municipalities grow only two ways; by infill, as Mr. Campen talked about, and by annexation.

Article 23A, Section 9, defines the

relationship between the County and The town as it relates to annexation. It allows the County five -- it allows what I call a transition period of five years by which the County has the right to veto a change of use that is a change from the existing County Comprehensive Plan.

But once land is annexed, it becomes a part of the town. Each of the towns that have Critical Area; Easton, the Town of Oxford and the Town of St. Michaels, have Critical Area plans approved by the Critical Areas Commission, approved by the very gentlemen that Judge North quoted. All of those plans have provisions for the granting of growth allocation and have provisions for review by the Critical Area Commission.

It is my opinion that the way the law works when you read those provisions together, as a judge would do, as a court would do, that once land becomes annexed, subject to the annexation provisions of Article 23A, the town has exclusive zoning control. If that land happens to bear a

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Critical Area land-use classification of RCA, therefore making it potential growth allocation conversion land, that the town, without the express consent of the county government, could not authorize a dwelling density of greater than one per 20 for five years. But other than the five-year transition period, the zoning control is exclusively within the towns.

And what Bill 933 purports to do is to give the County the ultimate veto power of land-use classification changes, RCA changes –

(Change audiotape)

– RCA conversions within the towns.

We don't believe that that will survive judicial review, and we believe, in an exercise of global view, the right thing for the Commission to do is to not approve Bill 933 to the extent that it purports to apply within town boundaries.

I don't think there is any question that the County has the authority to say we're going to change that pre-map growth allocation area. That's

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fine. That's County jurisdiction. They can do that. That doesn't change the fundamental right of the town to go through an annexation process, and consistent with 66B, consistent with 23A, to rezone that land, subject to the five-year transition period.

The other thing I would point out and I would offer for the record are a copy of the minutes of Talbot County Planning Commission.

We are fortunate to have a Planning Commission that are very active, they understand these principles, they work hard and they looked at Bill 933. They recognized that it was unnecessary, they recommended to the County Council that they withdraw 933 and that they permit – and there be some discussions among the towns. You all may or may not have seen some of the tense correspondence that has passed back and forth among Town representatives. That tension is a reflection of the fact that there has been absolutely no dialogue, zero, none, no cooperative effort between the county

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government and the towns in coming up with a cooperative approach to the growth management and growth allocation issues.

I think everyone would agree at this point that that discussion, that dialogue between the planning officials of the towns, between the elected officials of the towns would have been preferable.

So we would ask you to not approve this amendment.

I would adopt the legal memorandum that Michael Hickson submitted on behalf of the Town of St. Michaels on behalf of the Town of Oxford, and would offer for the record a copy of the Planning Commission minutes.

PANEL MEMBER BLAZER: Thank you, Mr. Thompson.

MR. THOMPSON: Thank you.

PANEL MEMBER BLAZER: Any other town representatives? (No response)

Any elected officials who would like to

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make comments? (No response) I see movement in the back, but nobody is coming forward. Okay. No elected officials. Okay. Thank you.

The Maryland Department of Planning, I think, has a representative here.

MR. DUKET: How are you doing, Mr. Chairman, ladies and gentlemen of the panel, staff, counselor. For the record, I'm Larry Duket of the Maryland Department of Planning.

And I know what's going through your heads; here comes State Planning again.

But I want you all to think about the Critical Area law, but I want you to think about a little bit more than the Critical Area law.

I've been involved in State growth planning for nearly 30 years now. And if I had a couple hours to explain it all, you'd be amazed at how well all of our growth and environmental protection and funding laws fit together to form a pretty good growth strategy for Maryland.

I'm going to go ahead and read this

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statement rather than just speak extemporaneously, just to get this over with.

The Maryland Department of Planning appreciates the opportunity to offer comments on Council Bill 933.

The Bill would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities, or towns as they've been referred to tonight.

The bill is of significant interest to this department because it comes at a time when the State is committing its planning functions, its regulatory programs, its funding, its technical assistance and its capital programming in furtherance of directing growth towards both county designated growth areas and incorporated municipalities, which we now call County and Municipal Smart Growth and Priority Funding Areas, if you will.

With the current governor's Priority and

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Places initiative, this department is committed to participate in the debate on issues fundamental to the implementation of a sound growth strategy for Maryland.

The growth allocation process was principally created to allow county and municipal governments to reconcile the comprehensive planning, zoning and capital programs with the new resource conservation rules of the Critical Area law.

The RCA category limits development to only one dwelling unit per 20 acres. From a land-use planning perspective it's unusual and economically inefficient to have land within municipalities relegated to one dwelling unit per 20 acres standard. Yet the Critical Area RCA had this effect on farm and forest lands not yet having public water and sewer that were located within municipalities, within municipal growth boundaries and on adjacent lands eligible for municipal annexation.

Municipal governments in particular when

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the law was being written were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

Under Council Bill 933 specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area program and consequently the County will have approval authority over all future growth allocation requests in town. This would occur through the supplemental growth allocation process that is now part of the County's program.

This process was really originally created for narrower purposes through Council Bill 762, the supplemental growth allocation process, and was approved as a refinement by the Commission, I believe circa 2000.

Looking back on it, it seems unlikely that in 2000 the Commission would have treated such a significant change to the growth allocation process as a mere refinement were it not for the retention at that time of specific language giving

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allocations to the town.

Under Council Bill 933, the County and a town with an applicant seeking growth allocation would use a joint hearing process to ostensibly assure that both municipal and county planning and growth issues are considered. And, as a matter of fact, this department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of Council Bill 933.

Our concern, however, is that 933, by striking reserve amounts of allocation to each town, places the County as the final decision maker for all municipal requests for growth allocation.

Now, the County's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That's not what we are saying; that is, we do not believe that the rule calls for municipalities to always get what they purport to need.

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But Council Bill 933 effectively makes the supplemental growth allocation process the primary and only process, and contains no decision-making criteria or standards to account for or accommodate municipal growth needs. Not even the municipal Comprehensive Plan or the municipal zoning map, nor a municipal Critical Area Program, nor a growth allocation map prepared by the town is relevant under the terms of Council Bill 933.

Council Bill 933 can result in the denial of a specific bona fide, good-faith request for growth allocation which meets the accounting and locational criteria of the Critical Area law. It appears that the Commission's growth allocation policy is consistent with Town planning and zoning laws and the Critical Area programs. It's difficult, if a denial should occur in such a situation, how that process accommodates the growth allocation needs of the towns.

Now I'm going to throw you a curve ball here because I want to talk about the Regional

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District Act just for a second just to clarify something.

Under the Regional District Act certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority of their respective counties because these municipalities have never been given the authority by the General Assembly to exercise their own zoning powers. That set aside, the concept of county control over municipal land-use decisions is not contemplated in Maryland's planning and zoning law. County and municipal planning and zoning programs are created on equal, separate and, at times, competitive footings. No mystery.

And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth and environmental laws and, in doing so, uniformly the legislature has both preserved the sanctity of municipal land-use decisions and created laws that embody preferences for continued growth in municipalities that plan and

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zone for growth.

Even in that case where municipal annexation of land previously under county jurisdiction occurs the General Assembly has created a pretty clear rule that says that the county can control the zoning the municipal wants to put on there for five years, but after five years there is no longer any county control over municipal land use or zoning.

Now, when the Critical Area law was being drafted there was a lot of legitimate concern that was voiced over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges where growth and expansion were planned. Such concerns were based on property interests, public infrastructure investments, long-range capital plans and professional land planning principles, but these concerns were answered very clearly by the creation of the growth allocation law.

The concerns of municipalities in

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particular were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of municipalities.

Now, in hindsight the issue of county control over municipal growth allocation should have been raised in the context of Council Bill 762; however, given that 762 retains specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of Council Bill 933.

We also recognize the many approved programs in other counties with similar practice. We think these programs need to be revisited. Perhaps this can be evaluated during the six-year review process or perhaps it needs to be evaluated sooner if municipalities report to you they are not being accommodated.

Now, much has changed since the first generation of the Critical Area programs. The Commission and local governments know more, they have greater experience with much of the detail and

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technical nature of the Critical Area law and the criteria. And also since the adoption of the Critical Area law many new State laws have been enacted; the 1992 Planning Act, which applies to all State agencies and promotes eight different visions or goals for growth in the State; Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, on and on it goes. If you look at the details of each of these laws you will find that they favor growth directed to county-designated growth areas and incorporated municipalities. Indeed, these new laws reflect the same spirit as the Critical Area's growth allocation rule. Growth within muni that plan and zone for it should be accommodated.

The Maryland Department of Planning offers its assistance to the County, several towns and the Critical Area Commission to work to resolve issues that show that municipal needs for growth allocation are accommodated.

I thank you for your attention. If

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there's any questions, I'll be glad to try to answer them.

PANEL MEMBER BLAZER: Thank you, Mr. Duket, we appreciate it.

MR. DUKET: Would it be alright to -- I'll give this to the staff.

PANEL MEMBER BLAZER: Okay. We'll move on to the general public comments. I've got -- I have most of the names. If you didn't sign up, there's still one over here. We can take names as we are going through.

We're just going to go first come, first served with this. Come up to the front, identify yourself and if you are with any particular organization and approximately where you live. First, Edward Doyle. Mr. Doyle.

MR. DOYLE: Mr. Chairman, I'm coming up -- I'm coming down with a cold. It's very difficult to speak, so I'd prefer to wait and see if other comments need clarification, then I'll speak then.

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PANEL MEMBER BLAZER: That's fine. Thank you, Mr. Doyle. Thomas Alspach.

MR. ALSPACH: If you do Mr. Deming, I'll follow him.

PANEL MEMBER BLAZER: Mr. Deming, do you want to go now?

MR. DEMING: Thank you, Mr. Chairman, members of the Panel. My name is Thomas Deming. I'm an attorney from Annapolis, Maryland, and I've been retained by the St. Michaels Bay Hundred Alliance. And this is an alliance of community groups that include Friends of Bay Hundred, Inc.; St. Michaels Preservation Council; Save Our St. Michaels; Talbot County Historical Trust, Inc; Talbot County Taxpayers Association; Talbot Preservation Alliance; and Talbot River Protection Association. All of these groups support the amendment proposed by Talbot County in the form of Ordinance 933.

I would just like to speak briefly to a couple of the legal points that have been raised in

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prior testimony this evening, and others will address more specific benefits of 933 for Talbot County.

There have been several suggestions from attorneys representing towns that somehow there is a legal right among the towns to manage growth allocation within their boundaries even when the towns are expanded through annexation of areas that were previously in the county. I would submit to you that the most direct answer to that question is found in the Critical Areas law, specifically in Section 8-1808.1.

Now, This section was enacted by the General Assembly in 1986, after the criteria had been presented to the General Assembly, including the criteria which developed the whole concept of growth allocation in the first place.

And on the subject of growth allocation, the General Assembly decided in 1986 -- and I'm reading from Subsection B of that law -- the growth allocation for a local jurisdiction shall be

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calculated based on 5 percent of the total Resource Conservation Area in the local jurisdiction at the time of the original approval of the local jurisdiction's program.

So under the Critical Area law what a local jurisdiction in the form of a municipality can claim as a matter of right is 5 percent – or is growth allocation equal to 5 percent of the Resource Conservation Area that was located within their boundaries at the time of their initial program approval. There is nothing in the Critical Area law which speaks to the question of subsequent annexation of areas from the county which are designated RCA.

And, in fact, in my experience with local programs in other jurisdictions, this is a foreign concept. For example, I've been involved in a number of cases over in Annapolis which the City of Annapolis has annexed lands from Anne Arundel County which bore an RCA designation. Nobody ever suggested in the context of those annexations that

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some portion of Anne Arundel County's growth allocation automatically goes to the City of Annapolis along with the annexation. Yet that is what the towns in Talbot County seem to be suggesting here tonight.

That raises a second point that I'd like to suggest to you, and that is that I think this panel to fully evaluate the proposal of Talbot County needs to look at what, in fact, is going on in other local programs within the overall Critical Area with respect to the questions that are posed. It is, after all, the Commission's responsibility, under 8-1801B2 of your statute, to implement the resource protection program on a cooperative basis with State and affected local governments, with the local governments establishing and implementing their programs in a consistent and uniform manner, subject to State criteria and oversight.

Well, that raises the question how are other local jurisdictions dealing with these questions of growth allocation in annexed lands. In

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my experience there is no other local jurisdiction in Maryland that is handling it quite the way that municipalities in Talbot County have been allowed to handle it under the provisions that were originally part of Talbot County's local program.

I would suggest that, as Judge North and all the people he cited spoke to the original intent of the statute, there is a lot to be said for those comments. I think they are right in terms of what the original intent of the law and criteria were. But, furthermore, I think you need to consider that what Talbot County did in giving, as the county attorney said, a blank check to municipalities, measured in hundreds of acres of lands that could be annexed and automatically have growth allocation go with them, that was unique. That's a situation that I don't think was repeated anywhere else in the State of Maryland.

And so it would be, I think, moving Talbot County and the municipalities in Talbot County more back into the uniform and consistent

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approach that characterizes the implementation of programs throughout the Chesapeake Bay region of Maryland to approve 933 as an amendment to the Talbot County program.

I'd be happy to answer any questions.

PANEL MEMBER BLAZER: Thank you, Mr. Deming. Any questions of Mr. Deming? Great. Thank you. Christopher Britton. Mr. Britton?

MR. ALSPACH: May I take Mr. Britton's spot since I deferred to Mr. Deming.

PANEL MEMBER BLAZER: You're Mr. Alspach?

MR. ALSPACH: Yes sir.

PANEL MEMBER BLAZER: Real quick.

MR. ALSPACH: Well, I'll wait if you –

PANEL MEMBER BLAZER: No, go ahead. Come on up.

MR. ALSPACH: Good evening.

PANEL MEMBER BLAZER: Go ahead. State your name and affiliation.

MR. ALSPACH: Yes, sir. Good evening, members of the Panel. My name is Tom Alspach. I'm

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a resident of Talbot County. I am president of Talbot Preservation Alliance, which is a nonpartisan volunteer citizens organization. We have some 300 active members who are involved in and concerned with growth and development issues in the county. We take an active role in development projects; we testify at hearings; we, from time to time, hire consultants, when necessary, to offer expert testimony; and we've been involved in a number of the projects that you've heard a little bit about tonight.

What I would like to do is just shift the focus a little bit and talk to you briefly about the specifics of a couple of projects that we've had here in Talbot County that, on the one hand, are examples of how 933 would work and how it has – how 762 has worked effectively, we believe, and also an example of why 933, in fact, is needed very much in this community.

The earlier speakers from the towns, I think, uniformly expressed reservations about 933.

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In fact, I think they went further than that. I think it's quite natural and to be expected that the towns would prefer not to have Talbot County involved, quite frankly, in their decision making on growth issues.

I respectfully suggest to you that the Critical Areas law obligates the County to be involved, notwithstanding that there may be some necessary tension as those issues are worked through. But that tension can be a good thing because many times it can produce a much better result. We've had that experience in Talbot County.

You've heard some testimony about what's known as the Easton Village project, which is a site at the corner of Route 33 and the Easton bypass. That site also happens to be at the very head of the Tred Avon River. The Tred Avon River is listed as an impaired river by the E.P.A. We've had independent analysis done of the water there. The water off that site basically is unsafe to go into; there's a serious problem with all sorts of

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pollutants, in particular hydrocarbons.

Now, as a result of the joint process that 762 put into place, as you've heard tonight, Talbot County also was involved in the approval of growth allocation for that project. And I think one of the speakers stated that Talbot County effectively had extracted a million dollars worth of road improvements for Glebe Road as a result of their involvement in the project. That's not exactly correct.

It wasn't Glebe Road. There were monies that the developer agreed to pay as a result of the County's involvement in the project, and they are monies that are specifically directed towards improving the circulation and flow at the part of the road that passes along the Tred Avon River. Why is that important?

One of the objections that we, the Talbot Preservation Alliance and Talbot River Protection Association, had to this project was that there's a massive cuing problem at that intersection;

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automobiles back up there, there's hydrocarbons that are coming off those vehicles, they're going right into the river, and the results are obvious in the tests that have been done.

The objective and the accomplishment of the County Council in reviewing the growth allocation request was to require that developer to do something about that situation to try to improve the traffic situation there that, in turn, would reduce the hydrocarbon emissions into that river. And that's a good result. And that would not have happened, I submit to you, if we did not have this process of joint review. There were some other improvements to the project that occurred as a result of joint review. I won't take you through all them.

But I want to emphasize to you that this fear that you are hearing from the towns that somehow this process will halt their growth in its tracks is utterly unfounded. All the evidence to date is just to the contrary. There has been no

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instance of Talbot County under 762 denying growth allocation that has been requested. All their involvement has done is to improve the growth allocation application.

There was another example besides Easton Village that was on the board earlier tonight, where the County was involved in the process. And as a result of that joint review we got a 54-acre easement on property on Oxford Road that will be perpetual as part of negotiations for, I believe, 40 acres of growth allocation.

So these are good things that come out of this process, and these are reasons why we believe this process should be expanded to include the other municipalities in the county who are on the rivers.

It's very important to remember that the growth allocation decisions made by the municipalities affect everyone in the county, they affect everyone's Critical Area.

We have a big problem with the Miles River. What happens with growth allocation in St.

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Michaels affects everyone who uses the Miles River and the Critical Area around St. Michaels, whether they be watermen, tourists, people who live there or folks just passing through.

Now, I told you I'd give you an example of why 933 is needed, and I'm going to do that. You heard some testimony to the effect that this County Bill is presumably driven by this Midland project in St. Michaels. I submit you to that's not the case. There is a much broader problem than that, and it's illustrated by another annexation and growth allocation that was just approved by the Town of St. Michaels recently.

What I'm showing you is a map of the Town of St. Michaels. This is the Town of St. Michaels, this light yellow area. Recently St. Michaels annexed, by doing what they call a pipe stem, actually, everything in the gold here. So they brought this into the Town and then they awarded growth allocation. They awarded growth allocation for this property. It hasn't come to you yet. I've

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heard some rumors it may be withdrawn. I don't know the ins and outs. But that was annexed and growth allocation was awarded to that property.

Now, what is the planning rationale for that? You heard from the Department of Planning tonight about their concerns about Smart Growth, driving development into the towns. This is just the opposite from that.

You heard the attorney for St. Michaels talking about not wanting to extend sewers, not permitting commercial sprawl, and requiring development to occur in and around municipalities. That's not what they're doing. They are putting an annexation out in the middle of Talbot County. This annexation -- the Critical Area in this annexation is completely surrounded by county Critical Area. The blank line is the Critical Area. This is all county Critical Area. They had decided to put this property, this annexation, out here in the middle of the county.

I submit to you that if a municipality is

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going to engage in this kind of planning, this kind of growth, it is absolutely essential for the people who live in this county on both sides of this project to have some say in what they do and decisions that are made with regard to growth allocation. So that is, I think, a very clear example of why 933 is needed.

What I'd like to do -- I know that time is running short, so I'll cut my remarks short. I've got a lot more to say, but I won't go on.

PANEL MEMBER BLAZER: Thank you.

MR. ALSPACH: I would like to submit this for the record, though, if I may, because I think this is probably as good a graphic example as you are going to see of why 933 should be approved by the Critical Area Commission.

Thank you very much for the time.

PANEL MEMBER BLAZER: Thank you, Mr. Alspach. Gretchen Panuzio.

I would like to say real quick, while Mrs. Panuzio is coming up -- I think I'm saying that

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right. I don't if I am.
MS. PANUZIO: And you are.
PANEL MEMBER BLAZER: We have got about 15 more people and it's about 9:30 right now, so if somebody has said something that you would agree with, you can just say, I agree with that speaker before, and try to address some of the new issues that may come up or that you want to present.
MS. PANUZIO: My name is Gretchen Panuzio, P-A-N-U-Z-I-O. I live at 708 Riverview Terrace in St. Michaels, Maryland.
My husband, Nicholas Panuzio, asked me to read this letter on his behalf tonight. He had to be out of town and was not able to come. But he is a former mayor of Bridgeport, Connecticut, and he has a viewpoint that is a little different from some of the people.
He said, gentlemen and ladies, I am sorry that I will not be able to attend your hearing at the Easton School auditorium because I will be traveling to Connecticut on business. I will attend

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your meeting concerning St. Michaels' Midland request next week.
I am submitting this letter for the record because of my concern about the process that was used by the County Commissioners in their enactment of Bill 933.
As a former mayor of a large community in an urban setting, I am concerned about the need to maintain the rural and small community environment that we all love in Talbot County. I did not move here to have another Northern Virginia evolve.
I know that growth of some nature is going to take place and I am interested in positive growth. If there is anyone that believes that growth can be stopped, they are wrong.
While I live the county, my home is one block from the city line of St. Michaels. I believe that I have some knowledge of the concerns of the people of St. Michaels. I would like to express my concerns for the following reasons:
Number one. The approval of Bill 933 was

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done without a public hearing and was rushed through to stop St. Michaels from making their own decisions on the Critical Area decision. This was a complete reversal of many years of having the local towns handle their own decisions.
Number two. If the towns do not have the ability to manage their own growth, then they will not be able to have managed growth which will increase their tax base. Consequently they will not be able to support the services that are required without killing the local residents with high taxes. The tax burden on the residents of the town is twice as much as that of the county.
Number three. It removes growth allocation from the towns that have used it judiciously and have come to rely on it for projects under consideration. It is saying to the local communities we will manage your growth and control your tax base, but you can increase taxes to maintain services.
Number four. I believe that it runs

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contrary to Critical Areas regulations which require the counties to cooperate and accommodate the towns. It is also not helpful to good growth management –
(Change audiotape)
– which says to keep all growth near the towns so that services such as sewers and water can be handled more efficiently.
Number five. The County decided many years ago that the best way to handle these actions were for the people closest to the situation to make those decisions. Now because of an attempt to control what local citizens want, the County has reversed it traditions which have worked well. Citizens should make the decisions for their communities, not people who live outside the community.
I hope that the Critical Area Commission will reject Bill 933 and allow the local communities to control their own destinies. If not, perhaps the County should come up with a taxing system that says if the county is going to control the economic

development of the towns, then they will spread the cost of the services throughout the county and have everyone share in the taxes. I do not believe that those who oppose any growth will want that to be done.

Sincerely, Nicholas A. Panuzio.

I'll be happy to give this to you for your records.

PANEL MEMBER BLAZER: Appreciate it. Thank you. Gene Mechling. Mr Mechling.

FROM THE FLOOR: He left.

PANEL MEMBER BLAZER: Okay Jay Corvan.

MR. CORVAN: How do you do. My name is Jay Corvan. I live in Trappe, Maryland, and I'm a local architect.

I'd just like to comment very briefly about both of the bills under consideration.

First of all, I believe that the antagonism that's being experienced between the County and municipalities is long founded and very deep and, unfortunately, I think that they need to

work on resolving their differences.

I believe that the bills under consideration will actually help along those lines. I think that when you are thinking of -- really go back to realize what this might have been in the governmental sense, I believe it might amount to something like the checks and balances that our government actually experiences in the United States. So I don't think this is that unusual.

I'd also like to say that I believe that if the County participated in a master plan, which it currently does not have underway, that the growth allocations could be considered by the municipalities during that master-planning process, and we wouldn't be experiencing this problem now if we had that master plan in place. So I think this is an important aspect. And perhaps you, as a committee, might be able to recommend to the county and the municipalities to undergo that process. Thank you.

PANEL MEMBER BLAZER: Thank you, sir.

Russell Dize.

MR. DIZE: Mr. Chairman, members of the committee, I am Russell Dize, vice-president of Maryland Watermen's Association, and I probably have a different slant on it than most people here.

I'm really interested in the Critical Areas. As we see more growth we see more problems with the rivers and the bay. We're fighting hard now to eliminate nitorgen that's going into the bay. And with more growth allocation in the area around St. Michaels, it affects us greatly in the Tilghman area, which I'm from, as we work the waters of Miles River and other rivers in Talbot County.

Last year they had a sewage spill in St. Michaels that went into the Miles River and shut the river down two weeks. That caused our watermen two weeks of work. That's pretty difficult to handle.

With all these new houses going on, we just want to make sure that they'll be handled, that the effluent will be handled.

Finally the Chesapeake Bay Foundation has

taken up the nitrogen issue and, as some of you may know, the Chesapeake Bay from Potomac River to above the Bay Bridge has a huge problem with low oxygen coming from the nitrogen. And there are no specific standards that these sewage treatment plants have on nitrogen release. They are getting some guidelines now, but there haven't been any specific numbers put on the nitrogen release.

So it affects us greatly. We're like -- the watermen now are like the miners' canary. When you see us disappearing, you know you've got a problem. We're disappearing.

We need to control it, and I believe 933 will help, because if you get below St. Michaels, anything from St. Michaels down, all the little communities, Tilghman, Claiborn, Whitman, McDaniel, Bozman, Neavitt, we are controlled by the County, so we think the County would have a better idea of the complete residents in the area than the Town of St. Michaels. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr.

Dize. John Hurt.

MR. HURT: Chairman Blazer, members of the Panel, members of the staff, my name is John Hurt. I reside at 15 Londonderry Drive in Easton.

