Legal Advice & Policy - Vol 6 Talbot County NO 26-C-04-005495 11/14/05 MSA_S_1831-6

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.	*	**Case No. 20-C-04-005095**
DEPARTMENT OF NATURAL RESOURCES-CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND COASTAL BAYS, et al.	*	
Defendants	*	

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

MILES POINT PROPERTY, LLC'S AND THE MIDLAND COMPANIES, INC'S MOTION FOR SUMMARY JUDGMENT

Miles Point Property, LLC and The Midland Companies, Inc. (collectively "Miles Point"), by and through their attorneys, Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge, P.C., pursuant to Maryland Rule 2-501 hereby move for summary judgment on the ground that there is no genuine dispute of material fact in this case and Miles Point is entitled to summary judgment as a matter of law. In support hereof, Miles Point states as follows:

This case arises out of Talbot County's (the "County") enactment of Bill 933, pursuant to which it purported to "take back" growth allocation that it had reserved to the Town of St. Michaels and the Town of Oxford, since inception of Talbot County's local critical area program 1986. Both the St. Michaels and the Oxford critical area programs are premised upon the County's commitment of several hundreds of acres of growth allocation to each of the towns.

Because Bill 933 constituted an amendment to the County's critical area program, it had to be approved by the Critical Area Commission for the Chesapeake and the Atlantic Coastal Bays (the "CAC"). The CAC declined to approve Bill 933 as an amendment to the County's

critical area program for several reasons. Among the reasons cited are the resulting inconsistencies between the County and municipality critical area programs if Bill 933 were approved and the failure of Bill 933 to comply with CAC criteria, most notably COMAR 27.01.02.06.A , which requires the County to coordinate with municipalities to establish a procedure for accommodating the municipalities' growth needs.

The County appealed the CAC's denial of Bill 933 as an amendment to the County's critical area program. The question to be resolved in this case, *i.e.* whether the CAC properly declined to approve Bill 933 as an amendment to the County's critical area program, is strictly a legal question and therefore may be decided on a Motion for Summary Judgment. The CAC's decision should be affirmed and judgment entered against the County for the following reasons:

A. Bill 933 does not comply with criteria adopted by the CAC, specifically COMAR 27.01.02.06.A, because the County did not cooperate with the affected municipalities to establish a process to accommodate their growth allocation needs when it enacted Bill 933, contrary to COMAR 27.01.02.06.A; and

B. Bill 933 fails to accommodate the growth needs of municipalities in violation of Section 8-1808(b)(3) of the Natural Resources Article of the Maryland Code; and

C. If Bill 933 were approved as an amendment to the County's critical area program, it would result in inconsistencies between the County's program and municipality programs, contrary to the intent of the General Assembly that programs be implemented in a consistent manner.

In support hereof, Miles Point incorporates by reference the accompanying Statement of Grounds and Authorities in Support of Motion for Summary Judgment. For the reasons set forth herein and in the Statement of Grounds and Authorities, the CAC's decision to deny the County's request to approve Bill 933 as an amendment to the County's critical area program should be upheld.

WHEREFORE, Miles Point Property, LLC and The Midland Companies, Inc. respectfully requests that this Court enter summary judgment in favor of all defendants and against Talbot County.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 14th day of November, 2005, a copy of the foregoing Motion for Summary Judgment was sent first class mail, postage prepaid, to:

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

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

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

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

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

Richard A. DeTar

IN THE CIRCUIT COURT FOR
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	*	
Plaintiff	*	
v.	*	**Case No. 20-C-04-005095**
DEPARTMENT OF NATURAL RESOURCES-CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND COASTAL BAYS, et al.	*	
	*	
Defendants		

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

ORDER

Having considered Miles Point Property, Inc's and The Midland Companies, Inc.'s Motion for Summary Judgment, the accompanying Statement of Grounds and Authorities and the opposition thereto, it is this _____ day of _____, 2005:

ORDERED, that the Motion for Summary Judgment be and is hereby **Granted**; and

IT IS FURTHER ORDERED, that judgment be entered in favor of all defendants and against Plaintiff Talbot County, Maryland.

_____
Judge, Circuit Court for Talbot County

IN THE CIRCUIT COURT FOR
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	*	
Plaintiff	*	
v.	*	**Case No. 20-C-04-005095**
DEPARTMENT OF NATURAL RESOURCES-CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND COASTAL BAYS, et al.	*	
Defendants	*	

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

MILES POINT PROPERTY, LLC'S AND THE MIDLAND COMPANIES, INC'S STATEMENT OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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

I. INTRODUCTION

This case arises out of Talbot County's (the "County") enactment of Bill 933, pursuant to which the County Council purported to "take back" growth allocation that it had previously committed to the Town of St. Michaels (the "Town") and the Town of Oxford for purposes of planning for growth in the critical area within these municipalities. A true and correct copy of Bill 933 is attached hereto as Exhibit 1. As detailed below, in reliance on the County's granting of growth allocation to these Towns, Oxford and, in particular, St. Michaels devoted considerable local resources toward establishing and implementing local municipal critical area programs that were approved by the CAC. The cooperation between the County and the

municipalities when these government bodies first enacted their critical area programs in 1988 is in sharp contrast to the total lack of coordination with the affected municipalities exhibited by the County when it enacted Bill 933.

Because Bill 933 constituted a proposed amendment to the County's critical area program, it had to be approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "CAC") in accordance with Section 8-1809(i) of the Natural Resources Article of the Maryland Code ("NR") and in accordance with Section 190-109C of the Talbot County Zoning Ordinance, Talbot County Code, a copy of which is attached hereto as Exhibit 2. Recognizing the enactment of Bill 933 created irreconcilable differences between local municipal and County critical area programs and was not in compliance with the critical area statute and the applicable critical area criteria set forth in the CAC regulations, specifically COMAR 27.01.01 et al., the CAC declined to approve Bill 933 as a program amendment to the County's critical area program. As a result, the County filed this lawsuit challenging the CAC's denial of the County's program amendment.

II. BACKGROUND FACTS RELATING TO THE MILES POINT PROJECT

A. The Miles Point Project

The property that is the subject of the Miles Point Project is located within the Town (the "Property"), having been annexed into the Town in 1980. In connection with that annexation, Miles Point's predecessor-in-title to the property, the Town *and the County* entered into an Annexation Agreement reflecting that the Property is intended for future growth in the Town. A true and correct copy of the Annexation Agreement is attached hereto as Exhibit 3.

Between 1998 and 2000, Miles Point submitted three different plans to the Town pursuant to which Miles Point sought growth allocation to develop the Property as contemplated

by the Town and Talbot County in the Annexation Agreement. During the Town's growth allocation deliberations, it sought and obtained direction from the County, specifically Dan Cowee, who was then the Talbot County Director of Planning. With respect to the Town's award of growth allocation for the Miles Point Project, the County Director of Planning advised the Town of St. Michaels Planning Commission (the "Town Planning Commission") as follows:

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

(Exhibit 4, Transcript from St. Michaels Planning Commission Meeting on November 5, 1998 at page 10) (emphasis added). The Talbot County Director of Planning went on to say "[y]ou're going to look at the County's plan and see that it has been approved by the Critical Area Commission and it indicates that growth allocation should be applied to that property at some point in the future." (Exhibit 4, Transcript from St. Michaels Planning Commission Meeting on November 5, 1998 at page 10).

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

Point II Application, in 2003 that requested growth allocation for the Property. The Miles Point II Application included not only the property already within the Town but also approximately 17 acres of land owned by Miles Point located within the County. Accordingly, the Miles Point II application required the Town to annex that property. After several public hearings between September and November 2003, the Town Planning Commission recommended growth allocation approval to the Miles Point II Application, and the Town of St. Michaels annexed the 17 acres by resolution dated October 28, 2003. However, as a result of the County Council's opposition to the Miles Point development project, the County declined to relinquish zoning authority over the 17 acres of land annexed by the Town of St. Michaels until expiration of five (5) years in accordance with Section 9(c) of Article 23A of the Maryland Code. (Exhibit 5, Transcript of November 18, 2003 County Council Hearing at ___). As a result, Miles Point submitted a revised application, referred to as the Miles Point III Application, that did not include the newly annexed property in the development plan. The Town Commissioners unanimously approved the Miles Point III Application and awarded growth allocation to Miles Point to convert approximately 71 acres of land from Resource Conservation Area ("RCA") to an Intense Development Area ("IDA"). The designation of the Property as IDA permits Miles Point to develop the Property to the level of density permitted by the underlying R-1 zoning of the Property that the County agreed to in the Annexation Agreement.

B. <u>The Miles Point Project has been awarded 70.86 acres of growth allocation by the Town of St. Michaels.</u>

The Town awarded the Miles Point Project 70.86 acres of growth allocation following numerous lengthy hearings in the fall of 2003 and winter of 2004. In accordance with Section 8-1809(i) of the Natural resources Article, the Town submitted to the CAC its request for an amendment to its local critical area plan as a result of the Town's approval of Miles Point's

request for growth allocation. Although the CAC approved the IDA map amendment for the Subject Property on May 5, 2004, the CAC attempted to impose conditions upon the specific development plan associated with the Town's grant of growth allocation to Miles Point. A copy of the CAC's May 5, 2004 Decision is attached hereto as Exhibit 6 at pages 77-99. Subsequently, this Honorable Court invalidated the conditions imposed by the CAC on the Miles Point III development plan. (Exhibit 7, Opinion and Order dated April 11, 2004, J. Sause). On remand to the CAC, on May 4, 2005, it awarded a growth allocation map amendment without any conditions subject to its appeal of this Court's April 11, 2004 Order. (Exhibit 7, Order dated April 11, 2004). Subsequently, the CAC determined that a revised Miles Point III plan submitted by Miles Point satisfied the CAC's interpretation of its critical area criteria. Accordingly, the CAC entered into a settlement agreement with Miles Point dated September 7, 2005 through which the previously imposed conditions were removed in consideration for Miles Point implementing the revised Miles Point III "150' Plan." A copy of the CAC Settlement Agreement is attached hereto as Exhibit 8. Accordingly, the subject Miles Point Property has been awarded to it 70.86 acres of growth allocation by the Town which the County is seeking to take back through Bill 933.

III. UNDISPUTED FACTS RELEVANT TO MOTION FOR SUMMARY JUDGMENT

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

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

criteria adopted by the CAC is COMAR 27.01.02.06A(2), which provides in pertinent part as follows:

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

COMAR 27.01.02.06A(2) (emphasis added). The record in this case is devoid of any coordination between the County and the Town to cooperatively establish a process that would accommodate the Town's growth needs. On the contrary, as set forth below, the County intentionally precluded any input from, or cooperation with, the Town of St. Michaels during the pendancy of Bill 933.

On November 18, 2003, after the County recognized that the Miles Point Project would likely receive growth allocation from the Town, several County Council members introduced Bill 933, without any prior input from and/or discussion with the Town. (Exhibit 5, Transcript of November 18, 2003 Hearing at pages 80-88). At that time the County Council openly opposed the Midland Project, going so far as to issue a public recommendation to the Town that it deny the growth allocation request for the Project. (Exhibit 9, Star Democrat Article).

Bill 933 provides in pertinent part that it repeals the previous awards of growth allocation to municipalities located within the County, including the 245 acres of growth allocation previously provided to the Town.[1] (See Exhibit 1, Bill 933). At the time Bill 933 was enacted (and currently), there were no major growth allocation requests pending in any of the Towns within Talbot County except for the Miles Point Project.

The County then forwarded Bill 933 to the Talbot County Planning Commission (the "County Planning Commission") for its recommendation. At a public hearing before the County

[1] When the County adopted its critical area program in 1989, 245 acres of growth allocation were provided to the Town of St. Michaels. See Talbot County Zoning Ordinance § 190-109D(9)(a).

Planning Commission, representatives of the Towns of Oxford, St. Michaels and Trappe objected to Bill 933 because the County had failed to coordinate with them prior to its introduction. (Exhibit 10, Minutes of December 3, 2003 County Planning Commission Meeting). Because the County failed to cooperatively work with the municipalities, *the County Planning Commission recommended against the adoption of Bill 933.* (Exhibit 10, Minutes of December 3, 2003 County Planning Commission Meeting).

Thereafter on December 16, 2003, at a public hearing before the County Council on Bill 933, the Towns of Oxford and St. Michaels requested that the County delay enactment of Bill 933 to provide time for the municipalities to coordinate with the County relative to the establishment of a process to accommodate their anticipated growth needs and their need for growth allocation to accommodate those needs. (Exhibit 11, Transcript from December 16, 2003, County Council Meeting at 122-125; 127-130). The Town Attorney for St. Michaels, H. Michael Hickson, pleaded with the County Council to work with the Town of St. Michaels Commissioners to cooperatively establish a process for the awarding of growth allocation within the Town, as follows:

> Looking at the Bill itself, it would appear that at the very least the County Council is going to assume a veto power over any development proposal that may come forth in the town in the critical area. **To this point I respectfully suggest that there has been no indication to the towns as to what the problem is and the invitation to the towns to get together collectively with the County and work on solving this problem in a less drastic way.** I would suggest that this is an extremely drastic way to withdraw all of the growth allocation from the towns and start over again. **It may well be if the towns can get together we can come up with some sort of formula that would please every one, or at least please most of the people.**

(Exhibit 11, Transcript of December 16, 2003 County Council Meeting at 123-24) (Emphasis added). Mr. Hickson summed up his comments to the County Council by stating: "I'm trying to

be conciliatory. The town would like to find a way we can work together." (Exhibit 11, Transcript of December 16, 2003 County Council Meeting at 144).

The comments from various citizens and citizens groups at the December 16, 2003 public hearing demonstrate that Bill 933 was intended by the County Council to thwart the Miles Point Project and growth within the Town of St. Michaels. (Exhibit 11, Transcript of December 16, 2003 County Council Meeting at 106-08, 130-32, 135-37, 138-40). Attorney for the Talbot Preservation Alliance, Thomas Alspach, commented as follows during the hearing:

> The passage of this bill would not mean by any means that, for example, the midlands project in St. Michaels would not go forward. It does not mean that. What it would mean is that the County would have some ability to participate in negotiations that it should have been included in but has not been included in. The current project proposes to include the construction of 320 dwelling units, a 30 room inn, ad 15,000 acres of commercial space on a piece of property outside of St. Michaels, and proposes to have approximately three to four entrances on to a County road with only one entrance on to Route 33. The County has not been consulted in any fashion with regard to necessary improvements on that County road. More importantly, as some of the members of the Council alluded to earlier in discussions this afternoon, this project would add a huge amount of volume to the waste water system. The County should be involved in discussions about a result of that magnitude.

(Exhibit 11, Transcript of December 16, 2003 County Council Meeting at 106-07). Beth Jones, President of the Bay Hundred Foundation, stated:

> There's a ground sell of support, as I mentioned before, for this bill 933. In fact, just over the last week a hearty bunch of about 40 folks went out and collected 1,037 signatures and also stimulated, I believe, as far as I know, 55 e-mails and at least two letters in support of 933. So where is this coming from. Well, I think we have learned a lesson as we have watched the St. Michaels commissioners and the St. Michaels planning commission grapple with a mega development proposal at the north end of town that would affect us all and yet many of us who have signed the petition do not have a voice at the table. And so we look to the County Council to represent us in decision that will affect us.

(Id. at 131).

The County Council voted to approve Bill 933 on December 23, 2003, despite the unfavorable recommendation of the County Planning Commission. The President of the County Council, Phil Foster, admitted that the County had failed to cooperate with the Towns of St. Michaels and Oxford in enacting Bill 933 or establishing cooperatively with the municipalities a process to accommodate growth within the towns. Voting against Bill 933, Mr. Foster commented as follows:

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

(Exhibit 12, Transcript from December 23, 2003, County Council Meeting at pg. 37).

