

Sept 2006

Volume I: Talbot County v. Town of Oxford No. 1509 Record Extract

MSA\_S\_1831\_10 (1 of 2)

OFFICE OF THE ATTORNEY GENERAL  
Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays  
1804 West Street Suite 100  
Annapolis, Maryland 21401  
(410) 260-3466  
(410) 974-5338 (Fax)

February 15, 2007

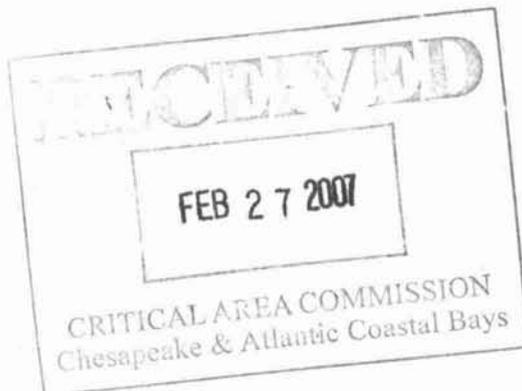
MEMORANDUM

TO: Shelly Mekiliesky

FROM: Marianne E. Dize *MED*

RE: Record Extract and Appellant's Brief  
*Talbot County v. Town of Oxford* No. 01509, Sept. Term 2006 Ct. of Special App.

Enclosed please find the record extract and appellant's brief in the above-captioned case. My brief is due on Monday, March 5, but I would like to file on Friday, March 2. As per my phone conversation with your office today, I will email a copy of my draft brief by COB on Friday, February 16<sup>th</sup> to K. Parker and Bonnie Ranaudo. Please let me know who is reviewing the brief, and ask that person to contact me directly with comments/changes. Thanks!



**In The  
Court of Special Appeals of Maryland**

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No. 01509  
September Term, 2006

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**TALBOT COUNTY, MARYLAND**  
Appellant,

v.

**TOWN OF OXFORD, MARYLAND, et al.**  
Cross-Appellant and Appellees.

---

APPEAL FROM THE CIRCUIT COURT FOR  
TALBOT COUNTY, MARYLAND  
(Honorable John W. Sause, Judge)

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**RECORD EXTRACT  
VOLUME I**

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Daniel Karp, Esquire  
Victoria M. Shearer, Esquire  
Karpinski, Colaresi & Karp  
120 E. Baltimore Street  
Suite 1850  
Baltimore, Maryland 21202  
(410) 727-5000  
Counsel for Appellant

Michael Pullen, Esquire  
Talbot County Attorney  
11 N. Washington Street  
Easton, Maryland 21601  
(410) 770-8092  
Counsel for Appellant

H. Michael Hickson, Esquire  
Jesse Hammock, Esquire  
Banks, Nason & Hickson, P.A.  
113 South Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044  
(410) 546-4644  
Counsel for Town of St. Michaels

Marianne Mason Dise, Esquire  
Joseph Gill, Esquire  
Paul Cucuzella, Esquire  
J. Joseph Curran, Attorney General  
480 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
(410) 260-8350  
Counsel for Department of Natural Resources

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

Richard A. DeTar, Esquire  
Demetrios Kaouris, Esquire  
Miles & Stockbridge, P.C.  
101 Bay Street  
Easton, Maryland 21601  
(410) 822-5280  
Counsel for Miles Point Properties, LLC and  
the Midlands Companies, Inc.

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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

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			06/11/04
		Party ID: 0026703		
	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			12/01/04
		Party ID: 0028663		
	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			12/01/04
		Party ID: 0028664		

20-C-04-005095 Date: 11/29/06 Time: 15:09

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

Appear: 11/17/2004

12/21/04

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)545-4644		Appear: 09/24/2004	09/27/04

**CALENDAR EVENTS**

Date	Time	Fac	Event Description	Text SA	Jdg	Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec				
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	Activity User	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 Mandamus 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 Request 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 Commissioners 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 issuance 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

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

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

Plaintiff :

vs. : Civil Action No. \_\_\_\_\_

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 :

**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:

### 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

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 Jeniza Morris  
Secretary



1 **A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL**  
 2 **GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY,**  
 3 **MARYLAND.**

4  
 5  
 6 **SECTION ONE: BE IT ENACTED**, by the County Council of Talbot County, that  
 7 Title 19-14 (c) (iv) (c) [i] be repealed and re-enacted to establish procedures for awarding  
 8 supplemental growth allocation to municipalities in Talbot County, Maryland, as follows:  
 9

10  
 11 [i] Not more than 1,213 acres of the Critical Areas of the County, including  
 12 all land lying within the Critical Area within incorporated towns, shall be reclassified  
 13 from the Rural Conservation (RC) District (or town zoning districts established for the  
 14 Resource Conservation Area of the Critical Area) to any other zoning district. Of these  
 15 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the  
 16 Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation  
 17 associated with annexations, and 618 acres is reserved for the County.  
 18

19 When 1,092 acres (ninety [90] percent of 1,213 acres) has been approved for growth  
 20 allocation by the Towns and/or the County, then the County shall request permission  
 21 from the Maryland Critical Area Commission to double the maximum number of acres  
 22 that may be reclassified from the Rural Conservation District (or comparable town  
 23 districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the  
 24 County shall reserve acreage for each town.  
 25

26 If the commission approves the doubling of the number of acres that may be rezoned  
 27 under this Section, the County will have its full allocation of 2,554 acres for growth as  
 28 specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213  
 29 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below =  
 30 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426 acre  
 31 allocation (1,213 + 1,213) at the time of the establishment of this Section (August 13,  
 32 1989).  
 33

34 Upon request for supplemental growth allocation by any municipal corporation within the  
 35 County, the County Council may transfer growth allocation to the municipal corporation  
 36 and may impose such conditions, restrictions, and limitations upon the use of any such  
 37 supplemental growth allocation, if any, as the Council may consider appropriate. All such  
 38 requests shall comply with the following requirements.  
 39

40 [1] **Application Process.** The applicant shall file their application with the  
 41 municipality. In addition to complying with all municipal requirements, the applicant  
 42 shall also provide the information required by § 19.14 (c) (iv) [b] of the Talbot County  
 43 Zoning Ordinance, as amended, and shall also comply with the design standards set forth  
 44 in § 19.14 (c) (iv) [b] [1] through [9], of the Talbot County Zoning Ordinance, as  
 45 amended. The municipality shall forward the application to the County Council for  
 46 consideration and review within five (5) working days.  
 47

48 [2] **Staff and Planning Commission Review.** The planning staff and the  
 49 Planning Commission shall review the application in accordance with the procedures set  
 50 forth in § 19.14 (c) (iv) (c) [1] through [4], except that municipal and county staff reports  
 51 shall be forwarded to the Planning Commissions of both jurisdictions and the planning  
 52 staff shall schedule a joint hearing on the application before the Planning Commissions of  
 53 both jurisdictions. The designated chairperson of each Planning Commission shall co-  
 54 chair the hearing. Each Planning Commission shall vote separately and make its  
 55 recommendations to its respective council or commission. Each Planning Commission  
 56 shall provide a copy of its recommendations to the other jurisdiction.  
 57

58 [3] **Council Review.** The county and municipal councils or commissions  
 59 shall hold a joint hearing on the application, co-chaired by the designated chairperson of  
 60 each council or commission which may be coordinated jointly with the Critical Area  
 61 Commission. The county and municipal councils or commissions shall make their

1 respective decisions separately as independent entities. The County Council shall  
2 evaluate the application in accordance with § 19.14 (c) (iv) [d].  
3

4 [4] Amendments to Approved Projects. Any amendment to an approved  
5 project shall be subject to County Council review and approval for a period of five (5)  
6 years following the date of initial approval.  
7

8  
9

10  
11 BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days  
12 following its enactment.  
13

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15  
16  
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18

19 PUBLIC HEARING

20  
21 Having been posted and Notice of time and place of hearing and Title of Bill No.  
22 762 having been published, a public hearing was held on Tues. April 18, 2000  
23

24  
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30

31 BY THE COUNCIL

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34 Read the third time.

35  
36 ENACTED April 25, 2000 \*  
37 \*AS AMENDED\*  
38

39 By Order Junia Morris  
40 Secretary  
41

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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 *Janice Manis*  
Secretary

1



"Exhibit D"

E. 33

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

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

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

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

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

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

WHEREAS, the process created by the 1989 zoning ordinance is both redundant and inconsistent or 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

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

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

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

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

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

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

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

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

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

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

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

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

114  
 115 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT  
 116 COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is  
 117 hereby amended as set forth herein.  
 118

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

121 \* \* \*

122  
 123 § 190-109 D (9)  
 124

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

133 \* \* \*

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

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

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

153  
 154  
 155 **§ 190-109 D (11)**

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

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

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

175  
 176 **§ 190-109 D (15)**

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

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

184  
185 § 190-109 D (16)

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

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

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

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

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

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

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

221  
222 2. Severability.

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

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

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

**PUBLIC HEARING**

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

**BY THE COUNCIL**

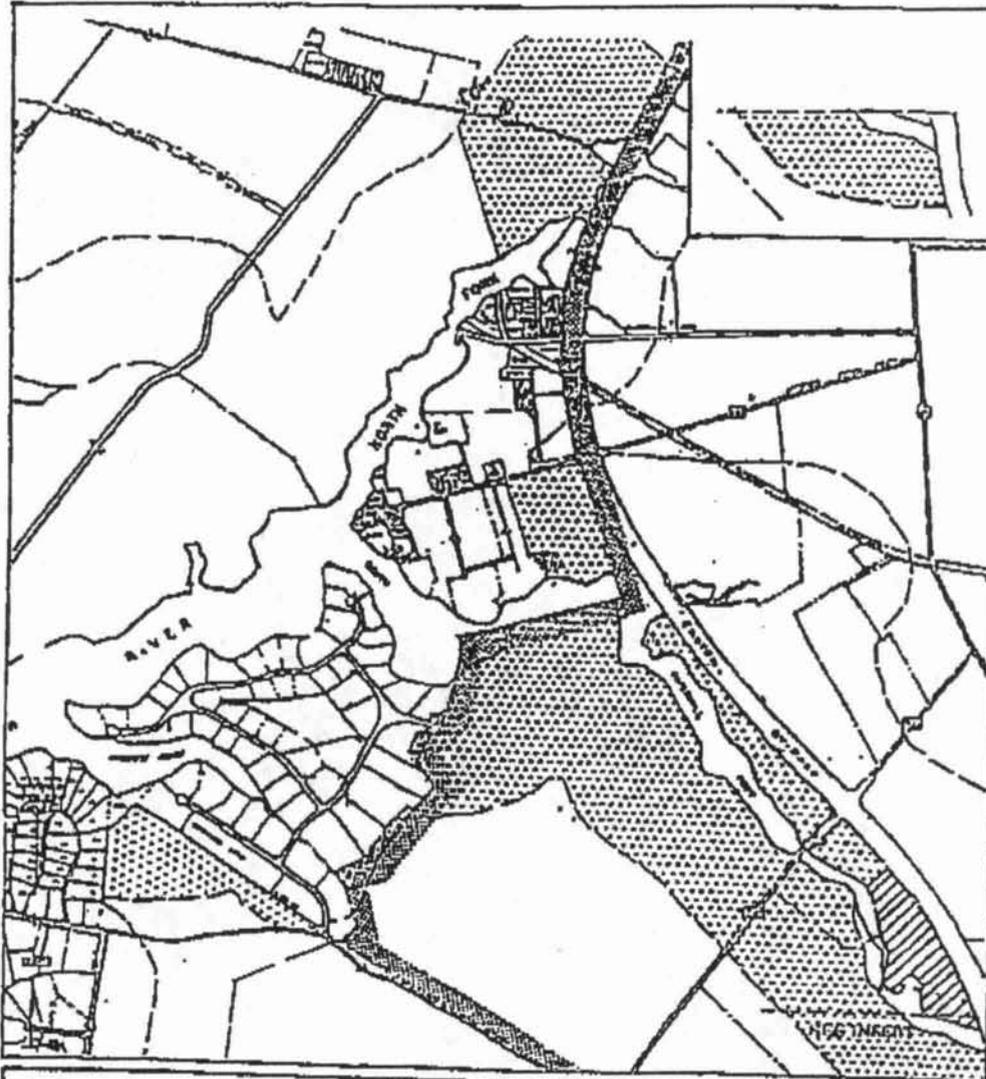
Read the third time.

ENACTED December 23, 2003\*  
\*AS AMENDED\*

By Order Debra Mavis  
Secretary

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

### ZONING

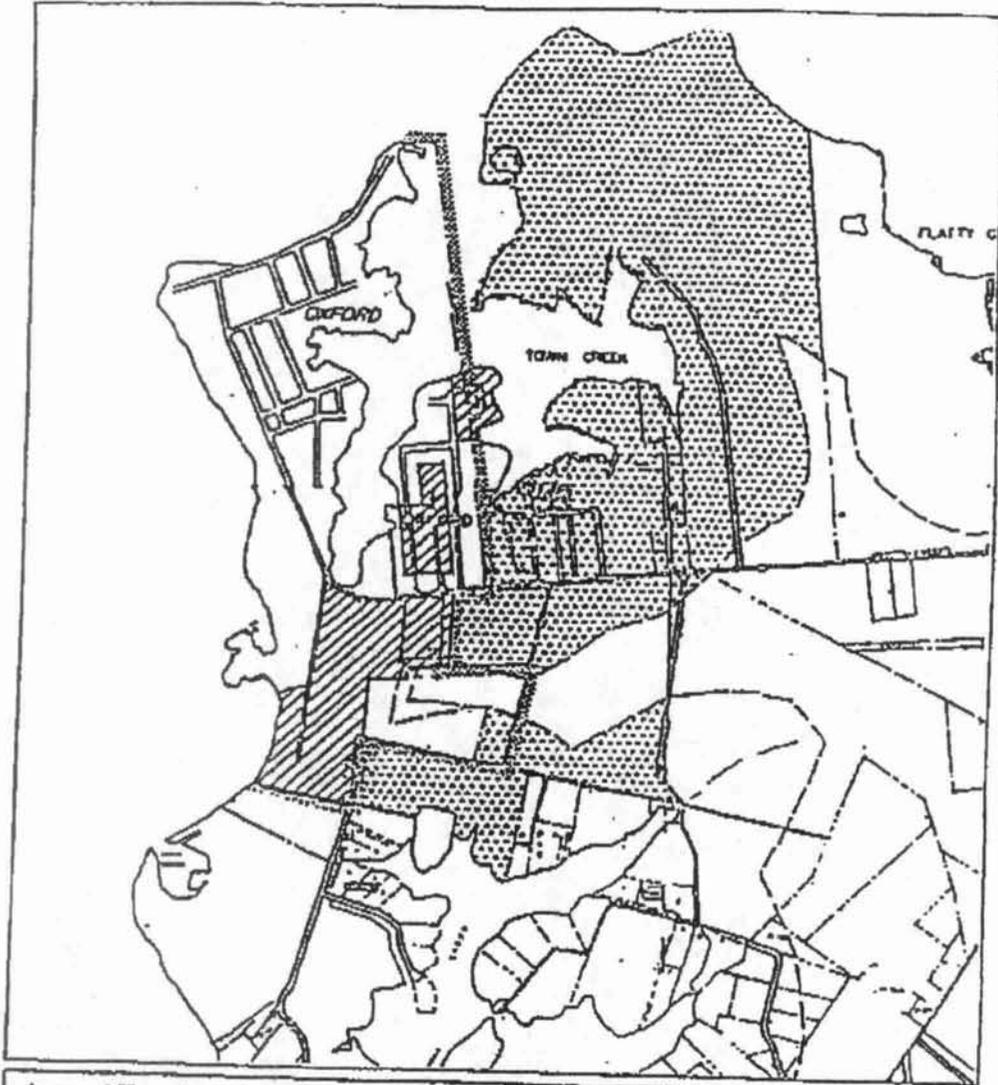


Area Allocated for Town Development		Map No. 1	
TOWN OF EASTON Talbot County, Maryland		RCA for Annexation or Rezoning	 miles Wiles Dailey Prosser Realtor, Va. Surveyor, Etc.
		LDA for Rezoning	

190:A5

E. 41

# ZONING

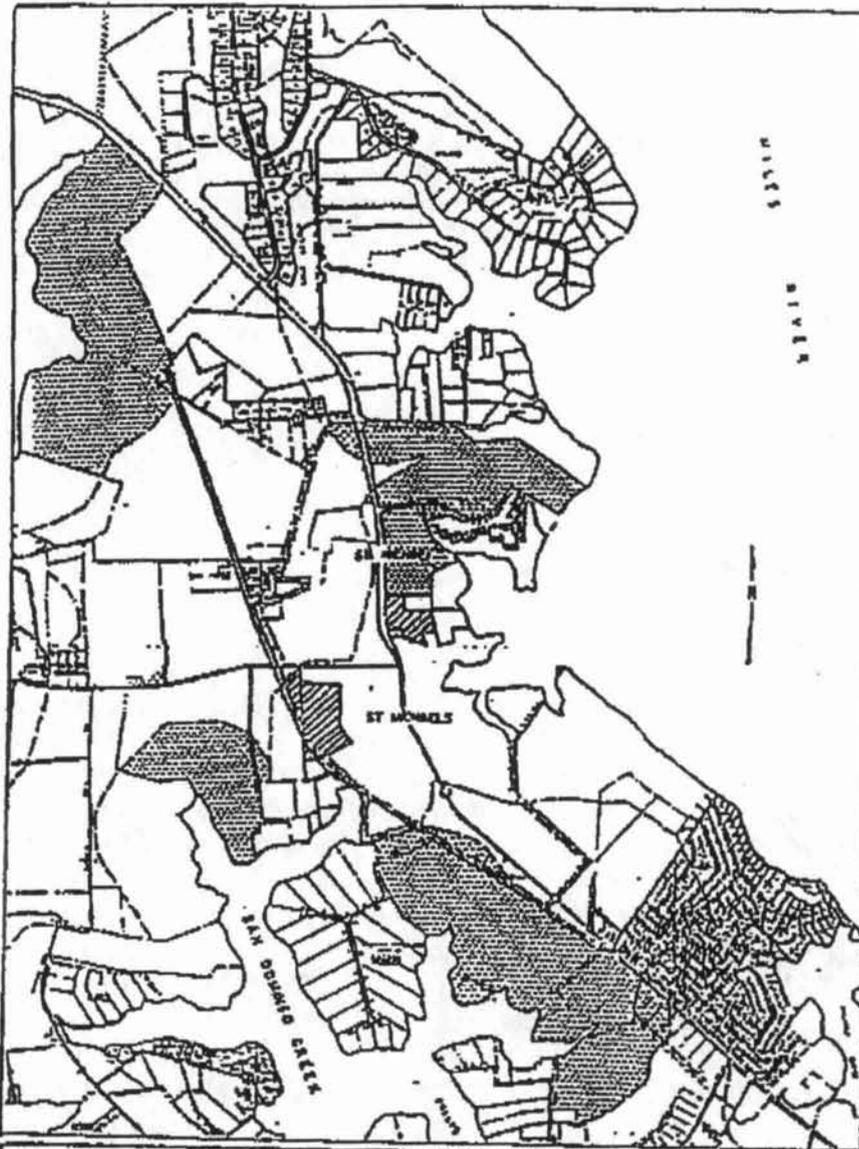


Area Allocated for Town Development		Map No
TOWN OF OXFORD	RCA for Annexation or Rezoning	 Wiles Dailey Prouse Boston Va Sarasota, Fla.
Talbot County, Maryland	LDA for Rezoning	

190:A7

E. 42

# ZONING



<p>Area Allocated for Town Development</p> <p><b>TOWN OF ST MICHAELS</b></p> <p>Talbot County, Maryland</p>		<p>Map No. 3</p> <p>Scale: 1" = 1/4 mile</p> <p>Wiles Deller Penick</p> <p>Scotts, Va.      Saratoga, Pa.</p>
<p>⊗ RZA for Amendment or Exception</p> <p>▨ LSA for Rezoning</p>		

190:A9

E. 43

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

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

RECEIVED  
MAY 21 2004

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

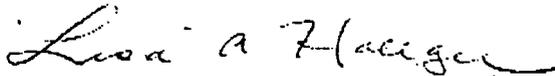
E. 44

Mr. Kinney  
May 14, 2004  
Page 2

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

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

Sincerely,



Lisa Hoerger  
Natural Resource Planner

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

E. 45

**IN THE CIRCUIT COURT OF MARYLAND  
FOR TALBOT COUNTY**

TALBOT COUNTY, MARYLAND, \*

Plaintiff, \*

v. \*

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

DEPARTMENT OF NATURAL \*  
RESOURCES, \*

Defendant. \*

\* \* \* \* \*

**VERIFIED ANSWER TO COUNT II**

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rules 2-323 and 15-701, hereby answers Count II only<sup>1</sup> of the Amended Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the “Complaint”), and states:

1. To the extent that paragraphs 1 through 6 of the Complaint contain allegations of fact, and not merely statements or conclusion of laws to which no responses are required, DNR admits the allegations.

2. To the extent that paragraph 7 of the Complaint contains statements or conclusions

---

<sup>1</sup> Pending is DNR’s Motion To Dismiss in which DNR asked the Court, pursuant to Maryland Rule 2-322, to dismiss all three Counts of the Complaint. By the accompanying Withdrawal Of Motion To Dismiss Count II, DNR withdraws its Motion To Dismiss as to Count II only.

of law, no response is required. As to those factual allegations contained in paragraph 7, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

3. Paragraph 8 of the Complaint contains no allegations of fact, only statements and conclusions of law, to which no responses are required.

4. To the extent that paragraphs 9 through 13 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required, DNR admits the allegations.

5. DNR denies the allegation contained in paragraph 14 of the Complaint that “[t]he Towns of St. Michaels and Oxford have not utilized the growth allocations reserved to them.” As to the remaining allegations contained in paragraph 14, to the that the allegations are allegations of fact, and not merely statements or conclusion of laws to which no responses are required, DNR admits the allegations.

6. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 15 of the Complaint.

7. DNR admits the allegations contained in paragraph 16 of the Complaint.

8. Paragraph 17 of the Complaint contains no allegations of fact, only statements and conclusions of law, to which no responses are required.

9. DNR denies the allegations contained in paragraph 18 of the Complaint that “[t]he Commission accepted Bill 933 for review as a proposed program amendment on February 4, 2004,” and that “[t]he Commission failed to act within 90 days and thus Bill 933 is deemed approval.” The remaining allegations contained in paragraph 18 are either statements or conclusions of law, to which no responses are required.

10. Paragraph 19 of the Complaint contains no allegations of fact, only statement or conclusions of law, to which no responses are required.

11. DNR responds to the allegations contained in paragraphs 20 through 26 of the Complaint – the separately enumerated Count I for Declaratory Judgment – not because it intends to respond to, or waive its Motion To Dismiss as to, Count I, but because the allegations contained in paragraphs 20 through 26 are incorporated by reference into Count II by operation of paragraph 27 of the Complaint.

a. Paragraph 20 of the Complaint contains no separate allegations of fact, and thus no response is required.

b. Paragraphs 21 and 22 of the Complaint contain no allegations of fact, only conclusions of law, to which no responses are required.

c. To the extent that paragraph 23 of the Complaint contains allegations of fact, and not statements or conclusions of law to which no responses are required, DNR denies the allegations.

d. To the extent that plaintiff alleges in paragraph 23 of the Complaint that the Critical Area Commission denied approval of Bill 933 as an amendment to Talbot County's local Critical Area program, and notified the County in writing as such by letter dated May 14, 2004, DNR admits these allegations. The remaining allegations contained in paragraph 23 are statements or conclusions of law, to which no responses are required.

e. DNR denies the allegation contained in paragraph 25 of the Complaint that "[t]he Commission ignored the criteria established by State law as the benchmark for its consideration of local program amendment and applied improper criteria in making its decision."

The remaining allegations contained in paragraph 25 amount to statements or conclusions of law to which no responses are required.

f. Paragraph 26 of the Complaint contains no allegations of fact, only statements or conclusions of law, to which no responses are required.

12. Paragraph 27 of the Complaint contains no separate allegations of fact, and thus no response is required.

13. Paragraph 28 of the Complaint contains no allegations of fact, only statements or conclusions of law, to which no responses are required.

14. DNR admits the allegations contained in paragraph 29 of the Complaint.

15. Paragraphs 30 and 31 of the Complaint contain no allegations of fact, only statements or conclusions of law, to which no responses are required.

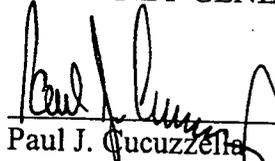
16. DNR denies the allegation contained in paragraph 32 of the Complaint that the Commission considered or relied upon "extraneous facts, arguments, and findings" when it considered Bill 933. The remaining allegations contained in paragraph 32, including the allegation that the "Commission exceeded its limited authority," amount to statements or conclusions of law to which no responses are required.

17. Paragraphs 33 through 35 of the Complaint contain no allegations of fact, only statements or conclusions of law, to which no responses are required.

18. DNR's Motion To Dismiss is pending as to Count III of the Complaint, and thus DNR does not respond, at this time, to paragraphs 36 through 40 of the Complaint.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzze

Marianne D. Masou

Assistant Attorneys General

Maryland Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

(410) 260-8352

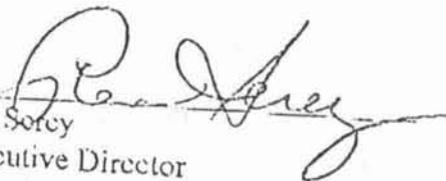
Fax: (410) 260-8364

*Attorneys for defendants*

Dated: August 27, 2004

VERIFICATION

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



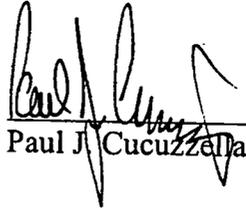
Ren Sorey  
Executive Director  
Critical Area Commission for the Chesapeake  
and Atlantic Coastal Bays

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2004, a copy of the foregoing Verified Answer To Count II was sent via first class mail, postage prepaid, to:

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

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

  
Paul J. Cucuzza

IN THE CIRCUIT COURT OF MARYLAND  
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,

\*

Plaintiff,

\*

v.

\*

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

DEPARTMENT OF NATURAL  
RESOURCES,

\*

\*

Defendant.

\*

\* \* \* \* \*

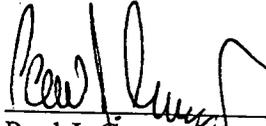
AMENDMENT TO VERIFIED ANSWER TO COUNT II

Defendant Department of Natural Resources ("DNR") and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rule 2-341(a), submits this amendment to its Verified Answer To Count II, and states:

1. DNR strikes paragraph 11.c. of the Verified Answer To Count II.
2. In its Verified Answer To Count II, DNR mistakenly failed to respond to the allegations contained in paragraph 24 of the Complaint.
3. DNR denies the allegations contained in the first sentence of paragraph 24. The second sentence of paragraph 24 contains only statements or conclusions of law to which no responses are required.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



Paul J. Cucuzzella  
Marianne D. Mason  
Assistant Attorneys General  
Maryland Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
(410) 260-8352  
Fax: (410) 260-8364  
*Attorneys for defendants*

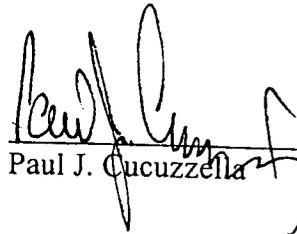
Dated: August 31, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of August, 2004, a copy of the foregoing Amendment  
To Verified Answer To Count II was sent via first class mail, postage prepaid, to:

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

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



Paul J. Cucuzzella

IN THE CIRCUIT COURT OF MARYLAND  
FOR TALBOT COUNTY

TALBOT COUNTY, MARYLAND,

\*

Plaintiff,

\*

v.

\*

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

DEPARTMENT OF NATURAL  
RESOURCES,

\*

\*

Defendant.

\*

\* \* \* \* \*

MOTION TO DISMISS

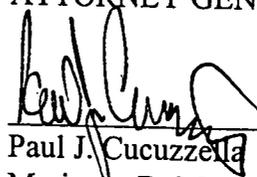
Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, move pursuant to Maryland Rule 2-322(b)(2) to dismiss the Complaint For Declaratory Judgment, Petition For Writ Of Mandamus, And Appeal From Administrative Agency (the “Complaint”) for failure to state a claim upon which relief can be granted. As more fully set forth in the accompanying Memorandum In Support Of Motion To Dismiss, DNR states:

1. Count I of the Complaint, for Declaratory Judgment, fails to state a claim because the form of the relief sought in Count 1 will not serve to resolve an uncertainty or insecurity with respect to any rights, status or other legal relations. *See* Maryland Rule 3-402.
2. Count II of the Complaint, for Writ of Mandamus, fails to state a claim and is deficient because it is not verified and is not supported by affidavit. *See* Maryland Rule 15-701(a).
3. Count III of the Complaint, for judicial review of an administrative action under

Maryland Rule 7-201 *et seq.*, fails to state a claim because the cited rule does not grant a right of judicial review and the rule is inapplicable where judicial review is not authorized by statute. *See Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 541 (1999); Md. Code Ann., State Gov't §§ 10-202(d) and 10-222; Maryland Rule 7-201(a)(1).

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



Paul J. Cucuzzella

Marianne D. Mason

Assistant Attorneys General

Maryland Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

(410) 260-8352

Fax: (410) 260-8364

*Attorneys for defendant*

Dated: July 6, 2004

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs. :

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

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

Defendant :

AMENDED 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 this instant Amended Complaint seeking a declaratory judgment, a writ of *mandamus*, and appeal in the administrative decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, refusing to approve Bill No. 933 as a local program amendment to Talbot County's Critical Area Program. Plaintiff adopts and incorporates by reference the entirety of its original Complaint for declaratory judgment, petition for writ of *mandamus*, and appeal from administrative agency, with all attachments, copy attached hereto. In addition, pursuant to Maryland Rule 15-701, Plaintiff submits the Affidavit of Talbot County Attorney Michael L. Pullen, as follows:

I HEREBY AFFIRM UNDER PENALTIES OF PERJURY, that the statements contained within this Amended Complaint, and the original Complaint attached hereto, are true and correct to the best of my knowledge, information, and belief.

Michael L. Pullen 07-20-04  
Michael L. Pullen Date

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of July, 2004, a copy of Plaintiff's Amended Complaint was mailed first-class, postage prepaid to:

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

Michael Pullen  
Of Counsel for Plaintiff

**IN THE CIRCUIT COURT OF MARYLAND  
FOR TALBOT COUNTY**

TALBOT COUNTY, MARYLAND,

\*

Plaintiff,

\*

v.

\*

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

DEPARTMENT OF NATURAL  
RESOURCES,

\*

Defendant.

\*

\*

\* \* \* \* \*

**WITHDRAWAL OF MOTION TO DISMISS COUNT II**

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, hereby withdraw its Motion To Dismiss as to Count II of the Complaint only, and states:

1. Pending is DNR’s Motion To Dismiss, in which DNR asks, *inter alia*, that Count II of the Complaint, for Writ of Mandamus, be dismissed because the Complaint was not verified as required by Maryland Rule 15-701(a). Subsequently, plaintiff amended the Complaint and provided the requisite Rule 15-701(a) verification.
2. DNR’s Motion To Dismiss as to Counts I and III stands.
3. By the accompanying Answer To Count II, DNR answers, pursuant to Maryland Rules 2-323 and 15-701, only those allegations relevant to Count II.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzzella

Marianne D. Mason

Assistant Attorneys General

Maryland Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

(410) 260-8352

Fax: (410) 260-8364

*Attorneys for defendant*

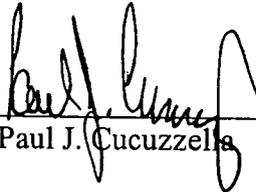
Dated: August 27, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of August, 2004, a copy of the foregoing Withdrawal Of Motion To Dismiss Count II was sent via first class mail, postage prepaid, to:

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

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

  
\_\_\_\_\_  
Paul J. Cucuzzella

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* \* \* \* \*

\* CIVIL CASE NO. 20-C-04-005095DJ

\* IN THE

\* CIRCUIT COURT

\* FOR

\* TALBOT COUNTY

\* STATE OF MARYLAND

**MOTION TO INTERVENE**

The Movant, The Commissioners Of St. Michaels ("St. Michaels"), by its attorney, H. Michael Hickson, moves, pursuant to Maryland Rule 2-214, for leave to intervene as an additional party defendant in the above captioned case. The grounds for this Motion, as addressed in the Memorandum Of Law filed herewith, are as follows:

**I.**

**Facts Common To All Grounds For Intervention**

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

2. St. Michaels is a Maryland municipal corporation, with its corporate boundaries located entirely within the geographic boundaries of the County.

3. Beginning on or about May 11, 1954, and continuously thereafter, St. Michaels 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 St. Michaels, a comprehensive plan, a zoning ordinance, a zoning map (dividing all land within St. Michaels into zoning districts, defining the historic district, and defining the critical area management overlay zones), and a subdivision ordinance; and (2) establishing, appointing and maintaining a planning commission, a zoning inspector, a board of appeals and a historic district commission pursuant to such ordinances.

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

Robert L. Ehrlich, Jr.  
Governor

Chesley 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) 974-3338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

October 2, 2003

Mr. Roby Hurley  
Maryland Department of Planning  
Lower Eastern Shore Regional Office  
Salisbury Multi-Service Center  
201 Baptist Street, Suite 24  
Salisbury, Maryland 21801-4974

Re: Strausburg Farm Annexation and Growth Allocation

Dear Mr. Hurley:

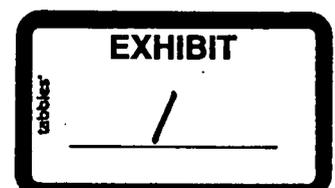
At its meeting on October 1, 2003, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays concurred with the Chairman's determination that the Strausburg Farm annexation and growth allocation request is a refinement to the St. Michael's Critical Area program and it was approved. The refinement included the following three conditions:

1. Prior to recordation of the subdivision plat for the Strausburg property, the Town Planning Commission shall approve a Buffer Management Plan for the property. Implementation of the plan shall take place prior to issuance of any building permits.
2. Prior to recordation of the subdivision plat for the Strausburg property, the Town shall submit to the Commission staff, a conservation easement that will ensure that 76 acres adjacent to the subject growth allocation shall be maintained in uses appropriate to the Resource Conservation Area as those uses set forth in the Town Ordinance. The easement shall remain in perpetuity and recorded.
3. The amount of growth allocation shall be 20.1 acres.

This refinement should be incorporated into your Critical Area Program within 120 days from the date of this letter. Please send a copy of the Town's amended Critical Area map to the Commission when it is available.

E. 63

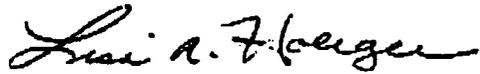
TTY For the Deaf  
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



Mr. Hurley  
October 2, 2003  
Page Two

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

Sincerely,



Lisa A. Hoerger  
Natural Resources Planner

cc: Ms. Jean Weisman  
Ms. Deborah Renshaw

Robert L. Ehrlich, Jr.  
Governor

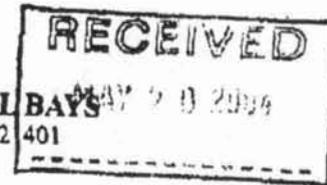
Michael S. Steele  
Lt. Governor



Martin G. Madder  
Chairman

Ren Serey  
Executive Director

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



May 14, 2004

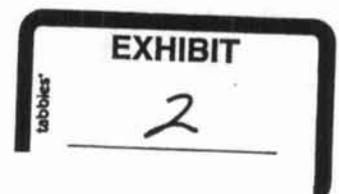
Ms. Cheryl Thomas, Town Manager  
Town of St. Michaels  
P. O. Box 206  
300 Mill Street  
St. Michaels, Maryland 21663-0206

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

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

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

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

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

Sincerely,



Mary R. Owens, Chief  
Program Implementation Division

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

**DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT**

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

**Section 1: RECITALS**

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

MAP FD SCORE \$	20.00
RECORD FEE	75.00
TOTAL	95.00
RCPT #	75796
MAS 6400	BK # 568
Feb 20 2004	03:44 PM

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

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

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

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

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

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

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

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

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

St. Michaels Planning C  
on behalf of  
The Commissioners of

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

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

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

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

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

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

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

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

Miles Point Development Rights  
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on behalf of  
The Commissioners Of St. Michaels

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

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

1.10.1 Providing the Developer with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, which assurance the Developer has sought in order to incur substantial commitments to develop the Subject Property, such that the development of every part of the Subject Property may be maintained and completed in the future during the term of this Agreement as a Traditional Neighborhood Development in accordance with the Development Plan as it relates to the Subject Property; and

1.10.2 Providing the prospective purchasers and future owners of the Subject Property with the certainty and predictability of Qualified Vested Rights in the Existing Land Use Regulations during the term of this Agreement to assure them, to the fullest extent permitted by the Development Agreement Statute, that every part of the Subject Property will be developed and maintained during the term of this Agreement as a Traditional Neighborhood Development substantially in accordance with the Development Plan as it relates to the Subject Property; and

1.10.3 Providing the Developer with the right to petition the Town, and providing the Town with the right but not the duty, to amend the Agreement (the "Amendment") in accordance with the terms hereof, to add the Huntman Property to the definition herein of the "Subject Property" in exchange for the additional consideration provided herein relating to the Huntman Property as described in the Schedule Of Consideration To The Town (Exhibit 10), and thereby:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 2: Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.13 "Development Plan" means the plans, specifications and other documents describing to the intended development of the Subject Property in a manner substantially similar to the Miles Point Concept Plan, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003, attached hereto and incorporated herein by reference (Exhibit 1 hereto), as it may be amended by the Town in the process of granting the Development Approvals.

2.14 "DRRA" means this Development Rights and Responsibilities Agreement, as it may be amended from time to time, including all addenda, schedules and exhibits incorporated by reference.

2.15 "Effective Date" means the Execution Date of the last of all the parties to execute this Agreement, provided that this Agreement is: (a) fully executed; and (b) is recorded in the County Land Records within twenty (20) days after being fully executed.

2.17 "Enabling Ordinance" means Ordinance No 2-2003, adopted by the Town on November 11, 2003, 2003 pursuant to the Development Agreement Statute, to establish procedures and requirements for the consideration of development rights and responsibility agreements.

2.18 "Execution Date" means, with respect to each party, the date on which the party executes this Agreement.

2.19 "Existing Land Use Regulations" means those certain Town land use laws, rules, regulations and policies, to the fullest extent permitted by the Development Agreement Statute, in effect on the Effective Date, applicable to and governing the use, density and/or intensity of

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Point, LLC; Miles Point Property, LLC &  
TND Development, Inc. LIBER 1 225 FOL 184 of 162 -

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on behalf of  
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development of the Subject Property substantially in conformity with that portion of the Development Plan applicable to the Subject Property, except that Developer and Town may mutually agree that the Project will be subject to a later enacted or amended rule, regulation, ordinance, policy, condition, or environmental regulation that becomes effective after the Effective Date.

2.19 "Future Land Use Regulations" means those certain land use regulations which take effect after the Effective Date.

2.20 "Governmental Authority" means any applicable federal, state, county or Town governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over this Project.

2.21 "HOA" means the association of Owners which shall be formed pursuant to the Declaration of Covenants, Restrictions and Conditions for the Project (sometimes hereinafter the "Declaration"). The HOA shall be responsible for the annual collection of the Annual Unit Payments from the Owners of the residential units and the live/work units located within the Project, as specified in the Duty to Pay, Section 10.4 of this Agreement, and in the Schedule Of Consideration To The Town, incorporated herein as Exhibit 10, and payment of these funds to the Town.

2.22 "Hunteman Property" shall refer to those certain tracts or parcels of land east of Maryland Route 33 and binding on Yacht Club Road and being more particularly described as follows:

- 2.22.1 All that land described in the deed dated August 31, 2001, from Elsie W. Hunteman to Miles, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 96, et seq.;
- 2.22.2 Consisting of 17.156 acres, more or less and more particularly shown on a plat prepared by McCrone, Inc., titled "ANNEXATION PLAT OF THE LANDS OF ELSIE W. HUNTEMAN TO THE TOWN OF ST. MICHAELS SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND," dated March 1998, a copy of which plat is attached hereto as Exhibit 7; and
- 2.22.3 Consisting of two (2) tracts of land which are the subject of a petition for annexation to the Town and Town Commissioners Resolution No. 2003-06, adopted on October 28, 2003.

2.23 "Midland" means The Midland Companies, Inc., a District of Columbia Corporation, together with its successors and assigns to the extent permitted by this Agreement. Midland is at certain stages of the development process referred to as a "Developer" in this Agreement as that term is defined in Section 2. Midland acquired its rights in the contract of sale for the Perry Cabin Land from Point, and thereafter Midland assigned all of its rights in said contract and the Perry Cabin Land to Miles. Midland is the entity that has submitted all of the applications to the Town for growth allocation for development on the Subject Property. Midland, Miles, Point and TND Inc. are related entities in that George A. Valanos is the President of Midland and TND Inc. and the Managing Member of Miles and Point.

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2.24 "Miles Point II" refers to the application for the award of growth allocation relating to a proposed project on the Perry Cabin Land and the Huntman Property, submitted to the Town by letter dated September 9, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application, which application was withdrawn by Midland on or about December 19, 2003.

2.25 "Miles Point III" refers to the application for the award of growth allocation relating to a proposed project only on the Perry Cabin Land, submitted to the Town by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application. Miles Point III is the subject of this Agreement, and unless otherwise specified herein, where there is a factual distinction the term "Miles Point" refers to the application, concept plan and/or proposed project that is the subject of the application submitted by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland.

2.26 "Miles Point Annexation Agreement" shall refer to the Annexation Agreement dated October 28, 2003, and amended February, 2004 between the Town and Miles through which the Huntman Property was annexed into the Town which is now or about to be recorded among the County Land Records.

2.27 "Miles" means Miles Point Properties, LLC, a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Miles is the current owner of the Huntman Property. Miles is the contract purchaser of the Perry Cabin Land, by virtue of the assignment to Miles from Midland of all of its interest as purchaser in a contract for the purchase of the Perry Cabin Land. It is intended that Miles will be the owner of all of the Miles Point Property (consisting of the Perry Cabin Land and the Huntman Property). Miles is a real estate holding company formed for purposes of taking ownership of the Miles Point Property. TND Inc. is responsible for obtaining the Development Approvals. When such Approvals are obtained and financing for the public facilities is in place, and construction of the development is scheduled to commence, it is intended that Miles will convey the Miles Point Property to TND Inc., at which time TND Inc. shall become the successor and assigns to Miles as the "Developer" to all or any part of the Miles Point Property. Although Miles is referred to as the Developer, obligated to the Town in that capacity herein until conveyance to TND Inc. of all of Miles' interest in the Miles Point Property, Miles will not functionally act as a developer of the Miles Point Property. George A. Valanos is the Managing Member of Miles.

2.28 "Miles Point Annexation" means the annexation accomplished by Town Resolution No. 2003-06, which extended the Town boundaries to include approximately 42.066 acres of land, of which approximately 17 acres is fast land, which represents the Huntman Property.

2.29 "Mile Point Property" means collectively the land that is designated in this Agreement as the Perry Cabin Land and the land that is designated in this Agreement as the Huntman Property.

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

Miles Point Development Rights  
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2.30 "Mortgage" means any mortgage or deed of trust granted by an owner encumbering real property, encumbering any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the locality of the Subject Property (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale and leaseback documents, lease and leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute); provided that such mortgage, deed of trust or other form of security instrument, and any instrument evidencing any such other form of security arrangement, has been recorded among the County Land Records.

2.31 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other lender, and their successors and assigns, that is secured by the Subject Property.

2.32 "Owner" means all the persons and/or entities that are the current record title fee simple owner(s) of the Subject Property, and their successors in title to each lot or parcel of land that is a part of the Subject Property on which an individual residential unit or a live/work unit is located or intended to be located on the Subject Property pursuant to the subdivision and development of the Subject Property in accordance with the Development Plan. Each Developer hereby agrees to bind the Subject Property to the terms of this Agreement immediately upon becoming an Owner of the subject Property during the term of this Agreement. A duty of an Owner under this Agreement with respect to a particular subdivision lot or parcel of the Subject Property on which a Unit is intended to be located according to the Development Plan shall be the joint and several duty of each person and/or entity that is a record title fee simple owner of such lot or parcel of the Subject Property at the time such duty accrues or is due to be performed according to this Agreement.

2.33 "Parties" or "Party" mean the parties or a party to this Agreement, being Town and/or Developer and including their successors or assigns

2.34 "Performance Bond" means a bond of a corporate surety licensed in the State of Maryland issued for the benefit of Town in the sum equal to one hundred percent (100%) of the estimated cost of the work for the applicable public improvements undertaken by Developer pursuant to the Public Facilities Agreement.

2.35 "Perry Cabin Land" shall refer to approximately 72.167 acres of land more particularly described as "Parcel 2" and "Parcel 2A" in a plat prepared by McCrone, Inc. titled "Growth Allocation Plat, The Lands of Miles Point Property, LLC and Part of the Lands of Perry Cabin Associates, Second Election District, Talbot County, Maryland" prepared for The Midland Companies", dated September 2003, a copy of which plat is attached hereto as Exhibit 6. The Perry Cabin Land is part of the same land described in a deed dated May 14, 1979 from Charles F. Benson and Harry C. Meyerhoff to Perry Cabin Associates, a Maryland partnership, recorded among the County Land Records in Liber No. 533, folio 486, *et seq.* The Perry Cabin Land was annexed to the Town pursuant to an Annexation Agreement dated May 6, 1980 between the

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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Town, Perry Cabin Associates Limited Partnership, and Talbot County, Maryland, recorded among the Land Records of Talbot County in Liber No. 548, folio 167 *et seq.* (the "Perry Cabin Farm Annexation Agreement") Midland is the equitable owner and contract purchaser of the Perry Cabin Land.

2.36 "Planning Commission" means the Planning Commission of the Town, created and constituted pursuant to Article 66B of the Maryland Code.

2.37 "Point" means St. Michaels Point, L.L.C., a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Point was the original contract purchaser of the Perry Cabin Land from Perry Cabin Associates. Point has assigned all of its right, title and interest in said contract of sale, and in the Perry Cabin Land, to Midland. It is intended that Point will have no further role in the ownership, development or sale of the Perry Cabin Land or the Huntman Property. George A. Valanos is the Managing Member of Point.

2.38 "Project" means the development of the Subject Property as a Traditional Neighborhood Development in accordance with the Development Plan.

2.39 "Public Facilities Agreement" means the public facilities agreement between the Town and the Developer relating to construction and installation of the public facilities on the Subject Property in accordance with the Development Plan.

2.40 "Qualified Vested Rights" is the right granted to the Developer in Section 9 to the Existing Land Use Regulations as they apply to the development of the Subject Property in accordance with the Development Plan, in order for the Developer to obtain a certain use, density and intensity of development of the Subject Property without the Developer having to make substantial improvements to all portions of the Subject Property.

2.41 "Qualifications" means the qualifications, reservations and exemptions to the vested rights in the Existing Land Use Regulations otherwise provided to Developer in Section 9.1, which authority is reserved to the Town in Section 9.2 of this Agreement.

2.42 "Sewer Approval" means any action by the Developer which uses in whole or in part a sewer allocation or approval on the Subject Property for the development in accordance with the Development Plan, including: (1) installation of infrastructure; (2) entering into a binding contract to sell a lot in the Subject Property; or (3) conveying any lot in the Subject Property.

2.43 "Subject Property" means the real property that is subject to this Agreement, which as of the Effective Date shall be the Perry Cabin Land. This Agreement may be amended in the future such that the Subject Property also includes the Huntman Property.

2.44 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Subject

Property as a Traditional Neighborhood Development that are consistent with the Development Plan.

2.45 "State" means the State of Maryland.

2.46 "Third Party" means any person or legal entity not a party to this Agreement.

2.47 "TND Inc." shall refer to "TND Development, Inc." a Maryland corporation, together with its successors and assigns to the extent permitted by this Agreement. When financing for the public facilities is in place and construction of the development is scheduled to commence it is intended that Miles will convey the Miles Point Property (consisting of the Perry Cabin Land and the Huntman Property) to TND Inc., at which time TND Inc. shall become the successor and assign to Miles and TND Inc. will be the "Developer" as that term is defined in this Section 2. TND Inc. will develop and construct the infrastructure and community structures pursuant to the Public Facilities Agreement. George A. Valanos is the President of TND.

2.48 "Traditional Neighborhood Development" means a style of subdivision and development design that is described and governed by Town Zoning Ordinance (No. 109, as amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone).

2.49 "Town" means the "The Commissioners of St. Michaels", a municipal corporation, organized and existing under the laws of the State of Maryland, together with its successors and assigns.

2.50 "Town's Collateral Improvement Fund" means the fund described in Section 10 of this Agreement.

2.51 "Town Commissioners" means the elected officials that constitute the executive and legislative body of the Town, known as the Commissioners of St. Michaels.

2.52 "Unit" means a dwelling unit or a live/work unit as shown, authorized and limited by the Development Plan and the Development Approvals.

2.53 "Zoning Ordinance" means the zoning regulations contained in Town Ordinance No. 109, as amended, applicable to development of the Subject Property.

**Section 3: Exhibits (list).** The following documents are exhibits to this Agreement, are incorporated herein by reference, even though some or all of them may not be attached hereto.

Exhibit 1 – Drawing titled "Miles Point Concept Plan", showing the proposed development of the Perry Cabin Land and the Huntman Property, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003.

Exhibit 2 – Design Code for Miles Point, for the development of the Miles Point Property, prepared by Duany Plater-Zyberk & Company.

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- Exhibit 3 – Miles Point Annexation Agreement, between the Town and Miles, dated October 28, 2003.
- Exhibit 4 – Public Facilities Agreement, between the Town and TND Inc., dated October 28, 2003.
- Exhibit 5 – Perry Cabin Farm Annexation Agreement.
- Exhibit 6 – Plat of Perry Cabin Land.
- Exhibit 7 – Plat of Huntzman Property Annexation.
- Exhibit 9 – Public Facilities Agreement
- Exhibit 10 – Schedule Of Consideration To The Town, consisting of 19 pages, and which is an integral part of Section 10 of this Agreement.
- Exhibit 11 – Schedule Of Town Administrative And Utility Fees, Charges And Rates
- Exhibit 12 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone)
- Exhibit 13 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part f (TND Lot and Building Standards)
- Exhibit 14 - Certification Of Interest In The Subject Property

**Section 4: Subject Property.** The real property that is subject to this Agreement is the Perry Cabin Land. It is contemplated by the parties that this Agreement may be amended in the future such that the Subject Property shall also include the Huntzman Property.

**Section 5: Effective Date, Recordation, Term, and Termination of Agreement**

- 5.1 This Agreement shall be effective, and confer all rights and obligations according to the terms of this Agreement, on the Effective Date of this Agreement.
- 5.2 Unless waived in writing by the Developer, and subject to the conditions precedent to termination described in Section 5.3 of this Agreement, this Agreement shall terminate upon the first to occur of the following described circumstances (hereinafter “Terminating Circumstances”), which Terminating Circumstances the Developer shall in good faith, timely and diligently attempt to avoid:
  - 5.2.1 On the twenty-first (21st) day following the Effective Date, this Agreement has not been recorded among the County Land Records.
  - 5.2.2 The failure of at least of one Developer, as defined herein, to have an interest, of the type required by the Development Agreement Statute, in the Perry Cabin Land at any time before the Developer obtains fee simple title to the Perry Cabin Land.

5.2.3 One hundred and eighty (180) days after the Developer has obtained all final Development Approvals and Sewer Approval for the Subject Property, and the Developer has failed within that time to obtain fee simple title to the Perry Cabin Land or fails to immediately thereupon subject the Perry Cabin Land to all of the terms and conditions of this Agreement. When a Developer is now or hereafter becomes the fee simple title owner of all of the Subject Property before the final subdivision plat and Declaration are recorded, that Developer hereby binds all of its successors in title to the Subject Property to the rights and duties of the Owner(s) of the Subject Property as described herein, as distinct from the rights and duties of the Developer. Notwithstanding anything to the contrary stated or implied in this Agreement, the Developer has no obligation to the Town to obtain or retain fee simple title to the Perry Cabin Land and shall make that decision solely at Developer's discretion.

5.2.4 Sixty (60) days after any one of the Development Approvals, after having been timely applied for by the Developer, has been denied by a binding decision which has been rendered final, subject to the following:

5.2.4.1 This Agreement is not intended to expressly or impliedly obligate the Town, or any officer, employee or administrative or executive body of the Town, to grant or award any discretionary or non-discretionary Development Approvals; on the contrary, each request for a Development Approval shall be impartially reviewed by the applicable reviewing governmental authority for the Town, based solely on the facts of record and the applicable laws and regulations.

5.2.4.2 In the event a Development Approval contains conditions, not expressly contemplated in this Agreement, the Developer may reject the Development Approval by providing within thirty (30) days of the Developer's receipt of the written Development Approval written notice to the Town of the Developer's objection to one or more conditions in which case the approval shall not constitute a Development Approval as that term is used in this Agreement, but shall be considered the denial of a Development Approval.

5.2.4.3 The conditions contained in the Planning Commission's Recommendation to the Town Commissioners concerning the Miles Point II application for growth allocation are expressly contemplated by the parties hereto to be the same or similar to the conditions for the Miles Point III application for growth allocation as may be recommended by the Planning Commission and imposed by the Town Commissioners.

- 5.2.5 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and granted, is not final by reason of an administrative or judicial remedy that has been pursued by a person legally entitled so to do, and that still is pending.
- 5.2.6 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and denied, is not final by reason of an administrative or judicial remedy that has been pursued by the Developer, and that still is pending.
- 5.2.7 Ten (10) years after any applicable law (including Talbot County Bill No. 933, enacted by the Talbot County Council on December 23, 2003) which purports to remove the power of the Town, as the sole and exclusive authority, to the exclusion of the Talbot County Council, to award the IDA growth allocation, contemplated by this Agreement, to permit development on the Perry Cabin Land in a form substantially similar to that shown on the Development Plan, has not been invalidated or otherwise rendered ineffective by: (a) a final and legally exhausted decision by any governmental agency authorized so to do; (b) a final and legally exhausted decision by a court of competent jurisdiction; or (c) applicable legislation.
- 5.2.8 When the Subject Property has been fully developed by the construction on the Subject Property of a Unit on all of the lots approved for a Unit according to the Development Plan and occupancy permits have been issued by the Town therefor, and all of the Developer Obligations and the payment of all consideration to the Town in connection with the Project, as specified by Section 10 of this Agreement, have been satisfied.
- 5.3 As conditions precedent to the termination of this Agreement by reason of the occurrence of any Terminating Circumstance described in Section 5.2 of this Agreement:
- 5.3.1 The Developer shall, by writing signed by an authorized officer of the Developer and delivered to the Town:
- 5.3.1.1 Relinquish all Development Approvals obtained by the Developer or its predecessors in interest in pursuit of the terms and requirements of this Agreement; and
- 5.3.1.2 Withdraw all applications for Development Approvals then pending that were sought pursuant of the terms and requirements of this Agreement; and
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- 5.3.2 The Developer, for itself, its successor Developer Assigns, and its successors in interest as Owner of the Subject Property, hereby waives all

claims of impermissible change of mind in any subsequent administrative decision, as compared to any decision rendered in pursuit of a Development Approval pursuant to this Agreement, relating to all or any part of the Subject Property.

5.4 Notwithstanding anything to the contrary contained in this Agreement, if no Terminating Circumstance set forth in Section 5.2 has sooner occurred, or if all of the Terminating Circumstances set forth in Section 5.2 that have sooner occurred have been waived, then this Agreement shall nevertheless automatically terminate seventy-five (75) years after the date of this Agreement, subject, however, to Section 18.23 of this Agreement.

5.5 Developer and Town may mutually waive, in whole or in part, any or all of the Conditions set forth in Section 5.2 at any time prior to the deadline set forth in Section 5.3 for the satisfaction of such condition(s), provided that such waiver is in writing.

5.6 Developer or any Owner may require the Town to sign and provide, for recording in the County Land Records by the requesting Developer or Owner, written confirmation of the date and fact of the termination of this Agreement upon the occurrence of both of the following:

5.6.1 The occurrence of any Terminating Circumstance described in Section 5.2 hereof, which is not timely waived; and

5.6.2 The occurrence of the conditions precedent described in Section 5.3.1 of this Agreement.

5.7 Anything to the contrary in this Agreement notwithstanding, including but not limited to Sections 14 and 16 of this Agreement, if the approved final subdivision plat for the entire Subject Property and the approved Declaration in accordance with the Development Plan are recorded among the County Land Records and fee simple title to at least one lot or parcel of the Subject Property is thereafter conveyed to an Owner who is not the Developer, then development of the entire Subject Property shall not substantially deviate from the recorded subdivision plat, Declaration, the Development Plan, and the Developer Obligations in place at the time of such conveyance, and this Agreement unless the Developer obtains a final order from a court of competent jurisdiction.

## **Section 6: Binding Effect, Assignment, Notice and Release**

6.1 Binding Effect of Agreement. The Subject Property is hereby made subject to this Agreement. Development of the Subject Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to the benefit of, the respective parties to this Agreement, and their successors in interest, and constitute covenants that shall run with the Subject Property.

6.1.1 Town. Whenever the term "Town" is used in this Agreement, such term shall include the successor governmental entity to the Town.

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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6.1.2 Developer. Whenever the term "Developer" is used in this Agreement, such term shall include the successor in interest to the Developer of the Subject Property (the "Developer Assignee"). Except where specifically stated to the contrary in this Agreement, the rights and duties of the Developer pursuant to this Agreement follow the person who is properly assigned such rights and duties in accordance with the requirements of this Agreement. A duty of the Developer pursuant to this Agreement shall be the liability of the person that is the Developer at the time the duty of the Developer accrues pursuant to this Agreement, and his successor Developer Assignees. When an Owner of some or all of the Subject Property is also the Developer of the Subject Property, the conveyance of title by said Owner to some or all of the Subject Property passes the rights and duties of the Owner to his successor in title to that same portion of the Subject Property; but does not assign the rights and duties of the Developer of the Subject Property pursuant to this Agreement unless both of the following conditions are satisfied: (1) the assignment of the rights and duties of the Developer is expressly stated in the conveyancing document, and (2) all of the requirements of this Agreement for the assignment are satisfied.

6.1.3 Owner. Except where specifically stated to the contrary in this Agreement, the rights and duties of the Owner of a particular parcel of the Subject Property pursuant to this Agreement follow the person who is the successor in title to that same parcel of the Subject Property. A duty of an Owner relating to a specific Unit or parcel of the Subject Property shall be the liability of the person or entity that is the Owner of said property at the time that duty accrues, and the successors in title of that Owner to that portion of the Subject Property. When the Developer of the Subject Property is also an Owner of some or all of the Subject Property, the Developer, in his solely capacity as an Owner, shall have the rights and duties of the Owner pursuant to this Agreement with respect to all of the Subject Property owned by the Developer.

6.2 Enforcement By Town. The Planning Commission has entered into and executed this Agreement on behalf of the Town pursuant the authority of the Development Agreement Statute and the Enabling Ordinance. Therefore, the Town, by and under the direction and authority of the Town Commissioners, shall have the right to enforce the terms of this Agreement.

6.3 Transfer and Assignment of Rights and Interests.

6.3.1 Assignment. There shall be only one Developer of the Subject Property at a given time for the purposes of this Agreement. The Developer for the purposes of this Agreement shall at all times be the same person or entity as the "Developer" for the purposes of (and as defined in) the Public Facilities Agreement until all obligations to the Town under the Public Facilities Agreement with respect to the Subject Property have been fully satisfied.

6.3.1.1 At all times before the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the

Development Plan and the approved Declaration in accordance herewith, the Developer shall be either Midland, Miles or TND Inc.

6.3.1.1.1 It is the intention of the parties that Miles will assign its ownership interest acquired and to be acquired in the Miles Point Property to TND Inc. and the Town hereby expressly consents to this assignment provided that George A. Valanos is the President of, and the owner of, or has control of the voting rights to, at least a 34 % equity interest in, TND Inc. at all times while TND Inc. is acting in the capacity of the Developer of the Subject Property (except in the event of the death of George A. Valanos; or in the event of a default by the Developer in the terms of a mortgage, deed of trust or other document securing the repayment of a loan by a lien on the Subject Property, which default results in the foreclosure and sale of the Subject Property).

6.3.1.2 After the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the Development Plan and the approved Declaration in accordance herewith:

6.3.1.2.1 The transfer of title to one or more lots and/or sections of the Subject Property shall not transfer the rights and duties of the Developer except in accordance with the conditions specified herein.

6.3.1.2.2 Developer shall not sell, assign or transfer its rights and obligations as Developer of the Subject Property under this Agreement to any person other than those described in Section 6.3.1.1, natural or legal, at any time during the Term of this Agreement, (as distinguished from the conveyance of title to land constituting some or all of the Subject Property without rights and/or duties of the Developer created by this Agreement) except in compliance with all of the following conditions:

6.3.1.2.2.1 All such rights and duties relating to all of the Subject Property are assigned by the assignor in writing;

6.3.1.2.2.2 All such rights and duties relating to all of the Subject Property are accepted by the assignee in writing;

6.3.1.2.2.3 The assignor is not in default on any obligation or duty of the assignor to the Town imposed by the Developer Obligations or by this Agreement;

6.3.1.2.2.4 The assignee is, or shall be upon execution of the assignment, the "Developer" for the purposes of the Public Facilities;

6.3.1.2.2.5 The assignee has demonstrated to the Town his or its ability to perform and satisfy the duties of the Developer under this Agreement; and

6.3.1.2.2.6 The assignment is consented to by the Town in writing, provided that such consent will not be unreasonably withheld.

6.3.1.3 Before the approved final subdivision plat and the approved Declaration are recorded among the County Land Records the Developer and its successors shall not sell or otherwise convey legal or equitable title to one or more individual lots or parcels of the Subject Property, on which a Unit is located or is contemplated to be located by the Development Plan, to an Owner.

6.3.1.4 Constructive Notice and Acceptance. Every person who, now or hereafter, owns or acquires any right, title or interest in or to the Subject Property, or any part thereof, is, and shall be, conclusively deemed to have consented and agreed to be bound by every provision contained in this Agreement applicable to all or the portion of the Subject Property acquired, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

6.3.1.5 Release of Developer. Upon the assignment of the all of the duties and obligations of the Developer (as distinguished from the duties under this Agreement of the Owners and HOA) under this Agreement and the Public Facilities Agreement, Developer will be released from its obligations under this Agreement with respect to the Subject Property, or portion thereof, so assigned arising subsequent to the effective date of such assignment, if Developer obtains the Town's written consent to such assignment.

6.4 Owner's Responsibilities. A transferee of the title to a lot or parcel of the Subject Property shall be responsible for satisfying the good faith compliance requirements of the Developer under this Agreement relating to the portion of the Subject Property owned by such transferee that have not been satisfied at the time the transferee takes title to the lot or parcel of the Subject Property. Nothing contained herein shall be deemed to grant to Town discretion to approve or deny any sale or transfer, except as otherwise expressly provided in this Agreement. A default by any transferee shall only affect that portion of the Subject Property owned by such transferee and shall not cancel or diminish in any way Developer's or any other transferee's rights hereunder with respect to any portion of the Subject Property not owned by such transferee.

6.5 Amendment and Waiver. This Agreement may be waived, amended or cancelled, in whole or in part, only by written consent of all of the necessary parties to such amendment or waiver. In every instance of a waiver, amendment or termination of a term of this Agreement, the Town, by and through the Planning Commission, shall be a necessary party thereto. In any waiver, amendment or termination of any of the Qualified Vested Rights, described in Section 9

of this Agreement, relating to any lot or parcel of the Subject Property, the record title owners of all lots or parcels of the Subject Property shall be necessary parties thereto. In any waiver, amendment or termination of any provision of a Development Approval, including a plat or condition that constitutes part of such approval, the record title owners of all lots or parcels of the Subject Property directly affected by such Development Approval shall be necessary parties thereto; but this provision shall not preclude a property owner from seeking and obtaining relief available pursuant to an applicable land-use law. In an amendment or termination of any other provision of this Agreement, only the Town and persons whose land is directly involved in such amendment or termination shall be necessary parties thereto. All such writings shall be signed by the appropriate officers of the Town and Developer and in a form suitable for recordation in the County Land Records, and shall be recorded in the County Land Records. This provision shall not limit any remedy of the Town or Developer as provided by this Agreement.

**6.6 Notices.** All notices and other communications in connection with this Agreement shall be in writing and delivered either by personal (hand) delivery or by United States certified or registered mail. Each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until actually received.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

TND Development, Inc.  
1228 Thirty-First Street, N.W.  
Washington, D.C. 20007  
Telephone (703) 556-4000  
Attn: George A. Valanos,  
President

*with a copy to:*  
Miles & Stockbridge P.C.  
101 Bay Street  
Easton, Maryland 21601  
Attn: Richard A. DeTar  
Telephone (410) 822-5280

Notices and communications to the Town shall be addressed to, and delivered at, the following address:

The Commissioners of St. Michaels  
P. O. Box 206  
300 Mill Street  
St. Michaels, Maryland 21663  
Attn: Town Manager  
Telephone (410) 745-9535

*with a copy to:*  
H. Michael Hickson  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044  
Telephone (410) 546-4644

## Section 7: Representations, Warranties and Covenants

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**7.1 Both Parties. Procedural Sufficiency.** Town and Developer, for itself, its successor Developer Assignees, and its successors in title to the Subject Property, hereby acknowledge and agree that all required notices, meetings, and hearings have been properly

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St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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given and held by the Town with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations or rights created by it on the grounds of any procedural infirmity or any denial of any procedural right.

7.2 Developer. Developer hereby makes the following representations, warranties and covenants to and with Town as of the Execution Date:

7.2.1 *Existence*. Developer is a corporation and/or limited liability company duly incorporated/organized and legally existing under the laws of the State of Maryland and is qualified to transact business in the State of Maryland.

7.2.2 *Authorization*. Developer is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned is authorized to act on behalf of and bind Developer to the terms of this Agreement. Developer has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by Developer does not require any consent or approval that has not been obtained.

7.2.3 *Ownership of Subject Property*. On the Effective Date of this Agreement the Developer has the interest in the Perry Cabin Land that is required by the Development Agreement Statute. Unless and until this Agreement is terminated pursuant to Section 5, either Miles or TND Inc., has and shall retain legal and equitable title to the Huntman Property for sufficient time: (a) for the control by the County over the land-use classification of the Huntman Property to expire; and (b) for the provisions of the Miles Point Annexation Agreement, as it may be amended from time-to-time, relative to the Development Approvals by the Town relating to the Huntman Property, to be considered and granted, along with the Amendment of this Agreement to include the Huntman Property as part of the Subject Property. As indicated in the Certification Of Interest In The Subject Property, attached hereto as Exhibit 14, the legal, equitable, and lien holder interests currently held in the Perry Cabin Land, and the legal, equitable, and lien holder interests currently held in the Huntman Property, are as follows:

7.2.3.1 *Ownership of the Huntman Property*. Miles is the legal and equitable fee simple owner of the Huntman Property.

7.2.3.2 *Ownership of the Perry Cabin Land*. Perry Cabin Associates Limited Partnership is the legal fee simple owner of the Perry Cabin Land. Perry Cabin Associates Limited Partnership has entered into a contract to sell the Perry Cabin Land. The assignee/purchaser of this contract is Miles. Miles is the equitable owner of the Perry Cabin Land.

## Section 8: Development Rules and Restrictions.

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

Miles Point Development Rights And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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8.1 Permitted Uses. The permitted uses of the Subject Property, in accordance with the Existing Land Use Regulations and the Development Approvals are as set forth in the Development Plan.

8.2 Number and Type of Units, Uses and Density. The total number and density of single-family residential Units, townhouse dwelling Units, live/work Units, (collectively the "Units") and an inn containing sleeping rooms, contemplated by this Agreement and the Development Plan to be located on the Subject Property in accordance with the Existing Land Use Ordinances, are as follows:

<u>Type of Units</u>	<u>To Be Located On The Perry Cabin Land</u> (± 72.167 acres)	<u>To Be Located On The Huntman Property</u> (± 17.156 acres)	<u>Total</u> (89.323 acres)
Single-Family Dwelling Units (other than townhouses)	251	41	292
Townhouse Dwelling Units	20	0	20
Live/Work Units, consisting of commercial use on the 1 <sup>st</sup> floor, commercial and/or residential use on the 2 <sup>nd</sup> floor, and residential use on the 3 <sup>rd</sup> floor, not to exceed a total of 15,000 sq. ft. of commercial interior space for all live/work Units	8	0	8
Inn Sleeping Rooms	24	0	30 <sup>1</sup>

8.2.1 The use of the commercial areas of the live/work units and the inn on the Subject Property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.2.2 The maximum height and size of structures on the subject property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part

<sup>1</sup> Six (6) additional inn units are proposed on the Perry Cabin Land in the event the Development Approvals are obtained in the future on the Huntman Property, in which case this Agreement shall become effective as to the Huntman Property.

f (TND Lot and Building Standards), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

**8.3 Developer Agreements.** The Developer shall comply with: (i) this Agreement, (ii) the Developer Obligations, and (iii) all subsequent Development Approvals for which it is the applicant or a successor in interest to the applicant relating to the Subject Property.

**8.4 Other Fees.** In addition to the fees specifically mentioned in this Agreement, Developer agrees to pay all customary and usual Town fees, including but not limited to use fees for building inspections, permit and water connection and use fees, and water connection and use fees generally applicable on a Town-wide basis for similar projects, at the rate and amount in effect at the time the fee is required to be paid.

**8.5 Timing of Development.** The parties acknowledge that the most efficient and economic Development of the Subject Property depends upon numerous factors, some of which are not within the control of Developer, such as market orientation and demand, interest rates, competition, and similar factors, and that except as provided in Section 10.9.1 of this Agreement, the rate of development will be determined by the Developer, in its sole subjective business judgment and discretion. However, the Development Approvals shall remain effective for only the time periods specified therein and the rate of conveyance of lots or parcels within the Subject Property shall not exceed the rate set forth in Section 10.9.1 of this Agreement. Subject to the Qualifications provided in Section 9.2 and the other terms and conditions of this Agreement; in the event any Subsequent Land Use Regulation is enacted which relates to the rate, timing or sequencing of development of property within Town, Town agrees that such Subsequent Land Use Regulation shall not apply to the Development Plan.

**8.6 Phasing of Development.** The construction of the development on the Subject Property shall be in a defined series of development phases in which: (1) there shall be no more than thirty (30) acres of the Subject Property under active construction at the same time; (2) all construction ongoing at the same time shall be confined land within a single phase; (3) a phase shall consist of contiguous parcels of land; and (4) the Developer shall at all times have on record at the Town office a drawing to scale that identifies the location and boundaries of the active phase. For the purpose of this Section 8.6, the term construction shall mean: (1) actual construction of infrastructure within a street or utilities right-of-way; or (2) actual grading or construction within a public or privately owned park or open space. In determining the area under construction, the area shall include: (1) the construction of streets and alleys, pipes, or the installation of wires and other conduits for collection of sewage or stormwater, or for the distribution water, electricity, gas, telephone, CATV or other utility services (exclusive of street and alley top-coat paving, installation of sidewalks and the installation of streetlight poles and fixtures) within a street or utility right-of-way area shall include all land between the boundary lines of the right-of-way for the length (lineal feet within the right-of-way) of the actual construction; and (2) the lesser of the entire platted area of the open space within which construction is occurring or the defined and identifiable area as shown on a building permit as the area of grading or construction; and (3) the entire area of a subdivision lot on which the construction of improvements is occurring. The area of a phase may be redefined from time-to-time by omitting a completely developed area within the phase and adding an undeveloped area

to the same phase, provided that the Developer shall first furnish the Town with a drawing to scale showing the area omitted and the area added to the phase, either by identifying the lots involved or with courses, distances and points of reference. For purposes of this Section 8.6, the term construction shall not include activity relating to the construction of improvements on a privately-owned subdivision lot. The Developer may cease construction in one defined phase before construction within that phase is completed, and commence construction in another defined phase, provided that no more than one phase, not exceeding 30 acres, is under construction on the Subject Property at any one time. Before commencing development of a new phase, or redefining the area of an existing phase to omit a completely developed area and adding an undeveloped area, the Developer shall provide the Town with a drawing to scale defining the land area that constitutes the development phase, by identified lots and/or with courses, distances and points of reference.

**8.7 Time Limitation for Improvements on Privately-Owned Subdivided Lots.** With regard to each lot created by and shown on the recorded final subdivision plat of the Project, on which lot it anticipated by the Development Plan that a Unit will be located thereon, it is the desire and intention of the parties hereto that a Unit be constructed on such lot within a reasonable time after it is sold and conveyed by the last Developer to the first Owner who is not a Developer. The benefits to all concerned of requiring that lots be promptly improved, include: (1) promoting construction within confined areas of the Project; and (2) to hastening the completion of all construction within confined areas of the Project. Therefore, the Declaration of Covenants, Restrictions and Conditions for the Project shall provide as follows:

**8.7.1** The Owner of a lot in the Project who is not the Developer shall:

**8.7.1.1** Within 24 months after acquiring legal title to the lot, cause the issuance of the requisite approvals by the Developer or the HOA of plans for construction of a Unit and any appurtenances thereto (collectively "Improvements") on the lot, obtain the building and any other required permits for construction of the Improvements on such lot, and the beginning of substantial construction of said Improvements on the lot by the digging and pouring the footers therefore; and

**8.7.1.2** Thereafter, cause diligent and in good faith efforts resulting in substantial completion of the said Improvements and issuance of an occupancy permit therefor within a reasonable time, but in any event, within shorter of two (2) years after the issuance of the first building permit for such Improvements or four (4) years after the recorded conveyance in the land records of Talbot County of such lot to said Owner.

**8.7.2** If the Owner fails to timely comply with the requirements of Sections 8.7.1 or 8.7.2, the Developer shall have the right, at its sole option, to take the following remedial action:

**8.7.2.1** Re-acquire title to the lot from the Owner at the same contract price that the Owner paid for the lot, and the Owner shall be required to re-convey said lot to

the Developer for the consideration tendered by the Owner to the Developer at the time of the Owner's acquisition of the lot; or

8.7.2.2 Assume control of the construction of the Improvements on the lot from the Owner, and complete the construction of the Improvements on the lot for the Owner at the Owners' sole cost plus a 15 % management fee based on the other costs expended by the Developer for such completion, all of which shall be promptly paid by the Owner to the Developer. If not paid in full within thirty (30) days after billing the Owner shall pay interest at the legal rate on the unpaid balance, beginning on the billing date until paid in full. In the event that the Owner fails to pay in full within sixty (60) days after being billed by the Developer for the costs incurred and/or management fee earned by the Developer, then the Developer shall be entitled to a lien against the Owner's lot and the Improvements thereon pursuant to the terms and procedures of the Maryland contract Lien Act, as amended from time-to-time, and to collect the unpaid balance, interest thereon, and collection costs including attorneys fees by means by suit for breach of contract and/or by means of the Maryland contract Lien Act.

8.8 Moratoria. The parties hereby acknowledge and agree that this Agreement contemplates and provides for the development of the Project and that no moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation on the conditioning, rate, timing or sequencing of the development of property within the Town and affecting the Subject Property or any portion thereof shall apply to or govern the development of the Subject Property, whether affecting parcel or subdivision maps, building permits, occupancy permits or other approvals to develop or use land issued or granted by the Town, except as may be necessary to: (i) comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such state or federal law or regulation; (ii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Subject Property in which event any ordinance, rule, or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; (iii) maintain the Town's compliance with state sewerage, water systems and utility regulations; or (iv) fulfill the Town's essential governmental responsibilities pursuant to its reservations of authority. In the event of any such moratorium, future ordinance, resolution, rule or regulation, unless taken by the Town as provided under the four (4) exceptions contained above, Developer shall continue to be entitled to apply for and receive approvals as contemplated by this Agreement and in accordance with the Applicable Development Rules.

8.9 Changes and Amendments to the Development Plan. The parties acknowledge that refinement and further development of the Project may require changes to the Development Plan. In the event Developer finds that any such change is necessary or appropriate, Developer shall apply for an amendment to the Development Plan to effectuate such change and Town shall promptly process and act on such application for an amendment. Amendments to Development Approvals to allow changes to the Development Plan that do not also require an amendment to

the Existing Land Use Regulations shall be reviewed for consistency with the Existing Land Use Regulations and the Subsequent Land Use Regulations.

**Section 9: Consideration to the Developer and Owners - Qualified Vested Rights**

9.1 Grant of Qualified Vested Rights. Notwithstanding any future action of the Town to the contrary, whether by ordinance, resolution, initiative, or otherwise, for consideration provided in this Agreement to the Town, the Town hereby grants to the Developer during the Term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, Qualified Vested Rights in the Existing Land Use Regulations as they relate to the Development of the Subject Property in accordance with the Development Plan; subject, however, to the following:

- 9.1.1 The Developer and the Town may mutually agree that the Project will be subject to a Future Land Use Regulation.
- 9.1.2 The Developer and the Town may make amendments, additions and waivers to this Agreement adopted pursuant to Section 6 of this Agreement.
- 9.1.3 The Qualifications set forth in Section 9.2 of this Agreement.

9.2 Qualifications To Vested Rights. Notwithstanding anything to the contrary set forth in Section 9.1 above, the rights therein granted with respect to the Existing Land Use Regulations are hereby defined by the following Qualifications, which may limit, but anything to the contrary notwithstanding shall not expand, the Qualified Vested Rights granted by this Agreement beyond that authorized by the Development Agreement Statute:

- 9.2.1 Non-Conflicting Future Land Use Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are not in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property;
- 9.2.2 Conflicting Future Land Use Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property if the Developer has given the Town specific written consent to the application of such rules to development of the Subject Property;
- 9.2.3 Cost And Time Effects of Future Land Use Regulations. To the fullest extent permitted by the Development Agreement Statute and the Enabling Ordinance, any Future Land Use Regulation which increases the cost of development of the Subject Property, and any Future Land Use Regulation limiting the rate, timing or sequencing of development of the Subject Property, shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Subject Property.

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9.2.4 County, State and Federal Laws and Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to existing and future applicable county, state and federal laws and regulations, together with any land use regulations, programs and actions, or inaction, that are reasonably (taking into consideration, among other things, the assurances provided to Developer hereunder) adopted or undertaken by the Town in order to satisfy a duty or obligation of the Town to comply with such applicable county, state and federal laws and regulations. In the event that applicable county, state or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations, in which event this Agreement shall remain in full force and effect provided that performance of the Agreement pursuant to the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.

9.2.5 Public Health, Safety or Welfare. The Qualified Vested Rights granted by Section 9.1 hereof in the Existing Land Use Regulations as they relate to the development of the Subject Property in accordance with the Development Plan, shall be subject to the power of the Town Commissioners to determine that compliance with laws, rules, regulations, and policies enacted or adopted after the Effective Date of this Agreement, to the extent such police powers are preserved for the Town by the Development Agreement Statute or the Enabling Ordinance, are essential to ensure the health, safety, or welfare of residents of all or part of the Town.

9.2.6 Building Standards. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit the application of present or future Building Standards, except that (taking into consideration the assurances to Developer in this Agreement) any future amendment thereto that reduces the amount of land within the Subject Property that can be utilized for structures and improvements, or increases the amount of open space within the Project, materially different from that depicted on the Development Plan, shall not be considered a provision of any of the Building Standards included within the exception provided by this Paragraph (6), but shall, to the extent permitted by the Development Agreement Statute and the Enabling Ordinance, not apply to and govern the Development of the Project unless it complies with another exception under this Section 9.

9.2.7 Customary Town Fees and Charges. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit customary Town fees and charges generally applicable and imposed by the Town pursuant to law upon all similarly situated applicants and property owners, including, but not limited to, the fees and charges for processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, annexation, growth allocation, proposed legislation, building permit fees, water system connection charges, occupancy permit fees, and other fees, charges and

processing costs imposed by law. This Agreement shall not limit the power of the Town to impose such fees, charges and requirements, and to amend the rates and charges generally applicable within the Town for such services after the date of this Agreement, which shall not be limited by the Qualified Vested Rights in the applicability thereof to the Subject Property, the Developer or the successors in interest thereof. Such fees and charges imposed by Town law are not intended to be consideration for this Agreement.

9.2.8 Other Agreements. This Agreement is not intended to alter or restrict the rights and duties of the parties to the Perry Cabin Farm Annexation Agreement, the Public Facilities Agreement or the Miles Point Annexation Agreement, as amended, relating to the Subject Property, as it or they may be modified according to their own terms. The terms of those agreements are not intended to be consideration for this Agreement.

9.2.9 Procedural Provisions. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit generally applicable procedural provisions, including those governing the processing of Development Approvals and Land Use Regulations such as requirements for notice, hearings, and hearing bodies.

9.2.10 This Agreement shall not relate to, bind or limit the Town, or its actions, operations, tariffs, rates, or policies in its capacity (if and when the Town ever becomes a supplier of utility services to the Subject Property, except that with regard to a particular utility service, the Town agrees to treat the Developer and the Subject Property as the Town treats other similarly situated developers and land within its applicable utility service territory at the time that the time of such treatment.

9.2.11 Police Powers, Full Extent of Law. The parties acknowledge that Town is restricted in its authority to limit its police powers by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to Town all of its police powers that cannot be so limited. It is expressly agreed that Town reserves its police power to adopt and enforce ordinances, regulations, policies and other enactments, and to take such other actions pursuant to said police power, affecting the Project necessary to ensure the public health, safety or welfare. In the exercise of its police powers, the Town shall recognize and consider the circumstances existing at the time this Agreement was authorized. In addition, such exercise of the police power shall be in a manner consistent with the purpose and intent of the Development Agreement Statute. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to Town all such powers and authority that cannot be restricted by contract.

9.3 Adoption of Comprehensive Plan and Development Plan, Further Approvals. In preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town considered the health, safety, and welfare of the existing and future residents and

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

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populations of the Town and prepared and/or reviewed in this regard extensive environmental studies ("Environmental Studies") as well as traffic impact reports and other studies economic and non-economic relating to impacts of this Development Plan or similar development plans on the Town and its public facilities and services. Without limiting the generality of the foregoing, in preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town carefully considered and determined the projected needs (taking into consideration the planned development of the Project and the Town and adjacent areas) for police, fire, paramedic, and similar facilities and services within the Project, the Town and adjacent areas and the projected needs within the Project and such areas for stormwater management measures, public water and county sewer with the Region II District serving the Town, the needs of the residents for open space and parks, and the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project.

9.4 Acknowledgment of Future Land Use Regulations. The parties acknowledge that the allocation of development within the Subject Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations, such as the location of particular sensitive areas or other site-specific considerations. The parties acknowledge that in certain instances, the development of the Subject Property may be restricted and adversely affected and impacted by Future Land Use Regulations adopted by Town as provided in Section 9.2.

9.5 All Governmental Approvals Required Before Development Of Subject Property Required. It is acknowledged that this Agreement only provides assurances to Developer with respect to the Existing Land Use Regulations that will apply to the Development of the Subject Property and that prior to and as a condition precedent to the final decision to construct or develop any of the Public Facilities or any portions of the Project on the Subject Property, all government permits and approvals shall be obtained as required by the applicable regulations, in accordance with and as provided in Sections 9 (including but not limited to state and federal regulations).

9.6 Consideration for Assurances to Developer. The parties further acknowledge that the public benefits to be provided by Developer to Town pursuant to this Agreement, including without limitation the consideration to the Town set forth in Section 10 are in consideration for and reliance upon assurances that the Subject Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the development of the Subject Property may be affected by exercise of the reservations of authority, Developer is concerned that normally the courts extend to local agencies significant deference in the adoption of land use regulations, which might permit Town to attempt to apply inconsistent land use regulations in the future under the guise of the reservations of authority. Accordingly, Developer desires assurances that Town will not inequitably further restrict or limit the development of the Subject Property in conflict with the intent of this Agreement, except in strict accordance with the Qualifications of the Vested Rights set forth in Section 9.

9.7 Use of Annual Unit Payments. As further consideration to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, for the

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The Commissioners Of St. Michaels

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preservation and improvement of the Town in general, and therefore for the benefit of the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, by the preservation and improvement of the Town of which the Subject Property is a part, the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part, and used by the Town in accordance with the purpose, of the Town Collateral Improvement Fund, as described in Section 10 of this Agreement.

9.8 Amendment To Include The Huntman Property. After the County relinquishes or otherwise loses control over the land-use classification of the Huntman Property, as provided by Maryland Code, Art. 23A, § (c), in the event that the Town issues all of the Development Approvals relating to and for the development of the Huntman Property as an addition to the Traditional Neighborhood Development on the Perry Cabin Land in accordance with the Development Plan, and within a time and as otherwise specified by the Miles Point Annexation Agreement, as it may be amended from time-to-time by the Town Commissioners, the Developer shall have the right and duty to offer to the Town, and the Town shall have the duty to consider, but shall not have the obligation to approve, the amendment of this Agreement to add the Huntman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment"), provided further that the Town agrees to the Amendment within one (1) year after the date on which such Amendment is offered by the Developer, thereby granting Qualified Vested Rights to the Huntman Property as of the date of the Amendment.

**Section 10: Consideration To The Town.** As the sole and exclusive consideration for the Qualified Vested Rights granted by this Agreement to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, the said Developer, for itself its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby promises to make the payments to the Town, to convey the property rights to the Town, to undertake the duties as described in the Schedule Of Consideration To The Town (Exhibit 10), as further explained, modified and expanded by this Section 10, relative to the Subject Property as defined in this Agreement:

10.1 Infrastructure Costs, Fees, Charges, And Duties.

10.1.1 Privately-Owned Subdivision Infrastructure. It is the responsibility of the Developer to cause the installation at its expense of all infrastructure on the Subject Property. At the request of the Developer the Town ordinance creating the traditional neighborhood zone anticipates narrow public ways, that are of the open section design, and that some of the public ways will be privately owned. The Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby request and consent to the amendment of the Town Zoning Ordinance and the Town Subdivision Ordinance to provide for such narrow streets without curbs or gutters ("open section roads"), with gentle pervious swales as part of the stormwater management system, and other public ways that are more narrow and made of more porous paving material that may be privately owned and maintained by a responsible homeowners association, contrary to what is presently required by Town laws and regulations. Although the parties hereto

acknowledge the environmental benefits of narrow open section roads within the Critical Area, and that the proposal of the Developer to use such narrow open section roads within the Project is a significant positive factor in making the Project worthy of the growth allocation necessary to develop within the Critical Area, the Town anticipates that the cost to repair and maintain such open section roads and swales will be greater than for conventional roads with curbs and gutters to the current Town standards and specifications. Therefore, parties agree as follows with regard to repair, maintenance and re-construction of infrastructure on the Subject Property:

10.1.1.1 Publicly-Owned Subdivision Infrastructure. Upon construction to Town standards, inspection and acceptance by the Town, the Town shall in perpetuity repair, maintain and re-construct, at its own cost: the stormwater catch-basins and lines (up to, but not including, the stormwater management ponds); and roads, drives and streets within the Project (as identified in the Design Code and shown on the Concept Plan for the Project). The Town reserves the right, but not the duty, at its sole discretion, to acquire title to, own, maintain and control the passages, lanes, and alleys, (collectively "Privately Owned Public Ways") as identified in the Design Code and as shown on the Concept Plan for the Project.

10.1.1.2 Public Ways. All roads, drives, streets, alleys, lanes passages, and public ways of every type (collectively the "Public Ways") shall be open to the public at all times. The Town shall have the sole right to establish speed limits, and enforce all traffic laws on all Public Ways. The Town and all public utilities shall have the right to enter over, under and upon all Privately Owned Public Ways for the purpose of installing, repairing, maintaining and rebuilding wires, conduits, and other transmission, distribution and collection facilities related to furnishing public utility services.

10.1.2 Privately-Owned Subdivision Infrastructure. The Developer, and thereafter the Owners through the HOA, shall in perpetuity repair, maintain and re-construct, at its own cost, in such a manner to keep the Project worthy of growth allocation, the Privately Owned Public Ways, brick sidewalks, street lights, grass strips and trees along streets, stormwater management facilities with the exception of stormwater catch-basins and or lines (up to but not including the stormwater management ponds), and all open spaces not owned by the Town, located within or upon the Subject Property (all of which shall be included within the term "Privately-Owned Subdivision Infrastructure").

10.1.2.1 The provisions of this Section 10.1.2 ("Privately-Owned Subdivision Infrastructure"), including the following subsections of

Section 10.1.2, shall be incorporated in the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property.

10.1.2.2 The Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property shall be recorded in the County Land Records simultaneously with the recording of the approved final subdivision plat for the entire Subject Property.

10.1.2.3 No conveyance of a subdivision lot or construction of infrastructure shall commence on the Subject Property before the recording of such the approved final subdivision plat and such Declaration of Covenants, Restrictions and Conditions.

10.1.2.4 Before the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property is recorded in the County Land Records, the Developer shall submit to the Town, for the review and approval of the Town Attorney for consistency thereof with the terms of this Agreement, such Declaration of Covenants, Restrictions and Conditions.

10.1.2.5 The Developer, as Developer and Owner, shall, at its own expense, at all times until such time as all components of the Privately-Owned Subdivision Infrastructure are conveyed to the HOA, reasonably and diligently keep, maintain, repair and re-construct all such components of the Privately-Owned Subdivision Infrastructure in good order and state of repair.

10.1.2.6 When the Privately-Owned Subdivision Infrastructure is conveyed by the Developer to the HOA, the HOA shall accept, assume, undertake to reasonably and diligently perform all of the title and duties of, the ownership, repair, maintenance, re-construction, and replacement of the Privately-Owned Subdivision Infrastructure, keeping each component thereof at all times in good condition, and to assess and collect from the Owners revenues reasonably sufficient in amount to create and adequately fund operating and reserve fund, and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing, maintaining, re-constructing and replacing, from time-to-time as reasonably necessary, all of the Privately-Owned Subdivision Infrastructure.

10.1.2.7 The Declaration of Covenants, Restrictions and Conditions for the Project shall provide that the HOA shall have, accept and perform all of the rights and duties set forth in this Section 10. The Declaration of Covenants, Restrictions and Conditions shall also empower and require the HOA to: (a) make assessments against each lot on which a Unit is

located or is anticipated by the Development Plan in the Subject Property for the purpose of generating the funds for the HOA in an amount necessary to pay for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure; (b) to collect those assessments, and (c) to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a proper assessment has been made and for which timely payment has not been made to the HOA for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland contract Lien Act), or its successors, as amended from time-to-time.

10.1.2.8 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right to enforce upon the HOA and its Owners by judicial action and otherwise, the reasonable and timely performance of all HOA duties described in this Section 10.1.2, and with the right of the Town to collect from the HOA, and its Owners the attorneys fees and all other costs incurred by the Town relating to such enforcement actions in the event that the Town prevails in any such action.

10.1.2.9 For purposes of monitoring performance of the HOA with the provisions of this Section 10.1.2, the Town shall be entitled to without making a request therefor, and HOA shall furnish to the Town, as frequently as the HOA furnishes to its board of directors and/or its membership, the following documents relating to the HOA: disclosure statements, news letters to the membership, minutes of board of directors meetings, minutes of membership meetings, budgets, financial reports and statements, accounts receivable from Owners relating to the assessments to and collections from Owners, proposed rules or amendments to the HOA documents and any other information relating to the HOA as may be deemed necessary or desirable by the Town.

10.2 Consent To Regulatory Fees And User Charges. The Developer, for itself, its successor developer Assignees, and its successors in interest to the Subject Property, hereby acknowledge that all of the current Town fees, charges, costs and rates, shown on the Schedule Of Town Administrative And Utility Fees, Charges And Rates, attached hereto as Exhibit 11, are fair and reasonable in amount, and that they each have a reasonable relationship to the cost of providing the services to which they relate. Moreover, the Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, hereby consent to the increase of such Town fees, charges, costs and rates in subsequent years based on changes in the C.P.I., provided that all such increases of such Town fees, charges, costs and rates are also equally applicable to all other regular and customary users of such Town services.

10.3 Parks and Open Spaces.

10.3.1 In General. Parks and open spaces shall be located, developed and improved by the Developer in the locations and to the extent shown on the Miles Point Concept Plan (Exhibit 1), and in accordance with additional representations made by the Developer to the Town during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, relating to the Subject Property. Structures and improvements as so represented shall be constructed within the parks and open spaces at Developer's expense as shown on the Miles Point Concept Plan, and in accordance with additional representations by the Developer to the Town during the above referenced growth allocation and DRRA hearings. Rights in such parks and open spaces, with improvements, shall be granted as set forth in the Town Consideration Chart (Exhibit 10), constructed, maintained, and continuously opened for public use and enjoyment, as represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings. All of the above-referenced representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, shall constitute a material term of this Agreement. Simultaneously with the recording of the final subdivision plat for the Subject Property, the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records: (1) establish a Declaration of Covenants, Restrictions and Conditions for the Subject Property which provide for the ownership, maintenance and upkeep by the HOA of all parks and open spaces on the Subject Property that are not to be owned and maintained by the Town; and (2) within the time periods specified in the Schedule Of Consideration To The Town (Exhibit 10) the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records grant such rights and duties to the Town and the public in said parks and open spaces as has been represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings.

10.3.2 Hunteman Property Non-Structural Shoreline Stabilization. The Developer shall install the Non-Structural Shoreline Stabilization on the Hunteman Property at the same time that the Non-Structural Shoreline Stabilization is installed on the Perry Cabin Land.

10.3.3 Non-Structural Shoreline Stabilization. The subject of this Section 10.3.3 is the construction, repair, maintenance, and if necessary re-construction and replacement, of non-structural shoreline stabilization on the Perry Cabin Land and the Hunteman Property, as hereinafter described.

10.3.3.1 Definitions. The following definitions shall apply solely to Section 10.3.3:

10.3.3.1.1 The "Non-Structural Stabilization" means the shoreline stabilization described in the Power Point Presentation by Gene Slear, Vice President, Environmental Concern, Inc., presented September 25,

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2003 (see Exhibit 45 to the Miles Point III public hearing of the Town Planning Commission), to be installed Environmental Concerns, Inc.), which, together with proper repair and maintenance, is intended to provide to the shoreline, where such stabilization is placed, repaired and maintained, perpetual protection from wind and/or wave action at the shoreline, including such action caused by hurricanes and other storms, that result in erosion of such shoreline.

10.3.3.1.2 The "Shoreline" means, and is more particularly described, as follows: (1) beginning at a point at the southern boundary line between the Perry Cabin Land the land of the Foggs Cove Townhouses at its intersection with the Miles River at mean high tide; then (2) running from said beginning point in a generally northerly direction along the shoreline formed by the intersection of the Perry Cabin Land and the Miles River at mean high tide to the common boundary line between the Perry Cabin Land to the Huntman Property; and then (3) continuing therefrom in a generally northerly direction along the shoreline formed by the intersection of the Huntman Property and the Miles River at mean high tide to the ending point at a shoreline stone revetment existing on the Huntman Property; constituting a total distance, from the beginning point to the ending point, of approximately 2,100 lineal feet.

10.3.3.1.3 The "Non-Structural Shoreline Stabilization" means the Non-Structural Stabilization successfully applied to and established at the Shoreline.

10.3.3.2 The Developer shall, at its sole expense, cause the Non-Structural Stabilization to be constructed, installed, applied to and established at the Shoreline of both the Perry Cabin Land and at the Shoreline of the Huntman Property by Environmental Concern, Inc. or by some other contractor equally experienced and knowledgeable about such matters that is acceptable to the Town (hereinafter the "Shoreline Contractor"), within the deadline established therefore in the award of growth allocation for the Perry Cabin Land. The Non-Structural Shoreline Stabilization shall be installed according to standards and specifications intended, together with reasonable and appropriate periodic repairs and maintenance as provided for in this Agreement, to establish a healthy and self-sustaining tidal wetland capable of providing perpetual prevention of erosion to the Shoreline, from wind and/or wave action of the Miles River, including such action caused by hurricanes and other storms.

10.3.3.3 For a period of ten (10) consecutive years, beginning immediately upon the completion of the installation of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Huntman Property, and receipt by the Town of a written certificate of completion of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Huntman Property by the Shoreline Contractor, the Developer shall, at its sole expense, shall cause the

following to be performed with regard to the Non-Structural Shoreline Stabilization:

10.3.3.3.1 Provide reasonable and appropriate periodic inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization as recommended and performed by the Shoreline Contractor, or its successor. The inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization shall be performed in accordance with the recommendations of the Shoreline Contractor at least annually, or more frequently as recommended by the Shoreline Contractor.

10.3.3.3.2 In the event of severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization, at the sole fair and reasonable discretion of the Town, severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization shall be promptly replaced at the Shoreline by either: (1) Non-Structural Stabilization; or (2) stone revetment.

10.3.3.3.3 At all relevant times after the initial installation of the Non-Structural Shoreline Stabilization, the Shoreline Contractor shall be selected with the consent of the Town. If the Developer or president of the HOA (as the case may be) fail to timely initiate the selection of a Shoreline Contractor when the arises, the Town shall have the sole right to select the Shoreline Contractor, which may include an expert and a general contractor, to assess the status of the Non-Structural Shoreline Stabilization, to recommend a method to improve the status of the Non-Structural Shoreline Stabilization, and to construct, install, repair or maintain the Non-Structural Shoreline Stabilization, as is reasonably necessary for the health of the artificial tidal wetland thereby created or the protection from erosion of the Shoreline.

#### 10.3.3.4 Approvals and Information.

10.3.3.4.1 All inspections, repairs, maintenance, re-constructions and replacements of the Shoreline Areas shall be subject to the prior review and approval of the Town.

10.3.3.4.2 All such inspections, repairs, maintenance, re-constructions, and replacements to the Non-Structural Shoreline Stabilization shall be reported in writing to the Town. A copy of all reports, contracts, bills, invoices, statements, designs, specifications and all other documents relating to the Non-Structural Shoreline Stabilization shall be promptly furnished by the Developer or the HOA (as the case may be) to the Town.

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10.3.3.5 The Developer may assign its obligations under this Section 10.3.3 to the HOA, provided the HOA shall, on behalf of the Owners, expressly undertake and assume such obligations in writing to the Town. The obligations of the Developer assumed by the HOA shall be performed by the HOA in a manner substantially similar to the manner in which the HOA is required to maintain the Privately-Owned Subdivision Infrastructure, as set forth in Section 10.1 of this Agreement. Without limiting the generality of the foregoing, the HOA shall, upon assignment by the Developer and acceptance by the HOA of the foregoing obligations of the Developer relating to the Non-Structural Shoreline Stabilization, for unexpired portion of the ten (10) year period for which the Developer was originally obligated:

10.3.3.5.1 Regularly repair and maintain the Shoreline Area, in accordance with sound property management standards;

10.3.3.5.2 Assess and collect from the Owners revenues reasonably sufficient to create and adequately fund an operating and reserve fund for the Shoreline Area and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing and maintaining from time to time as reasonably necessary, the Shoreline Areas; and

10.3.3.5.3 Diligently enforce the collection of Assessments against all Owners as necessary to provide funds necessary to properly maintain and repair the Shoreline Areas, in accordance with the Declaration of Covenants, Restrictions and Conditions for the Project and establish, enforce, foreclose and collect on a lien against the land and improvements of each lot for which an assessment has been made but for which payment has not been tendered to the HOA, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), on any successor statute, as amended from time to time.

10.3.3.6 If the Developer, or the HOA (if the obligations of the Developer have been assigned to and accepted by the HOA), fail to timely or adequately perform the obligations of the Developer as described in Section 10.3.3.3 of this Agreement, then the Town shall have the right to perform such duties at the expense of the Developer or the Owners (as the case may be), upon thirty (30) days prior written notice to the Developer or the HOA on behalf of the Owners (as the case may be) of the intention of the Town to perform such duties for and at the expense of the Developer or the Owners (as the case may be). Such notice shall state the nature of the work anticipated to be done and the reason for the necessity for such work. If the performance of the anticipated work leads to the discovery of other work that reasonably should have been discovered and performed by the Developer or the HOA, then Developer or the Owners (as the case may be) shall be liable for the cost of such additional work. The Owners

thus liable shall be the Owners of lots on the Subject Property that are assessable for expenses of the HOA pursuant to the Declaration, in the same proportion as the cost of the operation and maintenance of improvements in the subdivision owned and/or operated by the HOA are assessed to the lots of the Subject Property, as provided by the Declaration.

10.3.3.6.1 The Owners referred to in this Section 10.3.3 shall be the owners of each lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by HOA for, and on the same percentage basis as it is normally assessed by the HOA, as provided by the Declaration. Each Owner of a lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by the HOA shall be personally liable, jointly and severally with all co-owners of the same lot, for the share (based on the amount thereof that could be assessed to the Owner's lot) of the total cost incurred by the Town in performing the duties of the Owners pursuant to Section 10.3.3.3 of this Section. The Town shall also have the right to assess the lots of the subdivision of the Subject Property for such costs incurred by the Town in the proportion described herein. Such costs thus assessed shall be due and payable in full within 30 days after the assessment.

10.3.3.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall have the right, in its sole discretion, by notice to the HOA, to perform some or all of the obligations of the HOA pursuant to Section 10.3.3 of this Agreement.

10.3.3.7.1 To the extent the Town undertakes such obligations during the ten (10) year period after completion of the Non-Structural Shoreline Stabilization by the Developer, the HOA shall reimburse the Town for all direct and indirect costs incurred by the Town that are associated with such maintenance and repair.

10.3.3.7.2 A reasonable basis for the need for work required by this Agreement shall be the failure of the HOA, upon written demand therefore, to provide written evidence that such work have been timely or satisfactorily performed.

10.3.3.7.3 The failure of the HOA to promptly reimburse the Town for such costs shall entitle the Town to seek all available legal relief, including but not limited to the right, as third party beneficiary to this Agreement and the Declaration, to assess the Owners of each lot in the subdivision of the Subject Property with its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and

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

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

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

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

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

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

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

#### 10.4 Duty To Pay Consideration To The Town.

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

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

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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

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

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

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

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

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

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

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

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

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

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

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

Unit Payment applies if the amount due is not received and paid in full on or before the later of 30 days after the date of the bill or July 31 of the year for which the Annual Unit Payment applies. In addition, the HOA shall promptly after each billing furnish to the Town an accounting of the total billing, to include the total amount billed, the base amount billed (\$1,000 per Unit) and the additional amount billed based on the change in C.P.I. since April 2004. The HOA shall be liable for all errors that it commits in the billing and collection process, including the failure to keep accurate records that frustrates any effort by the Town to bill or collect Annual Unit Payments, or any interest or late charges due thereon.

10.5.5.2 If the HOA has been instructed to bill and collect the Annual Unit Payments, the Town shall have no duty to inform the HOA of the change in the C.P.I., the change in the amount of the Annual Unit Payments as the result of the change in the C.P.I., or that the change in the C.P.I. must be billed to the Owners as part of the Annual Unit Payments. Nevertheless, if the HOA has been instructed by the Town to bill the Annual Unit Payments and fails to bill the correct dollar amount of the Annual Unit Payments to include the change in dollar amount based on the change in the C.P.I. as provided in this Agreement and Exhibit 10 hereto, then the HOA shall be directly liable to the Town for any deficiency in the amount billed and collected by the HOA as the result of the failure of the HOA to bill the correct dollar amount to the Unit Owners.

10.5.5.3 If the HOA collects Annual Unit Payments for the Town, the HOA shall remit to the Town, not less frequently than monthly on or before the first day of each month, all payments of Annual Unit Payments received since the last time such receipts were remitted to the Town. All such remittances shall be accompanied by an accounting of the receipts remitted, including, for each payment received: (1) the amount of the payment; (2) the Unit to which it applies; (3) the date the payment was received by the HOA; (4) the name and address of the payor; (5) any accounting received by the payor to indicate how the amount of the payment was arrived at, such as late charges or interest included; and (6) any other communication received with the payment. In addition, with each remittance the HOA shall furnish a list of each receipt and the total of the receipts being remitted.

10.5.5.4 If the HOA participates in the billing and/or collection of the Annual Unit Payments for the Town, then the HOA shall assist and cooperate with the Town, and participate, including providing testimony and documentary evidence, in any judicial action by the Town to establish, enforce or collect upon any lien, in which the billing and/or collection of the Annual Unit Payments by the HOA for the Town is an issue or factual predicate to the successful prosecution of the action by the Town.

10.5.6 The Owner(s) of a parcel of land which has been properly billed for an Annual Unit Payment pursuant to this Agreement (or the Declaration) that remains unpaid after the due date shall be in breach of this Agreement (and the Declaration) and shall be liable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 12. Public Facilities**

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

### **Section 13. Administration of Performance**

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

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

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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

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

13.4 Good Faith Compliance Review

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

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

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

**Section 14: Default and Remedies.**

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

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

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

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

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

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

**Section 15: Mortgage Protection; Certain Rights of Cure.**

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

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

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

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

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

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

#### **Section 16: Estoppel Certificates.**

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

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

**Section 17: Conflicts of Laws, Rules, Regulations**

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

**17.2. Notice.** Neither party shall claim that a conflict, as described in Section 17.1, exists, unless that party has given the other party at least thirty (30) days written notice of the conflict. The notice shall identify the law, regulation or non-Town governmental action, the date the law or regulation was enacted or the date the non-Town governmental action was taken, and the manner in which the law, regulation or non-Town governmental action conflicts with one or more provisions of this Agreement.

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

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

17.5 Cooperation in Securing Permits or Approvals. Provided Town and Developer agree to a modification or suspension of this Agreement pursuant to this Section 17, Town shall use its best efforts to assist Developer in the timely securing of any permits or approvals which may be required as a result of such modifications to, or suspensions of, all or any part of this Agreement.

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

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

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

## **Section 18: Miscellaneous Provisions**

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

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

18.3 Invalidity, Unenforceability, Severability, And Savings Clause.

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

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

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

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

18.3.2.2 Second, if the provisions of Section 18.3.2.1 of this Agreement are not sufficient to save the validity and enforceability of the offending term(s) and/or provision(s) of this Agreement, then such offending term(s) and/or provision(s) shall be severed and deleted from this Agreement only to the extent necessary to save the validity and enforceability of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

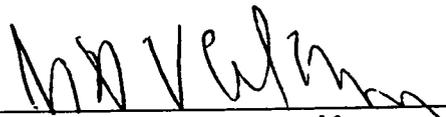
**IN WITNESS WHEREOF**, Developer and Town have executed this Agreement on the dates set forth below.

WITNESS/ATTEST:

**DEVELOPER:**

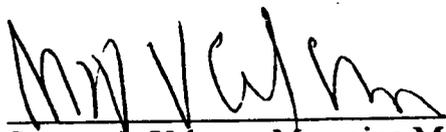
THE MIDLAND COMPANIES, INC.

  
\_\_\_\_\_

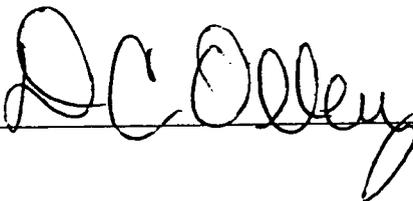
By:  2-16-04  
George A. Valanos, President Date

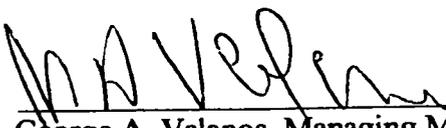
ST. MICHAELS POINT, L.L.C.

  
\_\_\_\_\_

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

MILES POINT PROPERTY, LLC

  
\_\_\_\_\_

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

TND DEVELOPMENT, INC.

[Signature]

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

**TOWN:  
THE COMMISSIONERS OF ST. MICHAELS**

By: St. Michaels Planning Commission

Cheril S. Thomas, Town Manager

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

**APPROVED AS TO FORM:**

By: [Signature]  
H. Michael Hickson  
Town Attorney

By: [Signature]  
Richard A. DeTar  
Attorney for the Developer(s)

St. Michaels, Maryland

Miles Point  
Concept Plan



**KEY**

	Future Residential
	Current Residential
	Edge Residential
	Civic Structure

Miles Point Concept Plan  
St. Michaels, Maryland  
December 21, 2001

QUARY PLYLER-EVANS & COMPANY  
200 FREDERICK ROAD, COLLEGE PARK, MD 20740  
JAL, STRAFER  
quary@plyler.com or jal@plyler.com

E. 129  
LIBER 1 225 FOLIO 467

**MILES POINT**  
TOWN OF ST. MICHAELS, MD



**THE MIDLAND COMPANIES**  
DEVELOPER

**DUANY PLATER-ZYBERK & COMPANY**  
TOWN PLANNERS

ANDRES DUANY, LUDWIG FONTALVO-ABELLO, ANTHEA GIANNIOTES, JAY GRAHAM, MELISSA KIMBALL, OSCAR MACHADO, BARRY MAHAFFEY,  
GARY MODJESKA, MICHAEL MORRISSEY, JORGE PLANAS, DAVID SAN ROMAN, GALINA TAHCHIEVA, GEORGE VALANOS, MIKE WATKINS

## General Notes

This Design Code was conceived to guide the development of Miles Point.

The provisions of the Design Code are derived from the vernacular architectural and planning traditions of the region. These have been modified to incorporate technical, social and environmental progress.

This Design Code is enacted by reference within the Community Association Documents.

This Design Code applies to the design of all the private buildings and landscapes. Private buildings shall be approved by the Miles Point Architect (MPA) for the compliance with its requirements.

Public and Civic buildings are exempted from the provisions of this Code; their design is to be negotiated with the Miles Point Architect (MPA).

Variations to this Code may be granted on the basis of unusual programmatic requirements, peculiar site constraints, hardship, or architectural merit as determined by the Miles Point Architect (MPA).

Local building code(s) shall take precedence over the provisions of this Design Code.

The Design Code consists of five interrelated documents:

- The Regulating Plan
- The Thoroughfare Standards
- The Urban Standards
- The Architectural Standards
- The Landscape Standards

Following these five documents is the Design Review Policy and Procedure that will be used to enforce the Design Code.

## The Regulating Plan

A drawing which maps with precision the Neighborhood Edge, General, and Center Zones. The Regulating Plan shows the approximate form and locations of Open Spaces such as parks, squares and plazas as well as the approximate trajectories of the thoroughfares.

## The Thoroughfare Types

A matrix of drawings, specifications, and dimensions which assemble vehicular and pedestrian ways into sets specialized in both capacity and character. The Thoroughfares which range from rural to urban are assigned to appropriate locations in the Thoroughfare Types Plan.

## The Urban Standards

A matrix of text and drawings that regulates those aspects of private building which affect the public realm. The Urban Standards vary according to the zoning categories of the Regulating Plan. The Urban Standards define the streetscape and encourage the provision of certain building elements which influence social behavior, such as stoops and porches. They also encourage certain building types in order to serve a full range of age, income and occupation. The Urban Standards specify the frontage types and permitted uses.

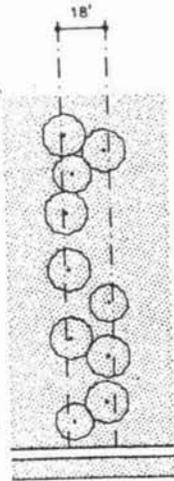
## The Architectural Standards

A matrix of text that specifies the materials and configurations permitted for walls, attachments, roofs, openings and storefronts. The Architectural Standards are intended to produce visual compatibility among disparate building types. They relate the new buildings to the vernacular building traditions of the region, thus inheriting a suitable response to climate.

## The Landscape Standards

A list of plant species with instructions regarding their location, planting pattern, and maintenance. The lists are separated into those pertaining to public Open Spaces and Thoroughfares and those pertaining to Private Lots at frontage yards. The Public and Private planting lists are coordinated towards achieving a visually coherent reforestation of the urban fabric. The selection and disposition of the species is intended to support the rural to urban transect character of each zone and to coalesce the private and public landscaping towards an ecosystem harmonious with the region.