I'm here tonight as president-elect of the Mid-Shore Board of Realtors, representing our board and over 500 members.

And we are really interested in managed growth, well planned and well thought through that will benefit all who live and love the mid-Shore area.

We believe that the Critical Area law as set forth in the Natural Resources article of the Maryland Annotated Code, nor the local program criteria contained in COMAR give county government the power to control or limit planning, zoning or subdivision regulation within local municipality borders.

Both legislation and case law have regularly declared that municipalities have exclusive planning, zoning and subdivision powers

within their borders. The reason for this should be clear. Local municipalities are the best judge of what is appropriate for them.

I'm just going to read just a couple excerpts out of this statement and then I'll conclude.

The Mid-Shore Board of Realtors strongly opposes the approval of Talbot County Bill 933. It effectively removes planning and zoning powers from the towns due to the fact that the majority of the land within the town is within the Critical Area -- -- Sid Campen said that only 5 acres are out -- or are not Critical Area in the Town of Oxford -- thus the County would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.

The bill has created a strong adversarial relationship between the County and the towns.

Russell mentioned that this is probably been going on for some time. It is. But this certainly doesn't do anything to alleviate that.

It's also clearly contrary to Maryland law, which requires counties to work in coordination and cooperation with the municipalities to plan and establish for growth. And 933 is a far-reaching effort to take complete control over one particular project.

Good legislation demands that those who will be affected have a voice and that their voice be heard and considered. If Bill 933 is allowed to take effect, this will not be the case. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will lose also.

It's interesting that Mr. Dize summarized his remarks by saying 933 would be a good vehicle to control growth. Quite frankly, I believe that's the objective. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Hurt. Callum Bain.

MR. BAIN: I'm Callum Bain, 9704 Bent Tree Road, Easton. I'm a practicing physician, I'm

an M.D. I'm also the president of the Talbot River Protection Association.

Chairman Blazer, ladies and gentlemen, we know by now that 933 takes away the growth allocation rights from the municipalities.

Let me remind you that we are not talking about canvas, we are talking about an area that is 42 percent water; 38 percent of our land is in the Critical Area and, as you heard earlier tonight, 600 miles of waterfront. So what we are talking about is not like canvas.

Our roads here are already inadequate. During Isabel they flooded. Much of the development around here is on very long, thin peninsulas. If Isabel had been worse, it's doubtful if we could have got the people out of some of these small towns. Land does not exist in some areas to improve these roads; it just isn't there.

We also know that the sewage is inadequate in many areas around here.

Now, the Council, who are behind me, are

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responsible, the County Council that is, for the health and safety of citizens.

We have massive growth going on here. We have, for example, in St. Michaels, we have a jewel highway, Route 33, with a very bad accident record.

And I've already alluded to the sewage problems in this area, which I happen to know a lot and can submit written documentation if you would like it.

I think the County Council must control development around here by Bill 933 to ensure public safety; safety on the highways, safety through the disposal of sewage. They cannot fulfill their responsibility for health and safety without Bill 933.

So I ask for the support of the Critical Area Commission in putting Bill 933 into operation. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Bain. Jane Hubbel.

FROM THE FLOOR: She left.

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PANEL MEMBER BLAZER: Thank you. John McGowan.

MR. MCGOWAN: My name is John McGowan, and I live at 400 Water Street in St. Michaels. I've owned the property and been a resident of St. Michaels for more than ten years. I'm a former member of the St. Michaels Historic District Commission. My letter of February 29 is included in the Critical Areas Commission 933 file. I'll be brief.

I agree with most of the people who have opposed 933. I oppose 933. When I look at the actions of the Talbot County Council I shudder because it reminds me of an experience that I had a few years ago negotiating a check with the Chinese communists, officials. After signing a lengthy agreement for a joint venture and construction of a large facility, we sent a large contingent of people to China for planning and carrying out the agreement, we spent a pile of money, only to find out that the Chinese began to renig on the agreement

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immediately. It became clear to us that the rules were being changed after the agreement. It was also clear to us we were dealing with bugs, especially the local level. I won't bore you with how we figured out to get around this. But it brings up a parallel with the way 933 was enacted, with no discussion. People have alluded to cooperation and so forth. I won't go back over that.

But after almost seven years of public exposure through press releases, press accounts, public meetings, readily available copies of the proposals, the Talbot County Council all of a sudden late last year discovered the existence of the proposal for the Miles project. They must have been hearing voices, demon voices maybe. They certainly were hearing voices.

It's my belief that several members of the Council should have recused themself, and this 933 would never have passed. I say that because of the close association with individuals and groups that are opposed to this project. But that's for

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another day.

I would ask this Council -- excuse me -- panel to not allow 933 to be enforced, enacted, and that the growth allocation be restored to St. Michaels. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. McGowan. John Wolfe.

MR. WOLFE: Good evening. My name is John Wolfe. I reside at 246 Perry Cabin Drive, St. Michaels, Maryland. I'm not an attorney and I'm not going to quote COMAR. What I am going to try to do is appeal to your logic.

We have a rather unique situation in Talbot County compared to at least where I've lived other places in my life. We have shared responsibilities for key items of infrastructure. For example, in St. Michaels the wastewater treatment is not under the control of St. Michaels, it's a County responsibility; schools are a County responsibility; many roads that impact on the St. Michaels area are County.

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So what sense does it make to have a municipality have unilateral control over growth allocation when it impacts key infrastructure items for which they do not control. That's why a cooperative interactive process makes sense. It's local. It's not COMAR. I ask you to support Bill 933. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Wolfe. Tom Hughes.

MR. HUGHES: I don't know what happened to your batting order, but I thought I was third to sign up this evening. So we'll go from here.

My name is Tom Hughes. I'm representing the Talbot River Protection Association.

Members of the Critical Area Committee, I am speaking to you this evening on behalf of the board and membership of the Talbot River Protection Association, also known as TRPA, in support of Bill 933. I'm one of the founders of this organization and I'm still on the board of directors.

TRPA was founded in 1996 to both study

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the condition of our local waters and to insist that all environmental laws be followed in order to protect and improve our rivers.

In 2002 I was appointed by the Talbot County to an ad hoc committee to review its new Critical Areas regulations. I was also appointed by the County in 2001 to both a regional and Steering Committee for the review of our Comprehensive Plan. The product of this two-year effort is currently under review by Talbot's Planning and Zoning Commission before being sent to the County Council.

My experience in all these endeavors has given be broad insight into two areas of Talbot County's life that are germane to this evening's discussion. One is the past and present condition of our rivers, and the other is public perception of same and what they want done about it.

I have been a conservationist for most of my life and continue to be distressed at the lack of progress in saving the bay. We have made countless promises to our unique estuaries and have yet to

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deliver on them. Somehow these promises and time tables always seem to get pushed back further into the future and our environment suffers as a result.

The waters of Talbot County are now in worse condition than they were when the Critical Area law was passed. How do I know this? Over the past several years TRPA, in conjunction with the University of Maryland at Horn Point and others, has assembled a unique database of water quality data covering all of Talbot's waters. These data, assembled from both public and private sources paints a sorry picture of the health of our local waters. All of this data can be accessed on the Web at www.hpl.unces.dbu and then click on the TRPA Creek Watchers link.

Wholly objective scientific data proves that water quality in Talbot County is not improving as required under federal, state and local laws, and in many instances it is actually getting worse.

As a participant in Talbot's Comprehensive Plan review I was also made well aware

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that the citizens of Talbot County want their rivers improved. They, like other residents of the mid-Shore, place a far greater value on improving their environment than catering to poorly planned development.

The majority of residents of Talbot, as represented by the regional comprehensive planning committees, also want better cooperation between the town and County governments. They realize that actions of one entity have affects on the other that must be rectified prior to decisions being made that have long-term consequences for the County as a whole.

Forty-two percent of Talbot County is water, 38 percent of our land is in the Critical Area. The Critical Areas law has more significance for Talbot County than any other subdivision in Maryland.

What the incorporated towns of this county do often have effects that go beyond its own boundaries. Since any project undertaken in the

Critical Areas of one of our towns will ultimately affect the waters of the county, it would seem prudent for both entities to act in a coordinated fashion to ensure the best results for all the citizens of the county. Indeed, the County's comprehensive water and sewer plan already necessitates this in matters relating to water and sewer. All municipal sewer systems in the county discharge directly, or in some cases indirectly, into the county waters.

Good government requires cooperation. And in 2004, Talbot citizens, as represented in the new county Comprehensive Plan draft, demanded the rivers of Talbot County belong to all of us and their improvement is crucial to our economy.

Bill 933 is a wholly legitimate response to a majority of the citizens of Talbot County who demand both cleaner rivers and better cooperation between local governments in order to accomplish this long overdue goal.

More than 20 years ago the State of

Maryland declared through the new Critical Areas law that -- quote -- the shoreline and adjacent lands constitute a valuable, fragile and sensitive part of this estuary system where human activity can have a particularly immediate and adverse impact on water quality and natural habitats. The capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited. End of quote.

The object of the Critical law -- and only one previous person has even mentioned that -- the object of the Critical Area law was to limit activity in the thousand feet of land near the water in order to clean up the bay and provide habitat.

Members of the Commission, the rivers of Talbot County are telling us that we have failed totally in our mission to clean up the bay.

People ask TRPA from time to time why they continue to see shorelines being cleared and developed. They thought there were laws against it. We try to explain growth allocation to them, but in

the end many come to think it is all a farce. Indeed, how can a homeowner be expected to take seriously Talbot's new hundred-foot residential buffer requirement, when a developer is able to call his hundred-foot buffer a waterfront park with all the activity it entails?

Your Commission has an opportunity here tonight to support a County Council that, with the backing of the majority of the citizens, wants to make a new beginning in its efforts to clean up our precious rivers while seeing to it that responsible development can still go forward.

The status quo is no longer acceptable. The Talbot River Protection Association urges your support of Bill 933. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Hughes. Judith Amdur.

MS. AMDUR: I'm Judith Amdur of Bozman, and I'm reading a statement submitted by Russell Trane, who is unable to attend the meeting this evening. Russell Trane is the former administrator

of the Environmental Protection Agency.

Dear Members of the Panel: As the owner, with my wife, of a 175-acre farm in Bozman, Maryland, I'm writing in strong support of Bill 933. It is essential that critical development issues not be left to the sole discretion of a local jurisdiction such as St. Michaels. Large-scale real estate development inevitably impacts a far wider region than just the town immediately involved.

Sewage treatment and nutrient runoff into local waterways, for example, will affect wide areas of Chesapeake Bay. Increased traffic congestion at a bottleneck such as St. Michaels will have a direct impact on the safety, economic well-being and general quality of life of those of us who live in the Bay Hundred area.

It makes total good sense for the County to be involved in such decision making as assured by Bill 933. I urge your support of that Bill.

Sincerely, Russell Trane.

PANEL MEMBER BLAZER: Thank you, Mrs.

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Amdur. Robert Amdur.

MR. AMDUR: Thank you. I'm Robert Amdur of Bozman.

I suggest that the reason we are here tonight is the fact that there has been little cooperation or sensitivity by the Town of St. Michaels to the citizens of the county.

Talbot County Council, acting in the spirit and the best interest of the Critical Area law and regulations, recently passed Bill 933. The Council recognized the impact that growth allocations that are granted for intensive development could have on a county infrastructure and upon the residents of the areas beyond the Town limits.

I believe that the County Council should have a role in determining how growth in the Critical Areas will be used when it affects county residents. Bill 933 will accomplish that objective, and I urge the Commission to endorse this ordinance.

PANEL MEMBER BLAZER: Thank you, Mr.

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Amdur. Jackie Fletcher.

MS. FLETCHER: I'm Jackie Fletcher. 24640 Nightclub -- Yacht Club Road, St. Michaels, Maryland.

After listening and analyzing everything both sides have to say, I strongly encourage you to approve this bill. It's a good thing to do.

And I think there might have been some misunderstandings or mis -- all this bate (phonetically) made in the past. But go forward so that we can do a responsible thing for the county, for the water, for the bay, for the people and for our next generation. And that's all I have to say.

Just something else I'd like to mention. As a token Chinese here, I would like to say that we grew our learning of our war from (unintelligible). We use the same Chinese character for crisis as well for opportunity. So we need to understand the issue. Every issue is (unintelligible) dimensional, particularly when we talk about 933. So I urge some of you, you may be opposed to this issue, take a

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look at the benefit of what the issue will bring to all of us. As a concerned citizen I encourage you to approve this Bill. Thank you.

PANEL MEMBER BLAZER: Thank you. Lisa Mullens Thompson.

MS. THOMPSON: I am a town resident of St. Michaels, and I'm concerned about the possible unintended consequences of Bill 933.

Proponents of 933 claim that they want to encourage a more deliberate process; it helps to preserve the farmlands and the health of the bay. But I fear 933 will do just the opposite.

This Bill has the effect of rewarding towns that quickly granted growth allocation, while punishing the towns that took their time to more carefully deliberate both the development proposals and future growth.

Many backers of 933 say they ultimately want to take growth allocation away from St. Michaels and Oxford and give it to Easton. Such a move would only reinforce this perception.

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The message to towns and other Critical Areas will be clear; in the future he who hesitates is lost. Better to rush a development and the implementation while the growth allocation is still available than to risk losing the opportunity altogether. That is not an environment which encourages responsible stewardship or good town planning.

Everyone here tonight agrees that we want to preserve farmland and save the bay. But I am concerned the ultimate effect of 933 will be to discourage denser developments around existing town centers with access to public water and sewer and, instead, it will encourage large-lot development that will eat up our rural landscape and require the installation of more septic tanks. That result would be the exact opposite of what we all say we want to accomplish.

In short, I urge the Commission to be aware of these unintended consequences and to respect the good faith that has been made by our

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town officials.
PANEL MEMBER BLAZER: Thank you. Allen Silverstein.
MR. SILVERSTEIN: Mr. Chairman, members of the Commission, thank you for the opportunity to appear before you. My name is Allen I. Silverstein. I reside at 7233 Francis Street in Easton, Maryland. I'm here representing the Talbot County Chamber of Commence, an 850 member organization, and I stand here this evening in opposition to Talbot County Council Bill 933. I think you've heard a lot of good reasons why that Bill should not be passed.
(Change audiotape)
And due to lateness of the evening, that's all I have to say. Thank you very much.
PANEL MEMBER BLAZER: Thank you. Robert Fletcher.
MR. FLETCHER: My name is Robert Fletcher. I'm from Yacht Club Road, St. Michaels, just outside the Town and just barely in the county. I probably live closer to the development that's

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been in question than anybody who lives in St. Michaels, 40, 50 feet.
I want to pass on repeating the several comments that I would have made about runoff and roads and the terrible condition that we've allowed the Miles River to get into, along with its creeks, on one of which I live.
I do want to take exception to the idea that's been put forward by two, perhaps three, of the speakers in opposition to 933, to say that somehow that the county surprised them with 933. 933 was well publicized, it had hearings before the County Planning Commission, Planning and Zoning Commission and, of course, it was publicized before it went to the County Council. There has been no surprise.
Also, testimony you've heard tonight from people who complain that the county didn't come to them and stop them from swinging on the rope while they spent a million dollars on legal fees and consultants. I wonder why the Town didn't approach

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the County.
Is the County supposed to know when to jump into a town's business, as they are asking it not to do now, and keep them from dangling?
I think that there has to be much better cooperation.
I sat through the hearings, as I mentioned, in the county, and it became clear that many of the county officers felt that the dialogue had basically failed without the presence of a Bill such as 933.
I strongly support 933. I think that the county people and the St. Michaels and the people of the other towns need to work closer together to preserve our fine area. I thank you very much.
PANEL MEMBER BLAZER: Thank you, Mr. Fletcher. Steve Florkewicz.
MR. FLORKEWICZ: I'm Steve Florkewicz. I live in St. Michaels, Incorporated, the Town of St. Michaels.
And I'd like to urge your support of Bill

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933. I feel it's quite necessary in order to take in the entire area of the county when growth allocation decisions are made.
One interesting thing that came to my mind when this hearing announcement came out was back five years I had written a letter to the St. Michaels Commissioners requesting that they consider returning at least some of the 245-acre growth allocation to the county, and part of the reason was because the 245 was way out of balance with the other towns, Oxford only getting 195, Easton only getting 150. And when you look at the area of St. Michaels, there was not 245 acres available for development in St. Michaels. So they were depending on annexing county land in order to be able to use that 245 acres.
So I think, based on the fact that they were figuring on taking over county land, that the county should also have a strong voice in how the growth allocation is allotted. Thank you very much.
PANEL MEMBER BLAZER: Thank you, sir.

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Elizabeth Jones.

MRS. JONES: Good evening. My name is Elizabeth Jones, and I live just outside of St. Michaels.

I want to take exception to a statement earlier that there was no public hearing for Bill 933. Actually there was a public hearing and actually in preparation for that public hearing a rather remarkable thing happened. Forty activists got together, strongly supporting this Bill, and together we decided that we had just a week but in that week we were going to see what kind of support there was beyond ourselves.

We started collecting signatures on Tuesday morning; we finished the following Monday, that's when the stragglers came in. There was amazing outpouring of support from county residents and town residents alike in favor of Bill 933.

We realized that we are blessed to live where we live and we realized that we are facing tremendous development pressures and, therefore, the

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idea of having a safeguard system where towns and county work together to make sure that we get sustainable growth, not detrimental growth, is in all our interest.

In the course of that week, I'm going to tell you that probably 90 percent of the people who we approached, haphazardly, I have to say -- this is as we were gearing up for Christmas -- 90 percent of the people signed on to a petition in favor of Bill 933. All told, we raised -- or we got eleven hundred signatures and in addition to a lot of emails from folks e-mailing in from far away.

I have done some analysis of these signatures, and it's really interesting that they not only come from the Bay Hundred, 25 percent of them are registered voters within the Town of St. Michaels. We also have big representation from the Town of Easton itself, the incorporated area. We've got people from Trappe, we've got people from Oxford, eleven hundred, all told, in less than a week said we want Bill 933. Thank you.

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PANEL MEMBER BLAZER: Thank you. Mr. Doyle.

MR. DOYLE: My name Edward Doyle. I'm from St. Michaels, Maryland.

Lucky for me, most of the comments I had have been covered, and I won't go into those.

I just wanted to make one comment, just listening to the presentations.

A lot of the argument that seems to be coming against 933 from the towns and from others is to impugn the motive of the County Council, to say that the County Council used this as a back-door way to get at the Midland development. None of that addresses the substance of the issue; that is, that's a smoke screen and a charet, a canard. To imply that the County Council was acting out of malice, I think, is a very bad example of an argument. To even suggest that they are equivalent to the communist Chinese is ridiculous.

So I think the point is that the cooperation is necessary between the towns and the

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county in all of these issues because they share common resources

One other thing is that these growth allocations are a very valuable asset and they reside within the towns of just a few hundred people with a very small tax base. The enticement to use those as a way to increase the funds of the town or to be enticed by the developer in ways that probably are not proper is a very serious and real potential.

As an example, a developer can offer a town a considerable amount of money for development within a town of only 200 people. Additionally, as with St. Michaels with the Midland project, you heard Mr. Hickson say that they rejected it a number of times until they just could not handle the cost and the legal bills any longer and they acquiesced and, among other things, to get out of that, a thousand dollars per home built was offered by the developer for, I think, 20, 30 years. That's a pretty strong enticement to a small community.

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I think the advantage of having the County involved removes that enticement and adds some substance and consideration back to the whole community so they can't be buffaloed and put over by the deep pockets of the developer. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Doyle.

That exhausts our list of people who have signed up.

MR. THOMPSON: Mr. Chairman, I did sign up to speak on behalf of Strausburg family, and I think it is important that we correct some misimpressions that Mr. Alspach may have left with you.

My name is David Thompson. I previously addressed you on behalf of the Town of Trappe and the Town of Oxford. I'm now addressing you on behalf of Vance and Nancy Strausburg.

Vance and Nancy Strausburg own a 136-acre farm here at the head of Broad Creek. This farm was annexed by the Town of St. Michaels back in the

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fall.

It is, indeed, a pipe-stem annexation. Ms. Mason's real boss, the Attorney General of the State, has approved pipe-stem annexations in an opinion that he wrote or that one of his staff wrote, an opinion that the Town of St. Michaels relied on and an opinion that the Strausburg family relied on.

The use of this example by Mr. Alspach presents a classic example of the kind of contradictions we are faced with in land-use planning.

The Strausburg annexation is final. Growth allocation was granted by the Town of St. Michaels under the Town of St. Michaels' growth allocation process. And on October 1, 2003, the Critical Area Commission approved that growth allocation as consistent with all of the criteria. It is adjacent to an LDA. The growth allocation that was approved in this case was 20 acres.

In reliance upon the annexation and the

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growth allocation that was approved by this Commission, the Strausburg family has donated to the Town of St. Michaels a 75-acre conservation easement, a conservation easement that permanently protects and preserves the approach to St. Michaels from the north; a conservation easement that prevents the construction of homes on a 36-acre portion of that parcel that is zoned by the County Council as town residential, which would permit four dwelling units per acre with water and sewer and one dwelling unit per acre without water and sewer.

The Strausburg family, to preserve a modicum of the value of their property, opted to seek —the County, by the way, rejected their proposal that the County process it under the County's growth allocation process.

The Strausburg family went to the Town, with which they have a long-standing relationship. It was determined that they met the legal criteria. They were annexed. The County government was given notice of that annexation. There was an annexation

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hearing. No one from the County government showed up.

Many of the people who spoke here tonight in opposition to Bill 933 did speak at the St. Michaels annexation of the Strausburg property and they supported the annexation of the Strausburg property, because everybody in this room knows that a 75-acre conservation easement in consideration, if you will, for 20 acres of growth allocation that adds five dwelling units to a 136-acre farm that could be developed with as many as 130, with water and sewer and all that, or 36 additional homes on the one home per one acre analysis was a good deal; it was a good deal for the community, it was a good deal for all of us who live in Bay Hundred, it was a good deal for all of us who live in Bozman, where I live, by the way, right next to Mr. Russell Trane. It was a good deal for Russell Trane, who has put an environmental easement on his property, as well.

If more people would do this we'd all be better off because that's the real protection that

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we have. It's better than any zoning that changes with the whim of whoever happens to be in office.

This 75-acre conservation easement was approved because the Town of St. Michaels was given the opportunity to use the annexation law, to use the Critical Area criteria. It was approved by the Critical Area Commission. And it is not an example of something that needs to be stopped, it is an example of something that needs to be encouraged.

Yet in Talbot County Bill 933, this is one of the example used in one of the multiple whereases as something that is bad. And as the president of one of the conservation groups has told you, we need to stop this; I think it's terrible that people are giving these 75-acre conservation easements out to the Town of St. Michaels. That's nonsense.

There are many contradictions that we have to deal with. Bill 933 would authorize, as written, would authorize the County to invalidate your decision granting growth allocation. The

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vested rights provision is intended to allow the County to reach back and to take away any growth allocation that has not been acted upon by development.

So we talk about the unintended consequences. This is a perfect example of a conservation easement that could very well sit there for years and years and years. There could be no development of these five lots.

But yet what the County Council Bill suggests to a landowner like Strausburgs is, you'd better build them, you'd better build them quick, because they want to take it away because a special interest group believes this is bad.

It's not bad. It was a bad example. But it's the right thing for our community, it's the right thing for the protection of open space, and it was a good thing that the St. Michaels Commissioners did. I thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Thompson. Is there anybody else out there who did

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not sign up that would like to say something at this point?

MS. ELLISON: Doctor Rebecca Ellison, 27350 Oxford Road. I live right outside of Oxford. I have lived for 11 years in St. Michaels. I'm very familiar with the situation with the Midland Companies.

I hadn't really intended to speak; but I would like to speak in favor of this Bill.

I'm sorry that there aren't more members of the general public here. I want to say that I was -- slightly participated in Beth Jones' impromptu petition.

I think that you really do need to know that there is a great deal of citizen unrest here. Everybody is being very polite and very few of us have taken the gloves off. But I think you can see that Mr. Thompson just had a nerve hit, and I think that's because the most recent thing said, I think I'd like to speak to that.

This pipe-stem thing, apparently they get

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some kind of contiguity to annex into St. Michaels simply because this property is on the St. Michaels Road. Where does it end? This property is a good mile out of town.

I'm afraid that he may have struck a good deal for the Town. But what about the property that is between the pipe stem and town? Now they are all going to scramble and they're maybe not going to be so nice as the Strausburgs. It's a very bad precedent.

And I would also like to amplify -- I think it was Mr. Doyle who said that the Town simply needs the cash. I've watched this very closely, and I was at most of the early -- Midland I, Midland II, Midland III. Now they changed the names, so they start over with one again. Actually, I think we're at five, even though it's Miles Point III.

It's unbelievable what went on in November and December. These people did a scramble. There's probably two meetings a week, including practically Christmas morning.

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The only way to interpret the reversal is that they simply need the cash.

I'm sorry they twisted in the wind for all those years. And it did cost a million dollars. I think they raised the taxes three times.

I think I'd like to throw out some quick numbers from all the meetings I've been to. I think this project adds 60 percent to the size of the town. I think that's kind of a lot. No one yet has really addressed the ability of a developer to distinguish a traditional town. This town has been there for three-hundred-plus years. What will happen with a stroke of a pen, when you add 60 percent to the size of the residents of the town?