In conclusion, the record in this matter demonstrates an utter and complete lack of coordination between the County and the Town to establish a process to accommodate municipal growth needs. The County's failure to coordinate with the municipalities is expressly contrary to the criteria adopted by the CAC.

It should also be noted that Talbot County does not need to take back the 245 acres of growth allocation it previously gave to the Town of St. Michaels in order for the County to maintain a reserve of growth allocation. On the contrary, when Talbot County initially granted 595 acres of growth allocation to the Towns of Easton, Oxford and St. Michaels, it retained 618 acres of growth allocation for the County to administer outside of the towns. See Talbot County Zoning Ordinance § 190-109D(9)(a). Talbot County has not utilized all of the acres of growth allocation retained by it. (See Exhibit 1, Bill 933). The former Planning Director for Talbot County, Dan Cowee, explained to the Planning Commission for St. Michaels that Talbot County does not even need the growth allocation acres it has retained for itself. In fact, Talbot County has so little need for growth allocation outside of that to be used for growth in the municipalities

that it has contemplated whether it could sell its growth allocation acres to Anne Arundel County. (See Dan Cowee's testimony before the Planning Commission for St. Michaels, Exhibit 4 at page 13).

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

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

Prior to the introduction of Bill 933, the County took the unprecedented step of recommending to the Town that it deny Miles Point's growth allocation request. (Exhibit 9, Article from Star Democrat) At the December 16, 2003 public hearing on Bill 933, Councilman Duncan, recognizing Bill 933's direct impact on the Miles Point Project, asked what effect Bill 933 would have upon the Annexation Agreement between the County and Miles Point relative to development on the Property. Councilman Duncan stated:

> Is there a statute of limitations on contractual agreements when things completely change. I mean the way of doing business in '76 and '80 was entirely different as it is now in 1989, and how can we as a Government body sign a contractual agreement to permit something to happen when all the rules through the state agency, not from the local agency, the state agency changed the rules as far as the development process is concerned. And so my question is, I guess, one, is there a statute of limitations, and, two, if so, what is the timeframe. And the second question would be, when there's agreements made and there is state legislation that comes down that more or less changes the tenants of the whole agreement, so to speak, where do we stand.

(Exhibit 11, Transcript of December 16, 2003 County Council Meeting at 248). These comments are clearly directed to consideration of whether the County Council is obligated to

support the Miles Point development plan pursuant to the Annexation Agreement or whether the County Council can oppose the Miles Point Project through Bill 933.

A few months later, the County, acting through its County Council (and the County attorney), identified the Honorable John C. North ("Judge North") as an agent and spokesperson on behalf of the County in connection with Bill 933. At the hearing before the CAC on March 24, 2004, relating to Bill 933, the County expressly called upon Judge North to speak to the CAC panel during the time allocated to the County. A transcript containing relevant excerpts from the March 24, 2004 CAC hearing is attached hereto as Exhibit 13.[2] It is noteworthy that Judge North was appointed by this particular County Council and currently serves on the County Planning Commission. See Exhibit 14 attached hereto. At the public hearing on the Miles Point growth allocation request before the panel of the CAC on April 1, 2004, Judge North acknowledged that the County enacted Bill 933 only after it became apparent that the Commissioners of St. Michaels would grant growth allocation for the Miles Point Project. A true and correct copy of relevant excerpts from Judge North's statement to the panel of the CAC on April 1, 2004 is attached hereto as Exhibit 15 (See page 5 thereof). Specifically, Judge North stated:

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

[2] Judge North's opposition to growth allocation for the Midland/Miles Point project is quite personal because Judge North's personal residence is on Yacht Club Road, adjacent to the development site. (Exhibit 15, Excerpt from Transcript of April 1, 2004 CAC Hearing at pg. 2).

instituted a bill to recover unused growth allocation from all municipalities in the County of Talbot. [Emphasis added].[3]

(Exhibit 15, Excerpt from Transcript of April 1, 2004 CAC Hearing at pg. 5). In conclusion, the County's own designated representative made it abundantly clear that the County enacted Bill 933 for the purpose of preventing the Miles Point Project in St. Michaels.

C. **Enactment of Bill 933 would cost the Town of St. Michaels millions of dollars.**

As stated above, because almost twenty (20) years ago the County committed 245 acres of growth allocation to the Town of St. Michaels so that it could plan growth in the critical area within the Town, the Town developed its own local critical area program and planned for development of the Subject Property. After spending in excess of a million dollars on attorneys fees and other related professionals, the Town determined that the Miles Point III project would constitute a benefit to the Town and therefore awarded growth allocation for the Subject Property. In order to recapture expenses incurred by the Town in connection with its local growth allocation processes and to capture much needed additional revenues that the Town has not been able to procure as a result of years of declining population (while the County has permitted sprawl growth immediately outside of the Town which has strained infrastructure resources), the Town entered into the Developer's Rights and Responsibilities Agreement with Miles Point dated February 19, 2004 (the "DRRA"). (Exhibit 16 hereto). Among other benefits, the DRRA obligates Miles Point to donate a public waterfront park for the citizens of St. Michaels and requires each of the proposed 279 units in the Miles Point III Plan to pay to the Town $1,000 per year for thirty (30) years over and above real property taxes that the Town of St. Michaels would receive from the Miles Point III development. See DRRA, Exhibit 16,

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

paragraphs 10.4 and 10.5 thereof. In today's dollars, the financial benefit to the Town of St. Michaels from the thirty years of payments, ignoring all other benefits set forth in the DRRA, amounts to $11,370,000.[4]

In summary, the Town of St. Michaels has incurred millions of dollars to establish a local critical area program, implement the critical area program, plan for growth based upon its local critical area program, and administer its growth allocation program (including for at least five separate applications for growth allocation by Miles Point). After all these years, the Miles Point III project represents the Town's first use of its growth allocation. Through negotiation of the DRRA, the Town will finally recoup millions of dollars it has invested in its local critical area program. After all of this effort, in one fell swoop the County, through Bill 933, is attempting to take all of this away from the Town while leaving it with a huge financial setback.

D. <u>The CAC refused to approve Bill 933 as a Program Amendment to the County's critical area plan because it failed to comply with the critical area law and regulations</u>.

Prior to and during the public hearing before the CAC on March 24, 2003, various parties had the opportunity to testify and present argument in support of or opposition to Bill 933. As to the lack of coordination between the County and the Town in enacting Bill 933, on behalf of the Town of St. Michaels Mr. Hickson testified:

> 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.**

[4] The DRRA provides that these payments shall be adjusted every two years based upon the consumer price index so that actual payments will increase commensurate with inflation.

(Exhibit 13 Excerpt from March 24, 2004 CAC Hearing at 66). The Maryland Department of Planning expressed its concern that "CB-933, by striking reserved amounts of growth allocation for each town, placed the County as the final decision-maker for all municipal requests for growth allocation." (Exhibit 17, Statement of Department of Planning).

Following the public hearing, the CAC prepared a Panel Report. A true and correct copy of the Panel Report is attached hereto as Exhibit 18. In the Panel Report, the CAC noted the applicability of COMAR 27.01.02.06.A, stating in pertinent part:

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

(Exhibit 18, Panel Report).

In a Supplemental Report, the CAC Panel noted that inconsistencies would arise between the County's and the municipalities' critical area programs if it were to approve the County's program amendment. The Supplemental Report provides:

> 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 19, Supplemental Report at 1). At a public hearing on May 3, 2004, with Michael Pullen, the County attorney, in attendance, the CAC voted to not approve the County's Program Amendment. (Exhibit 6, Excerpt from May 5, 2004 CAC Hearing). The CAC shortly thereafter issued a written decision denying approval for the County's proposed program amendment. A true and correct copy of the CAC's written decision is attached hereto as Exhibit 20.

IV. THE STANDARD OF REVIEW FOR CAC DECISIONS INVOLVING INTERPRETATION OF CAC REGULATIONS

The CAC's approval or denial of a program amendment to a local jurisdiction's critical area program is a legislative function. See North v. Kent Island Ltd. Partnership, 106 Md. App. 92, 664 A.2d 34, 41 (1995). When the courts review an action that is legislative in nature, the scope of review is limited to whether the agency was acting within its legal boundaries. See Department of Nat. Resources v. Linchester Sand & Gravel Corp., 274 Md. 211, 223, 334 A.2d 514, 523 (1975). See also Gisriel v. Ocean City Bd. of Superv., 345 Md. 477, 490 n. 12, 693 A.2d 757, 763 n. 12 (1997)("Legislative or quasi-legislative decisions of local legislative bodies or administrative agencies are, of course, not subject to ordinary judicial review; instead they are subject to very limited review by the courts.").

An agency must follow its own rules and regulations. See e.g. Anastasi v. Montgomery County, 123 Md. App. 472, 491, 719 A.2d 980 (1998)(citing Accardi v. Shaughnessy, 347 U.S. 260, 74 S. Ct. 499 (1954)). It is a principle of Maryland administrative law that deference is owed to an agency's interpretation of its own regulations. See MTA v. King, 369 Md. 274, 799 A.2d 1246 (2002). In Ideal Federal v. Murphy, 339 Md. 446, 461, 663 A.2d 1272, 1279 (1995), the Court of Appeals explained the substantial deference the Courts provide an agency's interpretation of a statute with which it is charged to administer and its own regulations, stating:

> In Udall v. Tallman, 380 U.S. 1, 16, 85 S. Ct. 792, 801, 13 L.Ed.2d 616, 625 (1965), the Supreme Court of the United States noted that:
>
> > When faced with a problem, of statutory construction, this Court shows great deference to the interpretation given a statute by the officers or agency charged with its administration.
> >
> > . . .
> >
> > When the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order.

See also First Gibralter Bank FSB, 19 F.3d [1032] at 1047. Additionally, an agency's interpretation of an administrative regulation is "of controlling weight unless it is plainly erroneous or inconsistent with the regulation." Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414, 65 S. Ct. 1215, 1217, 89 L.Ed. 1700, 1702 (1945).

It is with this standard of review in mind that this Honorable Court should review the CAC's denial of the County's Program Amendment.

V. ARGUMENT

A. The Program Amendment fails to comply with criteria established by the CAC pursuant to Section 8-1808(e) of the Natural Resources Article because the County failed to cooperate with the municipalities when it enacted Bill 933.

The standards for approval by the CAC of a program amendment are set forth in Section 8-1809(j) of the Natural Resources Article, which provides as follows:

> (j) *Standards for approval by Commission.* – The Commission shall approve programs and program amendments that meet:
>
> (1) The standards set forth in § 8-1808(b)(1) through (3) of this subtitle; and
>
> (2) The criteria adopted by the Commission under § 18-1808 of this subtitle.

Section 18-1808(e) of the Natural Resources Article provides that the criteria of the CAC shall be adopted by regulation. See also COMAR 27.01.01.02 ("Every provision of this subtitle constitutes part of the 'criteria for program development' within the meaning and intent of Natural Resources Article, §8-1808(d)."). Among the criteria set forth in the regulations promulgated by the CAC is COMAR 27.01.02.06A(2), which provides as follows:

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

The program amendment of the County fails to comply with COMAR 27.01.02.06. Rather than cooperating with the municipalities to establish a process that accommodates the growth needs of

the affected municipalities within the County, the County enacted Bill 933 without any input from or coordination with the municipalities. Stated differently, the County did not cooperatively establish a process with the municipalities to accommodate growth, but undertook to establish a process unilaterally without involving the Towns of Oxford and St. Michaels in the process. This violates COMAR 27.01.02.06, and therefore the proposed amendment is not in compliance with the CAC criteria. Moreover, it is clear that the County sought adoption of Bill 933 for the specific purpose of frustrating the Town of St. Michaels' long-standing growth plan to use growth allocation to allow development of the Subject Property. Indeed, Talbot County also mapped the Subject Property for growth in its Comprehensive Plan. (Exhibit 21, Talbot County Comprehensive Plan Map).

It is noteworthy that COMAR 27.01.02.06 does not provide the County with authority to unilaterally develop a process for awarding growth allocation that applies to municipalities. The language of the regulation states unequivocally that the establishment of the process for accommodating growth must be done in coordination with municipalities. Had the CAC intended to provide the County with unilateral authority to establish a process for awarding growth allocation to towns, the regulation would have been drafted to read: "When planning future expansion of intensely developed and limited development areas, counties shall establish a process to accommodate the growth needs of the municipalities."[5] The phrase "in coordination with affected municipalities" set forth in the regulation must be given meaning. To refuse to give meaning to this phrase violates a cardinal principal of statutory construction that each

[5] Miles Point submits that had the CAC intended to require the establishment of a coordinated process for awarding growth allocation within municipalities, the regulation would have been drafted as follows: "when planning future expansion of intensely developed and limited development areas, counties shall establish a coordinated process to accommodate the growth needs of the municipalities."

portion of a statute is to be given effect and that no portion of a statute is to be rendered nugatory. See Board of Educ. v. Lendo, 295 Md. 55, 63, 453 A.2d 1185, 1189 (1982).

To the extent the County argues that County Bill 762 sets forth a process for awarding growth allocation and that the County received input from the Town when it enacted Bill 762, this assertion is completely inaccurate and contrary to the legislative history of Bill 762.[6] Bill 762 was introduced by the County Council to establish a process for awarding additional growth allocation within the Town of Easton because (unlike the Towns of St. Michaels and Oxford) Easton had used up all of the growth allocation originally provided to the Town of Easton by Talbot County. After receiving a copy of Bill 762 from the County in 2000, Mr. Hickson, Town of St. Michaels attorney, wrote to the County Council and inquired specifically whether there was to be any substantive change to Section 19-14(c)(i) of the County Code, which established the 245 acres of growth allocation that the County had reserved to St. Michaels. A true and correct copy of the Letter from Mr. Hickson and the enclosure are attached hereto as Exhibit 23. It was made clear in Bill 762 that it was not intended to change the growth allocation provided to the Towns of St. Michaels and Oxford. The County Council intended that Bill 762 apply only after a municipality had utilized all the growth allocation that the County had reserved to it and that the procedure set forth in Bill 762 could not be utilized by a municipality until it had utilized all of the reserved growth allocation. The County Council members commented as follows during the public hearing on Bill 762:

> MR. HIGGINS: . . . Now, in my opinion, it does not affect St. Michaels and Oxford at this time –
>
> MS. SPENCE: Right.

[6] Bill 762 is codified as Section 190-109D(9)(d) of the Talbot County Code. A true and correct copy of Bill 762 is attached hereto as Exhibit 22.

MR. HIGGINS: -- because they have not gone through their initial allocation, which is around 200 acres for each of those municipalities, so they will fall into this same procedure if at any future point in time they've gone through theirs.

MR. FOSTER: Well, would they necessarily have to exhaust it, or might they still not chose to apply for this, perhaps reserving some of it for some future project and deciding that that's all they would have left, and a new one comes along, that wouldn't they still be able to make the application?

MR. COWEE: It's my understanding that until that acreage is used up, they would not be under this process.

MS. SPENCE: Right, until its used up.

MR. FOSTER: They could not? Is that your understanding, Mr. Pullen?

MR. PULLEN: I think that, I think that is, in fact, in the existing ordinance –

MR. FOSTER: Okay.

MR. PULLEN: -- in one of the two section that we referred to earlier.

(Exhibit 24, Expert from Transcript of March 28, 2000 County Council Hearing at 77-78). To contend now that the Town had participated in and condoned the approach set forth in Bill 762 for all growth allocation requests is disingenuous. The Town condoned adoption of Bill 762 only with the understanding that the County had reserved 245 acres of growth allocation for the Town and that the procedure set forth in Bill 762 would not apply to the Town until it had utilized all the growth allocation the County had provided to it.