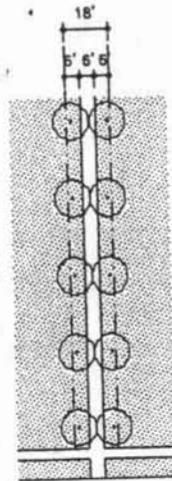




Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-0

Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	N/A
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	Varies
Planter Type	Continuous
Tree Pattern	Varied pattern
Tree Species	A mix of: American Holly, Eastern Red Cedar, Red Maple, Serviceberry, Sourwood, Swamp Bay Magnolia
Ground Cover	Lawn

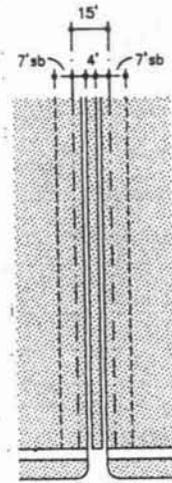


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-6a has trees on the public side only.

PS-18-6

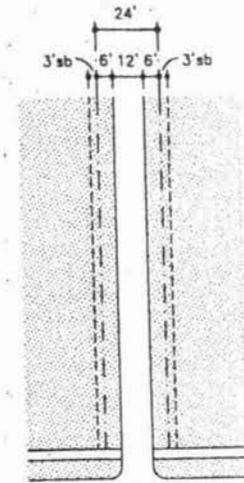
Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	6 ft.
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Passages may be different and any one of: American Holly, Crapemyrtle, Golden Raintree, Yellowwood
Ground Cover	Lawn



Lanes service the rear of lots and are rural in character having only a pair of narrow, unpaved ruts that may or may not be centered in the ROW.

LA-15-4

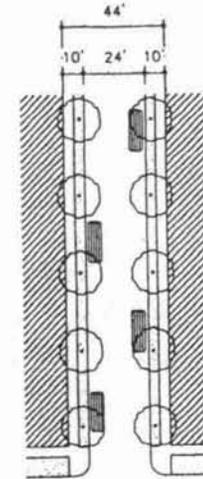
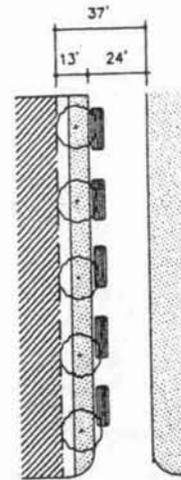
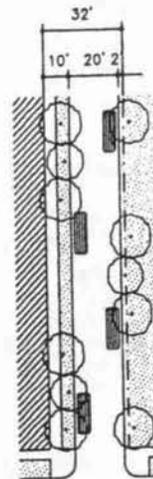
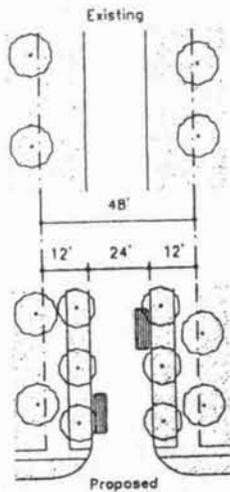
Precedent	Harrison Alley
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	15 ft.
Pavement Width	2 gravel ruts at 2 ft. each
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn



Alleys service the rear of lots nearest the Neighborhood Center where the density is greatest and uses may be mixed. They are more urban in character with a strip of paving at the center and shoulders that may or may not be paved.

AL-24-12

Precedent	N/A
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	24 ft.
Pavement Width	12 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn



Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

Drives define the edge between an urbanized and a natural condition, usually along a waterfront, a park, or a promontory. One side has sidewalks and buildings, the other side is more rural in character with natural-istic planting and rural detailing.

Streets are appropriate for residential buildings at the Neighborhood Center and General. A single species of tree should be planted in steady alignment in continuous planting strips. A vertical canopy is necessary to avoid building facades at shallow frontage setbacks.

RD-48-24

Precedent	Perry Cabin Drive
Type	Road
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	48 ft.
Pavement Width	24 ft.
Curb Type	Header Curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	8.8 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft. and 6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 25 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

RD-32-20

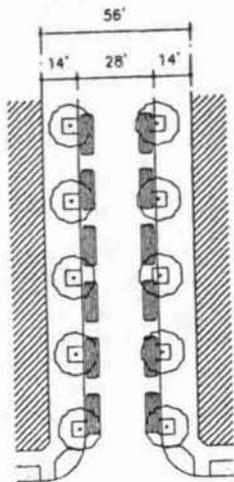
Precedent	Grace Street
Type	Small road
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	32 ft.
Pavement Width	20 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	15 m.p.h.
Pedestrian Crossing Time	3.9 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Swale
Tree Pattern	Charters at 30 ft. on center average
Tree Species	Scarlet Oak
Ground Cover	Lawn

DR-37-24

Precedent	The Strand Drive
Type	Drive
Movement	Slow movement
Traffic Lanes	Two way
Parking Lanes	One side
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	Swale and 4" header curb at planter
Curb Radius	10 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	6.5 seconds
Sidewalk Width	5 ft.
Planter Width	8 ft.
Planter Type	Continuous
Tree Pattern	30 ft. on center average
Tree Species	Inland: Red Maple; Waterfront: to be determined
Ground Cover	Lawn

ST-44-24

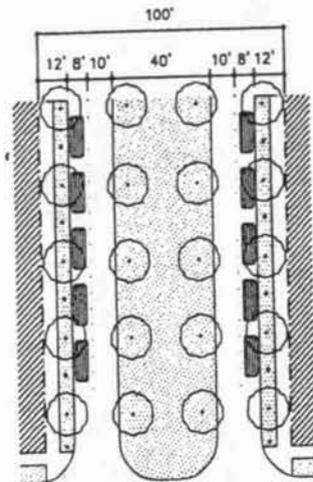
Precedent	No. 225
Type	Small residential street
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	4" Header curb
Curb Radius	5 ft.
Vehicular Design Speed	20 m.p.h.
Pedestrian Crossing Time	5.5 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Willow Oak
Ground Cover	Lawn



Commercial streets are appropriate for commercial buildings at the Neighborhood Center. Trees are confined by individual planters, creating a sidewalk of maximum width, with areas accommodating street furniture. Clear trunks and high canopies are necessary to avoid interference with shopfronts, signage and awnings.

CS-56-28

Precedent	Talbot Street
Type	Commercial street
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	54 ft.
Pavement Width	28 ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	5 seconds
Sidewalk Width	9 ft.
Planter Width	5 ft.
Planter Type	Individual, except at arcade
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn



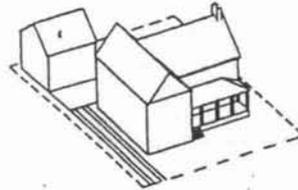
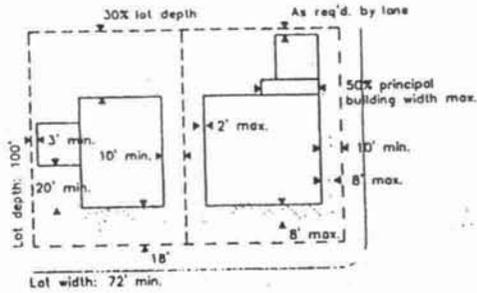
Avenue is a local, slow-movement thoroughfare suitable for General, Center, and Core Urban Zones. Avenues are appropriate as approaches to civic buildings. In residential areas, the median may be wider and planted naturalistically to become greenway. The streetscape details may vary as the avenue passes from one zone to another.

AV-100-36

Precedent	Avenue
Type	Speed movement
Movement	Two ways
Traffic Lanes	One sides
Parking Lanes	100 ft.
R.O.W. Width	18 ft. + 18 ft.
Pavement Width	4" Header curb
Curb Type	15 ft.
Curb Radius	25 m.p.h.
Vehicular Design Speed	10 seconds
Pedestrian Crossing Time	6 ft.
Sidewalk Width	6 ft.
Planter Width	Continuous center, Individual sides
Planter Type	Allee, 30 ft. on center
Tree Pattern	London Plane
Tree Species	Lawn
Ground Cover	

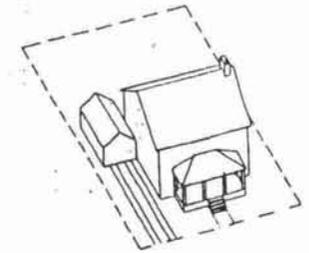
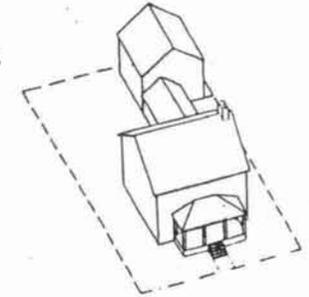
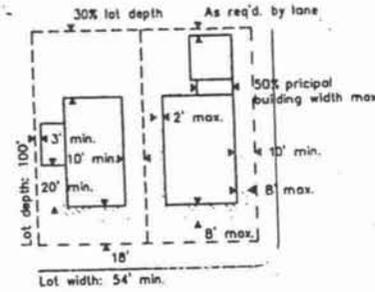
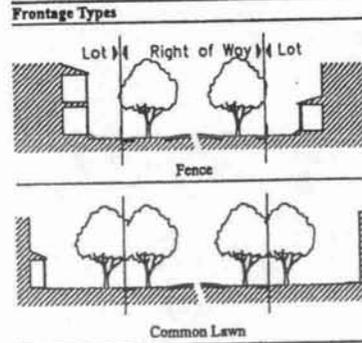
NEIGHBORHOOD EDGE - LARGE HOUSE

NEIGHBORHOOD EDGE - HOUSE



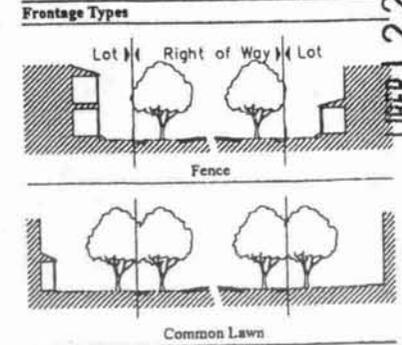
A Large House is a single-family residence on its own large lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	72 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
<b>Setbacks</b>	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.



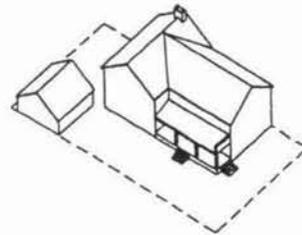
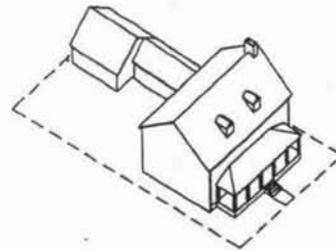
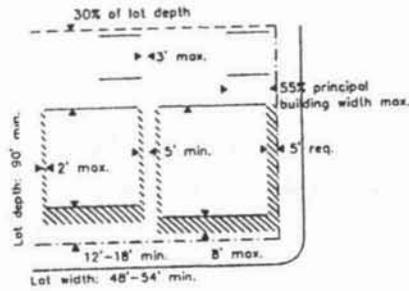
A House is a single-family residence on its own lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 54 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines are a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	54 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
<b>Setbacks</b>	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.



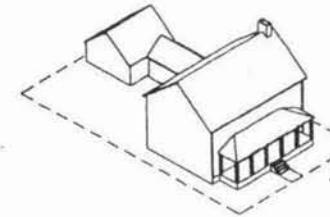
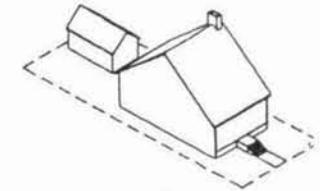
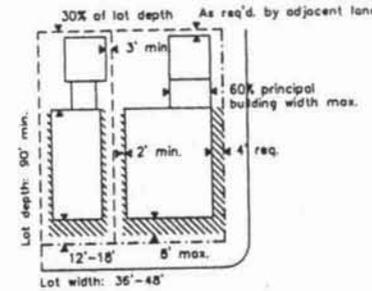
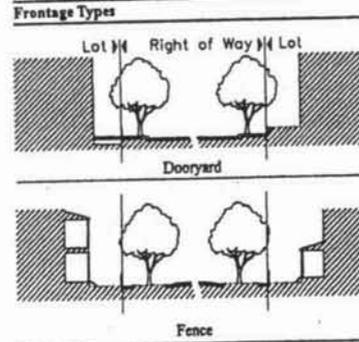
NEIGHBORHOOD GENERAL - HOUSE

NEIGHBORHOOD GENERAL - COTTAGE



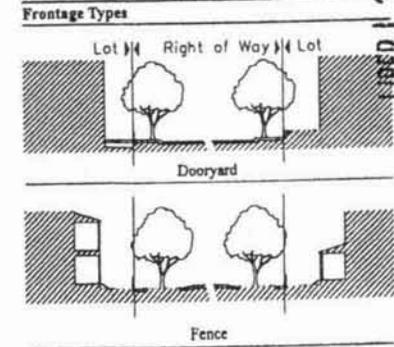
A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 55% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	48 - 54 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
<b>Setbacks</b>	
at building frontage	12 - 18 ft.
at building side	5 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.



A Cottage is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 30 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	30 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
<b>Setbacks</b>	
at building frontage	12 - 18 ft.
at building side	4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	3 stories max.
of first floor above grade	2.5 ft. max.
of back building and outbuilding	2 stories max.

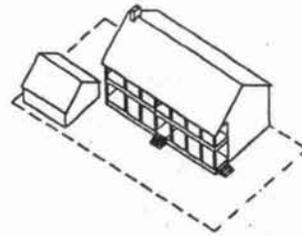
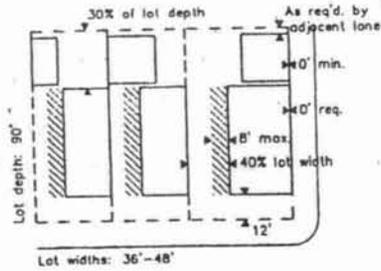


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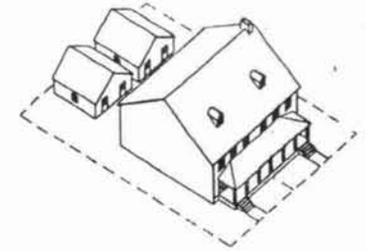
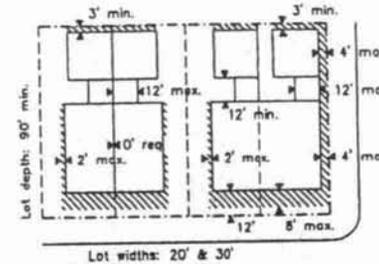
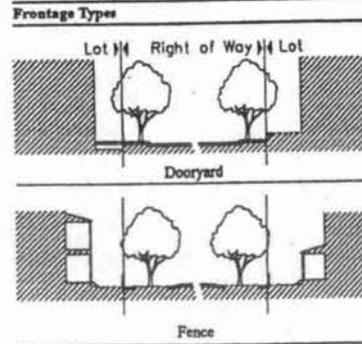
NEIGHBORHOOD GENERAL - SIDE YARD HOUSE

NEIGHBORHOOD GENERAL - DUPLEX HOUSE



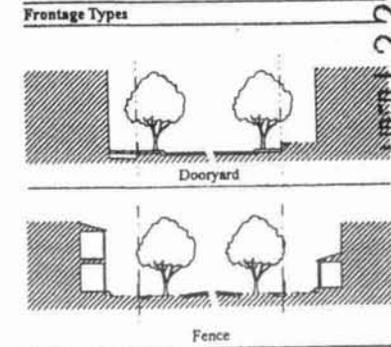
A Side yard House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from the North or West side, and a minimum of 40% of the lot depth from the South or East side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	36 - 48 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
<b>Setbacks</b>	
at building frontage	12 ft.
at building side	0 ft. & 40% of the lot min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	60% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

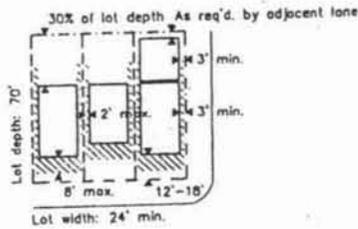


A Duplex House is two units sharing a lot, each with its yard. At corner locations, each duplex can have its own entry. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from one side, 0 feet or 4 feet minimum from the other, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
<b>Setbacks</b>	
at building frontage	12 ft.
at building side	0 ft. & 0 ft. or 4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	4 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

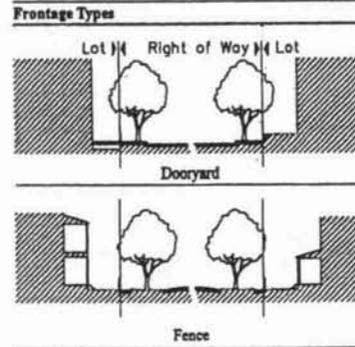


NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE



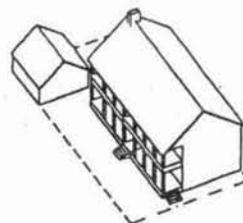
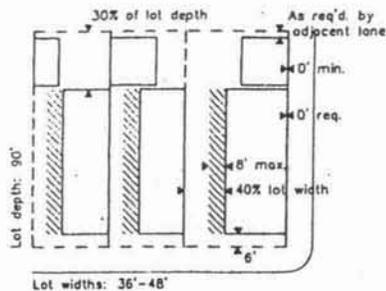
A Rosewalk Cottage is a single-family residence on its own lot, with frontage on a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal building measured from the lot lines are 6-12 feet from the front, a minimum of 3 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 70 ft.
Lot coverage by roofs	60 % max.
<b>Setbacks</b>	
at building frontage	6 -12 ft.
at building side	3 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	70% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max., 3 ft. max. at corner lots
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.



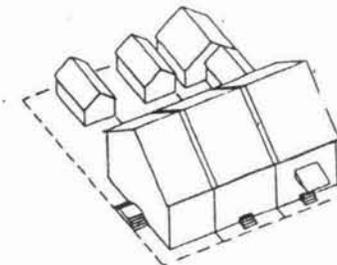
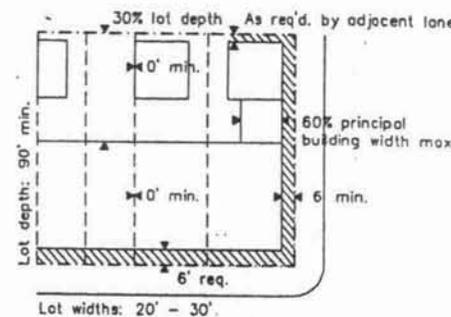
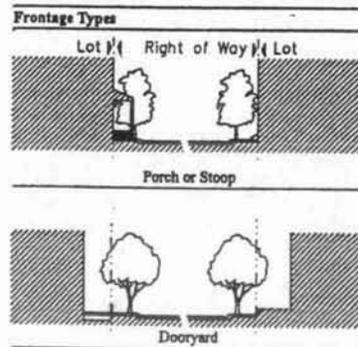
NEIGHBORHOOD CENTER - SIDE YARD HOUSE

NEIGHBORHOOD CENTER - ROW HOUSE



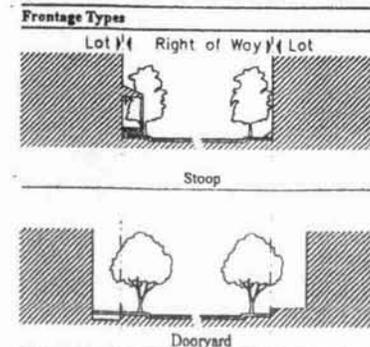
A Side yard House is a single-family residence on its own lot. Within the Neighborhood Center this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from the North or West side, a minimum of 40% of the lot width from the South or East side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	36 - 48 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
<b>Setbacks</b>	
at building frontage	6 ft.
at building side	0 ft. & 40% of the lot min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	50% of lot width min.
<b>Encroachments</b>	
at building frontage	6 ft. max.
at building side	8 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

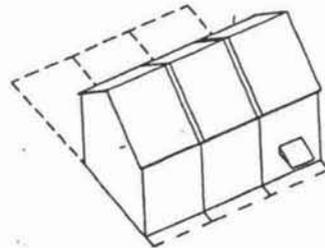
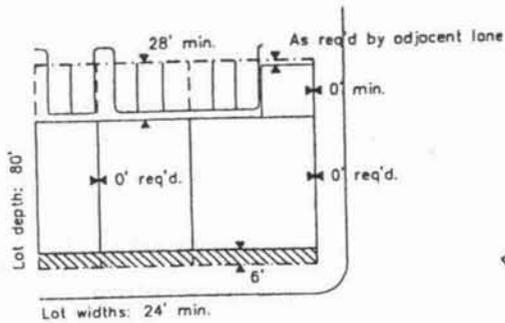


A Row House is a single-family attached residence on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from one side, 0 feet or 6 feet minimum from the other, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 0 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
<b>Setbacks</b>	
at building frontage	6 ft.
at building side	0 ft. & 0 ft. or 6 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
<b>Encroachments</b>	
at building frontage	6 ft. max.
at building side	0 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

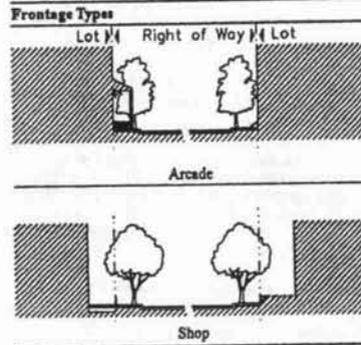


NEIGHBORHOOD CENTER - SHOP/HOUSE



A Shop/ House is a single building which may be residential and/or commercial, and may be attached to others, on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 24 feet in width by approximately 80 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from each side, and a minimum of 28 feet from the rear. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. An outbuilding containing a garage (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of three and one-half stories in height. Outbuildings may be a maximum of one story in height. Garages and/ or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 80 ft.
Lot coverage by roofs	90 % max.
<b>Setbacks</b>	
at building frontage	6 ft.
at building side	0 ft. min.
at building rear	28 ft.
at outbuilding side	0 ft. min.
Building frontage at setback	100% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max. (2 ft. into ROW is permitted)
at building side	-
<b>Height</b>	
of principal building	3.5 stories max.
of first floor above grade	0 ft. req.
of outbuilding	1 story max.



## WALLS

**Materials**

Walls shall be "select" grade wood siding, cedar shingles, lightweight concrete siding (eg. "Hardieplank"), board and batten, stucco, or tumbled or wood moulded red brick to be approved by the Miles Point Architect (MPA).

Foundation walls shall be brick, stucco or parged block.

Walls of outbuildings may, in addition to the wall materials, be board and batten.

Trim shall be 5/4" wood or simulated wood (eg. "Synwood" or light-weight concrete).

Piers shall be brick or stucco.

Retaining walls shall be brick.

Garden walls are permitted in side and rear yards and shall be brick.

Fences along frontages shall be wood pickets painted white. Side and rear yard fences shall be wood pickets or closed wood boards painted white or stained.

Lattice shall be wood. Vinyl is permitted only at crawl space enclosures.

Wood shall be painted or stained, except cedar shingles and exterior wood floors.

Panelized materials are not permitted.

Paints and stains on walls shall not be dark colors; and, on trim shall be white or cream. A maximum of two different colors shall be used on all of the buildings on a single lot: one base color and one complementing or contrasting trim color (excluding shutters which must be dark color with exception of white on cedar house).

**Configuration**

Walls above the foundation, and below the eave shall be of a single material.

Walls shall have no more than 4 outside corners to the frontage.

Gable ends may be a different material than the wall below.

Wood Siding may be lapped, dutch-lapped, or, on Colonial buildings, beaded.

Lightweight concrete siding shall emulate lapped or beaded siding, eased, with no more than 6 inches exposed to the weather.

Parging shall be cement with a smooth sand-finish.

Stucco shall be cementitious with a smooth sand finish.

Brick mortar joints shall be concave or grapevine.

Trim shall be no more than 5/4 inches in depth or 6 inches in width at corners and around openings, except at the front door which may be any size or configuration.

Piers shall be no less than 16 inches square.

Columns shall be of the Doric or Tuscan orders detailed strictly proportional and per *The American Vignola*.

Posts shall be no less than 6 inches square and chamfered.

Intercolumnation on the ground floor shall have vertically proportioned openings.

Crawlspace enclosures shall be enclosed with horizontal boards, louvers, shingles, or framed lattice.

Garden walls at frontages shall be no less than shoulder height. Elsewhere garden walls shall be no more than 7' in height.

Fences at frontages may be as tall as waist height. Fences in rear yards shall be no more than 7' in height.

Lattice shall be framed and mounted between, not in front of or behind, posts.

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## ATTACHMENTS

**Materials**

Stoops shall be brick or wood.

Chimneys shall be brick, or parged masonry.

Flues shall be clay or metal painted to match the roof.

Porches shall be made of wood.

Porch screen frames shall be 5/4 inch maximum and finished in wood or "Synwood."

Railings shall be wood.

Front walks, if any, shall be gravel, brick, slate or stone.

Cornice and soffit shall be wood or cellular PVC.

**Configuration**

Chimneys shall extend to the ground, have a corbelled cap (no more than 5 courses) and either project from the wall, or, be flush with the wall and exposed at the ground floor and above the roof only.

Intercolumnation on the ground floor of porches shall have vertically proportioned openings.

Railings shall have top and bottom rails centered on pickets or sawn balusters. Bottom rails shall be vertically proportioned and shall clear the floor. Spaces between pickets or balusters shall be no more than 3 inches.

Balconies that cantilever shall be visibly supported by brackets and shall be no more than 3 feet in depth.

Porches shall have a minimum depth of 6 feet and may be enclosed by see through screens.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

Equipment including HVAC, utility meters and the like, shall be placed in rear yards and the rear half of the side yards.

## ROOFS

**Materials**

Roofs shall be standing seamterne metal, 5V-crimp, wood shingle, or asphalt shingle to be approved by the Miles Point Architect. Asphalt shingle roofs are permitted on outbuildings and principal buildings where gable ends front the street with the exception of vista terminations and frontage on squares, greens, passages, bodies of water or greenways.

Roofs colors shall be silver, dark gray, black, red, or green.

Gutters and downspouts shall be galvanized metal, painted metal or copper.

Flashing shall be metal or painted metal.

**Configuration**

Principal roofs on detached and semi-detached buildings shall be a symmetrical gable with pitch between 9:12 and 14:12 or a symmetrical hip between 3:12 and 6:12. Roofs with a symmetrical gable fronting the street may have a pitch of 6:12.

Ancillary roofs may be sheds if angled no less than 3:12 and attached to a side wall, rear wall or rear roof slope of the principal roof.

Backbuilding roofs may, in addition to the principal roof forms, be gambrel roofs.

Roofs of a single volume shall be of the same material.

Eaves shall be continuous. Eaves which overhang less than 14 inches shall have a closed soffit. All closed soffits shall have crown moulding and ogee gutters. Eaves which overhang more than 14 inches shall have exposed rafters and half round gutters or a closed soffit with brackets and crown moulding. All pitched roofs shall be trimmed, at minimum, with gable and eave boards all around.

Dormers shall be habitable, no wider than the window below, and placed no closer to the edge of the roof than if centered above the window below.

Roof penetrations shall be placed on the rear slope and finished to match the color of the roof.

Skylights shall be flat glass and mounted on roof slopes not facing frontages.

Towers shall not extend more than 15 feet above the roof ridge and shall not have a floor area exceeding 150 square feet. Towers are permitted on pre-designated lots.

## OPENINGS

**Materials**

Windows shall be wood, vinyl-clad wood, cellular PVC, or extruded aluminum-clad wood and clear glass to be approved by the Town Architect.

Doors and garage doors shall be wood or composite wood with raised panels and painted.

Openings in brick walls to have jack arches the bottom of which shall be no less than 10 inches below the cornice above.

Gates in openings of garden walls shall be made of wood.

Screen doors shall be wood.

Shutters shall be made of wood with louvers or raised panels.

**Configuration**

Windows shall be single, double or triple-hung. Windows, openings and window sashes shall be rectangular with a vertical or square proportion. The centerline of windows shall align vertically. In section, the centerline of the window sash shall align within the centerline of the wall, (no flush mounted windows). Accent windows are permitted at gable ends to be approved by the Town Architect.

Transoms shall be rectangular, arched or fan-shaped.

Window openings shall include an apron below the exterior window sill.

Multiple windows in the same rough opening shall be separated by a 4 inch minimum post.

Muntins shall be authentic (true divided panes) or simulated (milled and fixed on the interior and exterior surfaces) no more than 7/8" in width. Window panes shall be similar proportions throughout the building.

Bay windows shall have no less than 3 sides and shall extend to the floor inside and to the ground outside, or, be visually supported by brackets.

Doors shall be hinged and have raised panels, louvers or raised panels and glass.

Garage doors may be hinged or sliders. Those facing a frontage shall be a maximum of 9 feet wide.

Shutters shall be operable and the size and shape of the associated opening.

Upper story openings shall be centered above lower story openings. Openings in gabled ends must be centered.

## STOREFRONTS

**Materials**

Storefronts shall be made of wood, synthetic wood (e.g.: "Synwood") or metal.

Signs shall be painted wood, painted metal or porcelain.

Awnings shall be a light metal armature with a canvas membrane.

**Configuration**

Storefronts shall be designed individually. The storefront should be detailed while the rest of the building should be simple. The storefront, doors, awnings and signage shall be a unified design.

Doors shall be recessed a minimum of 3' and located near the center of the storefront, except at corners.

Storefront glazing shall be a minimum of 75% of the first floor elevation. All glass shall be clear.

Awnings shall be permitted to encroach the full width of the sidewalk and be within reach at the drip edge. Awnings shall be a minimum of 6 ft. deep. Awnings shall be rectangular in shape with straight edges. Awnings may have side panels but shall not have a bottom (soffit) panel. The vertical drip of an awning may be stenciled with signage.

Awnings shall be dark green sloping rectangles without side or bottom panels. Awnings shall not be internally lit.

Storefront windows shall be between 2 feet and 2.5 feet above ground level and shall reach to within 1 foot of the ceiling. Storefront windows shall be lit from dusk to midnight.

Signs attached to buildings shall be integral to the storefronts, no more than 2 feet in height by any length, and shall be externally illuminated. Signs may contain multiple individual signs which refer to tenants of the building.

Neon signs of no greater than 4 S.F. are permitted inside storefronts.

Blade signs may be attached perpendicular to the facade and extend up to 4 feet from the frontage line and shall not exceed 2 feet in height.

Address numbers shall be a max. of 8" in height.

Storefronts and signage shall be painted a single dark gloss background color. Lettering may be any color.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

## MISCELLANEOUS

Variances may be granted by on the basis of architectural merit by the Design Review Committee.

Properties and improvements shall conform to the intention, not the "letter", of The Architectural Regulations.

The following shall be located in rear yards: HVAC equipment, meters, solar panels, antennas, satellite dishes, garbage cans.

The following shall not be permitted: paneled materials, copper anodized aluminum.

Exterior light fixtures shall be compatible with the style of the building.

Driveways at frontages are allowed for properties without alley access and shall be a maximum of 10 feet wide. Alley driveways may be no wider than the garage doors they serve.

Paved Ruts shall be brick, gravel or grass pavers (e.g. "Grasscrete" blocks). Paved ruts are 2 feet wide and spaced 4 feet apart.

Front walks, if any, shall be gravel, brick, slate or stone.

## STOREFRONTS

**Materials**

Storefronts shall be made of wood, synthetic wood (e.g.: "Synwood") or metal.

Signs shall be painted wood, painted metal or porcelain.

Awnings shall be a light metal armature with a canvas membrane.

**Configuration**

Storefronts shall be designed individually. The storefront should be detailed while the rest of the building should be simple. The storefront, doors, awnings and signage shall be a unified design.

Doors shall be recessed a minimum of 3' and located near the center of the storefront, except at corners.

Storefront glazing shall be a minimum of 75% of the first floor elevation. All glass shall be clear.

Awnings shall be permitted to encroach the full width of the sidewalk and be within reach at the drip edge. Awnings shall be a minimum of 6 ft. deep. Awnings shall be rectangular in shape with straight edges. Awnings may have side panels but shall not have a bottom (soffit) panel. The vertical drip of an awning may be stenciled with signage.

Awnings shall be dark green sloping rectangles without side or bottom panels. Awnings shall not be internally lit.

Storefront windows shall be between 2 feet and 2.5 feet above ground level and shall reach to within 1 foot of the ceiling. Storefront windows shall be lit from dusk to midnight.

Signs attached to buildings shall be integral to the storefronts, no more than 2 feet in height by any length, and shall be externally illuminated. Signs may contain multiple individual signs which refer to tenants of the building.

Neon signs of no greater than 4 S.F. are permitted inside storefronts.

Blade signs may be attached perpendicular to the facade and extend up to 4 feet from the frontage line and shall not exceed 2 feet in height.

Address numbers shall be a max. of 8" in height.

Storefronts and signage shall be painted a single dark gloss background color. Lettering may be any color.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

## MISCELLANEOUS

Variances may be granted by on the basis of architectural merit by the Design Review Committee.

Properties and improvements shall conform to the intention, not the "letter", of The Architectural Regulations.

The following shall be located in rear yards: HVAC equipment, meters, solar panels, antennas, satellite dishes, garbage cans.

The following shall not be permitted: panelized materials, copper anodized aluminum.

Exterior light fixtures shall be compatible with the style of the building.

Driveways at frontages are allowed for properties without alley access and shall be a maximum of 10 feet wide. Alley driveways may be no wider than the garage doors they serve.

Paved Ruts shall be brick, gravel or grass pavers (e.g. "Grasscrete" blocks). Paved ruts are 2 feet wide and spaced 4 feet apart.

Front walks, if any, shall be gravel, brick, slate or stone.

## TREES

## The Front Yard

The summer landscape will be enhanced with the extended bloom time of improved varieties of crapemyrtles introduced by the National Aroretum. White and Pale Pink preferred.

*In addition to the tree in the adjacent thoroughfare,*

Crapemyrtle

## The Rear Yard

Medium size flowering trees and evergreens will add variety and privacy to the private gardens.

*In addition to the trees in the Front Yard,*

Yellowwood

Carolina Silverbell

Southern Magnolia

Foster Holly

## GROUNDCOVER

## All Yards

Low maintenance gardens for seasonal residents can employ native perennials to add interest without creating a rigorous maintenance routine. Serious gardeners can enhance this palette with additional perennials. Natives are encouraged.

Fescue/Bluegrass Blend

Foamflower

St. Johnswort

Creeping Phlox

Fern

Leadwort

Green-and-Gold

Barrenwort

## INSTRUCTIONS

For every 25 feet of frontage or fraction thereof, one species or cultivar of tree from this list shall be planted. Planting other tree species is permitted, but shall not count toward the fulfillment of the objective of establishing a visually coherent spatial structure for microclimate.

Tree heights at the time of planting vary according to species and availability and shall be determined by the Landscape Supervisor.

The placement of trees in frontages shall be within 10 feet of the frontage line and in alleys within 4 feet of either side of the rearlot line. Trees in the Village Edge may be placed anywhere, except at least one tree shall be placed within 8 feet of the rearlot line.

The soil profile shall be protected from deep compaction during building construction by mandating and staking alley or lane access during construction. Compacted soil areas shall be decompacted and hydrological permeability assured by mechanically breaking up remnant basement soil and rototilling 2-3 inches of recycled organic matter before the addition of a mix of organically amended topsoil.

Energy conservation measures, such as planting shade trees near the southern facades of buildings to block summer sun, are encouraged.

Landscape Plans for private gardens should be prepared by a qualified professional in the field of landscape architecture or garden design.

## UNDERSTORY

## All Yards

Flowering trees and shrubs are predominately natives for sustainability and to emphasize the distinct nature of the Chesapeake coastal plain to visitors. Non-native with historic associations are noted with an asterisk.

Serviceberry

Sourwood

Redbud

Fringetree

Oakleaf Hydrangea

Viburnum species

Winterberry

Inkberry

Dwarf summersweet

Dwarf Fothergilla

Hydrangea

Coast Azalea

Pinxter Azalea

Swamp Azalea

Boxwood\*

Witchhazel

Lace Cap Hydrangea\*

## OTHER

## All Yards

The fence line garden is a distinctive feature of St. Michaels. These plants are found at the base of the fence and climbing on the fence.

Hollyhocks

Daylilies

Iris

Trumpet Honeysuckle

Climbing Hydrangea

Trumpet Vine

Climbing Rose Species

Clematis

## *Critical Area Commission*

### PANEL REPORT May 5, 2004

**APPLICANT:** Talbot County

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

**COMMISSION ACTION:** Vote

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

**PANEL RECOMMENDATION:** Pending Panel Discussion

**STAFF:** Ren Serey

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

**DISCUSSION:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTY COUNCIL  
OF  
TALBOT COUNTY, MARYLAND

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

Bill No. 933\*

**\*AS AMENDED\***

Expiration Date: January 22, 2004

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

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

By the Council November 18, 2003

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

By Order

Julie Maus  
Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either  
87 separately or in combination, could forever block the County from accessing the remaining  
88 growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or  
89 exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and  
90  
91

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

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

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

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

114  
115 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT  
116 COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is  
117 hereby amended as set forth herein.  
118

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

121 \* \* \*

122  
123 § 190-109 D (9)  
124

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

133 \* \* \*

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

37 (a) Not more than 128 acres of the Critical Area of the County, including lands within the  
38 incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an  
39 Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts  
40 include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas  
41 of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC)  
42 or Limited Industrial (LI). Town zoning districts include all districts classified as LDA.  
43 The requested IDA classification shall include areas of 20 or more contiguous acres of  
44 LC, GC, LI or town zoning districts established for the IDA of the Critical Area.  
45

46 (b) In determining whether the twenty-acre threshold has been reached, the contiguous areas  
47 of existing commercial and/or industrial zoning districts, whether located in the Critical  
48 Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for~~  
49 ~~the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St.~~  
50 ~~Michaels for growth allocation or growth allocation associated with annexations, and 36~~  
51 ~~acres for the County for growth allocation for property outside of the towns and outside~~  
52 ~~of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~  
53

54  
55 § 190-109 D (11)

56  
57 ~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9)~~  
58 ~~and (10) should be reviewed by the County and Towns by June 1, 1993 for possible~~  
59 ~~reallocation and at least every four years thereafter.~~  
50

51 \* \* \*  
52 § 190-109 D (14)

53  
54 ~~Specific annexation requests for property included in the acres reserved for the towns in~~  
55 ~~§ 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by~~  
56 ~~the County for consistency with the County Comprehensive Plan and shall be subject to~~  
57 ~~all current ordinances regulating annexations. The County shall not act on rezoning~~  
58 ~~requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request~~  
59 ~~for the property has been denied by the town or until 12 months after an annexation~~  
60 ~~request for the property has been submitted to the town, whichever occurs first. If the~~  
61 ~~County approves a rezoning request not associated with an annexation request for~~  
62 ~~property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the~~  
63 ~~property rezoned shall be subtracted from the acres reserved for the Town for annexation~~  
64 ~~in § 190-109D(9) and (10).~~  
5

6 § 190-109 D (15)

7  
8 ~~Growth allocation requests for property that has been annexed within five years of the~~  
9 ~~request shall be reviewed by the County for consistency with the County Comprehensive~~  
0 ~~Plan. Growth allocation request(s) for property that has been in the town for more than~~  
1 ~~five years prior to the request does not require review by the County; however, the towns~~

182 shall inform the County of such reclassification to ensure that the total reserved acres,  
183 listed above, are not exceeded.  
184

185 § 190-109 D (16)  
186

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

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

191 1. Vested Rights: Effective Date of Zoning Text Amendments  
192

193 This ordinance shall apply to the total growth allocation acreage allocated to the County  
194 under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains  
195 unutilized on the effective date of this ordinance.  
196

197 (a) For purposes of this subsection, the term "unutilized" includes the total growth  
198 allocation acreage allocated to the County under State law, less growth allocation  
199 acreage that (1) has been previously allocated by any town or the County; and,  
200 (2) prior to the effective date of this ordinance, has resulted in actual physical  
201 commencement of some significant and visible construction; (3) which has been  
202 undertaken in good faith, with the intention to carry it through to completion; and,  
203 (4) which has occurred pursuant to a validly issued building permit.  
204

205 (b) For purposes of this subsection, growth allocation acreage allocated to the County  
206 does not include growth allocation allocated to the towns under § 8-1808.1 (b)  
207 (5% of the total resource conservation area in the town at the time of  
208 original approval of the town's critical area program by the Critical  
209 Area Commission).  
210

211 (c) For purposes of this subsection, County growth allocation acreage that has been  
212 previously allocated by any town shall first be counted as part of that town's  
213 allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been  
214 exceeded, growth allocation that has been utilized prior to the effective date of  
215 this ordinance shall be deducted against the County's remaining growth  
216 allocation. Growth allocation awarded by any town that remains unutilized on the  
217 effective date of this ordinance shall revert to the County. Growth allocation  
218 awarded by the County, prior to or after the effective date of this ordinance, shall  
219 be deducted from the total growth allocation acreage allocated to the County  
220 under § 8-1808.1 (b).  
221

222 2. Severability.

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

5 invalid, the remaining provisions hereof and the application thereof to all other persons and  
6 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\*

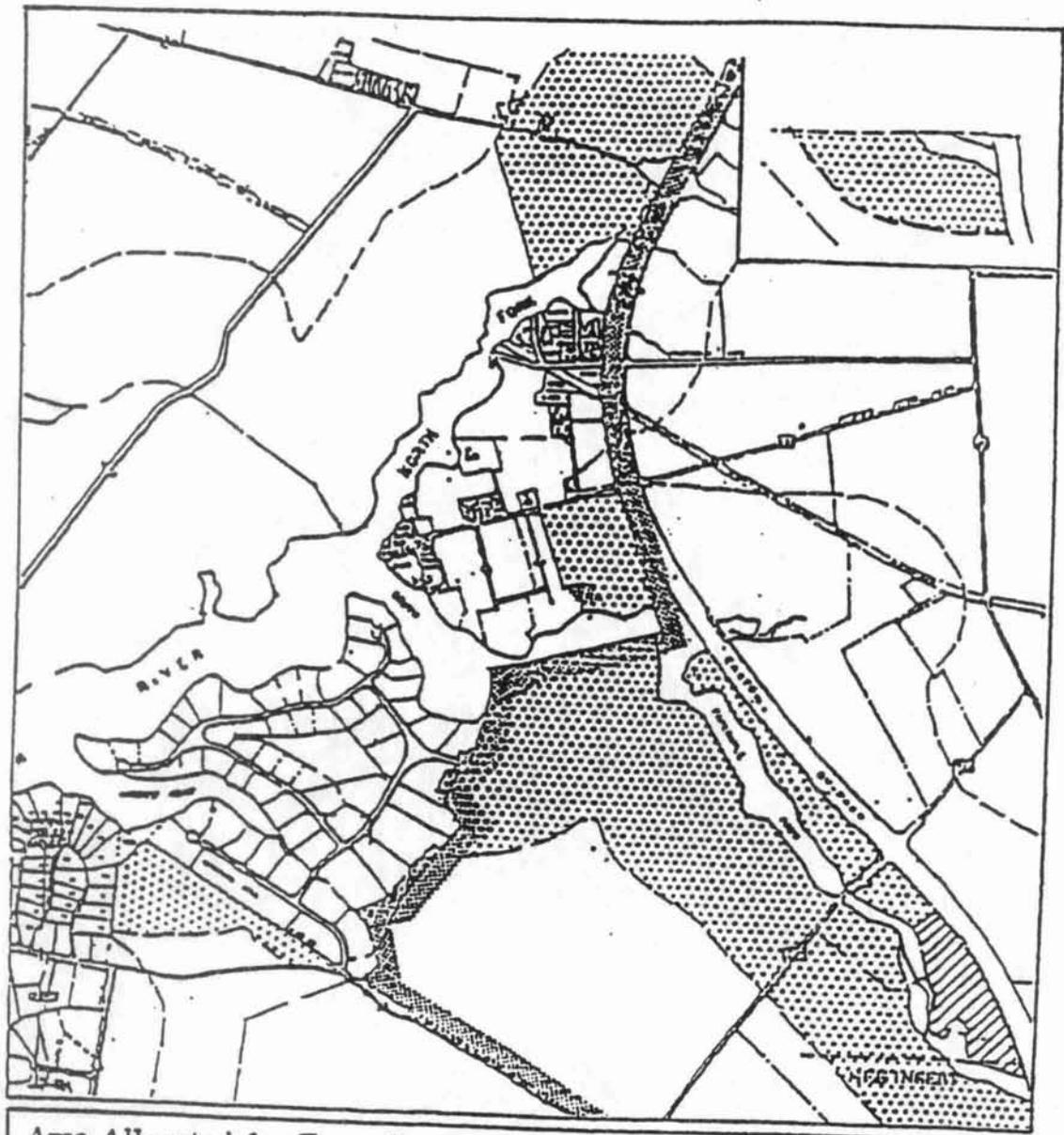
**\*AS AMENDED\***

By Order

*Jessie Maus*  
Secretary

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

ZONING



Area Allocated for Town Development

**TOWN OF EASTON**  
Talbot County, Maryland

 RCA for Annexation or Rezoning

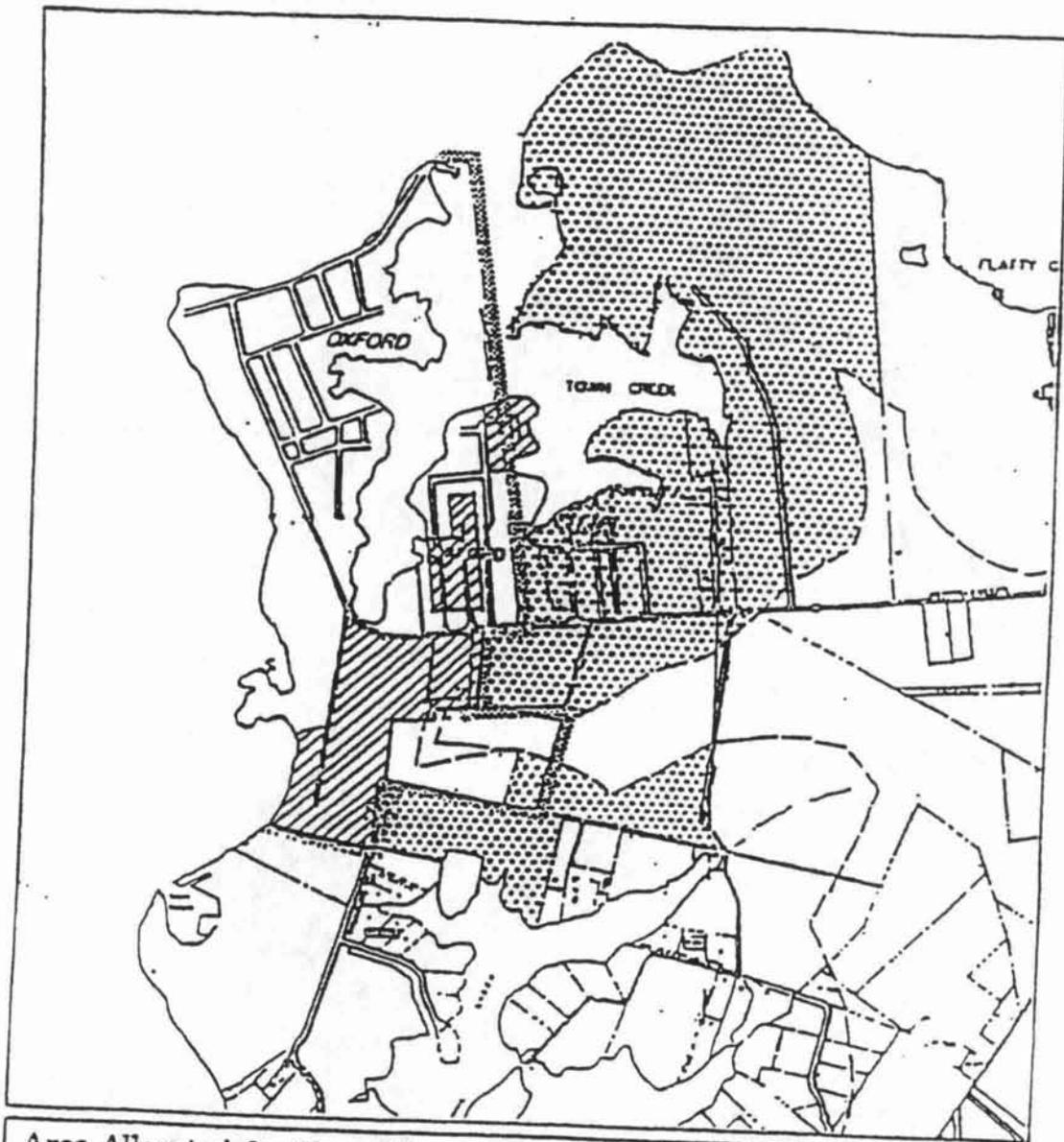
 LDA for Rezoning

Map No. 1

 miles

Wiles Dailey Pruske  
Reston Va. Sarasota, Fla.

ZONING



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

 RCA for Annexation or Rezoning

 LDA for Rezoning

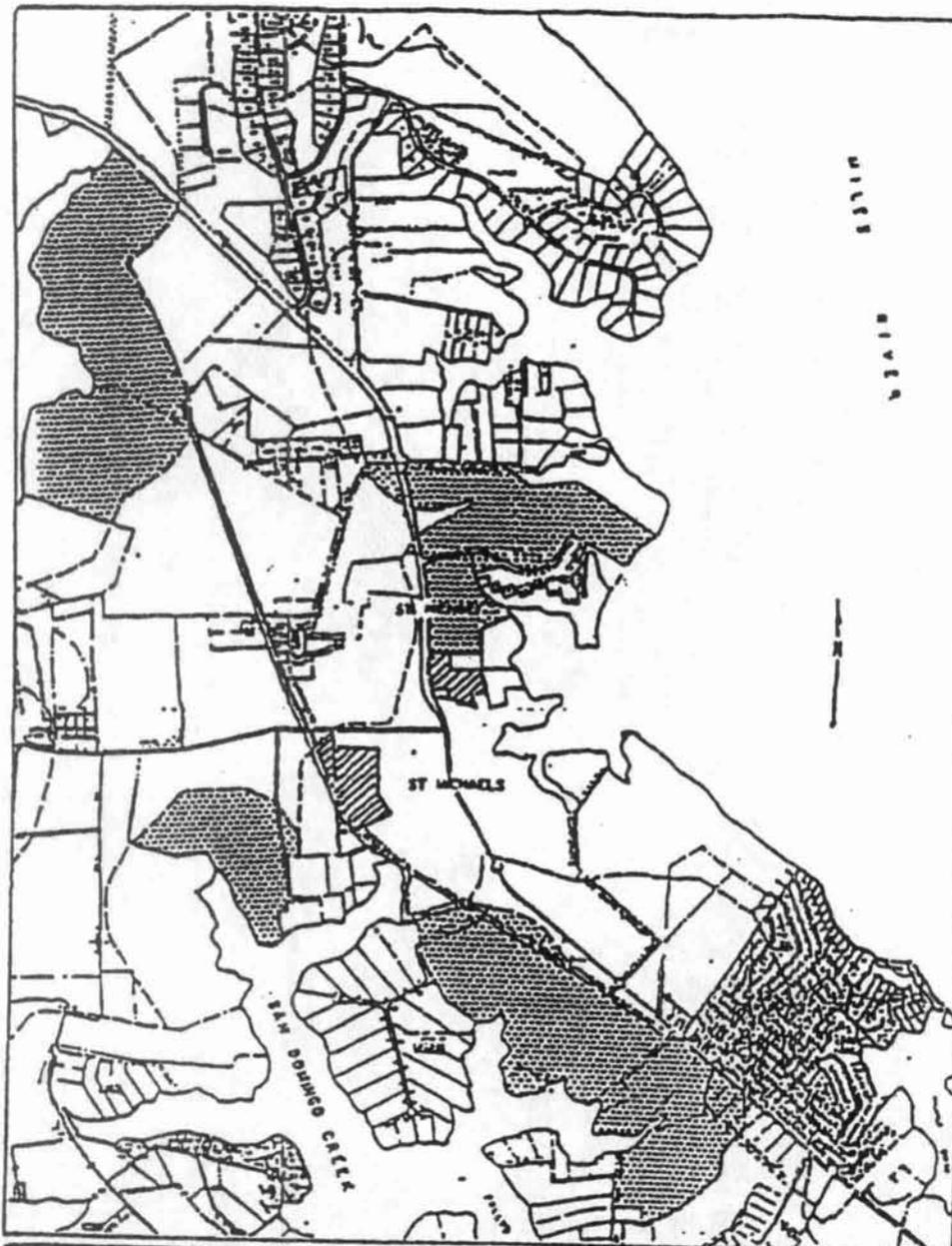
Map No

 miles

Wiles Dailey Prosske

Roxton Va Sarasota, Fla.

ZONING



Area Allocated for Town Development	[Cross-hatch pattern] RCA for Amusement or Recreation	<p>Map No. 1</p>  <p>Wiles Selley Francho Staunton, Va.      Savannah, Ga.</p>
<b>TOWN OF ST MICHAELS</b>	[Diagonal line pattern] LDA for Learning	
Talbot County, Maryland		

# *Critical Area Commission*

## **SUPPLEMENT TO PANEL REPORT**

May 5, 2004

**APPLICANT:** Talbot County

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

**COMMISSION ACTION:** Vote

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

**PANEL RECOMMENDATION:** Deny

**STAFF:** Ren Serey

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

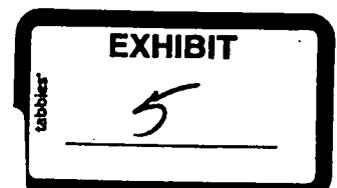
### **DISCUSSION:**

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

The basis for the motion is as follows:

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

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



TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* CIVIL CASE NO. 2-C-04-005095DJ  
\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* TALBOT COUNTY  
\* STATE OF MARYLAND

\* \* \* \* \*

**MOTION TO INTERVENE**

The Town of Oxford ("Oxford"), by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, moves pursuant to Maryland Rule 2-214 for leave to intervene as an additional party defendant in the above captioned case.

**I.**

**Facts Common To All Grounds For Intervention**

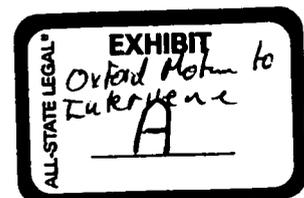
1. The Plaintiff, Talbot County, Maryland (the "County"), is a political subdivision of the State of Maryland.
2. The Town of Oxford is a Maryland municipal corporation, located entirely within the geographic boundaries of the County.
3. At all times relevant hereto, Oxford has exercised the planning 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.

# ZONING ORDINANCE



Oxford, Maryland

*Adopted July 9, 1996*



## **SECTION 33. TOWN OF OXFORD CRITICAL AREA OVERLAY DISTRICT ("O")**

### **33.01 - Statement of Intent.**

The purpose of the Critical Area Overlay District ("O") is to implement Oxford Critical Area Program and to protect and enhance water quality and habitat resources located within the Oxford Critical Area. The geographic areas for which the following district regulations apply shall be the Oxford Critical Area District as defined in Section 4.03 and as designated on the Town of Oxford Critical Area Overlay District Maps.

The intent of this district is to provide special regulatory protection for the resources located within the Oxford Critical Areas and to foster more sensitive development activity for shoreline areas. Another objective is to minimize adverse impacts to water quality and natural habitats. As such, the Town of Oxford considers the Oxford Critical Area Program to be legally part of this Zoning Ordinance. The Program shall require that all project approvals are consistent with the Critical Area Law and therefore minimize adverse impacts on water quality, conserve fish, wildlife and plant habitat and establish policies for growth management.

### **33.02 - Land Use Management District Classifications.**

Within the Town of Oxford Critical Area Overlay District ("O") there shall be three land use management area classifications:

1. Intensely Developed Areas (IDA);
2. Limited Development Areas (LDA); and
3. Resource Conservation Areas (RCA) which shall be as shown on the Official Critical Area Map. These land use management areas correspond to the definitions established in the Chesapeake Bay Critical Area Criteria, as amended, for each area and specifically as identified on the Town of Oxford Critical Area maps, adopted as part of the Oxford Critical Area Program. Mapped land use management area classifications are based on land uses established on or before 1 December 1985, except for areas where the land classification may be changed by granting the Growth Allocation (GA) floating zone district classification. The following regulations shall be applied based on the specific land management classification.

### **33.03 - Density Provisions**

1. Intensely Developed Areas (IDA)

Permitted density in the Intensely Developed Area (IDA) shall be as established in the underlying base zone.

2. Limited Development Areas (LDA)

The density of development and minimum lot sizes permitted within a Limited Development Area (LDA) shall be as established in the underlying base zone.

3. **Resource Conservation Areas (RCA)**

Residential densities in Resource Conservation Areas (RCAs) shall be no more than one (1) dwelling unit per twenty (20) acres, except as provided for in 5 below, and Section 9.01.

4. **Determining Density**

Determination of density shall be based on the gross site area of the parcel, excluding tidal wetlands, except that in determining residential densities for a site in the RCA, private wetlands may be included in the calculation of one (1) unit per twenty (20) acre density, provided the development density on the upland portion of the site does not exceed one (1) dwelling unit per eight (8) acres.

Minimum and maximum lot sizes shall be governed by standards applicable to the underlying base zoning districts, and this ordinance. Nothing in this regulation shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members, provided no such conveyance shall result in a density of greater than one (1) dwelling unit per twenty (20) acres -- except as provided in 5 below.

5. **Intra-family Transfer:** The one (1) unit per twenty (20) acre density limitation in the RCA shall not prevent a bona fide intra-family transfer subjected to the following limitations:

- a. Intra-family transfer will be permitted on parcels of land in Oxford where it is shown that the parcel was recorded on or before 1 March 1986 and such parcel is at least seven (7) acres and not more than sixty (60) acres in size.
- b. A bona fide intra-family transfer shall be subject to all the requirements to the Town of Oxford Subdivision Regulations and a notation shall be placed on the final subdivision plan denoting the lot(s) that are created under these provisions.
- c. Subdivision of land under the bona fide intra-family transfer provisions contained herein shall be subject to the following limitations:
  - (1) Parcels 7 acres to less than 12 acres cannot be subdivided into more than a total of 2 lots.
  - (2) Parcels 12 acres to less than 60 acres cannot be subdivided into more than 3 lots.

- (3) A lot created pursuant to these provisions may not be subsequently conveyed to any person except:
- (a) where the conveyance is to a member of the owner's immediate family or
  - (b) where the conveyance of the lot is as part of a default on a mortgage or deed of trust.
- (4) Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. In addition, any lot created under this section may not be transferred or sold to a third party, not a member of the owner's immediate family or holder of a mortgage or deed to trust on the property, unless and until the Planning Commission has determined that the following can be conclusively provided:
- (a) a change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer and when such circumstances are consistent with the warrants and exception contained herein, or;
  - (b) other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCAs warrant an exception.
- (5) Deeds of transfer shall include the provisions contained in (4) above as covenants which shall restrict the subsequent transfer or sale of a lot or lots created pursuant to the intra-family transfer provisions contained herein to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property.

#### **33.04 - General Regulations.**

1. Except as provided below, permitted uses, accessory uses and special exception uses in the Critical Area District shall be limited to those permitted within the existing applicable underlying base zoning district, as shown on the Official Oxford Zoning Maps.
2. Existing industrial and commercial facilities, including those directly supporting agriculture, forestry, aquaculture shall be allowed in the RCA. However, additional land may not be zoned for industrial or commercial development.
3. The following uses are prohibited in the Critical Area District due to their high potential for adverse impact on plant and wildlife habitats and water quality, unless it has been

demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.

- a. Non-maritime heavy industry; and
- b. Transportation facilities.

4. The following uses are prohibited in the Critical Area District:

- a. New solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles;
- b. New sanitary landfills;
- c. New sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities;
- d. New commercial and industrial maritime or related facilities in the Buffer within Resource Conservation Areas (RCAs);
- e. The application of sludge in the Buffer;
- f. New wash plant for surface mining and mineral extraction uses in the Buffer; and
- g. New sand and gravel mining and related uses in the Buffer.

### **33.05 - General Buffer Regulations.**

Except as provided for in Section 8.04 (Buffer Exemption Area Provisions), new buildings, structures, activities, and facilities permitted in the underlying zoning district (base zoning district) are prohibited within the Buffer, except the following:

- 1. Community piers, individuals private piers, docks, and launching ramps facilities.
  - a. For community piers, only the following uses shall be permitted to locate in the Buffer:
    - (1) slips;
    - (2) docks, piers, launching ramps, access roads, paths; and
    - (3) loading/unloading area.

b. Where community or individual slips or piers are to be provided in the subdivision that is approved after April 26, 1988, (date of the Oxford Critical Area Program adoption), the number of slips or piers, shall be the lesser of (1) or (2) below:

- (1) Up to one slip for every fifty (50) feet of shoreline in a subdivision in the Limited Development Area (LDA) and Intensely Developed Areas (IDA), and one slip per three hundred (300) feet of shoreline in a subdivision in the Resource Conservation Area (RCA); or
- (2) The foregoing provisions of Section 33.05 b notwithstanding, with respect to projects for which applications for community or individual slips or piers have been submitted to the Oxford Board of Port Wardens prior to May 30, 1988 the maximum number of slips or piers shall be as set forth below:

<b>Platted Lots or Dwellings in the Critical Area</b>	<b>Slips</b>
up to 15	1 for each lot
16 -40	15 or 75%, whichever is greater
41 -100	30 or 50%, whichever is greater
101 - 300	50 or 25%, whichever is greater
over 300	75 or 15%, whichever is greater

(3) The Board of Appeals may grant a variance from the provisions of this subsection in accordance with Section 11.02.7.

c. New commercial marinas and other related commercial maritime facilities where permitted in LDA and IDA, expansion of existing commercial marinas and other related commercial maritime facilities in RCA, and uses accessory thereto, provided that non-water-dependent uses and activities shall not be located in the Buffer. Only the following which are considered commercial marine "water-dependent" uses, shall be permitted in the Buffer:

- (1) moorings, buoys, and slips;
- (2) docks, piers, launching ramps, access roads and paths;
- (3) loading and unloading areas;
- (4) fueling areas; and

- (5) public areas.
- d. Public beaches and other public water-oriented recreation and education facilities, uses and related structures, provided that non-water-dependent uses and activities shall not be permitted in the Buffer. Only the following, which are considered public "water-dependent" uses, may be permitted to locate in the Buffer:
- (1) lifeguard stations;
  - (2) nature study/passive recreation facilities with no structures or impervious surfaces;
  - (3) moorings, buoys, and slips;
  - (4) docks, piers, launching ramps, access roads and paths; and
  - (5) loading and unloading areas.
- e. Fisheries and related commercial water-dependent facilities, provided that non-water-dependent uses and activities shall not be permitted in the Buffer. Only the following, which are considered fisheries "water-dependent" uses, shall be permitted to locate in the Buffer;
- (1) docks, piers, launching ramps, access roads and paths;
  - (2) seafood offloading docks;
  - (3) fueling area; and
  - (4) shore facilities for aquaculture.
- f. Research facilities operated by county, state or federal government agencies or educational institutions conducting marine related studies provided non-water dependent facilities are located outside of the Buffer.
- g. Commercial water-dependent fisheries facilities including, but not limited to, structures for crab shedding, fish off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations, and fisheries activities, may be permitted in the Buffer, in IDAs, LDAs and RCAs.

2. No cutting or clearing of trees or natural vegetation is permitted in the Buffer except that limited cutting or clearing of trees is permitted for the following purposes under an approved Forest Management Plan:
  - a. For personal use, providing that Buffer functions are not impaired and trees cut are replaced;
  - b. To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
  - c. In conjunction with horticultural practices used to maintain the health of individual trees;
  - d. To provide access to private piers;
  - e. To install or construct an approved shore erosion protection device or measure; or
  - f. To protect forests from extensive pest or disease infestation or threat from fires if approved by the Department of Agriculture or the Bay Watershed Forester.
  
3. Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions as set forth in the policies of the Oxford Critical Area Program.

### **33.06 - Development Standards in Intensely Developed Areas (IDAs)**

All development and redevelopment in IDA shall be subject to the following development standards and/or conditions, in addition to those established in other sections of this ordinance, except that development on lots qualifying under Section 9.01, 3. must only comply with these provisions insofar as possible as determined by the Planning Commission:

1. All sites for which development or redevelopment activities are proposed, and which require building permit, subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical Area.
2. No structure or uses associated with development in an Intensely Developed Area shall be permitted within the Buffer, except for water-dependent facilities, unless the site is within a Buffer Exemption Area;
3. Development and redevelopment shall be subject to the Habitat Protection guidelines in the Oxford Critical Area Program;

4. Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve a ten (10%) percent reduction of pre-development pollutant loadings unless the Town Commissioners have approved offsets as set forth in the Oxford Critical Area Program.
5. Development and redevelopment projects shall delineate those site areas not covered by impervious surfaces that are to be maintained or established in vegetation. Where vegetation is not proposed, the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in 33.08 below;
6. Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:
  - a. Construct appropriate structural measure to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or
  - b. Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be use.) If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

**33.07- Development Standards in Limited Development Areas (LDAs) and Resource Conservation Areas (RCAs).**

Development and redevelopment in an areas designated Limited Development (LDA) or Resource Conservation (RCA) shall be subject to the following standards, except that development on lots of record qualifying under Section 9.01, 3. must only comply with these regulations insofar as possible as determined by the Oxford Planning Commission. However, water dependent facilities and habitat protection areas are not subject to the "in so far as possible" exception.

1. All sites for which development or redevelopment activities are proposed, and which require subdivision approval or site plan review and approval, or a building permit, shall identify environmental or natural features on that portion of the site within the Critical Area;

2. Site development shall be designed to assure that those features or resources identified as Habitat Protection Areas are afforded protection as prescribed in the Habitat Protection Element of Town of Oxford Critical Area Program;
3. Roads, bridges, and utilities serving development shall be so located as to avoid disturbances to habitat protection areas. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas, the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists;
4. All development activities which cross, or are located adjacent to, tributary streams in the critical Area shall:
  - a. not be located in the Buffer but be designed in a manner to reduce increases in flood frequency and severity;
  - b. provided for the retention of natural streambed substrate; minimized adverse impacts to water quality and storm water runoff; and
  - c. retain the existing tree canopy.
5. Development activities shall be located and designed to provide for the maintenance of the wildlife and plant habitats on the existing site and to maintain continuity with those on adjacent sites. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site.
6. Forest and development woodlands, as defined by the Oxford Critical Area Program, shall be created or protected in accordance with the following;
  - a. When no forest exists on the site, at least fifteen (15%) percent of the gross site area shall be afforested. The location of the afforested areas should be designed to reinforce protection to habitats on the site or to provide connections between forested areas when they are present on adjacent sites;

- b. When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan (the developer shall submit plans for development and areas to be cleared to the Bay Watershed Forester of the Maryland Forest, Park and Wildlife service for comments and recommendations and shall transmit the comments to the Planning Commission). A grading permit must be obtained prior to any clearings or cutting associated with proposed development and in addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions:
- (1) All forests cleared or developed shall be replaced on not less than an equal areas basis on the site or on an alternative site approved by the Planning Commission;
  - (2) No more than twenty (20%) percent of the forested or developed woodland within the site proposed for development may be removed, except as provided for in the requirement below, and the remaining eighty (80%) percent shall be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants). Removal of forest or developed woodland cover in the Buffer is prohibited;
  - (3) The clearing of forest or developed woodlands up to twenty (20%) percent shall be replaced on an area basis of one to one. A developer may propose clearing up to thirty (30%) percent of the forest or developed woodland on a site, but the trees removed must be replaced at the rate of 1.5 times the area removed;
  - (4) If more than thirty (30%) percent of the forest on a site is cleared, the forest is required to be replanted at three (3) times the total area extent of the cleared forest;
  - (5) If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the above requirement;
  - (6) Surety in the form of a performance bond or other means acceptable to the Town Attorney shall be provided in an amount suitable to assure forest replacement as required; and
  - (7) The forests and developed woodlands required to be retained or created through afforestation shall be maintained through restrictive covenants, easements, or similar instruments in a form approved by the Town Attorney.

7. Development on slopes greater than fifteen (15%) percent shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability;

8. Except as otherwise provided in this subsection for stormwater runoff, manmade impervious surfaces are limited to 15% of a parcel or lot. However,

a. If a parcel or lot one-half (1/2) acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to twenty-five (25) percent of the parcel or lot.

b. If a parcel or lot one-fourth (1/4) acre or less in size was in nonresidential use on or before December 1, 1985, then man-made impervious surfaces associated with that development are limited to twenty-five (25) percent of the parcel or lot.

c. If an individual lot one (1) acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed twenty-five (25) percent of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed fifteen (15) percent.

d. These provisions do not apply to a trailer park that was in residential use on or before December 1, 1985.

e. The Oxford Board of Appeals may grant a variance from the provisions of this section in accordance with the Section 11.02, subsections 7 through 10.

9. Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:

a. Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion;

b. Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used.) If published data are not available, either the annual rate is assumed to be two (2) feet

per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

### **33.08 - Woodland Reforestation and Afforestation Standards.**

Where reforestation or afforestation is required the following minimum standards shall be used within the Critical Area District:

1. The replacement or establishment of forests or developed woodlands shall assure a diversified plant community, but may include other types of tree plantings where necessary to correct an existing soil stabilization problem. Diverse forest plantings shall include a canopy layer, an understory layer, and a shrub layer.
2. For each acre of land where woodlands must be replaced or established, plantings shall consist of trees and/or wildlife shrub species spaced approximately at eight (8) foot intervals in rows eight (8) feet apart, or other suitable spacing as determined by the Bay Watershed Forester on a site-by-site basis, which result in a minimum of three-hundred (300) stems per acre after the first growing season.
3. Required planting plans shall be prepared and submitted with the site plan or preliminary and final subdivision plat. A planting plan shall be included as a required public improvement with site plans or subdivisions plats. The planting plan must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a professional registered forester, landscape architect, or an experienced landscape designer. The planting plan shall show:
  - a. The site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements and the general location of structures and uses of abutting properties;
  - b. Existing and proposed grades;
  - c. Existing vegetative cover to be retained and the location, general size and type of such vegetation;
  - d. The methods for protecting plant materials after construction;
  - e. A plant schedule and plan listing plants to be used giving their botanical and common names, size at time of planting, and quality of each;
  - f. An indication of whether plants are balled and burlapped, container grown or bare root; and

- g. An indication of the spacing and location of all proposed trees, shrubs and ground covers.

4. Plant Materials and Planting Schedule

- a. Although plant types should be chosen from the recommended plant list available from the Town Office or the Maryland State Bay Watershed Forester, plant types that vary from this list may be substituted with the approval of the local Bay Watershed Forester. Plants for afforestation or reforestation shall be approved by the Bay Watershed Forester for suitability in regard to the eventual size and spread, susceptibility to diseases and pests, and adaptability to existing soil and climate conditions.

- b. All planting should be done between December and April of each year. For the first two (2) years steps should be taken to control competing vegetation. Technical Assistance from the State's Bay Watershed Forester is highly recommended.

5. The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and cost estimate, the developer or owner shall enter into an agreement with the Town of Oxford to provide plantings as required. The agreement shall be in a form and substance as approved by the Town and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of one hundred and twenty percent (120%) of proposed plant materials, labor and maintenance costs to be used as follows:

- a. If all afforestation or reforestation is not completed within two (2) years after the first spring planting date following recordation, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited, or if a bond or surety has been posted, payment in full to the Town shall be ordered. The funds, so received, shall be used by the Town to defray the cost of providing the approved afforestation or reforestation for the site.
- b. If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be a continuing obligation of the property owner.
- c. All security posted will be held for a period of two (2) years after installation of the planting, to assure the proper maintenance and growth. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted to the extent necessary to replace the dead plant materials.
- d. The Town Commissioners or their designee may from time to time release those portions of the surety which may be appropriate.

6. Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.
7. All plantings shall be inspected by Town staff or the Bay Watershed Forester upon notification by the developer or owner and shall be approved according to the following standards:
  - a. The planting shall adhere to the approved plan. Substitutions or revisions may be made with the approval of the Bay Watershed Forester or the Planning Commission.
  - b. All plants shall be protected from vehicular encroachment by wheelstops, curbs or other barriers unless distance provides adequate protection.

### **33.09 - Special Provisions for Water-Dependent Facilities.**

1. All applications for development of Commercial Marinas or other water related uses in the Oxford Critical Areas must include the following information:
  - a. Water depth contours shown at two (2) foot intervals at mean low water taken by sounding (unless otherwise specified by the Board of Port Wardens).
  - b. Existing and proposed grading surface of the land.
  - c. Location of natural features and the drainage areas of all non-tidal wetlands.
  - d. Land within the 100 year floodplain.
  - e. Location of all existing and proposed structures.
  - f. Location of all existing or proposed site improvements including storm drains, culverts, retaining walls and fences.
  - g. Description, method and location of water supply and sewerage disposal facilities.
  - h. Mean high and mean low water line.
  - i. All existing and proposed piers, buoys, launching ramps, shore protection structures.
  - j. Location and dimensions of all areas to be dredged including present and proposed depths.

- k. Volume of dredge spoil to be removed, type of material, location and dimensions of disposal area(s) including dikes.
  - l. Location of all existing and proposed land-based building and structures on the site and a description of uses and activities to be conducted in each.
  - m. Location and dimensions of all boat launching ramps.
  - n. Location and dimensions of all boat slips and mooring buoys.
  - o. Location of fuel dock and fuel storage tanks.
  - p. Location of all required buffer/yards/building restriction lines.
2. Applications for water-dependent use shall be accompanied by an environmental assessment report which indicates how the proposed project achieves the following criteria:
- a. That the activities will not significantly alter existing water circulation patterns or salinity regimes;
  - b. That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
  - c. That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
  - d. That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activities or vessels, or from boat cleaning and maintenance operations is minimized;
  - e. That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
  - f. That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the areas immediately surrounding the dredging operation or within the Critical Area.
  - g. That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area;
  - h. That interference with the natural transport of sand will be minimized; and

- i. That no disturbances will occur to aquatic areas of historic waterfowl staging and concentration areas.

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL  
RESOURCES

Defendant

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

AND CLERK  
OF TALBOT COUNTY  
EASTON, MARYLAND  
FILED  
DEC 1 AM 11 43

\* \* \* \* \*

**ORDER**

Having considered the Motion to Intervene filed by The Commissioners of St. Michaels ("St. Michaels") and the Motion to Intervene filed by the Town of Oxford ("Oxford") in the above-captioned matter, and the memoranda of law and arguments of counsel in support thereof and in opposition thereto, which motions, memoranda and arguments were considered by the Court at a hearing on November 17, 2004; and

Finding that St. Michaels and Oxford (collectively the "Towns") each meet the criteria of Maryland Rule 2-214 (b)(2), being political subdivisions of the State, and this being an action involving the validity Talbot County Bill No. 933, which would affect the Towns;

NOW THEREFORE, it is, this 1<sup>st</sup> day of <sup>December</sup>~~November~~, 2004, by the Circuit Court for Talbot County, Maryland,

**ORDERED** that said Motions to Intervene of The Commissioners of St. Michaels and the Town of Oxford be, and are hereby, **GRANTED**; and it is further

**ORDERED** that The Commissioners of St. Michaels and the Town of Oxford are hereby joined as additional parties defendants to this action; and it is further

**ORDERED** that The Commissioners of St. Michaels and the Town of Oxford shall promptly file and serve their initial pleadings as required by Maryland Rule 2-214 upon all parties of record to this action.

Date: 12/1/04

Calvin R. Sanchez  
Judge

TALBOT COUNTY MARYLAND

COURT  
TALBOT COUNTY  
EASTON, MARYLAND

Plaintiff

2004 DEC 8 PM 2 31

IN THE CIRCUIT COURT FOR  
TALBOT COUNTY

vs

DEPT. NATURAL RESOURCES  
CRITICAL AREA COMMISSION

CASE NO. 20-C-04-005095

Defendant

**ORDER**

This case came before the court for hearing on the 17<sup>th</sup> day of November, 2004, on the Motion to Dismiss filed by Defendant Department of Natural Resources (DNR) and its Critical Area Commission (Commission). The complaint filed by Plaintiff, Talbot County, Maryland (Talbot), seeks Declaratory Judgment in Count 1, Writ of Mandamus in Count 2, and an appeal of an administrative action of DNR in Count 3. In response to the filing of an amended Complaint, with affidavit, DNR has withdrawn its motion to dismiss Count 2.

Count 1 of the Complaint seeks declaratory judgment that Bill 933, a proposed amendment to Talbot's critical area program, was approved by the Commission as a matter of law. The complaint states that the Bill was enacted by the Talbot County Council in December 2003 and submitted to the Commission for approval on February 4, 2004; that the Commission failed to act on the proposed amendments within the 90 day period required by Section 8-1809(n)(i), Natural Resources Article, MD. Ann. Code; and that as a result of the failure to act during that time period the proposed amendments are deemed approved as a matter of law. Talbot also seeks court

declaration that the Commission, which subsequently refused to approve Bill 933, acted arbitrarily and illegally, applying improper criteria in making its decision to deny approval of the proposed amendments to Talbot's program although they complied with the applicable standards required by law.

The DNR bases its motion to dismiss Count 1 on the claim that there exists no justiciable controversy between the parties for which the court could award declaratory judgment. It claims that the status of Bill 933 has been resolved by the failure of the Commission to approve the Bill. Talbot claims that a controversy exists as to the viability of the amendments contained in Bill 933, and that the court, by declaratory judgment, should resolve that controversy by trial.

The court, having considered the pleadings and argument of counsel, concludes that there exists a situation of uncertainty with respect to the status of the critical area program of Talbot County, and that the court, by declaratory judgment, can remove that uncertainty in the interests of the parties and the citizens of Talbot County.

DNR has withdrawn its motion to dismiss Count 2 of the Complaint.

Count 3 of the Complaint seeks review by the court of the Commission's decision to disapprove the amendments submitted by Talbot under the Administrative Procedure Act. DNR claims that no statutory authority exists which would permit such a review and Talbot has cited no authority for such review.

It is, thereupon, this 8th day of December, 2004, by the Circuit Court for Talbot County,

ORDERED, that Defendant DNR's Motion to Dismiss Count 1 of the Complaint is denied, and it is further

ORDERED, Defendant DNR's Motion to Dismiss Count 3 of the Complaint is granted, said Count being hereby dismissed.

Calvin R. Sanders

Calvin R. Sanders, Judge

COPY

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

THE COMMISSIONERS OF ST. MICHAELS

Counter-Plaintiff

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant

\*  
\* CIVIL CASE NO. 20-C-04-005095DJ  
\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* TALBOT COUNTY  
\* STATE OF MARYLAND

\* \* \* \* \*

\* \* \* \* \*

**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

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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 through 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".

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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.

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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.

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:

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 Huntman 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

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19.2 After the annexation of the Strausburg Property and the Huntman 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

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 Huntman Property, consisting of approximately 17 acres of land described in a deed dated August 31, 2001 from Elsie W. Huntman 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 Huntman 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:

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22.1 From 1998 through 2003 numerous applications relating to the said Perry Cabin Farm and/or the Huntman 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 Huntman 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

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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 Huntman 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);

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;

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;

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.

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;

- 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 14<sup>th</sup> 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. Cuezella, Esquire  
 Marianne D. Mason, Esquire  
 Assistant Attorneys General  
 Maryland Department of Natural Resources  
 580 Taylor Avenue, C-4

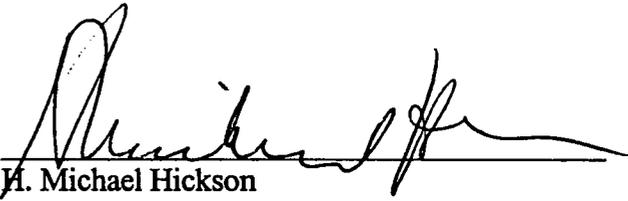
Law Offices Of  
 BANKS, NASON  
 & HICKSON  
 Professional Assoc.  
 Baptist Street  
 P.O. Box 44  
 Salisbury, MD  
 21803-0044

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

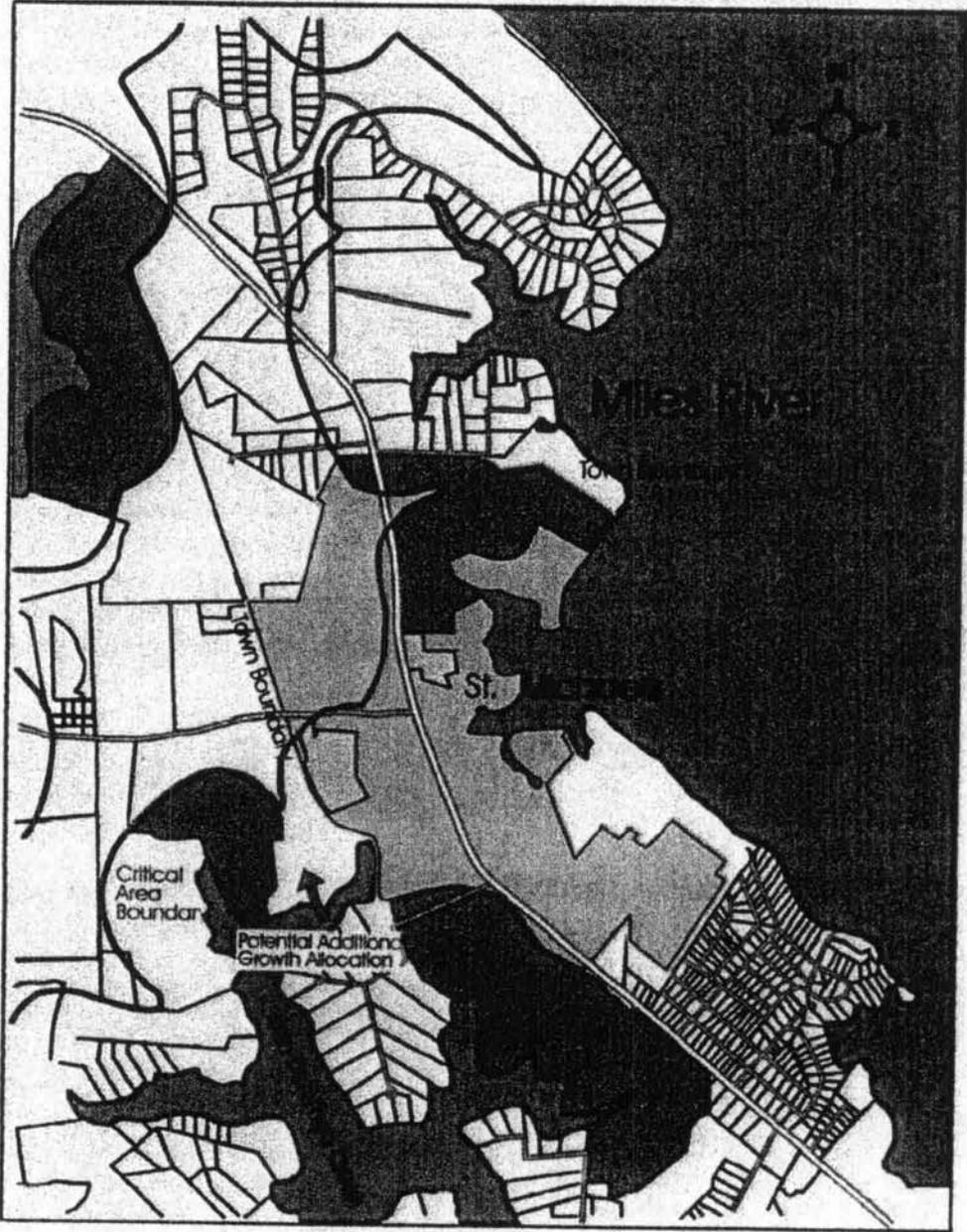
David R. Thompson, Esquire  
Brynja M. Booth, Esquire  
Cowdrey, Thompson & Karsten, P.A.  
130 N. Washington Street  
Easton, Maryland 21601  
Attorneys for Town of Oxford



H. Michael Hickson

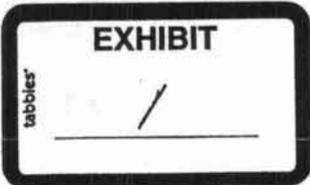
Law Offices Of  
BANKS, NASON  
& HICKSON  
Professional Assoc.  
J. Baptist Street  
P.O. Box 44  
Salisbury, MD  
21803-0044

Designated Critical Area Growth Allocation Areas



Areas identified for future growth allocation and suitable for development in both the Talbot County Critical Area Program and the St. Michaels Critical Area Program

RCA for annexation or rezoning
  LDA for rezoning



**DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT**

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

**Section 1: RECITALS**

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

IMP FD SURE \$ 20.  
 RECORD FEE 75.  
 TOTAL 95.  
 Rpt # 7573  
 Bk # 568  
 03:44

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

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

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

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

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

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

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

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

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

St. Michaels Planning on behalf of The Commissioners of

E. 202

LIBER 1 225-405

**EXHIBIT**  
 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1.12.1 The consideration granted to the Town is not a limitation and/or exaction imposed upon development of the Subject Property;
- 1.12.2 The consideration granted to the Town is fair and reasonable in nature, amount and duration as compared to the value of the Qualified Vested Rights granted by this Agreement to the Developer, the Owners, and their respective successors in interest; and
- 1.12.3 The rights of the Developer, the Owners, and their respective successors in interest, to challenge the legality, amount, or nature of such consideration to the Town are hereby waived.

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

E. 205

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

Miles Point Development Rights And Responsibilities Agreement

St. Michaels Planning Commission on behalf of The Commissioners Of St. Michaels

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

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

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

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

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

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

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

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

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

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

E. 206

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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

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

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

## **Section 2: Definitions**

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

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

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

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

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

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

E. 207

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

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

LIBER 1 225<sup>6</sup> OF 614-10

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

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

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

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

E. 208

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

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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

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

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

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

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

2.13 "Development Plan" means the plans, specifications and other documents describing to the intended development of the Subject Property in a manner substantially similar to the Miles Point Concept Plan, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003, attached hereto and incorporated herein by reference (Exhibit 1 hereto), as it may be amended by the Town in the process of granting the Development Approvals.

2.14 "DRRA" means this Development Rights and Responsibilities Agreement, as it may be amended from time to time, including all addenda, schedules and exhibits incorporated by reference.

2.15 "Effective Date" means the Execution Date of the last of all the parties to execute this Agreement, provided that this Agreement is: (a) fully executed; and (b) is recorded in the County Land Records within twenty (20) days after being fully executed.

2.17 "Enabling Ordinance" means Ordinance No 2-2003, adopted by the Town on November 11, 2003, 2003 pursuant to the Development Agreement Statute, to establish procedures and requirements for the consideration of development rights and responsibility agreements.

2.18 "Execution Date" means, with respect to each party, the date on which the party executes this Agreement.

2.19 "Existing Land Use Regulations" means those certain Town land use laws, rules, regulations and policies, to the fullest extent permitted by the Development Agreement Statute, in effect on the Effective Date, applicable to and governing the use, density and/or intensity of

The Midland Companies, Inc.; St. Michaels Miles Point Development Rights  
Point, LLC; Miles Point Property, LLC & And Responsibilities Agreement  
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St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

development of the Subject Property substantially in conformity with that portion of the Development Plan applicable to the Subject Property, except that Developer and Town may mutually agree that the Project will be subject to a later enacted or amended rule, regulation, ordinance, policy, condition, or environmental regulation that becomes effective after the Effective Date.

2.19 "Future Land Use Regulations" means those certain land use regulations which take effect after the Effective Date.

2.20 "Governmental Authority" means any applicable federal, state, county or Town governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over this Project.

2.21 "HOA" means the association of Owners which shall be formed pursuant to the Declaration of Covenants, Restrictions and Conditions for the Project (sometimes hereinafter the "Declaration"). The HOA shall be responsible for the annual collection of the Annual Unit Payments from the Owners of the residential units and the live/work units located within the Project, as specified in the Duty to Pay, Section 10.4 of this Agreement, and in the Schedule Of Consideration To The Town, incorporated herein as Exhibit 10, and payment of these funds to the Town.

2.22 "Hunteman Property" shall refer to those certain tracts or parcels of land east of Maryland Route 33 and binding on Yacht Club Road and being more particularly described as follows:

- 2.22.1 All that land described in the deed dated August 31, 2001, from Elsie W. Hunteman to Miles, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 96, *et seq.*;
- 2.22.2 Consisting of 17.156 acres, more or less and more particularly shown on a plat prepared by McCrone, Inc., titled "ANNEXATION PLAT OF THE LANDS OF ELSIE W. HUNTEMAN TO THE TOWN OF ST. MICHAELS SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND," dated March 1998, a copy of which plat is attached hereto as Exhibit 7; and
- 2.22.3 Consisting of two (2) tracts of land which are the subject of a petition for annexation to the Town and Town Commissioners Resolution No. 2003-06, adopted on October 28, 2003.

2.23 "Midland" means The Midland Companies, Inc., a District of Columbia Corporation, together with its successors and assigns to the extent permitted by this Agreement. Midland is at certain stages of the development process referred to as a "Developer" in this Agreement as that term is defined in Section 2. Midland acquired its rights in the contract of sale for the Perry Cabin Land from Point, and thereafter Midland assigned all of its rights in said contract and the Perry Cabin Land to Miles. Midland is the entity that has submitted all of the applications to the Town for growth allocation for development on the Subject Property. Midland, Miles, Point and TND Inc. are related entities in that George A. Valanos is the President of Midland and TND Inc. and the Managing Member of Miles and Point.

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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2.24 "Miles Point II" refers to the application for the award of growth allocation relating to a proposed project on the Perry Cabin Land and the Huntman Property, submitted to the Town by letter dated September 9, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application, which application was withdrawn by Midland on or about December 19, 2003.

2.25 "Miles Point III" refers to the application for the award of growth allocation relating to a proposed project only on the Perry Cabin Land, submitted to the Town by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland, and the concept plan relating thereto as modified through processing by the Town of the application. Miles Point III is the subject of this Agreement, and unless otherwise specified herein, where there is a factual distinction the term "Miles Point" refers to the application, concept plan and/or proposed project that is the subject of the application submitted by letter dated December 23, 2003, from Bruce C. Armistead, Esquire, on behalf of Midland.

2.26 "Miles Point Annexation Agreement" shall refer to the Annexation Agreement dated October 28, 2003, and amended February, 2004 between the Town and Miles through which the Huntman Property was annexed into the Town which is now or about to be recorded among the County Land Records.

2.27 "Miles" means Miles Point Properties, LLC, a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Miles is the current owner of the Huntman Property. Miles is the contract purchaser of the Perry Cabin Land, by virtue of the assignment to Miles from Midland of all of its interest as purchaser in a contract for the purchase of the Perry Cabin Land. It is intended that Miles will be the owner of all of the Miles Point Property (consisting of the Perry Cabin Land and the Huntman Property). Miles is a real estate holding company formed for purposes of taking ownership of the Miles Point Property. TND Inc. is responsible for obtaining the Development Approvals. When such Approvals are obtained and financing for the public facilities is in place, and construction of the development is scheduled to commence, it is intended that Miles will convey the Miles Point Property to TND Inc., at which time TND Inc. shall become the successor and assigns to Miles as the "Developer" to all or any part of the Miles Point Property. Although Miles is referred to as the Developer, obligated to the Town in that capacity herein until conveyance to TND Inc. of all of Miles' interest in the Miles Point Property, Miles will not functionally act as a developer of the Miles Point Property. George A. Valanos is the Managing Member of Miles.

2.28 "Miles Point Annexation" means the annexation accomplished by Town Resolution No. 2003-06, which extended the Town boundaries to include approximately 42.066 acres of land, of which approximately 17 acres is fast land, which represents the Huntman Property.

2.29 "Mile Point Property" means collectively the land that is designated in this Agreement as the Perry Cabin Land and the land that is designated in this Agreement as the Huntman Property.

E. 211

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

Miles Point Development Rights And Responsibilities Agreement

St. Michaels Planning Commission on behalf of The Commissioners Of St. Michaels

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2.30 "Mortgage" means any mortgage or deed of trust granted by an owner encumbering real property, encumbering any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the locality of the Subject Property (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale and leaseback documents, lease and leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute); provided that such mortgage, deed of trust or other form of security instrument, and any instrument evidencing any such other form of security arrangement, has been recorded among the County Land Records.

2.31 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other lender, and their successors and assigns, that is secured by the Subject Property.

2.32 "Owner" means all the persons and/or entities that are the current record title fee simple owner(s) of the Subject Property, and their successors in title to each lot or parcel of land that is a part of the Subject Property on which an individual residential unit or a live/work unit is located or intended to be located on the Subject Property pursuant to the subdivision and development of the Subject Property in accordance with the Development Plan. Each Developer hereby agrees to bind the Subject Property to the terms of this Agreement immediately upon becoming an Owner of the subject Property during the term of this Agreement. A duty of an Owner under this Agreement with respect to a particular subdivision lot or parcel of the Subject Property on which a Unit is intended to be located according to the Development Plan shall be the joint and several duty of each person and/or entity that is a record title fee simple owner of such lot or parcel of the Subject Property at the time such duty accrues or is due to be performed according to this Agreement.

2.33 "Parties" or "Party" mean the parties or a party to this Agreement, being Town and/or Developer and including their successors or assigns

2.34 "Performance Bond" means a bond of a corporate surety licensed in the State of Maryland issued for the benefit of Town in the sum equal to one hundred percent (100%) of the estimated cost of the work for the applicable public improvements undertaken by Developer pursuant to the Public Facilities Agreement.

2.35 "Perry Cabin Land" shall refer to approximately 72.167 acres of land more particularly described as "Parcel 2" and "Parcel 2A" in a plat prepared by McCrone, Inc. titled "Growth Allocation Plat, The Lands of Miles Point Property, LLC and Part of the Lands of Perry Cabin Associates, Second Election District, Talbot County, Maryland" prepared for The Midland Companies", dated September 2003, a copy of which plat is attached hereto as Exhibit 6. The Perry Cabin Land is part of the same land described in a deed dated May 14, 1979 from Charles F. Benson and Harry C. Meyerhoff to Perry Cabin Associates, a Maryland partnership, recorded among the County Land Records in Liber No. 533, folio 486, *et seq.* The Perry Cabin Land was annexed to the Town pursuant to an Annexation Agreement dated May 6, 1980 between the

Town, Perry Cabin Associates Limited Partnership, and Talbot County, Maryland, recorded among the Land Records of Talbot County in Liber No. 548, folio 167 *et seq.* (the "Perry Cabin Farm Annexation Agreement") Midland is the equitable owner and contract purchaser of the Perry Cabin Land.

2.36 "Planning Commission" means the Planning Commission of the Town, created and constituted pursuant to Article 66B of the Maryland Code.

2.37 "Point" means St. Michaels Point, L.L.C., a Maryland limited liability company, together with its successors and assigns to the extent permitted by this Agreement. Point was the original contract purchaser of the Perry Cabin Land from Perry Cabin Associates. Point has assigned all of its right, title and interest in said contract of sale, and in the Perry Cabin Land, to Midland. It is intended that Point will have no further role in the ownership, development or sale of the Perry Cabin Land or the Huntman Property. George A. Valanos is the Managing Member of Point.

2.38 "Project" means the development of the Subject Property as a Traditional Neighborhood Development in accordance with the Development Plan.

2.39 "Public Facilities Agreement" means the public facilities agreement between the Town and the Developer relating to construction and installation of the public facilities on the Subject Property in accordance with the Development Plan.

2.40 "Qualified Vested Rights" is the right granted to the Developer in Section 9 to the Existing Land Use Regulations as they apply to the development of the Subject Property in accordance with the Development Plan, in order for the Developer to obtain a certain use, density and intensity of development of the Subject Property without the Developer having to make substantial improvements to all portions of the Subject Property.

2.41 "Qualifications" means the qualifications, reservations and exemptions to the vested rights in the Existing Land Use Regulations otherwise provided to Developer in Section 9.1, which authority is reserved to the Town in Section 9.2 of this Agreement.

2.42 "Sewer Approval" means any action by the Developer which uses in whole or in part a sewer allocation or approval on the Subject Property for the development in accordance with the Development Plan, including: (1) installation of infrastructure; (2) entering into a binding contract to sell a lot in the Subject Property; or (3) conveying any lot in the Subject Property.

2.43 "Subject Property" means the real property that is subject to this Agreement, which as of the Effective Date shall be the Perry Cabin Land. This Agreement may be amended in the future such that the Subject Property also includes the Huntman Property.

2.44 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Subject

Property as a Traditional Neighborhood Development that are consistent with the Development Plan.

2.45 "State" means the State of Maryland.

2.46 "Third Party" means any person or legal entity not a party to this Agreement.

2.47 "TND Inc." shall refer to "TND Development, Inc." a Maryland corporation, together with its successors and assigns to the extent permitted by this Agreement. When financing for the public facilities is in place and construction of the development is scheduled to commence it is intended that Miles will convey the Miles Point Property (consisting of the Perry Cabin Land and the Huntman Property) to TND Inc., at which time TND Inc. shall become the successor and assign to Miles and TND Inc. will be the "Developer" as that term is defined in this Section 2. TND Inc. will develop and construct the infrastructure and community structures pursuant to the Public Facilities Agreement. George A. Valanos is the President of TND.

2.48 "Traditional Neighborhood Development" means a style of subdivision and development design that is described and governed by Town Zoning Ordinance (No. 109, as amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone).

2.49 "Town" means the "The Commissioners of St. Michaels", a municipal corporation, organized and existing under the laws of the State of Maryland, together with its successors and assigns.

2.50 "Town's Collateral Improvement Fund" means the fund described in Section 10 of this Agreement.

2.51 "Town Commissioners" means the elected officials that constitute the executive and legislative body of the Town, known as the Commissioners of St. Michaels.

2.52 "Unit" means a dwelling unit or a live/work unit as shown, authorized and limited by the Development Plan and the Development Approvals.

2.53 "Zoning Ordinance" means the zoning regulations contained in Town Ordinance No. 109, as amended, applicable to development of the Subject Property.

**Section 3: Exhibits (list).** The following documents are exhibits to this Agreement, are incorporated herein by reference, even though some or all of them may not be attached hereto.

Exhibit 1 – Drawing titled "Miles Point Concept Plan", showing the proposed development of the Perry Cabin Land and the Huntman Property, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003.

Exhibit 2 – Design Code for Miles Point, for the development of the Miles Point Property, prepared by Duany Plater-Zyberk & Company.

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

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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- Exhibit 3 – Miles Point Annexation Agreement, between the Town and Miles, dated October 28, 2003.
- Exhibit 4 – Public Facilities Agreement, between the Town and TND Inc., dated October 28, 2003.
- Exhibit 5 – Perry Cabin Farm Annexation Agreement.
- Exhibit 6 – Plat of Perry Cabin Land.
- Exhibit 7 – Plat of Huntzman Property Annexation.
- Exhibit 9 – Public Facilities Agreement
- Exhibit 10 – Schedule Of Consideration To The Town, consisting of 19 pages, and which is an integral part of Section 10 of this Agreement.
- Exhibit 11 – Schedule Of Town Administrative And Utility Fees, Charges And Rates
- Exhibit 12 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone)
- Exhibit 13 - Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part f (TND Lot and Building Standards)
- Exhibit 14 - Certification Of Interest In The Subject Property

**Section 4: Subject Property.** The real property that is subject to this Agreement is the Perry Cabin Land. It is contemplated by the parties that this Agreement may be amended in the future such that the Subject Property shall also include the Huntzman Property.

**Section 5: Effective Date, Recordation, Term, and Termination of Agreement**

- 5.1 This Agreement shall be effective, and confer all rights and obligations according to the terms of this Agreement, on the Effective Date of this Agreement.
- 5.2 Unless waived in writing by the Developer, and subject to the conditions precedent to termination described in Section 5.3 of this Agreement, this Agreement shall terminate upon the first to occur of the following described circumstances (hereinafter "Terminating Circumstances"), which Terminating Circumstances the Developer shall in good faith, timely and diligently attempt to avoid:
  - 5.2.1 On the twenty-first (21st) day following the Effective Date, this Agreement has not been recorded among the County Land Records.
  - 5.2.2 The failure of at least one Developer, as defined herein, to have an interest, of the type required by the Development Agreement Statute, in the Perry Cabin Land at any time before the Developer obtains fee simple title to the Perry Cabin Land.

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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5.2.3 One hundred and eighty (180) days after the Developer has obtained all final Development Approvals and Sewer Approval for the Subject Property, and the Developer has failed within that time to obtain fee simple title to the Perry Cabin Land or fails to immediately thereupon subject the Perry Cabin Land to all of the terms and conditions of this Agreement. When a Developer is now or hereafter becomes the fee simple title owner of all of the Subject Property before the final subdivision plat and Declaration are recorded, that Developer hereby binds all of its successors in title to the Subject Property to the rights and duties of the Owner(s) of the Subject Property as described herein, as distinct from the rights and duties of the Developer. Notwithstanding anything to the contrary stated or implied in this Agreement, the Developer has no obligation to the Town to obtain or retain fee simple title to the Perry Cabin Land and shall make that decision solely at Developer's discretion.

5.2.4 Sixty (60) days after any one of the Development Approvals, after having been timely applied for by the Developer, has been denied by a binding decision which has been rendered final, subject to the following:

5.2.4.1 This Agreement is not intended to expressly or impliedly obligate the Town, or any officer, employee or administrative or executive body of the Town, to grant or award any discretionary or non-discretionary Development Approvals; on the contrary, each request for a Development Approval shall be impartially reviewed by the applicable reviewing governmental authority for the Town, based solely on the facts of record and the applicable laws and regulations.

5.2.4.2 In the event a Development Approval contains conditions, not expressly contemplated in this Agreement, the Developer may reject the Development Approval by providing within thirty (30) days of the Developer's receipt of the written Development Approval written notice to the Town of the Developer's objection to one or more conditions in which case the approval shall not constitute a Development Approval as that term is used in this Agreement, but shall be considered the denial of a Development Approval.

5.2.4.3 The conditions contained in the Planning Commission's Recommendation to the Town Commissioners concerning the Miles Point II application for growth allocation are expressly contemplated by the parties hereto to be the same or similar to the conditions for the Miles Point III application for growth allocation as may be recommended by the Planning Commission and imposed by the Town Commissioners.

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- 5.2.5 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and granted, is not final by reason of an administrative or judicial remedy that has been pursued by a person legally entitled so to do, and that still is pending.
- 5.2.6 Ten (10) years after any one of the Development Approvals, after having been timely applied for by the Developer and denied, is not final by reason of an administrative or judicial remedy that has been pursued by the Developer, and that still is pending.
- 5.2.7 Ten (10) years after any applicable law (including Talbot County Bill No. 933, enacted by the Talbot County Council on December 23, 2003) which purports to remove the power of the Town, as the sole and exclusive authority, to the exclusion of the Talbot County Council, to award the IDA growth allocation, contemplated by this Agreement, to permit development on the Perry Cabin Land in a form substantially similar to that shown on the Development Plan, has not been invalidated or otherwise rendered ineffective by: (a) a final and legally exhausted decision by any governmental agency authorized so to do; (b) a final and legally exhausted decision by a court of competent jurisdiction; or (c) applicable legislation.
- 5.2.8 When the Subject Property has been fully developed by the construction on the Subject Property of a Unit on all of the lots approved for a Unit according to the Development Plan and occupancy permits have been issued by the Town therefor, and all of the Developer Obligations and the payment of all consideration to the Town in connection with the Project, as specified by Section 10 of this Agreement, have been satisfied.

5.3 As conditions precedent to the termination of this Agreement by reason of the occurrence of any Terminating Circumstance described in Section 5.2 of this Agreement:

- 5.3.1 The Developer shall, by writing signed by an authorized officer of the Developer and delivered to the Town:
  - 5.3.1.1 Relinquish all Development Approvals obtained by the Developer or its predecessors in interest in pursuit of the terms and requirements of this Agreement; and
  - 5.3.1.2 Withdraw all applications for Development Approvals then pending that were sought pursuant of the terms and requirements of this Agreement; and

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5.3.2 The Developer, for itself, its successor Developer Assigns, and its successors in interest as Owner of the Subject Property, hereby waives all

claims of impermissible change of mind in any subsequent administrative decision, as compared to any decision rendered in pursuit of a Development Approval pursuant to this Agreement, relating to all or any part of the Subject Property.

5.4 Notwithstanding anything to the contrary contained in this Agreement, if no Terminating Circumstance set forth in Section 5.2 has sooner occurred, or if all of the Terminating Circumstances set forth in Section 5.2 that have sooner occurred have been waived, then this Agreement shall nevertheless automatically terminate seventy-five (75) years after the date of this Agreement, subject, however, to Section 18.23 of this Agreement.

5.5 Developer and Town may mutually waive, in whole or in part, any or all of the Conditions set forth in Section 5.2 at any time prior to the deadline set forth in Section 5.3 for the satisfaction of such condition(s), provided that such waiver is in writing.

5.6 Developer or any Owner may require the Town to sign and provide, for recording in the County Land Records by the requesting Developer or Owner, written confirmation of the date and fact of the termination of this Agreement upon the occurrence of both of the following:

5.6.1 The occurrence of any Terminating Circumstance described in Section 5.2 hereof, which is not timely waived; and

5.6.2 The occurrence of the conditions precedent described in Section 5.3.1 of this Agreement.

5.7 Anything to the contrary in this Agreement notwithstanding, including but not limited to Sections 14 and 16 of this Agreement, if the approved final subdivision plat for the entire Subject Property and the approved Declaration in accordance with the Development Plan are recorded among the County Land Records and fee simple title to at least one lot or parcel of the Subject Property is thereafter conveyed to an Owner who is not the Developer, then development of the entire Subject Property shall not substantially deviate from the recorded subdivision plat, Declaration, the Development Plan, and the Developer Obligations in place at the time of such conveyance, and this Agreement unless the Developer obtains a final order from a court of competent jurisdiction.

## **Section 6: Binding Effect, Assignment, Notice and Release**

6.1 Binding Effect of Agreement. The Subject Property is hereby made subject to this Agreement. Development of the Subject Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to the benefit of, the respective parties to this Agreement, and their successors in interest, and constitute covenants that shall run with the Subject Property.

6.1.1 Town. Whenever the term "Town" is used in this Agreement, such term shall include the successor governmental entity to the Town.

**6.1.2 Developer.** Whenever the term "Developer" is used in this Agreement, such term shall include the successor in interest to the Developer of the Subject Property (the "Developer Assignee"). Except where specifically stated to the contrary in this Agreement, the rights and duties of the Developer pursuant to this Agreement follow the person who is properly assigned such rights and duties in accordance with the requirements of this Agreement. A duty of the Developer pursuant to this Agreement shall be the liability of the person that is the Developer at the time the duty of the Developer accrues pursuant to this Agreement, and his successor Developer Assignees. When an Owner of some or all of the Subject Property is also the Developer of the Subject Property, the conveyance of title by said Owner to some or all of the Subject Property passes the rights and duties of the Owner to his successor in title to that same portion of the Subject Property; but does not assign the rights and duties of the Developer of the Subject Property pursuant to this Agreement unless both of the following conditions are satisfied: (1) the assignment of the rights and duties of the Developer is expressly stated in the conveyancing document, and (2) all of the requirements of this Agreement for the assignment are satisfied.

**6.1.3 Owner.** Except where specifically stated to the contrary in this Agreement, the rights and duties of the Owner of a particular parcel of the Subject Property pursuant to this Agreement follow the person who is the successor in title to that same parcel of the Subject Property. A duty of an Owner relating to a specific Unit or parcel of the Subject Property shall be the liability of the person or entity that is the Owner of said property at the time that duty accrues, and the successors in title of that Owner to that portion of the Subject Property. When the Developer of the Subject Property is also an Owner of some or all of the Subject Property, the Developer, in his solely capacity as an Owner, shall have the rights and duties of the Owner pursuant to this Agreement with respect to all of the Subject Property owned by the Developer.

**6.2 Enforcement By Town.** The Planning Commission has entered into and executed this Agreement on behalf of the Town pursuant the authority of the Development Agreement Statute and the Enabling Ordinance. Therefore, the Town, by and under the direction and authority of the Town Commissioners, shall have the right to enforce the terms of this Agreement.

**6.3 Transfer and Assignment of Rights and Interests.**

**6.3.1 Assignment.** There shall be only one Developer of the Subject Property at a given time for the purposes of this Agreement. The Developer for the purposes of this Agreement shall at all times be the same person or entity as the "Developer" for the purposes of (and as defined in) the Public Facilities Agreement until all obligations to the Town under the Public Facilities Agreement with respect to the Subject Property have been fully satisfied.

**6.3.1.1** At all times before the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the

Development Plan and the approved Declaration in accordance herewith, the Developer shall be either Midland, Miles or TND Inc.

6.3.1.1.1 It is the intention of the parties that Miles will assign its ownership interest acquired and to be acquired in the Miles Point Property to TND Inc. and the Town hereby expressly consents to this assignment provided that George A. Valanos is the President of, and the owner of, or has control of the voting rights to, at least a 34 % equity interest in, TND Inc. at all times while TND Inc. is acting in the capacity of the Developer of the Subject Property (except in the event of the death of George A. Valanos; or in the event of a default by the Developer in the terms of a mortgage, deed of trust or other document securing the repayment of a loan by a lien on the Subject Property, which default results in the foreclosure and sale of the Subject Property).

6.3.1.2 After the recordation among the County Land Records of the final approved subdivision plat of the Subject Property in accordance with the Development Plan and the approved Declaration in accordance herewith:

6.3.1.2.1 The transfer of title to one or more lots and/or sections of the Subject Property shall not transfer the rights and duties of the Developer except in accordance with the conditions specified herein.

6.3.1.2.2 Developer shall not sell, assign or transfer its rights and obligations as Developer of the Subject Property under this Agreement to any person other than those described in Section 6.3.1.1, natural or legal, at any time during the Term of this Agreement, (as distinguished from the conveyance of title to land constituting some or all of the Subject Property without rights and/or duties of the Developer created by this Agreement) except in compliance with all of the following conditions:

6.3.1.2.2.1 All such rights and duties relating to all of the Subject Property are assigned by the assignor in writing;

6.3.1.2.2.2 All such rights and duties relating to all of the Subject Property are accepted by the assignee in writing;

6.3.1.2.2.3 The assignor is not in default on any obligation or duty of the assignor to the Town imposed by the Developer Obligations or by this Agreement;

6.3.1.2.2.4 The assignee is, or shall be upon execution of the assignment, the "Developer" for the purposes of the Public Facilities;

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6.3.1.2.2.5 The assignee has demonstrated to the Town his or its ability to perform and satisfy the duties of the Developer under this Agreement; and

6.3.1.2.2.6 The assignment is consented to by the Town in writing, provided that such consent will not be unreasonably withheld.

6.3.1.3 Before the approved final subdivision plat and the approved Declaration are recorded among the County Land Records the Developer and its successors shall not sell or otherwise convey legal or equitable title to one or more individual lots or parcels of the Subject Property, on which a Unit is located or is contemplated to be located by the Development Plan, to an Owner.

6.3.1.4 Constructive Notice and Acceptance. Every person who, now or hereafter, owns or acquires any right, title or interest in or to the Subject Property, or any part thereof, is, and shall be, conclusively deemed to have consented and agreed to be bound by every provision contained in this Agreement applicable to all or the portion of the Subject Property acquired, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

6.3.1.5 Release of Developer. Upon the assignment of the all of the duties and obligations of the Developer (as distinguished from the duties under this Agreement of the Owners and HOA) under this Agreement and the Public Facilities Agreement, Developer will be released from its obligations under this Agreement with respect to the Subject Property, or portion thereof, so assigned arising subsequent to the effective date of such assignment, if Developer obtains the Town's written consent to such assignment.

6.4 Owner's Responsibilities. A transferee of the title to a lot or parcel of the Subject Property shall be responsible for satisfying the good faith compliance requirements of the Developer under this Agreement relating to the portion of the Subject Property owned by such transferee that have not been satisfied at the time the transferee takes title to the lot or parcel of the Subject Property. Nothing contained herein shall be deemed to grant to Town discretion to approve or deny any sale or transfer, except as otherwise expressly provided in this Agreement. A default by any transferee shall only affect that portion of the Subject Property owned by such transferee and shall not cancel or diminish in any way Developer's or any other transferee's rights hereunder with respect to any portion of the Subject Property not owned by such transferee.

