Legal Advice & Policy - Vol II Talbot County Case No 01509 6/21/06 - 12/19/06 MSA_S_1831-9

TALBOT COUNTY	*	IN THE
	*	COURT OF
	*	SPECIAL APPEALS
	*	No.: 01509
CRITICAL AREA COMMISSION, et al.		September Term
	*	

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

Pleadings Index Volume II

8.	June 21, 2006	Town of Oxford's Motion to Dismiss Appeal
9.	June 30, 2006	Response of Talbot County to Motion to Dismiss Appeal
10.	July 7, 2006	Order of Court of Special Appeals
11.	August 3, 2006	Memorandum of Circuit Court
12.	August 14, 2006	Supplemental Memorandum of Circuit Court
13.	August 14, 2006	Judgment of Circuit Court
14.	August 15, 2006	Court of Special Appeals Judgment
15.	September 5, 2006	Notice of Appeal
16.	September 6, 2006	Civil Appeal Information Report
17.	September 11, 2006	Town of Oxford's Notice of Cross Appeal
18.	September 14, 2006	Civil Appeal Information Report
19.	October 10, 2006	Judge Eyler's Order
20.	November 29, 2006	Case History and Index to Record
21.	December 8, 2006	Information From Clerk of the Court
22.	December 19, 2006	Stipulation for Extension of Time

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

Talbot County, Maryland	:	
Appellant	:	No. 01509
v.	:	September Term, 2006
Town of Oxford, Maryland, *et al.*	:	
Appellees	:	

STIPULATION FOR EXTENSION OF TIME

The parties, by and through their respective counsel, hereby stipulate in accordance with the provisions of Maryland Rule 8-502(b) that Appellant Talbot County's brief will be filed on or before February 2, 2006. Unless a future stipulation is filed, the remainder of the Court's briefing order remains in effect.

IT IS SO STIPULATED.

Victoria Shearer

Victoria M. Shearer, Esquire
Karpinski, Colaresi & Karp
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202
410-727-5000
Attorneys for Talbot County, Maryland

Marianne Mason Dise/vs

Marianne D. (Mason) Dise, Esquire
Joseph Gill, Esquire
Joe Cucuzella, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Critical Areas Commission

Richard DeTar /vs

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

Michael Hickson /v.

H. Michael Hickson, Esquire
Banks, Nason & Hicks, P.A.
113 South Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for St. Michaels

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December 2006, a copy of the foregoing was sent by first class mail, postage prepaid, to:

H. Michael Hickson, Esquire
Banks, Nason & Hicks, P.A.
113 South Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for St. Michaels

Marianne D. Dise, Esquire
Joseph Gill, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Critical Areas Commission

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

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

Richard A. DeTar, Esquire
Demetrios Kaouris, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601
Attorneys for Midlands

Victoria Greave

Of Counsel for Talbot County, Maryland

RECEIVED
DEC 13 2006
DNR - LEGAL DIVISION

Court of Special Appeals

Robert C. Murphy Courts of Appeal Building
Annapolis, Md. 21401-1699

LESLIE D. GRADET
CLERK

(410) 260-1450
WASHINGTON AREA 1-888-200-7444

ROBERT J. GREENLEAF
CHIEF DEPUTY

No. 01509, September Term, 2006
CROSS APPEAL FILED

Talbot County, Maryland
vs.
Town of Oxford, Maryland et al.

IMPORTANT
This is how the case must be titled on all briefs.

The Record in the captioned appeal was received and docketed on 12/01/2006.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before 01/10/2007. (Rule 8-502(a)(1)).

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant's brief (Rule 8-502(a)(2)).

This appeal has been set for argument before this Court one of the following days:
May 01, 02, 03, 04, 07, 08, 09, 10, 2007.

IF, DUE TO A CURRENTLY SCHEDULED COURT APPEARANCE OR OTHER EXTRAORDINARY CAUSE, YOU WILL BE UNABLE TO APPEAR ON ONE OR MORE OF THESE DATES, YOU MUST INFORM THE CLERK WITHIN TEN DAYS AFTER THE DATE OF THIS NOTICE. OTHERWISE, THE DATE SELECTED FOR ARGUMENT WILL NOT BE CHANGED.

Stipulations for extensions of time within which to file briefs will only be accepted if the appellee's brief will be filed at least 30 days, and any reply brief, at least 10 days, before the scheduled argument or submission on brief (Rule 8-502(b)).

NOTICE: Law firm name and address must be printed on brief and record extract.

December 08, 2006

Maryland Relay Service
1-800-735-2258
TT/VOICE

No. 01509, September Term, 2006

Attorneys for Appellant:

DANIEL KARP, ESQUIRE
MICHAEL PULLEN, ESQUIRE
VICTORIA SHEARER, ESQUIRE

Attorneys for Appellee:

J. JOSEPH CURRAN JR., ESQUIRE
BRYNJA M. BOOTH, ESQUIRE
PAUL J. CUCUZZELLA, ESQUIRE
RICHARD DE TAR, ESQUIRE
JOSEPH GILL, ESQUIRE
JESSE HAMMOCK, ESQUIRE
MICHAEL HICKSON, ESQUIRE
DEMETRIOS G. KAOURIS, ESQUIRE
MARIANNE D. MASON, ESQUIRE
DAVID THOMPSON, ESQUIRE

LESLIE D. GRADET

Leslie D. Gradet

CLERK OF THE COURT
OF SPECIAL APPEALS

December 08, 2006

CROSS-APPEAL

Deadlines in this appeal (and cross-appeal) for the filing of briefs and record extracts shall be in accordance with Maryland Rule 8-502(a).

What is Due	When
Appellant's Brief and Record Extract	Date shown on front page
Appellee/Cross-Appellant's Brief	30 days after date Appellants Brief and Record Extract are filed
Appellant's Reply/Cross-Appellee's Brief	30 days after date Appellee/ Cross-Appellant's brief is filed
Cross-Appellant's Reply Brief	20 days after date Appellant's Reply/Cross-Appellee's brief is filed

ADMINISTRATIVE ORDER

Pursuant to Maryland Rule 8-502 (c), I hereby direct that in an appeal to the Court of Special Appeals, 10 copies of each record extract shall be filed, unless otherwise ordered by the court. Two copies of each record extract shall be served on each party pursuant to Maryland Rule 1-321.

Chief Judge's signature appears on
original Administrative Order

Dated: November 1, 2006

NOTICE
RULE CHANGE
RECORD EXTRACTS

Effective July 1, 2005

Maryland Rule 8-502 (c) now provides that "In an appeal to the Court of Special Appeals, 15 copies of each brief and **seven copies of each record extract** shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321."

Be prepared to file additional copies at a later date if the court directs.

COMMERCIAL AND COMPUTER FONTS
APPROVED BY THE COURT OF SPECIAL APPEALS OF MARYLAND
UNDER MARYLAND RULE 8-112 (AS AMENDED JULY 1, 1997)

The following fonts are approved by the Court of Appeals for use in briefs, petitions for writ of certiorari, and other papers prepared by commercial printers or computer printers. This list is provided for your guidance - these fonts are suggested, not mandatory. Be sure to read Maryland Rules 8-112 and 8-504(a)(8) carefully for requirements as to type size, spacing, margins, and the statement in the brief as to the typeface used.

Antique Olive

Arial

Arial Rounded

Book Antiqua

Bookman Old Style

Britannic

Century Gothic

Century Schoolbook

CG Times

Courier

Courier New

Footlilght MT Light

Letter Gothic

MS Line Draw

Times New Roman

Universal

Date: July 23, 1997

NOTICE TO ALL COUNSEL

Your Name and Address and your law firm's name, must be printed on your brief and record extract.

CIRCUIT COURT FOR TALBOT COUNTY
Mary Ann Shortall
Clerk of the Circuit Court
11 N. Washington Street
Suite 16
Easton, MD 21601-
(410)-822-2611, TTY for Deaf: (410)-819-0909
MD Toll Free (1-800)339-3403 Fax (410)820-8168 Assignment Ofc (410)770-6809

11/29/06

Case Number: 20-C-04-005095 DJ
Date Filed: 06/11/2004
Status: Reopened/Active
Judge Assigned: Horne, William S.
Location :
CTS Start : 06/11/04 Target : 12/08/05

Talbot County Maryland vs Dept Natural Resources Critical Area Comm Ch

C A S E H I S T O R Y

RECEIVED
DEC 4 2006
DNR - LEGAL DIVISION

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C04005095V13

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End		Pty. Disp. / Addr Update	Entered
PLT	001	Talbot County Maryland	Party ID: 0026702			06/11/04
Mail:		142 North Harrison Street Easton, MD 21601	06/11/04		06/11/04 NLG	06/11/04 NLG
Attorney:		0020096 Karp, Daniel 120 East Baltimore Street Baltimore, MD 21202-1605 (410)727-5000		Appear: 06/11/2004		06/11/04
		0022739 Pullen, Michael L 11 N Washington Street Easton, MD 21601 (410)770-8092		Appear: 06/11/2004		06/11/04
		0802667 Shearer, Victoria M		Appear: 11/04/2005		11/07/05

Bryant, Karpinski, Colaresi & Karp, PA
120 East Baltimore Street
Suite 1850
Baltimore, MD 21202
(410)727-5000

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
DEF	001	Dept Natural Resources Critical Area Comm Chesapeake/Atlantic Coastal Party ID: 0026703			06/11/04
Mail:		1804 West Street Suite 100 Annapolis, MD 21401	06/11/04	06/11/04 NLG	06/11/04 NLG
Mail:		Office Of The Attorney General 580 Taylor Avenue, C-4 Annapolis, MD 21401 Serve On: Marianne D. Mason,Deputy Counsel	06/11/04	06/11/04 NLG	06/11/04 NLG
Attorney:		0005124 Mason, Marianne C4 Legal,Tawes Ofc Bldg. 580 Taylor Avenue Annapolis, MD 21401 (410)260-8351	Appear: 07/08/2004		07/08/04
		0029317 Gill, Joseph Department Of Natural Resources Ofc Of Attorney General 580 Taylor Avenue C4 Annapolis, MD 21401 (410)260-8350	Appear: 11/14/2005		11/17/05
		0806231 Cucuzzella, Paul J Assistant Attorney General Dept. Of Natural Resources 580 Taylor Ave Suite C4 Annapolis, MD 21401 (410)260-8352	Appear: 07/08/2004		07/08/04
DEF	002	St. Michaels Commissioner Of Party ID: 0028663			12/01/04
Attorney:		0010821 Hickson, H Michael Banks, Nason & Hickson P O Box 44 Salisbury, MD 21803-0044 (410)546-4644	Appear: 12/01/2004		12/01/04
DEF	003	Oxford Town Of Party ID: 0028664			12/01/04

Attorney: 0003492 Thompson, David R
Cowdrey Thompson & Karsten P A
130 N Washington St
P O Box 1747
Easton, MD 21601
(410)822-6800

Appear: 12/01/2004

12/01/04

0801083 Booth, Brynja McDivitt
Cowdrey Thompson & Karsten P A
130 N Washington St
Easton, MD 21601
(410)822-6800

Appear: 12/01/2004

11/17/05

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
DEF	004	Miles Point Property LLC	Party ID: 0033202		12/08/05

Attorney: 0005557 DeTar, Richard Allen
Miles & Stockbridge, P.C.
101 Bay Street
Easton, MD 21601
(410)822-5280

Appear: 12/08/2005

12/09/05

0801773 Kaouris, Demetrios G
Miles & Stockbridge, P.C.
101 Bay Street
Easton, MD 21601
(410)822-5280

Appear: 12/08/2005

12/09/05

DEF 005 Midland Companies Inc

Party ID: 0033203

12/08/05

Attorney: 0005557 DeTar, Richard Allen
Miles & Stockbridge, P.C.
101 Bay Street
Easton, MD 21601
(410)822-5280

Appear: 12/08/2005

12/09/05

0801773 Kaouris, Demetrios G
Miles & Stockbridge, P.C.
101 Bay Street
Easton, MD 21601
(410)822-5280

Appear: 12/08/2005

12/09/05

INT 001 Oxford Town Of

Party ID: 0028352

11/01/04

Attorney: 0003492 Thompson, David R
Cowdrey Thompson & Karsten P A
130 N Washington St
P O Box 1747

Appear: 12/15/2004

12/21/04

Easton, MD 21601
(410)822-6800

0801083 Booth, Brynja McDivitt — Appear: 11/17/2004 — 12/21/04
Cowdrey Thompson & Karsten P A
130 N Washington St
Easton, MD 21601
(410)822-6800

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
INT	002	Miles Point Property LLC	Party ID: 0032659		10/19/05
Attorney:	0005557	DeTar, Richard Allen Miles & Stockbridge, P.C. 101 Bay Street Easton, MD 21601 (410)822-5280	Appear: 10/19/2005		10/25/05
	0801773	Kaouris, Demetrios G Miles & Stockbridge, P.C. 101 Bay Street Easton, MD 21601 (410)822-5280	Appear: 10/19/2005		11/17/05
INT	003	Midland Companies Inc	Party ID: 0032660		10/19/05
Attorney:	0005557	DeTar, Richard Allen Miles & Stockbridge, P.C. 101 Bay Street Easton, MD 21601 (410)822-5280	Appear: 10/19/2005		10/25/05
	0801773	Kaouris, Demetrios G Miles & Stockbridge, P.C. 101 Bay Street Easton, MD 21601 (410)822-5280	Appear: 10/19/2005		11/17/05
ITP	001	St Michaels Commissioners The	Party ID: 0027985		09/27/04
Attorney:	0010821	Hickson, H Michael Banks, Nason & Hickson P O Box 44 Salisbury, MD 21803-0044 (410)546-4644	Appear: 09/24/2004		09/27/04

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text Rec	SA	Jdg	Day	Of Notice	User ID
Result			ResultDt By Result Judge						
11/17/04	01:30P	CDOC	Motion Hearing (Civil)			WSH	01	/01	MM
Held/Concluded			11/17/04 E C.Sanders	Y					
Stenographer(s): Bonnie Chambers									
04/14/05	01:30P	SETT	Scheduling Conference			GBR	01	/01	MA
Held/Concluded			04/14/05 E G.Rasin, Jr.	N					
01/26/06	09:00A	CDOC	Motion Hearing (Civil)			WSH	01	/01	LVW
Held/Concluded			01/26/06 E J.Sause, Jr.	Y					
Stenographer(s): Lori Whitehead									

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User	Activity Date
03/27/06	DO	Decree or Order	CT	AFTER TRIAL/HEARING	MB	03/30/06
08/14/06	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	PL	08/14/06

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
WSH Horne, William S.	J	06/11/04	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Payments Received	06/11/04	06/11/04	000	TBA		03/27/06	NLG RRM
	$80.00 Clk. $10.00 Pltf. Appr. $25.00 Surcharge pd. Rec.#78094.							
	$10.00 Appr. Fee (Hickson) pd. 9/27/04 Rec.#7968							
	$10.00 Appr. Fee (Town of Oxford) pd. 11/1/04 Rec. #80083.							
	$10.00 Appr. Fee (DeTar), pd, Rec. #18496							
	$10.00 Appr Fee (Def Miles Point), pd, Rec. #18793							
	04/13/06 Appeal fees pd (Talbot County)							
	$60.00 Clk fee, appeal (County), pd, Rec. #19577							
	$50.00 COSA fee (County), pd, Rec. #19576 ccfund							
	04/24/06 Appeal fees pd (Oxford)							
	$60.00 Clk fee, cross-appeal (Oxford), pd, Rec. #19664							
	$50.00 COSA fee, (Oxford), pd, Rec. #19665 ccfund							

04/24/06 Appeal fees pd (St Michaels)
$60.00 Clk fee, cross-appeal (SM), pd, Rec. #19662
$50.00 COSA fee, cross-appeal (SM), pd, Rec. #19663 ccfund
09/05/06 Appeal fees pd (Talbot County)
$50.00 COSA fee, (County) pd, Rec. #20512 ccfund
$60.00 Clk fee, (County) pd, Rec. #20537
09/11/06 Appeal fees pd (Oxford)
$50.00 COSA fee, (DNR), pd, Rec. #20538 ccfund
$60.00 Clk fee, (DNR), pd, Rec. #20539
11/27/06 COSA pd from ccfund via ck #2278 ($ 250.00)

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0002000	Complaint for Declaratory Judgment, Petition for Writ of Manadmus and Appeal From Administrative Agency	06/11/04	06/11/04	PLT001	TBA		03/27/06	NLG MB
0002001	Verified Answer to Count II Only	09/02/04	09/02/04	DEF001	WSH		03/27/06	NLG MB
0002002	Answer to Complaint Filed by Attorney: H Michael Hickson Esq	12/14/04	12/21/04	ITP001	WSH		03/27/06	MB MB
0002003	Answer to Complaint by Intervenor Filed by Attorney: Brynja McDivitt Booth Esq	12/15/04	12/21/04	INT001	WSH		03/27/06	MB MB
0003000	Case Information Sheet Filed	06/11/04	06/11/04	PLT001	TBA		03/27/06	NLG MB
0004000	Notice to Administrative Agency Issued	06/11/04	06/11/04	000	TBA		06/11/04	NLG NLG
0005000	Writ of Summons - Civil Issued	06/11/04	06/11/04	DEF001	TBA		06/11/04	NLG NLG
0006000	Motion to Dismiss	07/08/04	07/08/04	DEF001	TBA		03/27/06	NLG MB
0007000	Memorandum in Support of Motion to Dismiss	07/08/04	07/08/04	DEF001	TBA		03/27/06	NLG MB
0008000	Amended Complaint for Declaratory Judgment, Petition for Writ of Mandamus, and Appeal From Administrative Agency	07/20/04	07/21/04	PLT001	TBA		03/27/06	NLG MB
0009000	Memorandum In Opposition to Motion to Dismiss	07/20/04	07/21/04	PLT001	TBA		07/21/04	NLG NLG
0010000	Withdrawal of Motion to Dismiss Count II	09/02/04	09/02/04	DEF001	TBA		03/27/06	NLG MB
0011000	Amendment to Verified Answer to Count II	09/07/04	09/08/04	DEF001	TBA		03/27/06	NLG MB
0012000	Notice of Service of Discovery First Request for Production of Documents to Defendant	09/08/04	09/09/04	PLT001	TBA		03/27/06	NLG MB
0013000	Case Information Sheet Filed	09/24/04	09/27/04	ITP001	TBA		03/27/06	NLG MB
0014000	Motion to Intervene	09/24/04	09/27/04	ITP001	TBA		03/27/06	NLG MB

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0015000	Proposed Answer to Complaint	09/24/04	09/27/04	ITP001	TBA		03/27/06	NLG MB
0016000	Proposed Counterclaim	09/24/04	09/27/04	ITP001	TBA		03/27/06	NLG MB
0017000	Opposition to St. Michaels Motion to Intervene Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq	10/12/04	10/14/04	PLT001	TBA		03/27/06	MB MB
0018000	Assignment Notice Issued Motions hearing set for 11/17/04 at 1:30 p.m. Copies mailed to attorneys.	10/14/04	10/14/04	000	TBA		10/14/04	MM MB
0019000	Memorandum in Reply to Opposition to St. Michaels' Motion to Intervene Filed by Attorney: H Michael Hickson Esq	10/29/04	11/01/04	ITP001	TBA		11/01/04	MB MB
0020000	Motion to Intervene and Request for Hearing Filed by David R. Thompson on behalf of Town of Oxford.	11/01/04	11/03/04	000	TBA		03/27/06	MB MB
0021000	Notice of Service of Discovery Materials Defendants' Response to First Request for Production of Documents. Filed by Attorney: Marianne Mason ,Paul J Cucuzzella Esq	10/25/04	11/09/04	PLT001	TBA		03/27/06	MB MB
0022000	Open Court Proceeding/Hearing Held Motions hearing held November 17, 2004. The Hon. Calvin R. Sanders, presiding. Bonnie Chambers, court reporter. Victoria Shearer appeared on behalf of the Plaintiff, Talbot County. Marianne Mason and Paul Cucuzzella appeared on behalf of Defendant, DNR Michael Hickson appeared on behalf of Town of St. Michaels. Brjnya Booth appeared on behalf of Town of Oxford. Mr. Hickson and Ms. Shearer heard on motion by Town of St. Michaels to intervene. Motion to Intervene by town of St. Michaels - "Granted". Motion to Intervene by Town of Oxford - "Granted". Mr. Hickson and Ms. Booth to prepare joint order. Attorneys heard on Motion to Dismiss. Court to take matter under advisement.	11/17/04	11/17/04	000	CRS		03/27/06	MB MB
0023000	Supplemental Memorandum of Law in Support of Motion to Dismiss Count III Filed by Attorney: H Michael Hickson Esq	11/23/04	12/01/04	000	TBA		12/01/04	MB MB
0024000	Order Granting Intervention of St. Michaels and Oxford as Defendants Copies mailed to all attorneys.	12/01/04	12/01/04	000	CRS		12/01/04	MB MB

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0025000	Supplemental Memorandum in Support of Motion to Dismiss Count III Filed by Attorney: Paul J Cucuzzella Esq,Marianne Mason	12/03/04	12/06/04	000	TBA		03/27/06	MB MB
0026000	Order of Court Regarding Hearing held November 17, 2004. Defendant DNR's Motion to Dismiss Count 1 - "Denied". Defendant DNR's Motion to Dismiss Count 3 - "Granted". Defendant DNR's Motion to Dismiss Count 2 has been withdrawn.	12/08/04	12/13/04	000	CRS		12/13/04	MB MB
0027000	**********DOCUMENTS MAILED********** PARTIES: Karp, Daniel 100 E Pratt Street Suite 1540, Baltimore, MD, 21202 Pullen, Michael 142 N Harrison Street , Easton, MD, 21601 Mason, Marianne C4 Legal,Tawes Ofc Bldg. 580 Taylor Avenue, Annapolis, MD, 21401 Cucuzzella, Paul 580 Taylor Ave Suite C4, Annapolis, MD, 21401 Hickson, H P O Box 44, Salisbury, MD, 218030044 Thompson, David 130 N Washington St P O Box 1747, Easton, MD, 21601	12/13/04	12/13/04	000	TBA		12/13/04	MB MB
0028000	Counter Claim Filed by Attorney: H Michael Hickson Esq	12/14/04	12/21/04	ITP001	TBA		03/27/06	MB MB
0029000	Counterclaim for Declaratory Judgment by Intervenor Town of Oxford Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq	12/15/04	12/21/04	INT001	TBA		03/27/06	MB MB
0030000	Answer to Counterclaim of Intervenor Commissioners of St Michaels Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq	12/15/04	12/21/04	PLT001	TBA		03/27/06	MB MB
0031000	Second Amended Complaint Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq	02/18/05	03/03/05	PLT001	TBA		03/27/06	MB MB
0031001	Answer to Second Amended Complaint Filed by Attorney: H Michael Hickson Esq	03/08/05	03/09/05	DEF002	WSH		03/27/06	MB MB
0031002	Answer by the Town of Oxford to Second Amended Complaint Filed by Attorney: David R Thompson Esq	03/09/05	03/09/05	DEF003	WSH		03/27/06	MB MB
0031003	Miles Point Property LLC's and the Midland Companies Inc's Answer to Amended Complaint Filed by Attorney: Richard Allen DeTar Esq	12/14/05	12/15/05	DEF004	WSH		03/27/06	MB MB
0032000	Notice of Service of Discovery Materials Commissioners of St. Michael's First Request for Production of Documents to MD Critical Area Commission.	02/22/05	03/03/05	000	TBA		03/27/06	MB MB

Filed by Attorney: H Michael Hickson Esq

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0033000	Notice of Service of Discovery Commissioners of St. Michael's First Request for Pdocution of Documents to Plaintiff. Filed by Attorney: H Michael Hickson Esq	02/22/05	03/03/05	000	TBA		03/27/06	MB MB
0034000	Order for Civil Non-Domestic Scheduling Conference Scheduling Conference set for April 14, 2005 at 1:30 p.m.	03/07/05	03/07/05	000	TBA		03/27/06	MB MB
0035000	**********DOCUMENTS MAILED********** PARTIES: Karp, Daniel 100 E Pratt Street Suite 1540, Baltimore, MD, 21202 Pullen, Michael 11 N Washington Street , Easton, MD, 21601 Booth, Brynja 130 N Washington St , Easton, MD, 21601 Mason, Marianne C4 Legal,Tawes Ofc Bldg. 580 Taylor Avenue, Annapolis, MD, 21401 Cucuzzella, Paul 580 Taylor Ave Suite C4, Annapolis, MD, 21401 Hickson, H P O Box 44, Salisbury, MD, 218030044 Thompson, David 130 N Washington St P O Box 1747, Easton, MD, 21601 Copy of Scheduling Order, plus Excerpt from Case Management Plan and Court Call Information.	03/07/05	03/07/05	000	TBA		03/07/05	MB MB
0036000	Department of Natural Resources' Answer to Second Amended Complaint Filed by Attorney: Marianne Mason ,Paul J Cucuzzella Esq	03/17/05	03/22/05	DEF001	TBA		03/27/06	MB MB
0037000	Notice of Service of Discovery Plaintiff's Second Request for Production of Documents to DNR. Filed by Attorney: Michael L Pullen Esq	03/29/05	04/05/05	000	TBA		03/27/06	MB MB
0038000	Affidavit in Support of Second Amended Complaint Filed by Attorney: Michael L Pullen Esq	03/29/05	04/05/05	000	TBA		04/05/05	MB MB
0039000	Notice of Service of Discovery Defendants' Response to First Request for Production of Documents. Filed by Attorney: Paul J Cucuzzella Esq,Marianne Mason	04/06/05	04/08/05	000	TBA		03/27/06	MB MB
0040000	Pre-Trial Scheduling Conference Held	04/14/05	04/21/05	000	GBR		03/27/06	MB MB
0041000	PreTrial Scheduling Order Hearing on motions to be assigned by 9/30/05.	04/14/05	04/21/05	000	GBR		03/27/06	MB MB
0042000	Notice of Service of Discovery Response to Intervenor/Counter-Plaintiffs First Request for Production of Dcouments.	04/27/05	05/06/05	000	TBA		03/27/06	MB MB