B. The County's Program Amendment does not comply with Section 8-1808(b) because it fails to accommodate municipalities' growth in the Critical Area.

A program amendment must comply with the standards set forth in Section 8-1808(b) of the Natural Resources Article. See NR § 8-1809(j)(1). Section 8-1808(b) provides 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. [Emphasis added].

As explained throughout this Memorandum, Bill 933 proposed to take back all of the Town of St. Michaels' growth allocation. Once the growth allocation is taken back by Talbot County, Bill 933 does not contain legislation establishing a new process for growth allocation within the Town of St. Michaels (or Oxford). This faulty legislation is silent with respect to the means, if any, through which any growth can occur in the critical area within the Towns of St. Michaels and Oxford. See Bill 933 (Exhibit 1).

As explained above, Talbot County's response to this is that Bill 762, adopted several years prior to Bill 933, will apply to the Town's of Oxford and St. Michaels. Given the legislative history of Bill 762, which expressly establishes that it was not intended for the Towns of Oxford and St. Michaels, there is no way it can be lawfully applied to St. Michaels and Oxford.

Because there has been no consultation or coordination by Talbot County with the Commissioners for St. Michaels (or Oxford), the local critical area program for St. Michaels (and Oxford) does not contemplate a joint process with Talbot County. Moreover, the Town of St. Michaels was five years into the Miles Point growth allocation request when Talbot County suddenly, and without warning or input from the Town of St. Michaels, quickly proposed and passed Bill 933 (subject to CAC review). At a

minimum, in order to satisfy the cooperative element of COMAR 27.01.02.06A(2), Talbot County should not have drafted Bill 933 to retroactively rescind growth allocation that the Commissioners of St. Michaels were already in the process of awarding for a project.[7]

Bill 933 fails to comply with Section 8-1808(b)(3) of the Natural Resources Article because it does not accommodate growth. Rather, the County's program amendment allows the County discretion to unilaterally reject proposed growth within a municipality's critical area. In other words, the decision to award growth allocation for real property located within a municipality may be unilaterally left to the County's discretion. If Bill 933 is approved, the County could deny a growth allocation request that a municipality's governing body determines is appropriate for its municipality, thus prohibiting growth within the municipality. In essence, Bill 933 empowers the County to determine whether growth shall occur within a municipality's critical area. Because the Program Amendment does not accommodate growth needs of the municipalities in violation of Section 8-1808(b)(3) of the Natural Resources Article, the CAC properly declined to approve Bill 933 as an amendment to the County's critical area program.

C. The CAC properly rejected the program amendment because it would create conflicts between the County's critical area program and the approved programs of municipalities located within the County.

The CAC is charged with the responsibility to approve not only the County's critical area program but also the programs established by municipalities within the County. See NR § 8-1809. The intent of the critical area program is that "each local jurisdiction shall have primary responsibility for developing and implementing a program." NR § 8-1808(a). Stated differently,

[7] Miles Point is not arguing that it would be appropriate for Talbot County to take back any of the 245 acres of growth allocation awarded to the Town of St. Michaels. It recognizes, however, that it is more egregious for Talbot County to retroactively take back growth allocation that the Town has already incurred the expense and use of resources to process than it is to take back St. Michaels' growth allocation process for future growth allocation requests that have not yet commenced under the local processes.

within its boundaries, each local jurisdiction has the authority to implement a critical area program that applies to property within its jurisdiction. The General Assembly noted that a purpose of enacting the critical area program was "[t]o implement the Resource Protection Program on a cooperative bases between the State and affected local governments, **with local governments establishing and implementing their programs in a consistent and uniform manner, subject to State criteria and oversight.**" NR § 8-1801(b)(2) (emphasis added).

The CAC approved the Town's critical area program, after the Town adopted Ordinance No. 183, and it approved the County's program in 1989. When adopted and approved by the CAC, both the County program and the Town's program accommodated growth needs by recognizing that the County provided to each municipality a certain amount of growth allocation. Each municipality's critical area ordinance is premised upon the County's granting of growth allocation to the municipalities for their future growth.

The County, without any consultation or coordination, purports to "take back" the growth allocation provided to the municipalities (and in particular St. Michaels which has awarded growth allocation to at least two projects)[8] and to unilaterally establish a process for awarding growth allocation that requires approval from the County Council within each municipality's critical area. The approved programs of the Town of St. Michaels and the Town of Oxford do not have provisions for a joint hearing with the County to establish a process for awarding growth allocation nor do they necessarily apply the same standards as the County. As noted above, the municipalities' critical area programs are premised on the process established between the County and the towns in 1988, pursuant to which the County provided a certain amount of growth allocation to each of the municipalities. The CAC recognized that if Bill 933 were to be

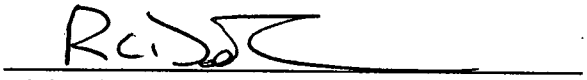
[8] In addition to the Miles Point Project, the Commissioners recently awarded 17 acres of growth allocation for another smaller project.

approved, there would be a conflict between the County's and the municipalities' critical areas programs. Consistent with the General Assembly's purpose of promoting consistent and uniform critical area programs, the CAC properly refused to approve the County's program amendment.

VI. CONCLUSION

The CAC properly refused to approve the County's amendment to its critical area program. The proposed amendment violates CAC criteria, specifically COMAR 27.01.02.06.A, and Section 8-1808(b) of the Natural Resources Article. Moreover, approval of the County's program amendment would create irreconcilable conflicts between the previously approved programs of the municipalities and the County's program. For these reasons, the CAC properly declined to approve Bill 933 and the Court should enter summary judgment in favor of Miles Point and against the County.

Respectfully submitted,



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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 14th day of November, 2005, a copy of the foregoing Statement of Grounds and Authorities in Support of Motion for Summary Judgment was sent first class mail, postage prepaid, to:

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

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

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

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

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

Richard A. DeTar

IN THE CIRCUIT COURT FOR
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	*	
Plaintiff	*	
v.	*	**Case No. 20-C-04-005095**
DEPARTMENT OF NATURAL RESOURCES-CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND COASTAL BAYS, et al.	*	
	*	
Defendants		

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

EXHIBIT LIST

1. Bill 933
2. Talbot County Code § 190-109
3. Annexation Agreement
4. Transcript of 11/5/1998 St. Michaels Planning Commission Hearing.
5. Transcript of 11/18/2003 Talbot County Council Meeting.
6. Transcript of May 5, 2004 Critical Area Commission Hearing.
7. Opinion and Order of Circuit Court for Talbot County dated 4/11/2004.
8. Critical Area Commission Settlement Agreement.
9. Star Democrat Article.
10. Minutes of 12/3/2003 Talbot County Planning Commission Hearing.
11. Transcript of 12/16/2003 Talbot County Council Meeting.
12. Transcript of 12/23/2003 Talbot County Council Meeting.
13. Transcript of 3/24/2004 Critical Area Commission Hearing.
14. Notice appointing J. North to Talbot County Planning Commission.

15. Transcript of 4/1/2004 Critical Area Commission Hearing.

16. Development Rights and Responsibilities Agreement.

17. Statement of Maryland Department of Planning regarding Bill 933.

18. Critical Area Commission Panel Report regarding Bill 933.

19. Critical Area Commission Supplemental Panel Report regarding Bill 933.

20. Critical Area Commission Written Decision.

21. Comprehensive Plan for Talbot County.

22. Bill 762.

23. Letter from Michael Hickson to Talbot County.

24. Transcript of March 28, 2000 Talbot County Council Meeting.

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 _____
Secretary

1

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

000508

(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

000512

§ 190-109. Amendments. [Amended 9-10-1991 by Bill No. 459, effective 11-9-1991; 1-28-1992 by Bill No. 465, effective 3-28-1992; 8-11-1992 by Bill No. 487, effective 10-10-1992; 2-25-1997 by Bill No. 642, effective 4-16-1997; 10-27-1998 by Bill No. 691, effective 12-26-1998; 3-30-1999 by Bill No. 699, effective 5-29-1999; 4-15-2000 by Bill No. 762, effective 6-24-2000; 8-24-2001 by Bill No. 837, effective 10-23-2001]

The provisions of this Chapter 190, Zoning, or the boundaries of any zoning district may be amended by the County Council in accordance with the procedures set forth in this section. For the purposes of this section, amendments are separated into four categories: amendments to the Zoning Ordinance text, amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation is requested, amendments to the Critical Area provisions of this Chapter 190, Zoning, and growth allocation district boundary amendments in the Critical Area.

A. Amendments to the Zoning Ordinance Text.

(1) An amendment to text of this Chapter 190, Zoning, may be initiated by any interested party, the County Council, Planning Commission or Planning Officer.

(2) An application for an amendment to the text of this Chapter 190, Zoning, shall be filed in the Planning Office on the prescribed forms with the accompanying filing fee where applicable.

(3) The application shall first be referred by the County Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the text of this Chapter 190, Zoning, the Council shall determine whether or not the proposal is suitable to warrant the introduction of legislation. The Council may conduct any informal hearings it deems appropriate in making its determination.

(5) Upon bill (legislation) introduction, the Council shall hold a public hearing in order that interested parties and citizens shall have the opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(6) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed amendment.

B. Amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation is requested.

(1) An amendment to the Official Zoning District Maps may be initiated by the County Council, Planning Commission, Planning Officer or by a person with a committed financial, contractual or proprietary interest in the property to be affected by the proposed amendment.

(2) An application for an amendment to the Official Zoning District Maps shall be filed in the Planning Office on the prescribed application forms with the accompanying filing fee where applicable. Each application shall also be accompanied by a plat drawn to scale showing the existing and proposed boundaries and other information the Planning Officer may need in order to locate the amendment on the Official Zoning District Maps. Such plat shall not be required for sectional or comprehensive redistricting.

(3) The application shall first be referred by the Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for its review

and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the Official Zoning District Maps and before approval or denial, the Council shall introduce a bill (legislation) for the proposed amendment and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(5) Site visit. The Council shall not approve or disapprove any application for an Official Zoning Map amendment unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area. Such site visit shall not be required for sectional or comprehensive redistricting.

(6) In granting approval for an amendment to the Official Zoning Maps, the Council shall take into consideration findings of fact in each specific case including but not limited to the following:

(a) Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

(b) Compatibility with existing and proposed development and land use in the surrounding area;

(c) Availability of public facilities;

(d) The effects on present and future transportation patterns; and

(e) The effect on population change within the immediate area.

(7) After a review of the applicable findings, the Council may:

(a) Grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located; or

(b) Grant the amendment based upon the fact that there was a mistake in the existing zoning classification.

(8) Editor's Note: Former Subsection B(8), providing an exception to the requirement that the Council find either a change in the character of the neighborhood or a mistake in the original zoning to downzone property, as amended, was repealed 12-9-2003 by Bill No. 923, effective 2-7-2004. This bill also redesignated former Subsection B(9) through B(12) as B(8) through B(11), respectively. The fact that an application for a district boundary amendment complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed district boundary amendment would in fact be compatible with surrounding land uses and is not, in itself, sufficient to require approval.

(9) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed amendment.

(10) New application. Following denial of a district boundary amendment for property, either in whole or in part, no application shall be accepted for filing by the County Council within one year from the date of the decision. The Council may allow an applicant to withdraw an application for district boundary amendment at any time, provided that if the request for withdrawal is made after publication of the public notice of hearing, no application for district boundary amendment of all or any part of the property which is subject to the application shall be allowed within one year from the date of the public hearing unless the Council specifies that the time limit shall not apply.

(11) Changing of Official Zoning Maps. The Planning Officer shall change the Official Zoning Maps within 60 days after the adoption of any amendments, in order that said maps shall always be an up-to-date public record of the zoning districts in Talbot County.

C. Amendments to the Critical Area provisions of this Chapter 190, Zoning.

(1) Amendments to the Critical Area provisions in any section of this Chapter 190, Zoning, shall be consistent with Maryland State Critical Area Law and shall be referred to the Chesapeake Bay Critical Area Commission for their review and approval in accordance with § 190-109D(7) of this chapter. 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) Non-maritime 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 applications 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 chapter;

(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 Wastewater Treatment Plant.

(2) An amendment to the Critical Area provisions of this chapter may be initiated by any interested party, the County Council, Planning Commission or Planning Officer.

(3) An application for an amendment to the text of this Chapter 190, Zoning, shall be filed in the Planning Office on the prescribed forms with the accompanying filing fee where applicable.

(4) The application shall first be referred by the County Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(5) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the text of this chapter, the Council shall determine whether or not the proposal is suitable to warrant the introduction of legislation. The Council may conduct any informal hearings they deem appropriate in making its determination.

(6) Upon bill (legislation) introduction, the Council shall hold a public hearing in order that interested parties and citizens shall have the opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(7) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed amendment.

D. Growth allocation district boundary amendments in the Critical Area.

(1) Growth allocation district boundary amendments in the Critical Area may be initiated by the County Council, Planning Commission, Planning Officer or by a person with a committed financial, contractual, or proprietary interest in the property to be affected by the proposed amendment.

(2) An application for a growth allocation district boundary amendment shall be filed in the Planning Office on the prescribed application form with the accompanying filing fee, where applicable. Each application shall include a proposed site plan and/or subdivision plat that meets the applicable design standards in Articles X and XII of this chapter. Each application request should make the maximum effort to meet the intent of the Critical Area policies and the applicable design standards. The request should:

(a) Create lots or parcels that maximize the opportunities for clustered development that protect

habitat and agricultural resources;

(b) Locate structures so as to minimize impact on habitat protection areas and agricultural areas;

(c) Provide a minimally disturbed buffer along the shoreline;

(d) Minimize soil erosion and runoff;

(e) Maximize protection of eroding shorelines;

(f) Have a minimal impact or cause an improvement to stormwater, floodplain and stream characteristics;

(g) Minimize impacts on nontidal wetlands;

(h) 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

(i) Maximize protection of forests.

(3) The application shall first be referred by the Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) Introduction of bill; considerations.

(a) After receiving the recommendation of the Planning Officer and Planning Commission concerning a proposal for a growth allocation district boundary amendment and before approval or denial, the Council shall introduce a bill (legislation) for the proposed amendment and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(b) In deciding whether to approve or disapprove an application for a growth allocation district boundary amendment, in addition to the specific requirements and purposes set forth elsewhere in this chapter, the Council may also consider:

[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.

(c) The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation district boundary amendment would in fact be compatible with surrounding land uses, and is not, in itself, sufficient to require approval.

(5) A complete record shall be kept of the hearing including the vote of all members of the Council in deciding all questions relating to the proposed growth allocation district boundary amendment.

(6) Site visit. The Council shall not approve or disapprove any applications for a growth allocation district boundary amendment unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area.

(7) Critical Area Commission approval.

(a) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area 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 the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

(b) If a project receiving growth allocation approval, in accordance with the provisions of this subsection, does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of the final growth allocation approval, the Critical Area and zoning classifications may revert to the previously designated classifications, upon recommendation of the Planning Officer and approval by the County Council.

(c) 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.

(d) 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 90 days of Critical Area Commission denial. An extension of the ninety-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.

(8) 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.

(9) Awarding of supplemental growth allocation to municipalities in County.

(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.

(b) When 1,092 acres (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.

(c) If the Commission approves the doubling of the number of acres that may be rezoned under this subsection, 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 Subsection D(10) 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).

(d) 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 the application with the municipality. In addition to complying with all municipal requirements, the applicant shall also provide the information required by § 190-109D(2) of this chapter, as amended, and shall also comply with the design standards set forth in § 190-109D(2)(a) through (i) of this chapter, as amended. The municipality shall forward the application to the County Council for consideration and review within five 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 § 190-109D(9)(d)[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 § 190-109D(4).