6.5 Amendment and Waiver. This Agreement may be waived, amended or cancelled, in whole or in part, only by written consent of all of the necessary parties to such amendment or waiver. In every instance of a waiver, amendment or termination of a term of this Agreement, the Town, by and through the Planning Commission, shall be a necessary party thereto. In any waiver, amendment or termination of any of the Qualified Vested Rights, described in Section 9

of this Agreement, relating to any lot or parcel of the Subject Property, the record title owners of all lots or parcels of the Subject Property shall be necessary parties thereto. In any waiver, amendment or termination of any provision of a Development Approval, including a plat or condition that constitutes part of such approval, the record title owners of all lots or parcels of the Subject Property directly affected by such Development Approval shall be necessary parties thereto; but this provision shall not preclude a property owner from seeking and obtaining relief available pursuant to an applicable land-use law. In an amendment or termination of any other provision of this Agreement, only the Town and persons whose land is directly involved in such amendment or termination shall be necessary parties thereto. All such writings shall be signed by the appropriate officers of the Town and Developer and in a form suitable for recordation in the County Land Records, and shall be recorded in the County Land Records. This provision shall not limit any remedy of the Town or Developer as provided by this Agreement.

**6.6 Notices.** All notices and other communications in connection with this Agreement shall be in writing and delivered either by personal (hand) delivery or by United States certified or registered mail. Each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until actually received.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

TND Development, Inc.  
1228 Thirty-First Street, N.W.  
Washington, D.C. 20007  
Telephone (703) 556-4000  
Attn: George A. Valanos,  
President

*with a copy to:*  
Miles & Stockbridge P.C.  
101 Bay Street  
Easton, Maryland 21601  
Attn: Richard A. DeTar  
Telephone (410) 822-5280

Notices and communications to the Town shall be addressed to, and delivered at, the following address:

The Commissioners of St. Michaels  
P. O. Box 206  
300 Mill Street  
St. Michaels, Maryland 21663  
Attn: Town Manager  
Telephone (410) 745-9535

*with a copy to:*  
H. Michael Hickson  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044  
Telephone (410) 546-4644

## Section 7: Representations, Warranties and Covenants

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**7.1 Both Parties. Procedural Sufficiency.** Town and Developer, for itself, its successor Developer Assignees, and its successors in title to the Subject Property, hereby acknowledge and agree that all required notices, meetings, and hearings have been properly

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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given and held by the Town with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations or rights created by it on the grounds of any procedural infirmity or any denial of any procedural right.

**7.2 Developer.** Developer hereby makes the following representations, warranties and covenants to and with Town as of the Execution Date:

**7.2.1 Existence.** Developer is a corporation and/or limited liability company duly incorporated/organized and legally existing under the laws of the State of Maryland and is qualified to transact business in the State of Maryland.

**7.2.2 Authorization.** Developer is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned is authorized to act on behalf of and bind Developer to the terms of this Agreement. Developer has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by Developer does not require any consent or approval that has not been obtained.

**7.2.3 Ownership of Subject Property.** On the Effective Date of this Agreement the Developer has the interest in the Perry Cabin Land that is required by the Development Agreement Statute. Unless and until this Agreement is terminated pursuant to Section 5, either Miles or TND Inc., has and shall retain legal and equitable title to the Huntman Property for sufficient time: (a) for the control by the County over the land-use classification of the Huntman Property to expire; and (b) for the provisions of the Miles Point Annexation Agreement, as it may be amended from time-to-time, relative to the Development Approvals by the Town relating to the Huntman Property, to be considered and granted, along with the Amendment of this Agreement to include the Huntman Property as part of the Subject Property. As indicated in the Certification Of Interest In The Subject Property, attached hereto as Exhibit 14, the legal, equitable, and lien holder interests currently held in the Perry Cabin Land, and the legal, equitable, and lien holder interests currently held in the Huntman Property, are as follows:

**7.2.3.1 Ownership of the Huntman Property.** Miles is the legal and equitable fee simple owner of the Huntman Property.

**7.2.3.2 Ownership of the Perry Cabin Land.** Perry Cabin Associates Limited Partnership is the legal fee simple owner of the Perry Cabin Land. Perry Cabin Associates Limited Partnership has entered into a contract to sell the Perry Cabin Land. The assignee/purchaser of this contract is Miles. Miles is the equitable owner of the Perry Cabin Land.

**Section 8: Development Rules and Restrictions.**

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8.1 **Permitted Uses.** The permitted uses of the Subject Property, in accordance with the Existing Land Use Regulations and the Development Approvals are as set forth in the Development Plan.

8.2 **Number and Type of Units, Uses and Density.** The total number and density of single-family residential Units, townhouse dwelling Units, live/work Units, (collectively the "Units") and an inn containing sleeping rooms, contemplated by this Agreement and the Development Plan to be located on the Subject Property in accordance with the Existing Land Use Ordinances, are as follows:

<b>Type of Units</b>	<b>To Be Located On The Perry Cabin Land (± 72.167 acres)</b>	<b>To Be Located On The Huntman Property (± 17.156 acres)</b>	<b>Total (89.323 acres)</b>
<b>Single-Family Dwelling Units (other than townhouses)</b>	251	41	292
<b>Townhouse Dwelling Units</b>	20	0	20
<b>Live/Work Units, consisting of commercial use on the 1<sup>st</sup> floor, commercial and/or residential use on the 2<sup>nd</sup> floor, and residential use on the 3<sup>rd</sup> floor, not to exceed a total of 15,000 sq. ft. of commercial interior space for all live/work Units</b>	8	0	8
<b>Inn Sleeping Rooms</b>	24	0	30 <sup>1</sup>

8.2.1 The use of the commercial areas of the live/work units and the inn on the Subject Property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part e (TND Land Use Standards), Subpart 3) (Neighborhood Center Zone), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.2.2 The maximum height and size of structures on the subject property is governed by the Town Zoning Ordinance (Ordinance No. 109, As Amended), Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone), Part

<sup>1</sup> Six (6) additional inn units are proposed on the Perry Cabin Land in the event the Development Approvals are obtained in the future on the Huntman Property, in which case this Agreement shall become effective as to the Huntman Property.

f (TND Lot and Building Standards), in effect on the Effective Date of this Agreement, a copy of which is attached hereto as Exhibit 13.

8.3 Developer Agreements. The Developer shall comply with: (i) this Agreement, (ii) the Developer Obligations, and (iii) all subsequent Development Approvals for which it is the applicant or a successor in interest to the applicant relating to the Subject Property.

8.4 Other Fees. In addition to the fees specifically mentioned in this Agreement, Developer agrees to pay all customary and usual Town fees, including but not limited to use fees for building inspections, permit and water connection and use fees, and water connection and use fees generally applicable on a Town-wide basis for similar projects, at the rate and amount in effect at the time the fee is required to be paid.

8.5 Timing of Development. The parties acknowledge that the most efficient and economic Development of the Subject Property depends upon numerous factors, some of which are not within the control of Developer, such as market orientation and demand, interest rates, competition, and similar factors, and that except as provided in Section 10.9.1 of this Agreement, the rate of development will be determined by the Developer, in its sole subjective business judgment and discretion. However, the Development Approvals shall remain effective for only the time periods specified therein and the rate of conveyance of lots or parcels within the Subject Property shall not exceed the rate set forth in Section 10.9.1 of this Agreement. Subject to the Qualifications provided in Section 9.2 and the other terms and conditions of this Agreement; in the event any Subsequent Land Use Regulation is enacted which relates to the rate, timing or sequencing of development of property within Town, Town agrees that such Subsequent Land Use Regulation shall not apply to the Development Plan.

8.6 Phasing of Development. The construction of the development on the Subject Property shall be in a defined series of development phases in which: (1) there shall be no more than thirty (30) acres of the Subject Property under active construction at the same time; (2) all construction ongoing at the same time shall be confined land within a single phase; (3) a phase shall consist of contiguous parcels of land; and (4) the Developer shall at all times have on record at the Town office a drawing to scale that identifies the location and boundaries of the active phase. For the purpose of this Section 8.6, the term construction shall mean: (1) actual construction of infrastructure within a street or utilities right-of-way; or (2) actual grading or construction within a public or privately owned park or open space. In determining the area under construction, the area shall include: (1) the construction of streets and alleys, pipes, or the installation of wires and other conduits for collection of sewage or stormwater, or for the distribution water, electricity, gas, telephone, CATV or other utility services (exclusive of street and alley top-coat paving, installation of sidewalks and the installation of streetlight poles and fixtures) within a street or utility right-of-way area shall include all land between the boundary lines of the right-of-way for the length (lineal feet within the right-of-way) of the actual construction; and (2) the lesser of the entire platted area of the open space within which construction is occurring or the defined and identifiable area as shown on a building permit as the area of grading or construction; and (3) the entire area of a subdivision lot on which the construction of improvements is occurring. The area of a phase may be redefined from time-to-time by omitting a completely developed area within the phase and adding an undeveloped area

to the same phase, provided that the Developer shall first furnish the Town with a drawing to scale showing the area omitted and the area added to the phase, either by identifying the lots involved or with courses, distances and points of reference. For purposes of this Section 8.6, the term construction shall not include activity relating to the construction of improvements on a privately-owned subdivision lot. The Developer may cease construction in one defined phase before construction within that phase is completed, and commence construction in another defined phase, provided that no more than one phase, not exceeding 30 acres, is under construction on the Subject Property at any one time. Before commencing development of a new phase, or redefining the area of an existing phase to omit a completely developed area and adding an undeveloped area, the Developer shall provide the Town with a drawing to scale defining the land area that constitutes the development phase, by identified lots and/or with courses, distances and points of reference.

**8.7 Time Limitation for Improvements on Privately-Owned Subdivided Lots.** With regard to each lot created by and shown on the recorded final subdivision plat of the Project, on which lot it anticipated by the Development Plan that a Unit will be located thereon, it is the desire and intention of the parties hereto that a Unit be constructed on such lot within a reasonable time after it is sold and conveyed by the last Developer to the first Owner who is not a Developer. The benefits to all concerned of requiring that lots be promptly improved, include: (1) promoting construction within confined areas of the Project; and (2) to hastening the completion of all construction within confined areas of the Project. Therefore, the Declaration of Covenants, Restrictions and Conditions for the Project shall provide as follows:

**8.7.1 The Owner of a lot in the Project who is not the Developer shall:**

**8.7.1.1 Within 24 months after acquiring legal title to the lot, cause the issuance of the requisite approvals by the Developer or the HOA of plans for construction of a Unit and any appurtenances thereto (collectively "Improvements") on the lot, obtain the building and any other required permits for construction of the Improvements on such lot, and the beginning of substantial construction of said Improvements on the lot by the digging and pouring the footers therefore; and**

**8.7.1.2 Thereafter, cause diligent and in good faith efforts resulting in substantial completion of the said Improvements and issuance of an occupancy permit therefor within a reasonable time, but in any event, within shorter of two (2) years after the issuance of the first building permit for such Improvements or four (4) years after the recorded conveyance in the land records of Talbot County of such lot to said Owner.**

**8.7.2 If the Owner fails to timely comply with the requirements of Sections 8.7.1 or 8.7.2, the Developer shall have the right, at its sole option, to take the following remedial action:**

**8.7.2.1 Re-acquire title to the lot from the Owner at the same contract price that the Owner paid for the lot, and the Owner shall be required to re-convey said lot to**

the Developer for the consideration tendered by the Owner to the Developer at the time of the Owner's acquisition of the lot; or

8.7.2.2 Assume control of the construction of the Improvements on the lot from the Owner, and complete the construction of the Improvements on the lot for the Owner at the Owners' sole cost plus a 15 % management fee based on the other costs expended by the Developer for such completion, all of which shall be promptly paid by the Owner to the Developer. If not paid in full within thirty (30) days after billing the Owner shall pay interest at the legal rate on the unpaid balance, beginning on the billing date until paid in full. In the event that the Owner fails to pay in full within sixty (60) days after being billed by the Developer for the costs incurred and/or management fee earned by the Developer, then the Developer shall be entitled to a lien against the Owner's lot and the Improvements thereon pursuant to the terms and procedures of the Maryland contract Lien Act, as amended from time-to-time, and to collect the unpaid balance, interest thereon, and collection costs including attorneys fees by means by suit for breach of contract and/or by means of the Maryland contract Lien Act.

8.8 Moratoria. The parties hereby acknowledge and agree that this Agreement contemplates and provides for the development of the Project and that no moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation on the conditioning, rate, timing or sequencing of the development of property within the Town and affecting the Subject Property or any portion thereof shall apply to or govern the development of the Subject Property, whether affecting parcel or subdivision maps, building permits, occupancy permits or other approvals to develop or use land issued or granted by the Town, except as may be necessary to: (i) comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such state or federal law or regulation; (ii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Subject Property in which event any ordinance, rule, or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; (iii) maintain the Town's compliance with state sewerage, water systems and utility regulations; or (iv) fulfill the Town's essential governmental responsibilities pursuant to its reservations of authority. In the event of any such moratorium, future ordinance, resolution, rule or regulation, unless taken by the Town as provided under the four (4) exceptions contained above, Developer shall continue to be entitled to apply for and receive approvals as contemplated by this Agreement and in accordance with the Applicable Development Rules.

8.9 Changes and Amendments to the Development Plan. The parties acknowledge that refinement and further development of the Project may require changes to the Development Plan. In the event Developer finds that any such change is necessary or appropriate, Developer shall apply for an amendment to the Development Plan to effectuate such change and Town shall promptly process and act on such application for an amendment. Amendments to Development Approvals to allow changes to the Development Plan that do not also require an amendment to

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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the Existing Land Use Regulations shall be reviewed for consistency with the Existing Land Use Regulations and the Subsequent Land Use Regulations.

**Section 9: Consideration to the Developer and Owners - Qualified Vested Rights**

**9.1 Grant of Qualified Vested Rights.** Notwithstanding any future action of the Town to the contrary, whether by ordinance, resolution, initiative, or otherwise, for consideration provided in this Agreement to the Town, the Town hereby grants to the Developer during the Term of this Agreement, to the fullest extent permitted by the Development Agreement Statute, Qualified Vested Rights in the Existing Land Use Regulations as they relate to the Development of the Subject Property in accordance with the Development Plan; subject, however, to the following:

- 9.1.1** The Developer and the Town may mutually agree that the Project will be subject to a Future Land Use Regulation.
- 9.1.2** The Developer and the Town may make amendments, additions and waivers to this Agreement adopted pursuant to Section 6 of this Agreement.
- 9.1.3** The Qualifications set forth in Section 9.2 of this Agreement.

**9.2 Qualifications To Vested Rights.** Notwithstanding anything to the contrary set forth in Section 9.1 above, the rights therein granted with respect to the Existing Land Use Regulations are hereby defined by the following Qualifications, which may limit, but anything to the contrary notwithstanding shall not expand, the Qualified Vested Rights granted by this Agreement beyond that authorized by the Development Agreement Statute:

- 9.2.1 Non-Conflicting Future Land Use Regulations.** The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are not in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property;
- 9.2.2 Conflicting Future Land Use Regulations.** The Qualified Vested Rights granted by Section 9.1 hereof do not apply to Future Land Use Regulations that are in conflict with the Existing Land Use Regulations as they relate to the development of the Subject Property if the Developer has given the Town specific written consent to the application of such rules to development of the Subject Property;
- 9.2.3 Cost And Time Effects of Future Land Use Regulations.** To the fullest extent permitted by the Development Agreement Statute and the Enabling Ordinance, any Future Land Use Regulation which increases the cost of development of the Subject Property, and any Future Land Use Regulation limiting the rate, timing or sequencing of development of the Subject Property, shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Subject Property.

- 9.2.4 County, State and Federal Laws and Regulations. The Qualified Vested Rights granted by Section 9.1 hereof do not apply to existing and future applicable county, state and federal laws and regulations, together with any land use regulations, programs and actions, or inaction, that are reasonably (taking into consideration, among other things, the assurances provided to Developer hereunder) adopted or undertaken by the Town in order to satisfy a duty or obligation of the Town to comply with such applicable county, state and federal laws and regulations. In the event that applicable county, state or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such applicable county, state and federal laws and regulations, in which event this Agreement shall remain in full force and effect provided that performance of the Agreement pursuant to the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.
- 9.2.5 Public Health, Safety or Welfare. The Qualified Vested Rights granted by Section 9.1 hereof in the Existing Land Use Regulations as they relate to the development of the Subject Property in accordance with the Development Plan, shall be subject to the power of the Town Commissioners to determine that compliance with laws, rules, regulations, and policies enacted or adopted after the Effective Date of this Agreement, to the extent such police powers are preserved for the Town by the Development Agreement Statute or the Enabling Ordinance, are essential to ensure the health, safety, or welfare of residents of all or part of the Town.
- 9.2.6 Building Standards. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit the application of present or future Building Standards, except that (taking into consideration the assurances to Developer in this Agreement) any future amendment thereto that reduces the amount of land within the Subject Property that can be utilized for structures and improvements, or increases the amount of open space within the Project, materially different from that depicted on the Development Plan, shall not be considered a provision of any of the Building Standards included within the exception provided by this Paragraph (6), but shall, to the extent permitted by the Development Agreement Statute and the Enabling Ordinance, not apply to and govern the Development of the Project unless it complies with another exception under this Section 9.
- 9.2.7 Customary Town Fees and Charges. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit customary Town fees and charges generally applicable and imposed by the Town pursuant to law upon all similarly situated applicants and property owners, including, but not limited to, the fees and charges for processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, annexation, growth allocation, proposed legislation, building permit fees, water system connection charges, occupancy permit fees, and other fees, charges and

processing costs imposed by law. This Agreement shall not limit the power of the Town to impose such fees, charges and requirements, and to amend the rates and charges generally applicable within the Town for such services after the date of this Agreement, which shall not be limited by the Qualified Vested Rights in the applicability thereof to the Subject Property, the Developer or the successors in interest thereof. Such fees and charges imposed by Town law are not intended to be consideration for this Agreement.

9.2.8 Other Agreements. This Agreement is not intended to alter or restrict the rights and duties of the parties to the Perry Cabin Farm Annexation Agreement, the Public Facilities Agreement or the Miles Point Annexation Agreement, as amended, relating to the Subject Property, as it or they may be modified according to their own terms. The terms of those agreements are not intended to be consideration for this Agreement.

9.2.9 Procedural Provisions. The Qualified Vested Rights granted by Section 9.1 hereof shall not apply to or limit generally applicable procedural provisions, including those governing the processing of Development Approvals and Land Use Regulations such as requirements for notice, hearings, and hearing bodies.

9.2.10 This Agreement shall not relate to, bind or limit the Town, or its actions, operations, tariffs, rates, or policies in its capacity (if and when the Town ever becomes a supplier of utility services to the Subject Property, except that with regard to a particular utility service, the Town agrees to treat the Developer and the Subject Property as the Town treats other similarly situated developers and land within its applicable utility service territory at the time that the time of such treatment.

9.2.11 Police Powers; Full Extent of Law. The parties acknowledge that Town is restricted in its authority to limit its police powers by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to Town all of its police powers that cannot be so limited. It is expressly agreed that Town reserves its police power to adopt and enforce ordinances, regulations, policies and other enactments, and to take such other actions pursuant to said police power, affecting the Project necessary to ensure the public health, safety or welfare. In the exercise of its police powers, the Town shall recognize and consider the circumstances existing at the time this Agreement was authorized. In addition, such exercise of the police power shall be in a manner consistent with the purpose and intent of the Development Agreement Statute. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to Town all such powers and authority that cannot be restricted by contract.

9.3 Adoption of Comprehensive Plan and Development Plan; Further Approvals. In preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town considered the health, safety, and welfare of the existing and future residents and

populations of the Town and prepared and/or reviewed in this regard extensive environmental studies ("Environmental Studies") as well as traffic impact reports and other studies economic and non-economic relating to impacts of this Development Plan or similar development plans on the Town and its public facilities and services. Without limiting the generality of the foregoing, in preparing and adopting the Comprehensive Plan and in granting the Development Approvals, the Town carefully considered and determined the projected needs (taking into consideration the planned development of the Project and the Town and adjacent areas) for police, fire, paramedic, and similar facilities and services within the Project, the Town and adjacent areas and the projected needs within the Project and such areas for stormwater management measures, public water and county sewer with the Region II District serving the Town, the needs of the residents for open space and parks, and the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project.

**9.4 Acknowledgment of Future Land Use Regulations.** The parties acknowledge that the allocation of development within the Subject Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations, such as the location of particular sensitive areas or other site-specific considerations. The parties acknowledge that in certain instances, the development of the Subject Property may be restricted and adversely affected and impacted by Future Land Use Regulations adopted by Town as provided in Section 9.2.

**9.5 All Governmental Approvals Required Before Development Of Subject Property Required.** It is acknowledged that this Agreement only provides assurances to Developer with respect to the Existing Land Use Regulations that will apply to the Development of the Subject Property and that prior to and as a condition precedent to the final decision to construct or develop any of the Public Facilities or any portions of the Project on the Subject Property, all government permits and approvals shall be obtained as required by the applicable regulations, in accordance with and as provided in Sections 9 (including but not limited to state and federal regulations).

**9.6 Consideration for Assurances to Developer.** The parties further acknowledge that the public benefits to be provided by Developer to Town pursuant to this Agreement, including without limitation the consideration to the Town set forth in Section 10 are in consideration for and reliance upon assurances that the Subject Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the development of the Subject Property may be affected by exercise of the reservations of authority, Developer is concerned that normally the courts extend to local agencies significant deference in the adoption of land use regulations, which might permit Town to attempt to apply inconsistent land use regulations in the future under the guise of the reservations of authority. Accordingly, Developer desires assurances that Town will not inequitably further restrict or limit the development of the Subject Property in conflict with the intent of this Agreement, except in strict accordance with the Qualifications of the Vested Rights set forth in Section 9.

**9.7 Use of Annual Unit Payments.** As further consideration to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, for the

preservation and improvement of the Town in general, and therefore for the benefit of the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, by the preservation and improvement of the Town of which the Subject Property is a part, the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part, and used by the Town in accordance with the purpose, of the Town Collateral Improvement Fund, as described in Section 10 of this Agreement.

9.8 Amendment To Include The Hunteman Property. After the County relinquishes or otherwise loses control over the land-use classification of the Hunteman Property, as provided by Maryland Code, Art. 23A, § (c), in the event that the Town issues all of the Development Approvals relating to and for the development of the Hunteman Property as an addition to the Traditional Neighborhood Development on the Perry Cabin Land in accordance with the Development Plan, and within a time and as otherwise specified by the Miles Point Annexation Agreement, as it may be amended from time-to-time by the Town Commissioners, the Developer shall have the right and duty to offer to the Town, and the Town shall have the duty to consider, but shall not have the obligation to approve, the amendment of this Agreement to add the Hunteman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment"), provided further that the Town agrees to the Amendment within one (1) year after the date on which such Amendment is offered by the Developer, thereby granting Qualified Vested Rights to the Hunteman Property as of the date of the Amendment.

**Section 10: Consideration To The Town.** As the sole and exclusive consideration for the Qualified Vested Rights granted by this Agreement to the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property, the said Developer, for itself its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby promises to make the payments to the Town, to convey the property rights to the Town, to undertake the duties as described in the Schedule Of Consideration To The Town (Exhibit 10), as further explained, modified and expanded by this Section 10, relative to the Subject Property as defined in this Agreement:

10.1 Infrastructure Costs, Fees, Charges, And Duties.

10.1.1 Privately-Owned Subdivision Infrastructure. It is the responsibility of the Developer to cause the installation at its expense of all infrastructure on the Subject Property. At the request of the Developer the Town ordinance creating the traditional neighborhood zone anticipates narrow public ways, that are of the open section design, and that some of the public ways will be privately owned. The Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the HOA and the Owners, hereby request and consent to the amendment of the Town Zoning Ordinance and the Town Subdivision Ordinance to provide for such narrow streets without curbs or gutters ("open section roads"), with gentle pervious swales as part of the stormwater management system, and other public ways that are more narrow and made of more porous paving material that may be privately owned and maintained by a responsible homeowners association, contrary to what is presently required by Town laws and regulations. Although the parties hereto

acknowledge the environmental benefits of narrow open section roads within the Critical Area, and that the proposal of the Developer to use such narrow open section roads within the Project is a significant positive factor in making the Project worthy of the growth allocation necessary to develop within the Critical Area, the Town anticipates that the cost to repair and maintain such open section roads and swales will be greater than for conventional roads with curbs and gutters to the current Town standards and specifications. Therefore, parties agree as follows with regard to repair, maintenance and re-construction of infrastructure on the Subject Property:

**10.1.1.1 Publicly-Owned Subdivision Infrastructure.** Upon construction to Town standards, inspection and acceptance by the Town, the Town shall in perpetuity repair, maintain and re-construct, at its own cost: the stormwater catch-basins and lines (up to, but not including, the stormwater management ponds); and roads, drives and streets within the Project (as identified in the Design Code and shown on the Concept Plan for the Project). The Town reserves the right, but not the duty, at its sole discretion, to acquire title to, own, maintain and control the passages, lanes, and alleys, (collectively "Privately Owned Public Ways") as identified in the Design Code and as shown on the Concept Plan for the Project.

**10.1.1.2 Public Ways.** All roads, drives, streets, alleys, lanes passages, and public ways of every type (collectively the "Public Ways") shall be open to the public at all times. The Town shall have the sole right to establish speed limits, and enforce all traffic laws on all Public Ways. The Town and all public utilities shall have the right to enter over, under and upon all Privately Owned Public Ways for the purpose of installing, repairing, maintaining and rebuilding wires, conduits, and other transmission, distribution and collection facilities related to furnishing public utility services.

**10.1.2 Privately-Owned Subdivision Infrastructure.** The Developer, and thereafter the Owners through the HOA, shall in perpetuity repair, maintain and re-construct, at its own cost, in such a manner to keep the Project worthy of growth allocation, the Privately Owned Public Ways, brick sidewalks, street lights, grass strips and trees along streets, stormwater management facilities with the exception of stormwater catch-basins and or lines (up to but not including the stormwater management ponds), and all open spaces not owned by the Town, located within or upon the Subject Property (all of which shall be included within the term "Privately-Owned Subdivision Infrastructure").

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**10.1.2.1** The provisions of this Section 10.1.2 ("Privately-Owned Subdivision Infrastructure"), including the following subsections of

Section 10.1.2, shall be incorporated in the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property.

10.1.2.2 The Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property shall be recorded in the County Land Records simultaneously with the recording of the approved final subdivision plat for the entire Subject Property.

10.1.2.3 No conveyance of a subdivision lot or construction of infrastructure shall commence on the Subject Property before the recording of such the approved final subdivision plat and such Declaration of Covenants, Restrictions and Conditions.

10.1.2.4 Before the Declaration of Covenants, Restrictions and Conditions for the Project on all of the Subject Property is recorded in the County Land Records, the Developer shall submit to the Town, for the review and approval of the Town Attorney for consistency thereof with the terms of this Agreement, such Declaration of Covenants, Restrictions and Conditions.

10.1.2.5 The Developer, as Developer and Owner, shall, at its own expense, at all times until such time as all components of the Privately-Owned Subdivision Infrastructure are conveyed to the HOA, reasonably and diligently keep, maintain, repair and re-construct all such components of the Privately-Owned Subdivision Infrastructure in good order and state of repair.

10.1.2.6 When the Privately-Owned Subdivision Infrastructure is conveyed by the Developer to the HOA, the HOA shall accept, assume, undertake to reasonably and diligently perform all of the title and duties of, the ownership, repair, maintenance, re-construction, and replacement of the Privately-Owned Subdivision Infrastructure, keeping each component thereof at all times in good condition, and to assess and collect from the Owners revenues reasonably sufficient in amount to create and adequately fund operating and reserve fund, and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing, maintaining, re-constructing and replacing, from time-to-time as reasonably necessary, all of the Privately-Owned Subdivision Infrastructure.

10.1.2.7 The Declaration of Covenants, Restrictions and Conditions for the Project shall provide that the HOA shall have, accept and perform all of the rights and duties set forth in this Section 10. The Declaration of Covenants, Restrictions and Conditions shall also empower and require the HOA to: (a) make assessments against each lot on which a Unit is

located or is anticipated by the Development Plan in the Subject Property for the purpose of generating the funds for the HOA in an amount necessary to pay for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure; (b) to collect those assessments, and (c) to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a proper assessment has been made and for which timely payment has not been made to the HOA for the performance of all of the HOA duties relating to the Privately-Owned Subdivision Infrastructure, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland contract Lien Act), or its successors, as amended from time-to-time.

10.1.2.8 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right to enforce upon the HOA and its Owners by judicial action and otherwise, the reasonable and timely performance of all HOA duties described in this Section 10.1.2, and with the right of the Town to collect from the HOA, and its Owners the attorneys fees and all other costs incurred by the Town relating to such enforcement actions in the event that the Town prevails in any such action.

10.1.2.9 For purposes of monitoring performance of the HOA with the provisions of this Section 10.1.2, the Town shall be entitled to without making a request therefor, and HOA shall furnish to the Town, as frequently as the HOA furnishes to its board of directors and/or its membership, the following documents relating to the HOA: disclosure statements, news letters to the membership, minutes of board of directors meetings, minutes of membership meetings, budgets, financial reports and statements, accounts receivable from Owners relating to the assessments to and collections from Owners, proposed rules or amendments to the HOA documents and any other information relating to the HOA as may be deemed necessary or desirable by the Town.

10.2 Consent To Regulatory Fees And User Charges. The Developer, for itself, its successor developer Assignees, and its successors in interest to the Subject Property, hereby acknowledge that all of the current Town fees, charges, costs and rates, shown on the Schedule Of Town Administrative And Utility Fees, Charges And Rates, attached hereto as Exhibit 11, are fair and reasonable in amount, and that they each have a reasonable relationship to the cost of providing the services to which they relate. Moreover, the Developer, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, hereby consent to the increase of such Town fees, charges, costs and rates in subsequent years based on changes in the C.P.I., provided that all such increases of such Town fees, charges, costs and rates are also equally applicable to all other regular and customary users of such Town services.

**10.3 Parks and Open Spaces.**

**10.3.1 In General.** Parks and open spaces shall be located, developed and improved by the Developer in the locations and to the extent shown on the Miles Point Concept Plan (Exhibit 1), and in accordance with additional representations made by the Developer to the Town during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, relating to the Subject Property. Structures and improvements as so represented shall be constructed within the parks and open spaces at Developer's expense as shown on the Miles Point Concept Plan, and in accordance with additional representations by the Developer to the Town during the above referenced growth allocation and DRRA hearings. Rights in such parks and open spaces, with improvements, shall be granted as set forth in the Town Consideration Chart (Exhibit 10), constructed, maintained, and continuously opened for public use and enjoyment, as represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings. All of the above-referenced representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, shall constitute a material term of this Agreement. Simultaneously with the recording of the final subdivision plat for the Subject Property, the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records: (1) establish a Declaration of Covenants, Restrictions and Conditions for the Subject Property which provide for the ownership, maintenance and upkeep by the HOA of all parks and open spaces on the Subject Property that are not to be owned and maintained by the Town; and (2) within the time periods specified in the Schedule Of Consideration To The Town (Exhibit 10) the Developer shall, by documents satisfactory to the Town attorney, signed and recorded in the County Land Records grant such rights and duties to the Town and the public in said parks and open spaces as has been represented by the Developer to the Town during the above referenced growth allocation and DRRA hearings.

**10.3.2 Hunteman Property Non-Structural Shoreline Stabilization.** The Developer shall install the Non-Structural Shoreline Stabilization on the Hunteman Property at the same time that the Non-Structural Shoreline Stabilization is installed on the Perry Cabin Land.

**10.3.3 Non-Structural Shoreline Stabilization.** The subject of this Section 10.3.3 is the construction, repair, maintenance, and if necessary re-construction and replacement, of non-structural shoreline stabilization on the Perry Cabin Land and the Hunteman Property, as hereinafter described.

**10.3.3.1 Definitions.** The following definitions shall apply solely to Section 10.3.3:

**10.3.3.1.1** The "Non-Structural Stabilization" means the shoreline stabilization described in the Power Point Presentation by Gene Slear, Vice President, Environmental Concern, Inc., presented September 25,

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

Miles Point Development Rights And Responsibilities Agreement

St. Michaels Planning Commission on behalf of The Commissioners Of St. Michaels

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2003 (see Exhibit 45 to the Miles Point III public hearing of the Town Planning Commission), to be installed Environmental Concerns, Inc.), which, together with proper repair and maintenance, is intended to provide to the shoreline, where such stabilization is placed, repaired and maintained, perpetual protection from wind and/or wave action at the shoreline, including such action caused by hurricanes and other storms, that result in erosion of such shoreline.

10.3.3.1.2 The "Shoreline" means, and is more particularly described, as follows: (1) beginning at a point at the southern boundary line between the Perry Cabin Land and the land of the Foggs Cove Townhouses at its intersection with the Miles River at mean high tide; then (2) running from said beginning point in a generally northerly direction along the shoreline formed by the intersection of the Perry Cabin Land and the Miles River at mean high tide to the common boundary line between the Perry Cabin Land to the Hunteman Property; and then (3) continuing therefrom in a generally northerly direction along the shoreline formed by the intersection of the Hunteman Property and the Miles River at mean high tide to the ending point at a shoreline stone revetment existing on the Hunteman Property, constituting a total distance, from the beginning point to the ending point, of approximately 2,100 lineal feet.

10.3.3.1.3 The "Non-Structural Shoreline Stabilization" means the Non-Structural Stabilization successfully applied to and established at the Shoreline.

10.3.3.2 The Developer shall, at its sole expense, cause the Non-Structural Stabilization to be constructed, installed, applied to and established at the Shoreline of both the Perry Cabin Land and at the Shoreline of the Hunteman Property by Environmental Concern, Inc. or by some other contractor equally experienced and knowledgeable about such matters that is acceptable to the Town (hereinafter the "Shoreline Contractor"), within the deadline established therefore in the award of growth allocation for the Perry Cabin Land. The Non-Structural Shoreline Stabilization shall be installed according to standards and specifications intended, together with reasonable and appropriate periodic repairs and maintenance as provided for in this Agreement, to establish a healthy and self-sustaining tidal wetland capable of providing perpetual prevention of erosion to the Shoreline, from wind and/or wave action of the Miles River, including such action caused by hurricanes and other storms.

10.3.3.3 For a period of ten (10) consecutive years, beginning immediately upon the completion of the installation of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Hunteman Property, and receipt by the Town of a written certificate of completion of the Non-Structural Shoreline Stabilization on the Perry Cabin Land and the Hunteman Property by the Shoreline Contractor, the Developer shall, at its sole expense, shall cause the

following to be performed with regard to the Non-Structural Shoreline Stabilization:

10.3.3.3.1 Provide reasonable and appropriate periodic inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization as recommended and performed by the Shoreline Contractor, or its successor. The inspections, repairs and maintenance to the Non-Structural Shoreline Stabilization shall be performed in accordance with the recommendations of the Shoreline Contractor at least annually, or more frequently as recommended by the Shoreline Contractor.

10.3.3.3.2 In the event of severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization, at the sole fair and reasonable discretion of the Town, severe damage, destruction or other failure of the Non-Structural Shoreline Stabilization shall be promptly replaced at the Shoreline by either: (1) Non-Structural Stabilization; or (2) stone revetment.

10.3.3.3.3 At all relevant times after the initial installation of the Non-Structural Shoreline Stabilization, the Shoreline Contractor shall be selected with the consent of the Town. If the Developer or president of the HOA (as the case may be) fail to timely initiate the selection of a Shoreline Contractor when the arises, the Town shall have the sole right to select the Shoreline Contractor, which may include an expert and a general contractor, to assess the status of the Non-Structural Shoreline Stabilization, to recommend a method to improve the status of the Non-Structural Shoreline Stabilization, and to construct, install, repair or maintain the Non-Structural Shoreline Stabilization, as is reasonably necessary for the health of the artificial tidal wetland thereby created or the protection from erosion of the Shoreline.

#### 10.3.3.4 Approvals and Information.

10.3.3.4.1 All inspections, repairs, maintenance, re-constructions and replacements of the Shoreline Areas shall be subject to the prior review and approval of the Town.

10.3.3.4.2 All such inspections, repairs, maintenance, re-constructions, and replacements to the Non-Structural Shoreline Stabilization shall be reported in writing to the Town. A copy of all reports, contracts, bills, invoices, statements, designs, specifications and all other documents relating to the Non-Structural Shoreline Stabilization shall be promptly furnished by the Developer or the HOA (as the case may be) to the Town.

10.3.3.5 The Developer may assign its obligations under this Section 10.3.3 to the HOA, provided the HOA shall, on behalf of the Owners, expressly undertake and assume such obligations in writing to the Town. The obligations of the Developer assumed by the HOA shall be performed by the HOA in a manner substantially similar to the manner in which the HOA is required to maintain the Privately-Owned Subdivision Infrastructure, as set forth in Section 10.1 of this Agreement. Without limiting the generality of the foregoing, the HOA shall, upon assignment by the Developer and acceptance by the HOA of the foregoing obligations of the Developer relating to the Non-Structural Shoreline Stabilization, for unexpired portion of the ten (10) year period for which the Developer was originally obligated:

10.3.3.5.1 Regularly repair and maintain the Shoreline Area, in accordance with sound property management standards;

10.3.3.5.2 Assess and collect from the Owners revenues reasonably sufficient to create and adequately fund an operating and reserve fund for the Shoreline Area and to promptly assess and collect from the Owners any deficiency necessary to insure that such operating and reserve fund is adequate to fund the full cost of repairing and maintaining from time to time as reasonably necessary, the Shoreline Areas; and

10.3.3.5.3 Diligently enforce the collection of Assessments against all Owners as necessary to provide funds necessary to properly maintain and repair the Shoreline Areas, in accordance with the Declaration of Covenants, Restrictions and Conditions for the Project and establish, enforce, foreclose and collect on a lien against the land and improvements of each lot for which an assessment has been made but for which payment has not been tendered to the HOA, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), on any successor statute, as amended from time to time.

10.3.3.6 If the Developer, or the HOA (if the obligations of the Developer have been assigned to and accepted by the HOA), fail to timely or adequately perform the obligations of the Developer as described in Section 10.3.3.3 of this Agreement, then the Town shall have the right to perform such duties at the expense of the Developer or the Owners (as the case may be), upon thirty (30) days prior written notice to the Developer or the HOA on behalf of the Owners (as the case may be) of the intention of the Town to perform such duties for and at the expense of the Developer or the Owners (as the case may be). Such notice shall state the nature of the work anticipated to be done and the reason for the necessity for such work. If the performance of the anticipated work leads to the discovery of other work that reasonably should have been discovered and performed by the Developer or the HOA, then Developer or the Owners (as the case may be) shall be liable for the cost of such additional work. The Owners

thus liable shall be the Owners of lots on the Subject Property that are assessable for expenses of the HOA pursuant to the Declaration, in the same proportion as the cost of the operation and maintenance of improvements in the subdivision owned and/or operated by the HOA are assessed to the lots of the Subject Property, as provided by the Declaration.

10.3.3.6.1 The Owners referred to in this Section 10.3.3 shall be the owners of each lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by HOA for, and on the same percentage basis as it is normally assessed by the HOA, as provided by the Declaration. Each Owner of a lot in the subdivision of the Subject Property that is, pursuant to the Declaration, subject to being assessed by the HOA shall be personally liable, jointly and severally with all co-owners of the same lot, for the share (based on the amount thereof that could be assessed to the Owner's lot) of the total cost incurred by the Town in performing the duties of the Owners pursuant to Section 10.3.3.3 of this Section. The Town shall also have the right to assess the lots of the subdivision of the Subject Property for such costs incurred by the Town in the proportion described herein. Such costs thus assessed shall be due and payable in full within 30 days after the assessment.

10.3.3.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall have the right, in its sole discretion, by notice to the HOA, to perform some or all of the obligations of the HOA pursuant to Section 10.3.3 of this Agreement.

10.3.3.7.1 To the extent the Town undertakes such obligations during the ten (10) year period after completion of the Non-Structural Shoreline Stabilization by the Developer, the HOA shall reimburse the Town for all direct and indirect costs incurred by the Town that are associated with such maintenance and repair.

10.3.3.7.2 A reasonable basis for the need for work required by this Agreement shall be the failure of the HOA, upon written demand therefore, to provide written evidence that such work have been timely or satisfactorily performed.

10.3.3.7.3 The failure of the HOA to promptly reimburse the Town for such costs shall entitle the Town to seek all available legal relief, including but not limited to the right, as third party beneficiary to this Agreement and the Declaration, to assess the Owners of each lot in the subdivision of the Subject Property with its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and

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

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

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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

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

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

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

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

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

Miles Point Development Rights  
And Responsibilities Agreement

St. Michaels Planning Commission  
on behalf of  
The Commissioners Of St. Michaels

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

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

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

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

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

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

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

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

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

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

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

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

Unit Payment applies if the amount due is not received and paid in full on or before the later of 30 days after the date of the bill or July 31 of the year for which the Annual Unit Payment applies. In addition, the HOA shall promptly after each billing furnish to the Town an accounting of the total billing, to include the total amount billed, the base amount billed (\$1,000 per Unit) and the additional amount billed based on the change in C.P.I. since April 2004. The HOA shall be liable for all errors that it commits in the billing and collection process, including the failure to keep accurate records that frustrates any effort by the Town to bill or collect Annual Unit Payments, or any interest or late charges due thereon.

10.5.5.2 If the HOA has been instructed to bill and collect the Annual Unit Payments, the Town shall have no duty to inform the HOA of the change in the C.P.I., the change in the amount of the Annual Unit Payments as the result of the change in the C.P.I., or that the change in the C.P.I. must be billed to the Owners as part of the Annual Unit Payments. Nevertheless, if the HOA has been instructed by the Town to bill the Annual Unit Payments and fails to bill the correct dollar amount of the Annual Unit Payments to include the change in dollar amount based on the change in the C.P.I. as provided in this Agreement and Exhibit 10 hereto, then the HOA shall be directly liable to the Town for any deficiency in the amount billed and collected by the HOA as the result of the failure of the HOA to bill the correct dollar amount to the Unit Owners.

10.5.5.3 If the HOA collects Annual Unit Payments for the Town, the HOA shall remit to the Town, not less frequently than monthly on or before the first day of each month, all payments of Annual Unit Payments received since the last time such receipts were remitted to the Town. All such remittances shall be accompanied by an accounting of the receipts remitted, including, for each payment received: (1) the amount of the payment; (2) the Unit to which it applies; (3) the date the payment was received by the HOA; (4) the name and address of the payor; (5) any accounting received by the payor to indicate how the amount of the payment was arrived at, such as late charges or interest included; and (6) any other communication received with the payment. In addition, with each remittance the HOA shall furnish a list of each receipt and the total of the receipts being remitted.

10.5.5.4 If the HOA participates in the billing and/or collection of the Annual Unit Payments for the Town, then the HOA shall assist and cooperate with the Town, and participate, including providing testimony and documentary evidence, in any judicial action by the Town to establish, enforce or collect upon any lien, in which the billing and/or collection of the Annual Unit Payments by the HOA for the Town is an issue or factual predicate to the successful prosecution of the action by the Town.

10.5.6 The Owner(s) of a parcel of land which has been properly billed for an Annual Unit Payment pursuant to this Agreement (or the Declaration) that remains unpaid after the due date shall be in breach of this Agreement (and the Declaration) and shall be liable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Section 12. Public Facilities**

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

#### **Section 13. Administration of Performance**

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

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

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

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

13.4 Good Faith Compliance Review

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

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

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

**Section 14: Default and Remedies.**

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

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

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

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

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

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

**Section 15: Mortgagee Protection; Certain Rights of Cure.**

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

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

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

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

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

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

#### **Section 16: Estoppel Certificates.**

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

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

## **Section 17: Conflicts of Laws, Rules, Regulations**

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

**17.2. Notice.** Neither party shall claim that a conflict, as described in Section 17.1, exists, unless that party has given the other party at least thirty (30) days written notice of the conflict. The notice shall identify the law, regulation or non-Town governmental action, the date the law or regulation was enacted or the date the non-Town governmental action was taken, and the manner in which the law, regulation or non-Town governmental action conflicts with one or more provisions of this Agreement.

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

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

17.5 Cooperation in Securing Permits or Approvals. Provided Town and Developer agree to a modification or suspension of this Agreement pursuant to this Section 17, Town shall use its best efforts to assist Developer in the timely securing of any permits or approvals which may be required as a result of such modifications to, or suspensions of, all or any part of this Agreement.

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

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

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

#### **Section 18: Miscellaneous Provisions**

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

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

18.3 Invalidity, Unenforceability, Severability, And Savings Clause. E. 258

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

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

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

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

**18.3.2.2** Second, if the provisions of Section 18.3.2.1 of this Agreement are not sufficient to save the validity and enforceability of the offending term(s) and/or provision(s) of this Agreement, then such offending term(s) and/or provision(s) shall be severed and deleted from this Agreement only to the extent necessary to save the validity and enforceability of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

DC O'Leary

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

ST. MICHAELS POINT, L.L.C.

DC O'Leary

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

MILES POINT PROPERTY, LLC

DC O'Leary

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

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TND DEVELOPMENT, INC.

[Signature]

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

TOWN:  
THE COMMISSIONERS OF ST. MICHAELS

By: St. Michaels Planning Commission

Cheril S. Thomas, Town Manager

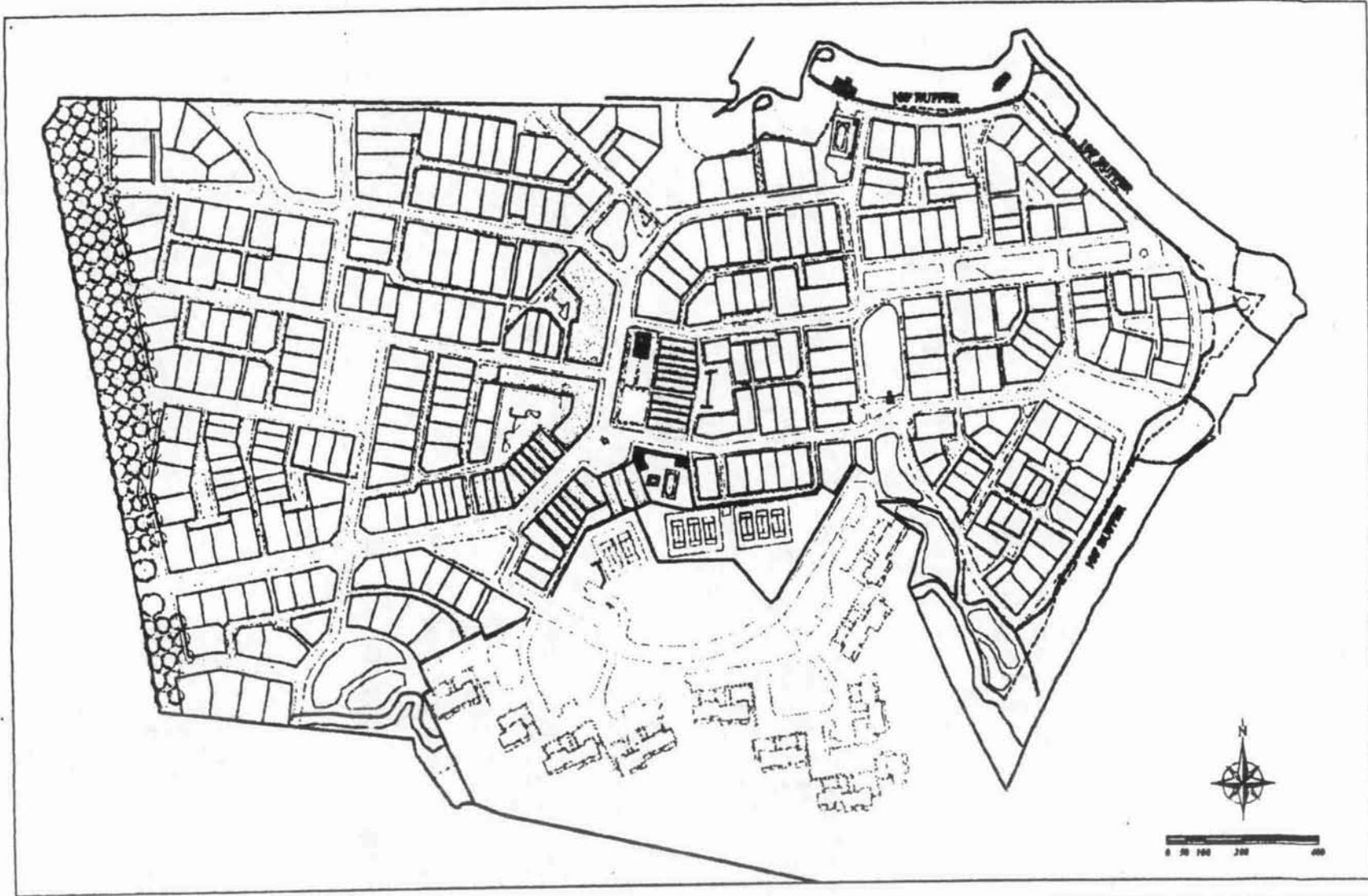
By: Frederick N. Megahan 2-19-04  
Frederick N. Megahan, Chairman Date

APPROVED AS TO FORM:

By: [Signature]  
H. Michael Hickson  
Town Attorney

By: [Signature]  
Richard A. DeTar  
Attorney for the Developer(s)

E. 263



KEY	
	Utility Right-of-Way (Proposed by the State of Maryland)
	Street Right-of-Way
	Other Right-of-Way
	Other Structures

Miles Point Concept Plan  
St. Michaels, Maryland  
December 21, 2005  
DEAN FLETCHER-ROBERTS & COMPANY  
10000 WOODBURN ROAD, SUITE 100  
ST. MICHAELS, MARYLAND 20688  
www.fletcher-roberts.com

E. 264

LIBER 1 225 FOLIO 4 67

**MILES POINT**  
TOWN OF ST. MICHAELS, MD



**THE MIDLAND COMPANIES**  
DEVELOPER

**DUANY PLATER-ZYBERK & COMPANY**  
TOWN PLANNERS

ANDRES DUANY, LUDWIG FONTALVO-ABELLO, ANTHEA GIANNIOTES, JAY GRAHAM, MELISSA KIMBALL, OSCAR MACHADO, BARRY MAHAFFEY,  
GARY MODJESKA, MICHAEL MORRISSEY, JORGE PLANAS, DAVID SAN ROMAN, GALINA TAHCHIEVA, GEORGE VALANOS, MIKE WATKINS

E. 265

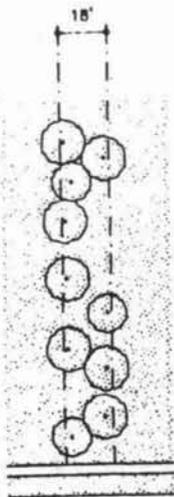
LIDER 1 2 2 5 FOLIO 4 5 8



©Deary Plater-Tyler & Company

E. 266

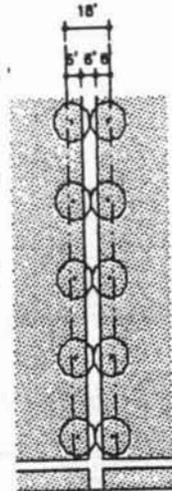
LIBER 1225 FOLIO 470



Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-0

Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	N/A
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	Varies
Planter Type	Continuous
Tree Pattern	Varied pattern
Tree Species	A mix of: American Holly, Eastern Red Cedar, Red Maple, Serviceberry, Sourwood, Swamp Bay Magnolia
Ground Cover	Lawn

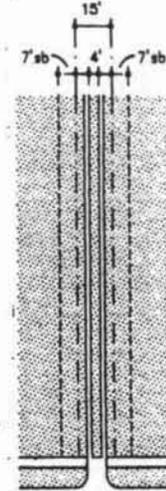


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

PS-18-6a has trees on the public side only.

PS-18-6

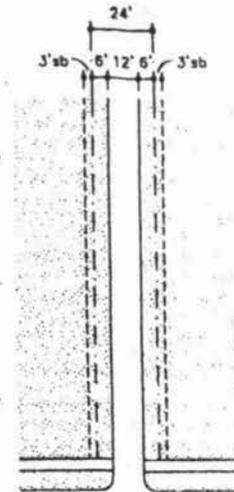
Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	6 ft.
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	6 ft.
Planter Type	Continuous
Tree Pattern	Alley, 30 ft. on center
Tree Species	Passages may be different and any one of: American Holly, Crapemyrtle, Golden Raintree, Yellowwood
Ground Cover	Lawn



Lanes service the rear of lots and are rural in character having only a pair of narrow, unpaved ruts that may or may not be centered in the ROW.

LA-15-4

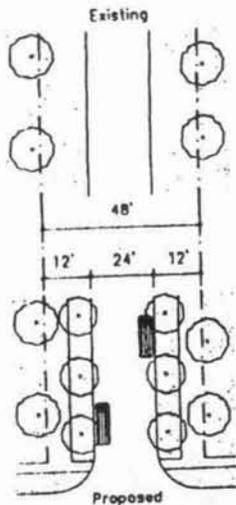
Precedent	Harrison Alley
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	15 ft.
Pavement Width	2 gravel ruts at 2 ft. each
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn



Alleys service the rear of lots nearest the Neighborhood Center where the density is greatest and uses may be mixed. They are more urban in character with a strip of paving at the center and shoulders that may or may not be paved.

AL-24-12

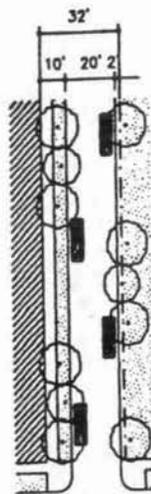
Precedent	N/A
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	24 ft.
Pavement Width	12 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter Width	N/A
Planter Type	N/A
Tree Pattern	None
Tree Species	N/A
Ground Cover	Lawn



Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

RD-48-24

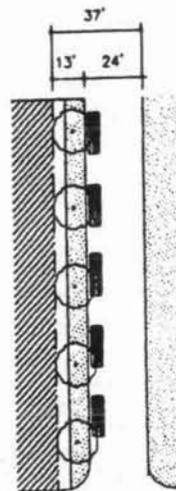
Precedent	Perry Cabin Drive
Type	Road
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	48 ft.
Pavement Width	24 ft.
Curb Type	Header Curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	8.8 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft. and 6 ft.
Planter Type	Continuous
Tree Pattern	Allee, 25 ft. on center
Tree Species	London Plane
Ground Cover	Lawn



Roads are relatively rural, appropriate in the Neighborhood General and Edge. Since the frontage usually includes a substantial setback, the tree canopy may be quite wide. The rural aspect may be supported by the provision of alternating tree species in imperfect alignment. Curbs may be detailed as open swales with drainage by percolation where possible.

RD-32-20

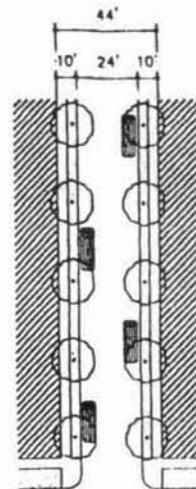
Precedent	Grace Street
Type	Small road
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	32 ft.
Pavement Width	20 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	15 m.p.h.
Pedestrian Crossing Time	3.9 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Swale
Tree Pattern	Clusters at 30 ft. on center average
Tree Species	Scarlet Oak
Ground Cover	Lawn



Drives define the edge between an urbanized and a natural condition, usually along a waterfront, a park, or a promontory. One side has sidewalks and buildings, the other side is more rural in character with natural-istic planting and rural detailing.

DR-37-24

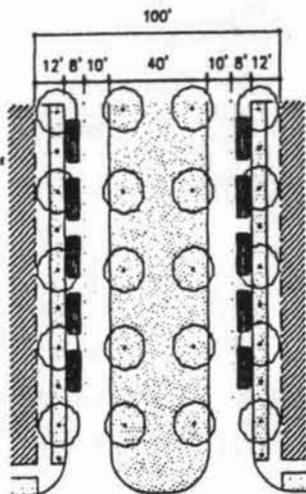
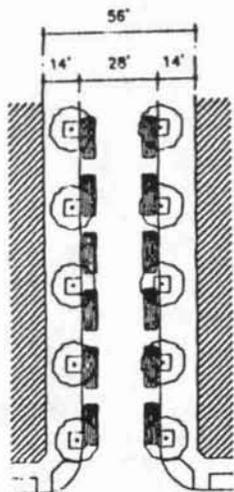
Precedent	The Strand
Type	Drive
Movement	Slow movement
Traffic Lanes	Two way
Parking Lanes	One side
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	Swale and 4" header curb at planter
Curb Radius	10 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	6.5 seconds
Sidewalk Width	5 ft.
Planter Width	8 ft.
Planter Type	Continuous
Tree Pattern	30 ft. on center average
Tree Species	Inland: Red Maple; Waterfront: to be determined
Ground Cover	Lawn



Streets are appropriate for residential buildings at the Neighborhood Center and General. A single species of tree should be planted in steady alignment in continuous planting strips. A vertical canopy is necessary to avoid building facades at shallow frontage setbacks.

ST-44-24

Precedent	Neighborhood Center
Type	Small residential street
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	40 ft.
Pavement Width	24 ft.
Curb Type	4" Header curb
Curb Radius	5 ft.
Vehicular Design Speed	20 m.p.h.
Pedestrian Crossing Time	5.5 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter Type	Continuous
Tree Pattern	Allee, 30 ft. on center
Tree Species	Willow Oak
Ground Cover	Lawn



Commercial streets are appropriate for commercial buildings at the Neighborhood Center. Trees are confined by individual planters, creating a sidewalk of maximum width, with areas accommodating street furniture. Clear trunks and high canopies are necessary to avoid interference with shopfronts, signage and awnings.

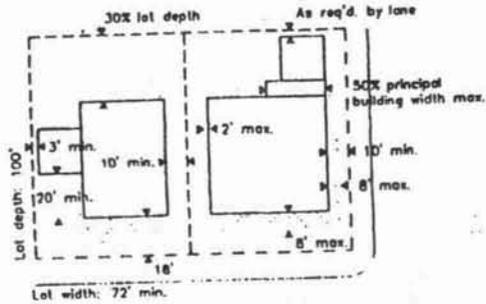
Avenue is a local, slow-movement thoroughfare suitable for General Center, and Core Urban Zones. Avenues are appropriate as approaches to civic buildings. In residential areas, the median may be wider and planted naturalistically to become greenway. The streetscape details may vary as the avenue passes from one zone to another.

CS-56-28

Precedent	Talbot Street
Type	Commercial street
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	54 ft.
Pavement Width	28 ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	5 seconds
Sidewalk Width	9 ft.
Planter Width	5 ft.
Planter Type	Individual, except at arcade
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

AV-100-36

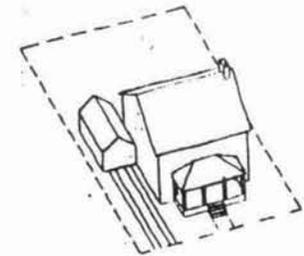
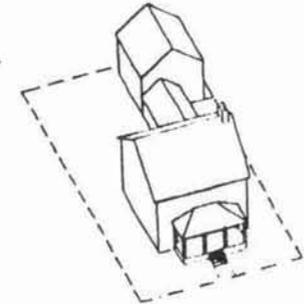
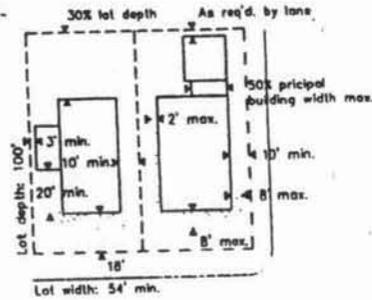
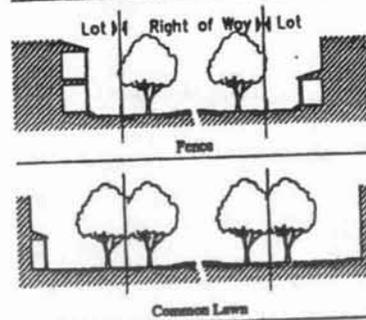
Precedent	Avenue
Type	Speed movement
Movement	Two ways
Traffic Lanes	One side
Parking Lanes	100 ft.
R.O.W. Width	118 ft. + 18ft.
Pavement Width	4" Header curb
Curb Type	15 ft.
Curb Radius	25 m.p.h.
Vehicular Design Speed	10 seconds
Pedestrian Crossing Time	6 ft.
Sidewalk Width	6 ft.
Planter Width	Continuous center, individual sides
Planter Type	Allee, 30 ft. on center
Tree Pattern	London Plane
Tree Species	Lawn
Ground Cover	



A large House is a single-family residence on its own large lot. Within Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

Lot size	72 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
<b>Setbacks</b>	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
at building frontage at setback	50% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

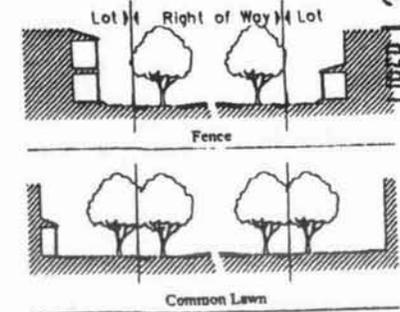
Frontage Types



A House is a single-family residence on its own lot. Within Neighborhood Edge this type occupies lots that are a minimum of 54 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines are a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 50% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. In the absence of an alley, garages and parking may be provided a minimum of 20 feet behind the front facade.

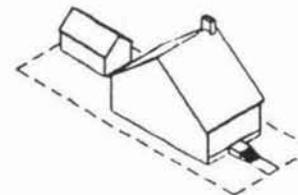
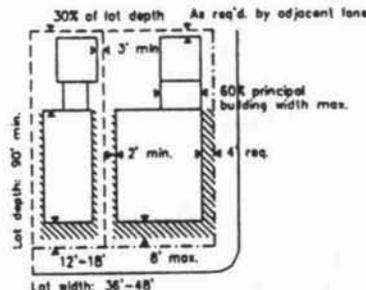
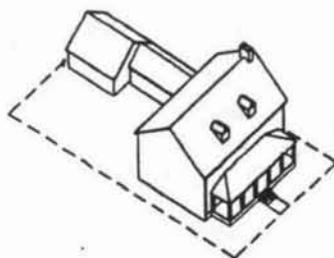
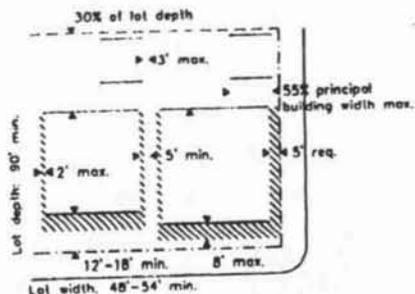
Lot size	54 ft. min. x 100 ft.
Lot coverage by roofs	50 % max.
<b>Setbacks</b>	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max.
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



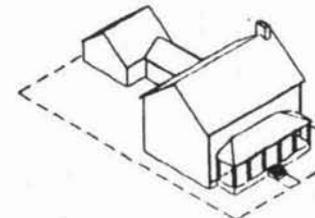
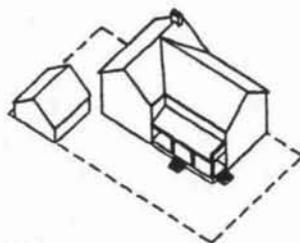
NEIGHBORHOOD GENERAL - HOUSE

NEIGHBORHOOD GENERAL - COTTAGE

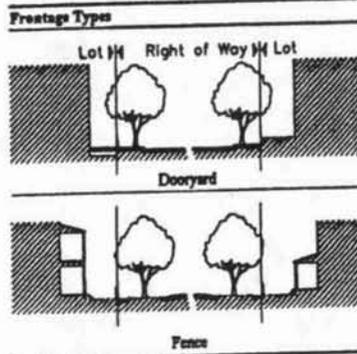


A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 55% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

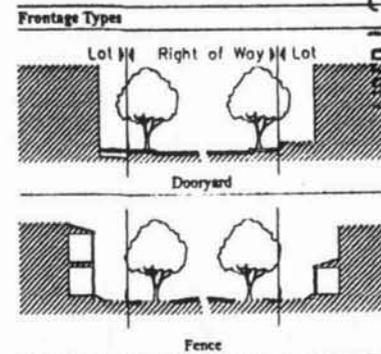
A Cottage is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 30 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.



Lot size	48 - 54 ft. min. x 90 ft.
Lot coverage by roof	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	5 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

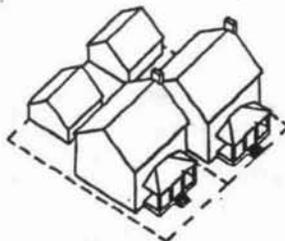
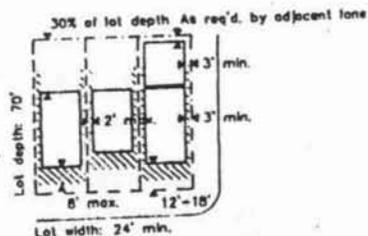


Lot size	30 - 48 ft. min. x 90 ft.
Lot coverage by roof	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	3 stories max.
of first floor above grade	2.5 ft. max.
of back building and outbuilding	2 stories max.



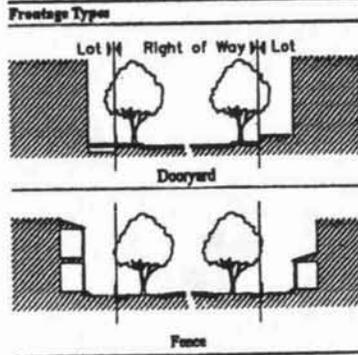


NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE



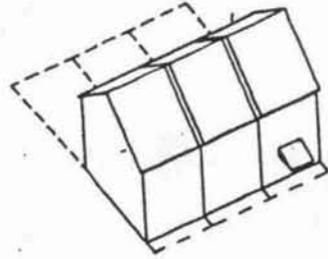
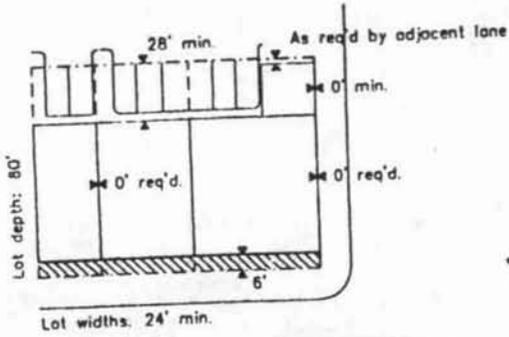
Rosewalk Cottage is a single-family residence on its own lot, with stage on a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal building measured from the lot lines are 6-12 feet from the front, a minimum of 3 feet from each side, and a minimum of 30% of the lot depth from the rear. The setback to the outbuilding and back building from the side lot lines is a minimum of 3 feet. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. Back buildings may be a maximum of 60% of the width of the principal building. An outbuilding containing a garage and/or apartment (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of two and one-half stories in height. Outbuildings and back buildings may be a maximum of two stories in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 70 ft.
Lot coverage by roof	60 % max.
<b>Setbacks</b>	
at building frontage	6-12 ft.
at building side	3 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
at building frontage at setback	70% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max.
at building side	2 ft. max., 3 ft. max. at corner lots
<b>Height</b>	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.



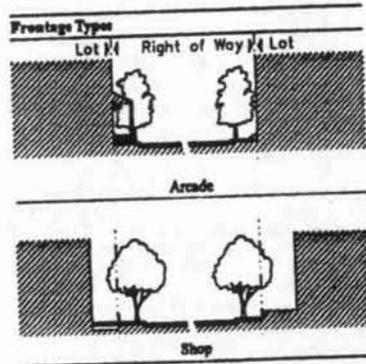


NEIGHBORHOOD CENTER - SHOP/HOUSE



Shop/House is a single building which may be residential and/or commercial, and may be attached to others, on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 24 feet in width by approximately 80 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from each side, and a minimum of 28 feet from the rear. The setback to the outbuilding from the rear lot line is the minimum required by the adjacent lane, if any. Porches, stoops, balconies, bay windows, and chimneys may encroach into the setbacks as shown. An outbuilding containing a garage (not exceeding 500 square feet in footprint) is permitted in the rear yard. Principal buildings may be a maximum of three and one-half stories in height. Outbuildings may be a maximum of one story in height. Garages and/or surface parking shall be provided in the rear yard and accessed from a lane.

Lot size	24 ft. min. x 80 ft.
Lot coverage by roofs	90 % max.
<b>Setbacks</b>	
at building frontage	6 ft.
at building side	0 ft. min.
at building rear	28 ft.
at outbuilding side	0 ft. min.
building frontage at setback	100% of lot width min.
<b>Encroachments</b>	
at building frontage	8 ft. max. (2 ft. into ROW is permitted)
at building side	-
<b>Height</b>	
of principal building	3.5 stories max.
of first floor above grade	0 ft. req.
of outbuilding	1 story max.



## WALLS

## Materials

Walls shall be "select" grade wood siding, cedar shingles, lightweight concrete siding (eg. "Hardieplank"), board and batten, stucco, or tumbled or wood moulded red brick to be approved by the Miles Point Architect (MPA).

Foundation walls shall be brick, stucco or parged block.

Walls of outbuildings may, in addition to the wall materials, be board and batten.

Trim shall be 3/4" wood or simulated wood (eg. "Synwood" or lightweight concrete).

Piers shall be brick or stucco.

Retaining walls shall be brick.

Garden walls are permitted in side and rear yards and shall be brick.

Fences along frontages shall be wood pickets painted white. Side and rear yard fences shall be wood pickets or closed wood boards painted white or stained.

Lattice shall be wood. Vinyl is permitted only at crawl space enclosures.

Wood shall be painted or stained, except cedar shingles and exterior wood floors.

Panelized materials are not permitted.

Paints and stains on walls shall not be dark colors; and, on trim shall be white or cream. A maximum of two different colors shall be used on all of the buildings on a single lot: one base color and one complementing or contrasting trim color (excluding shutters which must be dark color with exception of white on cedar house).

## Configuration

Walls above the foundation, and below the eave shall be of a single material.

Walls shall have no more than 4 outside corners to the frontage.

Gable ends may be a different material than the wall below.

Wood Siding may be lapped, dutch-lapped, or, on Colonial buildings, beaded.

Lightweight concrete siding shall emulate lapped or beaded siding, cased, with no more than 6 inches exposed to the weather.

Parging shall be cement with a smooth sand-finish.

Stucco shall be cementitious with a smooth sand finish.

Brick mortar joints shall be concave or grapevine.

Trim shall be no more than 3/4 inches in depth or 6 inches in width at corners and around openings, except at the front door which may be any size or configuration.

Piers shall be no less than 16 inches square.

Columns shall be of the Doric or Tuscan orders detailed strictly proportional and per *The American Vitrols*.

Pests shall be no less than 6 inches square and chamfered.

Interconnection on the ground floor shall have vertically proportioned openings.

Crawlspace enclosures shall be enclosed with horizontal boards, louvers, shingles, or framed lattice.

Garden walls at frontages shall be no less than shoulder height. Elsewhere garden walls shall be no more than 7' in height.

Fences at frontages may be as tall as waist height. Fences in rear yards shall be no more than 7' in height.

Lattice shall be framed and mounted between, not in front of or behind, posts.

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## ATTACHMENTS

## Materials

Steps shall be brick or wood.

Chimneys shall be brick, or parged masonry.

Floors shall be clay or metal painted to match the roof.

Porches shall be made of wood.

Porch screen frames shall be 3/4 inch maximum and finished in wood or "Synwood."

Railings shall be wood.

Front walks, if any, shall be gravel, brick, slate or stone.

Corules and soffits shall be wood or cellular PVC.

## Configuration

Chimneys shall extend to the ground, have a corbelled cap (no more than 5 courses) and either project from the wall, or, be flush with the wall and exposed at the ground floor and above the roof only.

Interconnection on the ground floor of porches shall have vertically proportioned openings.

Railings shall have top and bottom rails centered on pickets or sawn balusters. Bottom rails shall be vertically proportioned and shall clear the floor. Spaces between pickets or balusters shall be no more than 3 inches.

Balconies that cantilever shall be visibly supported by brackets and shall be no more than 3 feet in depth.

Porches shall have a minimum depth of 6 feet and may be enclosed by see through screens.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

Equipment including HVAC, utility meters and the like, shall be placed in rear yards and the rear half of the side yards.

## ROOFS

## Materials

Roofs shall be standing seam turne metal, 5V-crimp, wood shingle, or asphalt shingle to be approved by the Miles Point Architect. Asphalt shingle roofs are permitted on outbuildings and principal buildings where gable ends front the street with the exception of vista terminations and frontage on squares, greens, passages, bodies of water or greenways.

Roof colors shall be silver, dark gray, black, red, or green.

Gutters and downspouts shall be galvanized metal, painted metal or copper.

Flashing shall be metal or painted metal.

## Configuration

Principal roofs on detached and semi-detached buildings shall be a symmetrical gable with pitch between 9:12 and 14:12 or a symmetrical hip between 3:12 and 6:12. Roofs with a symmetrical gable fronting the street may have a pitch of 6:12.

Accessory roofs may be sheds if angled no less than 3:12 and attached to a side wall, rear wall or rear roof slope of the principal roof.

Backbuilding roofs may, in addition to the principal roof forms, be gambrel roofs.

Roofs of a single volume shall be of the same material.

Eaves shall be continuous. Eaves which overhang less than 14 inches shall have a closed soffit. All closed soffits shall have crown moulding and open gutters. Eaves which overhang more than 14 inches shall have exposed rafters and half round gutters or a closed soffit with brackets and crown moulding. All pitched roofs shall be trimmed, at minimum, with gable and eave boards all around.

Downers shall be habitable, no wider than the window below, and placed no closer to the edge of the roof than if centered above the window below.

Roof penetrations shall be placed on the rear slope and finished to match the color of the roof.

Skylights shall be flat glass and mounted on roof slopes not facing frontages.

Towers shall not extend more than 15 feet above the roof ridge and shall not have a floor area exceeding 150 square feet. Towers are permitted on pre-designated lots.

## OPENINGS

## Materials

Windows shall be wood, vinyl-clad wood, cellular PVC, or extruded aluminum-clad wood and clear glass to be approved by the Town Architect.

Doors and garage doors shall be wood or composite wood with raised panels and painted.

Openings in brick walls to have jack arches the bottom of which shall be no less than 10 inches below the cornice above.

Gates in openings of garden walls shall be made of wood.

Screen doors shall be wood.

Shutters shall be made of wood with louvers or raised panels.

## Configuration

Windows shall be single, double or triple-hung. Windows, openings and window sashes shall be rectangular with a vertical or square proportion. The centerline of windows shall align vertically. In section, the centerline of the window sash shall align within the centerline of the wall, (no flush mounted windows). Accent windows are permitted at gable ends to be approved by the Town Architect.

Transoms shall be rectangular, arched or fan-shaped.

Window openings shall include an apron below the exterior window sill.

Multiple windows in the same rough opening shall be separated by a 4 inch minimum post.

Muntins, shall be authentic (true divided panes) or simulated (milled and fixed on the interior and exterior surfaces) no more than 7/8" in width. Window panes shall be similar proportions throughout the building.

Bay windows shall have no less than 3 sides and shall extend to the floor inside and to the ground outside, or, be visually supported by brackets.

Doors, shall be hinged and have raised panels, louvers or raised panels and glass.

Garage doors may be hinged or sliders. Those facing a frontage shall be a maximum of 9 feet wide.

Shutters shall be operable and the size and shape of the associated opening.

Upper story openings shall be centered above lower story openings. Openings in gabled ends must be centered.

E. 276

LIBER 1 225 FOLD 480

**STOREFRONTS****Materials**

Storefronts shall be made of wood, synthetic wood (e.g.: "Synwood") or metal.

Signs shall be painted wood, painted metal or porcelain.

Awnings shall be a light metal armature with a canvas membrane.

**Configuration**

Storefronts shall be designed individually. The storefront should be detailed while the rest of the building should be simple. The storefront, doors, awnings and signage shall be a unified design.

Doors shall be recessed a minimum of 3' and located near the center of the storefront, except at corners.

Storefront glazing shall be a minimum of 75% of the first floor elevation. All glass shall be clear.

Awnings shall be permitted to encroach the full width of the sidewalk and be within reach of the drip edge. Awnings shall be a minimum of 6 ft. deep. Awnings shall be rectangular in shape with straight edges. Awnings may have side panels but shall not have a bottom (soffit) panel. The vertical drip of an awning may be stenciled with signage.

Awnings shall be dark green sloping rectangles without side or bottom panels. Awnings shall not be internally lit.

Storefront windows shall be between 2 feet and 2.5 feet above ground level and shall reach to within 1 foot of the ceiling. Storefront windows shall be lit from dusk to midnight.

Signs attached to buildings shall be integral to the storefronts, no more than 2 feet in height by any length, and shall be externally illuminated. Signs may contain multiple individual signs which refer to tenants of the building.

Neon signs of no greater than 4 S.F. are permitted inside storefronts.

Blade signs may be attached perpendicular to the facade and extend up to 4 feet from the frontage line and shall not exceed 2 feet in height.

Address numbers shall be a max. of 8" in height.

Storefronts and signage shall be painted a single dark gloss background color. Lettering may be any color.

Keystones and quoins are not permitted.

Spotlights and floodlights are not permitted.

**MISCELLANEOUS**

Variations may be granted by on the basis of architectural merit by the Design Review Committee.

Properties and improvements shall conform to the intention, not the "letter", of The Architectural Regulations.

The following shall be located in rear yards: HVAC equipment, meters, solar panels, antennas, satellite dishes, garbage cans.

The following shall not be permitted: painted materials, copper anodized aluminum.

Exterior light fixtures shall be compatible with the style of the building.

Driveways at frontages are allowed for properties without alley access and shall be a maximum of 10 feet wide. Alley driveways may be no wider than the garage doors they serve.

Paved Ruts shall be brick, gravel or grass pavers (e.g. "Grasscrete" blocks). Paved ruts are 2 feet wide and spaced 4 feet apart.

Front walks, if any, shall be gravel, brick, stone or stone.

E. 277

LIBER 1 225 FOLIO 48 1

## TREES

**The Front Yard**

The summer landscape will be enhanced with the extended bloom time of improved varieties of crapemyrtles introduced by the National Aroretum. White and Pale Pink preferred.

*In addition to the tree in the adjacent thoroughfare,*  
Crapemyrtle

**The Rear Yard**

Medium size flowering trees and evergreens will add variety and privacy to the private gardens.

*In addition to the trees in the Front Yard,*  
Yellowwood  
Carolina Silverbell  
Southern Magnolia  
Foster Holly

## UNDERSTORY

**All Yards**

Flowering trees and shrubs are predominately natives for sustainability and to emphasize the distinct nature of the Chesapeake coastal plain to visitors. Non-native with historic associations are noted with an asterisk.

Serviceberry  
Sourwood  
Redbud  
Fringetree  
Oakleaf Hydrangea  
Viburnum species  
Winterberry  
Inkberry  
Dwarf summersweet  
Dwarf Fothergilla  
Hydrangea  
Coast Azalea  
Pinxter Azalea  
Swamp Azalea  
Boxwood\*  
Witchhazel  
Lace Cap Hydrangea\*

## GROUNDCOVER

**All Yards**

Low maintenance gardens for seasonal residents can employ native perennials to add interest without creating a rigorous maintenance routine. Serious gardeners can enhance this palette with additional perennials. Natives are encouraged.

Fescue/Bluegrass Blend  
Foamflower  
St. Johnswort  
Creeping Phlox  
Fern  
Leadwort  
Green-and-Gold  
Barrenwort

## OTHER

**All Yards**

The fence line garden is a distinctive feature of St. Michaels. These plants are found at the base of the fence and climbing on the fence.

Hollyhock  
Daylilies  
Iris  
Trumpet Honeysuckle  
Climbing Hydrangea  
Trumpet Vine  
Climbing Rose Species  
Clematis

## INSTRUCTIONS

For every 25 feet of frontage or fraction thereof, one species or cultivar of tree from this list shall be planted. Planting other tree species is permitted, but shall not count toward the fulfillment of the objective of establishing a visually coherent spatial structure for microclimate.

Tree heights at the time of planting vary according to species and availability and shall be determined by the Landscape Supervisor.

The placement of trees in frontages shall be within 10 feet of the frontage line and in alleys within 4 feet of either side of the rearlot line. Trees in the Village Edge may be placed anywhere, except at least one tree shall be placed within 8 feet of the rearlot line.

The soil profile shall be protected from deep compaction during building construction by matting and staking alley or lane access during construction. Compacted soil areas shall be decompacted and hydrological permeability assured by mechanically breaking up pavement basement soil and rototilling 2-3 inches of recycled organic matter before the addition of a mix of organically amended topsoil.

Energy conservation measures, such as planting shade trees near the southern facades of buildings to block summer sun, are encouraged.

Landscape Plans for private gardens should be prepared by a qualified professional in the field of landscape architecture or garden design.

Robert L. Ehrlich, Jr.  
Governor

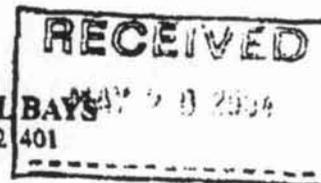
Michael S. Steele  
Lt. Governor



Martin G. Madde  
Chairman

Rea Serey  
Executive Director

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



May 14, 2004

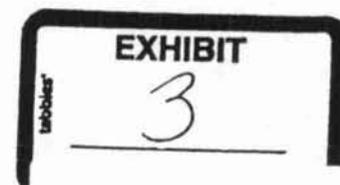
Ms. Cheryl Thomas, Town Manager  
Town of St. Michaels  
P. O. Box 206  
300 Mill Street  
St. Michaels, Maryland 21663-0206

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

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

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

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



E. 279

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



Martin G. Madde  
Chairman

Ren Serey  
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**STATE OF MARYLAND  
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[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

October 2, 2003

Mr. Roby Hurley  
Maryland Department of Planning  
Lower Eastern Shore Regional Office  
Salisbury Multi-Service Center  
201 Baptist Street, Suite 24  
Salisbury, Maryland 21801-4974

Re: Strausburg Farm Annexation and Growth Allocation

Dear Mr. Hurley:

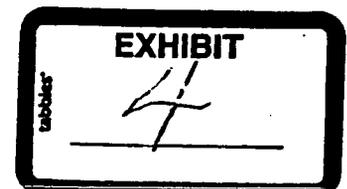
At its meeting on October 1, 2003, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays concurred with the Chairman's determination that the Strausburg Farm annexation and growth allocation request is a refinement to the St. Michael's Critical Area program and it was approved. The refinement included the following three conditions:

1. Prior to recordation of the subdivision plat for the Strausburg property, the Town Planning Commission shall approve a Buffer Management Plan for the property. Implementation of the plan shall take place prior to issuance of any building permits.
2. Prior to recordation of the subdivision plat for the Strausburg property, the Town shall submit to the Commission staff, a conservation easement that will ensure that 76 acres adjacent to the subject growth allocation shall be maintained in uses appropriate to the Resource Conservation Area as those uses set forth in the Town Ordinance. The easement shall remain in perpetuity and recorded.
3. The amount of growth allocation shall be 20.1 acres.

This refinement should be incorporated into your Critical Area Program within 120 days from the date of this letter. Please send a copy of the Town's amended Critical Area map to the Commission when it is available.

E. 280

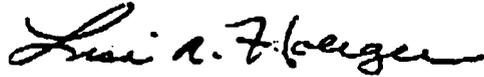
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Mr. Hurley  
October 2, 2003  
Page Two

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

Sincerely,



Lisa A. Hoerger  
Natural Resources Planner

cc: Ms. Jean Weisman  
Ms. Deborah Renshaw

Ms. Thomas  
May 14, 2004  
Page 2

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

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

Sincerely,



Mary R. Owens, Chief  
Program Implementation Division

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

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* CIVIL CASE NO. 2-C-04-005095DJ

\* IN THE

\* CIRCUIT COURT

\* FOR

\* TALBOT COUNTY

\* 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

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 Area 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 void 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;

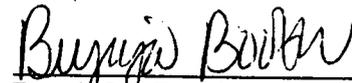
(5) That the Town of Oxford has exclusive planning and zoning jurisdiction within the town boundaries, and Talbot County and the Talbot County Council have no right to enact or enforce zoning laws within the Town of Oxford;

(6) That the County's attempt to repeal the zoning maps mapping the growth allocation 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 19<sup>th</sup> 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. Cuezella, 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

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

TALBOT COUNTY, MARYLAND :

Plaintiff :

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

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

Defendant

\* \* \* \* \*

**ANSWER TO COUNTERCLAIM OF INTERVENOR  
COMMISSIONERS OF ST. MICHAELS**

Talbot County, Maryland, Plaintiff and Counter-Defendant, by ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, responds to the Counterclaim for declaratory relief of Intervenor Commissioners of St. Michaels as follows:

**GENERAL DENIALS**

1. The Counterclaim fails to state a claim upon which relief may be granted.
2. Plaintiff/Counter-Defendant denies the allegations of fact and liability asserted in the Counterclaim.

**SPECIFIC ALLEGATIONS**

3. Paragraphs 1 through 13 of the Counterclaim do not contain any

factual allegations which Plaintiff/Counter-Defendant must admit or deny. To the extent there are any factual allegations contained therein, they are denied.

4. Plaintiff/Counter-Defendant denies the factual allegations contained in Paragraphs 14 through 25 of the Counterclaim.

5. The factual allegations of Paragraph 26 are denied, except that Plaintiff/Counter-Defendant admits that it enacted Bill 933.

6. The factual allegations of Paragraphs 27 through 32 are denied.

7. Paragraph 33 does not contain any factual allegations which Plaintiff/Counter-Defendant must admit or deny. To the extent there are any factual allegations contained therein, they are denied.

8. Plaintiff/Counter-Defendant denies the factual allegations contained in Paragraph 34.

9. Paragraph 35 does not contain any factual allegations which Plaintiff/Counter-Defendant must admit or deny. To the extent there are any factual allegations contained therein, they are denied.

10. Plaintiff/Counter-Defendant denies the factual allegations contained in Paragraph 36 through 39.

11. Paragraph 40 does not contain any factual allegations which Plaintiff/Counter-Defendant must admit or deny.

#### **AFFIRMATIVE DEFENSES**

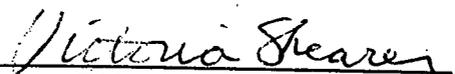
12. Plaintiff/Counter-Defendant possesses immunity.

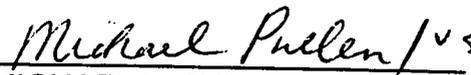
13. Intervenor's claim is barred by the applicable statute of limitations.
14. Intervenor's claim is barred by the doctrine of laches.
15. Intervenor's claim is barred by the doctrine of estoppel.
16. Intervenor's claim is barred by the doctrine of privilege.
17. This Court lacks jurisdiction.

ALLEN, KARPINSKI, BRYANT  
& KARP

BY:

  
DANIEL KARP

  
VICTORIA M. SHEARER  
100 East Pratt Street  
Suite 1540  
Baltimore, Maryland 21202  
410-727-5000

  
MICHAEL L. PULLEN  
142 N. Harrison Street  
Easton, Maryland 21601  
(410) 822-1100  
Attorneys for Talbot County

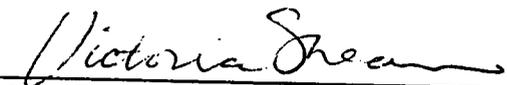
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of December, 2004, a copy of Plaintiff Talbot County's Answer to Counterclaim of Intervenor Commissioners of St. Michaels was sent by first class mail, postage prepaid, to:

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803  
Attorneys for Defendant/Counter-Plaintiff,  
Commissioners of St. Michaels

Marianne Mason, Esquire  
Paul J. Cucuzella, Esquire  
Assistant Attorneys General  
Maryland Dept. of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401

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

  
Of Counsel for Plaintiff/Counter-  
Defendant

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

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

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

Defendant :

\* \* \* \* \*

**ANSWER TO COUNTERCLAIM OF INTERVENOR TOWN OF OXFORD**

Talbot County, Maryland, Plaintiff and Counter-Defendant, by ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, responds to the Counterclaim for declaratory relief of Intervenor Town of Oxford as follows:

**GENERAL DENIALS**

1. The Counterclaim fails to state a claim upon which relief may be granted.
2. Plaintiff/Counter-Defendant denies the allegations of fact and liability asserted in the Counterclaim.

**SPECIFIC ALLEGATIONS**

3. Paragraphs 1 through 8 of the Counterclaim do not contain any factual allegations which Plaintiff/Counter-Defendant must admit or deny. To the extent there are any factual allegations contained therein, they are denied.

4. Plaintiff/Counter-Defendant denies the factual allegations contained in Paragraphs 9 through 12 of the Counterclaim.

5. Plaintiff/Counter-Defendant admits the allegation of Paragraph 13 that it enacted Bill 933, but denies all other factual allegations of Paragraph 13.

6. Paragraphs 14 and 15 do not contain any factual allegations which Plaintiff/Counter-Defendant must admit or deny. To the extent there are any factual allegations contained therein, they are denied.

7. Plaintiff/Counter-Defendant denies the factual allegations contained in Paragraphs 16 through 23 of the Counterclaim.

**AFFIRMATIVE DEFENSES**

8. Plaintiff/Counter-Defendant possesses immunity.
9. Intervenor's claim is barred by the applicable statute of limitations.
10. Intervenor's claim is barred by the doctrine of laches.
11. Intervenor's claim is barred by the doctrine of estoppel.
12. Intervenor's claim is barred by the doctrine of privilege.
13. This Court lacks jurisdiction.

ALLEN, KARPINSKI, BRYANT  
& KARP

BY: 

\_\_\_\_\_  
DANIEL KARP

*Victoria Shearer*

VICTORIA M. SHEARER  
100 East Pratt Street  
Suite 1540  
Baltimore, Maryland 21202  
410-727-5000

*Michael Pullen / vs*

MICHAEL L. PULLEN  
142 N. Harrison Street  
Easton, Maryland 21601  
(410) 822-1100  
Attorneys for Talbot County

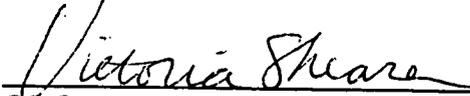
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of December, 2004, a copy of Plaintiff Talbot County's Answer to Counterclaim of Intervenor Town of Oxford was sent by first class mail, postage prepaid, to:

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

Marianne Mason, Esquire  
Paul J. Cucuzella, Esquire  
Assistant Attorneys General  
Maryland Dept. of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401

H. Michael Hickson, Esquire  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803  
Attorneys for Defendant/Counter-Plaintiff,  
Commissioners of St. Michaels

  
Of Counsel for Plaintiff/Counter-  
Defendant

COPY

TALBOT COUNTY, MARYLAND,

Plaintiff

Vs.

DEPARTMENT OF NATURAL RESOURCES,

Defendant

\* CIVIL CASE NO. 20-C-04-005095DJ  
\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* TALBOT COUNTY  
\* STATE OF MARYLAND

\* \* \* \* \*

ANSWER TO COMPLAINT

The Commissioners Of St. Michaels ("St. Michaels"), Defendant, by H. Michael Hickson, its attorney, in answer to the initial 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") filed by Talbot County, Maryland (the "County") in the above-captioned case, says:

- A. The Complaint, and all counts contained therein, fails to state a claim upon which relief can be granted. St. Michaels relies on and joins in the Motion To Dismiss filed by the Department Of Natural Resources. St. Michaels would respond only to those counts of the Complaint that have survived the said Motion To Dismiss at the time St. Michaels is required to file its Answer to the Complaint.
- B. In accordance with Maryland Rule 2-323 (c), the averments of the claim for relief, as contained in the Initial Complaint (because they are not altered by the Amended Complaint) are hereby answered paragraph-by-paragraph, *ad seriatim*, as follows:
  - 1. To the extent that paragraphs 1, 2 and 3 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.
  - 2. To the extent that paragraph 4 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is denied that counties have primary responsibility for developing and implementing a local critical area protection program that is applicable within an incorporated municipality that has adopted a local critical area protection program that has been reviewed and approved by the Maryland Critical Area Commission

Banks, Nason &  
Hickson, P.A.  
P.O. Box 44  
Salisbury, MD  
21803-0044  
410-546-4644

For The Chesapeake And Atlantic Coastal Bays (the "Commission"); all other averments of fact thereof are admitted.

3. To the extent that paragraph 5 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are admitted except that St. Michaels is without knowledge or information sufficient to form a belief as to the effective date of Talbot County's proposed program.
4. To the extent that paragraph 6 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.
5. To the extent that paragraph 7 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are denied.
6. To the extent that paragraph 8 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.
7. To the extent that paragraph 9 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are denied.
8. To the extent that paragraph 10 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments thereof are admitted.
9. To the extent that paragraph 11 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is admitted that the County local critical area program (hereinafter the "County Critical Area Program") included three maps showing areas around the Towns of Easton, St. Michaels, and Oxford; that the County reserved growth allocation to the following municipalities in the following quantities: Easton (155 acres), Oxford (195 acres), and St. Michaels. (245 acres); and that no growth allocation was reserved for the Town of Queen Anne. All other averments in paragraph 11 of the Initial Complaint are denied.

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P.O. Box 44  
Salisbury, MD  
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410-546-4644

10. To the extent that paragraph 12 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, the averments are denied.
11. To the extent that paragraph 13 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is admitted that the County submitted County Bill No. 762 to the Commission for review as a local program amendment. All other averments in paragraph 13 of the Initial Complaint are denied.
12. To the extent that paragraph 14 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, it is admitted that to date the provisions of County Bill No. 762 have been applied only to the Town of Easton. All other averments in paragraph 14 of the Initial Complaint are denied.
13. The averments in paragraph 15 of the Initial Complaint are denied.
14. It is admitted that the County Council forwarded County Bill No. 762 to the Commission for review. All other averments in paragraph 16 of the Initial Complaint are denied.
15. It is admitted that County Bill No. 933 purports to repeal the 1989 maps and the reservations of growth allocation to the towns of Easton, St. Michaels and Oxford. To the extent that paragraph 17 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments are denied.
16. To the extent that paragraphs 18 and 19 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied.
17. To the extent that paragraph 20 of the Initial Complaint contains averments to which an answer is required, the answers previously stated herein to the paragraphs 1 through 19 of the Initial Complaint are hereby reiterated; all other averments thereof are denied.

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Hickson, P.A.  
P.O. Box 44  
Salisbury, MD  
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410-546-4644

18. To the extent that paragraphs 21, 22 and 23 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied.
19. To the extent that paragraph 23 of the Initial Complaint avers that the Commission acted to disapprove County Bill No. 933 as an amendment to the County Critical Area Program on or before May 5, 2004, and that the Commission thereafter issued a written notification of such action to the County dated May 14, 2004, such averments are admitted. To the extent that paragraph 23 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments are denied.
20. It is denied that the Commission did not act on the proposed amendment contained in County Bill No. 933 within the time required by law. To the extent that paragraph 24 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments thereof are denied.
21. To the extent that paragraphs 25 and 26 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all such averments thereof are denied.
22. To the extent that paragraph 27 of the Initial Complaint contains averments to which an answer is required, the answers previously stated herein to the paragraphs 1 through 26 of the Initial Complaint are hereby reiterated; all other averments thereof are denied.
23. It is denied that the Commission failed to act on the proposed program amendment reflected by County Bill No. 933 within the time required by law. To the extent that paragraph 28 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, the other such averments thereof are denied.
24. The averments in paragraph 29 of the Initial Complaint are admitted.
25. To the extent that paragraph 30 of the Initial Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied. Further answering, even assuming, *arguendo*, that

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Hickson, P.A.  
P.O. Box 44  
Salisbury, MD  
21803-0044  
410-546-4644

County Bill No. 933 conforms to all requirements of Maryland Code, Natural Resources Art., Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and to all provisions of the Code Of Maryland Regulations, Title 27 (Chesapeake Bay Critical Area Commission), (said code sections and regulations being collectively referred to hereinafter as the "State Critical Area Program"), the members of the Commission are required to disapprove County Bill No. 933 if it is in conflict with another State law.

26. The averments in paragraph 31 of the Initial Complaint are denied. Further answering, even assuming, *arguendo*, that the information before the Commission demonstrated that County Bill No. 933 met all requirements of the State Critical Area Program, there were other grounds raised on the record of the Commission, each of which requires the Commission to disapprove County Bill No. 933.
27. It is denied that the Commission considered and/or relied 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. To the extent that paragraph 32 of the Initial Complaint contains other averments of fact, and not merely statements or conclusions of law to which no response is required, all such other averments thereof are denied.
28. To the extent that paragraphs 33, 34 and 35 of the Initial Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all averments thereof are denied.
29. To the extent that paragraph 36 of the Initial Complaint contains averments to which an answer is required, the answers previously stated herein to the paragraphs 1 through 35 of the Initial Complaint are hereby reiterated; all other averments thereof are denied.
30. All averments of paragraphs 37 and 38 of the Initial Complaint, which are not merely statements or conclusions of law to which no response is required, are denied.
31. St. Michaels denies the averment in paragraph 39 of the Initial Complaint that the decision to disapprove County Bill No. 933 occurred on May 14, 2004. To the

Banks, Nason &  
Hickson, P.A.  
P.O. Box 44  
Salisbury, MD  
21803-0044  
410-546-4644

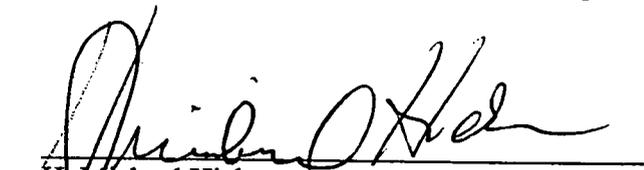
extent that the remainder of paragraph 39 of the Initial Complaint contains averments to which an answer is required, all such averments are denied.

32. It is admitted that the County participated in the proceedings before the Commission relative to County Bill No. 933. All other averments in paragraph 40 of the Initial Complaint are denied.

C. Any and all averments and averments of the Complaint not otherwise specifically answered herein are hereby DENIED.

D. In accordance with Maryland Rule 2-323 (g), the following affirmative defenses are asserted as to all counts contained in the Complaint:

1. All issues raised by this litigation that have been previously determined against the Plaintiff or its predecessors in interest are barred from being re-litigated by the doctrine of collateral estoppel.
2. The Plaintiff is estopped from asserting the claims contained in the Complaint.
3. Talbot County Bill No. 933, and the enactment thereof, is illegal.
4. All issues raised by this litigation that have been previously determined between the parties or their predecessors in interest are barred from being re-litigated by the doctrine of *res judicata*.
5. The enactment of Talbot County Bill No. 933 is *ultra vires*.
6. The Plaintiff has waived any and all rights sought to be advanced by the Complaint.

  
H. Michael Hickson

Banks, Nason & Hickson, P.A.

113 S. Baptist Street

P.O. Box 44

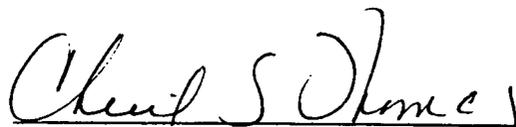
Salisbury, Maryland 21803-0044

Telephone: 410-546-4644

Attorney for The Commissioners Of St. Michaels,  
Defendant

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

foregoing Answer To Complaint are true and correct to the best of my knowledge, information and belief.



Cheryl S. Thomas, Town Manager  
The Commissioners Of St. Michaels

CERTIFICATE OF SERVICE

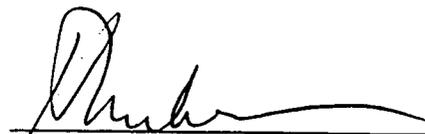
I HEREBY CERTIFY that on this 14<sup>th</sup> day of December, 2004, that an exact copy of the foregoing ANSWER TO COMPLAINT was mailed by regular U.S. Mail, postage pre-paid to:

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

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

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

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



W. Michael Hickson

Banks, Nason &  
Hickson, P.A.  
P.O. Box 44  
Salisbury, MD  
21803-0044  
410-546-4644

TALBOT COUNTY, MARYLAND

Plaintiff

v.

DEPARTMENT OF NATURAL  
RESOURCES

Defendant

\*

\*

\*

\*

\*

\*

IN THE

CIRCUIT COURT

FOR

TALBOT COUNTY,

MARYLAND

Case No. 20-C-04-005095DJ

\* \* \* \* \*

ANSWER TO COMPLAINT BY INTERVENOR

The Town of Oxford, ("Oxford"), Defendant, by David R. Thompson and Brynja M. Booth, and Cowdrey, Thompson & Karsten, A Professional Corporation, its attorneys, in answer to the Amended Complaint herein, states the following:

I

Rule 2-322(b)(2) Defenses

The Complaint, and each and every count thereof, fails to state a claim upon which relief can be granted.

II

Rule 2-323(g) Affirmative Defense

1. Bill 933, and its enactment process, are illegal, and the claims in the Amended Complaint are therefore barred.
2. The principles of estoppel bar the claims asserted by the Plaintiff.
3. The purported enactment of Bill 933 is ultra vires, and the claims in the Amended Complaint are therefore barred.
4. The Plaintiff has waived any rights to assert the claims set forth in the Amended Complaint.

5. The claims of the Plaintiff are barred by the doctrine of res judicata.
6. The claims of the Plaintiff are barred by the doctrine of collateral estoppel.

III  
Specific Responses under Rule 2-323(c)

In accordance with Maryland Rule 2-323 (c), the averments of the Amended Complaint are hereby answered paragraph by paragraph, as follows:

1. Oxford admits the averments of numbered paragraph 1.
2. Oxford admits the averments of numbered paragraph 2.
3. Oxford admits the averments of numbered paragraph 3.
4. Oxford denies the averment of numbered paragraph 4, in that each municipality with planning and zoning jurisdiction, including the Town of Oxford, has the primary responsibility to develop and implement a local critical area program within its own jurisdiction. Oxford admits that Talbot County has the responsibility to develop a local program within its planning and zoning jurisdiction.
5. Oxford admits the averments of numbered paragraph 5.
6. Oxford admits the averments of numbered paragraph 6.
7. Oxford denies the averments of numbered paragraph 7.
8. Oxford admits that the Plaintiff has correctly quoted a small portion of the applicable statute, but denies the legal conclusion set forth in numbered paragraph 8 of the Amended Complaint.
9. Oxford admits that Talbot County adopted a local program that for a period of time was approved by the Commission. All remaining allegations of fact in numbered paragraph 9 are denied.

10. Oxford admits that the County has correctly quoted COMAR 27.01.02.06 A. (2) in numbered paragraph 10 of the Amended Complaint.

11. Oxford admits that Talbot County adopted its local program in 1989, and enacted three zoning maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and that the County allocated acreage outside of the Town, for growth allocation conversion to permit higher land development density consistent with town growth. Oxford admits that the 1989 county zoning ordinance and critical area program were approved by the Commission.

12. The averments of numbered paragraph 12 are denied in that paragraph 12, as stated, misrepresents the status of the County's critical program *vis-a-vis* the continuing dialogue between county and state representatives concerning the County's critical area regulations.

13. The factual allegations of numbered paragraph 13 are denied except that Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission. The legal conclusions, to which no response is required, are likewise denied.

14. The factual allegations of numbered paragraph 14 are denied, except that Oxford admits that the substantive and procedural provisions of Bill 762 have only been applied to the Town of Easton.

15. The allegations of numbered paragraph 15 are denied.

16. The allegations of numbered paragraph 16 are denied, except that Oxford admits Bill 933 was forwarded to the Critical Area Commission for review.

17. Oxford denies both the factual and legal conclusions set forth in numbered paragraph 17 of the Complaint.
18. Oxford denies the allegations of numbered paragraph 18 of the Amended Complaint.
19. Oxford denies the allegations of numbered paragraph 19 of the Amended Complaint.
20. Oxford adopts and incorporates by reference numbered paragraphs 1 through 19 of the Amended Complaint as its response to numbered paragraph 20.
21. Oxford denies the allegations of numbered paragraph 21.
22. Oxford denies the allegations of numbered paragraph 22.
23. The allegations of numbered paragraph 23 are denied. Oxford asserts affirmatively that the Critical Area Commission voted to disapprove Bill 933 on May 5, 2004, at an official proceeding at which the County Attorney and at least one County Council member were present.
24. Oxford denies the allegations of numbered paragraph 24.
25. Oxford denies the allegations of numbered paragraph 25.
26. In response to numbered paragraph 26, Oxford admits that a declaratory judgment will serve to terminate the uncertainty and controversy giving rise to this proceeding, and further admits that there is an actual controversy between Oxford and the County, which involves antagonistic claims which will result in imminent and inevitable litigation. Oxford denies the allegations and conclusions of subparagraphs (a) through (d) of numbered paragraph 26, and denies that the County is entitled to the relief sought in lettered paragraphs A through H immediately following numbered paragraph 26.

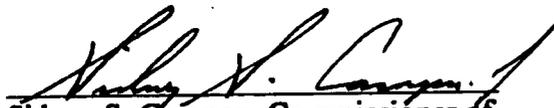
27. In response to the allegations of paragraph 27, Oxford incorporates and adopts by reference its response to paragraphs 1 through 26.
28. Oxford denies the allegations of numbered paragraph 28.
29. Oxford denies the allegations and conclusions of numbered paragraph 29, and asserts affirmatively that the Commission is responsible for applying all applicable laws in conducting its public functions.
30. Oxford denies the allegations and conclusions of numbered paragraph 30.
31. Oxford denies the allegations of numbered paragraph 31.
32. Oxford denies the allegations of numbered paragraph 32.
33. Oxford denies the allegations of numbered paragraph 33.
34. Oxford denies the allegations of numbered paragraph 34.
35. Oxford denies the allegations of numbered paragraph 35. Oxford further denies that the Plaintiff is entitled to the relief sought in the paragraph following numbered paragraph 35.
36. The Town of Oxford adopts and incorporates by reference its responses set forth above in paragraphs 1 through 35 to the allegations of numbered paragraph 36.
37. Oxford denies the allegations contained in numbered paragraph 37 of the Amended Complaint.
38. Oxford denies the allegations contained in numbered paragraph 38 of the Amended Complaint.
39. Oxford neither admits nor denies the request for judicial review set forth in paragraph 39, but denies the allegation that the Commission made its decision on May 14, 2004 disapproving Bill 933.

40. Oxford admits that Talbot County was a party to the proceedings before the Commission, and asserts affirmatively that the Town of Oxford was likewise a party to that proceeding.

WHEREFORE, in response to each and every claim for relief in each and every count of the Amended Complaint, the Town of Oxford asserts that the Plaintiff is not entitled to the relief sought or to any relief. The Town of Oxford respectfully requests that the Court declare Bill 933 invalid for all of the reasons set forth herein, and for such other reasons as may be apparent during the trial of this matter, and that the Town of Oxford have such other and further relief as the nature of this case requires.

Verification

In accordance with requirements that Mandamus related pleadings be verified, I hereby certify on behalf of the Town of Oxford that the matters and facts set forth herein are true and correct to the best of my knowledge, information and belief.

  
Sidney S. Campen, Commissioner of  
the Town of Oxford

Respectfully submitted:

  
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 15<sup>th</sup> day of December, 2004, a copy of the foregoing Answer to Complaint 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, MD

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

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

I further certify that a copy of this answer was faxed to each of the above counsel, and hand delivered to Michael L. Pullen, Attorney for Talbot County, at his address as set forth above, on this 1<sup>st</sup> day of November, 2004.

  
David R. Thompson

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

2005 FEB 18 PM 4 14  
CIRCUIT COURT  
TALBOT COUNTY  
LAWTON, MARYLAND

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs.

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

Defendant :

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

THE COMMISSIONERS OF :  
ST. MICHAELS :

and :

TOWN OF OXFORD, MARYLAND :

Interveners, Defendants :  
and Counter-Plaintiffs :

**SECOND AMENDED COMPLAINT**

Talbot County, Maryland, Plaintiff, by and through Daniel Karp, Victoria Shearer, and Allen, Karpinski, Bryant & Karp, P.A., and Michael L. Pullen, Talbot County Attorney, its attorneys, files this Second Amended Complaint seeking a declaratory judgment declaring that Bill 933 (Exhibit "A") 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 Coastal Bays, to approve Bill No. 933 as a local program amendment to Talbot County's Critical Area Program. In support of this action, Plaintiff states as follows:

## Parties

1. Talbot County, Maryland, is a charter county and a political subdivision of the State of Maryland.
2. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, hereinafter "Critical Area Commission", is a Commission within the Department of Natural Resources created by § 8-1803, Natural Resources Article, Md. Ann. Code.
3. The Commissioners of St. Michaels, intervenor-defendant, is the corporate name of a Maryland municipal corporation generally known as the Town of St. Michaels or "St. Michaels" hereinafter. St. Michaels derives all its corporate and municipal power entirely from the State of Maryland.
4. The Town of Oxford, or "Oxford" hereinafter, intervenor-defendant, is a Maryland municipal corporation deriving all its corporate and municipal power entirely from the State of Maryland.

## The Legal Framework

5. The Chesapeake Bay has been in decline for a number of years. One of the principal causes of that decline is pollution from the adjacent land mass. Studies have shown a direct link between population proximity to the shore and pollution in the adjacent Bay waters and rivers.
6. Inter-jurisdictional cooperation is essential to address the Bay's continuing decline by coordinated land use policies including all land masses (States, Counties, and municipalities) surrounding the Bay and its watershed. One such effort is the Chesapeake 2000 Agreement, signed by the Chesapeake Bay Commission, the State of Maryland, the Commonwealth of Pennsylvania, the Commonwealth of Virginia, the District of Columbia, and the United States of America.
7. Another such effort, the Maryland General Assembly's statewide response to the decline of the Bay, is the Chesapeake Bay Critical Area Program, Natural Resources Article § 8-1801 *et. seq.*<sup>1</sup>, The Chesapeake Bay Critical Area Program is comprised of Title 8, Subtitle 18, "Chesapeake Bay Critical Area Protection Program" and regulations contained in the Code of Maryland Regulations (COMAR) Title 27, "State Critical Area Commission."

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<sup>1</sup> Further references to Title 8, Subtitle 18 of the Natural Resources Article will only include the numeric designation. In the event other articles or subtitles of the Maryland Annotated Code are referred to, a complete citation will be used.

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

(a) The General Assembly finds and declares that:

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

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

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

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

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

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

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

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

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

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

9. The Purposes of the Chesapeake Bay Critical Area Protection 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)

10. The critical area includes "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." § 8-1807 (a) (2). The critical area is a 1000 foot ribbon encircling the Bay that transects County-municipal boundaries.

11. Land lying within the critical area is mapped as either "Resource Conservation Area" (RCA), "Limited Development Area" (LDA), or "Intensely Developed Area" (IDA) based upon the density of existing development as of December 1, 1985. Section 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 a remapped from RCA to either LDA or IDA.

12. The Critical Area Commission must approve any proposed local critical area program. *Id.* § 8-1809 (i). In accordance with this requirement, Talbot County submitted its proposed program to the Critical Area Commission for review and approval. The Critical Area Commission approved Talbot County's proposed program and it became effective August 13, 1989.

13. Section 8-1809 (g), requires each local jurisdiction to review its entire program and propose any necessary amendments to its program, at least once every 4 years, beginning with the 4-year anniversary of the program's effective date, and every 4 years thereafter. The Critical Area Commission must approve any proposed local program amendments. *Id.* § 8-1809 (i).

14. 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.

15. COMAR 27.01.02.06 A. (2), part of the criteria adopted by the Commission, 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."

#### Count I Declaratory Judgment

16. The allegations of paragraphs 1-15 are incorporated by reference herein as if fully set forth.

17. When Talbot County adopted (and the Critical Area Commission approved) its program in 1989, 3 planning maps were included showing anticipated growth areas around the towns of Easton, Oxford, and St. Michaels. Using those 1989 planning maps, growth allocation acreage was reserved for Easton (155 acres), Oxford (195 acres), and St. Michaels, (245 acres). No growth allocation was reserved for the Town of Queen Anne.

18. "Reserving" County growth allocation for municipalities in a County ordinance, based on County planning maps, for future (anticipated) municipal growth does not transfer growth allocation to a municipality without the continuing consent of the County's elected representatives.

19. The County's continuing consent to "reserve" growth allocation for municipalities may be freely withdrawn by the County's elected representatives, in the valid exercise of the legislative prerogative granted to Talbot County by Article 25 A §5 (the "Express Powers Act") and by the County Charter.

20. The municipalities, as such, have no vested rights to require the County to continue the "reservation" of growth allocation, nor to prevent the County from changing the 1989 the "reservation" of growth allocation to any municipality.

21. State law creates growth allocation, and State law assigns control over awards of growth allocation to the counties.

22. There is no provision in State law that operates to permanently transfer growth allocation from the County to St. Michaels, or to Oxford, without the County's original and continuing consent. Nor is there any provision in State law that prohibits the County from modifying this "reservation" in its own ordinance, subject only to the authority of the Critical Area Commission to review the local program change to determine if it meets State standards and criteria pursuant to § 8-1809 (j).