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0043000	Notice of Service of Discovery St Michaels Response to First Request for Production of Documents	05/04/05	05/06/05	DEF002	TBA		03/27/06	MB MB
0044000	Notice of Service of Discovery Answers to Plaintiff's First Set of Interrogatories and Response to Second Request for Production of Documents. Filed by Attorney: Paul J Cucuzzella Esq	06/10/05	06/14/05	000	TBA		03/27/06	MB MB
0045000	Notice of Service of Discovery Commissioners of St Michael's First Request for Admissions of Fact, First set of Interrogatories and Second Reqeust for Production of Documents to Talbot County Filed by Attorney: H Michael Hickson Esq,David R Thompson Esq	09/12/05	09/13/05	000	TBA		03/27/06	MB MB
0046000	Notice of Service Response to the First Request for Production of Documents by Plaintiff and First Set of Interrogatories. Filed by Attorney: Brynja McDivitt Booth Esq,David R Thompson Esq	09/16/05	09/20/05	000	TBA		03/27/06	MB MB
0047000	Notice of Service of Discovery Notice of Discovery of Plaintiff's Response to Request for Admission of Fact to the Commisioners of St. Michaels.	10/13/05	10/20/05	PLT001	TBA		03/27/06	MT MB
0048000	Motion to Intervene Filed by INT002-Miles Point Property LLC, INT003-Midland Companies Inc Filed by Attorney: Richard Allen DeTar Esq	10/19/05	10/25/05	INT002	JWS	Granted	12/08/05	MB MB
0049000	Miles Point Property LLC's and the Midland Companies Inc's Statement of Grounds and Authorities in Support of Motion to Intervene. Filed by Attorney: Richard Allen DeTar Esq	10/19/05	10/25/05	000	TBA		03/27/06	MB MB
0050000	Notice of Service of Discovery Talbot County's Responses to Commissioners of St Michaels First Set of Interrogatories. Filed by Attorney: Michael L Pullen Esq	10/24/05	10/26/05	PLT001	TBA		03/27/06	MB MB
0051000	Notice of Service of Discovery Talbot County's Response to Commissioners of St Michaels Second Request for Production of Documents. Filed by Attorney: Michael L Pullen Esq	10/24/05	10/26/05	PLT001	TBA		03/27/06	MB MB
0052000	Department of Natural Resources' Consent to Miles Point LLC's and the Midland Companies Inc's Motion to Intervene Filed by Attorney: Paul J Cucuzzella Esq,Marianne Mason	10/25/05	10/26/05	DEF001	TBA		03/27/06	MB MB
0053000	Town of Oxford's Consent to Miles Point, LLC's and the Midland Companies, Inc's Motion to Intervene	10/27/05	10/28/05	000	TBA		03/27/06	MB MB

Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0054000	Talbot County's Opposition to Miles Point LLC and the Midland Companies Inc's Motion to Intervene Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq	11/04/05	11/07/05	PLT001	TBA		03/27/06	MB MB
0055000	Supplement to Talbot County's Opposition to Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene Filed by Attorney: Michael L Pullen Esq	11/10/05	11/10/05	PLT001	TBA		03/27/06	MB MB
0057000	Talbot County's Supplemental Response to Motion to Intervene Filed by Attorney: Daniel Karp Esq	11/14/05	11/17/05	PLT001	TBA		03/27/06	MB MB
0058000	St Michaels Motion for Summary Judgment Filed by Attorney: H Michael Hickson Esq	11/14/05	11/17/05	DEF002	TBA		03/27/06	MB MB
0059000	Memorandum of Law in Support of the St Michaels Motion for Summary Judgment Filed by Attorney: H Michael Hickson Esq	11/14/05	11/17/05	DEF002	TBA		03/27/06	MB MB
0060000	Continuation of exhibits from tab #59000 (Split between files #5 & 6)	11/14/05	11/17/05	000	TBA		03/27/06	MB MB
0061000	Continuation of exhibit from tab 59000 (split between files 5, 6 & 7	11/14/05	11/17/05	000	TBA		03/27/06	MB MB
0062000	Department of Natural Resources' Motion for Summary Judgment Filed by Attorney: Marianne Mason ,Paul J Cucuzzella Esq	11/14/05	11/17/05	DEF001	TBA		03/27/06	MB MB
0063000	Department of Natural Resources' Memorandum in Support of Motion for Summary Judgment Filed by Attorney: Paul J Cucuzzella Esq,Joseph Gill ,Marianne Mason	11/14/05	11/17/05	DEF001	TBA		03/27/06	MB MB
0064000	Motion for Summary Judgment Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq	11/14/05	11/17/05	DEF003	TBA		03/27/06	MB MB
0065000	Memorandum in Support of Motion for Summary Judgment by the Town of Oxford Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq	11/14/05	11/17/05	DEF003	TBA		03/27/06	MB MB
0066000	Miles Point Property LLC's and the Midland Companies Inc's Motion for Summary Judgment. Filed by INT002-Miles Point Property LLC, INT003-Midland Companies Inc	11/14/05	11/17/05	INT002	TBA		03/27/06	MB MB

Filed by Attorney: Richard Allen DeTar Esq

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0067000	Miles Point Property LLC's and the Midland Companies Inc's Statement of Grounds and Authorities in Support of Motion for Summary Judgment Filed by INT003-Midland Companies Inc, INT002-Miles Point Property LLC Filed by Attorney: Richard Allen DeTar Esq	11/14/05	11/17/05	INT003	TBA		03/27/06	MB MB
0068000	Motion of St Michaels to Incorporate and Adopt by Reference the Motion for Summary Judgment Filed by Miles Point Property, LLC and the Midland Companies Inc. Filed by Attorney: H Michael Hickson Esq	11/14/05	11/17/05	DEF002	TBA		03/27/06	MB MB
0069000	Talbot County's Motion for Summary Judgment Filed by Attorney: Daniel Karp Esq	11/15/05	11/17/05	PLT001	TBA		03/27/06	MB MB
0070000	Motion of St. Michaels to Incorporate and Adopt by Reference the Motion for Summary Judgment Filed by Miles Point Property, LLC and the Midland Companies Inc. Filed by Attorney: David R Thompson Esq,H Michael Hickson Esq	11/15/05	11/17/05	DEF002	TBA		03/27/06	MB MB
0071000	Talbot County's Nunc Pro Tunc Motion for Extension of Time to File Motion for Summary Judgment With Affidavit attached Filed by Attorney: Daniel Karp Esq	11/16/05	11/17/05	PLT001	JWS	Granted	12/08/05	MB MB
0072000	Attorney Appearance Filed - Joseph P Gill as attorney for DNR	11/14/05	12/05/05	DEF001	TBA		12/05/05	MB
0073000	Assignment Notice Issued Motions hearing set for January 26, 2006 at 9:00 am. Copies mailed by Assignment Clerk.	12/07/05	12/07/05	000	TBA		12/07/05	LVW MB
0074000	Order Granting Right to Intervene and Supplemental Scheduling Order Miles Point Property LLC and Midland Companies are allowed to intervene as Defendants. Action may be set for trial or hearing any time after January 15, 2006. Miles Point/Midlands must file any motion for summary judgment or response to plaintiff's motion for summary judgment on or before December 22, 2005.	12/08/05	12/09/05	000	JWS		12/09/05	MB MB
0075000	Order Accepting Motion for Summary Judgment Motion for Summary Judgment filed by Plaintiff on November 15, 2005 is accepted.	12/08/05	12/09/05	000	JWS		12/09/05	MB

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0076000	**********DOCUMENTS MAILED********** Copy of Order Granting Right to Intervene and Order Accepting Motion for Summary Judgment PARTIES: Karp, Daniel 100 E Pratt Street Suite 1540, Baltimore, MD, 21202 Pullen, Michael 11 N Washington Street , Easton, MD, 21601 Shearer, Victoria 100 E Pratt Street Suite 1540, Baltimore, MD, 21202 Mason, Marianne C4 Legal,Tawes Ofc Bldg. 580 Taylor Avenue, Annapolis, MD, 21401 Gill, Joseph Ofc Of Attorney General 580 Taylor Avenue C4, Annapolis, MD, 21401 Cucuzzella, Paul 580 Taylor Ave Suite C4, Annapolis, MD, 21401 Hickson, H P O Box 44, Salisbury, MD, 218030044 Thompson, David 130 N Washington St P O Box 1747, Easton, MD, 21601 Booth, Brynja 130 N Washington St , Easton, MD, 21601 DeTar, Richard 101 Bay Street , Easton, MD, 21601 Kaouris, Demetrios 101 Bay Street , Easton, MD, 21601	12/09/05	12/09/05	000	TBA		12/09/05	MB MB
0077000	Department of Natural Resources' Memorandum in Opposition to Talbot County's Motion for Summary Judgment Filed by Attorney: Joseph Gill ,Marianne Mason ,Paul J Cucuzzella Esq	12/14/05	12/15/05	DEF001	TBA		12/15/05	MB
0078000	Talbot County's Opposition to Miles Point Property LLC and the Midland Companies Inc's Motion for Summary Judgment Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq,Victoria M Shearer Esq	12/15/05	12/15/05	PLT001	TBA		03/27/06	MB MB
0079000	Talbot County's Opposition to Department of Natural Resources' Motion for Summary Judgment Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq,Victoria M Shearer Esq	12/14/05	12/15/05	PLT001	TBA		03/27/06	MB MB
0080000	Talbot County's Opposition to St Michaels and Oxford's Motions for Summary Judgment Filed by Attorney: Daniel Karp Esq,Michael L Pullen Esq,Victoria M Shearer Esq	12/14/05	12/15/05	PLT001	TBA		03/27/06	MB MB
0081000	St Michaels Opposition to Talbot County's Motion for Summary Judgment With Memorandum in Support Thereof attached. Filed by Attorney: H Michael Hickson Esq	12/14/05	12/15/05	DEF002	TBA		03/27/06	MB MB
0082000	Town of Oxford's Opposition to Talbot	12/14/05	12/15/05	DEF003	TBA		03/27/06	MB MB

County's Motion for Summary Judgment
Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0083000	Miles Point Property Inc's and the Midland Companies Inc's Opposition to Talbot County's Motion for Summary Judgment. Filed by Attorney: Richard Allen DeTar Esq	12/14/05	12/15/05	DEF004	TBA		03/27/06	MB MB
0084000	Open Court Proceeding/Hearing Held. Motions hearing held January 26, 2006. The Hon. John W. Sause, presiding. Lori Whitehead, Court Reporter. Counsel heard by the Court on their Motions for Summary Judgment. Court will render written opinion at later date.	01/26/06	03/15/06	000	JWS		03/27/06	MB MB
0085000	Memorandum from Judge Sause requesting copies of Sections 190-109 of the Talbot County Zoning Ordinance. Copies mailed to all counsel.	02/14/06	03/15/06	000	JWS		03/15/06	MB
0086000	notifying change of firm name to Bryant, Karpinski, Colaresi & Karp Filed by Attorney: Victoria M Shearer Esq	02/15/06	03/15/06	000	TBA		03/27/06	MB MB
0087000	Line filing Talbot County's Letter of Transmittal in reply to Judge Sause's Memorandum Filed by Attorney: Michael L Pullen Esq	02/23/06	03/15/06	PLT001	TBA		03/27/06	MB MB
0088000	Memorandum and Order re: Hearing held January 26, 2006 Request for issurance of writ of mandamus by Plaintiff is "Denied" Request for issuance of writ of certiorari is "Dismissed"	03/27/06	03/27/06	000	JWS		03/27/06	MB MB
0089000	**********DOCUMENTS MAILED********** Copy of Memorandum and Order PARTIES: Pullen, Michael 11 N Washington Street , Easton, MD, 21601 Shearer, Victoria 120 East Baltimore Street Suite 1850, Baltimore, MD, 21202 Cucuzzella, Paul 580 Taylor Ave Suite C4, Annapolis, MD, 21401 Hickson, H P O Box 44, Salisbury, MD, 218030044 Thompson, David 130 N Washington St P O Box 1747, Easton, MD, 21601 Booth, Brynja 130 N Washington St , Easton, MD, 21601 DeTar, Richard 101 Bay Street , Easton, MD, 21601	03/27/06	03/27/06	000	TBA		03/27/06	MB MB
0090000	Notice of Appeal to COSA Prehearing Information forms delivered to Mr. Pullen.	04/13/06	04/14/06	PLT001	TBA		08/14/06	BJL PL

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0091000	Notice of Cross-Appeal to COSA or COA Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq	04/24/06	04/26/06	INT001	TBA		08/14/06	MB PL
0092000	Notice of Cross-Appeal to COSA or COA	04/24/06	04/26/06	DEF002	TBA		08/14/06	MB PL
0093000	Transcript Request Pursuant to Maryland Rule 8-411 Filed by Attorney: Victoria M Shearer Esq Talbot County's Transcript Request, to be included in the record for purposes of appeal.	05/11/06	05/25/06	000	TBA		08/14/06	PL PL
0094000	Line Please note that effective July 5, 2006, the firm name of counsel for Defendant Talbot County, Maryland has changed to Karpinski, Colaresi & Karp, P.A.	07/11/06	07/12/06	000	TBA		08/14/06	PL PL
0095000	Appeal Order From COSA or COA	07/11/06	07/12/06	000	JRE		08/14/06	PL PL
0096000	Memorandum in RE: Compliance involves only supplementation of the Judgment of March 23, 2006, no hearing is required, Supplemental Memorandum and Amended Judgment shall be filed in the near future. Copies of Memorandum mailed to Counsel of Record.	08/03/06	08/03/06	000	TBA		08/03/06	MAS
0097000	Supplemental Memorandum	08/14/06	08/14/06	000	JWS		08/14/06	PL
0098000	Final Judgment Copies mailed.	08/14/06	08/14/06	000	JWS		08/14/06	PL
0099000	Mandate Received from Court of Special Appeals	08/14/06	08/15/06	000	TBA			PL
0100000	Notice of Appeal to COSA or COA Filed by Attorney: Daniel Karp Esq,Victoria M Shearer Esq	09/05/06	09/07/06	PLT001	TBA			PL PL
0101000	Reopen Case	09/05/06	09/12/06	000	TBA		09/12/06	PL
0102000	Notice of Cross-Appeal to COSA or COA Filed by Attorney: David R Thompson Esq,Brynja McDivitt Booth Esq	09/11/06	09/12/06	DEF003	TBA			PL
0103000	Order - Appeal to Proceed with a Prehearing Conference (COSA) pursuant to Maryland Rule 8-206(a)(1)	10/12/06	10/17/06	000	TBA			PL PL
0104000	Reporter's Official Transcript received on 11/15/06 Official Transcript of proceedings motion Hearing held on January 26, 2006.	11/15/06	11/15/06	000	TBA			PL
0105000	Original Record sent to COSA This record was packaged today's date to be hand delivered by the	11/29/06	11/29/06	000	TBA		11/29/06	JM JM

Clerk Mary Ann Shortall on Friday, December 1, 2006.
Copies of Docket entries and index mailed to Counsel of record.

SERVICE

Form Name	Issued	Response	Served	Returned	Agency
Writ of Summons	06/11/04				Returned To Attorney
DEF001 Dept Natural Resources Critical A					

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CANCEL	09/24/04	0	no	no	DAPC	D	015	000
1ANS	1st Answer Tickle	CLOSED	12/15/04	0	no	no	DAPC	D	030	000
35AS	35 Day Tickle After	CANCEL	11/25/04	35	no	no	DAPC	D	000	000
60DT	60 Day Tickle	OPEN	12/11/06	60	yes	no	MAPC	D	103	000
CTOS	Create Tickle On Ser	CANCEL	06/11/04	0	no	no			000	000
NCDT	Notice Of Contemplat	CANCEL	10/09/04	120	no	no	DANS	D	000	000
SLIL	Set List - Informati	CANCEL	07/20/04	0	no	no	DCAM	D	008	000
SLIL	Set List - Informati	CLOSED	12/14/04	0	no	no	DCOC	D	028	000
SLIL	Set List - Informati	CLOSED	05/11/06	0	no	no	DTRA	D	093	000
SLMR	Set List For Motions	CANCEL	06/30/04	19	no	no	NWSU	D	005	000
SLMR	Set List For Motions	CANCEL	07/27/04	19	no	no	MDIS	D	006	000
SLMR	Set List For Motions	CANCEL	10/13/04	19	no	no	MINT	D	014	000
SLMR	Set List For Motions	CANCEL	11/20/04	19	no	no	MINT	D	020	000
SLMR	Set List For Motions	CANCEL	11/07/05	19	no	no	MMOT	D	048	000
SLMR	Set List For Motions	CLOSED	12/03/05	19	no	no	MJSM	D	058	000
SLMR	Set List For Motions	CLOSED	12/03/05	19	no	no	MJSM	D	062	000
SLMR	Set List For Motions	CLOSED	12/03/05	19	no	no	MJSM	D	064	000
SLMR	Set List For Motions	CLOSED	12/03/05	19	no	no	MJSM	D	066	000

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLMR	Set List For Motions	CLOSED	12/03/05	19	no	no	MJSM	D	068	000
SLMR	Set List For Motions	CLOSED	12/04/05	19	no	no	MJSM	D	069	000
SLMR	Set List For Motions	CANCEL	12/05/05	19	no	no	MMOT	D	071	000
SLTR	Set List For Trial	CANCEL	09/24/04	0	yes	no	1ANS	T	015	000
SLTR	Set List For Trial	CLOSED	12/15/04	0	yes	no	1ANS	T	030	000

INDEX

Certified Docket Entries	1 - 17
Statement of Costs and Certification	18
Complaint for Declaratory Judgment, Petition for Writ of Mandamus, and Appeal from Administrative Agency	19 - 46
Civil-Non-Domestic Case Information Report	47
Notice to Administrative Agency of Judicial Review	48
Motion to Dismiss	49 - 67
Memorandum in Support of Motion to Dismiss	68 - 74
Amended Complaint for Declaratory Judgment, Petition for Writ of Mandamus, and Appeal from Administrative Agency	75 - 88
Memorandum in Opposition to Motion to Dismiss	89 - 96
Withdrawal of Motion to Dismiss Count II	97 - 99
Verified Answer to Count II	100 - 106
Amendment to Verified Answer to Count II	107 - 108
Notice of Service	109 - 110
End Volume I	
Civil Non-Domestic Case Information Sheet	111 - 112
Motion to intervene	113 - 226
Proposed Answer to Complaint	227 - 233
Proposed Counterclaim (for Declaratory Judgment)	234 - 331
Opposition to St. Michaels' Motion to Intervene	332 - 354
Notice of Assignment	355
END VOLUME II	

Memorandum in Reply to Opposition to St. Michaels' Motion to Intervene	356 - 422
Motion to Intervene	423 - 470
Notice of Service of Discovery Materials	471 - 472
Supplemental Memorandum of Law in Support of Motion to Dismiss Count III (Judicial Review)	473 - 477
Order	478 - 479
Supplemental Memorandum in Support of Motion to Dismiss Count III	480 - 482
Order	483 - 485
Answer to Complaint	486 - 492
Counterclaim (For Declaratory Judgment)	493 - 590
Answer to Complaint by Intervenor	591 - 597
Counterclaim for Declaratory Judgment by Intervenor Town of Oxford	598 - 606
Answer to Counterclaim of Intervenor Commissioners of St. Michaels	607 - 614
END VOLUME III	
Second Amended Complaint	615 - 645
Notice of Service of Discovery Materials	646 - 647
Notice of Service of Discovery Materials	648 - 649
Order for Civil Non-Domestic Scheduling Conference	650
Answer to Second Amended Complaint	651 - 659
Answer by the Town of Oxford to Second Amended Complaint	660 - 669
Department of Natural Resources' Answer to Second Amended Complaint	670 - 678
Notice of Service of Discovery	679 - 680

Affidavit in Support of Second Amended Complaint	681 - 682
Notice of Service of Discovery Materials	683 - 684
Pretrial Scheduling Order - Civil	685
Sanction Order	686 - 687
Notice of Service of Discovery	688 - 689
Notice of Service of Discovery Materials	690 - 691
Notice of Service of Discovery Materials	692 - 693
Notice of Service of Discovery	694 - 695
Notice of Service	696 - 697
Notice of Service of Discovery	698 - 699
Miles Point Property, LLC's and the Midland Companies, Inc.'s Motion to Intervene	700 - 704
Miles Point Property, LLC'S and the Midland Companies, Inc.'s Proposed Answer to Amended Complaint	705 - 714
Miles Point Property, LLC's and the Midland Companies, Inc.'s Statement of Grounds and Authorities in Support of Motion to Intervene	715 - 776
(clerk error in page numbering)	778 - 795
Notice of Service of Discovery	796
Notice of Service of Discovery	797
Department of Natural Resources' Consent to Miles Point, LLC's and The Midland Companies, Inc.'s Motion to Intervene	798 - 799
Town of Oxford's Consent to Miles Point, LLC's and the Midland Companies, Inc.'s Motion to Intervene	800 - 801
Talbot County's Opposition to Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene	802 - 931

Supplement to Talbot County's Opposition to Miles Point LLC and the Midland Companies, Inc.'s Motion to Intervene	932 - 935
Talbot County's Supplemental Response to Motion to Intervene	936 - 941
END VOLUME IV	
The St. Michaels Motion for Summary Judgment (for Declaratory Relief)	942 - 947
Memorandum of Law in Support of the St. Michaels Motion for Summary Judgment	948 - 1295
END VOLUME V	
Continuation of Exhibits from Volume V	1296 - 1576
END VOLUME VI	
Continuation of Exhibits from Volume VI	1577 - 1835
END OF VOLUME VII	
Department of Natural Resources' Motion for Summary Judgment	1836 - 1838
Department of Natural Resources' Memorandum in Support of Motion for Summary Judgment	1839 - 1939
Memorandum in Support of Motion for Summary Judgment by the Town of Oxford	1940 - 2186
END OF VOLUME VIII	
Miles Point Property, LLC'S and The Midland Companies, Inc's Motion for Summary Judgment	2187 - 2190
Miles Point Property, LLC'S and The Midland Companies, Inc's Statement of Grounds and Authorities in Support of Motion for Summary Judgment	2191 - 2427
Motion of St. Michaels to Incororate and Adopt by Reference the Motion for Summary Judgment Filed by Miles Point Property, LLC and the Midland Companies, Inc.	2428 - 2429

END OF VOLUME IX

Talbot County's Motion for Summary Judgment 2430 - 2724

END OF VOLUME X

Continuation of Exhibits from Volume IX 2725 - 2850

Motion of St. Michaels to Incororate and Adopt by Reference the Motion for Summary Judgment Filed by Miles Point Property, LLC and the Midland Companies, Inc. 2851 - 2852

Talbot County's Nunc Pro Tunc Motion for Extension of Time to File Motion for Summary Judgment 2853 - 2858

Notice of Entry of Appearance 2859 - 2860

Notice of Assignment 2861

Order Granting Right to Intervene and Supplemental Scheduling Order 2862 - 2863

Order Accepting Motion for Summary Judgment 2864

Department of Natural Resources' Memorandum in Opposition to Talbot County's Motion for Summary Judgment 2865 - 2874

Talbot County's Opposition to Miles Point Property, LLC and the Midland Companies, Inc.'s Motion for Summary Judgment 2875 - 2887

Talbot County's Opposition to Department of Natural Resources' Motion for Summary Judgment 2888 - 3010

END OF VOLUME XI

Talbot County's Opposition to St. Michaels's and Oxford's Motions for Summary Judgement 3011 - 3164

St. Michaels' Opposition to Talbot County's Motion for Summary Judgment 3165 - 3198

Town of Oxford's Opposition to Talbot County's Motion for Summary Judgment 3199 - 3243

Miles Point Property, LLC'S and the Midland Companies, Inc's Answer to Amended Complaint	3244 - 3252
Miles Point Property, Inc.'s And the Midland Companies, Inc.'s Opposition to Talbot County's Motion for Summary Judgment	3253 - 3255
Memorandum	3256
Line	3257 - 3258
Line	3259 - 3260
Memorandum	3261 - 3302
Notice of Appeal	3303 - 3305
Notice of Cross-Appeal	3306 - 3307
Notice of Cross-Appeal	3308 - 3310
END OF VOLUME XII	
Line	3311 - 3312
Order w/attachments	3313 - 3427
Memorandum	3428
Supplemental Memorandum	3429 - 3430
Judgment	3431 - 3435
Mandate	3436
Notice of Appeal	3437 - 3439
Notice of Cross-Appeal	3440 - 3441
Order	3442 - 3443
Transcript of Motion's Hearing 01/26/06	3444

RECEIVED
OCT 13 2006
DNR - LEGAL DIVISION

Talbot County, Maryland	*	IN THE
vs.	*	COURT OF SPECIAL APPEALS
Department of Natural Resources Critical Area Commission for the Chesapeake and Atlantic Coastal Bays et al.	*	No. 01509
	*	September Term, 2006

O R D E R

The Court of Special Appeals, pursuant to Maryland Rule 8-206(a)(1), orders and directs that the above captioned appeal proceed without a Prehearing Conference.

BY THE COURT

JAMES R. EYLER, JUDGE

Date: October 10, 2006

MARY ANN SHORTALL, CLERK
CIRCUIT COURT FOR TALBOT COUNTY
(See attached Mailing List)

Dear Clerk: Will you kindly place this order with the record in this cause (002C04005095). The date of this Order establishes commencement of the 10 day period under Md. Rule 8-411(b) and the 60 day period for transmittal of the record under Md. Rule 8-412(a).

NO. 01509, SEPTEMBER TERM, 2006

Mailing List: DANIEL KARP, ESQUIRE
MICHAEL PULLEN, ESQUIRE
VICTORIA SHEARER, ESQUIRE
MARY ANN SHORTALL, CLERK
BRYNJA M. BOOTH, ESQUIRE
RICHARD DE TAR, ESQUIRE
JOSEPH GILL, ESQUIRE
MICHAEL HICKSON, ESQUIRE
MARIANNE D. MASON, ESQUIRE
DAVID THOMPSON, ESQUIRE

RECEIVED

SEP 14 2006

DNR - LEGAL DIVISION

COURT OF SPECIAL APPEALS OF MARYLAND
361 Rowe Blvd., Second Floor
Annapolis, MD 21401
410-260-1450

CIVIL APPEAL INFORMATION REPORT (Md. Rules 8-205 & 8-206)

Appeal No. _____
(To be filled in by Clerk, Court of Special Appeals)

Directions: Generally, within 10 days after filing an appeal in a civil case, the appealing party ("appellant") must fill out, sign and file an original of this form by mail or by hand with P.H.C. Clerk, Court of Special Appeals, 361 Rowe Blvd., Annapolis, MD 21401, and send copies of it to all other attorneys and unrepresented parties in the case. Attach all requested items to the original and all copies. Use extra pages if desired. There is no filing fee for this report.