[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 years following the date of initial approval.

(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.) Editor's Note: Maps 1, 2 and 3 are included at the end of this chapter.

(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.

(12) 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 20 acres should be reclassified 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).

(13) Zoning Map amendments from the LDA Zoning District to another LDA Zoning District or from one

IDA Zoning District to another IDA Zoning District shall not require growth allocation, but shall instead be required to follow the procedures of a Non-Critical Area Zoning Map amendment as prescribed in § 190-109B.

(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).

(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.

(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.

(17) When considering growth allocation 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 growth allocation requests from the Rural Residential, Town Residential, or Village Center District, priority shall be given based on the district requested in the following order: Limited Commercial, General Commercial, Limited Industrial.

(18) A growth allocation 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 District or to any size area of Limited Commercial, General Commercial, or Limited Industrial Districts. For purposes of this section 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 center line of any rights-of-way.

(19) A growth allocation 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, 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 center line of any rights-of-way.

(20) A growth allocation 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 cannot be located within the limits of an incorporated town. Such a request should be located within or adjacent to a Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section, 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 center line of any rights-of-way. Such a request should be located so as not

to conflict with the character and purpose of the Rural Conservative District.

(21) Growth allocation for specific uses in the Rural Conservation RC Zone. Specific uses in the Rural Conservation RC Zoning District listed in § 190-19, General Table of Land Use Regulations, are permitted to expand only with the issuance of growth allocation. The process for granting growth allocation for specific Rural Conservation RC uses is as follows: **[Added 12-9-2003 by Bill No. 932, effective 2-7-2004]**

(a) Application for growth allocation shall accompany an application for site plan review and shall be made on forms provided by the Planning Office.

(b) An application shall be submitted to the Planning Office meeting all of the general site plan requirements as stipulated in § 190-92 of this chapter. The application shall indicate the area and number of growth allocation acres requested.

(c) The Planning Officer, or his or her designated representative, shall review the application materials, including the site plan and all attachments, for completeness and, if found to be in order, shall accept the application.

(d) The application shall be submitted by the Planning Officer or his or her designated representative to the Technical Advisory Committee (TAC) for review and comment.

(e) Upon completion of the Technical Advisory Committee review, all comments shall be passed on to the Planning Officer. The Planning Officer or his or her designated representative shall prepare a staff report, which shall accompany the site plan report required under § 190-92 of this chapter and forward to the Planning Commission.

(f) The Planning Commission shall review the application, related materials and the Planning Office staff report for both the site plan and the application for growth allocation at a regular public meeting. Upon favorable approval by the Planning Commission and the Planning Officer, the Planning Officer shall forward the recommendation on the growth allocation request to the County Council.

(g) After receiving the recommendation of the Planning Officer and the Planning Commission concerning a proposal for growth allocation associated with a use expansion in the Rural Conservation RC Zone, the Council shall hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112 of this chapter.

(h) In deciding whether to approve or disapprove an application for a growth allocation for expansion of specific uses in the Rural Conservation RC Zone as listed in § 190-19 of this chapter, the Council shall consider the following:

[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, and nature of the proposed use and/or expansion of the use; and

[8] The protection of the public health, safety and welfare.

(i) The fact that an application for a growth allocation complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation would in fact be compatible, and is not, in itself, sufficient to require approval with surrounding land uses.

(j) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed growth allocation.

(k) Site visit. The Council shall not approve or disapprove any applications for a growth allocation

unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area.

(l) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area 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 the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

(m) The County Council may reconsider a request denied by the Critical Area Commission. 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 90 days of Critical Area Commission denial. An extension of the ninety-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.

§

RECYCLED

ANNEXATION AGREEMENT

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

W I T N E S S E T H :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2 The Inn Property and the 11.008 acre parcel, now owned by Talbot County, shall, simultaneously with annexation, be considered as two separate subdivided lots pursuant to the Land Subdivision Regulations of St. Michaels. The balance of 153.29 ac. the Property shall be developed in Subdivision Sections not larger than thirty (30) acres in size. A subdivision plan for each Subdivision Section shall be prepared, at Owner's expense, and be submitted to the appropriate authorities of the town of St. Michaels for their consideration and review in accordance with the laws of St. Michaels. No subdivision plans shall be put into effect without compliance with this Annexation Agreement, and all applicable zoning laws and subdivision regulations. Prior to the sale or improvement (by the construction of any structure thereon) of any lot or parcel of real estate in the Property the following conditions must be satisfied for the entire Subdivision Section of which the lot is a part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. ZONING.

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

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

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

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

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

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

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

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

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

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

12. MISCELLANEOUS PROVISIONS.

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

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

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

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

explaining or otherwise affecting the terms, conditions and provisions hereof.

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement the day and year first above written.

ATTEST:

[illegible]
County Clerk

TALBOT COUNTY MARYLAND

By: Herbert L. Andrew III (SEAL)
President

ATTEST:

Mifford H. Sprecher,
Town Clerk

THE COMMISSIONERS OF ST. MICHAELS

By: Helen K. Plummer (SEAL)
Helen K. Plummer,
President

WITNESS:

Teresa K. Meyerhoff

PERRY CABIN ASSOCIATES

By: Harry C. Meyerhoff (SEAL)
Harry C. Meyerhoff,
General Partner

RECYCLED

Exhibit 165
MP 111

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

RICK MEGAHAN: Steve, would you introduce our guests.

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

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

UNKNOWN MAN: Would you speak up, please.

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

[APPLAUSE]

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

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

UNKNOWN MAN: Thank you.

03/22/2004 14:24 410/453463 TOWNOFSAINTMICHAELS PAGE 02/23

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

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

GENE HAMILTON: Yeah.

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

review on this project which I, I think is a smart idea, because being as large as it is, the type of impacts that could potentially happen from it you really need to have that outside expertise to make sure that what the developers are telling you is correct.

RICK MEGAHAN: I, I had a specific question for you, it pertained to the part of the Critical Areas requirement and growth allocation of the Critical Areas that pertain to the phasing, the two year phasing of the submission that is what they give us needs to be what will be accomplished with in a two year time frame and that is what would be approved if this [inaudible word or two]. What's been your experience with that?

DAN COWEE: Most of our growth allocation requests County-wide have been small except for in the city or I, I should say the Town of Easton the Easton Club with a big chunk, well over a hundred acres of growth allocation. In the County we've had smaller thirty acre, some smaller ten acre requests. Lately we haven't had many requests at all. We've even contemplated the possibility of selling it to Anne Arundel County because we know they're a little short, and we're a little long, and we still have well over twenty two hundred acres left. Let me get back to your question again.

RICK MEGAHAN: For instance Easton Club, how was that submitted? Was that submitted in two year increments ?

DAN COWEE: I, I don't know if Easton had that requirement in their ordinance. We do, we have just passed a regulation that says you must reach a final plat approval for a subdivision using growth allocation within a two year period.

JAMES BURNS: So you, the County, has made a conclusion of final plat approval.

DAN COWEE: Correct, correct. We do not have any, we do have an extension allowance I, I had never read until last night how you all were going to do this. I had a number of of comments written in the margin about it being very cumbersome in terms of the review process, because you're going to be looking at these projects on a two year incremental basis.

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

November 18, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:
THOMAS DUNCAN, President
PHILIP FOSTER
HOPE HARRINGTON
PETER CARROLL
HILARY SPENCE

Reported by
David C. Corbin

MS. SPENCE: Which one.

SECRETARY: A bill to amend Talbot County Code, Chapter 190 zoning, article 14, administration, section 190-109D, growth allocation, district boundary amendments in the critical area by adding a new paragraph, 21, growth allocation for specific uses in the RC zone to comply with the Chesapeake Bay critical area commission four-year review requirement.

MR. DUNCAN: Who would like to introduce the bill. Ms. Spence, Mrs. Harrington, Mr. Carroll. Mr. Duncan. 933, please.

SECRETARY: A bill to review and reallocate the number of reserved acres of growth allocation allocated among the towns for rezoning in compliance with the requirements of Chapter 190, Talbot County code, zoning, section 190-109D-11.

MR. DUNCAN: Who would like to introduce that bill.

MR. CARROLL: I would like to introduce

that. But this bill differed from all the others. Really needs to go to planning and zoning and have it come back to us. Mr. President, you had a public hearing date of 9 December. I think our next meeting is on December 23rd. And I would like to propose that we have a hearing date of December 23rd for this bill to give planning and zoning an opportunity to review it and come back with their recommendations and appropriate changes.

MR. FOSTER: Merry Christmas towns, we're taking away your present.

MR. DUNCAN: Is that workable.

MR. HOLLIS: Currently scheduled as a Council day, yes, sir.

MS. HARRINGTON: Legislative day.

MR. DUNCAN: Are you introducing the bill.

MR. CARROLL: Yes, I'm introducing. But I want to make sure everybody understood it had to go to planning and zoning and there's a schedule issue and I wanted to get that

included.

MR. FOSTER: Actually they meet, Mr. Carroll, at the beginning of the month, so probably it wouldn't matter.

MR. CARROLL: If they can have it finished sooner, that would be great. But I want to make sure they have adequate time to staff it thoroughly and are comfortable themselves. It is the Christmas season, Mr. Foster, and I wouldn't want to overburden them.

MR. DUNCAN: Mr. Carroll --

MR. FOSTER: You're known for your Christmas spirit, Mr. Carroll.

MR. DUNCAN: Mrs. Harrington?

MS. HARRINGTON: Yes.

MR. FOSTER: No.

MR. DUNCAN: Spence no. Duncan yes.

MS. SPENCE: Is that 932?

MR. FOSTER: 933.

MR. DUNCAN: Let me explain something. We have had a lot of introduction of bills

relating to critical areas, and as you see by the Council, we're all over the place on different bills and so forth. These are very technical bills, they are bills that have to comply or should comply with the critical areas commission and so forth. And none us agree with everything in these bills. I guarantee you that none of us do. However, we have to put a plan before the critical areas. They put us on hold for several times. We're under the gun. Haven't got a plan in and so forth. As distasteful as some of these items are in the bills, there's a lot of items in the particular bills that have to be according to state law and so forth. Even though sometimes we introduce and we vote for bills we don't particularly like, you have to sometimes hold your nose and vote for them. That's where we area with these critical area bills. It's nothing -- it's not the -- it's nothing everybody wants and yet it's something some of

us want in some sections of these particular bills. But we have to get something to the state on this issue.

MR. FOSTER: You need a basin, Mr. Duncan, to wash your hands. I think we should also point out that that's a matter of interpretation, what the critical areas commission can sustain and what it can't, and whether these are required or whether we're going to pass what is required. That's a matter of we might have differing opinions on.

MS. HARRINGTON: And I would like to say I'm not quite sure I totally agree with you, Mr. Duncan. And I almost always do agree with you.

MR. DUNCAN: Oh, my, thank you.

MS. HARRINGTON: But I think that the fact that we have been very deliberate in our consideration of these critical areas bills and that we have tried to stay within the critical areas laws and yet make these bills more user

friendly to the citizens of Talbot County, I think we have accomplished that in great part. So I feel pretty comfortable voting for this legislation.

MR. FOSTER: I don't think these bills are significantly different from the ones we refused, and I guess that's just a difference of opinion we have.

MR. DUNCAN: Again, we're going to have to have a public hearing on these bills.

MR. CARROLL: Mr. President, I propose that we have the public hearing on this last bill on the 23rd of December. It's been brought to my attention that the Council in the past has tended to cancel that meeting just before Christmas, so perhaps we can try to have that hearing on the 16th instead.

MS. SPENCE: Do we have to have a hearing on a Council day. Could we not pick another day.

MR. FOSTER: We have every Tuesday in

December. These bills don't have to go to planning and zoning.

MR. CARROLL: I'm talking about a particular bill.

MR. HOLLIS: Mr. Carroll had asked this particular bill go to planning and zoning.

MR. DUNCAN: That's the 16th at what time, is that in the evening.

MR. HOLLIS: Day meeting.

MR. FOSTER: Couldn't these critical areas bills be done some different day, the 9th or --

MR. HOLLIS: Everything else is still schedule for the 9th for a public hearing.

MR. FOSTER: Okay.

MR. DUNCAN: With the exception of Bill 933.

MR. FOSTER: I think splitting them may be a good idea because they may take a long time each.

MR. DUNCAN: Bill 933 is December 16th at 1:30 p.m.

MS. SPENCE: Excuse me, Mr. Duncan. If we don't meet on the 23rd and we don't meet on the fifth Tuesday, the 30th, that means we're not meeting again until --

MR. FOSTER: The 6th.

MR. HOLLIS: First week in January.

MR. DUNCAN: Why aren't we meeting on the 23rd.

MS. SPENCE: I have a problem with three weeks between meetings. We have such a full plate here with all this legislation and all the issues, I would like to go ahead and meet on the 23rd.

MS. HARRINGTON: I would too.

MR. FOSTER: We can decide that when we get there. Let's see if we have business. Right now all the business that we're doing we have completed through the 16th.

MS. SPENCE: I think you're trying to set the hearing up for --

MR. FOSTER: He agreed to the 16th.

MR. CARROLL: I moved it to the 16th. I had a side bar, it's not going to be perfect but it's going to allow, I think, to talk to the towns a little bit and get input. And there are some legal issues and some planning issues, maps that need to be looked at, pulled out of the comp. plan and we need an update. I think there's enough time by the 16th to do that. If it runs over to the 23rd and we have to have a meeting, so be it. But I would hope I would not want to be the cause that forces us to be here on Christmas Day.

MR. FOSTER: You'll be in Paris anyway, right.

MR. DUNCAN: The next agenda item is public hearing on Bill 920. If the secretary would read the bill.

SECRETARY: Bill No. 920, a bill to amend chapter 190, zoning, of the Talbot County Code, article four, section 190-19, general table of land use regulations, by adding new

RECYCLED

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

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?

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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

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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.

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CHAIRMAN MADDEN: Any other discussion?

MS. SAMORAJCZYK: 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,

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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

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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

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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

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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

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upgrade so that -- when they have overflows 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

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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

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town of St. Michael'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

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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

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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

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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

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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

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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-foot 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 certain mistakes, 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

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 that is 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 amendment. 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 [illegible] 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, both by the relevant 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 a 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

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Bill 762. Bill 933 does not affect that approval. This is readily apparent from the 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

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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

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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

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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 [illegible] 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 [illegible] 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

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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

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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

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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 towns. 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

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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 [illegible] 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,

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

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 [illegible] 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

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 town and the County approved and that the Commission approved.

CHAIRMAN MADDEN: The town approved. The Commission --

MS. ENNIS: It already has it for both 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. 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 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

RECYCLED

CIRCUIT COURT
OF TALBOT COUNTY
ENTERED
2005 APR 14 AM 10 29

THE CIRCUIT COURT FOR TALBOT COUNTY

THE MIDLAND COMPANIES, INC. et al	:	
v.	:	Civil # 5088
MARYLAND DEPARTMENT OF NATURAL RESOURCES et al	:	

DECLARATORY JUDGMENT
and
ANCILLARY RELIEF BY WAY OF MANDAMUS

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

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

The cause of action

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

the pleading or paper which indicates its nature."