23. In accord with the quadrennial review requirement of Section 8-1809 (g), Talbot County duly enacted Bill 933 as a proposed local program amendment and submitted it to the Critical Area Commission for their review. Bill 933, and other Bills that accompanied it, (Bills 929, 930, 931, and 932), resulted from the first comprehensive review and revision to the County's local program since it was adopted in 1989.

24. Talbot County forwarded Bill 933 to the Critical Area Commission on December 29, 2003 for its review as a local program amendment.

25. State law requires the Critical Area Commission, within 10 working days of receiving a proposed program amendment, to either (i) mail a notification to the local jurisdiction that the proposal has been accepted for processing; or (ii) return the proposal as incomplete. § 8-1809 (m) (2)

26. Talbot County again forwarded Bill 933 to the Critical Area Commission on January 19, 2004.

27. The Critical Area Commission failed to comply with the requirements of § 8-1809 (m) (2), by failing to either mail a notification to Talbot County that the proposal has been accepted for processing or to return the proposal as incomplete within 10 working days of receiving the transmittal of December 29, 2003, or, alternatively, 10 working days of receiving the transmittal of January 19, 2004.

28. The Critical Area Commission accepted Bill 933 for review on February 5, 2004. The Critical Area Commission's belated acceptance of Bill 933 for review on February 5, 2003, was in violation of the requirements of Maryland law.

29. Section 8-1809 (o) provides that, "for proposed program amendments: the commission shall act on the proposed program amendment within 90 days of the commission's acceptance of the proposal. If action by the commission is not taken within 90 days, the proposed program amendment is deemed approved."

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

31. Bill 933 became operative pursuant to § 8-1809 (o), by virtue of the Commission's failure to act within the appropriate period of time established by State law.

32. Alternatively, although Bill 933 fully complied with the standards set forth in § 8-1808 (b) (1) through (3) and with the criteria of the critical area program adopted by the Commission under § 8-1808, the Critical Area Commission refused to approve it as a local program amendment.

33. Both State and County law provided for quadrennial comprehensive review of the County's local critical area program, including the 1989 planning maps, for, *inter alia*, possible recalculation and reallocation of reserved growth allocation. Those comprehensive reviews should have occurred in 1993, 1997, and 2001. However, no comprehensive reviews of Talbot County's local critical area program took place until 2003. Consequently, until 2003, the 3 planning maps adopted in 1989 remained static as a prospective look to the future, frozen in time.

34. By 2003, any continued usefulness or relevance of the 1989 planning maps had been wholly eliminated through adoption of 2 intervening, (and now, in 2005, 3) County Comprehensive Plans.

35. Many other changes occurred between 1989 and 2003. Town boundaries, planned growth areas, municipal growth needs, planning policies, and, not the least, the Bay's health, (continuing decline) all changed, as did State and local growth policies. There were ongoing, revised environmental assessments, revised environmental policies, and adoption of other goals, agreements, (The Chesapeake Bay 2000 Agreement) and metrics to establish and measure the success of the national, inter-state, and statewide effort to reverse the Bay's decline.

36. Bill 933, which was adopted in 2003 as part of the required quadrennial comprehensive review of Talbot County's local critical area program, took into account actual events during the 14 years since adoption of the 1989 planning maps. Bill 933 properly repealed those outdated maps.

37. In addition to intervening adoption of County Comprehensive Plans that show substantially different municipal growth areas than the 1989 planning maps, other circumstances changed as well. On April 25, 2000, Talbot County duly enacted Bill 762 and submitted it to the Critical Area 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 "B" and it is incorporated by reference herein. Bill 762 complied with the critical area criteria [COMAR 27.01.02.06 A. (2)], that require 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.

38. Bill 762 was drafted in coordination with affected municipalities, circulated to the municipalities and their attorneys for comment, amended to incorporate their suggested changes, and approved by the Critical Area Commission.

39. Bill 762 is now and has been part of Talbot County's local critical area program since 2000. Bill 762 gives Talbot County joint review, in conjunction with affected municipalities, over supplemental awards of growth allocation to municipalities.

40. Even in the absence of the procedure established by Bill 762, Bill 933 is a legitimate exercise by Talbot County of the State-delegated authority to control the process by which growth allocation is awarded.

41. Bill 933 repealed the outdated 1989 planning maps repealed the 1989 "reservation" of growth allocation to the towns based on those planning maps.

#### Count II Declaratory Judgment

42. The allegations of paragraphs 1-41 are incorporated by reference herein as if fully set forth.

43. Bill 933 meets the standards set forth in § 8-1808 (b) (1) through (3).

44. Bill 933 meets the criteria adopted by the Commission under § 8-1808.

45. Bill 933 meets the standards and criteria established by § 8-1809 (j), as the benchmark for the Critical Area Commission's decision to approve local program amendments.

46. Bill 933 is consistent with other county programs throughout the State of Maryland concerning the method for awarding growth allocation to municipalities. Those county programs had been previously approved by the Critical Area Commission, remain approved, and are currently in effect in other Maryland counties.

47. Even though Bill 933 met all applicable criteria and standards, and even though enactment of Bill 933 promotes the environmental policies upon which the State critical area law is based, the Critical Area Commission failed, neglected, and refused to approve Bill 933 as a local program amendment to the 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.

48. The Commission's refusal to approve Bill 933 is 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 their consideration and applied improper criteria in making its decision.

### Count III Declaratory Judgment

49. The allegations of paragraphs 1-50 are incorporated by reference herein as if fully set forth.

50. The General Assembly has enacted statewide restrictions on development in the critical area. These Statewide restrictions apply equally in municipalities and counties. In particular, in areas mapped as RCA, new development is limited to 1 dwelling unit per 20 acres.

51. As the State's legislature, the Maryland General Assembly inherently possesses full power to legislate for the entire State and for its political subdivisions, subject only to limitations imposed by the United States Constitution and the Maryland Constitution. By contrast, the State's municipal corporations only possess authority to legislate in those areas authorized by the Maryland Constitution or by the Maryland General Assembly. Furthermore, the authority of municipal corporations is often limited by the decisions of the General Assembly to preempt areas of statewide concern.

52. The Maryland General Assembly created "growth allocation," by enacting § 8-1808.1. Growth allocation permits new development at densities greater than 1 per 20 on land mapped RCA.

53. Growth allocation is created by State law and delegated by the State to the counties. This is a valid exercise of legislative power by the State.

54. State law defines a "local jurisdiction," to include both municipalities and counties having land in the critical area. Growth allocation is calculated under the same State formula for all "local jurisdictions" by multiplying the total amount of RCA in the local jurisdiction by 5%. §8-1808.1 (b). Municipalities and counties are treated identically under the formula. Each gets 5% of the local jurisdiction's RCA as its growth allocation.

55. Applying the State formula, (growth allocation acreage = 5% of land mapped RCA) results in 2,554 acres of growth allocation for Talbot County based on approximately 51,080 acres classified RCA.

56. St. Michaels had approximately 98.04 acres classified as RCA. According to the State formula,  $5\% \times 98.04 = 4.9$  acres of growth allocation. Oxford, similarly, had a relatively small amount of growth allocation under the State formula. This result flows directly from State law, not County law.

57. State law does not transfer growth allocation from the counties to the municipalities. Instead, State law delegates, and mandates, that Maryland's counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities. Talbot County has done so.

58. Maryland's counties have adopted differing approaches to awarding growth allocation to municipalities. Many counties require municipalities to apply to the county for awards of growth allocation. All these differing approaches are consistent with Maryland State law and have been approved by the Critical Area Commission.

59. Under Maryland law, the question of what process counties create to accommodate the growth needs of municipalities is to be determined by the counties, in coordination with affected municipalities, in the exercise of this State-delegated power to Maryland counties.

60. The Critical Area Commission, by refusing to approve Bill 933, usurped and illegally interfered with the County's State-delegated authority to determine what processes to adopt to provide for the growth needs of municipalities.

#### Count IV Declaratory Judgment

61. The allegations of paragraphs 1-60 are incorporated by reference as if fully set forth herein.

62. The primary reason for the Commission's decision<sup>2</sup>, as explained in the letter of May 14, 2004 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. Michael's program for the Strausburg growth allocation approved in October 2003."

63. This reasoning assumes that the Commission's decision to approve a particular project for a single property owner is superior to, and takes precedence over the County's exercise of its State-delegated legislative prerogatives. In effect, according to the Critical Area Commission's reasoning, one property owner's project approval prohibits the County from validly exercising its State-delegated police power to legislate.

64. The first reason stated by the Critical Area Commission in support of its decision is contrary to law. Growth allocation awards, absent vested rights, are subject to the superior, and ongoing, right of the State or County, in the exercise of its lawful authority, to enact legislation. It is not within the prerogative of the Critical Area Commission to unilaterally determine that its prior project approval takes precedence over a validly enacted County ordinance.

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<sup>2</sup> This "local program change" was, in reality, a map amendment affirming a request for approximately 20 acres of growth allocation. It was not a text amendment to St. Michael's critical area program.

65. The second reason given by the Critical Area Commission for refusing to approve Bill 933 was that:

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 which create is contrary to the commission's oversight responsibility to insure that local programs are implemented in a consistent and uniform manner.

66. The Critical Area Commission has already approved many county programs that require municipalities to request growth allocation from the county. Thus, to the extent that the critical area commission is required to exercise oversight to insure that local programs are implemented in a consistent and uniform manner, that obligation requires approval of Bill 933, because Bill 933 is consistent with the critical area commission's previous approvals of similar procedures in other counties.

67. There is no evidence that St. Michaels local critical area program was premised on growth allocation reserves provided by the County. St. Michaels' program was adopted in 1987, two years before the County's program was adopted in 1989.

68. There is no evidence that Oxford's critical area program was premised on growth allocation reserves provided by the County. Much of the area included in the 1989 (anticipated) growth areas around Oxford has already been developed, in the County, and annexation of that area has specifically been rejected by Oxford.

69. 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:

- (1) Bill 933 meets the standards set forth in § 8-1808 (b) (1) through (3); and
- (2) Bill 933 meets the criteria adopted by the Commission under § 8-1808; and
- (3) Bill 933 became effective by reason of the Commission's failure to accept and process the Bill, and to act on the Bill within the time permitted by State law.

70. The Critical Area Commission, the Commissioners of St. Michaels and the Town of Oxford deny this.

#### Count V Mandamus and Certiorari

71. The allegations of paragraphs 1-72 are incorporated by reference herein as if fully set forth.

72. The Critical Area Commission is charged with the responsibility of reviewing local program amendments to determine whether they comply with the standards set forth in § 8-1808 (b) (1) through (3) and the criteria adopted by the Commission under § 8-1808.

73. 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 their decision.

74. 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.

75. 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.

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

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

78. The Commission acted contrary to law and beyond the scope of their 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 them in considering Bill 933 as a local program amendment.

WHEREFORE, Plaintiff requests the Court to review the decision of the Critical Area Commission on its 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 remand this case to the Critical Area Commission for further consideration of Bill 933 as a local program amendment in light of the Court's decision in this case. In addition, Plaintiff prays:

- A. That the Court assume jurisdiction over this controversy and issue a declaratory judgment;
- B. That the Court declare that the Critical Area Commission is required to consider

only the standards set forth in § 8-1808 (b) (1) through (3); and the criteria adopted by the Commission under § 8-1808, when reviewing a proposed local program amendment.

- C. That the Court determine that the Commission exceeded the proper scope of its authority by failing to consider only those standards and criteria.
- D. That the Court determine that the Commission failed to adequately articulate appropriate findings of fact to justify their decision to not approve Bill 933 as a local program amendment.
- E. That the Court determine that the reasons expressed by the Critical Area Commission for refusing to approve Bill 933 as a local program amendment are legally insufficient to justify 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.

*Daniel Karp / mp*

Daniel Karp

*Victoria Shearer / mp*

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



---

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of February, 2005, a copy of the foregoing Second Amended Complaint was mailed first-class, postage prepaid to:

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

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

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



\_\_\_\_\_  
Of Counsel for Plaintiff  
Talbot County, Maryland

**COUNTY COUNCIL**  
**OF**  
**TALBOT COUNTY, MARYLAND**

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

Bill No.      933\*

**\*AS AMENDED\***

Expiration Date:      January 22, 2004

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

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

By the Council      November 18, 2003

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

By Order *Janice Mainz*  
Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114  
115 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT  
116 COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is  
117 hereby amended as set forth herein.  
118

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

121 \* \* \*

122  
123 § 190-109 D (9)  
124

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

133 \* \* \*

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

137 (a) Not more than 128 acres of the Critical Area of the County, including lands within the  
138 incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an  
139 Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts  
140 include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas  
141 of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC)  
142 or Limited Industrial (LI). Town zoning districts include all districts classified as LDA.  
143 The requested IDA classification shall include areas of 20 or more contiguous acres of  
144 LC, GC, LI or town zoning districts established for the IDA of the Critical Area.  
145

146 (b) In determining whether the twenty-acre threshold has been reached, the contiguous areas  
147 of existing commercial and/or industrial zoning districts, whether located in the Critical  
148 Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for~~  
149 ~~the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St.~~  
150 ~~Michaels for growth allocation or growth allocation associated with annexations, and 36~~  
151 ~~acres for the County for growth allocation for property outside of the towns and outside~~  
152 ~~of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~  
153

154  
155 **§ 190-109 D (11)**  
156

157 ~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9)~~  
158 ~~and (10) should be reviewed by the County and Towns by June 1, 1993 for possible~~  
159 ~~reallocation and at least every four years thereafter.~~  
160

161 \* \* \*  
162 **§ 190-109 D (14)**  
163

164 ~~Specific annexation requests for property included in the acres reserved for the towns in~~  
165 ~~§ 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by~~  
166 ~~the County for consistency with the County Comprehensive Plan and shall be subject to~~  
167 ~~all current ordinances regulating annexations. The County shall not act on rezoning~~  
168 ~~requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request~~  
169 ~~for the property has been denied by the town or until 12 months after an annexation~~  
170 ~~request for the property has been submitted to the town, whichever occurs first. If the~~  
171 ~~County approves a rezoning request not associated with an annexation request for~~  
172 ~~property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the~~  
173 ~~property rezoned shall be subtracted from the acres reserved for the Town for annexation~~  
174 ~~in § 190-109D(9) and (10).~~  
175

176 **§ 190-109 D (15)**  
177

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

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

184  
185 § 190-109 D (16)

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

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

191 1. Vested Rights: Effective Date of Zoning Text Amendments  
192

193 This ordinance shall apply to the total growth allocation acreage allocated to the County  
194 under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains  
195 unutilized on the effective date of this ordinance.  
196

197 (a) For purposes of this subsection, the term "unutilized" includes the total growth  
198 allocation acreage allocated to the County under State law, less growth allocation  
199 acreage that (1) has been previously allocated by any town or the County; and,  
200 (2) prior to the effective date of this ordinance, has resulted in actual physical  
201 commencement of some significant and visible construction; (3) which has been  
202 undertaken in good faith, with the intention to carry it through to completion; and,  
203 (4) which has occurred pursuant to a validly issued building permit.  
204

205 (b) For purposes of this subsection, growth allocation acreage allocated to the County  
206 does not include growth allocation allocated to the towns under § 8-1808.1 (b)  
207 (5% of the total resource conservation area in the town at the time of  
208 original approval of the town's critical area program by the Critical  
209 Area Commission).  
210

211 (c) For purposes of this subsection, County growth allocation acreage that has been  
212 previously allocated by any town shall first be counted as part of that town's  
213 allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been  
214 exceeded, growth allocation that has been utilized prior to the effective date of  
215 this ordinance shall be deducted against the County's remaining growth  
216 allocation. Growth allocation awarded by any town that remains unutilized on the  
217 effective date of this ordinance shall revert to the County. Growth allocation  
218 awarded by the County, prior to or after the effective date of this ordinance, shall  
219 be deducted from the total growth allocation acreage allocated to the County  
220 under § 8-1808.1 (b).  
221

222 2. Severability.

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

225  
226

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\*

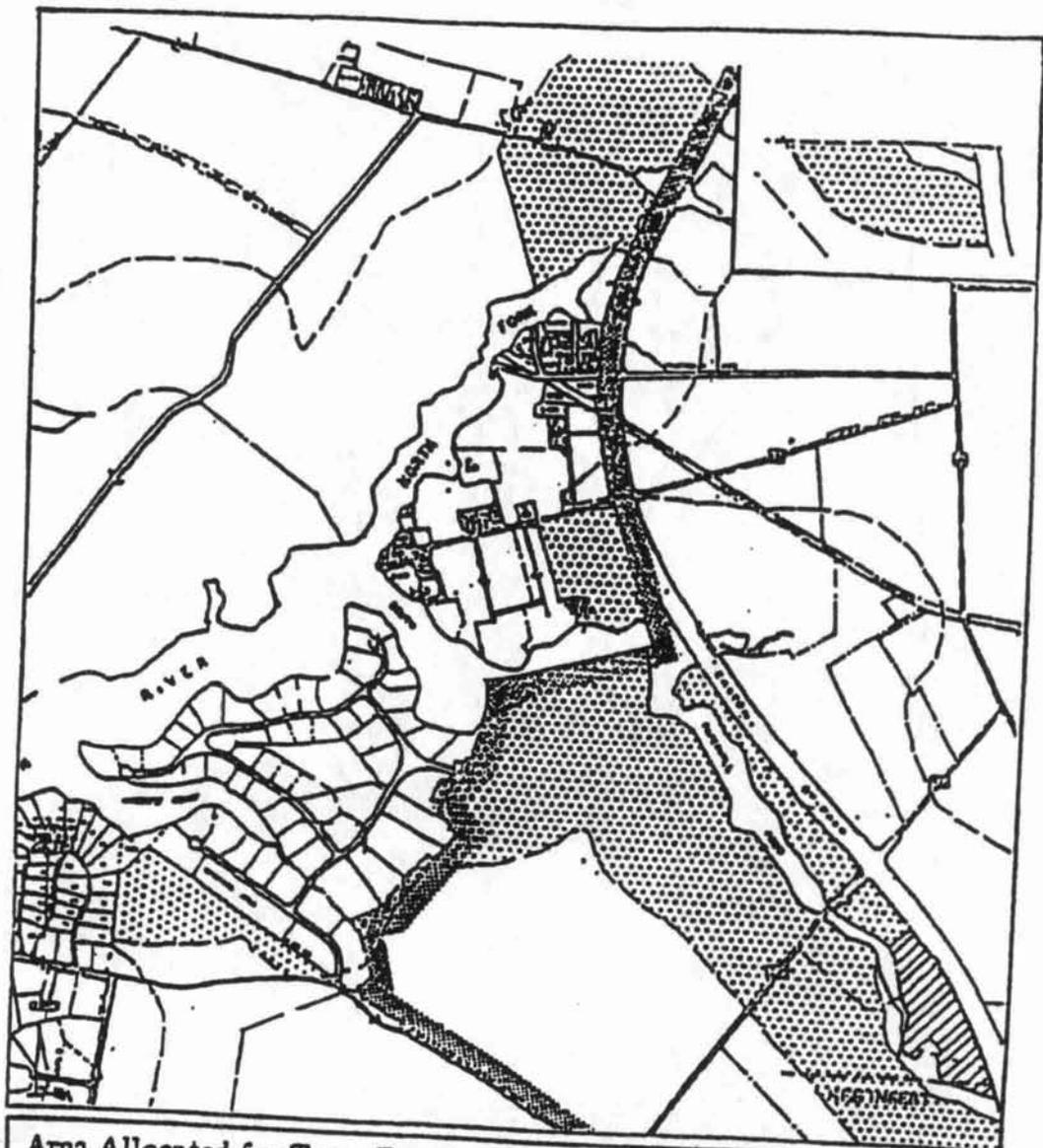
**\*AS AMENDED\***

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

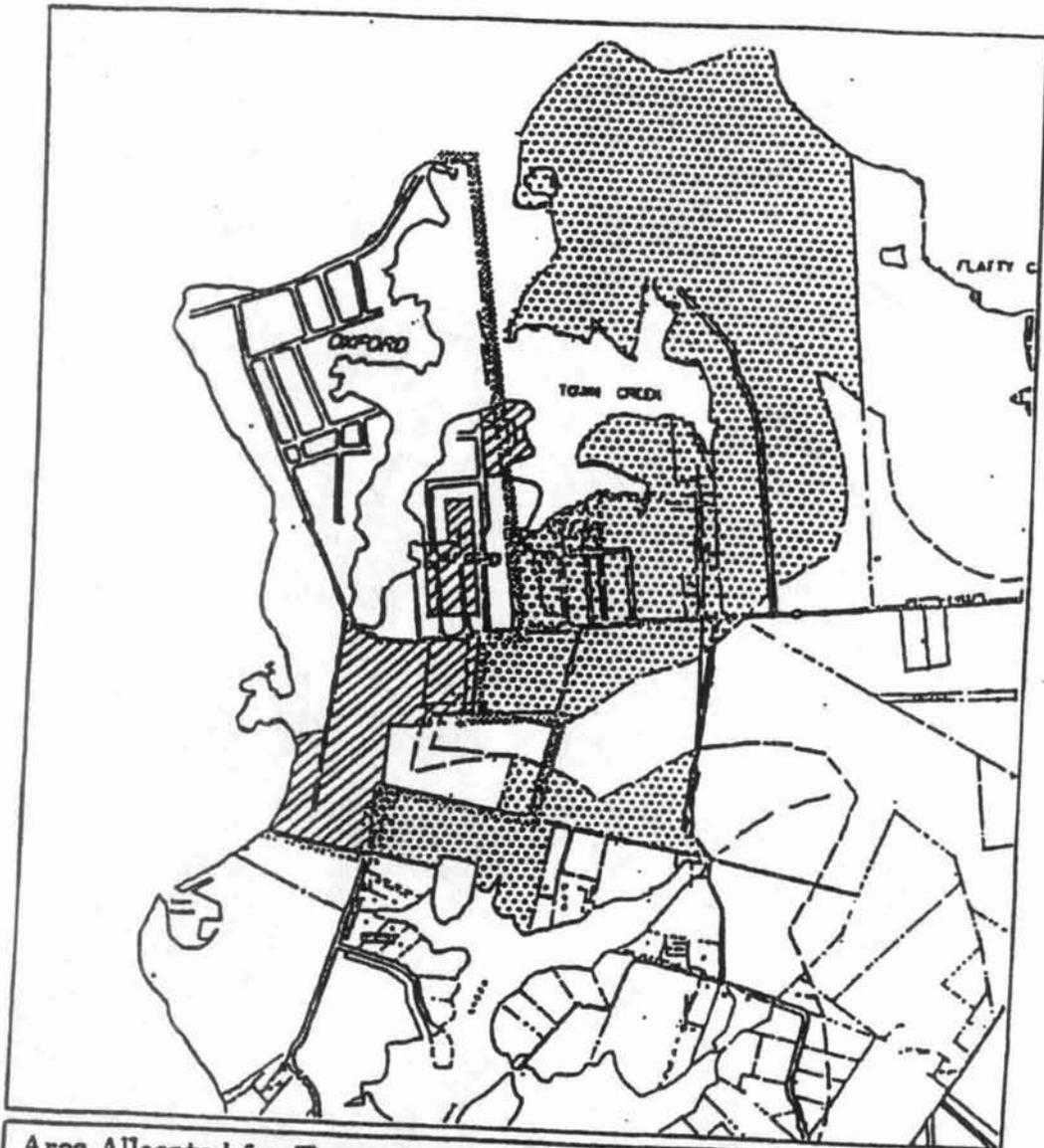
 LDA for Rezoning

Map No. 1

 miles

Wiles Dailey Prosser  
Norfolk Va. Sarasota, Fla.

ZONING



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

 RCA for Annexation or Rezoning

 LDA for Rezoning

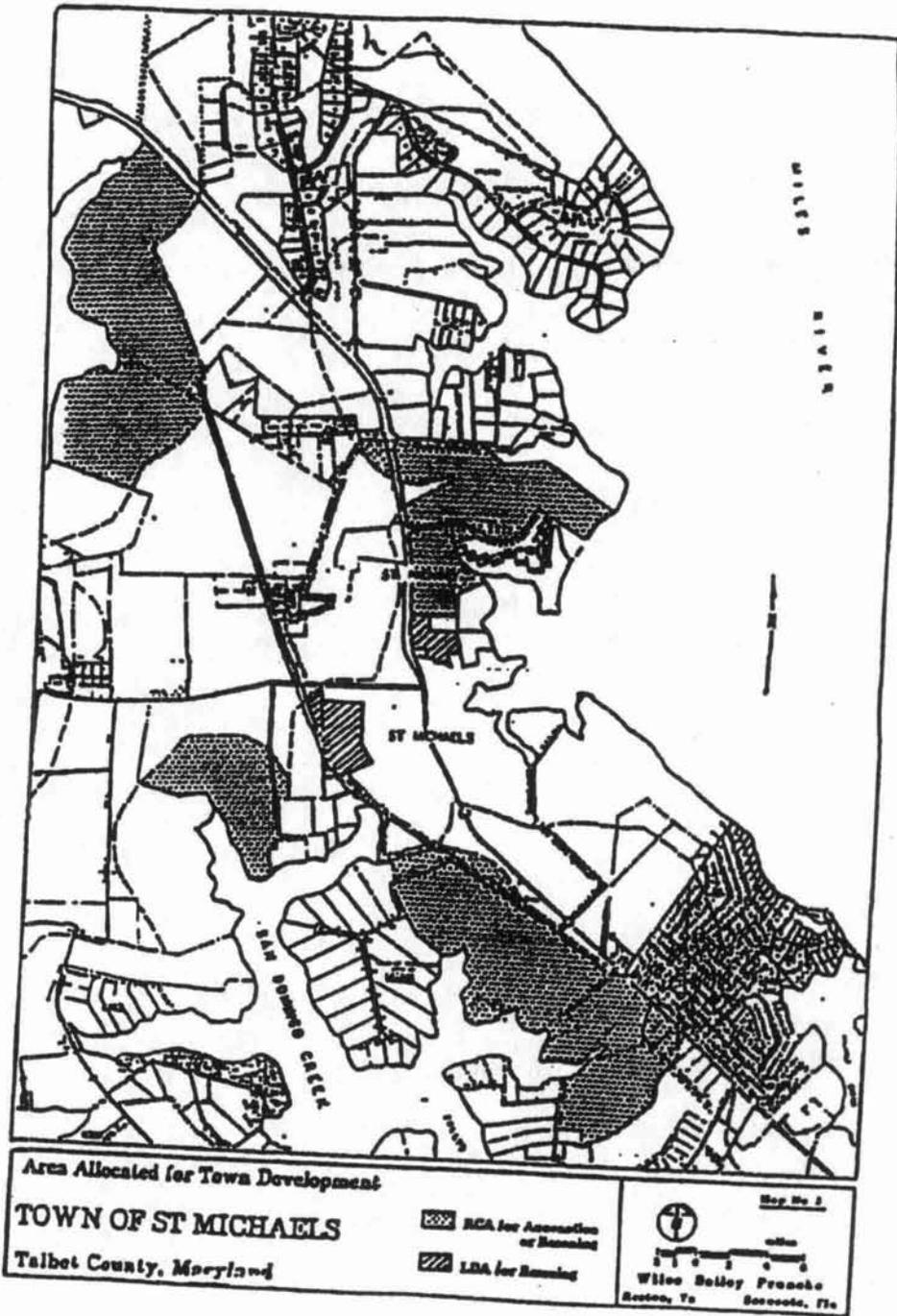


Map No

 miles

Wiles Daily Prenske  
Roxton Va Sarasota, Fla.

# ZONING



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 Jeniza Morris  
Secretary

Second Amended Complaint  
Exhibit B

1 **A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL**  
2 **GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY,**  
3 **MARYLAND.**  
4  
5

6 SECTION ONE: BE IT ENACTED, by the County Council of Talbot County, that  
7 Title 19-14 (c) (iv) (c) [i] be repealed and re-enacted to establish procedures for awarding  
8 supplemental growth allocation to municipalities in Talbot County, Maryland, as follows:  
9

10  
11 [i] Not more than 1,213 acres of the Critical Areas of the County, including  
12 all land lying within the Critical Area within incorporated towns, shall be reclassified  
13 from the Rural Conservation (RC) District (or town zoning districts established for the  
14 Resource Conservation Area of the Critical Area) to any other zoning district. Of these  
15 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the  
16 Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation  
17 associated with annexations, and 618 acres is reserved for the County.  
18

19 When 1,092 acres (ninety [90] percent of 1,213 acres) has been approved for growth  
20 allocation by the Towns and/or the County, then the County shall request permission  
21 from the Maryland Critical Area Commission to double the maximum number of acres  
22 that may be reclassified from the Rural Conservation District (or comparable town  
23 districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the  
24 County shall reserve acreage for each town.  
25

26 If the commission approves the doubling of the number of acres that may be rezoned  
27 under this Section, the County will have its full allocation of 2,554 acres for growth as  
28 specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213  
29 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below =  
30 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426 acre  
31 allocation (1,213 + 1,213) at the time of the establishment of this Section (August 13,  
32 1989).  
33

34 Upon request for supplemental growth allocation by any municipal corporation within the  
35 County, the County Council may transfer growth allocation to the municipal corporation  
36 and may impose such conditions, restrictions, and limitations upon the use of any such  
37 supplemental growth allocation, if any, as the Council may consider appropriate. All such  
38 requests shall comply with the following requirements.  
39

40 [1] Application Process. The applicant shall file their application with the  
41 municipality. In addition to complying with all municipal requirements, the applicant  
42 shall also provide the information required by § 19.14 (c) (iv) [b] of the Talbot County  
43 Zoning Ordinance, as amended, and shall also comply with the design standards set forth  
44 in § 19.14 (c) (iv) [b] [1] through [9], of the Talbot County Zoning Ordinance, as  
45 amended. The municipality shall forward the application to the County Council for  
46 consideration and review within five (5) working days.  
47

48 [2] Staff and Planning Commission Review. The planning staff and the  
49 Planning Commission shall review the application in accordance with the procedures set  
50 forth in §19.14 (c) (iv) (c) [1] through [4], except that municipal and county staff reports  
51 shall be forwarded to the Planning Commissions of both jurisdictions and the planning  
52 staff shall schedule a joint hearing on the application before the Planning Commissions of  
53 both jurisdictions. The designated chairperson of each Planning Commission shall co-  
54 chair the hearing. Each Planning Commission shall vote separately and make its  
55 recommendations to its respective council or commission. Each Planning Commission  
56 shall provide a copy of its recommendations to the other jurisdiction.  
57

58 [3] Council Review. The county and municipal councils or commissions  
59 shall hold a joint hearing on the application, co-chaired by the designated chairperson of  
60 each council or commission which may be coordinated jointly with the Critical Area  
61 Commission. The county and municipal councils or commissions shall make their

1 respective decisions separately as independent entities. The County Council shall  
2 evaluate the application in accordance with § 19.14 (c) (iv) [d].  
3

4 [4] Amendments to Approved Projects. Any amendment to an approved  
5 project shall be subject to County Council review and approval for a period of five (5)  
6 years following the date of initial approval.  
7  
8  
9

10  
11 BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days  
12 following its enactment.  
13  
14  
15  
16  
17  
18

19  
20 PUBLIC HEARING

21 Having been posted and Notice of time and place of hearing and Title of Bill No.  
22 762 having been published, a public hearing was held on Tues. April 18, 2000  
23  
24  
25  
26  
27  
28  
29  
30

31 BY THE COUNCIL  
32  
33

34 Read the third time.  
35

36 ENACTED April 25, 2000 \*  
37 \*AS AMENDED\*  
38

39  
40 By Order

*Julia Morris*  
Secretary

41  
42  
43  
44  
45  
46 Spence - aye  
47 Dyott - aye  
48 Foster - aye  
49 Higgins - aye  
50 Harrison - aye

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor



**RECEIVED** Martin G. Madden  
Chairman  
MAY 18 2004 Ren Serey  
Executive Director  
TALBOT COUNTY COUNCIL

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/](http://www.dnr.state.md.us/criticalarea/)

May 14, 2004

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

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

Dear Mr. Kinney:

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

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

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

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

**Second Amended Complaint**  
Exhibit C

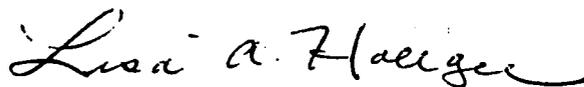
E. 343

Mr. Kinney  
May 14, 2004  
Page 2

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

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

Sincerely,



Lisa Hoerger  
Natural Resource Planner

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

Sept. 2006

Volume I: Talbot County v. Town of Oxford No. 1509 Record Extract

USA\_S\_1831\_10 (2 of 2)

TALBOT COUNTY, MARYLAND,

Plaintiff,

Vs.

DEPARTMENT OF NATURAL RESOURCES, et al.

Defendants.

\* \* \* \* \*

THE COMMISSIONERS OF ST. MICHAELS et al.

Counter-Plaintiffs,

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant.

\* \* \* \* \*

**ANSWER TO SECOND AMENDED COMPLAINT**

The Commissioners Of St. Michaels ("St. Michaels"), Defendant, by H. Michael Hickson, its attorney, in answer to the Second Amended Complaint (the "Complaint") filed by Talbot County, Maryland (the "County") in the above-captioned case, says:

- A. The Complaint, and all counts contained therein, fails to state a claim upon which relief can be granted.
- B. The County's request for Mandamus, contained at Count V (Mandamus and Certiorari) of the Complaint, is not supported by an affidavit as required by Md. Rule 15-701, is therefore insufficient as a matter of law, and should be dismissed.
- C. In accordance with Maryland Rule 2-323 (c), the averments of the claim for relief, as contained in the Complaint are hereby answered paragraph-by-paragraph, *ad seriatim*, as follows:

1. To the extent that paragraphs 1 through 4 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are admitted.

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

2. To the extent that paragraphs 5 through 7 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are denied.

3. St. Michaels denies that the legislative findings, referred to in paragraph 8, date from the time when the Chesapeake Bay Critical Area Program was enacted originally. To the extent that the remainder of paragraph 8 contains averments of fact, and not merely statements or conclusions of law to which no response is required, all such averments of fact are denied.

4. To the extent that paragraphs 9 through 11 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, all such averments of fact are denied.

5. To the extent that paragraph 12 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are denied, except that St. Michaels believes that Talbot County initially submitted a proposed program to the Critical Area Commission for approval, which St. Michaels believes was implemented by Talbot County and was approved by the Critical Area Commission before August 13, 1989.

6. To the extent that paragraphs 13 through 15 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are denied.

7. To the extent that paragraph 16 of the Complaint contains averments to which an answer is required, the answers previously stated herein to paragraphs 1 through 15 of the Complaint are hereby reiterated; all other averments thereof are denied.

8. As to the allegations of paragraph 17, St. Michaels admits that as part of its Local Critical Area Program, Talbot County mapped 245 acres in and adjacent to St. Michaels, 195 acres in and adjacent to Oxford and 155 acres in and adjacent to Easton, as areas appropriate for growth, and that such Program was approved by the Critical Area Commission. St. Michaels either denies or is without sufficient knowledge to admit or deny the remaining allegations contained in paragraph 17, and they are therefore denied.

9. The allegations contained in paragraphs 18 through 22 of the Complaint are denied. Further answering, the limitations devised and exercised by the County over the award of growth allocation by municipalities for land located within the Critical Area inside those municipalities, is contrary to

State laws and policies, as set forth in the Counterclaims filed in this case by St. Michaels and by Oxford.

10. The allegations contained in paragraph 23 of the Complaint are denied, except that, upon information and belief, St. Michaels admits that the County did fail to review its Critical Area Program between its inception and 2003, as required by State law and admitted by the County in its Second Amended Complaint.

11. St. Michaels is without sufficient information to form a belief as to the truth of the averments contained in paragraph 24, and therefore denies the same.

12. To the extent that paragraph 25 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are denied.

13. St. Michaels is without sufficient information to form a belief as to the averments contained in paragraph 26, and therefore denies the same.

14. To the extent that paragraph 27 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are denied.

15. To the extent that paragraph 28 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels is without sufficient information to admit or deny said averments, and therefore denies the same.

16. To the extent that paragraphs 29 through 32 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, such averments of fact are denied.

17. To the extent that paragraph 33 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels is without sufficient information to form an opinion as to the truth of said averments, and therefore denies the same; except that, upon information and belief, St. Michaels admits that the County failed to review its Critical Area Program, as required by State law, between its inception and 2003.

18. The allegations contained in paragraph 34 are denied.

19. Paragraph 35 speaks in generalities and observations, and are not sufficiently specific as to allow St. Michaels to form an opinion as to the truth of the averments therein. As such, St.

Michaels is without sufficient information to form an opinion as to the truth of said averments, and therefore denies the same.

20. St. Michaels is without sufficient information to form an opinion as to the truth of the averments in paragraph 36, and therefore denies the same. Further answering, the County had not timely preformed the periodic reviews as required by law, and has used the periodic reviews as a vehicle to restrict development within St. Michaels in a manner that is contrary, and for reasons that are irrelevant, to State laws and policies.

21. The allegations contained in paragraph 37 are denied.

22. St. Michaels is without sufficient information to admit or deny the allegations contained in paragraph 38, and therefore denies those allegations; except to state that when introduced and presented to the Critical Area Commission, County Bill No. 762 was not intended to affect the mapping by the County of areas in and adjacent to St. Michaels, Oxford and Easton, or the acreage thereof, as appropriate for growth, contrary to the way it is now interpreted by the County.

23. To the extent that paragraphs 39 and 40 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies such allegations of fact. Further answering, County Bill No. 762 is also contrary to State laws and policies that grant autonomy to municipalities regarding planning, zoning and other land-use matters within their borders.

24. St. Michaels admits that Bill 933 purports to alter the County's original mapping of areas in and adjacent to St. Michaels, Oxford and Easton as appropriate for growth. To the extent that paragraph 41 of the Complaint otherwise contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies the same. Further answering, Bill 933 is illegal and therefore ineffective, unenforceable and/or inoperative.

25. To the extent that paragraph 42 of the Complaint contains averments to which an answer is required, the answers previously stated herein to paragraphs 1 through 41 of the Complaint are hereby reiterated; all other averments thereof are denied.

26. The allegations contained in paragraphs 43 through 45 are denied.

27. To the extent that paragraph 46 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels is without sufficient information to form an opinion as to the truth of said averments, and therefore denies said averments of fact.

28. With regard to paragraph 47, St. Michaels admits that the Critical Area Commission refused to approve Bill 933; all other allegations of paragraph 47 are denied.

29. The allegations contained in paragraph 48 of the Complaint are denied.

30. To the extent that paragraph 49 of the Complaint contains averments to which an answer is required, the answers previously stated herein to paragraphs 1 through 48 of the Complaint are hereby reiterated; all other averments thereof are denied.

31. With regard to paragraphs 50 through 52, St. Michaels admits that the State has enacted laws which provide for the restriction of development in the Critical Area, and created growth allocation as a means of allowing development within the Critical Area at densities greater than one unit per twenty acres. To the extent that paragraphs 50 through 52 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies all other allegations.

32. St. Michaels denies the allegations of Paragraph 53.

33. To the extent that paragraph 54 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies such averments of fact.

34. St. Michaels has insufficient knowledge to admit or deny the acreage of mapped RCA in Talbot County or within St. Michaels, so such allegations are denied. To the extent that paragraphs 55 and 56 of the Complaint contain other averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies all such averments.

35. The allegations contained in paragraphs 57 and 58 of the Complaint are denied.

36. To the extent that paragraph 59 contains allegations of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies all such allegations.

37. The allegations contained in paragraph 60 of the Complaint are denied.

38. To the extent that paragraph 61 of the Complaint contains averments to which an answer is required, the answers previously stated herein to paragraphs 1 through 60 of the Complaint are hereby reiterated; all other averments thereof are denied.

39. Paragraph 62 of the Complaint quotes only part of the Commission's letter of May 14, 2004, which speaks for itself, but does not include any other statements and documents of the Commission in connection with its hearings, deliberations and decision to disapprove Bill 933. St. Michaels is without sufficient information to form an opinion as to the "primary reason" for

the Commission's decision regarding Bill 933, and therefore denies the County's averments regarding the same. All other allegations to which a response is required are denied.

40. To the extent that paragraphs 63 and 64 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies all such averments.

41. Regarding the allegations contained in paragraph 65, St. Michaels admits that the Commission's statements speak for themselves. St. Michaels denies the remaining allegations and insinuations contained in plaintiffs paragraph 65.

42. In response to paragraph 66 of the Complaint, St. Michaels is without knowledge as to the specifics of prior actions by the Critical Area Commission. To the extent that paragraph 66 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies the same. Further answering, St. Michaels denies that the Critical Area Commission was performing a quasi-judicial function in disapproving Bill 933, and denies a requirement of consistency by the Critical Area Commission in the face of changing or different conditions, or to continue actions or conduct that appears is intended to, or would, produce results that are contrary to State law or policy.

43. The allegations contained in paragraphs 67 and 68 of the Complaint are denied.

44. In answer to paragraphs 69 and 70 of the Complaint, St. Michaels admits that actual, antagonistic controversies exist between the parties that will lead to inevitable litigation, and that St. Michaels disputes and disagrees with the assertions of the County contained in Paragraph 69 of the Complaint. All other allegations to which an answer is required are denied.

45. To the extent that paragraph 71 of the Complaint contains averments to which an answer is required, the answers previously stated herein to paragraphs 1 through 70 of the Complaint are hereby reiterated; all other averments thereof are denied.

46. To the extent that paragraph 72 of the Complaint contains averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies such averments of fact.

47. To the extent that paragraphs 73 through 78 of the Complaint contain averments of fact, and not merely statements or conclusions of law to which no response is required, St. Michaels denies such averments of fact.

- D. Any and all averments of the Complaint not otherwise specifically answered herein are hereby DENIED.
- E. In accordance with Maryland Rule 2-323 (g), the following affirmative defenses are asserted as to all counts contained in the Complaint:
1. All issues raised by this litigation that have been previously determined against the Plaintiff or its predecessors in interest are barred from being re-litigated by the doctrine of collateral estoppel.
  2. The Plaintiff is estopped from asserting the claims contained in the Complaint.
  3. Talbot County Bill No. 933, and the enactment thereof, is illegal.
  4. All issues raised by this litigation that have been previously determined between the parties or their predecessors in interest are barred from being re-litigated by the doctrine of *res judicata*.
  5. The enactment of Talbot County Bill No. 933 is *ultra vires*.
  6. The Plaintiff has waived any and all rights sought to be advanced by the Complaint.

**WHEREFORE**, St. Michaels requests that this Honorable Court:

A. Dismiss Talbot County's request for Mandamus contained in Count V of the Second Amended Complaint because, as stated *supra*, the same is unsupported by an affidavit as required by Md. Rule 15-701, and, as a result, is insufficient as a matter of law; and,

B. Issue a declaratory judgment denying all of the relief requested by the Plaintiff, Talbot County, in its Second Amended Complaint, and granting all of the relief requested by St. Michaels and Oxford in their respective Counterclaims filed in the above-captioned case.



H. Michael Hickson  
Banks, Nason & Hickson, P.A.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, Maryland 21803-0044  
Telephone: 410-546-4644  
Attorney for The Commissioners Of St. Michaels,  
Defendant and Counter-Plaintiff

**VERIFICATION**

I solemnly affirm, under the penalties of perjury, that the matters and facts contained in the foregoing Answer To Second Amended Complaint are true and correct to the best of my knowledge, information and belief.

A handwritten signature in cursive script, appearing to read "Cheryl S. Thomas", written over a horizontal line.

Cheryl S. Thomas, Town Manager  
The Commissioners Of St. Michaels

**CERTIFICATE OF SERVICE**

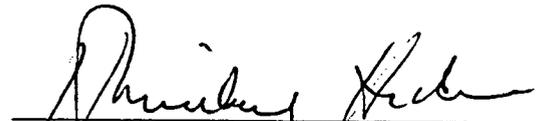
I HEREBY CERTIFY that on this 8th day of March, 2005, that an exact copy of the foregoing ANSWER TO SECOND AMENDED COMPLAINT was mailed by regular U.S. Mail, postage pre-paid to:

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

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

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

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

  
\_\_\_\_\_  
H/ Michael Hickson, Esq.

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

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

ANSWER BY THE TOWN OF OXFORD TO SECOND AMENDED COMPLAINT

The Town of Oxford, ("Oxford"), one of the Defendants, by its attorneys, David R. Thompson, Brynja M. Booth, and Cowdrey, Thompson & Karsten, A Professional Corporation, in answer to the Second Amended Complaint herein, and in response to each and every count thereof, states the following:

I  
Rule 2-322(b)(2) Defenses

The Second Amended Complaint, and each and every count thereof, fails to state a claim upon which relief can be granted.

II  
Rule 2-323(g) Affirmative Defense

1. Bill 933, and its enactment process, are illegal, and the claims in the Second Amended Complaint are therefore barred.
2. The principles of estoppel bar the claims asserted by the Plaintiff.
3. The purported enactment of Bill 933 is *ultra vires*, and the claims in the Second Amended Complaint are therefore barred.

4. The Plaintiff has waived any rights to assert the claims set forth in the Second Amended Complaint.

5. The Plaintiff has failed comply with necessary conditions precedent, and its claims are therefore barred.

III  
Specific Responses under Rule 2-323(c)

In accordance with Maryland Rule 2-323 (c), the averments of the Second Amended Complaint are hereby answered paragraph by paragraph, as follows:

1. Oxford admits the factual averments of numbered paragraph 1.
2. Oxford admits the factual averments of numbered paragraph 2.
3. Oxford admits that St. Michaels is a Maryland municipal corporation, and denies the remaining averments of numbered paragraph 3.
4. Oxford admits that the Town of Oxford is a Maryland municipal corporation, and denies the remaining averments of numbered paragraph 4.
5. Oxford denies the averments of numbered paragraph 5 to the extent that said paragraph recites a vague oversimplification of the status of the Chesapeake Bay. Oxford asserts that studies of the Chesapeake Bay have shown direct sources of pollution which are materially different and more complex than the simplistic conclusion asserted in paragraph 5.
6. Oxford admits that various agreements and compacts have been signed by various governmental entities, and agrees that coordinated planning by all governments within the Chesapeake Bay watershed is a laudable goal. All other allegations are denied. Oxford asserts affirmatively that the Plaintiff has failed to participate in coordinated planning

with the municipalities of Talbot County in connection with the enactment of Talbot County Legislative Bill 933.

7. Oxford admits that the Plaintiff has cited in paragraph 7 the current statutory reference to the Chesapeake Bay Critical Area Program. The remaining allegations are denied.

8. With respect to numbered paragraph 8, Oxford admits that Plaintiff has quoted some statutory language that is currently set forth in Md. Code Ann. Natural Resources Art. § 8-1801(a). The remaining allegations are denied.

9. Oxford admits that Plaintiff has quoted current statutory language set forth in Md. Code Ann. Natural Resources Art. § 8-1801(b) in numbered paragraph 9. The remaining allegations are denied

10. Oxford admits that Plaintiff has quoted statutory language set forth in Md. Code Ann. Natural Resources Art. § 8-1807(a)(2) in numbered paragraph 10. The remaining allegations are denied.

11. In response to paragraph 11, Oxford admits that land within the critical area was to be mapped as RCA, LDA, or IDA, depending upon criteria addressed by state law and regulation, and that there is a growth allocation process to modify those classifications. All remaining allegations and characterizations are denied.

12. In response to paragraph 12, Oxford admits that Natural Resources Article § 8-1809(i) provides that local jurisdictions' critical area programs must be submitted to the Critical Area Commission. Oxford also admits that Talbot County submitted a proposed program to the Critical Area Commission that became effective August 13, 1989. All other allegations set forth in paragraph 12 are denied.

13. Oxford admits that the statute referred to in numbered paragraph 13 addresses local program amendments and review thereof by the Critical Area Commission. The remaining allegations and conclusions are denied.

14. Oxford admits that the Plaintiff has quoted a portion of the applicable statute, but denies the legal conclusions set forth in numbered paragraph 14.

15. Oxford admits that the County has quoted COMAR 27.01.02.06A(2) in numbered paragraph 15 of the Second Amended Complaint.

16. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-15 of the Second Amended Complaint as its response to paragraph 16.

17. Oxford admits that Talbot County adopted a local program in 1989, and enacted three maps classifying areas contiguous to Oxford, Easton and St. Michaels as growth allocation and annexation areas, and that the County prioritized acreage contiguous to towns for growth allocation conversion to permit higher land development densities consistent with town growth. Oxford admits that in 1989, the Talbot County Critical Area Program, and related zoning ordinance provisions, was approved by the Commission.

18. Oxford denies the averments, factual characterizations and legal conclusions set forth in paragraph 18.

19. Oxford denies the averments, factual characterizations and legal conclusions set forth in paragraph 19.

20. Oxford denies the averments, factual characterizations and legal conclusions set forth in paragraph 20.

21. The allegations, characterizations, and legal conclusions set forth in paragraph 21 are denied.

22. Oxford denies the averments, allegations and legal conclusions set forth in paragraph 22.

23. The allegations set forth in paragraph 23 are denied except that Oxford admits that Bill 933 was forwarded to the Critical Area Commission for review.

24. Oxford admits that Bill 933 was forwarded to the Critical Area Commission. Oxford has insufficient information at this time as to the exact date that the Bill was forwarded. Accordingly, all other factual allegations set forth in paragraph 24 are denied.

25. Oxford admits that the Plaintiff has referred to one provision of an applicable statute in paragraph 25.

26. Oxford has insufficient information at this time to admit or deny the allegations of paragraph 26; therefore, it is denied.

27. Oxford denies the allegations set forth in numbered paragraph 27.

28. Oxford denies the allegations set forth in numbered paragraph 28.

29. Oxford admits that in paragraph 29, the County has quoted a portion of the applicable statute. Any remaining assertions are denied

30. Oxford denies the allegations set forth in numbered paragraph 30.

31. Oxford denies the allegations set forth in numbered paragraph 31.

32. Oxford denies the allegations set forth in numbered paragraph 32.

33. The averments of numbered paragraph 33 are denied in that paragraph 33, as stated, misrepresents the status of the County's critical area program *vis-a-vis* the continuing dialogue between county and state officials concerning the County's critical area regulations.

34. Oxford denies the allegations and legal conclusions set forth in paragraph 34.

35. Oxford denies the allegations and legal conclusions set forth in paragraph 35.

36. Oxford denies the allegations and legal conclusions set forth in paragraph 36.
37. The allegations and legal conclusions set forth in paragraph 37 are denied, except that Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission.
38. The allegations of paragraph 38 are denied.
39. The allegations set forth in paragraph 39 are denied, in that Oxford asserts that Bill 762 does not apply within municipal boundaries as a matter of law. Oxford admits that the County Council adopted an ordinance denominated Bill 762, and submitted it to the Critical Area Commission.
40. The allegations set forth in paragraph 40 are denied.
41. The allegations set forth in paragraph 41 are denied.
42. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-42 of the Second Amended Complaint as its response to paragraph 42.
43. The allegations set forth in paragraph 43 are denied.
44. The allegations set forth in paragraph 44 are denied.
45. The allegations set forth in paragraph 45 are denied.
46. The allegations set forth in paragraph 46 are denied.
47. The allegations of numbered paragraph 47 are denied.
48. Oxford denies the allegations set forth in numbered paragraph 48.
49. In response to the allegations of paragraph 49, Oxford incorporates and adopts by reference its responses to paragraphs 1-49.

50. Oxford denies the legal conclusions of paragraph 50, but agrees that in areas mapped as RCA, there is a generally applied limitation applicable to new residential dwellings, establishing one dwelling unit per 20 acres as a density standard .

51. The allegations of numbered paragraph 51 are denied.

52. Oxford admits that growth allocation calculations and guidelines for local jurisdictions are set forth in Md. Code Ann. Natural Resources Article § 8-1808.1, and that the growth allocation process may permit new development at greater densities than 1 per 20 acres in areas that have been classified as RCA. Any remaining characterizations of the law in paragraph 52 are denied.

53. Oxford admits that Md. Code Ann. Natural Resources Article § 8-1808.1 sets forth growth allocation and development guidelines for local jurisdictions. All other allegations set forth in paragraph 53 are denied.

54. Oxford admits that the code section cited in numbered paragraph 54 applies to counties and towns. The remaining allegations of numbered paragraph 54 are denied.

55. The Town of Oxford lacks sufficient information at this time concerning the dimensions and calculations of the actual geographic areas mapped by Talbot County, and therefore denies the allegations of paragraph 55.

56. Oxford denies allegations and interpretations set forth in numbered paragraph 56.

57. Oxford denies the allegations and interpretations set forth in paragraph 57.

58. Oxford denies the characterizations, allegations, and interpretations set forth in paragraph 58.

59. Oxford denies the allegations set forth in paragraph 59.

60. Oxford denies the allegations set forth in paragraph 60.

61. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-61 of the Second Amended Complaint as its response to paragraph 61.

62. Oxford admits that Plaintiff has quoted a portion of a letter from the Critical Area Commission in paragraph 62. All other allegations are denied.

63. Oxford denies the allegations set forth in paragraph 63.

64. Oxford denies the allegations set forth in paragraph 64.

65. Oxford admits that Plaintiff has quoted a portion of a letter from the Critical Area Commission in paragraph 65.

66. Oxford denies the allegations set forth in paragraph 66.

67. Oxford denies the allegations set forth in paragraph 67.

68. Oxford denies the allegations, interpretations, and argument set forth in paragraph 68.

69. In response to numbered paragraph 69, Oxford admits that a declaratory judgment will serve to terminate the uncertainty and controversy giving rise to this proceeding, and further admits that there are actual controversies between Oxford and the County, which involve antagonistic claims which will result and have resulted in imminent and inevitable litigation. Oxford denies the allegations and conclusions of subparagraphs (1) through (3) of numbered paragraph 69.

70. Paragraph 70, as written, does not identify the "this" that is denied by the Defendants, unless it relates to subparagraphs (1) through (3) of the preceding paragraph. Oxford does admit that by virtue of the County's attempts to enact and enforce Bill 933, there

are antagonistic claims and an actual controversy exists concerning the relationships between county and municipal governments.

71. Oxford adopts and incorporates by reference its responses to numbered paragraphs 1-70 of the Second Amended Complaint as its response to paragraph 71.

72. Oxford denies the allegations set forth in paragraph 72 as an incomplete and therefore inaccurate statement of law.

73. Oxford denies the allegations set forth in paragraph 73.

74. Oxford denies the allegations set forth in paragraph 74.

75. Oxford denies the allegations set forth in paragraph 75.

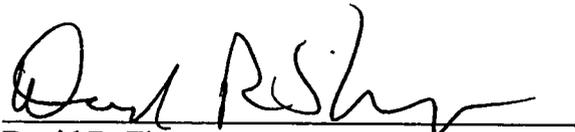
76. Oxford denies the allegations set forth in paragraph 76.

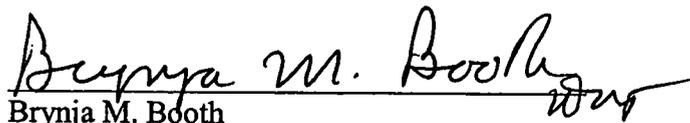
77. Oxford denies the allegations set forth in paragraph 77.

78. Oxford denies the allegations set forth in paragraph 78. Oxford further denies that the County is entitled to the relief sought in lettered paragraphs A through H immediately following numbered paragraph 78.

WHEREFORE, in response to each and every claim for relief in each and every count of the Amended Complaint, the Town of Oxford asserts that the Plaintiff is not entitled to the relief sought or to any relief. The Town of Oxford respectfully requests that the Court declare Bill 933 invalid for all of the reasons set forth herein and for the reasons set forth in Oxford's Counterclaim herein, and for such other reasons as may be apparent during the proceedings in this matter, and that the Town of Oxford have such other and further relief as the nature of this case requires.

Respectfully submitted:

  
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**

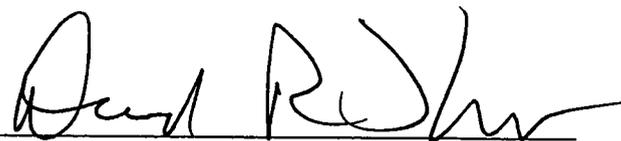
I hereby certify that on this 8<sup>th</sup> day of March, 2005, a copy of the foregoing Answer to the Second Amended Complaint was mailed by first class mail, postage prepaid to:

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

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

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

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

**IN THE CIRCUIT COURT OF MARYLAND  
FOR TALBOT COUNTY**

TALBOT COUNTY, MARYLAND, \*

Plaintiff, \*

v. \*

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

DEPARTMENT OF NATURAL \*  
RESOURCES, et al., \*

Defendants. \*

\* \* \* \* \*

**DEPARTMENT OF NATURAL RESOURCES'  
ANSWER TO SECOND AMENDED COMPLAINT**

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Paul J. Cucuzzella and Marianne D. Mason, Assistant Attorneys General, pursuant to Maryland Rules 2-323 and 15-701, hereby answers the Second Amended Complaint (the “Complaint”), and states:

1. To the extent that paragraphs 1 through 5 of the Complaint contain allegations of fact, and not merely statements or conclusion of laws to which no responses are required or provided, DNR admits the allegations.

2. To the extent that paragraph 6 of the Complaint purports to explain the substance of the Chesapeake 2000 Agreement, the Agreement speaks for itself. Otherwise, paragraph 6 contains statements of law to which no responses are required or provided.

3. To the extent that paragraph 7 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR admits the allegations.

4. Paragraph 8 of the Complaint contains only statements or conclusions of law to which no response is required or provided. The statutes referenced speak for themselves.

5. To the extent that paragraphs 9 through 15 of the Complaint contain allegations of fact, and not merely statements or conclusion of laws to which no responses are required or provided, DNR admits the allegations.

6. Paragraph 16 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

7. DNR admits the allegations of facts contained in the second sentence of paragraph 17 of the Complaint regarding growth allocation reserved for the towns of Easton, Oxford and St. Michaels. DNR lacks sufficient knowledge or information to either admit or deny the remaining allegations of fact contained in paragraph 17.

8. To the extent that paragraphs 18 through 20 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

9. DNR admits the allegation contained in paragraph 21 of the Complaint that state law creates growth allocation. Otherwise, paragraph 21 contains statements or conclusions of law to which no response is required or provided.

10. To the extent that paragraph 22 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies

the allegations.

11. DNR admits the allegation of fact contained in paragraph 23 of the Complaint that Talbot County submitted Bill 933 to the Critical Area Commission for review. To the extent that the remainder of paragraph 23 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

12. DNR denies the allegations of fact contained in paragraph 24 of the Complaint.

13. Paragraph 25 of the Complaint contains only statements or conclusion of law to which no response is required or provided. The statute referenced speaks for itself.

14. As to the allegations of fact contained in paragraph 26 of the Complaint, DNR admits only that Talbot County sent Bill 933 to the Critical Area Commission under cover of letter dated January 19, 2004.

15. To the extent that paragraph 27 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

16. DNR admits the allegations of fact made in the first sentence of paragraph 28 of the Complaint. DNR denies the allegation in paragraph 28 that the Critical Area Commission "belatedly" accepted Bill 933 for review. The remainder of paragraph 28 of the Complaint contains statements or conclusions of law to which no responses are required or provided.

17. Paragraph 29 of the Complaint contains only statements or conclusion of law to which no responses are required or provided. The statute referenced speaks for itself.

18. To the extent that paragraphs 30 and 31 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided,

DNR denies the allegations.

19. DNR admits the allegation of fact contained in paragraph 32 of the Complaint that the Critical Area Commission did not approve Bill 933 as a local program amendment. To the extent that the remainder of paragraph 32 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

20. DNR admits the allegations of fact contained in paragraph 33 of the Complaint that Talbot County is required to conduct comprehensive reviews of its critical area program every four years, and that it did not conduct such reviews in 1993, 1997 or 2001. DNR denies the remaining allegations of fact contained in paragraph 33.

21. To the extent that paragraphs 34 through 36 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

22. DNR admits the allegations of fact contained in paragraph 37 of the Complaint that Talbot County enacted Bill 762 and submitted it to the Critical Area Commission as a proposed amendment to its critical area program. To the extent that the remainder of paragraph 37 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

23. DNR admits the allegation contained in paragraph 38 of the Complaint that the Critical Area Commission approved Bill 762 as a refinement to Talbot County's critical area program. As to the remaining allegations contained in paragraph 38, DNR lacks sufficient knowledge of information to either admit or denies these allegations.

24. DNR admits the allegation contained in paragraph 39 of the Complaint that Bill 762 has been incorporated into Talbot County's critical area program. The remainder of paragraph 39 contains statements or conclusions of law to which no responses are required or provided.

25. Paragraphs 40 and 41 of the Complaint contain only statements or conclusion of law to which no responses are required or provided.

26. Paragraph 42 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

27. Paragraphs 43 through 45 of the Complaint contain only statements or conclusion of law to which no responses are required or provided.

28. To the extent that paragraphs 46 through 48 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

29. Paragraph 49 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

30. To the extent that paragraphs 50 through 52 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

31. DNR admits the allegation contained in paragraph 53 of the Complaint that growth allocation is created by State law. The remainder of paragraph 53 contains statements or conclusions of law to which no responses are required or provided.

32. Paragraph 54 of the Complaint contains only statements or conclusion of law to which no responses are required or provided. The statute referenced speaks for itself.

33. DNR admits the allegations of fact contained in paragraphs 55 and 56 of the Complaint.

34. Paragraph 57 of the Complaint contains only statements or conclusion of law to which no responses are required or provided.

35. To the extent that paragraph 58 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

36. Paragraph 59 of the Complaint contains only statements or conclusion of law to which no responses are required or provided.

37. To the extent that paragraph 60 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

38. Paragraph 61 of the Complaint contains no separate allegations of fact, and thus no responses are required or provided.

39. The letter referenced in paragraph 62 of the Complaint speaks for itself. To the extent that the remainder of paragraph 62 and footnote 2 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge or information to either admit or deny the allegations.

40. To the extent that paragraphs 63 and 64 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

41. The letter referenced in paragraph 65 of the Complaint speaks for itself.

42. DNR admits the allegation of fact contained in paragraph 66 of the Complaint that the Critical Area Commission has, in the past, approved some county critical area programs that require county municipalities to request growth allocation from the county. To the extent that the remainder of paragraph 66 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

43. DNR denies the allegation of fact in paragraph 67 that St. Michaels' critical area program was adopted in 1987. To the extent that the remainder of paragraph 67 contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge to either admit or deny the allegations.

44. To the extent that paragraph 68 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR lacks sufficient knowledge to either admit or deny the allegations.

45. To the extent that paragraph 69 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

46. Paragraph 70 of the Complaint contains an ambiguity: DNR is not certain as to what the term "this," as used in the paragraph, references. Because of this ambiguity, DNR does not respond to paragraph 70.

47. Paragraph 71 of the Complaint contains no separate allegations of fact, and thus no response is required or provided.

48. To the extent that paragraph 72 of the Complaint contains allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR

admits the allegations.

49. To the extent that paragraphs 73 through 78 of the Complaint contain allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR denies the allegations.

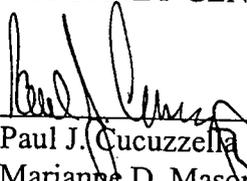
50. The remainder of the Complaint contains a prayer for relief, to which to response is required or provided.

#### AFFIRMATIVE DEFENSES

51. The Complaint fails to state a claim upon which relief can be granted.
52. The claims asserted in the Complaint are barred by illegality.
53. The claims asserted in the Complaint are barred by estoppel.
54. The claims asserted in the Complaint are premised upon the plaintiff's *ultra vires* enactment of Bill 933, thus the claims are barred.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL



---

Paul J. Cucuzzella  
Marianne D. Mason  
Assistant Attorneys General  
Maryland Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
(410) 260-8352  
Fax: (410) 260-8364  
*Attorneys for defendant Department of Natural Resources*

Dated: March 16, 2005

CERTIFICATE OF SERVICE

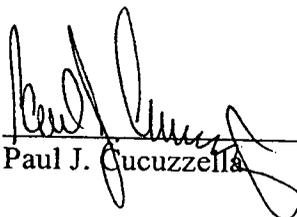
I hereby certify that on the 16th day of March, 2005, a copies of the foregoing Department Of Natural Resources' Answer To Second Amended Complaint was sent via first class mail, postage prepaid, to:

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

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

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

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

  
Paul J. Cucuzzella

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

TALBOT COUNTY, MARYLAND :

Plaintiff :

vs. :

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

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

Defendant :

vs. :

THE COMMISSIONERS OF :  
ST. MICHAELS :

and :

TOWN OF OXFORD, MARYLAND :

Interveners, Defendants :  
and Counter-Plaintiffs :

**AFFIDAVIT IN SUPPORT OF SECOND AMENDED COMPLAINT**

I HEREBY AFFIRM UNDER PENALTIES OF PERJURY, that the statements contained within the Second Amended Complaint, are true to the best of my knowledge, information and belief.



Michael L. Pullen

Date

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2005, a copy of the foregoing Affidavit in Support of Second Amended Complaint was mailed first-class, postage prepaid to:

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

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

David R Thompson Esq  
Cowdry Thompson & Karsten PA  
P.O. Box 1747  
Easton, Maryland 21601



---

Of Counsel for Plaintiff  
Talbot County, Maryland

IN THE CIRCUIT COURT FOR  
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND

Plaintiff

v.

Case No. 20-C-04-005095

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

Defendants

\* \* \* \* \*

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

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

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

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made as of this 2<sup>7</sup>/<sub>1</sub> day of May, 1980, by and among TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (hereinafter sometimes referred to as "Talbot County"); THE COMMISSIONERS OF ST. MICHAELS, a municipal body corporate of the State of Maryland (hereinafter sometimes referred to as "St. Michaels"); and PERRY CABIN ASSOCIATES, a Maryland limited partnership (hereinafter referred to as "Owner").

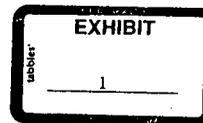
W I T N E S S E T H :

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2 The Inn Property and the 11.000 acre parcel, now owned by Talbot County, shall, simultaneously with annexation, be considered as two separate subdivided lots pursuant to the Land Subdivision Regulations of St. Michaels. <sup>153.29</sup> The balance of the Property shall be developed in Subdivision Sections not larger than thirty (30) acres in size. A subdivision plan for each Subdivision Section shall be prepared, at Owner's expense, and be submitted to the appropriate authorities of the town of St. Michaels for their consideration and review in accordance with the laws of St. Michaels. No subdivision plans shall be put into effect without compliance with this Annexation Agreement, and all applicable zoning laws and subdivision regulations. Prior to the sale or improvement (by the construction of any structure thereon) of any lot or parcel of real estate in the Property the following conditions must be satisfied for the entire Subdivision Section of which the lot is a part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. ZONING.

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

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

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

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

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

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

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

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

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

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

12. MISCELLANEOUS PROVISIONS.

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

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

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

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



Exhibit 165  
MP 111

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

RICK MEGAHAN: Steve, would you introduce our guests.

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

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

UNKNOWN MAN: Would you speak up, please.

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

[APPLAUSE]

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

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

UNKNOWN MAN: Thank you.

EXHIBIT  
tabbies  
2

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(121098)

E. 387

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

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

**GENE HAMILTON:** Yeah.

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

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

**Members Present**

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

**Staff Present**

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

**Zoning Text Amendment – Bill 933**

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

Mr. George Kinney presented the staff report.

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

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

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

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

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

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

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

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

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

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

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

➤ Steve Florkewicz, East Morango Street, St. Michaels

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

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

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

- Barry Gillman, St. Michaels Town Commissioner

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

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

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

- Michael Hickson

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

- Mr. Robert Amdur, Bozman

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Sewell seconded.

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

Motion passed 3-1

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COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

December 16, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:

PHILIP FOSTER, President

HOPE HARRINGTON

PETER CARROLL

HILARY SPENCE

THOMAS DUNCAN

Reported by  
David C. Corbin

E. 394

EXHIBIT

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

13                   (Reporter changed paper.)

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

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

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

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

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

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

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

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1           came out. So I heartily support the 933.

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

3           DAVID THOMPSON: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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*Taken on December 16, 2003*

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

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

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

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Taken on December 16, 2003*

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

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

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

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

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

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

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

3           MR. FOSTER: Yes.

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

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Taken on December 16, 2003*

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

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

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

11 ARNOLD SMITH: I'm for your 933.

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

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

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

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COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

December 23, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:

PHILIP FOSTER, President

HOPE HARRINGTON

PETER CARROLL

HILARY SPENCE

THOMAS DUNCAN

Reported by  
David C. Corbin

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

E. 411

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Taken on December 23, 2003*

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

EXCERPT

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

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School  
Easton, Maryland

Reported by. David M. Schafer, AA, CCR

E. 413

EXHIBIT

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MEMBERS OF THE PANEL:

Dave Blazer, Chair

William Giese

Joseph Jackson

Gary Setzer

Edwin Richards

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Marianne Mason, Assistant Attorney General

1           MR. PULLEN: Mr. Chairman, if I may, I  
2 would like to yield the balance of the County's  
3 presentation at this point to a person who needs no  
4 introduction to the Panel, the Honorable John C.  
5 North.

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

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

\_\_\_\_\_

David M. Schafer

My Commission expires August 2006

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

OFFICE OF PLANNING & ZONING

*Appointed by County Council:*

George G. Kinney, *Planning Officer*

Courthouse

11 North Washington St.

Easton, MD 21601

(410) 770-8030

e-mail: [gkinney@talbgov.org](mailto:gkinney@talbgov.org)

web: [www.talbgov.org/pz/pz.html](http://www.talbgov.org/pz/pz.html)

PLANNING & ZONING COMMISSION

*Appointed by County Council to 5-year terms:*

Richard Hutchison, *Chair (chosen by Commission in Jan., 1-year term), 2006*

Linda Makoski, 2002; William C. Boicourt, 2004; Robert C. Zuehlke, 2006; John C. North II, 2008.

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

ZONING ADMINISTRATION

Mary Kay Verdery, *Assistant Planning Officer* (410) 770-8030

e-mail: [mverdery@talbgov.org](mailto:mverdery@talbgov.org)

DEPARTMENT OF PUBLIC WORKS

*Appointed by County Council:*

Raymond P. Clarke, *County Engineer*

Talbot County Operations Center

605 Port St.

Easton, MD 21601

(410) 770-8170

e-mail: [rclarke@talbgov.org](mailto:rclarke@talbgov.org)

fax: (410) 770-8176

web: [www.talbgov.org/pw/publicworks.html](http://www.talbgov.org/pw/publicworks.html)

RECYCLING DIVISION

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

e-mail: [dbrummel@talbgov.org](mailto:dbrummel@talbgov.org)

SANITATION DIVISION

Raymond P. Clarke, *County Engineer* (410) 770-8170

e-mail: [rclarke@talbgov.org](mailto:rclarke@talbgov.org)

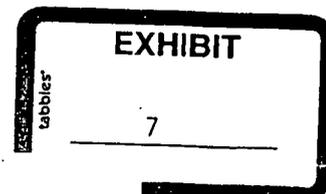
ROADS DEPARTMENT

*Appointed by County Council*

Richard Ball, Jr., *Superintendent* (410) 770-8150

e-mail: [rball@talbgov.org](mailto:rball@talbgov.org)

web: [www.talbgov.org/pw/publicroad.html](http://www.talbgov.org/pw/publicroad.html)



04-01-04 North Excerpt

EXCERPT

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

Date: Thursday, April 1, 2004

Time: 7:00 p.m.

Location: Steamboat Building  
St. Michaels, Maryland

Chesapeake Maritime Museum

Reported by. David M. Schafer, AA, CCR

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MEMBERS OF THE PANEL:

Gary Setzer, Chair

Judith Evans

Joseph Jackson

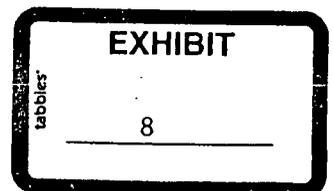
Dave Blazer

Edwin Richards

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Page 1

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

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

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

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

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

20 A few facts. St. Michaels is located on

21 an isthmus, a narrow band of land with the Miles  
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1 River on one side of it and San Domingo Creek on the

2 other, both bodies of water seriously degraded. I

3 know that they are seriously degraded because, one,

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

5 Miles is concerned, I've observed that personally

6 myself over an extended period of time.

7 When I was younger there were lots of

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

9 of crabs and fish. Today there are no bottom

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

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

12 You should understand that because St.

13 Michaels is located on an isthmus there are many

14 problems presented by that. There is a very

15 practical problem with respect to traffic flow. All

16 the residents of Tilghman and Wittman and Bozman and

17 Neavitt and Claiborne, the whole north end of the

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

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

20 Michaels. There is only one way through St.

21 Michaels, one narrow street right down the middle of  
□

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1 town.

2 Some years ago there were efforts made to

3 explore the possibility of building a bypass around

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

5 Engineers said it could not be done because of the

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

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

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

21           Some years back, six or seven years back  
□

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1 now, the Town was presented by Mr. Valanos with his  
2 proposal to develop this property in question. At  
3 that time I was asked for my views on the subject,  
4 and I gave them and I paraphrased Mrs. Carter and  
5 said "just say no", and the Town Council accepted  
6 that suggestion and just said no to the proposed  
7 growth allocation.

8           This matter, as a result, went to the  
9 Circuit Court and to the Court of Appeals and the  
10 Town was sustained.

11           Mr. Valanos modified his plan somewhat.  
12 The Town again said no, it went to the Circuit  
13 Court, the Town was sustained, it went to the Court  
14 of Appeals, again the Town was sustained.

15           A third time Mr. Valanos comes back.

16 This project is modified slightly, and the Town  
17 again says no, is sustained by the Circuit Court,  
18 goes to the Court of Appeals, the Court of Appeals  
19 sends it back and said take a better look at things.

20 About that time the Town ran out of  
21 steam, the Town ran out of money, the Town ran out  
□

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1 of determination.

2 I applaud the efforts of the Town Council  
3 to have attempted so long and so vigorously to ward  
4 off what they very accurately perceived as a gross  
5 imposition on this entire community.

6 But after having raised taxes in the Town  
7 twice to meet legal expenses exceeding a million  
8 dollars, ladies and gentlemen, fending off Mr.  
9 Valanos, after doing that they ran out of steam and  
10 consequently the Town voted to grant the growth  
11 allocation to this project.

12 Fortunately the County of Talbot, in the  
13 form of a County Council, came galloping to the  
14 rescue and said this matter should not proceed in  
15 this fashion, and consequently they instituted a  
16 bill to recover unused growth allocation from all  
17 municipalities in the County of Talbot.

18 I think all the authorities are in  
19 agreement that that is perfectly in accord with the  
20 COMAR regulations. I don't think there is any real  
21 dispute on that point, though there are arguments to  
□

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1 be made about it.

2 So we are in a situation now where the

3 Town has granted growth allocation. Should they be  
4 sustained in that? I urge you that they should not  
5 be sustained. And to that point let me read you a  
6 couple of letters which I think you will find of  
7 interest.

8           The first letter is from a gentleman well  
9 known in this community, who writes as follows: I'm  
10 a lifelong resident of St. Michaels and a taxpayer;  
11 12-year former member of Planning and Zoning; a  
12 former Town Commissioner; and presently judge of the  
13 Orphans' Court of Talbot County.

14           The proposed plan would adversely affect  
15 the traffic, sanitary sewer, air quality, and add  
16 additional pollution to the Miles River, whether the  
17 present or additive wastewater facilities are used,  
18 and cause havoc with the general welfare and safety  
19 of the citizens already living here.

20           The density of homes will create gridlock  
21 on the highway, Route 33, and lead to all other  
□

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1 public utilities and burden all other public  
2 utilities already overburdened presently.

3           St. Michaels needs many improvements,  
4 especially streets, curbs and drainage, before  
5 expanding to new expansions that will not compliment  
6 our present lifestyle.

7           The quality and quantity of these homes  
8 will not in any way generate necessary revenue for  
9 improvements that are necessary and will create many  
10 problems you are unable to address at this time;  
11 example, schools and tourism.

12           I strongly urge you to deny this  
Page 6

13 application.

14 James E. Thomas, better known as Sawdy  
15 Thomas.

16 A second letter, from J. Charles Fox,  
17 better known as Chuck Fox.

18 To whom it may concern: I have worked on  
19 behalf of the Chesapeake Bay for 20 years, serving  
20 in various federal, state and nongovernmental  
21 organizations.

□

10

1 I served as the Secretary of the Maryland  
2 Department of Natural Resources in the Glendening  
3 administration. In that capacity I chaired the  
4 Governor's Chesapeake Bay cabinet and represented  
5 the Critical Area Commission in numerous high-level  
6 forums.

7 I also served as the assistant  
8 administrator for water at the U.S. Environmental  
9 Protection Agency in the Clinton administration,  
10 responsible for implementing the Federal Clean Water  
11 and Safe Drinking Water Acts.

12 I've worked for a number of conservation  
13 organizations, including the Environmental Policy  
14 Institute, which worked closely with the Hughes  
15 administration in securing enactment of the original  
16 Critical Areas Act and its subsequent regulations.

17 Perhaps most importantly I've come to  
18 value intensely the unique natural resources of  
19 Talbot County, particularly the Town of St. Michaels  
20 and the Miles River.

21 I'm very familiar with the site of the

□

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1 proposed project and the environmental challenges  
2 confronting the Miles River and the Chesapeake Bay.

3 Over the past 20 years, despite  
4 significant efforts by federal, state and local  
5 governments, the Chesapeake's health has not  
6 improved. A clear scientific consensus concludes  
7 that in order to restore the Chesapeake we will have  
8 to sharply reduce pollution and restore sensitive  
9 habitat. Unfortunately, the proposed Miles Point  
10 project will do just the opposite.

11 Talbot County confronts significant  
12 growth related challenges. The county attracts tens  
13 of thousands of new residents and visitors almost  
14 every year, in large part because of the unique  
15 natural resources that define the county, yet these  
16 same new residents and visitors jeopardize the  
17 county's precious natural resources. How well the  
18 County manages this apparent paradox will define the  
19 quality of life for future generations.

20 In general, both the county and  
21 municipalities must find a means of channeling

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1 growth to those areas best suited to accommodate it.  
2 By definition this should exclude environmentally  
3 sensitive areas adjacent to important water  
4 resources; however, the proposed Miles Point project  
5 would be located in just such an area, contributing  
6 to pollution and habitat loss on the Miles River.  
7 The Miles Point project likely also will contribute  
8 significantly to existing traffic problems in St.  
9 Michaels.

10 In the end the county and the Town of St.  
11 Michaels must find a way to reduce pollution and  
12 restore habitat to be successful in achieving its  
13 goals for the Miles River and the Chesapeake Bay.  
14 This will not be an easy task.

15 It is my sincere hope that these goals  
16 will form the basis of future debates between Talbot  
17 County, the Town of St. Michaels and the citizens of  
18 the region. Sincerely, J. Charles Fox.

19 PANEL MEMEBER SETZER: Judge North, could  
20 I ask you to sum up now.

21 JUDGE NORTH: I'm sorry?  
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1 PANEL MEMEBER SETZER: Could I ask you to  
2 sum up, please? And if you have additional letters,  
3 you can submit them.

4 JUDGE NORTH: All right. I'll sum up  
5 with a letter from Governor Hughes.

6 To whom it may concern: The legislation  
7 to save the Chesapeake Bay was instituted and  
8 sponsored by my administration during my second term  
9 as Governor. The keystone of that legislation was  
10 the Critical Areas law. One of the basic purposes  
11 of that law is to minimize human intrusion on lands  
12 bordering on the water. In furtherance of that  
13 goal, the law provides that there can be no lower  
14 than one house built per 20 acres in Resource  
15 Conservation Areas.

16 St. Michaels is beautifully located, with  
17 the Miles River on one side and San Domingo creek on  
18 the other, both of which are already degraded.

19 To permit the construction of several  
20 hundred homes in this area would be environmentally  
21 irresponsible and flagrantly inconsistent with the  
□

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1 goals of the Critical Area law.

2 Some weeks ago I testified before the  
3 Planning Commission that incremental growth of  
4 established municipalities was anticipated by the  
5 legislature in providing for growth allocation but  
6 it was never intended to allow hundreds of new  
7 dwelling units in a Resource Conservation Area in  
8 one fell swoop. This would quickly consume a  
9 county's growth allocation and destroy the principle  
10 of controlled incremental growth.

11 The Critical Areas law was enacted to  
12 protect the waters of Maryland and help restore the  
13 Chesapeake Bay to a healthy condition. In over 30  
14 years in public office I know of no law that has had  
15 more support from the citizens of Maryland.

16 As residents of the Eastern Shore we are  
17 blessed with many beautiful rivers and creeks and  
18 much of the bay's shoreline; therefore, we have a  
19 special responsibility to be vigilant in protecting  
20 those natural resources and committed to carrying  
21 out the intent and spirit of the Critical Area law.  
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1 Respectfully submitted, Harry Hughes.

2 In summation, gentlemen and ladies, it  
3 seems to be quite evident that there is overwhelming  
4 evidence that this growth allocation should be  
5 denied.

6 I should also tell you that the three  
Page 10

7 former representatives to the Critical Area  
8 Commission -- the three are Bill Corkran, Doctor --  
9 come on head -- Doctor Shepard Krech and Paul Jones,  
10 Esquire, all had authorized me to say that they  
11 would vote against granting growth allocation in  
12 this instance.

13 Thank you very much.

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I, David M. Schafer, a Notary Public in  
and for the State of Maryland, County of Wicomico,  
do hereby certify the foregoing excerpt a true and  
accurate record of the aforementioned proceeding.

AS Witness, my hand and Notarial Seal this  
2nd day of April 2004, at Delmar, Maryland.

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David M. Schafer

My Commission expires August 2006

04-01-04 North Excerpt

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2005 APR 14 AM 10 29

THE CIRCUIT COURT FOR TALBOT COUNTY

THE MIDLAND COMPANIES, INC. et al

v.

MARYLAND DEPARTMENT OF  
NATURAL RESOURCES et al

Civil # 5088

: : : : :

DECLARATORY JUDGMENT  
and  
ANCILLARY RELIEF BY WAY OF MANDAMUS

On May 5, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, an agency of the Department of Natural Resources (the Commission) took action with respect to a "program amendment" requested by the Town of St. Michaels (the Town). Developers interested in the project (plaintiffs) have challenged that action in this proceeding and subsequently filed a motion for summary judgment, which is now before the Court. A similar motion was filed by the Commission. At a hearing on those motions, we allowed intervention of Fogg Cove Homeowners Association, Inc. (on the representation that it is a property owner) and a number of individual residents of St. Michaels, who had also interposed a motion for summary judgment..

The existence of requests for summary judgment by all parties indicates a consensus on the requisite finding with respect to the absence of genuine dispute as to any material fact. Independently of that consensus, we so find.

**The cause of action**

Unfortunately, before proceeding to the issues involved here, we must first ferret out that which the Court is asked to address or, more properly, what are the cognizable cause(s) of action. The title of that pleading is "Complaint For Judicial Review, Mandamus and For Declaratory Relief." This must be taken as an attempt to satisfy the requirement of Rule 1-301 that "Every pleading and paper filed shall contain . . . a brief descriptive title of

the pleading or paper which indicates its nature.”

The title is then followed by this statement:

Pursuant to the Courts and Judicial Proceedings Article, Section 3-401 et seq. and 12-201, Annotated Code of Maryland, Petitioners/Plaintiffs, . . . hereby bring this Complaint against the Respondent/Defendant . . . to obtain Judicial Review of a decision of the . . . [Commission], to issue a mandamus concerning action of the . . . [Commission] that Plaintiffs/Respondents believe to be illegal and beyond the scope of the . . . [Commission's] lawful authority and for Declaratory Relief relating to actions which the . . . [Commission] has asserted that it will take against Petitioners/Plaintiffs' interests . . . .

The claims for relief, which by Rule 2-305 “shall contain . . . a demand for judgment for relief sought”, wholly ignore matters of mandamus or judicial review. It seeks that this Court:

A. Declare as unlawful, *ultra vires*, and otherwise not permitted by Maryland law the Conditions on the award of IDA growth allocation for Miles Point III imposed by the Respondent/Defendant . . . [Commission] that *development of the Miles Point III Project shall be set back from the landward edge of tidal waters at least 300'* and that a forest vegetation buffer management plan shall be developed cooperatively with the . . . [Commission] and subject to it further review and approval;

B. Declare that the Conditions imposed by the . . . [Commission] are void and of no lawful force and effect such that the Critical Area Commission's approval of the Town's request to amend its program to use 70.863 acres of growth allocation for the Miles Point III project to change the critical area designation of the property from RCA to IDA remains valid and in effect, but the Conditions of that approval are stricken.

C. Award the Petitioners/Plaintiffs the cost of this case; and

D. Such other and further relief as the Court deems appropriate.<sup>1</sup>

By stipulation of the parties, what we understand to be the here-italicized portion paragraph A, was dismissed, for the reason that “there is no present or actual controversy between the parties with respect to. . . [the condition].”

Apparently unrecognized is the fact that one of the statutes invoked, Courts

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<sup>1</sup> A second count was dismissed by stipulation.

and Judicial Proceedings §12-301 has absolutely no application in this case.<sup>2</sup> Furthermore, Courts Article, §3-409 (b) would preclude any right of declaratory relief if there were any other statutory avenue for review of the action of the Commission.

Because intervenors allege the existence such other avenues of relief, we detour briefly to consider those claims. The first suggestion is that plaintiffs should have filed a request for judicial review under Title 7, Chapter 2, of the Rules. Those provisions provide no *right* of appeal, but by their express terms are applicable only "where judicial review is authorized by statute." We are aware of no statute conferring a right of review or "appeal" from a determination of the Commission. Sensing that result, intervenors propose that the request for judicial review should be directed against the action of the Town. For purposes of brevity, we shall assume, but certainly not decide, the existence of a statute permitting judicial review of the action of the Town, although it was clearly a legislative action. Cf. *Queen Anne's Conservation, Inc. v. County Comm'rs*, 382 Md. 306. The common sense explanation of plaintiffs' failure to seek judicial review of the Town's action is that it has no difference with the Town's action. The obvious and complete legal answer is that any decision rendered in a proceeding in which the Commission is not a party will have absolutely no effect upon its actions. Intervenors' contentions are wholly without merit.

We return to the relief sought by the complaint. Although mandamus is referred to in the title of the complaint, its hoary head is not otherwise raised, even in the claims for relief. Although Courts Article, §3-409 (c) would have permitted its combination with an action for declaratory judgment, such is not the result here, since the complaint does not contain either the verification or the specific claim for relief required by Rule 15-701. *Brack v. Wells*, 184 Md. 86, 89. No cause of action is stated for mandamus.

A similar situation arose in *Redding v. Board of County Comm'rs*, 263 Md. 94, 112, where it was held that the plaintiff could not obtain relief by way of mandamus but that such might be afforded as ancillary relief to a declaratory judgment:

The *form* of the 'Petition for Injunction, Mandamus and Such Further Relief as to the Court May Seem Proper' . . . gives us some difficulty. The petition is far from a model of careful pleading. Rather, it presents a 'shotgun' approach with the hope of the pleader that one shot will hit his opponent and bring him down. We interpret the petition as an action at law for declaratory relief . . . *i.e.*, to declare the order . . . of the Board of Appeals null and void with ancillary relief by way of injunction or mandamus, if required, pursuant to [former] Maryland Rules BF 40, 41, 42 and 43. It can hardly be an action for a writ of mandamus, as such, pursuant to Rules BE 40-46 [now Rule 15-701] in that (1) the petition was not verified as required by Rule BE 40 c and (2) there is no prayer for relief setting forth

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<sup>2</sup> The section deals solely with the right of appeal of final judgments of a circuit court.

the peremptory form of the writ of mandamus sought. See [former] Rule BE 45. Indeed, the prayer for relief *is for declaratory relief* and the relief obtained from the lower court was a declaration that the order . . . was null and void. In its opinion, the lower court suggests that a writ of mandamus *might issue* to compel the Board of Appeals to grant the motion to strike the evidence introduced at the second hearing on behalf of Redding or that the Board be enjoined from attempting to enforce its order . . . , but the fact is that neither a writ of mandamus nor a writ of injunction did issue. Instead, declaratory relief was awarded – properly in our opinion – there being no necessity under the circumstances for issuing writs of mandamus or of injunction. [Italics in original]

Our first declarations will be that this action is solely one for declaratory relief, but that mandamus or injunctive relief may be granted as ancillary relief if it appears that such is necessary under the circumstances.

#### **The action of which plaintiffs complain**

As embodied in a letter of May 14, 2004, which is as much about its action as we are going to know absent what might be pure surmise following a page-by-page review of the record, the Commission stated:

Re: Town of St. Michaels Proposed Program Amendment  
Miles Point III Growth Allocation Request

This letter notifies you of action by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays on the referenced growth allocation request. On May 5, 2004, at its regular meeting, the Critical Area Commission approved the Town's request to amend its Program to use 70.863 acres of growth allocation for the Miles Point III project to change the Critical Area designation of the property from RCA [Resource Conservation Area] to IDA [Intensely Developed Area]. The approval is subject to the following conditions:

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer.
2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a

Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.

3. In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.
4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

The Town is required to amend the Town's Critical Area Map to show this change within 120 days of receipt of this letter. Please provide a copy of the Town's amended map to the Commission when it becomes available. If you have any questions, please telephone me at . . . . In closing, I would like to thank you and your staff for your cooperation and assistance over the last several months as the Commission reviewed this proposal.

We have little other guidance, other than a lengthy "Panel Report", dated May 5, 2004, by the Commission's hearing panel, which discusses its investigation and discussion in wide-ranging terms. In a space provided for "Commission Action" appears the single word "Vote"; and "Panel Recommendation" is stated to be "Pending Panel Discussion." These do not represent either ultimate findings of fact (which remained "pending panel discussion") or reasons for any action taken, even to the degree of the Panel's providing specific recommendations. As will be seen, an agency has a duty to provide both findings of fact and reasons for its action.

#### The law

The basic component of the Critical Area statute (Natural Resources Article, Title 8, Subtitle 18, hereafter cited by "§") is the requirement that each jurisdiction establish a critical area protection program, based upon criteria established by the Commission.

**E. 434**

Thereafter, a "program amendment" or a "program refinement"<sup>3</sup> requires approval by the Commission before its application. The latter type of action is not involved here.<sup>4</sup>

A "Program amendment. . . [is] any change to an adopted [Critical Area] program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area . . . in a manner not provided for in the adopted program . . . [and, specifically] includes a change to a zoning map that is not consistent with the method for using the growth allocation contained in an adopted program" (§8-1802 (a) (15)).

In *North v. Kent Island Limited Partnership*, 106 Md. App. 92, Queen Anne's County had determined that the critical area designation of an area on Kent Island should be changed from limited development area (LDA) to intensely developed area (IDA), on the grounds of mistake in the original mapping. As required, approval was sought from the Critical Area Commission. The Commission denied the amendment based upon a finding that there had been no mistake in the mapping. It was held that the Commission lacked authority to deny the amendment on that basis.

Speaking for the Court, Judge Fisher carefully defined the respective rights of the Commission and local governments, at 106:

The Commission was designed to be an oversight committee. Section 8-1801(b) (2). The original drafting group considered forming the Commission as a permitting agency for all projects in the critical area. The drafting group concluded that such a role was undesirable because the Commission would become tangled in collisions with local agencies and developers over the specifics of particular projects. George W. Liebmann, *The Chesapeake Bay Critical Area Act: The Evolution of a Statute*, *The Daily Record*, April 20, 1985, at 1. The drafting group also considered constituting the Commission as an appeal board. Because this would impose substantial hearing burdens on the Commission and create a conflict between the Commission and local zoning boards, the group decided against such a provision. The drafting group also considered allowing an appeal directly to the Commission from the permit granting agency. The drafting group rejected this

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<sup>3</sup> "Program refinement" means any change to an adopted program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program . . . [and] includes: 1. A change to a zoning map that is consistent with the development area designation of an adopted program; and 2. The use of the growth allocation in accordance with an adopted program" (§8-1802(a)(16)).

<sup>4</sup> Left to our own devices, we might have concluded that the action here involved might have been more properly regarded as a "program refinement" because "The use of the growth allocation in accordance with an adopted program" is specifically said to be a program refinement by the final sentence of the statute quoted in the preceding footnote. However, the parties seem to agree that this action involves a program amendment; and we shall do nothing to change that course. *Swart v. Department of Natural Resources* (Court of Appeals, No. 94 September Term 2004, decided March 14, 2005).

approach because it would either result in duplicative appeals or grant the Commission pendent jurisdiction to address issues which did not fall under its regulations. Because there was a need for the Commission to check upon local permit determinations involving zoning and subdivision, the group drafted a provision granting the Commission the right to intervene at any stage of administrative, judicial, or "other original proceeding concerning project approvals. Section 8-1812.

Based upon this interpretation of the statute, the Court held, at 105:

The role of the Critical Area Commission is to examine the amendment to determine whether the amendment is consistent with the criteria. In contrast to § 8-1809(h)(2)(i), which requires the local approving authority to make a finding of mistake, § 8-1809(j) provides a separate standard of review to be applied. Section 8-1809(j) provides:

(j) *Standards for approval by Commission.* -- The Commission shall approve programs and program amendments that meet:

(1) The standards set forth in § 8-1808 (b)(1) through (3)<sup>5</sup> of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle.<sup>6</sup>

It was just as squarely held, at 106, that "It is not the role of the Commission to reexamine whether there was an actual mistake in the original zoning. To allow the Critical Area Commission to revisit the question of mistake would render meaningless the hearings before the Planning Commission and the County Commissioners. In addition, this would create a state level zoning board, which was not the intention of the General Assembly in establishing the Critical Area Commission."

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<sup>5</sup> Those standards, referred to as "*Goals of program*" are that "A program shall consist of those elements which are necessary or appropriate: (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; (2) To conserve fish, wildlife, and plant habitat; and (3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

<sup>6</sup> §8-1808 (e) (1): "The Commission shall adopt by regulation . . . criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section." These criteria are contained in Title 27 of COMAR.

### Application of *North* to the present case

It was noted in *North* that "There were two ways in which the County could have redesignated the parcel: (1) The County could have redesignated the parcel based on a mistake in the original mapping; or (2) The County could have redesignated the parcel based on the use of the County's growth allocation." 106 Md. App. at 107. The first was involved in that case; this case involves the second method; but we perceive no difference in the applicable legal requirements.

In critical area parlance, "Growth allocation means the number of acres of land in the Chesapeake Bay Critical Area . . . that a local jurisdiction may use to create new intensely developed areas and new limited development areas" (§18-102 (a)(10)). Under §8-1808.1, the allocation is equal to "5 percent of the total resource conservation area in a local jurisdiction . . . at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government. Subsection (c) of that section provides "guidelines" for use of growth allocation:

When locating new intensely developed or limited development areas, local jurisdictions shall use the following guidelines:

(1) New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas;

(2) New limited development areas should be located adjacent to existing limited development areas or intensely developed areas;

(3) Except as provided in paragraph (5) of this subsection, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;

(4) New intensely developed or limited development areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed or limited development areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of this subtitle; and

(5) . . . if the county is unable to utilize a portion of the growth allocated to the county in paragraphs (1) and (2) of this subsection within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in paragraph (3) of this subsection. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

In this case, it is undisputed that the Town of St. Michaels followed all procedures required by its critical area ordinance and found that the use of growth allocation at the Perry Cabin site was consistent with the "guidelines" contained in §18-1808.1 (c) just quoted.. Importantly, as in *North*, use of the guidelines is to be made by "local jurisdictions" in connection with "locating new intensely developed or limited development areas." In other words, application of the guidelines is entrusted *solely* to the local jurisdiction. The matter is the more binding in light of the provisions of §8-1808.1, which provides that "in the event of any inconsistency between the criteria [of the Commission] and the provisions of this section, this section shall control."

The result is that stated in *North*,, 106 Md. App. at 107:

In this case, once the Planning Commission determined that there was a mistake in the original zoning, the program amendment should have been referred to the Critical Area Commission to determine whether it met the criteria. The Commission has jurisdiction to examine the . . . [action of the local jurisdiction] and determine whether the . . . [action] meets the established criteria. The sole issue before the Commission should have been whether the property satisfies the definition of IDA as set forth in the criteria.

In the final analysis, it is difficult to understand just what the Commission did in this case. That is itself a virtually fatal flaw. An agency must prepare findings of fact and conclusions of law that are adequate for judicial review. Although not raised by plaintiff, this is an practical prerequisite to any sort of judicial consideration. It is also a *duty* of the agency. As flatly held by the Court of Appeals in *Baker v. Board of Trustees*, 269 Md. 740, 747

As long ago as *Adams v. Board of Trustees*, 215 Md. 188, 195 . . . we reversed, as not supported by the evidence, an action taken by the Board without a finding of fact, or an assignment of reasons for the result reached. Only the circumstance that the record before us makes it clear that the Board could have reasonably reached the result which it did, *Heaps v. Cobb*, . . . 185 Md. at 380 . . . saves this case from a similar fate. To be certain that the teaching *Adams* is not again overlooked, we propose to remand, for appropriate findings of fact, any case which hereafter reaches us in the posture of this one.

This is no more than a recognition of the fundamental right of a party to be apprised of the facts relied upon by the agency, *Blue Bird Cab Co. v. Department of Employment Security*, 251 Md. 458, 466 . . . even in the absence of a statutory provision, is frequently required by a court as an aid to judicial review, 2 Davis, *Administrative Law Treatise*, § 16.05 at 444-49 (1958); 2 Am. Jur. 2d *Administrative Law* § 447 at 256 (1962), and cases cited. See also Code (1957, 1971 Repl. Vol.) Art. 41, § 254 which imposes this requirement on those agencies of the State which are subject to our Administrative Procedure Act.

Were this all, we might simply remand the case to the Commission with

instructions to provide the necessary information – not that this would end the matter, but it would at least provide an identifiable context for our consideration. However, it is quite clear here that the Commission felt able – even to the extent of an apparent inconsistency in applying LDA standards to an IDA district – to create standards out of whole cloth. The sole issue before the Commission involves a wholly objective determination, that being whether the amendment proposed by the Town satisfies the definition of IDA as set forth in the applicable criteria. Conjecture as to whether the situation could be made better by the addition of bells and whistles is beyond the authority of the Commission – if it exists at all, it is within the sole province of the Town. To simply remand the case for articulation of its misconceptions would be idle indeed.

What remains is the question of whether the Court should provide ancillary relief at this time. Under Courts Article, §3-411, our declaratory judgment will have “the force and effect of a final judgment or decree.” Judgment though it is, it is simply what its name says it is and provides no practical relief whatever in that it provides for no further attention by anyone to the approval sought by the Town. The Commission would hold an unenforceable decision, and the Town would hold an unacted-upon request for approval.

We shall also provide mandatory relief, because (i) “[f]urther relief based on a declaratory judgment or decree may be granted if necessary or proper” upon application and further proceedings under Courts Article §3-412, and there can be no doubt about the facts that further relief would be requested or that is *prima facie* “necessary or proper” under the circumstances of this case; (ii) under authority of *Redding v. Board of County Comm'rs, supra*, mandatory relief is a “necessity under the circumstances”<sup>7</sup>; (iii) mandatory relief is permissible under plaintiffs’ request for “other and further relief as the Court deems appropriate”; and (iv) because further delay could only (and, we think, unnecessarily) prolong this matter,

### DECLARATORY RELIEF

For reasons stated above, the Court **FINDS AND DECLARES** that:

1. This action is solely one for declaratory relief, but mandamus, injunctive or other mandatory relief may be granted as ancillary relief if it appears that such is necessary under the circumstances.
2. The action of The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the Commission) with respect to the request of the Town of St. Michaels

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<sup>7</sup> and (iii) The *Redding* case involved a hearing and rehearing of charges against a police officer. It was declared that the discharge of the officer after the first hearing was valid and that the re-hearing was unauthorized and void. In short, further mandatory relief would have been without purpose.

for approval of a program amendment was improper and void for the following reasons:

a-The Commission failed to provide findings of fact and a statement of reasons for the result reached.

b-So far as can be gleaned from the record, the Commission considered matters not germane to the single issue of whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area.

### MANDATORY RELIEF

For reasons stated above, it is **FURTHER ORDERED** that:

3. The Commission is directed to consider and determine, on the basis of the existing record, whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area.

4. For purposes of Natural Resources Article §8-1809 (o)(1), the time for decision shall be extended until the first meeting of the Commission which is at least 10 days after its receipt of this Judgment.

5. The Commission is further directed to give full consideration to the legal requirements that (i) the sole issue before the Commission is whether the property satisfies the definition of IDA as set forth in the criteria and (ii) in applying criteria, those contained in §8-1808.1 are controlling in the case of inconsistency with those of the Commission.

6. In order to avoid lack of clarity heretofore discussed, the Commission is further directed to observe the legal requirement that it render its decision in writing and include findings of fact and a statement of reasons for the result reached.

7. The provisions of this Order are without prejudice to any right to subsequent review following action by the Commission.

8. Costs of this proceeding shall be paid by defendants and intervenors.



John W. Sause, Jr.  
Chief Judge (ret)  
Sitting by Designation

April 11, 2005

Civil # 5088

April 11, 2005

E. 440

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TALBOT COUNTY, MARYLAND,

Plaintiff,

Vs.

DEPARTMENT OF NATURAL RESOURCES, et al.

Defendants.

\* \* \* \* \*

THE COMMISSIONERS OF ST. MICHAELS et al.

Counter-Plaintiffs,

Vs.

TALBOT COUNTY, MARYLAND,

Counter-Defendant.

\* \* \* \* \*

**THE ST. MICHAELS MOTION FOR SUMMARY JUDGMENT**  
**(For Declaratory Relief)**

The Commissioners Of St. Michaels ("St. Michaels"), Defendant and Counter-Plaintiff herein, by its attorney, H. Michael Hickson, pursuant to Md. Rule 2-501, files this Motion for Summary Judgment on the ground that there is no genuine dispute as to any material fact, and St. Michaels is entitled to a declaratory judgment as a matter of law, based on the following grounds, each of which is sufficient to grant this Motion:

1. Talbot County Bill No. 933 ("Bill 933") is invalid because Talbot County, Maryland (the "County") made no good faith effort to coordinate with St. Michaels, an affected municipality, in developing and enacting Bill 933, as required by COMAR, § 27.01.02.06 (A)(2).

2. Bill 933 is in violation of COMAR, § 27.01.02.06 (A)(2), because it repeals from the County local critical area program all prior processes and the results thereof to accommodate

Law Offices Of  
BANKS, NASON  
& HICKSON  
Professional Assoc.  
113 S. Baptist Street  
P.O. Box 44  
Salisbury, MD  
21803-0044

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
  - [2] ~~Stafford Planning Commission and review with the planning staff and the~~ Stafford Planning Commission 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.

MEETING OF A PANEL  
OF  
THE STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 3)

Time: 1:00 p.m.

Location: Department of Housing and  
Community Development,  
Crownsville, Maryland

Reported by: Linda A. Crockett

Page 2

1

2 MEMBERS OF THE PANEL:

3

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5 Martin G. Madden, Chair

6 Peggy G. Campbell

7 Ren Secey

8

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10 Marianne Mason, Assistant Attorney General

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1 Commission's authority in the context of taking

2 action such as approval or denial on a program

3 amendment for growth allocation. Seven, to

4 consult with counsel to obtain legal advice on

5 the meaning of Commission criteria COMAR

6 27.01.02.06A and B. This would be available in

7 the minutes for the full meeting are available.

8 Having made that motion, can I have a second?

9 COMMISSIONER: Second.

10 CHAIRMAN MADDEN: All in favor say aye.

11 (All said aye.)

12 (Recess.)

13 MS. HOERGER: You have a staff report

14 titled town of St. Michael's ordinance Number

15 304, and attached to that is the actual bill that

16 the town commissioners passed. It is correcting

17 essentially two items in their existing critical

18 area program. The first change has to do with

19 eliminating a duplicative process for applicants

20 who, for example, may be seeking a growth

21 allocation request before the town commissioners

Page 3

1 PROCEEDINGS

2

3 CHAIRMAN MADDEN: I'm asking us to go

4 into a brief closed session. One, to consult

5 with counsel to obtain legal advice on the

6 applicable sections of the critical area law and

7 criteria governing the Commission's

8 deliberations. Two, consult on the applicability

9 of other state laws, policies and regulations,

10 including but not limited to planning and zoning.

11 Three, to consult with counsel to seek legal

12 advice whether the Commission should consider the

13 effect of a program approved by the Commission:

14 four, to consult with counsel to obtain legal

15 advice on the interplay between Talbot County

16 Bill 762 and Bill 933. Five, to consult with

17 counsel to obtain legal advice on the interplay

18 between the proposed amendments from St. Mary's

19 and St. Michael's Miles Point III growth

20 allocation. Six, to consult with counsel to

21 obtain legal advice on the scope of the

1 receive that or not. But if they do, then they

2 have to come back again to get the maps amended.

3 The town is simply eliminating that duplication

4 and when someone comes to the town commissioners

5 for that it will only be one time.

6 The second change involves the

7 correction of order in which things like text

8 changes, map amendments are approved and adopted

9 between the town commissioners and this

10 Commission. The current town program is set up

11 so that those changes come to this Commission

12 first and then they go back to the town

13 commissioners. The town has now changed that so

14 the town commissioners first approve those types

15 of changes and then they come to the Critical

16 Area Commission. A couple of years ago that

17 process was changed for growth allocation

18 processes. That has already happened. This will

19 fix the process for all these changes, including

20 text changes.

21 That is the substance of Ordinance 304.

1 Chairman Madden appointed a five-member panel  
2 which held a hearing in the town of St. Michael's  
3 on April 1st. There were no substantive comments  
4 on this ordinance. We did have some comments  
5 from the town. That's all I have to report.

6 CHAIRMAN MADDOEN: Any other comments?  
7 Comments from the public?

8 MR. SETZER: The panel, as Lisa said,  
9 discussed proposed ordinance and would like to  
10 move before the entire Commission in accordance  
11 with Lisa's staff report that ordinance 304 as  
12 enacted by St. Michael's town commissioners which  
13 amend growth allocation, zoning and critical area  
14 map amendment procedures used by the town be  
15 approved by the Commission.

16 We have a motion for approval. Do we  
17 have a second?

18 MS. MASON: Second.

19 CHAIRMAN MADDOEN: Any discussion? All  
20 those in favor say aye?

21 (All say aye.)

1 request. It was heard at the April 1st hearing.  
2 There were no substantive public comments. Does  
3 anyone have any questions?

4 CHAIRMAN MADDOEN: Any questions for  
5 Lisa? If not, I'll turn it over to panel chair.

6 MR. SETZER: Once again the panel  
7 discussed the proposed resolution and would like  
8 to recommend to the Commission that it approve  
9 resolution 2003-06 adopted by St. Michael's town  
10 commissioners which annexes the 42.066 acre Miles  
11 Point LLC property into the town.

12 Is there a motion to approve resolution  
13 2003-06. Is there a second?

14 COMMISSIONER: Second.

15 CHAIRMAN MADDOEN: Any additional  
16 comment? All those in favor say aye.

17 (All said aye.)

18 CHAIRMAN MADDOEN: Motion is approved.

19 Thank you, Lisa.

20 Next we move to St. Michael's growth  
21 allocation for Miles Point III in Talbot County.

CHAIRMAN MADDOEN: Next we'll move to St.  
Michael's annexation resolution 2003-06.

1 MS. HOERGER: The proposal is resolution  
2 2003-06. I'm trying to do this so you all can  
3 see it. I apologize if some of you can't. The  
4 annexation request of the town of St. Michael's  
5 is for 42.066 acres of land. 17 of those are  
6 upland. The portion of the annexation on this  
7 site plan is this area in green. This is the 17  
8 acres of upland. The balance of that 46 acres  
9 are the land that is under the Miles River. The  
10 reason the town also annexed that area is because  
11 they have a board of port ordinance and a  
12 waterway management ordinance and they do have  
13 the authority to annex state waters, in case  
14 anyone had questions.

15 The critical area designation of the  
16 annexation property as a resource conservation  
17 area and as it was brought into the town, it will  
18 remain as a resource conservation area. Chairman  
19 Madden appointed a five-member panel to hear this

1 Mary Owens will lead the panel discussion.

2 MS. OWENS: This next item is an  
3 application from the town of St. Michael's to  
4 award some growth allocation to the Miles Point  
5 III project. This is a site map of the project.  
6 Then we have a couple pictures of the site. So  
7 Lisa is going to go through those and I'll just  
8 quickly kind of show you the site while I talk  
9 about the project. It involves the award of  
10 70.963 acres of the growth allocation to change  
11 the critical area designation from RCA to IDA.  
12 It's proposed to be a residential development  
13 involving 251 single-family units, 20 townhouses,  
14 8 live and work units, an inn, and a public  
15 waterfront park.

16 As I get into my presentation I'll talk  
17 about the erosion on the shoreline. But this  
18 shows a shot of the shoreline and some of the  
19 erosion that's on the property. This is another  
20 view of the property that shows that it currently  
21 does not have a vegetated buffer. It was

1 formerly farmed. So it's basically an open  
 2 field, fairly level. Shoreline varies. In some  
 3 places it's a little bit more of a cliff, maybe  
 4 seven or eight feet. Here it's about 2 or 3  
 5 feet. That's a view to across the project site  
 6 to an area of townhouses which is actually here  
 7 on the site plan. On this particular day the  
 8 tide was pretty far out so there is somewhat of a  
 9 sandy beach. But at a normal tide condition  
 10 there really isn't much of a beach there. It  
 11 shows a portion of the property that has been  
 12 protected already with a revetment.

13 Here again you can see the significant  
 14 erosion there. That's another shot basically of  
 15 the same view on a cloudier day. There isn't a  
 16 lot of vegetation on the edge of the shoreline  
 17 because a lot of it has eroded and fallen into  
 18 the water. Here's another shot of the shore.  
 19 This is looking across the project. It's  
 20 basically a field. There's not a whole lot of  
 21 vegetation. Again, another shot of the site, an

1 again this morning to discuss this issue. And  
 2 I'm going to summarize their discussions, some of  
 3 which took place at the earlier panel meeting  
 4 which took place today.

5 In reviewing this application, the  
 6 Commission was really looking at primarily the  
 7 goals of the critical area program, which are to  
 8 minimize adverse impacts on water quality that  
 9 result from pollutants; to conserve fish, plant  
 10 and wildlife habitat; and then to establish land  
 11 use policies that accommodate growth and also the  
 12 fact that just people in the critical area can  
 13 have adverse environmental impacts.

14 In analyzing this project and I think  
 15 making an effort to look at whether it was  
 16 appropriate to approve it or deny it or approve  
 17 it with conditions, the panel analyzed several  
 18 aspects of the project. The first had to do with  
 19 protection of habitat and water quality. In  
 20 terms of looking at how the criteria addressed  
 21 the use of growth allocation, there are really

1 open field. That's basically it. It's fairly  
 2 straightforward. There's not a lot of vegetation  
 3 on the site.

4 There are two non-tidal wetland areas.  
 5 Essentially the project involves the use of the  
 6 growth allocation to change the critical area  
 7 designation from RCA to IDA. The property has a  
 8 long history, has undergone several revisions  
 9 over the years. It's been involved in extensive  
 10 litigation. But at this point the town has  
 11 submitted it to the Commission for approval. The  
 12 last revision involved this portion of the  
 13 property which was recently annexed was taken out  
 14 of the project.

15 The panel held a public hearing on  
 16 Thursday, April 1. It was well attended. There  
 17 was a lot of public comment on the issue and the  
 18 record was held open until Tuesday, April 13th.  
 19 We received a lot of public comment that was  
 20 provided to all of the panel members. The panel  
 21 met once after the public hearing and then met

1 three areas that they focused on, new IDA and LDA  
 2 areas should be located to minimize impacts to  
 3 habitat protection areas and optimize benefit to  
 4 water quality. On this particular site there are  
 5 two primary habitat protection areas which are  
 6 the 100-foot buffer and a waterfowl staging and  
 7 concentration area in the Miles River. New IDA  
 8 should also be located where they minimize their  
 9 impacts on defined land use of the RCA.