We have new people like this well-meaning lady from Connecticut. She's sort of a pro-town person, but maybe she doesn't know that the potential cost to the county of fixing the sewer INI. I don't remember what the other I is, but you know, the infiltration problem with the collection system. That's the weak point of the St. Michaels

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sewer. They don't know the extent of it. They have been blowing colored gas through it and other esoteric -- trying to find out what exactly is going on. The number I heard was $27 million. Somebody can correct me. But that's an obligation that falls on me as a county resident, and that's the sort of things, I think there are examples of that, whoever said let's look at logic.

The other number I'd like to throw out is I believe is eighteen hundred county residents live sort of upwind of St. Michaels' single road through town, which will be badly congested.

The State Highway Administration is allowing this development to have only entrance onto the St. Michaels Road, so there are, of course, four entrances onto Yacht Club Road, which is a county road. Why should the County -- I go back to the logic thing.

Thank you for your consideration. I suggest that this is really a popular idea. The time has come. Thank you.

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PANEL MEMBER BLAZER: Thank you very much. Are there any other comments about Talbot County's Bill 933?

MR. PULLEN: Mr. Chairman, if there are no other comments from the public, I would like to take this opportunity to thank the Panel and thank the speakers who have come tonight and stayed rather late to voice their opinion, and we appreciate that opportunity very much.

PANEL MEMBER BLAZER: Thank you. I want to thank you all, too, for being here tonight and spending a good part of the evening with us. You're actually done earlier than I thought we were. But I thank you for your civility and your patience and comments.

Going through, I do want to remind you that written comments will be accepted up until Monday, April 5, 2004, until the close of business on that day, and you can send those to the Critical Area Commission at 1804 West Street, Suite 100, Annapolis Maryland 21401.

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Any comments from the Panel members? (No response)

PANEL MEMBER BLAZER: Thank you all for coming. This closes the public hearing.

(The hearing adjourned at 10:25 p.m.)

10:25 p.m.)

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

As witness, my hand and Notarial Seal this 15th day of April 2004, at Delmar, Maryland.

David M. Schafer

DAVID M. SCHAFER NOTARY PUBLIC MY COMMISSION EXPIRES AUG. 2006 WICOMICO COUNTY, MD

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

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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.

GROWTH ALLOCATION COORDINATION BETWEEN COUNTIES AND MUNICIPALITIES
April 6, 2004

Anne Arundel County
(Currently undergoing comprehensive review, to be completed in April 2004)

The County allocated 11 acres of growth allocation to the City of Annapolis which represents five percent of the RCA lands within the City. The City controls the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the City.

Baltimore County

Baltimore County does not have any municipalities with Critical Area Programs.

Calvert County
(Last comprehensive review completed February 1997, currently undergoing third round)

Calvert County allocated 100 acres of growth allocation to Chesapeake Beach and 20 acres to North Beach. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the Towns.

Caroline County
(Comprehensive review initiated)

Caroline County did not allocate any growth allocation to the towns of Denton, Federalsburg, Greensboro or Hillsboro. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. To date, no growth allocation has been used within the Towns.

Cecil County
(Last comprehensive review completed in July, 1994)

Cecil County did not allocate any growth allocation to the towns of Charlestown, Chesapeake City, Elkton, Northeast, Perryville, and Port Deposit. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. When Towns approve growth allocation applications, they submit a request for growth allocation to the County with information about the project. To date, Charlestown, Northeast, and Port Deposit have not used any growth allocation, Chesapeake City has used 23.87 acres, Elkton has used 76.50 acres, and Perryville has used 58.66 acres.

Charles County
(Last comprehensive review completed in July 2001)

Charles County includes provisions in the County's Program stating that Indian H... the County divide growth allocation acreage on the basis of population, i.e. if Indian He...

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3.5% of the population, then the Town is entitled to 3.5% of the growth allocation. The calculations must be updated regularly, especially when a growth allocation application is submitted. To date, Indian Head has used 9.00 acres of growth allocation.

Dorchester
(Last comprehensive review completed in February 2001)

Dorchester has allocated 240 acres of growth allocation to the City of Cambridge, 30 acres to Vienna, 20 acres to Secretary, and 20 acres to be used jointly by Church Creek, Eldoardo, Brookview, and Galestown. The respective Towns control the use of this growth allocation and may use it without County review or action. These allocations reflected coordination between the municipalities and the County to identify the growth allocation needs of the municipalities an amendment to the County's Critical Area Program which was approved by the Commission in July 2001.

Harford County
(Last comprehensive review completed in August 2001)

Harford County did not allocate any growth allocation to the Town of Havre de Grace; however, the County's zoning ordinance includes provisions for using growth allocation for land proposed to be annexed by a municipality. These provisions require the review of applications through the County's procedures.

Kent County
(Last comprehensive review completed in March 2003)

Kent County has allocated 82.78 acres of growth allocation to the Town of Betterton, 84.00 acres to Chestertown, no acreage to the Town of Millington, and 66.73 acres to the Town of Rock Hall. The respective Towns control the use of this growth allocation and may use it without County review or action. Once this acreage is used, the Kent County Growth Allocation Policy would apply. It states, "It is policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall." The County would be involved in the review of projects requiring growth allocation in excess of the initial allotment.

Prince George's County

Prince George's County does not have any municipalities with Critical Area Programs.

Queen Anne's County
(Last comprehensive review completed in April, 1996)

The County has set aside 189 acres of growth allocation for Centreville, and 160 acres for Queenstown. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, Centreville has not used any growth allocation and Queenstown has used 15.06 acres. The County's Program states that, "The Queen Annes' County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five years." At this time, the County has not reallocated any growth allocation set aside for the municipalities. Additional growth allocation may be used by these Towns, as well as Church Hill and Queen Anne, on a project-by-project basis, subject to review and approval by the County.

St. Mary's County
(Last c[illegible]prehensive review completed in July 2002)
The Co[illegible]ity allocated 4 acres of growth allocation to the Town of Leonardtown, which represents five percent of the RCA lands within the Town. The Town controlled the use of this growth allocation and used it in 1998 for the Tudor Hall Village Project. The Town has requested additional growth allocation from the County for another part of the Tudor Hall Project and the Leonardtown Landing Project. In the Tudor Hall Project, the Town become an applicant to the County and went through the same formal review and approval process as a private landowner. Since that time, the County has completed their comprehensive review and amended their growth allocation process. Now the Town requests growth allocation from the County Commissioners, and the Commissioners may approve the request if it is consistent with the County's comprehensive plan. The Town is not required to submit the request with a specific project; however, the most recent growth allocation request was made specifically to accommodate the Leonardtown Landing Project, and specific plans were provided to the County with the Town's request.

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Somerset County
(Last comprehensive review completed in December 1995)
Somerset County allocated 100 acres of growth allocation to Princess Anne and 100 acres to Crisfield. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has reviewed and approved the use of 17.12 acres of growth allocation within the Town of Crisfield.

Talbot County
(Currently undergoing a comprehensive review to be completed in 2004)
Talbot County allocated 155 acres of growth allocation to the Town of Easton, 195 acres to the Town of Oxford, and 245 acres to the Town of St. Michaels. The County's Critical Area provisions state that this reserved acreage shall be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. The respective Towns control the use of this growth allocation and may use it without County review or action. In May 2000, the County amended their Critical Area Program to provide for the award of supplemental growth allocation through a joint review process in which both the Town and County would participate. Easton has used 147.34 acres of its original allocation, plus an additional 156.0 acres through the "supplemental growth allocation" process. Oxford has used 15.22 acres of growth allocation, and St. Michaels has not used any growth allocation acreage.

Wicomico County
(Last comprehensive review completed in November 2001)
Wicomico County originally allocated half of its growth allocation to the City of Salisbury and the towns of Mardela Springs and Sharptown. The County's Program specified that after four years, any of this growth allocation that had not been used would become part of the countywide growth allocation pool. No growth allocation was used by Salisbury, Mardela Springs, or Sharptown during the four years, so all growth allocation has been consolidated in the countywide pool. At this time, the municipalities would have to request approval of the use of growth allocation by the County.

Worcester County – Chesapeake Bay
(Last comprehensive review completed in November 2003)

Worcester County did not allocate any growth allocation to the Town of Snow Hill. The Town must apply to the County to use growth allocation after the request is approved by the Town Council. The County reviews the application and holds a public hearing on the application. To date 1.63 acres of growth allocation have been used by Snow Hill.

Worcester County – Coastal Bays
(Program adopted in November 2002)

The only incorporated municipality in the Coastal Bays Critical Area of Worcester County is Ocean City. All of Ocean City is designated IDA, so no growth allocation would be needed unless additional land was annexed.

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)

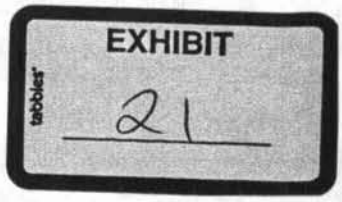
DISCUSSION:

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.



MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 2)

Time: 10:15 a.m.

Location: Department of Housing and

Community Development,

Crownsville, Maryland

Reported by: Linda A. Crockett

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MEMBERS OF THE PANEL:

Gary Setzer, Chair
Judith Evans
Joseph Jackson
Edwin Richards
David Blazer

Marianne Mason, Assistant Attorney General

P R O C E E D I N G S

CHAIRMAN SETZER: We'll convene this discussion by the hearing panel. Sitting on the panel is Judith Evans, Joe Jackson, Ed Richards and Davis Blazer. The three issues that we have before us all relate to the town of St. Michael's, ordinance 304, changes in zoning and critical area map amendment procedures; resolution 2003-06 which deals with the annexation of Miles Point property; and then we have growth allocation request for Miles Point III.

Much like the previous discussion I think two out of three proposals we could probably dispose of quickly. So why don't we move to ordinance Number 304 which deals with the text changes and I'll open it up for discussion. Do you want to summarize your staff report?

MS. HOERGER: There are two basic changes with ordinance 304. One is to amend some procedures in the town's critical area program with respect to eliminating duplication of amendment processes. For example, when an applicant would come before the town for growth allocation, the commissioners would award that and they would come back a second time to change the actual physical town map. So the town has changed that so that it is one process instead of two.

The second change involves the correction of the order that the town commissioners and this Commission review text and map amendments affecting the critical area. This process was corrected for growth allocation reviews in 1999. And now they're correcting the other types of processes so that, again, the order would be town commissioner vote and then it comes to the Commission for review. And that's essentially it.

CHAIRMAN SETZER: Any discussion? Do, I have a motion?

MR. BLAZER: I move that we accept 304.

MS. EVANS: I second.

CHAIRMAN SETZER: Any discussion? All those in favor say aye.

(All said aye.)

CHAIRMAN SETZER: No opposition. 304 is approved.

The second issue on the agenda is the resolution 2003-06. Could you please summarize?

MS. HOERGER: We have a map up here which is essentially for the next item of discussion. This will show the annexation piece, the Miles Point Property, LLC was annexed into the town, this area, the upland portion is 17.136 acres. They have annexed a total of 42 acres which includes some lands of the bed of the Miles River, and the reason for that is the town has a board of port ordinance and a water management ordinance, so they have some jurisdiction to annex land under state waters, so that's why you'll see that number in your staff report. It

has come into the town as a resource conse[illegible]n area and will remain as a resource conservation area.

CHAIRMAN SETZER: Discussion? A motion?

MR. BLAZER: I have a motion that we approve.

MR. JACKSON: Second.

CHAIRMAN SETZER: All those in favor say aye.

(All said aye.)

CHAIRMAN SETZER: No opposition.

The third issue on the agenda has to do with Miles Point III growth allocation. I'll turn to Lisa to summarize.

MS. OWENS: I'm doing this one. This project involves the use and growth allocation by the town of St. Michael's of 70.863 acres to change the critical area designation from RCA to IDA. That's the conceptual plan for the project. Essentially the property is undeveloped. It's been used for agriculture. It's basically a

fairly level open field with a few, a little bit of fringe of trees in the buffer. The town is proposing to deduct the entire acreage of the parcel located on the east side of Maryland 33. There is a portion of property located on the -- for this project.

Just to summarize a little bit. I'm just going to walk you through my staff report. The Commission has several standards of review. They are primarily looking at the goals of the critical area program to minimize adverse impacts on water quality, to conserve fish, wildlife, plant habitat; and establish land use policies for development in the Critical Area but also address the fact that even if pollution is controlled, the number, movement and activities of people in the area can create adverse environmental impacts.

To summarize the panel's discussion broken down into several categories. The most time was the discussion about protecting habitat

and water quality. And [illegible]COMAR provides some guidelines for growth allocation that basically talk about minimizing impacts to habitat protection areas. There are two habitat protection areas on the site. One is the 100-foot buffer and the other is the water conservation area. I'm going to turn it over to Claudia to talk about that. The next goal is to minimize the impact of the defined land use of the RCA; and the third is that new IDA and LDA located in RCA should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters. Again, these are guidelines.

I think important points of the discussion had to do with the fact that this is going to be a fairly intense development of this site. There will be 280 new dwelling units, an inn, and also the buffer is proposed to be used by the town as a park. So most of the site is going to be developed. Impervious surface levels are going to increase from 0 percent to roughly

55 percent. There are going to be dramatic changes in water quality. And the primary ways that impacts to the water quality are going to be addressed is the agricultural use of the property is going to cease, stormwater management is going to be provided, and forested buffers will be established.

There has been a lot of discussion about the forested buffer. The width has been an issue, whether it's going to be 100 or 300 feet, whatever. Also the project involves the creation of a marsh for shore erosion control. Sometimes there can be some conflicts created by trying to establish a forest buffer, there's some balancing that needs to go in there. The town has viewed the fact that they are providing the marsh as being sort of a trade-off, they don't need to provide the 300-foot setback because they're going to be providing this area of marsh.

There was also a lot of discussion about the use of the 100-foot buffer that is proposed

in the project as a park. The town [redacted]ses there will be gathering areas used for concerts and potentially other civic events. We don't have any details for the park yet. We do believe that because there's not a lot of publicly owned land in the town of St. Michael's and not a lot of waterfront that it would be used heavily and quite frequently.

The 300-foot setback was talked about quite a bit. I'm on Page 4 now, some of the points sort of summarized and broken down into six points, things that were discussed about the purpose of the 300-foot setback: Providing a buffer between areas of intense human activity. To potentially provide some type of wildlife corridor system on the property. To provide protection to the waterfowl staging and concentration areas located in the Miles River. The 300-foot setback also can have the effect of reducing overall impervious surface area associated with the project and the volume of

stormwater, and it also increases the areas available for infiltration -- provides for recharge. If you minimize the effects of shoreline erosion by basically providing a wider area in which to deal with erosion control. And then providing an area of sufficient size and width to accommodate both the resource protection benefits of the buffer and accommodate the recreational needs of the town.

With that I was hoping that maybe Claudia could talk a little bit about the waterfowl concentration areas.

MS. JONES: We got some comments from Larry Heinman from the Department of Natural Resources. And he says it's used by large numbers of wintering Atlantic Canada geese, canvasbacks (phonetic), tundra swans, golden eye, (inaudible) and mallards. Two of the species, canvasbacks and tundra swans, are in decline in the Maryland portion of the bay. He recommends that any proposed construction along the

waterfront be c[redacted]e the fall and wintering period for these species. He recommends that bulkheading not be done, to keep it as natural as possible, either marsh grass and/or stone. He also recommends that setbacks for building construction, walkways, et cetera be set back as far as possible or screening of plantings to minimize the activities.

I did not get to follow up with Barry to see what he felt as far as marsh creation. The forest buffer for waterfowl, although he did say that springing was recommended. I did talk to Stan Causey at the Department of the Environment and he said he has already issued several years ago a permit for riprap along the shoreline and he hasn't seen an application yet for marsh creation, but he didn't feel like it was the best candidate.

I also looked at an article that was done by Fish and Wildlife Service as well as the U.S. Forest Service Chesapeake Bay Program, in

1995, and they talk about discouraging people from a full scale shift to marsh creation versus a forested shoreline saying that most of the research has been done and it's undisputed how valuable large areas of salt marsh are to aquatic life.

However, when they did sampling along fringe marshes versus forested shorelines, they found a lot more use by aquatic species along the forested shorelines versus a forested buffer where you had some debris that provided hiding areas for aquatic species, fish and crabs.

MS. MASON: Just to follow up on something Claudia said, the record that the town submitted at the public hearing included a number of boxes which I think are over there on that hand cart. And we have gone through those and in those boxes there were documents referencing the applications for riprap permits, just to follow up. That's somewhere in one of those boxes. The excerpts were provided, anything that was

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relevant to the Commission's review, excluding traffic, volume of cars, things like that were provided to the panel.

MS. OWENS: Page 4, the next thing that was discussed was wildlife habitat and corridors. That site certainly is used by wildlife, even though it may not be the typical thing we envision, since it's basically an open field. It certainly is a goal to provide for the habitat. That's why we've established the buffer and try to provide vegetative corridor wherever possible. There was some discussion about the various areas where stormwater management is proposed. And there are actually four of them. What's proposed is here, here, here, and here. And the idea of possibly working that stormwater quality management and ponding management into some type of habitat areas as well through (inaudible).

The next issue that was discussed was shoreline access and buffer management. As I said earlier, the 100-foot buffer on the project

as proposed is supposed to be dedicated to the town for use as a town park. We do know they plan to use the area for walkways and gathering areas. We do not know too much else about that. We don't have a detailed plan of the area as of yet.

Certainly in the past the Commission has requested -- required that a Buffer Management Plan be submitted for review and approval by the Commission at a later date and that may be something to contemplate on this because we don't know a lot yet about what's going to happen.

Stormwater management, just touched on that before, areas that are proposed to be provided. They have performed preliminary calculations based on their conceptual plan and believe that volume and runoff of stormwater can be controlled and they can meet the 10 percent reduction requirement.

All of this is subject to them getting more detailed soil information once they know

more about impervious surface area. It does look feasible that they would be able to provide all the necessaries for water management on site.

Shore erosion control, we talked about that. Their proposal at the moment is implement a marsh creation program and a structural element, which is a sill basically to protect the marsh. There was a lot of discussion about shading of the grasses. Certainly that's something, if they're shaded and don't get sufficiently established, they don't do as good a job at protecting the shore. Most of you were out on the site, you saw how severely it's eroded. Even in the two times Lisa was there she felt there was more erosion.

MS. MASON: Can I add something on that too? There was information that was provided to the panel from the town indicating that the erosion was somewhere at the rate of 2 feet per year.

MS. OWENS: Which based on our

definition is considered significantly eroding. What I think we're not clear on yet is whether if we're trying to establish a forested buffer and also providing a marsh creation, we want to be successful at what distance would forest vegetation need to be set back from the edge of the bank in order to not shade the grass. We haven't quite gotten a definitive answer on that.

The last issue that was discussed was wastewater treatment. There were some concerns about wastewater treatment problems in St. Michael's and the limitation of their plan. Based on the information that we were provided at the last panel meeting, it was our understanding that the plan is to be substantially upgraded prior to any of the structures that are proposing to be built on the site to be connected to it. MDE is the kind of watchdog agency ensuring that that is adequate. We believe they have the measures in place and the conditions placed by the town council to do that. That's basically

it.

CHAIRMAN SETZER: Any questions?

MR. BLAZER: This I guess goes back to the permit for the shoreline, that was not for the wetland creation, that was only to stabilize the shoreline.

MS. JONES: That's my understanding.

MR. BLAZER: We're still looking at basically the same area?

MS. JONES: Yes.

CHAIRMAN SETZER: In terms of my review of the request there are several issues. One has to do with the buffer and the use of a 100-foot buffer in lieu of a 300-foot buffer and the suggestion that that distance may preserve improvement compensated by marsh creation. Based on the review from staff as well as information the -- the success of marsh creation on the shoreline significantly (inaudible).

I don't know that in terms of water quality benefits that we want to sacrifice a

lesser buffer for a highly engineered marsh creation, so I think I personally would like to have us discuss implementing a larger buffer. The criteria is looking at a 300-foot buffer.

MR. SEREY: The criteria do not -- the guidelines does not call for a 300-foot buffer. It's a 300-foot setback between the new growth allocation and the tidal waters, and I think the idea behind that is not necessarily to achieve a 300-foot area with the exact same buffer functions that you would get from a 100-foot buffer, but to have that 100-foot buffer and those functions associated with it and then an additional setback. It's not a 100 versus a 300.

CHAIRMAN SETZER: So the 100-foot buffer would be what we would be looking for highly vegetated establishing some habitat value on site and taking this discussion one step further, based on the use by the town of that area for public use, public functions, we need to look at what types of restrictions the Commission wants

to look at in te[illegible]f the town's use of that area.

MS. MASON: You have a criteria that does encourage public access to the waterfront. You need to keep that in mind as well. Something else on the plan and in the information provided to the panel, and I believe it was pointed out in the public hearing, although I'm not sure. The developer has proposed more than a 100-foot buffer in some places up there, perhaps even substantially more. Some of the line goes into the stormwater management which the Commission has in the past found that's not permitted to be in the buffer. So it really can't be counted as part of the buffer area.

Nonetheless, if you look carefully where the line is there is a provision -- in other words, it's not a static line. So when you're discussing that issue you need to be aware of the fluctuation in the setback, which it could change based on where it's measured from. I don't

recall seeing any information as to when the line on the plan -- where it was drawn from and if the shoreline is eroding, that could make a difference.

MR. SEREY: My understanding is that the line from which the buffers and setbacks are measured was taken in November of last year, about seven months old. That's my understanding.

CHAIRMAN SETZER: The other issue that is of concern for me has to do with the treatment of stormwater on site, the proposal at this point is conceptual and certainly takes advantage of surface control techniques in terms of dealing with quantity and quality. Personally, I would like to see at least an attempt to use more of the environmental sensitive techniques, and some other opportunities, at least keep them in reserve until you find out what the soils are on site and whether they're applicable before going to the surface water treatment system. We already touched on the shore erosion.

Personally I don't want to discourage the creation of marsh along the shoreline, but then again, the use of that shoreline is more appropriate for a buffer than a marsh creation project. That might be something to consider whether the investment in the structural marsh system is worthwhile. I guess at the exclusion of other --

MR. JACKSON: If it's highly engineered that usually means high maintenance. Is that true, Claudia?

MS. JONES: Not necessarily. Gary might be better to answer this. If it's engineered properly then they shouldn't have to maintain too much. If they do it right, correctly.

CHAIRMAN SETZER: I think it can be done. When MDE was out on site Claudia spoke with them and that's when the project, shore erosion, marsh creation really even looked into that process. His position is that it was part of the department's charge and it's also within a

period where -- we looked at no treatment, marsh creation and -- you go out on site, they're looking at the site again. That's not to say I necessarily want to discourage marsh creation.

MS. JONES: But it's telling that there was one little patch where it looked like there was some kind of marsh grass growing along the shoreline maybe about this wide and the rest of it was just sand. So it's not happening naturally, although it might be something for them to consider doing marsh creation on one side and riprap on the other. I don't think the marsh creation should be traded for buffer.

MR. BLAZER: The permit for the riprap is actually only on the point out front. It stops where the property line exists. So if you look at the map, the point that's furthest east, I guess, right, from there all of the way north and around, to that is all permit for the riprap. That lower section is not part of this permit. There might be a second permit.

CHAIRMAN SETZER: What I would like to do, if you all agree, is because there are a lot of issues that kind of are swirling around, to close the meeting and have an opportunity to discuss some of these issues with counsel and determine whether or not --

MR. RICHARDS: The legal process.

CHAIRMAN SETZER: The legal process. We can close the meeting to consult with counsel and take legal advice. So I would like to close the meeting to consult with counsel to obtain legal advice under the applicable sections of the applicable area of law, to consult with counsel to obtain legal advice in the context of recommending Commission action on the growth allocation, to consult with counsel to obtain legal advice on the interplay between this proposed program and the amendment on the 933, and to consult with counsel to obtain legal advice.

MR. BLAZER: I make a motion that we go

into closed session.

MR. JACKSON: Second.

CHAIRMAN SETZER: All those in favor?

(All said aye.)

CHAIRMAN SETZER: To summarize our discussion, the issues that have jumped out at me in terms of considering the -- open for discussion.

MR. BLAZER: I think we were talking before about the 300-foot buffer. I think one of the concerns that the shore erosion issue is kind of a moot point. We see that as something we need to deliberate. A 300-foot buffer in my eyes --

MS. MASON: Setback in the criteria, that setback?

MR. BLAZER: No. I think my issue with that directly is the amount of impervious surface that you need to have a 300-foot setback because of the habitat and the criteria that's laid out for water quality habitat considerations would be

more in line with the goals of the program.

I think my other point was I'm looking at it from that perspective as opposed to the trade-off that's recommended within the proposal. I think our purviews are looking at water quality and habitat issues, the 300-foot buffer would be more adequate. Especially my concerns with impervious surface, going from 0 to 50 or 60 percent I think the number was, than the argument laid out in the proposal about marsh creation. That is something to me that is a little bit different.

CHAIRMAN SETZER: I think with the marsh creation, MDE went out, to advance that to a vegetated shoreline which certainly is viable to protect the shoreline. I think the concern for us is, and we heard this in some of the discussion previously, is whether or not we can use that as a trade-off to adjust the buffer and setback. That's what we need to focus on.