The title is then followed by this statement:

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

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

> A. Declare as unlawful, *ultra vires*, and otherwise not permitted by Maryland law the Conditions on the award of IDA growth allocation for Miles Point III imposed by the Respondent/Defendant . . . [Commission] that *development of the Miles Point III Project shall be set back from the landward edge of tidal waters at least 300'* and that a forest vegetation buffer management plan shall be developed cooperatively with the . . . [Commission] and subject to it further review and approval;
>
> B. Declare that the Conditions imposed by the . . . [Commission] are void and of no lawful force and effect such that the Critical Area Commission's approval of the Town's request to amend its program to use 70.863 acres of growth allocation for the Miles Point III project to change the critical area designation of the property from RCA to IDA remains valid and in effect, but the Conditions of that approval are stricken.
>
> C. Award the Petitioners/Plaintiffs the cost of this case; and
>
> D. Such other and further relief as the Court deems appropriate.[1]

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

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

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[1] A second count was dismissed by stipulation.

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

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

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

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

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

[2] The section deals solely with the right of appeal of final judgments of a circuit court.

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

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

The action of which plaintiffs complain

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

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

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

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may allowed outside of the100-foot Buffer.

2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a

Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.

3. In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.

4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

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

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

The law

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

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

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

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

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

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

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

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

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

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

> The role of the Critical Area Commission is to examine the amendment to determine whether the amendment is consistent with the criteria. In contrast to § 8-1809(h)(2)(i), which requires the local approving authority to make a finding of mistake, § 8-1809(j) provides a separate standard of review to be applied. Section 8-1809(j) provides:
>
> (j) *Standards for approval by Commission.* -- The Commission shall approve programs and program amendments that meet:
>
> (1) The standards set forth in § 8-1808 (b)(1) through (3)[5] of this subtitle; and
>
> (2) The criteria adopted by the Commission under § 8-1808 of this subtitle.[6]

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

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[5] Those standards, referred to as "*Goals of program*" are that "A program shall consist of those elements which are necessary or appropriate: (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; (2) To conserve fish, wildlife, and plant habitat; and (3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

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

Application of *North* to the present case

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

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

> When locating new intensely developed or limited development areas, local jurisdictions shall use the following guidelines:
>
> (1) New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas;
>
> (2) New limited development areas should be located adjacent to existing limited development areas or intensely developed areas;
>
> (3) Except as provided in paragraph (5) of this subsection, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;
>
> (4) New intensely developed or limited development areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed or limited development areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of this subtitle; and
>
> (5) . . . if the county is unable to utilize a portion of the growth allocated to the county in paragraphs (1) and (2) of this subsection within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in paragraph (3) of this subsection. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

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

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

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

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

> As long ago as *Adams v. Board of Trustees*, 215 Md. 188, 195 . . . we reversed, as not supported by the evidence, an action taken by the Board without a finding of fact, or an assignment of reasons for the result reached. Only the circumstance that the record before us makes it clear that the Board could have reasonably reached the result which it did, *Heaps v. Cobb*, . . . 185 Md. at 380 . . . saves this case from a similar fate. To be certain that the teaching *Adams* is not again overlooked, we propose to remand, for appropriate findings of fact, any case which hereafter reaches us in the posture of this one.
>
> This is no more than a recognition of the fundamental right of a party to be apprised of the facts relied upon by the agency, *Blue Bird Cab Co. v. Department of Employment Security*, 251 Md. 458, 466 . . . even in the absence of a statutory provision, is frequently required by a court as an aid to judicial review, 2 Davis, *Administrative Law Treatise*, § 16.05 at 444-49 (1958); 2 Am. Jur. 2d *Administrative Law* § 447 at 256 (1962), and cases cited. *See also* Code (1957, 1971 Repl. Vol.) Art. 41, § 254 which imposes this requirement on those agencies of the State which are subject to our Administrative Procedure Act.

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

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

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

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

DECLARATORY RELIEF

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

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

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

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

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

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

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

MANDATORY RELIEF

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

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

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

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

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

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

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

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

April 11, 2005

RECYCLED

COPY

SETTLEMENT AGREEMENT

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

Definitions

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

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

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

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

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

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

Recitals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agreement Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **General Provisions.**

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

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

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

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

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

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

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

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

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

CRITICAL AREA COMMISSION:

By: _____ (SEAL) 9/7/2005
Martin G. Madden — Date
Chairman

_____
Witness

THE MIDLAND COMPANIES, INC.:

By: _____ (SEAL) 9-7-05
George A. Valanos — Date
President

_____
Witness

MILES POINT PROPERTY, INC.:

By: _____ (SEAL) 9-8-05

George A. Valanos — Date

Managing Member

_____

Witness

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

May 14, 2004

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

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

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

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

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

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

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

EXHIBIT A

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

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

Sincerely,

Mary R. Owens

Mary R. Owens, Chief
Program Implementation Division

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

Critical Area Commission
DECISION
MAY 4, 2005

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

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

PANEL RECOMMENDATION: See Panel Report

ACTION: Vote

BACKGROUND

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

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

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

EXHIBIT 3

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

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

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

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

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

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

STATUTE AND CRITERIA

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

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

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

***

(4) New intensely developed... areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed....areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date.

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

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

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

(2) Industrial, institutional, or commercial uses are concentrated in the area; or

(3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

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

FINDINGS OF FACT AND STATEMENT OF REASONS

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

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

(1) The new IDA of Miles Point III will be located adjacent to an existing IDA.

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

The reasons for these findings are as follows:

(1) The Town stated that the new IDA of Miles Point is adjacent, on the south side, to an existing IDA.

(2) The new IDA will have residential uses predominating, (over 250 units on 70 acres) and will contain relatively little natural habitat, with impervious surface increasing from 0% to over 50%.

(3) The new IDA will have housing density greater than three dwelling units per acre, and the area is served by public water and sewer collection.

(4) The new IDA is greater than 20 acres.

DECISION

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

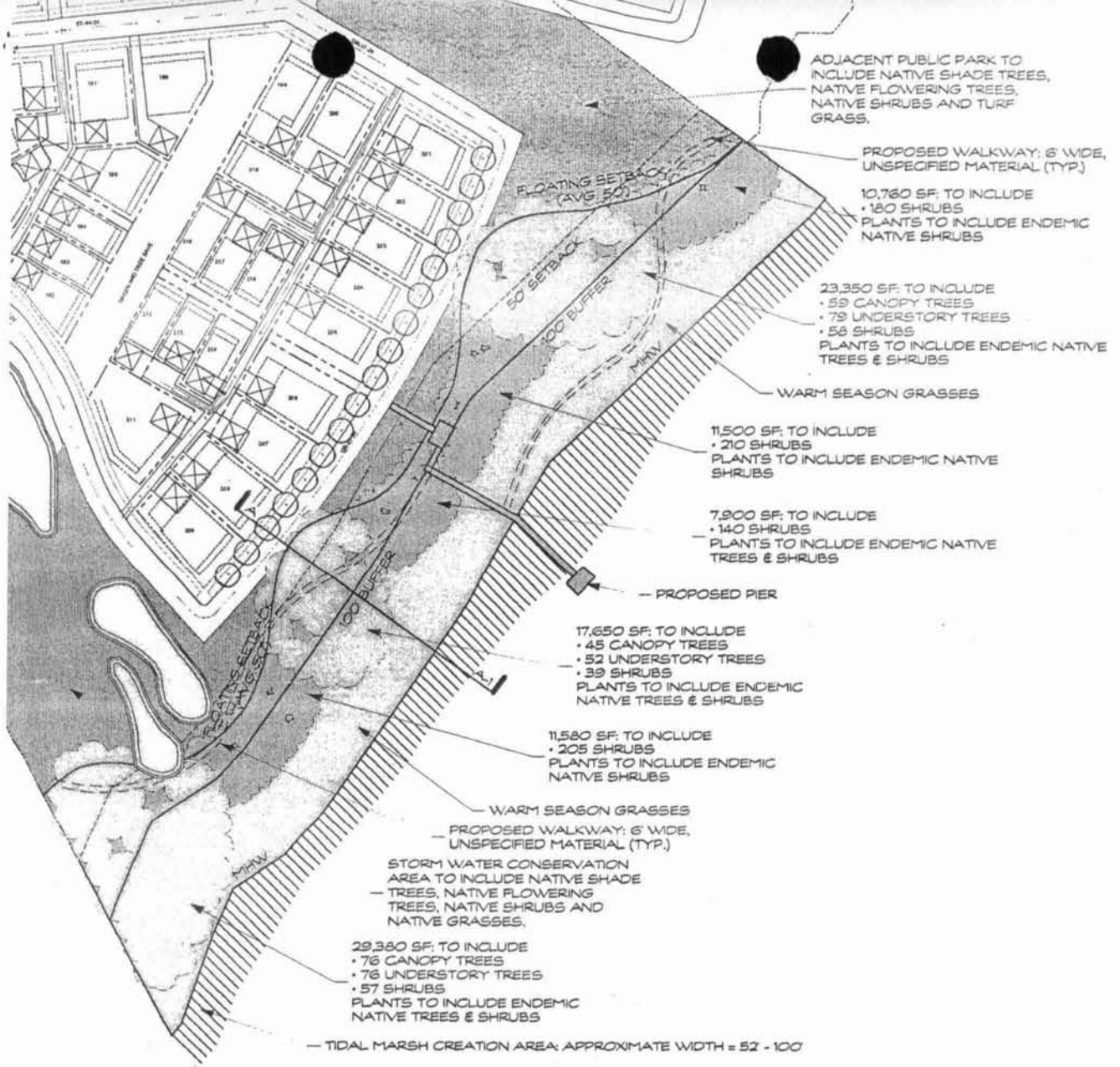
Pursuant to the Court of Special Appeals' May 3, 2005 Order, the Commission intends immediately to seek a stay from the Court of Special Appeals of the effective date of this Decision approving the program amendment. This Decision is therefore stayed, and shall not become effective until such time as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

Dated: May 4, 2005

By: Martin G Madden

Martin G. Madden, Chairman

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



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

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

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

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

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

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

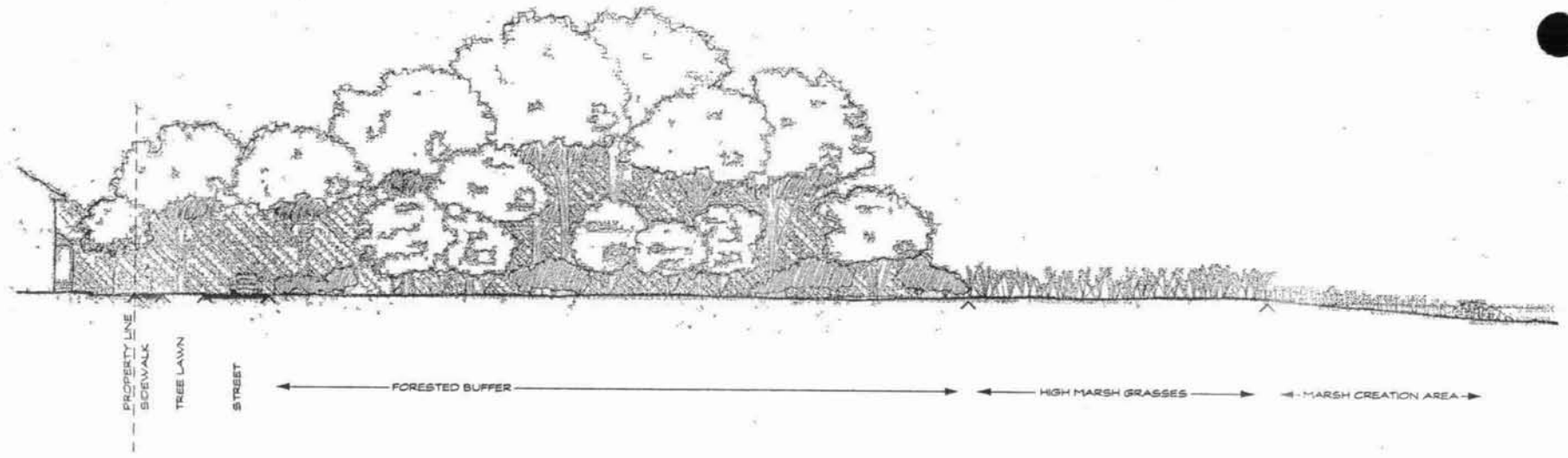
MILES POINT

CONCEPTUAL SHORELINE BUFFER PLAN

SCALE: 1" = 100'

02 SEPTEMBER 2005
GRAHAM LANDSCAPE ARCHITECTURE

EXHIBIT C



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

EXHIBIT
D

Miles Point: Buffer
Management Plant List
15-Aug-05

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

Viburnum nudium	Possum-Haw viburnum	6'	sun to light shade	wet to mod dry		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.
Marsh Grasses						
Hibiscus moscheutos	Common Rose Mallow	6'	Sun	wet		Attracts butterflies
Juncus roemerianus	Black Rush	5'	Sun to partial shade	wet to moist		
Myrica cerifera	Wax Myrtle					
Myrica pensymvania						
Rosa rugosa	Rugosa Rose	3'-8'				
Scirpus robustus						
Solidago sempervirens						
Spartina 'alterniflora'						
Spartina 'patens'						
Grasses						
Andropogon glomeratus	Bushy Bluestem					
Andropogon virginicus						Provides wildlife food and cover.
Bontelona curtipendula	Side Oats Grama					
Carex species						Provides wildlife food and cover.
Decanthelium clandestinum	Deer tounge					
Deschampsia cespitosa						Provides wildlife food and cover.
Elymus canadensis	Canada Wild Rye					
Panicum virgatum						Provides food for many sparrow species
Schizachyrium scoparium						Provides food for many sparrow species
Tridens flavus	Purple Top					
Forb Seeds for Grass Mix						
Aster novae-angliae	New England Aster					
Bidens cernua	Nodding Bur Marigold					
Eupatorium maculatum	Spootted Joe-Pye Weed					
Solidago graminifolia	Grass-leaved Goldenrod					
Mimulus ringens	Square-stem Monkey Flower					
Monarda fistulosa	Wild Bergamot					
Polygonum pensylvanicum	Pennsylvanica Smartweed					
Senecio aureus	Golden Ragwort					
Verbena hastata	Blue Vervain					
Veronia novaboracensis	New York Ironweed					

Talbot Council suggests St. Michaels deny request

By CHRIS WILLIAMS
Staff Writer

EASTON — The Talbot County Council unanimously recommended Friday that the St. Michaels Town Commission deny the growth allocation request for the Miles Point development.

"I regard growth allocation as sort of a precious commodity to be used when it's most appropriate and will achieve a significant public benefit," said Councilman Philip Carey Foster. "I don't think this is the place to use it. I think the problems that would be generated by adding that degree of population to that location greatly outweigh any benefits that may come out of the project."

The St. Michaels Town Commissioners are expected to hold a public hearing Tuesday on the growth application from the Midland Companies to build 312 homes on the 89-acre Miles Point property. The St. Michaels Planning Commission has been considering the application since September and held numerous public hearings before giving a favorable recommendation on the proposal last Thursday.

Michaels Town Manager Darril Thomas said the commissioners were notified about the Friday afternoon county council work session at 4 p.m. Thursday.

Town Commission President Robert Snyder immediately sent a letter to the council requesting to postpone the meeting.

The town "is in the midst of [illegible]th allocation hearings and [illegible] a decision has not been reached in that matter, we are [illegible]ree to attend the workshop [illegible]make comments," Snyder [illegible]. "We ask that the council, [illegible]fore, not take a stand with[illegible]ll the information and we [illegible]that you will consider our [illegible]ns, and the reasons for [illegible] to be worth your consider[illegible]in these matters."

[illegible]ichaels Town Commission [illegible]President Phil Dinkel ap[illegible]d at the Friday afternoon [illegible]n to restate the town's po[illegible]that it would not be appro[illegible]for the commissioners to [illegible]s the Midland proposal [illegible]he application is still be[illegible]nsidered. Councilwoman Hope Harrington also questioned the appropriateness of issuing an opinion before the town commission has made a decision.