10 And then something that the panel spent  
 11 a lot of time discussing was that new IDA and LDA  
 12 in the RCA should be located at least 300 feet  
 13 beyond the edge of tidal waters. And that  
 14 300-foot setback issue was discussed extensively,  
 15 primarily because the panel believes that this  
 16 project involves a very intense development.  
 17 There will be a lot of units and a lot of new  
 18 residents that will be in the area, and that most  
 19 of the site is going to be developed. There  
 20 aren't a lot of open space areas, and the  
 21 importance of the setback to meet the goals of

1 the critical area program became really the  
2 primary way that impacts could be minimized and  
3 habitat could be protected.

4 Another issue involved dealing with  
5 stormwater on the site and water quality.  
6 Impervious area is going from approximately 0  
7 percent as the site is currently undeveloped up  
8 to approximately 55 percent, which includes  
9 roads, rooftop areas, et cetera. The primary  
10 ways that water quality will be addressed will be  
11 agricultural use of the property is going to stop  
12 so they will no longer be applying fertilizer.  
13 They also will be proposing to treat all  
14 stormwater on the site and they're proposing  
15 essentially four areas where stormwater will be  
16 addressed, here, here, here, and here.

17 The other way that stormwater quality  
18 will be addressed is through the provision of  
19 forestation of the 100-foot buffer. One of the  
20 issues that the panel also talked about is how  
21 the 100-foot buffer is proposed to be dedicated

1 effects of shoreline erosion on the project by  
2 having a wider area to deal with erosion control;  
3 and then providing an area of sufficient size and  
4 width to accommodate the needs or requirement to  
5 provide a buffer and the requirement of the town  
6 to provide recreational needs.

7 The panel also talked about wildlife  
8 habitat, and their discussions focused on the  
9 ability of the 300-foot setback to provide some  
10 of those benefits and provide for wildlife to  
11 continue to use the site. The panel spent a  
12 considerable amount of time today talking about  
13 the use of the buffer as a town park and  
14 providing for shoreline access and the need to  
15 deal with managing the buffer and providing an  
16 appropriate plan.

17 As you saw from the pictures, there is  
18 not much vegetation in the buffer. So the buffer  
19 is going to have to be established. The site is  
20 fairly exposed. It has an eroding shoreline.  
21 There will need to be a significant investment in

to the town for use as a park. And the panel was  
concerned about how the use of the park -- the  
3 use of the 100-foot buffer as a park could be  
4 coordinated with the requirement to forest the  
5 buffer and would those uses potentially be  
6 conflicted.

7 In looking at the setback and the  
8 buffer, the Commission -- and I'm on the middle  
9 of Page 4 now -- talked about the ecological  
10 benefits of providing a 300-foot setback, and the  
11 benefits included providing a buffer between  
12 intense human activity and pollution and  
13 sensitive aquatic resources; potentially  
14 providing a wildlife corridor system, some sort  
15 of habitat area for wildlife; providing  
16 appropriate protection for the waterfowl staging  
17 and concentration area; reducing overall  
18 impervious surface on the area, and along with  
19 that, reducing the volume of stormwater and  
20 associated pollutants as well as increasing the  
21 available for infiltration; minimizing the

1 getting that buffer established.  
2 I think the important thing that the  
3 panel really focused on this morning is that the  
4 criteria required that the buffer be established  
5 when agricultural use of the land ceases. And  
6 that it's fairly specific in the criteria that in  
7 establishing the buffer, management measures  
8 shall be undertaken to provide forest vegetation  
9 that assures the buffer functions to protection  
10 of habitat and water quality.

11 The panel talked at length about other  
12 projects that have involved the review and  
13 approval of the Commission of a Buffer Management  
14 Plan and felt that might be a way that they could  
15 assure that a buffer was appropriately  
16 established and that any other recreational uses  
17 were appropriately accommodated.

18 The panel also talked about stormwater  
19 management and discussed the conceptual design.  
20 They were, I think, prudent in acknowledging that  
21 at this point the design is conceptual. Although

1 preliminary calculations have been performed and  
 2 indicate that the applicant will be able to meet  
 3 the 10 percent pollutant reduction requirement  
 4 which is required in intensely developed areas.  
 5 They're proposing four best management practices,  
 6 three pond wetland systems, and then a fourth  
 7 multiple pond system.

8 The Commission I think is concerned that  
 9 when we're providing for stormwater management,  
 10 that if possible, every effort should be made to  
 11 deal with conserving and providing habitat if  
 12 possible, and that environmentally sensitive  
 13 design in stormwater practices should be a  
 14 priority. There was a lot of discussion about  
 15 certain types of practices which require  
 16 attention and other types of practices and the  
 17 benefits that those types of practices may  
 18 provide over a typical surface water treatment  
 19 system such as a pond.

20 The panel also talked quite a bit about  
 21 shore erosion control on the project. Currently

1 The last issue addressed by the panel  
 2 and not talked about too much today but more at  
 3 the prior panel meetings was wastewater treatment  
 4 and concerns about whether the town's wastewater  
 5 treatment plant was going to be adequate to  
 6 accommodate all of this new development. The  
 7 town is proposing to do a major upgrade of their  
 8 sewage treatment plant which is actually operated  
 9 by the County. The new or renovated treatment  
 10 plants will provide nutrient reduction and state  
 11 of the art technology for wastewater treatment.  
 12 St. Michael's Town Council approval of the growth  
 13 allocation actually included conditions that  
 14 addressed the need to complete the upgrade of the  
 15 plant before any building permits could be issued  
 16 for development on this site. So the panel  
 17 believed that those conditions were adequate to  
 18 deal with the wastewater issue.

19 That's pretty much my summary of the  
 20 panel report.

21 CHAIRMAN MADDEN: Any questions? Thank

1 there is an approved permit approved by MDE and  
 2 the Army Corps of Engineers for installation of a  
 3 revegetment for shore erosion control. However,  
 4 what the applicant is currently proposing is to  
 5 deal with the shore erosion control issue through  
 6 a marsh creation, which is basically a  
 7 nonstructural measure that provides some habitat  
 8 benefits.

9 Some of the information provided in the  
 10 record indicated that the town believed that  
 11 providing the marsh creation as a shore erosion  
 12 control measure was sort of a trade-off in terms  
 13 of the habitat benefit with the 300-foot setback.  
 14 That was discussed extensively by the panel.

15 Another concern with providing the marsh  
 16 creation was a concern about whether there would  
 17 be conflicts created with shading of the marsh  
 18 grass which might prevent it from being effective  
 19 as a shoreline stabilization strategy and whether  
 20 the providing of a 100-foot buffer as required  
 21 was going to create conflicts there.

1 you very much. I'll open it up for public  
 2 comments. I want to start up with the town of  
 3 St. Michael's.

4 MR. HICKSON: My name is Michael  
 5 Hickson. Mr. Chairman, Commission members. I'm  
 6 the town attorney for St. Michael's. It would be  
 7 helpful if we had the recommendation from the  
 8 panel so that I could address that. But I don't  
 9 know how you feel about that motion.

10 CHAIRMAN MADDEN: The panel has voted on  
 11 the recommendation. They haven't reported it to  
 12 the Commission yet at this point. The Commission  
 13 has not discussed it. So the recommendation is  
 14 approval with conditions.

15 MR. HICKSON: I understand that. And I  
 16 wanted to discuss the conditions is why I was  
 17 hoping that that would be introduced. But I will  
 18 obviously do whatever you wish me to do.  
 19 Proceed?

20 CHAIRMAN MADDEN: Proceed.

21 MR. HICKSON: The town of St. Michael's

1 has been dealing with an application on this  
 2 particular site since 1998. There has been, as I  
 3 said earlier, extensive litigation. It has been  
 4 represented that the town is beleaguered, that  
 5 they're tired of this, that they can't afford to  
 6 continue the battle if that's what it takes, and  
 7 that sort of thing. That is simply not true. We  
 8 have received -- in the beginning we received not  
 9 only my advice, but we sought a second opinion on  
 10 a number of legal issues from a law firm by the  
 11 name of Lenos & Blocker that concentrates its  
 12 practice in land use law, and Lenos & Blocker  
 13 have been with the town, they have been advising  
 14 the town with me ever since 1999.

15 We established a strategy in 1999 and we  
 16 pursued that strategy and the strategy has played  
 17 out. We litigated with the developer for as long  
 18 as the developer wanted to litigate. As  
 19 mentioned earlier, there have been several  
 20 applications on this property, and each time an  
 21 application was submitted that we didn't think

was adequate, we turned them down flat. But if  
 they wanted to go to court about it, that was  
 fine. We went to court and met them in court and  
 we defeated them.

Part of our strategy was that this is  
 our town and judges don't necessarily make good  
 land use planners. And we didn't want the future  
 of our town decided by a judge. We wanted it  
 decided by our own committees and our own town  
 commissioners. When we felt we were at a point  
 where suggestion was appropriate to sit down with  
 a developer and try to get to a better plan. We  
 did that. And we did it in several ways.

We invited in Professor Richard Collins,  
 who was previously head of the planning  
 department of the University of Virginia and also  
 a founder of an organization, if I can get it  
 right, the Foundation for Environmental  
 Mediation. He's done a lot of mediation in land  
 use disputes, not only in Virginia, but in other  
 states as well as Maryland. We called him in and

1 workshop that involved the town commissioners and  
 2 developer and ultimately a plan similar to this  
 3 was arrived at. All the while, if the developer  
 4 was not willing to listen to reason, we were  
 5 prepared to go to court.

But as I said before, we didn't want our  
 town planned in court. So this project proceeded  
 from that point and has gone through the Planning  
 Commission, has gone through the town  
 commissioners at both levels, and received  
 unanimous approvals. The records in this case  
 from the town is over there. Most of that stuff  
 came from the town record. We had three full  
 boxes we submitted to this Commission. The  
 Planning Commission's recommendation was, I  
 believe 70-some pages long and the town  
 commissioners' decision adopted most of that  
 recommendation, but was 20-some pages in addition  
 to that.

As you will hear from the panel, most of  
 the concern here seems to be the 300-foot area,

1 the buffer and a hundred foot minimum and beyond  
 2 that as well as the shoreline treatment. I sent  
 3 to Chairman Madden a few days ago -- actually, I  
 4 sent it in care of Ms. Mason for her to do as she  
 5 wishes. Included with the letter was a list that  
 6 was three pages long that lists issues that the  
 7 town commissioners and the Planning Commission  
 8 considered in dealing with the 300-foot buffer  
 9 and making their decision that in this case  
 10 300-foot buffer was not appropriate or needed.

11 One of the reasons that they decided  
 12 that the 300-foot buffer was not appropriate or  
 13 needed was because the proposal was to do a  
 14 vegetative shoreline stabilization whereby marsh  
 15 would be constructed with some low level stone to  
 16 keep the sand in place by an organization known  
 17 as Environmental Concern, Gene Slear from  
 18 Environmental Concern is here today. He  
 19 addressed the town commissioners and the Planning  
 20 Commission. The testimony is on record from him  
 21 and that testimony is in those boxes over there.

1 the full 300-foot buffer. The buffer is, however  
 2 -- at every location is more than 100 feet. In  
 3 many cases it's substantially more than 100 feet.

4 Now, we're concerned here, the  
 5 recommendation is that a full 100-foot buffer and  
 6 an additional 200 foot, as I understand it,  
 7 setback area be established. A uniform distance  
 8 all along this project. Now, the town has  
 9 invested six years in the development of this  
 10 property. In the beginning we were totally  
 11 opposed to it. But this piece of property is  
 12 subject to an annexation agreement that was  
 13 entered into with the land owner in 1981. At  
 14 that point, when that property came into town  
 15 through an annexation agreement where certain  
 16 zoning for residential development was guaranteed  
 17 to the owner, the die was cast at that time that  
 18 this property was going to be developed.

19 So the town commissioners ultimately  
 20 came to the position that they should find -- if  
 21 there was going to be development, it was in

1 But again, among the things that I sent  
 2 to Commissioner Madden through Ms. Mason were  
 3 some excerpts from that testimony. The testimony  
 4 was given after Hurricane Isabel, and Mr. Slear  
 5 was asked what has been the effects on similar  
 6 projects from Hurricane Isabel, and the testimony  
 7 was that there were no permanent effects at all.  
 8 There were minor impacts. For instance, the  
 9 vegetation, that the marsh grass was laid down  
 10 for a while but in a few days it popped back up  
 11 on its own accord. We think that is a better way  
 12 and we think it will enhance the qualities of the  
 13 Miles River. And based on the testimony that  
 14 we've got and we've seen, and we did investigate  
 15 it, we think this method will work and it's  
 16 better to do it that way.

17 Now, what is the incentive for a  
 18 developer to spend almost twice as much to do a  
 19 project like that rather than put in reatment if  
 20 you don't give him something in return? What we  
 21 gave him in return was we didn't make him put in

1 their best interest not to simply deny it, but to  
 2 work for the best outcome, and they believe this  
 3 is the best outcome.

4 This decision is here in a situation  
 5 procedurally where there's not much room for  
 6 negotiation. In another project, Four Seasons,  
 7 it came before this Commission when the County  
 8 commissioners who were the final authority had  
 9 not made their final decision. There was some  
 10 negotiation done here, the buffer was extended.  
 11 It then went back to the County for a final vote.  
 12 We don't have that situation here.

13 As you heard Ms. Owens say, we were  
 14 required to change our zoning ordinance in 1999.  
 15 Before that time the process was it went to the  
 16 Planning Commission, if it was a favorable  
 17 recommendation, it would come up here for the  
 18 Critical Care Commission to review and make its  
 19 decision and then back to the town commissioners.  
 20 But that's not the way it is now and that's not  
 21 the way it has been throughout this project. The

1 town commissioners made its final decision, a  
2 site-specific, plan-specific decision. And if  
3 you do very much with this decision of the town  
4 commissioners it will be tantamount to a denial  
5 and we'll have to start all over again.

6 I would suggest that as far as what will  
7 be recommended, that instead of setting a uniform  
8 300-foot setback, that you give the staff and the  
9 town an opportunity to work together and try to  
10 find a resolution to what has been the panel's  
11 concerns. Thank you very much.

12 CHAIRMAN MADDOEN: Thank you.  
13 Mr. Hickson. Any members of the public like to  
14 comment? We ask you to keep it to the matters  
15 germane as outlined by the Attorney General and  
16 keep it to no more than two minutes. Yes, sir.

17 MR. SLEAR: Good afternoon. My name is  
18 Gene Slear. I'm the vice president with  
19 Environmental Concern. We're a public  
20 not-for-profit company established to restore  
21 wetlands, educate the public regarding the value

1 have to be a highly engineered site in order for  
2 that marsh to work properly.

3 I want to submit a couple of additional  
4 facts for your consideration. The property owner  
5 immediately to the south is the Fogg Cove  
6 Condominium Association. We designed a marsh  
7 vegetation shoreline protection system for the  
8 Fogg Cove Condominium Association seven years  
9 ago. It's right in here, functioning  
10 beautifully, continues to function beautifully.  
11 It is engineered to a lower standard than what  
12 we've engineered for this area. The reason  
13 simply is it receives less fetch; it's more  
14 protected. As we proceed on this roughly  
15 north-south access, there is more fetch and  
16 therefore more energy interacting with the  
17 unprotected shoreline.

18 We have, instead of just a system of  
19 groins and sand, planted we have established a  
20 sill which protects the vertical edge of the new  
21 marsh from the energy. I'd like to bore you with

1 of wetlands, and to do research in the benefits  
2 of wetlands for water quality and habitat  
3 enhancement. We've been at the same location in  
4 St. Michael's, Maryland since 1972. We were  
5 engaged by the Midland Corporation to evaluate  
6 the needs for water quality enhancement and  
7 habitat enhancement on this site, initially in  
8 1997, I believe, and more recently in 2002. Our  
9 findings are part of the record.

10 The panel's findings suggest that there  
11 is some -- there was some discussion regarding  
12 certain aspects of our findings and I'd like to  
13 address those. I'm not adding any new  
14 information, just summarizing what's already in  
15 the record.

16 The area that will receive the -- the  
17 shoreline that will be protected by marsh  
18 vegetation starts from the southerly property  
19 line and proceeds up to this boundary here, a  
20 distance of about 800-some-odd feet. It was  
21 stated in the panel's report that it would

1 two short details, one is that the energy we have  
2 to deal with, there are two components to that,  
3 one is the rate at which the water attacks the  
4 shoreline, and the mass of that. And the mass is  
5 a function of how deep the water is. The water  
6 is very shallow along this area. So the  
7 engineering, as we come away from that property  
8 line and proceed up and around, it's very easy --  
9 we have done sites that have the same engineering  
10 requirements that's in the record. We've shown  
11 pictures of what happened after Isabel to those  
12 sites.

13 CHAIRMAN MADDOEN: You need to sum up.  
14 MR. SLEAR: The shoreline is part of an  
15 eco-system which includes best management  
16 practices for stormwater management and a  
17 forested buffer and the tidal marsh. The tidal  
18 marsh in this area runs along the north-south  
19 axis. The forested buffer will not shade that  
20 marsh to any extent because the sun comes up in  
21 the east and goes down in the west. So we're

1 very comfortable to work out something with the  
 2 Commission to fully forest that. That working  
 3 with the constructed wetlands that will be part  
 4 of the stormwater management system provide a  
 5 superior system as defined by the U.S. Wildlife  
 6 Service as recently as 2002.

7 CHAIRMAN MADDEN: Thank you very much.

8 MR. SLEAR: Thank you.

9 MR. DICKSON: My name is Sidney Dickson.

10 I've lived in the environs of St. Michael's.  
 11 I've lived within three miles of it for most of  
 12 my 63 years. I'm one of those who gave up  
 13 development rights on my 37 acres adjacent to  
 14 town in order to prevent such unhealthy  
 15 developments as we are faced with today.

16 Read between the lines here, please, pay  
 17 attention. From what you've heard today all is  
 18 roses. It seems to me that the public input has  
 19 not been considered. I assure you that the  
 20 community of Falbot, the Eastern Shore, I know  
 21 the watermen, the builders, the land owners are

1 you might have heard. They have demonstrated  
 2 they'll dump enough money into this project to  
 3 prevail. It seems clear that Midlands will stop  
 4 at nothing and take the golden egg and leave a  
 5 devastated goose. This was made clear to me  
 6 person to person in a very chilling way.

7 Before the Town Commission folded into  
 8 submissive compromise, before any of these little  
 9 meetings, I was told by a sitting town  
 10 commissioner, Rob Nobile, by name, that few  
 11 supported the Midlands proposition. But he said  
 12 townspeople had been taxed to the limit to the  
 13 point they considered Midlands to be unstoppable.  
 14 Furthermore, get this, this is untenable, could  
 15 be very easily implied, and I can't prove it, but  
 16 this town commissioner told me this, and I'd like  
 17 to see the town commissioners and the lawyers  
 18 deny it, the town commissioners were informed  
 19 that if they continue to stand in the way of  
 20 Midlands, they stood risk of being sued  
 21 personally and individually for being in the way.

1 dead set against this development. No matter  
 2 what you hear about how they have gotten together  
 3 and made these arrangements. These are silly  
 4 details that you're being confused with. The  
 5 point is once this land is ruined, it's going to  
 6 stay ruined until the next ice age. These  
 7 buildings aren't going away if you let them be  
 8 put there. I implore you, do not let this go  
 9 through.

10 They say, oh, you've got to compromise.  
 11 You don't have to compromise. Right is right and  
 12 wrong is wrong. This is wrong. This is good  
 13 habitat. On normal storms in the summer of St.  
 14 Michael's contaminated wastewater and sewage  
 15 actually runs in and out of one of the food  
 16 stores. I've seen it happen. It's Lady's  
 17 Market. They've prepared with sand bags. This  
 18 is not unusual.

19 There's something worse. It's not so  
 20 much what they're doing, it's how they're doing  
 21 it. Through incessant lawsuits, contrary to what

1 Rob Nobile told me this. I testified under oath  
 2 that he told me this and that they had caved  
 3 because they thought Midland was unstoppable and  
 4 they were -- could not raise taxes further and  
 5 they certainly couldn't have their families  
 6 ruined by this money.

7 This is a matter of money. The  
 8 community does not want this. Who wants this?  
 9 Midlands. And one or two contractors in the area  
 10 who have been paid to agree with them. The  
 11 builders don't want it. You see no builders  
 12 saying we want to build these houses. Our  
 13 builders are busy. We have plenty of growth.

14 CHAIRMAN MADDEN: I need you to sum up,  
 15 please. Your time is up. I need you to sum up.

16 MR. DICKSON: Turn it down flat. Thank  
 17 you.

18 CHAIRMAN MADDEN: Thank you, sir.

19 MR. DEMING: Chairman Madden, members of  
 20 the Commission. I'm Thomas Deming, I'm an  
 21 attorney for the St. Michael's Bay Hundred

1 Alliance. The Commission's charge under Natural  
 2 Resources Article Section 9-1809 is to determine  
 3 whether the program amendment as proposed meets  
 4 the goals of the statute and the criteria. You  
 5 will hear in the panel's recommendation that was  
 6 forecast in the staff report several specific  
 7 instances in which the panel members express  
 8 grave concern whether this project meets the  
 9 criteria. Most specifically the 300-foot  
 10 setback. The criteria say that the town shall  
 11 use the guideline that proposed new IDA should be  
 12 located at least 300 feet from the tidal waters  
 13 and tidal wetlands.

14 As a member of this morning's panel  
 15 said, that's a strong should and it's backed up  
 16 by a shall. But the record in this case shows  
 17 that rather than using the 300-foot setback, the  
 18 town accepted rationales from the developer as to  
 19 why there should be no 300-foot setback. This is  
 20 but one instance of several that are reflected in  
 21 the panel's comments that indicate that this

proposal as submitted does not meet the criteria.  
 2 and I would submit to you that rather than  
 3 approving this proposal with conditions, that the  
 4 more straightforward action for this Commission  
 5 to take under the terms of the statute is to vote  
 6 it up or down and I would urge that your vote  
 7 should be to disapprove the proposed program  
 8 amendment. Thank you.

9 CHAIRMAN MADDEN: Thank you.

10 MR. ALSPACH: Thank you, Mr. Chairman.

11 Ladies and gentlemen, good afternoon. My name is  
 12 Tom Alspach. I represent Talbot Preservation  
 13 Alliance, Inc. We are a volunteer citizens  
 14 organization with a large number of members in  
 15 Talbot County and in St. Michael's.

16 We are opposed to this project  
 17 specifically for the reasons that it does not  
 18 comport with the criteria that this Commission  
 19 must apply under the Critical Area law. You'll  
 20 hear the staff report about problems with  
 21 compliance with the 300-foot setback. We

1 certainly agree with that.

2 I'd like to draw your attention to the  
 3 additional criterion, mandatory criterion with  
 4 which this project does not apply. That is the  
 5 criterion relative to development in intensely  
 6 developed areas which recites that to the extent  
 7 practicable, future development shall use cluster  
 8 development as a means to reduce impervious  
 9 surface and maximize areas of natural vegetation.  
 10 COMAR defines cluster development as a means of  
 11 residential development where dwelling units are  
 12 concentrated in selected areas or in a selected  
 13 area or selected areas of a development tract so  
 14 as to provide natural habitat or other open space  
 15 uses on remainder.

16 Ladies and gentlemen, the developer here  
 17 has done the clustering of the houses. But they  
 18 forgot about the open space. There is none. The  
 19 rationale is you have this 100-foot buffer. If  
 20 you look at the rest of this development plat,  
 21 all we have is houses. There is some open space.

1 but it's impervious surface; it's tennis courts.  
 2 The requirement under the COMAR statute is to  
 3 reduce impervious areas through cluster housing.  
 4 This does not reduce impervious areas, as you  
 5 heard, it increases impervious areas from 0  
 6 percent to 55 percent of the site. There is no  
 7 dedicated open space on this plat.

8 Now, I think you will hear that the idea  
 9 of extending the 300-foot setback to 300 feet is  
 10 some sort of substitute for the creation of open  
 11 space. I submit to you that it's not. The  
 12 rationale of the 300-foot setback is to protect  
 13 the shoreline against human impact. That's right  
 14 in the Critical Area law. That's a separate and  
 15 distinct criterion from the clustering criterion  
 16 which requires open space as a means to reduce  
 17 impervious areas and maximize areas of natural  
 18 vegetation. There are no areas of natural  
 19 vegetation that are being provided for on this  
 20 project. This project does not comply with the  
 21 criteria. I thank you for my time.

1 CHAIRMAN MADDEN: Thank you very much.  
 2 DR. MCCARTHY: Chairman Madden and  
 3 members of the Critical Area Commission. Thank  
 4 you for allowing me to speak. I'm Dr. John  
 5 McCarthy, and I represent the Talbot River  
 6 Protection Association, of which I serve as  
 7 executive director.

8 TRPA, as we're best known, was created  
 9 about eight years ago in an attempt to protect  
 10 the rivers and creeks in Talbot County from the  
 11 constant degradation that they were experiencing,  
 12 and one of those of which is, of course, the  
 13 Miles River. Eight years later it would appear  
 14 that we're not succeeding.

15 In the past two weeks our Talbot County  
 16 newspaper, The Star Democrat, has featured news  
 17 articles telling us that the oyster harvest this  
 18 year is the lowest ever and Chesapeake oysters  
 19 have fallen to 1 percent of their normal  
 20 population. The seafood industry on the  
 21 Chesapeake has fallen from its predominant place

1 completed a three-year study of the discharge  
 2 from the St. Michael's wastewater treatment plant  
 3 into the Miles River.

4 That study concluded that the  
 5 nutrient-generated loss of dissolved oxygen at  
 6 that site in the river was lethal to all marine  
 7 life. The State of Maryland, in part as a result  
 8 of this study, declared the Miles River to be  
 9 impaired. Unfortunately, this is not an isolated  
 10 situation. TRPA and the creek watchers have been  
 11 collecting water samples from all the rivers and  
 12 creeks in Talbot County, including the Miles  
 13 River, and it found that in many cases the  
 14 results are comparable and that marine life and  
 15 plant life is not compatible with what is there.

16 This is the same wastewater treatment  
 17 plant that exists today. Nothing has changed.  
 18 It's the same overburdened and malfunctioning  
 19 sewage removal system that routinely, as you've  
 20 already heard, allows partially treated or even  
 21 untreated sewage to flow in the streets of St.

1 of just a few years ago and the watermen who  
 2 survived on it are now searching for other means  
 3 of livelihood. A sport fisherman is suffering  
 4 from a serious systemic infection caused by an  
 5 infected rockfish, and this is not an isolated  
 6 incident. What do all those three things have in  
 7 common? They're all related to the condition of  
 8 the water of the Chesapeake Bay and the rivers  
 9 flowing into it.

10 This should not be news to anyone. I'm  
 11 sure you all realize that just recently Governor  
 12 Ehrlich and the Maryland legislature passed  
 13 landmark legislation funding over a number of  
 14 years upgrading of the larger wastewater  
 15 treatment plants in the estuary. One of these  
 16 plants is hoped to be the Talbot County-owned  
 17 plant serving St. Michael's into which the  
 18 proposed 300 Miles Point III homes would send  
 19 their sewage. A year ago TRPA, with the  
 20 assistance and coordination of the Horn Point  
 21 Laboratories of the University of Maryland,

1 Michael's during heavy weather situations.  
 2 We cannot allow the wastewater and  
 3 stormwater from 300 more homes to be added to it.  
 4 Even if the wastewater treatment plant is  
 5 improved it will cost millions to Talbot County  
 6 and Maryland, and the Miles River will not be  
 7 capable of handling the discharge.

8 CHAIRMAN MADDEN: I need you to sum up.  
 9 DR. MCCARTHY: The significance of this  
 10 involves the welfare of a major Maryland  
 11 industry, the well-being of all of our citizens  
 12 and their ability to enjoy their surroundings,  
 13 and most importantly the public health of all  
 14 those who live and travel. We urge not that the  
 15 proposed Miles Point III growth allocation be  
 16 sent back to the town for improvement, but it be  
 17 rejected without conditions. Thank you.

18 CHAIRMAN MADDEN: Thank you. Please try  
 19 to adhere to the time limit in fairness to  
 20 everybody else.

21 SPEAKER: I'm afraid that there's no way

1 to hold it up. This is a portrayal of the area  
 2 of St. Michael's showing the river. I just  
 3 wanted to point out this was used recently. This  
 4 is a DNR product. It indicates the oyster bars  
 5 here at St. Michael's, the oyster bars that exist  
 6 in this region where the present consideration is  
 7 underway for the impact on the oyster stocks in  
 8 the Miles River.

9 I would like to say to the Commission  
 10 this: It seems to me that in history -- and I  
 11 personally was involved years ago with the  
 12 efforts that were made to put the critical area  
 13 law into place and design it for its purpose. I  
 14 understood, and people still today do, understood  
 15 its objective was to guarantee that we would  
 16 protect the water, the fishery, and the seafood  
 17 stock, the capability of the water being what it  
 18 was at one time.

19 It seems to me that we're off that mark  
 20 with many of the decisions we're making today,  
 21 and this one in particular. The Miles River

1 focus on exclusively go to one of the conditions  
 2 the panel has proposed, which is a uniform  
 3 300-foot setback. And the first thing that I  
 4 want you to understand is that in the entire  
 5 history of the Critical Area Commission, you have  
 6 never imposed a 300-foot setback contrary to the  
 7 local governing body's approval and contrary to  
 8 the application, never in the history of any  
 9 application that has ever been before you. You  
 10 are asked today to do something extraordinary in  
 11 your path.

12 The second thing I want you to know is  
 13 one of the reasons for that is for the last 11  
 14 years, the Critical Area Commission has had a  
 15 written policy that says the 300 feet should  
 16 guideline is one for the locality to consider.  
 17 The locality must have a 100-foot buffer and it  
 18 is to consider the 300-foot setback, combining a  
 19 200-foot setback with the 100-foot buffer. And  
 20 if it isn't going to increase the setback, it  
 21 needs to explain why.

cannot assimilate what's being proposed here.  
 The commissioners paid \$40,000 for three years of  
 study to find out what the nutrients were in the  
 river right in the vicinity of St. Michael's  
 where this project is proposed. And the results  
 were very clear. The nutrients were out of  
 control and because the nutrients were whatever  
 they are, the dissolved oxygen was lethal to all  
 marine life.

10 I have to ask all of you, what did we  
 11 start out to do? This isn't what we're doing.  
 12 It was to protect these resources, these  
 13 fisheries. We're not doing it. How can we allow  
 14 more impact to the already threatened and  
 15 seriously declined capabilities of the Miles  
 16 River? Thank you.

17 CHAIRMAN MADDEN: Thank you, sir.

18 MR. DETAR: Thank you, Mr. Chairman.

19 members of the Commission. My name is Richard  
 20 Detar from Miles & Stockbridge. I represent the  
 21 cants. The comments that I would like to

1 But the point is your written policy  
 2 says that discretion is with the locality. The  
 3 exhibit is Exhibit 25 in the record. Don't take  
 4 my word for it. Ask your lawyer -- if you've  
 5 ever done it before -- ask your lawyer if that's  
 6 what the policy says.

7 Now, having said that, the Critical Area  
 8 Commission has influenced setbacks before, and  
 9 the way that you've done it is you've negotiated  
 10 with the municipality and the applicant, and  
 11 you've reached mutual agreement. That's what  
 12 happened in Hovnanian. It wasn't forced, it was  
 13 through agreement because of particularly  
 14 sensitive features.

15 When you vote on this I'd like you to  
 16 consider a couple of things. If you force for  
 17 the first time in your history a 300-foot  
 18 setback, you force a legal decision on whether or  
 19 not you have that authority. And if you do that,  
 20 it's not just about whether or not you erode your  
 21 ability to have influence on this project, if a

1 court says you don't have that authority, it.  
2 influences your ability to have that influence on  
3 other projects, like Hovnanian.

4 The second thing I want you to know is  
5 nobody ever asked us to push back the setback.  
6 It never came up despite meetings with the staff.  
7 The applicant is willing to consider that. So  
8 I'm not here to tell you leave it alone. I'm  
9 here to say consider approving it with the  
10 condition that the applicant and the town worked  
11 with your staff based on the site conditions to  
12 arrive at what makes sense for a setback.

13 CHAIRMAN MADDEN: I need you to sum up.

14 MR. CETAR: Not an arbitrary and uniform  
15 300 feet. Look at the environmental features of  
16 the site. Use your staff who are experts and  
17 allow the process to work through communication  
18 the way it should. I believe everybody will be  
19 better served if that process, which is how it  
20 has historically worked, takes effect in this  
21 case.

1 town is not left dangling. In fact, that  
2 agreement has already been recorded in the land  
3 records of Talbot County, so it now will extend  
4 not only to the current developer owner but to  
5 any subsequent owner.

6 I heard something about cluster not  
7 being a good idea here. I think people are  
8 missing a lot of small pockets of open space that  
9 do add up on this site. I know the mission of  
10 this Commission is environmental protection, but  
11 the mission of planning for communities and place  
12 making in communities is to think about a lot of  
13 other things. This development, designed by  
14 Andre Skelarni, who is a world renowned designer  
15 of traditional neighborhood developments,  
16 Seaside, Florida, you guys have heard the litany,  
17 I think it's an opportunity for the town to have  
18 quality development and environmental protection.  
19 There are much more open space than has been  
20 given credit, and if we clustered this on 30  
21 percent of the site and left the rest open space,

1 CHAIRMAN MADDEN: Thank you.

2 MR. REDMAN: My name is Tony Redman.  
3 I'm a planner with a company called Redman-  
4 Johnson Associates. I'm speaking on behalf of  
5 the town of St. Michael's, where I work as a  
6 consultant and have been very engaged in this  
7 project. I have just a few comments.

8 There was concern that wetlands creation  
9 on this edge might not be viable. I had  
10 submitted only last week a copy of the wetlands  
11 boundary map done by the State of Maryland back  
12 in 1971 that shows much core grass marsh in this  
13 area, which I think is a great indicator that it  
14 is viable, that together with a reputation of  
15 environmental concern and their history and track  
16 record of building these things gives me great  
17 reassurance of the work.

18 However, because we can't always be  
19 certain, I want you to know that the town has  
20 already secured a ten-year agreement with the  
21 developer for maintenance of that wetland, so the

1 I would submit to you it would look nothing like  
2 the existing town of St. Michael's. It would be  
3 totally inconsistent with character and scale.  
4 And in fact, in Talbot County and surrounding  
5 areas that's what we've already got, lots of  
6 cluster developments on two-acre lots. Using  
7 land inefficiently, not housing people on less  
8 land, it's very land wasteful.

9 Also there's a reference to this being  
10 as high as 50 and 60 percent impervious surface.  
11 It's not. The latest calculation from the  
12 developer is 49. You look at me and say so what,  
13 that's pretty high. Yes, it is high. But in the  
14 IDA there is no limit on impervious surface. If  
15 you wish to have a limit on impervious surface  
16 through IDA, do the same thing you do in the LDA,  
17 legislate an impervious surface limit. Until you  
18 do, we don't have an option. Thank you.

19 CHAIRMAN MADDEN: Thank you very much.

20 Yes, sir.

21 DR. BAINES: Chairman Madden, ladies and

1 gentlemen, I'm Callan Baines. I'm a physician  
 2 practicing in Easton since 1968. I listened at  
 3 the initial presentation by the tall blond lady  
 4 who did a nice job pointing out all the good  
 5 features. And then I said when is she going to  
 6 address the question of sewage disposal? Right  
 7 at the end I thought she let the cat out of the  
 8 bag because she said the sewage plant will be  
 9 rebuilt by Talbot County.

10 So I ask you are you going to permit  
 11 approximately 60,000 gallons per day of sewage  
 12 going into a plant which is already failing which  
 13 in turn goes into a river which is heavily  
 14 polluted? Let me remind you, sewage is dangerous  
 15 stuff. I don't want to tax our transcriptionist,  
 16 but you've got salmonella and shigella, E. coli,  
 17 crypto-sporidium, mycobacterium marinum, and  
 18 hepatitis virus. If she gets that right I'll  
 19 congratulate her. Pfiesteria causes loss of  
 20 intellect which sometimes is permanent. We've  
 21 had it on the Pocomoke River. The Miles River is

frequently closed because of E. coli  
 contamination in the oysters.

3 The wastewater treatment plant there  
 4 quite regularly fails, puts raw sewage straight  
 5 out because it doesn't have the holding capacity  
 6 for a town of 600 people. Now, this developer  
 7 wants to add 251 houses at his last count, 251  
 8 houses each putting out 250 gallons a day comes  
 9 out to about an extra load of 60,000 gallons  
 10 going into a plant which is already failing.

11 This development, if it goes through in  
 12 its present form, abruptly doubles the population  
 13 of St. Michael's. For those of you who don't  
 14 live in that county, St. Michael's in places is  
 15 only about a thousand feet wide. There's an  
 16 impact on the sewage, impact on the highways and  
 17 the rights of citizens that live there to travel  
 18 freely upon the highway.

19 CHAIRMAN MADDEN: Doctor, I'm going to  
 20 ask you to sum up, please.

21 DR. BAINES: Right. Bill 933 was an

1 attempt to provide adequate sewage disposal and  
 2 to enforce better cooperation between the town  
 3 and county. This plant is a county  
 4 responsibility. The counties are responsible for  
 5 public health. Therefore, 933 is essential if  
 6 they are to protect the health and welfare of the  
 7 people that live there. I ask that this project  
 8 not be allowed until the wastewater treatment  
 9 plant have been improved. Thank you.

10 CHAIRMAN MADDEN: Thank you, Doctor.  
 11 Yes, ma'am.

12 MS. JONES: Good afternoon. My name is  
 13 Beth Jones. I'm president of the Bay Hundred  
 14 Foundation, an all-volunteer organization devoted  
 15 to preserving and enhancing the historic,  
 16 cultural and environmental qualities that make  
 17 our region so special.

18 This project is located in the Bay  
 19 Hundred area. As you probably know, Talbot  
 20 County has 650 miles of shoreline, more than any  
 21 other county in the United States. Bay Hundred

1 has the lion's share of that shoreline.  
 2 Dr. Baines was talking about the fact it's only a  
 3 thousand feet across. I have to say I'm so  
 4 delighted to live in a state that had the  
 5 leadership and the foresight to create the  
 6 Critical Area Commission 20-some years ago. And  
 7 I guess my question to you is if not here, then  
 8 where? This is the heart of what critical area  
 9 is all about.

10 The second question I have is about what  
 11 I heard the attorney for Midlands to say. If I  
 12 heard him correctly, it sounds like he was  
 13 implying that there might be a lawsuit against  
 14 you if you didn't give them what they wanted.  
 15 And if that's the case, unfortunately we've been  
 16 down this pike before. That has been the modus  
 17 operandi.

18 CHAIRMAN MADDEN: Thank you, Ms. Jones.

19 MR. DIES: My name is Russell Dies. I'm  
 20 vice president of the Maryland Watermen  
 21 Association. I live at Pilghman, Maryland.

1 Harvested seafood, shellfish out of Miles River  
 2 all my life until here recently. And last summer  
 3 Miles River was shut down for two weeks and we  
 4 couldn't harvest shellfish in Miles River because  
 5 of the overflow of the sewage treatment plant in  
 6 St. Michael's.

7 If you add, double the amount of  
 8 effluent going out of there, I see real danger  
 9 for the watermen in that area. Take a good look  
 10 at me. You might not want to, but you won't see  
 11 us much longer. As commissions okay these plans,  
 12 they're writing my death certificate. Because as  
 13 a waterman in Miles River and other rivers in  
 14 Talbot County, we soon no longer would be able to  
 15 make a living. We're right at that point now.

16 But I hail them for making new  
 17 marshland. But what's going to come from the  
 18 houses, the development, the overflow into the  
 19 Miles River is going to wipe away any benefits.  
 20 It can be the best plan and the best laid out  
 21 community, but if it puts people out of work. My

1 unit. On Monday the third of this week the  
 2 voters of St. Michael's went to the polls and  
 3 elected two of the three slow growth limited  
 4 control growth candidates, and each of those  
 5 gentlemen are here today.

6 Without further redundancy, SOS would  
 7 like to endorse the testimony of our attorneys  
 8 Deming and Asplach and other opponents who have  
 9 spoken before me. Thank you for hearing our  
 10 plea. Please help us preserve our way of life,  
 11 our environment, and our Chesapeake Bay  
 12 tributaries. Please vote no on this growth  
 13 allocation.

14 CHAIRMAN SETZER: Thank you, Mr. Martin.  
 15 Commissioner Carroll.

16 MR. CARROLL: I'm Peter Carroll, Talbot  
 17 County Council. I'd like to talk a little bit  
 18 about that waste treatment plant. St. Michael's  
 19 plant is actually a regional plant. It deals  
 20 with St. Michael's, Royal Oaks, and a number of  
 21 houses and developments that are along that

1 family has been working on the water since 1670.  
 2 We all have been watermen captains. I own a  
 3 50-foot skipjack. I can no longer make a living  
 4 because -- this is one reason, the oysters are  
 5 dead. If you have any feeling for the watermen,  
 6 turn this down.

7 CHAIRMAN MADDEN: Thank you.

8 MR. MARTIN: Good afternoon. For the  
 9 record, my name is Warren Martin. I'm a resident  
 10 of St. Michael's, Talbot County, Maryland. I'm  
 11 also co-chairman of SOS, Save Our St. Michael's.  
 12 Perhaps you've seen some of our bumper stickers  
 13 in the last seven years. We are an organization  
 14 of approximately 300 residents who have followed  
 15 and monitored this issue for seven years. I have  
 16 probably attended close to 100 of these meetings  
 17 in that period of time.

18 This Midland project is simply too dense  
 19 for our fragile Bay Hundred peninsula. To the  
 20 south of this project we have two units per acre.  
 21 Immediately to the north we have two acres per

1 route, that state road that comes in. The County  
 2 took that over a number of years ago because the  
 3 town was operating it and was not able to keep it  
 4 up to an acceptable standard. There has been  
 5 significant deterioration of the stirring paddles  
 6 and the processing equipment. So we have  
 7 ownership of that facility now.

8 A couple years ago a plan was to put in  
 9 place to increase the size of that plant to  
 10 800,000 gallons. It's a 500,000 gallon plant  
 11 today. Last year we took a look at that because,  
 12 as the governor has said to all of us, we need to  
 13 do a better job about environmental controls.  
 14 The processes that we have in place today simply  
 15 aren't getting the job done, and local  
 16 governments need to do more.

17 So we went back and revisited that  
 18 800,000 gallon plant and sized it to 660,000  
 19 gallons. That's the size of the plant that MDE  
 20 had originally recommended be put in place. That  
 21 downsizing brought to the surface another

1 critical issue. St. Michael's is an old historic  
2 town, and the sewer collection lines, the lines  
3 from the houses, the regional collectors that  
4 lead into the main collection lines, are leaking,  
5 and we have enormous infusion and of course  
6 rainwater flowing into those lines so that the  
7 plant on a nominal average runs around 300 to  
8 350,000 gallons a day.

9 But when we have storm events it can go  
10 to a million, a million and a half or a million  
11 eight in some cases. Those are the cases that  
12 cause raw sewage to flow out of manhole covers,  
13 pops the lids off and sends that out into the  
14 streets and into the town. We think that this  
15 project is not right yet. It should not go  
16 forward. And we sent a letter to you asking you  
17 to delay this project because we are very  
18 concerned about getting a new wastewater  
19 treatment plant in place and being able to cope  
20 with it.

21 The plant alone will not fix the

1 problem. We need to do something about the INI.  
2 We are spending money on that. That's a part of  
3 our upgrade program. But unless we can bring  
4 that flow down to I'm going to say in storm  
5 events to something like 700,000 or 800,000  
6 gallons per day, a new plant isn't going to solve  
7 the problem. All these new homes are going to  
8 exacerbate that.

9 We're here to ask you not to do this  
10 now. Let us get our house in order. Let's get  
11 the waste treatment plant back on line, and let's  
12 go into St. Michael's and fix all those  
13 connections and leaders and then we're ready to  
14 move on with it. Thank you very much.

15 CHAIRMAN MADDEN: Thank you, Council  
16 Member Carroll.

17 MR. VALANOS: Good afternoon. My name  
18 is George Valanos. I'm the developer of the  
19 Miles Point project. I'd like to pick up on  
20 something that Mr. Carroll said. Our engineers  
21 working with the County director of

1 utilities, Ray Clark, to address the INI problem.  
2 We recognize that that's an issue, and certainly  
3 before we go forward we're going to have to  
4 address it and see to it that the INI issue is  
5 taken care of, as well as working with them with  
6 respect to the capacity of the existing  
7 wastewater treatment plant.

8 Also I'd like to make a comment about  
9 what our firm stands for is about smart growth,  
10 pedestrian-friendly development. I know that  
11 density has been an issue. But I also -- my  
12 feeling of the critical area legislation, and  
13 maybe some of you agree and some of you don't, is  
14 to really identify through your planning process,  
15 through smart growth issues, where development is  
16 to take place and to identify those areas that  
17 are priority places and also to look at them in  
18 compact planning. Because what you're doing by  
19 developing compactly is creating a pedestrian  
20 environment where people can walk or bike, and if  
21 it's close into town, which this project is, then

1 they will actually reduce car trips. And also  
2 you can centralize your stormwater management and  
3 provide best practices for that.

4 Outside of the town of St. Michael's  
5 there is in the Bay Hundred region on average  
6 over the last two decades roughly 30 units per  
7 year, 300 every decade that are being developed  
8 on large lots. And what a development like this  
9 will do, in my opinion, is will redirect that  
10 development to areas where development should  
11 take place.

12 With that I want to thank you for your  
13 time.

14 CHAIRMAN MADDEN: Thank you,  
15 Mr. Valanos.

16 MR. DUNCAN: Mr. Chairman, members of  
17 the Commission, let me introduce myself. My name  
18 is Thomas Duncan. I'm a member of the Talbot  
19 County Council. I was on that council, as a  
20 matter of fact, I was president of Talbot County  
21 Council when the Critical Areas legislation was

1 enacted, and the towns were given a certain  
 2 amount of growth allocation, along with the fact  
 3 that we did a new comprehensive plan and a voting  
 4 ordinance at that time. So as you can see it was  
 5 quite hectic at the time that I was on that  
 6 council.

7 I would like to speak to you not on the  
 8 issues of engineering or chemicals, or whatever.  
 9 I'd like to speak to you on the emotional issue  
 10 of this bill and it's this: My great-grandmother  
 11 was a Native American. My grandfather made a  
 12 living on the water. My father made a living on  
 13 the water. I grew up on the water. I would  
 14 suggest that the representatives of the town here  
 15 were not residents of the Talbot County. I've  
 16 been in Talbot County 67 years and I've seen the  
 17 progression or I should say regression of the  
 18 waters of Talbot County.

19 You ask why am I here and why am I so  
 20 emotional about this subject matter. The fact of  
 21 the matter is it's not going to make any

1 Member Duncan. Anybody else? Judge North.

2 JUDGE NORTH: Good afternoon,

3 Mr. Chairman, ladies and gentlemen. I commend  
 4 you upon your patience and your attentiveness.

5 You've heard a great deal this afternoon and I

6 have just a few more words. This property is

7 near mine. So I'm very familiar with it. But I

8 assure you that if it were miles and miles away I

9 would have the same concern. St. Michael's is on

10 a very delicate area of land. It is an isthmus

11 connecting two bodies of land with water on each

12 side of it.

13 The waters of the Miles River have been

14 terribly, terribly damaged over the years. There

15 are no oysters in the Miles River any longer.

16 There are very few crabs and fish, and very

17 little bottom grasses. The Miles is in terrible

18 condition, due very largely to what happens in

19 St. Michael's and at the St. Michael's wastewater

20 treatment plant. I would urge you to give every

21 consideration not to compromise this matter

1 difference to me. At my age, I'll be gone. It  
 2 doesn't matter. But I have 12 grandchildren that  
 3 are going to accept what I leave for my

4 grandchildren. We're not asking for no growth in  
 5 Talbot County. All we're asking for is the  
 6 opportunity to get it right, to get it right.

7 That's all we're asking. And the fact of the  
 8 matter is we're at a crossroads right now. If we  
 9 can't get it right now, you can forget about

10 Talbot County. Why do people like to come to  
 11 Talbot County? It's pristine; it's beautiful.

12 Because Talbot County was the first county on the  
 13 Eastern Shore that had zoning. And that, in  
 14 fact, is what made Talbot County what it is, plus

15 we had some very wise people in government and  
 16 some very wise people in the civilian sector that  
 17 came forward and helped us guide our county.

18 So please give Talbot County the  
 19 opportunity to plan for the future. Thank you  
 20 for your time, Mr. Chairman.

21 CHAIRMAN MADDOEN: Thank you, Council

1 because we are, as has been said, at a  
 2 crossroads. The Miles and the bay have never  
 3 ever been in as terrible a condition as they are  
 4 today.

5 And recognizing this, I must point out

6 to you that a great number of people, the great

7 majority of people familiar with this situation

8 have voiced opposition to it. I took the liberty

9 of sending out a memo to all of you together with

10 supporting letters of people who had written in

11 concern, and in summary I would point out to you

12 that in favor of this proposition there is the

13 Midlands Corporation, the St. Michael's Town

14 Council, or part of them now, and a handful of

15 real estate brokers and other individuals.

16 Against this proposal, totally against it, are

17 Governor Harry Hughes who would be here today

18 save for a preexisting medical appointment;

19 Russell Trane, the first head of the

20 Environmental Protection Agency; Chuck Fox,

21 former secretary of DNR; several former St.

1 Michael's town commissioners who have written:  
 2 all four former Critical Area Commission members  
 3 from Talbot County, the Bay Hundred Foundation,  
 Fogg Cove Homeowners Association, Historic St.  
 Michael's, Maryland Watermen's Association, Save  
 6 Our St. Michael's, St. Michael's Preservation  
 7 Coalition, Talbot County Historical Trust, Talbot  
 8 County Oystermen's Association, Talbot  
 9 Preservation Alliance, Talbot River Protection  
 10 Association, and hundreds of citizens throughout  
 11 Talbot County.

12 In closing let me say that I thought  
 13 Mr. DeTar was very candid in his comments and he  
 14 has followed the path that his client has  
 15 followed previously. He says to you, in effect,  
 16 if you go along with this requirement at 300-foot  
 17 setback you're going to go to court. You're  
 18 going to be hamstrung in the future. That's his  
 19 threat. There is an easy way of resolving that  
 20 matter. Very easy. Turn it down flat, no  
 21 conditions. Turn it down flat. Thank you.

CHAIRMAN MADDEN: Thank you, Judge  
 2 worth. Would anybody else from the public like  
 3 to make a brief comment? We thank you. I would  
 4 like to turn to the chair of the panel for  
 5 additional information and recommendations.  
 6 MR. SETZER: Over the past 45 minutes to  
 7 an hour you all had a small taste of what we  
 8 experienced for three to four hours when we had  
 9 the public hearing for this particular growth  
 10 allocation. And you add those comments along  
 11 with the cart of backup material that's been  
 12 supplied to the Commission in support and  
 13 opposition to the project, and you can see the  
 14 type of issues that we as a panel have been  
 15 wrestling with over the past several weeks.  
 16 As a result of what was offered this  
 17 afternoon, I guess I'd just like to address a  
 18 couple points so at least you all have some idea  
 19 of the discussion that the panel had in moving  
 20 forward with this recommendation. First off,  
 there was a lot of discussion about the 300-foot

1 setback and how that relates to the design of the  
 2 development, the fact that it's very intense  
 3 development, and the fact that it is going to  
 4 increase the impervious surface on the site.  
 5 According to Mr. Redman the new figure is 49  
 6 percent. But obviously the increase in  
 7 impervious surface is going to be significant.  
 8 And those were the things that we looked at when  
 9 we were discussing the 300-foot setback.  
 10 We recognized, and again, Mr. Redman  
 11 pointed it out in the plan, that there are a  
 12 number of open space areas distributed throughout  
 13 the development. But we also thought that it was  
 14 important, because of the intensity of the  
 15 development and because of the impervious  
 16 surfaces, that we provide a more significant  
 17 setback to help the Commission deal with its  
 18 regulatory issues in terms of water quality and  
 19 habitat protection and those types of issues.  
 20 We talked at considerable length about  
 21 the use of the 100-foot buffer and we looked at

1 it from both a plant and wildlife habitat issue  
 2 as well as public access. And we recognized that  
 3 in terms of the Critical Area criteria those are  
 4 both important issues. But I think all the panel  
 5 members came down on the side of a more heavily  
 6 vegetated 100-foot buffer, again, to promote the  
 7 water quality and habitat protection requirements  
 8 of the Critical Area Commission.  
 9 We talked about stormwater management  
 10 and appropriate best management practices for the  
 11 site. There's a number, I think three or four  
 12 surface treatment ponds on the site which  
 13 obviously you can vegetate and provide some  
 14 wetland vegetation. But we thought that as the  
 15 design for the project moved forward, that there  
 16 should be additional consideration for  
 17 environmentally sensitive design for the  
 18 buildings in terms of rooftop disconnects, what  
 19 other opportunities may exist based on the  
 20 geology of the site, and opportunity for  
 21 infiltration and those types of issues so that we

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1 had an opportunity to kind of look for some  
 2 expertise and guidance in the stormwater  
 3 management area, and we asked Ken Pensill from  
 4 MDE to sit in on panel discussions and provide  
 5 some background in terms of the type of treatment  
 6 options that are available to deal with  
 7 stormwater management.

8 The panel also discussed, and discussed  
 9 it quite heavily this morning, shoreline  
 10 treatment. We talked about marsh creation versus  
 11 revegetation. There's an existing permit issued by  
 12 MDE for revegetation on part of the property. We  
 13 talked a lot about whether or not marsh creation  
 14 would be successful. And all of that discussion  
 15 was fine, but when it came down to a  
 16 recommendation, what the panel really looked at  
 17 was whether or not providing a vegetated  
 18 shoreline treatment was an appropriate trade-off  
 19 for a forested, vegetated 100-foot buffer.

20 We also heard, both during the hearing  
 21 as well as over the past hour, a lot of concerns

1 construction on this property contingent upon  
 2 appropriate availability of sewage treatment.  
 3 So we've looked at the issue; we've  
 4 talked about the issue, and the agencies that are  
 5 responsible for dealing with the issue have all  
 6 been engaged and are working toward a resolution.  
 7 So we've heard the issue; we've tried to  
 8 understand the issue, and the agencies  
 9 responsible for dealing with the issue have all  
 10 been engaged, and from that point we've moved on.  
 11 From my notes that's all I have.

12 If you don't mind, if there's anyone  
 13 else on the panel that would like to provide  
 14 other observations before we move forward with  
 15 the recommendation.

16 CHAIRMAN HADDEN: I'd be happy to take  
 17 those. I want to compliment the panel. They  
 18 have put a lot of time and debate into this. I  
 19 want to commend the members. Any other panel  
 20 members?

21 MR. SETZER: I call for the chairman to

1 about wastewater treatment. And again, the panel  
 2 was interested in making sure that we understood  
 3 the situation as it exists today as well as what  
 4 was on the horizon for wastewater treatment for  
 5 Talbot County in the St. Michael's area.

6 We asked again MDE from the MPOS program  
 7 to come in and talk to the panel and discuss the  
 8 issues related to this treatment plant,  
 9 infiltration, the overflows, and what was being  
 10 done now and in the future to address the sewage  
 11 treatment issues.

12 And I think the panel report that Mary  
 13 put together kind of puts it in context. MDE has  
 14 issued a new permit allowing for the increase of  
 15 the treatment plant to 660,000 gallons per day.  
 16 They're required to put in biological nutrient  
 17 reduction. They're required to put together a  
 18 plan to address the infiltration into the system,  
 19 which is a big concern and a big part of the  
 20 overflows that are being experienced. And it's  
 21 our understanding that the town has qualified the

1 make a recommendation.

2 What's being distributed now is a  
 3 supplement to the panel report which is basically  
 4 the recommendation for a vote. The panel  
 5 discussed Miles Point III growth allocation  
 6 request in regard to the consistency of the  
 7 request with the goals of the Criteria Area Act  
 8 and the Commission's Criteria required by Natural  
 9 Resources Article 8-1809(j). As a result of the  
 10 panel discussions the panel would move for the  
 11 approval of the growth allocation request with  
 12 the following conditions; one, that the  
 13 development shall be set back from the landward  
 14 edge of tidal waters at least 300 feet. Passive  
 15 recreation activities may be allowed outside of  
 16 the 100-foot buffer; two, the 100-foot buffer  
 17 shall be established. And in establishing the  
 18 buffer, management measures shall be undertaken  
 19 to provide forest vegetation that assures the  
 20 buffer functions set forth in Critical Area  
 21 Criteria.

1 Before final recordation of any  
 2 subdivision plats or grading of the site, a  
 3 Buffer Management Plan shall be developed  
 4 cooperatively with the town and the Commission  
 5 and the respective staffs. The Buffer Management  
 6 Plan shall be approved and reviewed by the  
 7 Commission and may provide for public access;  
 8 three, in measuring the 300-foot setback and  
 9 100-foot buffer, the measurement shall be based  
 10 on the existing shoreline at the time the Buffer  
 11 Management Plan is submitted to the Commission;  
 12 four, a stormwater management plan shall be  
 13 developed that promotes environmentally sensitive  
 14 design and explores all opportunities for  
 15 infiltration and bioretention before utilizing  
 16 surface water treatment measures. The stormwater  
 17 management plan shall be developed cooperatively  
 18 with the town, the Commission, and their staff.  
 19 The Stormwater Management Plan shall be reviewed  
 20 and approved by the Commission.

21 CHAIRMAN MADDEN: Do we have a second?

1 going to be able to build on the site. And I  
 2 think that construction isn't just the new  
 3 housing units, but also I believe to the  
 4 infrastructure, unless there's the appropriate  
 5 capacity not only available, but granted to the  
 6 town to move the construction forward. That's  
 7 the panel's understanding.

8 CHAIRMAN MADDEN: Any other discussion  
 9 or comments?

10 MR. RICHARDS: Edwin Richards. My  
 11 understanding in reading the material is that  
 12 there is a condition that limits the construction  
 13 to a capacity of the -- very specific, and I  
 14 can't remember the exact wording, but it  
 15 basically says they cannot use any septic tanks,  
 16 no other intermediate system, and they have to  
 17 have approval, not only capacity, but they have  
 18 to have approval before they can actually start  
 19 construction. We looked at it -- or I looked at  
 20 it and I thought that was very restrictive and I  
 21 felt dealt with the issue of capacity.

COMMISSIONER: Second. Meg Andrews.

MS. ANDREWS: Can you clarify for me, is

3 it the panel's understanding that this  
 4 enhancement to the wastewater treatment system  
 5 would have to be in place before the development  
 6 went forward or there would just have to be a  
 7 plan for it?

8 MR. SETZER: It's our understanding that  
 9 the authorization has been made to increase the  
 10 capacity of the treatment plant. That also  
 11 requires the County to develop a plan that  
 12 addresses the infiltration problems that are  
 13 resulting in some of the overflows that have been  
 14 described. We don't have, I guess, an exact  
 15 timetable for when that plan is going to be  
 16 constructed or when that plan is going to be in  
 17 effect.

18 However, the conditions placed on the  
 19 development by the town requires that there's  
 20 adequate capacity for whatever component of the  
 21 development moves forward. So basically they're not

1 CHAIRMAN MADDEN: Any other discussion?  
 2 MS. SAMORAJCZYK: Who makes that  
 3 decision?

4 MR. RICHARDS: It's between the County  
 5 and the Department of Environment. Anything that  
 6 the County does has to agree with the regulations  
 7 being administered by the Department of  
 8 Environment. And I'm sure after what's gone on  
 9 in Centreville that that will be tightened up.  
 10 So I think both County and Department of  
 11 Environment will be involved.

12 CHAIRMAN MADDEN: Any other questions or  
 13 comments?

14 MS. ENNIS: Is the current capacity of  
 15 the sewage treatment plant such that on an  
 16 ordinary day there would be allocation available  
 17 for this development, or must it be enlarged in  
 18 order to meet the basic statement that there's  
 19 allocation available?

20 MR. SETZER: I don't recall.

21 MR. RICHARDS: As I recall, the

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1 statement made by the representative of the  
2 Department of Environment was that there is  
3 existing capacity that could allow it to move  
4 forward. However, the INI issue is one that has  
5 been raised in testimony here and I think it's  
6 one that's going to be closely investigated  
7 before -- there was a statement that there may be  
8 a re-evaluation of the capacity of the facility.  
9 So at least at this point theoretically there is  
10 capacity to move ahead.

11 But I think that's going to be placed  
12 under investigation.

13 MS. ENNIS: So it could go forward  
14 without any of it?

15 MS. MASON: There wasn't enough for the  
16 whole development.

17 MR. RICHARDS: No. This is a staged  
18 development over a number of years. I think  
19 there's going to be a lot of work done before any  
20 approvals are given.

21 MR. SETZER: I guess from a panel

1 there are major problems here, there's no  
2 requirement on the County or the town to make  
3 those improvements prior to this, or at least the  
4 first phase.

5 MR. RICHARDS: I'll quote two things,  
6 one is the statement from the representative of  
7 the Department of Environment that said that that  
8 was under investigation. And secondly, there was  
9 testimony today that there has been money  
10 committed at the County level. I believe it was  
11 Councilman Carroll who said they are  
12 investigating it and it is underway right now as  
13 far as the County is concerned.

14 Also there was some written testimony  
15 submitted indicating something like \$400,000 had  
16 been committed already to begin the process to  
17 correct these problems.

18 MS. MASON: Also in the panel report,  
19 going along with what Gary said --

20 MR. SETZER: Page 7 of the staff report.

21 MS. MASON: -- which summarizes the

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1 perspective the issue was laid on the table. We  
2 asked the agency that was responsible for sewage  
3 treatment and discharge permits to come to speak  
4 to the panel to at least make sure that we  
5 understood the existing condition and prospects  
6 for the future, and you have to kind of tread  
7 lightly here because of certain jurisdictional  
8 areas that it's important for whether or not this  
9 project moves forward from an MDE and County  
10 perspective in terms of sewage treatment.

11 We felt, as far as the Commission was  
12 concerned, the fact that this issue was being  
13 examined, that Ed recalls there was capacity  
14 available for portions of the development to go  
15 forward. There were controls placed on the  
16 development for -- to have capacity available for  
17 the further build-out of the development of that  
18 sewage treatment plant was being addressed.

19 MS. ENNIS: I'm very new to this so  
20 maybe I don't understand. It sounds like if  
21 there's available capacity right now, even though

1 information that the panel received from the MDE  
2 representative. That's the information that the  
3 panel received.

4 MS. ENNIS: I guess my concern is that  
5 the permits have been issued. Then you get to  
6 the point can the town and the County afford to  
7 make the improvements and will those improvements  
8 have to be in place before the first part of the  
9 development moves forward? And I mean, my  
10 concern is that our first charge is to protect  
11 the water and the fish and wildlife, and even if  
12 we try to be objective and discount emotional  
13 appeals of what is said here today and what I'm  
14 sure the panel has heard, from a practical  
15 standpoint of being involved with government, can  
16 we be sure that this sewage treatment plant  
17 improvement and expansion is going to take place?

18 MR. SETZER: I guess that raises the  
19 question, do we have the authority to petition --

20 MS. MASON: That's a very good question,  
21 and that's one that the panel discussed with me,

1 actually, early on in the process. And the  
 2 Critical Area Commission has always worked  
 3 cooperatively with the permitting agencies. And  
 in this case the Department of the Environment  
 would be the agency that issues the permits for  
 6 upgrading or for making sure that the sewage  
 7 treatment plant is functioning in accordance with  
 8 the state regulations.

1 gallons per day. Originally the County requested  
 2 to expand the plant to one million gallons per  
 3 day and MDE rejected that request as unreasonable  
 4 growth. The County agreed to go down to .8  
 5 million gallons per day. After design was  
 6 completed at this capacity the County Council  
 7 changed the expansion to .66 million gallons per  
 8 day.

9 This Commission has no direct authority  
 10 to require MDE or the town to do anything with  
 11 regard to its sewage treatment plant, in my  
 12 opinion. The panel took the initiative and asked  
 13 for information from the appropriate people at  
 14 MDE, which I believe is well within their  
 15 authority to get as much information as they can.

9 The County is initiating the redesign  
 10 with the new capacity. The schedule design start  
 11 was February of 2002. Design completion was  
 12 October of 2003. The design start was January of  
 13 2004. Redesign completion is June 2004, with  
 14 construction start of September 2004 and  
 15 construction completion by December of 2005. It  
 16 says the service area is experiencing excessive  
 17 infiltration and inflow with 1,000 percent  
 18 variation of flows in some locations that  
 19 occasionally result in overflow. Maryland  
 20 Environmental Service has completed a study and  
 21 identified the areas with excessive infiltration

16 The MDE representative informed them  
 17 that MDE was in charge and taking care of the  
 18 sewage treatment plant matters. So I believe  
 19 that the panel report, as far as it went, really  
 20 I think states that the panel discharged their  
 21 duty because they did get information presented

at the public hearing similar to what you heard  
 today, only a lot more of it, that addressed  
 3 concerns and questions about the current  
 4 situation in St. Michael's and I think that the  
 5 panel was right to get additional information.  
 6 Beyond that, the panel did not discuss  
 7 recommending any kind of condition. So I didn't  
 8 give them advice on that. But my advice would  
 9 probably be that they should defer to the  
 10 Department of the Environment on the sewage  
 11 treatment issue.

1 and inflow. During their July 22, 2003 meeting  
 2 the County Council decided to proceed with INI  
 3 corrections immediately. The corrections are  
 4 estimated to cost \$600,000.

12 MR. SETZER: If it's okay with you I  
 13 found a fax sheet that MDE provided us.

5 MDE advised the County to apply for MDE  
 6 and USDA world grants and loans. Also MES's  
 7 study discovered that some INI was due to house  
 9 connections, and the County has been advised that  
 9 some homeowners might be eligible for CPPG  
 10 funding.

14 Fax sheet update, Talbot County region 2  
 15 wastewater treatment plant ENR upgrade and  
 16 expansion. The proposed project involves the  
 17 upgrade of the existing region 2 St. Michael's  
 18 wastewater treatment plant with enhanced nutrient  
 19 removal facilities to achieve total nitrogen  
 20 removal for a yearly average of 3 milligrams per  
 liter with expansion from .5 to .66 million

11 As far as the ENR agreement, the County  
 12 signed the ENR agreement, which is enhanced  
 13 nutrient removal. With MDE, the County's meeting  
 14 with MDE on October 29th, 2003 was to discuss how  
 15 to proceed with the ENR project at the new  
 16 capacity of .66 million gallons per day.

17 CHAIRMAN MADDEN: Do you want to  
 18 summarize that for us? Any other discussion?

19 MS. PRETTIMAN: I would like to add on  
 20 that it's to any entity's benefit that owns a  
 21 water treatment plant or a septic plant to

1 upgrade so that -- when they have overflows the  
2 MOE comes down very hard on them and fines them.  
3 So it would be to their benefit. My question,  
4 though, is on the ENR, and I didn't quite hear  
5 you. They agreed to go down to 3 with the  
6 enhancement?

7 MR. SETZER: Right.

8 MS. PRETTIMAN: Will their capacity go  
9 up because they will be running more efficiently  
10 then with going down to 3?

11 MR. SETZER: The impression that I got  
12 was that ENR was a function of the .66.

13 MS. PRETTIMAN: And you don't know what  
14 capacity they are right now?

15 MR. SETZER: I think they're authorized  
16 for .5.

17 CHAIRMAN MADDEN: Commissioner McKay.

18 MR. MCKAY: Thank you. I'm a bit  
19 concerned about the area, the 300-foot setback.  
20 While I recognize that I think it should be part  
21 of this project, and that might be my personal

1 town of St. Michael's work with the Critical  
2 Areas Commission to accomplish that setback as  
3 best as possible.

4 CHAIRMAN MADDEN: I would defer over to  
5 the panel chairperson because I know they gave a  
6 lot of thought to the proposal. I also will ask  
7 the counsel to give a historical perspective on  
8 whether we've applied 300-foot buffers before.  
9 Do you want to give us some thought behind the  
10 recommendation?

11 MR. SETZER: I guess as I mentioned  
12 earlier that looking at the intensity of the  
13 development and the increase in the  
14 imperviousness, we just thought it was important  
15 to provide the maximum available setback that the  
16 Commission authorized. We didn't discuss really  
17 straying from the 300-foot setback, that I can  
18 recall. I think right out of the gate the panel  
19 started to talk about establishing a 300-foot  
20 setback on the development, on the parcel. If  
21 anybody on the panel has a different

1 feeling, I'm concerned that from the 100-foot out  
2 to the 300-foot, that that should maintain -- we  
3 should maintain a local government or local  
4 jurisdiction, kind of working together with the  
5 Critical Areas Commission as well as the  
6 developer to try to make that work as best as it  
7 can for that particular project.

8 I am very concerned that we're  
9 establishing a precedent that would really --  
10 probably is something that's best left to the  
11 local jurisdictions to do it as they should, as  
12 the legislation says, they should. And I just  
13 think it's something that should be the locals  
14 working with the Critical Area Commission to try  
15 to accomplish that. I certainly support the  
16 300-foot setback. I just feel like you're taking  
17 away some flexibility with the local  
18 jurisdictions in trying to accomplish other  
19 benefits as they deal with that area of setbacks.

20 And I would like to see us revise it to  
21 have this -- this particular project to have the

1 recollection. That's my recollection.

2 MR. GILLISS: If the growth allocation  
3 request requires this Commission to consider the  
4 standards set out in 8-1809(J), and 8-1909(J)  
5 directs us to the goals of the program in 8-1808,  
6 one of which is to minimize impacts on water  
7 quality, then we don't need to foundationally be  
8 based upon the regulations which talk about  
9 development from RCA to intense development, and  
10 the shoulds and the shalls, but instead can rely  
11 upon the fact that 8-1808(B)(1) directs us to  
12 look at water quality, and one way to protect  
13 water quality is to have a 300-foot buffer.

14 MS. MASON: Following up on what you  
15 said, (B)(3), which directs the Commission to  
16 look at the number of movement and activity and  
17 persons in an area which is also something that  
18 the panel discussed very very in-depth with the  
19 proposed use of the 100-foot buffer proposed to  
20 be a fairly intensive public recreation and  
21 access area. The panel's discussions that I

1 recall were centered on how much protection for  
2 habitat and water quality would that 100-foot  
3 buffer actually achieve if it's going to be used  
4 for a public park and the need for some  
5 additional area to achieve those goals of the  
6 program.

7 CHAIRMAN MADDOEN: Any further  
8 discussion?

9 MR. RICHARDS: The commissioner raised a  
10 point about the local government participation.  
11 That's one of the initiatives that's been very  
12 much a concern to me throughout this.

13 My issue with the 300-foot is it was  
14 more procedurally at this point than it is an  
15 environmental concern. Although I think  
16 ultimately that would be a top concern. But the  
17 regulations, to try and paraphrase them,  
18 basically says that the local jurisdictions shall  
19 use guidelines, and one of the guidelines is it  
20 should have a 300-foot setback.

21 In the submittals that they have they

1 standpoint.

2 On the environmental I think there are  
3 some arguments against it. I think that the town  
4 was given an opportunity and they didn't do it  
5 appropriately. And I have to address some of the  
6 testimony because it really bothers me. There  
7 was a conflict between the two attorneys.

8 Mr. Hickson and the gentleman from Miles &  
9 Stockbridge, which I did not get his name, about  
10 the 100-foot buffer and the 300 feet. The  
11 gentleman from Miles & Stockbridge says that the  
12 developer, or his client, the issue of 300 feet  
13 never came up. Which to me undermines anything  
14 the town says if that is true, undermines  
15 anything the town says about whether or not they  
16 dealt with that issue. They got the opportunity.  
17 And if that's true, that even goes further in  
18 undermining the three points that they gave us.

19 The other conflict that I have is  
20 because in addition to the 300-foot, there's the  
21 question of the 100-foot forested buffer. I

1 claim to have addressed them, which they're also  
2 required to do elsewhere, as I recall. And they  
3 gave three reasons. We couldn't buy into any of  
4 those reasons as to reasons why they should not  
5 have a 300-foot. So basically we said they  
6 really did not give the full merit to the  
7 "should." And my feeling is that the "should" is  
8 a very strong thing that says that they will do  
9 it unless there's a compelling reason why they  
10 don't or it runs counter to the intent of the  
11 program.

12 And so right off the bat my feeling was  
13 and the reason why I didn't address the issue  
14 whether there should be something less than 300  
15 feet, it says it should be 300 feet. So it's  
16 time to drop it back in their lap.

17 I agree with you, if they want to come  
18 back and say there is a compelling reason why we  
19 cannot do it at 300 feet and then I, as an

20 individual, not speaking for the Commission,  
21 would be glad to consider it. On a procedural

1 heard the attorney for the town of St. Michael's  
2 saying we had to give him something in exchange  
3 for putting in the marsh. And what he gave in  
4 exchange was the 300 feet plus 100 feet of  
5 forested buffer. And why did he give up the 100  
6 feet of forested buffer? Because it would create  
7 shade which would make the marsh impractical.

8 So basically in addressing the issue of  
9 how the local government dealt with it, I think  
10 that point, to me, was the most critical element  
11 in this thing as to why it should be returned  
12 with conditions, because that issue was not  
13 appropriately addressed by the town. It should  
14 be returned to make sure they address it.

15 And if they want to negotiate something  
16 with the developer, then well and good.  
17 Personally I have a feeling that if they can come  
18 up with a compelling reason, I will listen, but I  
19 will listen very critically.

20 MR. MCKAY: I appreciate those comments  
21 and I concur with you as long as the feeling here

1 is that we're requiring the 300-foot setback  
2 because the local jurisdiction did not, in our  
3 opinion, fully explore that -- doing that, then  
4 that's fine. But I feel very uncomfortable if we  
5 are doing it simply because we feel this  
6 project -- and I do feel that 300-foot is  
7 required here, but simply because we feel it's  
8 required and the local jurisdiction has made  
9 every effort possible to meet the 300. I want to  
10 make sure we don't feel like we're establishing a  
11 precedent.

12 CHAIRMAN MADDEN: This is the conclusion  
13 the panel has reached.

14 MS. SAMORE: I would just like to raise  
15 the point that the criteria established, the 300  
16 feet, that it's the minimum, not the maximum,  
17 that should be located at least. So it's the  
18 minimum requirement in order to meet the goals of  
19 the program which is to minimize adverse impacts  
20 on water quality. So I think that's a very  
21 important point.

1 correct certain mistakes, conflicts or omissions  
2 in their local program. And there were about  
3 four of those, three of which have all been  
4 corrected either prior to today, will be  
5 corrected through the bills today, or in the  
6 future. So essentially those items have or will  
7 be addressed.

8 The other primary thrust behind these  
9 bills that are in your staff report is part of  
10 the County's comprehensive update that's required  
11 every six years by each county. Last month we  
12 did Anne Arundel County. We just updated them  
13 for the third time. This is Talbot County's  
14 first comprehensive review. I'll direct you to  
15 your staff report. There are six bills that were  
16 sent to us by the County. And I'm going to go  
17 through each one of them bill by bill.

18 The first one is Bill 922, and this bill  
19 includes specific provisions for the notification  
20 of property owners for certain types of  
21 development applications before the Office of

1 CHAIRMAN MADDEN: Thank you. Are we  
2 ready to vote? We have a motion in front of us  
3 to approve the Miles Point Growth Allocation  
4 Request with four conditions. All those in favor  
5 say aye.

6 (All say aye.)

7 CHAIRMAN SETZER: Opposed?

8 MS. ENNIS: Only because of the sewage  
9 treatment.

10 CHAIRMAN MADDEN: The motion is  
11 approved.

12 Next on the agenda is the Talbot County  
13 Comprehensive Review Amendments. I'll ask Lisa  
14 to come up and give that presentation.

15 (Recess.)

16 MS. HOERGER: This has been a long  
17 process for us, and the County Commissioners have  
18 finally enacted a series of several bills that  
19 are doing primarily two things. One is, for  
20 those of you that were here in September of 2002,  
21 this Commission sent the County a directive to

1 Planning and Zoning. The panel has no changes to  
2 this bill. The way that you received it and read  
3 it is the way that we propose to accept it.

4 The second bill is 926, and this is a  
5 section in the County's current zoning ordinance  
6 where all the definitions are laid out. And they  
7 are adding some definitions. A definition for a  
8 champion tree forest, preservation plan is a new  
9 definition for the County, marsh vegetation,  
10 mitigation, and disturbance.

11 There are two definitions in this bill  
12 that the panel, which you will hear later from  
13 the panel chair, are proposing to amend. One is  
14 the definition of a dwelling unit, and the second  
15 is their definition of shoreline development  
16 buffer which is their definition of the 100-foot  
17 buffer. And there will be one minor change to  
18 their definition of development activities.

19 The next bill is Bill 927. This is the  
20 section of the County Zoning Ordinance which  
21 lists those uses that are permissible in the

1 County's resource conservation areas. If you  
 2 have a copy of your Bill you can see those uses.  
 3 They're all acceptable to the Commission.

However, the panel has recommended a few

4 changes to those. One is for parks and  
 5 playgrounds. You may recall last month Anne  
 6 Arundel County had a similar provision in their  
 7 RCA use list and this Commission recommended and  
 8 approved an amendment to their comprehensive  
 9 review that it specifically be limited to passive  
 10 recreation, and that's the same type of  
 11 limitation that we're going to be asking for on  
 12 this bill.

13 The other issues in this bill with  
 14 regard to resource conservation area uses have to  
 15 do with the County's limit on treated septage  
 16 land application, community sewage treatment  
 17 plants, and sludge application for agricultural  
 18 and horticultural purposes. The County has  
 19 restrictions on where these uses can occur. They  
 20 restrict them to within 200 feet of mean high  
 21

1 buffer exemption area program for the first time.  
 2 We do not have the maps yet, but the County  
 3 Council is working on those maps and once we  
 4 receive them, you will get a chance to see those  
 5 maps and approve them.

6 What you'll be approving today is the  
 7 supporting language in the County's ordinance  
 8 that instructs how development will occur in  
 9 buffer exemption areas.

10 We will be making a suggested change to  
 11 the County's forest preservation plan language.  
 12 With regard to the buffer exemption area language  
 13 that's proposed, it is essentially consistent  
 14 with your policy on buffer exemption areas. In  
 15 fact, there are several places in the new bill  
 16 where it is stricter.

17 However, there's one section with regard  
 18 to mitigation. As you know, in buffer exemption  
 19 areas, the prescribed mitigation ratio is at a 2  
 20 to 1 ratio, but that's for all development  
 21 activities in the buffer. The County's bill

ter and tributary streams and we're going to  
 put in an addition to that to ensure that it's  
 3 also restricted from the buffer and the edge of  
 4 tidal wetlands because that wasn't clear in the  
 5 initial bill.

6 The next bill, Bill 929 amends the  
 7 agricultural and forestry management section of  
 8 the County zoning ordinance. In here the County  
 9 has done several things. They have reworked this  
 10 section of their ordinance quite a bit, inserting  
 11 the words 100 feet where appropriate, including  
 12 provisions for forest preservation plans.

13 This is something new for Talbot County.  
 14 This will require property owners in the critical  
 15 area to submit forest preservation plans when  
 16 they are undertaking clearing or development  
 17 activities within a 100-foot buffer or outside  
 18 the buffer.

19 They're also adding certain habitat  
 20 protection areas which didn't appear in the  
 21 County's original program, and they're adding a

1 reads for new impervious in the buffer. So the  
 2 suggested change will be all development change.  
 3 So we can capture what will eventually be in the  
 4 buffer when the development takes place.

5 Bill 931, another section of the  
 6 County's zoning ordinance that pertains to the  
 7 general site plan requirements. Again, in this  
 8 section of the County Code there was  
 9 significant -- well, not significant changes, but  
 10 a lot of changes that the County made over the  
 11 years, and it adds waivers and certain  
 12 applications for site plans, talks about  
 13 extensions, and they have updated their language  
 14 with regard to when they refer to the appropriate  
 15 state agencies which have changed over the years.

16 There are a couple of changes to Bill  
 17 931 that the panel discussed today in the earlier  
 18 panel discussion. One of the issues is that in  
 19 the criteria there is a requirement that lots or  
 20 parcels must be at least 15 percent forested. So  
 21 if you have a lot or parcel that is not, you have

1 to bring it up to that minimum threshold.  
 2 The way this bill is currently written.  
 3 it exempts grandfathered lots or parcels that are  
 4 less than seven acres. Because that is  
 5 inconsistent with the criteria and other county  
 6 programs in the Critical Area, the panel is going  
 7 to recommend that those references be deleted  
 8 from the bill.

9 The other change to this section is with  
 10 regard to the mitigation ratios prescribed when  
 11 you're clearing in the Critical Area. When  
 12 you're clearing between 20 and 30 percent of a  
 13 lot or parcel, you're required to do one and a  
 14 half to one mitigation. The way the bill  
 15 currently reads, you'd only be required to do one  
 16 and a half to one for the portion of the clearing  
 17 that would be between 20 and 30 percent range.  
 18 So we're asking for that to be corrected.

19 The final bill is Bill 932. This bill  
 20 talks about the process for obtaining growth  
 21 allocations for applicants in Talbot County, and

1 on March 24th. There weren't a whole lot of  
 2 substantive public comments. We did receive a  
 3 few. County staff gave us a formal presentation.  
 4 And that concludes my presentation  
 5 unless you have any comments or questions.

6 CHAIRMAN MADDEN: I'll turn it over to  
 7 the chair.

8 MR. BLAZER: The panel discussed the  
 9 County Council bills that Lisa has gone over,  
 10 those are Talbot County Bills 922, 926, 927, 929,  
 11 931 and 932 as part of their comprehensive review  
 12 of their local program. We reviewed them with  
 13 regard to the consistency of the goals of the  
 14 Critical Care Act and the Commission's criteria  
 15 required in Natural Resources Article 8-1809(G).  
 16 Again, just briefly, these are the bills as part  
 17 of the comprehensive review.

18 On behalf of the panel I move the  
 19 approval of the County Council bills with the  
 20 following conditions, and I'll read through, Lisa  
 21 has given you a summary of them and they're in

1 the panel had no suggested changes to that bill.

2 The comprehensive review also includes  
 3 that the County provide us with updated habitat  
 4 protection area maps. This is in an effort to  
 5 keep their maps current so we know which NPAs are  
 6 occurring within the County and we know what has  
 7 changed. We are working with the Department of  
 8 Nature Resources on finalizing those maps and  
 9 having them available to County staff and  
 10 Commission staff.

11 The critical area acreage and growth  
 12 allocation was provided to the Critical Area  
 13 Commission staff by the County. I believe your  
 14 package has attached to it a chart that lists out  
 15 all the growth allocations that have taken place  
 16 since the inception of the Talbot program. It  
 17 also includes the three local municipalities, St.  
 18 Michael's, Oxford and Easton's growth allocation  
 19 deductions.

20 Chairman Madden appointed a five-member  
 21 panel. The panel held a public hearing in Easton

1 your handout that's been circulated here. In  
 2 Bill 926, Chapter 190 Article 2 definitions and  
 3 word usage, Section 190-14, Section J, dwelling  
 4 unit. Change the definition of a dwelling unit  
 5 to state dwelling unit means a single unit  
 6 providing complete independent living facilities  
 7 for at least one person, including permanent  
 8 provisions for sanitation, cooking, eating,  
 9 sleeping, and other activities routinely  
 10 associated with daily life. A dwelling unit  
 11 includes a living quarters for domestic and other  
 12 employee or tenant, an in-law or accessory  
 13 apartment, a guest house, or a caretaker  
 14 residency.

15 The other section of Bill 926, Section  
 16 9, where we made a recommendation of shoreline  
 17 development buffer, amend the definition of a  
 18 shoreline development buffer to state that there  
 19 are at least 100 feet wide measured landward from  
 20 the mean high water line of tidal waters,  
 21 tributary streams, and tidal wetlands.

1 The other section with Bill 926. Section  
2 1, development activities. They request that at  
3 least two sentences in item B be deleted. This  
4 is where the substantial alteration is defined.

In Bill 927, Chapter 190, article 4,  
5 land use regulations by zoning districts. Section  
6 190-19. Section 4 of that bill, parks and  
7 playgrounds, add another bullet that states  
8 limited to passive recreation. Sections 19, 20  
9 and 21, we talked about treated septage land  
10 application, community sewage treatment plant,  
11 sludge application for agricultural and  
12 horticultural purposes. The panel recommended  
13 adding tidal wetlands to the bullet that  
14 restricts these uses to within 200 feet of mean  
15 high water or tributary streams. At a minimum  
16 this bullet should include the language that says  
17 or insure that it is otherwise restricted within  
18 the 100-foot buffer of tidal wetlands.  
19 In Bill 929, Chapter 190, Article 11,  
20 Critical Area Special Provisions Section 190-98,  
21

1 the references to parcels up to 7 acres. It must  
2 provide 15 percent afforestation. This language  
3 excludes grandfathered parcels under 7 acres for  
4 the afforestation requirement. If it's the  
5 County's intent to allow certain allowances for  
6 grandfathered parcels under 7 acres, then the  
7 County may propose an exemption for certain  
8 classes of activities such as new dwellings.  
9 And then the last recommendation for  
10 Bill 931 is 190-93(E) (9) (D) (c), delete the phrase  
11 "additional ten percent." These were the  
12 recommendations of the panel.

13 CHAIRMAN MACCEN: We have a motion for  
14 approval with conditions. Is there a second?  
15 COMMISSIONER: Second.  
16 CHAIRMAN MADDEN: Is there any  
17 discussion? Hearing none, all those in favor say  
18 aye.  
19 (All said aye.)  
20 CHAIRMAN MADDEN: Opposed nay. Ayes  
21 have it.

190-98(B) (3) (H). In place of H insert the  
2 following language: The forest preservation plan  
3 shall include either of the following: A, a time  
4 period for implementing the plan and provisions  
5 for a final inspection by the County after which  
6 the plan will be certified complete, or B,  
7 provisions for removal of invasive exotic species  
8 and/or maintenance of native vegetation for a  
9 period up to five years including provisions for  
10 annual inspections by the County.

The other recommendation was  
11 190-98.1(B) (6) (B), replace the language  
12 mitigation equal to an area two times the square  
13 footage of the proposed impervious surface in the  
14 buffer area. Change that to the language that  
15 states mitigation equal to an area two times the  
16 square footage of the development activity in the  
17 buffer area.

18 Bill 931, which is Chapter 190, article  
19 12, site plan review, section 190-92 and  
20 93(E) (9) (A), and 190-93(E) (9) (D) (1), delete  
21

1 We have another very important issue  
2 coming up in front of the Commission right now,  
3 Talbot County Bill Number 933, growth allocation  
4 procedures. We had a panel that looked into this  
5 extensively. Ren is going to give the panel  
6 report. And then I will again ask for public  
7 comment if anybody wishes to have it.

8 MR. SEREY: This amendment to the Talbot  
9 County Critical Area Program is County Bill 933.  
10 As the chairman explained, the panel conducted a  
11 public hearing, met on the bill and discussed it  
12 several times, and met again this morning. The  
13 staff report that went out and the panel report  
14 that went out also included a copy of the bill.

15 In 1989 the Talbot County Council  
16 approved the County's Critical Area Program and  
17 submitted that to the Commission. The Commission  
18 approved that program. The program included what  
19 the County called preservation of growth  
20 allocation to the towns of St. Michael's, Easton  
21 and Oxford. The County used the method of

1 providing the growth allocation acres to the  
 2 towns. There were no conditions placed on the  
 3 use of those acres. That was in the 1989  
 4 Critical Areas Program. The County gave the town  
 5 of Easton 155 acres, town of St. Michael's 245  
 6 acres, and the town of Oxford 195 acres. There  
 7 were maps attached to the Critical Area Program,  
 8 three maps that showed the potential areas for  
 9 annexation outside of the towns.

10 The understanding was that the growth  
 11 allocation would be used by the towns both within  
 12 their current boundaries, and the understanding  
 13 was in annexed areas. As Lisa explained on one  
 14 of the other previous items -- I was going to say  
 15 this morning, it seems like this morning, the  
 16 town of Easton used all of its growth allocation  
 17 and in 2000 the County instituted a new process  
 18 which they called their supplemental growth  
 19 allocation process, and that is a process that  
 20 involved joint hearings by the County Council and  
 21 town of Easton and joint approval of growth

1 Easton ran out of growth allocation, that is the  
 2 joint process, the supplemental process, the  
 3 County informs us that that would be the process  
 4 now after the growth allocation unused by the  
 5 towns is removed and reverted back to the County.

6 There are a lot of planning, growth  
 7 management clauses that are in the preface to the  
 8 bill, in the whereas clauses, and you have all  
 9 that information. It discusses the fact that it  
 10 was done in 1989 and things have changed. Growth  
 11 management has changed, that the original county  
 12 program required a four-year review of the County  
 13 program in addition to a review of the growth  
 14 allocation maps and the growth needs of the  
 15 towns. That review was not done. It has been  
 16 done now in the form of Bill 933, removing the  
 17 growth allocation.

18 The original county total of growth  
 19 allocation was 2,554 acres. And the County has a  
 20 process for using a portion of that in the RCA as  
 21 is set out in the Critical Area law and is

1 allocations.

2 That process has been used recently for  
 3 the Easton Village and Ratcliffe growth  
 4 allocations that you may remember from a couple  
 5 months ago, I think that was January that the  
 6 Commission approved those. It's also been used  
 7 for the Cooke's Hope growth allocation in Easton.

8 Easton used their growth allocation.  
 9 Oxford has only used about 15 acres of its growth  
 10 allocation. And St. Michael's has used  
 11 approximately 21 acres for the Strausburg growth  
 12 allocation. And that is, as Lisa explained  
 13 earlier, a refinement that this Commission  
 14 approved in October of 2000.

15 Council Bill 933 prefaces the action  
 16 that the County took with a lot of explanation  
 17 about the use of growth allocation. What the  
 18 bill does is it removes that growth allocation  
 19 that has been unused by the town and has it  
 20 revert back to the County. And what the County  
 21 intends is that the process that they used when

1 concerned, among other things, that its process  
 2 for using the growth allocation in the RCA will  
 3 be compromised unless it regains control of all  
 4 of the growth allocation that has since been  
 5 unused.

6 If you look in your staff report or  
 7 panel report, on page 2 in the middle, you'll see  
 8 some of those reasons that the County set out in  
 9 addition to the ones that I've just described.

10 As I said, this action, Bill 933, will  
 11 remove the growth allocation and revert back to  
 12 the County. In addition, and I think Lisa also  
 13 described this earlier, it will undo a previously  
 14 approved growth allocation, and that's the  
 15 Strausburg growth allocation that this Commission  
 16 approved as a refinement in October of last year.  
 17 The reason it would remove that growth allocation  
 18 is because the bill contains a clause that says  
 19 if any growth allocation is unutilized, and the  
 20 County goes on to define unutilized, then by the  
 21 effective date of the bill, which was I think

1 February of this year, then that growth  
 2 allocation also reverts back to the County.  
 3 And included in the definition of  
 4 unutilized is the provision that any growth  
 5 allocation awarded for which substantial  
 6 construction has not started based on a valid  
 7 building permit, that is also affected by the  
 8 bill and reverts back to the County.

9 There could be other growth allocations  
 10 in addition to the Strausburg. We have talked to  
 11 the towns of Easton and Oxford regarding their  
 12 previously approved growth allocations, and our  
 13 understanding is that there are a few lots that  
 14 are still undeveloped for which there are no  
 15 building permits yet that could also be affected  
 16 by this bill. But the Strausburg growth  
 17 allocation approved in October is obviously  
 18 affected.

19 At the panel's request the staff looked  
 20 into growth allocations and growth allocation  
 21 systems in use by the other counties, and we

1 for review of a proposed amendment. Those  
 2 standards are that the Commission must determine  
 3 or that the program amendments must meet the  
 4 goals of the Critical Area law, and they are set  
 5 out at the bottom of page 4, as well as the  
 6 provisions of the criteria. That is what the  
 7 panel discussed at length in its meetings and  
 8 again today.

9 That's all I have in summary of the  
 10 bill. Are there any questions regarding the  
 11 process or what the bill does?

12 CHAIRMAN MADDEN: Thank you very much.  
 13 Now we'll allow brief public comment, if anybody  
 14 chooses to do so. We're allocating a time to the  
 15 County to come up and address us, and then we'll  
 16 allow members of the public to address us briefly  
 17 also.

18 MR. POLLEN: Thank you, my name is  
 19 Michael Pollen. I am the Talbot County attorney  
 20 and I would like to read to you a letter that was  
 21 addressed to Senator Madden on April 22nd which

1 Summarized for the panel that generally those  
 2 growth allocation procedures of the counties fall  
 3 into three categories. And I'm on Page 4 of your  
 4 panel report. One category is where the County  
 5 simply gave the growth allocation to the towns  
 6 for their use, and that was the process that  
 7 Talbot County used.

8 Another selection of programs, another  
 9 category of growth allocation used is where a  
 10 county simply identifies a number of acres for a  
 11 town's use, growth allocation, but then awards  
 12 that growth allocation on an individual project  
 13 basis when the town requests it.

14 And the third category is a coordinated  
 15 process where both entities make the decisions  
 16 together. If you look at the bottom of Page 4  
 17 you'll see some information that we've been  
 18 talking about quite a bit today in regard to the  
 19 other amendments. Here you'll find about three  
 20 quarters of the way down a quote from the  
 21 Critical Area law that provides you the standards

1 contained the County's comments on the  
 2 subcommittee's review of Bill 933 that had  
 3 occurred on April 19th.

4 Dear Senator Madden: During the  
 5 Critical Area Commission Subcommittee Review on  
 6 April 19, 2004 of Talbot County's proposed  
 7 changes to its local program, several members  
 8 commented on the need for more information to  
 9 fully understand the various bills' language. I  
 10 am respectfully submitting this letter to respond  
 11 to those questions and I will address my comments  
 12 in the order in which the discussion occurred.

13 Consistency. The subcommittee initially  
 14 posed the question whether Bill 933 was  
 15 consistent with existing Critical Area Commission  
 16 policies and other approved programs. The first  
 17 part of the discussion articulated the correct  
 18 standard by which to judge consistency. The  
 19 discussion involved approvals of the program for  
 20 Caroline County, Saint Mary's County, Wicomico  
 21 County, Queen Anne's County, which all

1 demonstrate that the Critical Area Commission has  
 2 approved as a matter of policy different  
 3 approaches to county municipal growth allocation.  
 4 Bill 933 falls within the parameters of the  
 5 previously approved programs and policies of the  
 6 Critical Area Commission. This is the correct  
 7 standard and the correct conclusion.

8 Comparison of Bill 933 to inconsistent  
 9 provisions of existing municipal programs based  
 10 on the 1989 ordinance that is being repealed by  
 11 933 is not the correct approach to determine  
 12 consistency. By definition, a program amendment  
 13 is a change to a program and it will necessarily  
 14 be different than existing elements of the  
 15 current program.

16 In the case of Bill 933, Talbot County  
 17 municipality has adopted their own local programs  
 18 based on the 1989 ordinance that gave them  
 19 specific amounts of growth allocation. Bill 933  
 20 changes that. And any existing elements of  
 21 approved local programs inconsistent with Bill

1 government and a property owner, or in this case,  
 2 a municipality, has no legal right to rely on a  
 3 preexisting law or any assumption that  
 4 preexisting law would continue as originally  
 5 enacted.

6 There was some discussion about various  
 7 projects that were pending, and one in  
 8 particular, Cooke's Hope, was the subject of the  
 9 next paragraph.

10 Cooke's Hope. One topic of discussion  
 11 was the effect of Bill 933 on the Critical Area  
 12 Commission's previous approval of the Cooke's  
 13 Hope project. Talbot County Council has already  
 14 approved its Cooke's Hope project utilizing the  
 15 procedures adopted under Bill 762. Bill 762 is  
 16 the bill that was approved by this Commission in  
 17 2000 that established a joint review process with  
 18 the municipalities and the County in which the  
 19 applicant submits the application to the  
 20 municipality; it's forwarded to the County;  
 21 there's a joint review at the Planning Commission

1 933 are irrelevant to whether Bill 933 should be  
 2 approved.

3 If proposed amendments are compared with  
 4 inconsistent existing program elements for  
 5 consistency, no amendment would ever be  
 6 consistent, and therefore, no amendment would be  
 7 approved.

8 I'm sure the subcommittee's intention,  
 9 based on Ms. Mason's legal advice in considering  
 10 consistency, does not include consideration of  
 11 existing elements of the municipal Critical Area  
 12 programs that were premised on the 1989 ordinance  
 13 that are being changed by Bill 933.

14 Municipal reliance. Some of the  
 15 discussion centered upon expectations of various  
 16 municipalities premised on the 1989 award of the  
 17 growth allocation acreage. This is not an  
 18 appropriate consideration in evaluating Bill 933.  
 19 Maryland law is quite clear that absent vested  
 20 rights, which Bill 933 specifically does not  
 21 impair, zoning laws may be changed by local

1 level; there is a joint meeting of the town and  
 2 the county planning commissions. They separately  
 3 confer and form separate recommendations to their  
 4 respective bodies. That is followed by a joint  
 5 meeting between the town council and the County  
 6 Council to review the application. They then  
 7 separately confer among themselves and come up  
 8 with individual recommendations for approval or  
 9 not. Both, under Bill 762, both the town and the  
 10 County must approve the project.

11 Now, that procedure has been  
 12 successfully used with the town of Easton on  
 13 several occasions. The town of Easton has no  
 14 longer any growth allocation, as Ren Serey  
 15 indicated.

16 Back to the letter. One topic of  
 17 discussion was the effect of Bill 933 on the  
 18 Critical Area Commission's previous approval of  
 19 the Cooke's Hope project. The Talbot County  
 20 Council has already approved the Cooke's Hope  
 21 project utilizing the procedures adopted under

1 Bill 762. Bill 933 does not affect that  
 2 approval. This is readily apparent from the  
 3 language of the bill itself on page 6, line 216,  
 4 which states, growth allocation awarded by any  
 5 town that remains unutilized by the effective  
 6 date of the ordinance shall revert to the County.  
 7 Growth allocation awarded by the County prior to  
 8 or after the effective date of the ordinance  
 9 shall be deducted from the total growth  
 10 allocation allocated to the County under section  
 11 9-1909(1)(B).

12 So that project has been through the  
 13 joint review process and approved, and Bill 933  
 14 would have no effect on that project.

15 I want to skip ahead in the letter to  
 16 discussion of Bill 762. Other parts of the  
 17 discussion noted that Bill 762 was premised on  
 18 the assumption that it pertained to supplemental  
 19 awards of growth allocation after the use of  
 20 allocated acreage under the 1981 maps. When Bill  
 21 762 was enacted, and that was in 2002 -- or

1 and utilized with the town of Easton.  
 2 Bill 933 simply takes that existing  
 3 procedure and applies it uniformly throughout the  
 4 County to all of the towns, including St.  
 5 Michael's, including the town of Oxford.  
 6 Bill 762 is the County-created procedure  
 7 required by COMAR to accommodate needs of  
 8 municipalities. Bill 762 was drafted by the town  
 9 attorneys for the town of Easton and circulated  
 10 for comment to the town attorneys and town  
 11 commissioners for the town of Oxford and St.  
 12 Michael's prior to introduction by the County  
 13 Council.

14 The comments offered by the town  
 15 attorney for the town of St. Michael's, the only  
 16 comments received were incorporated into the  
 17 bill. Enactment of Bill 762 was in coordination  
 18 with affected municipalities, as required by  
 19 COMAR.

20 They then go on to discuss other  
 21 coordination between the County and the

1 Because, in 2000, there was no intention to repeal  
 2 the 1980 maps. That does not forever enshrine  
 3 those maps and place them beyond the police power  
 4 of a future council. The premises or assumptions  
 5 upon which Bill 762 was enacted do not bear on  
 6 whether Bill 933 is consistent with the standards  
 7 and the criteria the Critical Area Commission is  
 8 required to consider under Natural Resources  
 9 Article Section 8-1809(J).

10 Bill 762 is the County-created procedure  
 11 required by COMAR to accommodate the growth needs  
 12 of municipalities. COMAR has a specific criteria  
 13 that says when planning future expansion of  
 14 limited development and intensely developed area,  
 15 counties, in coordination with affected  
 16 municipalities, shall establish procedures to  
 17 accommodate the growth needs of municipalities.

18 So COMAR requires the specifically --  
 19 that the counties establish this procedure  
 20 specifically, and that's what Bill 762 did.  
 21 That's already been approved by the Commission

1 municipalities because that was one of the  
 2 criteria, one of the elements in the criteria.  
 3 On the planning level Talbot County has  
 4 coordinated directly with each municipality to  
 5 establish growth boundaries around each of the  
 6 affected municipalities. This effort has  
 7 resulted in coordinated maps showing common plans  
 8 between the County and each municipality for  
 9 growth areas around the town. Examination of  
 10 those maps shows quite clearly the coordinated  
 11 result of that county municipal effort to  
 12 accommodate the growth needs of municipalities.

13 These maps are the definitive reference  
 14 point from which to evaluate county municipal  
 15 cooperation regarding growth boundaries of  
 16 municipalities and county accommodation of growth  
 17 needs. The matching plans between the County and  
 18 each of the effective municipalities shows a  
 19 level of cooperative effort that speaks for  
 20 itself. Any claim that there was not adequate  
 21 political coordination between the town and

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1 county elected officials in connection with  
 2 enactment of Bill 933 --  
 3 CHAIRMAN MADDEN: I'm going to ask you  
 4 to summarize because your time is expiring.  
 5 Mr. POLLEN: Mr. Chairman, it's the  
 6 County's position that this -- and as Mr. Serey  
 7 explained in his comments, many counties  
 8 throughout the state have adopted Critical Area  
 9 policies that do not give specific acreage growth  
 10 allocations to municipalities. Those county-wide  
 11 programs have been previously approved by this  
 12 Commission.

13 Bill 933 is within the state-delegated  
 14 power of the County Council to enact. We're a  
 15 charter county. We have the obligation to  
 16 develop our own program, delegate it not only  
 17 under our charter, but under the Critical Area  
 18 law. This policy has been previously promoted by  
 19 other counties and approved by the Critical Area  
 20 Commission. And we believe that it represents  
 21 not only good environmental policy, but it's well

1 is attempting to yank back reserved acreage that  
 2 was originally given to the town and that the  
 3 town's programs were based on. They have been  
 4 functioning all these years, and the towns did  
 5 not receive any complaint from the County that  
 6 anything wasn't working well until we received  
 7 notice of this bill.

8 I testified at the local panel hearing.  
 9 We found evidence in the record here that the  
 10 County manager contacted Mr. Serey of this office  
 11 on October the 29th, 2003 to inform him that the  
 12 bill was in process and that he could expect it  
 13 to be up here for processing at the Critical Area  
 14 Commission in January of 2004. This bill was not  
 15 introduced to the public until some time in  
 16 November of 2003, and the towns were not  
 17 contacted about it and the problem was not raised  
 18 with the towns before the bill was introduced to  
 19 the public.

20 So there has been no coordination.  
 21 There's been no cooperation, and the effect of

1 within the prerogative of the County Council to  
 2 adopt that policy being consistent with the goals  
 3 and criteria of the Critical Area Commission.

4 It's really designed to enhance and  
 5 protect the environment of the Chesapeake Bay and  
 6 protect its future. So we would urge that the  
 7 Critical Area Commission adopt this as a program  
 8 amendment to Talbot County's local program.

9 CHAIRMAN MADDEN: Thank you for your  
 10 comments? Any member of the public that would  
 11 like to speak to us briefly on Talbot County Bill  
 12 933?

13 MR. HICKSON: My name is Michael  
 14 Hickson, I'm the attorney for the town of St.  
 15 Michael's. The town opposes 933. The towns of  
 16 Easton and Oxford appeared at the local county  
 17 hearing and also opposed this bill.

18 We opposed it for several reasons.  
 19 First, we think it's different than other  
 20 situations that you have addressed because in  
 21 this situation you're yanking back on the county

1 the bill will, as I said, yank back reserved  
 2 acreage and in my view run contrary to the way  
 3 that the state Critical Area laws and policies  
 4 are supposed to work, and that is they're  
 5 supposed to work in an organized and coordinated  
 6 fashion. Not to say that every county has to  
 7 work the same way, but by suddenly yanking back  
 8 these bills you have towns that in fact don't  
 9 have them; they can't function at all in terms of  
 10 Critical Area.

11 CHAIRMAN MADDEN: Your time is expiring.  
 12 Please summarize.

13 MR. HICKSON: We agree with what the  
 14 panel discussed this morning, that in effect it  
 15 will undo some decisions that the Critical Area  
 16 Commission had made, that it's inconsistent with  
 17 the existing town programs that exist in three  
 18 municipalities in the town and there's been no  
 19 cooperation or coordination in bringing this bill  
 20 forward. So we oppose it.

21 CHAIRMAN MADDEN: Thank you. Does

1. anybody else want to make any public comment?

2 MR. ALSPACH: Thank you again. My name  
3 is Tom Alspach. I'm speaking on behalf of the  
4 Critical Preservation Alliance. I would not agree  
5 with Mr. Hickson that the towns cannot function  
6 with Bill 933. The purpose of Bill 933 is to  
7 ensure that both the County and town and their  
8 respective populaces equally have a stake in the  
9 Critical Area, have their views taken into  
10 account in the grand growth allocation.

11 The grand growth allocation in a town  
12 like St. Michael's or Oxford affects all the  
13 residents of the County who utilize the Miles  
14 River, the Tred Avon River, Choptank River, et  
15 cetera. What this process is intended to do is  
16 to establish a joint review procedure whereby  
17 both jurisdictions participate in that review.  
18 Nothing is being taken away. The only two  
19 instances that this process has already been used  
20 with regard to the town of Easton, and in both  
21 instances the growth allocation requests were

1 by Mr. Jackson at the panel hearing, the question  
2 was raised doesn't this give the County a veto  
3 and it can prevent any growth allocation  
4 whatsoever. No, it doesn't. The law requires  
5 the counties to accommodate the growth needs of  
6 the town. If the County were arbitrarily denying  
7 growth allocation pursuant to this procedure, the  
8 town would have relief available to it because  
9 the County would not be accommodating its need  
10 for growth. So that fear or concern is  
11 misplaced. I would urge you to approve this  
12 proposed program amendment. It does nothing but  
13 assure that all parties affected by growth  
14 allocation will be heard in the process.

15 CHAIRMAN MADDEN: Anything else? I'll  
16 turn it over to panel chair for additional  
17 comments and recommendations.

18 MR. BLAZER: I guess a couple things  
19 while we're passing out the panel recommendations  
20 and report. We only had three people I think  
21 speak here. But the night of our panel we were

1 approved.  
2 If you look at a map, some of you who  
3 were at the public hearing for the panel,  
4 remember I showed you what St. Michael's looks  
5 like now. It looks like a big bar bell, a chunk  
6 of lead here and a chunk of lead here and a  
7 skinny bar that joins the two together. That's  
8 what St. Michael's looks like now because they  
9 annexed a piece of property three-quarters of a  
10 mile out to the country by way of annexing a  
11 roadbed. That piece of annexed property is out  
12 in the middle of the county on a county river  
13 surrounded by county residents, yet the residents  
14 of the County had no say whatsoever when growth  
15 allocation for this annexation was considered.

16 Given the fact that they will be  
17 directly impacted by it, by annexations like in  
18 the future, this procedure would ensure that  
19 their concerns are taken into account as well as  
20 those of people living in the town. By the way,  
21 in a response to a question that was asked, I think

1 there for a good two and a half, three hours, had  
2 quite a few people talk similar to the other St.  
3 Michael's hearing. And a lot was presented and a  
4 lot was discussed, and basically some of the  
5 issues that we had to deal with and that we  
6 focused on were basically -- we wanted to apply  
7 the specific sections in the critical areas law.  
8 We heard all kinds of things about planning and  
9 smart growth and wastewater treatment and some of  
10 the problems with the Miles River, you know, we  
11 needed to focus on the Critical Area provisions  
12 in the criteria and the law that we had. So  
13 that's what we tried to focus on in our panel  
14 discussions.

15 So, you know, with that, we also looked  
16 at the effect of Bill 933 on other Critical Area  
17 programs, program amendments, program  
18 refinements, what the Critical Area COMAR section  
19 said, so we had several meetings, a lot of  
20 discussion, a lot of debate as we went through,  
21 and I also want to thank the panel members,

1 because I think the debate and the discussion was  
2 very healthy and I appreciate all of your input  
3 on those.

4 A couple other introductory remarks. In  
5 its review of Bill 933, the panel wanted to  
6 encourage the County and towns to work together  
7 on specific changes on the growth allocation  
8 procedures that are going to affect all of them.  
9 You heard a couple people talk about process  
10 things and I think that's one of the things that  
11 we'd like to see as this develops over time.

12 The panel believed that the time was  
13 particularly appropriate for this kind of  
14 cooperative effort and the analysis given that  
15 the County has engaged in its comprehensive  
16 review of its program.

17 The panel also believes that the  
18 supplemental growth allocation process of Bill  
19 762 that I believe Mr. Pollen talked a little bit  
20 about which is incorporated in the County code  
21 may be a desirable growth allocation process.

1 basis was accepted Bill 933 would create  
2 conflicts between the County program and several  
3 of the approved municipal programs that the  
4 Commission has agreed to. The municipal programs  
5 have their own approved growth allocation  
6 procedures premised on the growth allocation  
7 reserves provided by the County. The conflict  
8 that Bill 933 would create was contrary to the  
9 Commission's oversight responsibility to ensure  
10 that local programs are implemented in a  
11 consistent and uniform manner. So that's our  
12 recommendation.

13 CHAIRMAN MADDEN: Do we have a motion  
14 for denial of Talbot County Bill 933? Is there  
15 a second?

16 COMMISSIONER: Second.

17 CHAIRMAN MADDEN: Any discussion? Yes,  
18 Barbara?

19 SPEAKER: I would like to clarify  
20 something. It's my understanding that the goals  
21 of Bill 933 are consistent with the state

1 however, as presently drafted, Bill 933 really  
2 doesn't harmonize or come in line with the  
3 supplemental growth allocation process of the  
4 County code. There were some inconsistencies  
5 that the panel was uncomfortable with in our  
6 determination of our recommendation.

7 I'd like to move on behalf of the panel  
8 to deny approval of Talbot County Bill 933 as an  
9 amendment to the County's Critical Area program  
10 and to invite the County to work with the  
11 Commission and its staff to develop new growth  
12 allocation provisions that will be compatible  
13 with the state Critical Area Act and its  
14 criteria.

15 There are two major bases for the  
16 motion. They are: If we accept Bill 933, we  
17 would negate at least one previous Commission  
18 action of approving a local program change, and  
19 that's the refinement to the St. Michael's  
20 program for the Strausburg growth allocation we  
21 approved back in October 2003. And the second

1 delegation to the County, but the draftmanship is  
2 creating some inconsistency, so with appropriate  
3 draftmanship the goals could be realized: is that  
4 correct?

5 MS. MASON: The process that the County  
6 has said that they intend to use, that is the  
7 joint process through Bill 762, the panel  
8 believed was definitely in line with or  
9 appropriate under the state law and criteria, but  
10 the actual wording of the bill which is what the  
11 panel had to look at created the problem for this  
12 Commission of negating the Commission action.

13 SPEAKER: So it's basically an inartful  
14 drafting as opposed to a noncompliance -- the  
15 goals are not noncompliant, the draftmanship --

16 CHAIRMAN MADDEN: Denial is articulated  
17 in the motion. If we stick to the motion rather  
18 than try to read something else into it. Any  
19 other discussion?

20 MS. ENNIS: It seems to me when we look  
21 at this issue, the thing that's most inconsistent

1 is that it will repeal an action that the  
 2 Commission has already approved, both the town  
 3 and the County approved and that the Commission  
 4 approved.

CHAIRMAN MADDEN: The town approved.

The Commission --

7 MS. ENNIS: It didn't have to go through  
 8 the County?

9 CHAIRMAN MADDEN: Correct.

10 MS. ENNIS: If that were corrected,  
 11 would we still be opposed to this?

12 CHAIRMAN MADDEN: I think again, we have  
 13 to look at the motion. The motion cites two  
 14 issues. The basis for the motion is the first  
 15 paragraph, accepting 933 would negate at least  
 16 one previous Commission action and, number two,  
 17 would create conflicts between the County program  
 18 and several approved municipal programs. That's  
 19 what we're basing this motion on. Any other  
 20 discussion? If not, we have a motion in front of  
 21 us for denial. All those in favor say aye.