MR. RICHARDS: In addition to the

environmental issues, I would like to raise a procedural issue as far as the 300-foot setback is concerned. The attorneys are going to go berserk. As a layman I have my own definitions of what shall or should be. And basically I think in the regulations that we're working from we have a should reinforce by and shall use and shall use as the guideline shall be used and it says there should be a 300-foot setback. My layman's definition says that shall is stronger than should. But when they're used together it says should means that there will be a 300-foot setback unless there are very compelling reasons why they cannot have the 300-foot setback or that a 300-foot setback would work against the intent of the law.

And the three reasons the town gave for not requiring a 300-foot setback did not meet my standards. And I do not know of any compelling reason why there cannot be a 300-foot setback. And I do not feel a 300-foot setback would work

against the intent of the law. So I think procedurally, I do not think the town met the requirements of the regulations. They did not take appropriate considerations to the guidelines 300-foot setback.

Now all the lawyers can write me a letter and fax me all the stuff to tell me it's wrong.

MR. BLAZER: My issue about impervious surface, I think the design of the development, trying to use cluster development, trying to use new urban techniques, it's been at the expense of open space and at the expense of what should be a better buffer. You know, they have got their density; they have got the site design, but open space requirements really aren't there. And the buffer, looking at water quality and habitat considerations, I think in this case is very appropriate.

CHAIRMAN SETZER: A buffer, the statute of regulations will provide that with land use

changes from agricultural use to -- that the buffer has to be established. And it's not just a vegetative buffer. It says forest and vegetation needs to be established. So there's a number of opportunities to point to in the statute that directly concentrate on providing an adequate buffer with the habitat and water quality considerations.

MR. RICHARDS: I think another argument in addition to the environmental. Basically dealing with growth allocation, the stipulation we're accommodating growth which we're required to do. However, even if pollution is controlled, we have to take into consideration that people create adverse environmental impacts, and essentially the 300-foot setback is to protect the water from us, not just the stormwater, not just the runoff, not just the other problems, but basically us walking there, driving there create problems.

One way to mitigate that is to keep the

problem 300 feet away from the water. That's I believe that should is a very strong indication of what we should be doing.

CHAIRMAN SETZER: Not to solely concentrate on the environment issues that relate to water quality and habitat and as it relates to both the setback and buffer, one of the other issues that the Commission needs to address is giving the public an opportunity to reach the water and enjoy the water. So while I think we all kind of agree that we need to deal with both the reestablishment of a 100-foot buffer and perhaps a larger setback than what's being proposed by the development, in that same context we also need to provide an opportunity for public access, and somehow there needs to be that balance between buffer setback and public access to the water. We need to be able to accomplish all those objectives.

MR. BLAZER: Would that be incorporated into a Buffer Management Plan? I mean, it's not

that specific that we'd have to agree to today. But I think making some condition we need a Buffer Management Plan.

MS. OWENS: We could acknowledge that the plan would have public access.

MR. BLAZER: And it needs to come back to the Commission.

CHAIRMAN SETZER: Under that Buffer Management Plan you could address not only the 100-foot buffer but an adequate setback.

MS. OWENS: Yes, or we could do it in two conditions. It would have one that talks about providing a 300-foot setback and one that talks about establishing a buffer as required by the criteria. I guess if the 300-foot setback exists, we have the public access in the 200 feet that aren't forest.

MR. RICHARDS: I think they're two different issues. The 200 foot we're talking about passive recreation, that should be available for passive recreation. I think the

problems with this is sin[illegible]ere's no provision for a forested buffer, I think 100 foot is what in the management plan talk about what part is going to be forested and how it's going to be forested and what provisions will be there for public access. Part of the issue with accommodating growth is being able to use the bay. I think that's been an issue and I think that has to be addressed.

CHAIRMAN SETZER: Any further discussion?

MS. OWENS: What about stormwater management?

MR. RICHARDS: I'll approach it from another standpoint, Greg, I would defer to you because I've had to deal with water plans, but I don't like them. I think one of the issues that I have is a conflict in looking at this development, I think it is an appropriate site for development. I think the cluster or traditional town approach they have used is very

appropriate. However, I think that by using it it requires us to go from a more controlled growth under a limited development area to an IDA. And I have some problems with that because the LDA has some criteria that are weighed because we're going by the IDA. I recognize that if you stay with the LDA, you can't stay with the cluster. But I think there are a lot of advantages to some of the criteria in the LDA, which I don't know whether it's appropriate for us to talk about those.

But I think some of the issues have already been raised and I think most of them addressed the stormwater problem. One is the restriction on impervious surfaces and, you know, whether or not that could be applied, I don't know. But I think it should at least be used as the basis for evaluating the proposal and who would evaluate it, would it be the town or us, I don't know.

Another one is forestation. I have a

problem with the less trees than we had before and there are provisions for that. One of the things that I think the guidelines should be is the cap on the number of units in an LDA which I look at about 212, which I don't think is necessarily hard and fast. But I think as a planning guide that gives us a good instrument to look at. The difference between the impact of an LDA and IDA and I think all of this needs to be looked at by someone and I don't know who that someone is.

But anyway, going back to the issue of stormwater, I don't like to deal with stormwater, if you went back to some of these LDA standards, you would reduce the problems for the stormwater management engineering because you'll reduce the runoff and the speed of runoff.

I don't know how to approach those, but they're certainly concerns that came up in my mind when I was looking through all of the material. And I just had to throw it out on the

table. Sorry.

MS. MASON: I think that the decision as to whether the town -- whether to request growth allocation to go from RCA to LDA or RCA to IDA is within the town's purview. The town decided they wanted to and that's how the Commission needs to consider it. I think within that set of facts that you have, that the town has requested IDA, I think the Commission would be straying from its statutoried and regulatory home if it were to say, well, we think this should be LDA instead of IDA. My advice is you need to take it as it is, that is IDA.

But that said, the criteria that you all have discussed regarding the conversion of agriculture uses to other uses apply equally. The protection of the habitat, waterfowl staging areas, the number, use and activities of people in the buffer, the wildlife and habitat benefits of a larger setback would apply.

So I think you've been discussing lots

of issues and I think the question of LDA versus IDA is one that I would advise that it's not in our ball court.

MR. RICHARDS: I think it has to stay IDA.

MS. MASON: But even in terms of applying that --

MR. RICHARDS: I thought you were going to say that.

CHAIRMAN SETZER: As far as Mary's staff report, I think she indicated that at least conceptually a way to treat stormwater would address critical area requirements in terms of -- I guess from my perspective the only thing that I would like to see on the stormwater side is that at this early juncture in the design of the project, that we will close the door on other best management practices that may be -- we may have a better opportunity in terms of filtration or other types of best management practices as opposed to dis -- I'd just as soon keep it very

general and just make that that all opportunities are investigated in terms of using best management practices before jumping to surface water treatment. Discussion?

MS. OWENS: Do you want to see that stormwater plan similar to -- you've done that before on other projects?

CHAIRMAN SETZER: I think North Bay is an excellent example. We had a very conceptual stormwater proposal and the Commission worked very closely -- at that -- with that particular project because it was a state project, we were able to work with MDE and move forward in terms of stormwater management. The Commission's staff -- I think they have a -- work with staff and the Commission to come up with stormwater treatment.

Discussion. Does anyone want to venture on a motion, a discussion here?

MR. RICHARDS: I move that we approve Miles Point with those conditions. And you'll

have to help me with the wording, 300-foot setback, 100-foot buffer management that allows planting of trees and public access to the water and a condition that -- stormwater, whatever Greg just said.

MR. BLAZER: Encourage the use of best management.

MR. RICHARDS: And it comes back for review. Any other conditions anybody wants to throw in?

CHAIRMAN SETZER: I think we want those to come back not just for review, but also approval.

MR. BLAZER: Did the Buffer Management Plan get incorporated or is that a separate condition?

MR. RICHARDS: I put it in as one condition. But you can put it in as two separate conditions. Two conditions, one that there be a 300-foot setback allowing for passage, recreation -- 200 feet beyond the 100-foot

forested buffer, and two, there be a forested buffer with a management plan that would allow for public access. That's three conditions, I think.

CHAIRMAN SETZER: In terms of developing the buffer management plan and the stormwater plan, work with both the Commission and the Commission staff to address these issues and to bring that result back to the Commission for approval.

MS. OWENS: The plans, the buffer and stormwater.

MR. SEREY: Do you want us to verify our understanding that the buffer and any setbacks are being measured from a line set last November, and if so, do you have any further question about that?

MS. OWENS: Shouldn't it be whatever the existing shoreline is when they do the project?

MR. RICHARDS: 100 foot through the existing shoreline.

MR. JACKSON: If we have another Isabel come through you don't know where the shoreline will be.

MR. RICHARDS: So moved.

MR. BLAZER: I'll second.

CHAIRMAN SETZER: As part of the discussion, why don't we ask Ren or Mary who are taking copious notes to read back the motion.

MS. OWENS: The conditions are that the project will include a 300-foot setback, that it include a 100-foot forested buffer that includes provisions for public access, that a Buffer Management Plan be developed, and that they work with both the Commission and Commission staff on the development to be submitted for approval by the Commission, that a stormwater management plan be developed that explores all options for infiltration and buyer retention and that that plan, that they work on that with the Commission and Commission's staff and that it be brought back to the Commission for approval.

CHAIRMAN SETZER: Discussion?

MR. SEREY: There was one other element that Ed had mentioned about passive recreation and the 300-foot setback.

MS. MASON: And the measurement?

MR. SEREY: I've got that.

CHAIRMAN SETZER: Can we take a play off this morning and move it as a conditional approval with final vote coming after staff has had an opportunity to put the final motion together?

MS. MASON: Before the 1:00 meeting?

CHAIRMAN SETZER: Yes. Further discussion? All those in favor?

(All said aye.)

CHAIRMAN SETZER: No opposition. Approved.

(Proceedings concluded.)

STATE OF MARYLAND SS:

I, LINDA A. CROCKETT, a Notary Public of the State of Maryland, do hereby certify that these proceedings took place before me at the time and place herein set out, and the proceedings were recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties nor an employee of counsel nor related to any of the parties nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 8th day of June, 2004.

My commission expires

December 1, 2004 Notary Public

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 3)

Time: 1:00 p.m.

Location: Department of Housing and

Community Development,

Crownsville, Maryland

Reported by: Linda A. Crockett

MEMBERS OF THE PANEL:

Martin G. Madden, Chair

Peggy G. Campbell

Ren Serey

Marianne Mason, Assistant Attorney General

Commission's authority in the context of taking action such as approval or denial on a program amendment for growth allocation. Seven, to consult with counsel to obtain legal advice on the meaning of Commission criteria COMAR 27.01.02.06A and B. This would be available in the minutes for the full meeting are available. Having made that motion, can I have a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: All in favor say aye.

(All said aye.)

(Recess.)

MS. HOERGER: You have a staff report titled town of St. Michael's ordinance Number 304, and attached to that is the actual bill that the town commissioners passed. It is correcting essentially two items in their existing critical area program. The first change has to do with eliminating a duplicative process for applicants who, for example, may be seeking a growth allocation request before the town commissioners

P R O C E E D I N G S

CHAIRMAN MADDEN: I'm asking us to go into a brief closed session. One, to consult with counsel to obtain legal advice on the applicable sections of the critical area law and criteria governing the Commission's deliberations. Two, consult on the applicability of other state laws, policies and regulations, including but not limited to planning and zoning. Three, to consult with counsel to seek legal advice whether the Commission should consider the effect of a program approved by the Commission; four, to consult with counsel to obtain legal advice on the interplay between Talbot County Bill 762 and Bill 933. Five, to consult with counsel to obtain legal advice on the interplay between the proposed amendments from St. Mary's and St. Michael's Miles Point III growth allocation. Six, to consult with counsel to obtain legal advice on the scope of the

receive that or not. But if they do, then they have to come back again to get the maps amended. The town is simply eliminating that duplication and when someone comes to the town commissioners for that it will only be one time.

The second change involves the correction of order in which things like text changes, map amendments are approved and adopted between the town commissioners and this Commission. The current town program is set up so that those changes come to this Commission first and then they go back to the town commissioners. The town has now changed that so the town commissioners first approve those types of changes and then they come to the Critical Area Commission. A couple of years ago that process was changed for growth allocation processes. That has already happened. This will fix the process for all these changes, including text changes.

That is the substance of Ordinance 304.

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Chairman Madden appointed a five-member panel which held a hearing in the town of St. [redacted]'s on April 1st. There were no substantive comments on this ordinance. We did have some comments from the town. That's all I have to report.

CHAIRMAN MADDEN: Any other comments? Comments from the public?

MR. SETZER: The panel, as Lisa said, discussed proposed ordinance and would like to move before the entire Commission in accordance with Lisa's staff report that ordinance 304 as enacted by St. Michael's town commissioners which amend growth allocation, zoning and critical area map amendment procedures used by the town be approved by the Commission.

We have a motion for approval. Do we have a second?

MS. MASON: Second.

CHAIRMAN MADDEN: Any discussion? All those in favor say aye?

(All say aye.)

request. It was heard at the April 1st hearing. There were no substantive public comments. Does anyone have any questions?

CHAIRMAN MADDEN: Any questions for Lisa? If not, I'll turn it over to panel chair.

MR. SETZER: Once again the panel discussed the proposed resolution and would like to recommend to the Commission that it approve resolution 2003-06 adopted by St. Michael's town commissioners which annexes the 42.066 acre Miles Point LLC property into the town.

Is there a motion to approve resolution 2003-06. Is there a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: Any additional comment? All those in favor say aye.

(All said aye.)

CHAIRMAN MADDEN: Motion is approved. Thank you, Lisa.

Next we move to St. Michael's growth allocation for Miles Point III in Talbot County.

CHAIRMAN MADDEN: Next we'll move to St. Michael's annexation resolution 2003-06.

MS. HOERGER: The proposal is resolution 2003-06. I'm trying to do this so you all can see it. I apologize if some of you can't. The annexation request of the town of St. Michael's is for 42.066 acres of land. 17 of those are upland. The portion of the annexation on this site plan is this area in green. This is the 17 acres of upland. The balance of that 46 acres are the land that is under the Miles River. The reason the town also annexed that area is because they have a board of port ordinance and a waterway management ordinance and they do have the authority to annex state waters, in case anyone had questions.

The critical area designation of the annexation property as a resource conservation area and as it was brought into the town, it will remain as a resource conservation area. Chairman Madden appointed a five-member panel to hear this

Mary Owens will lead the panel discussion.

MS. OWENS: This next item is an application from the town of St. Michael's to award some growth allocation to the Miles Point III project. This is a site map of the project. Then we have a couple pictures of the site. So Lisa is going to go through those and I'll just quickly kind of show you the site while I talk about the project. It involves the award of 70.863 acres of the growth allocation to change the critical area designation from RCA to IDA. It's proposed to be a residential development involving 251 single-family units, 20 townhouses, 8 live and work units, an inn, and a public waterfront park.

As I get into my presentation I'll talk about the erosion on the shoreline. But this shows a shot of the shoreline and some of the erosion that's on the property. This is another view of the property that shows that it currently does not have a vegetated buffer. It was

formerly farmed. So it's basi[redacted]an open field, fairly level. Shoreline varies. In some places it's a little bit more of a cliff, maybe seven or eight feet. Here it's about 2 or 3 feet. That's a view to across the project site to an area of townhouses which is actually here on the site plan. On this particular day the tide was pretty far out so there is somewhat of a sandy beach. But at a normal tide condition there really isn't much of a beach there. It shows a portion of the property that has been protected already with a revetment.

Here again you can see the significant erosion there. That's another shot basically of the same view on a cloudier day. There isn't a lot of vegetation on the edge of the shoreline because a lot of it has eroded and fallen into the water. Here's another shot of the shore. This is looking across the project. It's basically a field. There's not a whole lot of vegetation. Again, another shot of the site, an

open field. That's basically it. It's fairly straightforward. There's not a lot of vegetation on the site.

There are two non-tidal wetland areas. Essentially the project involves the use of the growth allocation to change the critical area designation from RCA to IDA. The property has a long history, has undergone several revisions over the years. It's been involved in extensive litigation. But at this point the town has submitted it to the Commission for approval. The last revision involved this portion of the property which was recently annexed was taken out of the project.

The panel held a public hearing on Thursday, April 1. It was well attended. There was a lot of public comment on the issue and the record was held open until Tuesday, April 13th. We received a lot of public comment that was provided to all of the panel members. The panel met once after the public hearing and then met again this [redacted]ing to discuss this issue. And I'm going to summarize their discussions, some of which took place at the earlier panel meeting which took place today.

In reviewing this application, the Commission was really looking at primarily the goals of the critical area program, which are to minimize adverse impacts on water quality that result from pollutants; to conserve fish, plant and wildlife habitat; and then to establish land use policies that accommodate growth and also the fact that just people in the critical area can have adverse environmental impacts.

In analyzing this project and I think making an effort to look at whether it was appropriate to approve it or deny it or approve it with conditions, the panel analyzed several aspects of the project. The first had to do with protection of habitat and water quality. In terms of looking at how the criteria addressed the use of growth allocation, there are really three areas that they focused on, new IDA and LDA areas should be located to minimize impacts to habitat protection areas and optimize benefit to water quality. On this particular site there are two primary habitat protection areas which are the 100-foot buffer and a waterfowl staging and concentration area in the Miles River. New IDA should also be located where they minimize their impacts on defined land use of the RCA.

And then something that the panel spent a lot of time discussing was that new IDA and LDA in the RCA should be located at least 300 feet beyond the edge of tidal waters. And that 300-foot setback issue was discussed extensively, primarily because the panel believes that this project involves a very intense development. There will be a lot of units and a lot of new residents that will be in the area, and that most of the site is going to be developed. There aren't a lot of open space areas, and the importance of the setback to meet the goals of

the critical area program became really the primary way that impacts could be minimized and habitat could be protected.

Another issue involved dealing with stormwater on the site and water quality. Impervious area is going from approximately 0 percent as the site is currently undeveloped up to approximately 33 percent, which includes roads, rooftop areas, et cetera. The primary ways that water quality will be addressed will be agricultural use of the property is going to stop so they will no longer be applying fertilizer. They also will be proposing to treat all stormwater on the site and they're proposing essentially four areas where stormwater will be addressed, here, here, here, and here.

The other way that stormwater quality will be addressed is through the provision of forestation of the 100-foot buffer. One of the issues that the panel also talked about is how the 100-foot buffer is proposed to be dedicated

to the town for use as a park. And the panel was concerned about how the use of the park -- the use of the 100-foot buffer as a park could be coordinated with the requirement to forest the buffer and would those uses potentially be conflicted.

In looking at the setback and the buffer, the Commission -- and I'm on the middle of Page 4 now -- talked about the ecological benefits of providing a 300-foot setback, and the benefits included providing a buffer between intense human activity and pollution and sensitive aquatic resources; potentially providing a wildlife corridor system, some sort of habitat area for wildlife; providing appropriate protection for the waterfowl staging and concentration area; reducing overall impervious surface on the area, and along with that, reducing the volume of stormwater and associated pollutants as well as increasing the area available for infiltration; minimizing the

effects of shoreline erosion on the project by having a wider area to deal with erosion control; and then providing an area of sufficient size and width to accommodate the needs or requirement to provide a buffer and the requirement of the town to provide recreational needs.

The panel also talked about wildlife habitat, and their discussions focused on the ability of the 300-foot setback to provide some of those benefits and provide for wildlife to continue to use the site. The panel spent a considerable amount of time today talking about the use of the buffer as a town park and providing for shoreline access and the need to deal with managing the buffer and providing an appropriate plan.

As you saw from the pictures, there is not much vegetation in the buffer. So the buffer is going to have to be established. The site is fairly exposed. It has an eroding shoreline. There will need to be a significant investment in

getting that buffer established.

I think the important thing that the panel really focused on this morning is that the criteria required that the buffer be established when agricultural use of the land ceases. And that it's fairly specific in the criteria that in establishing the buffer, management measures shall be undertaken to provide forest vegetation that assures the buffer functions to protection of habitat and water quality.

The panel talked at length about other projects that have involved the review and approval of the Commission of a Buffer Management Plan and felt that might be a way that they could assure that a buffer was appropriately established and that any other recreational uses were appropriately accommodated.

The panel also talked about stormwater management and discussed the conceptual design. They were, I think, prudent in acknowledging that at this point the design is conceptual. Although

preliminary calculations have been performed and indicate that the applicant will be able to meet the 10 percent pollutant reduction requirement which is required in intensely developed areas. They're proposing four best management practices, three pond wetland systems, and then a fourth multiple pond system.

The Commission I think is concerned that when we're providing for stormwater management, that if possible, every effort should be made to deal with conserving and providing habitat if possible, and that environmentally sensitive design in stormwater practices should be a priority. There was a lot of discussion about certain types of practices which require attention and other types of practices and the benefits that those types of practices may provide over a typical surface water treatment system such as a pond.

The panel also talked quite a bit about shore erosion control on the project. Currently

there is an approved permit approved by MDE and the Army Corps of Engineers for installation of a revetment for shore erosion control. However, what the applicant is currently proposing is to deal with the shore erosion control issue through a marsh creation, which is basically a nonstructural measure that provides some habitat benefits.

Some of the information provided in the record indicated that the town believed that providing the marsh creation as a shore erosion control measure was sort of a trade-off in terms of the habitat benefit with the 300-foot setback. That was discussed extensively by the panel.

Another concern with providing the marsh creation was a concern about whether there would be conflicts created with shading of the marsh grass which might prevent it from being effective as a shoreline stabilization strategy and whether the providing of a 100-foot buffer as required was going to create conflicts there.

The [illegible] issue addressed by the panel and not talked about too much today but more at the prior panel meetings was wastewater treatment and concerns about whether the town's wastewater treatment plant was going to be adequate to accommodate all of this new development. The town is proposing to do a major upgrade of their sewage treatment plant which is actually operated by the County. The new or renovated treatment plants will provide nutrient reduction and state of the art technology for wastewater treatment. St. Michael's Town Council approval of the growth allocation actually included conditions that addressed the need to complete the upgrade of the plant before any building permits could be issued for development on this site. So the panel believed that those conditions were adequate to deal with the wastewater issue.

That's pretty much my summary of the panel report.

CHAIRMAN MADDEN: Any questions? Thank

you very much. I'll open it up for public comments. I want to start up with the town of St. Michael's.

MR. HICKSON: My name is Michael Hickson, Mr. Chairman, Commission members. I'm the town attorney for St. Michael's. It would be helpful if we had the recommendation from the panel so that I could address that. But I don't know how you feel about that motion.

CHAIRMAN MADDEN: The panel has voted on the recommendation. They haven't reported it to the Commission yet at this point. The Commission has not discussed it. So the recommendation is approval with conditions.

MR. HICKSON: I understand that. And I wanted to discuss the conditions is why I was hoping that that would be introduced. But I will obviously do whatever you wish me to do. Proceed?

CHAIRMAN MADDEN: Proceed.

MR. HICKSON: The town of St. Michael's

has been dealing with an application on this particular site since 1998. There has been, as I said earlier, extensive litigation. It has been represented that the town is beleaguered, that they're tired of this, that they can't afford to continue the battle if that's what it takes, and that sort of thing. That is simply not true. We have received -- in the beginning we received not only my advice, but we sought a second opinion on a number of legal issues from a law firm by the name of Lenos & Blocker that concentrates its practice in land use law, and Lenos & Blocker have been with the town, they have been advising the town with me ever since 1999.

We established a strategy in 1999 and we pursued that strategy and the strategy has played out. We litigated with the developer for as long as the developer wanted to litigate. As mentioned earlier, there have been several applications on this property, and each time an application was submitted that we didn't think

was adequate, we turned them down flat. But if they wanted to go to court about it, that was fine. We went to court and met them in court and we defeated them.

Part of our strategy was that this is our town and judges don't necessarily make good land use planners. And we didn't want the future of our town decided by a judge. We wanted it decided by our own committees and our own town commissioners. When we felt we were at a point where suggestion was appropriate to sit down with a developer and try to get to a better plan. We did that. And we did it in several ways.

We invited in Professor Richard Collins, who was previously head of the planning department of the University of Virginia and also a founder of an organization, if I can get it right, the Foundation for Environmental Mediation. He's done a lot of mediation in land use disputes, not only in Virginia, but in other states as well as Maryland. We called him in and

he assembled a citizen group that included the developer and representatives from all sides and they mediated what should happen on this project and proposed plans for most of the summer of 2002.

In addition to that, included with that group, we invited a gentleman by the name of Ed McMahon, vice president of the Conservation Fund. Mr. McMahon has written about conservation and development and he's lectured extensively around the country. And we used him and Professor Collins as a sounding board as to the site, the quality of the proposed plan at that time and what should happen to it. The mediation group was led by Professor Collins and that went throughout the summer of 2002.

And at the end of it there were -- the opinion was not uniform. There was a majority opinion and a minority opinion. But many of the points were agreed on and it formed a basis for more dialogue. And after that there was a public

workshop that involved the town commissioners and developer and ultimately a plan similar to this was arrived at. All the while, if the developer was not willing to listen to reason, we were prepared to go to court.