> "I'm not convinced that the present plan ... is the wisest use of that growth allocation. You only have it once, it's gone forever after that. I would just ask the commissioners to consider long and hard how they decide to use it and is it in the best interest of the town?"
>
> Councilwoman Hilary Spence

Foster, who made the motion to issue the opinion opposing the Miles Point proposal, said it would not make any sense to wait until after the town commission's decision to wait.

"It wouldn't be any good, obviously, to give them advice after they've already done whatever they decide to do," Foster said.

The county council replied to Snyder with a similar response in writing Friday, saying that the council members had been polled and the consensus was to proceed with the workshop as scheduled.

All five county council members expressed concerns over the scale of the proposed Miles Point project and its potential impact on the environment, traffic and a struggling wastewater treatment plant.

Recognizing that the ultimate authority on growth allocation rests with the town commissioners, Councilwoman Hilary Spence said she agreed with Foster.

"I'm not convinced that the present plan ... is the wisest use of that growth allocation. You only have it once, it's gone forever after that. I would just ask the commissioners to consider long and hard how they decide to use it and is it in the best interest of the town?"

The county council also unanimously voted to send a letter to the St. Michaels Town Commission discussing the recent annexation of the former Hunteman property, a 17-acre piece of waterfront land that is a key component of the Miles Point development. The letter references a June 20 letter from the town commission to the council that said the commissioners had no reason to believe that the council would not relinquish control of the zoning on the Hunteman property if it was annexed.

"There was no reason for the town to assume, then," the council wrote, "what the county council would do if the question were presented, and there is no reason to assume now what the council will decide when it is appropriate to do so."

The Talbot County Planning Commission recently recommended that the county council retain control of the zoning on the Hunteman property for five years, which it may do under Maryland state law. While the move would not prevent the Miles Point development from occurring, it could delay any building on the Hunteman property, which represents 17 acres of the 89-acre project, but comprises the majority of the waterfront land.

Holding up the zoning also would delay any potential shoreline improvements on that part of the property, St. Michaels planning commissioners said Thursday.

Following the workshop, St. Michaels resident Jim Frankos of West Chestnut Street criticized the county council for issuing an opinion without having all the facts.

"It's just a shame that they haven't been able to attend any of the open forums in St. Michaels," said Frankos, who attends most town meetings. "Because all of these issues have been addressed."

The St. Michaels Town Commission is expected to begin the public hearing on the Miles Point growth allocation request at its regular town meeting at 7:30 p.m. in the Chesapeake Bay Maritime Museum's Steamboat Building.

Talbot County Planning Administrc meeting on Friday concerning the growth for the citizens of St. Micha

Growth

ness is minimum versus maximum," Smith said. "You don't get growth allocation unless you've shown that that proposal to be the best example, a superior example of protecting the envrionmental trust."

One example of the proposal's minimum efforts, Smith said, was the use of a 100-foot buffer instead of a 300-foot buffer, which the Critical Area's growth allocation criteria suggests.

Megahan and Knepper, however, pointed to the shoreline management plan that would be put in place to reduce erosion as well as the stormwater management system throughout the development as examples of overall improvements to the environment.

"There was no habitat identified on this property," Megahan said, "but new habitat is likely to be created. Stormwater management would exist where none

Statue

Douglass memorial there was a good opportunity to craft an official written policy concerning public properties and memorial monuments.

The Frederick Douglass Project stems from a discussion in winter 2002 by staffers, volunteers and board members at the Historical Society of Talbot County of the idea of creating a monument to Douglass in Talbot. In August 2002, a public

RECYCLED

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

RECEIVED
MAR 24 2004
CRITICAL AREA COMMISSION

Members Present	Staff Present
Richard Hutchison, Chairman	George Kinney, Planning Officer
John Sewell, Vice Chairman	Mary Kay Verdery, Assistant Planning Officer
William C. Boicourt	Debbie Moore, Recording Secretary
Linda Makosky	
Robert Zuehkle	

Zoning Text Amendment – Bill 933
A Bill to review and reallocate the number of reserved acres of growth allocation allocated among the Towns for rezoning in compliance with the requirements of Chapter 190, Talbot County Code, "Zoning" § 190-109 D. (11)

Mr. George Kinney presented the staff report.

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

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

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

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

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

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

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

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

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

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

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

- Steve Florkewicz, East Morango Street, St. Michaels

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

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

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

- Barry Gillman, St. Michaels Town Commissioner

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

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

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

- Michael Hickson

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

- Mr. Robert Amdur, Bozman

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Sewell seconded.

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

Motion passed 3-1

RECYCLED

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

December 16, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:

PHILIP FOSTER, President
HOPE HARRINGTON
PETER CARROLL
HILARY SPENCE
THOMAS DUNCAN

Reported by
David C. Corbin

this bill is not to take away growth allocation from the towns, it does not mean that St. Michaels or Oxford or Easton for that matter will never any longer be able to award growth allocation. It's solely for the purpose of ensuring the County will be a participant in future awards of growth allocations in those communities. In other words, it would put Oxford and St. Michaels on the same footing as Easton is at this point with regard to the need to collaborate with the County when awarding growth allocation. The passage of this bill would not mean by any means that, for example, the midlands project in St. Michaels would not go forward. It does not mean that. What it would mean is that the County would have some ability to participate in negotiations that it should have been included in but has not been included in. That current project proposes to include the construction of 320 dwelling units, a 30 room inn, and 15,000 acres of commercial

space on a piece of property outside of St. Michaels, and proposes to have approximately three or four entrances on to a County road with only one entrance on to Route 33. The County has not been consulted in any fashion with regard to necessary improvements on that County road. More importantly, as some of the members of the Council have alluded to earlier in discussions this afternoon, this project would add a huge amount of volume to the waste water system. The County should be involved in discussions about a result of that magnitude. At the present time the Town of St. Michaels, as I understand it, is engaged in the negotiation of a so-called developers rights and responsibilities agreement with the developer that will set forth the parameters for not just the development but for what contributions the developer will make to the public good. Once again, because of the counties -- because of the impact on the

County, the development of this size, the County should be involved in this project. Now, I just for the record want to note something, I want to read something into the record on the general subject of whether the reallocation of growth allocation is contemplated by existing law. And what this is is a passage from a staff report prepared for the Miles Point project in February 2000, prepared by Mr. Tony Redman of the firm Redman and Johnston on behalf of the Town of St. Michaels. And there's a discussion in this report about what some of the alternatives might be for future use of growth allocation in that area. And Mr. Redman, and I want to make sure the record reflects, Mr. Redman, as many of you know, was very closely involved in the actual drafting of the critical area law. Mr. Redman states, "indeed it is possible that Talbot County could reduce or could take away entirely the amount of growth allocation that

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

(Reporter changed paper.)

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

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

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

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

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

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

came out. So I heartily support the 933.

MR. FOSTER: Thank you. Mr. Thompson.

DAVID THOMPSON: Thank you, Mr. President. I am here today on behalf of the commissioners of Oxford. You heard briefly from Kathy Ratcliffe, and Paul Martin is here with her. I had the opportunity --

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. FOSTER: Thank you, Mr. Goetze.

ARNOLD SMITH: This is the first time around.

MR. FOSTER: Yes.

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

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

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

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

ARNOLD SMITH: I'm for your 933.

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

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

MR. HIXON: I would say let's find a better way. Let's look at the growth allocation that we have. If the concern is the town or towns would tie up the growth allocation so that the County could never reach the threshold to get into the second tier, let's talk about that. Let's see what each town has to have and what each town can give up. Let's see about putting it into a pool that can be drawn upon. If getting down to the threshold to get to the second tier is the issue, I'm sure --

MR. FOSTER: I don't think that is the issue. I think the question is whether the County wants to take this back or doesn't want to take it back.

MR. HIXON: That may be. I think that is problematic. And I'm not trying to be -- I'm not trying to be threatening here, I'm trying to be conciliatory. The town would like to find a way where we can work together.

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RECYCLED

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

December 23, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:

PHILIP FOSTER, President
HOPE HARRINGTON
PETER CARROLL
HILARY SPENCE
THOMAS DUNCAN

Reported by
David C. Corbin

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

PUBLIC HEARINGS

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

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by: David M. Schafer, AA, CCR

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

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.

RECYCLED

11 North Washington St.
Easton, MD 21601
(410) 770-8058
e-mail: khaddaway@talbgov.org
fax: (410) 822-8694
web: www.talbgov.org/econdev/econserv.html

OFFICE OF PLANNING & ZONING
Appointed by County Council:
George G. Kinney, *Planning Officer*
Courthouse
11 North Washington St.
Easton, MD 21601
(410) 770-8030
e-mail: gkinney@talbgov.org
web: www.talbgov.org/pz/pz.html

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

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

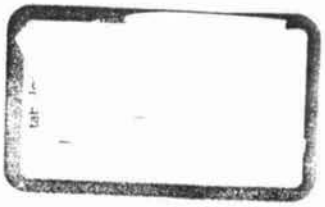
ZONING ADMINISTRATION
Mary Kay Verdery, *Assistant Planning Officer* (410) 770-8030
e-mail: mverdery@talbgov.org

DEPARTMENT OF PUBLIC WORKS
Appointed by County Council:
Raymond P. Clarke, *County Engineer*
Talbot County Operations Center
605 Port St.
Easton, MD 21601
(410) 770-8170
e-mail: rclarke@talbgov.org
fax: (410) 770-8176
web: www.talbgov.org/pw/publicworks.html

RECYCLING DIVISION
Derrick Brummell, *Coordinator* (410) 770-8168
e-mail: dbrummel@talbgov.org

SANITATION DIVISION
Raymond P. Clarke, *County Engineer* (410) 770-8170
e-mail: rclarke@talbgov.org

ROADS DEPARTMENT
Appointed by County Council
Richard Ball, Jr., *Superintendant* (410) 770-8150
e-mail: rball@talbgov.org
web: www.talbgov.org/pw/publicroad.html



EXCERPT

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Thursday, April 1, 2004

Time: 7:00 p.m.

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

Reported by. David M. Schafer, AA, CCR

MEMBERS OF THE PANEL:

Gary Setzer, Chair

Judith Evans

Joseph Jackson

Dave Blazer

Edwin Richards

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

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

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

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

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

About that time the Town ran out of steam, the Town ran out of determination.

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

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

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

I think all the authorities are in agreement that that is perfectly in accord with the COMAR regulations. I don't think there is any real dispute on that point, though there are arguments to be made about it.

So we are in a situation now where the

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

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

Section 1: RECITALS

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

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

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

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

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

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

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

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

Recorded
Liber 1225/folio 405

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

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

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

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

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Public Facilities

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

Section 13. Administration of Performance

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

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

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

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

13.4 Good Faith Compliance Review

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

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

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

Section 14: Default and Remedies.

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

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

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

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

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

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

Section 15: Mortgagee Protection; Certain Rights of Cure.

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

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

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

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

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

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

Section 16: Estoppel Certificates.

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

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

Section 17: Conflicts of Laws, Rules, Regulations

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

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

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

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

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

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

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

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

Section 18: Miscellaneous Provisions

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

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

18.3 Invalidity, Unenforceability, Severability, And Savings Clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

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

ST. MICHAELS POINT, L.L.C.

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

MILES POINT PROPERTY, LLC

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

TND DEVELOPMENT, INC.

D. C. Colley

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

TOWN:
THE COMMISSIONERS OF ST. MICHAELS

By: St. Michaels Planning Commission

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

_____
Cheril S. Thomas, Town Manager

D. C. Colley

APPROVED AS TO FORM:

By: _____
H. Michael Hickson
Town Attorney

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

Exhibit 10

MILES POINT
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT
EXHIBIT 10
SCHEDULE OF CONSIDERATION TO THE TOWN

	Description	Item Fees	Item Total	PERRY CABIN 279 units[1]	HUNTEMAN 41 units[1]	MILES POINT TOTAL 320 units[1]
A.	**INFRASTRUCTURE COSTS, FEES, CHARGES, AND DUTIES,** imposed or to be imposed by Town law, or assumed by the Public Infrastructure Agreement, or by utility tariff of rates & charges, in effect at the time such infrastructure is installed or services are sought:					
1.	The developer shall at its cost install or arrange for installation of all infrastructure relating to the Project on the Subject Property:					
a	Developer shall construct and install all infrastructure at its sole cost.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
b	The following infrastructure relating to the Project on the Subject Property shall be owned, maintained and/or operated by the Developer and/or the HOA in perpetuity: passages[2], lanes[2] and alleys[2], brick sidewalks, street lights, grass strips and trees along streets, stormwater management facilities, all open spaces not owned by the Town, and all other			Amount unknown at this	Amount unknown at this	Amount unknown at this

2	Description	Item Fees	Item Total		PERRY CABIN 279 units		HUNTEMAN 41 units		MILES POINT TOTAL 320 units
	Developer and/or HOA-owned facilities.				time		time		time
2.	Public Utilities Infrastructure:(Water and any other Town-owned facilities, shall be installed at the cost of the Developer, and after being accepted by the Town shall thereafter be maintained by the utilities to the property line of the individual lot owners):[3]								
a.	Water:								
(1)	Developer shall pay the full actual cost of construction and installation to Town standards of the water system, including the required fire hydrants, serving the Subject Property from point of adequate capacity.				Amount unknown at this time		Amount unknown at this time		Amount unknown at this time
(2)	Homeowner shall pay to Town any connection and related fees relating to Homeowner's property at normal rates in general effect at time fees incurred.				Amount unknown at this time		Amount unknown at this time		Amount unknown at this time
b.	Electric: The Town is the owner of the electric distribution system (the "System") that serves the Subject Property. The System is currently								

LIBER 1225 FOLIO 56

3	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	leased to Delmarva Power & Light Company through October 15, 2006.					
(1)	Developer shall cause electric distribution system to be installed on the Subject Property at rates and costs in accordance with the applicable tariff approved by the P.S.C. and in effect at the time.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
(2)	Homeowner shall pay to electric utility operator all connection and related fees relating to Homeowner's property at normal rates in general effect at time fees incurred.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
c.	CATV.					
(1)	Developer shall pay or otherwise cause construction and installation of the CATV system serving the Subject Property in accordance with requirements of CATV system operator.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
3.	Utility-owned infrastructure (e.g., sewer, telephone, & CATV) shall be the			As required by utility service	As required by utility service	As required by utility service

Liber 1225 Folio 569

4	Description	Item Fees	Item Total		PERRY CABIN 279 units		HUNTEMAN 41 units		MILES POINT TOTAL 320 units
	responsibility of the Developer and utility supplier as they may agree or as determined by applicable tariffs.				supplier		supplier		supplier
4.	Open Spaces (except for the Waterfront Park) and all improvements thereto, including, structures, electricity, water, walkways, bicycle paths, trees, shrubbery and other vegetation – at the sole cost of the Developer and/or HOA to include cost of construction and maintenance in perpetuity.				Amount unknown at this time		Amount unknown at this time		Amount unknown at this time
5.	Town Involvement In Infrastructure Installation – actual Town costs relating to items A.1, A.2.a.(1), A.2.b.(1), and A.2.c.(1) above, shall be paid directly by Developer, or reimbursed by Developer to Town, as work on infrastructure progresses:[4]								
a.	Town engineering costs – to be reimbursed by Developer as billed				Actual Cost Unknown		Actual Cost Unknown		Actual Cost Unknown
b.	Town inspection costs – to be reimbursed by Developer as billed				Actual Cost Unknown		Actual Cost Unknown		Actual Cost Unknown
c.	Related Town attorneys fees – to be reimbursed by Developer as billed				Actual Cost Unknown		Actual Cost Unknown		Actual Cost Unknown
d.	Town Consultant costs, if any – to be reimbursed by Developer as billed				Actual Cost Unknown		Actual Cost Unknown		Actual Cost Unknown