1 STATE OF MARYLAND SS:  
 2 I, LINDA A. CROCKETT, a Notary Public of the  
 3 State of Maryland, do hereby certify that these  
 4 proceedings took place before me at the time and  
 5 place herein set out, and the proceedings were  
 6 recorded stenographically by me and this  
 7 transcript is a true record of the proceedings.

8 I further certify that I am not of counsel to  
 9 any of the parties nor an employee of counsel nor  
 10 related to any of the parties nor in any way  
 11 interested in the outcome of this action.

12  
 13 As witness my hand and notarial seal this 8th  
 14 day of June, 2004.

15  
 16 My commission expires  
 17 December 1, 2004 Notary Public

1 (All said aye.)

CHAIRMAN MADDEN: Opposed nay?  
 Motion for denial is approved. Thank  
 you again, all panel members and Commission  
 members.

6 (Proceedings concluded at 5:00 p.m.)

**CRITICAL AREA COMMISSION**  
**For the Chesapeake and Atlantic Coastal Bays**  
**People's Resource Center**  
**100 Community Place**  
**Crownsville, Maryland**  
**May 5, 2004**

The full Critical Area Commission met at the People's Resource Center Crownsville, Maryland. The meeting was called to order by Chairman Martin G. Madden with the following Members in **Attendance**:

Margo Bailey, Kent County  
Dave Blazer, Worcester County Coastal Bays  
Dr. Earl Chambers, Queen Anne's County  
Judith Cox, Cecil County  
Ella Ennis, Calvert County  
Judith Evans, Western Shore Member at Large  
William Giese, Dorchester County  
Ed Gilliss, Baltimore County  
Pat Goucher, Department of Planning  
Joseph Jackson, Worcester County, Chesapeake Bay  
Thomas McKay, St. Mary's County  
Daniel Mayer, Charles County  
Stevie Prettyman, Wicomico County  
William Rice, Somerset County  
Edwin Richards, Caroline County  
Duncan Stuart for Otis Rolley, Baltimore City  
Barbara Samorajczyk, Anne Arundel County  
Douglas Wilson, Harford County  
Fred Samadani for Louise Lawrence, Maryland Department of Agriculture  
Gary Setzer, Maryland Department of the Environment  
Jim McLean, Md Depart of Business and Economic Development  
Frank Dawson, Maryland Department of Natural Resources  
Meg Andrews, Maryland Department of Transportation  
Allison Ladd, Dept. Housing and Community Development

*Approved*

**NOT IN ATTENDANCE:**

James N. Mathias, Jr., Ocean City  
Gail Booker Jones, Prince George's County

Chairman Madden welcomed the Commission's newest member, Stevie Prettyman from Wicomico County and he acknowledged Effie Reynold's participation at last month's Commission meeting for Jim McLean, Maryland Department of Business and Economic Development. The Chairman welcomed Fred Samadani representing the Maryland Department of Agriculture in Louise Lawrence's absence, Duncan Stuart representing the City of Baltimore for Otis Rolley and Paul Cucuzzella for the Attorney General's Office with Marianne Mason. He recognized Judge North, the former Chair of the Critical Area Commission, who was in the audience for an agenda item.

acreage and will notify the Commission when the acreage is verified. If necessary, the lot boundaries will be adjusted and the growth allocation acreage deduction may decrease. This request has been approved by the County Commissioners of Worcester County. **The Commission supported the Chairman's determination of Refinement.**

**Chairman Madden moved that the Commission adjourn to Executive Session:** The Chairman quoted the Statutory Authority for closing meetings under State Government Article 10-508(a)(7), "to consult with counsel to obtain legal advice." He further stated that his reasons for closing the meeting were to consult with counsel to obtain legal advice 1) on the applicable sections of the Critical Area law and criteria governing the Commission's deliberations. 2) on the applicability of other State laws, policies, and regulations. 3) about whether the Commission may consider the effect of Talbot County Bill 933 on any other Critical Area Program, program amendment, or program refinement approved by the Commission. 4) on the interplay between Talbot County Bill 762 and Bill 933. 5) on the interplay between the proposed Program Amendment from Talbot County (Bill 933) and the proposed Program amendment from St. Michaels for the Miles Point III growth allocation. 6) on the scope of the Commission's authority in the context of taking action on a program amendment for growth allocation. 7) on the meaning of Commission Criteria in COMAR 27.01.02.06 A. and B. **The motion was seconded by Jim McLean and carried unanimously.**

The meeting reconvened and Chairman Madden called upon Lisa Hoerger to present St. Michaels Ordinance #304, Text Changes to Amend the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures in the Town of St. Michaels.

**Town of St. Michaels:** Lisa Hoerger presented for Vote Ordinance #304, Text Changes to Amend the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures for the Town of St. Michaels. The first change involves eliminating duplication in approval of map amendment and growth allocation requests that currently requires that a formal map amendment process be followed to amend the map after a request for growth allocation has already been approved. The Town contends that the award of growth allocation is, in and of itself, a map amendment. The second change involves the correction of the order for Town Commission and Critical Area Commission review and approval of text and map amendments affecting the Critical Area to be compatible with the review process for growth allocations. The Town amended its growth allocation review and approval process in 1999. A Commission panel hearing on Ordinance #304 was held in St. Michaels on April 1, 2004 and there was no public comment. **Gary Setzer moved on panel recommendation that Ordinance #304 as enacted by the St. Michaels Town Commissioners, which amends the Growth Allocation, Zoning, and Critical Area Map Amendment Procedures used by the Town, be approved by the Commission. The motion was seconded by Joe Jackson and carried unanimously.**

**Town of St. Michaels:** Lisa Hoerger presented for Vote, Resolution 2003-06, Annexation of the Miles Point, LLC Property submitted by the St. Michaels Town Commissioners. The purpose of the resolution is to annex 42.066 acres of land into the town. Approximately 17.156 acres are upland and the remaining acreage is a portion of the bed of the Miles River. The entire property is located within the Critical Area. This annexation resulted in a change

approval of growth allocation, that a Buffer Management Plan be submitted. 5) Stormwater Management - The preliminary concept plans for detention show that the 10% pollutant reduction requirement for IDAs is achievable through the implementation of on-site Best Management Practices (BMPs) and that certain types of BMPs provide habitat benefits. The Panel expressed an interest in exploring stormwater management options that provided habitat benefits. 6) Shore Erosion Control - The Panel was familiar with erosion problems on the site, and they discussed the viability of a marsh creation along the extensively eroded Miles River proposed by the applicant. They also discussed the conflict between establishing the Buffer in natural vegetation and providing sufficient sunlight for the marsh grasses. 7) Wastewater Treatment- The Panel had reviewed information on the wastewater treatment issues and a discharge permit from MDE was distributed for the Talbot County Region II Wastewater Treatment Plant. This is the plant that would treat wastewater from the Miles Point III project and it is proposed to be upgraded. The Town Commissioners' conditions of approval for the project address the timing of permit issuance with the planned upgrades.

Chairman Madden opened up the meeting to public comment. Eighteen citizens spoke, 7 spoke in support and 11 were in opposition of the project.

Gary Setzer moved on panel recommendation to approve the growth allocation request with the following conditions: 1) The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer. 2) The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access. 3) In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission. 4) A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission. The motion was seconded by Joe Jackson.

In response to a question by Meg Andrews regarding what the status of the wastewater treatment has to be before the development can go forward, Gary Setzer replied that authorizations have been issued by the Department of the Environment to increase the capacity of the treatment plant and it also requires the County to develop a plan that addresses the infiltration problems. Gary read an MDE report which requires the treatment plant expansion. Commissioner McKay, although supportive of the 300-foot setback, commented that he believes that this condition is establishing a precedent which should be left to the local governments to impose. A discussion followed during which several Commission members stated that they believed a 300-foot setback was appropriate due to the significant amount of development proposed for the site.

E. 483

001627

**Section Four, Parks and Playgrounds (Public and Private - See page 3) - Add another bullet that states, "Limited to passive recreation."**

**Sections Eighteen, Twenty, and Twenty-One, Treated Septage Land Applications, Community Sewage Treatment Plant, Sludge Application for Agricultural and Horticultural Purposes (See page 8-9) - Add "tidal wetlands" to the bullet that restricts these uses to within 200 feet of mean high water or tributary streams or ensure that these activities are otherwise restricted within the 100-foot Buffer of tidal wetlands.**

**Bill 929 - Chapter 190, Article XI Critical Area Special Provisions, §190-88**

**190-88 B (3) [h] (See page 8) - In place of [h] insert the following language:**

**"The Forest Preservation Plan shall include either of the following:**

- a) A time period for implementing the plan and provisions for a final inspection by the County after which the Plan will be certified complete; or**
- b) Provisions for removal of invasive/exotic species and/or maintenance of native vegetation for a period of up to 5 years including provisions for annual inspections by the County."**

**190-88.1 B (6) (b) (See page 12) - Replace "Mitigation equal to an area two times the square footage of the proposed impervious surface in the Buffer area..." with "Mitigation equal to an area two times the square footage of the development activity in the Buffer area..."**

**Bill 931 - Chapter 190, Article XII Site Plan Review §190-92**

**190-93 E (9) (a) (See page 31) & 190-93 E (9) (d) [i] (See page 34) - Delete the references to parcels up to seven acres that must provide 15% afforestation. This language excludes grandfathered parcels under seven acres from the afforestation requirement. If it is the County's intent to allow certain allowances for grandfathered parcels under seven acres then the County may propose an exemption for certain classes of activities (i.e. new dwelling).**

**190-93 E (9) (d) [c] (See page 33) - Delete the phrase, "...additional 10%..." The motion was seconded by Joe Jackson and carried unanimously.**

**Talbot County:** Ren Serey presented for Vote Talbot County Council Bill #933, Review and Reallocation of growth allocation for the Towns of Easton, St. Michaels and Oxford. Mr. Serey said that previously, the County had set aside a specified number of acres of growth allocation for use by the Towns with no conditions upon it. The original County Critical Area Ordinance adopted in 1989 included maps of the Towns and surrounding areas, which identified potential areas for annexation or rezoning. The original Ordinance also stated that

Bill #933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner. The motion was seconded by Bill Giese and carried unanimously.

### Old Business

Chairman Madden announced that the three Commission Bills were passed and the Governor is expected to sign them on May 26<sup>th</sup>, 2004.

Commission Counsel, Marianne Mason, Esquire, updated the Commission on legal matters. She said that she argued before the Wicomico Zoning Board the Lewis variance case on remand, which was deliberated for six hours and then turned down.

### New Business

There was no new business reported.

There being no further business the meeting adjourned at 5:05 p.m.

Minutes submitted by: Peggy Campbell, Commission Coordinator

Robert L. Ehrlich, Jr.  
Governor

Paul S. Steele  
Governor



RECEIVED  
MAY 18 2004  
TALBOT COUNTY COUNCIL

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/](http://www.dnr.state.md.us/criticalarea/)

May 14, 2004

Mr. George Kinney, AICP  
Director, Office of Planning and Zoning  
108 Maryland Avenue, Suite 102  
Easton, Maryland 21601

**Re: Talbot County Proposal  
Program Amendment: Bill 933**

Dear Mr. Kinney:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its regularly scheduled meeting on May 5, 2004 the Critical Area Commission considered County Bill #933, Talbot County's proposed amendment to its local Critical Area program concerning the reallocation of growth allocation reserve acres. Upon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration of the Panel's Report and its Supplement (both attached), statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program. The vote was unanimous, with one member abstaining.

The basis for the Commission's decision, as set out in the Supplement to the Panel Report, was as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

Ex. 4

E. 486

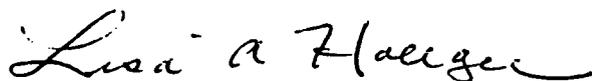
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Mr. Kinney  
May 14, 2004  
Page 2

The Panel recommended and the Commission fully supported inviting Talbot County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria. Commission staff are available at your convenience to discuss new growth allocation procedures or to arrange a meeting with the Commission's Program Implementation Subcommittee.

Please contact me if you have questions or need additional information.

Sincerely,



Lisa Hoerger  
Natural Resource Planner

cc: Honorable Philip Carey Foster  
Mr. R. Andrew Hollis, Talbot County  
Mr. Mike Pullen, Talbot County  
Ms. Mary Kay Verdery, Talbot County  
Ms. Marianne Mason, DNR- AG

E. 487

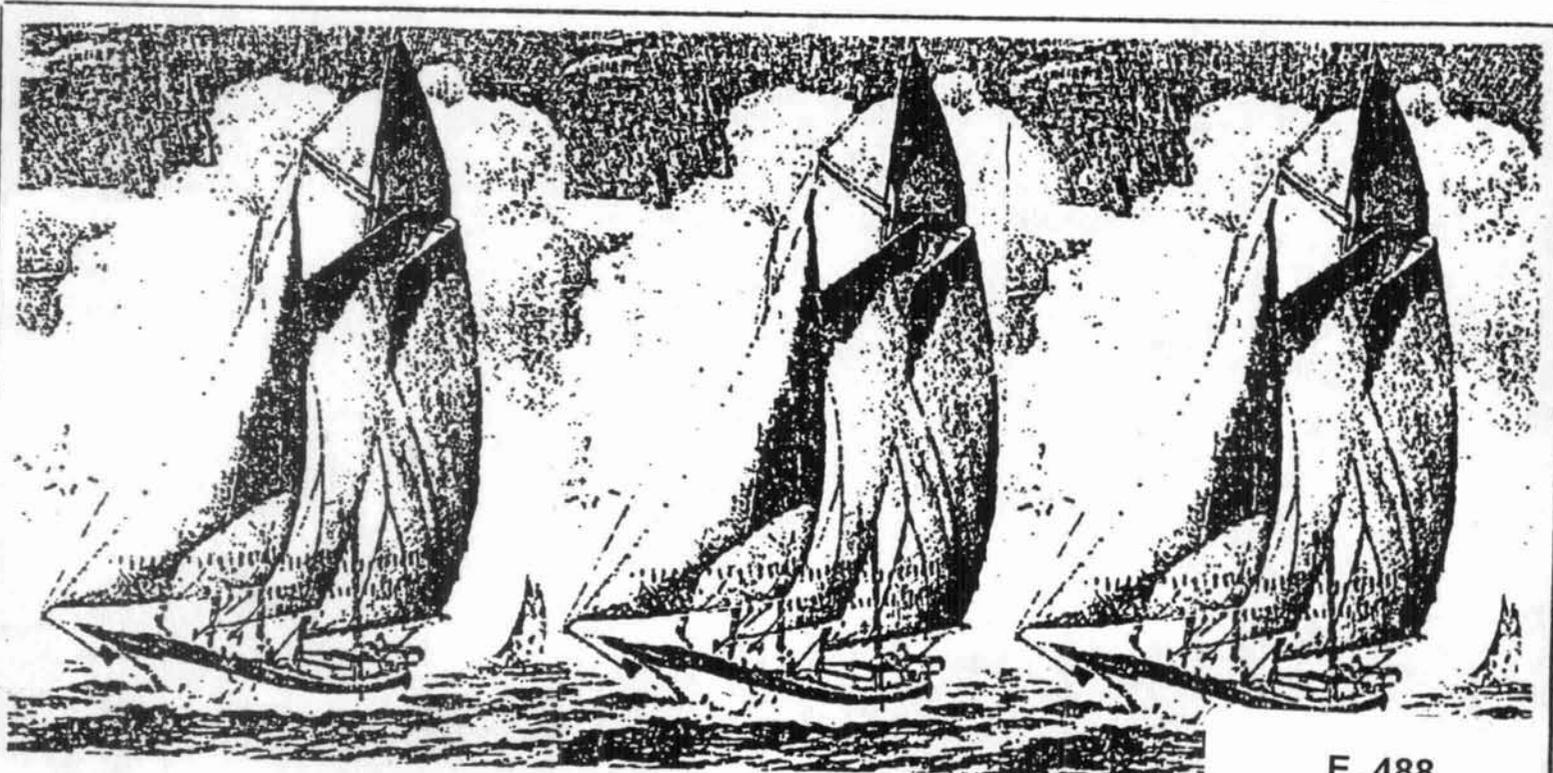
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# CRITICAL AREA PLAN

TALBOT COUNTY  
MARYLAND

DRAFT  
MAY, 1989

Ex. 5



E. 488

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### MAP LIST

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## **CHAPTER I INTRODUCTION**

The Talbot County Critical Area Plan is mandated by the Chesapeake Bay Critical Area Law, passed in 1984, in which the General Assembly of the State of Maryland took a landmark stand to clean up the Chesapeake Bay and protect the waters and surrounding lands from further environmental decline. Talbot County's positive response in support of the State mandate is embodied in this Plan.

### **PURPOSE**

The purposes of the Talbot County Plan directly reflect those of the Critical Area Law and are as follows:

- . To protect water quality by reducing pollution and its effects, whatever the sources;
- . To conserve fish, wildlife and plant habitats;
- . To be an integral part of the Talbot County Comprehensive Plan;
- . To establish land use policies in Talbot County's Critical Area, which allow for growth while minimizing the negative effects on the environment that can result from development or other activities;
- . To promote the most environmentally sensitive plans and practices where development is allowed in shoreline areas;
- . To encourage the conservation of all types of wetlands within the Critical Area so that they can continue to function in their natural capacities as marine nurseries, filters and absorbers of flood and erosive impacts; and
- . To restore both shellfish and finfish productivity through protection and cultivation of submerged aquatic vegetation beds.

## **ORGANIZATION**

The Talbot County Critical Area Plan is divided into chapters that focus either on environmental or implementation issues associated with this Plan. Chapters III through XI present the environmental goals and policies of the Plan. A series of policies are listed that are intended to provide strategies for achieving each specific goal. Chapters II and XII are implementation sections. Chapter II deals with development in the Critical Area and describes the methods used by the County to delineate Intensely Developed Areas (IDA), Limited Development Areas (LDA) and Resource Conservation Areas (RCA). It also describes the methods to be used for allocating future growth in the Critical Area. Chapter XII lists the methods the County will use to develop a zoning ordinance and other regulatory documents to enforce the objectives of this Plan. It also lists methods for dealing with existing development, variances from the standards of the Plan and other County programs for its implementation.

## CHAPTER II

### DEVELOPMENT IN THE CRITICAL AREA

#### INTRODUCTION

One of the key elements which will affect the effectiveness and enforceability of Talbot County's Critical Area Plan is the accuracy of the Critical Area maps. This chapter addresses the process of mapping and delineating the development areas and establishes guidelines to direct, control and allocate growth in the Critical Area.

#### CRITICAL AREA DESIGNATION

The Critical Area of Talbot County as defined by the Critical Area Law includes ...all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide ... all land and water areas within 1000' of the landward boundaries of State or private wetlands and the heads of tide, as defined in Title 9 of the Natural Resources Article of the State Code". The boundary line used to enclose the above described Critical Area was transferred from the State of Maryland tidal wetlands maps.

Once this Critical Area was delineated, the acreage within its boundary was computed. This equals 64,847 acres or 38% of the unincorporated area in Talbot County. The total Critical Area, including incorporated towns, equals 65,689 acres.

#### IDENTIFICATION OF DEVELOPMENT AREAS

The next task in the mapping process was to divide all land and water within the Critical Area into three classifications based on existing land uses and densities, termed Intensely Developed Areas (IDA), Limited Development Areas (LDA) and Resource Conservation Areas (RCA). Because these land classification maps both guide and limit future development in the Critical Area, they are the foundation of the Talbot County Critical Area Plan.

In order to ensure that the land classification process be as accurate as possible, a number of information sources were considered and evaluated. The resources selected and used as the basis for the delineation of the development areas were as follows:

1. Aerial photographic maps (1985), 1" = 600' with the following natural features identified on each map:
  - a. Wetlands (tidal and non-tidal);
  - b. Forest resources;
  - c. Agricultural resources;
  - d. Mean high water line;
  - e. Perennial and intermittent tributary streams; and
  - f. Submerged aquatic vegetation.

2. Land uses, as determined by a field survey and photo interpretation from 1985 aerial photographs, 1' = 600";
3. Tax assessment maps, 1' = 600", indicating all property lines, property identification numbers, acreage and property owner's names (on larger parcels only);
4. Computer listing of all property within the County identifying each parcel, map number, market value of land, market value of improvements, acreage and the land use classification prepared from July, 1985 tax assessment records updated to the spring of 1986 by the Maryland Department of State Planning and the Department of Assessments and Taxation;
5. Existing Talbot County zoning maps, 1' = 600";
6. Extensive knowledge of existing and committed land development, utility systems and other physical characteristics of the County by the Planning Staff and Planning Commission members; and
7. Other public documents (building permit records, tax assessment records, etc.) as necessary to determine the presence of structures or if footings/foundations were started by December 1, 1985.

The following policies guided the classification of lands within the Critical Area:

**Policy A:** That the requirements of the Critical Area Legislation be followed.

**Policy B:** Classification of LD.'s, IDA's and RCA's should be accomplished in a manner that provides maximum protection of the County's primary natural resource, the Bay, its tributaries and the adjoining land area.

**Policy C:** That designations be made on a parcel by parcel method.

Specific criteria were then selected in order to classify each of the development areas. These appear below.

#### **CRITERIA FOR DELINEATION OF INTENSELY DEVELOPED AREAS**

IDA's included any area of twenty or more contiguous acres where residential, commercial, institutional and/or industrial development predominated and relatively little natural habitat was present. In addition, the area had to exhibit at least one of the following characteristics:

1. Housing density was equal to or greater than four dwelling units per acre; or
2. Industrial, institutional or commercial uses were concentrated in an area; or
3. Public sewer and water systems were currently serving the area and housing density was greater than three dwelling units per acre.

## **CRITERIA FOR DELINEATION OF LIMITED DEVELOPMENT AREAS**

LDA's included any area of twenty or more contiguous acres developed in low or moderate intensity uses. The areas had a developed residential density of one dwelling unit per five acres up to four dwelling units per acre. The areas were not subject to extensive re-subdivision. And, they had an historic identification and concentration of rural development such as a village or crossroads area zoned for such development. In addition, the following characteristics were used:

1. Areas were not dominated by agriculture, wetlands, forest, barren land, surface water or open space;
2. Areas had public water or sewer system or both; and
3. Areas were designated as LDA by Planning Commission hearing.

## **DELINEATION OF RESOURCE CONSERVATION AREAS**

RCA's included the balance of the Critical Area not previously designated as an IDA (Intensely Developed Area) or a LDA (Limited Development Area). This remaining land was reviewed for qualification for RCA, characterized by housing densities of less than 1 dwelling unit per 5 acres, and the dominant land use was agriculture, forests, barren land, wetlands, surface water or open space.

### **Summary of Critical Area Classification**

The following Table 2.1, Critical Area Classifications, indicates the total area for each of the three development area classifications. An appendix to this Plan records and catalogs each of the individual development areas, and is on file at the Planning Department. This catalog of IDA's and LDA's contains the following information for each of the 76 individual areas, as illustrated on Map 1.

1. IDA or LDA identification number;
2. Tax map (1' = 600") with IDA or LDA outline;
3. Tax map number;
4. Number of residential acres;
5. Number of residential lots;
6. Number of developed residential lots;
7. Percentage of lots developed;
8. Developed Density (DU/ACRE);
9. Non-residential acres; and
10. Total acres.

**TABLE 2.1**

**CRITICAL AREA CLASSIFICATIONS**

Intensely Developed Areas	585	acres
Limited Development Areas	7,606	acres
Resource Conservation Areas	57,498	acres
<hr/>		
Critical Area Total	65,689	acres

**EXPANSION OF DEVELOPMENT AREAS AND FUTURE ALLOCATION**

The State Legislation provides for the future expansion of Intensely Developed and Limited Development Areas within the Critical Area. The total area of expansion may not exceed an area equal to 5% of the County's Resource Conservation Area excluding non-tidal wetlands or federally owned lands. No more than one-half of this allocated expansion may occur in the Resource Conservation Area. The calculation of Talbot County's future growth allocation is as follows:

**TABLE 2.2**  
**EXPANSION FORMULA FOR TALBOT COUNTY**

Total Resource Conservation Area		57,498
Less Lands in Tidal Wetlands and Federally Owned	-	<u>6,416</u>
Net Resource Conservation Area		51,082
Apply 5% Growth Expansion	x	<u>.05</u>
Total Growth Allowed		2,554
Allowed in RCA (max. 50%)		1,277
Allowed in IDA/LDA		1,277

As indicated in Table 2.2 above, the total future growth allocation in the Critical Area is 2,554 acres.

The general policies for creating new IDA's and LDA's within the Critical Area are as follows:

- Policy A: New IDA's should be located in existing LDA's or adjacent to existing IDA's.
- Policy B: New LDA's should be located adjacent to existing LDA's or IDA's.
- Policy C: New IDA's and LDA's which are located within Resource Conservation Areas should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
- Policy D: New IDA's and LDA's should be located to minimize impacts to Habitat Protection Areas and to optimize benefits to water quality.

The Amendments to the Critical Area Law, Chapter 602, further state that if Talbot County is unable to utilize a portion of the growth allocated, within or adjacent to existing IDA's or LDA's, then that portion may be located in the RCA. Any development resulting from this condition must be clustered.

The County does not intend to utilize the 50% of the Growth Allocation that is to be reserved for the LDA (1,277 acres). The Critical Area Criteria states that intense development should be directed outside the Critical Area. Further, one of the principle goals of land use planning in Talbot County is to preserve the County's rural character and channel development into the incorporate towns. To these ends the County intends to preclude any new IDAs from being created in the County. Because of the limited area of the towns, the opportunity to apply the LDA Growth Allocation to the towns is inherently limited. Therefore the County will limit the LDA Growth Allocation to 5% and the RCA Growth Allocation to 95%, thus:

Total Growth Allowed	2,554 acres
Allowed in RCA (95%)	2,426 acres
Allowed in LDA (5%)	128 acres

The thrust of the Critical Area Legislation is to encourage the counties to located the entire growth allocation in or adjacent to areas that are already developed. Municipalities should be given the highest priority for growth allocation. Talbot County will use additional methods for distributing the growth allocation it has available as listed below.

1. To Incorporated Municipalities: Easton, St. Michaels and Oxford have expressed their need for expansion of development beyond their corporate boundaries. Their requests have been evaluated and they will be provided growth allocations because they each exhibit urban character and have designated IDA's adjacent to their corporate boundaries.

2. **To Unincorporated Villages:** Numerous village centers already exist which have the development intensity and character necessary to be classified as LDA's. Allocations of future growth to allow these centers to expand when municipal services, i.e. water and sanitary sewer, become available.
3. **For Infill:** Numerous opportunities exist to fill in existing IDA's or LDA's. Growth allocations can be used to continue or complete the established character and intensity of development.

#### **AMENDMENTS TO AREA DESIGNATIONS AND THE CRITICAL AREA MAP**

The County will adopt a procedure for amending the Critical Area Map to accommodate the expansion of an IDA or LDA, and to make corrections based on new information that a property owner or other person or agency may bring to light, indicating an inaccuracy in the Map. Any such amendment to the Critical Area Map must be approved by both the County Council and the Chesapeake Bay Critical Area Commission.



TALBOT COUNTY, MARYLAND  
OFFICE OF LAW

RECEIVED  
APR 23 2004  
TALBOT COUNTY MANAGER

MICHAEL L. PULLEN  
County Attorney

April 22, 2004

36 S. Washington Street  
Easton, MD 21601  
Phone: 410-822-1100  
Fax: 410-822-8991

Hon. Martin G. Madden, Chairman  
Critical Area Commission  
Chesapeake and Atlantic Coastal Bays  
1804 West Street, Suite 100  
Annapolis, MD 21401

Re: Bill 933

Dear Senator Madden:

During the Critical Area Commission's Subcommittee review on April 19, 2004 of Talbot County's proposed changes to its local program, several members commented on the need for more information to fully understand the various Bills' language. I am respectfully submitting this letter to respond to those questions.

I will address my comments in the order in which the discussion occurred.

**Consistency.** The subcommittee initially posed the question whether Bill 933 was consistent with existing Critical Area Commission policies and other approved programs. The first part of the discussion articulated the correct standard by which to judge consistency. The discussion involving approvals of the program for Caroline County, St. Mary's County, Wicomico County, Queen Anne's County, all demonstrate that the Critical Area Commission has approved, as a matter of policy, different approaches to county/municipal growth allocation. Bill 933 falls within the parameters of the previously approved programs and policies of the Critical Area Commission. That is the correct standard and the correct conclusion.

Comparison of Bill 933 to inconsistent provisions of existing municipal programs, based on the 1989 ordinance that is being repealed by Bill 933, is not the correct approach to determine consistency. By definition, a program amendment is a change to the program and it will necessarily be different than existing elements of the current program. In the case of Bill 933, Talbot County municipalities adopted their own local programs based on the 1989 ordinance that gave them specific amounts of growth allocation. Bill 933 changes that and any existing elements of approved local programs inconsistent with Bill 933 are irrelevant to whether Bill 933 should be approved. If proposed amendments are compared with the inconsistent existing program elements for consistency, no amendment would ever be consistent and therefore no amendment could be approved. I am sure that the subcommittee's intention, based upon Ms. Mason's legal advice, in considering consistency does not include consideration of existing

Ex. 6

elements of the municipal critical area programs that were premised upon the 1989 ordinance that are being changed by Bill 933.

**Municipal Reliance.** Some of the discussion centered upon expectations of various municipalities premised on the 1989 award of the growth allocation acreage. This is not an appropriate consideration in evaluating Bill 933. Maryland law is quite clear that, absent vested rights, (which Bill 933 specifically does not impair) zoning laws may be changed by local government and a property owner, or in this case a municipality, has no legal right to rely on pre-existing law or on any assumption that pre-existing law would continue as originally enacted.

**Cooke's Hope.** One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope Project. The Talbot County Council has already approved the Cooke's Hope Project utilizing the procedures adopted under Bill 762. Bill 933 does not affect that approval. This is readily apparent from the language of the Bill itself on page 6, line 216, which states, "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)." Talbot County has already approved the growth allocation for Cooke's Hope under the joint procedures established by Bill 762. Under the express terms of Bill 933, the Bill would not apply to that prior award of growth allocation to Cooke's Hope.

Even if Bill 933 did apply to the Cooke's Hope growth allocation, approval of Bill 933 would not require, or even permit, that growth allocation to be withdrawn. There have been no changes in the Cooke's Hope critical area development plan between that prior approval and approval of Bill 933. The Talbot County Council could not withdraw prior approval of the Cooke's Hope growth allocation because any attempt to do so would violate the rule against a "mere change of mind." The Talbot County Council has never contemplated any such attempted withdrawal in the first place. That suggestion merely arose during the discussion as a hypothetical question. The short answer to that hypothetical question is that Bill 933 does not apply to Cooke's Hope, and the Cooke's Hope growth allocation could not be legally withdrawn, even if the Council were inclined to try to do so, because any withdrawal would be arbitrary and prohibited by the rule against mere change of mind. Approval of Bill 933 will have no effect on Cooke's Hope growth allocation, nor can it, legally, for the reasons stated.

**Bill 762.** Other parts of the discussion noted that Bill 762 was premised on the assumption that it pertained to supplemental awards of growth allocation after the use of allocated acreage under the 1989 maps. When Bill 762 was enacted there was no intention to repeal the 1989 maps. That does not forever enshrine those maps and place them beyond the police power of a future County Council. The premises or assumptions upon which Bill 762 was enacted do not bear upon whether Bill 933 is consistent with the standards and criteria the Critical Area Commission is required to consider under Natural Resources Article § 8-1809 (j). Bill 762 is the County-created procedure required by COMAR to accommodate the growth needs

of municipalities. Bill 762 was drafted by the town attorney for the Town of Easton and circulated for comment to the town attorneys and the town commissions for the Towns of Oxford and St. Michael's prior to introduction by the County Council. The comments offered by the town attorney for the town of St. Michael's (the only comments received) were incorporated into the Bill. Enactment of Bill 762 was "in coordination with affected municipalities" as required by COMAR.

**Other coordination with municipalities.** On the planning level Talbot County has coordinated directly with each municipality to establish growth boundaries around each of the affected municipalities. This effort has resulted in coordinated maps showing common plans between the county and each municipality for growth areas around the towns.

Examination of those maps shows quite clearly the coordinated result of that County/municipal effort to accommodate the growth needs of municipalities. These maps are the definitive reference point from which to evaluate county/municipal cooperation regarding growth boundaries of municipalities and County accommodation of municipal growth needs. The matching plans between the county and each of the affected municipalities shows a level of cooperative effort that speaks for itself. Any claim that there was not adequate *political* coordination between the town and County elected officials in connection with the enactment of Bill 933, a county ordinance, is specious.

As stated previously, Bill 762 fully complied with the COMAR requirement that counties, in coordination with affected municipalities, establish a process to accommodate the growth needs of the municipalities. No law can require *political* cooperation between elected officials from different political subdivisions with different ideas about what public policy is best. Bill 762 was enacted in coordination with affected municipalities. The county and each of those municipalities have an ongoing cooperative planning process for growth areas around the towns that has resulted in common plans with virtually identical maps. Bill 933 was enacted in full compliance with the requirements of the Talbot County Charter. Mere disagreement with the policy embodied in Bill 933 (although Bill 933 certainly is a sound environmental policy) is not a legitimate basis for attacking it or declining to approve it is a local program amendment.

**Interplay between Bill 762 and Bill 933.** Some of the discussion questioned whether Bill 762 would be applicable in the event Bill 933 was adopted. As I understood it, the suggestion was that Bill 762 was intended to allow "supplemental" awards of growth allocation in addition to the 1989 maps and that, if the 1989 maps were repealed, the question was whether Bill 762 would apply at all or whether there would be a "gap" in the procedure for granting growth allocation to municipalities in Talbot County. If that question centers on the use of the term "supplemental" (the speaker noted that this may be a question of semantics) the answer is straightforward. Easton, Oxford, and St. Michael's have all utilized the power granted to them by the County Council in 1989, premised on the 1989 maps, to make awards of growth allocation. Bill 933 withdraws the "blank check" previously issued to the towns and any future award of growth allocation would be "supplemental" to the pre-existing town awards. There is

no gap between 762 and 933. Supplemental means additional or more than a municipality has available for a particular project. The relationship between 933 and 762 is that 933 will trigger the cooperative, joint hearing process and place St. Michael's and Oxford on an equal footing with Easton.

**Talbot County's position.** The Critical Area Commission has previously approved other County programs that have not awarded growth allocation to municipalities. The subcommittee correctly noted this during its discussion. Bill 933 falls squarely within these previously adopted local parameters and policies, which have all been approved by the Critical Area Commission.

The Talbot County Council has been delegated, by State law under its charter form of government, police power to determine what policies are best for Talbot County. Critical area legislation delegates, and obliges, each local jurisdiction to establish its own critical area program within the guidelines, criteria, and parameters approved by the Critical Area Commission. Bill 933 is a legitimate exercise of the police power by the Talbot County Council and falls within local program policies previously approved by the Commission. Disapproval of Bill 933 would violate Talbot County's prerogative to establish its own local critical area program in the legitimate exercise of the state-delegated police power. Failure to approve Bill 933 would be arbitrary and capricious and would violate the fundamental premise of consistency articulated by the subcommittee itself during its discussion because other approved county programs have the very same policy. Furthermore, to my knowledge those counties have not adopted a procedure to accommodate the growth needs of municipalities in their jurisdictions, unlike Talbot County under Bill 762, and therefore Talbot County's program is more compliant with COMAR requirements than other counties with similar policies.

Bill 933 is an attempt by the County to exercise its state-delegated authority, and obligation, to reverse the decline of the Chesapeake Bay. The Governors Bay Cabinet has exhorted Talbot County, and all counties bordering the Chesapeake Bay and its tributaries, to re-examine its current land-use policies and to adopt policies better suited to protect the health and prevent the ongoing decline of the Bay. Bill 933 is consistent with their request and with the goals and policies of the critical area program set forth in State law and criteria. Bill 933 is consistent with local programs previously approved by the Critical Area Commission for other counties.

In sum, Bill 933 represents a good-faith effort by Talbot County to fulfill its obligation to join with all affected political subdivisions, including federal, state, and municipal, to mount a coordinated effort to save the Bay. Given its mandate to protect the Chesapeake Bay and its critical area, this is exactly the type of measure the Critical Area Commission could be expected to embrace.

For these reasons Talbot County believes that approval of Bill 933 is not only appropriate but also required by consistency and by the standards and criteria in Natural Resources Article §

Honorable Martin G. Madden  
Chairman, Critical Area Commission  
April 22, 2004  
Page 5

8-1809 (j). Thank you for your time and for your and the Commission's consideration of these issues.

Sincerely,



Michael L. Pullen

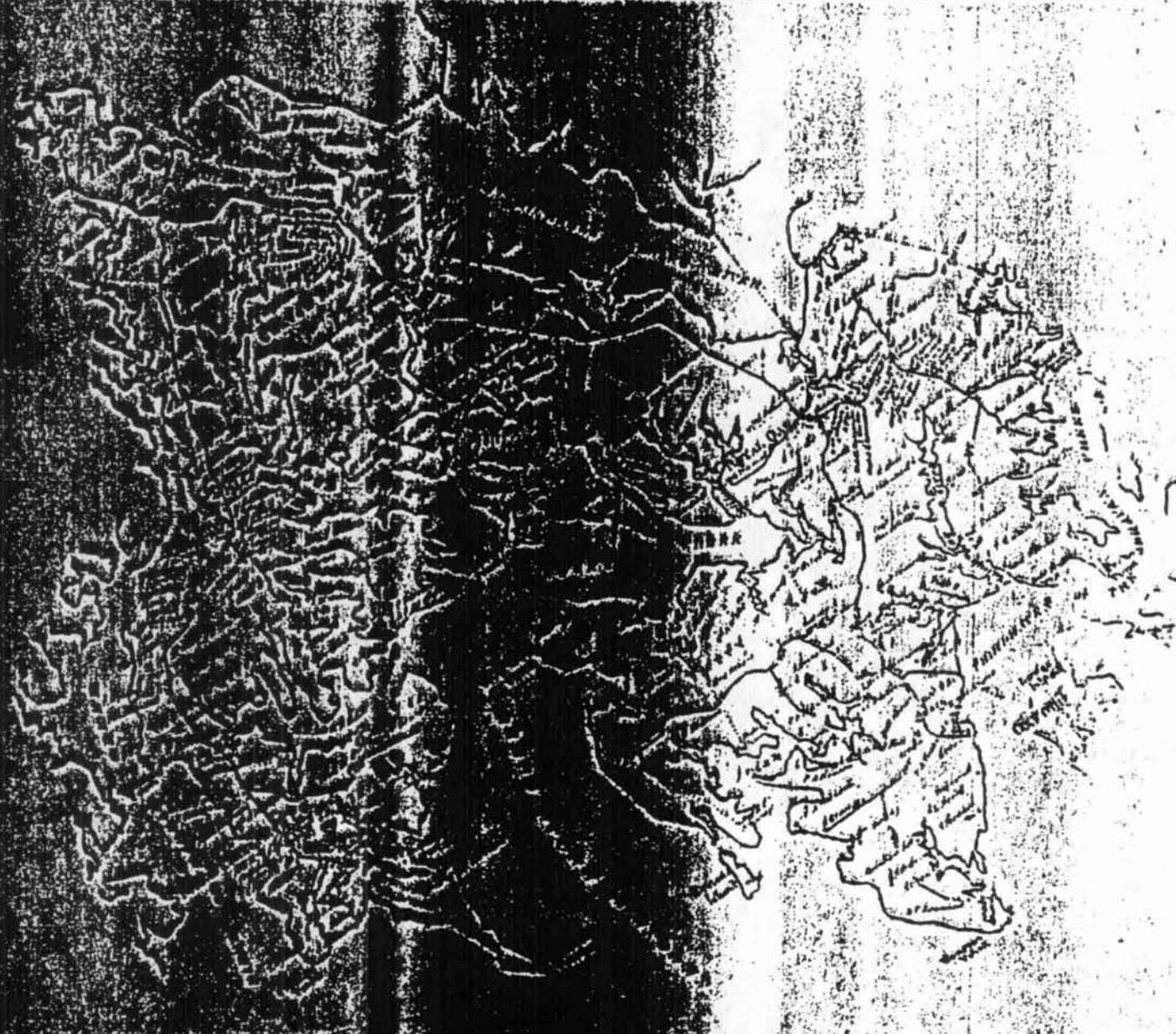
cc: Ren Serey, Executive Director  
Marianne D. Mason, Esq.  
✓ R. Andrew Hollis, County Manager of

*Local*

# CHESAPEAKE BAY CRITICAL AREA LOCAL PROGRAM

## TOWN OF ST. MICHAELS

DECEMBER 1987



REDMAN/CHITSON  
PLANNING ASSOCIATES  
122 NORTH HARRISON STREET  
EASTON, MARYLAND 21601

Ex 7

E. 504

**TOWN OF ST. MICHAELS, MARYLAND**

**CHESAPEAKE BAY CRITICAL AREA**

**LOCAL PROGRAM**

**December 1987**

**ACKNOWLEDGEMENTS**

*This Program has been prepared by Redman/Johnston Associates for the Town of St. Michaels as a fulfillment of the Town's obligation under the Critical Area Law-Subtitle 18. The process employed the background and expertise of the Town Commissioners, Planning Commission and Town Manager, with project coordination from the Town.*

**TOWN COMMISSIONERS**

*Richard E. Brown, President  
Earnest E. McMahon, Vice President  
Rosella B. Camper  
John L. Donlap  
George W. Wilson, Jr.*

**PLANNING COMMISSION**

*Jack Meara  
Stanley Brewer  
Susan Reed  
John Banghart  
Jack Miller*

**TOWN MANAGER**

*William B. Nicholson, Jr.  
Jean Weisman, Assistant Town Clerk*

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## INTRODUCTION

A great deal of concern for the continuing decline of the Chesapeake Bay, the largest estuarine system in the eastern United States, has been expressed statewide and has prompted the U.S. government and the adjoining states of Maryland, Pennsylvania, and Virginia especially to initiate numerous studies and data gathering in the Chesapeake Bay in an attempt to determine the underlying causes for declines in water quality and loss of valuable wildlife and wildlife habitat. Taking what is perhaps one of the boldest Bay protection initiatives to-date the Maryland legislature established the Chesapeake Bay Critical Area Law, Natural Resources Article, subsection 8-1801. The Commission is attempting to insure better management of the Bay-area natural resources. The Critical Area Law and Criteria regulate land use practices which contribute to the pollution of the Bay.

The Critical Area Law, which became effective 1 June 1984, forms part of the State's program for protecting and enhancing the quality of the Chesapeake Bay. As stated in Section 8-1801, the "Declaration of Public Policy", "there is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along the shoreline areas of the Chesapeake Bay and tributaries so as to minimize damage to water quality and natural habitats." More specifically, the law cites stresses on the Bay from the cumulative effects of human activity because these result in increased levels of pollutants, nutrients, and toxins, and a decline in more protective land uses (such as forestland and agricultural land).

The Critical Areas Law will not only affect the manner of St. Michaels resources management program in coastal areas but will also influence growth management planning for the Town and St. Michaels Harbor. What the elected officials of St. Michaels will have to determine is how to devise a local Chesapeake Bay Critical Area Program which achieves a balance between resource protection and growth objectives, that is if the two conflict. Opinions about what constitutes a Local Program will differ depending on who is affected. Addressing our environmental protection problems often sets two "opposing" views against each other. We can all agree to measures that call for the protection of natural resources, yet if it is our own land on which development activity is limited, then we assert our rights as property owners with equal vehemence.

One hundred and ninety-five miles long, with 1,726 square miles in Maryland and 1,511 square miles in Virginia, the Chesapeake Bay is one of the most intensively used water bodies on this planet.<sup>1</sup> The total drainage area of the Chesapeake is equal in size to the State of Washington. The Bay is still relatively young; it was created after the glacial sheets of the last Ice Age melted and the lower valley of the Susquehanna River flooded.<sup>2</sup> The result is an enormous biological boon--the largest, most productive estuarine system in the United States.

The Chesapeake Bay Critical Area Program (Natural Resources Article 8-1801-8-1816) was passed by the Maryland General Assembly in 1984 because of widespread concern throughout the State for the declining quality of the natural resources of the Chesapeake Bay. Recent studies conducted by the U.S. Environmental Protection

Agency and others have shown that reductions in the Bay's natural productivity are related to human activities within the fragile watershed areas of the Bay and its tributaries. To confront and check the problems stemming from specifically detrimental practices and impacts, the General Assembly designated the Critical Area boundary (a geographical zone that runs one-thousand feet landward along the tidal waters of the Chesapeake Bay and its tributaries). The General Assembly directed that new development in this marked-off area will be regulated so that harm to the Bay can be minimized and eventually curtailed.

The Chesapeake Bay Critical Areas Legislation consists of the following three goals:

- 1) to minimize adverse impacts on water quality that result from high nutrient loadings in runoff from surrounding lands or from pollutants that are discharged from structures;
- 2) to conserve fish, wildlife, and plant habitats; and
- 3) to establish land use policies for development locating within the Chesapeake Bay Critical Area that accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create environmental impacts.

The St. Michaels Chesapeake Bay Resource Protection Program (Local Program) contained herein addresses the above stated program goals, providing more detailed policies, objectives and recommendations which are not only consistent with the Chesapeake Bay Critical Areas Law and Criteria, but outline a Critical Area program which may be used to the Town's advantage--to improve its character, to enhance its visual appearance, and to protect its natural environment.

The Critical Area Law states that there is "a critical and substantial State interest" to foster more sympathetic development activity along the Chesapeake Bay shoreline so that damage to water quality and to natural estuarine habitats will be minimized. Pursuant to the requirements of the Act passed by the General Assembly, the Chesapeake Bay Critical Area Commission was established. The Commission is responsible for establishing criteria by which local governments will develop their programs to address the Critical Area law's concerns. As mandated by the General Assembly the Critical Area Commission adopted extensive criteria to guide formulation of local government programs.

The Commission was also directed to establish land-use policies within the Critical Area which will address matters of development and accommodate growth. Certain new development activities, and the expansion of certain existing ones, are only allowed within the Critical Area when no environmentally acceptable alternative exists outside the Critical Area (and such development is needed to correct an existing water quality or wastewater management problem). The Commission is aware too that, apart from the predicament of pollution from development, there exists the problem of adverse environmental impacts from the mere number, routines and activities of people within the Critical Area.

The Critical Area and its boundary line was established as the "initial planning area" in which the law and criteria apply. Within the 1000 foot Critical Area, the mission is to develop plans, programs, criteria, regulations, etc., not only to accommodate the

growth of human-built environments, but also to provide for the conservation of fish/wildlife/plant habitats and to protect the endangered water quality of the Bay. Thus, the purpose of the Chesapeake Bay Critical Areas Program, as it applies to the Town of St. Michaels, is for guiding efforts to upgrade the Bay's water quality and to protect the Bay's fish and wildlife habitats.

In general, the Critical Area Law and Criteria establish a legal, a procedural and a performance framework for the State's program. In addition, they are the basis on which Local Programs will be evaluated for compliance. The Criteria include major components each of which comprises a section of the St. Michaels Local Program as follows:

**Development in the Critical Area**  
**Water Dependent Facilities**  
**Erosion Protection Works**  
**Forest and Woodland Protection**  
**Natural Parks**  
**Habitat Protection Areas**  
**Agriculture Protection in the Critical Area**  
**Surface Mining in the Critical Area**

A significant amount of development has already occurred along the St. Michaels waterfront. Development is becoming more intensive along the Miles River and San Domingo Creek. St. Michaels Harbor is a much-utilized marina facility and boating access area. Development pressures at present are greatest along the waterfront areas.

As will be explained more thoroughly later on in this text, a required one-hundred foot buffer area landward from the mean highwater line of tidal waters, tributary streams, and coastal wetlands will need to be incorporated into the Town's existing regulations and ordinances. The buffer, among other things, provides for the removal or reduction of sediments, nutrients, and other pollutants entering the Bay and its tributaries and is ideally a wooded strip along the shore. It is also obvious that the buffer requirement of the local program will, to a certain extent, alter the manner in which development and redevelopment can occur along shoreline of the Town. Buffers and screens will also be required or recommended to minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources. Buffers provide plant and wildlife habitat and filter stormwater runoff. Development that is conservative of the ecology will be required. The vital areas of transitional habitat which separate wild aquatic and upland communities from human culture need to be protected, and in some cases, artificially created or enhanced. Maintaining the natural environment of streams and preserving riparian wildlife habitats is a Town priority. Mitigation measures will be needed to ensure that new and/or expanded development will not negatively impact the water quality. Environmentally-sensitive areas will be identified and management strategies developed so that the appropriate protection methods can be devised and implemented. In particular, St. Michaels Harbor will be reviewed in light of the quality of the adjacent aquatic environment. Measures will be recommended that comply with the Critical Area criteria and which will upgrade, if necessary, impacts to the water at the Town of St. Michaels. An important overall objective of the critical area planning process is to educate the public to the problems of the Bay and its tributaries and how the Town can better manage its development to keep water quality at a more than acceptable level.



# Chapter I

## AN OVERVIEW of EXISTING CONDITIONS AT ST. MICHAELS

### Regional Setting

The village of St. Michaels is conveniently nestled on a narrow, crooked neck of land located between the Miles River and San Domingo Creek (which is a tributary of the Choptank River). The peninsula on which St. Michael's has been established curves out, and then downward, into the Chesapeake Bay. St. Michaels is accessible by water from both sides and this has been an important ingredient in the conception and development of the Town. Since it's earliest days, St. Michaels has been a waterfront-oriented community. The Town's early economy was based in ship building and the seafood harvesting industry. St. Michaels is currently one of the best known boating areas on the East Coast.

The main thoroughfare to and from Town is Maryland Route 33 (which becomes Talbot Street within the corporate limits). Route 33 connects St. Michaels with Easton, the County Seat, to the east and with Tilghman Island.

### Flooding Characteristics and Topography

St. Michaels lies wholly within the Atlantic Coastal Plain region and is less than twenty feet above sea level. The land in the immediate vicinity of the town features poorly defined streams and a close proximity to the water. Consequently, St. Michaels has characteristically poor surface drainage and a very high water table.

Sections of the Town of St. Michaels Critical Area are located within the one hundred- and five hundred-year floodplain as delineated by the Federal Emergency Management Agency. The Critical Area zones within the one hundred-year floodplain are defined as "special flood hazard areas inundated by types of 100-year shallow flooding where depths are between one and three feet." The Critical Areas within the five hundred-year floodplain are defined as "areas between the Special Flood Hazard Area and the limits of the 500-year flood, including areas of the 500-year floodplain that are protected from the 100-year flood by dike, levee, or other water control structures; or areas subject to certain types of 100-year shallow flooding where depths are less than one foot; and areas subject to 100-year flooding from sources with drainage areas less than one square mile."

### Historical Sketch

Stories from the 1812 War are still a favorite topic in St. Michaels--the town has had no small share in the drama and spectacle of American history. In Colonial times settlers plied their way up the "St. Michaels River" (which is known today, of course, as the Miles River) to reach a site that was later established as the town of St. Michaels.

Numerous "Baltimore Clippers", in their heyday speedier than any other vessels sailing the waters, were built in St. Michaels' shipyards. A clipper brig called the "John Gilpin", launched from the harbor in 1830, later went on to set a trans-Pacific record, which stood for thirteen years, by sailing to Canton, China from Callao, Peru. Among the various types of vessels that were crafted at St. Michaels' boat yards were pungs, schooners, bugeyes, and skipjacks.

### Climate

St. Michaels has a humid, continental type of climate that is modified by its proximity to large bodies of water. The general flow of atmospheric air is from west to east, but alternating high and low pressure systems regulate the climate during the colder half of the year. The average annual temperature is about 56 F (14 C). The warmest period of the year is the last half of July when the maximum temperature in the afternoon averages near 89 F (32 C). The coldest period of the year is the latter part of January and the early part of February, when the early morning minimum temperature averages 25 F (-4 C). The average growing season is 210 to 220 days for the tideland areas bordering the Chesapeake Bay. The annual precipitation at Easton, Maryland averages 44.65 inches; the record low annual average of 22.04 inches was registered for the year 1930 and a record high annual average of 57.33 inches was registered for the year 1935.

The prevailing wind is from the northwest in winter, and from the south or southwest in May through September.

### Soils

The parent material of the soils in the St. Michaels area consisted of sediments transported mainly by water. Part of it probably was moved by wind and the rest by ice flows carried by glacial meltwater. Some of the sediments were clay-sized particles, but others were as large as pebbles. In places there were cobbles and small to fairly large stones.

The stones and larger pebbles must have been transported by ice during the retreating of some of the last glaciers. The St. Michaels area was not glaciated but ice sheets once extended into northern Pennsylvania. Fragments of ice containing clay, gravel, and a few stones floated down the rivers. As the ice flows drifted southward, they melted and dropped sediments in the then shallow sea. The areas in which sediments were deposited later emerged from the sea to form the Delmarva Peninsula, of which St. Michaels is a part.

### A Description of the Miles River Basin

The Miles River is located within the Chester River Basin. This river basin is considered to be predominately rural in nature, though it is experiencing development pressures of an increasing magnitude. Historically, farmland has been located upcounty while the towns and commercial fishing operations evolved further downstream. The desire of new residents of Talbot County, and of the Eastern

Shore, to be located along the waterfront is causing this gap to close. Scattered development is occurring along the Miles River, inside and outside of the municipal boundaries of St. Michaels, because of the attractiveness of a water access location and the ease of relatively smooth transportation routes to the nearby urban areas of the State. These development pressures, as well as continued impacts from agricultural operations in the Critical Area, have contributed to a decrease in water quality and an increase in water pollution. Human activities in and on the Miles River have significantly increased. Urban run-off and failing septic systems have substantially as well as detrimentally elevated the river's bacterial and nutrient levels. Boat marinas, waste from boats, the copper-based anti-fouling paint which boats are regularly treated with, and occasional petroleum leaks or spills add contaminants throughout the river.

As outlined in the Revised 208 Water Quality Plan for the Chester River Basin, prepared by the State of Maryland, Department of Natural Resources, Water Resources Administration, there are several areas of concern dealing with water quality and water pollution. Point source pollution (which is a discharge into surface waters and/or groundwater by a recognizable entity) occurs because the St. Michaels Sewage Treatment Plant releases into the Miles River. In addition, non-point source pollution (which is a discharge into surface waters and/or groundwater by an unrecognizable entity) also contributes to the water quality degradation. Non-point sources include failing septic systems, stormwater runoff, floodplain areas, erosion and sediment control, and urban runoff.

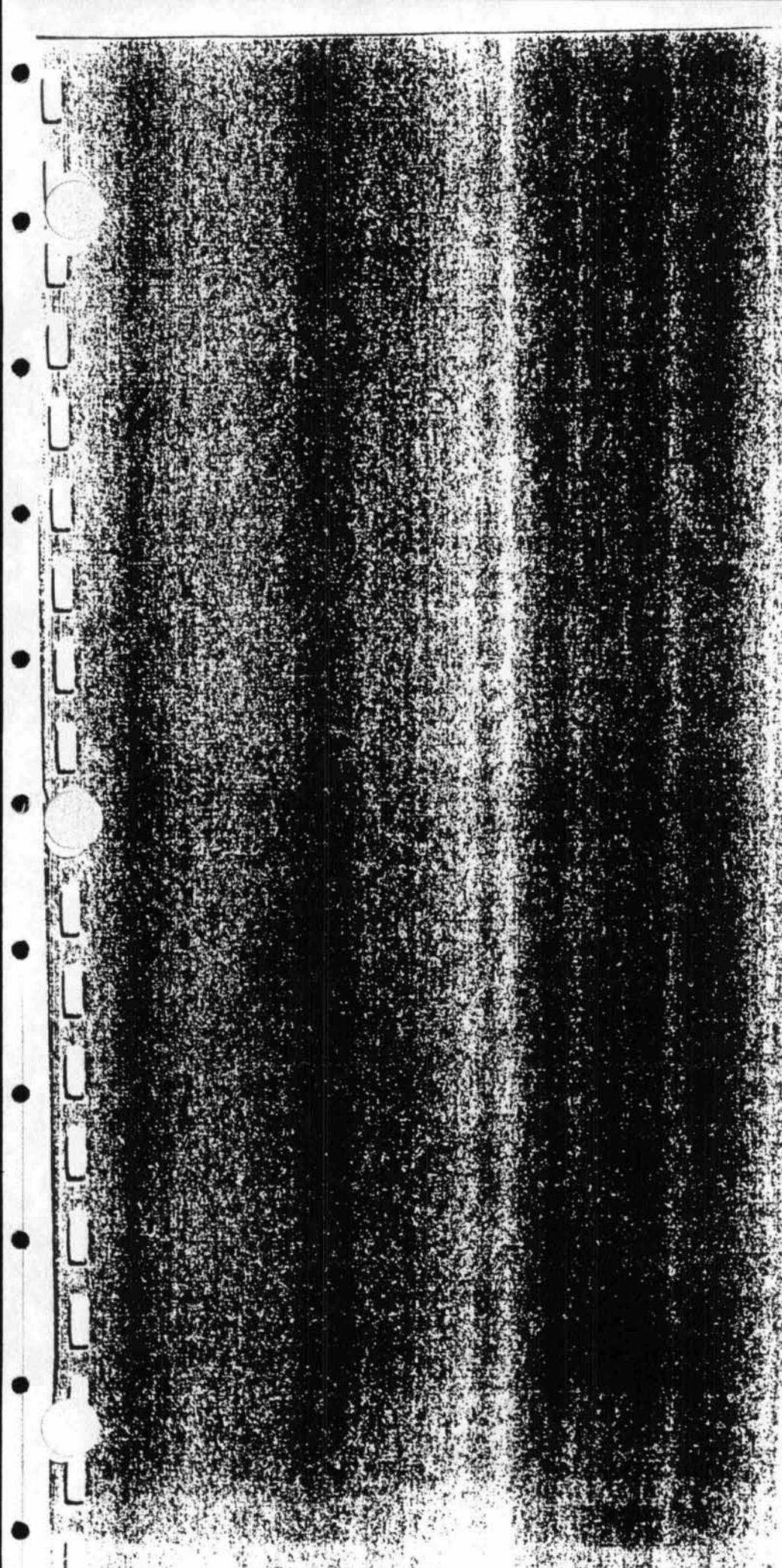
The Chester River Basin, of which the Miles River is a part, is still primarily rural in nature--but with the encroachment of development this could change. The Critical Area Legislation, with its requirements to establish buffer areas, which confront the problem of urban runoff from high density areas, and which require the problem of runoff from agricultural land to be addressed, should aid in the improvement of water quality in the Miles River. The Criteria should also help to reduce water degradation in the Basin as a whole.

St. Michaels harbor and the free-flowing segments of the Miles River are classified as Class One waters for both aquatic life and water contact recreation. Although the water quality is poorer toward the headwaters of the Miles, it is "Good" in the river's mainstem and lower tributaries. Maryland's Construction Grants Program, after generating water quality severity scores from existing data, ranked the Miles River segment as the highest scoring of the eleven segments of the Chester River Basin tested.

Because of failing septic systems, agricultural runoff, and the naturally poor flushing characteristics in the headwater areas of the Miles River, heightened bacterial levels are a significant water quality concern. In fact, because of endangering bacterial levels, the upper tidal areas of Leeds Creek and the Miles River (along with its tributaries) have been indefinitely closed to shellfish harvesting. The relatively small area around the St. Michaels municipal discharge is also closed as a protective buffer. There is a hopeful note for the Miles, however: according to the Maryland Water Quality Inventory (1986), the lower portion of Leeds Creek was opened to shellfish harvesting in September 1985 because there were few sanitary violations in the upper watershed and bacterial counts were low.

Another significant problem for the Miles River is that of overly high nutrient levels due to agricultural runoff. Also, low dissolved oxygen (DO) conditions are from time-to-time present in the river's deeper portions, especially during the summer months. It is speculated that low DO conditions may have been the cause of a fish kill in St. Michaels harbor in August of 1984. A kill of numerous menhaden, spot, white perch, striped bass and anchovy that occurred at the harbor in August of 1972 was determined upon investigation to be the result of both a "mahogany tide" (another name for a dinoflagellate bloom--which turns the water a dark red-brown color) and low DO conditions.

The salt content of the Miles River is an important, naturally-existing factor which affects the distribution of animal and plant species. For a variety of organisms adaptability to an area is a function of the amount of salinity that they can tolerate. The upper portion of the Chesapeake Bay, of which the Miles River is considered a sub-basin, has less salinity than the lower portion because the inflow of freshwater is much greater. Saltiness is also determined by water depth--as depth increases, so does the percentage of salt. Maximum salinity values for the Miles River (and the Bay as a whole) occur in the autumn; minimum salinity values occur in the spring. The surface salinity regime for the Miles River in the fall lies somewhere between fourteen to fifteen parts per thousand. In springtime the surface salinity regime of the river is between nine and ten parts per thousand.



## Chapter II

### ST. MICHAELS LOCAL RESOURCE PROTECTION PROGRAM

#### Section I. DEVELOPMENT

As long as the Critical Area is maintained in its natural state, little can or need be done to manage land uses to protect water quality and wildlife habitats. However, as was discussed earlier, the St. Michaels waterfront is a desirable area for homes and businesses to locate. Hence, it is unrealistic to believe that the Critical Area program can or should freeze the further development of the St. Michaels Critical Area. Nevertheless, the Critical Area law and Criteria impose additional restrictions on the form and intensity of development.

Establishing the post-critical area development process for St. Michaels requires that the Local Program begin by assessing existing land use to determine a number of basic management and regulatory parameters. First, land use as of December 1985 must be zoned into one of three land use categories, Intensely Developed (IDA), Limited Development (LDA) and Resource Conservation Areas (RCA). Second, for each category policies, objectives and development requirements relating to the various program elements, i.e., Development in the Critical Area, Water Dependent Facilities, Erosion Protection Works, Forest and Woodland Protection, Natural Parks, and Habitat Protection Areas must be established. Third, provisions for grandfathering, variances, and buffer exemptions must be prepared to insure that the Town is able to strike a fair balance between the goals and objectives of the Local Program and the rights of property owners.

To meet the mandated mission of protecting the water quality and conserving habitat areas in the Critical Area, the Town has established land use policies for development which accommodate growth and address ecological concerns. In recognition that the Chesapeake Bay Critical Area has great diversity in existing land use, the State's criteria allow for a differentiation in the designation land use types and consequently allow for a differential in guidelines to apply to development and redevelopment in those areas. The Town's Critical Area falls into three general land use categories which are: 1) Intensely Developed Areas (IDA); 2) Limited Development Areas (LDA); and 3) Resource Conservation Areas (RCA).

Recognizing the extreme sensitivity of the vegetated shoreline contiguous to aquatic habitat, the Town has created another zone of management, the Buffer which will have unique development constraints. The buffer extends throughout the Town's shorefront across IDA, LDA, and RCA areas. Initially mapped as 100' from mean high water or tidal wetlands as required by State Criteria it has been modified where the presence of sensitive resources indicated 100' would be inadequate to protect water quality or unique habitats. For a more detailed explanation of Buffer requirements see the Buffer section in the Habitat Protection Element of this protection program.

#### Critical Area Acreage in the Town of St. Michaels

The Town of St. Michaels occupies roughly 556.76 acres (or about 0.87 square miles).<sup>1</sup> Of that total, approximately 320.68 acres are included in the Critical Area. This

tally comprises nearly 57.59 percent of the Town's overall acreage.

### Intensely Developed Area

In the Town of St. Michaels about 199 acres are classified as intensely developed. Intensely developed areas (IDAs) embrace nearly 35.76 percent of the Town's total acreage and around 62.09 percent of the Town's total Critical Area acreage. IDAs are defined in the Critical Area Criteria guidebook as follows:

IDA's include any area of 20 or more contiguous acres, or the entire upland portion of a municipality within the Critical Area (whichever is less) where residential, commercial, institutional and/or industrial development is predominant and relatively little natural habitat occurs. In addition, the area is to have one of the following characteristics:

1. Housing density is equal to or greater than four dwelling units per acre;
2. Industrial, institutional or commercial uses are concentrated in the area; or
3. Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.<sup>3</sup>

### Limited Development Area

Approximately 23.53 acres of the Town of St. Michaels are classified as having limited development. It is estimated that 4.23 percent of the Town's total acreage comes under the limited development (LDA) category. Nearly 7.34 percent of the total acreage for the Town of St. Michaels Critical Area is deemed to be LDA. According to the Critical Area Criteria guidebook, an area manifests limited development potential if it fits the following description:

LDA's include any area currently developed in low or moderate intensity uses that contain areas of natural plant and wildlife habitat and where the quality of run-off from such areas has not been substantially altered or degraded. In addition, the area is to have at least one of the following characteristics:

1. Housing density between one unit per five acres up to four dwelling units per acre;
2. Area not dominated by agriculture, wetland, forest, barren land, surface water or open space;
3. Areas having the characteristics of the Intensely Developed Area, but less than 20 acres in extent; or
4. Areas having public water or sewer or both.<sup>3</sup>

### Resource Conservation Area

The Town of St. Michaels has nearly 98.04 acres that are classified for resource conservation (RCA). Approximately 17.61 percent of the Town's total acreage is RCA. Resource conservation areas comprise about 30.57% percent of the total Critical Area land in the Town.

The Critical Area Criteria guidebook explains RCAs as follows:

RCA's are any area predominated by wetlands, forests, and forestry activities, abandoned fields, agriculture, fishery activities, or aquaculture. In addition, the area is to have at least one of the following characteristics:

1. Housing density less than one dwelling unit per five acres; or
2. The dominant land use is agriculture, wetland, forest, barren land, surface water or open space.<sup>4</sup>

### Location and Extent of Future Intensely Developed (IDA) and Limited Development (LDA) Areas

The Critical Area Criteria provide for the designation of new IDA and LDA's in the Critical Area. Generally the amount of total Resource Conservation Area acreage which can be converted to a more dense or intense land use is limited to five percent (5%) of the total RCA area in the County. The computation of the what is termed the "growth allocation" excludes tidal wetlands in the RCA. In addition the Critical Areas Criteria mandate that the County establish a process that accommodates the growth needs of municipalities.

Criteria for establishing new IDA and LDA's are as follows:

New IDA's should be located in existing LDA's or adjacent to existing IDA's.

New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

1. If the County is able to utilize its growth allocation as prescribed above, no more than half of the expansion allocated in the Criteria of the Commission may be located in RCA's (adjacent to LDA's or IDA's).
2. If the County is unable to utilize a portion of the growth allocated to the County within or adjacent to existing IDA's or LDA's as demonstrated in the Talbot County Local Program approved by the Commission, then that portion of allocated expansion which cannot be so located may be located in the RCA in addition to expansion allocated in 4 above. A developer shall be required to cluster any development in any area authorized.
3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water

quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such areas and shall be designated on the Comprehensive Zoning Map submitted by the Local jurisdiction as part of its application to the Commission for program approval or at a later date as per 8-1809 (g) (Proposed Amendments).

The thrust of the Critical Area Criteria is to encourage the County to locate the entire growth allocation in or adjacent to areas that are already developed, such as the municipalities or existing IDA's and LDA's in the County. The Criteria intimate that the municipalities should be given priority for growth allocation. The Criteria also suggest that no more than half of the Growth Allocation should be located in existing RCA's, but recognize that it is possible that certain counties, including Talbot County, may not be able to so locate all of the growth allocation. If this is the case, the Criteria provide for allocating the unused portion of the growth allocation in stand-alone RCA's. The Talbot County Comprehensive Plan encourages locating growth in or near the existing towns, thus the Town of St. Michaels should reasonably expect the County to assign some portion of the growth allocation for its growth needs.

St. Michaels has determined that there are several areas within and adjacent to the corporate limits for which it will request growth allocation in order to permit development to occur at densities permitted in the St. Michaels Zoning Ordinance. These areas, which are currently LDA and RCA are shown on Map 2-1. Under the LDA designation, the Town would not be permitted to allow the full density currently permitted, thus it will need growth allocation to permit conversion of these areas to new IDA's. Growth allocation has been requested from the County for these areas which total approximately 445 acres in the Critical Area.

#### **Program Goals**

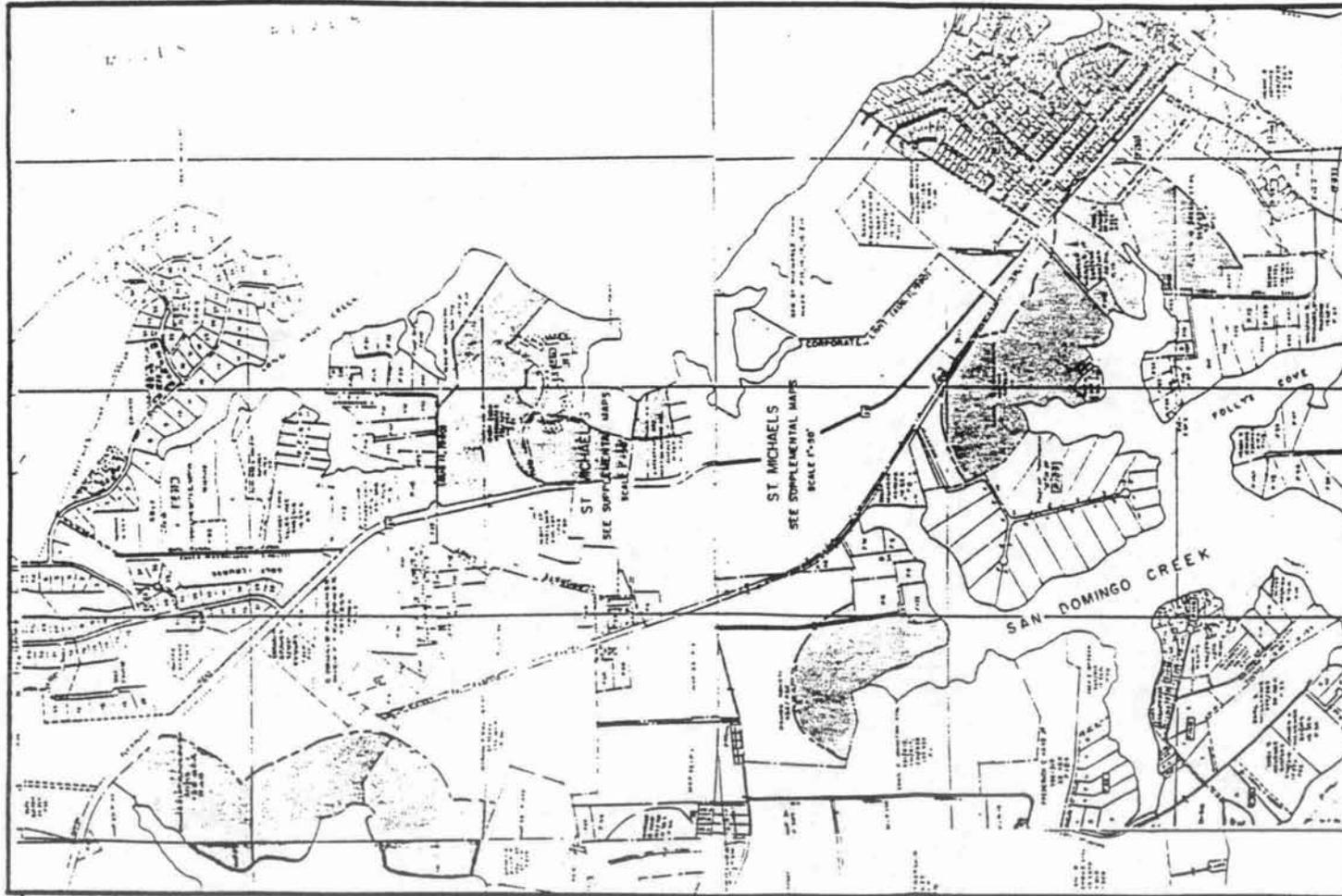
Using the designated development areas, the Town has established the following general goals to guide the creation of specific regulations within the Critical Area.

1. To direct future intense development to locations outside the Town's Critical Area to the extent possible. When future intense development activities are proposed in the Critical Area they shall be accommodated exclusively in designated Intensely Developed Areas.
2. To maintain medium development densities in the Limited Development Areas.
3. To reserve a portion of Resource Conservation Areas for compatible uses including but not limited to, fisheries, resource utilization activities (e.g., park land or passive recreation) and for achieving habitat protection objectives.

FUTURE GROWTH AREAS

Map II-1

E. 522



APPX. 403.1 ACRES



FUTURE GROWTH AREAS

ST. MICHAELS, MARYLAND

REDMAN/JOHNSTON  
ASSOCIATES

4. To exclude the following types of development activities due to their adverse impact on habitats and water quality unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.

Non-maritime heavy industry.

Transportation facilities not including the proposed St. Michaels Parkway or others necessary to serve the region.

Sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities.

5. To exclude the following types of development from the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.

Solid or hazardous waste collection or disposal facilities.

Sanitary landfills

6. To develop policies and programs necessary to achieve local program objectives for Intensely developed, Limited Development and Resource Conservation areas identified within the St. Michaels Critical Area.
7. To assure those development and redevelopment activities which are permitted to occur within portions of the Town's Critical Area and/or Critical Area buffer are developed in a manner consistent with appropriate Local program elements to achieve water quality and habitat resource protection benefits.

#### Designation of Development Areas

Intensely Developed, Limited Development and Resource Conservation Areas are designated on the Critical Area Map, Appendix 6, Map 1. The developed areas have been mapped based on existing land use data as of December 1985. The IDA's delineated are those areas where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs.

Any Town area mapped IDA meets at least one of the following general criteria:

1. Public sewer and water collection and distribution systems are currently serving the area.
2. Industrial, institutional, or commercial uses are concentrated in the area.

3. If residential, the housing density is greater than three dwelling units per acre with sewer and water or greater than 5 units per acre if sewer and water does not serve the site.

Any Town Area mapped LDA meets at least one of the following general criteria:

1. Housing densities range from one dwelling unit per five (5) acres up to four dwelling units per acre.
2. The area is not dominated by agriculture, wetlands, forest, barren land, surface waters, or open space.
3. The area is served by public sewer and/or water.

In addition to these general guidelines, it was necessary to develop detailed mapping rules which include assumptions not covered by the State criteria. These decision rules are found in Appendix 3, and were instrumental in providing an understandable and defensible basis for mapping areas in a manner consistent with the broader definitions for each area contained in section 14,15.02 of the Chesapeake Bay Critical Area Criteria.

Resource Conservation Areas constitute the residual mapped areas and are characterized by nature-dominated environments such as wetlands, forests, and resource-utilization activities such as agriculture, forestry, fisheries or aquaculture. These areas have been designated as Resource Conservation Areas (RCA) on the Critical Area Map, Appendix 6, Map 1. The density in these areas is less than one dwelling unit per five (5) acres. The dominant land use is forest, wetland, open space, or open water. The RCAs are areas that are remaining after all the detailed mapping decision rules have been applied to a tract or parcel of land thereby eliminating IDA and LDA type parcels and uses.

## **DEVELOPMENT OBJECTIVES**

### **Intensely Developed Areas Objectives**

To guide future development and redevelopment efforts the following program objectives have been framed for the Intensely developed areas within St. Michaels.

1. Minimize the expansion of Intensely Developed areas into areas not designated Intensely Developed.
2. Accommodate additional development permitted under the term of the Town's zoning ordinance provided water quality is not impaired.
3. Target Town (Intensely Developed Areas) stormwater management problem areas for public improvements to reduce runoff values and improve runoff water quality.
4. Minimize expansion of development into buffer portions of the Intensely

Developed Area or other Intensely Developed Areas designated as "Habitat Protection Areas" (see Habitat Protection Areas element).

5. Encourage public access to the Town's shoreline.
6. Establish programs for woodland resources creation and enhancement in Intensely Developed Areas in the form of urban forestry, street tree plantings, landscaping and open land buffer plantings.
7. Utilize State programs which assist the Town in enhancing biological resources in IDA's which are protective of water quality and contribute to urban wildlife habitat.

#### Limited Development Areas Objectives

The following objectives are designed to capitalize on opportunities to enhance water quality and natural habitat in areas where moderate density development patterns will continue to occur in the Town:

1. Maintain or improve the quality of runoff and groundwater entering the Bay and its tributaries.
2. Maintain to the extent practicable existing areas of natural habitat.
3. Accommodate additional low density development or moderate intensity development not exceeding a net density of four units per acre.
4. Maintain the character of existing low and moderate density areas as defined by the current mix of development and natural vegetation.
5. Provide for the orderly growth of the Town within those portions of the Critical Area beyond the Town limits that have been designated as growth areas.

#### Resource Conservation Areas Objectives

The following objectives are designed to maintain the biological values of these Resource Conservation Areas within the Town's Critical Area.

1. Restrict development activities within Resource Conservation Areas to a level consistent with the Chesapeake Bay Critical Area Criteria.
2. At the time development is proposed, determine if the Buffer needs to be expanded beyond 100 feet to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.
3. Maintain and enhance forest cover in Resource Conservation Area designated lands to maintain their biological productivity and habitat values.

4. Utilize State programs and incentive/disincentive programs to maintain and enhance the features present on Resource Conservation area sites.

#### **Implementation Strategies to Guide Development in the Critical Area**

To achieve the objectives outlined for the Development element of the Town's Local Program will require several local actions. These actions, designed to implement the proposed program may take many forms. Some actions will revise and amend the Town's development ordinances and processes currently used for review of development proposals. Other actions may include projects which can be undertaken by the Town through staff or appointed Boards or Commissions. Efforts to achieve these objectives are often process oriented. Continuing re-evaluation of progress will be required to ascertain the community's effectiveness in achieving these objectives.

The following recommendations are intended to establish an initial list of tasks and projects that are designed to achieve St. Michaels program objectives. They should be periodically reviewed and revised. As State programs evolve and changes are made to the Critical Area Law and criteria, comparable adjustments to the St. Michaels Local Program should be considered.

The Town's implementation strategies include:

1. Preparation and adoption of an overlay zone corresponding to the Town's Critical area which superimposes Critical Area - oriented development standards on Intensely Developed Areas, Limited Development and Resource Conservation Areas. These standards will be applicable to all development in the Critical Area, and would apply in addition to those within the current zoning ordinance and underlying base zoning districts. The overlay zone establishes development standards for three mapped areas, i.e., Intensely Developed Areas, Limited Development Areas, and Resource Conservation Areas. The overlay zone text will specify those standards to be considered applicable for each of the three areas, and to assure that development and related land disturbances are essentially consistent with the State Criteria (proposed Overlay Zone in Chapter 3 - Implementation). The overlay zone further reflects buffer exemption provisions consistent with Resource Protection objectives.
2. Preparation of a check list for site plan reviews and guidance for use by the developers as well as Town staff which has approval authority. The check list will serve to familiarize users with all information necessary to be shown or identified on a specific site proposed for development to assure resources to be protected are properly identified.
3. Preparation of a mitigation manual which identifies alternative mitigation techniques for various kinds of disturbances to site resources as well as techniques (structural and non-structural) for mitigating water quantity and quality related impacts. This manual will be helpful in assessing whether or not 10 percent reduction in pollutant loadings are achieved for new

**development in Intensely Developed Areas.**

4. Preparation of landscape standards for developed sites which incorporate standards for plant coverage, location and species composition. These standards should be consistent with the Forest and Woodland protection element of this program. Urban Forestry planting considerations and plantings which enhance wildlife food value should be incorporated to achieve program intent and accomplish previously identified objectives.
5. Establish a waterfront development authority which would be appointed by the Town Commissioners to coordinate both public and private actions which together influence the future form and functions of Town shoreline areas. The authorities' responsibilities and efforts should be directed toward:
  - a. Evaluating sites for enhanced public access to the waterfront and making recommendations to the Town Commissioners concerning public waterfront property acquisition.
  - b. Establishing model or demonstration buffer plantings on Town-owned properties or elsewhere in the Intensely Developed Area buffer.
  - c. Identifying specific sites which represent appropriate locations for retrofitting measures to address existing Stormwater Management problems, as public improvements.
  - d. Encouraging redevelopment of privately owned sites within the Intensely Developed Area where structures are vacant or under-utilized and/or large portions of the site are impervious.
  - e. Focus efforts to expand the size and/or enhance plantings in the existing Town waterfront properties located in the Buffer.
6. Request growth allocation from the County for identified areas within the Town which the Town wishes to see developed as new IDAs.
7. Request growth allocation from the County for identified areas beyond the Town boundaries which will satisfy the Town's growth needs and designate these areas as new LDAs. Require annexation as one condition of awarding the growth allocation to proposed development projects on these sites.

## **Section II. WATER DEPENDENT FACILITIES**

Recognizing that water dependent facilities have unique needs and potential for impact on water quality, St. Michaels has included this element within the program to focus on these development types. According to the "General Criteria", water-dependent facilities are "those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer..."

There are a number of types of commercial, industrial and recreational uses which need access to the water. Other activities require location at the shoreline because of their dependence on waterways. However, the construction of water-dependent structures can impair water quality, destroy valuable wetlands, spoil shellfish beds and disturb anadromous fish spawning activities. The kinds of water-dependent facilities include:

- 1) marinas and other commercial maritime structures;
- 2) public beaches and other public water-oriented recreation or education areas;
- 3) new, expanded or redeveloped industrial or port-related uses;
- 4) research areas;
- 5) fisheries facilities; and
- 6) community piers and other related non-commercial boat docking and storage structures.

These various waterfront or shoreline based facilities need regulatory guidelines so that the quality of the water can be protected.

### **A Description of St. Michaels Harbor**

St. Michaels Harbor opens on the Miles River. It is a natural harbor with ideal surroundings. Because of the limited size of the St. Michaels harbor there are presently only three small marina/boatyard operations. But although it is relatively diminutive and shallow, St. Michaels harbor is yet a homeport to local oystermen, crabbers, fishermen and clammers; the harbor has also become increasingly important as a center for the recreational boating and yachting industry.

At present, there are approximately 13,700 feet of waterfront in St. Michaels. The harbor area, including Fogg Cove and the Perry Cabin Farm waterfront, comprises 87.5 percent of the total frontage. The Land Use Map ( Appendix 6, Map 1) depicts the location of all existing marinas as well as industrial and recreational water dependent facilities.

construction in State wetlands (i.e., marshes, swamps, and submerged bottoms below the mean high water mark); Private Wetland Permit is required from the State Dept. of Natural Resources for any dredging, filling or construction in marshes or swamps that are above the mean high water mark but which are subject to periodic tidal action.

Waterway Improvement Program - its mission is to develop, maintain, improve and promote the recreational and commercial capabilities, conditions and safety of Maryland's waterways for the benefit of the general public. The Waterway Grants and Project Planning project is responsible for the recreational access development of the Chesapeake Bay and its tributaries with emphasis on projects and activities related to the general boating public. Activities include liaison with Federal, State agencies and county and municipal governments in promoting, designing, constructing and financing marine facility projects. Funds the construction of marine facilities (50% for local governments) ; evaluates water-oriented recreational needs; dredges channels and harbors. (DNR-Tidewater Administration)

Shoreline Improvement Grant Program - administers shoreline improvement funds for the construction of facilities for public access to the shoreline for recreational and educational purposes. (DNR - Tidewater Admin.)

Coastal Resources Program - is responsible for promoting and providing for the best use of Maryland's coastal resources, protecting valuable areas and resources, and resolving conflicts among competing coastal uses.

Recreational Boating Program - Oversees the review of project permits dealing with ramps, piers, and marinas; works with boating or citizen groups to determine important recreational boating issues. (DNR - Tidewater Admin.)

### **Goals**

It is the goal of the Town of St. Michaels to permit water dependent facilities within the established Critical Area Buffer with certain conditions and that the location of these activities will be designed and operated so as to have minimal individual and cumulative impact on water quality and fish, wildlife and plant habitat in the Critical Area.

### **Objectives**

To limit non-residential development activities in the Buffer to the extent possible to those that are water-dependent.

Require that water-dependent facilities are located and designed to minimize impact (individual and cumulative) on water quality and fish, wildlife and plant habitats identified in the St. Michael's portion of the Chesapeake Bay Critical Area.

The St. Michael's Planning Commission, Board of Port Wardens, Board of Appeals and Town Commissioners will review all applications for water-dependent facilities utilizing the following general criteria:

Proposed new and/or expanded uses or facilities must be demonstrably water-dependent (see Definitions for Water- Dependent Uses)

New commercial and industrial water-dependent facilities (with the exception of those allowed by the criteria, i.e., expansion of existing marinas and fisheries facilities) will not be permitted in the Buffer in areas designated Resource Conservation Areas.

The proposed project must be found to meet a recognized private or public need.

The design and location of facilities in a water-dependent use will be such that they minimize adverse effects on water quality, and fish, plant, and wildlife habitat.

#### **Water Dependent Facilities Recommendations**

In order to implement the goals and objectives of the Water-dependent Element of the St. Michaels Local Program the following should be incorporated into existing or new regulations and review procedures for approval of new or expansion of existing water-dependent facilities:

1. Water Dependent Facilities will be defined as follows:
  - A. Those structures or works associated with industrial, maritime, recreational, educational and fisheries activities that require location at or near the shoreline within the required shore Buffer.
  - B. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on water by reason of the intrinsic nature of its operation. These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other public water-oriented recreation areas and fisheries activities.
  - C. Excluded are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision which provides community piers.
2. The following review standards and criteria will apply to all permit and review processes relating to water dependent facilities.
  - A. Review Criteria for Industrial and Port-Related Water-Dependent Facilities

1. New, expanded, or redeveloped industrial or port-related facilities and replacement of these facilities shall only be permitted in specifically exempted portions of the Buffer in areas designated Intensely Developed Areas (IDA) in the St. Michael's Chesapeake Bay Critical Areas Program (see Appendix 6, Map 1)

**B. Review Criteria for Marinas and Other Commercial Maritime Facilities**

1. New or expanded marinas and related facilities may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas.
2. New marinas or related maritime facilities may not be permitted in the Buffer within the Resource Conservation Area with the exception of public beaches and other water-oriented recreation or education areas.
3. Expansion of existing marinas may be permitted by the Town within the Resource Conservation Areas provided it is sufficiently demonstrated that the expansion will not adversely affect water quality at or leaving the site of the marina, and that it will result in an overall net improvement in water quality at or leaving the site of the marina.
4. New and existing marinas shall meet the sanitary requirements of the State Department of Health and Mental Hygiene as required in COMAR 10.17.02
5. New marinas shall establish a means of minimizing the discharge of bottom wash into tidal waters.

**C. Review Criteria for Community Piers and Other Related Non-commercial Boat Docking and Storage Facilities.**

1. New or expanded community marinas and other non-commercial boat docking and storage facilities may be permitted in the Buffer subject to the criteria stated above and provided that:
  - a. These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
  - b. The facilities are community-owned, established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
  - c. The facilities are associated with a residential development approved by St. Michaels for the Critical Area and are consistent with all criteria and local regulations for the Critical Area.

## Marinas and Tidal Wetlands

The growth of marinas in the Town of St. Michaels has had a significant impact on wetlands acreage losses. It is rather ironic that the construction of marina facilities to increase access to fishing often requires the elimination of wetlands tracts that are crucial fish habitats. While it is easier than ever to leave from a dock to go fishing, it is harder than ever to find fish in great supply.

Shoreline development has been steadily intensifying, due to easy access and close proximity to the dense population centers across the Bay. It remains to be seen whether the development boom, generated by the construction of the second Bay span, will gradually and unintentionally destroy even more tidal wetland habitats. Undirected marina development may have hazardous ecological consequences for St. Michaels. Conventional dredge and fill operations often cause silting and heavy water turbidity to spill-over into the wetlands adjacent to the marina site proper.<sup>4</sup> Once an initial wetland area is chosen for marina development, incidents destructive to nearby wetland areas are more likely to occur. Septic seepage and petroleum spills from marinas and waterfront development can contaminate, over time, neighboring fish habitats and submerged plant beds. Wetlands are often carelessly used as convenient trash disposal areas.

On the other hand, much of the economy of the Town is greatly dependent on water access and recreational boating. The conflicts that arise from the competition for water access and the desire to protect sensitive aquatic habitats often result in community residents lining up on either side of the issue. But marina development, in and of itself does not have to result in a net loss of wetlands, particularly when it is now fairly common practice to create new wetlands in alternative locations. Mitigation practices of this type should be given priority consideration in the review and approval of new marina facilities in the Town.

### **Existing Plans and Programs Relating to Water-Dependent Facility Development**

The following list of Local, State and Federal plans and programs currently exist which relate to the development of water-dependent facilities.

#### St. Michaels Comprehensive Plan

#### St. Michaels Harbor Management Plan

St. Michaels: Land Use Regulations - The Town regulates marina development through its zoning ordinance.

Maryland Wetlands Act - Under this program the State Board of Health issues licenses and permits when altering state or private wetlands.

Rivers and Harbors Act - Permit must be acquired from ACOE before obstructing or altering a navigable waterway.

Wetlands Management Programs - Maryland Wetlands Act, Title 9, requires a State Wetlands License from the State Board of Health for dredging, filling or

- d. Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and
  - e. If the community piers, slips, or moorings are provided as part of a new development, private piers in the development are not allowed.
2. The number of slips, piers, or mooring buoys at the facility shall be the lesser of (a) or (b) below:
- a. One slip for each 50 feet of shoreline in the subdivision in the IDA and LDA and one slip for each 300 feet in the RCA; or
  - b. A density of slips, piers, or mooring buoys to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Platted Lots or Dwellings in the Critical Area	Slips and Moorings
up to 15	1 for each lot
16-40	15 or 75% whichever is greater
41-100	30 or 50%, whichever is greater
101-300	50 or 25%, whichever is greater
over 300	75 or 15%, whichever is greater

Source: The Chesapeake Bay Critical Area Commission

**D. Review Criteria for Public Beaches and Other Public Water-Oriented Recreation or Education Areas.**

1. Public beaches or other public water-oriented or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in IDA's.
2. These facilities may be permitted within the Buffer in LDA's and RCA's provided that:
  - a. Adequate sanitary facilities exist;
  - b. Service facilities are, to the extent possible, located outside the Buffer;
  - c. Permeable surfaces are used to the extent practicable, if no degradation of groundwater results;
  - d. Disturbance to natural vegetation is minimized; and
  - e. Areas for passive recreation, such as nature study and hunting and trapping, and for education, may be permitted in the Buffer within RCA's, if service facilities for these uses are located outside the Buffer.

**E. Review Criteria for Research Areas.**

1. Water-dependent research facilities or activities operated by the State, federal, or local agencies, or educational institutions may be permitted in the Buffer, if non water-dependent facilities associated with these projects are, to the extent possible, located outside of the Buffer.

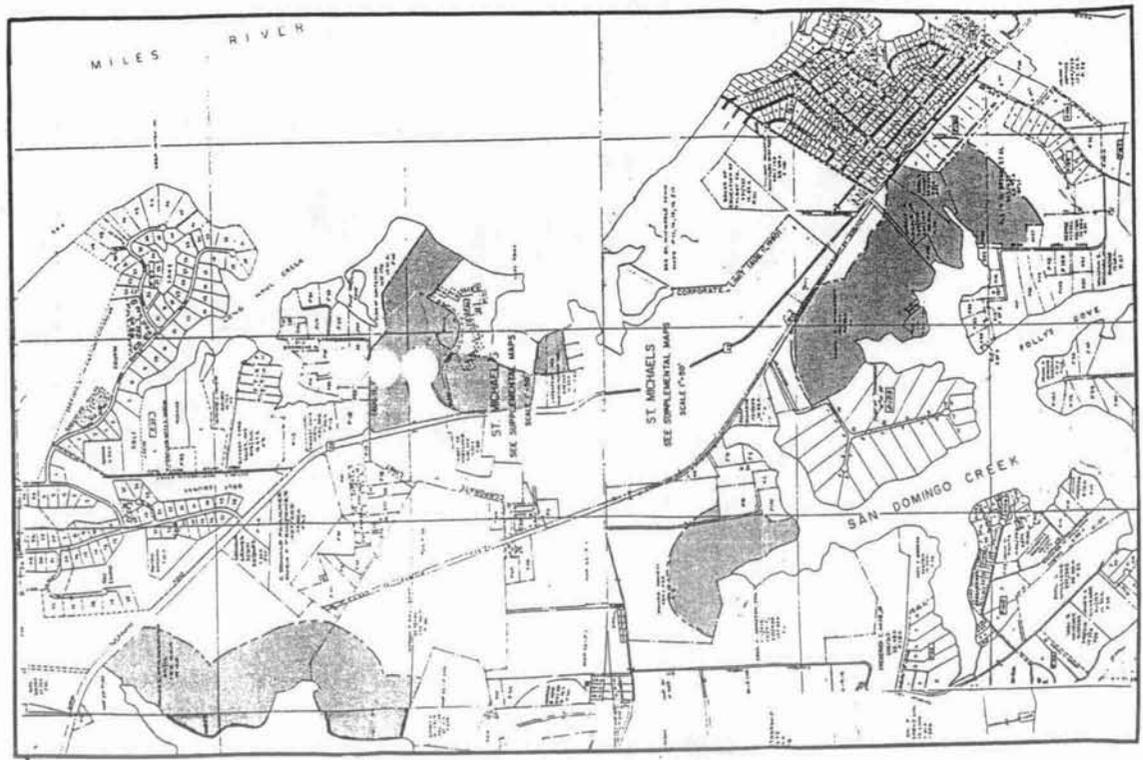
**F. Review Criteria for Fisheries Activities**

1. Lands and water areas with high aquaculture potential should be identified in cooperation with the State. These areas are encouraged and protected from degradation by other types of land and water use or by adjacent land or water use.
2. Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations and fisheries activities, may be permitted in the Buffer, in IDA, LDA, and RCA's.

### Management Recommendations

The Town of St. Michaels has developed a planning process for siting new water-dependent facilities and to implement the Criteria. In evaluating proposed site plans required by these regulations, the Planning Commission and Board of Appeals shall consider the anticipated effect of the location, construction, and operation of the proposed facility upon the environment of the site and the adjacent area. All federal, state, and local laws and regulations applicable shall be complied with and in addition applicants for conditional uses under this section shall address each of the following factors to which the Board of Appeals will give primary consideration:

- (1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- (2) That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
- (3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- (4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations is minimized;
- (5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
- (6) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area, generally;
- (7) That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area; and
- (8) That interference with the natural transport of sand will be minimized.



**FUTURE GROWTH AREAS**

Map II-1

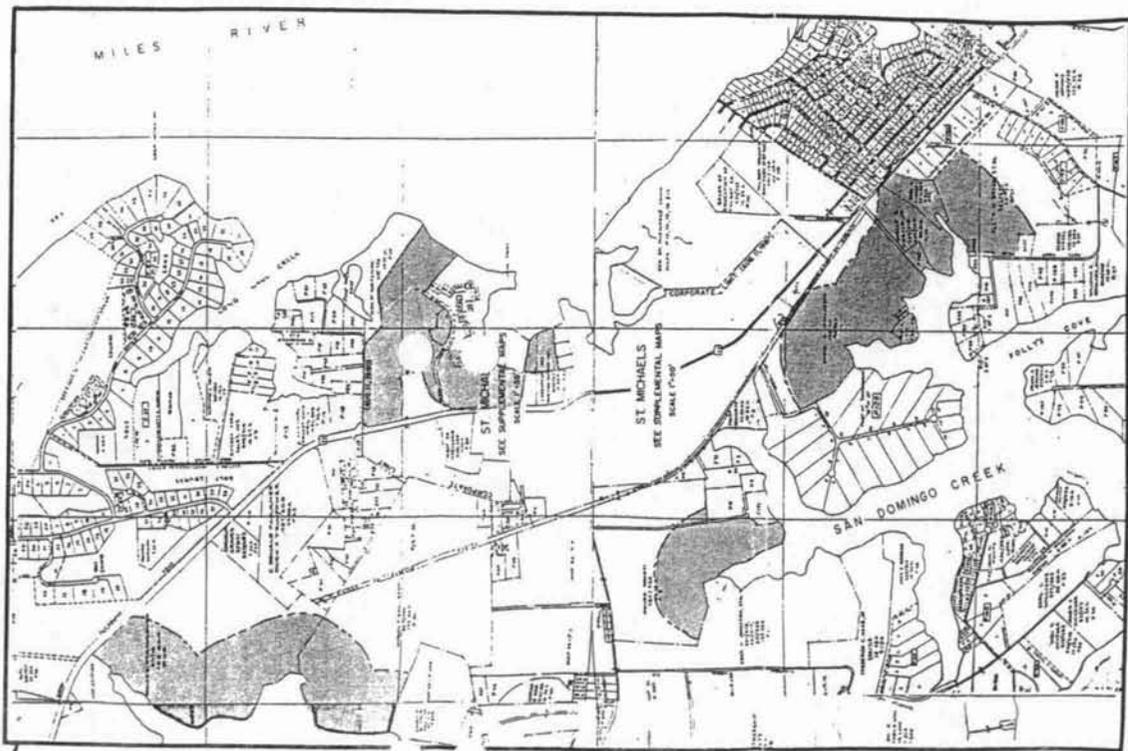
APPX. 403.1 ACRES



FUTURE GROWTH AREAS

**ST. MICHAELS, MARYLAND**

**REDMAN/JOHNSTON  
ASSOCIATES**



FUTURE GROWTH AREAS

Map II-1

APPX. 403.1 ACRES



FUTURE GROWTH AREAS

ST. MICHAELS, MARYLAND

LOCAL PROGRAM

### **Section III. SHORE EROSION PROTECTION**

Eroding shorelines create significant problems for all tidewater towns. Sediments can fill in navigation lanes, harbors, spawning grounds and shellfish beds. Yet erosion is nonetheless natural: it is the removal of material from coasts and shores by the action of the water. In fact, for the Town of St. Michaels and all Bay-bordering jurisdictions, a net loss of shoreline is the norm--there just are not enough in-drifting deposits to replace the out-drifting sediments.

Despite this, however, erosion is a process that man's intervention may accelerate or impede. And even when man impedes erosion in an effort to prevent a loss of valuable property, the Bay's water quality and marine life may suffer. Bulkheads and riprap can cause jeopardizing alterations to the aquatic environments in estuaries, rivers and basin areas. It is highly important that shoreline areas be protected--but not irrespective of water quality, benthic organisms, anadromous fish or submerged aquatic vegetation.

The key aims for protecting the Town of St. Michaels shoreline include:

- 1) reducing the damage to prime real estate;
- 2) minimizing suspended silts which harm fish;
- 3) stopping the deposition of sediments which fill boating and shipping channels;
- 4) curtailing the spoilage of shellfish beds, fish spawning/nursery areas, and wetland vegetation, and;
- 5) preserving water quality for recreation and commercial harvesting.

Before the Town of St. Michaels can implement measures to safeguard its extensive water frontage it will need to make an examination of, as well as map, the areas where banks are severely undercut, have slumped or have altogether collapsed. Accurate mapping of areas where the shoreline is holding up well will also be necessary; in this way costly remedies or shabby alterations which the Town does not need can be rejected.

It is stipulated in the Criteria, under the heading "Shore Erosion Protection Works", within The Final Regulations of the Chesapeake Bay Critical Area Protection Program, that local jurisdictions must, with State or federal assistance, map their shoreline areas within the Critical Area. This mapping requirement is needed to identify and subsequently designate shoreline segments with the features listed in the table following:

**EROSION CONTROL MEASURES  
APPROPRIATE TO VARIOUS SHORELINE CONDITIONS**

**Erosion Conditions**

**Erosion Control Recommendation**

1. No appreciable erosion

No measures needed

2. No significant erosion  
(Rates less than 2 feet per year)

Non-structural measures preferred wherever practical and effective, structural measures generally not encouraged

3. Significant erosion  
(Rates 2 feet per year or greater)

Non-structural measures to be considered; if not practical and effective, structural measures may be installed provided that the measure used best provides for conservation of fish and plant habitat.

**SOURCE:** *The Chesapeake Bay Critical Area Commission*

Subsequent to the mapping and designation phase, the Town of St. Michaels should generate policies that address shoreline erosion based on the control recommendations. The recommendations proposed by the Critical Area Commission are purposefully broad so that local jurisdictions can tailor them to fit their specific erosion control needs.

**Wind and Fetch Characteristics**

The prevailing wind typically comes from either the northwest, west northwest, or from the south. During the winter, spring, and fall the winds are usually strongest from these three points, however, during the summer the winds are strongest primarily from the south. Despite the variation in wind intensities, the percent of calm stays relatively the same throughout the year.

Of the four critical wind directions it should be noted that only the northeasterly winds have a sizeable fetch. A "fetch" is defined as the area in which waves are generated by a wind coming from a particular direction. The northeasterly winds have about a mile and a quarter of open water in which to build the waves which reach St. Michaels harbor. Estimates of expected wave-height can be made from average gale intensity figures for the St. Michaels area.

According to historical data, an approximated gale intensity for the northeasterly winds would be about 45 miles per hour--which would mean that the expected wave-height for such a storm would be about 2.5 feet. Storms of greater intensity would obviously bring greater waves; 75 mile-per-hour winds would likely bring 4 foot waves, and 100 mile-per-hour winds would likely bring 5 foot waves. These wave-heights are projected irrespective of any accompanying astronomically

influenced tides or elevation in sea level due to storm surges.

### Erosion Rate

Shorelines that have the highest erosion rates are generally exposed to the longest fetches (for the definition of "fetch" see the subsection headed, Wind and Fetch Characteristics). Areas within the tributary bays, such as Eastern Bay, or the tidal rivers, such as the Miles, have a lower overall erosion rate. According to the U.S. Geological Survey's map atlas of Historical Shorelines and Erosion Rates (1975) the Miles River shoreline, from the town of St. Michaels to Tilghman Point, erodes at the rate of two to four feet per year. This is, a significant rate for erosion.

### Siltation and Shoaling

About one-third of the total area at St Michaels harbor is unused because of water depths that are at less than four feet. Because it is quite vulnerable to siltation, the harbor must be dredged from time to time. Another related constraint is placed on the effective use of the water surface within the harbor as a result of shoaling. The combined effects of siltation and shoaling have limited about one-third of the harbor to boats that draw less than four feet. Yet, as a result of the ever-increasing influx of recreational boaters during the summer weekends, St. Michaels harbor often becomes so jammed that no area for the flow of traffic in and out of the harbor is left. This is a condition which has been developing for many years.

The sedimentary structure of the bottom in any area of the Miles River limits the species of plant and animal life that may be found there. Benthic (bottom-dwelling) animals and rooted aquatic plants can only thrive in specific kinds of bottom materials.

Natural conditions such as weather patterns, soils, and slope move a certain amount of runoff and toxins into the Miles River but non-point pollution from agricultural operations presents a greater threat. Although farmers have done much to control the loss of topsoil on their lands by implementing new tillage practices, sheet and rill forms of erosion, which work at a rather unnoticeable rate, continue to load the streams which feed into the Miles River with sediment. Exposure of the soil to the rain and wind, reductions in cover or buffering vegetation, the improper use of fertilizer, and poor management of animal waste increase the load of sediment pulsing into the Miles. These agricultural factors also degrade the water quality by elevating the levels of nitrogen, phosphorus, biological oxygen demand (BOD), bacteria, herbicides and insecticides in the runoff loading as well.

In 1979 the Soil Conservation District designated the lands surrounding the Miles River sub-basin as an agricultural critical area for the potential release of sediment and/or animal waste. The need to identify this critical area emerged as the result of the intensive agricultural use in the vicinity and took into consideration the role of farming practices as well as the limitations set by soil type.

## **Shore Erosion Protection Programs**

Six sources of funding (grants or interest-free loans) are available for shoreline enhancement projects in St. Michaels. Three of these sources are within the Maryland Department of Natural Resources (DNR). Another source is the state's cost sharing program for urban projects. The Baltimore District of the U.S. Army Corps of Engineers also provides funds for shore erosion control. The Chesapeake Bay Trust, a non-profit organization which raises money to benefit the Bay, is a non-public source of assistance.

### **Chesapeake Bay Initiatives Program**

Through its Chesapeake Bay Initiatives Program, the State of Maryland offers grants for design and construction of nonstructural shoreline erosion control along the Bay. The money is available on a matching fund basis throughout the Coastal Resources Division of DNR. The award of grant money depends on the size of the project, its proximity to critical resources areas (fish spawning areas, etc.), the presence of adjacent marsh vegetation, and the amount of fetch to which the areas are exposed (less than 3-4 miles). To improve the chances of receiving grant money, any proposal for St. Michaels should include as many landowners as possible in order to increase the potential enhancement area. It might even be helpful to lump several of the recommended nonstructural protection areas into a single proposal. Grant awards require another source of funding - either from the Town itself or from another outside organization. Once a project is approved, it takes approximately a year to receive the money. Grants are administered through the local Soil Conservation District office.

### **Shore Erosion Control Loan Fund**

Interest-free loans are available from the Maryland DNR Shore Erosion Control Office for structural erosion control projects. Projects must be within a shore erosion control district. The loans cover 100 percent of the cost of construction and design (for County or municipally sponsored projects), and carry a 25 year term (with annual payments). The decision to provide a loan is based on the extent of shoreline erosion or silt deposition, the nature and amount of potential public benefit, the project's cost, and the date of application. Proposals for such loans should be sponsored by the Town or community groups (to qualify for 100 percent financing).

Because the money is committed on an as-available basis, it would be most advantageous to submit a number of lower-cost project proposals rather than one major proposal as an umbrella for several projects. Since the intent of the loans is erosion control, proposals should be limited to areas where erosion or erosion potential is high. Projects designed to increase recreational use are not as likely to be financed. DNR awards the engineering and construction contracts and supervises construction. However, the waiting period of up to three years for State financing presents an obstacle to addressing erosion problems demanding relatively fast action.

### **Waterway Improvement Program**

The mission of the Waterway Improvement Program is to develop, maintain, improve and promote the recreational and commercial capabilities, conditions, and safety of Maryland's waterways for the benefit of the general public. It is administered by the Tidewater Administration of Maryland DNR. The Waterway Grants and Project Planning project is responsible for recreational access development of the Chesapeake Bay and its tributaries, with emphasis on projects and activities related to the general boating public. Activities include liaison with Federal and State agencies and county and municipal governments in promoting, designing, construction and financing marine facility projects. The Program funds the construction of marine facilities (100% for State projects and 50% for local projects); prepares and distributes the Guide to Public Piers and Boat Ramps; evaluates water-oriented recreational needs; and dredges channels and harbors. This program is useful for the construction of boating-related erosion control structures in man-made lagoons.

### **State Cost Sharing Program for Urban Projects**

This program provides state money for projects located near the Chesapeake Bay that carry out best management practices to prevent erosion, runoff, and sedimentation.

### **Army Corps of Engineers' Water Resource Assistance Program**

The Water Resources Assistance Program of the Army Corps of Engineers' Baltimore District provides financial assistance for small navigation and structural erosion control projects within its jurisdiction. To be funded, projects must be economically justified and environmentally acceptable and must not commit the Corps to any further work. The proposal should be sponsored by the Town to increase its credibility. It also may be possible to group several projects into a single proposal to give the Corps a sense of a comprehensive plan. The project must be economically justified (based on a benefit/cost analysis) and environmentally acceptable (larger projects may require preparation of an environmental impact statement), and the project sponsor must be willing to provide assistance (land, easements, rights-of-ways, possible cost-sharing). Money is available for the following reasons:

- Small navigation projects (projects less than \$2 million);
- Small beach erosion control projects (projects less than \$1 million); and
- Emergency and streambank erosion (projects less than \$250,000).

### **Chesapeake Bay Trust Grants**

The Chesapeake Bay Trust offers financial assistance grants to nonprofit organizations and public agencies for projects designed to benefit the Bay and to promote business/government/citizen cooperation. The funds are dispersed on

the basis of the qualifications of the requesting organization, the objectives of the project, and the project's potential to serve as a model for other efforts. The Trust's grants are not limited to any particular type of activity, so both structural and nonstructural projects can qualify. As with the State's loan program, Town or community group sponsorship (preferably County) will help the project's chances. Since the Trust seeks to promote cooperation, projects should involve the largest number of landowners possible. Efforts could be made to encourage major landowning organizations (e.g., U.S. Army Corps of Engineers) to participate and, perhaps, provide some funding. The Trust is seeking as much visibility as possible in the projects it funds, so it would be advisable to submit only the most accessible projects. Also, since the Trust's intention is to benefit the Bay, proposals to increase recreational use will not be as acceptable as those intended to stabilize and clean up the shoreline.

### **Shore Erosion Protection Objectives and Goals**

The key aims for protecting the Town of St. Michaels shoreline include:

- 1) Encouraging the protection of rapidly eroding portions of the shoreline in the Critical Area;
- 2) Encouraging where appropriate, the use of non-structural shore protection measures in order to conserve and protect plant, fish, and wildlife habitat; and
- 3) Discouraging the use of bulkheads or other vertical erosion control structures, except where it can be shown that alternative methods would be ineffective or impractical in reducing or preventing shoreline erosion.

### **Shore Erosion Protection Recommendations**

The shore erosion works protection recommendations of the St. Michaels Local Program reflect two major objectives: (1) to encourage the protection of rapidly eroding shorelines in the Critical Area and (2) to encourage the use of nonstructural measures, where they can effectively and practically reduce or prevent shore erosion, in order to conserve and protect plant, fish and wildlife habitat.

Control measures mentioned in ordinances and program elements should include the following:

- Nonstructural - creation of an intertidal marsh fringe channelward of the existing bank by one of the following methods:
  1. Vegetation - planting an existing shore to a 15 foot wide band of vegetation);
  2. Bank Sloping/Vegetation - sloping and planting a nonwooded bank less than 6 feet high to eliminate tidal water contact, using structures to contain sloped materials if necessary; and

3. Contained Beach - filling alongshore with sandy materials, grading, and containing the new beach to eliminate tidal water contact with the bank.

- **Structural**

1. Revetment - facing laid on a sloping shore to reduce wave energy and contain shore materials (stone recommended for use in St. Michaels revetments)
2. Bulkhead - excluded due to adverse impacts to the nearshore marine environment, except in the following special cases:
  - a Where erosion impact is severe and high bluffs and/or dense woodland preclude land access, bulkheads can be installed by shallow-draft barge and pile driver; and
  - b In narrow, manmade lagoons for activities that require frequent interchange between boats and land.

**Mechanisms for Implementing Shore Erosion Management Policies**

Amendments to Existing Town Ordinances. The Shore Erosion Management Plan suggests revisions to St. Michaels existing Zoning Ordinance and Subdivision Regulations to facilitate abatement of shore erosion.

The recommended changes and adjustments to the Zoning Ordinance are to accomplish the following:

- Require that a detailed drawing locating shore erosion abatement techniques be included with the site plan,
- Require that existing shoreline management designation and estimated erosion status (with existing structures, their condition, and recommended approach) be included on the boundary survey plat (at least 1"=100'),
- State that shore erosion control work should be bonded and completion required as a condition of occupancy or sale, unless weather forces postponement of work to the following year,
- Provide that no development in any zone shall be approved without the approving authority's determination that existing or planned and funded structural/nonstructural protection is adequate,
- Provide that erosion control measures are consistent with criteria policies (see page 30).

Mandate the Planning Commission to consider in its review of subdivision plats specifying cluster development, shoreline areas as irreplaceable natural features contributing to the utility of community open space for a recreational use or scenic purpose. Utility includes maintenance easements along the shoreline adjacent to

erosion control structures.

The revisions to St. Michaels existing Subdivision Regulations should be as follows:

- Require a property owner applying to the Planning Department for approval of a subdivision to submit on a combined preliminary/final plat the location and extent of existing and/or proposed erosion abatement approaches,
- Treat inclusion of guidelines that will promote erection of buildings in areas free from shoreline erosion as a priority in preliminary plat review by the Planning Commission,
- Require developers to submit, with the Public Improvement Plans accompanying their final plats, complete project specifications for proposed shore erosion work, to include design storm, calculated wave runup, required stone weight, and/or other data as requested for the Town's review, and
- Include among design standards and requirements, under waterfront development constraints, an evaluation of shorelines included within any subdivision for erosion problems and, where appropriate, a unified treatment designed by a competent engineer.
- Provide that erosion control measures are consistent with criteria policies (see page 30).

Obtain Funding and Encourage Private Property Owners to Obtain Funding from other Agencies. A number of government and private agencies fund shore protection projects. Among them are the following:

Maryland Department of Natural Resources, Coastal Resources Division,  
Chesapeake Bay Initiatives Program

Maryland Department of Natural Resources, Shore Erosion Control Office,  
Shore Erosion Control Loan Fund

Maryland Department of Natural Resources, Waterway Improvement Program

State of Maryland Cost Sharing Program for Urban Projects

COE Baltimore District, Water Resources Assistance Program

Chesapeake Bay Trust Grants

#### **SECTION IV. FOREST and WOODLAND PROTECTION**

For achieving the objectives outlined by the Commission's criteria, local jurisdictions are required to develop a Forest Preservation Plan. To accomplish this, the plan must first identify and designate all forests and developed woodlands within the Critical Area which are one acre or larger in size. Moreover, forested areas, which include habitat protection areas (see the Habitat Protection Area section of this plan), must also be identified.