AN APPEAL MAY BE DISMISSED IF THIS FORM IS NOT TIMELY FILED, RULE 8-602(a)(4). Within 7 days of receiving an appellant's information report, each non-appealing party ("appellee") may but need not file one.

Appeals of Juvenile Court cases, and appeals by prisoners relating to their confinement, are exempt from this form.

PLEASE SUPPLY THE FOLLOWING INFORMATION:

1. **Case Caption:** Talbot County v. Department of Natural Resources Critical Area Commission, et al.

   a. Name of party appealing: Talbot County, Maryland

   b. Was this case previously appealed to this Court? ☐ No ☒ Yes;
   If "yes," Appeal No. 00418, Sept. Term, 2006; Appeal No. _____, Sept. Term, 20___.

   c. Are there other cases pending in this Court that are related to this case? ☐ No ☒ Yes;
   If "yes," Appeal No. 00418, Sept. Term, 2006; Appeal No. _____, Sept. Term, 20___.

   d. Are there other cases pending in another court that are related to this case? ☒ No ☐ Yes; if "yes," then:
   Case No. _____
   Court: _____
   Case title: _____

2. **Name, mailing address, email & weekday telephone of parties and attorneys, if any:**

   Appellant(s): Talbot County, Maryland

   Appellee(s): Department of Natural Resources Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, Town of Oxford, Town of St. Michaels

   Attorney(s) for Appellant(s): Daniel Karp, Esqurie & Victoria Shearer, Esquire, Bryant, Karpinski, Colaresi & Karp, 120 E. Baltimore Street, Suite 1350, Baltimore, MD 21202 410-727-5000; Mike Pullen, Esquire, Talbot County, Maryland, 11 N. Washington Street Easton, MD 21601 410-770-8093

   Attorney(s) for Appellee(s): H. Michael Hickson, Esquire, Banks, Nason & Hickson, 113 South Baptist Street, P.O. Box 44, Salisbury, MD 21803; David R. Thompson, Esquire, Cowdrey Thompson & Karsten, P.O. Box 1747, Easton, MD 21601 (410 822-6800; Mariann Mason, Deputy Counsel, Office of the Attorney General, 580 Taylor Avenue, C-4, Annapolis, Maryland 21401 *

   * The Town of Oxford is also a cross-appellant.

3. **A.D.A. Accommodation/Interpreters for Proceedings in Maryland Appellate Courts**
Will a party or attorney need an A.D.A. accommodation or interpreter? ☒ No ☐ Yes
If "yes," please explain the need and the requested accommodation: _____

4. **Type of civil case**: ☐ administrative appeal, ☐ contract, ☒ declaratory judgment, ☐ domestic, ☐ estate, ☐ foreclosure, ☐ paternity, ☐ tort, ☐ workers' compensation, ☐ other (specify):

5. **Court appealed from: ☒ Circuit ☐ Orphans Court for** Talbot County

a. Full Case No: 2-C-04-005095D b. Judge's Name: John W. Sause
c. Does the appeal arise from:
A pre-trial motion? ☐ No ☒ Yes; if yes, ☒ Motion with hearing, or ☐ Motion without hearing.
A trial? ☐ No ☐ Yes; if yes, ☐ Jury trial, or ☐ Non-jury trial.
Other? ☐ No ☐ Yes; if yes, (specify):

d. Is this an appeal of an order granting a motion to dismiss?..... ☒ No ☐ Yes; if yes, go to (f)
e. Is this an appeal of an order granting summary judgment?..... ☐ No ☒ Yes; if yes, go to (f)

If you answered "yes" to (d) or (e), then:
f. Was a hearing requested in writing by any party? ..... ☐ No ☒ Yes; if yes, go to (g)
g. Was a hearing held?..... ☐ No ☒ Yes; if yes, go to (h)
h. Was the hearing recorded?..... ☐ No ☒ Yes; if yes, go to (i) thru (k)

For all cases where there was a hearing and/or trial, please answer (i) through (k):
i. Dates & duration of trial/hearing (days/hours): January 26, 2006; 3 hours
j. Number of exhibits in evidence: _____
k. If a full transcript of all proceedings will not be ordered or is unnecessary for the appeal, please explain why Rule 8-411 does not apply: _____

6. **Record Extract**
a. In your view, will the court file, exhibits and transcripts altogether exceed 100 pages? ☒ Yes ☐ No.
b. If "yes," have the attorneys and unrepresented parties discussed using Rules 8-413(b)("Statement of Case in Lieu of Entire Record"), or 8-501(l)("Deferred Record Extract")? ☐ Yes ☒ No; if "no," explain why:
Neither option is viable in this case.

7. **Judgments, Orders and/or Rulings in Question**
(ATTACH COPY OF WRITTEN JUDGMENTS, ORDERS &/OR RULINGS BEING APPEALED.)
a. Date of judgments, orders and/or rulings appealed (if different from shown on docket, please explain):
Final judgment and memorandum opinion dated March 23, 2006 and filed March 27, 2006; final judgment and supplemental memorandum dated August 14, 2006 and filed August 14, 2006/

b. Describe judgments, orders and/or rulings appealed, including whether such is/are written:

c. Do the judgments, orders and/or rulings end the whole case (all claims) as to all parties? ☒ Yes ☐ No
(If "no," explain how the judgments, orders and/or rulings are appealable under Rule 2-602 and Code, Courts Art., sections 12-301, 12-303):

8. Post-Judgment Motions

a. Were any motions filed under Rules 2-532, 2-533, or 2-534? ..... ☐ Yes ☒ No
If "yes," please identify each such motion and for each, state:
1. Date(s) filed: ;
2. Date(s) of ruling(s) on motion(s): ;
3. Ruling(s) on motion(s):

b. Was *in banc* review requested under Rule 2-551? ..... ☐ Yes ☒ No
If "yes," who filed for *in banc* review:

9. Appeal

(ATTACH COPY OF NOTICE OF APPEAL)

a. Appeal's filing date in circuit court: September 5, 2006; Cross-Appeal filed September 11, 2006;
b. Name of party appealing: Talbot County, Maryland; Cross-Appellant Town of Oxford;
c. Filing fee paid? ☒ Yes ☐ No; if "no," is a motion for waiver and affidavit attached? ☐ Yes ☐ No
d. Is this an appeal under Rule 8-207(a) of an order about: adoption; guardianship terminating parental rights; guardianship of the person; child custody or visitation?..... ☐ Yes ☒ No
e. Is this an appeal of an interlocutory order under Code, Courts Article, section 12-303? ☐ Yes ☒ No
f. Will this be an Expedited Appeal under Rule 8-207(b)?..... ☐ Yes ☒ No
g. State each issue and claim of trial court error that you are appealing. (Appellees may use this space to explain their contentions about an appellant's answer to this question.)
The trial court declined to address Oxford's counterclaim issues relating to Talbot County's authority to exercise planning and zoning authority in incorporated municiplaities.

10. Settlement or Scheduling Conference

(Information disclosed on this form is subject to the confidentiality provision of Rule 8-205(f).)

a. Describe briefly the history and present status of settlement negotiations sufficient to aid the Court of Special Appeals to decide whether to schedule a Pre-Hearing Conference: None.

b. Was this case submitted to any Alternative Dispute Resolution process (arbitration, mediation, settlement conference, etc.)? ☐ Yes ☒ No. If "yes," describe briefly. _____

c. Would a Pre-Hearing Conference help to narrow or reduce legal issues? ☐ Yes ☒ No

d. Would a Pre-Hearing Conference help plan the handling of large records? ☐ Yes ☒ No

e. Would a Pre-Hearing Conference help plan for other administrative issues? ☐ Yes ☒ No

If "yes" to (c), (d), or (e), please state the issues and summarize your discussions to date with the opposing party/counsel about them. _____

CERTIFICATE OF SERVICE

I certify that on the date stated below a copy of the foregoing Report was mailed, postage prepaid to:

Richard A. DeTar, Esquire
Demetrios G. Kaouris, Esquire
101 Bay Street
Easton, Maryland 21601

Daniel Karp, Esquire
Victoria Shearer, Esquire
120 E. Baltimore Street, Suite 1850
Baltimore, Maryland 21202-1605

Joseph Gill, Esquire
Paul J. Cueuzzella, Esquire
Marianne D. Mason, Esquire
580 Taylor Avenue, C-4
Annapolis, Maryland 21401

Michael L. Pullen, Esquire
11 N. Washington Street
Easton, Maryland 21601

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

9/12/06
Date

Signed

Revised June 2004

TALBOT COUNTY, MARYLAND	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
DEPARTMENT OF NATURAL RESOURCES, et al.	*	TALBOT COUNTY,
	*	MARYLAND
Defendants	*	Case No. 20-C-04-005095DJ

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 SEP 11 PM 2 08

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

NOTICE OF CROSS-APPEAL

The Town of Oxford ("Oxford"), Defendant/Counter-Plaintiff, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, pursuant to Maryland Rule 8-202(e) files this Notice of Cross Appeal from the Supplemental Memorandum and Final Judgment of the Court dated August 14, 2006 in the above-captioned matter.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2006, a copy of the foregoing Notice of Cross-Appeal was sent first class mail, postage prepaid to:

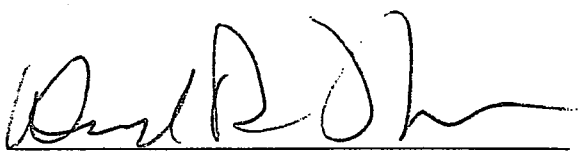
Daniel Karp, Esquire
Victoria Shearer, Esquire
Bryant, Karpinski, Colaresi & Karp, P.A.
Suite 1850
120 E. Baltimore Street
Baltimore, Maryland 21202-1605
Attorney for Talbot County, MD

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

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

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

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



David R. Thompson

KARPINSKI, COLARESI & KARP, P.A.
ATTORNEYS AT LAW
SUITE 1850, 120 EAST BALTIMORE STREET
BALTIMORE, MARYLAND 21202-1605

(410) 727-5000
FACSIMILE (410) 727-0861
E-MAIL bkcklaw@aol.com

DANIEL KARP *
KEVIN KARPINSKI *
RICHARD T. COLARESI
VICTORIA M. SHEARER *
MATTHEW D. PETER
THOMAS S. BOUCHELLE†

* ADMITTED IN MD AND D.C.
† ADMITTED IN MD AND DE

RECEIVED
SEP 8 2006
DNR - LEGAL DIVISION

September 6, 2006

P.H.C. Clerk
Court of Special Appeals
361 Rowe Boulevard
Annapolis, Maryland 21401

RE: My File No.: 324-231
Talbot County, Maryland v. Department of Natural Resources Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

Dear Sir/Madam Clerk:

Please find enclosed Appellant Talbot County, Maryland's Civil Appeal Information Report in the above-captioned appeal.

Sincerely yours,

KARPINSKI, COLARESI & KARP

Victoria Shearer

BY: Victoria M. Shearer

Enclosure

cc: Michael L. Pullen, Esquire
H. Michael Hickson, Esquire
Marianne D. Mason, Esquire
David R. Thompson, Esquire
Richard A. DeTar, Esquire

COURT OF SPECIAL APPEALS OF MARYLAND

361 Rowe Blvd., Second Floor
Annapolis, MD 21401
410-260-1450

CIVIL APPEAL INFORMATION REPORT (Md. Rules 8-205 & 8-206)

Appeal No. _____
(To be filled in by Clerk, Court of Special Appeals)

Directions: Generally, within 10 days after filing an appeal in a civil case, the appealing party ("appellant") must fill out, sign and file an original of this form by mail or by hand with P.H.C. Clerk, Court of Special Appeals, 361 Rowe Blvd., Annapolis, MD 21401, and send copies of it to all other attorneys and unrepresented parties in the case. Attach all requested items to the original and all copies. Use extra pages if desired. There is no filing fee for this report.

AN APPEAL MAY BE DISMISSED IF THIS FORM IS NOT TIMELY FILED, RULE 8-602(a)(4). Within 7 days of receiving an appellant's information report, each non-appealing party ("appellee") may but need not file one.

Appeals of Juvenile Court cases, and appeals by prisoners relating to their confinement, are exempt from this form.

PLEASE SUPPLY THE FOLLOWING INFORMATION:

1. **Case Caption:** Talbot County v. Dept. of Natural Resources Critial Area Commission, et. al.

   a. Name of party appealing: Talbot County, Maryland

   b. Was this case previously appealed to this Court? ☐ No ☒ Yes;
   If "yes," Appeal No. 418, Sept. Term, 20 06; Appeal No. _____, Sept. Term, 20___.

   c. Are there other cases pending in this Court that are related to this case? ☒ No ☐ Yes;
   If "yes," Appeal No. _____, Sept. Term, 20___; Appeal No. _____, Sept. Term, 20___.

   d. Are there other cases pending in another court that are related to this case? ☒ No ☐ Yes; if "yes," then:
   Case No. _____
   Court: _____
   Case title: _____

2. **Name, mailing address, email & weekday telephone of parties and attorneys, if any:**

   Appellant(s): Talbot County, Maryland c/o Michael Pullen, County Atty 11 North Washington Street, Easton, Maryland 21601; 410-770-8001

   Appellee(s): Dept. of Natural Resources Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, Town of Oxford, Town of St. Michaels, Midland Companies & Miles Point Properties, LLC.

   Attorney(s) for Appellant(s): Michael Pullen, CountyAttorney, 11 N.Washington Street, Easton, MD 21601; 410-770-8001.
   Daniel Karp &Victoria Shearer, 120 E.Baltimore Street, Suite 1850, Baltimore Maryland 21202; 410-727-5000

   Attorney(s) for Appellee(s): Dept. of Natural Resources Critical Area Comm'n, Joseph Gill and Mariane Mason, Esq., 580 Taylor Ave, C-4, Annapolis MD 21401, Town of St.Michaels, Michael Hickson, Esq., Banks, Nason & Hickson, 113 S. Baptist St., P.O. Box 44, Salisbury MD 21803. Town of Oxford, David Thompson esq., Cowdry, Thompson & Karsten 130 N Washington Street, Easton, MD 21601.

3. **A.D.A. Accommodation/Interpreters for Proceedings in Maryand Appellate Courts**

Will a party or attorney need an A.D.A. accommodation or interpreter? ☒ No ☐ Yes
If "yes," please explain the need and the requested accommodation: _____

4. **Type of civil case**: ☐ administrative appeal, ☐ contract, ☒ declaratory judgment, ☐ domestic, ☐ estate, ☐ foreclosure, ☐ paternity, ☐ tort, ☐ workers' compensation, ☐ other (specify):

5. **Court appealed from: ☒ Circuit ☐ Orphans Court for** _____

a. Full Case No: 2-C-04-005095 DJ b. Judge's Name: John W. Sause
c. Does the appeal arise from:
A pre-trial motion? ☐ No ☒ Yes; if yes, ☒ Motion with hearing, or ☐ Motion without hearing.
A trial? ☐ No ☐ Yes; if yes, ☐ Jury trial, or ☐ Non-jury trial.
Other? ☐ No ☐ Yes; if yes, (specify):

d. Is this an appeal of an order granting a motion to dismiss?..... ☒ No ☐ Yes; if yes, go to (f)
e. Is this an appeal of an order granting summary judgment?..... ☐ No ☒ Yes; if yes, go to (f)

If you answered "yes" to (d) or (e), then:
f. Was a hearing requested in writing by any party? ..... ☐ No ☒ Yes; if yes, go to (g)
g. Was a hearing held?..... ☐ No ☒ Yes; if yes, go to (h)
h. Was the hearing recorded?..... ☐ No ☒ Yes; if yes, go to (i) thru (k)

For all cases where there was a hearing and/or trial, please answer (i) through (k):
i. Dates & duration of trial/hearing (days/hours): January 26, 2006
j. Number of exhibits in evidence: _____
k. If a full transcript of all proceedings will not be ordered or is unnecessary for the appeal, please explain why Rule 8-411 does not apply: _____

6. **Record Extract**
a. In your view, will the court file, exhibits and transcripts altogether exceed 100 pages? ☒ Yes ☐ No.
b. If "yes," have the attorneys and unrepresented parties discussed using Rules 8-413(b)("Statement of Case in Lieu of Entire Record"), or 8-501(l)("Deferred Record Extract")? ☐ Yes ☒ No; if "no," explain why: Because neither option is viable in this case.

7. **Judgments, Orders and/or Rulings in Question**
(ATTACH COPY OF WRITTEN JUDGMENTS, ORDERS &/OR RULINGS BEING APPEALED.)
a. Date of judgments, orders and/or rulings appealed (if different from shown on docket, please explain):
Supplemental Memorandum and Final Judgment dated August 14, 2006.

b. Describe judgments, orders and/or rulings appealed, including whether such is/are written:

c. Do the judgments, orders and/or rulings end the whole case (all claims) as to all parties? ☒ Yes ☐ No
(If "no," explain how the judgments, orders and/or rulings are appealable under Rule 2-602 and Code, Courts Art., sections 12-301, 12-303:

8. Post-Judgment Motions

a. Were any motions filed under Rules 2-532, 2-533, or 2-534? ..... ☐ Yes ☒ No
If "yes," please identify each such motion and for each, state:
1. Date(s) filed: ;
2. Date(s) of ruling(s) on motion(s): ;
3. Ruling(s) on motion(s):

b. Was *in banc* review requested under Rule 2-551? ..... ☐ Yes ☐ No
If "yes," who filed for *in banc* review:

9. Appeal

(ATTACH COPY OF NOTICE OF APPEAL)

a. Appeal's filing date in circuit court: September 1, 2006 ;
b. Name of party appealing: Talbot County, Maryland ;
c. Filing fee paid? ☒ Yes ☐ No; if "no," is a motion for waiver and affidavit attached? ☐ Yes ☐ No
d. Is this an appeal under Rule 8-207(a) of an order about: adoption; guardianship terminating parental rights; guardianship of the person; child custody or visitation? ..... ☐ Yes ☒ No
e. Is this an appeal of an interlocutory order under Code, Courts Article, section 12-303? ☐ Yes ☒ No
f. Will this be an Expedited Appeal under Rule 8-207(b)? ..... ☐ Yes ☒ No
g. State each issue and claim of trial court error that you are appealing. (Appellees may use this space to explain their contentions about an appellant's answer to this question.)
This is a declaratory judgment action in which the parties filed cross-motions for summary judgment. Appellant challenges the Circuit Court's denial of its Motion for Summary Judgment, and grant of DNR's motion.

10. Settlement or Scheduling Conference

(Information disclosed on this form is subject to the confidentiality provision of Rule 8-205(f).)

a. Describe briefly the history and present status of settlement negotiations sufficient to aid the Court of Special Appeals to decide whether to schedule a Pre-Hearing Conference: None

b. Was this case submitted to any Alternative Dispute Resolution process (arbitration, mediation, settlement conference, etc.)? ☐ Yes ☒ No. If "yes," describe briefly. _____

c. Would a Pre-Hearing Conference help to narrow or reduce legal issues? ☐ Yes ☒ No
d. Would a Pre-Hearing Conference help plan the handling of large records? ☐ Yes ☒ No
e. Would a Pre-Hearing Conference help plan for other administrative issues? ☐ Yes ☒ No
If "yes" to (c), (d), or (e), please state the issues and summarize your discussions to date with the opposing party/counsel about them. _____

CERTIFICATE OF SERVICE

I certify that on the date stated below a copy of the foregoing Report was mailed, postage prepaid to:

Mike Pullen, Esq.
11 N. Washington Street
Easton, Maryland 21601

David Thompson, Esq.
130 N. Washington Street
Waston, Maryland 21601

H. Michael Hickson, Esq.
113 S. Baptist Street, P.O. Box 44
Salisbury, Maryland 21803

Richard DeTar, Esq.
101 Bay Street
Easton, Maryland 21601

Marianne D. Mason, Esq.
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

9-6-06
Date

Victoria Shearer
Signed

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

THE CIRCUIT COURT FOR TALBOT COUNTY

2006 AUG 14 PM 2 43

TALBOT COUNTY MARYLAND	:	
v.	:	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	:	

SUPPLEMENTAL MEMORANDUM

This action has been returned by the Court of Special Appeals based upon findings that the Judgment of this Court does not "unambiguously declare the rights of the . . . [defendants]" and thus is "non-final under Md. Rule 2-602 . . . [because] without explicit declaration of the rights of four parties . . . the judgment does not conform to the principle that a trial court should declare in writing the rights of all parties who properly seek declaratory relief."

Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." The requests for relief in the counterclaims of the municipalities were identical, being that we "determine and adjudicate the rights and liabilities of the parties with respect to County Bill No. 933." We apologize for the plain errors in not expanding upon the statement in paragraph 1 of the former Judgment and of assuming that our findings and declaration that Bill 933 had been disapproved by the Critical Area Commission involved the inevitable and only result that no one, including the parties, had any rights or responsibilities with respect to Bill 933. A full statement of that proposition has been added to the Judgment which accompanies this Memorandum.

The Order of the Court of Special Appeals also directs "further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC and Midland Companies, Inc." Out of an abundance of caution, we interpret this to mean that consideration should be given not only to rights and responsibilities relating to Bill 933, but also to the broader and more general question involving rights and responsibilities

of the parties with respect to distribution and use of growth allocation.[1]

We believe that the hearing already held and the Memorandum of March 23, 2006, are sufficient to permit a statement of those rights and responsibilities without further hearing or argument. Those matters are also included in the accompanying Judgment. If any party disagrees with proceeding in this manner, it would seem best in the interests of time and economy that it be first addressed by a motion to alter or amend the judgment in accordance with Rule 2-534.

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

August 14, 2006

[1] It should be noted, however, that Miles Point Properties, LLC, and Midland Companies, Inc., have not filed a counterclaim or otherwise requested declaratory relief.

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

THE CIRCUIT COURT FOR TALBOT COUNTY

2006 AUG 14 PM 2 43

TALBOT COUNTY MARYLAND	
v.	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	

JUDGMENT

For reasons stated in the Memorandum filed on March 23, 2006, the Order of the Court of Special Appeals dated, July 7, 2006, and the Supplemental Memorandum filed herewith, the Judgment dated March 23, 2006, is **VACATED** and, in lieu thereof, the Court **FINDS AND DECLARES** that:

As used in this Judgment:

critical area statute means Title 8, Subtitle 18, of the Natural Resources Article of the *Code*, specific provisions of which are herein cited as "NR §.

growth allocation and *program* have the meanings contained in paragraphs (10) and (14) of NR § 8-1802 (a).

Bill 933 means the proposal titled "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.", which was adopted by the Talbot County Council and forwarded for approval to the Critical Area Commission.

local jurisdictions refers to Talbot County and all municipal corporations within its borders with planning and zoning powers, in which any part of the Chesapeake Bay Critical Area is located. *Cf.* NR § 8-1802 (a)(13).

Propriety of Critical Area Commission action

1. Under NR § 8-1806, the Critical Area Commission "has all powers necessary for carrying out the purposes of this subtitle" and thus not only the right, but also the duty to do so. One of those purposes is that contained in NR § 8-1801: "the purpose . . . [t]o implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight."

2. The local jurisdictions are also required to observe the purpose stated in NR § 8-1801 and establish and implement local critical area programs:

a-in a consistent and uniform manner and .

b-consistent with the critical area statute and criteria adopted by the Critical Area Commission.

3. Criteria adopted by the Critical Area Commission in accordance with specific authority granted by NR § 8-1806 provide that local critical area programs are to be adopted and implemented::

a-in a manner which reflects consideration of cumulative impacts of regulated activities;

b-in coordination with each other; and

c-by action in coordination with each other when planning future expansion of intensely developed and limited development areas.

4. The Critical Area Commission has a duty and the authority under NR § 8-1809 (j). to withhold approval from proposed program amendments that do not meet the criteria adopted by the Commission and correctly decided that Bill 933 did not meet those criteria.

5. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amendment to the Talbot County critical area program for the reason that it would negate valid action previously taken by the Commission.

6. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amend-

ment to the Talbot County critical area program for the reason that it would create conflicts between the County program and several approved municipal programs.

7. There is insufficient proof to support a finding that the Critical Area Commission failed to act within the period for consideration and final action provided in NR § 8-1809 (m); and credible proof indicates that it complied with the statute in that respect.

Specific rights and duties with respect to Bill 933

8. Notwithstanding that the County otherwise had full authority to amend the *Talbot County Code*, its authority with respect to matters relating to the critical area program involved only the right to "propose" an amendment . NR § 8-1809 (h). As further stated in NR § 8-1809 (i), "A program may not be amended except with the approval of the Commission." The short of the matter is that Bill 933 was not in any sense an actual amendment of the program – or final action of any other sort. Bill 933, representing a proposal which was rejected by the only body having authority to grant final aapproval, has neither force or effect nor any other present significance, legal or factual. For all intents and purposes, it is nonexistent. Accordingly, none of the parties to this action has any rights and responsibilities with respect to Bill 933.

General rights and responsibilities of local jurisdictions

9. The critical area statute and criteria adopted by the Critical Area Commission, referred to in paragraphs 1, 2 and 3 of this Judgment, contemplate that growth allocation is to be shared by the local jurisdictions.

10. An individual local jurisdiction has no primary or superior right to determine the manner of distribution or use of growth allocation or to control or supervise the use of growth allocation by another local jurisdiction.

11. Accordingly, the portion of the critical area program of each local jurisdiction which relates to distribution of growth allocation must be established on a cooperative basis by all local jurisdictions (NR § 8-1801) and in a manner which is coordinated (COMAR 27.01.10.01), consistent and uniform (COMAR 27.01.02.06). In other words, growth allocation is to be distributed on the basis of an overall plan for distribution which is a synthesis of the individual programs adopted by the local jurisdictions.

12. While admitting that formulation of such a plan may not be a simple exercise, we reject the notion that responsible public officials are unable or unwilling to apply the common sense and good will necessary to meet the challenge. A point of departure

might lie in ascertaining the amount of growth allocation to which each local jurisdiction would be entitled if assigned in the same proportion that the critical area in that local jurisdiction bears to the critical area in all local jurisdictions. The suggestion of course does not have the imprimatur of law, but it certainly illustrates the plain need for cooperation and an overall comprehensive plan in order to avoid the absurd result of having the common pool of growth allocation dominated or gobbled up by a single local jurisdiction.

13. The program of each local jurisdiction, its consistency with the plan referred to in paragraph 11 of this Judgment and the proper cumulative effect of all local programs are ultimately subject to review and approval by the Critical Area Commission as set forth in paragraphs 1 through 6 of this Judgment.

Rights of other intervening defendants

14. The findings and declarations contained in paragraph 8 of this Judgment, are applicable to interveners Miles Point Properties, LLC and Midland Companies, Inc.