But as I said before, we didn't want our town planned in court. So this project proceeded from that point and has gone through the Planning Commission, has gone through the town commissioners at both levels, and received unanimous approvals. The records in this case from the town is over there. Most of that stuff came from the town record. We had three full boxes we submitted to this Commission. The Planning Commission's recommendation was, I believe 70-some pages long and the town commissioners' decision adopted most of that recommendation, but was 20-some pages in addition to that.

As you will hear from the panel, most of the concern here seems to be the 300-foot area,

the buffer and a hundred foot m[illegible]m and beyond that as well as the shoreline treatment. I sent to Chairman Madden a few days ago -- actually, I sent it in care of Ms. Mason for her to do as she wishes. Included with the letter was a list that was three pages long that lists issues that the town commissioners and the Planning Commission considered in dealing with the 300-foot buffer and making their decision that in this case 300-foot buffer was not appropriate or needed.

One of the reasons that they decided that the 300-foot buffer was not appropriate or needed was because the proposal was to do a vegetative shoreline stabilization whereby marsh would be constructed with some low level stone to keep the sand in place by an organization known as Environmental Concern, Gene Slear from Environmental Concern is here today. He addressed the town commissioners and the Planning Commission. The testimony is on record from him and that testimony is in those boxes over there.

But again, among the things that I sent to Commissioner Madden through Ms. Mason were some excerpts from that testimony. The testimony was given after Hurricane Isabel, and Mr. Slear was asked what has been the effects on similar projects from Hurricane Isabel, and the testimony was that there were no permanent effects at all. There were minor impacts. For instance, the vegetation, that the marsh grass was laid down for a while but in a few days it popped back up on its own accord. We think that is a better way and we think it will enhance the qualities of the Miles River. And based on the testimony that we've got and we've seen, and we did investigate it, we think this method will work and it's better to do it that way.

Now, what is the incentive for a developer to spend almost twice as much to do a project like that rather than put in revetment if you don't give him something in return? What we gave him in return was we didn't make him put in the full 3[illegible]t buffer. The buffer is, however -- at every location is more than 100 feet. In many cases it's substantially more than 100 feet.

Now, we're concerned here, the recommendation is that a full 100-foot buffer and an additional 200 foot, as I understand it, setback area be established. A uniform distance all along this project. Now, the town has invested six years in the development of this property. In the beginning we were totally opposed to it. But this piece of property is subject to an annexation agreement that was entered into with the land owner in 1981. At that point, when that property came into town through an annexation agreement where certain zoning for residential development was guaranteed to the owner, the die was cast at that time that this property was going to be developed.

So the town commissioners ultimately came to the position that they should find -- if there was going to be development, it was in their best interest not to simply deny it, but to work for the best outcome, and they believe this is the best outcome.

This decision is here in a situation procedurally where there's not much room for negotiation. In another project, Four Seasons, it came before this Commission when the County commissioners who were the final authority had not made their final decision. There was some negotiation done here, the buffer was extended. It then went back to the County for a final vote. We don't have that situation here.

As you heard Ms. Owens say, we were required to change our zoning ordinance in 1999. Before that time the process was it went to the Planning Commission, if it was a favorable recommendation, it would come up here for the Critical Care Commission to review and make its decision and then back to the town commissioners. But that's not the way it is now and that's not the way it has been throughout this project. The

town commissioners made its final decision, a site-specific, plan-specific decision. And if you do very much with this decision of the town commissioners it will be tantamount to a denial and we'll have to start all over again.

I would suggest that as far as what will be recommended, that instead of setting a uniform 300-foot setback, that you give the staff and the town an opportunity to work together and try to find a resolution to what has been the panel's concerns. Thank you very much.

CHAIRMAN MADDEN: Thank you, Mr. Hickson. Any members of the public like to comment? We ask you to keep it to the matters germane as outlined by the Attorney General and keep it to no more than two minutes. Yes, sir.

MR. SLEAR: Good afternoon. My name is Gene Slear. I'm the vice president with Environmental Concern. We're a public not-for-profit company established to restore wetlands, educate the public regarding the value

of wetlands, and to do research in the benefits of wetlands for water quality and habitat enhancement. We've been at the same location in St. Michael's, Maryland since 1972. We were engaged by the Midland Corporation to evaluate the needs for water quality enhancement and habitat enhancement on this site, initially in 1997, I believe, and more recently in 2002. Our findings are part of the record.

The panel's findings suggest that there is some -- there was some discussion regarding certain aspects of our findings and I'd like to address those. I'm not adding any new information, just summarizing what's already in the record.

The area that will receive the -- the shoreline that will be protected by marsh vegetation starts from the southerly property line and proceeds up to this boundary here, a distance of about 800-some-odd feet. It was suggested in the panel's report that it would have to be a highly engineered site in order for that marsh to work properly.

I want to submit a couple of additional facts for your consideration. The property owner immediately to the south is the Fogg Cove Condominium Association. We designed a marsh vegetation shoreline protection system for the Fogg Cove Condominium Association seven years ago. It's right in here, functioning beautifully, continues to function beautifully. It is engineered to a lower standard than what we've engineered for this area. The reason simply is it receives less fetch; it's more protected. As we proceed on this roughly north-south access, there is more fetch and therefore more energy interacting with the unprotected shoreline.

We have, instead of just a system of groins and sand, planted we have established a sill which protects the vertical edge of the new marsh from the energy. I'd like to bore you with

two short details, one is that the energy we have to deal with, there are two components to that, one is the rate at which the water attacks the shoreline, and the mass of that. And the mass is a function of how deep the water is. The water is very shallow along this area. So the engineering, as we come away from that property line and proceed up and around, it's very easy -- we have done sites that have the same engineering requirements that's in the record. We've shown pictures of what happened after Isabel to those sites.

CHAIRMAN MADDEN: You need to sum up.

MR. SLEAR: The shoreline is part of an eco-system which includes best management practices for stormwater management and a forested buffer and the tidal marsh. The tidal marsh in this area runs along the north-south axis. The forested buffer will not shade that marsh to any extent because the sun comes up in the east and goes down in the west. So we're

very comfortable to work out something with the Commission to fully forest that. That working with the constructed wetlands that will be part of the stormwater management system provide a superior system as defined by the U.S. Wildlife Service as recently as 2002.

CHAIRMAN MADDEN: Thank you very much.

MR. SLEAR: Thank you.

MR. DICKSON: My name is Sidney Dickson. I've lived in the environs of St. Michael's. I've lived within three miles of it for most of my 63 years. I'm one of those who gave up development rights on my 37 acres adjacent to town in order to prevent such unhealthy developments as we are faced with today.

Read between the lines here, please, pay attention. From what you've heard today all is roses. It seems to me that the public input has not been considered. I assure you that the community of Talbot, the Eastern Shore, I know the watermen, the builders, the land owners are

you might have heard. They have demonstrated they'll dump enough money into this project to prevail. It seems clear that Midlands will stop at nothing and take the golden egg and leave a devastated goose. This was made clear to me person to person in a very chilling way.

Before the Town Commission folded into submissive compromise, before any of these little meetings, I was told by a sitting town commissioner, Rob Nobile, by name, that few supported the Midlands proposition. But he said townspeople had been taxed to the limit to the point they considered Midlands to be unstoppable. Furthermore, get this, this is untenable, could be very easily implied, and I can't prove it, but this town commissioner told me this, and I'd like to see the town commissioners and the lawyers deny it, the town commissioners were informed that if they continue to stand in the way of Midlands, they stood risk of being sued personally and individually for being in the way.

dead set against this development. No matter what you hear about how they have gotten together and made these arrangements. These are silly details that you're being confused with. The point is once this land is ruined, it's going to stay ruined until the next ice age. These buildings aren't going away if you let them be put there. I implore you, do not let this go through.

They say, oh, you've got to compromise. You don't have to compromise. Right is right and wrong is wrong. This is wrong. This is good habitat. On normal storms in the summer of St. Michael's contaminated wastewater and sewage actually runs in and out of one of the food stores. I've seen it happen. It's Lady's Market. They're prepared with sand bags. This is not unusual.

There's something worse. It's not so much what they're doing, it's how they're doing it. Through incessant lawsuits, contrary to what

Rob Nobile told me this. I testified under oath that he told me this and that they had caved because they thought Midland was unstoppable and they were -- could not raise taxes further and they certainly couldn't have their families ruined by this money.

This is a matter of money. The community does not want this. Who wants this? Midlands. And one or two contractors in the area who have been paid to agree with them. The builders don't want it. You see no builders saying we want to build these houses. Our builders are busy. We have plenty of growth.

CHAIRMAN MADDEN: I need you to sum up, please. Your time is up. I need you to sum up.

MR. DICKSON: Turn it down flat. Thank you.

CHAIRMAN MADDEN: Thank you, sir.

MR. DEMING: Chairman Madden, members of the Commission. I'm Thomas Deming, I'm an attorney for the St. Michael's Bay Hundred

Alliance. The Commission's charge under Natural Resources Article Section 8-1809 is to de[illegible]e whether the program amendment as proposed meets the goals of the statute and the criteria. You will hear in the panel's recommendation that was forecast in the staff report several specific instances in which the panel members express grave concern whether this project meets the criteria. Most specifically the 300-foot setback. The criteria say that the town shall use the guideline that proposed new IDA should be located at least 300 feet from the tidal waters and tidal wetlands.

As a member of this morning's panel said, that's a strong should and it's backed up by a shall. But the record in this case shows that rather than using the 300-foot setback, the town accepted rationales from the developer as to why there should be no 300-foot setback. This is but one instance of several that are reflected in the panel's comments that indicate that this

proposal as submitted does not meet the criteria. And I would submit to you that rather than approving this proposal with conditions, that the more straightforward action for this Commission to take under the terms of the statute is to vote it up or down and I would urge that your vote should be to disapprove the proposed program amendment. Thank you.

CHAIRMAN MADDEN: Thank you.

MR. ALSPACH: Thank you, Mr. Chairman. Ladies and gentlemen, good afternoon. My name is Tom Alspach. I represent Talbot Preservation Alliance, Inc. We are a volunteer citizens organization with a large number of members in Talbot County and in St. Michael's.

We are opposed to this project specifically for the reasons that it does not comport with the criteria that this Commission must apply under the Critical Area law. You'll hear the staff report about problems with compliance with the 300-foot setback. We

certainly agree with th[illegible]

I'd like to d[illegible] your attention to the additional criterion, mandatory criterion with which this project does not apply. That is the criterion relative to development in intensely developed areas which recites that to the extent practicable, future development shall use cluster development as a means to reduce impervious surface and maximize areas of natural vegetation. COMAR defines cluster development as a means of residential development where dwelling units are concentrated in selected areas or in a selected area or selected areas of a development tract so as to provide natural habitat or other open space uses on remainder.

Ladies and gentlemen, the developer here has done the clustering of the houses. But they forgot about the open space. There is none. The rationale is you have this 100-foot buffer. If you look at the rest of this development plat, all we have is houses. There is some open space,

but it's impervious surface; it's tennis courts. The requirement under the COMAR statute is to reduce impervious areas through cluster housing. This does not reduce impervious areas, as you heard, it increases impervious areas from 0 percent to 55 percent of the site. There is no dedicated open space on this plat.

Now, I think you will hear that the idea of extending the 300-foot setback to 300 feet is some sort of substitute for the creation of open space. I submit to you that it's not. The rationale of the 300-foot setback is to protect the shoreline against human impact. That's right in the Critical Area law. That's a separate and distinct criterion from the clustering criterion which requires open space as a means to reduce impervious areas and maximize areas of natural vegetation. There are no areas of natural vegetation that are being provided for on this project. This project does not comply with the criteria. I thank you for my time.

CHAIRMAN MADDEN: Thank you very much.

DR. McCARTHY: Chairman Madden and members of the Critical Area Commission. Thank you for allowing me to speak. I'm Dr. John McCarthy, and I represent the Talbot River Protection Association, of which I serve as executive director.

TRPA, as we're best known, was created about eight years ago in an attempt to protect the rivers and creeks in Talbot County from the constant degradation that they were experiencing, and one of those of which is, of course, the Miles River. Eight years later it would appear that we're not succeeding.

In the past two weeks our Talbot County newspaper, The Star Democrat, has featured news articles telling us that the oyster harvest this year is the lowest ever and Chesapeake oysters have fallen to 1 percent of their normal population. The seafood industry on the Chesapeake has fallen from its predominant place

of just a few years ago and the watermen who survived on it are now searching for other means of livelihood. A sport fisherman is suffering from a serious systemic infection caused by an infected rockfish, and this is not an isolated incident. What do all those three things have in common? They're all related to the condition of the water of the Chesapeake Bay and the rivers flowing into it.

This should not be news to anyone. I'm sure you all realize that just recently Governor Ehrlich and the Maryland legislature passed landmark legislation funding over a number of years upgrading of the larger wastewater treatment plants in the estuary. One of these plants is hoped to be the Talbot County-owned plant serving St. Michael's into which the proposed 300 Miles Point III homes would send their sewage. A year ago TRPA, with the assistance and coordination of the Horn Point Laboratories of the University of Maryland, completed a three-year study of the discharge from the St. Michael's wastewater treatment plant into the Miles River.

That study concluded that the nutrient-generated loss of dissolved oxygen at that site in the river was lethal to all marine life. The State of Maryland, in part as a result of this study, declared the Miles River to be impaired. Unfortunately, this is not an isolated situation. TRPA and the creek watchers have been collecting water samples from all the rivers and creeks in Talbot County, including the Miles River, and it found that in many cases the results are comparable and that marine life and plant life is not compatible with what is there.

This is the same wastewater treatment plant that exists today. Nothing has changed. It's the same overburdened and malfunctioning sewage removal system that routinely, as you've already heard, allows partially treated or even untreated sewage to flow in the streets of St. Michael's during heavy weather situations.

We cannot allow the wastewater and stormwater from 300 more homes to be added to it. Even if the wastewater treatment plant is improved it will cost millions to Talbot County and Maryland, and the Miles River will not be capable of handling the discharge.

CHAIRMAN MADDEN: I need you to sum up.

DR. McCARTHY: The significance of this involves the welfare of a major Maryland industry, the well-being of all of our citizens and their ability to enjoy their surroundings, and most importantly the public health of all those who live and travel. We urge not that the proposed Miles Point III growth allocation be sent back to the town for improvement, but it be rejected without conditions. Thank you.

CHAIRMAN MADDEN: Thank you. Please try to adhere to the time limit in fairness to everybody else.

SPEAKER: I'm afraid that there's no way

to hold it up. This is a portrayal of the area of St. Michael's showing the river. I just wanted to point out this was used recently. This is a DNR product. It indicates the oyster bars here at St. Michael's, the oyster bars that exist in this region where the present consideration is underway for the impact on the oyster stocks in the Miles River.

I would like to say to the Commission this: It seems to me that in history -- and I personally was involved years ago with the efforts that were made to put the critical area law into place and design it for its purpose. I understood, and people still today do, understood its objective was to guarantee that we would protect the water, the fishery, and the seafood stock, the capability of the water being what it was at one time.

It seems to me that we're off that mark with many of the decisions we're making today, and this one in particular. The Miles River

cannot assimilate what's being proposed here. The commissioners paid $40,000 for three years of study to find out what the nutrients were in the river right in the vicinity of St. Michael's where this project is proposed. And the results were very clear. The nutrients were out of control and because the nutrients were whatever they are, the dissolved oxygen was lethal to all marine life.

I have to ask all of you, what did we start out to do? This isn't what we're doing. It was to protect these resources, these fisheries. We're not doing it. How can we allow more impact to the already threatened and seriously declined capabilities of the Miles River? Thank you.

CHAIRMAN MADDEN: Thank you, sir.

MR. DETAR: Thank you, Mr. Chairman, members of the Commission. My name is Richard DeTar from Miles & Stockbridge. I represent the applicants. The comments that I would like to focus on exclusively go to one of the conditions the panel has proposed, which is a uniform 300-foot setback. And the first thing that I want you to understand is that in the entire history of the Critical Area Commission, you have never imposed a 300-foot setback contrary to the local governing body's approval and contrary to the application, never in the history of any application that has ever been before you. You are asked today to do something extraordinary in your path.

The second thing I want you to know is one of the reasons for that is for the last 11 years, the Critical Area Commission has had a written policy that says the 300 feet should guideline is one for the locality to consider. The locality must have a 100-foot buffer and it is to consider the 300-foot setback, combining a 200-foot setback with the 100-foot buffer. And if it isn't going to increase the setback, it needs to explain why.

But the point is your written policy says that discretion is with the locality. The exhibit is Exhibit 25 in the record. Don't take my word for it. Ask your lawyer -- if you've ever done it before -- ask your lawyer if that's what the policy says.

Now, having said that, the Critical Area Commission has influenced setbacks before, and the way that you've done it is you've negotiated with the municipality and the applicant, and you've reached mutual agreement. That's what happened in Hovnanian. It wasn't forced, it was through agreement because of particularly sensitive features.

When you vote on this I'd like you to consider a couple of things. If you force for the first time in your history a 300-foot setback, you force a legal decision on whether or not you have that authority. And if you do that, it's not just about whether or not you erode your ability to have influence on this project, if a

court says you don't have that [redacted]rity, it influences your ability to have that influence on other projects, like Hovnanian.

The second thing I want you to know is nobody ever asked us to push back the setback. It never came up despite meetings with the staff. The applicant is willing to consider that. So I'm not here to tell you leave it alone. I'm here to say consider approving it with the condition that the applicant and the town worked with your staff based on the site conditions to arrive at what makes sense for a setback.

CHAIRMAN MADDEN: I need you to sum up.

MR. DETAR: Not an arbitrary and uniform 300 feet. Look at the environmental features of the site. Use your staff who are experts and allow the process to work through communication the way it should. I believe everybody will be better served if that process, which is how it has historically worked, takes effect in this case.

town is not [redacted] dangling. In fact, that agreement has already been recorded in the land records of Talbot County, so it now will extend not only to the current developer owner but to any subsequent owner.

I heard something about cluster not being a good idea here. I think people are missing a lot of small pockets of open space that do add up on this site. I know the mission of this Commission is environmental protection, but the mission of planning for communities and place making in communities is to think about a lot of other things. This development, designed by Andre Skelarni, who is a world renowned designer of traditional neighborhood developments, Seaside, Florida, you guys have heard the litany, I think it's an opportunity for the town to have quality development and environmental protection. There are much more open space than has been given credit, and if we clustered this on 30 percent of the site and left the rest open space,

CHAIRMAN MADDEN: Thank you.

MR. REDMAN: My name is Tony Redman. I'm a planner with a company called Redman-Johnson Associates. I'm speaking on behalf of the town of St. Michael's, where I work as a consultant and have been very engaged in this project. I have just a few comments.

There was concern that wetlands creation on this edge might not be viable. I had submitted only last week a copy of the wetlands boundary map done by the State of Maryland back in 1971 that shows much core grass marsh in this area, which I think is a great indicator that it is viable, that together with a reputation of environmental concern and their history and track record of building these things gives me great reassurance of the work.

However, because we can't always be certain, I want you to know that the town has already secured a ten-year agreement with the developer for maintenance of that wetland, so the

I would submit to you it would look nothing like the existing town of St. Michael's. It would be totally inconsistent with character and scale. And in fact, in Talbot County and surrounding areas that's what we've already got, lots of cluster developments on two-acre lots. Using land inefficiently, not housing people on less land, it's very land wasteful.

Also there's a reference to this being as high as 50 and 60 percent impervious surface. It's not. The latest calculation from the developer is 49. You look at me and say so what, that's pretty high. Yes, it is high. But in the IDA there is no limit on impervious surface. If you wish to have a limit on impervious surface through IDA, do the same thing you do in the LDA, legislate an impervious surface limit. Until you do, we don't have an option. Thank you.

CHAIRMAN MADDEN: Thank you very much. Yes, sir.

DR. BAINES: Chairman Madden, ladies and

gentlemen, I'm Callan Baines. I'm a physician practicing in Easton since 1968. I listened to the initial presentation by the tall blond lady who did a nice job pointing out all the good features. And then I said when is she going to address the question of sewage disposal? Right at the end I thought she let the cat out of the bag because she said the sewage plant will be rebuilt by Talbot County.

So I ask you are you going to permit approximately 60,000 gallons per day of sewage going into a plant which is already failing which in turn goes into a river which is heavily polluted? Let me remind you, sewage is dangerous stuff. I don't want to tax our transcriptionist, but you've got salmonella and shigella, E. coli, crypto-sporidium, mycobacterium marinum, and hepatitis virus. If she gets that right I'll congratulate her. Pfisteria causes loss of intellect which sometimes is permanent. We've had it on the Pocomoke River. The Miles River is

frequently closed because of E. coli contamination in the oysters.

The wastewater treatment plant there quite regularly fails, puts raw sewage straight out because it doesn't have the holding capacity for a town of 600 people. Now, this developer wants to add 251 houses at his last count, 251 houses each putting out 250 gallons a day comes out to about an extra load of 60,000 gallons going into a plant which is already failing.

This development, if it goes through in its present form, abruptly doubles the population of St. Michael's. For those of you who don't live in that county, St. Michael's in places is only about a thousand feet wide. There's an impact on the sewage, impact on the highways and the rights of citizens that live there to travel freely upon the highway.

CHAIRMAN MADDEN: Doctor, I'm going to ask you to sum up, please.

DR. BAINES: Right. Bill 933 was an attempt to provide adequate sewage disposal and to enforce better coop[illegible]ion between the town and county. This plant is a county responsibility. The counties are responsible for public health. Therefore, 933 is essential if they are to protect the health and welfare of the people that live there. I ask that this project not be allowed until the wastewater treatment plant have been improved. Thank you.

CHAIRMAN MADDEN: Thank you, Doctor. Yes, ma'am.

MS. JONES: Good afternoon. My name is Beth Jones. I'm president of the Bay Hundred Foundation, an all-volunteer organization devoted to preserving and enhancing the historic, cultural and environmental qualities that make our region so special.

This project is located in the Bay Hundred area. As you probably know, Talbot County has 660 miles of shoreline, more than any other county in the United States. Bay Hundred

has the lion's share of that shoreline. Dr. Baines was talking about the fact it's only a thousand feet across. I have to say I'm so delighted to live in a state that had the leadership and the foresight to create the Critical Area Commission 20-some years ago. And I guess my question to you is if not here, then where? This is the heart of what critical area is all about.

The second question I have is about what I heard the attorney for Midlands to say. If I heard him correctly, it sounds like he was implying that there might be a lawsuit against you if you didn't give them what they wanted. And if that's the case, unfortunately we've been down this pike before. That has been the modus operandi.

CHAIRMAN MADDEN: Thank you, Ms. Jones.

MR. DIES: My name is Russell Dies. I'm vice president of the Maryland Watermen Association. I live at Tilghman, Maryland.

Harvested seafood, shellfish out of Miles River all my life until here recently. And last summer Miles River was shut down for two weeks and we couldn't harvest shellfish in Miles River because of the overflow of the sewage treatment plant in St. Michael's.

If you add, double the amount of effluent going out of there, I see real danger for the watermen in that area. Take a good look at me. You might not want to, but you won't see us much longer. As commissions okay these plans, they're writing my death certificate. Because as a waterman in Miles River and other rivers in Talbot County, we soon no longer would be able to make a living. We're right at that point now.

But I hail them for making new marshland. But what's going to come from the houses, the development, the overflow into the Miles River is going to wipe away any benefits. It can be the best plan and the best laid out community, but if it puts people out of work. My

family has been working on the water since 1670. We all have been watermen captains. I own a 50-foot skipjack. I can no longer make a living because -- this is one reason, the oysters are dead. If you have any feeling for the watermen, turn this down.

CHAIRMAN MADDEN: Thank you.

MR. MARTIN: Good afternoon. For the record, my name is Warren Martin. I'm a resident of St. Michael's, Talbot County, Maryland. I'm also co-chairman of SOS, Save Our St. Michael's. Perhaps you've seen some of our bumper stickers in the last seven years. We are an organization of approximately 300 residents who have followed and monitored this issue for seven years. I have probably attended close to 100 of these meetings in that period of time.

This Midland project is simply too dense for our fragile Bay Hundred peninsula. To the south of this project we have two units per acre. Immediately to the north we have two acres per

unit. On Monday the third of this week the voters of St. Michael's went to the polls and elected two of the three slow growth limited control growth candidates, and each of these gentlemen are here today.

Without further redundancy, SOS would like to endorse the testimony of our attorneys Deming and Asplach and other opponents who have spoken before me. Thank you for hearing our plea. Please help us preserve our way of life, our environment, and our Chesapeake Bay tributaries. Please vote no on this growth allocation.

CHAIRMAN SETZER: Thank you, Mr. Martin. Commissioner Carroll.

MR. CARROLL: I'm Peter Carroll, Talbot County Council. I'd like to talk a little bit about that waste treatment plant. St. Michael's plant is actually a regional plant. It deals with St. Michael's, Royal Oaks, and a number of houses and developments that are along that

route, that state road that comes in. The County took that over a number of years ago because the town was operating it and was not able to keep it up to an acceptable standard. There has been significant deterioration of the stirring paddles and the processing equipment. So we have ownership of that facility now.