After the identifying of these two specific types of woodlands, the plan must generate policies through which forest cover can be maintained or increased in the overall land designated as Critical Area by the State. Incentive programs for conserving forestland, or for converting other uses to a forested condition, are emphasized. In addition to preparing the aforementioned forest preservation plan, any timber harvesting activities within the Critical Area which involve one acre of timber must be accompanied with forest management plans for timber harvesting. The criteria requires that such plans be prepared by a registered professional forester and be subject to review by the Maryland Forest and Wildlife Service, through the local district forestry board. The preparation of plans is an owner's or forester's responsibility and while reviews are conducted by the Maryland Forest, Park and Wildlife Service, these plans must be filed with the proper local jurisdiction.

Emphasis should also be placed on the development of forest management measures that will protect habitat areas and protect water quality. Finally, sediment control plans are required for timber harvests when the area of disturbance is greater than five-thousand square feet. Local jurisdiction implementation of forest management plans is primarily process-oriented and so the community must establish a system for notifying landowners of the requirements for forest management and sediment control plans. It must also designate a local agency to act as a repository for forest management plans as they are prepared and filed. That agency, with responsibility within the local jurisdiction for implementing the forest preservation plan, should also have a basis for determining whether or not the community is taking adequate steps to implement preservation plan components. While an inventory can be accomplished through mapping, the means by which incentives can be created range from land development guidelines, through zoning and land sub-division regulatory standards, to financial incentives for forest creation in the Critical Area.

Approximately 10.7 acres within the Critical Area of the Town of St. Michaels is considered to be forested land. This areal extent comprises nearly 3.34 percent of the Critical Area acreage and 1.92 percent of the total acreage in the Town.

The Chesapeake Bay Critical Area Commission has identified forest cover as a protective land use because it benefits water quality and provides wildlife habitat. The criteria later developed by the Commission established that the maintenance and enhancement of forest cover is a primary objective. It is known that land in forest cover does much to assure improved water quality and maintains water quality objectives. For wildlife habitat within the Critical Area, forestland provides both diversity and areal increase.

The Chesapeake Bay Critical Area Commission, in developing criteria as prompted by law, clearly recognize the benefits, both in terms of water quality and in terms of the increased wildlife habitat, of safeguarding forest and woodland cover within the thousand-foot band around the perimeter of the Bay and its tributaries. To that end, an entire element in the Critical Area criteria is reserved for forest and woodland protection. While many of the criteria directed at development provide measures for the protection of woodland (and penalties for displacement of forest or wooded cover in the development section), the forest and woodland protection element is designed to check the depletion of forest resources due to development as well as the depletion which is caused or can be caused by timber harvesting. The objective of the Commission is to conserve forest and woodlands to the fullest extent possible so that the benefits of improved water quality in the Critical Area can be maintained and preferably enhanced. Further, the criteria require that measures be taken to identify and protect any Habitat Protection Area that may be adversely affected by the cutting or clearing of trees.

### The Importance of Trees in the Town

The important species of hardwoods in the Town of St. Michaels include: oak, sweetgum, blackgum, yellow-poplar, red maple, holly, birch, dogwood, beech, and bay. Loblolly pine (sometimes called oldfield pine) and Virginia pine did not become dominant or occur in pure stands in the area until after the hardwoods had been extensively cleared.

It is important to note that, for developing the local Critical Areas program, forest and woodland protection is a distinct program element and yet it crosses over into activities that relate to development and habitat protection. Forest and woodlands not only provide great benefits in terms of reducing non-point sources of nutrient loading but they also reduce the sediment deposits pulsing into adjacent waterbodies. While substantial controversy may abound regarding how development may be done in a manner more sensitive to water quality and habitat values, few will disagree that, given all options, woodland is a preferred use--if the primary goal is to reduce nutrient loadings and establish wildlife cover. Woodlands located adjacent to wetlands provide diversity of habitat for those species which need it to satisfy their food, cover and nesting needs. Woodlands buffer farming activities from the water through the presence of tree canopy, leaf litter and deeper roots which uptake nutrients. Forested land also minimizes the amount of nitrogen and phosphorus entering the water. These considerations mean that an increase in forest cover in the Critical Area is the most straightforward way to accomplish the intentions and requirements of the Critical Area legislation.

Forests and woodlands add an important ingredient to the quality of our living. They make for a healthier environment and soften the detrimental impact of urban climatic conditions. Wooded areas, if properly planned, strategically placed and properly maintained, provide graceful lines. As well, the careful planning of woodland vegetation can provide for active recreational needs.

The benefits from forests and woodlands, both valuable and invaluable, justify a continued investment of time and energy for their management, conservation and preservation. Public and private funds should be allocated for this purpose. Forests,

woodlands and urban vegetation contribute important architectural functions. They have an obvious environmental significance, but can also provide numerous cost-effective shortcuts. In some cases there are direct dividends from managing woodlands and forests. Some examples of the overall benefits, values and functions are listed below.

### ARCHITECTURAL FUNCTIONS

space articulation  
acoustical control  
screening  
traffic control  
glare and reflection control  
elements of texture, proportion, scale,  
unity, continuity, repetition and color

### ENVIRONMENTAL BENEFITS

wildlife habitats  
wind influences  
light influences  
temperature influences  
humidity influences  
water quality influences

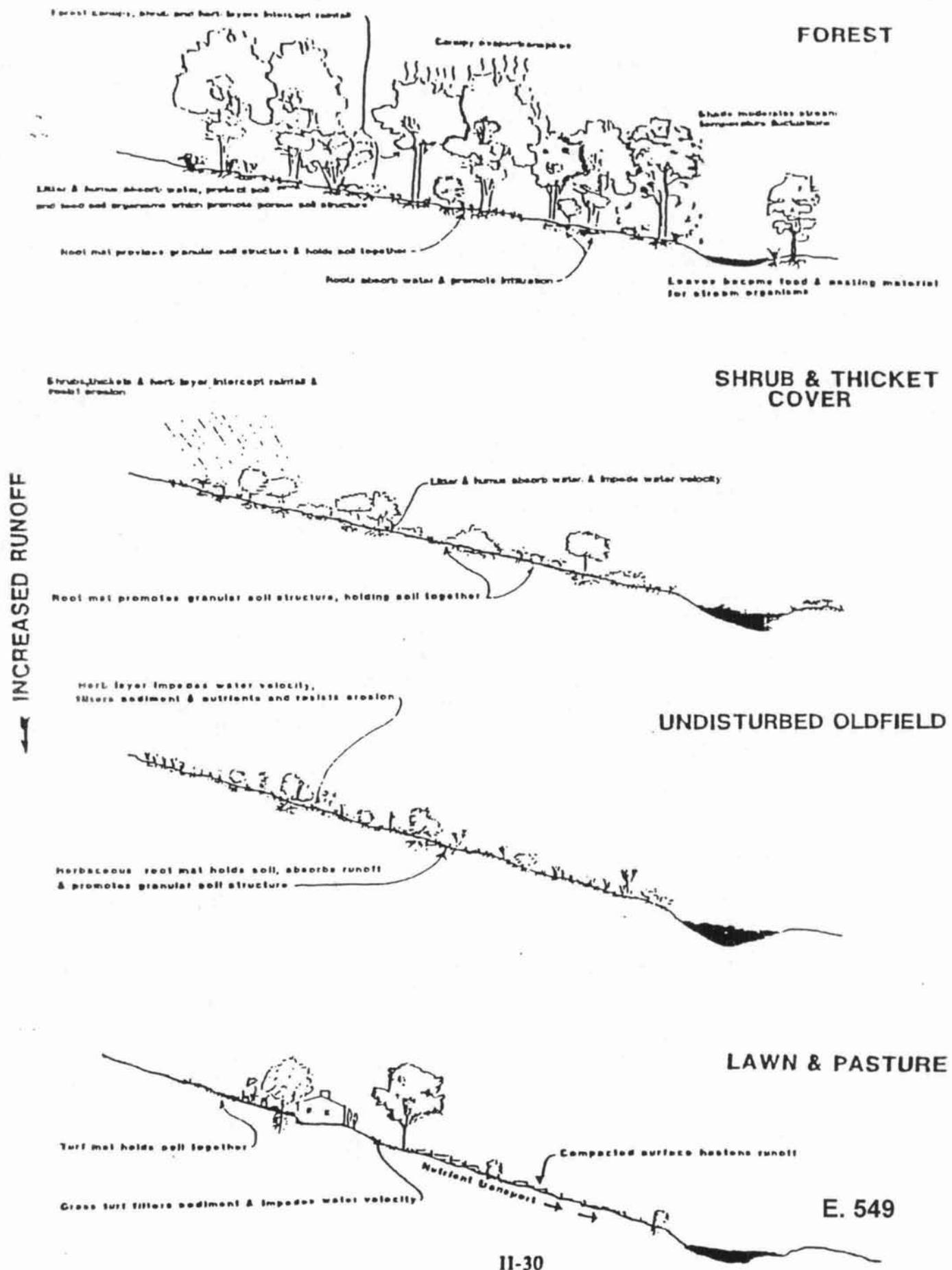
### COST-EFFECTIVE CHARACTERISTICS

climate amelioration  
increased real estate values  
energy conservation

While recognizing the overall value of forests, woodlands and urban vegetation to our environment, retained or increased forest cover has special ecological value in the Critical Area. Afforestation, the new planting of trees on non-forested land, and reforestation, the renewing of forest cover by the planting of seeds or young trees, play a vital role in wildlife management, shelterbelt windscreens, watershed protection and timber crop production. In the Critical Area, reforestation is one of the most cost effective means of meeting the water quality improvement requirements of the Critical Area Criteria. Establishing a vegetative buffer between upland areas and water bodies or wetlands helps to protect these resources from the potentially negative impacts of adjacent land use. Woodlands and forested areas reduce sediment and nutrient runoff by providing a transition zone which negates or reduces the impact of stormwater runoff. (see Figure 1)

The architectural functions of plants are important in the overall organization of the outdoor environment. Vegetation can actually achieve the illusion of space through the means of implied enclosure. Shrubs and trees can powerfully modify the ground plane, the vertical plane and the overhead plane. Plant materials may be used to direct or control the lines of view toward desirable points in a town or natural spot. Vegetative screens may be totally opaque in order to conceal a view or provide

# FIGURE II-1 RELATIVE RUNOFF CHARACTERISTICS BY VEGETATIVE LANDCOVER



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privacy control, or they may have varying degrees of transparency to provide partial screening and visual attraction.

Trees and vegetation are also important to the hydrologic cycle. They intercept precipitation, thus slowing its descent to the soil surface. This can increase beneficial infiltration. Trees and bushes also decrease stormwater runoff and soil erosion (which are two important considerations in improving water quality in the Critical Area, particularly in urban areas where natural underground aquifers are the main source of water).

Effectiveness in controlling runoff and infiltration varies by soil type, organic content of the soil, precipitation type, precipitation intensity, and the composition of the vegetative cover (which includes branching pattern, leaf pubescence, bark texture, etc.). Coniferous trees usually intercept precipitation at a greater rate than deciduous trees. It is estimated that sixty percent (60%) of rainfall will reach the ground through a pine canopy as compared to eighty percent (80%) through a hardwood canopy.

Improving water quality, which is one of the major criteria in the Critical Area Program, can be achieved through the strategic use of vegetation in the Critical Area, both in agricultural and urban regions. Vegetation helps to improve water quality by mitigating rapid runoff, recharges the water-bearing soil strata and helps prevent sun and wind erosion. Recent studies indicate that a forested buffer of 263 feet (80 meters) will substantially reduce phosphorus and nitrogen loadings to receiving waters. The curtailment of such loadings is a major policy in the Critical Area criteria. Vegetation sited near streams and other aquatic areas is very important. The removal of vegetative buffers along aquatic sources will cause several detrimental effects. The removal of the vegetation will increase the rate of erosion and nutrient runoff to the wetland and water areas. The decrease in shade on the water will cause elevations in light availability and water temperatures. This results in a reduction in the stream's ability to hold oxygen and subsequently permits a greater release of nutrients from sediment particles. These larger releases of nutrients will spark an increase in the number of algae blooms. A decrease in the quality of both the water and the biotic community is the outcome from removing or destroying vegetative buffers. The use of plants, bushes, shrubs, and trees in urban areas is encouraged to filter nutrient runoff and to reduce the rate of runoff from hard impervious surfaces.

### **Objectives**

The following policies or objectives are established for the Forest and Woodland element of the Town Local Program:

- 1) to maintain or increase the areal extent of forested vegetation in the Town of St. Michaels Critical Area;
- 2) to conserve forest and developed woodlands and to provide for the expansion of forested areas (this particular objective is not unlike the first--the two working together assure that the total landcover and woodland or forest cover within the Town of St. Michaels Critical Area

results in a net increase over time);

- 3) to minimize and, where appropriate, mitigate the removal of trees by development (while this policy is enumerated in the forest and woodland protection section of the criteria, the means by which it is achieved or implemented is more specifically discussed in association with those chapters of the criteria which relate to development activities--the forest and woodland cutting associated with development activities; and
- 4) to recognize forest and a protective land use and to manage forests in a manner beneficial for plant and wildlife habitat.

#### **Existing Resource Programs that Address Forest and Woodland Protection**

The following is a list of existing programs that address protection of forests and developed woodlands within the Critical Area:

#### **Federal Programs**

- Forestry Incentives Program (FIP) - A federal cost-share program which pays for reforestation, afforestation, and timber stand improvement. It is administered by the Agricultural Stabilization and Conservation Service (ASCS).
- Agricultural Conservation Program (ACP) - Same as FIP but it has a different acreage minimum.
- Conservation Reserve Program (CRP) - Provides cost sharing and offers annual payments for 10 years if a farmer will withdraw highly erodible land from production.
- Federal income tax credits for reforestation.

#### **Maryland State Programs**

- Maryland Seed Tree Law - Requires replanting of loblolly, shortleaf, and pond pine trees from recently harvested areas.
- Erosion and Sediment Control Plan - Required for all harvests of areas exceeding 5,000 square feet of disturbed area, or which cross any perennial or intermittent water-course with a drainage area exceeding 400 acres (100 acres for designated trout streams).
- Maryland Reforestation and Timber Stand Improvement Tax Deduction - State offers income tax modifications for those landowners who replant trees on recently harvested areas and participate in timber stand improvement practices (10-500 acres eligibility requirement).

- Reforestation and Timber Stand Improvement Cost Sharing - State offers cost sharing for those landowners who replant trees on recently harvested areas and participate in timber stand improvement practices.
- Woodlands Incentives Programs (WIP) - A State cost-share program which pays for reforestation, afforestation, and timber stand improvement. It is administered by the Maryland Forest, Park, and Wildlife Service.
- State Nursery - State-owned nursery where trees can be purchased at cost for conservation purposes (i.e., tree-planting on recently harvested areas and for wind break, wildlife habitat, and erosion control).
- State Cooperative Forestry Program - Professional foresters meet with landowners upon request (free of charge) to give advice and assistance on how to best manage their property.
- Forest Conservation and Management Program - The assessed value of forest land (five or more contiguous acres) can be frozen for a minimum of 15 years (for tax purposes) if the landowner follows an approved forest management plan.
- State Cost Sharing Program for Urban Projects - Cost sharing for urban projects located near the Chesapeake Bay which carry out best management practices to prevent erosion, runoff, and sedimentation.
- Maryland Environmental Trust - The Trust actively encourages landowners to donate "scenic" or conservation easements for tax advantages.
- State-Owned Lands - DNR is involved in forest conservation via its resource management role.
- Bay Watershed Foresters - State has foresters specifically assigned to help with forest planning and management within the Chesapeake Bay Critical Area.

#### **Resource Management Recommendations**

Removal of existing forest or woodland acres in the buffer is prohibited. Up to twenty percent of forest or woodland cover may be disturbed in other portions of the Critical Area in LDAs and RCAs, but must be replanted at a one for one ratio. Disturbance or removal over twenty percent and up to thirty percent must be replaced on the site at a ratio of one and a half times the acreage disturbed. These provisions should be incorporated into the St. Michaels Zoning Ordinance under site design requirements.

In case where replacement of existing forest or woodlands cannot be accomplished on the site, the developer may be permitted to provide mitigation at another site in the same watershed. The Town will establish offset provisions in their ordinances. Such offsets may be targeted to public properties in the Critical Area or may be established as a fee in lieu system where any fees collected are used to improve

water quality or wildlife habitat.

For achieving the objectives outlined by the Commission's criteria, local jurisdictions are required to develop a Forest Preservation Plan. To accomplish this, the plan must first identify and designate all forests and developed woodlands within the Critical Area which are one acre or larger in size. Moreover, forested areas, which include habitat Protection Areas (see the Habitat Protection Area Section of this plan), must also be identified. After the identifying of these two specific types of woodlands, the plan must generate policies through which forest cover can be maintained or increased in the overall land designated as Critical Area by the State. Incentive programs for conserving forestland, or for converting other uses to a forested condition, are emphasized. In addition to preparing the aforementioned forest preservation plan, any timber harvesting activities within the Critical Area which involve one acre of timber harvesting activities within the Critical Area which involve one acre of timber must be conducted under a Forest Management Plan. The criteria requires that such plans be prepared by a registered professional forester and be subject to review by the Maryland Forest and Wildlife Service, through the local district forestry board. The preparation of plans is an owner's or forester's responsibility and while reviews are conducted by the Maryland Forest, Park and Wildlife Service, these plans must be filed with the proper local jurisdiction. Emphasis should also be placed on the development of forest management measures that will protect habitat areas and protect water quality. Finally, sediment control plans are required for timber harvests when the area of disturbance is greater than five-thousand square feet. Local jurisdiction implementation of forest management plans is primarily process-oriented and so the Town will establish a system for notifying landowners of the requirements for forest management and sediment control plans. It must also designate a local agency to act as a repository for forest management plans as they are prepared and filed. That agency, with responsibility within the local jurisdiction for implementing the forest preservation plan, should also have a basis for determining whether or not the community is taking adequate steps to implement preservation plan components. While an inventory can be accomplished through mapping, the means by which incentives can be created range from land development guidelines, through zoning and land sub-division regulatory standards, to financial incentives for forest creation in the Critical Area. The actual range and selection of the particular types of incentives is a decision to be made by the Town.

Afforestation, the new planting of trees on non-forested land, and reforestation, the renewing of forest cover by the planting of seeds of young trees are the most cost effective means of achieving the water quality and habitat protection goals of the Critical Area Program. The emphasis will be on the development of an effective urban forestry program within the Critical Area. The following goals have been established as the policy of the Town of St. Michaels towards protecting and developing its woodland resources and establish both the objectives and management recommendations which constitute the Town's forest Preservation and Management Plan.

- ° Maintain and increase the forested vegetation of the Critical Area.
- ° Conserve forests, developed woodlands and urban vegetation and provide for expansion of forested areas.

- Provide that the removal of trees associated with development activities shall be minimized and, where appropriate, shall be mitigated.
- Recognize that forests are a protective land use and must be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation and other resources can be maintained, recognizing that, in some cases, these uses may be competing.

#### **Management Recommendations**

The following management recommendations are designed to implement the goals and requirements of the criteria:

- Implement Buffer offsetting requirements to maintain equal area forest cover in the Critical Area;
- Establish planting standards and requirements as part of a mitigation manual to guide the Planning Commission in selection of plant species.
- Include plant species with wildlife food values in recommended planting lists (see Mitigation Manual).
- Solicit comments of the Bay Forester in the review of planting plans.
- Enhance public awareness of the value of urban forestry through distribution of various education publications through the Town Office (e.g., "Trees for a Cleaner Bay").

## **SECTION V. AGRICULTURE**

### **Introduction**

The Critical Areas Law, Section 8-1801, Declaration of Public Policy states the findings and declarations of the General Assembly. Section 8-1801 (a)(1) reads as follows:

"National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxic substances in the Bay System and declines in more protective land uses such as forest and agricultural land in the Bay region."

Accordingly the goals of the Critical Areas Commission are to preserve existing agricultural lands in the Critical Area while at the same time providing for the management of agricultural lands so as to minimize non-point source pollution from these lands and to conserve natural habitats. The Chesapeake Bay Critical Areas Criteria, which are intended to implement the Critical Areas Law, require that each local jurisdiction prepare an agricultural protection plan that accomplishes these goals.

The criteria imposed three specific requirements with respect to agriculture in the Critical Area which are noteworthy for purposes of development of this element of the Town's Local Program which are: 1) identify agricultural lands in the Critical Area and establish programs designed to maintain these lands in agricultural use; 2) assure that farm lands in the Critical Areas are managed pursuant to soil conservation water quality plans and that best management practices are used and implemented on each farm in the Critical Area, and; 3) establish specific provisions for farming that assure water quality is protected and that fish, plant and wildlife habitats are conserved. These three basic requirements in summary are those which constitute a framework for preparation of the Agriculture Protection Plan component of the Town's local program.

The specific implementation measures to be included in the local program are as follows:

1. Establishment of a minimum 25 foot vegetated buffer strip landward from tidal waters, tidal wetlands and tributary streams.
2. Creation of new farmland cannot involve: a) diking, draining or filling of non-tidal wetlands; b) clearing of forests or woodlands on soils with slopes 15 percent or greater or soils with a slope greater than five percent which also has a "K" value of greater than 0.35; c) clearing of existing natural vegetation in the Buffer (100 feet from the shorefront) and; d) clearing land that would adversely affect or destroy Habitat Protection Areas.
3. Require that within five years of criteria approval, all farms in the Critical Area have in place and are implementing up-to-date Soil and Water Quality Plans.

"Agriculture" is defined by the Criteria (COMAR 14.15.06.01) as all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

### Description of Existing Agriculture Protection Programs

This section contains an overview of local state and federal programs and legislation which affects agriculture protection, particularly programs which provide funding and other assistance for implementation of soil and water conservation measures.

#### Federal Programs

The following briefly describe programs offered by the Soil Conservation Service which are designed to improve management of agricultural lands and reduce soil loss and avoid adverse water quality impacts as a result of agriculture practices.

#### Agricultural Conservation Program (ACP)

The Agricultural Conservation Program emphasizes enduring conservation practices to solve soil, water, and related resource problems through cost sharing and the exchange of technical information.

Soil saving practices which qualify for ACP assistance include: establishing terraces on land with steep slopes, plantings to anchor soils, installing sod waterways and structures to divert runoff and adopting other measures to conserve water, control erosion and reduce pollution on agricultural land.

The ACP also provides assistance in establishing and improving timber stands with owners of small woodland tracts to reduce soil erosion, conserve water, improve wildlife habitat and develop timber resources.

#### Emergency Conservation Program (ECP)

This program provides emergency assistance to farmers and ranchers for sharing the costs of restoring farmland, which is seriously damaged by natural disasters, to productive use. The ECP also implements emergency water conservation measures during severe drought periods. Assistance is only available to help solve new conservation problems caused by natural disasters, conservation problems existing prior to the disaster are not eligible for ECP assistance.

#### Rural Clean Water Program

This program aims to prevent or reduce the amount of non point agricultural pollutants from entering streams and lakes. These pollutants include: sediment, chemicals and livestock wastes.

Assistance is long term financial aid and technical assistance to owners and operators of privately held agricultural land in selected project areas who install and maintain Best Management Practices to control critical water quality problems in the area. The ASCS administers the program while the SCS helps in the preparation and application of water quality plans.

#### Conservation Reserve Program

This is a voluntary land retirement program designed to help reduce erosion through the retiring of highly erodible marginal cropland. This in turn will help increase wildlife habitat, improve water quality.

This program is a cost sharing program with 50% of the eligible costs available from the local ASCS office. Land is deemed eligible if it is highly erodible, cultivated annually for at least two out of the last five years and it is still available for crop production. Landowners will make bids for annual rental payments and lands will be then be selected. Contracts for selected lands are for ten years.

Lands selected for the program must be protected from erosion by the establishment of a tree stand or permanent vegetative cover. This cover or stand cannot be harvested or grazed during the contract period.

#### Forestry Incentive Program (FIP)

The Forestry Incentive Program is aimed at producing timber from forested lands. These forested lands provide shelter for wildlife, conserve water, prevent soil erosion and enhance the environment.

Federal and State agencies share the costs of tree planting and timber stand improvement with private landowners who are unable to commit themselves to the long-term investment required to develop woodlands.

#### Water Bank Program

This program is designed to maintain, improve and preserve inland fresh water and adjacent areas in important migratory waterfowl nesting, breeding and feeding areas. It serves in these marshes and wetlands to enhance the migratory waterfowl and other wildlife habitats, and to control soil erosion, prevent floods and improve water quality.

Eligible lands include privately owned inland wetlands suitable for the breeding, nesting and feeding of migratory waterfowl. Adjacent privately owned lands which are needed to protect the wetlands or are essential to carrying out the purposes of this program are also eligible.

Landowners receive annual payments for conserving and protecting the wetlands from drainage, filling or other practices destroying the character of the wetlands.

Funding is in the form of cost sharing which is administered through the ASCS. The SCS provides technical assistance in preparing a conservation plan for the landowner in wetland or waterfowl areas.

## 1985 Farm Bill

### Conservation Compliance Provision

The conservation compliance provision discourages the production of crops on highly erodible cropland where the land is not adequately protected from erosion. If crops are produced on lands without approved conservation systems, the eligibility for certain USDA program benefits is lost. Conservation compliance applies to land where annually tilled crops were grown at least once during the 1981-1985 period, and will apply to all highly erodible land in annual crop production by 1990. If lands qualify as highly erodible, several options are available. These include: 1. Develop and apply a conservation plan on the highly erodible lands, in cooperation with SCS. This retains eligibility for USDA farm program benefits. 2. Plant permanent vegetative or wildlife cover, or consider entering the Conservation Reserve. Cost sharing of up to 50%, with the ASCS, can be used to establish this vegetative cover on the erodible lands. Annual rental payments up to ten years will be made as long as the terms and conditions of the contract are met.

### Sodbuster

This provision is aimed at discouraging the conversion of highly erodible land for agricultural production. This provision applies to highly erodible land not planted to annually tilled crops during the 1981-1985 period.

### Agriculture In St. Michaels

By definition there is what can be considered limited agriculture land use within the corporate limits of St. Michaels. In addition there are several farm fields included in areas which the Town expects to annex. It is possible that agriculture activities will continue on these sites, hence the Town needs to establish an agriculture protection element in their local program.

### Agriculture Protection Policies

The Town of St. Michaels will pursue the following policies for the protection of agriculture lands in the Critical Areas:

Preserve existing agricultural land in the critical area where appropriate.

Insure that agricultural lands are managed to minimize non-point source pollution.

Conserve natural habitats occurring on agriculture lands in the Critical Area.

The objectives of the St. Michaels Agriculture Protection Plan are:

Within five years, have Soil Conservation and Water Quality Plans and associated Best Management Practices in place or being implemented on all farms in the Critical Areas to the extent possible.

For those farms not currently implementing Soil Conservation and Water Quality Plans and associated Best Management Practices and not already having a twenty-five foot buffer strip landward of tidal waters, tidal wetlands and tributary streams require that a twenty-five (25) foot vegetated filter strip be maintained until such time as the landowner is implementing an approved program of Best Management Practices.

Minimize creation of new agriculture land which results in a loss of nontidal wetlands, forests and woodlands, and on highly erodible soils.

Prohibit the removal of topsoil in the Critical Area for other than permitted mineral resource extraction operations.

Cooperate with Agriculture agencies in establishing educational and information programs to inform landowners of:

**Critical Area Requirements.**

**Forest Management Plans for timber harvesting on farms.**

**Establish appropriate regulations, procedures, and guidance to insure conservation of Habitat Areas on farms.**

#### **Resource Management Recommendations**

The Soil Conservation District will undoubtedly take a primary lead in the implementation of the Critical Area Criteria as they relate to agriculture activities. St. Michaels should insure that all agriculture activities conducted within the Town are done using the Best Management Practices established by the Soil Conservation Service by requiring any development that proposes maintaining agriculture uses in any portion of a site first commit to preparing a Farm Plan in cooperation with the local Soil Conservation District. In addition, the Town should either insure that forest management plans are required on any agriculture lands when timber harvesting occurs or prohibit timber harvesting in the Town. The former will meet the letter of the Criteria, but the latter will be more beneficial to the Town,

## **SECTION VI. SURFACE MINING**

The Critical Area Program's Criteria for surface mining, although less specific than the criteria guiding development or forest and woodland protection within the Critical Area, are nonetheless clearly important. Extensive deposits of sand, gravel and quarry rock, portions of which are within the Critical Area, are found in many of the State's local jurisdictions.

### **Goals and Objectives**

In establishing local programs the objectives of the Critical Area Commission are two-fold and assure that:

- 1) mining operations presently conducted in the Critical Area are managed in a manner that permits site reclamation at a later date; and
- 2) every effort is made to protect Critical Area aqua-resources from siltation, sedimentation, turbidity, chemical spillage and any other present or potential detriments associated with surface mining operations.

The Critical Area criteria note that, in general, surface mining operations are regulated under State of Maryland surface mining legislation. However, the thrust of the criteria is designed to maintain land areas underlain with mineral resources as undeveloped so that they may remain available for future extraction. The criteria were also generated to make local jurisdiction programs aware that improperly managed sand and gravel mining operations can have an adverse impact on water quality. It is the persistent aim of the Critical Area Commission to curtail the loading of sediments which jeopardize aquatic resources. To accomplish the aforestated policies, the Critical Areas Program criteria first require that the Town of St. Michaels take an inventory of, and map, known resource deposits.

### **Implementation Recommendation**

No significant deposits of mineral resources were identified within the Town of St. Michaels. In addition, there are currently no surface mining activities occurring within the corporate boundary. Accordingly, it is recommended that the Town make no provision for permitting surface mining within the Critical Area.

## **SECTION VII. NATURAL PARKS**

As defined in the Criteria's "General Provisions", natural parks "means areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions." It may be that the greenery, space and light of park areas will do more to instill concern for the Bay than any direct classroom methods. In establishing natural parks, maximizing visitation should not be a priority--rather, a park should be a place with significant, well cared for features that provide an unforgettable experience.

### **Requirements**

The Town of St. Michaels is required to:

- 1) identify likely sites where Natural Parks might be established within the Critical Area, and
- 2) consider conserving the biological and geological resources of areas which exemplify coastal ecosystems.

### **Implementation Recommendations**

There are no known areas within the Town of St. Michaels which exhibit the characteristics of a natural park (e.g. diverse biological communities). Due to the developed nature of the town, little opportunity exists for establishing natural parks, therefore the Town need not include special provisions for natural parks in their Local Program. However, natural plant communities, particularly those located adjacent to tidal and non-tidal wetlands on the undeveloped portions of Perry Cabin and along San Domingo Creek, should be afforded protection through the development process. Such areas provide clear water quality and habitat benefits to adjacent Bay tributaries. Absent sites which have natural park characteristics, efforts to limit development disturbances in these areas provide real opportunities for the town to contribute to water quality protection efforts in the Critical Area.

### **Management Recommendations**

Specifications for local jurisdictions are established in 14.15.08.03 A of the Chesapeake Bay Critical Area Commission Criteria. Thus, the Town of St. Michaels is required to identify areas within its Critical Area where natural parks could be established. The Town of St. Michaels, should consider conserving areas featuring natural habitat that provide opportunities for those recreation activities that are compatible with the maintenance of natural conditions. Conservation of natural parks areas may be accomplished through acquisitions, easements designation, or other appropriate means. Biological necessity rather than administrative convenience should form the basis for designating park boundaries. Moreover, parks should not be chosen to preserve only natural curiosities; they should be planned to include examples of coastal ecosystems that are found within the jurisdiction, each with its geological and biological resources intact.

For future proposed natural parks specific and appropriate management recommendations should be developed with the assistance of the Maryland forest,

Park, and Wildlife Service. The following limiting considerations should be incorporated in the preparation of any Natural Park plan.

1. Limit the activities to passive recreation such as hiking picnicking or fishing. Consider closing the park entirely during the breeding season of certain species (if necessary)
2. Limit the structures that may be built in the park to reduce the impact to sensitive resources. Structures should be limited to: trails, observation blinds, catwalks, rainshelters, rest stops, instructional pavilions, maintenance offices, and maintenance equipment storage sheds.
3. Limit park use during times when ground cover is sensitive (i.e., after a heavy rain, a flood or at the beginning of spring when vegetation is just recovering from winter dormancy).

## **SECTION VIII. HABITAT PROTECTION PROGRAM**

### **Introduction**

Addressing and planning for the conservation of the natural environment is a main point of focus for St. Michaels Critical Area program. Perhaps no one portion of a local jurisdiction's Critical Area plan goes into more detail, or is more significant, than that involving measures for "Habitat Protection". This section is an essential component in both the stated goals of Maryland's Critical Area Program and the legislated provisions of the Criteria. Furthermore, habitat protection is fundamental to the local aims and policies of the Town of St. Michaels for aiding the threatened Chesapeake Bay. As the Town establishes its requirements for the conservation of fish, plant and wildlife habitat, it is in effect safeguarding, and in some instances enhancing, the Chesapeake's fragile water quality. It should be pointed out that the areas in the Town of St. Michaels which are targeted for habitat protection measures are those which have habitat features of local, Statewide, or national significance.

Part E.(4) of the "Directives for Local Program Development" criteria [14.15.10.01], under Maryland's Critical Area Law, require that local program documents, like that for the Town of St. Michaels, "shall, if applicable, include, but not be limited to: A habitat protection area plan...." There are no rigid State standards for generating the Town's habitat plan--however, at the very least, the following elements are required:

- 1) Buffer management and protection guidelines;
- 2) A non-tidal wetland protection program;
- 3) Threatened or endangered species and species in need of conservation protection regulations;
- 4) A plant and wildlife protection program;
- 5) Anadromous fish spawning areas regulations;
- 6) Documentation of cooperation with adjacent jurisdictions and, where appropriate, joint protection measures established;
- 7) Documentation that the Town has habitat protection guidelines which cover grandfathered developments as fully as possible, and;
- 8) Documentation that habitat protection measures are indeed incorporated into the Town of St. Michaels's process for considering and approving proposed development.

Of the minimum elements aforesaid, the first five are the most important because they are called for and defined by the "Habitat Protection Areas in the Critical Area" section [14.15.09] of the State's Critical Area law. Each component will be briefly outlined in the text to follow.

## **THE BUFFER**

Buffers are utilized to maintain a transitional habitat zone between aquatic and upland communities. They are essential to water quality because they filter the pollutant loadings in land runoff. Not only are buffers pleasing to the eye, they afford protection to many species of fish and wildlife. Vegetative strips keep turbidity levels down in streams and wetlands. Since buffer screens offer so many beneficial spin-offs, and because they are essential to habitat protection efforts, the State of Maryland's Critical Area Commission has mandated their establishment.

As defined in the Criteria's "General Provisions", a buffer "means a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made disturbances." The Critical Area Criteria, as they affect the Town of St. Michaels, generally require the establishment of a naturally vegetated or planted buffer, established landward from the Mean High Water Line of tidal waters (or from the edge of tidal wetlands or tributary streams), having a width of no less than one hundred (100) feet. However, "The Buffer", must encompass adjacent hydric or highly-erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. The Buffer usually comprises approximately ten percent of a municipality's Critical Area acreage. In the case of St. Michaels, the Buffer takes up roughly 32 acres of land within the corporate limits.

Structures, roads, parking areas, impervious surfaces, mineral extraction operations and septic systems are not allowed in The Buffer. Although some minor alterations of The Buffer are allowed, substantial alterations are prohibited. The Town of St. Michaels may request exemption from the Buffer requirements if it can achieve habitat protection and water quality aims in some other efficient fashion.

Only under certain circumstances are other purposes for cutting down trees allowed. When cleared trees are to be replaced, cutting for personal use may be allowed. A tree may be felled if it has the potential to block up a stream or cause damage to dwellings. If a stand of trees can be made healthier by thinning, cutting is then permitted. Also, if access to private piers needs to be gained, permission to cut within the Buffer may be obtained. In some instances there may be special mitigation requirements. Very often the recommendations of the State Bay Watershed Forester may provide an acceptable basis for limited cutting in forested areas.

### **Goals**

The following goals relate to the establishment of the Buffer:

Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in run-off entering the Bay and its tributaries;

Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;

Maintain an area of transitional habitat between aquatic and upland communities;

Maintain the natural environment of streams; and

Protect riparian wildlife habitat.

Provide for the enhancement of natural and urban vegetation in the buffer in Town-owned property;

Preserve the existing natural buffer on Town-owned property;

### **Objectives**

Objectives have been established to implement the above stated water quality and habitat protection goals for managing the Buffer Zone. The following objectives include but are not limited to the objectives which can be distilled from the Criteria of the State Critical Area Program.

The Town will establish a minimum 100 foot Buffer landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands.

The Town will expand the Buffer beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils whose development or disturbance may impact streams, wetlands, or other aquatic environments.

New development activities, including structures, roads, parking areas and other impervious surfaces will not be permitted in the Buffer, except for those necessarily associated with water-dependent facilities, as set forth in the Water-dependent Facilities element of this chapter.

The Buffer will be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize, or enhance the shoreline.

Agricultural activities will be permitted in the Buffer, if the requirements stated in the State's rules and regulations (COMAR 14.15.09.01.C(4)) are strictly followed.

The cutting or clearing of trees within the Buffer shall be prohibited unless the provisions set forth in COMAR 14.15.09.01.C(5) are strictly followed and the State Bay Watershed Forester has approved the site plan. (See the Forest and Woodland Element in this Chapter)

The Town will request an exemption of certain portions of the Buffer and under certain conditions where it has sufficiently demonstrated that the December 1985 pattern of residential, industrial, commercial or recreational development in the Critical Area prevents the buffer from fulfilling its intended functions.

When exemptions are approved, compensatory measures will be required to ensure that the water quality and habitat protection goals are met when development or redevelopment occurs.

### **Establishment of the Buffer**

The Town has established a Buffer zone pursuant to COMAR 14.15.09 to generally protect habitat areas and accomplish the above stated objectives (see Critical Areas Map). The Buffer delineation extends landward from the mean high water line of tidal waters (or from the edge of tidal wetlands or tributary streams), having a width of no less than one hundred (100) feet and is shown on Map 1, Appendix 6. According to State criteria the Buffer has been expanded to include contiguous sensitive areas (see Appendix III for specifics of mapping methodology).

### **Buffer Management Recommendations**

The management strategies in this section have been developed to implement the above stated objectives. To achieve this task, the planned actions will employ the following techniques: (1) modifying the site plan review and approval processes; (2) amending existing ordinances; (3) adding new sections to ordinances; and (4) adopting new programs.

### **Zoning Ordinance Amendments**

The Town's Zoning Ordinance offers the best opportunity to regulate development activities within the Buffer. To formalize the establishment of the Buffer, the area will be part of an overlay zone which will be superimposed over the existing zoning districts with its own set of unique regulations. The encroachment into the 100 foot buffer which is the rule along the intensely developed waterfront, indicates a need for some flexibility in accommodating pre-existing conditions. These conditions are addressed through exemption and variance provision. The Buffer has unique site requirements; consequently, separate site plan requirements will be needed. The modifications listed below are needed to protect the Buffer and provide the legal framework for managing the Buffer (See Chapter 3 for a detailed description of Zoning Amendments):

Exclude as a permitted use all water polluting activities within the Buffer Zone. (For example use and storage of vehicles and machinery and fuel storage)

Provide for exemptions for development actions with insignificant impact on the Buffer.

Include criteria in the Zoning Ordinance to determine development guidelines for the review of site plans to determine whether development has insignificant or significant impact on the Buffer.

Develop a site plan checklist for significant development.

Include provisions that require clustering of development activities out of the Buffer Zone.

Exclude as permitted uses from the Buffer all development with the exception of those activities defined as having insignificant impact or defined as water dependent.

Include site plan requirements for development with significant impacts on the Buffer. Site plans will include but are not limited to the following requirements:

- The identification of all Habitat Protection Areas;
- Delineation of the Buffer including Mean High Water and tidal wetlands;
- Area of the site within the Buffer;
- Average slope of the land to the watercourse;
- Characterization of vegetation in the Buffer including species composition, density of vegetation, and the dominant specie in the understory;
- Location of submerged aquatic vegetation adjacent to the Buffer;
- Location of existing or proposed site improvements including storm drains, culverts and retaining walls;
- Planned disturbance to existing vegetation including cutting methods and computation of lost vegetative buffer;
- Methods for re-vegetation of the Buffer or offsetting impacts on the Buffer.

#### Buffer Exemption Areas

The Town is requesting a Buffer exemption for certain parts of the shoreline which meet the conditions for exemption described in COMAR 14.15.09.01 C.(8). These are called Buffer Exemption Areas and are shown on the Land Use Map in Appendix 6. In such areas, the existing pattern of residential, industrial, commercial or recreation development prevents the Buffer from fulfilling the water quality and habitat protection objectives set forth in COMAR 14.15.09.01. B. In lieu of the Buffer requirements, the Town proposed the following program for the Exemption Areas. First, these areas are defined as those otherwise within the designated Buffer described above which are largely or totally developed or that include undeveloped lots of record, the development of which is grandfathered under the provisions of COMAR 14.15.02.07 and the provisions of the Town program. Second, a set of rules is set forth for development and redevelopment to minimize the extent of impervious surfaces created by such development. Third, an offsetting program is established where by the adverse effects of any new impervious surfaces created are mitigated. Finally, a public information and education program is established to create awareness and understanding of the Town's Critical Area Program and to initiate

projects that would further its implementation. Specific language providing for the Buffer Exemption Area is contained in Element A: Zoning Ordinance Amendments (in Chapter Three).

## NON-TIDAL WETLANDS

As explained in the "General Provisions" of the Criteria, non-tidal wetlands are "those lands in the Critical Area...where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season." Furthermore, these lands have one or both of the following features: "(a) At least periodically, the lands support predominately hydrophytic vegetation; (b) The substrate is predominantly undrained hydric soils."

Four major classes of non-tidal wetlands have been identified for the State of Maryland. They are:

1. Aquatic Bed (AM)
2. Emergent (EM)
3. Scrub/Scrub (SS)
4. Forested (FO)

The non-tidal wetlands listed above characteristically have either high levels of groundwater or soils that are saturated. The plants indigenous to these wetlands prefer dampness and are adapted to conditions of periodic flooding.

Non-tidal wetlands are natural stewards, instrumental in the storage and channelization of waters from floods. Their deep root systems prevent streambanks from eroding, filter out pollutants, and provide a buffer that keeps upland silt out of lowland water. Non-tidal wetland plants offer nesting areas, shelter and natural crops to wildlife. For hunters and anglers, wetland vegetation provides natural structure around which waterfowl, game and fish tend to cluster. In compliance with the State's Criteria, the Town of St. Michaels must identify, and establish protection measures for, those certain types of palustrine non-tidal wetlands which help to preserve both water quality and fish and wildlife habitat ("palustrine" is a term that covers freshwater and low-salinity wetlands that contain trees, shrubs, emergent plants or lichens). The Critical Area law addresses but four of the eight classes of palustrine wetlands. Table 1 outlines these four non-tidal wetland types that the Town of St. Michaels is mandated to identify and protect. The Town may also be required to protect any non-tidal wetland that is designated to be of special

**TABLE I**  
**NON-TIDAL WETLAND TYPES**  
**AFFORDED PROTECTION IN THE**  
**CRITICAL AREA**

Ecological System	Palustrine
Class	Aquatic Bed (AM)
Class	Emergent (EM)
Class	Scrub/Shrub (SS)
Class	Forested (FO)

significance by State or federal authorities.

The Criteria require that, at least, a twenty-five foot wide vegetative strip is to be established around a wetland within which new development is not permissible. This buffer should, when practicable, be kept natural. Also, land disturbances around designated palustrine wetlands are to be minimized so that the hydrologic regime can be protected. The Town of St. Michaels should require an applicant for a development project in those watersheds to determine that the proposed activity will not impair an off-site wetland.

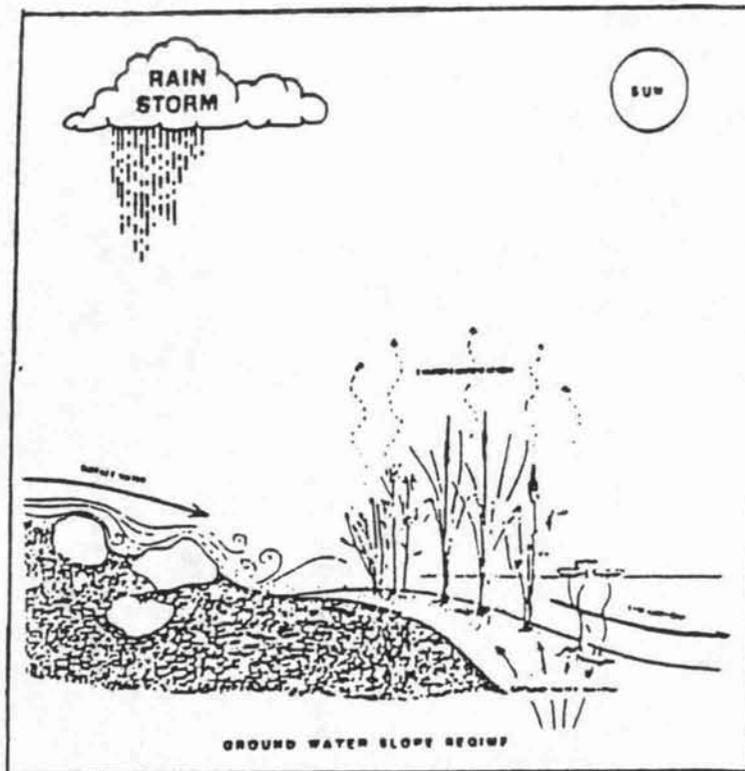
Alteration of non-tidal wetlands located within the Buffer are prohibited but, under certain circumstances, changes to wetlands outside the Buffer may be permitted. These changes may be permitted where it can be demonstrated that the impact are necessary and unavoidable, or of substantial economic benefit.

To understand non-tidal wetlands and their importance, and to comprehend Critical Area legislation, it is essential to have a working command of the related scientific terminology. A handy way of grasping and remembering the significance of non-tidal wetlands is to study the three H's--namely, "hydrologic regime", "hydric soils", and "hydrophytic vegetation".

**Hydrologic Regime**

The non-tidal wetlands section of the Critical Area criteria calls for the protection of the hydrologic regime. What exactly is the hydrologic regime? When speaking of non-tidal areas, the hydrologic regime refers to the quality, quantity, movement and presence of water in individual wetlands, in wetland complexes and in drainage basins containing wetlands. In other words, the hydrologic regime of a given non-tidal wetland area is the status quo of the water as it gathers and disperses locally during its mysterious, perpetual, large-scale circuit between the earth and the atmosphere. A non-tidal wetland hydrologic regime is a function of numerous factors, including: (see Figure 2)

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BASIC HYDROLOGIC REGIME TYPES FOR NON-TIDAL WETLANDS

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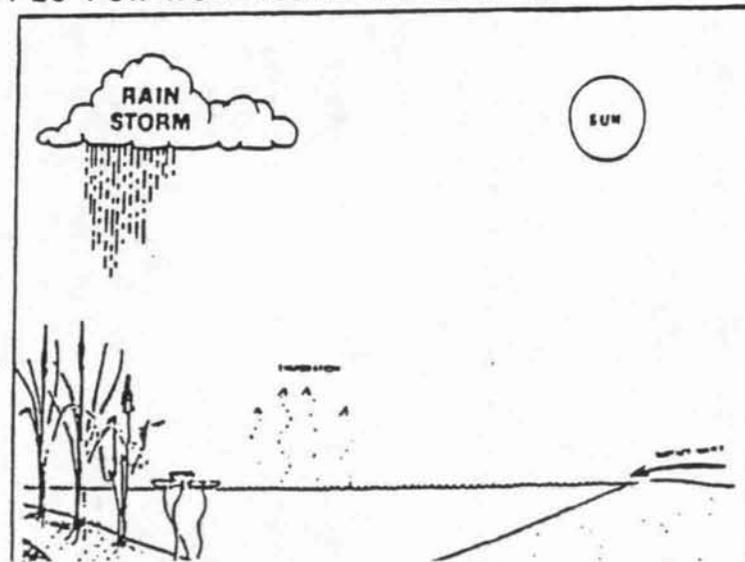
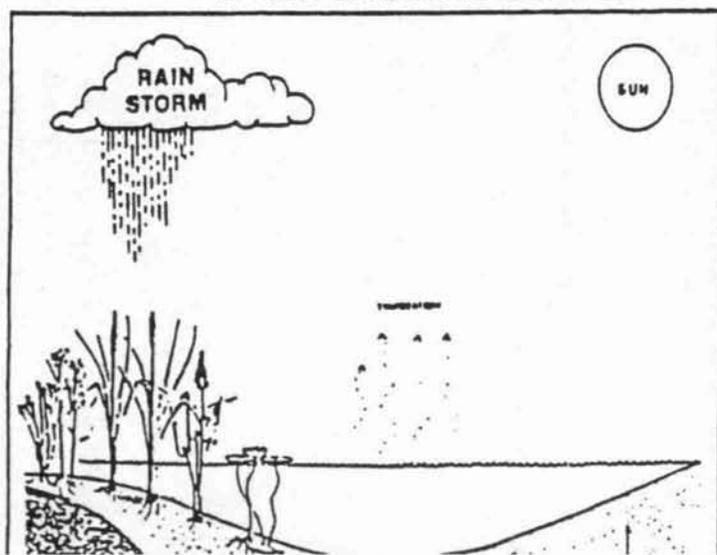


FIGURE 11-2

1. the presence of underlying aquifers
2. the water table
3. the permeability of the soil
4. flooding
5. stream flow
6. precipitation
7. evaporation
8. topographical features (such as slopes or depressions)
9. vegetation and evapotranspiration
10. surface water and ground water inflow

An assessment of the hydrologic regime of a non-tidal wetland depends on many variables. At best, a hydrologic evaluation is a local update on a broad, paradoxical process--one that is predictably cyclic and at the same time unpredictably erratic. However, a significant preliminary sketch of the hydrologic regime of a non-tidal wetland can be made by merely comparing the wetland's prevailing source of water against its prevailing topographical features. Figure 3, shows the four basic hydrologic regime possibilities. It should be noted that, although water source and topography will be dominant considerations in any hydrologic assessment, the prevailing vegetation at a wetland site is extremely important to water movement and quality.

The Chesapeake Bay Critical Area Commission has mandated that the Town of St. Michaels must protect the hydrologic regime of its non-tidal wetlands. The reason for this specific legislation is because the health of the Chesapeake depends on the quality of the water flowing into it. To correct the Bay's problems it is essential to start with the non-tidal wetlands which filter upland sediment and pollutant loadings. If we protect or enhance the hydrologic regime of the non-tidal wetlands we are indirectly, but most effectively, helping to purify waters entering the Bay.

#### Hydric Soils

In non-tidal wetland areas the substrate is predominately un-drained hydric soils. As defined in the "General Provisions" of the Critical Area criteria soils typed as hydric "are wet frequently enough to periodically produce anaerobic [oxygen-absent] conditions, thereby influencing the species composition or growth, or both, of plants on those soils."

That non-tidal wetland soils have oxygen-reduced conditions is a plus rather than a minus. Because organic matter imported into a non-tidal wetland (as well as the organic matter already present) is decomposed slowly by anaerobic rather than by

FIGURE II-3

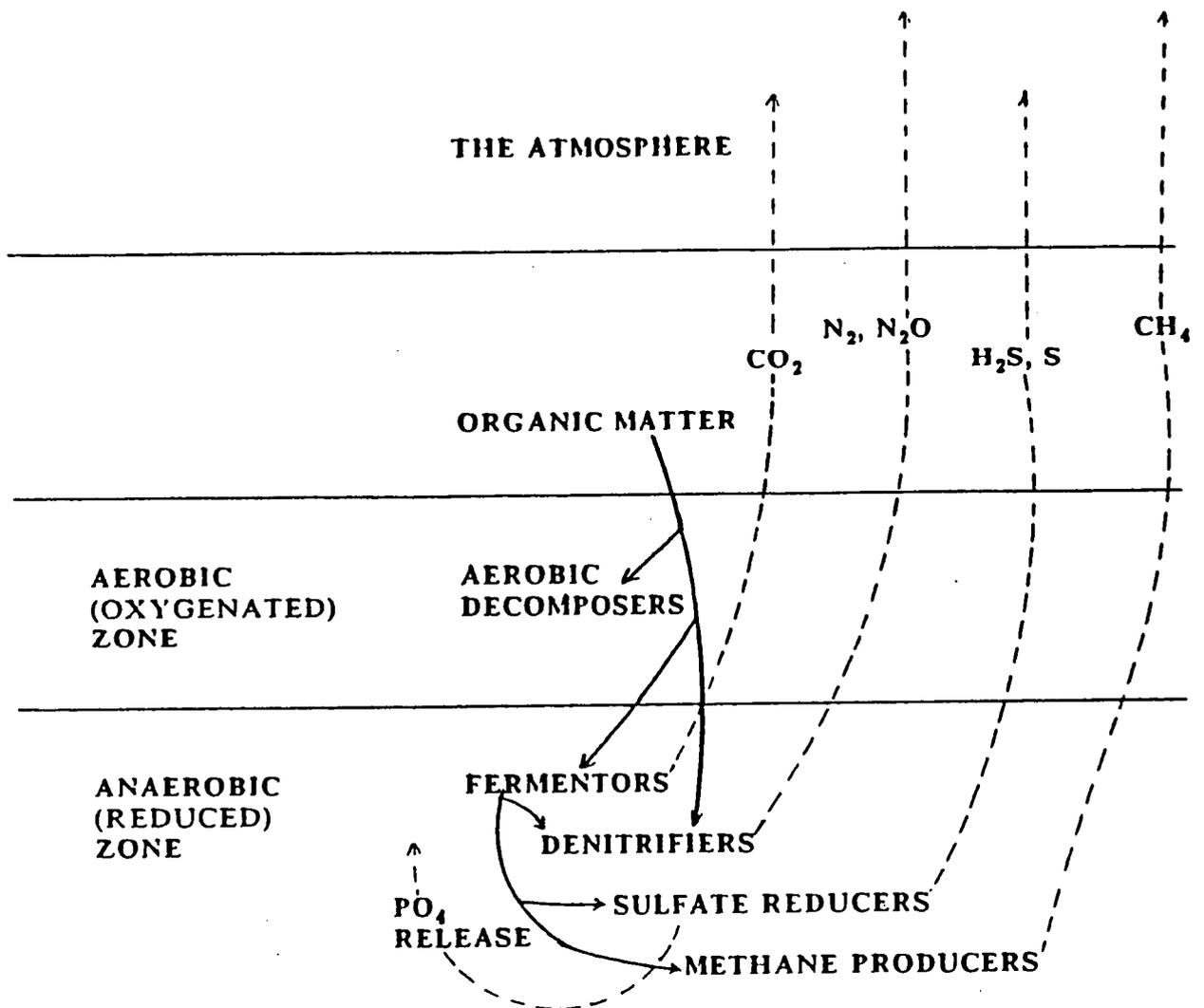


Figure [     ]. Microbial decomposition and recycling in wetland soils. The four major anaerobic decomposers gasify carbon, nitrogen and sulfur. Phosphate is also converted from insoluble sulfide forms to soluble forms that are again available to plants and other organisms.

Source: Eugene P. Odum, from the Proceedings of the National Symposium on Wetlands.

aerobic organisms, otherwise insoluble elements undergo a "microbial recovery" that turns them into gases. Once gasified, important organic matter, that would otherwise be irretrievably leached out into the Bay as sediments, is again made usable for plants and other organisms.

### Hydrophytic Plants

Hydrophytic plants, or hydrophytes, are defined by the "General Provisions" of the Critical Area Commission's criteria as "those plants...which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats)." Hydrophytic plants show many complex adaptations; while some hydrophytes are tolerant of hydric soils, others must have wet soil conditions.

Why is it important to protect water-based plants? Hydrophytes filter urban and agricultural pollutants. They reduce the velocity of sediment laden waters and have extensive root systems which stabilize stream banks. Hydrophytic plants also absorb nutrients that would otherwise degrade the water quality of the Bay's tributaries.

Wetland marshes have layers or strata of plants, as do woodland areas, and animals find their niches in this floristic diversity. Hydrophytic plants may be useful to man in reconstructing a picture of the anaerobic conditions of the primordial world. Not only is it possible to grow hydrophytes as cash crops, they can be artificially introduced into an area that needs to be improved by their natural filtering capacity.

As a sub-element of the Habitat Protection effort the Town has focused on non-tidal wetlands as a unique habitat worthy of protection. The benefits of protecting non-tidal wetlands contribute toward the overall program goals of improving water quality and preserving natural habitats. The value of the existence of non-tidal wetlands are as follows:

**Flood conveyance, Non-tidal wetlands along rivers and streams often lie within floodway areas which are subject to deep and high velocity flows.**

**Flood storage - Inland wetlands store flood waters and slowly release them down stream areas, lowering flood peaks. This function is particularly important in urban areas. The importance of wetlands in flood storage can be appreciated when it is recognized that a wetland one acre in size may hold 330,000 gallons of water if flooded to a depth of one foot.**

**Erosion and Sediment Control - Wetland vegetation has complex and extensive root systems which stabilize stream banks. Vegetation also reduces the velocities of sediment laden waters which cause deposition of silt in areas that are less damaging to water quality and sensitive habitat areas.**

**Pollution Control - Non-tidal wetlands act as pollutant filters by collecting and holding nutrients, silt sediment and other pollutants.**

**Wildlife habitat - Wetlands provide habitat for a vast array of wildlife because of their location at the land - water interface where the nutrient supplies are abundant. (REF. 15, p. 1)**

## **Inventory and Analysis**

Non-tidal wetlands have been identified within the Town's Critical Area as shown on the map entitled "Landcover".

### **Existing Resource Programs that Address Non-Tidal Wetlands**

The following is a list of existing programs, laws, or regulations which address the protection of non-tidal wetlands within the Critical Area. Several of these programs may be applicable to other Critical Area resources.

#### **Maryland Wetlands Act, Natural Resource Article, Section 9-101**

Obtain license from the State Board of Health when altering a state wetland. Obtain a permit or notification of approval from DNR for private wetlands.

#### **Section 404 Permit, Clean Water Act**

Placement of dredge fill within waters of the United States requires a permit from the Army Corps of Engineers (ACOE).

#### **National Wilderness Act**

Designates certain lands as wilderness area and prohibits commercial activity in those areas, with certain important qualifications.

#### **State wide Stormwater Management Program**

Includes assistance to local jurisdictions for planning and implementing stormwater management controls. Land development of all types (other than agricultural) must have approved stormwater management plan.

#### **Statewide Erosion and Sediment Control Program**

Develops guidelines for and review of local programs, including an education program for construction industry and local government personnel.

#### **Maryland Watershed Permits**

Provided by Natural Resources Law 8-801. Established primarily to maintain water quality and safer land use practices in floodplain. Construction or repair of bridges, culverts, dams, reservoirs, or small ponds requires permit by DNR. Applies to non-tidal waters only.

#### **Maryland Environmental Trust**

The Trust actively encourages landowners to donate scenic or conservation easements for tax advantages.

### Program Open Space

Aimed at providing public recreation and open spaces in Maryland. Allocates matching funds to local governments for land acquisition and coordinates the purchasing of the land; allocates all funds for the acquisition of state lands, including the purchase of land with Bay access funds; allocates funds for facility development of State and local lands; and administers the allocation of Federal Land and Water Conservation Funds to be used for the acquisition and development of parks and natural areas.

### Federal Land and Water Conservation Fund

Supplements Program Open Space

#### **Goal**

It is the goal of the Town to protect those non-tidal wetlands within the Critical Area Boundary found to be of importance to plant, fish and wildlife and water quality.

#### **Objectives**

The Town will implement the following objectives for protecting the non-tidal wetland habitats.

Require that all sites developed in the Critical Area be evaluated to determine if non-tidal wetlands not identified by the current mapping exist and if they are of special importance to fish, wildlife or plant habitat by the Coastal Resources Division or the Maryland Forest, Park and Wildlife Services of the Department of Natural Resources or other appropriate agencies.

Develop necessary regulations to maintain at least a 25 foot buffer around identified non-tidal wetlands where development activities or other activities that may disturb the wetlands or the wildlife contained within are prohibited. Generally, all significant development will be prohibited within the described buffer zone as well as the wetland area itself if adverse impact has been determined.

Include in development regulations for sites within the Critical Area a requirement for tracing the outfall of drainage to the receiving water body to determine if the flow enters non-tidal wetlands and if that flow would be altered to a degree which would cause impairment of water quality within the wetland.

Require that any alterations proposed to a non-tidal wetland result only from activities that are of substantial economic benefit or are water-dependent and that the wetland impacts are necessary and unavoidable. Activities that are of substantial economic benefit are those whose benefits, either public or private, substantially outweigh the combined water quality and habitat value of the non-tidal wetland. The benefits from such actions should be substantial, relative to

the value of the disturbed non-tidal wetland area, including consideration of the relative scarcity or uniqueness of the habitat protection area, its location, productivity and diversity, and other related factors. An impact is unavoidable if there is no alternative areas for the proposed development activity on the site that will not impact the non-tidal wetland area or if the scope, scale or location of the development cannot be changed in order to avoid adverse impacts. The applicant should demonstrate to the Town that other areas for development activity with fewer impacts were examined; however, these areas would not be practical to fulfill the basic purpose of the proposed activity.

Require developers to provide mitigation plans if the proposed development activity results in necessary and unavoidable impact to the wetland habitat and is the result of development that is water-dependent or of substantial economic benefits. Plans shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered. The mitigation effort shall be accomplished on or as near the site as possible.

Develop a process for routing all mitigation plans to the appropriate agency for review and comment. The designated agencies will have 30 days to provide comments regarding the plan. The routing list shall include the State Dept. of Natural Resources and the Maryland Forest Park and Wildlife Service. When appropriate, it shall include but not be limited to the following agencies: Army Corps of Engineers, State Dept. of the Environment; State Dept. of Agriculture; local Soil Conservation Districts; and, the U.S. Fish and Wildlife Service.

Develop a method for designating non-tidal wetlands not shown on the National Wetlands Inventory Map which will include at least one public hearing with notification of the appropriate public and private agencies.

Familiarize Town staff and the public with existing State and Federal programs designed to protect wetlands so that landowners can be informed about these resources and so maximum coordination will occur. This is particularly important with the U.S. Army Corp of Engineers Section 404 permitting process for non-tidal wetlands.

Encourage the placement of the identified wetlands into perpetual conservation easements through the Maryland Environmental Trust or some other mechanism.

Amend existing development related ordinances as needed to implement the stated objectives. The following ordinances will be amended: zoning, flood plain, storm water management, and subdivision.

#### **Resource Management Recommendations**

Provisions relating to non-tidal wetlands will be incorporated into the ordinances and procedures adopted by the Town to implement their Local Program. Specifically, all development actions in the Critical Areas requiring permits and/or site plan review, e.g., building permits for minor and major actions, subdivisions, and developments requiring site plan review by the Planning Commission, Board of Appeals or the Town Commissioners will be accompanied by an environmental assessment. The environmental assessment process, which is discussed in more detail in the

Implementation section, should require that the developer identify the location and extent of all non-tidal wetlands on the proposed development site and their related drainage area or areas.

Approximately 8.3 acres of land in the Town of St. Michaels Critical Area feature non-tidal wetland area. The non-tidal wetlands shown on the Landcover Map included in the St. Michaels Local Program should be assumed to exist on the site. The developer may submit proof that the map is inaccurate or that the non-tidal wetlands no longer exist, however the burden of proof is on the developer and must be convincing to all review agencies, including the Maryland Department of Natural Resources and the Army Corps of Engineers. Because additional non-tidal wetlands may be formed on the site over time, the applicant should assume that the Mapped areas in the Local Program may not include all non-tidal wetlands.

The Town will include Guidelines for Protecting Non-Tidal Wetlands in the Critical Area, Guidance Paper No. 3, Chesapeake Bay Critical Area Commission, by reference in their guidelines to developers and development in the Critical Areas. This technical document will assist applicants in the identification of non-tidal wetlands and provides guidance for establishing buffers and otherwise protecting non-tidal wetlands.

## **THREATENED and ENDANGERED SPECIES and SPECIES In NEED of CONSERVATION**

According to the Critical Areas Criteria threatened species means "any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C., 1531 et seq., as amended."

Endangered species "means any species of fish, wildlife, or plants which have been designated as such by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be "endangered" species pursuant to the federal Endangered Species Act, cited above."

Species in need of conservation "means those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation of the Secretary of the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Articles, 10-2A-03 and 4-2A-03, Annotated Code of Maryland."

In many cases, a habitat is found to be as equally rare and as jeopardized as the endangered species it supports, thus the emphasis in the Critical Areas Program on habitats as well as species. The continuation of these various species of wildlife and plants is important to the maintenance of diversity of species and is an indication of the health of overall natural systems in the Chesapeake Bay region.

### **Goal**

The goal of the Town's Habitat Protection Element of the Local Program is to protect the habitat areas of endangered flora and fauna species that are known to inhabit the vicinity of the Town Critical Area.

### **Objectives**

Identify Habitat Protection Areas in the vicinity and where possible map their habitats.

With the assistance of appropriate State and Federal agencies develop protection programs which specify measures that will safeguard habitat areas and procedures for notification of the public and proper State and federal agencies when an impending development will affect these habitats.

### **Resource Protection Recommendation**

No threatened or endangered species or species in need of conservation habitats have been identified in or near St. Michaels to-date. When such areas are identified by the State, Town or the any others, appropriate protective measures will be adopted and the public provided an opportunity to comment on the designation of areas and proposed protection measures.

## PLANT and WILDLIFE HABITATS

Despite the fact that the Town is already built-up, around and in its environs wildlife is abundant and habitats for "urban" wildlife can be improved and created. Various species of open-land wildlife (such as the quail and rabbits that normally frequent pastures, meadows, cropland, and lawns) can thrive here. Wetland wildlife (such as the muskrat and numerous kinds of waterfowl that typically live in ponds, marshes, and swamps) are also plentiful in the St. Michaels area.

As defined by the Criteria, wildlife habitat means "those plant communities and physiographic features that provide food, water and cover, nesting, and foraging for populations of animals in the Critical Area...." A plant habitat is a "community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics...."

### Goal

Insure that development in the Town of St. Michaels Critical Areas does not result in degradation of existing plant and wildlife habitats of colonial water birds, minimizes impacts to historic waterfowl staging areas, and does not decrease the habitat value of riparian forests and large forested areas.

### Objectives

The following are the Town's objectives for the Plant and Wildlife Habitats:

Identify, map and devise protection measures for the following habitat types:

- a. Colonial water bird nesting sites--which includes the nesting spots for such species as the heron, the egret, the tern and the glossy ibis.
- b. Aquatic areas of historic waterfowl staging and concentration areas
- c. Riparian forests--such as Bay-adjacent shoreline with forests that contain breeding populations of forest interior dwelling birds.
- d. Large forest areas--that contain breeding populations of forest-interior dwelling birds including, the mapping of forest corridors.
- e. Other important plant and wildlife habitat areas--as specified by State or federal authorities.
- f. Other plant and wildlife habitat of local significance--namely, those habitats for the species which are in some manner important to the Town of St. Michaels
- g. Natural Heritage Areas--as they are formally designated as such by the Secretary of the Maryland Department of Natural Resources.

Increase and enhance habitat areas for urban wildlife within the Town's Critical Area.

## **Inventory and Analysis**

The Habitat Areas Map, (see Appendix 6, Map 4) shows the sensitive plant and wildlife habitat in the Town. Areas of known submerged aquatic vegetation beds have been identified to guide site evaluations for water-dependent facilities and together with tidal wetlands represent the habitats of greatest importance for protection. In addition, historic waterfowl staging and concentration areas exist off the shore of St. Michaels.

## **Resource Protection Recommendations**

Plant and wildlife habitats are dynamic areas, subject to change and variation over time. Whenever a specific habitat area has been identified on or near a proposed development site, the applicant should be required to notify the appropriate State and/or federal agency with jurisdiction for regulating and/or identifying the habitat area. Prior to approving any plan for development, the Town will require that the developer or applicant incorporate the recommendation of the review agencies into the design of the development.

Should such habitats be identified in the future guidelines for their protection are available from State and federal sources.

A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area, Guidance Paper No. 1, Chesapeake Bay Critical Area Commission, July 1986.

Planning for Wildlife in Cities and Suburbs, Daniel L. Leedy, Robert M. Maestro, and Thomas M. Franklin, Urban Wildlife Research Center, Inc.

Although the Town is well developed it will take advantage of opportunities to increase and provide habitats for urban wildlife. Wildlife species which benefit from habitats which can be established in built-up areas enhance the community. Landscaping and other plantings which attract song birds and other wildlife not only benefit the wildlife, but also enhance the quality of the Town's environment for residents of the community. The Town will require substantial landscaping which includes plant species which provide food and cover for urban wildlife on all new development and redevelopment projects.

Aquatic areas of historic waterfowl staging and concentration do exist within the corporate limits of the Town of St. Michaels. To protect these areas, new water-dependent facilities will be so located as to prevent disturbances. If other Plant and Wildlife Habitats are identified by State or federal agencies, the proper authorities will be consulted.

A proposed amendment to the town of St. Michaels Subdivision Regulations specifying requirements for the Final Plat when the subdivision is to be located in the Critical Area gives standards for insuring that all Plant and Wildlife Areas are afforded protection.

Site plans for proposed development in the vicinity of an identified plant and wildlife habitat area shall be submitted to the Maryland Forest, Park and Wildlife Service for review and comment prior to approval by the Town. The Town shall conduct a public hearing prior to designation of any new Plant and Wildlife habitat areas or protection measures for same.

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## ANADROMOUS FISH PROPAGATION WATERS

The Criteria specifies that anadromous fish propagation waters are "those streams that are tributary to the Chesapeake Bay where spawning of anadromous species of fish...occurs or has occurred...." The term "anadromous" refers to fish that live out their lives in saltwater but which return to freshwater to spawn. Anadromous fish propagation waters are the Bay's fresh reaches where striped bass, yellow perch, white perch, shad and riverherring spawn.

### Requirements

The Town of St. Michaels is required to identify the anadromous fish spawning beds in the Critical Area and must also adopt stream protection and watershed protection measures. DNR's Tidewater Administration staff biologists do not expect anadromous fish to spawn in the waters around St. Michaels because of salinity values which are generally around nine to fifteen parts per thousand. Striped bass, white perch, yellow perch, shad and herring, in the Chesapeake system, spawn in waters with salinity values of from zero to one part per thousand. Striped bass and white perch young probably use these waters as nursery area.

### Stream Protection

A key prohibitive measure needed for stream protection is to insure that riprap, or any other artificial surface, is not allowed to intrude into spawning places. Rechannelization or stream flow alterations to spawning streams cannot be permitted. Dams or other barriers must be prohibited. Construction and repair in propagation streams will not be sanctioned between March 1st and May 15th. Other protection measures should be drafted by the Town of St. Michaels as needed.

### Watershed Protection

The watershed areas which drain into the Bay's fresh streams need protection as well. To minimize turbidity and other disturbances that affect streams, the vegetative cover within the watershed should be maintained or enhanced.

### Objectives and Goals

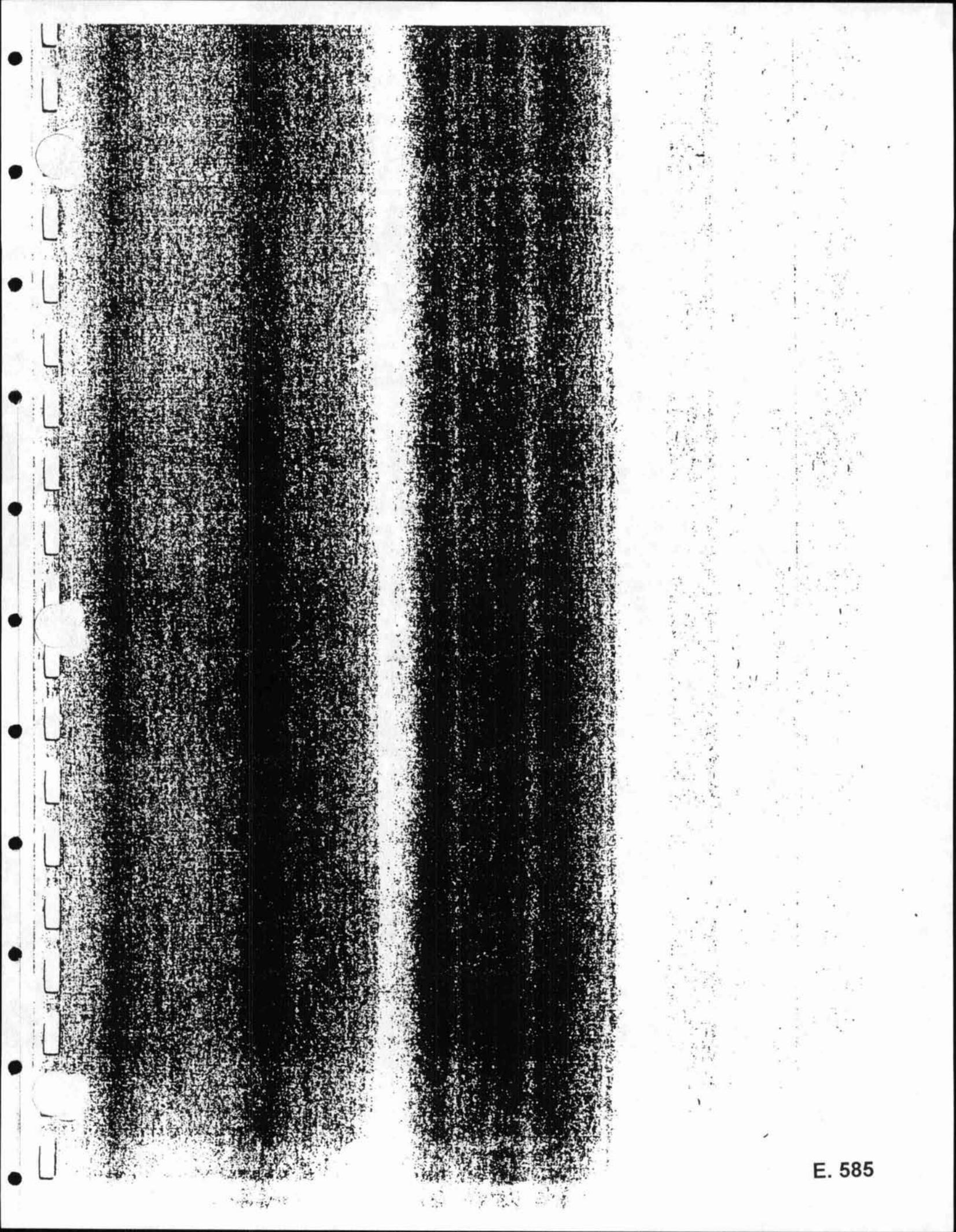
The aim of this component of the plan is simply to safeguard the precious spawning grounds of the Bay's fish. Although the Criteria focuses on the protection of only those segments of watersheds and streams lying within the Critical Area, local jurisdictions like the Town of St. Michaels are encouraged to include all watershed areas within their protection plans. Vegetative cover within the watershed should be maintained or enhanced.

## Management Recommendation Outline

1. Provide stream protection measures which:
  - a. prohibit the installation of rip-rap in anadromous fish spawning streams;
  - b. prohibit alterations to streams that will jeopardize spawning;
  - c. prohibit dams which will interfere with anadromous fish movements; and
  - d. between 1 March and 15 May, prohibit repairs or construction within The Buffer or along stream segments that support anadromous fish species.
2. Provide watershed protection measures which:
  - a. minimize land disturbances, including development;
  - b. protect or upgrade stream quality;
  - c. minimize sediment discharge; and
  - d. protect or enhance vegetative cover.

## Resource Management Recommendations

The Maryland Department of Natural Resources Tidewater Administration has indicated that the waters in and around St. Michaels are not suitable for anadromous fish spawning. Therefore no stream and watershed protection policies are being proposed.



## IMPLEMENTATION

This Chapter is a synthesis of the management strategies adopted in the Town's Local Program and a scheme for making those methods work within the legal and organizational framework of the Town of St. Michaels. It includes among other things a description and outline of a Critical Area plan review process. The necessary modifications to existing ordinances will be pulled from the various program elements and in some cases more fully developed. Finally, the Chapter outlines in greater detail new program elements needed to implement the goals and objectives of the Town's Critical Area Program.

Sections I, II, III, and IV, in Chapter III are intended to indicate the policy in amendments to the Town of St. Michaels Zoning Ordinance or Subdivision Regulations. These elements are included here for the purpose of guiding implementation. For complete information about the amendments to the Zoning Ordinance and Subdivision Regulations please see Appendix 7 and 8. The final authority for specific codification of these proposed amendments rests with the Town Attorney for St. Michaels.

### Zoning Ordinance Amendments

#### Section I. Critical Area Overlay Zone

An overlay zone or "Critical Area Zone" which corresponds to the Town's Critical Area is created to superimpose development standards consistent with the Town's Critical Area Program and as a means of insuring implementation of resource conservation and water quality protection provisions contained in the Town's Local Program. The standards and regulations developed for the Zone are applicable to all development in the Critical Area in addition to those within the underlying base zoning districts. The Critical Area Zone will be broken into the following management areas or sub-zones. Intensely Developed Areas (IDA), Limited Development Areas (LDA) and Resource Conservation Areas (RCA) as required. A Buffer overlay zone will apply another layer of regulation over these sub-zones. The three map components of the Critical Area Zone correspond to those mapped in Chapter 2 of the Town's Critical Area Program. Where the Critical Area Zone imposes land use regulations that are more restrictive than the underlying base zones then the provisions of Critical Area overlay zone will apply. The following outlines the provisions that will guide development and redevelopment activities in the IDA, LDA, RCA and the Buffer.

### Proposed Ordinance Provisions

#### A. Statement of Intent and Purpose

The following district is designed to protect and enhance water quality and habitat resources located within the Town's Chesapeake Bay Critical Area. The geographic area designed for application of the following district regulations shall be those lands and waters located within one thousand feet beyond the landward boundaries of State or private wetlands as designated on the St. Michaels Chesapeake Bay Critical Area Maps. The purpose of the district is to provide special regulatory protection to the resources located within the Town

Critical Area and to foster more sensitive development activity for shoreline areas so as to minimize adverse impacts to water quality and natural habitats.

#### **B. Sub District Classification**

Within the Chesapeake Bay Critical Area Resource Protection district there shall be three management area (land) subclassifications as follows:

Intensely Developed Areas (IDA)  
Limited Development Areas (LDA)  
Resource Conservation Areas (RCA)

These classifications shall correspond to the definitions established by the Critical Areas Commission for each area and are identified on the St. Michaels Chesapeake Bay Critical Area maps, adopted as part of the St. Michaels Chesapeake Bay Critical Area Local Program. Mapped sub-district classifications are land uses established on or before December 1, 1985.

#### **C. Buffer Overlay Zone Provisions**

A buffer overlay zone or "Buffer" is established as described in the Habitat Protection element of Chapter 3 and as shown on the Critical Area Map to generally provide a transitional habitat zone between aquatic and upland communities and improve the quality of adjacent receiving water bodies. The Buffer extends landward from the mean high water line of tidal waters (or from the edge of tidal wetlands or tributary streams), and having a width of no less than one hundred (100) feet as more specifically shown on the Zoning Map. The following special provisions apply to the designated Buffer in either of the three sub-zones; however, where the provisions governing those sub-zones are more restrictive they will apply. Among others the permitted uses include:

Alteration of an existing structure provided that they are minor alterations and determined to have insignificant impact on the Buffer's effectiveness.

Water-Dependent Facilities provided they meet the requirements set forth in the Water-Dependent Facilities section of the Zoning Ordinance.

Commercial Harvesting of Timber provided that it is consistent with the Town's Woodland Preservation Plan and the requirements found in COMAR 14.15.09.01C(5).

Cutting or Clearing of Trees (except commercial harvesting) for the following purposes:

- a. For personal use providing that Buffer functions are not impaired and trees cut are replaced;
- b. To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or

streambank;

- c. In conjunction with horticultural practices used to maintain the health of individual trees;
- d. To provide minimum access to private piers;
- e. To install or construct approved shore erosion protection devices or measures;
- f. To protect forests from extensive pest or disease infestation or threat from fires.

Note: Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure, or facility has received all necessary State and Federal permits.

#### **D. Intensely Developed Areas**

##### **1. Permitted uses**

Uses permitted within areas designated Intensely Developed shall be those permitted within the applicable underlying base zoning district. All uses shall be subject to the following development standards and/or conditions in addition to those established in other sections of this ordinance.

##### **2. Uses Not Permitted or Strictly Limited**

- a. The following uses are prohibited due to their adverse impact on habitats and water quality unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.
  - (1) Non-maritime heavy industry.
  - (2) Transportation facilities and utility transmission facilities except those necessary to serve permitted uses or where regional facilities must cross tidal waters.
  - (3) Sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities.
- b. The following uses are prohibited unless it is determined by the Board of Appeals that no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.

- (1) Solid or hazardous waste collection or disposal facilities.
- (2) Sanitary landfills
- (3) The land application of sludge.

c. Mining of sand and gravel is prohibited in the Critical Area.

3. Development Standards

Development and redevelopment in those areas designated Intensely Developed shall be subject to the following standards.

- a. No structure or uses associated with Development within Intensely Developed Areas shall be permitted within 100 feet of the shoreline or tributary stream and which would bring about or cause an increase in impervious surfaces or reduce the area which can be maintained or established in vegetative cover, unless the site meets requirements and standards for the Buffer Exemption Area described in Section 3, Chapter 3, of the St. Michaels Critical Area Local Program.
- b. Development and redevelopment shall be subject to the Habitat Protection Criteria as well as those habitat protection guidelines in Chapter 3 of the Town's Critical Area Program.
- c. Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve the following standards.
  - (1) Redevelopment proposals shall demonstrate that the best management practices for stormwater assure a 10 percent reduction of pre-development pollutant loadings (see Stormwater Management Ordinance for computation methodology).
  - (2) New development shall demonstrate that practices for stormwater management will reduce pre-development pollutant loadings by 10 percent.
  - (3) Redevelopment or development projects which cannot demonstrate they meet the requirements of (1) and (2) above may be approved only if it can be demonstrated that mitigation measures or offsets can be provided to achieve equivalent water quality benefits elsewhere in the Town.
  - (4) Methods of determining mitigation measures necessary to achieve 10 percent reductions outlined in (1) and (2) above or in determining alternative offsets

required in (3) above shall be consistent with the methodology outlined in "A Framework for Evaluating the 10 percent Rule in the Critical Area" prepared for the Critical Area Commission.

- d. All development and redevelopment projects shall delineate those site areas not covered by impervious surfaces to be maintained or established in vegetation. Where vegetation is not proposed the developer shall demonstrate why plantings for such portions of the site are impracticable. Types of planting and vegetation proposed shall be in accordance with guidelines established by the Town.

#### **E. Limited Development Areas**

1. **Permitted Uses**

Uses permitted within areas designated Limited Development shall be those permitted within the applicable underlying base zoning district except as provided below. All uses shall be subject to the development standards and/or conditions of this section, unless otherwise noted.

2. **Uses Not Permitted or Strictly Limited**

- a. Transportation facilities and utility transmission lines are prohibited in the Critical Area, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, due to their high potential for adverse impact on plant and wildlife habitats and water quality, unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.
- b. The following use are prohibited unless it is determined by the Board of Appeals that no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.
  - (1) Solid or hazardous waste collection or disposal facilities.
  - (2) Sanitary landfills
  - (3) The land application of sludge is prohibited in the Buffer.
- c. The following uses are prohibited in the Critical Area:
  - (1) New solid or hazardous waste collection or disposal facilities;
  - (2) New sanitary landfills;

- (3) New sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities;
- (4) New commercial and industrial maritime or related facilities in the Buffer within Resource Conservation Areas (RCAs); and
- (5) Mining of sand and gravel.

3. Density

The density of development and minimum lot sizes permitted within Limited Development Areas shall be governed by prescriptive densities and lot size within the applicable underlying base zoning districts. However, in these underlying base zoning districts which permit residential use, gross density may not exceed 3.99 units per acre unless the site has been granted growth allocation by the Town. Determination of density shall be based on the gross site area of the parcel or subdivision prior to development.

4. Development Standards

Development and redevelopment in those areas designated Limited Development shall be subject to the following standards.

- a. All sites for which development activities are proposed which require subdivision approval or site plan review and approval shall identify environmental or natural features on that portion of site within the Critical area. Features to be identified shall be those outlined in the "guidelines for applicants" contained in the St. Michaels Local Program and the Section 8, Site Plan Review Process and requirements for Major and Minor Development in the Critical Area.
- b. Site development shall be designed to assure those features or resources identified as "Habitat Protection Areas" are afforded protection as prescribed in the "Habitat Protection Element" of the Town's Local Program.
- c. Roads, bridges and utilities serving development shall be located to avoid disturbances to "Habitat Protection Areas". When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas the developer shall demonstrate how impacts to Habitats have been minimized and that no feasible alternative location of such infrastructure exists.
- d. All development activities which cross or are located adjacent to tributary streams shall:
  - (1) Not be located in the Buffer and designed in a manner to reduce increases in flood frequency and severity.

- (2) Provide for the retention of natural streambed substrate.
  - (3) Minimize adverse impacts to water quality and storm water runoff.
  - (4) Retain existing tree canopy adjacent to tributary streams for a distance of 100 feet from the stream centerline.
- e. Development activities shall be located and designed to provide for maintenance of existing site wildlife and plant habitats and continuity with those on adjacent sites. Existing wildlife corridors shall be identified on proposed development plats together with restrictive covenants or equivalent standards which assure their maintenance. When wildlife corridors exist or are proposed they shall include any existing "Habitat Protection Areas" and connect large forested areas on or adjacent to the site.
- f. Forest and developed woodlands as defined by the Town Local Critical Area Program shall be created or protected in accordance with the following.
- (1) When no forest exists on the site, at least 15 percent of the gross site area shall be afforested. The location of the afforested area should be designed to reinforce protection to site habitats or provide connections between forested areas when they are present on adjacent sites.
  - (2) When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan. The developer shall submit plans for development and areas to be cleared to the Maryland Forest, Park and Wildlife service for comments and recommendations and shall transmit comments to the St. Michaels Planning Commission. A grading permit shall be issued prior to any clearing or cutting associated with proposed development. In addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions.
    - a) All forests cleared or developed shall be replaced on not less than an equal area basis at a location within the local jurisdiction's Critical Area.

- b) No more than 20 percent of the forested or developed woodland within the site proposed for development may be removed (except as provided for in (c) below) and the remaining 80 percent shall be maintained as forest cover through the use of appropriate instruments as approved by the Town (e.g., recorded restrictive covenants). Removal of forest or developed woodland cover in the Buffer is prohibited.
  - c) Clearing of forest or developed woodlands up to 20 percent shall be replaced on an area basis of one to one. A developer may propose clearing up to 30 percent of the forest or developed woodland on a site, but the trees removed in excess of 20 percent must be replaced at the rate of 1.5 times the amount removed. (For example, on a 100 acre wooded site, if the developer proposes clearing 25 acres, it would be required that replacement be made of 27.5 acres. The additional 7.5 acres would be afforested offsite at a location approved by the local jurisdiction).
  - d) If more than 30 percent of the forest on a site is cleared, the forest is required to be replanted at 3 times the total areal extent of the cleared forest.
  - e) If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the requirement in (d) above.
- (3) Surety in the form of a performance bond or other means acceptable to the Town Attorney shall be provided in an amount suitable to assure forest replacement as required.
  - (4) Forests and developed woodlands required to be retained or created through afforestation shall be maintained through restrictive covenants, easements, or similar instruments in a form approved by the Town Attorney.
- g. Development on slopes greater than 15 percent shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability.

- h. Impervious surfaces shall be limited to 15 percent of the gross site area proposed for development. However, impervious surfaces on lots not exceeding one (1) acre in size in a subdivision approved after June 1, 1986 may be increased to a maximum of twenty-five (25) percent.
- i. Design and layout of development shall be in accordance with cluster development provisions contained in the St. Michaels Zoning Ordinance unless it can be demonstrated that such development form is inappropriate based on site features or inconsistent with the character of surrounding development.

**E. Resource Conservation Area**

**1. Permitted Uses**

Uses permitted with Resource Conservation areas shall be those permitted within the applicable underlying base zoning district (with the exception of those uses which are prohibited in the Critical Area) subject to the following conditions:

- a. New industrial and commercial uses and facilities may not be permitted regardless of uses permitted in the underlying base zoning districts.
- b. New commercial marinas or related commercial maritime facilities may not be permitted in areas designated Resource Conservation areas. Expansion of existing marina uses may be permitted subject to development standards for Resource Conservation Areas and for water-dependent facilities.
- c. The land application of sludge is prohibited in the Buffer.

**2. Uses Not Permitted or Strictly Limited**

- a. The following uses are prohibited due to their adverse impact on habitats and water quality unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water and in no case may be permitted in RCAs.
  - (1) Non-maritime heavy industry.
  - (2) Transportation facilities.
  - (3) Sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities.
- b. The following use are prohibited unless it is determined by the Board of Appeals that no environmentally acceptable alternative exists outside the Critical Area, and these development activities or

facilities are needed in order to correct an existing water quality of wastewater management problem and in no case may be permitted in RCAs.

- (1) Solid or hazardous waste collection or disposal facilities.
- (2) Sanitary landfills
- (3) The land application of sludge is prohibited.

c. Mining of sand and gravel is prohibited in the Critical Area.

3. Density

- a. Residential densities in Resource Conservation Areas shall not exceed 1 unit per 20 acres regardless of densities permitted in applicable underlying base zones.
- b. In determining residential densities for a parcel, private wetlands may be included in the calculation of 1 unit per 20 acre density provided the development density on the upland portion of the site does not exceed 1 dwelling unit per 8 acres.
- c. Minimum lot sizes shall be governed by standards applicable to the underlying base zoning districts.
- d. For purposes of intra-family transfer of ownership, parcels less than 60 acres in size, recorded on or before March 1, 1986 may be subdivided to exceed a density of 1 unit per 20 acres in accordance with the following schedule.

<u>Base parcel size in acres</u>	<u>Number of lots permitted</u>
7 up to 12	2
12 to less than 60	3

Additional provisions governing the subdivision of land for intra-family transfer of ownership are contained in Section F below.

4. Development Standards

Development shall be subject to the same standards applicable to Limited Development Areas identified in Section E.4 above. Design and layout of development shall be in accordance with cluster development provisions contained in St. Michaels Zoning Ordinance. In utilizing the one unit per 20 acre density on individual parcel created for residential use such parcel shall not be greater than 5 acres to assure maintenance of farm and forest dominated character in Resource Conservation Areas.

**G. Intra-Family Transfers**

**Applicability**--Intra-Family transfers will be permitted on parcels of land in Town of St. Michaels where it is shown that the parcel was recorded on or before March 1, 1986 and such parcel is at least seven (7) acres and not more than sixty (60) acres in size.

**Inter-Family Transfers subject to Town of St. Michaels Subdivision Approval**--A bona fide intra transfer shall be subject to all requirements of the Town of St. Michaels Subdivision Regulations.

**Limitations**--Subdivision of land under these provisions shall be subject to the following limitations:

**Parcels 7 acres to less than 12 acres**--cannot be subdivided into more than a total of 2 lots.

**Parcels 12 acres to less than 60 acres**--cannot be subdivided into more than 3 lots.

**Conditions of Approval**--The following will be required of all bona fide intra-family transfers:

A lot created pursuant to these provisions may not be subsequently conveyed to any person except as provided herein:

Where the conveyance is to a member of the owner's immediate family.

Where the conveyance of the lot is as part of a default on a mortgage or deed of trust.

**Standards and Conditions for subsequent transfers**--Lots created pursuant to these provisions shall:

Not be created for purposes of ultimate commercial sale. Any lot transferred or sold to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property unless the following can be conclusively proved:

A change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer when such circumstances are consistent with the warrants and exceptions contained herein: or

Other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCA's warrant an exception.

## **Section II. Grandfathering Provisions--Local Program Provisions for Pre-Existing Uses and Lots of Record**

An individual lot or parcel of land located within the St. Michaels Critical Area may be improved with a single family dwelling in Resource Conservation Areas and otherwise developed in accordance with the St. Michaels Zoning Ordinance in Limited Development and Intensely Developed Areas provided they comply insofar as possible with the Critical Area Criteria according to procedures and requirements contained in Section 3, Modified Buffer Requirements and further provided they comply with the following criteria:

1. Any single lot or parcel of record established in St. Michaels prior to local (date of Local Program Approval) by the Critical Area Commission may be improved or developed with a single family residence.
2. Any land on which development activity has progressed to the point of pouring foundation footing or installation of structural members, prior to adoption of the Critical Area program will be permitted to complete construction as per existing development approvals (e.g., building permit).
3. Land subdivided prior to June 1, 1984 is grandfathered. However, any development of such lands must comply "insofar as possible" with the St. Michaels Local Program if the development occurs between December 1, 1985 and the time the local program is approved.
4. Lands subdivided between June 1, 1984 and the date of Local Program approval for which "interim findings " (Critical Area Law, Section 8-1813) have been made by the St. Michaels Planning Commission, Board of Appeals, or Town Commissioners.
5. Lands subdivided after December 1, 1985 which conform to the requirements of the Chesapeake Bay Critical Area Criteria and/or St. Michaels Local Program (when adopted).

The St. Michaels Local Program includes procedures and standards for bringing future development of existing lots into compliance with the criteria "insofar as possible". These provisions include, among other things, the Buffer Exemption Area provisions and offset requirements as established in Section 3 below.

## **Section III. Buffer Exemption Area Provisions**

A Buffer Exemption Area is established as generally described in Section Two. It is defined as those areas within the Town in the designated Buffer described which are largely or totally developed or which include undeveloped lots of record less than 200 feet in depth the development of which is grandfathered under the provisions of Element B of this Section. The following special provisions apply in the Buffer Exemption Area in the three development areas (IDA, LDA or RCA); however, where the provisions governing these areas are more restrictive, they will apply.

**Permitted Uses:**

**New development or redevelopment** provided that the development and redevelopment Rules and offsetting requirements set forth below are observed.

**Shore Erosion Protection Measures** provided that such, measures are consistent the Town's shore erosion protection policies described in Section Two and provided that the measure has all applicable State and Federal permits.

**Cutting or Clearing of Trees** for the following purposes only:

- For personal use providing that Buffer functions are not impaired and trees cut are replaced.
- To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
- In conjunction with horticultural practices used to maintain the health of individual trees;
- To provide access to private piers;
- To install or construct an approved shore erosion protection device or measure;
- To protect trees from extensive pest or disease infestation;
- To permit the development or redevelopment allowed above to be constructed or installed.

**Prohibited Uses:**

**Water Polluting Activities** including but not limited to, storage of vehicles, fuel or chemicals.

**Development and Redevelopment Rules:**

1. **Existing Structures** - The expansion or redevelopment of existing structures in the Buffer Exemption Areas may not increase impervious surfaces and shall not result in greater than a 20 percent increase in the total site area in impervious surface within the Buffer Exemption Area as existed at the time of adoption of the Town's Critical Area Program. Offsetting of such increased impervious surfaces, as described below, shall be required.
2. **Removal of Existing Structures** - When a structure within the Buffer Exemption Area is removed or destroyed, it shall be replaced, insofar as possible, no closer than 100 feet from the edge of tidal waters, tidal wetlands or tributary streams. In such cases where a setback line exists as defined by structures on adjacent lots or parcels, the structure may not be replaced shoreward of that line. Any impervious surfaces created greater in extent to the pre-existing impervious surfaces within the Buffer Exemption Areas shall be offset as described below.

3. New Development - New development in the Buffer Exemption Area shall minimize the shoreward extent of impervious surfaces insofar as possible taking into consideration existing Town street setback requirements and other such factors. In no case may such impervious surfaces be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels.

Offsetting Requirements: New development or redevelopment in the Buffer Exemption Area which causes impervious surfaces as described above shall be required to offset for such developments as follows:

1. The extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained, in natural vegetation; and
2. Natural vegetation of an area twice the extent of the impervious surface created in the Buffer Exemption Area shall be planted in a Buffer Exemption offset area or other location as may be determined by the Town. The Town may collect fees in lieu of such planting for purposes described in the Offset Program described below.

Buffer Offset Program: Fees in lieu of planting, as described above, shall be used by the Town for purposes directly related to its Critical Area Program. Such purposes may include:

1. Projects that improve water quality or that create, improve or restore fish, wildlife or plant habitat.
2. Education or public information activities that would create awareness and understanding of the Town Critical Area Program.

#### **Section IV. Variance Provisions**

Due to special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area Overlay Zone would result in unwarranted hardship to a property owner, the Town's Board of Appeals may grant a variance from the strict adherence to those provisions. In granting a variance, the Board of Appeals must use the following criteria.

The Board shall make findings which demonstrate:

That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions within the Critical Area Zone would result in unwarranted hardship which is not generally shared by owners of property in the same sub-zone of the Critical Area.

That strict enforcement of the provisions within the Critical Area Zone would deprive the property owner of rights commonly shared by other owners of property in the same sub-zone within the Critical Area Zone.

That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area Zone.

That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.

That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area Zone, and that the granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program and associated ordinances as well as State law and regulations adopted under Subtitle 18 of the Natural Resources Article and COMAR 14.15.

That the State's Critical Areas Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.

That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

That the granting of a variance in no way varies the density or use limitations established in the St. Michaels Zoning Ordinance and Local Program.

Appeals from decisions concerning the granting or denial of a variance in the Critical Area Zone will be handled in the same manner as currently prescribed by ordinance.

#### **Section V. Compensatory Pollution Mitigation Program**

The Town of St. Michaels recognizes that an array of techniques must be employed to ensure that water quality and habitat protection goals are met. The Town has identified certain cases where the Buffer restrictions need to be modified to accommodate pre-existing conditions and thus has established Buffer Exemption Areas. It is also anticipated that certain pre-existing conditions will prevent some development within the Intensely Developed Areas (IDA) from meeting the 10 percent pollution reduction requirement effectively and practically. In creating the statewide Critical Area Program, it was predicted that it would be beneficial both ecologically and economically to make allowances for onsite and offsite offsets. The State Criteria provides that "Offsets may be provided either on or off site, provided that water quality benefits are equivalent, and that the benefits can be determined through the use of modelling, monitoring, or other computation of mitigation measures." This criterion served as a guide to the development of this Program to permit the mitigation of water pollution and adverse impacts on plant, fish, and wildlife habitat through offsets. Offsets are defined as structures or actions that compensate for undesirable impacts.

### Eligibility

Those properties located in the Buffer Exemption Area or anyone receiving a variance as described in this Chapter, the Town of St. Michaels will be eligible to compensate for undesirable impacts through this program. The Town may, due to the intrinsic nature of the development activity or pre-existing conditions, find it infeasible to meet all or part of the 10 percent pollution reduction requirement on site. In this case with approval, the developer may participate in the Compensatory Pollution Mitigation Program.

### Offset System

The Town will administer the offset system by designating sites, collecting fees in lieu, approving compensating actions and planting public areas. When it has been determined either through Board of Appeals hearing procedure or administratively, as applicable, that a property owner cannot meet the prescribed mitigation measures to ensure water quality improvement and habitat protection wholly on site, or is required to offset in the Buffer Exemption Area, then compensating actions will be permitted. The following options will be available.

- 1) The property owner may contribute a fee in lieu of providing the required mitigation measures on site so that the developer or Town can install a compensating amount of diverse plant community, at an approved buffer critical area enhancement receiving area; or
- 2) The property owner may provide the required mitigation measures on an approved buffer or critical area enhancement receiving area within the Town. The exact location will be proposed by the developer and approved by the Town. The property owner may contribute a fee in lieu of planting in the Buffer Exemption Area to the Town's Buffer Offset Program.

### Receiving Areas

Two types of receiving areas are deemed necessary. Buffer enhancement areas will be needed where the mitigation measures were to be provided within the Buffer. An example would be if a property owner obtained a variance to build within the buffer or qualifies for an exemption and cannot meet the mitigation requirements completely on site. General critical area enhancement areas are needed for cases where a single site cannot be developed in such a way as to provide a 10 percent reduction in runoff pollution as determined by the Board of Appeals or the Town Officials.

In addition to existing town parks, the Town will approve privately owned lands as Buffer Enhancement Areas if they meet the following minimum requirements:

- the property has not been identified as a candidate site for a water dependent use, and

--the planting plan includes at least 50 linear feet along the shoreline for the entire depth of the Buffer, and

--if the landowner agrees to grant a conservation easement through the Maryland Environmental Trust or restrictive covenants approved by the Town attorney.

Privately owned lands will be considered as general Critical Area Enhancement Areas if the property lies within the Critical Area and is made subject to a conservation easement as described above. Priority will be given to sites that are currently covered with impervious surface where the planted vegetation will generate a dual benefit to water quality and habitat protection.

#### Fees In Lieu of Mitigation

Fees collected in lieu of providing on site mitigation measures will be placed in a Compensatory Pollution Mitigation Fund to be used by the Town exclusively for providing those mitigation measures. In the case of Buffer Exemption offset activities, the fee will be based on the unit cost associated with installing and maintaining a wooded buffer equal to the area prescribed in the grant of variance or exemption provisions. The initial cost of installing a diverse plant community will be \$2.50 per square foot. For offsets permitted outside the Buffer Exemption Area, the fee will be based on the costs that a developer would incur for installing a best management practice on the site including an amortization of maintenance costs. The initial cost for providing a stratified forest outside the Buffer Exemption Area will also be \$2.50 per square foot until the Town can make adjustments through experience.

In the case of the 10 percent pollution reduction offset the Town will use funds for public projects which improve water quality (e.g. storm drainage improvements).

#### Pollution Mitigation Standards

For the purposes of determining the degree of pollution reduction and best management practices under this program, the document "A Framework for Evaluating the 10 percent Rule in the Critical Area " prepared for the Critical Area Commission will serve as a guide. In that manual the pollutant removal effectiveness has been evaluated for an array of what are accepted as best management practices. It will also contain standards for pollutant loadings by development type. The developer shall prepare the reduction computations which will be reviewed by the Town.

#### **Section VI. Critical Area Review Process**

The Critical Area Program affects many aspects of the Town's development approval process within the Critical Area. This section details a general routing process for applications for development so that projects can be efficiently processed. It includes decision criteria to guide projects through the process. The process design insures coordination between agencies. Finally it provides a means for resolving discrepancies in Critical Area resource findings. (see Figure 4 )

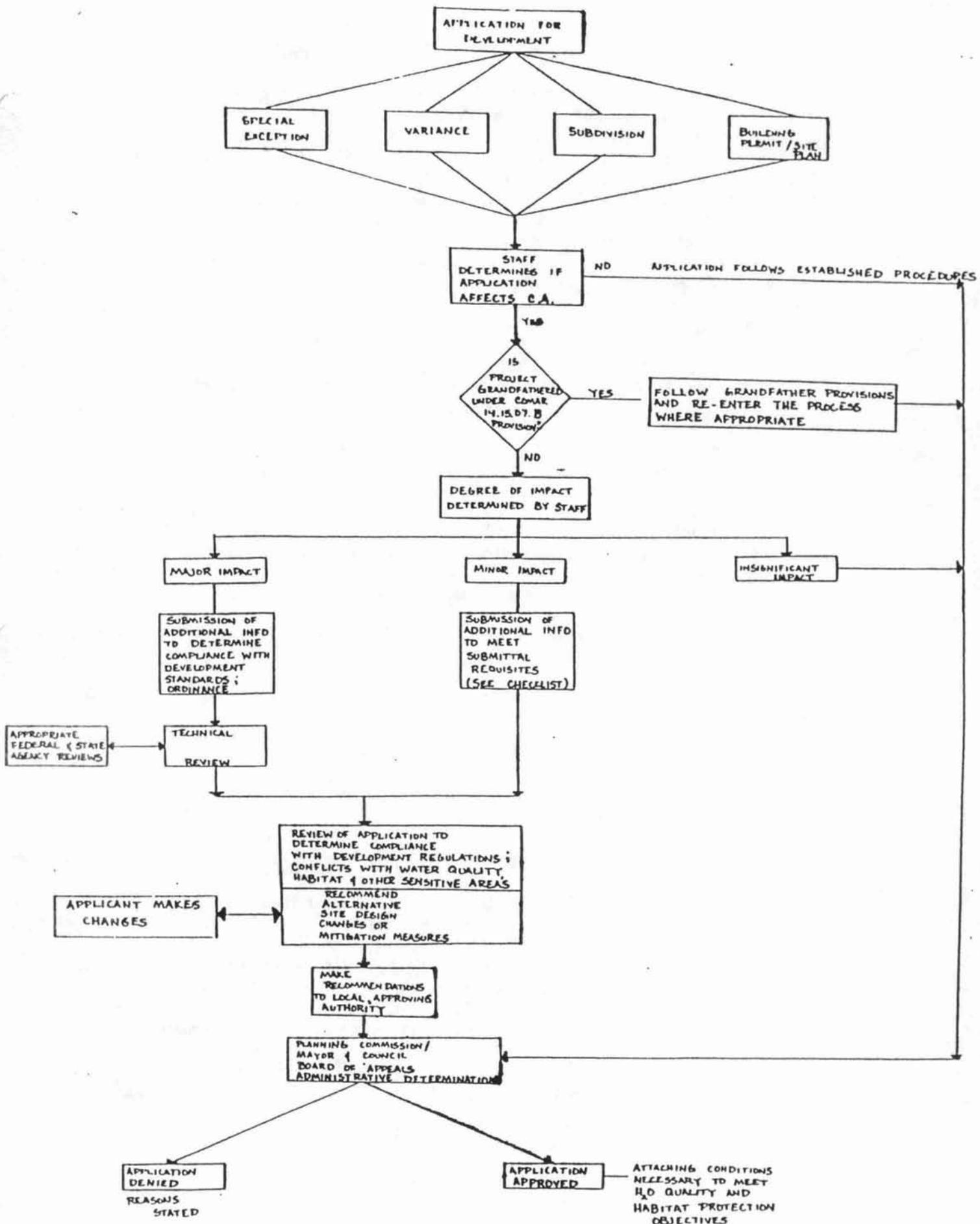


Figure III.1

## Degree of Impact Determination: Major, Minor and Insignificant

To differentiate between development with varying degrees of impact on water quality and wildlife habitats, the Town has created three categories: those with significant impact; those with significant but relatively minor impact; and, those with insignificant impact. This differentiation will allow development with minor or insignificant effects to move more quickly through the process since less information is needed for review. The following are examples of what might be considered insignificant actions. However, final determination must be made on a case by case basis. Determination of the degree of impact will be made by the appropriate town approval authority. In making this determination, the approval authority may seek the advice of appropriate County and/or State agencies or other authority.

### Insignificant Impacts

Development with insignificant impacts generally do not result in or make possible any changes to land or its use, or the changes they cause or permit are obviously brief, or harmless to water quality or habitats in the Critical Area.

Because of the sensitivity of the relationship between the Buffer and the receiving water body, what is considered insignificant in the Critical Area in general may be too disruptive to the Buffer. In the Buffer, any new construction or clearing of vegetation that results in a change in runoff characteristics is considered to be a development action with significant impacts. Outside the Buffer this may not always be true. The following examples of insignificant actions will help to make a quick determination.

The erection of an off-premise sign on fast land, if there is no clearing of vegetation.

The replatting of property lines, if there is no new construction.

The addition of a porch or attached garage to an existing structure.\*

The construction of a covering between two buildings that are already connected by a sidewalk.

The erection of an on-premise sign.

The use of a dwelling in a residential zone for a home occupation if there is no increase in parking.

The conversion of a single-family dwelling to a multi-family dwelling if there is no increase in impervious surface.

The construction of a crab shed for commercial fishing.

The normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.

Emergency construction necessary to protect property from damage by the elements.

Construction of a single family residence.\*

The construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owner of a single family residence when otherwise permitted by the Town's Critical Area Program.

The operation and maintenance of any system of dikes, ditches, drains or other utilities existing on the effective date of the Critical Area Program.

\*Note--If single family residence or other noted action is proposed in the Buffer it is automatically assumed to have "minor" impacts and must be reviewed accordingly.

### Minor Impacts

Minor impacts are associated with development actions which are determinable by the type and scale of the development action proposed. For example, type of development may be the deciding factor in the case of a small structure on a large site which may be used for storage of potentially hazardous products. The determination of whether or not a development action falls into the minor or major category will be made by the Town staff or approval authorities if required. In general, minor development actions include but are not limited to:

- A residential subdivision of three lots or units, or less.
- Construction of a single pier serving less than three dwelling units.
- Construction of less than 100 feet of bulkhead.
- Disturbance of less than 5,000 square feet of land area for commercial, institutional, or most, but not all, industrial uses where such development does not occur in the Buffer.
- Development which does not result in any direct discharge to surface waters from impervious surfaces.
- Development which does not involve dredging, filling, or channelization of tidal or non-tidal wetlands or of other offshore areas.
- Development which does not involve the use or storage of toxic substances.

## Major Impacts

Major impacts are associated with development actions that are not clearly included in the insignificant or minor categories. The submission requirements for major development proposals will be adhered to in detail, due to the likelihood that numerous and substantial impacts can potentially occur in developments which result in significant site alterations or which will result in intense activities on the land.

## **Section VII. Site Plan Review Process and Requirements for Major and Minor Developments in the Critical Area**

### Introduction

Development activities in the Town of St. Michaels Critical Area must comply with the applicable requirements of the Town's Local Chesapeake Bay Critical Area Protection Program and Town's Comprehensive Plan, Zoning Ordinance and Subdivision Regulations. To insure project review by the Town is completed in the minimum time possible and that proposed projects fully comply with all applicable regulations, applicants for development actions will adhere to the following procedural requirements and submission requirements.

#### A. Site Plan Review Required

The purpose of site plans is to assure detailed compliance with applicable provisions of enacted regulations and to prescribe standards for the design and construction of site improvements and measures and standards for the protection of water quality of the Chesapeake Bay and its tributaries and fish, plant and wildlife habitat on or in the vicinity of the proposed development site. Site plans will be required for all major and minor development activities. Development requiring site plan approval shall be permitted only in accordance with all specifications contained on an approved site plan and when required construction permits have been obtained subsequent to such approval.

#### B. Approving Authority

1. Site Plans for all subdivisions shall be prepared and approved as set forth in the Town's Subdivision Regulations, as amended, in addition to the requirements of this ordinance.
2. Site Plans for developments other than the above, where required in this ordinance and site plans submitted for growth allocation, shall be prepared and submitted as described below and approved by the Town or its designated representative. The Town may, at its discretion, waive or modify certain of the requirements stated below in cases where strict compliance with all requirements would impose an unnecessary burden on the applicant in the opinion of the Town Planning Commission.

**C. Information required to be included in the site plan**

1. An area or vicinity map at a scale of not smaller than 1" = 2,000 feet and showing such information as the names and numbers of adjoining roads, streams, bodies of water, railroads, subdivisions, election districts, or other landmarks sufficient to clearly identify the location of the property.
2. A boundary survey plat of the entire site at a scale not smaller than 1" = 100 feet (unless otherwise specified by the Town Commissioners or their designated agent) showing the following:
  - a. Topography of the property at 5 foot contour intervals (unless a smaller contour interval is specified by the Town or its designated representative).
  - b. Existing and proposed regraded surface of the land.
  - c. Location of natural features major ravines, drainage patterns.
  - d. Location and names, as appropriate, of water features including, rivers, streams (noting if the stream is an anadromous fish spawning stream) and their drainage areas in non-tidal reaches, tidal channels, ponds, and open bay waters.
  - e. Floodplain boundaries (100 year).
  - f. Location and area extent of all soils exhibiting the following characteristics as determined by the Soil Survey:
    - Wet soils
    - Hydric Soils and soils with hydric characteristics
    - Highly erodible soils (soils on slope greater than 15 percent or soils on slope greater than 5 percent with "K" values greater than 0.35)
  - g. Vegetation and cover: natural vegetation associations and other ground cover categories derived from the Local Program Maps and Inventories, other published maps, aerial photographs, or on-site surveys. The following four categories are suggested:
    - Aquatic Bed (AM)
    - Emergent (EM)
    - Shrub/Shrub (SS)
    - Forested (FO)
  - h. Other cover types, such as barren areas, filled areas, and excavated areas.
  - i. Location of all areas of shore erosion and annual erosion rates.
  - j. Habitat protection areas on or in the vicinity of the proposed development site (See the Town's Critical Area Program) including large forested areas and riparian forests.