15. Miles Point Properties, LLC, and Midland Companies, Inc., have none of the rights and responsibilities applicable to local jurisdictions, as set forth in paragraphs 9 through 13 of this Judgment, including, in particular, the plan referred to in paragraph 11 for the reasons that:

a-Those rights or responsibilities involve only the performance of a statutory duty of the local jurisdictions to apportion growth allocation, which is a wholly governmental function and

b-No special right or interest has been acquired by reason of their participation in growth allocation proceedings in the Town of St. Michaels, as the local jurisdictions have a continuing right to change or amend any law or ordinance. As stated in *O'Donnell v. Bassler*, 289 Md. 501, 508, a court "must apply the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights." In the latter regard:

> Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred. *Steuart Petroleum Co. v. Board of County Comm'rs of St. Mary's County*, 276 Md. 435, 442-44 . . .; *County Council for Montgomery County*

v. District Land Corp., 274 Md. 691, 707 . . . .

On the basis of the facts present in this action, Miles Point Properties, LLC, and Midland Companies, Inc., have neither obtained a permit, nor made any substantial beginning in construction.

16. The findings and declarations contained in paragraph 15 of this Judgment are not intended to, and do not, affect the rights of Miles Point Properties, LLC, and Midland Companies, Inc., to exercise the same rights as any other interested citizen to attend and participate in any hearing relating to the adoption or amendment of a critical area program.

Other dispositions

17. Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." Between paragraphs 70 and 71, plaintiffs' second amended complaint contains a caption which reads "Count V Mandamus and Certiorari." No other reference is made to those causes of action; and, except for a general request for an order directing the Critical Area Commission to "adopt" Bill 933 [1]), the complaint requests only declaratory relief. We are left to wonder as to the existence of the special allegations necessary to entertain those extraordinary causes of action.

18. For the reasons set forth in paragraph 17, issuance of writs of mandamus or certiorari are **DENIED**.

19. The costs of this proceeding shall be paid by plaintiff.

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

August 14, 2006

[1] Which, in the context of plaintiffs' specific requests for relief, can only be read as a request to issue an injunction as supplementary relief in accordance with § 3-412 of the Maryland Uniform Declaratory Judgments Act.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE: AND ATLANTIC COASTAL BAYS, et al.	:	
Defendants	:	

NOTICE OF APPEAL

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and KARPINSKI, COLARESI & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, hereby files an appeal from the Supplemental Memorandum and Final Judgment of the court dated August 14, 2006.

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: /Michael Pullen/cs

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

KARPINSKI, COLARESI
& KARP

BY: Daniel Karp/os
DANIEL KARP

Victoria Shearer
VICTORIA M. SHEARER
Suite 1850
120 E. Baltimore Street
Baltimore MD 21202
Attorneys for Plaintiff, Talbot County
(410)727-5000

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September 2006, a copy of the foregoing Notice of Appeal was sent by first-class, postage prepaid to:

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

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

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

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

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

Victoria Shearer
Plaintiff Talbot County, Maryland

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

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

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

Defendants

:

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 SEP 5 PM 3 44

NOTICE OF APPEAL

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and KARPINSKI, COLARESI & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, hereby files an appeal from the Supplemental Memorandum and Final Judgment of the court dated August 14, 2006.

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: Michael Pullen /cs

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

KARPINSKI, COLARESI
& KARP

BY: Daniel Karp/vs
DANIEL KARP

Victoria Shearer
VICTORIA M. SHEARER
Suite 1850
120 E. Baltimore Street
Baltimore MD 21202
Attorneys for Plaintiff, Talbot County
(410)727-5000

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September 2006, a copy of the foregoing Notice of Appeal was sent by first-class, postage prepaid to:

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

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

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

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

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

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 SEP 5 PM 3 44

Victoria Shearer
Plaintiff Talbot County, Maryland

MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TT/VOICE

RECEIVED

AUG 15 2006

DNR - LEGAL DIVISION

No. 00418, September Term, 2006

Talbot County, Maryland et al.
vs.
Department of Natural Resources,
Critical Area Commission et al.

JUDGMENT: June 21, 2006: Motion to Dismiss Appeal filed by counsel for the appellee.
June 30, 2006: Response to Motion to Dismiss Appeal filed by counsel for the appellant.
-July 7, 2006: Order of Court pursuant to Maryland Rule 8-206(d), that the matter proceed as follows without a further Prehearing Conference; Further Ordered, pursuant to Maryland Rule 8-602(a)(1), that the appellee Town of Oxford's "Motion to Dismiss Appeal" is hereby granted. The 4/13/06 appeal of Talbot Co., and 4/24/06 cross-appeals of Town of Oxford and Commissioners of St. Michaels, are premature and hereby dismissed without prejudice to the right to note an appeal from a final judgment or other appealable collateral order; Further Ordered that the matter is remanded to the Circuit Court for Talbot County for further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC, and Midland Companies, Inc. Each party to bear its own costs to date in this Court in the above-captioned matter.

August 07, 2006: Mandate issued.

From the Circuit Court: for **TALBOT COUNTY**
002C04005095

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **seventh** *day of* **August** **2006**

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 AUG 14 PM 2 43

THE CIRCUIT COURT FOR TALBOT COUNTY

TALBOT COUNTY MARYLAND	:	
v.	:	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	:	

JUDGMENT

For reasons stated in the Memorandum filed on March 23, 2006, the Order of the Court of Special Appeals dated, July 7, 2006, and the Supplemental Memorandum filed herewith, the Judgment dated March 23, 2006, is **VACATED** and, in lieu thereof, the Court **FINDS AND DECLARES** that:

As used in this Judgment:

critical area statute means Title 8, Subtitle 18, of the Natural Resources Article of the *Code*, specific provisions of which are herein cited as "NR §.

growth allocation and *program* have the meanings contained in paragraphs (10) and (14) of NR § 8-1802 (a).

Bill 933 means the proposal titled "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.", which was adopted by the Talbot County Council and forwarded for approval to the Critical Area Commission.

local jurisdictions refers to Talbot County and all municipal corporations within its borders with planning and zoning powers, in which any part of the Chesapeake Bay Critical Area is located. *Cf.* NR § 8-1802 (a)(13).

Propriety of Critical Area Commission action

1. Under NR § 8-1806, the Critical Area Commission "has all powers necessary for carrying out the purposes of this subtitle" and thus not only the right, but also the duty to do so. One of those purposes is that contained in NR § 8-1801: "the purpose . . . [t]o implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight."

2. The local jurisdictions are also required to observe the purpose stated in NR § 8-1801 and establish and implement local critical area programs:

a-in a consistent and uniform manner and .

b-consistent with the critical area statute and criteria adopted by the Critical Area Commission.

3. Criteria adopted by the Critical Area Commission in accordance with specific authority granted by NR § 8-1806 provide that local critical area programs are to be adopted and implemented::

a-in a manner which reflects consideration of cumulative impacts of regulated activities;

b-in coordination with each other; and

c-by action in coordination with each other when planning future expansion of intensely developed and limited development areas.

4. The Critical Area Commission has a duty and the authority under NR § 8-1809 (j). to withhold approval from proposed program amendments that do not meet the criteria adopted by the Commission and correctly decided that Bill 933 did not meet those criteria.

5. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amendment to the Talbot County critical area program for the reason that it would negate valid action previously taken by the Commission.

6. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amend-

ment to the Talbot County critical area program for the reason that it would create conflicts between the County program and several approved municipal programs.

7. There is insufficient proof to support a finding that the Critical Area Commission failed to act within the period for consideration and final action provided in NR § 8-1809 (m); and credible proof indicates that it complied with the statute in that respect.

Specific rights and duties with respect to Bill 933

8. Notwithstanding that the County otherwise had full authority to amend the *Talbot County Code*, its authority with respect to matters relating to the critical area program involved only the right to "propose" an amendment . NR § 8-1809 (h). As further stated in NR § 8-1809 (i), "A program may not be amended except with the approval of the Commission." The short of the matter is that Bill 933 was not in any sense an actual amendment of the program – or final action of any other sort. Bill 933, representing a proposal which was rejected by the only body having authority to grant final aapproval, has neither force or effect nor any other present significance, legal or factual. For all intents and purposes, it is nonexistent. Accordingly, none of the parties to this action has any rights and responsibilities with respect to Bill 933.

General rights and responsibilities of local jurisdictions

9. The critical area statute and criteria adopted by the Critical Area Commission, referred to in paragraphs 1, 2 and 3 of this Judgment, contemplate that growth allocation is to be shared by the local jurisdictions.

10. An individual local jurisdiction has no primary or superior right to determine the manner of distribution or use of growth allocation or to control or supervise the use of growth allocation by another local jurisdiction.

11. Accordingly, the portion of the critical area program of each local jurisdiction which relates to distribution of growth allocation must be established on a cooperative basis by all local jurisdictions (NR § 8-1801) and in a manner which is coordinated (COMAR 27.01.10.01), consistent and uniform (COMAR 27.01.02.06). In other words, growth allocation is to be distributed on the basis of an overall plan for distribution which is a synthesis of the individual programs adopted by the local jurisdictions.

12. While admitting that formulation of such a plan may not be a simple exercise, we reject the notion that responsible public officials are unable or unwilling to apply the common sense and good will necessary to meet the challenge. A point of departure

might lie in ascertaining the amount of growth allocation to which each local jurisdiction would be entitled if assigned in the same proportion that the critical area in that local jurisdiction bears to the critical area in all local jurisdictions. The suggestion of course does not have the imprimatur of law, but it certainly illustrates the plain need for cooperation and an overall comprehensive plan in order to avoid the absurd result of having the common pool of growth allocation dominated or gobbled up by a single local jurisdiction.

13. The program of each local jurisdiction, its consistency with the plan referred to in paragraph 11 of this Judgment and the proper cumulative effect of all local programs are ultimately subject to review and approval by the Critical Area Commission as set forth in paragraphs 1 through 6 of this Judgment.

Rights of other intervening defendants

14. The findings and declarations contained in paragraph 8 of this Judgment, are applicable to interveners Miles Point Properties, LLC and Midland Companies, Inc.

15. Miles Point Properties, LLC, and Midland Companies, Inc., have none of the rights and responsibilities applicable to local jurisdictions, as set forth in paragraphs 9 through 13 of this Judgment, including, in particular, the plan referred to in paragraph 11 for the reasons that:

a-Those rights or responsibilities involve only the performance of a statutory duty of the local jurisdictions to apportion growth allocation, which is a wholly governmental function and

b-No special right or interest has been acquired by reason of their participation in growth allocation proceedings in the Town of St. Michaels, as the local jurisdictions have a continuing right to change or amend any law or ordinance. As stated in *O'Donnell v. Bassler*, 289 Md. 501, 508, a court "must apply the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights." In the latter regard:

> Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred. *Steuart Petroleum Co. v. Board of County Comm'rs of St. Mary's County*, 276 Md. 435, 442-44 . . .; *County Council for Montgomery County*

v. District Land Corp., 274 Md. 691, 707 . . . .

> On the basis of the facts present in this action, Miles Point Properties, LLC, and Midland Companies, Inc., have neither obtained a permit, nor made any substantial beginning in construction.

16. The findings and declarations contained in paragraph 15 of this Judgment are not intended to, and do not, affect the rights of Miles Point Properties, LLC, and Midland Companies, Inc., to exercise the same rights as any other interested citizen to attend and participate in any hearing relating to the adoption or amendment of a critical area program.

Other dispositions

17. Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." Between paragraphs 70 and 71, plaintiffs' second amended complaint contains a caption which reads "Count V Mandamus and Certiorari." No other reference is made to those causes of action; and, except for a general request for an order directing the Critical Area Commission to "adopt" Bill 933 [1]), the complaint requests only declaratory relief. We are left to wonder as to the existence of the special allegations necessary to entertain those extraordinary causes of action.

18. For the reasons set forth in paragraph 17, issuance of writs of mandamus or certiorari are **DENIED**.

19. The costs of this proceeding shall be paid by plaintiff.

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

August 14, 2006

[1] Which, in the context of plaintiffs' specific requests for relief, can only be read as a request to issue an injunction as supplementary relief in accordance with § 3-412 of the Maryland Uniform Declaratory Judgments Act.

CIRCUIT COURT FOR TALBOT COUNTY
Mary Ann Shortall
Clerk of the Circuit Court
11 N. Washington Street

Easton, MD 21601
(410)-822-2611, TTY for Deaf: (410)-819-0909
MD Toll Free (1-800)339-3403 Fax (410)820-8168 Assignment Ofc (410)822-4444

Case Number: 20-C-04-005095 DJ

Marianne Mason
C4 Legal,Tawes Ofc Bldg.
580 Taylor Avenue
Annapolis, MD 21401

RECEIVED
AUG 16 2006
DNR - LEGAL DIVISION

FOLD HERE

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

THE CIRCUIT COURT FOR TALBOT COUNTY

2006 AUG 14 PM 2 43

TALBOT COUNTY MARYLAND	:	
v.	:	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	:	

: : : : :

SUPPLEMENTAL MEMORANDUM

This action has been returned by the Court of Special Appeals based upon findings that the Judgment of this Court does not "unambiguously declare the rights of the . . . [defendants]" and thus is "non-final under Md. Rule 2-602 . . . [because] without explicit declaration of the rights of four parties . . . the judgment does not conform to the principle that a trial court should declare in writing the rights of all parties who properly seek declaratory relief."

Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." The requests for relief in the counterclaims of the municipalities were identical, being that we "determine and adjudicate the rights and liabilities of the parties with respect to County Bill No. 933." We apologize for the plain errors in not expanding upon the statement in paragraph 1 of the former Judgment and of assuming that our findings and declaration that Bill 933 had been disapproved by the Critical Area Commission involved the inevitable and only result that no one, including the parties, had any rights or responsibilities with respect to Bill 933. A full statement of that proposition has been added to the Judgment which accompanies this Memorandum.

The Order of the Court of Special Appeals also directs "further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC and Midland Companies, Inc." Out of an abundance of caution, we interpret this to mean that consideration should be given not only to rights and responsibilities relating to Bill 933, but also to the broader and more general question involving rights and responsibilities

of the parties with respect to distribution and use of growth allocation.[1]

We believe that the hearing already held and the Memorandum of March 23, 2006, are sufficient to permit a statement of those rights and responsibilities without further hearing or argument. Those matters are also included in the accompanying Judgment. If any party disagrees with proceeding in this manner, it would seem best in the interests of time and economy that it be first addressed by a motion to alter or amend the judgment in accordance with Rule 2-534.

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

August 14, 2006

[1] It should be noted, however, that Miles Point Properties, LLC, and Midland Companies, Inc., have not filed a counterclaim or otherwise requested declaratory relief.

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 AUG 14 PM 2 43

THE CIRCUIT COURT FOR TALBOT COUNTY

TALBOT COUNTY MARYLAND	:	
v.	:	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	:	

JUDGMENT

For reasons stated in the Memorandum filed on March 23, 2006, the Order of the Court of Special Appeals dated, July 7, 2006, and the Supplemental Memorandum filed herewith, the Judgment dated March 23, 2006, is **VACATED** and, in lieu thereof, the Court **FINDS AND DECLARES** that:

As used in this Judgment:

critical area statute means Title 8, Subtitle 18, of the Natural Resources Article of the *Code*, specific provisions of which are herein cited as "NR §.

growth allocation and *program* have the meanings contained in paragraphs (10) and (14) of NR § 8-1802 (a).

Bill 933 means the proposal titled "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.", which was adopted by the Talbot County Council and forwarded for approval to the Critical Area Commission.

local jurisdictions refers to Talbot County and all municipal corporations within its borders with planning and zoning powers, in which any part of the Chesapeake Bay Critical Area is located. *Cf.* NR § 8-1802 (a)(13).

Propriety of Critical Area Commission action

1. Under NR § 8-1806, the Critical Area Commission "has all powers necessary for carrying out the purposes of this subtitle" and thus not only the right, but also the duty to do so. One of those purposes is that contained in NR § 8-1801: "the purpose . . . [t]o implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight."

2. The local jurisdictions are also required to observe the purpose stated in NR § 8-1801 and establish and implement local critical area programs:

a-in a consistent and uniform manner and .

b-consistent with the critical area statute and criteria adopted by the Critical Area Commission.

3. Criteria adopted by the Critical Area Commission in accordance with specific authority granted by NR § 8-1806 provide that local critical area programs are to be adopted and implemented::

a-in a manner which reflects consideration of cumulative impacts of regulated activities;

b-in coordination with each other; and

c-by action in coordination with each other when planning future expansion of intensely developed and limited development areas.

4. The Critical Area Commission has a duty and the authority under NR § 8-1809 (j). to withhold approval from proposed program amendments that do not meet the criteria adopted by the Commission and correctly decided that Bill 933 did not meet those criteria.

5. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amendment to the Talbot County critical area program for the reason that it would negate valid action previously taken by the Commission.

6. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amend-

ment to the Talbot County critical area program for the reason that it would create conflicts between the County program and several approved municipal programs.

7. There is insufficient proof to support a finding that the Critical Area Commission failed to act within the period for consideration and final action provided in NR § 8-1809 (m); and credible proof indicates that it complied with the statute in that respect.

Specific rights and duties with respect to Bill 933

8. Notwithstanding that the County otherwise had full authority to amend the *Talbot County Code*, its authority with respect to matters relating to the critical area program involved only the right to "propose" an amendment . NR § 8-1809 (h). As further stated in NR § 8-1809 (i), "A program may not be amended except with the approval of the Commission." The short of the matter is that Bill 933 was not in any sense an actual amendment of the program – or final action of any other sort. Bill 933, representing a proposal which was rejected by the only body having authority to grant final aapproval, has neither force or effect nor any other present significance, legal or factual. For all intents and purposes, it is nonexistent. Accordingly, none of the parties to this action has any rights and responsibilities with respect to Bill 933.

General rights and responsibilities of local jurisdictions

9. The critical area statute and criteria adopted by the Critical Area Commission, referred to in paragraphs 1, 2 and 3 of this Judgment, contemplate that growth allocation is to be shared by the local jurisdictions.

10. An individual local jurisdiction has no primary or superior right to determine the manner of distribution or use of growth allocation or to control or supervise the use of growth allocation by another local jurisdiction.

11. Accordingly, the portion of the critical area program of each local jurisdiction which relates to distribution of growth allocation must be established on a cooperative basis by all local jurisdictions (NR § 8-1801) and in a manner which is coordinated (COMAR 27.01.10.01), consistent and uniform (COMAR 27.01.02.06). In other words, growth allocation is to be distributed on the basis of an overall plan for distribution which is a synthesis of the individual programs adopted by the local jurisdictions.

12. While admitting that formulation of such a plan may not be a simple exercise, we reject the notion that responsible public officials are unable or unwilling to apply the common sense and good will necessary to meet the challenge. A point of departure

might lie in ascertaining the amount of growth allocation to which each local jurisdiction would be entitled if assigned in the same proportion that the critical area in that local jurisdiction bears to the critical area in all local jurisdictions. The suggestion of course does not have the imprimatur of law, but it certainly illustrates the plain need for cooperation and an overall comprehensive plan in order to avoid the absurd result of having the common pool of growth allocation dominated or gobbled up by a single local jurisdiction.

13. The program of each local jurisdiction, its consistency with the plan referred to in paragraph 11 of this Judgment and the proper cumulative effect of all local programs are ultimately subject to review and approval by the Critical Area Commission as set forth in paragraphs 1 through 6 of this Judgment.

Rights of other intervening defendants

14. The findings and declarations contained in paragraph 8 of this Judgment, are applicable to interveners Miles Point Properties, LLC and Midland Companies, Inc.

15. Miles Point Properties, LLC, and Midland Companies, Inc., have none of the rights and responsibilities applicable to local jurisdictions, as set forth in paragraphs 9 through 13 of this Judgment, including, in particular, the plan referred to in paragraph 11 for the reasons that:

a-Those rights or responsibilities involve only the performance of a statutory duty of the local jurisdictions to apportion growth allocation, which is a wholly governmental function and

b-No special right or interest has been acquired by reason of their participation in growth allocation proceedings in the Town of St. Michaels, as the local jurisdictions have a continuing right to change or amend any law or ordinance. As stated in *O'Donnell v. Bassler*, 289 Md. 501, 508, a court "must apply the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights." In the latter regard:

> Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred. *Steuart Petroleum Co. v. Board of County Comm'rs of St. Mary's County,* 276 Md. 435, 442-44 . . .; *County Council for Montgomery County*

v. District Land Corp., 274 Md. 691, 707 . . . .

> On the basis of the facts present in this action, Miles Point Properties, LLC, and Midland Companies, Inc., have neither obtained a permit, nor made any substantial beginning in construction.

16. The findings and declarations contained in paragraph 15 of this Judgment are not intended to, and do not, affect the rights of Miles Point Properties, LLC, and Midland Companies, Inc., to exercise the same rights as any other interested citizen to attend and participate in any hearing relating to the adoption or amendment of a critical area program.

Other dispositions

17. Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." Between paragraphs 70 and 71, plaintiffs' second amended complaint contains a caption which reads "Count V Mandamus and Certiorari." No other reference is made to those causes of action; and, except for a general request for an order directing the Critical Area Commission to "adopt" Bill 933 [1]), the complaint requests only declaratory relief. We are left to wonder as to the existence of the special allegations necessary to entertain those extraordinary causes of action.

18. For the reasons set forth in paragraph 17, issuance of writs of mandamus or certiorari are **DENIED**.

19. The costs of this proceeding shall be paid by plaintiff.

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

August 14, 2006

[1] Which, in the context of plaintiffs' specific requests for relief, can only be read as a request to issue an injunction as supplementary relief in accordance with § 3-412 of the Maryland Uniform Declaratory Judgments Act.

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 AUG 3 AM 11 36

THE CIRCUIT COURT FOR TALBOT COUNTY

TALBOT COUNTY MARYLAND	:	
	:	
v.	:	**Civil # 2-C-04-005095 D**
:	:	
DEPT. OF NATURAL RESOURCES	:	
CRITICAL AREA COMMISSION, et al	:	
	:	

: : : : :

MEMORANDUM

The Court has received the Order of the Court of Special Appeals, dated July 7, 2006.

The purpose of this Memorandum is to advise the parties of our determinations that compliance with the Order involves only supplementation of the Judgment of March 23, 2006; that no further hearing is required; and that the Court will supply a supplemental memorandum and amended Judgment in the near future.

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

August 2, 2006

RECEIVED

JUL 12 2006

DNR - LEGAL DIVISION

TALBOT COUNTY, MARYLAND	*	IN THE
Appellant	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
MARYLAND DEPARTMENT OF NATURAL RESOURCES, CRITICAL AREA COMMISSION et al.	*	No. 418
	*	September Term, 2006
Appellees	*	(CC #20-C-04-005095)

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

ORDER

On June 11, 2004, appellant's counsel filed an action for declaratory relief in the Circuit Court for Talbot County. The Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC, and the Midland Companies, Inc. were allowed to intervene. The two towns (Oxford and St. Michaels) counterclaimed for declaratory relief. Cross-summary judgment motions were filed. On March 27, 2006, the circuit court docketed the March 23, 2006 opinion thereon by the Hon. John W. Sause, Jr., retired, specially assigned. An appeal by appellant was filed on April 13, 2006, and cross-appeals by the towns of Oxford and St. Michaels were filed on April 24, 2006. A Prehearing Conference via telephone was held among counsel and the undersigned judge.

The judgment section of the circuit court's March 23, 2006 opinion declares appellant's rights but does not unambiguously declare the rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC and Midland Companies, Inc. On June 21, 2006, counsel for the Town of Oxford filed a "Motion to Dismiss Appeal" in this Court, and appellant's response thereto was filed on June 30, 2006.

The judgment of March 27, 2006 is non-final under Md. Rule 2-602, and is not certified under subsection (b) thereof, and thus, is not yet appealable. Another valid contention is that, without an

R.J.G. 7-5-06

explicit declaration of the rights of four other parties (*i.e.*, the two towns, Miles Point Properties, LLC and Midland Companies, Inc.), the judgment does not conform to the principle that a trial court should declare in writing the rights of all parties who properly seek declaratory relief. *Griffin v. Anne Arundel County*, 25 Md. App. 115, 137, *cert. denied*, 275 Md. 749 (1975); *Secure Financial Service, Inc. v. Popular Leasing USA, Inc.*, 391 Md. 274, 281 (2006) ("[W]hen entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment.").

It is, therefore, this 17th day of July, 2006, by the Court of Special Appeals,

ORDERED, pursuant to Maryland Rule 8-206(d), that the matter proceed as follows without a further Prehearing Conference; and, it is further,

ORDERED, pursuant to Maryland Rule 8-602(a)(1), that the appellee Town of Oxford's "Motion to Dismiss Appeal" is hereby granted. The April 13, 2006 appeal of Talbot County, Maryland, and the April 24, 2006 cross-appeals of the Town of Oxford and the Commissioners of St. Michaels, are premature and hereby dismissed without prejudice to the right to note an appeal from a final judgment or other appealable collateral order; and it is further,

ORDERED that the matter is remanded to the Circuit Court for Talbot County for further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC, and Midland Companies, Inc.

Each party to bear its own costs to date in this Court in the above-captioned matter.

James R. Eyler

James R. Eyler, Judge

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

TALBOT COUNTY, MARYLAND	:	
Appellant	:	
vs.	:	September Term, 2006
MARYLAND DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	:	Case No.: 418
Appellees	:	

RECEIVED
JUN 30 2006
DNR - LEGAL DIVISION

RESPONSE TO MOTION TO DISMISS APPEAL

Talbot County, Maryland, Appellant, by and through MICHAEL L. PULLEN, Talbot County Attorney, and BRYANT, KARPINSKI, COLARESI & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, submits this Response to Appellee/Cross-Appellant Town of Oxford's Motion to Dismiss the appeal.

1. Appellant Talbot County does not oppose dismissal of this appeal on the basis that the Order entered by the Circuit Court is not a "final judgment." However, Talbot County does disagree with certain portions of the Motion and the Proposed Order submitted with the Motion.

2. First, Talbot County does not agree with the allegations contained within Paragraph 3 of the Motion to Dismiss, which recites the alleged purposes or intent of Bill 933. In addition, Talbot County notes that the Complaint

attached to the Town of Oxford's Motion as "Exhibit C" is not the operative Complaint inasmuch as it was superseded by the Second Amended Complaint (filed February 18, 2005).