A couple years ago a plan was to put in place to increase the size of that plant to 800,000 gallons. It's a 300,000 gallon plant today. Last year we took a look at that because, as the governor has said to all of us, we need to do a better job about environmental controls. The processes that we have in place today simply aren't getting the job done, and local governments need to do more.

So we went back and revisited that 800,000 gallon plant and sized it to 660,000 gallons. That's the size of the plant that MDE had originally recommended be put in place. That downsizing brought to the surface another

critical issue. St. Michael's is an old historic town, and the sewer collection lines, the [redacted] from the houses, the regional collectors that lead into the main collection lines, are leaking, and we have enormous infusion and of course rainwater flowing into those lines so that the plant on a nominal average runs around 300 to 350,000 gallons a day.

But when we have storm events it can go to a million, a million and a half or a million eight in some cases. Those are the cases that cause raw sewage to flow out of manhole covers, pops the lids off and sends that out into the streets and into the town. We think that this project is not right yet. It should not go forward. And we sent a letter to you asking you to delay this project because we are very concerned about getting a new wastewater treatment plant in place and being able to cope with it.

The plant alone will not fix the

problem. We need to do something about the INI. We are spending money on that. That's a part of our upgrade program. But unless we can bring that flow down to I'm going to say in storm events to something like 700,000 or 800,000 gallons per day, a new plant isn't going to solve the problem. All these new homes are going to exacerbate that.

We're here to ask you not to do this now. Let us get our house in order. Let's get the waste treatment plant back on line, and let's go into St. Michael's and fix all those connections and leaders and then we're ready to move on with it. Thank you very much.

CHAIRMAN MADDEN: Thank you, Council Member Carroll.

MR. VALANOS: Good afternoon. My name is George Valanos. I'm the developer of the Miles Point project. I'd like to pick up on something that Mr. Carroll said. Our engineers are working with the County director of utilities, Ray Clark, to address the INI problem. We recognize that that [redacted] issue, and certainly before we go forward we're going to have to address it and see to it that the INI issue is taken care of, as well as working with them with respect to the capacity of the existing wastewater treatment plant.

Also I'd like to make a comment about what our firm stands for is about smart growth, pedestrian-friendly development. I know that density has been an issue. But I also -- my feeling of the critical area legislation, and maybe some of you agree and some of you don't, is to really identify through your planning process, through smart growth issues, where development is to take place and to identify those areas that are priority places and also to look at them in compact planning. Because what you're doing by developing compactly is creating a pedestrian environment where people can walk or bike, and if it's close into town, which this project is, then

they will actually reduce car trips. And also you can centralize your stormwater management and provide best practices for that.

Outside of the town of St. Michael's there is in the Bay Hundred region on average over the last two decades roughly 30 units per year, 300 every decade that are being developed on large lots. And what a development like this will do, in my opinion, is will redirect that development to areas where development should take place.

With that I want to thank you for your time.

CHAIRMAN MADDEN: Thank you, Mr. Valanos.

MR. DUNCAN: Mr. Chairman, members of the Commission, let me introduce myself. My name is Thomas Duncan. I'm a member of the Talbot County Council. I was on that council, as a matter of fact, I was president of Talbot County Council when the Critical Areas legislation was

enacted, and the towns were given a certain amount of growth allocation, along with the fact that we did a new comprehensive plan and a voting ordinance at that time. So as you can see it was quite hectic at the time that I was on that council.

I would like to speak to you not on the issues of engineering or chemicals, or whatever. I'd like to speak to you on the emotional issue of this bill and it's this: My great-grandmother was a Native American. My grandfather made a living on the water. My father made a living on the water. I grew up on the water. I would suggest that the representatives of the town here were not residents of the Talbot County. I've been in Talbot County 67 years and I've seen the progression or I should say regression of the waters of Talbot County.

You ask why am I here and why am I so emotional about this subject matter. The fact of the matter is it's not going to make any

difference to me. At my age, I'll be gone. It doesn't matter. But I have 12 grandchildren that are going to accept what I leave for my grandchildren. We're not asking for no growth in Talbot County. All we're asking for is the opportunity to get it right, to get it right. That's all we're asking. And the fact of the matter is we're at a crossroads right now. If we can't get it right now, you can forget about Talbot County. Why do people like to come to Talbot County? It's pristine; it's beautiful. Because Talbot County was the first county on the Eastern Shore that had zoning. And that, in fact, is what made Talbot County what it is, plus we had some very wise people in government and some very wise people in the civilian sector that came forward and helped us guide our county.

So please give Talbot County the opportunity to plan for the future. Thank you for your time, Mr. Chairman.

CHAIRMAN MADDEN: Thank you, Council Member Duncan. Anybody else? Judge North.

JUDGE NORTH: Good afternoon, Mr. Chairman, ladies and gentlemen. I commend you upon your patience and your attentiveness. You've heard a great deal this afternoon and I have just a few more words. This property is near mine. So I'm very familiar with it. But I assure you that if it were miles and miles away I would have the same concern. St. Michael's is on a very delicate area of land. It is an isthmus connecting two bodies of land with water on each side of it.

The waters of the Miles River have been terribly, terribly damaged over the years. There are no oysters in the Miles River any longer. There are very few crabs and fish, and very little bottom grasses. The Miles is in terrible condition, due very largely to what happens in St. Michael's and at the St. Michael's wastewater treatment plant. I would urge you to give every consideration not to compromise this matter

because we are, as has been said, at a crossroads. The Miles and the bay have never ever been in as terrible a condition as they are today.

And recognizing this, I must point out to you that a great number of people, the great majority of people familiar with this situation have voiced opposition to it. I took the liberty of sending out a memo to all of you together with supporting letters of people who had written in concern, and in summary I would point out to you that in favor of this proposition there is the Midlands Corporation, the St. Michael's Town Council, or part of them now, and a handful of real estate brokers and other individuals. Against this proposal, totally against it, are Governor Harry Hughes who would be here today save for a preexisting medical appointment; Russell Trane, the first head of the Environmental Protection Agency; Chuck Fox, former secretary of DNR; several former St.

Michael's town commissioners who have writ[illegible] all four former Critical Area Commission members from Talbot County, the Bay Hundred Foundation, Fogg Cove Homeowners Association, Historic St. Michael's, Maryland Watermen's Association, Save Our St. Michael's, St. Michael's Preservation Coalition, Talbot County Historical Trust, Talbot County Oystermen's Association, Talbot Preservation Alliance, Talbot River Protection Association, and hundreds of citizens throughout Talbot County.

In closing let me say that I thought Mr. DeTar was very candid in his comments and he has followed the path that his client has followed previously. He says to you, in effect, if you go along with this requirement at 300-foot setback you're going to go to court. You're going to be hamstrung in the future. That's his threat. There is an easy way of resolving that matter. Very easy. Turn it down flat, no conditions. Turn it down flat. Thank you.

CHAIRMAN MADDEN: Thank you, Judge North. Would anybody else from the public like to make a brief comment? We thank you. I would like to turn to the chair of the panel for additional information and recommendations.

MR. SETZER: Over the past 45 minutes to an hour you all had a small taste of what we experienced for three to four hours when we had the public hearing for this particular growth allocation. And you add those comments along with the cart of backup material that's been supplied to the Commission in support and opposition to the project, and you can see the type of issues that we as a panel have been wrestling with over the past several weeks.

As a result of what was offered this afternoon, I guess I'd just like to address a couple points so at least you all have some idea of the discussion that the panel had in moving forward with this recommendation. First off, there was a lot of discussion about the 300-foot

setback and how that [illegible]es to the design of the development, the fact that it's very intense development, and the fact that it is going to increase the impervious surface on the site. According to Mr. Redman the new figure is 49 percent. But obviously the increase in impervious surface is going to be significant. And those were the things that we looked at when we were discussing the 300-foot setback.

We recognized, and again, Mr. Redman pointed it out in the plan, that there are a number of open space areas distributed throughout the development. But we also thought that it was important, because of the intensity of the development and because of the impervious surfaces, that we provide a more significant setback to help the Commission deal with its regulatory issues in terms of water quality and habitat protection and those types of issues.

We talked at considerable length about the use of the 100-foot buffer and we looked at

it from both a plant and wildlife habitat issue as well as public access. And we recognized that in terms of the Critical Area criteria those are both important issues. But I think all the panel members came down on the side of a more heavily vegetated 100-foot buffer, again, to promote the water quality and habitat protection requirements of the Critical Area Commission.

We talked about stormwater management and appropriate best management practices for the site. There's a number, I think three or four surface treatment ponds on the site which obviously you can vegetate and provide some wetland vegetation. But we thought that as the design for the project moved forward, that there should be additional consideration for environmentally sensitive design for the buildings in terms of rooftop disconnects, what other opportunities may exist based on the geology of the site, and opportunity for infiltration and those types of issues so that we

had an opportunity to kind of look for some expertise and guidance in the stormwater management area, and we asked Ken Pensill from MDE to sit in on panel discussions and provide some background in terms of the type of treatment options that are available to deal with stormwater management.

The panel also discussed, and discussed it quite heavily this morning, shoreline treatment. We talked about marsh creation versus revetment. There's an existing permit issued by MDE for revetment on part of the property. We talked a lot about whether or not marsh creation would be successful. And all of that discussion was fine, but when it came down to a recommendation, what the panel really looked at was whether or not providing a vegetated shoreline treatment was an appropriate trade-off for a forested, vegetated 100-foot buffer.

We also heard, both during the hearing as well as over the past hour, a lot of concerns

about wastewater treatment. And again, the panel was interested in making sure that we understood the situation as it exists today as well as what was on the horizon for wastewater treatment for Talbot County in the St. Michael's area.

We asked again MDE from the MPDS program to come in and talk to the panel and discuss the issues related to this treatment plant, infiltration, the overflows, and what was being done now and in the future to address the sewage treatment issues.

And I think the panel report that Mary put together kind of puts it in context. MDE has issued a new permit allowing for the increase of the treatment plant to 660,000 gallons per day. They're required to put in biological nutrient reduction. They're required to put together a plan to address the infiltration into the system, which is a big concern and a big part of the overflows that are being experienced. And it's our understanding that the town has qualified the

construction on this property contingent upon appropriate availability of sewage treatment.

So we've looked at the issue; we've talked about the issue, and the agencies that are responsible for dealing with the issue have all been engaged and are working toward a resolution. So we've heard the issue; we've tried to understand the issue, and the agencies responsible for dealing with the issue have all been engaged, and from that point we've moved on. From my notes that's all I have.

If you don't mind, if there's anyone else on the panel that would like to provide other observations before we move forward with the recommendation.

CHAIRMAN MADDEN: I'd be happy to take those. I want to compliment the panel. They have put a lot of time and debate into this. I want to commend the members. Any other panel members?

MR. SETZER: I call for the chairman to

make a recommendation.

What's being distributed now is a supplement to the panel report which is basically the recommendation for a vote. The panel discussed Miles Point III growth allocation request in regard to the consistency of the request with the goals of the Criteria Area Act and the Commission's Criteria required by Natural Resources Article 8-1809(j). As a result of the panel discussions the panel would move for the approval of the growth allocation request with the following conditions; one, that 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; two, the 100-foot buffer shall be established. And in establishing the buffer, management measures shall be undertaken to provide forest vegetation that assures the buffer functions set forth in Critical Area Criteria.

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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 the respective staffs. The Buffer Management Plan shall be approved and reviewed by the Commission and may provide for public access; three, in measuring the 300-foot setback and 100-foot buffer, the measurement shall be based on the existing shoreline at the time the Buffer Management Plan is submitted to the Commission; four, 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, the Commission, and their staff. The Stormwater Management Plan shall be reviewed and approved by the Commission.

CHAIRMAN MADDEN: Do we have a second?

COMMISSIONER: Second. Meg Andrews.

MS. ANDREWS: Can you clarify for me, is it the panel's understanding that this enhancement to the wastewater treatment system would have to be in place before the development went forward or there would just have to be a plan for it?

MR. SETZER: It's our understanding that the authorization has been made to increase the capacity of the treatment plant. That also requires the County to develop a plan that addresses the infiltration problems that are resulting in some of the overflows that have been described. We don't have, I guess, an exact timetable for when that plan is going to be constructed or when that plan is going to be in effect.

However, the conditions placed on the development by the town requires that there's adequate capacity for whatever component of the project moves forward. So basically they're not

going to be able to build on the site. And I think that construction isn't just the new housing units, but also I believe to the infrastructure, unless there's the appropriate capacity not only available, but granted to the town to move the construction forward. That's the panel's understanding.

CHAIRMAN MADDEN: Any other discussion or comments?

MR. RICHARDS: Edwin Richards. My understanding in reading the material is that there is a condition that limits the construction to a capacity of the -- very specific, and I can't remember the exact wording, but it basically says they cannot use any septic tanks, no other intermediate system, and they have to have approval, not only capacity, but they have to have approval before they can actually start construction. We looked at it -- or I looked at it and I thought that was very restrictive and I felt dealt with the issue of capacity.

CHAIRMAN MADDEN: Any other discussion?

MS. SAMORAJCIYK: Who makes that decision?

MR. RICHARDS: It's between the County and the Department of Environment. Anything that the County does has to agree with the regulations being administered by the Department of Environment. And I'm sure after what's gone on in Centreville that that will be tightened up. So I think both County and Department of Environment will be involved.

CHAIRMAN MADDEN: Any other questions or comments?

MS. ENNIS: Is the current capacity of the sewage treatment plant such that on an ordinary day there would be allocation available for this development, or must it be enlarged in order to meet the basic statement that there's allocation available?

MR. SETZER: I don't recall.

MR. RICHARDS: As I recall, the

statement made by the representative of the Department of Environment was that there is existing capacity that could allow it to move forward. However, the INI issue is one that has been raised in testimony here and I think it's one that's going to be closely investigated before -- there was a statement that there may be a re-evaluation of the capacity of the facility. So at least at this point theoretically there is capacity to move ahead.

But I think that's going to be placed under investigation.

MS. ENNIS: So it could go forward without any of it?

MS. MASON: There wasn't enough for the whole development.

MR. RICHARDS: No. This is a staged development over a number of years. I think there's going to be a lot of work done before any approvals are given.

MR. SETZER: I guess from a panel

perspective the issue was laid on the table. We asked the agency that was responsible for sewage treatment and discharge permits to come to speak to the panel to at least make sure that we understood the existing condition and prospects for the future, and you have to kind of tread lightly here because of certain jurisdictional areas that it's important for whether or not this project moves forward from an MDE and County perspective in terms of sewage treatment.

We felt, as far as the Commission was concerned, the fact that this issue was being examined, that Ed recalls there was capacity available for portions of the development to go forward. There were controls placed on the development for -- to have capacity available for the further build-out of the development of that sewage treatment plant was being addressed.

MS. ENNIS: I'm very new to this so maybe I don't understand. It sounds like if there's available capacity right now, even though

there are major problems here, there's no requirement on the County or the town to make those improvements prior to this, or at least the first phase.

MR. RICHARDS: I'll quote two things, one is the statement from the representative of the Department of Environment that said that that was under investigation. And secondly, there was testimony today that there has been money committed at the County level. I believe it was Councilman Carroll who said they are investigating it and it is underway right now as far as the County is concerned.

Also there was some written testimony submitted indicating something like $400,000 had been committed already to begin the process to correct these problems.

MS. MASON: Also in the panel report, going along with what Gary said --

MR. SETZER: Page 7 of the staff report.

MS. MASON: -- which summarizes the

information that the panel received from the MDE representative. That's the information that the panel received.

MS. ENNIS: I guess my concern is that the permits have been issued. Then you get to the point can the town and the County afford to make the improvements and will those improvements have to be in place before the first part of the development moves forward? And I mean, my concern is that our first charge is to protect the water and the fish and wildlife, and even if we try to be objective and discount emotional appeals of what is said here today and what I'm sure the panel has heard, from a practical standpoint of being involved with government, can we be sure that this sewage treatment plant improvement and expansion is going to take place?

MR. SETZER: I guess that raises the question, do we have the authority to petition --

MS. MASON: That's a very good question, and that's one that the panel discussed with me,

actually, early on in the process. And the Critical Area Commission has always worked cooperatively with the permitting agencies. And in this case the Department of the Environment would be the agency that issues the permits for upgrading or for making sure that the sewage treatment plant is functioning in accordance with the state regulations.

This Commission has no direct authority to require MDE or the town to do anything with regard to its sewage treatment plant, in my opinion. The panel took the initiative and asked for information from the appropriate people at MDE, which I believe is well within their authority to get as much information as they can.

The MDE representative informed them that MDE was in charge and taking care of the sewage treatment plant matters. So I believe that the panel report, as far as it went, really I think states that the panel discharged their duty because they did get information presented

at the public hearing similar to what you heard today, only a lot more of it, that addressed concerns and questions about the current situation in St. Michael's and I think that the panel was right to get additional information.

Beyond that, the panel did not discuss recommending any kind of condition. So I didn't give them advice on that. But my advice would probably be that they should defer to the Department of the Environment on the sewage treatment issue.

MR. SETZER: If it's okay with you I found a fax sheet that MDE provided us.

Fax sheet update, Talbot County region 2 wastewater treatment plant ENR upgrade and expansion. The proposed project involves the upgrade of the existing region 2 St. Michael's wastewater treatment plant with enhanced nutrient removal facilities to achieve total nitrogen removal for a yearly average of 3 milligrams per liter with expansion from .5 to .66 million

gallons per day. Originally the County requested to expand the plant to one million gallons per day and MDE rejected that request as unreasonable growth. The County agreed to go down to .8 million gallons per day. After design was completed at this capacity the County Council changed the expansion to .66 million gallons per day.

The County is initiating the redesign with the new capacity. The schedule design start was February of 2002. Design completion was October of 2003. The design start was January of 2004. Redesign completion is June 2004, with construction start of September 2004 and construction completion by December of 2005. It says the service area is experiencing excessive infiltration and inflow with 1,000 percent variation of flows in some locations that occasionally result in overflow. Maryland Environmental Service has completed a study and identified the areas with excessive infiltration

and inflow. During their July 22, 2003 meeting the County Council decided to proceed with INI corrections immediately. The corrections are estimated to cost $600,000.

MDE advised the County to apply for MDE and USDA world grants and loans. Also MES's study discovered that some INI was due to house connections, and the County has been advised that some homeowners might be eligible for CPPG funding.

As far as the ENR agreement, the County signed the ENR agreement, which is enhanced nutrient removal. With MDE, the County's meeting with MDE on October 29th, 2003 was to discuss how to proceed with the ENR project at the new capacity of .66 million gallons per day.

CHAIRMAN MADDEN: Do you want to summarize that for us? Any other discussion?

MS. PRETTIMAN: I would like to add on that it's to any entity's benefit that owns a water treatment plant or a septic plant to

upgrade so that -- when they have [illegible] flows the MDE comes down very hard on them and fines them. So it would be to their benefit. My question, though, is on the ENR, and I didn't quite hear you. They agreed to go down to 3 with the enhancement?

MR. SETZER: Right.

MS. PRETTIMAN: Will their capacity go up because they will be running more efficiently then with going down to 3?

MR. SETZER: The impression that I got was that ENR was a function of the .66.

MS. PRETTIMAN: And you don't know what capacity they are right now?

MR. SETZER: I think they're authorized for .5.

CHAIRMAN MADDEN: Commissioner McKay.

MR. McKAY: Thank you. I'm a bit concerned about the area, the 300-foot setback. While I recognize that I think it should be part of this project, and that might be my personal

feeling, I'm concerned that from the 100-foot out to the 300-foot, that that should maintain -- we should maintain a local government or local jurisdiction, kind of working together with the Critical Areas Commission as well as the developer to try to make that work as best as it can for that particular project.

I am very concerned that we're establishing a precedent that would really -- probably is something that's best left to the local jurisdictions to do it as they should, as the legislation says they should. And I just think it's something that should be the locals working with the Critical Area Commission to try to accomplish that. I certainly support the 300-foot setback. I just feel like you're taking away some flexibility with the local jurisdictions in trying to accomplish other benefits as they deal with that area of setbacks.

And I would like to see us revise it to have this -- this particular project to have the

town of St. M[illegible]l's work with the Critical Areas Commission to accomplish that setback as best as possible.

CHAIRMAN MADDEN: I would defer over to the panel chairperson because I know they gave a lot of thought to the proposal. I also will ask the counsel to give a historical perspective on whether we've applied 300-foot buffers before. Do you want to give us some thought behind the recommendation?

MR. SETZER: I guess as I mentioned earlier that looking at the intensity of the development and the increase in the imperviousness, we just thought it was important to provide the maximum available setback that the Commission authorized. We didn't discuss really straying from the 300-foot setback, that I can recall. I think right out of the gate the panel started to talk about establishing a 300-foot setback on the development, on the parcel. If anybody on the panel has a different

recollection. That's my recollection.

MR. GILLISS: If the growth allocation request requires this Commission to consider the standards set out in 8-1809(J), and 8-1809(J) directs us to the goals of the program in 8-1808, one of which is to minimize impacts on water quality, then we don't need to foundationally be based upon the regulations which talk about development from RCA to intense development, and the shoulds and the shalls, but instead can rely upon the fact that 8-1808(B)(1) directs us to look at water quality, and one way to protect water quality is to have a 300-foot buffer.

MS. MASON: Following up on what you said, (B)(3), which directs the Commission to look at the number of movement and activity and persons in an area which is also something that the panel discussed very very in-depth with the proposed use of the 100-foot buffer proposed to be a fairly intensive public recreation and access area. The panel's discussions that I

recall were centered on how much protection for habitat and water quality would that 100-foot buffer actually achieve if it's going to be used for a public park and the need for some additional area to achieve those goals of the program.

CHAIRMAN MADDEN: Any further discussion?

MR. RICHARDS: The commissioner raised a point about the local government participation. That's one of the initiatives that's been very much a concern to me throughout this.

My issue with the 300-foot is it was more procedurally at this point than it is an environmental concern. Although I think ultimately that would be a top concern. But the regulations, to try and paraphrase them, basically says that the local jurisdictions shall use guidelines, and one of the guidelines is it should have a 300-foot setback.

In the submittals that they have they

claim to have addressed them, which they're also required to do elsewhere, as I recall. And they gave three reasons. We couldn't buy into any of those reasons as to reasons why they should not have a 300-foot. So basically we said they really did not give the full merit to the "should." And my feeling is that the "should" is a very strong thing that says that they will do it unless there's a compelling reason why they don't or it runs counter to the intent of the program.

And so right off the bat my feeling was and the reason why I didn't address the issue whether there should be something less than 300 feet, it says it should be 300 feet. So it's time to drop it back in their lap.

I agree with you, if they want to come back and say there is a compelling reason why we cannot do it at 300 feet and then I, as an individual, not speaking for the Commission, would be glad to consider it. On a procedural

standpoint.

On the environmental I think there are some arguments against it. I think that the town was given an opportunity and they didn't do it appropriately. And I have to address some of the testimony because it really bothers me. There was a conflict between the two attorneys, Mr. Hickson and the gentleman from Miles & Stockbridge, which I did not get his name, about the 100-foot buffer and the 300 feet. The gentleman from Miles & Stockbridge says that the developer, or his client, the issue of 300 feet never came up. Which to me undermines anything the town says if that is true, undermines anything the town says about whether or not they dealt with that issue. They got the opportunity. And if that's true, that even goes further in undermining the three points that they gave us.

The other conflict that I have is because in addition to the 300-foot, there's the question of the 100-foot forested buffer. I

heard the attorney for the town of St. Michael's saying we had to give him something in exchange for putting in the marsh. And what he gave in exchange was the 300 feet plus 100 feet of forested buffer. And why did he give up the 100 feet of forested buffer? Because it would create shade which would make the marsh impractical.

So basically in addressing the issue of how the local government dealt with it, I think that point, to me, was the most critical element in this thing as to why it should be returned with conditions, because that issue was not appropriately addressed by the town. It should be returned to make sure they address it.

And if they want to negotiate something with the developer, then well and good. Personally I have a feeling that if they can come up with a compelling reason, I will listen, but I will listen very critically.

MR. McKAY: I appreciate those comments and I concur with you as long as the feeling here

is that we're requiring the 300-[illegible] setback because the local jurisdiction did not, in our opinion, fully explore that -- doing that, then that's fine. But I feel very uncomfortable if we are doing it simply because we feel this project -- and I do feel that 300-foot is required here, but simply because we feel it's required and the local jurisdiction has made every effort possible to meet the 300. I want to make sure we don't feel like we're establishing a precedent.

CHAIRMAN MADDEN: This is the conclusion the panel has reached.

MS. SAMORE: I would just like to raise the point that the criteria established, the 300 feet, that it's the minimum, not the maximum, that should be located at least. So it's the minimum requirement in order to meet the goals of the program which is to minimize adverse impacts on water quality. So I think that's a very important point.

CHAIRMAN MADDEN: Thank you. Are we ready to vote? We have a motion in front of us to approve the Miles Point Growth Allocation Request with four conditions. All those in favor say aye.

(All say aye.)

CHAIRMAN SETZER: Opposed?

MS. ENNIS: Only because of the sewage treatment.

CHAIRMAN MADDEN: The motion is approved.

Next on the agenda is the Talbot County Comprehensive Review Amendments. I'll ask Lisa to come up and give that presentation.