- k. Location of Critical Area boundaries including Critical Area, Buffer and Overlay Zone designations (i.e. IDA, LDA and RCA)
3. A detailed drawing showing the location of existing and proposed improvements including but not limited to the following:
    - a. Location, proposed use and height of all buildings.
    - b. Location of all parking and loading areas with ingress and egress drives thereto.
    - c. Location of outdoor storage (if any).
    - d. Location and type of recreational facilities (if any).
    - e. Location of all existing or proposed site improvements (including bulkheads, piers, sanitary sewers components, storm drains, culverts, retaining walls, fences, storm water management facilities as well as any sediment and erosion control structures).
    - f. Description, method and location of water supply and sewerage disposal facilities.
    - g. Location of open space, buffer areas, mapped as part of the Town Local Program, including the 100 foot Buffer, whichever is applicable, and landscaping. The plan shall show all areas to be maintained as landscaping and shall specify the type of landscaping to be provided. The means by which such landscaping will be permanently maintained shall be specified.
    - h. Location, size and type of all signs.
    - i. Location, size and type of vehicular entrances to the site.
  4. Computations of (where applicable these shall be shown as pre-and-post development computations):
    - a. Total lot area.
    - b. Building Floor area for each type of proposed use.
    - c. Building ground coverage (percentage).
    - d. Road area.
    - e. Number and area of off-street parking and loading spaces.
    - f. Total man-caused impervious surfaces areas and percentage of site.
    - g. Permanent open space areas including natural parks if applicable.
    - h. Total forested or wooded area, area of forest or woodland to be cleared, area to be replanted in forest cover.

- i. Pre- and post-development non-point source pollution loadings (IDA area only)
  - j. Area of site within the Critical Area and Buffer if not total site.
5. Commercial or Industrial uses must also include:
- a. Specific uses proposed.
  - b. Maximum number of employees for which buildings are designed.
  - c. Type of energy to be used for any manufacturing processes.
  - d. Type of wastes or by-products to be produced by any manufacturing process. Any potentially hazardous substances, chemicals, caustics, etc. that will be stored on the site.
  - e. Proposed method of disposal of such wastes or by-products.
  - f. Location of outdoor lighting facilities
  - g. Other information as may be specified in the regulations for industrial or commercial uses in this Ordinance.

**D. Procedure for preparation**

1. Site plans shall be prepared by a professional in the field of environmental management, land planning, landscape architecture or civil engineering in the State of Maryland.
2. All site plans shall clearly show the information required by this Section.
3. If such plans are prepared in more than one sheet, match lines shall clearly indicate where the several sheets join and an index sheet shall be required.
4. Every site plan shall show the name and address of the owner and developer, election district, north point, date, scale of drawing, and number of sheets. The site plan shall be submitted in triplicate to the Town or its designated representative. The Town may require that additional copies be provided when necessary.
5. Site plan submissions for development in the Critical Area shall also include all recommendations concerning forest management and Habitat Area protection provided by the Maryland Forest, Park and Wildlife Service, Maryland Natural Heritage Program, Maryland Tidewater Administration and U.S. Fish and Wildlife Service.

**E. Procedure for processing**

Upon receipt of the site plan, the Town or its designated representative shall review such plan, soliciting comments from other departments, agencies, and

officials as such office may deem appropriate. The site plan shall be approved if it meets the requirements of this section, other requirements of this ordinance and all other Federal, State, and Town regulations. The Town or its designated representative shall approve or disapprove the site plan within sixty (60) days of the filing of the application. Notice of such action shall be given in writing to the applicant.

**F. Construction of required improvements**

Upon approval of a site plan, the applicant shall then secure the necessary construction permits from appropriate agencies before commencing work. The applicant may construct only such improvements as have been approved by the Town or its designated representative.

After construction has been completed, inspection of site improvements shall be made by the departments certifying to the applicable requirements.

The installation of improvements as set forth in this Section shall not bind the Town to accept such improvements for the maintenance, repair and operation thereof; requirements for said improvements shall be in addition to (and not in lieu of) any other legal requirements.

**G. Expiration and Extension**

Approval of site plans shall be for a one (1) year period and shall expire at the end of such period unless building construction has begun. Upon written request by the applicant, within ninety (90) days of the expiration of said approval, a one (1) one year extension may be given by the Town or its designated representative. Such request shall be acknowledged and a decision rendered thereon not more than thirty (30) days after filing of said request.

**Section VIII. Water-Dependent Facilities Siting and Review Criteria**

This section is intended to guide the orderly and efficient use of the waters and water oriented land uses within the Town of St. Michaels, through provision of a uniform method of regulating marinas and other water related facilities and adjacent land uses. These provisions implement the Town's water-dependent facilities element of the St. Michaels Local Program and specifically to minimize the adverse impacts of intensive water oriented land uses and concentrations of watercraft on the environment and existing and future development within the Town. This subsection establishes the permitted type, intensity, and location of water-dependent uses which may be provided along the Town's shoreline.

The following water-dependent uses may be permitted by the Town Board of Appeals upon finding that each applicant has substantially met all of the guidelines and criteria relating to the location and design of new and expanded water-dependent facilities. Prior to rendering a decision, the Board of Appeals will receive the review comments of the Town Planning Commission and Board of Port Wardens.

### A. Definition of Water-Dependent Facilities

In the Case of dispute, the St. Michaels Board of Appeals will determine if a proposed use is water-dependent based on the following criteria for defining water-dependent facilities, after review by Board of Port Wardens:

1. Those structures or works associated with industrial, maritime, recreational, educational and fisheries activities that require location at or near the shoreline within the required shore buffer.
2. An activity is water-dependent if it cannot exist outside the buffer and is dependent on water by reason of the intrinsic nature of its operation. These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other public water-oriented recreation areas and fisheries activities.
3. Excluded from the requirements set forth herein are individual private piers, installed or maintained by riparian landowners, and which are not part of a subdivision which provides community piers.

### B. Applicability

Unless otherwise provided, the provisions of this subtitle and any rules and regulations adopted in connection herewith, shall be applicable to and govern:

1. Construction and development of new marinas, water oriented commercial uses, commercial marine facilities, and community piers. Such uses and facilities include, by way of illustration and not in limitation, piers, wharves and other facilities offered to the public for the berthing and securing of watercraft; launching ramps and other structures and equipment for the launching and removal of watercraft; bait, fishing equipment, and ice sales facilities and seaworthy watercraft, wet storage facilities for craft, watercraft repair facilities; yacht clubs, watercraft sales, rental and charter operations; and marine equipment sales.
2. Expansion, rearrangement and/or development of lawfully existing marinas, or water-dependent commercial uses.

Any marina or water dependent facility lawfully existing on the effective date of these regulations, may maintain and repair its facility in accordance with the guidelines set forth in these regulations.

### C. Lot Size and Coverage

1. The minimum lot size for marina and water dependent uses shall be the minimum acreage as set forth in this Ordinance for the zoning classification in which the use lies.
2. The maximum lot coverage shall be 50 percent of the total marina lot area, not including auto parking and movement areas. Twenty-five (25) percent of the site shall be landscaped.

3. Each lot shall have side and front yards (adjacent to roadways) measuring not less than ten (10) feet. No structure shall be permitted within these required yards.
4. Shore Buffer/Yard shall be a minimum of one hundred (100) feet measured landward from the Mean High Water Line in areas not proposed for locating water-dependent facilities.
5. The width of the lot shall be a minimum of fifty (50) feet provided along the shoreline.
6. All structures shall be located as follows:
  - a. All principal structures which are not water-dependent shall be located outside the buffer and within the required yards on lots in the Critical Area which are not specifically exempted from the Buffer provisions by virtue of the Grandfathering provisions of the St. Michaels Local Program .
  - b. All accessory structures and uses shall be located within the buildable area defined by required yards, except that: launching ramps, hoists, travel lifts, marine railways or other facilities for the launching and removal of watercraft, piers, pilings, buoys, vending machines, marine fuel sale facilities, boat houses, and commercial fishing uses may be located adjacent to the body of water.
  - c. Dredged spoil shall not be located in the shore buffer yard.
  - d. Sanitary facilities may be located in the shore buffer yard.
  - e. Interior roadways and parking areas shall be constructed of pervious material or located outside the 100 foot shore buffer yard.
  - f. All outside areas, including dry storage areas, used for any type of repair or maintenance of watercraft, including scraping, sanding, painting, and fiberglass repairs, shall be located outside the buffer area.

**D. Site Plan Requirements and Information to be Provided for Water-Dependent Facilities**

Unless otherwise provided, all development of commercial marinas or other water related uses shall be subject herein to the requirements established in the Critical Area Overlay District (see the General Regulations Appendix 7). The following provides a checklist of information to be provided:

1. Water depth contours shown at two (2) foot intervals at mean low water taken by sounding (unless otherwise specified by the Town Planning Commission).
2. Existing and proposed regraded surface of the land.

3. Location of natural features (such as streams, wetlands (tidal and non-tidal), drainage easements, vegetative and tree cover.
4. Land within the 100 year floodplain.
5. Location of all existing and proposed structures.
6. Location of all existing or proposed site improvements including storm drains, culverts, retaining walls and fences.
7. Description, method and location of water supply and sewerage disposal facilities.
8. Mean high and mean low water line.
9. All existing and proposed piers, buoys, launching ramps, shore protection structures.
10. Location and dimensions of all areas to be dredged including present and proposed depths.
11. Volume of dredge spoil to be removed, type of material, location and dimensions of disposal area(s) including dikes.
12. Location of all existing and proposed land-base building and structures on the site and a description of uses and activities to be conducted in each.
13. Location and dimensions of all boat launching ramps.
14. Location and dimensions of all boat slips and mooring buoys.
15. Location of fuel dock and gasoline storage tanks.
16. Location of all required buffers/yards/building restriction lines.

#### E. Site Plan Review - Performance Standards and Guidelines

In evaluating proposed site plans for Water Dependent Facilities required by these regulations, the Planning Commission and Board of Appeals shall consider the anticipated effect of the location, construction, and operation of the proposed facility upon the environment of the site and the adjacent area (see the requirements established in the Critical Area Overlay District, under "General Regulations" of Appendix 7). All federal, state, and local laws and regulations applicable shall be complied with and in addition applicants for conditional uses under this section shall address each of the following factors to which the Board of Appeals will give primary consideration:

1. Location of all proposed operational activities and dry storage areas in a manner that results in the least detrimental impact to adjacent and surrounding residential properties.

2. Location of slips in a manner which minimizes dredging needs and volumes. Dredged channels should decrease in width and depth toward shore with provision made for berthing deeper draft boats farthest from shore. Design of slips which are two feet (2) deeper at mean low water than the lowest projection of boats moored in them will minimize turbidity and bottom disturbances.
3. Maintenance of water circulation patterns to include tidal flow patterns, and preservation of salinity and distribution of nutrients in the water. Dimensions and locations of channels should be designed to achieve maximum flushing of the marina basin area.
4. Maintenance of the flow and volume of the natural drainage system, both on site and on adjacent properties.
5. Approaches taken through design to reduce storm water runoff volumes and erosion. Use of impervious ground surfacing should be minimized where possible. Maximum distances should be maintained between water and land areas proposed to be used for parking and loading purposes, to minimize the consequences of site runoff.
6. Effective use and location of site screening and vegetation in a manner which minimize noise and lighting impacts to surrounding residential uses.
7. Many off-site considerations which are significant should be reviewed in relation to the proposed marine facility location. It should be the applicant's responsibility to further assure the review body that their location proposals or projects should not adversely affect:
  - (a) Maintenance of state water quality standards.
  - (b) Land and water circulation needs. Marine locations should avoid interference with traffic flow on Town streets and the land/water transportation patterns of the surrounding area.
  - (c) Preservation of rooted submerged aquatic vegetation of value to fish, shellfish and wildlife in the area.
  - (d) Preservation of area wetlands, (tidal and non-tidal), fish spawning areas, shellfish beds and waterfront nesting sites.

#### **Section IX. Growth Allocation Process**

Several areas of the Town or adjacent areas where growth may occur have been mapped as Limited Development Areas or Resource Conservation Areas based on existing land use as of December 1, 1985. These areas may have to be converted to a different management category, e.g., converted from an LDA to an IDA through use of the County's growth allocation. These areas are identified and discussed in the Development Section of the St. Michaels Local Program.

The Town has requested growth allocation from the County to provide for these anticipated growth areas. The Town has mapped these growth areas in order to determine the approximate acreage of growth allocation that will be required and so that the County may anticipate the Town's growth needs in establishing their growth allocation process. It is also recommended that the Town adopt a local process for subsequent allocation of growth when it is determined development proposals which are consistent with the Town Comprehensive Plan and Local Program.

The Commissioners of St. Michaels may award growth allocation that permits an increase in the permitted density or intensity of use of a site over and above what is currently permitted at the time a specific development proposal is submitted. Prior to awarding growth allocation the Town Commissioners will review the proposed development plans and determine if they meet the objectives of the Local Program and are consistent with the St. Michaels Comprehensive Plan.

The following are additional provisions for guiding the award of the Town's growth allocation are recommended for inclusion in the St. Michaels Critical Area Overlay Zone:

#### Purpose and Intent

It is the purpose of the St. Michaels Growth Allocation Process to establish objectives, procedure, standards and criteria for determining appropriate locations and projects where growth allocation may be awarded to permit conversion of existing Limited Development Areas (LDA) and/or Resources Conservation Areas (RCA) to a new LDA and/or IDA. Upon approval of a proposed development project, the Planning Commission may assign a portion of the County's total Growth Allocation existing in LDA and RCA areas, as designated in the St. Michaels Critical Area Program. The Growth Allocation may be awarded to development projects which the Planning Commission deems to be the best examples of critical areas development and land use, and which demonstrate consistency with the Comprehensive Plan, Local Program and Critical Area Criteria.

The Growth Allocation Process is intended to insure that the Town's limited growth allocation, as determined in the Talbot County Local Chesapeake Bay Critical Area Protection Program (Local Program) is managed to insure equity in the award of growth while also resulting in development projects in the Town's Critical Area which achieve the goals and objectives of the Local Program as determined by the Town Commissioners. Further, it is the intent of the Town to establish a process whereby only those development projects which the Town Commissioners concludes are examples of sensitive development in the critical area are given growth allocation.

#### Project Location Criteria

It is the intent of the Town to encourage projects for growth allocation to be located in or adjacent to existing Limited Development or Intensely Developed Areas. In approving projects for Growth Allocation award the Planning Commission will give consideration to the following guidelines for the location of the growth allocation projects to the extent possible:

1. New IDA's should be located in existing LDA's or adjacent to existing IDA's.
2. New LDA's should be located adjacent to existing LDA's or IDA's.
3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.
4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the St. Michaels Local Program for such areas and shall be designated on the St. Michaels Zoning Map for information purposes (note: Growth Allocation assigned to a property shall not constitute a zoning map amendment as per Article 66B unless there is a change in the underlying/existing zoning classification and shall be submitted to the Critical Area Commission as per COMAR 8-1809 (g) (Proposed Amendments) of the Chesapeake Bay Critical Areas Criteria.

#### Time Limitations

Applications for growth allocation shall include a schedule of project development and project phases. Project approval and award of growth allocation shall be limited to those phases of the project that can be completed within two (2) years of project approval. If after two (2) years the project is not completed, the applicant may request and the Town Commissioners may grant an extension of the time limit provided the Town Commissioners finds that reasons for project delay were not caused by the applicant but are for reasons beyond the applicant's control. The Town Commissioners shall withdraw the growth allocation from projects which are not completed within two (2) years or which are not granted an extension by the Town Commissioners.

Subsequent phases of the project which will require more than two (2) years to complete are eligible for subsequent growth allocation awards and successful completion of approved phases of a project may be taken into consideration by the Planning Commission when considering subsequent phases of the project for growth allocation provided the applicant has substantially complied with all conditions of approval.

#### Submission Requirements

Development activities in the St. Michaels Critical Area which are submitted for growth allocation must comply with the applicable requirements of the Town's Local Chesapeake Bay Critical Area Protection Program and the St. Michaels Comprehensive Plan, Zoning Ordinance and Subdivision Regulations. To insure project review by the Town is completed in the minimum time possible and that proposed projects fully comply with all applicable regulations, applicants for development actions will adhere to the site plan requirements contained in Sections 7 and 8 as applicable.

#### **Section X. Amendments to Storm Water Management and Sediment Control Ordinances**

The following provisions are recommended to adapt the existing Town (or County) Stormwater Management Ordinance to the Critical Area Program by limiting exemptions and waivers.

### Exemptions

The following categories of development are exempted from the requirements of providing stormwater management. This does not exempt the developer from providing an adequate storm water drainage system or meeting the requirements of the Town's Critical Area Program and associated ordinances.

1. Agricultural land management practices approved by the Department of Agricultural and the Department of Natural Resources.
2. All developments disturbing no more than 5,000 square feet and not located within the Buffer area of the Town's Critical Area Overlay Zone.
3. Additions or modifications to existing single family detached residential structures provided they are not located within the Buffer area of the Town's Critical Area Overlay Zone.

### Waivers

Any developer receiving a waiver of on-site storm water management quantitative control is not relieved of the responsibility of providing storm water management for qualitative control. The developer is required to demonstrate that such measures as required to reduce or eliminate pollutants from the first flush runoff event will be provided. If the proposed development activity is located in the Intensely Developed Area of the Critical Area Overlay Zone, then the developer must demonstrate that the pollutant loading from the site will be reduced by ten (10) percent.

The following modification to the Town's sediment control ordinance will insure that activities that would be excepted from the requirements of a grading permit will be evaluated as to their impact on water quality and identified habitat areas.

### Exceptions

No exceptions shall be granted for the requirement of a grading permit for any grading, stripping, excavating or filling of land in the Town established Critical Area Overlay Zone. However, upon evaluation of the site outside the designated Buffer, the inspector may grant the exception if he determines that the development activity is classified as "insignificant" in impact to water quality and plant, fish and wildlife habitats as set forth in the Town's Critical Area Program.

## **Section XI. Recommended Planting Standards**

### Urban Woodland Reforestation and Afforestation Standards

The purpose of this section is to provide guidance to the Town in the reforestation and afforestation of trees within the Critical Area. These guidelines may be modified over time based on experienced gained through their application. Where woodlands

must be replaced or established by the developer, the following vegetative shall be followed:

- a. The replacement or establishment of forests or developed woodlands shall assure a diversified plant community, but may include other types tree plantings where necessary to correct an existing soil stabilization problem. Diverse forest plantings shall include a canopy layer, an understory layer, and a shrub layer.
- b. For each acre of land where woodlands must be replaced or established, plantings shall consist of trees and/or wildlife shrub species spaced approximately at eight (8) foot intervals in rows eight (8) feet apart, or other suitable spacing as determined by the Bay Watershed Forester on a site-by-site basis, which result in a minimum of three-hundred (300) stems per acre after the first growing season.

**Additional Requirements: Planting Plans, Bonds and Inspections**

A planting plan shall be submitted, by the developer, to the Planning Commission for approval and must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a licensed landscape architect or an experienced landscape designer. The planting plan must be prepared in coordination with the approved site plan and shall show:

- 1) the site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements and the general location of structures and uses of abutting properties;
- 2) existing and proposed grades;
- 3) existing vegetative cover to be retained and the location, general size and type of such vegetation;
- 4) the methods for protecting plant materials during and after construction;
- 5) a plant schedule and plan listing plants to be used giving their botanical and common names, size at time of planting, and quality of each;
- 6) an indication of whether plants are balled and burlapped, container grown or bare root; and
- 7) an indication of the spacing and location of all proposed trees, shrubs and ground covers.

Although plant types should be chosen from the recommended plant list available at the Town Office, plant types that vary from this list may be substituted with the approval of the Planning Commission or the Bay Watershed Local Forester. Plants for afforestation or reforestation shall be approved by the office for suitability in regard to the eventual size and spread, susceptibility to diseases and pests, and adaptability to existing soil and climate conditions.

The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon the Planning Commission's approval of the plan and cost estimate, the developer or owner shall enter into an agreement with the Town to provide buffer planting as required. The agreement shall be in form and substance as approved by the Town Attorney and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of one hundred and twenty percent (120%) of the cost of the proposed buffering materials.

- 1) If all afforestation or reforestation is not completed within one (1) year after the date of occupancy, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited (or if a bond or surety has been posted, payment in full to the Town of St. Michaels shall be ordered. The funds, so received, shall be used by the Town to defray the cost of providing the approved Buffer afforestation or reforestation for the site.
- 2) If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall constitute a lien on the property, and the owner of the property shall be bound under a continuing obligation for payment of any and all excess costs and expenses of any nature incurred by the Town; unused portions of monies forfeited under the bond shall be returned.
- 3) All bonds or other forms of surety shall be in a form acceptable to and approved by the Town Attorney.
- 4) If cash or a certified check is offered, it shall be deposited with the Town Commissioners or their agent, who shall give an official receipt there for, stipulating that said cash has been deposited in compliance with, and subject to, the provisions of this section.
- 5) All security posted will be held for a period of one (1) year after installation of the screening, to assure the proper maintenance and growth of the planting. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted to the extent necessary to replace the dead plant materials.
- 6) The Town Manager or his designee may from time to time release those portions of the surety which may be appropriate.
- 7) Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.
- 8) All plantings shall be inspected by the designated Town authority upon notification by the developer or owner and shall be approved according to the following standards:

- a) The planting shall adhere to the approved plan. Substitutions or revisions may be made with the approval of the Planning Commission.
- b) All plants shall be protected from vehicular encroachment by wheelstops, curbs or other barriers unless distance provides adequate protection.

#### Afforestation or Reforestation Trees Suitable for the Town's Critical Area

Canopy trees make urban environments more livable by shielding out the sun and wind. They define a town's visual character and spatial order. There are numerous varieties of canopy trees. These should be chosen carefully for compatibility with soil type, for rate of growth, for coverage and for intended use. Canopy trees generally suitable for the Town's may be chosen from the approved tree lists of the Maryland Forest, Park and Wildlife Service.

The root systems of understory trees help to uptake and filter runoff loadings. The trees themselves proffer shelter and food to urban wildlife. Understory trees should be those on the approved tree list available from the Maryland Forest, Park and Wildlife Service.

Evergreen and deciduous shrubs are instrumental in landscaping, buffering and screening. Listings of shrub types which might be appropriate for planting in the Town are available from the Maryland Forest, Park and Wildlife Service.

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## Appendix I Definitions

"Afforestation" means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

"Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

"Agricultural easement: means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.

"Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

"Aquaculture" means (a) the farming or culturing of finfish, shellfish, other aquatic plants or animals, or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments. (b) Activities include the hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas. (c) Cultivation methods include, but are not limited to, seed or larvae development and growout facilities, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

"Barren land" means unmanaged land having sparse vegetation.

"Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

"Buffer" means a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances.

"Building Envelope" means that land which lies within the inner most edge of the required yards and required buffer.

"Clearcutting" means the removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut, from advanced regeneration or stump sprouts, or from planting of seeds or seedlings by man.

"Cluster Development" means a residential development in which dwelling units are

concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.

"Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

"Commercial harvesting" means a commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.

"Commission" means the Chesapeake Bay Critical Area Commission.

"Community piers" means boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

"Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps, and pertinent data relative to the past, present, and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land use, water resources and their use, transportation facilities, and public facilities, prepared by or for the planning board, agency, or office.

"Conservation easement" means a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.

"Cover crop" means the establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from the entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat, or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.

"Critical Area" means all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b. 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 9 of the Natural Resources Article, Annotated Code of Maryland; and
- c. modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

"Density" means the number of dwelling units per acre within a defined and measurable area.

"Developed woodlands" means those areas of 1 acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

"Development" means any activity that materially affects the condition or use of dry land, land under water, or any structure.

"Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures.

"Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

"Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.

"Excess stormwater run-off" means all increases in stormwater resulting from:

- a. An increase in the imperviousness of the site, including all additions to buildings, roads, and parking lots;
- b. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
- c. Alteration of drainageways, or regrading of slopes;
- d. Destruction of forest; or
- e. Installation of collection systems to intercept street flows or to replace swales or other drainageways.

"Fisheries activities" means commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

"Forest" means a biological community dominated by trees and other woody plants covering a land area of 1 acre or more. This also includes forests that have been cut but not cleared.

"Forest Interior Dwelling Birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

#### APPENDIX I - 3

"Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

"Forest practice" means the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

"Habitat Protection Areas" include the Buffer, Non-Tidal Wetlands, threatened and Endangered Species and Species in Need of Conservation, Plant and Wildlife Habitats and Anadromous Fish Spawning Areas as defined in COMAR 14.15.09.

"Highly erodible soils" means those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

"Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

"Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

"Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

"K Value" means the soils erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

"Land-based aquaculture" means the raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.

"Land clearing" means any activity that removes the vegetative ground cover.

"Landforms" means features of the earth's surface created by natural causes.

"Management Areas" general refers to IDA, LDA and RCA's. These may also be termed "sub-zones" of the Critical Area zone.

"Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

"Mean High Water Line" means the average level of high tides at a given location.

"Natural Heritage Area" means any communities of plants or animals which are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

"Natural Vegetation" means those plant communities that develop in the absence of human activities.

"Nature-dominated" means a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human intervention.

"Natural features" means components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

"Non-point source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather, by changes in land management practices.

"Non-renewable resources" means resources that are not naturally regenerated or renewed.

"Non-tidal wetlands" means those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. These regulations apply to the Palustrine class of non-tidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979) and as identified on the National Wetlands Inventory maps, or which may be identified by site survey at the time of application for a development activity. These lands are usually characterized by one or both of the following:

- a. At least periodically, the lands support predominantly hydrophytic vegetation;
- b. The substrate is predominantly undrained hydric soils.

"Offsets" means structures or actions that compensate for undesirable impacts.

"Open space" means land and water areas retained in an essentially underdeveloped state.

"Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

"Palustrine" means all non-tidal wetlands dominated by trees, shrubs persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.

"Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

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"Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.

"Private harvesting" means the cutting and removal of trees for personal use.

"Project approvals" means the approval of development, other than development by a State or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

"Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies which are available to the general public.

"Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.

"Redevelopment" means the process of developing land which is or has been developed.

"Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.

"Renewable resource" means a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

"Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

"Seasonally flooded water regime" means a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.

"Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

"Significantly eroding areas" means areas that erode 2 feet or more per year.

"Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, 10-2A-06 and 4-2A-03, Annotated Code of Maryland.

"Spoil pile" means the overburden and reject materials as piled or deposited during surface mining.

"Soil Conservation and Water Quality Plans" means land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document

containing a map and related plans that indicate:

- a. How the landowner plans to treat a farm unit;
- b. Which best management practices the land owner plans to install to treat undesirable conditions; and
- c. The schedule for applying those Best Management Practices.

"Steep slopes" means slopes of 15 percent or greater incline.

"Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.

"Topography" means the existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

"Transitional habitat" means a plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

"Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.

"Tributary streams" means those perennial and intermittent streams in the Critical Areas which are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.

"Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including, but not limited to, electric lines, water conduits, and sewer lines.

"Wash plant" means a facility where sand and gravel is washed during processing.

"Water-based aquaculture" means the raising of fish and shellfish in any natural, open, free-flowing water body.

"Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

"Waterfowl" means birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

"Wildlife corridor" means a strip of land having vegetation that provides habitat and a safe passageway for wildlife.

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**MAPPING METHODOLOGY**

**I. INTRODUCTION**

Inventory and mapping of natural and cultural resources is required under Section 14.15.10.01 of the Chesapeake Bay Critical Area Legislation. Data collected pertinent to the local jurisdiction's Critical Area has provided the basis upon which the Local Program has been structured. The inventory was performed primarily through the assessment of existing maps and documents with actual field investigation/verification performed where data was unavailable or mapped prior to the mid 1970's.

After careful review, the resources were divided into five categories based upon functions and inter-relationships between the resources. Each set of information has been graphically illustrated using a mylar-transparency overlay system to allow for comparison between the various groups of information. Following, listing of documents utilized in performing the inventory.

**II. LANDCOVER**

This map consists of the dominant natural landcover within the jurisdiction's Critical Area. Features mapped include:

**FOREST COVER > 1 acre extent**

**SOURCE:**

- DNR 200' scale tidal wetland maps;
- 1986 600' scale aerial photography

**DEVELOPED WOODLANDS > 1 acre in extent**

**SOURCE:**

- DNR 200' scale tidal wetland maps;
- 1986 600' scale aerial photography

**AGRICULTURE**

**SOURCE:**

- DNR 200' scale tidal wetland maps;
- 1986 600' scale aerial photography

**TIDAL WETLANDS**

**SOURCE:**

- DNR 200' scale tidal wetland maps;
- 1986 600' scale aerial photography

## **WATER BODIES**

### **SOURCE:**

- DNR 200' scale tidal wetland maps;
- 1986 600' scale aerial photography
- USDA County Soil Surveys.

## **III. SOILS/TOPOGRAPHY MAP**

This map illustrates the approximate locations of the various soil types within the jurisdiction. Characteristics and development constraints of the soils are displayed in tabular form on each map.

### **SOIL SERIES BOUNDARIES**

#### **SOURCE:**

- USDA County Soil Surveys.

### **SLOPE 0-2%, 2-5%, varies**

#### **SOURCE:**

- USDA County Soil Surveys.

**HYDRIC SOILS** Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation.

#### **SOURCE:**

- State List of Hydric Soils prepared by the  
U.S. Department of Agriculture, Soil  
Conservation Service.

### **HIGHLY ERODIBLE SOILS**

#### **SOURCE:**

- USDA County Soil Surveys

### **SHORE EROSION STRUCTURES**

#### **SOURCE:**

- Field Reconnaissance

### **100 YEAR FLOODPLAIN**

#### **SOURCE:**

- Flood Insurance rate maps, Federal Emergency Management Agency

### **SAND AND GRAVEL**

#### **SOURCE:**

- USDA County Soil Survey

#### **IV. HABITATS AREAS**

Information obtained from the LANDCOVER inventory was assessed to determine biological communities that provide aquatic and terrestrial wildlife habitat as well as movement between habitats.

##### **SUBMERGED AQUATIC VEGETATION**

###### **SOURCE:**

- Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and Tributaries-1985

##### **ANADROMOUS FISH SPAWNING AREAS**

###### **SOURCE:**

- DNR, Tidewater Administration Fisheries Division.

##### **FOREST INTERIOR DWELLING BIRDS: POTENTIAL HABITAT**

Large, undisturbed, mature forested stands; includes Riparian forests of 300 feet or greater in width, contiguous forested areas of the above description with a minimum 500 foot radius from the center of the forested tract, and upland forests 100 acres in size or greater.

###### **SOURCE:**

- DNR 200' scale tidal wetland maps;
- 1986 600' scale aerial photography
  
- LANDCOVER MAP
- Guidance Paper No.1- A Guide to Conservation of Forest Interior Dwelling Birds in the Critical Area.

##### **COLONIAL NESTING BIRDS**

###### **SOURCE:**

- DNR, Forest Park and Wildlife Service

##### **OYSTER BARS**

###### **SOURCE:**

- Natural Oyster Bars Maps; Department of Natural Resources, State of Maryland.

##### **RARE, THREATENED, ENDANGERED SPECIES**

###### **SOURCE:**

- Maryland Natural Heritage Program

##### **HISTORIC WATERFOWL STAGING AND CONCENTRATION AREAS**

###### **SOURCE:**

- MD Forest, Park and Wildlife Service

##### **NON-TIDAL WETLANDS**

###### **SOURCE:**

- United States Department of the Interior, National wetlands Inventory Maps, 1980 -1982

**WATER DEPENDENT FACILITIES: Recreational, Industrial**

**SOURCE:**

- Guide for Cruising Maryland Waters, Maryland Department of Natural Resources Tidewater Administration.
- DNR 200' scale Tidal Wetland Maps.
  - 1986 600' scale aerial photography
- Field Reconnaissance.

**VI. LAND USE**

Development density patterns have been identified as well as Existing Land Use. Critical Area boundaries and Buffers are refined as a result of analysis of the previous four maps and Existing Land Use.

**1000 FOOT CRITICAL AREA BOUNDARY**

**SOURCE:**

- DNR 200' scale Tidal Wetland Maps.
- 1986 600' scale aerial photography

**100 FOOT BUFFER**

**SOURCE:**

- Generated through analysis of the LANDCOVER, SOILS/TOPOGRAPHY, HABITAT AREAS, and EXISTING LAND USE MAPS

**\*INTENSELY DEVELOPED AREAS**

**SOURCE:**

- Generated through analysis of the LANDCOVER, SOILS/TOPOGRAPHY, HABITATS AREAS, and EXISTING LAND USE MAPS

**\*LIMITED DEVELOPMENT AREAS**

**SOURCE:**

- Generated through analysis of the LANDCOVER, SOILS/TOPOGRAPHY, HABITATS AREAS, and EXISTING LAND USE MAPS

**\*RESOURCE CONSERVATION AREAS**

**SOURCE:**

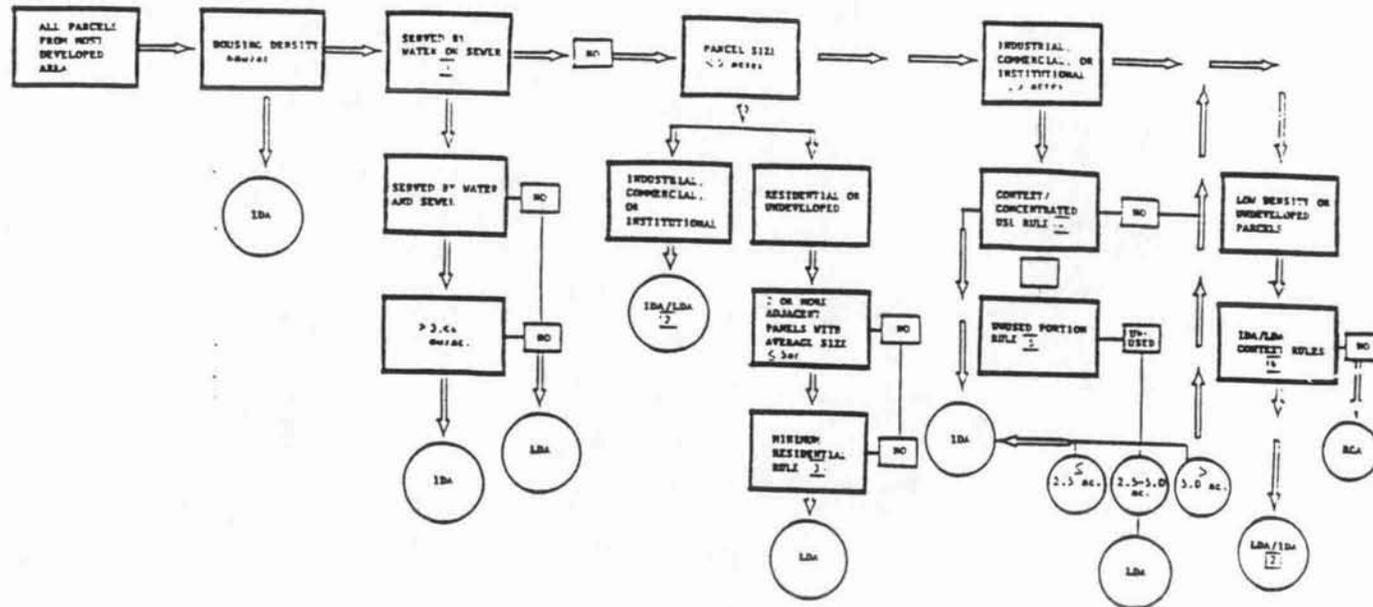
- Generated through analysis of the LANDCOVER, SOILS/TOPOGRAPHY, HABITATS AREAS, and EXISTING LAND USE MAPS

**WATER DEPENDENT FACILITIES**

**SOURCE:**

- Field Reconnaissance, Guide for Cruising Maryland Waters 14th ed., MD DNR, Tidewater Administration

# MAPPING METHODOLOGY FOR DESIGNATING CRITICAL AREA LAND USE ZONES



1 AREA INDICATED AS SERVED IF SHOWN AS S1, S2, V1 OR W7 ON COUNTY COMPREHENSIVE WATER AND SEWER PLAN.

2 DETERMINATION OF IDA-LDA SHALL BE BASED ON THE RELATIVE DEGREE TO WHICH DEVELOPMENT AT THE SITE WILL IMPACT THE WATER QUALITY OF THE RECEIVING WATER BODY AS WELL AS PLANT, FISH AND WILDLIFE HABITATS.

3 AT LEAST 50% OR MORE OF ALL PARCELS (INCLUDING SUBJECT PARCEL & ADJACENT PARCELS) ARE DEVELOPED.

4 5,000 SF OF THE SITE OR BUILDING COVERAGE ON AN ADJACENT PARCEL DEVELOPED AS COMMERCIAL, INDUSTRIAL OR INSTITUTIONAL.

5 IF 50% OR MORE OF THE PARCEL IS DEVELOPED, THEN IDA. IF < 50% OF THE SITE IS DEVELOPED, THEN USED AND UNDEVELOPED PORTIONS ARE SPLIT (USED TO IDA, UNDEVELOPED FOR FURTHER ANALYSIS.)

6 A IF PARCEL IS < 3 ACRES AND CONTIGUOUS ON 2 SIDES BY LDA/IDA.  
 B IF PARCEL IS 3-10 ACRES AND CONTIGUOUS ON 3 OR MORE SIDES TO LDA OR IDA.  
 C IF PARCEL IS < 20 ACRES, EDGED FOR IDA OR LDA TYPE DEVELOPMENT AND POSSESSING S2 OR W3 PRIORITY ON THE COUNTY COMPREHENSIVE WATER AND SEWER PLAN, THEN LDA.

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**Appendix 4 - Information Needed for Review**

**TOWN OF ST. MICHAELS  
CHESAPEAKE BAY CRITICAL AREA CHECKLIST**

Applicant: \_\_\_\_\_ Project: \_\_\_\_\_

Address: \_\_\_\_\_ Location: \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Development Category: Insignificant Action ( )  
Minor Action ( )  
Major Action ( )

Application complete (see list below) ( ) More information requested ( )

Date Complete: \_\_\_\_\_ Date Requested: \_\_\_\_\_

Type of Application: Building Permit ( )  
Zoning Amendment ( )  
Variance ( )  
Special Exception ( )  
Subdivision ( )

Qualifies as an insignificant action (yes) (no)

**INFORMATION NEEDED FOR MINOR AND MAJOR ACTIONS**

1. Existing Conditions	MINOR ACTIONS	MAJOR ACTIONS
a. area location map	( )	( )
b. site drainage characteristics (minor)	( )	( )
c. 100 year flood plain	( )	( )
d. topography survey (major only)	( )	( )
e. sensitive areas	( )	( )
f. valued habitats	( )	( )
g. hydric soils	( )	( )
h. built features	( )	( )
i. access drives	( )	( )
j. soils (major only)	( )	( )
k. wetlands	( )	( )
l. submerged aquatic vegetation	( )	( )
m. upland vegetation	( )	( )
n. wildlife habitat	( )	( )
o. rare, threatened, or endangered habitat	( )	( )
p. title block, legend, and north arrow	( )	( )
q. map scale and data sources	( )	( )

2. Concept Plan

- |  |     |     |
|--|-----|-----|
| a. areas to be conserved                   | ( ) | ( ) |
| b. property boundaries                     | ( ) | ( ) |
| c. proposed lot lines                      | ( ) | ( ) |
| d. location of proposed structures         | ( ) | ( ) |
| e. site drainage patterns                  | ( ) | ( ) |
| f. post development topography             | ( ) | ( ) |
| g. traffic circulation (major only)        | ( ) | ( ) |
| h. trip generation (major only)            | ( ) | ( ) |
| i. sewerage treatment and disposal         | ( ) | ( ) |
| j. water lines and well locations          | ( ) | ( ) |
| k. stormwater management features          | ( ) | ( ) |
| l. erosion and sediment control measures   | ( ) | ( ) |
| m. required yard setback lines             | ( ) | ( ) |
| n. title block, legend, scale, north arrow | ( ) | ( ) |

3. Narrative Report

- |   |     |     |
|---|-----|-----|
| a. Town's site development objectives addressed | ( ) | ( ) |
| b. computation of lost habitat                  | ( ) | ( ) |
| c. computation of lost ag lands                 | ( ) | ( ) |
| d. computation of lost forest & woodlands       | ( ) | ( ) |
| e. description of mitigating measures           | ( ) | ( ) |
| f. description of effect of mitigation          | ( ) | ( ) |
| g. computation of impervious surface area       | ( ) | ( ) |
| h. description of plant communities             | ( ) | ( ) |
| i. description of wildlife habitat              | ( ) | ( ) |
| j. correspondence with MD DNR                   | ( ) | ( ) |

**Appendix 5 - Mitigation Manual**

The Mitigation Manual was considered too lengthy to include as an appendix to this report. The manual is a resource guidebook separate and distinct from this program document. The Mitigation Manual is designed to assist Town approval authorities in review of future development projects and to implement the policies, objectives and implementation components of this local program.

**Appendix 6 - Critical Area Maps**

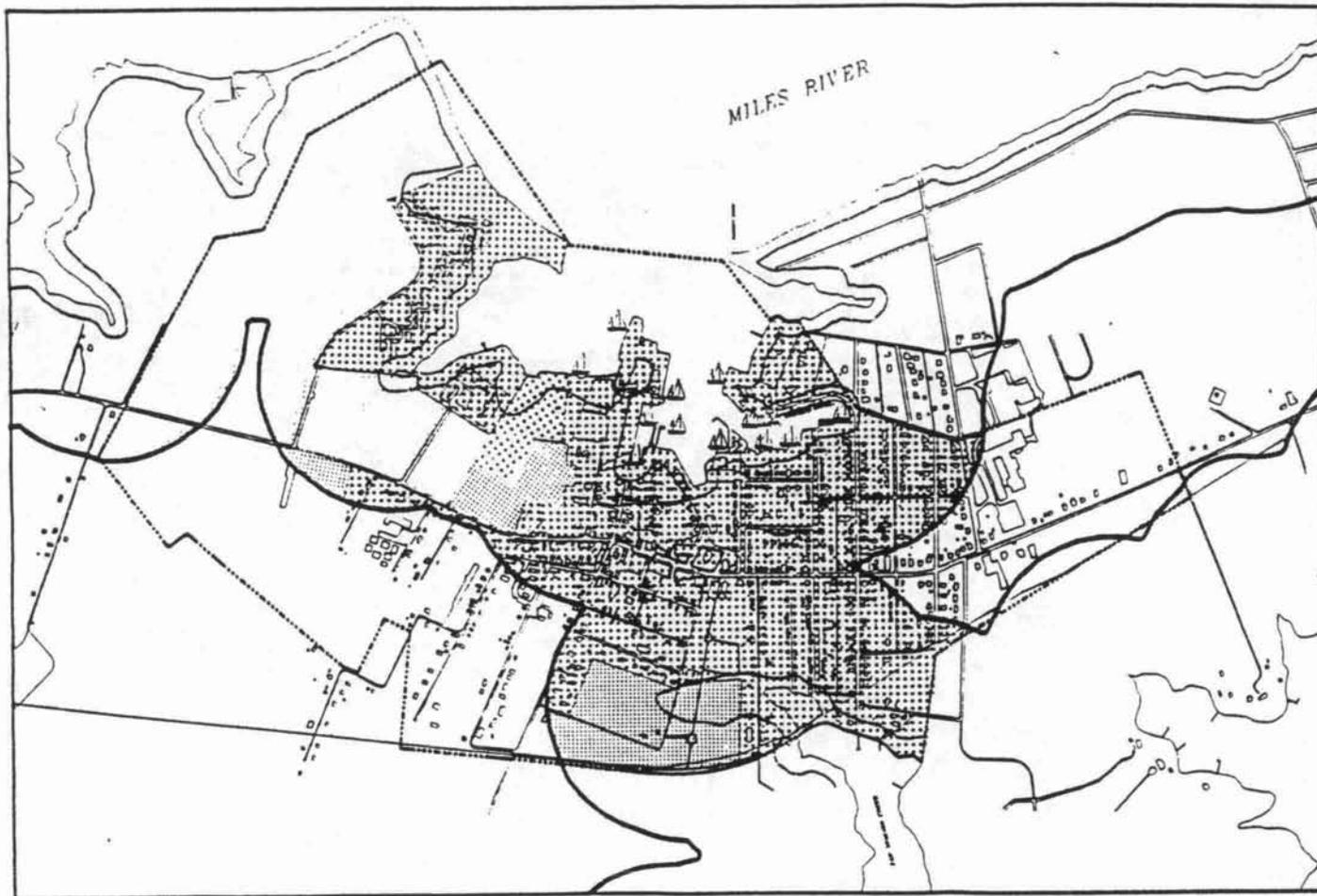
- 1. Land Use Map**
- 2. Soils/Topography**
- 3. Landcover Map**
- 4. Habitats Areas**

**APPENDIX VI - 1**

**E. 640**

LAND USE MAP

E. 641



-  CRITICAL AREA BOUNDARY
-  BUFFER
- Land Use**
-  IDA
-  LDA
-  RCA
-  WATER DEPENDENT FACILITIES

ST. MICHAELS, MARYLAND

Map 1

REDMAN/JOHNSTON  
 ASSOCIATES

APPENDIX VI-2

# SOILS/TOPOGRAPHY

E. 642

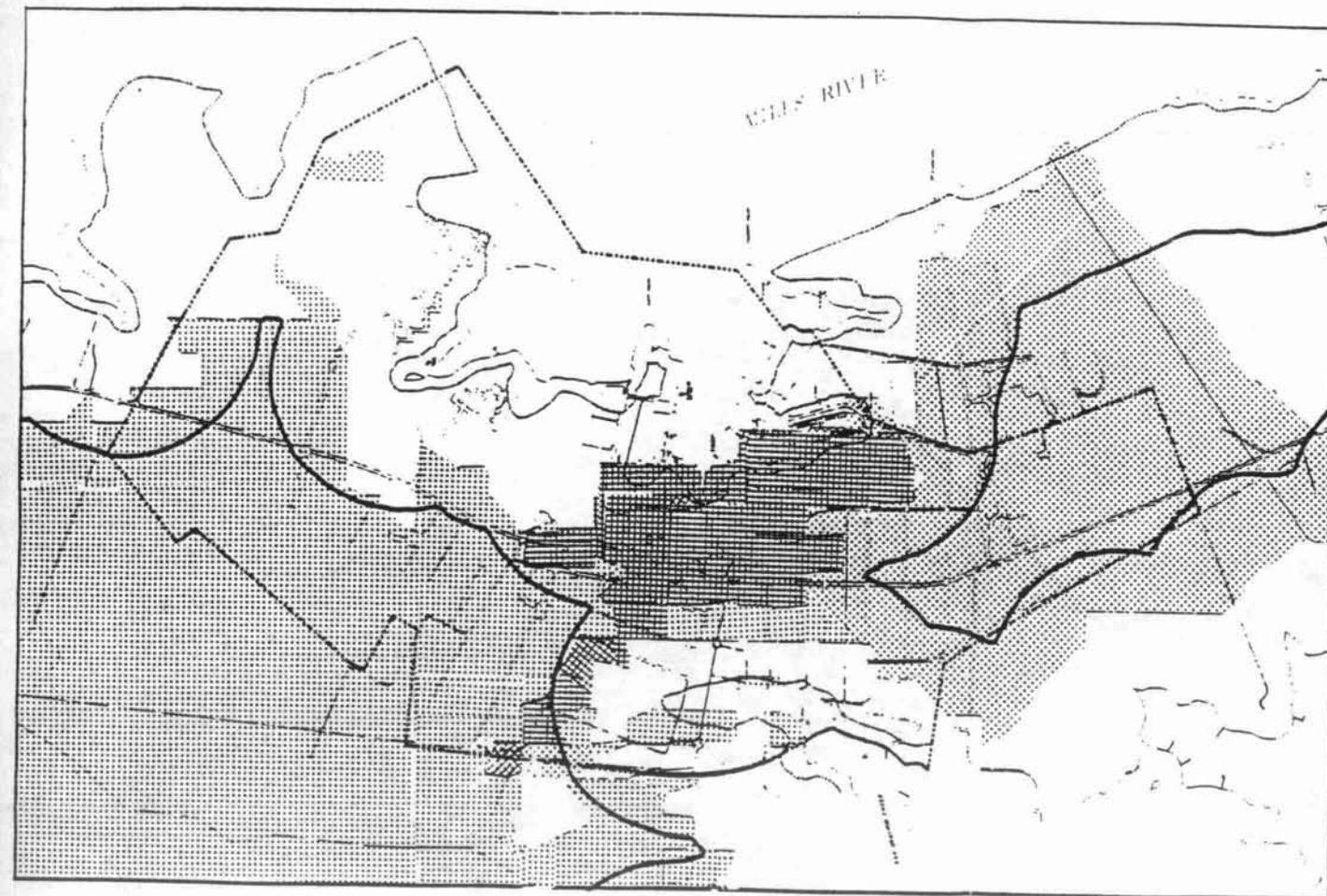
-  HYDRIC SOILS
-  HIGHLY ERODABLE
-  STEEP SLOPES

ST. MICHAELS, MARYLAND

Map 2

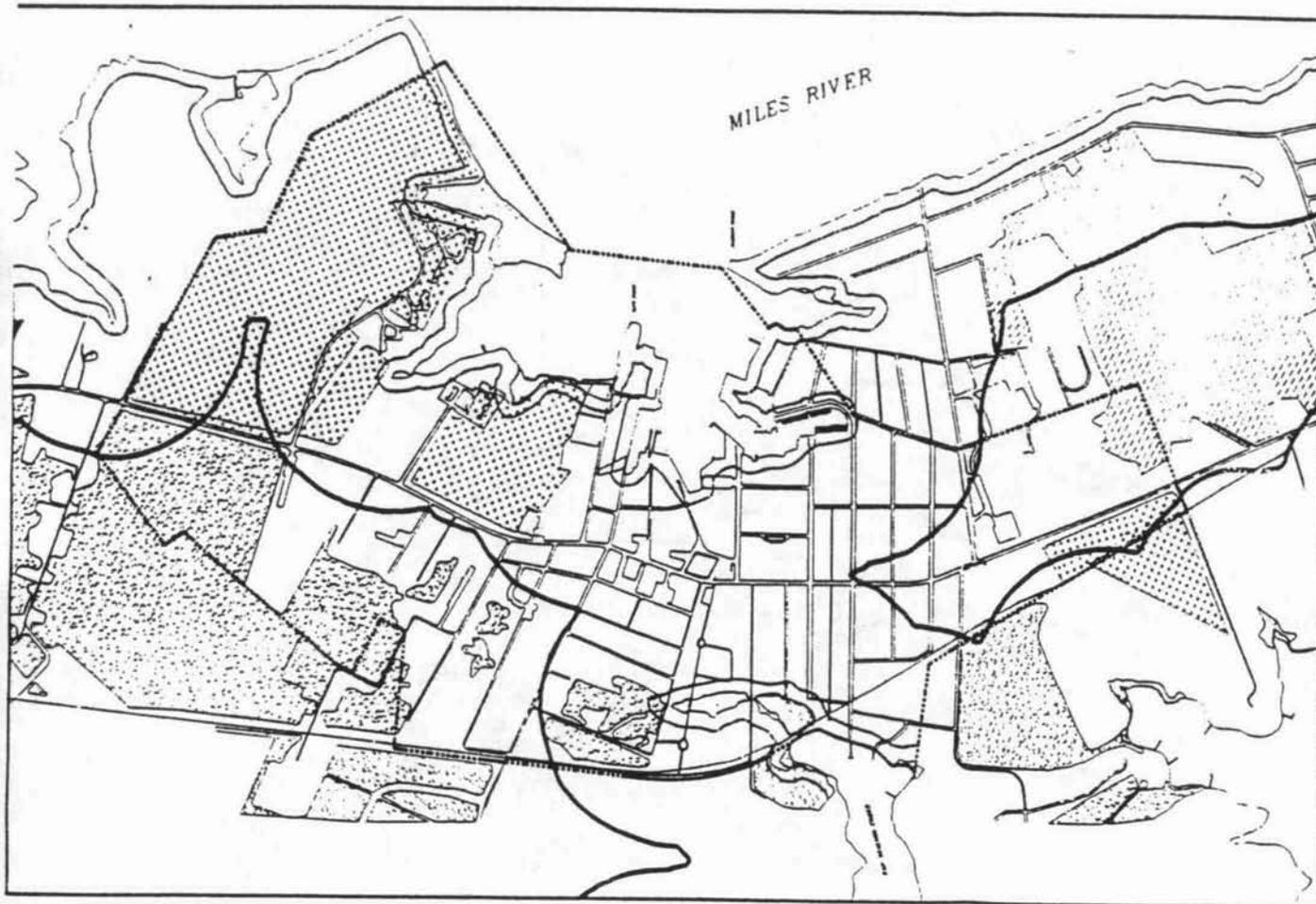
REDMAN/JOHNSTON  
 ASSOCIATES

APPENDIX VI - 3



LANDCOVER MAP

E. 643



-  DEVELOPED WOODLANDS
-  FOREST
-  AGRICULTURAL LAND
-  TIDAL WETLANDS

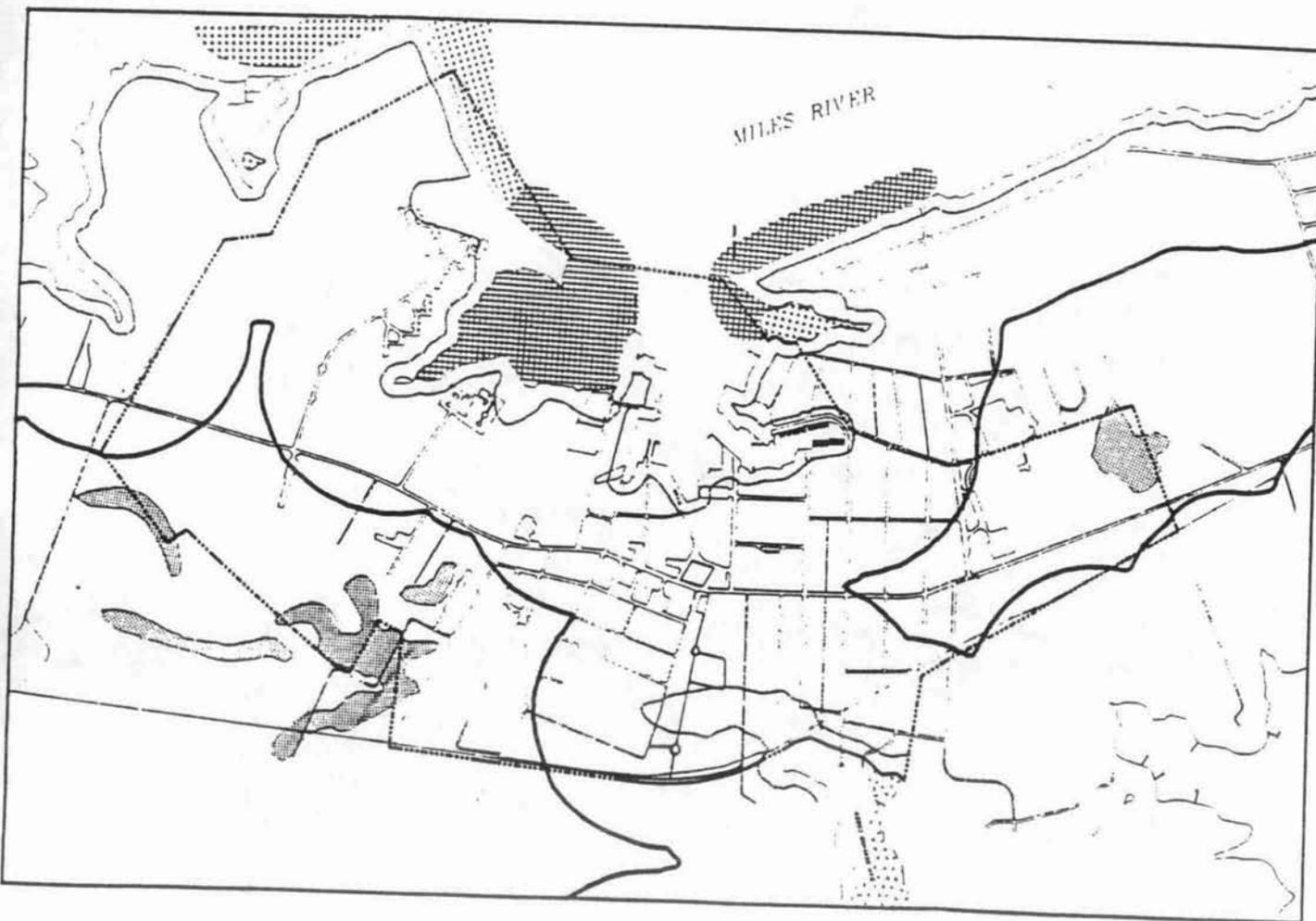
ST. MICHAELS, MARYLAND

Map 3

REDMAN/JOHNSTON  
 ASSOCIATES

APPENDIX VI - 4

## HABITAT AREAS



ST. MICHAELS, MARYLAND

MAP 4

REDMAN/JOHNSTON  
ASSOCIATES

APPENDIX VI - 5

## Appendix VII - Zoning Ordinance

The previous sections of this document describe the recommended technical and administrative procedures to be followed in implementing the goals and objectives of the St. Michaels Critical Area Program. The next step is to identify the tools that will be used to ensure that these procedures are followed.

St. Michaels has available several tools that can be used to implement the land use controls it has developed for the Critical Area Program. Principal among these tools are the St. Michaels Zoning Ordinance and Subdivision Regulations. St. Michaels is proposing to revise these documents to reflect the recommendations contained in its Critical Area Program. Proposed amendments to the St. Michaels Zoning Ordinance are contained in APPENDIX SEVEN and proposed amendments to the Town's Subdivision Regulations are contained in APPENDIX EIGHT.

By adopting the proposed revisions the Town will ensure that the St. Michaels Critical Area Program will be implemented. The revisions contain specific standards and criteria to guarantee that implementation is consistent and predictable, and provide adequate standards against which compliance can be measured. They also assure that there is adequate authority, when needed, for enforcing the Critical Area Program.

### APPENDIX SEVEN: Proposed Amendments to the St. Michaels Zoning Ordinance

*Add the following information to SECTION 1. ESTABLISHMENT OF ZONES. PROVISION FOR OFFICIAL ZONING MAP:*

3. Official Critical Area Overlay District Maps - Official Critical Area Overlay District Maps shall be prepared and maintained in force as part of the Official Zoning Maps of the Town. They shall delineate the extent of the of the Critical Area Overlay District ("O") that shall correspond to the Chesapeake Bay Critical Area.
  - a. The Critical Area Overlay District shall include all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
    - 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 9 of the Natural Resources Article, Annotated Code of Maryland.
    - 2) All lands and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotate of Maryland; and
    - 3) Modification to these areas through inclusion or exclusions proposed by the Town of St. Michaels and approved by the Commission as

specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

b. Within the designated Critical Area all land shall be assigned one of the following land use management classifications:

- 1) Intensely Developed Area (IDA)
- 2) Limited Development Area (LDA)
- 3) Resource Development Area (RCA)

The land use management classification shall be as designated in the Town of St. Michaels Chesapeake Bay Critical Area Program, as amended: The Critical Area Overlay District Maps may be amended by the Town Commissioners in compliance with amendment provisions in this ordinance, the Maryland Critical Area Law and Critical Area Criteria.

4. Changing the Official Critical Areas Overlay District Maps - The Town Commissioners may elect to adjust the Critical Area Boundary to delete areas of the Town from the Critical Area District. The Town commissioners may also elect to add areas to the Critical Area. Any adjustments or changes shall be treated as amendments to the Critical Area Overlay District ("O") on the Official Critical Area Overlay District Map for the Town of St. Michaels and may be approved only after review and approval by the Critical Area Commission. Procedures and requirements for amending the Critical Area District Maps are as set forth in Section 14.

*Add as subsection "9". Non-Conforming Lots in the Critical Area, to SECTION 4. NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND...*

9. An individual lot or parcel of land located within the Town of St. Michaels Critical Area Overlay District ("O") may be improved with a single family dwelling and related accessory uses in a Resource Conservation Area (RCA) and otherwise developed in accordance with Section 5.10 in a Limited Development (LDA) and an Intensely Developed Area (IDA) provided they comply with the provisions of Section 6.19 Buffer Exemption Area Provisions and further provided they comply with the following criteria:

- a. Any legally buildable single lot or parcel of record established in the Town of St. Michaels prior to (date of the Town Critical Area Program Approval) may be improved or developed with one single family residence...
- b. Any lot on which development activity has legally progressed to the point of pouring foundation footing or installation of structural members, prior to adoption of the Town of St. Michaels Critical Area Program, will be permitted to complete construction as per existing development approvals.
- c. Development may take place on lots created prior to 1 June 1984 subject to the limitations on permitted uses contained in Section 5.10 and subject

to the provisions of Section 6.19. However, any development of such lands must comply "insofar as possible" with the Critical Area Criteria if the development occurs between 1 December 1985 and the time the local program is approved. Development after (insert date of Town Critical Area Program approval) on land subdivided prior to 1 June 1984 must comply with the use provisions of Section 5.10 and the provisions of Section 6.19.b.

- d. Development may take place on lots subdivided between 1 June 1984 and 1 December 1985, for which "interim findings" (Critical Area Law, Section 8-1813) have been made by the Town of St. Michaels Planning Commission, the Town Board of Appeals, or the Town Commissioners.

*Add "10.", below, to SECTION 5 ZONE REGULATIONS:*

#### 10. Critical Area Overlay District

The purpose of the Critical Area Overlay District ("O") is to implement zoning regulations and measures designed to protect and enhance water quality and habitat resources located within the Town's Critical Area. The geographic area for which the following district regulations apply shall be those lands and waters located within one thousand feet of the landward boundaries of all tidal waters, tidal wetlands and tributary streams in the Critical Area as designated on the Town of St. Michaels Critical Area Overlay District Maps.

The intent of this district is to provide special regulatory protection for the resources located within the town Critical Area and to foster more sensitive development activity in shoreline areas. Another objective is to minimize adverse impacts to water quality and natural habitats.

##### a. Land Use Management District Classifications

- 1) Within the Town of St. Michaels Critical Area Overlay District ("O") there shall be three land use management area classifications: 1) Intensely Developed Areas (IDAs); 2) Limited Development Areas (LDAs); and 3) Resource Conservation Areas (RCAs) which shall be as shown on the Official Critical Area Maps.
- 2) These land use management areas correspond to the definitions established in the Chesapeake Bay Critical Area Criteria COMAR 14.15, as amended, for each area and specifically as identified on the Town of St. Michaels Critical Area maps, adopted as part of the Town's Critical Area Program. Mapped land use management area classifications are based on land uses established on or before 1 December 1985, except for areas where the land classification may be changed by granting the Growth Allocation (GA) floating zone district classification. The following regulations shall be applied based on the specific land management classification.

**b. Density Provisions**

- 1) Density in the Intensely Developed Areas (IDAs) shall be as established in the underlying base zone.
- 2) The density of development and minimum lot sizes permitted within a Limited Development Area (LDA) shall be governed by prescriptive densities within the applicable underlying base zoning districts. However, in underlying base zoning districts that permit residential use, density may not exceed 3.99 units per acre. Determination of density shall be based on the gross site area of the parcel prior to development or subdivision.
- 3) Residential densities in Resource Conservation Areas (RCAs) shall not exceed one (1) dwelling unit per twenty (20) acres regardless of densities permitted in applicable underlying base zones, except as provided below. Determination of density shall be based on the gross site area of the parcel, excluding tidal wetlands, except that in determining residential densities for a site, private wetlands may be included in the calculation on one (1) dwelling unit per twenty (20) density, provided the development density on the upland portion of the site does not exceed one (1) dwelling unit per eight (8) acres.
- 4) Minimum lot sizes shall be governed by standards applicable to the underlying base zoning districts.
- 5) The one (1) dwelling unit per twenty (20) acre density limitation in the RCA shall not prevent a bona fide intra-family transfer subjected to the following limitations:
  - a) Intra-family transfer will be permitted on parcels of land in St. Michaels where it is shown that the parcel was recorded on or before 1 March 1986 and such parcel is at least seven (7) acres and not more than sixty (60) acres in size.
  - b) A bona fide intra-family transfer shall be subject to all the requirements of the Town of St. Michaels Subdivision Regulations and a notation shall be placed on the final subdivision plan denoting the lot(s) that are created under these provisions.
  - c) Subdivision of land under the bona fide intra-family transfer provisions contained herein shall be subject to the following limitations:
    - i) Parcels 7 acres to less than 12 acres cannot be subdivided into more than a total of 2 lots.
    - ii) Parcels 12 acres to less than 60 acres cannot be subdivided into more than 3 lots.

- d) A lot created pursuant to these provisions may not be subsequently conveyed to any person except as provided herein:
  - i) Where the conveyance is to a member of the owner's immediate family; or
  - ii) Where the conveyance of the lot is as part of a default on a mortgage or deed of trust.
- e) Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. In addition, any lot created under this section may not be transferred or sold to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property, unless and until the Planning Commission has determined that the following can be conclusively proved:
  - i) A change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer when such circumstances are consistent with the warrants and exceptions contained herein, or;
  - ii) Other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCAs warrant an exception.
- f) Deeds of transfer shall include the provisions contained in (e) above as covenants which shall restrict the subsequent transfer or sale of a lot or lots created pursuant to the intra-family transfer provisions contained herein to a third party, not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property.

c. General Regulations

- 1) Except as provided in Section 6.19.b (Buffer Exemption Area Provisions), permitted uses, accessory uses and special exception uses shall be limited to those permitted within the existing applicable underlying base zoning district, as shown on the Official St. Michaels Zoning Maps.
- 2) Existing industrial and commercial facilities, including aquaculture facilities, shall be allowed in the RCA. However, additional land may not be zoned for industrial or commercial development in the RCA.
- 3) The following uses are prohibited in the Critical Area due to their high potential for adverse impact on plant and wildlife habitats and water quality, unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.

- a) Non-maritime heavy industry; and
  - b) Transportation facilities and utility transmission lines except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters.
- 4) The following uses are prohibited in the Critical Area:
- a) New solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles;
  - b) New sanitary landfills;
  - c) New sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities; or
  - d) New commercial and industrial maritime or related facilities in the Buffer within Resource Conservation Areas (RCAs).

d. General Buffer Regulations

- 1) New buildings, structures, activities, and facilities permitted in the underlying zoning district (base zoning district) are prohibited within the Buffer, except the following:
  - a) Boat houses, community piers, individual private piers, docks, launching ramps, and mooring facilities.
    - i) For community piers, only the following uses shall be permitted to locate in the Buffer:
      - Mooring buoys and slips;
      - Docks, piers, launching ramps, access roads, paths; and
      - Loading/unloading areas.
    - ii) Where community or individual slips, piers, or mooring buoys are to be provided in a subdivision that is approved after [date of the St. Michaels Critical Area Program adoption], the number of slips, piers, mooring buoys shall be the lesser of (1) or (2) below:
      - Up to one slip for every fifty (50) feet of shoreline in subdivisions in the Limited Development Areas (LDA) and Intensely Developed Areas (IDA), and one slip per three hundred (300) feet of shoreline in the subdivision in the Resource Conservation Area (RCA); or

- A density of slips, piers, or mooring buoys to platted lots or dwellings in the subdivision according to the following schedule:

**Platted Lots or Dwellings  
in the Critical Area**

**Slips and Moorings**

up to 15	1 for each lot
16 - 40	15 or 75 %, whichever is greater
41 - 100	30 or 50 %, whichever is greater
101 - 300	50 or 25 %, whichever is greater
over 300	75 or 15 %, whichever is greater

- b) New commercial marinas and other related commercial maritime facilities where permitted in LDA and IDA, expansion of existing commercial marinas and other related commercial maritime facilities in RCA, and uses accessory thereto, provided that non-water-dependent uses and activities shall not be located in the Buffer. Only the following, which are considered commercial marine "water-dependent" uses, shall be permitted in the Buffer:
- i) Moorings buoys and slips;
  - ii) Docks, piers, launching ramps, access roads and paths;
  - iii) Loading and unloading areas;
  - iv) Fueling areas; and
  - v) Public areas.
- c) Public beaches and other public water-oriented recreation and education facilities, uses and related structures, provided that non-water-dependent uses and activities shall not be permitted in the Buffer. Only the following, which are considered public "water-dependent" uses, may be permitted to locate in the Buffer:
- i) Lifeguard stations;
  - ii) Nature study/passive recreation facilities with no structures or impervious surfaces;
  - iii) Moorings buoys and slips;
  - iv) Docks, piers, launching ramps, access roads and paths; and
  - v) Loading and unloading areas;
- d) Fisheries and related commercial water-dependent facilities, provided that non-water-dependent uses and activities shall not be permitted in the Buffer. Only the following, which are

considered fisheries "water-dependent" uses, shall be permitted to locate in the Buffer:

- i) Docks, piers, launching ramps, access roads and paths;
  - ii) Seafood offloading docks;
  - iii) Fueling areas; and
  - iv) Shore facilities for aquaculture.
- e) Research facilities operated by county, state or federal government agencies or educational institutions conducting marine related studies.
- 2) Limited cutting or clearing of trees is permitted for the following purposes under an approved Forest Management Plan:
- a) For personal use, limited to five-hundred (500) square feet, providing that Buffer functions are not impaired and trees cut are replaced;
  - b) To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
  - c) In conjunction with horticultural practices used to maintain the health of individual trees;
  - d) To provide access to private piers;
  - e) To install or construct an approved shore erosion protection device or measure; or
  - f) To protect forests from extensive pest or disease infestation or threat from fires if approved by the Department of Agriculture or the Bay Watershed Forester.

e. Development Standards in Intensely Developed Areas (IDAs)

- 1) All development and redevelopment in IDA shall be subject to the following development standards and/or conditions, in addition to those established in other sections of this ordinance, except that development on lots qualifying under Section 4.9 must only comply with these provisions insofar as possible as determined by the Planning Commission:
- a) All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical Area;
  - b) No structure or uses associated with development in an Intensely Developed Area shall be permitted within the Buffer unless the site is within a Buffer Exemption Area;

- c) Development and redevelopment shall be subject to the Habitat Protection guidelines in the St. Michaels Critical Area Program;
- d) Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve a ten (10%) percent reduction of pre-development pollutant loadings (see Mitigation Manual for computation methodology);
- e) Development and redevelopment projects shall delineate those site areas not covered by impervious surfaces that are to be maintained or established in vegetation. Where vegetation is not proposed, the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in g. below;
- f) A minimum twenty-five foot Buffer shall be maintained around all non-tidal wetlands as identified in the St. Michaels Critical Area Program where development activities or other activities which may disturb the wetlands or wildlife contained therein shall be prohibited unless it can be shown that these activities will not adversely affect the wetland; and
- g) Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:
  - i) Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or
  - ii) Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used.) If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

**f. Development Standards in Limited Development Areas (LDAs) and RCAs (RCAs)**

- 1) Development and redevelopment in an area designated Limited Development (LDA) or Resource Conservation (RCA) shall be subject to the following standards, except that development on lots of record qualifying under Section 4.9 must comply with these regulations insofar as possible as determined by the Planning Commission:**
  - a) All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical Area;**
  - b) Site development shall be designed to assure that those features or resources identified as Habitat Protection Areas are afforded protection as prescribed in the habitat protection element of Town of St. Michaels Critical Area Program;**
  - c) Roads, Bridges and utilities serving development shall be so located as to avoid disturbances to habitat protection areas. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas, the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists;**
  - d) All development activities which cross, or are located adjacent to, tributary streams in the Critical Area shall:**
    - i) not be located in the Buffer but be designed in a manner to reduce increases in flood frequency and severity;**
    - ii) provided for the retention of natural streambed substrate;**
    - iii) minimized adverse impacts to water quality and storm water runoff; and**
    - iv) retain the existing tree canopy;**
- 2) Development activities shall be located and designed to provide for the maintenance of the wildlife and plant habitats on the existing site and to maintain continuity with those on adjacent sites. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site.**
- 3) Forest and development woodlands, as defined by the Town Critical Area Program, shall be created or protected in accordance with the following;**

- a) When no forest exists on the site, at least fifteen (15%) percent of the gross site area shall be afforested. The location of the afforested areas should be designed to reinforce protection to habitats on the site or to provide connections between forested areas when they are present on adjacent sites;
- b) When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan (the developer shall submit plans for development and areas to be cleared to the Maryland Forest, Park and Wildlife service for comments and recommendations and shall transmit the comments to the Planning Commission). A grading permit must be obtained prior to any clearing or cutting associated with proposed development and in addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions.
- i) All forests cleared or developed shall be replaced on not less than an equal area basis on the site or on an alternative site approved by the Planning Commission. When the development pad is strictly limited to the minimum required, and cleared areas are reforested to the extent possible a forest area shall continue to be considered a developed woodland and no replacement shall be required;
- ii) No more than twenty (20%) percent of the forested or developed woodland within the site proposed for development may be removed (except as provided for in the requirement below) and the remaining eighty (80%) percent shall be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants). Removal of forest or developed woodland cover in the Buffer is prohibited;
- iii) The clearing of forest or developed woodlands up to twenty (20%) percent shall be replaced on an area basis of one to one-a developer may propose clearing up to thirty (30%) percent of the forest or developed woodland on a site, but the trees removed in excess of twenty (20%) percent must be replaced at the rate of 1.5 times the area removed;
- iv) If more than thirty (30%) percent of the forest on a site is cleared, the forest is required to be replanted at three (3) times the total areal extent of the cleared forest;
- v) If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the above requirement;

- vi) Surety in the form of a performance bond or other means acceptable to the Town Attorney shall be provided in an amount suitable to assure forest replacement as required;
- vii) The forests and developed woodlands required to be retained or created through afforestation shall be maintained through restrictive covenants, easements, or similar instruments in a form approved by the Town Attorney;
- c) Development on slopes greater than fifteen (15%) percent shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability;
- d) Impervious surfaces shall be limited to fifteen (15%) percent of the gross site area. However, impervious surfaces on any lot not exceeding one (1) acre in size in a subdivision approved after June 1, 1986 may be up to twenty five (25) percent of the lot; and
- e) A minimum twenty-five foot Buffer shall be maintained around all non-tidal wetlands as identified in the St. Michaels Critical Area Program where development activities or other activities which may disturb the wetlands or wildlife contained therein shall be prohibited unless it can be shown that these activities will not adversely affect the wetland; and
- f) Development and redevelopment projects that propose shore erosion protection must demonstrate that significant shore erosion is occurring on the site. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and where appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:
  - i) Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or
  - ii) Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used.) If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

**g. Woodland Reforestation and Afforestation Standards**

Where reforestation or afforestation is required the following minimum standards shall be used within the Critical Area District:

- 1) The replacement or establishment of forests or developed woodlands shall assure a diversified plant community, but may include other types tree plantings where necessary to correct an existing soil stabilization problem. Diverse forest plantings shall include a canopy layer, an understory layer, and a shrub layer.
- 2) For each acre of land where woodlands must be replaced or established, plantings shall consist of trees and/or wildlife shrub species spaced approximately at eight (8) foot intervals in rows eight (8) feet apart, or other suitable spacing as determined by the Bay Watershed Forester on a site-by-site basis, which result in a minimum of three-hundred (300) stems per acre after the first growing season.
- 3) **Planting Plans, Bonds and Inspections** - Required planting plans shall be prepared and submitted with the site plan or preliminary and final subdivision plat. A planting plan shall be included as a required public improvement with site plans or subdivisions plats. The planting plan must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a professional registered forester, landscape architect, or an experienced landscape designer. The planting plan shall show:
  - a) The site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements and the general location of structures and uses of abutting properties;
    - i) Existing and proposed grades;
    - ii) Existing vegetative cover to be retained and the location, general size and type of such vegetation;
    - iii) The methods for protecting plant materials after construction;
    - iv) A plant schedule and plan listing plants to be used giving their botanical and common names, size at time of planting, and quality of each;
    - v) An indication of whether plants are balled and burlapped, container grown or bare root; and
    - vi) An indication of the spacing and location of all proposed trees, shrubs and ground covers.

3) **Plant Materials and Planting Schedule**

- a) Although plant types should be chosen from the recommended plant list available from the Planning Commission or the Maryland State Bay Watershed Forester, plant types that vary from this list may be substituted with the approval of the Local Bay Watershed Forester. Plants for afforestation or reforestation shall be approved by the Bay Watershed Forester for suitability in regard to the eventual size and spread, susceptibility to diseases and pests, and adaptability to existing soil and climate conditions.
- b) All planting should be done in the months of March and April of each year. For the first two (2) years steps should be taken to control competing vegetation. Technical assistance from the State's Bay Watershed Forester is highly recommended.

4) The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and cost estimate, the developer or owner shall enter into an agreement with the Town of St. Michaels to provide plantings as required. The agreement shall be in form and substance as approved by the Town and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of one hundred and twenty percent (120%) of proposed plant materials, labor and maintenance costs.

- a) If all afforestation or reforestation is not completed within two (2) year after the first spring planting date following recordation, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited, or if a bond or surety has been posted, payment in full to the Town shall be ordered. The funds, so received, shall be used by the Town to defray the cost of providing the approved Buffer afforestation or reforestation for the site.
- b) If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be a continuing obligation of the property owner.
- c) All bonds or other forms of surety shall be in a form acceptable to and approved by the Town Commissioners.
- d) All security posted will be held for a period of two (2) years after installation of the planting, to assure the proper maintenance and growth. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted to the extent necessary to replace the dead plant materials.
- e) The Town Commissioners or their designee may from time to time release those portions of the surety which may be appropriate.

- f) Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.
- 5) All plantings shall be inspected by Town or the Bay Watershed Forester upon notification by the developer or owner and shall be approved according to the following standards:
- a) The planting shall adhere to the approved plan. Substitutions or revisions may be made with the approval of the Bay Watershed Forester or the Planning Commission.
  - b) All plants shall be protected from vehicular encroachment by wheelstops, curbs or other barriers unless distance provides adequate protection.
  - c) No planting shall result in vegetative growth exceeding thirty-six (36) inches in height, within thirty (30) feet of any street intersection or otherwise obstruct sightlines.

i. Water-Dependent Facilities

All applications for development of Commercial Marinas or other water related uses in the Critical Area must include the following information:

- 1) Water depth contours shown at two (2) foot intervals at mean low water taken by sounding (unless otherwise specified by the Town Planning Commission).
- 2) Existing and proposed regraded surface of the land.
- 3) Location of natural features (such as streams, wetlands (tidal and non-tidal), drainage easements, vegetative and tree cover.
- 4) Land within the 100 year floodplain.
- 5) Location of all existing and proposed structures.
- 6) Location of all existing or proposed site improvements including storm drains, culverts, retaining walls and fences.
- 7) Description, method and location of water supply and sewerage disposal facilities.
- 8) Mean high and mean low water line.
- 9) All existing and proposed piers, buoys, launching ramps, shore protection structures.

- 10) Location and dimensions of all areas to be dredged including present and proposed depths.
- 11) Volume of dredge spoil to be removed, type of material, location and dimensions of disposal area(s) including dikes.
- 12) Location of all existing and proposed land-based building and structures on the site and a description of uses and activities to be conducted in each.
- 13) Location and dimensions of all boat launching ramps.
- 14) Location and dimensions of all boat slips and mooring buoys.
- 15) Location of fuel dock and gasoline storage tanks.
- 16) Location of all required buffer/yards/building restriction lines.
- 17) An environmental assessment report which indicates how the proposed project achieves the following criteria:
  - a) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
  - b) That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
  - c) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
  - d) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activities or vessels, or from boat cleaning and maintenance operations is minimized;
  - e) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
  - f) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area.
  - g) That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area; and
  - h) That interference with the natural transport of sand will be minimized.

Add "11", below, to SECTION 5 ZONE REGULATIONS:

**11. Growth Allocation District - GA**

The Growth Allocation district ("GA") shall be a floating zone. The floating zone is not mapped but is designated for use in areas classified as Resource Conservation Areas (RCA) and/or Limited Development Areas within the Town of St. Michaels Critical Area Overlay District ("O"). The purpose of the floating zone is to permit a change in the land management classification established in the Critical Area Overlay District on specific sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification. Only projects which have been approved by the Town Commissioners for award of the Critical Area Growth Allocation are eligible for the floating zone designation.

The Growth Allocation ("GA") provides for changing the land management classification of Resource Conservation Areas (RCA) and Limited Development Areas (LDA) in the Critical Area District ("O"). The Growth Allocation district ("GA") shall only be permitted on sites or portions of sites which have been approved as amendments to the St. Michaels Critical Area Program by the Critical Area Commission. Granting to the Growth Allocation ("GA") district classification shall further be limited as setforth below.

a. Growth Allocation District ("GA") - The following provisions shall apply the Growth Allocation ("GA") district:

1) Submission Requirements

- a) Five (5) copies of the request for growth allocation and "GA" floating zone classification and all required items for submission shall be submitted to the Town of St. Michaels Planning Commission.
- b) Concept plans, site plans and subdivision plats shall be prepared as per the applicable requirements of the Zoning Ordinance and/or Subdivision Regulations.

2) Procedure for Processing GA District Applications:

- a) All grants of the floating zone district by the Town Commissioners shall meet the same procedural requirements as for amending the Critical Area Overlay District, contained in Section 14.
- b) All applications for the GA Growth Allocation District Classification shall be accompanied by a preliminary site plan or subdivision plat prepared as per the requirements of the St. Michaels Zoning Ordinance and the Subdivision Regulations.
- c) All applications will be reviewed by the Planning Commission for consistency with the Town of St. Michaels Comprehensive Plan, the Town of St. Michaels Critical Area Program, and the Town

of St. Michaels Zoning Ordinance. The Planning Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

- d) After revising the site plan or plat based on the Planning Commission Review, the developer shall submit a preliminary site plan or plat.
  - e) The Planning Commission shall then hold a public hearing on all submissions. Submissions shall include the following:
    - i) Presentation of projects by the developers;
    - ii) Staff review comments; and
    - iii) Public comments.
  - f) The Planning Commissioners will then make its final recommendation and forward the application to the Critical Area Commission for review and approval.
  - g) Following approval of the application by the Critical Area Commission the Town Commissioners shall hold a public hearing on the proposed development projects. The hearing shall include the following:
    - i) Presentation of projects by the developers;
    - ii) Planning Commission recommendations;
    - iii) Critical Area Commission recommendations; and
    - iv) Public comments.
  - h) The Town Commissioners will then make the final decision on awarding growth allocation and may grant the floating zone request. The Town Commissioners may also establish conditions of approval to accompany the "GA" district classification, including a time limitation for completion of the proposed project.
- 3) Recording the GA Growth Allocation District
- a) The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.
  - b) Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations and shall delineate the Growth Allocation District on the record plat or site plan.

Add the following information to SECTION 6. SUPPLEMENTAL ZONE REGULATIONS:

18.  
19. Special Buffer Requirements

- a. The following special yard requirements shall apply within the Critical Area Overlay District ("O"):
- 1) Except as provided for water-dependent facilities in Section 5.10.c new development activities, including structures, roads, parking areas, impervious surfaces, and septic systems are not permitted in the Buffer.
  - 2) When the Buffer is not fully forested on certain parcels of land, the Buffer shall be expanded to include contiguous sensitive areas on the parcel. This expansion will occur whenever new land development or other land disturbing activities, such as clearing natural vegetation for agriculture or mining, are proposed. The expanded Buffer must be shown on plans required for such development.

Sensitive areas have the following features: 1) Hydric soils and soils with hydric properties as designated by the Soil conservation Service; 2) High erodible soils with a K value greater than .35; and 3) Steep slopes greater than fifteen percent (15%). The Buffer shall be expanded according to the following rules:

- a) When the site of the proposed land disturbance drains to a slope greater than fifteen (15) percent contiguous to the Buffer, the Buffer shall be expanded four (4) feet for every percent of slope over fifteen (15) percent or to the top of slope, whichever is greater, but in no case more than ten (10) feet beyond the top of the slope greater than fifteen (15) percent.
  - b) Where the site of the proposed land disturbance drains to the Buffer not fully covered by forest or developed woodland, the Buffer shall be expanded for one hundred (100) feet to one hundred fifty (150) feet, or to the upland limit of adjacent hydric soils, soils with hydric properties, and erodible soils, whichever is less. The Buffer will be expanded to include those soils lying in the drainage area between the proposed land disturbance and the Buffer.
  - c) The applicant may provide afforestation in the Buffer as an alternative to expanding the Buffer to include hydric soils, soils with hydric properties and erodible soils, provided that no area of hydric soils is classified as a nontidal wetland. Afforestation must be in accordance with Section 5.10.g.
- b. Buffer Exemption Area Provisions
- 1) The following special provisions apply in the Buffer Exemption Areas in the IDA, LDA, RCA.

a) **Permitted Uses:**

- i) New development or redevelopment (consistent with the provisions of Section 5.10), provided that the Development and Redevelopment Rules and Offsetting Requirements set forth below are observed.
- ii) Shore Erosion Protection Measures provided that such measures are consistent with the Town's shore erosion protection policies and provided that the measure has obtained all applicable State and federal permits.
- iii) Cutting or Clearing of Trees under an approved forest management plan for the following purposes only:
  - For personal use providing that Buffer functions are not impaired and trees cut are replaced.
  - To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
  - In conjunction with horticultural practices used to maintain the health of individual trees;
  - To provide access to private piers;
  - To install or construct an approved shore erosion protection device or measure;
  - To protect trees from extensive pest or disease infestation; or
  - To permit the development or redevelopment allowed above to be constructed or installed.

b) **Prohibited Uses:**

- i) Water polluting activities including, but not limited to, storage of vehicles, fuel or chemicals.

c) **Development and Redevelopment Rules:**

- i) Existing Structures - The expansion or redevelopment of existing structures in the Buffer Exemption Area may not increase impervious surfaces shoreward of the existing structure and shall not result in greater than a twenty-five (25) percent increase in the total site area in impervious surfaces, as described below, shall be required.

- ii) **Removal of Existing Structures** - when a structure within the Buffer Exemption Area is removed or destroyed, it may be replaced, insofar as possible, no closer than 100 feet from the edge of tidal waters, tidal wetlands or tributary streams. In such cases where a setback line exists as defined by structures on adjacent lots or parcels, the structure may not be replaced shoreward of that line. any impervious surfaces created greater in extent to pre-existing impervious surfaces within the Buffer Exemption Area shall be offset as described below.
- iii) **New Development** - New development in the Buffer Exemption Area shall minimize the shoreward extent of impervious surfaces insofar as possible taking into consideration existing Town yard setback requirements and other such factors. In no case may such impervious surfaces be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels.
- iv) **Offsetting Requirements:** New development or redevelopment in the Buffer Exemption Area which causes impervious surfaces as described above shall be required to offset for such development as follows:
  - The extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained, in natural vegetation; and
  - Natural vegetation of an area twice the extent of the impervious surface created in the Buffer Exemption Area shall be planted in a Buffer Exemption offset Area or other location as may be determined by the Town. The Town may collect fees in lieu of such planting.

*Add the following information to SECTION 10. THE BOARD OF APPEALS: POWERS AND DUTIES:*

**5. Variance from the Critical Area Overlay District Provisions.**

- a. In addition, due to special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area Overlay District ("O") would result in unwarranted hardship to a property owner, the Board of Appeals may grant a variance from the provisions of the Critical Area Overlay District. Variance requests in the Critical Area Overlay District shall not be granted unless the decision is based on the following additional criteria:

- 1) That special conditions or circumstances exist that are unique to the subject property or structure and that strict enforcement of the provisions within the Critical Area Overlay District ("O") would result in unwarranted hardship which is not generally shared by owners of property in the same management areas (i.e., IDA, LDA, RCA) of the Critical Area.
  - 2) That strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in the same management area within the Critical Area District.
  - 3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
  - 4) That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.
  - 5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical District, and that the granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program and associated ordinances as well as Subtitle 18 of the Natural Resources Article and COMAR 14.15.
  - 6) That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
- b. A variance will not be granted by the Board of Appeals unless and until:
- 1) A completed application for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District ("O") shall not be heard unless the State's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.
  - 2) The Board of Appeals shall find that the reason set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structures. In making this determination for variance requests in the Critical Area Overlay District ("O"), the Board of Appeals shall consider the following as tantamount to a minimum variance:
    - a) That the granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands, or tributary streams in the Critical Area as is feasible; and,

- b) That the applicant takes steps to mitigate impacts, insofar as possible, including:
  - i) Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis;
  - ii) Afforestation of areas of the site so that at least fifteen (15) percent of the gross site is forested; and,
  - iii) Implementation of any mitigation measures which relate to Habitat Protection Areas as delineated in the Town of St. Michaels Critical Area Program, and recommended by State agencies, are included as conditions of approval.
- c) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- d) For variances in the Critical Area Overlay District ("O"), the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this ordinance and the Town of St. Michaels Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- e) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by Certified Mail and furnished a copy of the said application.
- 3) In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate which comply with the intent of this ordinance and the Town of St. Michaels Critical Area Program. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance.

*Renumber* SECTION 14 to SECTION 15 and add the following SECTION 14.

**Section 14. AMENDMENTS IN THE CRITICAL AREA DISTRICT.**

The Town Commissioners may from time to time amend the provisions of this ordinance as they relate to the Critical Area District, amend the land use

management classification of properties in the Critical Area District or amend the Critical Area District Boundary.

In addition, the Town Commissioners shall review and propose any necessary amendments, as required, to the land-use management classifications in the Critical Area District at least every four (4) years.

All such amendments shall be approved by the Maryland Chesapeake Bay Critical Area Commission as established in Subsection 8-1803 of the Critical Area Law, Subtitle 18. Standards for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18 Subsection 8-1809 (i). The Critical Area Commission process for approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, Subsection 8-1809 (d).

a. Amendment Procedures

- 1) Proposed amendments to this Ordinance may only be initiated by the Planning Commission.
- 2) Amendments involving specific properties shall first be submitted to the Planning Commission.
- 3) For all proposed amendments the Planning Commission shall first hold a public hearing related thereto, at which parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. In addition, the Planning Commission shall post notice of their public hearing on property(s) for which amendments are requested and to the extent possible based on the best available information, notify all property owners immediately contiguous to the applicant of the hearing date, time and place. The Planning Commission shall also furnish these property owners with a copy of the said application.
- 4) The Planning Commission shall then forward proposed amendments to the Maryland Critical Area Commission.
- 5) After receiving the recommendations of the Planning Commission and the approval of the Critical Area Commission, the Town Commissioners shall hold a public hearing on the proposed amendments, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County.

b. Requirements for Amendments

1) Amendments to the Official Critical Area District Maps

The Town Commissioners may amend the Critical Area District Boundary to delete areas of the Town from the Critical Area District when it can be demonstrated that the Critical Area, as mapped on the Official Critical Area District Maps, is incorrectly drawn. The amended Critical Area District Boundary shall, at a minimum, encompass all areas as set forth in Section 1.3. Evidence sufficient to warrant a determination of a mistakenly drawn Critical Area Boundary Line shall be based on, and substantiated by either;

- a) The Official State Wetland Maps;
- b) The amended Official State Wetland Maps adopted by the State of Maryland; or
- c) The written concurrence by the State of Maryland that the Official State Wetland Map is incorrect.

The Town Commissioners may also elect to add areas to the Critical Area District at any time. Addition or deletion of areas from the Critical Area District shall be processed as amendments to the Critical Area District as per this Section.

- 2) Land-Use Management Classification - When proposing a change of land-use management classification, i.e., Intensely Developed Area (IDA), Limited Development Area (LDA) or Resource Conservation Area (RCA), other than by changing a land-use management classification through granting of the GA Growth Allocation District, the Town Commissioners shall not approve amendments unless it is found that there was a mistake in the original classification and that the amendment is approved by the Critical Area Commission. Changes to the Land Use Management classification using Growth Allocation shall be as prescribed in Section 5.11.

*Renumber SECTION 15. to SECTION 16.*

*Renumber SECTION 16. to SECTION 17.*

*Renumber SECTION 17. to SECTION 18.*

*Renumber SECTION 18. to SECTION 19.*

Renumber SECTION 19. DEFINITIONS to SECTION 20 DEFINITIONS and amend, renumber, and realphabetize to incorporate the following definitions:

**Afforestation** -- The establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas that are not presently in forest cover.

**Anadromous fish** -- Fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

**Buffer** (spelled with a capital B) -- A naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area Overlay District ("O"), the minimum Buffer is a continuous area located immediately landward of tidal waters (measured from the Mean High Water Line), tributary streams in the Critical Area, and tidal wetlands and has a minimum width of one hundred (100) feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in the Zoning Ordinance.

**Buffer Exemption Area** -- Any portion of the St. Michaels Critical Area shoreline that has been requested by the Town of St. Michaels and approved by the Critical Area Commission for exemption from the Buffer provisions of this Ordinance because due to the existing pattern of development the Buffer is prevented for fulfilling its function.

**Community piers** -- Boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

**Conservation easement** -- A non-possessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.

**Critical Area** -- All lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all state and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b. 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 9 of the Natural Resources Article, Annotated Code of Maryland; and
- c. Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Critical Area Commission -- The Maryland Chesapeake Bay Critical Area Commission.

Development -- Activity that materially affects the condition or use of dry land, land under water, or any structure.

Density -- The number of dwelling units per acre of gross area of a development tract.

Developed woodlands -- Areas one (1) acre or more in size that predominantly contain trees and natural vegetation and that also include residential, commercial, or industrial structures and uses.

Development or development activities -- Any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination thereof, including the subdivision of land.

Drainageways -- Are defined as minor watercourses that are defined either by soil type or by the presence of intermittent or perennial streams or topography that indicates a swale where surface sheet flows join.

Environmental Assessment -- A comprehensive report that describes the natural features and characteristics of a proposed development site, the changes that will occur as the result of proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and mitigation measures to be taken to minimize undesirable impacts to the environment.

Fisheries activities -- Commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

Forest -- A biological community dominated by trees and other woody plants covering a land area of one (1) acre or more. This also includes forests that have been cut but not cleared.

Forest management -- The protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

Forest practice -- The alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

Grandfathered -- Describes the status accorded certain properties and development activities that are of record prior to the date of adoption of the Zoning Ordinance or provisions of the Zoning Ordinance.

**Growth Allocation:**

- a. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; also
- b. An act of the Mayor and Council, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the "O" Critical Area Overlay District to another land management classification which allows an increase in the permitted density.

**Habitat Protection Areas** -- Includes the Buffer, Non-Tidal Wetlands, Threatened and Endangered Species, Plant and Wildlife Habitats, Anadromous Fish Spawning Propagation Waters and Species in Need of Conservation, as defined in COMAR 14.15.09.

**Highly erodible soils** -- Soils with a slope greater than 15 percent; or those soils with a K value greater than 0.35 with slopes greater than 5 percent.

**Hydric soils** -- Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

**Immediate Family** -- Father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

**Land clearing** -- Any activity that removes the vegetative ground cover.

**Marina** -- Any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

**Mean High Water Line** -- The average level of high tides at a given location.

**Natural Vegetation** -- Plant communities that develop in the absence of human activities.

**Natural features** -- Components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

**Non-tidal wetlands** -- Refers to those lands in the Critical Area (excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland) farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat) where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the

growing season, and that are usually characterized by one or both of the following:

- a. at least periodically, the lands support predominantly hydrophytic vegetation; and/or
- b. The substrate is predominantly undrained hydric soils.

Offsets -- Structures or actions that compensate for undesirable impacts.

Open space -- Land and water areas retained for use as active or passive recreation areas in an essentially underdeveloped state.

Open water -- Tidal waters of the State that do not contain tidal wetlands and/or submerged aquatic vegetation.

Pad development -- The area of a lot, within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed the remaining area of the lot must be maintained in natural vegetation.

Physiographic features -- The soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

Redevelopment -- The process of developing land that is or has been developed.

Reforestation -- The establishment of a forest through artificial reproduction or natural regeneration.

Shore Erosion Control Measures -- Any of number of structural and nonstructural methods or techniques for controlling the erosion of shoreline areas. More specifically the term refers to:

- a. Nonstructural - Creation of an intertidal marsh fringe channelward of the existing bank by one of the following methods:
  1. Vegetation -- Planting an existing shore with a wide band of vegetation;
  2. Bank Sloping/Vegetation -- Sloping and planting a non-wooded bank to manage tidal water contact, using structures to contain sloped materials if necessary; and
  3. Contained Beach -- Filling alongshore with sandy materials, grading, and containing the new beach to eliminate tidal water contact with the bank.
- b. Structural
  1. Revetment -- facing laid on a sloping shore to reduce wave energy and contain shore materials;

2. Bulkhead -- excluded due to adverse impacts to the near-shore marine environment, except in the following special cases:

(a) There erosion impact is severe and high bluffs and/or dense woodland preclude land access, bulkheads can be installed by shallow-draft barge and pile driver; and

(b) In narrow, manmade lagoons for activities that require frequent interchange between boats and land.

Steep slopes -- Slopes of 15 percent or greater incline.

Tidal wetlands -- State wetlands that are defined as any land under the navigable waters of the state below the Mean High Water Line, affected by the regular rise and fall of tide, and private wetlands that defined as any land not considered 'state wetlands' bordering or lying beneath tidal waters, that is subject to regular or periodic tidal action and supports aquatic growth. Private wetlands includes wetlands transferred by the state by a valid grant, lease, patent, or grant confirmed by Article 5 of the Declaration of Rights of the Constitution to the extent of the interest transferred. The term "regular or periodic tidal action" means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by the wind or any other circumstance.

Topography -- The existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

Tributary streams -- Perennial and intermittent streams in the Critical Area that are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the Town of St. Michaels.

Water-dependent facilities -- Structures or works associated with industrial, maritime, recreational, educational, or fisheries activities which the Town of St. Michaels has determined require location at or near the shoreline within the Buffer.

Wildlife corridor -- A strip of land having vegetation that provides habitat and a safe passageway for wildlife.

**APPENDIX EIGHT - PROPOSED AMENDMENTS TO THE TOWN OF ST. MICHAELS  
SUBDIVISION REGULATIONS**

The following amendments will be incorporated into the Town of St. Michaels  
Subdivision Regulations:

**ARTICLE I**

*Add the following item to Section 101 Intent:*

- (f) ...; and
- (g) protect wetlands, streams, areas of steep slopes, highly erodible (and other soils with development constraints), shorelines, and plant and wildlife habitats within the Town's Critical Area.

*Amend ARTICLE II - DEFINITIONS, Section 200 General to add the following:*

- (11) *Terms referred to in regulatory provisions specific to the "O" Critical Area Overlay District shall be the same as those specified in Section 20 of the St. Michaels Zoning Ordinance.*

*Add the following information under ARTICLE V - DESIGN STANDARDS:*

**Section 511 Standards For Development in the "O" Critical Area Overlay District**

- (a) In addition to the other provisions of the Town Zoning Ordinance and Subdivision Regulations, the following will apply to all subdivision of land located within the Town of St. Michaels Critical Area Overlay District:
  - (1) Where a tract of land bordering tidal water, tidal wetlands, or tributary streams in the Critical Area is to be subdivided and a Buffer exemption has not been granted by the Critical Area Commission, a Buffer of at least one hundred (100) feet shall be established in natural vegetation (except areas of the Buffer which are planted in vegetation where necessary to protect, stabilize, or enhance the shore line). No development, including septic systems, impervious surfaces, parking areas, roads, or structures, are permitted in the buffer. However, approved development or expansion of a water-dependent facility, as defined in the Town of St. Michaels Zoning Ordinance, is excepted from these Buffer provisions.
  - (2) If the lot ownership extends to the water, wetlands, or streambed then the Buffer shall be included in the required setback distance for building on that lot, except in the case of water-dependent facilities. Where the Buffer is to be owned and maintained by a Home Owners or similar appropriate

organization, the required setbacks distance shall be measured from the property line separating that lot from the designated Buffer. The buffer, when not included in the lots, may be included in the calculating gross density.

- (3) When the Buffer is not fully forested, it will be expanded to include contiguous sensitive areas on parcels containing twenty (20) acres or more in the RCA land management classification. This expansion will occur whenever new land development or other land disturbing activities, such as clearing natural vegetation for agriculture or mining, are proposed. The expanded Buffer must be shown on plans required for such development or activities. Sensitive areas are defined as follows: 1) Hydric soils and soils with hydric properties as designated by the Soil Conservation Service; 2) highly erodible soils with a K value greater than .35; and 3) Steep slopes greater than 15 percent. The Buffer shall be expanded according to the following rules:
- (i) When the site of the proposed land disturbance drains to a slope greater than fifteen (15) percent contiguous to the Buffer, the Buffer shall be expanded four (4) feet for every percent of slope or to the top of slope, whichever is greater, but in no case more than ten (10) feet beyond the top of the slope greater than (15) percent.
  - (ii) Where the site of the proposed land disturbance drains to the Buffer, not fully covered by forest or developed woodland, the Buffer shall be expanded from one hundred (100) feet to one hundred fifty (150) feet, or to the upland limit of adjacent hydric soils, soils with hydric properties, and erodible soils, whichever is less.
  - (iii) The applicant may provide afforestation in the Buffer as an alternative to expanding the Buffer to include hydric soils, soils with hydric properties, and erodible soils, provided that no area of hydric soils is classified as a non-tidal wetland. Afforestation must be in accordance with the Town of St. Michaels Zoning Ordinance.
  - (iv) All subdivision in the St. Michaels Critical Area shall be subject to the Habitat Protection criteria and guidelines prescribed in the Town of St. Michaels Critical Area Program.
  - (v) The subdivider shall be required to identify stormwater management policies appropriate to site development which achieve the following standards:

- In areas designated Intensely Developed Area on the Town of St. Michaels Official Critical Area map the subdivider shall demonstrate that the best management practices for stormwater assure a ten (10) percent reduction of pre-development pollutant and loadings.
  - The subdivider shall delineate those site areas not covered by impervious surfaces to be maintained or established in vegetation. Where vegetation is not proposed the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in as part of the Town of St. Michaels Critical Area Program.
  - The subdivision shall be designed to assure those features, or resources identified as habitat Protection Areas are offered protection as prescribed in the Habitat Protection Element of the Town of St. Michaels Critical Area Program.
- (4) Roads, bridges and utilities serving lots shall be located to avoid disturbances to Habitat Protection Areas. When no alternative exists and such infrastructure must cross of be located in Habitat Protection Area the developer shall demonstrate how impacts to Habitats have been minimized and that no feasible alternative location of such infrastructure exists.
- (5) All roads, bridges, lots or other development which cross or are located adjacent to tributary streams in the Critical Area shall:
- (i) Not be located in the Buffer and designed in a manner to reduce increases in flood frequency and severity.
  - (ii) Provide for the retention of natural streambed substrate.
  - (iii) Minimize adverse impacts to water quality and storm water runoff.
  - (iv) Retain existing tree canopy.
- (6) Lots and open space acres shall be located and designed to provide for maintenance of existing site wildlife and plant habitats and continuity with those on adjacent sites. Existing

wildlife corridors shall be identified on proposed development plats. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site.

- (7) Impervious surfaces in subdivision located in Limited Development Area (LDA) of the Town of St. Michaels Critical Area shall be limited to fifteen (15) percent of the gross site area proposed for development, except that impervious surfaces on any lot not exceeding one (1) acre in size in a subdivision approved after 1 June 1986 may be up to twenty-five (25) percent of the lot.
- (8) Development on slopes greater than fifteen (15) percent shall be prohibited unless such development is demonstrated to be only effective way to maintain or improve slope stability.
- (9) No clearing or grading is permitted in the Buffer nor on steep slopes and hydric or highly erodible soils for other than agricultural practices, not involving the clearing of natural vegetation in the Buffer, or commercial forestry practices in the Buffer between March 1 and May 15.
- (10) Land to be subdivided shall be designed and improved in reasonable conformity to existing topography, in order to minimize grading, cuts and fill, and to retain, insofar as possible, the natural contours, minimize store water run-off and conserve the natural cover and soil. No soil, sand or gravel shall be removed from any lots shown on any subdivision plat, except in accordance with the provisions of the Sediment Control Plan approved by the Soil Conservation District Board.
- (11) Subdivision and development in the Town of St. Michaels Critical Aero are encouraged to increase natural vegetation on the development site.
- (12) Subdivision located in Limited Development Areas (LDAs) and Resource Conservation Areas (RCAs) are required to meet the following minimum standards for forest and developed woodlands. Forest and developed woodlands as defined by the Town of St. Michaels Critical Area Program shall be created or protected in accordance with the following:
  - (i) When no forest exists on the site, at least fifteen (15) percent of the gross site area shall be afforested. The location of the afforested area should be designed to reinforce protection to site habitats or provide connections between forested areas when they are present on adjacent sites.
  - (ii) When forests or developed woodland exists on the site and proposed development requires the cutting or

clearing of trees, areas proposed for clearing shall be identified on the proposed development plan. The developer shall submit plans for development and areas to be cleared to the Maryland Forest, Park and Wildlife service for comments and recommendations, and shall transmit comments to the Town of St. Michaels Planning Office. A grading permit shall be obtained prior to any clearing or cutting associated with proposed development. In addition, cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions.

- All forests cleared or developed shall be replaced on not less than an equal area basis, either on the site or on another site approved by the Planning Commission except that if clearing on a fully forested lot is limited to a development pad of 10,000 square feet or less and cleared areas are reforested to the extent possible, the forest shall be considered a developed woodland and no replacement required.
- No more than 20 percent of the forested or developed woodland within the site proposed for development may be removed (except as provided for in ((c) below) and the remaining 80 percent shall be maintained as forest cover through the use of appropriate instruments (e.g., recorded restrictive covenants). Removal of forest of developed woodlands cover in the Buffer is prohibited.
- Clearing of forest or developed woodland up to 20 percent shall be replaced on an area basis of one to one. A developer may propose clearing up to 30 percent of the forest or developed woodland on a site, but the trees removed in excess of 20 percent must be replaced at the rate of 1.5 time the amount removed either on the site or on another site approved by the Planning Commission.
- If more than 30 percent of the forest on a site is cleared, the forest is required to be replanted at 3 times the total areal extent of the cleared forest.
- If the cutting of forests occurs before a grading permit is obtained, the forest is

required to be replanted according to the requirement in (d) above.

- All reforestation and/or afforestation shall be included in a planting plan.

*In ARTICLE VIII - APPLICATION AND PLAT REQUIREMENTS, under Section 803 Preliminary Plat and Section 804 Minor Subdivision Plat shall the following information requirements:*

(e) For proposed Subdivision located in the Critical Area, the following additional information will be shown on the Preliminary Plat as applicable:

(1) A boundary survey plat of the entire site at a scale that provides legibility without undue size and which shows the following:

(i) Floodplain boundaries (100 year);

(ii) Location and areal extent of all soils exhibiting the following characteristics as determined by the Soil Survey:

- Septic Limitations.
- Wet soils.
- Hydric Soils and soils with hydric properties, and
- Highly erodible soils (soils on slope greater than 15 percent or soils on slope greater than 5 percent with "K" values greater than 0.35)

(2) A detailed drawing showing:

(i) Location proposed use, and height of all buildings (delineate all existing buildings and structures):

(ii) Location of all parking and loading areas, with ingress and egress drives thereto;

(iii) Location of outdoor storage (if any);

(iv) Location of recreation facilities (if any);

(v) Location of all existing or proposed site improvements, including storm drains, culverts, retaining walls, fences, stormwater management facilities, a well as any sediment and erosion control structures and shore erosion structures;

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- (vi) Location, size and type of vehicular entrances to the site;
- (vii) Location of the Critical Area Overlay District Boundary, the Buffer and other buffer areas, open space areas, forested areas and landscaping (the plan shall show all areas to be maintained as landscaping and the type of plantings to be provided and the means by which such landscaping will be permanently maintained shall be specified);
- (viii) Location of all contiguous forested areas adjacent to the site;
- (ix) Location of tidal and non-tidal wetlands on the site;
- (x) Location of existing water-dependent facilities on and adjacent to the site, including the number of existing slips and moorings on the site;
- (xi) The location and extent of existing and/or proposed erosion abatement approaches;
- (xii) Location of Plant and Wildlife Habitats as defined in the Town of St. Michaels Critical Area Program;
- (xiii) Known location of the habitat of any threatened or endangered species or species in need of conservation on or adjacent to the site, or within 1/4 mile of the site in the case of bald eagle habitats;
- (xiv) Location of anadromous fish spawning streams(s) on or adjacent to the site and a delineation of the watershed area of the stream on the site; and
- (xv) A detailed drawing locating shore erosion abatement techniques to be included with the site plan.

(4) Computations of:

- (i) Total lot area;
- (ii) Building Floor area for each type of proposed use;
- (iii) Building ground coverage (percentage);
- (iv) Road area;

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- (v) Number and area of off-street parking and loading spaces; and
- (vi) General open space area;
- (vii) Total area in the Critical Area Overlay ("O");
- (viii) Total man-caused impervious surfaces areas and percentage of site;
- (ix) Separate computations of the total acres of existing forest cover in the Buffer and in the Critical Area; and
- (x) Total area of the site that will be temporally disturbed during development and area that will be permanently disturbed. disturbed is defined as any activity occurring on an area which may result in the loss of or damage to existing natural vegetation.

(5) Commercial or industrial uses must include:

- (i) Specific uses proposed;
- (ii) Maximum number of employees for which buildings are designed;
- (iii) Type of energy to be used for any manufacturing processes;
- (iv) Type of waters or by-products to be produced by any manufacturing process;
- (v) Proposed method of disposal of such wastes or by-products;
- (vi) Location of outdoor lighting facilities; and
- (vii) Other information as may be specified in the regulations for industrial or commercial uses in the Town of St. Michaels Zoning Ordinance;
- (viii) An Environmental Assessment Report which provides a coherent statement of how the proposed development addresses the goals and objectives of the Town of St. Michaels Chesapeake Bay Critical Area Program. At a minimum the Environment Assessment shall include;

- A statement of existing conditions, e.g.,

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amount and types of forest cover, amount and type of wetlands, discussion of existing agriculture activities on the site, soil types, topography, etc;

- Discussion of proposed development project, including number and type of residential units, amount impervious surfaces, proposed sewer treatment and water supply, acreage devoted to development, proposed open space and habitat protection areas;
- A discussion of the proposed development's impacts on water quality; and
- Documentation of all correspondence and findings.

(6) In addition to the information above, the Preliminary Site Plan shall be accompanied by the following when the subdivision or development is proposed in the Critical Area, as required:

- (i) A planting plan for reforested and afforested areas or Forest Management Plan with the comments of the Bay Forester;
- (ii) A Habitat Protection Plan including the comments of the Maryland Forest, Park and Wildlife Service and the Maryland Heritage Program;
- (iii) A preliminary Stormwater Management Plan;
- (vi) A preliminary Sediment and Erosion Control Plan;
- (v) A Shore Erosion Protection Plan - complete specification for proposed shore erosion work.

*Add the following item to SECTION 805. Final Plat:*

(e) Information to be shown for subdivision in the Critical Area:

(1) Final tabulation of:

- (i) Total area of the subdivision or parcels to be recorded in the Critical Area District.
- (ii) Total number of lots in the Critical Area District;
- (iii) Residential density in the Critical Area District.

(2) Accurate outlines (meats and bounds, where required) of any

common or reserved areas or portions of lots to be maintained by covenant, easement, or similar approved instrument, in permanent forest cover, including existing forested areas, reforested areas, and afforested areas.

- (3) Accurate outlines (metes and bounds, where required) of any areas to be maintained as permanent wildlife and plant habitat protection areas.
- (4) Comments of the Bay Water shed Forester, required when a proposed development site contains or will contain forest or developed woodland areas;
- (5) A Habitat Protection Plan including the comments to the Maryland Forest, Park and Wildlife Service, required when a habitat protection area (not including the Buffer) is on or adjacent to the site;
- (6) A Stormwater Management Plan;
- (7) A Sediment and Erosion Control Plan; and
- (8) A Planting Plan or Forest Management Plan, as applicable.