3. The Town of Oxford relies upon Maryland Rule 8-602(e)(1). However, that rule is not applicable to this case because no party has ever asserted that the trial court has discretion to or should enter a judgment pursuant to Rule 2-602(b). The Circuit Court lacks such discretion for the same reasons that the judgment is not "final," i.e., the Circuit Court must declare the rights of all parties (or that those parties' claims are moot) and does not possess discretion to adjudicate fewer than all of the claims in this action. The applicable provision is Rule 8-602(a). Rule 8-602(a) permits the Court of Special Appeals, on motion or on its own initiative, to dismiss an appeal for certain specified reasons, one of which is that "the appeal is not allowed by these rules or other law." The final judgment rule is a rule or "other law." Accordingly, Rule 8-602(a) and (b) permit this Court to dismiss the appeal and cross-appeals for lack of a final judgment.

4. Talbot County objects to the Proposed Order submitted by Oxford, as worded. First, the Proposed Order does not contain a statement that the judgment entered by the Circuit Court is not a final judgment. This statement

should be included in the order to render it clear, particularly to the Circuit Court, that the lack of a final judgment is the reason for dismissal. Second, the Proposed Order does not mention Intervenor/Defendant Miles Point Properties, LLC and the Midland Companies, Inc. ("Midland"), whose rights must also be addressed for the judgment to be final. Third, the Proposed Order dismisses the appeal but does not dismiss the cross-appeals. For the sake of clarity, the Order should specifically dismiss all appeals that have been filed.

Respectfully submitted,

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: Michael Pullen/vs

MICHAEL L. PULLEN
Talbot County Attorney
11 North Washington Street
Easton, Maryland 21601
410-770-8093

BRYANT, KARPINSKI, COLARESI
& KARP

BY: Daniel Karp/vs

DANIEL KARP

VICTORIA M. SHEARER
Suite 1850
120 East Baltimore Street
Baltimore, Maryland 21202
Attorneys for Appellant, Talbot County
410-727-5000

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 2006, a copy of the Response to Motion to Dismiss Appeal was sent by first-class mail, postage prepaid to:

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

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

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

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

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

Victoria Shearer
Talbot County, Maryland

LAW OFFICE

COWDREY, THOMPSON & KARSTEN

A PROFESSIONAL CORPORATION

ROY B. COWDREY, JR.
DAVID R. THOMPSON+
KURT D. KARSTEN *
ROBERT J. MERRIKEN *
HUGH CROPPER, IV
CURTIS H. BOOTH
BRYNJA MCDIVITT BOOTH
ELIZABETH ANN EVINS
JACOB BENSON CRAVEN

+ ADMITTED IN MD & VA
* ADMITTED IN MD & DC

130 NORTH WASHINGTON ST.

P. O. BOX 1747

EASTON, MARYLAND 21601

(410) 822-6800

FAX (410) 820-6586

ANNAPOLIS OFFICE
621 RIDGELY AVENUE
SUITE 402
ANNAPOLIS, MD 21401

OCEAN CITY OFFICE
P.O. BOX 535
9923 STEPHEN DECATUR
HIGHWAY, #D-2
OCEAN CITY, MD 21843

RECEIVED

JUN 22 2006

DNR - LEGAL DIVISION

June 21, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Honorable James R. Eyler
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Talbot County, Maryland v. Maryland Department of Natural Resources
Critical Area Commission, et al.
September Term, 2006
Case No. 418

Dear Judge Eyler:

Enclosed please find a chamber's copy of a Motion to Dismiss Appeal, which was filed by the Appellee, Town of Oxford in the above-referenced case. After your conference call with Michael Hickson, the attorney for St. Michaels, and Victoria Shearer, the attorney for Talbot County, the parties were unable to reach an agreement or stipulation with respect to the issue of the outstanding counterclaims raised by the Town of Oxford and St. Michaels. Accordingly, Oxford has filed a Motion to Dismiss Appeal in an attempt to resolve this matter.

Sincerely yours,

Brynja M. Booth

Brynja M. Booth

cc: all counsel of record:

H. Michael Hickson
Richard A. DeTar

Victoria M. Shearer
Marianne D. Mason
Michael Pullen
David R. Thompson

TALBOT COUNTY, MARYLAND	*	IN THE
	*	COURT OF
v.	*	SPECIAL APPEALS
MARYLAND DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	*	OF MARYLAND
	*	September Term, 2006
	*	Case No. 418

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

MOTION TO DISMISS APPEAL

Appellee/Cross-Appellant, the Town of Oxford, a Maryland Municipal Corporation ("Oxford"), by its attorneys, David R. Thompson, Brynja M. Booth, and Cowdrey, Thompson & Karsten, P.C., files this Motion to Dismiss Appeal, stating the following in support thereof:

1. This case involves an appeal by Talbot County, Maryland, and cross-appeals filed by the Town of Oxford and the Town of St. Michaels. The matter arises from a "judgment" entered by the Circuit Court of Talbot County on March 23, 2006. A copy of the judgment is attached hereto as Exhibit "A." The Memorandum which was issued contemporaneously with the "judgment" is attached hereto as Exhibit "B".

2. The case was commenced when Talbot County filed a Complaint against The Department of Natural Resources Critical Area Commission seeking a declaratory judgment, and a petition for a writ of mandamus.[1] A copy of the County's Complaint is

[1]The initial Complaint also included a third count, which sought an administrative appeal of the Critical Area Commission's decision. The Critical Area Commission filed a

attached hereto as Exhibit "C." The case involves an attempt by Talbot County to amend its local critical area program, through the introduction of Bill 933. The purpose, intent and purported effect of County Bill 933, was to withdraw from the incorporated municipalities, including the towns of Oxford and St. Michaels, their rights to exercise growth allocation rezoning and reclassification and control within their municipal boundaries, and to require the towns, including the Town of Oxford, to obtain County Council approval for municipal critical area land reclassifications.[2]

3. The Town of Oxford and the Town of St. Michaels each filed a Motion to Intervene and filed a Counterclaim against Talbot County. A copy of Oxford's Counterclaim is attached hereto as Exhibit "D" and St. Michael's Counterclaim is attached hereto as Exhibit "E." The trial court granted the motions to intervene. In its Counterclaim, Oxford requested a declaratory judgment, and requested that the court find and declare as follows:

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

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

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

---

motion to dismiss the administrative appeal, which was granted on December 8, 2004 by the trial court after a hearing.

[2] County Bill 933 and the procedural history surrounding the Bill, are set forth in more detail in the trial court's memorandum, which is attached as Exhibit B.

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

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

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

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

See Exhibit D.

4. Talbot County, St. Michaels and Oxford each filed motions for summary judgment. Oxford and St. Michaels both extensively briefed the issues presented in their respective counterclaims for declaratory judgment. Oxford and St. Michaels also addressed the issues raised in their counterclaims at a hearing held on the motions for summary judgment on January 26, 2006.

5. On March 27, 2006, the trial court entered a "judgment" and also issued a Memorandum opinion. See Exhibits A and B. In doing so, the trial court made the findings set forth in the attached "judgment," which denied Talbot County's request for a writ of mandamus and request for an issuance of a writ of certiorari. Exhibit A. However, the trial court did not enter a judgment or order with respect to Oxford's and St. Michaels's counterclaims. The trial court also made no findings or decision with respect to the towns' claims for declaratory judgment. See Exhibit A.

6. Section 12-301 of the Courts and Judicial Proceeding Article of the Maryland Annotated Code provides that a party may only appeal from a final judgment. A final judgment is a jurisdictional requirement. Popham v. State Farm Mut. Ins. Co., 333 Md. 136 (1994). For an appellate court to have subject matter jurisdiction, an appeal must generally be taken from a final judgment or an appealable interlocutory order. Planning Board v. Mortimer, 310 Md. 639, 644 (1987) (internal citations omitted). A judgment is considered final "if it decides or settles the very matter in controversy between the parties and determines the question of right in the case. In addition to being intended as an unqualified, final disposition of the matter in controversy,...the judgment must settle the rights of the parties, thereby concluding the cause of action." Waters v. Whiting, 113 Md. App. 464, 470 (1997) (internal citations omitted).

7. Maryland Rule 2-602 provides:

> (a) **Generally.** Except as provided in section (b) of this Rule, an order or other form of decision...that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim or third party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all of the parties to the action:
>
> (1) is not a final judgment[3]....
>
> . . . .

8. The Maryland Declaratory Judgment Act states as follows:

> Any person...whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation...may have

[3] The exception to this rule is set forth in Rule 2-602(b), which permits the trial court to direct the entry of a final judgment as to one or more but fewer than all of the claims for parties "...if the court expressly determines in a written order that there is no just reason for delay." There was no express written order in this case by the trial court which would create such an exception in this case.

> determined any question of construction or validity arising under the...statute, ordinance, administrative rule or regulation...and obtain a declaration of rights, status, or other legal relations under it.

Md. Code Ann., Cts. and Jud. Proc.,§ 3-406 (2002).

9. Both the towns of St. Michaels and Oxford were permitted by the trial court to intervene and to request a declaration of their respective rights *vis a vis* Bill 933.

10. The judgment entered by the trial court only addressed Talbot County's complaint against the Critical Area Commission and made no final determination or adjudication with respect to Oxford's or St. Michaels' counterclaims.

11. Because the trial court did not address the counterclaims filed by Oxford or St. Michaels, there is no final appealable order or judgment entered in this case. Accordingly, Oxford submits that the appeals filed in this case are premature.

12. Maryland Rule 8-602(e)(1) provides:

> If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(e)(1), the appellate court may, as it finds appropriate...remand the case for the lower court to decide whether to direct the entry of a final judgment....".

13. Oxford submits that it is in all of the parties' interests for this Court to remand the case to the trial court for the entry of a final judgment on Oxford's and St. Michaels' Counterclaims. Remanding this case will promote judicial economy,[4] and will avoid piecemeal litigation of the issues.

---

[4] Because the issue of whether an order is "final" is a jurisdictional issue, Oxford is concerned that if this issue is not addressed now, the parties and the court will waste time and judicial resources filing briefs, only to have the case dismissed and remanded to the

WHEREFORE, Oxford respectfully requests that this Honorable Court:

(A) Grant Oxford's Motion to Dismiss;

(B) Remand this case to the trial court for the entry of a final judgment on the counterclaims filed by the Town of Oxford and St. Michaels; and

(C) Grant Oxford such other and further relief as the nature of this case may require.

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

Attorneys for Appellee/Cross-Appellant
Town of Oxford

STATEMENT OF POINTS AND AUTHORITIES

1. The record herein.
2. Md. Code Ann. Courts and Judicial Proceeding, § 12-301 (2002)
3. Md. Code Ann. Courts and Judicial Proceeding, § 3-406 (2002)
4. Maryland Rule 2-602
5. Maryland Rule 8-602
6. Popham v. State Farm Mut. Ins. Co., 333 Md. 136 (1994).
7. Planning Board v. Mortimer, 310 Md. 639 (1987)
8. Tharp v. Disabled Vets, 121 Md. App. 548, 557 (1998)
9. Waters v. Whiting, 113 Md. App. 464, 470 (1997)

---

trial court for a final judgment on the counterclaims. See Tharp v. Disabled Vets, 121 Md. App. 548, 557 (1998) (noting that the appellate court can raise the jurisdictional issue *sua sponte*, and that "the jurisdiction of this Court is statutory, and may not be conferred by consent of the parties." (internal citations omitted)).

REQUEST FOR HEARING

Oxford respectfully requests a hearing on this Motion in accordance with Maryland Rule 8-603(e).

Brynja M. Booth

Brynja M. Booth

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2006, a copy of the foregoing Response was sent first class mail, postage prepaid to:

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

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

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

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

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

Brynja M. Booth

Brynja M. Booth

TALBOT COUNTY, MARYLAND	*	IN THE
	*	COURT OF
v.	*	SPECIAL APPEALS
MARYLAND DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	*	OF MARYLAND
	*	September Term, 2006
	*	Case No. 418

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

ORDER

Having considered the Motion to Dismiss Appeal filed by the Appellee, Town of Oxford in this case, it is, this _____ day of _____, 2006, by the Court of Special Appeals of Maryland,

ORDERED that the appeal filed herein be, and is hereby **DISMISSED**, and it is further

ORDERED that the case be remanded to the trial court for consideration of the counterclaims filed by the Town of Oxford and the Town of St. Michaels.

_____

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 MAR 27 PM 3 20

THE CIRCUIT COURT FOR TALBOT COUNTY

TALBOT COUNTY MARYLAND	
v.	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	

JUDGMENT

As used in this Judgment:

critical area statute means Title 8, Subtitle 18, of the Natural Resources Article of the Code, specific provisions of which are herein cited as "NR §.

Bill 933 means the proposal titled "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.", which was adopted by the Talbot County Council and forwarded for approval to the Critical Area Commission.

For reasons stated in the accompanying Memorandum, the Court **FINDS AND DECLARES** that:

1. Bill 933 represented only a proposal to amend § 190-109 of the *Talbot County Code* relating to the County's critical area program and was not in any sense an actual amendment of that program.

2. Under NR § 8-1806, the Critical Area Commission "has all powers necessary for carrying out the purposes of this subtitle" and thus not only the right, but also the duty to do so. One of those purposes is that contained in NR § 8-1801: "the purpose . . . [t]o implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their

Blumberg No. 6118 EXHIBIT A

programs in a consistent and uniform manner subject to State criteria and oversight.."

3. Talbot County and all municipalities in Talbot County are also required to observe the purpose stated in NR § 8-1801 and establish and implement local critical area programs:

a-in a consistent and uniform manner and .

b-consistent with the critical area statute and criteria adopted by the Critical Area Commission.

4. Criteria adopted by the Critical Area Commission in accordance with specific authority granted by NR § 8-1806 provide that local critical area programs are to be adopted and implemented::

a-in a manner which reflects consideration of cumulative impacts of regulated activities;

b-in coordination with each other; and

c-by action in coordination with each other when planning future expansion of intensely developed and limited development areas.

5. The Critical Area Commission has a duty and the authority under NR § 8-1809 (j). to withhold approval from proposed program amendments that do not meet the criteria adopted by the Commission and correctly decided that Bill 933 did not meet those criteria.

6. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amendment to the Talbot County critical area program for the reason that it would negate valid action previously taken by the Commission.

7. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amendment to the Talbot County critical area program for the reason that it would create conflicts between the County program and several approved municipal programs.

8. There is insufficient proof that the Critical Area Commission failed to act within the period for consideration and final action provided in NR § 8-1809 (m); and credible proof indicates that it complied with the statute in that respect.

On the basis of the foregoing findings and declarations, the request for issuance of a writ of mandamus is **DENIED**.

The request for issuance of a writ of *certiorari* is **DISMISSED**, as it states no law or facts upon which that relief can be granted..

The costs of this proceeding shall be paid by plaintiff.

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

March 23, 2006

CIRCUIT COURT
OF TALBOT COUNTY
FILED
2003 MAR 27 PM 3 20

THE CIRCUIT COURT FOR TALBOT COUNTY

TALBOT COUNTY MARYLAND v. DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	Civil # 2-C-04-005095 D

MEMORANDUM

This context of this action is the law relating to "critical areas" set forth in:

Title 8, Subtitle 18, of the Natural Resources Article of the *Code*,[1] (herein "NR §" or "the critical area statute");

regulations adopted by the Critical Area Commission (CAC) which are contained in Title 27 of COMAR (CAC regulation 27.01.##.##); and

provisions relating to the critical area contained in Chapter 190, the *Talbot County Zoning Ordinance*, of the *Talbot County Code* and, specifically, Article XIV, § 190-109 C. "Amendments to the Critical Area provisions of this Chapter 190" and D, "Growth allocation district boundary amendments in the Critical Area," (herein "TA § " or "the local critical area program"). For convenience, TA §190-109 is included in Appendix A, beginning at page 18. Shading indicates text which would be removed by the measure here considered.

The *corpus delicti* is Bill 933, adopted by the Talbot County Council on December 23, 2003 (hereafter, Bill 933), as a proposed amendment to its local critical area program.[2] This action, filed by Talbot County, seeks relief described at the outset of its Second Amended Complaint:

---

[1] In this Memorandum, the unqualified word "*Code*" means the *Annotated Code of Maryland*.

[2] The Bill is set forth in full in Appendix B, beginning at page 31.

. . . a declaratory judgment declaring that Bill 933 . . . has been validly enacted as a local program amendment to Talbot County's Critical Area Program, and seeking a writ of mandamus directing the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Costal Bays, to approve Bill No. 933 as a local program amendment to Talbot County's Critical Area Program.

Four of the five counts of the complaint seek declaratory relief from various perspectives. Despite these several guises, the answer to all of these requests involves an ultimate and wholly conclusive determination of whether CAC had authority to deny approval to Bill 933 or, stated another way, whether the law and facts applicable to this case support its having done so.

PART I. ALLOTMENT OF GROWTH ALLOCATION

"Development areas" and "growth allocation" in the critical area

NR §8-1802 (a)(5) and (7) define "Chesapeake Bay critical area" as "(1) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article; and (2) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article." CAC regulation 27.01.02.02 subdivides the critical area into 3 "development areas": (1) Intensely developed areas; (2) Limited development areas; and (3) Resource conservation areas."

After establishing development areas on the basis of existing uses, each local jurisdiction is given a "growth allocation" consisting of a "number of acres of land in the Chesapeake Bay Critical Area . . . that a local jurisdiction may use to create new intensely developed areas and new limited development areas." NR § 8-1802 (10). The growth allocation is "calculated based on 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." NR § 8-1808.1; CAC regulation 27.01.02.06 A(1).

The entire amount of growth allocation available throughout Talbot County is 2,554 acres. As a general matter, NR § 8-1808.1 (c)(3) provides that "no more than one-half of the expansion . . . may be located in resource conservation areas." In other words, growth allocation is of 2 types – the first involving change from Limited Development (LDA) to Intensely Developed (IDA) for which any number of growth allocation could be used (up to the total of 2,554) and, the second involving change from Resource Conservation (RCA) to either LDA or IDA, for which only 50% of the total was available. TA § 190-109

D (10)(a) restricts the first type of change to a maximum 128 acres. For reasons not entirely clear, the local critical area program subtracted that number from the whole allocation (the result being 2,426) and established half of that number (1,213 acres) as the amount which could be reclassified from RCA to any other zoning district.[3] TA § 190-109 D(9)(a)

Initial allotment of growth allocation between Talbot County and its municipalities

CAC regulation 27.01.02.06 A(2) directs that "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." A staff report to CAC involving Bill 933 (the CAC staff report) reveals that local jurisdictions had implemented this directive in several ways:

> 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 Talbot County critical area program employed the first of those processes. What is now TA § 190-109 D(9)(a), quoted in full context in Appendix A (page 23), provides that:

> Not more than 1,213 acres[4] 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.

---

[3] It appears to us that this formula unnecessarily reduced the amount available for reclassification from RCA. The critical area statute clearly provides that the 50% limitation is based upon the full growth area allocation (2,554 acres) without reduction for any IDA-LDA set-aside. The amount available for use in RCA was therefore 1,277 acres – 64 more than the local critical area program allowed.

[4] See footnote 3.

We shall refer to this distribution between County and municipalities as growth allocation allotment, to distinguish it from growth allocation.

TA §190-109 D(14) states that the growth allocation allotment to the Towns was also "shown in Maps 1, 2, and 3," each relating to one of the 3 incorporated towns and titled "Area Allocated for Town Development." The maps delineate specific areas of "RCA for Annexation or rezoning" and "LDA for rezoning" both within and adjacent to the subject Towns. Copies are attached to this Memorandum as Exhibit C (*infra*, pages 37, *et seq.)*.

By TA § 190-109 D(16), fully quoted *infra* page 26, "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." TA § 190-109 D(14) provides that the County will not act upon a request for rezoning of any portion of an area shown on a map, but outside of a Town "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." *Infra*, page 26 .

All in all, these provisions reflect a well-considered and sophisticated arrangement for allotment of growth allocation among County and Towns.

Subsequent events affecting allotment

As chronicled in the CAC staff report, by 2004:

- Oxford had awarded 15.223 acres of its allotted 195 acres, leaving it with 179.777 acres for future use.

- Of the 245 acres allotted to St. Michaels, 21 acres had been awarded for the "Strausburg Subdivision."[5] More recently, the Town had also approved the use of 70.92 acres of growth allocation for the Miles Point III Project, which was under separate review by the Critical Area Commission at the time when it considered Bill 933.[6]

- Easton had exhausted all of the 155-acre growth allotment. To remedy the situation, the Town had requested and was granted a so-called "supplemental" growth allocation of 28.762 acres. Easton requested an additional 156 acres of

---

[5] Approved by CAC as a refinement to the Town's critical area program in October 2003.

[6] We ask that the reader take special note of the Miles Point III project and its situation at the time when the Critical Area Commission considered Bill 933.

"supplemental" growth allotment; and on April 25, 2000, the Talbot County Council adopted Bill 762 ,which now appears as TA § 190-109 D (9), *infra*, pages 23-25. The CAC staff reported that "those projects are moving forward."

Bill 762 is not directively involved, but is highly important to proper understanding of the present subject, Bill 933. As noted, Easton had exhausted its initial growth allocation allotment and sought and additional acreage allowance. In order to deal with that situation, which was then only generally treated in the local critical area program, the County adopted Bill 762, the heart of which was its provision that "Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate." TA § 190-109 D(9). This was followed by detailed provisions regarding "Application process . . . Staff and Planning Commission review . . . [and] Council review." A full statement of these procedures appears in Appendix A, pages 23 *et seq*.

Important for our purposes is the fact that Bill 762 represented a mere *addition* to the County-municipality relation with respect to growth allotment, to be invoked only after a municipality had exhausted its initial allotment. It did not in any way affect the unused allotments of the Towns of Oxford and St. Michaels. In fact, Bill 762 specifically re-enacted present TA § 190-109 D(9)(a) which contains the growth allotment provisions of the original local critical area program.

This was not a matter of inadvertence. At a meeting on April 18, 2000 relating to adoption of Bill 762,, it was specifically recognized by one member of the Talbot County Council that the newly-created "supplemental" procedures would have no immediate effect upon Oxford and St. Michaels, "because they have not gone through their initial allocation, which is around 300 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." Two other members stated that "It's my understanding that until that acreage is used up, they would not be under this [supplemental allotment] process . . . . Right, until it's used up." The County Attorney suggested that no amendment need be made to Bill 762 to address the existing allocation, because "I think that is, in fact, in the existing ordinance."

PART II COUNTY COUNCIL BILL 933

The genesis of Bill 933

Bill 933 was introduced by three members of the Talbot County Council on November 18, 2003, and is titled "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."

The CAC staff report accurately summarizes its provisions:

> 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.

In a word, Bill 933 would remove all allotments to the Towns and provide, as the Towns' sole avenue for growth allocation, the procedure theretofore applicable only with respect to "supplemental" allotment.

Bill 933 contains a very elaborate preamble, containing 21 paragraphs. If not invoked directly, the content of these statements paraphrases reasons advanced by the County in this action to demonstrate the wisdom, if not necessity of changes to the growth allotment provisions. That preamble and full text of Bill 933 appear *infra*, pages 31, *et seq.*, where we have added a bracketed number to each paragraph of the preamble to simplify discussion.

In paragraphs [2] (page 31) and [20] - [21] (page 33) of the preamble to Bill 933, the County professes a need for reevaluation of its growth allotment program by reason of NR § 8-1809 (g) and TA § 190-109 D (11), both of which require that the Talbot County critical area program be reviewed on June 1, 1993, and quadrennially thereafter.[7] The Bill acknowledges that "None of the four-year reviews have occurred." Since both measures direct a comprehensive review of the entire critical area program, it is more than surprising that the sole result of such review has resulted in change only to a single, narrow aspect of the County's program.

Insofar as TA § 190-109 D (11), *infra* page 25, is concerned, it will be remembered that the County not only considered, but specifically left in place, the allotment provisions when it considered and adopted the "supplemental" growth area provisions of Bill 762 in 2000 (*supra*, page 5). The subject has been neither ignored nor unevaluated for the time period suggested.

For much the same reasons, the County clearly errs when it suggests that "the 1989 projections have no continued validity for any planning or zoning purpose", because "the 1989 maps do not reflect current Town boundaries, nor any development during the

---

[7] TA § 190-109 D(8), quoted on page 23, also requires review of the allotment maps on an annual basis.

ensuing 14 years, nor do they represent current planning for growth areas around the towns." Preambles [3] and [4], page 31.

It is unfair to criticize the fact that the maps, speaking of conditions in 1989, fail to show annexation which had occurred since that time. The point is that they do quite clearly delineate the areas in which annexation and use of growth area may (and did) occur. It is also inaccurate and misleading to say that they do not "represent current planning for growth areas around the towns." It has already been seen that the Town of St. Michaels has very recently utilized growth allocation in accordance with the maps for the Miles Point III project then pending before CAC. Footnote 6, *supra*. Moreover, the maps were always intended to be somewhat fluid. TA § 190-109 D(16), *infra*, page 26.

The paucity of use of growth allocation by the Towns can hardly support the suggestion that "these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, as alleged in Preamble paragraph [5], page 31.

Preamble [6], page 31, proffers a high-flown and ultimately somewhat tentative thought that "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 [emphasis supplied]." If an answer to this purported problem is to be found, it certainly does not appear in the Bill to which it is attached. Bill 933 is a single-purpose measure; it eliminates provisions which allot growth area to the Towns. It corrects no redundancy; and even a superficial reading shows that the provisions removed were not redundant to each other or to any other provision of the local critical area program. It is perhaps for those reasons that the suggestion slows to a virtual halt by its qualification "or potentially inconsistent."

Preamble paragraphs [7] through [17] contain a syllogistic effort to demonstrate that the Towns of Oxford and St. Michaels "could forever block the County from accessing the remaining growth allocation under the local critical area law." The propositions can be summarized as follows:

- The total number of acres available for growth allocation is 2,554 [7]. No more than one-half of the that amount may be located in resource conservation areas [8]. The County has followed this requirement by restricting the use of available growth allocation [10].

- The Town of Oxford has allocated only 15.223 acres of growth allocation, and has 139.777 acres remaining. The Town of St. Michaels has conditionally allocated up to 20 acres of growth allocation and has 225 acres remaining. The total growth allocation not used by both Towns is thus 364.777 acres. Preamble

[13]-[15]

- The County currently has a total of 316.229 acres of growth allocation; and, if it grants a pending application for supplemental growth allocation submitted by the Town of Easton for 156 acres, the County will have 160.229 acres of growth allocation. Preamble [16]

- Under an exception contained in NR § 8-1808.1 (c)(5), the Critical Area Commission may permit use of more than 50% of a local jurisdiction's growth allocation in a Resource Conservation Area "if the county is unable to utilize a portion of the growth allocated . . . within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission." Preamble [9]and.[11].