(Recess.)

MS. HOERGER: This has been a long process for us, and the County Commissioners have finally enacted a series of several bills that are doing primarily two things. One is, for those of you that were here in September of 2002, this Commission sent the County a directive to

correct cert[illegible]istakes, conflicts or omissions in their local program. And there were about four of those, three of which have all been corrected either prior to today, will be corrected through the bills today, or in the future. So essentially those items have or will be addressed.

The other primary thrust behind these bills that are in your staff report is part of the County's comprehensive update that's required every six years by each county. Last month we did Anne Arundel County. We just updated them for the third time. This is Talbot County's first comprehensive review. I'll direct you to your staff report. There are six bills that were sent to us by the County. And I'm going to go through each one of them bill by bill.

The first one is Bill 922, and this bill includes specific provisions for the notification of property owners for certain types of development applications before the Office of

Planning and Zoning. The panel has no changes to this bill. The way that you received it and read it is the way that we propose to accept it.

The second bill is 926, and this is a section in the County's current zoning ordinance where all the definitions are laid out. And they are adding some definitions. A definition for a champion tree forest, preservation plan is a new definition for the County, marsh vegetation, mitigation, and disturbance.

There are two definitions in this bill that the panel, which you will hear later from the panel chair, are proposing to amend. One is the definition of a dwelling unit, and the second is their definition of shoreline development buffer which is their definition of the 100-foot buffer. And there will be one minor change to their definition of development activities.

The next bill is Bill 927. This is the section of the County Zoning Ordinance which lists those uses that are permissible in the

County's resource conservation areas. If you have a copy of your bill you can see those uses. They're all acceptable to the Commission.

However, the panel has recommended a few changes to those. One is for parks and playgrounds. You may recall last month Anne Arundel County had a similar provision in their RCA use list and this Commission recommended and approved an amendment to their comprehensive review that it specifically be limited to passive recreation, and that's the same type of limitation that we're going to be asking for on this bill.

The other issues in this bill with regard to resource conservation area uses have to do with the County's limit on treated septage land application, community sewage treatment plants, and sludge application for agricultural and horticultural purposes. The County has restrictions on where these uses can occur. They restrict them to within 200 feet of mean high

water and tributary streams and we're going to put in an addition to that to ensure that it's also restricted from the buffer and the edge of tidal wetlands because that wasn't clear in the initial bill.

The next bill, Bill 929 amends the agricultural and forestry management section of the County zoning ordinance. In here the County has done several things. They have reworked this section of their ordinance quite a bit, inserting the words 100 feet where appropriate, including provisions for forest preservation plans.

This is something new for Talbot County. This will require property owners in the critical area to submit forest preservation plans when they are undertaking clearing or development activities within a 100-foot buffer or outside the buffer.

They're also adding certain habitat protection areas which didn't appear in the County's original program, and they're adding a

buffer exemption area progr[illegible]r the first time. We do not have the maps yet, but the County Council is working on those maps and once we receive them, you will get a chance to see those maps and approve them.

What you'll be approving today is the supporting language in the County's ordinance that instructs how development will occur in buffer exemption areas.

We will be making a suggested change to the County's forest preservation plan language. With regard to the buffer exemption area language that's proposed, it is essentially consistent with your policy on buffer exemption areas. In fact, there are several places in the new bill where it is stricter.

However, there's one section with regard to mitigation. As you know, in buffer exemption areas, the prescribed mitigation ratio is at a 2 to 1 ratio, but that's for all development activities in the buffer. The County's bill

reads for new impervious in the buffer. So the suggested change will be all development change. So we can capture what will eventually be in the buffer when the development takes place.

Bill 931, another section of the County's zoning ordinance that pertains to the general site plan requirements. Again, in this section of the County Code there was significant -- well, not significant changes, but a lot of changes that the County made over the years, and it adds waivers and certain applications for site plans, talks about extensions, and they have updated their language with regard to when they refer to the appropriate state agencies which have changed over the years.

There are a couple of changes to Bill 931 that the panel discussed today in the earlier panel discussion. One of the issues is that in the criteria there is a requirement that lots or parcels must be at least 15 percent forested. So if you have a lot or parcel that is not, you have

to bring it up to that minimum threshold.

The way this bill is currently written it exempts grandfathered lots or parcels that are less than seven acres. Because that is inconsistent with the criteria and other county programs in the Critical Area, the panel is going to recommend that those references be deleted from the bill.

The other change to this section is with regard to the mitigation ratios prescribed when you're clearing in the Critical Area. When you're clearing between 20 and 30 percent of a lot or parcel, you're required to do one and a half to one mitigation. The way the bill currently reads, you'd only be required to do one and a half to one for the portion of the clearing that would be between 20 and 30 percent range. So we're asking for that to be corrected.

The final bill is Bill 932. This bill talks about the process for obtaining growth allocations for applicants in Talbot County, and

the panel had no suggested changes to that bill.

The comprehensive review also includes that the County provide us with updated habitat protection area maps. This is in an effort to keep their maps current so we know which HPAs are occurring within the County and we know what has changed. We are working with the Department of Nature Resources on finalizing those maps and having them available to County staff and Commission staff.

The critical area acreage and growth allocation was provided to the Critical Area Commission staff by the County. I believe your package has attached to it a chart that lists out all the growth allocations that have taken place since the inception of the Talbot program. It also includes the three local municipalities, St. Michael's, Oxford and Easton's growth allocation deductions.

Chairman Madden appointed a five-member panel. The panel held a public hearing in Easton on March 24th. There weren't a whole lot of substantive public comments. We did receive a few. County staff gave us a formal presentation.

And that concludes my presentation unless you have any comments or questions.

CHAIRMAN MADDEN: I'll turn it over to the chair.

MR. BLAZER: The panel discussed the County Council bills that Lisa has gone over, those are Talbot County Bills 922, 926, 927, 929, 931 and 932 as part of their comprehensive review of their local program. We reviewed them with regard to the consistency of the goals of the Critical Care Act and the Commission's criteria required in Natural Resources Article 8-1809(G). Again, just briefly, these are the bills as part of the comprehensive review.

On behalf of the panel I move the approval of the County Council bills with the following conditions, and I'll read through, Lisa has given you a summary of them and they're in your handout that's been circulated here. In Bill 926, Chapter 190 Article 2 definitions and word usage, Section 190-14, Section 3, dwelling unit. Change the definition of a 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. A dwelling unit includes a living quarters for domestic and other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residency.

The other section of Bill 926, Section 9, where we made a recommendation of shoreline development buffer, amend the definition of a shoreline development buffer to state that there are at least 100 feet wide measured landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands.

The other section with Bill 926, Section 1, development activities. They request that at least two sentences in item B be deleted. This is where the substantial alteration is defined.

In Bill 927, Chapter 190, article 4, land use regulations by zoning districts, Section 190-19. Section 4 of that bill, parks and playgrounds, add another bullet that states limited to passive recreation. Sections 18, 20 and 21, we talked about treated septage land application, community sewage treatment plant, sludge application for agricultural and horticultural purposes. The panel recommended adding tidal wetlands to the bullet that restricts these uses to within 200 feet of mean high water or tributary streams. At a minimum this bullet should include the language that says or insure that it is otherwise restricted within the 100-foot buffer of tidal wetlands.

In Bill 929, Chapter 190, Article 11, Critical Area Special Provisions Section 190-88,

190-88(B)(3)(H). 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 up to five years including provisions for annual inspections by the County.

The other recommendation was 190-88.1(B)(6)(B), replace the language mitigation equal to an area two times the square footage of the proposed impervious surface in the buffer area. Change that to the language that states mitigation equal to an area two times the square footage of the development activity in the buffer area.

Bill 931, which is Chapter 190, article 12, site plan review, section 190-92 and 190-93(E)(9)(A), and 190-93(E)(9)(D)(1), delete

the references to parcels up to 7 acres. It must provide 15 percent aforestation. This language excludes grandfathered parcels under 7 acres for the aforestation requirement. If it's the County's intent to allow certain allowances for grandfathered parcels under 7 acres, then the County may propose an exemption for certain classes of activities such as new dwellings.

And then the last recommendation for Bill 931 is 190-93(E)(9)(D)(c), delete the phrase "additional ten percent." These were the recommendations of the panel.

CHAIRMAN MADDEN: We have a motion for approval with conditions. Is there a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: Is there any discussion? Hearing none, all those in favor say aye.

(All said aye.)

CHAIRMAN MADDEN: Opposed nay. Ayes have it.

We have another very important issue coming up in front of the Commission right now, Talbot County Bill Number 933, growth allocation procedures. We had a panel that looked into this extensively. Ren is going to give the panel report. And then I will again ask for public comment if anybody wishes to have it.

MR. SEREY: This amendment to the Talbot County Critical Area Program is County Bill 933. As the chairman explained, the panel conducted a public hearing, met on the bill and discussed it several times, and met again this morning. The staff report that went out and the panel report that went out also included a copy of the bill.

In 1989 the Talbot County Council approved the County's Critical Area Program and submitted that to the Commission. The Commission approved that program. The program included what the County called preservation of growth allocation to the towns of St. Michael's, Easton and Oxford. The County used the method of

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providing the growth allocation acres to the towns. There were no conditions placed on the use of those acres. That was in the 1989 Critical Areas Program. The County gave the town of Easton 155 acres, town of St. Michael's 245 acres, and the town of Oxford 195 acres. There were maps attached to the Critical Area Program, three maps that showed the potential areas for annexation outside of the towns.

The understanding was that the growth allocation would be used by the towns both within their current boundaries, and the understanding was in annexed areas. As Lisa explained on one of the other previous items -- I was going to say this morning, it seems like this morning, the town of Easton used all of its growth allocation and in 2000 the County instituted a new process which they called their supplemental growth allocation process, and that is a process that involved joint hearings by the County Council and town of Easton and joint approval of growth

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allocations.

That process has been used recently for the Easton Village and Ratcliffe growth allocations that you may remember from a couple months ago, I think that was January that the Commission approved those. It's also been used for the Cooke's Hope growth allocation in Easton.

Easton used their growth allocation. Oxford has only used about 15 acres of its growth allocation. And St. Michael's has used approximately 21 acres for the Strausburg growth allocation. And that is, as Lisa explained earlier, a refinement that this Commission approved in October of 2000.

Council Bill 933 prefaces the action that the County took with a lot of explanation about the use of growth allocation. What the bill does is it removes that growth allocation that has been unused by the town and has it revert back to the County. And what the County intends is that the process that they used when

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Easton ran out of growth allocation, that is the joint process, the supplemental process, the County informs us that that would be the process now after the growth allocation unused by the towns is removed and reverted back to the County.

There are a lot of planning, growth management clauses that are in the preface to the bill, in the whereas clauses, and you have all that information. It discusses the fact that it was done in 1989 and things have changed. Growth management has changed, that the original county program required a four-year review of the County program in addition to a review of the growth allocation maps and the growth needs of the towns. That review was not done. It has been done now in the form of Bill 933, removing the growth allocation.

The original county total of growth allocation was 2,554 acres. And the County has a process for using a portion of that in the RCA as is set out in the Critical Area law and is

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concerned, among other things, that its process for using the growth allocation in the RCA will be compromised unless it regains control of all of the growth allocation that has since been unused.

If you look in your staff report or panel report, on page 2 in the middle, you'll see some of those reasons that the County set out in addition to the ones that I've just described.

As I said, this action, Bill 933, will remove the growth allocation and revert back to the County. In addition, and I think Lisa also described this earlier, it will undo a previously approved growth allocation, and that's the Strausburg growth allocation that this Commission approved as a refinement in October of last year. The reason it would remove that growth allocation is because the bill contains a clause that says if any growth allocation is unutilized, and the County goes on to define unutilized, then by the effective date of the bill, which was I think

February of this year, then that growth allocation also reverts back to the County.

And included in the definition of unutilized is the provision that any growth allocation awarded for which substantial construction has not started based on a valid building permit, that is also affected by the bill and reverts back to the County.

There could be other growth allocations in addition to the Strausburg. We have talked to the towns of Easton and Oxford regarding their previously approved growth allocations, and our understanding is that there are a few lots that are still undeveloped for which there are no building permits yet that could also be affected by this bill. But the Strausburg growth allocation approved in October is obviously affected.

At the panel's request the staff looked into growth allocations and growth allocation systems in use by the other counties, and we

summarized for the panel that generally those growth allocation procedures of the counties fall into three categories. And I'm on Page 4 of your panel report. One category is where the County simply gave the growth allocation to the towns for their use, and that was the process that Talbot County used.

Another selection of programs, another category of growth allocation used is where a county simply identifies a number of acres for a town's use, growth allocation, but then awards that growth allocation on an individual project basis when the town requests it.

And the third category is a coordinated process where both entities make the decisions together. If you look at the bottom of Page 4 you'll see some information that we've been talking about quite a bit today in regard to the other amendments. Here you'll find about three quarters of the way down a quote from the Critical Area law that provides you the standards

for review of a proposed [redacted]dment. Those standards are that the Commission must determine or that the program amendments must meet the goals of the Critical Area law, and they are set out at the bottom of page 4, as well as the provisions of the criteria. That is what the panel discussed at length in its meetings and again today.

That's all I have in summary of the bill. Are there any questions regarding the process or what the bill does?

CHAIRMAN MADDEN: Thank you very much. Now we'll allow brief public comment, if anybody chooses to do so. We're allocating a time to the County to come up and address us, and then we'll allow members of the public to address us briefly also.

MR. POLLEN: Thank you, my name is Michael Pollen. I am the Talbot County attorney and I would like to read to you a letter that was addressed to Senator Madden on April 22nd which

contained the County's comments on the subcommittee's review of Bill 933 that had occurred on April 19th.

Dear Senator Madden: During the Critical Area Commission Subcommittee Review on April 19, 2004 of Talbot County's proposed changes to its local program, several members commented on the need for more information to fully understand the various bills' language. I am respectfully submitting this letter to respond to those questions and I will address my comments in the order in which the discussion occurred.

Consistency. The subcommittee initially posed the question whether Bill 933 was consistent with existing Critical Area Commission policies and other approved programs. The first part of the discussion articulated the correct standard by which to judge consistency. The discussion involved approvals of the program for Caroline County, Saint Mary's County, Wicomico County, Queen Anne's County, which all

demonstrate that the Critical Area Commission has approved as a matter of policy different approaches to county municipal growth allocation. Bill 933 falls within the parameters of the previously approved programs and policies of the Critical Area Commission. This is the correct standard and the correct conclusion.

Comparison of Bill 933 to inconsistent provisions of existing municipal programs based on the 1989 ordinance that is being repealed by 933 is not the correct approach to determine consistency. By definition, a program amendment is a change to a program and it will necessarily be different than existing elements of the current program.

In the case of Bill 933, Talbot County municipality has adopted their own local programs based on the 1989 ordinance that gave them specific amounts of growth allocation. Bill 933 changes that. And any existing elements of approved local programs inconsistent with Bill

933 are irrelevant to whether Bill 933 should be approved.

If proposed amendments are compared with inconsistent existing program elements for consistency, no amendment would ever be consistent, and therefore, no amendment would be approved.

I'm sure the subcommittee's intention, based on Ms. Mason's legal advice in considering consistency, does not include consideration of existing elements of the municipal Critical Area programs that were premised on the 1989 ordinance that are being changed by Bill 933.

Municipal reliance. Some of the discussion centered upon expectations of various municipalities premised on the 1989 award of the growth allocation acreage. This is not an appropriate consideration in evaluating Bill 933. Maryland law is quite clear that absent vested rights, which Bill 933 specifically does not impair, zoning laws may be changed by local

government and property owner, or in this case, a municipality, has no legal right to rely on a preexisting law or any assumption that preexisting law would continue as originally enacted.

There was some discussion about various projects that were pending, and one in particular, Cooke's Hope, was the subject of the next paragraph.

Cooke's Hope. One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope project. Talbot County Council has already approved its Cooke's Hope project utilizing the procedures adopted under Bill 762. Bill 762 is the bill that was approved by this Commission in 2000 that established a joint review process with the municipalities and the County in which the applicant submits the application to the municipality; it's forwarded to the County; there's a joint review at the Planning Commission

level; there is a joint meeting of the town and the county planning commissions. They separately confer and form separate recommendations to their respective bodies. That is followed by a joint meeting between the town council and the County Council to review the application. They then separately confer among themselves and come up with individual recommendations for approval or not. Both, under Bill 762, both the town and the County must approve the project.

Now, that procedure has been successfully used with the town of Easton on several occasions. The town of Easton has no longer any growth allocation, as Ren Serey indicated.

Back to the letter. One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope project. The Talbot County Council has already approved the Cooke's Hope project utilizing the procedures adopted under

Bill 762. Bill 933 does not affect that approval. This is readily apparent from [redacted] language of the bill itself on page 6, line 216, which states, growth allocation awarded by any town that remains unutilized by the effective date of the ordinance shall revert to the County. Growth allocation awarded by the County prior to or after the effective date of the ordinance shall be deducted from the total growth allocation allocated to the County under section 8-1808(i)(B).

So that project has been through the joint review process and approved, and Bill 933 would have no effect on that project.

I want to skip ahead in the letter to discussion of Bill 762. Other parts of the discussion noted that Bill 762 was premised on the assumption that it pertained to supplemental awards of growth allocation after the use of allocated acreage under the 1981 maps. When Bill 762 was enacted, and that was in 2002 -- or

excuse me, 2000, there was no intention to repeal the 1980 maps. That does not forever enshrine those maps and place them beyond the police power of a future council. The premises or assumptions upon which Bill 762 was enacted do not bear on whether Bill 933 is consistent with the standards and the criteria the Critical Area Commission is required to consider under Natural Resources Article Section 8-1809(J).

Bill 762 is the County-created procedure required by COMAR to accommodate the growth needs of municipalities. COMAR has a specific criteria that says when planning future expansion of limited development and intensely developed area, counties, in coordination with affected municipalities, shall establish procedures to accommodate the growth needs of municipalities.

So COMAR requires the specifically -- that the counties establish this procedure specifically, and that's what Bill 762 did. That's already been approved by the Commission and utilized with the town of Easton.

Bill 933 simply takes that existing procedure and applies it uniformly throughout the County to all of the towns, including St. Michael's, including the town of Oxford.

Bill 762 is the County-created procedure required by COMAR to accommodate needs of municipalities. Bill 762 was drafted by the town attorneys for the town of Easton and circulated for comment to the town attorneys and town commissioners for the town of Oxford and St. Michael's prior to introduction by the County Council.

The comments offered by the town attorney for the town of St. Michael's, the only comments received were incorporated into the bill. Enactment of Bill 762 was in coordination with affected municipalities, as required by COMAR.

They then go on to discuss other coordination between the County and the

municipalities because that was one of the criteria, one of the elements in the criteria. On the planning level Talbot County has coordinated directly with each municipality to establish growth boundaries around each of the affected municipalities. This effort has resulted in coordinated maps showing common plans between the County and each municipality for growth areas around the town. Examination of those maps shows quite clearly the coordinated result of that county municipal effort to accommodate the growth needs of municipalities.

These maps are the definitive reference point from which to evaluate county municipal cooperation regarding growth boundaries of municipalities and county accommodation of growth needs. The matching plans between the County and each of the effective municipalities shows a level of cooperative effort that speaks for itself. Any claim that there was not adequate political coordination between the town and

county elected officials in connection with enactment of Bill 933 --

CHAIRMAN MADDEN: I'm going to ask you to summarize because your time is expiring.

Mr. POLLEN: Mr. Chairman, it's the County's position that this -- and as Mr. Serey explained in his comments, many counties throughout the state have adopted Critical Area policies that do not give specific acreage growth allocations to municipalities. Those county-wide programs have been previously approved by this Commission.

Bill 933 is within the state-delegated power of the County Council to enact. We're a charter county. We have the obligation to develop our own program, delegate it not only under our charter, but under the Critical Area law. This policy has been previously promoted by other counties and approved by the Critical Area Commission. And we believe that it represents not only good environmental policy, but it's well

within the prerogative of the County Council to adopt that policy being consistent with the goals and criteria of the Critical Area Commission.

It's really designed to enhance and protect the environment of the Chesapeake Bay and protect its future. So we would urge that the Critical Area Commission adopt this as a program amendment to Talbot County's local program.

CHAIRMAN MADDEN: Thank you for your comments? Any member of the public that would like to speak to us briefly on Talbot County Bill 933?

MR. HICKSON: My name is Michael Hickson, I'm the attorney for the town of St. Michael's. The town opposes 933. The towns of Easton and Oxford appeared at the local county hearing and also opposed this bill.

We opposed it for several reasons. First, we think it's different than other situations that you have addressed because in this situation you're yanking back or the County

is attempting to yank back reserved acreage that was originally given to the town and that the town's programs were based on. They have been functioning all these years, and the towns did not receive any complaint from the County that anything wasn't working well until we received notice of this bill.

I testified at the local panel hearing. We found evidence in the record here that the County manager contacted Mr. Serey of this office on October the 29th, 2003 to inform him that the bill was in process and that he could expect it to be up here for processing at the Critical Area Commission in January of 2004. This bill was not introduced to the public until some time in November of 2003, and the towns were not contacted about it and the problem was not raised with the towns before the bill was introduced to the public.

So there has been no coordination. There's been no cooperation, and the effect of

the bill will, as I said, yank back reserved acreage and in my view run contrary to the way that the state Critical Area laws and policies are supposed to work, and that is they're supposed to work in an organized and coordinated fashion. Not to say that every county has to work the same way, but by suddenly yanking back these bills you have towns that in fact don't have them; they can't function at all in terms of Critical Area.

CHAIRMAN MADDEN: Your time is expiring. Please summarize.

MR. HICKSON: We agree with what the panel discussed this morning, that in effect it will undo some decisions that the Critical Area Commission had made, that it's inconsistent with the existing town programs that exist in three municipalities in the town and there's been no cooperation or coordination in bringing this bill forward. So we oppose it.

CHAIRMAN MADDEN: Thank you. Does

anybody else want to make any public comment?

MR. ALSPACH: Thank you again. My name is Tom Alspach. I'm speaking on behalf of the Public Preservation Alliance. I would not agree with Mr. Hickson that the towns cannot function with Bill 933. The purpose of Bill 933 is to ensure that both the County and town and their respective populaces equally have a stake in the Critical Area, have their views taken into account in the grand growth allocation.

The grand growth allocation in a town like St. Michael's or Oxford affects all the residents of the County who utilize the Miles River, the Tred Avon River, Choptank River, et cetera. What this process is intended to do is to establish a joint review procedure whereby both jurisdictions participate in that review. Nothing is being taken away. The only two instances that this process has already been used with regard to the town of Easton, and in both instances the growth allocation requests were

approved.

If you look at a map, some of you who were at the public hearing for the panel, remember I showed you what St. Michael's looks like now. It looks like a big bar bell, a chunk of lead here and a chunk of lead here and a skinny bar that joins the two together. That's what St. Michael's looks like now because they annexed a piece of property three-quarters of a mile out to the country by way of annexing a roadbed. That piece of annexed property is out in the middle of the county on a county river surrounded by county residents, yet the residents of the County had no say whatsoever when growth allocation for this annexation was considered.

Given the fact that they will be directly impacted by it, by annexations like in the future, this procedure would ensure that their concerns are taken into account as well as those of people living in the town. By the way, in response to a question that was asked, I think

by Mr. Jackson at the panel hearing, the question was raised doesn't this give the County a veto and it can prevent any growth allocation whatsoever. No, it doesn't. The law requires the counties to accommodate the growth needs of the town. If the County were arbitrarily denying growth allocation pursuant to this procedure, the town would have relief available to it because the County would not be accommodating its need for growth. So that fear or concern is misplaced. I would urge you to approve this proposed program amendment. It does nothing but assure that all parties affected by growth allocation will be heard in the process.

CHAIRMAN MADDEN: Anything else? I'll turn it over to panel chair for additional comments and recommendations.

MR. BLAZER: I guess a couple things while we're passing out the panel recommendations and report. We only had three people I think speak here. But the night of our panel we were

there for a good two and a half, three hours, had quite a few people talk similar to the other St. Michael's hearing. And a lot was presented and a lot was discussed, and basically some of the issues that we had to deal with and that we focused on were basically -- we wanted to apply the specific sections in the critical areas law. We heard all kinds of things about planning and smart growth and wastewater treatment and some of the problems with the Miles River, you know, we needed to focus on the Critical Area provisions in the criteria and the law that we had. So that's what we tried to focus on in our panel discussions.

So, you know, with that, we also looked at the effect of Bill 933 on other Critical Area programs, program amendments, program refinements, what the Critical Area COMAR section said, so we had several meetings, a lot of discussion, a lot of debate as we went through, and I also want to thank the panel members,

because I think the debate and the discussion was very healthy and I appreciate all of your input on those.

A couple other introductory remarks. In its review of Bill 933, the panel wanted to encourage the County and towns to work together on specific changes on the growth allocation procedures that are going to affect all of them. You heard a couple people talk about process things and I think that's one of the things that we'd like to see as this develops over time.

The panel believed that the time was particularly appropriate for this kind of cooperative effort and the analysis given that the County has engaged in its comprehensive review of its program.