LIBER 1225 FOLIO 56

5	Description	Item Fees	Item Total		PERRY CABIN 279 units		HUNTEMAN 41 units		MILES POINT TOTAL 320 units
A	**TOTAL INFRASTRUCTURE COSTS, FEES, CHARGES, AND DUTIES**				**AT NO COST To The Town**		**AT NO COST To The Town**		**AT NO COST To The Town**
B	**MISCELLANEOUS ONE-TIME CASH PAYMENTS** FROM DEVELOPER TO THE TOWN:								
1	PAYMENT FOR WITHDRAWAL OF PERRY CABIN, PHASE III, APPLICATION FOR AWARD OF GROWTH ALLOCATION. Payment is due upon the withdrawal of the Perry Cabin, Phase III, application for award of growth allocation, which shall occur no later than the occurrence of the following: (1) final, non-appealable, award of growth allocation for Miles Point III; and (2) upon obtaining Sewer Approval, as defined by the Development Rights and Responsibilities Agreement (the "DRRA":								
a	Amount agreed to be paid to the Town by Midland, which may be used for any purpose by the Town as determined by the Town Commissioners.				$175,000		N/A		$175,000
2	TRANSPORTATION PAYMENT, payable								

LIBER 1225 FOLIO 568

6	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	by the Developer to the Town no later than first to occur of issuance of 25th building permit or occupancy permit of the 10th residential unit on the Subject Property: Shall be used by the Town, as determined by the Town Commissioners, to study and/or address transportation issues involving traffic in the Town, including facilitating traffic flow on Route 33, parking facilities, and/or public transportation. Does not exempt owners or occupants of the Subject Property from end-user fees for any public transportation system funded in part by this payment.			$100,000 ± C.P.I. [5]	N/A	$100,000 ± C.P.I. [5]
3.	PAYMENT Toward New Well, Well House & Fence, payable by the Developer to the Town in three equal annual payments of $50,000 each; first payment to be one year after issuance of first building permit for a dwelling or live/work Unit on the Subject Property.			$150,000 ± C.P.I. [5]	N/A	$150,000 ± C.P.I. [5]
B.	**TOTAL MISCELLANEOUS ONE-TIME CASH PAYMENTS**			**$425,000**		**$425,000**

LIBER 1225 FOLIO 569

7	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
C.	**ONE-TIME PROPERTY TRANSFERS** FROM DEVELOPER TO TOWN:					
1.	ASSIGNMENT OF RIGHT OF 1ST REFUSAL TO MEYERHOFF ACREAGE ON WEST SIDE OF ROUTE 33, due from Midland to the Town upon final, non-appealable award of growth allocation relating to the Perry Cabin Land. Assignment of right of 1st refusal terminates in the event that the Town fails to reclassify Hunteman Property consistent with Development Plan after Talbot County loses control over re-classification of the Hunteman Property.			Unknown	N/A	Unknown
2	ACQUISITION FOR OR TRANSFER TO THE TOWN OF SUITABLE PROPERTY FOR A NEW WATER TOWER SITE, ½ acre ± of land in a suitable location acceptable to the Town, due from the Developer to the Town upon issuance of first building permit for a dwelling or live/work Unit.			Unknown	N/A	Unknown
3	ACQUISITION FOR OR TRANSFER TO THE TOWN OF SUITABLE PROPERTY FOR SITE OF NEW WELL AND WELL HOUSE, approximately ¼ acre ± of land in a			$50,000 ± C.P.I. [5]	N/A	$50,000 ± C.P.I. [5]

LIBER 1225 FOLIO 270

8	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	suitable location acceptable to the Town, or cash in lieu thereof [6] (estimate of value), due from the Developer to the Town upon issuance of first building permit for a dwelling or live/work Unit.					
4.	WATERFRONT PARK, consisting of land area located on the Subject Property as shown on the Development Plan, together with improvements thereto consisting of installation of non-structural shoreline stabilization, as described and performed by Environmental Concerns, Inc. (the "Non-Structural Shoreline Stabilization"), inspection and stabilization of existing rip-rap, pavilion, walkways, landscaping and parking, all as represented in public hearings, and all at the expense of, the Developer, to be conveyed by Developer to the Town in fee simple, free and clear of all liens and encumbrances, as follows:					
a	Contributed by the Developer to the Town on or before the first to occur of: (a) issuance of 40th building permit on the Perry Cabin Land; or (b) 18 months after recordation of the final subdivision plat[7] for all or any part of the development after the award of growth allocation on the Perry Cabin Land, that					

LIBER 1225 FOLIO 571

9	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	portion of the Waterfront Park located on the Perry Cabin Land, consisting of approximately 2.8 acres and the represented improvements completed thereon: [8]					
	Market value of waterfront land	2.8 acres	$218,390/ac.	$611,494		$611,494
	Cost of other improvements			96,552		96,552
	Cost of installation of Non-Structural Shoreline Stabilization	$380 per lineal foot	1,050 lineal ft.	$400,000		$40000
	Recreational value of waterfront park to community in perpetuity			Immeasurable		Immeasurable
	Environmental impact of converting eroding shoreline to Non-Structural Shoreline Stabilization in perpetuity			Immeasurable		Immeasurable
b	INSTALLATION OF NON-STRUCTURAL SHORELINE STABILIZATION on the Hunteman Property (the "Hunteman Non-Structural Shoreline Stabilization") due from the Developer simultaneous with the installation of the Non-Structural Shoreline Stabilization on the Perry Cabin					

LIBER 1225 FOLIO 72

10	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	Land, thus advancing the time when the Hunteman Non-Structural Shoreline Stabilization will be installed, and insuring that the Hunteman Non-Structural Shoreline Stabilization will be installed even if the Hunteman Property never becomes a part of the Subject Property under the terms of this Agreement:					
	Cost of installation	$380 per lineal foot	1,050 lineal feet	$400,000		$400,000
	Impact to environment of converting eroding shoreline to Non-Structural Shoreline Stabilization in perpetuity			Immeasurable		Immeasurable
c	Waterfront park, consisting of approximately 5.9 acres and the represented improvements completed thereon, contributed by the Developer to the Town within 12 months after granting of all Development Approvals for the Development Plan on the Hunteman Property and written Sewer Approval for 41 Units for the Hunteman Property that the County will allow to be exercised within 24 months, subject to Town's decision to include Hunteman Property as part of the Subject Property after the					

LIBER 1225 FOLIO 573

11	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	County relinquishes or loses zoning control over the Hunteman Property					
	Market value of waterfront land	5.9 acres	$218,390/ac.		$1,288,506	$1,288,506
	Cost of other improvements				$203,448	$203,448
	Recreational value of waterfront park to community in perpetuity				Immeasurable	Immeasurable
D	MAINTENANCE, REPAIRS AND RECONSTRUCTION of the non-structural stabilization of the shoreline at the waterfront park (the "Shoreline Stabilization") by Environmental Concerns, Inc. or a company of at least equal qualifications an experience in such matters, shall be provided by the Developer to the Town for a period of ten (10) consecutive years immediately following the completion of the installation of such Shoreline Stabilization, as necessary or reasonable to maintain the Shoreline Stabilization in good condition to accomplish the purposes described by the Developer and Environmental Concerns, Inc. in the public hearings for growth allocation. The Town shall maintain Upland areas of the Waterfront Park upon transfer of					

LIBER 1225 FOLIO 74

12	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	ownership to the Town. "Upland" means all areas of the Waterfront Park above the elevation of the land disturbed or planted to prepare for or install the Shoreline Stabilization.			Value Unknown	Value Unknown	Value Unknown
5.	CONTINUOUS PUBLIC ACCESS AND USE OF ALL OTHER PARKS AND OPEN SPACES located on the Subject Property other than the waterfront park, including squares, parks, walking paths, bicycle paths, to be titled and maintained in perpetuity in the name of the Developer and/or the Homeowners Association ("HOA") at the expense of the Developer and/or the HOA:			n		
a.	Easement or other document satisfactory to the Town, granting the perpetual right to the public to use and enjoy said parks and open spaces, due to be granted to the Town by the Developer as and when such parks and open spaces are opened for use by the residents of the Perry Cabin Land.			Value Unknown	Value Unknown	Value Unknown
b.	Easement or other document satisfactory to the Town, granting the perpetual right to the public to use and enjoy said parks and open spaces, due to be granted to the Town by the Developer as and when such parks and open spaces are opened for use			Value Unknown	Value Unknown	Value Unknown

LIBER 1225 FOLIO 75

13	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	by the residents of the Hunteman Property.					
C.	**TOTAL ONE-TIME PROPERTY TRANSFERS & EASEMENTS**			**At least $1,015,517**	**At least $2,034,483**	**At least $3,050,000**
D.	**ONE-TIME PER UNIT PAYMENTS,** payable with regard to each dwelling or live-work unit on the Subject Property ("Unit"):					
1.	INITIAL PER UNIT PAYMENT,[9] payable by the Developer to the Town (separate and apart from the Town building permit fee, as imposed by law) for each, Unit based on the number of Units involved at the time, at the earlier of: (a) transfer to a person or entity who is not a Developer of title to a parcel of land on which a Unit is authorized by the Development Plan; or (b) with the issuance by the Town of the initial building permit for a Unit:					
a.	Dwelling units: Perry Cabin Land	$1,500 ± C.P.I.[5]	271	406,500		406,500
	Hunteman Property	$1,500 ± C.P.I.[5]	41		61,500	61,500

LIBER 1225 FOLIO 76

14	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
b.	Live-work units: Perry Cabin Land	$1,500 ± C.P.I. [5]	8	12,000		12,000
	Hunteman Property	N/A	-0-		N/A	
2.	WATER SYSTEM CAPACITY PAYMENTS, payable (separate and apart from the Town water hook-up charge, as imposed by law) by the Owner at the time of application for each Town water service hook-up (meter) for a Unit on the Subject Property; payments shall be accumulated by the Town and used solely to add water storage capacity to the Town water system; revenue to be put in fund for improvements to the Water System					
a	Capacity payment per hook-up Capacity payment per hook-up	$1,200 ± C.P.I. [5 10 11]	271 units 41 units	325,200	49,200	$374,400
b	Capacity payment per hook-up	$1,200 ± C.P.I. [5 10 11]	8 units	$9,600	N/A	$9,600
3.	OCCUPANCY PAYMENTS, payable to the Town (separate and apart from the Town occupancy permit fee, as imposed by law) by the Owner for each Unit at the time the initial occupancy permit for a Unit is issued by the Town, prorated based on the date on which					

LIBER 1225 FOLIO 77

15	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	the application is submitted to the Town in the fiscal year (July 1 to June 30), which payment shall be deposited into and be a part of the Town's "Collateral Improvements Fund":					
a.	Dwelling units x $1,500 ± C.P.I. (prorated estimated to average 50%)	$1,500 ± C.P.I. [5 12]	271	$203,250	N/A	203,250
b	Dwelling units x $1,500 ± C.P.I. (prorated estimated to average 50%)	$1,500 ± C.P.I. [5 12]	41	N/A	30,750	30,750
c.	Live/work units x $1,500 ± C.P.I. (prorated estimated to average 50%)	$1,500 ± C.P.I [5 12]	8	$6,000	N/A	$6,000
D.	**TOTAL ONE-TIME PER UNIT PAYMENTS**			**963,420**	**141,580**	**$1,105,000**
E.	ANNUAL PER UNIT PAYMENTS, in addition to all governmental fees, charges and taxes imposed by law, payable to the Town by the Owner of each Unit, beginning for each Unit on the July 1 next following date of issuance by the Town of an occupancy permit for that Unit, and annually on each July 1 thereafter for 30 consecutive years, subject to annual adjustment based on the C.P.I.; all of which receipts shall be					

LIBER 1225 FOLIO 78

16	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	deposited into the Town's "Collateral Improvements" fund:					
a	Perry Cabin Land – 279 units, including live/work units @ ($1,000/yr. ± C.P.I.) x for 30 consecutive years	$1,000 ± C.P.I (per dwelling) [5]	$279,000 per year	$8,370,000	N/A	$8,370,000
b	Hunteman Property – 41 units @ ($1,000/yr. ± C.P.I.) x for 30 consecutive years	$1,000 ± C.P.I (per dwelling) [5]	$41,000 per year	N/A	$1,230,000	$1,230,000
E.	**TOTAL ANNUAL PER UNIT PAYMENTS for 30 consecutive years (exclusive of all governmental fees, charges and taxes imposed by law)**			**$8,370,000**	**$1,230,000**	**$9,600,000**

LIBER 1225 FOLIO 579

RECAP

A	**TOTAL INFRASTRUCTURE**			**AT NO COST To The Town**	**AT NO COST To The Town**	**AT NO COST To The Town**
B.	**TOTAL MISCELLANEOUS ONE-TIME CASH PAYMENTS**			**$425,000**		**$425,000**
C.	**TOTAL ONE-TIME PROPERTY TRANSFERS & EASEMENTS**			**At least $1,015,517**	**At least $2,034,483**	**At least $3,050,000**
D.	**TOTAL ONE-TIME PER UNIT PAYMENTS**			**963,420**	**141,580**	**$1,105,000**

17	Description	Item Fees	Item Total		PERRY CABIN 279 units		HUNTEMAN 41 units		MILES POINT TOTAL 320 units
E.	**TOTAL ANNUAL PER UNIT PAYMENTS for for 30 consecutive years (exclusive of all governmental fees, charges and taxes imposed by law)**				**$8,370,000**		**$1,230,000**		$9,600,000
	TOTAL				**$10,773,937**[13]		**$3,406,063**[13]		**$14,180,000**[13]

LIBER 1225 FOLIO 580

[1] If any Unit is ever constructed on the Subject Property, or if the use of any structure on the Subject Property is ever converted to one or more Units, such that there are more Units on the Subject Property than the total number of Units indicated in Section 8.2 of the Development Rights And Responsibilities Agreement (the "Agreement"), then the Owner of each such additional Unit shall, immediately upon such construction or conversion, become liable to the Town, and pay to the Town, on a per Unit basis all of the same fees, charges and payments as are provided on the above Schedule for each of the other Units. The due date for the payments relating to such converted Unit shall be based on the original date of conveyance, construction and occupancy of the structure, rather than based on the conversion date.

[2] The Town shall be the owner of, and maintain, the roads, drives and streets, as identified in the Design Code and shown on the Concept Plan for the Project, upon construction to Town standards, inspection and acceptance by the Town. The Town reserves the right, but not the duty, at its sole discretion, to acquire title to, own, maintain and control the passages, lanes, and alleys, (collectively "Privately Owned Public Ways") as identified in the Design Code and as shown on the Concept Plan for the Project. The owner of Privately Owned Public Ways shall be responsible for the repairs, maintenance and re-building of those Privately Owned Public Ways. All roads, drives, streets, alleys, lanes passages, and public ways of every type (collectively the "Public Ways") shall be open to the public at all times. The Town shall have the sole right to establish speed limits, and enforce all traffic laws on all Public Ways. The Town and all public utilities shall have the right to enter over, under and upon all Privately Owned Public Ways for the purpose of installing, repairing, maintaining and rebuilding wires, conduits, and other transmission, distribution and collection facilities related to furnishing public utility services.