- Although not so constrained by the critical area statute, the only way "to trigger release of the withheld 50% of the County's growth allocation" lies in TA § 190-109 D (9) (b), which provides that "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 to 2,426 acres." Preamble [12]

- Either Oxford or St. Michaels could forever block the County from accessing the remaining growth allocation under the local critical area law by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under TA § 190-109 D (9)(b) Preamble [17].

This sinister specter, which occupies more than 50% of the items in the Preamble, is a pure apparition. First and foremost, it fails to ascribe true meaning to the fact that both the County and CAC have already recognized that, in law and fact, 595 acres of the growth allocation available in the entire critical area of Talbot County had been allotted to the Towns. What this quite simply means is that the remaining 618 acres were originally allotted to the County.[8] In its paraphrase of NR § 8-1808.1 (c)(5), Preamble [9] loses what we believe to be its true meaning: "if the county is unable to utilize a portion of the growth *allocated to the county* . . . 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 [otherwise] allocated in . . . this subsection

[8] Without considering our suggestion in footnote 3 that the County actually has 64 more acres.

[emphasis supplied]."

It is puzzling that the County has tied its own hands by the restrictions imposed upon itself by TA § 190-109 D(9)(c): "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."[9]

Being unable to see that the restriction which the County imposed upon itself was to any degree directed or suggested by NR § 8-1808.1 (c)(5), we are not impressed by the problem which the County professes to see, particularly as it is one of which the County could relieve itself, as it does *not* do in Bill 933, by deleting TA § 190-109 D (9) (b) from its program.

Preamble paragraph [18] states that "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." The record suggests that this self-serving encomium at least overstates the matter. In a letter to the chairman of CAC, the president of the Easton Town Council described that municipality's experience with the supplemental growth allocation process: "While the process worked for . . . [the only project yet considered] in the sense that the project eventually obtained approval from both the Town and The County Commissioners, the process *did not reflect close cooperation between the Town and the County on either a procedural or a substantive basis* [emphasis supplied]." He explained:

> While the County Council participated in the joint hearing with the Town Council, the County Council also held a subsequent, separate public hearing on the application before granting the allocation. Thus the applicant was subject to an additional two months delay. The County Council also held separate negotiations with the developer of the project as a result of which the developer agreed to pay $1,000,000 to the County for road improvements as a condition to the grant of approval.

He concluded that "The fact that a particular developer is unusually compliant [with the extraction of $1,000,000] does not demonstrate the efficacy of the joint review program" and stated that "In summary, while the joint review process outlined in the County's Zoning

---

[9] Since this provision is an excuse for, but unaffected by Bill 933, continuance of the commitment in the last sentence to an allotment to the Towns is perplexing in view of other arguments against such allotment and the otherwise single-minded purpose of the Bill to deny allotment. There is also some wishful thinking, if not naivete, in the professed belief that CAC would double the growth area available for use in RCA in one fell swoop, rather than deal with the matter on a project by project basis.

Ordinance *permits* joint consultation and cooperation between the County Council and a municipality, it certainly does *require* it . . .[emphasis in original]."

Background unmentioned in Bill 933

The record here includes an article which appeared in a local newspaper four days after introduction of Bill 933.. That report makes no mention of the legislation but rather that "The Talbot County Council unanimously recommended Friday that the St. Michaels Town Commissioners deny the growth allocation for the Miles Point development." The chairman of the County Council, who had made the motion, is quoted as saying that "I think the problems that could be generated by adding that degree of population to that location greatly outweigh any benefits that may come out of the project."

It would strain the credulity of the most credulous to overlook the singular coincidence of this resolution and the introduction of Bill 933.

Later, at a hearing before a CAC panel on March 24, 2004, a former chairman of that Commission, then testifying on behalf of the County, observed that, in considering the Miles Point project, the St. Michaels Commissioners "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." These observations by a person who was uniquely familiar with critical area law and testifying on behalf of the County cannot be regarded as other than a statement of the actual purpose of Bill 933.

We believe that the motives of Bill 933 are transparent.

Presumably, the duty of CAC might not be affected by its ulterior motivation. The discussion in this Part results from the requirement that we consider matters advanced by the County in support of its argument that the action of CAC was erroneous, to give attention to other matters which may bear upon the weight to be given to the factual aspects of that argument and to avoid any suggestion that we ignore or concur *sub silentio* in propositions which are facially incorrect, contrived or misleading. Our inquiry has led us to the conclusion that none of the matters discussed in this Part represent proper grist for the County's argument and therefore have no proper bearing upon the determination to be made by CAC.

PART III. DETERMINATION BY CAC

After adoption by the County Council, Bill 933 was sent to CAC for approval required by both NR § 8-1809 (I) of the critical area statute and the *Talbot County Zoning Ordinance*. On May 5, 2004, "Upon the recommendation of the panel of Commission members who conducted a public hearing . . . and further upon consideration of the Panel's Report and its Supplement . . ., 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 two-fold basis for the decision was contained in a letter dated May 14, 2004. We shall discuss them separately.

Interference with existing projects

The first of CAC's reasons for disapproval was that "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."

The factual background was explained in the CAC staff report, which stated that "the Strausburg Subdivision . . . involved 21.00 acres of growth allocation to change the Critical Area designation from Resource Conservation Area (RCA) to Limited Development Area (LDA) for a ten lot residential subdivision. The Commission approved this growth allocation request as a refinement to St. Michaels' Critical Area Program on October 1, 2003." At the hearing in this Court, we were further advised that commencement of the Strausburg Subdivision had been delayed for a substantial period of time pursuant to a Development Rights and Responsibilities Agreement[10] entered into between St. Michaels and the developer.[11]

The concern of CAC lay in an uncodified provision in Bill 933, containing a section entirely separate from amendments to the local critical area program and headed

---

[10] See *Code*, Article 66B, §13-01. We express no opinion as to whether such delay is within the scope of such an agreement.

[11] The staff report also referred to (a) "the Miles Point III application, which the Town approved for 70.92 acres of growth allocation in January 2004," which had been submitted to CAC and was then being considered by it and (b) "the Cooke's Hope Project in Easton" for which the Town of Easton had 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 (the measure which, as seen *supra*, page 5) created the "supplemental" growth allocation process.. That had been reviewed through the County's supplemental growth allocation process and sent to CAC for approval, but had not yet been acted upon.

"Effective Date and Severability; legislative intent"(quoted in full on page 35, *infra)*. It provides that "Growth allocation awarded by any town that remains unutilized[12] on the effective date of this ordinance shall revert to the County." The Strausburg Subdivision lay squarely within the sights of this automatic reverter. CAC put it well: "Bill 933 would negate at least one previous Commission action approving a local program change." And, by use of the words "at least" it evidenced similar concern about projects discussed in footnote 11 which had already received Town and/or County approval and were awaiting CAC review.

Our first observation is in the form of a question as to whether the quoted provision, not being subject to codification or otherwise proposed to be incorporated into the County's critical area program, constituted an amendment of that program. If not, of course, it was for all intents and purposes non-existent from the standpoint of the critical area program and under the critical area statute could have no collateral effect upon that program. As the parties seem to have regarded it as part of a program amendment, we shall do likewise.

In essence, what CAC was asked to do by the County was to indirectly ratify a nullification of its own approval of the Strausburg Subdivision. That approval had not been given to action by the County, but to action of the Town of St. Michaels. The approval was wholly valid under the critical area statute, the Town's critical area program and existing provisions of the *Talbot County Zoning Ordinance*. We believe it perfectly obvious that the County has no right to require CAC to approve a measure which has the effect of revoking prior action by Commission.

For that and reasons hereafter cited with respect to CAC's second reason for disapproval, we conclude that relevant law and facts impel, as much as support, CAC's disapproval.

Creation of conflicts among critical area programs

CAC gave this additional reason for its disapproval:

> Accepting Bill 933 would create conflicts between the County program and several approved municipal program. 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.

---

[12] "Unutilized" was defined to include "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.

It is a tribute to this accurate and concise statement that even the prolixity of the present author can ultimately add so little to it.

From a factual standpoint, this statement defies refutation. It is bad enough that the municipalities were left with critical area programs which contained functionally inoperative provisions and therefore with nothing which represented a comprehensible growth allocation program, if indeed such existed at all. This is wholly untenable in view of the fact that both the County and the municipalities within it had adopted separate critical area programs on the basis of the 1989 growth allotments. CAC had given its approval to those programs on the same basis.

At least partial recognition of this is to be found in paragraph [19] of the County's Preamble to Bill 933, where it is said that "growth in and around the towns affects not only the particular town, but also the County as a whole." Had it also acknowledged the converse – that growth in and around unincorporated parts of the County affect not only the County but also the towns – it would have realized that CAC approved the several critical area programs on the basis of just such a comprehensive perspective.

As CAC correctly recognized, in a very real sense the individual programs were components of an overall critical area program applicable to all critical areas in Talbot County. Who or what is to say that any of those constituent programs would have passed muster if it was not consistent with that overall plan? More directly, how can it be said that the unilateral changes to one of the component parts of only one of those individual programs will create a comprehensive program for the critical area in Talbot County – even for the County itself?

First and foremost, under NR § 8-1806, CAC "has all powers necessary for carrying out the purposes of this subtitle." One is the seminal statement in NR § 8-1801 of "the purpose . . . [t]o implement the Resource Protection Program on a *cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.* [emphasis supplied]." Although not specifically cited, the above-quoted decision of CAC recognized and applied that power and the duty which it implied.

In addition, CAC has specific powers with respect to proposed amendments to a local critical area program. As clearly stated in NR § 8-1809 (j): "The Commission shall approve programs and program amendments that meet: (1) The standards set forth in § 8-1808 (b) (1) through (3) of this subtitle;[13] and (2) The criteria adopted by the Commission under § 8-1808 of this subtitle."

---

[13] Those provisions specify "elements which are necessary or appropriate" to certain conservation purposes.

"State criteria" so required to be reflected in a local critical area program include:

- CAC regulation 27. 01.10.01: "In developing their Critical Area Programs, local jurisdictions shall use the following general program criteria... [one being that] Local permitting and approval processes shall be *coordinated* so that *cumulative impacts of regulated activities* can be readily assessed [emphasis supplied]."

- Paragraph G of the same regulation: "The local program document shall include a statement of the local agencies involved, their responsibilities and their *coordination* with each other and appropriate State, federal, or private organizations [emphasis supplied]."

- CAC regulation 27.01.02.06, specific to growth allocation, directs that "When planning future expansion of intensely developed and limited development areas, counties, *in coordination with affected municipalities*, shall establish a process to accommodate the growth needs of the municipalities [emphasis supplied]."

We concur with the conclusion of CAC that disapproval of Bill 933 was necessary "to ensure that local programs are implemented in a consistent and uniform manner." That is the specific purpose announced in NR 8-1801 and was therefore the marching order of CAC.

The County's incorrect premises

We perceive a flaw in the County's basic premise, which is not specifically stated but is more than implicit in the action of CAC.

That flaw lies in the notion advanced in Preamble [21] of Bill 933, fully quoted *infra*, page 33 that "the original intent of the State law governing growth allocation ... 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." The assertion is repeated in Preamble [19].

An important factor which the County states in those Preambles, but cannot be found in its conduct, is the existence of "limits imposed by State law and regulation." It alleges that it has power "to determine ... how that growth allocation would be utilized, and reallocated among the Towns and the County", but gives no attention to "the limits imposed by State law and regulations" from which such power must be derived.

The stated purpose of critical area legislation involves the establishment and implementation of critical area programs "in a consistent and uniform manner." NR 8-1801.

The common thread of the criteria discussed on page 14, *supra*, is that this purpose be carried out by means of "coordination." That word, whether used as a noun, verb or adjective, has no subtle meaning. "To 'coordinate' means to harmonize, work together, or bring into a common action, effort or condition." *Network Commerce, Inc. v. Microsoft Corp.*, 260 F. Supp. 2d 1034, 1041 (D.C.W.D. Washington), *affirmed* 422 F.3d 1353 "The term 'coordinate,' according to the American Heritage dictionary means 'of equal rank, authority, or importance with another.' Webster's Third New International Dictionary 502 (2002)." *Sharp v. Fields (In re Baby W.)*, 796 N.E.2d 364, 373 (Ind.).

As the last quotation states, "coordination" involves equality in its true sense. The concept of equality is also recognized in *Empire Ins. Co. v. Cooper*, 138 S.W.2d 159, 164 (Tex.): "'Co-ordinate' means equal, of the same order, rank, degree or importance; not subordinate. Webster's New International Dictionary."[14] Plainly, in the context of critical area law, "The ordinary meaning of the word 'coordinate' does not connote a dominating influence." *Network Commerce, Inc. v. Microsoft Corp., supra.*

Another court has shared our incredulity at the proposition that unilateral action constitutes coordination: "We know of no way to define the verb 'coordinate' that would allow the Defendants to argue with a straight face that any of them coordinated the releases with Powers. Giving all due weight to the inescapable vagueness of words, it seems to this Court an abuse of language to suggest that a person has 'coordinated' a matter with another when she has not contacted him or, at the very least, an associate who is working on the same case." *Johnson v. Sawyer*, 760 F. Supp. 1216 , 1229. (D.C.S.D. Texas), *aff'd in part, modified in part and remanded in part* 980 F.2d 1490 (5th Cir. Tex. 1992).

While allowing of other interpretations, the CAC staff report fully concurs with the views here expressed:

> 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.

We particularly emphasize the words of *Empire Ins. Co. v. Cooper* and *Network Commerce, Inc. v. Microsoft Corp.*, both *supra*, that "'Co-ordinate' means equal,

---

[14] A later Texas case points with justifiable pride to the fact that Black's Law Dictionary uses this language to define "coordinate": "As to the term 'coordinate,' Black's Law Dictionary supplies the following definition: 'Equal, of the same order, rank, degree or importance; not subordinate. *Empire Ins. Co. of Texas v. Cooper*, [138 S.W.2d 159, 164 (Tex. Civ. App. -- Amarillo 1940, writ dism'd).]' Black's Law Dictionary 334 (6th Ed. 1990).' Thus, the leading definition of this term derives from a Texas case, albeit factually dissimilar from the present case." *Simon Prop. Group L.P. v. May Dep't Stores Co.*, 943 S.W.2d 64 , 71.

of the same order, rank, degree or importance; not subordinate" and that "The ordinary meaning of the word 'coordinate' does not connote a 'dominating influence'" While we have noted that various jurisdictions have implemented the "coordination" requirement in various ways (*supra*, page 3) this does not suggest to any degree that the County is the sole owner and dispenser of growth allocation largesse.

The County sees its position as being even above *primus inter pares*. It is virtually admitted that it allowed the defendant Towns no participation in the preparation and adoption of Bill 933, other than the right to participate in a public hearing afforded all citizens – a time when the die was already cast. However they may be characterized, that and the conduct reflected in the letter of the president of the Town Council of Easton reflect little, if any, coordination and absolutely no cooperation..

A similar variety of hubris lies in the County's conception of its place in the critical area pantheon. At the beginning of the complaint now under consideration, quoted on page 2, 16, *supra*, the County seeks a declaration that "Bill 933 . . . *has been validly enacted as a local program amendment* to Talbot County's Critical Area Program [emphasis supplied]." The fact of the matter is that Bill 933 enacted no amendment at all.

NR §8-1809 (h) clearly provides that the action of the county is a mere proposal for amendment.[15] By subsection (i), actual amendment does not occur until a proposal is approved by the Critical Area Commission.[16] The proposal is not incorporated in the local critical area program (*i.e.*, the program is not amended) until final the Critical Area Commission approval.[17]

Once again, the CAC decision was as much impelled as it is supported by the law and facts which relate to Bill 933.

PART IV. DILIGENCE OF CAC

NR § 1809 (o)(1) directs that, upon submission of a proposed amendment "the Commission shall act on the proposed program amendment within 90 days of the Commission's acceptance of the proposal. If action by the Commission is not taken within 90 days, the proposed program amendment is deemed approved." We regard plaintiff's contention that

---

[15] "As often as necessary but not more than 4 times per calendar year, each local jurisdiction may propose program amendments and program refinements to its adopted program."

[16] "A program may not be amended except with the approval of the Commission."

[17] "The local jurisdiction shall incorporate the approved program amendment into the adopted program within 120 days of receiving notice from the Commission that the program amendment has been approved."

CAC did not comply with those requirements as an unmitigated carper.

The date for approval does not run from the date of submission, but the date of its acceptance by CAC. NR §8-1809 (m) provides that "Within 10 working days of receiving a proposal under this paragraph, the Commission shall: (i) Mail a notification to the local jurisdiction that the proposal has been accepted for processing; or (ii) Return the proposal as incomplete." It is undisputed that the County's original submission was found to be incomplete, which resulted in extensive exchanges, telephonic and otherwise, between staff personnel of CAC and the County. Ultimately, all parties recognized that sufficient information had been provided and the matter moved forward.

It is not clear to us when, or if, CAC ever mailed "notification to the local jurisdiction that the proposal has been accepted for processing." Even now, the County does not claim that it was unaware that the proposal had been accepted for processing or that it actively participated in various hearings and other proceedings on that basis. In view of the extensive contact between the parties, receipt of a formal mailed notice was a nicety whose absence did not affect to any degree the ability of the County or anyone else to participate in proceedings relative to the requested approval. Unlike the provision establishing the time for processing, the critical area statute provides no penalty for failure to provide notice of acceptance. Under the circumstances here, we decline to mandate one.

Turning now to the contention of alleged automatic approval under the second provision of the statute. The County concedes that it made no objection with respect to expiration of 90 days until the time when this action was filed. It sent no letter or communication indicating that the 90 days had been tolled, even at the time when the Commission's decision was announced. It is presented to us as a rather wan coda to arguments vigorously pressed in other respects.

Without dispute, CAC took final action on May 5, 2004, which would mean that acceptance of the proposal could have occurred no earlier than February 5, 2004. We carefully listened to the various chronicles of events advanced by all parties during the hearing of this action and, quite frankly, find precious little difference of opinion. Plaintiff had the burden of proving that action was not taken within 90 days of acceptance. We have no hesitation in finding as matters of fact that plaintiff has not met that burden and that, in any event, the most credible proof is that acceptance of the program occurred within 90 days prior to May 5, 2004.

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

March 23, 2006

APPENDIX A

Talbot County Zoning Ordinance
Chapter 190: ZONING
ARTICLE XIV Administration

[*For convenience, provisions which would be repealed by Bill 933 are shaded*]

§ 190-109. **Amendments.**

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 . . . .**

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

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 [section 19.10 pf this ordinance] 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.

APPENDIX B

[For convenience of reference, paragraphs of the preamble have been numbered here]
[~~Strike out~~ is that in a copy of the Bill furnished the Court at the time of the hearing]

BILL 933

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

[1] 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

[2] 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

[3] 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

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

[5] 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

[6] 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

[7] 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

[8] 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

[9] 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

[10] 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

[11] 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

[12] 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

[13] 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

[14] WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and

[15] 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

[16] 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

[17] 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

[18] 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

[19] 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

[20] 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

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

project by project.

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

Maps 1, 2, and 3, attached, are hereby repealed.-

§ 190-109 D (9)

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

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns.

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

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

§ 190-109 (D)(11)

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

§ 190-109 (D)(14)

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

§ 190-109 (D)(15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 (D)(16)

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

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that

remains unutilized on the effective date of this ordinance.

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

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

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

2. Severability.

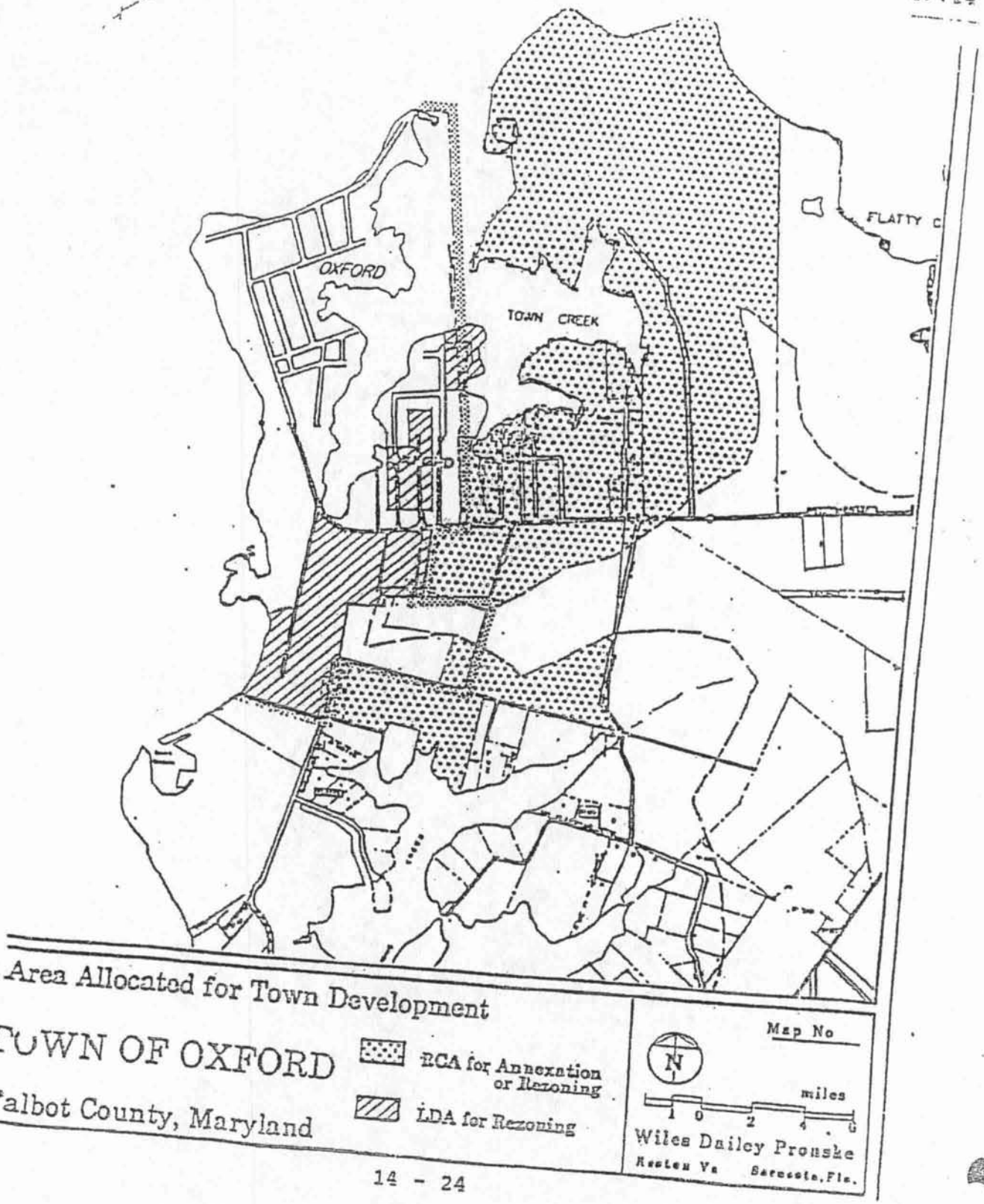
The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or invalid, the remaining provisions hereof and the application thereof to all other persons and circumstances remain in full effect.

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

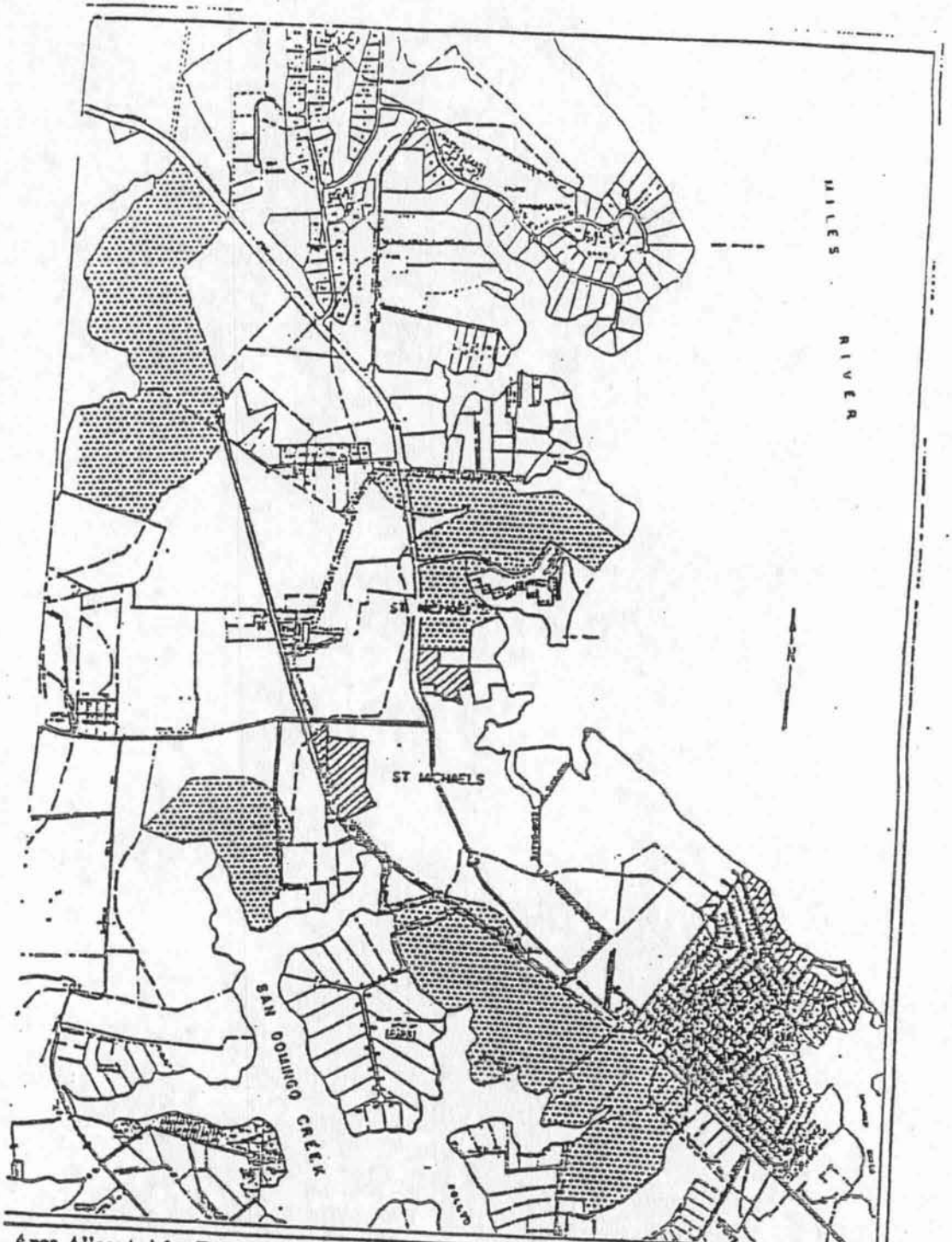
19.14

FORK
NORTH
RIVER
EASTON
Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
N
miles
1 0 2 4 6
Wiles Dailey Pronske
Reston Va Sarasota, Fla.