The panel also believes that the supplemental growth allocation process of Bill 762 that I believe Mr. Pollen talked a little bit about which is incorporated in the County code may be a desirable growth allocation process,

basis was accepted Bill 933 would create conflicts between the County program and several of the approved municipal programs that the Commission has agreed to. 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 was contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner. So that's our recommendation.

CHAIRMAN MADDEN: Do we have a motion for denial of Talbot County Bill 933? Is there a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: Any discussion? Yes, Barbara?

SPEAKER: I would like to clarify something. It's my understanding that the goals of Bill 933 are consistent with the state

however, as presently drafted, Bill 933 really doesn't harmonize or come in line with the supplemental growth allocation process of the County code. There were some inconsistencies that the panel was uncomfortable with in our determination of our recommendation.

I'd like to 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 its criteria.

There are two major bases for the motion. They are: If we accept Bill 933, we would negate at least one previous Commission action of approving a local program change, and that's the refinement to the St. Michael's program for the Strausburg growth allocation we approved back in October 2003. And the second

delegation to the County, but the draftmanship is creating some inconsistency, so with appropriate draftmanship the goals could be realized; is that correct?

MS. MASON: The process that the County has said that they intend to use, that is the joint process through Bill 762, the panel believed was definitely in line with or appropriate under the state law and criteria, but the actual wording of the bill which is what the panel had to look at created the problem for this Commission of negating the Commission action.

SPEAKER: So it's basically an inartful drafting as opposed to a noncompliance -- the goals are not noncompliant, the draftsmanship --

CHAIRMAN MADDEN: Denial is articulated in the motion. If we stick to the motion rather than try to read something else into it. Any other discussion?

MS. ENNIS: It seems to me when we look at this issue, the thing that's most inconsistent

is that it will repeal an action that the Commission has already approved, both the [redacted] and the County approved and that the Commission approved.

CHAIRMAN MADDEN: The town approved. The Commission --

MS. ENNIS: It didn't have to go through the County?

CHAIRMAN MADDEN: Correct.

MS. ENNIS: If that were corrected, would we still be opposed to this?

CHAIRMAN MADDEN: I think again, we have to look at the motion. The motion cites two issues. The basis for the motion is the first paragraph, accepting 933 would negate at least one previous Commission action and, number two, would create conflicts between the County program and several approved municipal programs. That's what we're basing this motion on. Any other discussion? If not, we have a motion in front of us for denial. All those in favor say aye.

(All said aye.)

CHAIRMAN MADDEN: Opposed nay?

Motion for denial is approved. Thank you again, all panel members and Commission members.

(Proceedings concluded at 5:00 p.m.)

STATE OF MARYLAND SS:

I, LINDA A. CROCK[redacted] a Notary Public of the State of Maryland, do hereby certify that these proceedings took place before me at the time and place herein set out, and the proceedings were recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties nor an employee of counsel nor related to any of the parties nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 8th day of June, 2004.

My commission expires

December 1, 2004 Notary Public

Ehrlich, Jr.
vernor

l S. Steele
iovernor

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.

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

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

Sincerely,

Lisa A. Hoerger

Lisa Hoerger
Natural Resource Planner

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

TOWN OF ST. MICHAELS, MARYLAND

CHESAPEAKE BAY CRITICAL AREA

LOCAL PROGRAM

December 1987

EXHIBIT
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Resource Conservation Area

The Town of St. Michaels has nearly 98.04 acres that are classified for resource conservation (RCA). Approximately 17.61 percent of the Town's total acreage is RCA. Resource conservation areas comprise about 30.57% percent of the total Critical Area land in the Town.

The Critical Area Criteria guidebook explains RCAs as follows:

> RCA's are any area predominated by wetlands, forests, and forestry activities, abandoned fields, agriculture, fishery activities, or aquaculture. In addition, the area is to have at least one of the following characteristics:
>
> 1. Housing density less than one dwelling unit per five acres; or
>
> 2. The dominant land use is agriculture, wetland, forest, barren land, surface water or open space.[4]

Location and Extent of Future Intensely Developed (IDA) and Limited Development (LDA) Areas

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

Criteria for establishing new IDA and LDA's are as follows:

New IDA's should be located in existing LDA's or adjacent to existing IDA's.

New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

1. 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).

2. If the County is unable to utilize a portion of the growth allocated to the County 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.

3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water

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.

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:

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 should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the St. Michaels Local Program for such areas and shall be designated on the St. Michaels Zoning Map for information purposes (note: Growth Allocation assigned to a property shall not constitute a zoning map amendment as per Article 66B unless there is a change in the underlying/existing zoning classification and shall be submitted to the Critical Area Commission as per COMAR 8-1809 (g) (Proposed Amendments) of the Chesapeake Bay Critical Areas Criteria.

Time Limitations

Applications for growth allocation shall include a schedule of project development and project phases. Project approval and award of growth allocation shall be limited to those phases of the project that can be completed within two (2) years of project approval. If after two (2) years the project is not completed, the applicant may request and the Town Commissioners may grant an extension of the time limit provided the Town Commissioners finds that reasons for project delay were not caused by the applicant but are for reasons beyond the applicant's control. The Town Commissioners shall withdraw the growth allocation from projects which are not completed within two (2) years or which are not granted an extension by the Town Commissioners.

Subsequent phases of the project which will require more than two (2) years to complete are eligible for subsequent growth allocation awards and successful completion of approved phases of a project may be taken into consideration by the Planning Commission when considering subsequent phases of the project for growth allocation provided the applicant has substantially complied with all conditions of approval.

Submission Requirements

Development activities in the St. Michaels Critical Area which are submitted for growth allocation must comply with the applicable requirements of the Town's Local Chesapeake Bay Critical Area Protection Program and the St. Michaels Comprehensive Plan, Zoning Ordinance and Subdivision Regulations. To insure project review by the Town is completed in the minimum time possible and that proposed projects fully comply with all applicable regulations, applicants for development actions will adhere to the site plan requirements contained in Sections 7 and 8 as applicable.

Section X. Amendments to Storm Water Management and Sediment Control Ordinances

The following provisions are recommended to adapt the existing Town (or County) Stormwater Management Ordinance to the Critical Area Program by limiting exemptions and waivers.

Exemptions

The following categories of development are exempted from the requirements of providing stormwater management. This does not exempt the developer from providing an adequate storm water drainage system or meeting the requirements of the Town's Critical Area Program and associated ordinances.

1. Agricultural land management practices approved by the Department of Agricultural and the Department of Natural Resources.

2. All developments disturbing no more than 5,000 square feet and not located within the Buffer area of the Town's Critical Area Overlay Zone.

3. Additions or modifications to existing single family detached residential structures provided they are not located within the Buffer area of the Town's Critical Area Overlay Zone.

Waivers

Any developer receiving a waiver of on-site storm water management quantitative control is not relieved of the responsibility of providing storm water management for qualitative control. The developer is required to demonstrate that such measures as required to reduce or eliminate pollutants from the first flush runoff event will be provided. If the proposed development activity is located in the Intensely Developed Area of the Critical Area Overlay Zone, then the developer must demonstrate that the pollutant loading from the site will be reduced by ten (10) percent.

The following modification to the Town's sediment control ordinance will insure that activities that would be excepted from the requirements of a grading permit will be evaluated as to their impact on water quality and identified habitat areas.

Exceptions

No exceptions shall be granted for the requirement of a grading permit for any grading, stripping, excavating or filling of land in the Town established Critical Area Overlay Zone. However, upon evaluation of the site outside the designated Buffer, the inspector may grant the exception if he determines that the development activity is classified as "insignificant" in impact to water quality and plant, fish and wildlife habitats as set forth in the Town's Critical Area Program.

Section XI. Recommended Planting Standards

Urban Woodland Reforestation and Afforestation Standards

The purpose of this section is to provide guidance to the Town in the reforestation and afforestation of trees within the Critical Area. These guidelines may be modified over time based on experienced gained through their application. Where woodlands

Chapter II

ST. MICHAELS LOCAL RESOURCE PROTECTION PROGRAM

Section I. DEVELOPMENT

As long as the Critical Area is maintained in its natural state, little can or need be done to manage land uses to protect water quality and wildlife habitats. However, as was discussed earlier, the St, Michaels waterfront is a desirable area for homes and businesses to locate. Hence, it is unrealistic to believe that the Critical Area program can or should freeze the further development of the St. Michaels Critical Area. Nevertheless, the Critical Area law and Criteria impose additional restrictions on the form and intensity of development.

Establishing the post-critical area development process for St. Michaels requires that the Local Program begin by assessing existing land use to determine a number of basic management and regulatory parameters. First, land use as of December 1985 must be zoned into one of three land use categories, Intensely Developed (IDA), Limited Development (LDA) and Resource Conservation Areas (RCA). Second, for each category policies, objectives and development requirements relating to the various program elements, i.e., Development in the Critical Area, Water Dependent Facilities, Erosion Protection Works, Forest and Woodland Protection, Natural Parks, and Habitat Protection Areas must be established. Third, provisions for grandfathering, variances, and buffer exemptions must be prepared to insure that the Town is able to strike a fair balance between the goals and objectives of the Local Program and the rights of property owners.

To meet the mandated mission of protecting the water quality and conserving habitat areas in the Critical Area, the Town has established land use policies for development which accommodate growth and address ecological concerns. In recognition that the Chesapeake Bay Critical Area has great diversity in existing land use, the State's criteria allow for a differentiation in the designation land use types and consequently allow for a differential in guidelines to apply to development and redevelopment in those areas. The Town's Critical Area falls into three general land use categories which are: 1) Intensely Developed Areas (IDA); 2) Limited Development Areas (LDA); and 3) Resource Conservation Areas (RCA).

Recognizing the extreme sensitivity of the vegetated shoreline contiguous to aquatic habitat, the Town has created another zone of management . the Buffer which will have unique development constraints. The buffer extends throughout the Town's shorefront across IDA, LDA, and RCA areas. Initially mapped as 100' from mean high water or tidal wetlands as required by State Criteria it has been modified where the presence of sensitive resources indicated 100' would be inadequate to protect water quality or unique habitats. For a more detailed explanation of Buffer requirements see the Buffer section in the Habitat Protection Element of this protection program.

Critical Area Acreage in the Town of St. Michaels

The Town of St. Michaels occupies roughly 556.76 acres (or about 0.87 square miles).[1] Of that total, approximately 320.68 acres are included in the Critical Area. This

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tally comprises nearly 57.59 percent of the Town's overall acreage.

Intensely Developed Area

In the Town of St. Michaels about 199 acres are classified as intensely developed. Intensely developed areas (IDAs) embrace nearly 35.76 percent of the Town's total acreage and around 62.09 percent of the Town's total Critical Area acreage. IDAs are defined in the Critical Area Criteria guidebook as follows:

> IDA's include any area of 20 or more contiguous acres, or the entire upland portion of a municipality within the Critical Area (whichever is less) where residential, commercial, institutional and/or industrial development is predominant and relatively little natural habitat occurs. In addition, the area is to have one of the following characteristics:
>
> 1. Housing density is 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.[3]

Limited Development Area

Approximately 23.53 acres of the Town of St. Michaels are classified as having limited development. It is estimated that 4.23 percent of the Town's total acreage comes under the limited development (LDA) category. Nearly 7.34 percent of the total acreage for the Town of St. Michaels Critical Area is deemed to be LDA. According to the Critical Area Criteria guidebook, an area manifests limited development potential if it fits the following description:

> LDA's include any area currently developed in low or moderate intensity uses that contain areas of natural plant and wildlife habitat and where the quality of run-off from such areas has not been substantially altered or degraded. In addition, the area is to have at least one of the following characteristics:
>
> 1. Housing density between one unit per five acres up to four dwelling units per acre;
>
> 2. Area not dominated by agriculture, wetland, forest, barren land, surface water or open space;
>
> 3. Areas having the characteristics of the Intensely Developed Area, but less than 20 acres in extent; or
>
> 4. Areas having public water or sewer or both.[3]

Resource Conservation Area

The Town of St. Michaels has nearly 98.04 acres that are classified for resource conservation (RCA). Approximately 17.61 percent of the Town's total acreage is RCA. Resource conservation areas comprise about 30.57% percent of the total Critical Area land in the Town.

The Critical Area Criteria guidebook explains RCAs as follows:

> RCA's are any area predominated by wetlands, forests, and forestry activities, abandoned fields, agriculture, fishery activities, or aquaculture. In addition, the area is to have at least one of the following characteristics:
>
> 1. Housing density less than one dwelling unit per five acres; or
>
> 2. The dominant land use is agriculture, wetland, forest, barren land, surface water or open space.[4]

Location and Extent of Future Intensely Developed (IDA) and Limited Development (LDA) Areas

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

Criteria for establishing new IDA and LDA's are as follows:

New IDA's should be located in existing LDA's or adjacent to existing IDA's.

New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

1. 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).

2. If the County is unable to utilize a portion of the growth allocated to the County 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.

3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water

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.

Growth Allocation:

a. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; also

b. An act of the Mayor and Council, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the "O" Critical Area Overlay District to another land management classification which allows an increase in the permitted density.

Habitat Protection Areas -- Includes the Buffer, Non-Tidal Wetlands, Threatened and Endangered Species, Plant and Wildlife Habitats, Anadromous Fish Spawning Propagation Waters and Species in Need of Conservation, as defined in COMAR 14.15.09.

Highly erodible soils -- Soils with a slope greater than 15 percent; or those soils with a K value greater than 0.35 with slopes greater than 5 percent.

Hydric soils -- Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

Immediate Family -- Father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

Land clearing -- Any activity that removes the vegetative ground cover.

Marina -- Any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

Mean High Water Line -- The average level of high tides at a given location.

Natural Vegetation -- Plant communities that develop in the absence of human activities.

Natural features -- Components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Non-tidal wetlands -- Refers to those lands in the Critical Area (excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland) farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat) where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the

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:

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 should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the St. Michaels Local Program for such areas and shall be designated on the St. Michaels Zoning Map for information purposes (note: Growth Allocation assigned to a property shall not constitute a zoning map amendment as per Article 66B unless there is a change in the underlying/existing zoning classification and shall be submitted to the Critical Area Commission as per COMAR 8-1809 (g) (Proposed Amendments) of the Chesapeake Bay Critical Areas Criteria.

Time Limitations

Applications for growth allocation shall include a schedule of project development and project phases. Project approval and award of growth allocation shall be limited to those phases of the project that can be completed within two (2) years of project approval. If after two (2) years the project is not completed, the applicant may request and the Town Commissioners may grant an extension of the time limit provided the Town Commissioners finds that reasons for project delay were not caused by the applicant but are for reasons beyond the applicant's control. The Town Commissioners shall withdraw the growth allocation from projects which are not completed within two (2) years or which are not granted an extension by the Town Commissioners.

Subsequent phases of the project which will require more than two (2) years to complete are eligible for subsequent growth allocation awards and successful completion of approved phases of a project may be taken into consideration by the Planning Commission when considering subsequent phases of the project for growth allocation provided the applicant has substantially complied with all conditions of approval.

Submission Requirements

Development activities in the St. Michaels Critical Area which are submitted for growth allocation must comply with the applicable requirements of the Town's Local Chesapeake Bay Critical Area Protection Program and the St. Michaels Comprehensive Plan, Zoning Ordinance and Subdivision Regulations. To insure project review by the Town is completed in the minimum time possible and that proposed projects fully comply with all applicable regulations, applicants for development actions will adhere to the site plan requirements contained in Sections 7 and 8 as applicable.

Section X. Amendments to Storm Water Management and Sediment Control Ordinances

The following provisions are recommended to adapt the existing Town (or County) Stormwater Management Ordinance to the Critical Area Program by limiting exemptions and waivers.

FUTURE GROWTH AREAS

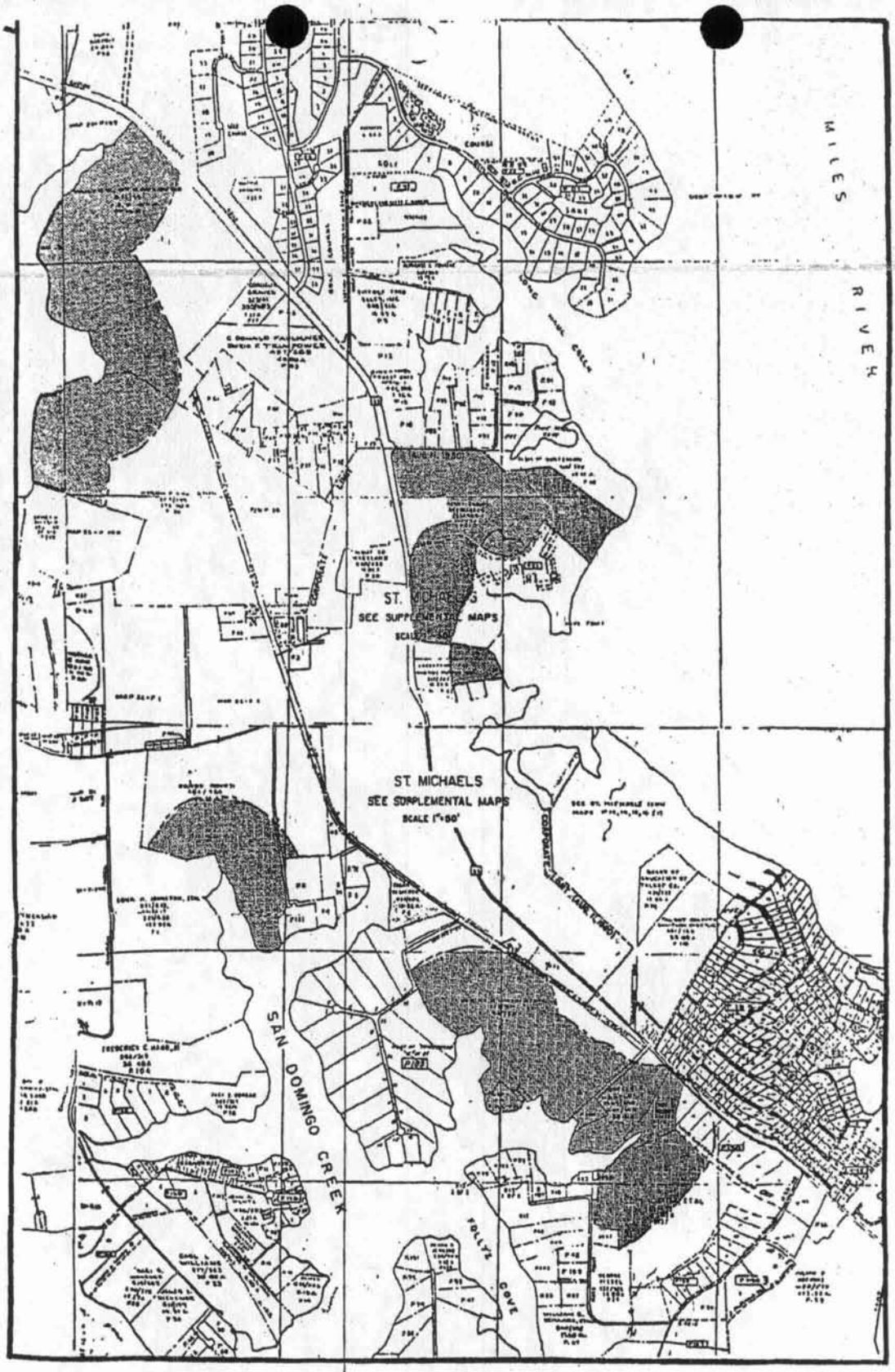
Map II-1

APPX. 403.1 ACRES

FUTURE GROWTH AREAS

ST. MICHAELS, MARYLAND

REDMAN/JOHNSTON
ASSOCIATES


MILES RIVER
ST. MICHAELS
SEE SUPPLEMENTAL MAPS
ST MICHAELS
SEE SUPPLEMENTAL MAPS
SCALE 1"=50'
SAN DOMINGO CREEK
FOLLY'S COVE

NOTICE: This document constitutes a compilation of Ordinance No. 109, As Amended, through Ordinance No. 306 which became effective May 18, 2004. In the event of a discrepancy between the language contained in this document and an Ordinance, the language in the Ordinance shall take precedence.

ZONING ORDINANCE

ST. MICHAELS

MARYLAND

Approved: December 9, 1975

Amended:

June 14, 1977 (Ord. #115)
February 14, 1978 (Ord. #118)
June 27, 1980 (Ord. #124)
October 11, 1983 (Ord. #137)
May 22, 1984 (Ord. #139)
July 10, 1984 (Ord. #141)
September 18, 1984 (Ord. 152)
January 8, 1985 (Ord. #157)
May 14, 1985 (Ord. 162)
October 8, 1985 (Ord. #171)
July 8, 1986 (Ord. #172)
September 9, 1986 (Ord. #173)
February 17, 1987 (Ord. #177)
September 8, 1987 (Ord. #181)
May 10, 1988 (Ord. #183)
June 14, 1988 (Ord. #185)
October 10, 1988 (Ord. #186)
August 9, 1988 (Ord. #187)
February 14, 1989 (Ord. #189)
March 14, 1989 (Ord. #191)
April 14, 1989 (Ord. #192)
July 11, 1989 (Ord. #193)
November 14, 1989 (Ord. #198)
December 14, 1990 (Ord. #200)
April 9, 1991 (Ord. #201)
September 10, 1991 (Ord. #202)
March 10, 1992 (Ord. #206)
March 18, 1992 (Ord. #208)
July 12, 1994 (Ord. #213)
December 14, 1993 (Ord.#214)
February 14, 1995 (Ord. #220)
April 11, 1995 (Ord. #221)
February 13, 1996 (Ord. #222)
November 14, 1995 (Ord. #224)
February 13, 1996 (Ord. #225)
March 12, 1996 (Ord. #227)
March 12, 1996 (Ord. #228)
September 8, 1997 (Ord. #237)
February 10, 1998 (Ord. #238)
September 14, 1999 (Ord. #241)
September 14, 1999 (Ord. #242)
June 8, 1999 (Ord. #244)
July 13, 1999 (Ord. #245)
January 11, 2000 (Ord. #246)
December 14, 1999 (Ord. #248)
March 28, 2000 (Ord. #249)
July 11, 2000 (Ord. #250)
July 12, 2001 (Ord. #253)
June 20, 2000 (Ord. #254)
July 11, 2000 (Ord. #255)
May 8, 2001 (Ord. #259)
October 9, 2001 (Ord. #266)
January 8, 2002 (Ord. #264)
January 8, 2002 (Ord. #267)
January 8, 2002 (Ord. #270)
July 3, 2002 (Ord. #258)
December 31, 2002 (Ord. #275)

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February 3, 2003 (Ordinance #279)
February 17, 2003 (Ordinance #282)
September 1, 2003 (Ordinance #291)
September 1, 2003 (Ordinance #293)
November 4, 2003 (Ordinance #295)
December 2, 2003 (Ordinance #290)
December 2, 2003 (Ordinance #297)
December 30, 2003 (Ordinance #298)
February 10, 2004 (Ordinance #304)
March 16, 2004 (Ordinance #299)
May 18, 2004 (Ordinance #305)
May 18, 2004 (Ordinance #306)

The preparation of this document was financed in part through a comprehensive planning grant from the Department of Housing and Urban Development, as administered by the Maryland Department of State Planning.

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

a. Purpose

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 Growth Allocation district -("GA") floating zone designation.

The Growth Allocation 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 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 district classification shall further be limited as set forth below.

b. Intent

Growth Allocation is a finite resource, created by the State and delegated to the counties of Maryland. Talbot County has delegated a part of its Growth Allocation to the Town and the surrounding area. Because it is limited in amount, and that amount is intended to serve the needs of the Town forever, Growth Allocation must be managed to address the most meritorious current needs of the Town, and conserved to meet the future needs of the Town. Despite the fact that the Town may currently have more acres of unawarded

Growth Allocation assigned to it than the number of undeveloped acres currently located within the RCA and/or LDA overlay zones in the Town, there are hundreds of additional acres of land located within the Chesapeake Bay Critical Area and within close proximity to the Town, such that substantial additional acres classified as RCA and/or LDA could be annexed to the Town in the future. Consistent with the "smart Growth" policy of the State, encouraging expansion of development in and around established population centers, it is anticipated that pressure on the Town for such annexations will increase in the future. Therefore, Growth allocation is a precious resource which must be conserved and managed wisely by the Town in accordance with the goals and objectives of the Town's comprehensive plan.

c. Procedures. The following procedures specified by this part c shall apply exclusively to all applications for the award of growth allocation, pursuant to this subsection 11 (Growth Allocation District).

1) Submission Requirements. An application to the Town for the award of growth allocation shall be accompanied by the following:

a) Ten (10) 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 shall be prepared as per the applicable requirements of the Zoning Ordinance.

c) Such other information and documentation as the Planning Commission may require.

2) Processing GA District Applications. Where the purpose or effect of an application to the Town is the award of growth allocation for the purposes of this subsection 11 (Growth Allocation District), the following procedures shall be followed:

a) Public notice shall be given in accordance with subsection 4 (Notice of Public Hearings) of section 15 (Amendments).

b) The processing and/or granting of an application for the award of growth allocation does not constitute or replace any other required land-use process, approval or permit.

c) Multiple applications:

i) An applicant may withdraw an application for the award of Growth Allocation at any time; however, such withdrawal