[3] All utility services normally provided by the Town to in-Town properties will be supplied at normal in-Town rates and charges, as they may be amended from time-to-time. The installation of electric facilities are governed by the tariff for the electric distribution provider approved by the Maryland Public Service Commission and in effect at the time of the installation. The CATV provider generally installs the CATV system at its own cost. (utility program for upfront costs)

[5] Amount of payment shall be adjusted to reflect the change in the C.P.I. since the C.P.I. on the base C.P.I. date, which shall be April 2004. The amount of each payment shall be adjusted to reflect the change in C.P.I. between April of 2004 and the C.P.I. as of the date of the last C.P.I. adjustment date, pursuant to this Agreement, before the payment is due to the Town pursuant to this Agreement. The C.P.I. adjustment dates for purposes of this Agreement shall be every other April after April of 2004. The C.P.I. for the purpose of this Agreement shall be the published C.P.I. for the applicable month of April.

[6] The parties acknowledge that a new well will be needed as the result of the Project. Placement of the well depends in part on the configuration of the system. If the Town engineer determines that a site within the development is not the best location for the new well, then the Developer will pay $50,000 to the Town toward a new well site in lieu of donating the land for a new well site. It is estimated that the new well and well house will cost $150,000, exclusive of land.

[7] A material assumption giving rise to this time frame is that recordation of the final subdivision plat for any part of the Development can not occur until written Sewer Approval, as defined by the DRRA.

[8]

The market value of the waterfront park is derived from the following information:	**Perry Cabin**	**Hunteman**	**Total**
Land Value:			
Per SDAT records, Hunteman Property conveyed on 9/4/2001 to Miles Point Property, LLC for the price of			$1,248,500
Per appraisal of Hunteman Property done in 2001			1,800,000
Round value of Hunteman Property at this time, 2 ½ years after purchase by Miles Point Property, LLC			1,900,000
Equate value of entire park, consisting of 8.7 acres and 3,000 lineal feet of shoreline, of which lineal 900 ft. is rip-rapped (apportioned based on acres of park land)	**$611,494**	$1,288,506	**$1,900,000**
Cost of Improvements to waterfront park:			
Non-Structural Shoreline Stabilization: 2,100 lineal ft., of which, approx. 1,050 2,100 lineal ft. will be on each of the two properties (apportioned based on lineal feet of non-structural shoreline stabilization)	400,000	400,000	$800,000
Other improvements – site work, gazebo, walkways and landscaping (apportioned based on acres of park land)	96,552	203,448	300,000
Total Cost Of Improvements	**$496,552**	$603,448	**$1,100,000**
Total Land Value And Total Cost Of Improvements	**$1,108,046**	$1,891,954	$3,000,000

LIBER 1225 FOLIO 581

[9] These payments shall be a part of the Town's general fund and the use of these payments shall be at the sole discretion of the Town Commissioners.

[10] All properties connected to the Town water system will be assessed for arsenic removal based on the number of users connected to the system at the time corrective measures are instituted. As new users come on line the cost of the arsenic correction and other capital improvements per user will decrease, assuming that the cost for the entire system remains constant.

[11] The estimated total cost of a new water tower in current dollars would be approximately least $1,000,000, exclusive of site. This development would use additional water storage capacity that has either been constructed or will need to be constructed, and that would not be used if this development were not built. Therefore, this development should bear the cost of the water storage capacity that will be used as the result of the proposed development.

[12] A one-time payment, prorated from the date the occupancy permit is issued to the beginning date of the period covered by the next annual payment.

[13] The dollar amounts in this column, and this total, are stated in current dollar values. However, most of the dollar amounts that are to be paid to the Town will be paid in an amount that has had the C.P.I. applied to it. Moreover, with regard to the items in this chart that are to be furnished in kind, such as land, or improvements to land, the values and costs are stated in current dollars, whereas the performance would be in the future, at which time inflation may cause the price to be higher. Therefore, most of the values in that chart are stated in current values that will not be effectively reduced by inflation.

MDP
Maryland Department of Planning

obert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Audrey E. Scott
Secretary

Florence E. Burian
Deputy Secretary

TO: Critical Area Commission Panel for Talbot County

FROM: Larry F. Duket,
Maryland Department of Planning

RECEIVED
MAR 24 2004
CRITICAL

SUBJ: Statement of the Maryland Department of Planning
Re: Talbot County Council Bill 933

DATE: March 24, 2004

INTRODUCTION

The Maryland Department of Planning appreciates the opportunity to offer comments on Talbot County's 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 (towns).

The Bill is of significant interest to this Department because it comes at a time when the State is committing its planning functions, regulatory programs, funding, technical assistance, and capital programs in furtherance of directing growth towards county-designated growth areas and incorporated municipalities (county and municipal "smart growth" and "priority funding" areas, if you will). With the Governor's Priority Places initiative, this Department is committed to participating 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 their comprehensive planning, zoning, and capital programs with the new Resource Conservation Area (RCA) rules of the Critical Area law. The RCA category limited development to one dwelling unit per 20 acres. From a land use planning perspective, it is unusual and economically inefficient to have land within municipalities relegated to a one dwelling unit per 20 acre 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 annexation. Municipal governments, in particular, were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

301 West Preston Street · Suite 1101 · Baltimore, Maryland 21201
Telephone: 410.767.4500 · Fax: 410.767.4480 · Toll Free: 1.877.767.6272 · TTY Users: Maryland Relay
Internet: www.MDP.state.md.us

COUNCIL BILL 933

Under CB-933, specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area Program. Consequently, the County will have approval authority over all future growth allocation requests in towns. This would occur through the supplemental growth allocation process that is now part of the County's Program. This process was originally created for narrower purposes by CB-762, "supplemental" growth allocation, and was approved as a refinement by the Commission in 2000. 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 allocations to the towns.

Under CB-933, the County, and a town with an applicant seeking growth allocation, would use a joint hearing process to ostensibly ensure that both municipal and county planning and growth issues are considered. This Department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of CB-933. Our concern is that CB-933, by striking reserved amounts of allocation for each town, places the County as the final decision-maker for all municipal requests for growth allocation.

A county's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That is, we do not believe the rule calls for municipalities to always get what they purport to need. But CB-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 zoning map is relevant under the terms of CB-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 location criteria of the Critical Area law, adheres to the Commission's Growth Allocation Policy, and is consistent with town planning and zoning laws and town Critical Area Programs. It is difficult to understand how that process accommodates the growth allocation needs of the towns.

Under the Regional District Act, certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority of their respective county because these municipalities have never been given the authority to exercise their own zoning powers. That aside, the concept of county control over municipal land use decisions is not contemplated in Maryland planning and zoning law. County and municipal planning and zoning programs are created on equal, separate, and, at times, competitive footings. And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth, and environmental laws. In doing so, 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 zone for growth. Even in the case of municipal annexation of land previously under county jurisdiction, the General Assembly has limited the

County's control over land use decisions on annexed land to a five year period following the date of annexation.

When the Critical Area law was being drafted, much legitimate concern 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. These concerns were answered by the creation of growth allocation (growth increment) in the law. The concerns of municipalities, in particular, were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of the municipalities.

On hindsight, the issue of County control over municipal growth allocation should have been raised in the context of CB-762. Given that CB-762 retained specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of CB-933. Also, there may be approved Programs in other counties with a similar practice; we think these Programs need to be revisited. Perhaps this can be evaluated during the six year review process, and perhaps it needs to be evaluated sooner if municipalities report to you that they are not being accommodated.

Much has changed since the first generation of Critical Area Programs. The Commission and local governments know more and have greater experience with much of the detail and technical nature of the Critical Area law and Criteria. Many new State laws have been enacted since then: the 1992 Planning Act, the Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, and so on. Each of these new laws favors growth directed to county-designated growth areas and incorporated municipalities. These new laws reflect the same spirit as the Critical Area law: growth within municipalities that plan and zone for it, is to be accommodated.

The Maryland Department of Planning offers its assistance to the County, the several towns, and the Critical Area Commission to work to resolve issues to ensure that municipal needs for growth allocation are accommodated. Thank you for the opportunity to offer our views on this important matter.

RECYCLED

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

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(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.

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- 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.

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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.

PAGE 6/7 * RCVD AT 11/9/2005 3:38:09 PM [Eastern Standard Time] * SVR:EASTFAX/0 * DNIS:9998 * CSID:410 819 0227 * DURATION (mm-ss):03-10

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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.

RECYCLED

rt L. Ehrlich, Jr.
Governor

ichael S. Steele
.t. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

May 14, 2004

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

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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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

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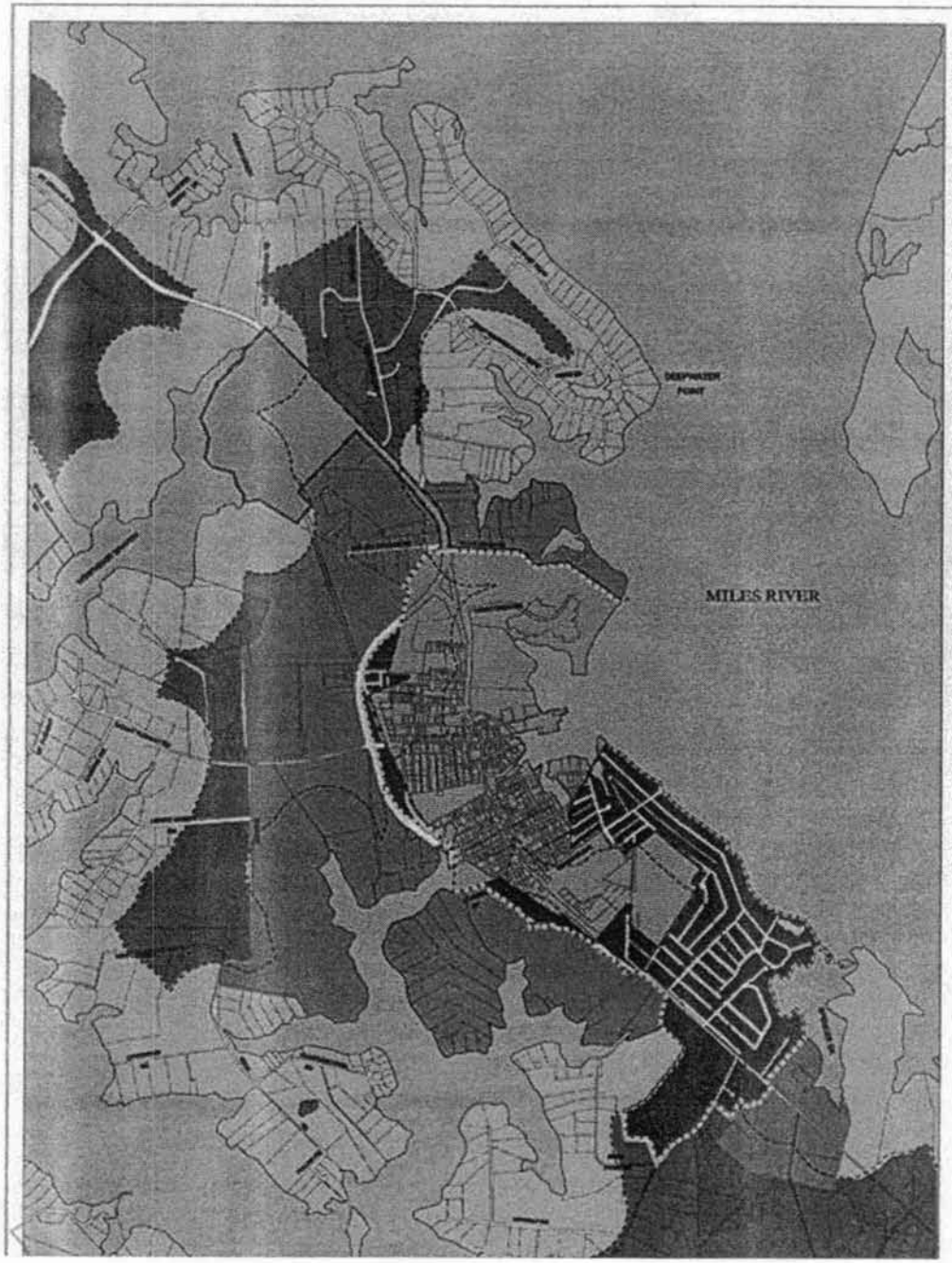

Talbot County Comprehensive Plan

MAP 3-3
St. Michaels Growth Area Plan

LEGEND:

- TOWN OF ST. MICHAELS
- DESIGNATED GROWTH AREA
- CRITICAL AREA
- COUNTRYSIDE PRESERVATION AREA
- WESTERN RURAL CONSERVATION AREA

PRIORITY FUNDING AREA BOUNDARY

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 Mohns
Secretary

000533

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

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

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

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

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

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

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

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

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

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

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

BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days following its enactment.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 762 having been published, a public hearing was held on Tues. April 18, 2000

BY THE COUNCIL

Read the third time.

ENACTED April 25, 2000 *
AS AMENDED

By Order Jessica Morris
Secretary

Spence - aye
Dyott - aye
Foster - aye
Higgins - aye
Harrison - aye

000535

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THE COMMISSIONERS OF ST. MICHAELS

SETTLED 1670 - 80

INCORPORATED 1804

FACSIMILE TRANSMITTAL SHEET

TO: Andy Hollis

FROM: Cheril Thomas

COPY

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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LAW OFFICES OF
BANKS, NASON & HICKSON
PROFESSIONAL ASSOCIATION
118 BAPTIST STREET
P.O. BOX 44
SALISBURY, MARYLAND 21803-0044
e-mail: bnhlaw@shore.intercom.net

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

NIC B. RUYSHINOFF

TELEPHONE
(410) 548-4644
FAX
(410) 548-5560

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

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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

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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 areas 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

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COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

COPY

March 28, 2000

* * *

Pursuant to notice, the above-captioned meeting was held on Tuesday, March 28, 2000, commencing at 1:30 p.m. in the Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

COUNCIL MEMBERS:

HILARY B. SPENCE, President
WAYNE DYOTT, Vice President
PHILIP CAREY FOSTER
LEVIN F. HARRISON, IV
ROBERT D. HIGGINS

ALSO PRESENT:

R. ANDREW HOLLIS, County Manager
MICHAEL L. PULLEN, ESQUIRE, County Attorney

REPORTED BY:
KATHRYN M. BENHOFF, CSR

000640

MS. WELTY: Right.

MR. HIGGINS: The County Council at that time said no, we are not going to blanket give 400 acres without commitment for a specific project, so now, it is going to be reviewed specific project by specific project jointly between, first step will be each Planning Commission, the Town Planning Commission and the County Planning Commission. Each separate group, being the County Council and the Town Council, will receive a recommendation up from each of their respective Planning Commissions, and that this process -- but what it's going to be is it's going to be a specific, site specific project by project issue as opposed to blanket saying we think that you need 400 acres for the next eight years, see you later, alligator.

Now, in my opinion, it does not affect St. Michaels and Oxford at this time --

MS. SPENCE: Right.

MR. HIGGINS: -- because they have not gone through their initial allocation, which is around 200 acres for each of those municipalities, so they will fall into this same procedure if at any future point in time they've

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gone through theirs.

MR. FOSTER: Well, would they necessarily have to exhaust it, or might they still not choose to apply for this, perhaps reserving some of it for some future project and deciding that that's all they would have left, and a new one comes along, that wouldn't they still be able to make the application?

MR. COWEE: It's my understanding that until that acreage is used up, they would not be under this process.

MS. SPENCE: Right, until it's used up.

MR. FOSTER: They could not? Is that your understanding, Mr. Pullen?

MR. PULLEN: I think that, I think that is, in fact, in the existing ordinance --

MR. FOSTER: Okay.

MR. PULLEN: -- in one of the two sections that we referred to earlier.

MR. FOSTER: Okay.

MR. HIGGINS: But does that clear it up to Mrs. Welty where the question was?

MS. WELTY: Well, if the Town of Easton applies