19.14


OXFORD
TOWN CREEK
FLATTY C
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No
N
miles
1 0 2 4 6
Wiles Dailey Pronske
Reston Va Sarasota, Fla.

14 - 24



Area Allocated for Town Development

TOWN OF ST MICHAELS

Talbot County, Maryland

RGA for Annexation or Rezoning

LDA for Rezoning

Map No 3

Miles Dolley Preeske

Reston, Va Sarasota, Fla

C

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :
142 North Harrison Street
Easton, MD 21601 :

Plaintiff :

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

DEPARTMENT OF NATURAL :
RESOURCES CRITICAL AREA
COMMISSION FOR THE CHESAPEAKE:
AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100 :
Annapolis, Maryland 21401
SERVE: Marianne D. Mason, :
Deputy Counsel
Office of the Attorney General :
580 Taylor Avenue, C-4
Annapolis, Maryland 21401 :

Defendant :

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2004 JUN 11 PM 2 15

COMPLAINT FOR DECLARATORY JUDGMENT, PETITION FOR WRIT OF MANDAMUS, AND APPEAL FROM ADMINISTRATIVE AGENCY

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files the instant action seeking a declaratory judgment, a writ of mandamus, and appealing the administrative decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program. In support of this request, Plaintiff states:

EXHIBIT
C

Parties

1. Talbot County, Maryland, is a charter county and a political subdivision of the State of Maryland.

2. The Department of Natural Resources is a principal department of the State of Maryland, § 1-101, Natural Resources Article, Md. Ann. Code; and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays is a Commission of the Department, created by § 8-1803 Natural Resources Article, Md. Ann. Code. The Defendant is hereinafter referred to as "the Commission."

The Legal Framework

3. In 1984, the General Assembly enacted the Chesapeake Bay Critical Area Protection Program, codified as §§ 8-1801 through 8-1817 of the Natural Resources Article, Md. Ann. Code. The purposes of the program are:

"(1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality in natural habitats; and

(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight." *Id.*, § 8 -1801 (b).

4. Each county within the critical area has primary responsibility for developing and implementing a local critical area protection program pursuant to

criteria established by the Commission and subject to review and approval by the Commission. *Id.*, § 8-1808 (a), (d) and 8-1809.

5. The Commission must approve any proposed critical area protection program prior to adoption. *Id.*, § 8-1809 (d). In accordance with this requirement, Talbot County submitted a proposed program to the Commission for review and approval. The Commission approved Talbot County's proposed program, and it became effective August 13, 1989.

6. Section 8-1809 (g) provides in relevant part that, "[e]ach local jurisdiction shall review its entire program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning with the 4-year anniversary of the date that the program became effective and every 4 years after that date." The Commission must approve any proposed program amendments. *Id.*, § 8-1809 (i).

7. Adoption of local program amendments by the County Council is a legislative process established and controlled by the Talbot County Charter. A bill is introduced, a public hearing is scheduled and advertised, followed by the Council's vote. If adopted the bill is forwarded to the Commission for its review as a local program amendment. In accord with the quadrennial review requirement of Section 8-1809 (g), Talbot County duly enacted and submitted proposed local program amendments to the Commission for its review.

8. Section 8-1809 (j) provides that, "The Commission shall approve

programs and program amendments that meet:

(1) The standards set forth in § 8 –1808 (b) (1) through (3) of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle."

Talbot County's Local Critical Area Program

9. Land lying within the critical area is mapped as either "Resource Conservation Area" (RCA), "Limited Development Area" (LDA), or "Intensely Developed Area" (LDA), based upon the density of existing development as of December 1, 1985. Md. Ann. Code, Natural Resources Article § 8 -1801.1, establishes a process through which density in an RCA may be increased through an award of growth allocation. If growth allocation is awarded, the area is remapped from RCA to either LDA or IDA. Section 8-1801.1 (c) establishes guidelines for locating new intensely developed or limited development areas in existing resource conservation areas. Talbot County's local program fully complies with those guidelines and has been approved by the Commission.

10. COMAR 27.01.02.06 A. (2) is part of the criteria for program development and provides that,

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

11. Talbot County adopted its local critical area program in 1989. It included 3 maps showing anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford. Using those maps, growth allocation acreage was reserved

for Easton (155 acres), Oxford (195 acres), and St. Michaels, (245 acres). No growth allocation was reserved for the Town of Queen Anne. The 1989 ordinance and program were approved by the Commission.

12. The 1989 ordinance provided for quadrennial review of those 3 maps for possible recalculation and reallocation of reserved growth allocation. The first quadrennial review was to have occurred in 1993, again in 1997, again in 2001, etc. None of those reviews ever took place. The 3 maps adopted in 1989 remained static as a prospective look to the future, frozen in time.

13. On April 25, 2000, Talbot County duly enacted and submitted Bill 762 to the Commission for review as a local program amendment. Bill 762 established a joint review process to award supplemental growth allocation to municipalities. A copy of Bill 762 is attached hereto as Exhibit "A" and it is incorporated by reference herein. Bill 762 complies with the critical area criteria set forth in COMAR 27.01.02.06 A. (2) which require the counties, in coordination with affected municipalities, to establish a process to accommodate the growth needs of municipalities when planning future expansion of intensely developed and limited development areas. Bill 762 was approved by the Commission.

14. In practice, the process established by Bill 762 has applied only to the Town of Easton because Easton was the only town that had utilized the growth allocation reserved to it under the 1989 maps. The Towns of St. Michaels and Oxford have not utilized the growth allocations reserved to them under the 1989

maps, and thus there was no occasion to apply the process established by Bill 762 to them.

15. Town boundaries, growth areas, and municipal growth needs changed significantly during the intervening 14 years after adoption of the 1989 maps. Bill 933, adopted in 2003, took into account actual events during that 14-year hiatus. During those years the Talbot County Comprehensive Plan had been reviewed, amended, updated, and adopted at 6-year intervals. The new comprehensive plans showed evolving town boundaries, revised town growth areas, and revised growth policies, not only for areas surrounding towns but also for the entire County.

16. In December 2003, the Talbot County Council approved comprehensive program amendments to the local critical area program, including Bill 933, and forwarded them to the Commission for review. A copy of Bill 933 is attached hereto as Exhibit "B" and it is incorporated herein by reference.

17. Bill 933 repealed the outdated 1989 maps, repealed the 1989 reservations of growth allocation to the towns based on those maps, and made the Bill 762 joint review process adopted and approved by the Commission in 2000 applicable to all the towns within the County.

18. The Commission accepted Bill 933 for review as a proposed program amendment on February 4, 2004. Pursuant to § 8-1809(n)(i), the Commission shall act on proposed program amendments within 90 days of the Commission's acceptance of the proposal. If action is not taken by the Commission within 90

days, the proposed program amendment is deemed approved. The Commission failed to act within 90 days and thus Bill 933 is deemed approved. This is one basis for this Complaint.

19. The Commission refused to approve Bill 933 as a local program amendment although it fully complied with the standards set forth in § 8–1808 (b) (1) through (3) of that subtitle and criteria of the critical area program adopted by the Commission under § 8–1808. The Commission's refusal to approve Bill 933 although it fully complied with all applicable standards and criteria is another basis for this Complaint.

Count 1 – Declaratory Judgment

20. The allegations of paragraphs 1-19 are incorporated by reference herein as if fully set forth.

21. Bill 933 meets the standards set forth in § 8–1808 (b) (1) through (3), Natural Resources Article, Md. Ann. Code.

22. Bill 933 meets the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code.

23. Even though Bill 933 meets the standards and criteria under §§ 8-1808 and 1809(j), the Commission failed, neglected, and refused to approve Bill 933 as a local program amendment to Talbot County's critical area program by letter dated May 14, 2004. A copy of that letter is attached hereto as Exhibit "C" and is incorporated by reference herein.

24. The Commission did not act on the proposed program amendment contained in Bill 933 within the 90-day period of time required by § 8-1809(n)(i), Natural Resources Article, Md. Ann. Code. As a matter of law the program amendment reflected by Bill 933 is therefore deemed approved.

25. The Commission's refusal to approve Bill 933 was arbitrary, capricious, and illegal. The Commission exceeded the proper scope of its authority. The Commission ignored the criteria established by State law as the benchmark for its consideration of local program amendments and applied improper criteria in making its decision.

26. A declaratory judgment will serve to terminate the uncertainty or controversy giving rise to this proceeding. An actual controversy exists between contending parties. Antagonistic claims are present between the parties involved that indicate imminent and inevitable litigation. Talbot County asserts that

(a) Bill 933 is deemed approved as a result of the Commission's failure to act within the time allowed by law; and

(b) Bill 933 meets the standards set forth in § 8–1808 (b) (1) through (3) of Title 8, Subtitle 18, Natural Resources Article, Md. Ann. Code; and

(c) Bill 933 meets the criteria adopted by the Commission under § 8-1808 of Title 8, Subtitle 18, Natural Resources Article, Md. Ann. Code; and

(d) The Commission was required to approve Bill 933 as a local program amendment to Talbot County's local critical area program.

The Commission denies this.

WHEREFORE, Plaintiff prays:

A. That the Court assume jurisdiction over this controversy and issue a declaratory judgment that the program amendment contained in Bill 933 be deemed approved because the Commission failed to act on it within the time required by law;

B. That the Court declare that the Commission is required to consider only the standards set forth in § 8–1808 (b) (1) through (3), Natural Resources Article, Md. Ann. Code; and the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code when reviewing a proposed local program amendment.

C. That the Court determine that the Commission exceeded the proper scope of its authority in failing to consider only those standards and criteria.

D. That the Court determine that the Commission failed adequately to articulate appropriate findings of fact to justify its decision not to approve Bill 933 as a local program amendment.

E. That the Court determine that the reasons expressed by the Commission for refusing to approve Bill 933 as a local program amendment are legally insufficient to justify their decision.

F. That the Court determine that Bill 933 meets the applicable standards and criteria, and determine that it should therefore be approved as a local program amendment.

G. That the Court determine that the Commission abused its discretion in failing, neglecting, and refusing to approve Bill 933 as a local program

amendment to Talbot County's critical area program.

H. And for such other and further relief as the nature of Plaintiff's cause may require.

Count II - Mandamus

27. The allegations of paragraphs 1-26 are incorporated by reference herein as if fully set forth.

28. Inasmuch as the Commission failed to act on the proposed program amendment reflected by Bill 933 within the time required by law, it is deemed approved.

29. The Commission is charged with the responsibility of reviewing local program amendments to determine whether they comply with the standards set forth in Natural Resources Article § 8–1808 (b) (1) through (3) and the criteria adopted by the Commission under § 8-1808, Natural Resources Article, Md. Ann. Code.

30. The sole issue before the Commission was whether Bill 933 complied with these established standards and criteria. If Bill 933 complies, State law requires and directs the Commission to approve it as a program amendment. The Commission lacked discretion to consider matters other than the specific standards and criteria set forth in the statute as the benchmark against which to measure its decision.

31. The information before the Commission demonstrated that Bill 933 met these standards and criteria. The Commission's decision to disapprove Bill 933 as a program amendment is not based upon or supported by facts in the record and is

arbitrary.

32. The Commission exceeded its limited authority by considering and relying upon extraneous facts, arguments, and findings that do not bear upon or control its decision to approve or disapprove Bill 933 as a local program amendment.

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

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

35. The Commission acted contrary to law and beyond the scope of its own jurisdiction in disapproving Bill 933 as a local program amendment to Talbot County's critical area program. The Commission abused the discretionary powers reposed in it in considering Bill 933 as a local program amendment.

WHEREFORE, Plaintiff requests the Court to review the decision of the Commission, procedurally and if warranted on the merits, to reverse that decision, and to Order the Commission to adopt Bill 933 as a local program amendment to Talbot County's critical area program. Alternatively, Plaintiff requests the Court to determine that the Commission has acted contrary to law and in excess of its jurisdiction, and to reverse the decision and direct the Commission to approve Bill 933 as a local program amendment, and to award such other and further relief as the nature of Plaintiff's case may require.

Count III – Administrative Appeal under Maryland Rules, Chapter 200, Title 7

36. The allegations of paragraphs 1-35 are incorporated by reference herein as if fully set forth.

37. The Commission failed to act on Bill 933 within the time required by law and thus the program amendment contained in that Bill is deemed approved.

38. The Commission erred in refusing to adopt Bill 933 as a local program amendment to Talbot County's critical area program for the reasons set forth above.

39. Talbot County requests judicial review of the Commission's decision of May 14, 2004 refusing to approve Bill 933 as a local program amendment to Talbot County's critical area program.

40. Talbot County was a party to the proceeding before the Commission.

WHEREFORE, Plaintiff requests the Court to review and reverse the decision of the Commission, and to award such other and further relief as the nature of Plaintiff's cause may require.

Daniel Karp //MP

Daniel Karp
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore MD 21202-1089
Attorney for Talbot County, MD
(410) 727-5000

Michael L. Pullen //MP

Michael L. Pullen
142 N. Harrison Street
Easton, Maryland 21601
Attorney for Talbot County, MD
(410) 770-8093

LAW [redacted] Bill 762

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 Mowbs
Secretary

EXHIBIT
tabbies
A

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 Janice Morris
Secretary

Spence - aye
Dyott - aye
Foster - aye
Higgins - aye
Harrison - aye

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

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

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

By the Council November 18, 2003

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

By Order _____
Secretary

1

EXHIBIT
B

"Exhibit D"

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

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

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

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

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

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

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

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

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

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

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

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

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

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

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

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

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

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

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

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

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

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

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

* * *

§ 190-109 D (9)

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

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

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

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

§ 190-109 D (11)

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

* * *

§ 190-109 D (14)

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

§ 190-109 D (15)

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

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

§ 190-109 D (16)

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

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

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

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

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

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

2. Severability.

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

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

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

PUBLIC HEARING

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

BY THE COUNCIL

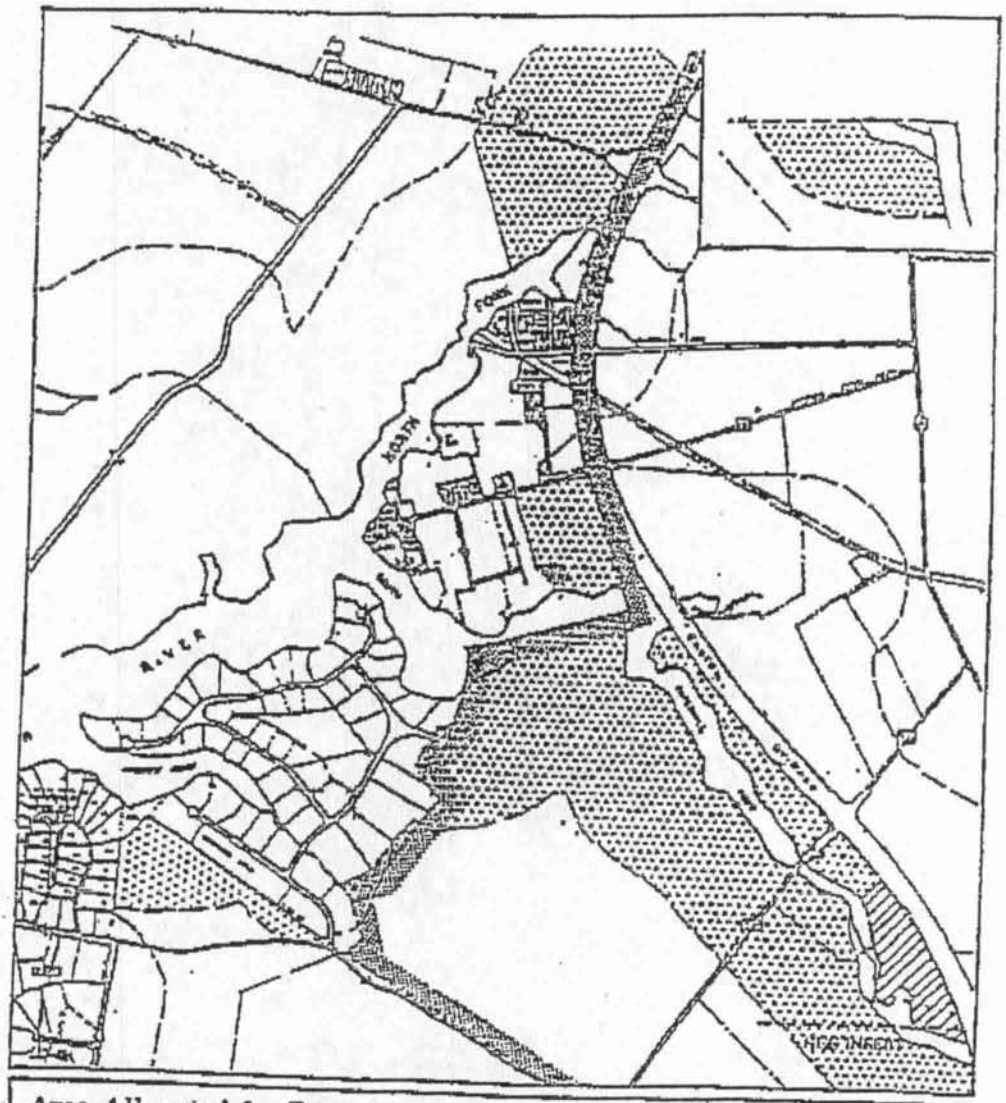
Read the third time.

ENACTED December 23, 2003*
AS AMENDED

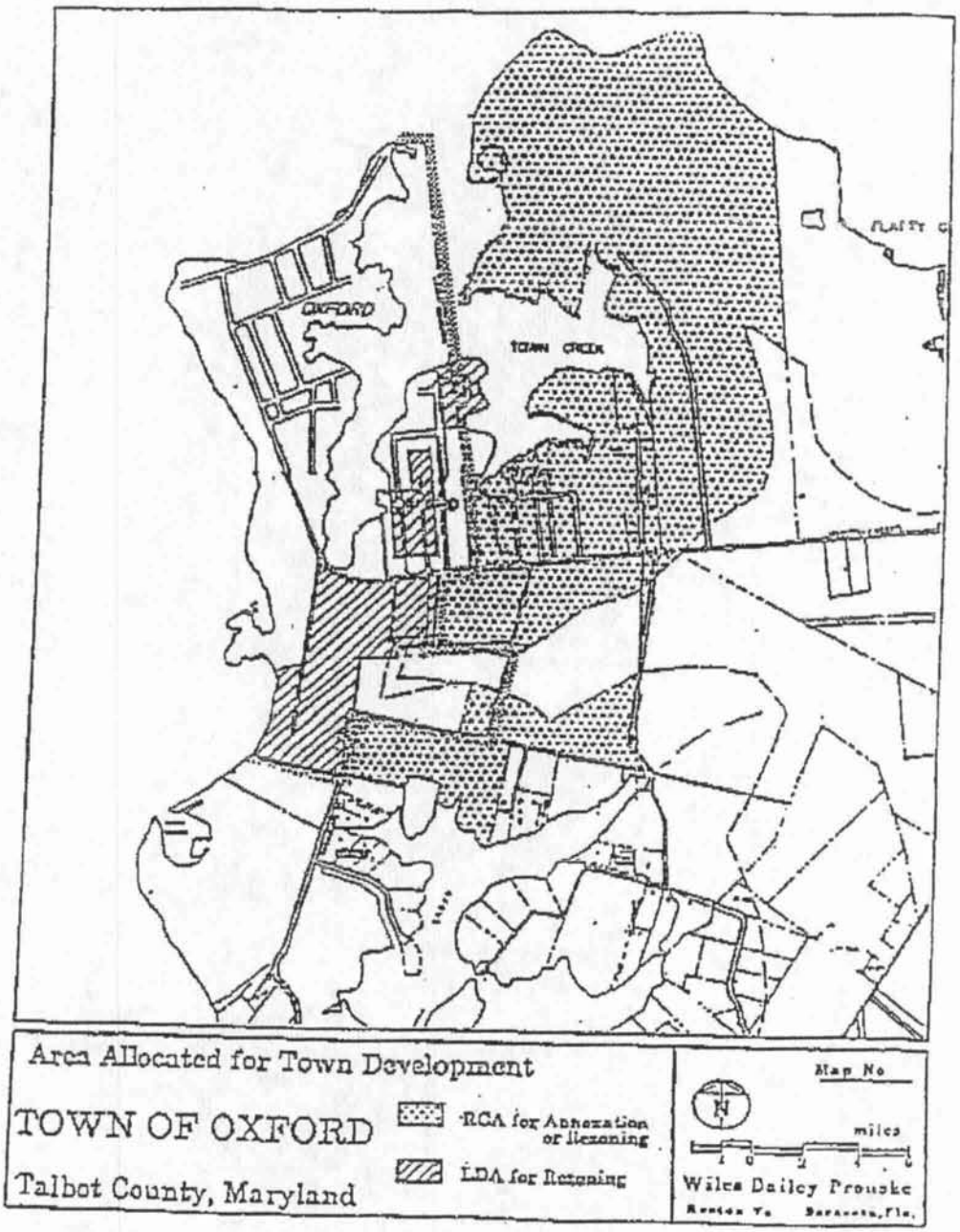
By Order _____
Secretary

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

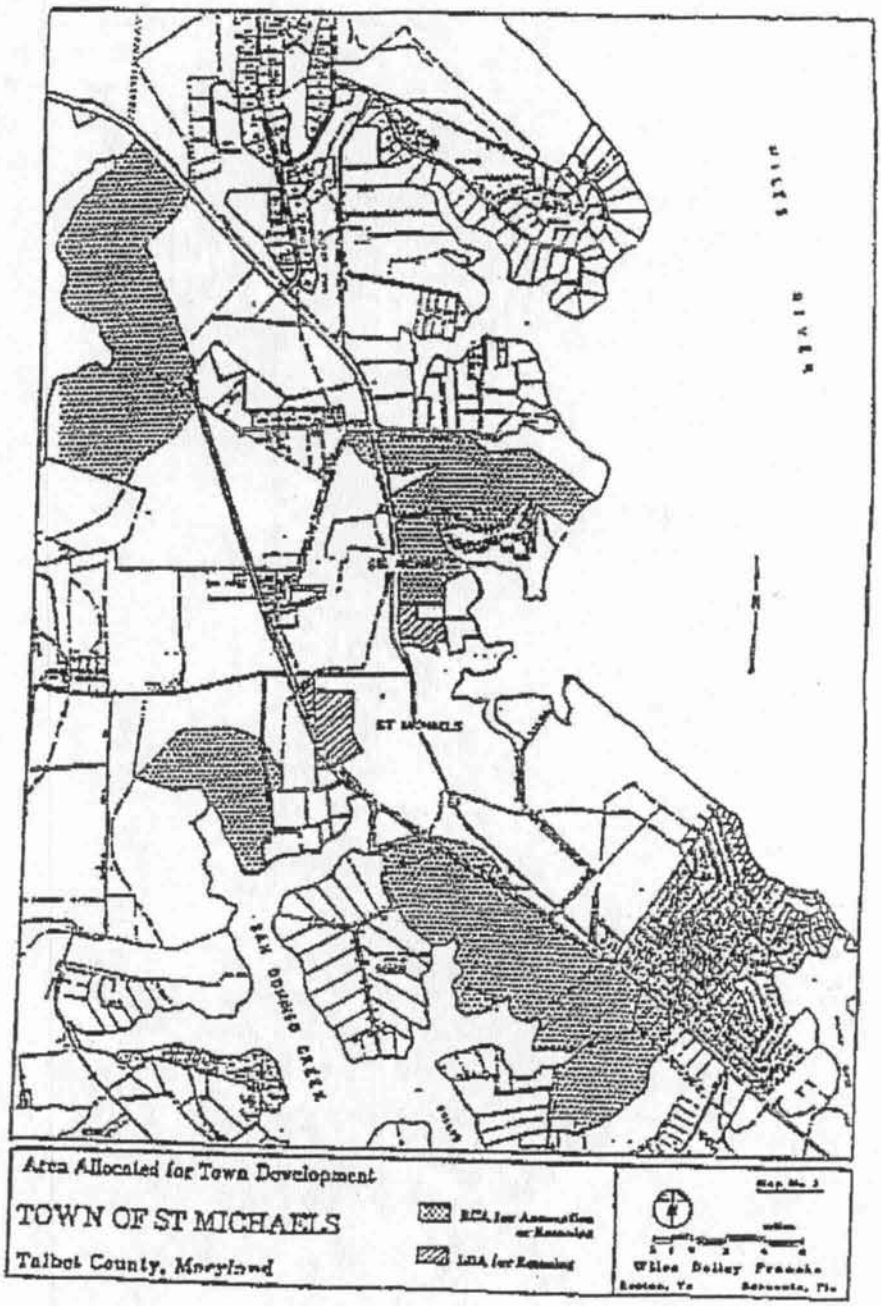
ZONING


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
N
miles
Wilce Dailey Pronske

ZONING


OXFORD
TOWN CREEK
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No
miles
Wilcs Dailey Prouske

ZONING



190:A9

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

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

RECEIVED
MAY 21 2004

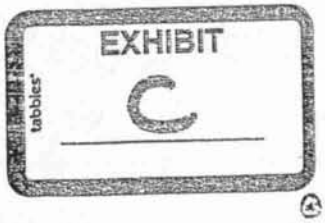
Re: Talbot County Proposal
Program Amendment: Bill 933

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.



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

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

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

Sincerely,

Lisa Hoerger
Natural Resource Planner

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

D

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 2-C-04-005095DJ
Plaintiff	*	IN THE
		CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

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

COUNTERCLAIM FOR DECLARATORY JUDGMENT BY INTERVENOR TOWN OF OXFORD

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

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

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

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

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

Blumberg No. 5118 EXHIBIT D

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

5. At all times relevant hereto, Oxford has exercised the planning and zoning powers granted to it by the State of Maryland by: (1) enacting, adopting, administering, applying and enforcing, relative to all land within Oxford, a comprehensive plan, a subdivision ordinance, a zoning ordinance, and a zoning map dividing all land within Oxford into zoning districts, defining the historic district, and defining the critical area land management districts; and (2) establishing, appointing and maintaining a planning commission, a board of appeals and a historic district commission.

6. The State of Maryland has enacted Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and has adopted provisions of the Code of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission) pursuant thereto. (Said code sections and regulations are collectively referred to hereinafter as the "State Critical Area Program").

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

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

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

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

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

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

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

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

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

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

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

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

16.2. Talbot County Bill No. 933 is a law involving a matter of general public concern (the Chesapeake Bay Critical Area), causing different effects on municipalities in the same class;

16.3. County Bill No. 933 is contrary to Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area), which encourages development within municipalities at a density of at least 3.5 units per acre;

16.4. County Bill No. 933 is contrary to State policy as expressed in Maryland Priority Places Strategy, established by Executive Order 2003.33, signed by Maryland Governor Ehrlich on October 8, 2003;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. That the Court find and declare as follows:

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

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

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

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

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

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

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

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

David R. Thompson, Esquire

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

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2004, a copy of the foregoing Counterclaim was mailed by first class mail, postage prepaid to:

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

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

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

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

David R. Thompson

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 2-C-04-005095DJ
Plaintiff	*	IN THE
		CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

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

COUNTERCLAIM FOR DECLARATORY JUDGMENT BY INTERVENOR TOWN OF OXFORD

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

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

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

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

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

Blumberg No. 5118 EXHIBIT D

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

5. At all times relevant hereto, Oxford has exercised the planning and zoning powers granted to it by the State of Maryland by: (1) enacting, adopting, administering, applying and enforcing, relative to all land within Oxford, a comprehensive plan, a subdivision ordinance, a zoning ordinance, and a zoning map dividing all land within Oxford into zoning districts, defining the historic district, and defining the critical area land management districts; and (2) establishing, appointing and maintaining a planning commission, a board of appeals and a historic district commission.

6. The State of Maryland has enacted Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and has adopted provisions of the Code of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission) pursuant thereto. (Said code sections and regulations are collectively referred to hereinafter as the "State Critical Area Program").

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

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

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

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

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

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

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

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

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

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

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

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

16.2. Talbot County Bill No. 933 is a law involving a matter of general public concern (the Chesapeake Bay Critical Area), causing different effects on municipalities in the same class;

16.3. County Bill No. 933 is contrary to Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area), which encourages development within municipalities at a density of at least 3.5 units per acre;

16.4. County Bill No. 933 is contrary to State policy as expressed in Maryland Priority Places Strategy, established by Executive Order 2003.33, signed by Maryland Governor Ehrlich on October 8, 2003;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. That the Court find and declare as follows:

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

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

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

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

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

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

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

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

David R. Thompson, Esquire

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

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2004, a copy of the foregoing Counterclaim was mailed by first class mail, postage prepaid to:

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

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

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

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

David R. Thompson

COPY

TALBOT COUNTY, MARYLAND,	*	
Plaintiff	*	CIVIL CASE NO. 20-C-04-005095DJ
Vs.		
DEPARTMENT OF NATURAL RESOURCES,	*	IN THE
Defendant	*	CIRCUIT COURT
* * * * * * *	*	FOR
THE COMMISSIONERS OF ST. MICHAELS		
Counter-Plaintiff	*	TALBOT COUNTY
Vs.	*	STATE OF MARYLAND
TALBOT COUNTY, MARYLAND,	*	
Counter-Defendant		

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

COUNTERCLAIM
(For Declaratory Judgment)

The Commissioners Of St. Michaels ("St. Michaels"), Defendant and Counter-Plaintiff herein, by its attorney, H. Michael Hickson, files this Counterclaim against Talbot County, Maryland (the "County"), Plaintiff and Counter-Defendant, pursuant to Maryland Rule 2-331 and Maryland Code, Courts and Judicial Proceedings Article, Title 3 (Courts of General Jurisdiction - Jurisdiction/Special Causes of Action), Subtitle 4 (Declaratory Judgment), and says:

1. The County has initiated the above-captioned case against the Defendant, the Maryland Department Of Natural Resources, alleging in the Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the "Initial Complaint"), as amended by the Amended Complaint (the "Amended Complaint"), (collectively the "Complaint") that the Maryland Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Critical Area Commission") improperly disapproved Talbot County Bill No. 933.

2. At all times here relevant St. Michaels has been, and continues to be, a Maryland municipal corporation, with its territory located entirely within the County, and with all of the

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

Blumberg No. 5118
EXHIBIT
E

powers, rights and duties within its territory conferred on Maryland municipal corporations by the Constitution and laws of Maryland.

3. At all times here relevant the County has been, and continues to be, a political subdivision of the State of Maryland.

4. At various times though its history St. Michaels has exercised the exclusive powers and discretion relating to the annexation of land, as granted to Maryland municipal corporations by the Maryland Constitution and statutes, by entering into annexation agreements with owners wishing to have their land annexed to St. Michaels and by annexing said land pursuant to said agreements.

5. Beginning in 1954, and continuously thereafter, pursuant to the powers and authority granted to Maryland municipal corporations by Maryland Code (1951), Article 66B, as amended from time-to-time, St. Michaels has exercised exclusive planning, zoning and subdivision powers, authority and control over all areas within its municipal territory by:

5.1 Adopting, and thereafter maintaining and amending, a comprehensive plan;

5.2 Enacting, and thereafter maintaining, amending, administering, applying and enforcing, a zoning ordinance, a zoning map (dividing all land within St. Michaels into zoning districts, and defining boundaries of the historic district), and a subdivision ordinance; and

5.3 Establishing, and thereafter appointing and re-appointing members of, and otherwise maintaining, a planning commission, a zoning inspector, a board of appeals and a historic district commission to administer said ordinances.

6. The State of Maryland enacted Chapter 794 of the 1984 Laws of Maryland, which has been subsequently amended and codified as Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), being hereinafter referred to as the "State Critical Area Laws".

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

7. Subsequent to the enactment of the State Critical Area Laws, what is now called the Critical Area Commission was constituted, its members were appointed and have been re-appointed from time-to-time, and it continues to exist and function by the authority of the State Critical Area Laws.

8. Subsequent to the enactment of the State Critical Area Laws, the Critical Area Commission adopted, and has thereafter amended from time-to-time, what is now the Code Of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission), being hereinafter referred to as the "State Critical Area Regulations".

9. The said State Critical Area Laws, as amended, and the said State Critical Area Regulations, as amended, are hereinafter collectively referred to the "State Critical Area Program".

10. Each member of the Critical Area Commission is a person who has been appointed thereto pursuant to the State Critical Area Laws, for which service he or she is entitled to receive compensation.

11. The duties and functions of the members of the Critical Area Commission require the exercise of discretion, judgment, experience and skill.

12. Each member of the Critical Area Commission, before exercising the powers and duties of his or her office as a member thereof, takes the oath or affirmation of office set forth in the Constitution Of Maryland, Article I (Elective Franchise), § 9 (Oath or affirmation of office).

13. The following incorporated municipalities within the County (hereinafter collectively the "Municipalities") have land within their corporate boundaries that is also located within the Critical Area, as defined by the State Critical Area Laws:

13.1 The Town Of Easton;

13.2 The Town Of Oxford; and

13.3 St. Michaels.

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

14. In or about 1987, the County requested the following from each Municipality:

14.1 A map of areas within and surrounding the Municipality, designating thereon land areas anticipated by the Municipality to be developed in the future; and

14.2 A request by the Municipality for the number of growth allocation acreage that the Municipality desired to have reserved by the County for its exclusive use.

15. In or about 1987, in response to the above-described request of the County to the Municipalities therein, and in anticipation of adopting its own local critical area protection program (the "St. Michaels Critical Area Program"), St. Michaels submitted the following to the County:

15.1 A map showing approximately 403 acres of land that St. Michaels identified as developable land located in and surrounding St Michaels (hereinafter the "St. Michaels Future Growth Areas Map", a copy of which is attached hereto as Exhibit No. 1); and

15.2 A request by St Michaels for 445 acres of growth allocation to be reserved for its exclusive use (the "St. Michaels Growth Allocation Acreage Request").

16. After receiving from St. Michaels the St. Michaels Future Growth Areas Map and the St. Michaels Growth Allocation Acreage Request, the County took the following actions in connection with the development and adoption of the County local critical area protection program (the "County Critical Area Program"):

16.1 Adopted the St. Michaels Future Growth Areas Map;

16.2 Reserved to St. Michaels, for its exclusive use, 245 acres of growth allocation; and

16.3 Adopted and used an interim critical area plan within the County (exclusive of the Municipalities) until the County Critical Area Program was enacted as part of the County code (subject to approval by the Critical Area Commission) and was approved by the Critical Area Commission.

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

17. Beginning in or about 1988, and continuing thereafter, in reliance on the State Critical Area Program and the actions of the County, St. Michaels took the following actions without the intervention or interference by the County, and with the approval of the Critical Area Commission:

17.1 Adopted, and thereafter amended, maintained, applied, and enforced the St. Michaels Chesapeake Bay Critical Area Local Program (the "St. Michaels Critical Area Program") in conformity with the State Critical Area Program with respect to all of the Critical Area located within St. Michaels;

17.2 Adopted, and thereafter amended and maintained, critical area overlay district maps;

17.3 Enacted, and thereafter amended, maintained, and enforced the critical area land use management district classifications mandated by the State Critical Area Program;

17.4 Designated upon the St. Michaels critical area overlay district maps the critical area land use management district classifications mandated by the State Critical Area Program;

17.5 Amended, and thereafter maintained and enforced, the St. Michaels Zoning Ordinance and the St. Michaels Subdivision Ordinance in conformity with the State Critical Area Program;

17.6 Included the St. Michaels Future Growth Areas Map as part of the St. Michaels Comprehensive Plan; and

17.7 Included the St. Michaels Future Growth Areas Map as part of the St. Michaels Critical Area Program.

18. The County adopted the County Critical Area Program, and thereafter until the introduction by the County of County Bill No. 933 in November of 2003, the County has consistently amended, maintained, and enforced, the County Critical Area Program in a manner that has recognized the exclusive power and authority of the Municipalities over the planning, zoning and subdivision of use and development of all land within their respective boundaries, including:

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

18.1 Incorporation therein of the St. Michaels Future Growth Areas Map and a similar map from each of the other Municipalities (collectively the "Town Future Growth Areas Maps");

18.2 Incorporation therein of the reservation of growth allocation acreage for the exclusive use of the Municipalities in the following amounts (collectively the "Growth Allocation Reserved For The Municipalities"):

18.2.1 For the Town of Easton - 155 acres;

18.2.2 For the Town of Oxford - 195 acres; and

18.2.3 For St. Michaels - 245 acres;

18.3 The County Critical Area Program was fully applicable to, and was enforceable and enforced against, all land within the Critical Area that is located in the political boundaries of the County, except the land located within the Municipalities;

18.4 In all respects, other than those as outlined in paragraphs 18.1 and 18.2 hereof, the County Critical Area Program was not applied to, and was not enforceable or enforced against, land located within the Municipalities; and

18.5 Purportedly enacting County Bill No. 762 on or about April 15, 2000 to amend the County Critical Area Program to add a process for approval of supplemental growth allocation within a Municipality, which County Bill No. 762 was thereafter purportedly approved by the Critical Area Commission based on representations to the public, to the Municipalities, and to the Critical Area Commission that County Bill No. 762 would be applicable only to a Municipality after it has exhausted its allotted share of the Growth Allocation Reserved For The Municipalities.

19. Because of the juxtaposition of St. Michaels to the Miles River, San Domingo Creek and Broad Creek:

19.1 After the annexation of the Perry Cabin Farm, but before the annexation of the Strausburg Property and the Hunteman Property, to St. Michaels:

19.1.1 Approximately 66% of the land area of St. Michaels was within the Critical Area; and

19.1.2 Approximately 97% of the undeveloped land in St. Michaels was within the Critical Area; and

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

19.2 After the annexation of the Strausburg Property and the Hunteman Property, to St. Michaels:

19.2.1 Approximately 68% of the land area of St. Michaels is within the Critical Area; and

19.2.2 Approximately 84% of the undeveloped land in St. Michaels is within the Critical Area.

20. As a practical matter, because of the proximity of St. Michaels to tidal waters, and because of the large percentage of the land in St. Michaels that is located within the Critical Area, and because of the even larger percentage of the remaining developable land in St. Michaels that is that located within the Critical Area, the discretionary power purportedly granted to the County Council by County Bill No. 933 would give the County Council the unfettered power to deny the award of growth allocation within St. Michaels, and thereby largely control the annexation of land to, and the planning, zoning and subdivision of land within, St. Michaels.

21. Pursuant to the exercise of its exclusive annexation, planning, zoning and subdivision powers (as described in paragraphs 4 and 6 hereof) and the St. Michaels Critical Area Program, and having a sufficient quantity of the Growth Allocation Reserved For St. Michaels available, prior to the purported adoption of Bill No. 933 and/or the claimed approval thereof by the Critical Area Commission, St. Michaels took the following actions and established the following interests:

21.1 In 1981 St. Michaels entered into an annexation agreement relating to the land known as Perry Cabin Farm, subject to certain terms and conditions relating to the zoning, development and use of said land.

21.2 In 1981 St. Michaels annexed and zoned the said Perry Cabin Farm, subject to the terms and conditions of said annexation agreement.

21.3 In 2003 St. Michaels entered into an annexation agreement relating to the land of Vance C. Strausburg and Nancy C. Strausburg (the "Strausburg Property"; deed refs. liber 497, folio 373 *et seq.* and Liber No. 511, folio 95 *et seq.*), consisting of

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

approximately 136 acres, subject to certain terms and conditions relating to the award of growth allocation, zoning, development and use of said land.

21.4 In 2003 St. Michaels accepted, processed and approved applications for annexation and zoning of the said Strausburg Property, subject to the terms and conditions of said annexation agreement.

21.5 In 2003 St. Michaels entered into an annexation agreement relating to the land known as the Hunteman Property, consisting of approximately 17 acres of land described in a deed dated August 31, 2001 from Elsie W. Hunteman to Miles Point, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 93, and subject to certain terms and conditions relating to the award of growth allocation, zoning, development and use of said land.

21.6 In 2003 St. Michaels accepted, processed and approved an application for annexation of the said Hunteman Property, subject to the terms and conditions of said annexation agreement.

21.7. In February of 2004, pursuant to Maryland Code, Art. 66B, § 13.01, and St. Michaels Ordinance No. 290, the St. Michaels Planning Commission, for the benefit of St. Michaels, entered into a Development Rights And Responsibilities Agreement with The Midland Companies, Inc., *et al.* (the "DRRA"), which is subject to the award of 70.863 acres of growth allocation for a 72.167-acre portion of the Perry Cabin Farm, and which includes consideration to St. Michaels as described in Section 10 of the DRRA which could exceed $14 million. A copy of the DRRA, which is recorded among the Talbot County Land Records on February 26, 2004 at Liber No. 1225, folio 405, is attached hereto and incorporated herein by reference as Exhibit No. 2.

22. Pursuant to the exercise of its exclusive annexation, planning, zoning and subdivision powers (as described in paragraphs 4 and 5 hereof) and the St. Michaels Critical Area Program, and having a sufficient quantity of Growth Allocation Reserved For St. Michaels available, prior to the purported adoption of Bill No. 933 and/or the claimed approval thereof by the Critical Area Commission, the following applications for the award of growth allocation were submitted to St. Michaels, and as required by law, accepted, processed and decided as follows:

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

22.1 From 1998 through 2003 numerous applications relating to the said Perry Cabin Farm and/or the Hunteman Property were decided, defended in court, mediated and negotiated, all of which efforts and devotion of resources contributed to the evolution and ultimate formation of a development plan for the said Perry Cabin Farm known as Miles Point III, which ultimately resulted in the award of 70.863 acres of growth allocation by St. Michaels, and the approval thereof by the Critical Area Commission, all in accordance with the terms of the DRRA (a copy of a letter from the Critical Area Commission announcing such approval is attached hereto and incorporated herein by reference as Exhibit No. 3); and

22.2 In 2003 an application relating to the Strausburg Property resulted in the award of 20.1 acres of growth allocation by St. Michaels, and the approval thereof by the Critical Area Commission, in addition to a 75-acre perpetual conservation easement granted to St. Michaels relating thereto the Strausburg Property (a copy of a letter from the Critical Area Commission announcing such approval is attached hereto and incorporated herein by reference as Exhibit No. 4).

23. To date the only growth allocation that has been awarded by St. Michaels is that described in paragraph 22 hereof.

24. St. Michaels anticipates that there will have to be an award of growth allocation with respect to the Hunteman Property in order for that land to be developed in the fashion that is anticipated by the annexation agreement described in paragraph 21.5 hereof.

25. All of the decisions and actions described in paragraphs 21 and 22 hereof have:

25.1 Been taken by St. Michaels prior to May 5, 2004;

25.2 Been taken by St. Michaels at substantial cost to St. Michaels in money and other limited resources;

25.3 Been taken by St. Michaels as an inseparable part of the exercise of its exclusive annexation, planning, zoning and subdivision powers and authority within St. Michaels; and

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

25.4 Have established contractual and other rights and interests in St. Michaels and those having an interest in the affected land as to the manner of development of the Perry Cabin Farm, the Strausburg Property, and the Hunteman Property as part of St. Michaels.

26. The County claims to have adopted and enacted County Bill No. 933 as part of the County Critical Area Program on or about December 23, 2003.

27. Subsequent to purportedly adopting and enacting County Bill No. 933, the County submitted County Bill No. 933 to the Critical Area Commission for its approval.

28. County Bill No. 933 will not become effective unless and until it is reviewed and approved by the Critical Area Commission.

29. In its Complaint, filed in the above-captioned case, the County claims that County Bill No. 933 has been approved (by operation of law or otherwise), or is required by law to be approved, by the Critical Area Commission.

30. St. Michaels has rights, interests, goals and objectives relating to the orderly development of the Town, providing of infrastructure and government services, and the public health, welfare, safety and good government of the Town, which are preserved and/or advanced by the interests described in paragraphs 4, 5, 17, 18, 21 and 22 hereof (collectively the "St. Michaels Interests").

31. Approval or validation of County Bill No. 933 would be illegal and invalid because it would have the following effects, each of which is legally sufficient to invalidate County Bill No. 933, or to make it inapplicable to the St. Michaels Interests as hereinafter defined:

31.1 Illegally monopolize the limit placed on the area of expansion of intensely developed or limited development areas, as established by COMAR 27.01.02.06 A (1);

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

31.2 Violate the requirement of COMAR 27.01.02.06 A (2), that counties establish a process to accommodate the growth needs of municipalities;

31.3 Violate the requirement of COMAR 27.01.02.06 A (2), that when establishing a process to accommodate the growth needs of municipalities, counties shall coordinate with the affected municipalities;

31.3 Illegally revoke all of the Growth Allocation Reserved For St. Michaels;

31.4 Retroactively revoke all growth allocation awarded by St. Michaels and approved by the Critical Area Commission, as described in paragraph 22 hereof;

31.5 Grant to the County Council the power to hear, and the unfettered discretion to deny, applications for the award of all growth allocation relating to land located within St. Michaels, contrary to the will and decision of St. Michaels;

31.6 Establish the affirmative vote of a majority of the members of the County Council in favor of an application for the award of growth allocation relating to land located within St. Michaels as an absolute prerequisite for the approval of such application;

31.7 Grant the members of the County Council the discretionary power to decide applications for growth allocation for land within St. Michaels without considering all of the applicable contents and criteria of the St. Michaels Comprehensive Plan, the St. Michaels Zoning Ordinance, the St. Michaels Subdivision Ordinance, or the St. Michaels Critical Area Program (collectively the "St. Michaels Land-Planning And Land-Use Documents");

31.8 Allow the members of the County Council, in considering an application for the award of growth allocation relating to land located within St. Michaels, to consider County land-planning and land-use objectives and criteria that are different from, and conflicting with, the objectives and criteria established by the St. Michaels Land-Planning And Land-Use Documents;

31.9 Effectively remove from St. Michaels, and place in the County Council, the ultimate annexation, planning, zoning and subdivision powers and authority granted by the State to St. Michaels, and exercised by St. Michaels, for the large percentage of St. Michaels that is located within the Critical Area;

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

31.10 Conflict with the Maryland Constitution and statutes that grant to Maryland municipal corporations autonomy from County government, and certain exclusive powers and duties within the municipal territory, including the powers of annexation, planning, zoning and subdivision;

31.11 Conflict with Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area), which encourages development within municipalities at a density of at least 3.5 units per acre;

31.12 Conflict with State policy as expressed in Maryland Priority Places Strategy, established by Executive Order 2003.33, signed by Maryland Governor Ehrlich on October 8, 2003;

31.13 Cause different effects on municipalities in the same class;

31.14 Interfere with the contractual and property rights established between St. Michaels and the owners of land within St. Michaels; and

31.15 Interfere with and adversely affect the rights, interests, goals and objectives of St. Michaels relating to the orderly development of the Town, providing of infrastructure and government services, and the public health, welfare, safety and good government of the Town, which are preserved and/or advanced by the interests described in paragraphs 4, 5, 17, 18, 21 and 22 hereof (collectively the "St. Michaels Interests").

32. If validated by an order of this Court, County Bill No. 933 would adversely affect the St. Michaels Interests as follows (the "Adverse Affects"):

32.1 Invalidating the award by St. Michaels, and the approval by the Critical Area Commission, of 20.1 acres of growth allocation for the Strausburg Property, including a 75-acre perpetual conservation easement granted to St. Michaels as a condition for such award of growth allocation;

32.2 Invalidating the award by St. Michaels, and the approval by the Critical Area Commission, of 70.863 acres of growth allocation for a 72.167-acre portion of the Perry Cabin Farm, including a public waterfront park granted to St. Michaels as a condition for such award of growth allocation;

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

32.3 Interfering with and invalidating the DRRA relating to a 72.167-acre portion of the Perry Cabin Farm, including the consideration to St. Michaels as described in Section 10 thereof and which could exceed $14 million;

32.4 Interfering with the administration and application of the St. Michaels Critical Area Program that was approved by the Critical Area Commission prior to the purported enactment of County Bill No. 933;

32.5 Interfering, and effectively invalidating St. Michaels Critical Area Program which, subject only to the review by the Critical Area Commission, placed in St. Michaels the exclusive right, free of County interference at least to the extent of 245 acres, to award growth allocation within its corporate boundaries;

32.6 Interfering with the exclusive authority of St. Michaels, pursuant to Maryland Code, Art. 66B, to effectively exercise planning, zoning and subdivision authority over the entire area within its corporate boundaries of St. Michaels;

32.7 Subordinating the St. Michaels Comprehensive Plan to the County Program and effectively rendering the St. Michaels Comprehensive Plan null and void within the Critical Area in St. Michaels;

32.8 Subordinating the St. Michaels Zoning Ordinance to the County Program and effectively rendering the St. Michaels Zoning Ordinance null and void within the Critical Area in St. Michaels; and

32.9 Subordinating the St. Michaels Subdivision Ordinance to the County Program and effectively rendering the St. Michaels Subdivision Ordinance null and void within the Critical Area in St. Michaels.

33. During the review of County Bill No. 933 by the Critical Area Commission, St. Michaels participated in each public hearing and meeting conducted by the Critical Area Commission related thereto, and submitted written communications to the Critical Area Commission, raising each of the issues addressed herein.

34. The County and St. Michaels are claiming conflicting interpretations and rights under the County Bill No. 933.

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

35. St. Michaels is a person, within the meaning of Maryland Code, Courts Article, § 3-406 (Authority to interpret), who may have determined any question of construction or validity arising under a law and obtain a declaration of rights, status, or other legal relations under such law.

36. The parties hereto are affected by the above-described County law by virtue of its purported limitation and withdrawal of all Growth Allocation Reserved For St. Michaels, and its purported application to all land within the Critical Area in St. Michaels.

37. There exists an actual controversy of a practicable and justicible issue involving antagonistic claims between the County and St. Michaels that is within the jurisdiction of this Honorable Court and that involves the rights and liabilities of the parties hereto under County Bill No. 933, and the propriety of the disapproval thereof by the Critical Area Commission, as set forth above, which controversy may be determined by a judgment of this Honorable Court.

38. The antagonistic claims that are present indicate that imminent and inevitable litigation will occur among the parties hereto.

39. A declaratory judgment or decree in this case will serve to terminate the uncertainties and controversies giving rise to this proceeding.

40. There is no statutory remedy applicable to this case that must be followed in lieu of this proceeding.

WHEREFORE, the Counter-Plaintiff, The Commissioners Of St. Michaels, requests:

A. That this Court determine and adjudicate the rights and liabilities of the parties with respect to County Bill No. 933; and

B. That this Court find and declare as follows:

1) That on its face County Bill No. 933 violates the State Critical Area Program;

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

2) That on its face County Bill No. 933 violates and is in conflict with the Constitution and laws of the State of Maryland;

3) As it would apply to St. Michaels, County Bill No. 933 would violate the State Critical Area Program; and

4) As it would apply to St. Michaels, County Bill No. 933 would and be in conflict with the Constitution and laws of the State of Maryland.

C. Grant such other and further relief as this Court may deem just and proper.

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD 21803-0044
Telephone 410-546-4644
Attorney for The Commissioners Of St. Michaels

Attachments:

Exhibit No. 1	St. Michaels Future Growth Areas Map
Exhibit No. 2	Development Rights And Responsibilities Agreement
Exhibit No. 3	Letter from the Critical Area Commission indicating approval of the award of 70.863 acres of growth allocation relating to the Perry Cabin Farm
Exhibit No. 4	Letter from the Critical Area Commission indicating approval of the award of 20.1 acres of growth allocation relating to the Strausburg Property

CERTIFICATE OF SERVICE

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

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

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

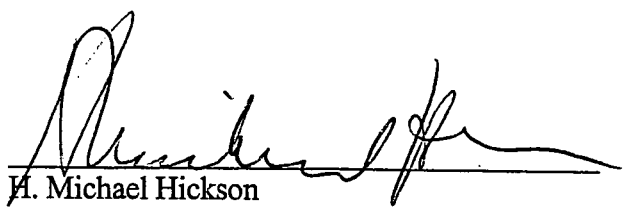
Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

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

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

Annapolis, Maryland 21401
Attorneys for Maryland Department of
Natural Resources

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



H. Michael Hickson

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